

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

**THE REPORT OF THE NATIONAL
ELECTION OBSERVER SYMPOSIUM**

2018

This is a product of Technical Working Group (TWG)



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Group

CREDIBLE, PEACEFUL, FREE AND FAIR ELECTIONS

Elections Observation Group
1ST Floor, Jumua Place, Lenana Rd, Nairobi
P.O. Box 43874 – 00100, Nairobi, Kenya
Tel: 0733608694 / 0790484629
Email: info@elog.or.ke
Facebook: Elections Observation Group KENYA
Twitter: [@elogkenya](https://twitter.com/elogkenya)
Web: www.elog.or.ke



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ABBREVIATIONS AND ACRONYMS

BBC	British Broadcasting Corporation
BVR	Biometric Voter Registration
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
CJPC	Catholic Justice and Peace Commission
CMD	Centre for Multi Party Democracy
CNN	Cable News Network
CoK	Constitution of Kenya
CRECO	Constitution and Reform Education Consortium
ECJP	Ecumenical Centre for Justice and Peace
ELOG	Elections Observation Group
EMB	Electoral Management Body
EVID	Electronic Voter Identification Device
FIDA-K	Federation of Women Lawyers - Kenya
GBV	Gender Based Violence
ICJ	Kenya Chapter of the International Commission of Jurists
ICT	Information Communication and Technology
IEBC	Independent Electoral and Boundaries Commission
IEC	Information Education and Communication materials
IED	Institute for Education in Democracy
IFES	International Foundation for Electoral Systems
IFES	International Foundation for Electoral Systems
IRI	International Republican Institute
JLAC	Judicial Leaders Advisory Council
KDA	Kenya Diaspora Alliance
KHRC	Kenya Human Rights Commission
KICD	Kenya Institute of Curriculum Development
KICTANet	Kenya ICT Action Network
KIEMS	Kenya Integrated Election Management System
KLRC	Kenya Law Reform Commission
KNCHR	Kenya National Commission on Human Rights

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KNICE	Kenya National Integrated Civic Education Programme
LRF	Legal Resources Foundation
LSK	Law Society of Kenya
MCAs	Members of County Assembly
MCK	Media Council of Kenya
NCCK	National Council of Churches of Kenya
NCHRD-K	National Coalition of Human Rights Defenders – Kenya
ODPP	Office of the Director of Public Prosecutions
ORPP	Office of the Registrar of Political Parties
PPA	Political Parties Act
PPDT	Political Parties Disputes Tribunal
PPDT	Political Parties Dispute Tribunal
PPLC	Political Parties Liaison Committee
PPLC	Political Parties Liaison Committee
PWDs	Persons living with disabilities
SCoK	Supreme Court of Kenya
SUPKEM	Supreme Council of Kenya Muslims
TWG	Technical Working Group
UDPK	United Disabled Persons of Kenya
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
YAA	Youth Agenda

Foreword

I would like to first congratulate the Technical Working Group (TWG) member organizations under the convenor-ship of Elections Observation Group (ELOG) and Kenya Human Rights Commission (KHRC), for successfully organizing the 2018 National Symposium to review the observation of the 2017 elections which culminated in the production of this report. Secondly, I would like to thank ELOG for the final publication of the report.

More often than not civil society in Kenya has been accused of not documenting its work and therefore this initiative is welcomed and is a crucial piece in the documentation of the 2017 General Elections and attendant electoral processes. The work undertaken by ELOG and the TWG organizations on elections is not only crucial for the democratic growth of Kenya but the African region in general.

It is essential for all actors working on elections in Kenya to remain focused on the realization of Article 81 of the Constitution of Kenya. The Constitution of Kenya envisions that the electoral system shall comply with the following principles: -

- a) Freedom of citizens to exercise their political rights under Article 38;
- b) Not more than two thirds of the members of elective public bodies shall be of the same gender;
- c) Fair representation of persons with disabilities;
- d) Universal suffrage based on the aspiration for fair representation and equality of vote; and
- e) Free and fair elections, which are –
 - i. By secret ballot;
 - ii. Free from violence, intimidation, improper influence or corruption;
 - iii. Conducted by an independent body;
 - iv. Transparent; and
 - v. Administered in an impartial, neutral, efficient, accurate and accountable manner.

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Only when we have elections that abide to these principles in their totality will we be able to confidently say that Kenyan elections are credible, peaceful, free and fair. Our focus must always remain on making every Kenyan's vote count. I hope that through the learning's from the Symposium, civil society actors and in particular ELOG and the TWG team will focus on actions that translate to the realization of Article 81 of the Constitution of Kenya.

