

THE FALLACIOUS VOTE

**A Human Rights Account of the
2017 Political Parties Primaries**

MAY 2017



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Acknowledgement

The Kenya National Commission on Human Rights (KNCHR) salutes the Citizens of Kenya for their participation and enthusiasm in this great milestone that will 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 has 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 wherefrom critical decisions that informed this monitoring process were made.

The report would not have been a success without the immense planning, input, support and participation of KNCHR staff who committed to early mornings and long nights at the KNCHR Elections Monitoring Hub to ensure that information from the regions was analyzed and posted. This report is aptly dubbed as "*The Fallacious Vote*" and it is a reflection of the continuous internal efforts of 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 the further educative role they have 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 continue employing vigilance as they have to safeguard 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 is the beginning of a crucial process that will facilitate inauguration of top leadership in Kenya in the next few months and thus takes the input of all to ensure that the end result is justifiable and adheres to the rule of law. It is in this light that we say to all who contributed to this process a big

THANK YOU.

Oh God of all Creation,

Bless this Land and Nation....

(Kenya National Anthem).

Foreword

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 in Kenya?

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 of Kenya and shall be exercised in accordance with the Constitution. One of the key provisions that bring to life this power is the constitutionally guaranteed right to make political choices that is actualized by the right to vote as entrenched in Article 38 (3) (b) of the Constitution of Kenya.

The exercise of these powers culminates to the determination of how citizens will be governed over the 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 and participate in its activities and also vie for a position in any political party of which they are members.

The same Constitution 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 of 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 all 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 of the 2017 political party primaries monitoring which took place in April and May 2017.

The information was gathered from 33 Counties that the 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 including the political party nominations process.

KNCHR lauds and notes the great enthusiasm with which the electorate participated in the primaries as was reflected in the turnout at varied polling centers despite the myriad and sudden cancellations and postponements by their respective 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 is 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 gazzetted in advance by the Independent Electoral and Boundaries Commission. The gaps brought about by this unpreparedness greatly affected the credibility and integrity of the entire exercise. Key among these issues include the lack of party registers and adequate voting materials. Therefore, for all intent and purpose of the election laws, political parties ought to be held liable for committing election offences stipulated on the Elections Offence Act of 2015.

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 include 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.

Suffice to note, party nominations are not an option 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.

KNCHR had in the 2013 political parties' nominations exercise noted similar irregularities and called upon the relevant duty bearers to act and tighten the noose on non-compliant parties/aspirants, some of which are yet to be effected. KNCHR is deeply concerned that despite new electoral reforms, political parties showed no improvement in the 2017 primaries.

The recommendations made in this 2017 report reflect the KNCHR's relentless push for electoral reforms which have a direct effect on the promotion, protection and enjoyment of fundamental human rights in Kenya.

CHAPTER 1: INTRODUCTION

1.1 Contextual Background

Kenya shall hold General Elections on Tuesday 8th August 2017 for the second time under the 2010 Constitution. The months leading to the political primaries have been precipitated by a clamour for electoral reforms that culminated in violent public demonstrations that led to the death of five people, hundreds injured and destruction of property.

Spirited calls by KNCHR, Civil Society Organizations and religious bodies to the two main political divides to hold dialogue and end the violence 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 to 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 and in a twist of events, an 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 have been 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 remains. Questions have been 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 procuring an audit firm that will clean up the voters register.

The focus on the 2017 general elections has also been 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 will definitely have logistical implications on the part of IEBC.

KNCHR has 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 are 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 primaries play a critical role in promoting democracy in a nation. Since the fight for multi-party democracy in the late 80s and early 90s, 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 mwananchi.

Political parties in Kenya are governed by the Political Parties Act of 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 and inclusion of special interest groups which must also be reflected in the governing body. Section 17 further provides that a political party must maintain in its head office and in each county office among other a membership list, its policies and plans. 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 hence play a critical role of protecting and promoting the various political rights as espoused 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 house of parliament at the national level and at the county assemblies are encompassed 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 feely 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 nepotisms, favourism, 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 1st 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 were 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 resolutions 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 applicant. 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.

KNCHR began from the 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 further mapped out 29 counties as hotspots during the elections. This assessment was based on information from security agencies, various partners involved in the election monitoring and observation and its own assessment stemming from its experience in the field.

The KNCHR team managed to develop an election monitoring system which allows for 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.

The KNCHR then proceeded to deploy 84 monitors who were taken through an intensive training program of the identified hotspots. In addition, the KNCHR not only engaged its members of staff from its regional offices 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

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 the elections, these fundamental rights are essential for the effective exercise of the right to vote.

2.1 International and Regional Instruments On Elections

The Constitution of Kenya 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.

(a) 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 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.

(b) International Convention on Civil and Political Rights

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.”

(c) The 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.

(d) 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 the reason 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 on equal footing with men.

(e) 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.

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 the national 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.

(f) The African Charter on Human and People’s Rights and the African Charter on Democracy, Elections and Governance

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.

(g) Protocol to the African Charter on Human and Peoples' Rights On The Rights of Women In Africa, 2003 (The Maputo Protocol)

This protocol focuses on the rights of women in Africa. With regards to elections, the protocol obligates states 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

Article 27 of the Constitution 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 in all human 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 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 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;

1. The Elections Act, 2011;
2. Election Offences Act, 2016;
3. The Political Parties Act, 2011;
4. The Independent Electoral and Boundaries Commission Act, 2011;
5. The Elections Campaign Financing Act, 2013;
6. The Supreme Court Act and
7. 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 and 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 in 2013, there have been several proposals to amend the Constitution and the statues related to the electoral bodies and processes in response to various issues that were experienced and also to comply with the Constitutional requirements.

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

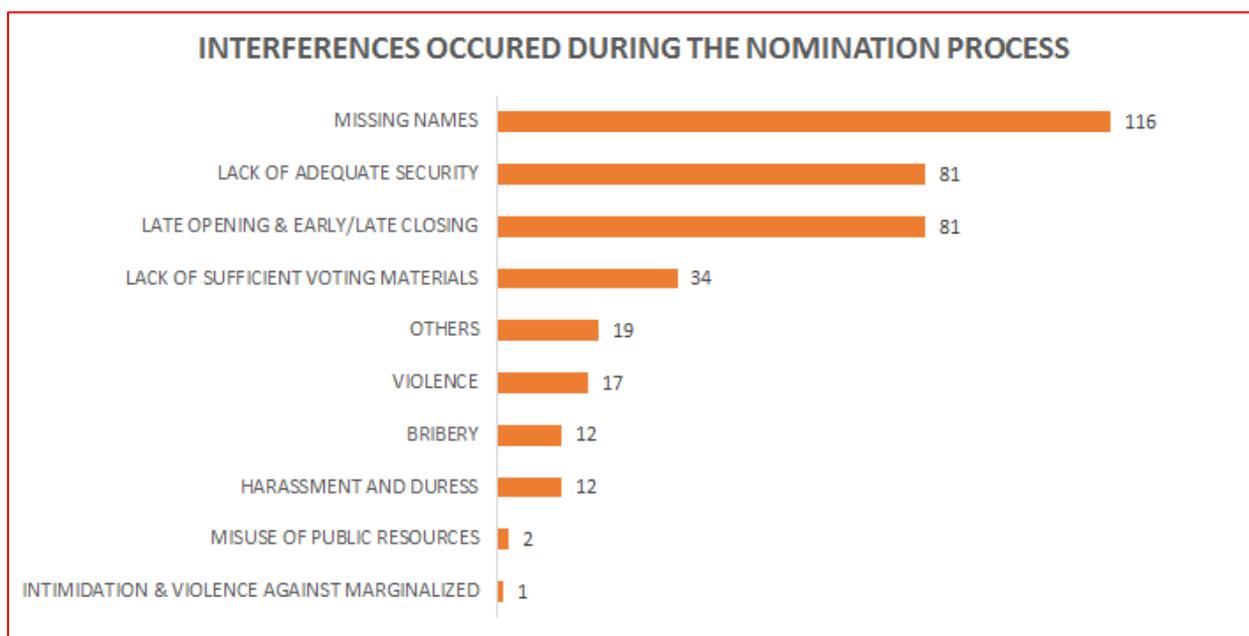
1. Election Laws (Amendment) Act, 2016 that has a raft of amendments to the Election Act, the IEBC Act, the Political Parties Act, 2011, the Supreme Court Act, 2011 and the Registration of Persons Act, Cap 106;
2. The Election Offences Act that enumerates the various offences associated with the elections and the penalties for the same and
3. An amendment to Election Laws (Amendment) Act, 2016 was also passed acrimoniously in 2016 despite the above mentioned negotiated pieces of legislation. Its main highlight was amending Section 44 of the elections law to allow for a manual backup system in the event of technology failure.

The 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

The Kenya National Commission on Human Rights had selected parameters upon which the monitoring of the primaries was based on. These are, bribery, violence, missing names (of both aspirants and candidates), voting materials, opening and closing time, provision of security, harassment and duress (of both aspirants and candidates), intimidation and violence against the marginalised and the vulnerable, manipulation of the voter register and any other unique issues that would arise including challenges and dispute resolution.

KNCHR monitors and staff monitored 224 centres in 33 counties¹ and documented the issues as presented in the graph below.



Graph 1: Summary of issues based on the 2017 Party Primaries

An overall analysis of the findings from the monitoring exercise highlights the prevalence of the various parameters used to measure the compliance of the process in promoting and protecting the right to vote and the right to be voted.

¹ Bungoma, Kakamega, Kisii, Migori, Siaya, Tana River, Lamu, Kwale, Garrissa, Marsabit, Turkana, Mandera, Isiolo, Samburu, Baringo, Nakuru, Kirinyaga, Meru, Laikipia, Elgeyo Market, Uasin Gishu, Nandi, Kericho, Bomet, Narok, Nairobi, Kiambu, Muranga, Mombasa, Wajir, Nyamira, Kajiado and Kisumu.

The findings infer that cases of missing names from the party registers were the highest concern with 115 centers out of the 224 documented. 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 the most of the political parties had not adequately prepared for the primaries. This is due to the fact that the second highest issue documented in the monitoring process was late opening and early/late closing that was reported in 79 out of the 224 centers monitored.

Out of the 224 centers monitored, the National Police Service endeavored to provide security at a minimum of 2 officers. However, in 79 centers the KNCHR team observed the officers were overwhelmed by the large number of the voter turnout.

There were 17 incidences of violence reported in the 33 counties monitored which resulted to confirmation of at least 2 deaths and 10 persons seriously injured and admitted in hospital. 12 cases of intimidation and harassment was reported including one case of a female aspirant banished from her home for participating in the primaries. At least 12 cases of open bribery by aspirants was registered and evidence captured by the KNCHR monitoring team.

3.1 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 bribery as 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.

The graph below shows the cases of bribery recorded in the top 9 counties with Bungoma topping closely followed by Nairobi. This is attributed to the fiercely contested ODM, Ford

Kenya, and Amani National Congress in the Western region as characterised by the numerous repeat exercises.