ELOG and TWG should ensure that they engage in all the key periods within the electoral cycle from the post election period, which is now. I encourage ELOG and Civil Society Actors to critically assess the 2017 General Elections to ascertain where we did not work effectively and begin to address our own challenges in order to enhance the contribution towards the realization of Article 81.

Grace Maingi

Executive Director, URAIA

Acknowledgements

The membership of the Technical Working Group (TWG) profoundly thanks different individuals and organizations that supported us in executing our mandate during the last general elections. Some of the organizations include; the United States Agency for International Development (USAID), the National Democratic Institute for International Affairs (NDI), the UK's Department for International Development (DFID), Deepening Democracy Programme (DDP), European Union Delegation to Kenya (EU), United Nations Development Program (UNDP), for their generous support towards the 2017/2018 TWG efforts.

We are grateful to ELOG Steering Committee for its strategic leadership under the Chairperson, Regina Opondo (CRECO). We acknowledge and thank Susan Mwongera (Youth Agenda), Susie Ibutu (NCCK), Beatrice Odera (CJPC), Teresa Omondi (FIDA), Anderson Gitonga (UDPK), Ven. Jephthah Gathaka (ECJP), Kennedy Masime (CGD), Lattif Shaban (SUPKEM), and Elayne Okaya (IED).

We recognize and thank the member organizations that participated in and supported the TWG work. These are: FIDA-K, CRECO, YAA, LSK, Katiba Institute, URAIA-Trust, NCCK, CJPC, ECJP, NCHRD-K, Kituo Cha Sheria, UDPK, KHRC, KNCHR and ELOG.

We extend our immense gratitude and appreciation to the TWG technical team for the overall planning and conduct of the 2017/2018 TWG efforts. We acknowledge and appreciate the overall leadership of the ELOG National Coordinator, Mulle Musau. Our immense gratitude to the TWG technical team ably led by Marcus Ageng'a (Senior Program Manager, ELOG) and Irene Muchomba (Program Associate, KHRC).

We thank Francis Aywa (Team Leader, DDP) for the key note address, Alice Njau (Program Manager, NDI) and all the presenters during the symposium that was held in Nairobi on 22nd- 23rd March, 2018: Grace Maingi (CEO-URAIA), Andrew Songa (Program Manager- KHRC), Ann Marie (KNCHR), Grace Githaiga (CEO-KICTANet), Elisha Ongoya (Dean, School of Law- Kabarak University), Salome

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Nduta (Program Manager- NCHRD-K), Barbara Kawira (Deputy CEO- FIDA- K), Dr Shem Ochudho (Chairman-KDA), Janet Munywoki (CEO-LRF), Anderson Gitonga (CEO-UDPK), Kennedy Masime (CEO-CGD), Susan Mwongera (CEO- YAA) and Mulle Musau (National Coordinator- ELOG).

We appreciate the efforts and contributions of the following members during the report development and writing retreat held on 17th to 19th May, 2018 at Sagana Gataway Resort: Elizabeth Kirema (Elections Expert), Steve Ogolla (Advocate of the High Court of Kenya and Legal Expert), Rebbeca Opetsi (Program Officer-UDPK), Francis Ndegwa (Communications Officer- NCHRD-K, Abubakar Said (Civic Education Manager- URAIA-Trust), Boaz Ojwang (Program Assistant, YAA), Zipporah Abaki (Program Officer- CRECO), Sally Ngugi (Program Officer-LSK), Christine Kuria (Program Manager- Katiba Institute), Leo Mutisya (Project Leader-Media Council of Kenya), Eusebius Atamalo (Program Officer-CJPC), Delilah Taabu and Laureen Odero (Rapporteurs) and Marcus A. Ageng'a (Senior Program Manager- ELOG).

We hope that the recommendations proposed herein will not only elicit healthy conversations around the electoral reform agenda in Kenya but also call both the duty bearers as well as the civil society to action.

Regina Opondo

Chairperson

ELOG Steering Committee

Executive Summary

This report captures the proceedings of the “*National Election Observation Symposium*” held on 22nd to 23rd March 2018 at the Crowne Plaza Hotel, Nairobi. The forum was organized under the auspices of the Technical Working Group (TWG) on Elections which is a network of civil society organizations working on democracy and electoral governance in Kenya.