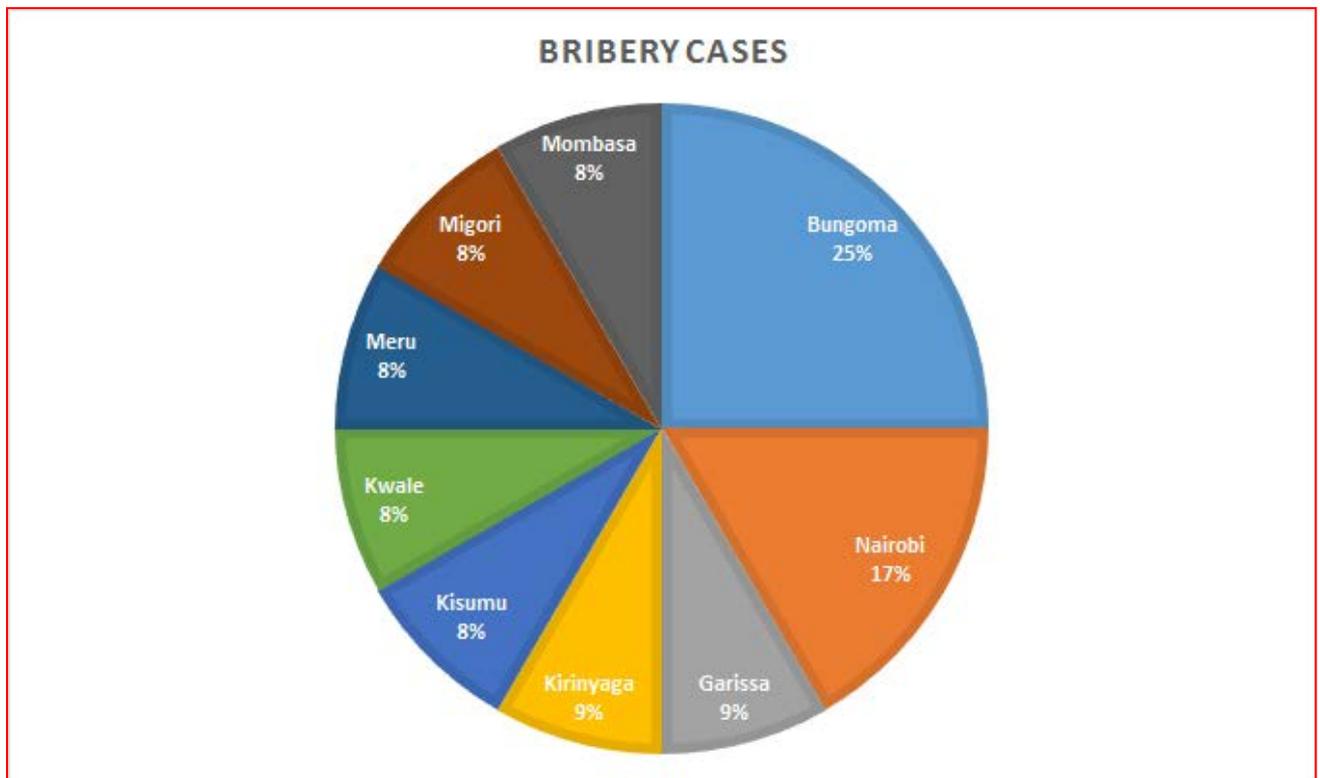


Chart 1: Bribery cases per county

KNCHR documented 12 cases of bribery reported in Bungoma, Nairobi, Garissa, Kirinyaga, Kisumu, Kwale, Meru, Migori, and Mombasa. Most of these recorded cases happened at polling stations where candidates for varied positions were giving out monies to those coming in to vote.

Some of these instances recorded were as follows:

- i. On 25th April 2017 within Matulo Ward in Webuye West Constituency, Bungoma County at around 8.30 am, a MCA aspirant was openly issuing cash to his supporters at Malaha Primary School polling station.
- ii. On 26th April 2017 within 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.

- iii. *On 26th April 2017 within Tononoka Social Hall polling station in 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 candidates.*
- iv. *On 18th April 2017, at a place called Whitehouse within Nakuru County, a candidate was caught on camera by KNCHR monitors bribing members of the public.*
- v. *On 22nd April 2017 in Langata within Nairobi County where a gubernatorial aspirant was captured giving out money to the members of the public.*



(Left) A voter on motorbike counts money dished out by an aspirant. (Right): Bribery in Nakuru County on 18th April 2017

- vi. *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.*
- vii. *On 24th April 2017 in Gatwe polling station, Mutira Ward in Kirinyaga County, an agent for an aspirant was captured by the KNCHR staff as he was dishing out money near the polling station.*
- viii. *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 which is an electoral offence and borders on attempts to unduly influence voters.



A gubernatorial aspirant with the ballot box placed on a desk she donated in 2014 (Photo- The Standard)

- ix. Transportation of voters- Some candidates transported voters to the polling stations.



Matungu Ward, Kakamega County: Voters being transported to vote at Mwira Primary School

- x. The Commission also observed the display of posters and distribution of leaflets bearing candidates' images and campaign messages at polling stations during the polling day.

Bribery is an illegality to influence voters by giving out freebies, money or other materials to influence voters and it disadvantages other candidates who may not have the equal financial strength. This therefore skews the voting patterns thus in the end having leaders whose leadership qualities are below the constitutional threshold.

The next graph indicates the number of bribery cases which indicate that the Jubilee Party (59%) had the highest number of cases closely followed by ODM (25%), Ford Kenya and ANC (8%)

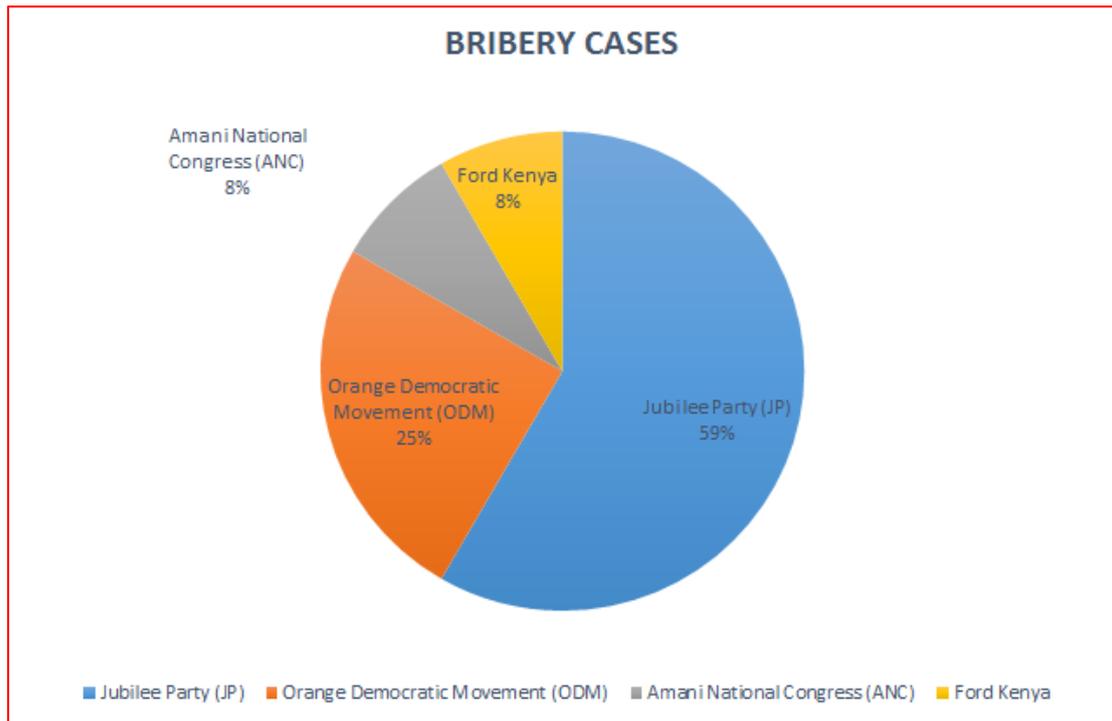


Chart 2: Cases of voter bribery per party

3.2 Violence

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

Section 11 of the Election Offences Act 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”*.

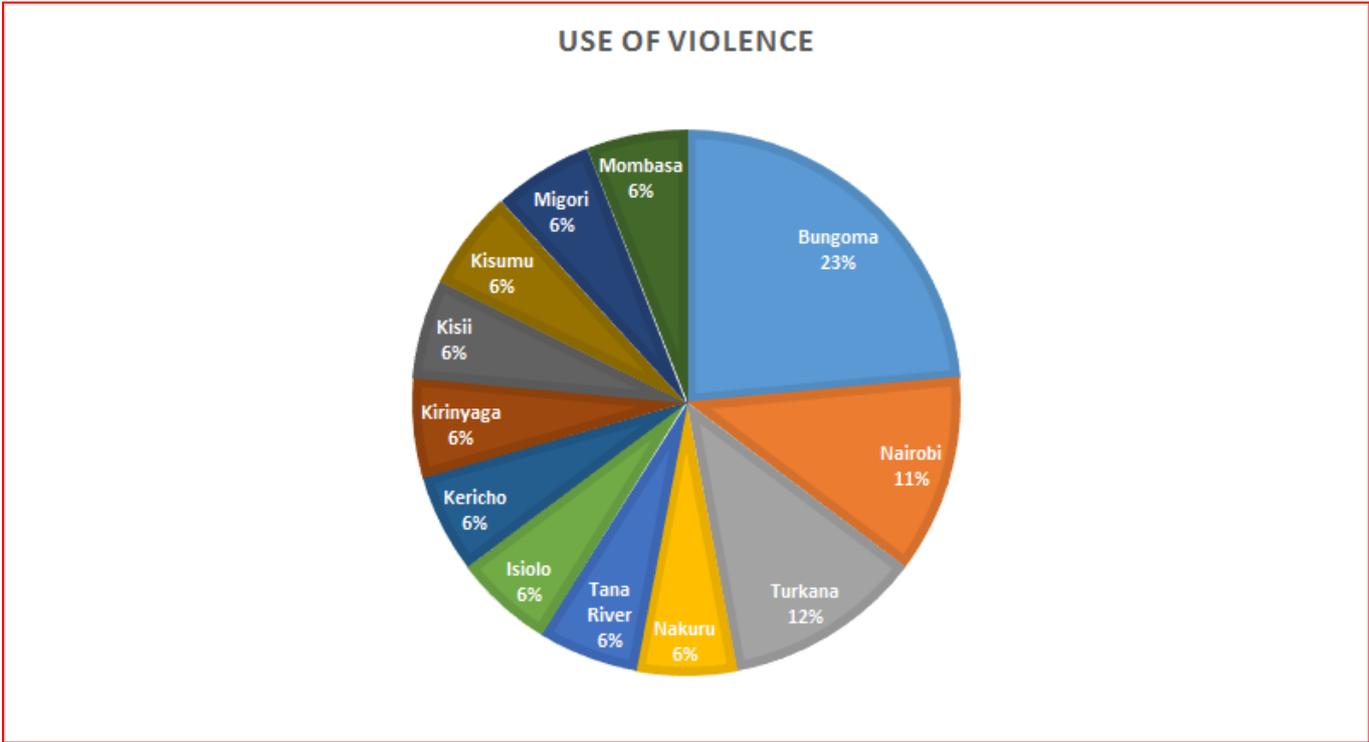


Chart 3: Cases of Violence

In all the 33 Counties monitored, KNCHR registered cases of violence. 17 of these cases were of a serious nature. These ranged 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.

KNCHR recorded some of the cases of violence on the following dates;

- i. *On 21st April 2017, at Ndori, Rarieda Constituency, 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.*
- ii. *20th April 2017, at Lenchante Hotel, in Kimilili Constituency, Bungoma County, an aspirant, Mr. Didmus Barasa, allegedly drew his gun and trained it on another aspirant threatening to shoot her. However, he was restrained though the female aspirant was left shaken.*
- iii. *On 23rd April 2017, group of people allegedly hired by the incumbent attacked supporters of his rival at Kangema Constituency and injured scores of people within Kanyenyaini market.*



A party supporter injured by alleged hired people from an opposing camp at Kanyenyaini, Murang'a County on 23rd April 2017

- xi. *On 26th April, at Dr. Livingstone Primary School, Maringo, Hamza Ward, Makadara Constituency in Nairobi County missing party register at the polling station led to the rise of tension and suspicions of rigging. 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 remaining voting materials taken to Jogoo Police station.*



Destroyed ballot papers after a fracas in Makadara, Nairobi.

- iv. *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.*



A victim of violence during the Migori Party primaries

- xii. *On 20th April, 2017 4 people were seriously injured at Rakwaro mixed secondary School in Migori County 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.*



An elderly woman caught in Party primaries fracas in Kirinyaga County on 24th May 2017

- xiii. *On 21st in Gatundu South Constituency, crude weapons consisting of machetes, clubs and slashers were intercepted by the security agents and led to 3 people being arrested.*
- xiv. *On 25th April, 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.*

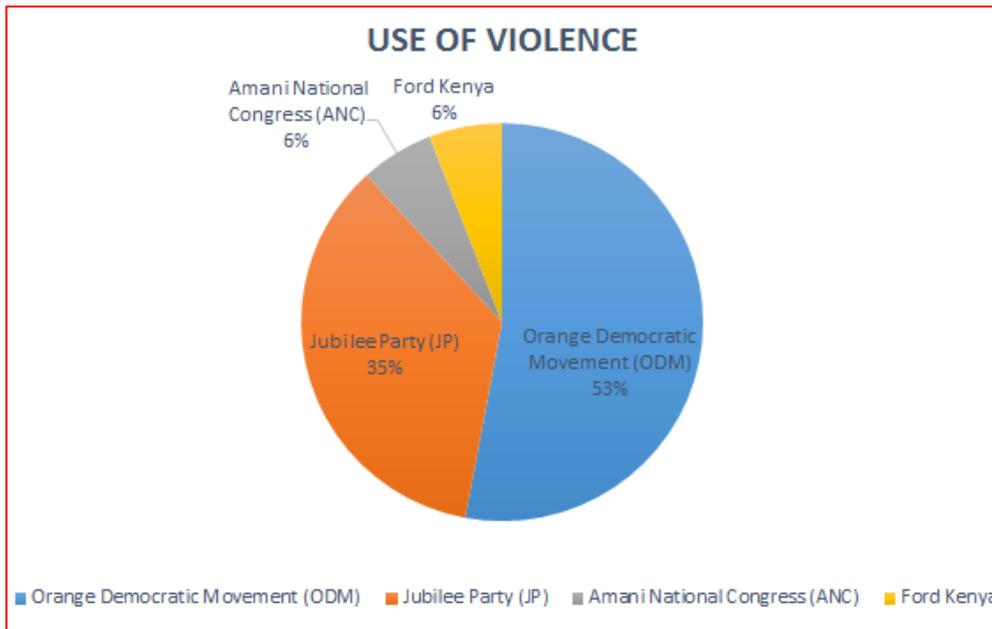


Chart 4: Cases of violence per Party

3.3 Missing Names

The Political Parties Act Section 7 (2) (f) (1) and section 28 of the Elections Act 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 primaries, KNCHR recorded 115 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.