The forum attracted over 60 participants from civil society organizations working on elections and Electoral Processes in Kenya. It was held for two days and the proceedings incorporated presentations and plenary discussions on various TWG thematic areas namely, Elections administration and management, Elections and Human Rights, Elections and legal Framework, Elections and Civic engagement, Elections and Special interest groups (Women, Prisoners, PWDs, Youth and Diaspora), Elections and Media, Elections and security and Elections and Electoral Technology.

The discussions invoked and invited dialogue among civil society and religious organizations who shared their experiences in observing the 2017 electoral processes with a view to build a consensus on key recommendations for improving the electoral processes moving forward. Some of the key recommendations that were made during the two-day event included the following:

No	Thematic Area	Broad Recommendation
1	Participation of SIGs	
	Youth	Improvement on the management of data on participation of youth, women and PWDs in elections;
		Enhanced and continuous voter registration and education throughout the electoral cycle;
		Process of issuance of ID cards needs to be reassessed and made easier as well as integrating it with voter registration;
		Mechanisms need to be put in place to promote youth participation and leadership grooming by political parties through mentorship of youth by older politicians to bridge generation gaps;
		Need to address negative ethnicity perpetrated by youth on social media.

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No	Thematic Area	Broad Recommendation
	Participation of SIGs	
	Women	<p>Development of a joint comprehensive response mechanism system to handle GBV cases i.e. reporting, medical assistance and investigations by duty bearers;</p> <p>IEBC and ORPP should place more emphasis on regulation of Political Parties that do not meet the spirit and action of affirmative action principles;</p> <p>Strict enforcement of the Electoral Code of Conduct and the Penal Code by the ODPP in order to deter cases of violence against women;</p> <p>Continuous civic education using unconventional means such as social media should be embraced by stakeholders;</p> <p>PPDT and IEBC should sensitize the electorate and women candidates on election dispute resolution mechanisms;</p> <p>Creation of a critical mass that believes in itself in order to support fundamental issues such as gender parity.</p>
	PWDs	<p>Development of partnerships between election observation groups with other stakeholders to enhance effective participation of PWDs;</p> <p>Provision of reasonable accommodation, barrier-free access and movement for PWDs in all premises across the country;</p> <p>Continuous registration of voters - ensure disaggregation of registered voters particularly on the basis of disability;</p> <p>Being intentional about the inclusion of at least one Commissioner with disability in every Commission includes- Just like other commissions such as NGEN, NLC, KNHRC, TSC;</p> <p>Clarity in the manner of distribution of the 12 nominated seats to National Assembly among SIGs (Art. 100)</p> <p>Provision of accessible registration and polling stations - ramps, lifts, IEC materials, sign language, assistive services by IEBC</p> <p>Inclusion of diaspora (including youth, women, PWDs, minorities) among the SIGs;</p> <p>Make it a requirement for political parties to establish diaspora offices and include diaspora in their rank and file, including party nomination lists.</p>

No	Thematic Area	Broad Recommendation
	Participation of SIGs	<p data-bbox="471 368 736 397">Diaspora Identification</p> <ul data-bbox="508 427 1198 809" style="list-style-type: none"> <li data-bbox="508 427 1198 456">• Inclusion of diaspora in the upcoming national census; <li data-bbox="508 476 1198 535">• Efforts by GoK through KDA to automate and grow the 'Diaspora Database' ; <li data-bbox="508 564 1198 623">• Cross-link the various diaspora portals and evoke a PPPP to locate and register diasporas; <li data-bbox="508 652 1198 809">• Evolve a mechanism to deal with this matter, e.g. hold bi-laterals with host countries as well as countries which don't allow dual citizenships like Germany, issue non-resident IDs like India does, etc. to solve the challenge of undocumented diaspora. <p data-bbox="471 838 857 868">Diaspora Voting and Registration</p> <ul data-bbox="508 887 1198 1783" style="list-style-type: none"> <li data-bbox="508 887 1198 946">• IEBC to identify initial regions in which diaspora can vote in 2022 elections; <li data-bbox="508 976 1198 1034">• Table and consult with stakeholders on budget for diaspora voting and registration; <li data-bbox="508 1064 1198 1123">• Immediately initiate process to identify and register diaspora voters; <li data-bbox="508 1152 1198 1211">• Remove the unconstitutional requirement for 'regular passport' to vote; <li data-bbox="508 1240 1198 1299">• Provide secure online facility for diaspora validation and verification of registered voters,; <li data-bbox="508 1328 1198 1417">• Article 82 requires parliament to have enacted by now law for continuous registration of voters and progressive registration of diaspora; <li data-bbox="508 1446 1198 1475">• Evolve a law to clarify on voting by dual citizens; <li data-bbox="508 1495 1198 1554">• Amend Art. 8(4) of Citizenship & Immigration Act which puts unnecessary administrative hurdles on dual citizens; <li data-bbox="508 1583 1198 1642">• To optimize diaspora voting, remove restriction for voters to vote where they registered; <li data-bbox="508 1671 1198 1783">• To eliminate the challenge of difficult and expensive process of voter registration, evolve appropriate technologies, processes and systems to facilitate diaspora voting.