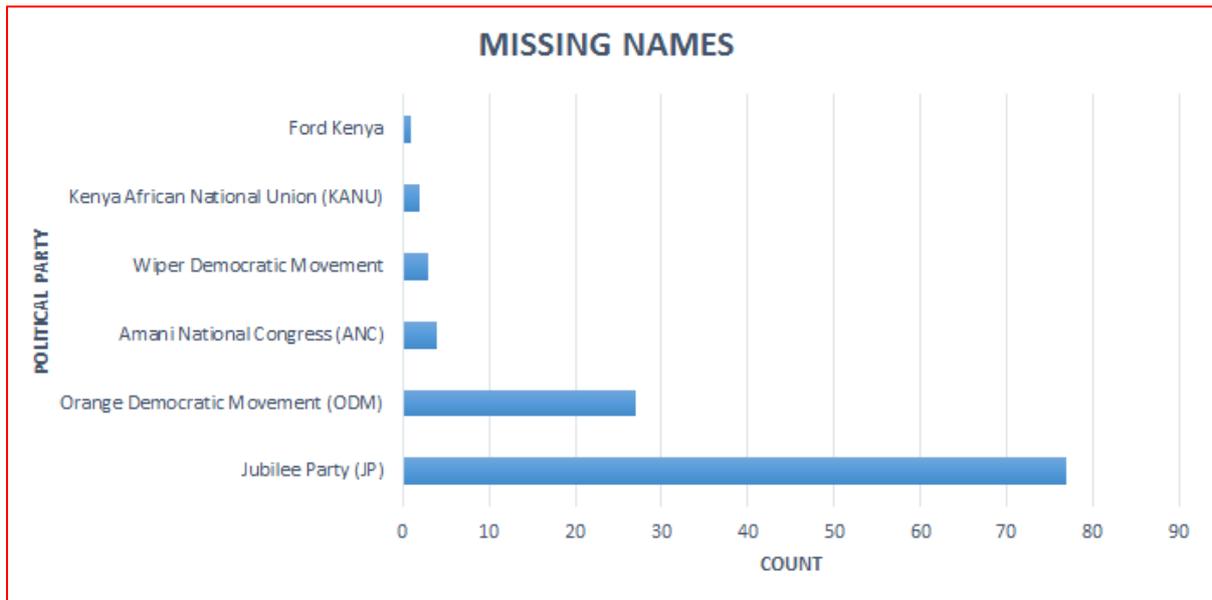
In some constituencies, many voters were turned back and failed to vote since their names were either missing on the available registers or due to the merger of the polling centres. This happened without a prior notice to the voters.



Graph 2: Cases of missing names per County

To salvage the situation, most political parties through their Returning Officers and Presiding Officers in consultation with other party officials at polling centres agreed that members who had National Identification Card and voters cards be allowed to vote.

KNCHR notes that though Judith Pareno of the ODM Elections Board made a public announcement on 17th April 2017 that the Party would rely strictly on the party register, KNCHR established that this was not the case. Similarly, her counterpart in the Jubilee Party, Mr. Andrew Musangi on 25th April 2017 asked Returning Officers under him to allow Party members with ID cards to cast their votes.



Graph 3: Missing names per Party

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

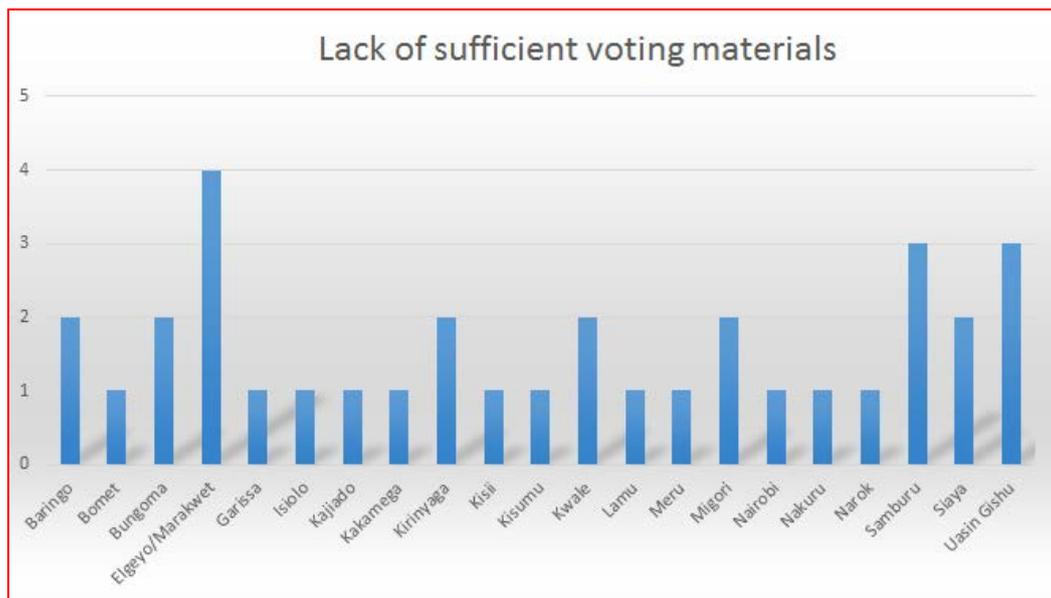
- i. On 26th April 2017 in Wabera Primary School polling center within Isiolo North Constituency County many voters' names were missing from the availed register during the Jubilee Party primaries. Those whose names were missing were turned away.
- ii. On 15th April 2107, KNCHR monitors noted there were 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 which combined 3 polling stations; Oloikarere, Nailoglogilog and Endashata polling stations.
- iii. On 20th April 2017 Mwira Polling Station within Mayoni Ward within Matugu, in 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.
- iv. Besides voters missing their names, aspirants also found their names missing on ballot papers causing cancellations of some nominations. In Kanduyi, Bungoma County, a Ford Kenya MCA aspirant for Sangalo Ward 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.

In the absence of party registers during the process, KNCHR notes that this 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.

3.4 Lack of Sufficient Voting Materials

While parties were accorded ample time to prepare adequate materials for the exercise, the Commission noted that this was not the case for most of the political parties based on the political party legislation and timelines given by IEBC².



Graph 4: Lack of sufficient materials per county

KNCHR documented that 34 centres did not have sufficient 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 party officials to lock out voters thus denying them the right to participate in the exercise.

² IEBC published a public notice dated 6th February 2017.

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:

- i. *On 24th April 2017, at Migori, Awendo Constituency, South Sakwa Ward, Mariwa Primary school, the ODM polling station received only 200 ballot papers and the party members list had 522 people. The last ballot paper was cast at 3:00 pm and the voters were still on the queue. Since the ballot papers were not enough, some voters did not vote.*
- ii. *On 25th April 2017 at Bungoma County, Bungoma Constituency, Kimilili Ward, Kimilili D.E.B Primary School polling station, 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. The reason for this was that 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.*
- iii. *On 24th April 2017, at Elgeyo Marakwet, Marakwet Constituency, Sambirir Ward, Chesoi Catholic Church polling station, 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.*
- iv. *On 26th April 2017, at Siaya, Alego Constituency, South East Alego ward, Kirindo Primary School ODM polling station, there were no sufficient ballot papers and the Presiding Officer decided to use exercise books as ballot papers for the exercise.*
- v. *On 20th April 2017 at Bomet County, Bomet Constituency, Kipsonoi Ward, Chebole Primary School, 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.*

- vi. On 24th April 2017 at Baringo County, Baringo East Constituency, Ribkwo ward, Chemolingot polling station, rubber stamps and ballot papers were missing at the polling centre.
- vii. On 24th April 2017, Elgeyo Marakwet, Marakwet Constituency, Sambirir ward, Sambirir Girls Secondary School, 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 Stamp were utilized as ballot papers in which voters were required to write the name of the aspirant of their choice that 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 p.m. This further disenfranchised voters who showed up at the polling station earlier and left without voting.



Photocopied ballot papers with the same serial numbers being used for the nominations

KNCHR notes 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.

3.5 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. In 2107 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 am to 5:00 pm. However, due to varied inadequacies, majority of the polling centres were opened past 9:00 am and closing as late as 11:00 pm.

KNCHR noted that most of the Parties were unable to complete the exercise in good time and therefore most of the polling stations started very late. There were extreme cases in which the primaries were carried late in the night. These include;

- i. *On 14th April, 2017 in Bungoma County, Bungoma Constituency Khalaba Ward Khalaba Primary school, the polling centre 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.*
- ii. *On 24th April,2017 Kirinyaga County, Kirinyaga Constituency, Kiine Ward, Kibingoti Youth Polytechnic, after the delivery of voting materials at 8:15 am, opening was delayed until 9:20 am 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.*
- iii. *On 25th April,2017 Kisumu County, Nyakach Constituency, South West Nyakach, Oboch Primary School, the ballot materials for this polling station arrived late at 12:35pm hence voting started some few minutes past 1pm. Some voters who had arrived as early as 7am 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 leaders who would lead them was then compromised.*
- iv. *On 13th April, 2017 in Bungoma County, Kanduyi Constituency, Township Pinnacle Ward Pinnacle Academy, chaos erupted at this polling station and voting began at 2pm and ended earlier at around 4pm.*
- v. *On 18th April,2017 Nyamira County, Nyamira Constituency, Bogichora Ward, Kiambere D.E.B Primary School, the polling station was opened at 11.00 am and closed at 11.00 pm.*
- vi. *On 22nd April,2017 Tana River County, Tana River Constituency, Garsen Central ward, Danisa Primary School, the voting exercise started at 12:32pm instead of 6:00am. Voters complained of hunger and fatigue.*

- vii. *On 25th April, 2017 Uasin Gishu County, Kesses Constituency, Langas ward, Wareng High school, the polling station was opened at 8.00 am in the morning and closed at 11.00 pm at night.*
- viii. *On 25th April, 2017 Uasin Gishu County, Soy Constituency, Kuinet ward, Railways Junior polling station, the delay in opening and closing of the polling station was caused by lack of enough polling materials and the station was opened at 9.15 am and closed at 8.50pm*
- ix. *On 20th April, 2017 Kakamega County, Matungu Constituency, Mayoni ward, Mwira polling station, opened at 12.00 pm and some voters had already left due to the long waiting hence they did not exercise their right to vote.*
- x. *On 22nd April, 2017 Kwale County, Kwale Constituency, Tiwi Ward, Mwaligulu Primary School, the polling station was opened early but due to late delivery of polling materials, the exercise began at 1 p.m.*

3.6 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 key electoral centres. The Kenya National Commission on Human Rights was thus keen on the preparedness of the National Police Service 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 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 centres were assigned at least two security personnel from the National Police Service.



Police take charge in maintaining order at polling stations

Despite the active role the security agents played in areas where the KNCHR monitors were deployed and incidences of violence reported, it is envisaged that Police will be keen to expedite the arrest and arraignment of suspects in Court as the general elections nears.

3.7 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 just completed 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.

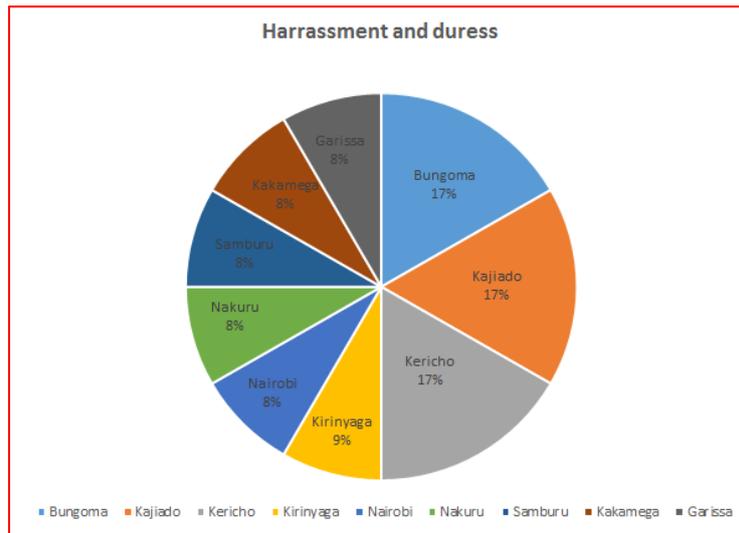


Chart 5: Cases of harassment and duress per county

- i. *In Garissa County, KNCHR documented an incident at Young Muslim Primary School, Ijara Ward, Garissa Constituency, 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.*



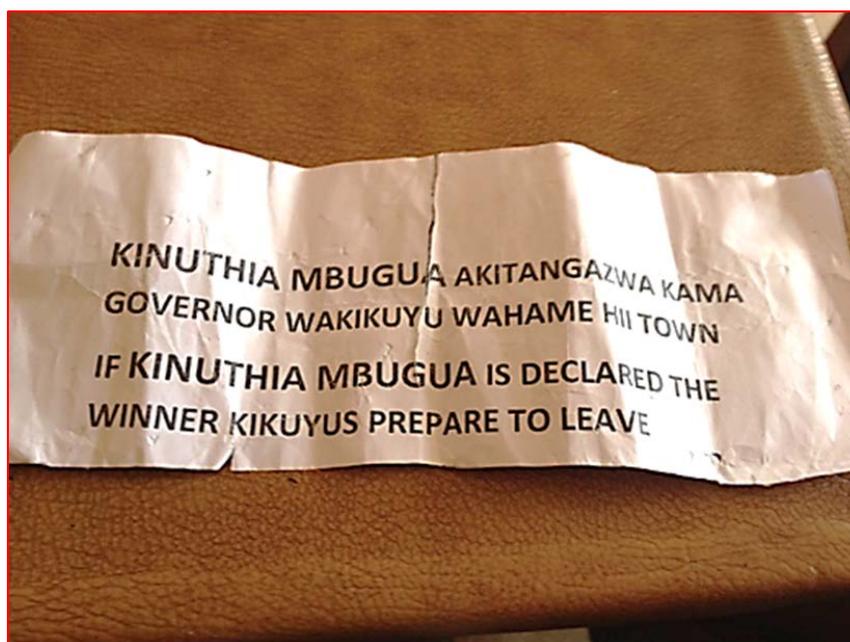
Aspirant Agents mobbing a voter in the guise of offering assistance

- ii. *At St Monica Girls Secondary and Kajiado Township 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.*

3.8 Intimidation and Violence against Marginalized Groups

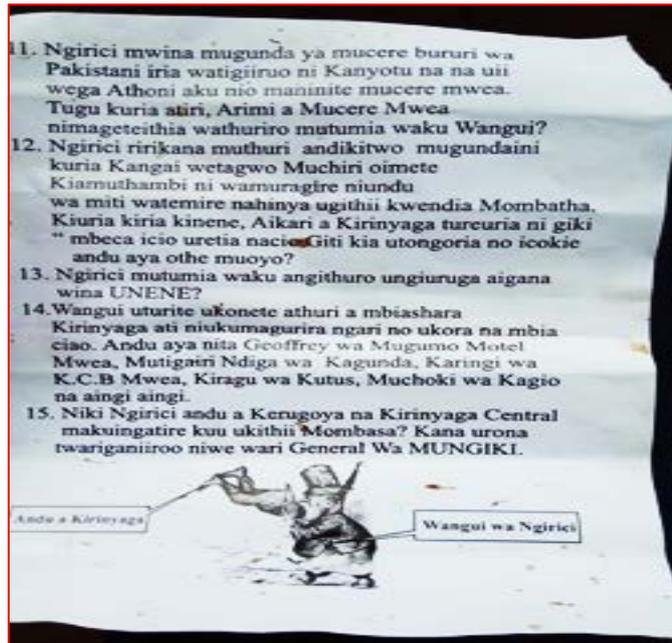
It was noted during these nominations that a number of political actors resorted to intimidation, violence and hate speech. These cases raise the specter of the 2007/08 post-election violence and must be condemned in the strongest terms possible. Some of the cases documented by KNCHR include:

- i. *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.*



Hate leaflets against one of the aspirants in Nakuru County

- ii. *In Kirinyaga County 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.*
- iii. *The next two photos indicate the trend of targeted harassment to women. The leaflet targeting a gubernatorial aspirant collected from Kirinyaga.*



A copy of hate speech leaflet that was distributed in Kirinyaga County. Translation is as below.

11. Ngirici and the family have a land of rice in Pakistan that you inherited from Kanyotu and you know well that it is your in-laws who depleted rice in Mwea. Will the rice farmers in Mwea empower themselves when your wife Wangui gets elected?

12. Ngirici, remember a man who was employed in a farm at Kangai whose name is Muchiri from Kiamuthambi who you killed because of trees that you cut down by force and you sold them in Mombasa. The big question that the people of Kirinyaga are asking is that Will money you are using to seek for this political seat bring back the lives of all those people?

13. Ngirici, if your wife gets elected how many will you kill when you have power?

14. Wangui, you have always conned Kirinyaga businessmen promising them that you will buy for them cars then you disappear with their money. Such people are like Geoffrey of Mugumo hotel Mwea, The late Ndiga Kugunda, Karingi of KCB Mwea, Kiragu from Kutus, Muchoki from Kaqio and many more.



A copy of a leaflet collected in Nakuru targeting a female aspirant

- iii. *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.*
- iv. *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.*
- v. *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 burnt shop belonging to Hon. Miringo burnt in Bungoma due to political and ethnic hate.

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.

3.9 Absence or Manipulation of Political Parties' Membership Lists

The Commission has 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.

POLITICAL PARTY NAME	LOGO	YES	NO
Jubilee Party (JP)			✓
Orange Democratic Movement (ODM)			✓
Wiper Democratic Movement			✓
Kenya African National Union (KANU)			✓
Amani National Congress (ANC)			✓
Chama Cha Mashinani (CCM)			✓
Ford Kenya (FK)			✓
Party of National Unity (PNU)			✓
Citizens Convention Party			✓

Table 1: Political Parties trend on use of valid party registers.

The Political Parties Act Section 7 (2) (f) (1) and Section 28 of the Elections Act 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 party registers during the process, it cast doubts on the 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:

1. None of the political parties had a valid party membership registers as required by the law;

2. While some parties attempted to have the political party registers, it was clear that the reference was the 2013 IEBC party register and
3. Some political parties registered party member's right at the polling centres and purportedly used them as the bona-fide registers.



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:



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

3.10 Emerging Issues

- i. The Commission alarmed by an emerging trend where some aspirants have 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.



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)



Children carrying a banner of MCA aspirant Dikqa Wario along the Northern bypass

- ii. Continued insecurity in some parts of the country such as Baringo and Laikipia may have hindered many voters from participating in the process owing to the relocation movement by residents following recent skirmishes in the areas.

- iii. 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 is 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 is clearly evident in the current post 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 primaries or in response to emerging issues. The following is a summary of the actions documented by KNCHR.

4.1 IEBC

The Independent Elections and Boundaries Commission set the timelines and gazetted the dates for the party primaries within the prescribed time to allow for parties to be ready for the nomination process.

They stood their ground following the request to extend the nomination dates as requested by the various parties that encountered challenges during the initial days of the nomination process.

In enforcing compliance with election laws, the IEBC challenged the high court ruling on political party hopping setting clarity on the intent of the process.

4.2 Political parties

The political parties;

- i. Occasionally informed the public of change of dates and shared critical updates through live broadcasts which managed expectations and quelled assumptions that would have hindered the smooth running of the nominations.
- ii. Severally halted the issuance of certificates in areas where there was contestation and expedited hearing of appeals by inviting the disagreeing aspirants to their offices or sending their election board officials to the ground for further investigations. This was evident in the actions taken in Migori, Kisumu and Nairobi Counties.

4.5 Political Party National Elections Boards

- i. These Boards facilitated the nomination process at the party level through the recruitment of election officials, provision of election materials and ensured circulation of materials to all polling centres.
- ii. Where anomalies were experienced, the boards expeditiously acted through cancellation of results and taking action against presiding officers who were found to have committed offenses.

4.3 Political Parties Dispute Tribunal

- i. 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.
- ii. The tribunal expeditiously adjudicated hundreds of petitions brought before it and issued judgement ranging from orders for refresh nominations processes, striking out petitions and awarding parties appropriate remedies they deemed fit

4.2 Police

As a proactive measure, the police mapped electoral hotspots prior to the commencement of the nominations process and thus were able to deploy security agents to the polling centres. Ultimately police were able to avert any incidences that might have interfered with the nominations process as demonstrated below;

- i. *On 15th April 2017, during the ODM primaries at Kanam ward, Turkana County, where supporters of parliamentary aspirants had clashed, the Police calmed the situation by quelling tensions and enabling the exercise to proceed smoothly.*
- ii. *On 25th April 2017, a group of rowdy youths stormed and dispersed voters queuing at Oboch Primary School polling centre Southwest Nyakach ward, Nyakach Constituency, Kisumu County. The youths were sent by one of the aspirants for MCA position who wanted to sabotage the voting process. The police intervened and apprehended the masterminds, hence restoring peace which saw the voting exercise continue without a hitch.*

- iii. *On 18th April in Nakuru Town East Constituency, Kivumbini Ward, Nakuru Primary School polling station, young female agents belonging to an MCA aspirant were harassed and threatened by their male counterparts using derogative language to demean and have them leave the polling station. The police intervened and came to their rescue and eventually secured the space for the female agents to perform their roles.*

- iv. *On 26th April 2017 at Mathare Youth Polytechnic polling station, Mabatini ward Mathare Constituency voters became impatient and pulled down the gate, the police stepped in and restored order.*

- v. *In Siaya, Migori, Kiambu, Kwale, Nairobi and Nakuru Counties, the Police in conjunction with members of the public were able to intercept and seize several consignments of crude weapons that were found in the vehicles belonging to aspirants. Three aspirants have since been charged for determination of their culpabilities.*

CHAPTER 5: RECOMMENDATIONS

The Kenya National Commission on Human Rights, 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. 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;

- i. *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 2103 IEBC registers meant that in the strict sense, those who voted in the 2017 primaries were not party members.*
- ii. *Uphold the rule of law in conducting 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 ensure that political parties do not become agents of breaking the law through promoting hooliganism during campaigns.*
- iii. *Ensure that they practice internal party democracy especially during the awarding of direct certificates in order to avert decisions that disenfranchise the youth, 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. We therefore call upon the political parties to strengthen the internal party democracy mechanisms in line with the constitution of Kenya, their own constitutions, the political parties act as well as all other relevant electoral laws.*
- iv. *Reign in candidates who break the respective laws and ensure that legal action is taken against such candidates. For instance, candidates who engage in actions which occasion*

violation of human rights like incitement to violence and destruction of property must be indicted and their names forwarded to the respective authorities for action.

- v. *Ensure that they prepare adequately for the primaries. This would entail procurement of the necessary materials including ballot papers, boxes, stamps and ink and ensure that they are delivered to the stations in good time to avoid late opening and closing of polling stations.*
- vi. *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 centres not only denies people the right to participate in the primaries but also creates lethargy among voters leading to trivialization of the whole exercise.*
- vii. *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.*
- viii. *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 level³.*
- ix. *Restrain their 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.*
- x. *Streamline the voter 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.*
- xi. *There is need for clarity in between the Party National Election Board and their County Boards to bring out semblance of synergy.*

5.2 The Office of the Registrar of Political Parties

³³ Sunday Nation, 19th April 2016

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 the general elections, the ORPP should;

- i. *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.*
- ii. *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.*
- iii. *Ensure that political parties update party membership registers and enforce strict use of the same during the primaries.*
- iv. *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.*
- v. *Position enforcement officers and 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 to manage elections should consider the following so as to better the party primaries;

- i. *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.*
- ii. *Consider and develop administrative regulations so that 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 the party primaries.*

5.4 The National Assembly and the Senate

- i. *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.*
- ii. *Revisit the provisions of law on issues of Independent candidates and party hopping so as to ensure that political parties do not just become vehicles upon which the candidates use for convenience.*
- iii. *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

- i. *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.*
- ii. *During deployment, consideration of the number of registered voters should inform the number of officers assigned to each polling center in consultation with the political parties.*
- iii. *Need to strengthen intelligence gathering to identify potential actionable threats to security such as arming of communities or persons, politically sponsored criminal gangs, hackers out to interfere with Kenya Integrated Election Management System (KIEMS) with the intention of influencing the outcome of the upcoming general elections, purveyors of hate messages (electronic and manual) and generally take other deterrent measures geared towards ensuring peaceful, free, fair and credible election. To this end, we particularly call upon the Directorate of Criminal Investigations to be more proactive in forestalling the aforementioned electoral offences.*

5.5 Media

The Media should;

- i. *Remain vigilant to objective and conflict sensitive reporting to avert heightening emotions that may escalate volatile situations.*
- ii. *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.*
- iii. *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.*

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

The Office of the Director of Public Prosecutions:

- i. *Must exercise its powers and order timely investigations into the alleged offences committed during the nomination process and prosecute the offenders accordingly as per the law conferred to it under section 21 of the Elections offences act.*

5.7 Chapter 6 Working Group

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

- i. *Financial probity institutions like KRA and Credit Reference Bureau*
- ii. *Commission for Higher Education for authentication of academic certificates*
- iii. *The Directorate of Criminal Investigations*
- iv. *National Cohesion and Integration Commission*
- v. *Kenya National Commission on Human Rights*

5.8 The Electorate

The voters must;

- i. *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.*
- ii. *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.*
- iii. *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 party primaries are a good indication of trends that may play out during the eventual general elections. Thus party primaries monitoring is essential as a means of tapping into strategies that positively work towards securing the vote or providing stop gap measures that may hinder the same.

The Fallacious Vote is a report whose efforts are 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 remains putting in place strengthened measures that would ensure full implementation of these 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.

At the time of writing this report, most of the successful candidates within the various political parties will have already received their certificate to participate in the general elections. It is the Commission's hope that the recommendations shared herein will cause actions that would guard the vote come August 8th 2017.