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No	Thematic Area	Broad Recommendation
	Participation of SIGs	
	DIASPORA	<p>Undertake an independent study to establish why diaspora for instance in RSA, TZ didn't register in large numbers to vote;</p> <p>Evolve a program for civic and voter education among the diaspora;</p> <p>Liaise with appropriate stakeholders to conduct diaspora roadshows & offer suitable online voter/civic education to diaspora.</p> <p>Initiate early, candid conversation with key stakeholders on this matter and agree on pilot constituencies/countries & cities;</p> <p>Requirement of political parties to establish offices in diaspora as a 'virtual county' and identify poll agents early;</p> <p>Explore reciprocal partnerships with external monitors and/or foreign missions;</p> <p>Establish formal or semi-formal partnerships with active diaspora organizations and political party offices;</p> <p>IEBC to establish dedicated Diaspora Liaison Office to streamline and enhance diaspora voter/monitor coordination</p>
	PRISONERS	<p>Critically embrace stakeholder partnerships e.g. the National Registration Bureau and the Prisons' management in ensuring that there are no transfers of prisoners at least 6 months before the elections and ensuring timely issuance of prisoners' IDs;</p> <p>Enhanced access to information – availability of IEBC officers and voter information;</p> <p>More documentation on our experiences in the participation of prisoners in electoral processes, and the need to enhance the same;</p> <p>Access to form 34As which are critical in monitoring participation;</p> <p>Need to focus more on prisoners' participation as a right, rather than its political impact;</p> <p>Observation groups need to document more experiences on participation of prisoners in electoral processes;</p> <p>More work on the realization of prisoners' needs and rights.</p>

No	Thematic Area	Broad Recommendation
2	Political Party Processes	<p>Rationalize the timelines for political party processes;</p> <p>Stagger party nominations;</p> <p>Review and implement the Election Campaign Financing Act, 2014;</p> <p>Enhance the capacity of dispute resolution institutions and oversight institutions (Office of the Registrar of Political Parties and IEBC). Boost funding for PPDT in particular and devolve its function to the counties;</p> <p>Observers should focus adequate attention on party nomination and campaigns;</p> <p>There is need to focus on the institutionalization of the party system and not just individual parties;</p> <p>Implement party/or election laws;</p> <p>Work with independent arbiters instead of political members acting as adjudicators;</p> <p>Only dully-registered party members should vote during nominations.</p>
3	Elections and Human Rights	<p>Mobilize interest groups and define public interest as a counter to ethnic mobilization (Accountability, non-discrimination);</p> <p>Continuous engagement with all stakeholders;</p> <p>Knowledge and research that clarifies the issues and defines the organizing question for reforms and transformation</p> <p>Invest in resolving Kenya's historic violations and marginalization to solve the electoral challenges currently faced;</p> <p>Address the high number of sexual harassment cases during electioneering periods;</p> <p>Address the issue of party primaries (mini elections) conducted with disregard to the law by using IEBC 2013 register, and IEBC accepting lists of nominated members elected through a process that does not comply with the law;</p> <p>Analyze and share on the effect of electoral violence on children who are killed, injured, tear gassed and hindered from going to school in the process (10 children died in the 2017 elections) e.g. the children in Kibera who were affected by the running battles between the police and NASA supporters every Tuesday during the anti-IEBC protests in 2017;</p> <p>Champion for justice for victims of electoral violations – 101 persons lost their lives, a majority of them being those living in informal settlements and youth.</p>

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No	Thematic Area	Broad Recommendation
4	Elections and Media	<p>Synergy building - Strengthened media monitoring partnerships;</p> <p>Continuous civic and voter education for media personnel throughout the electoral cycle and give briefs during by-elections;</p> <p>Push the media to give extensive analysis and criticism of party manifestos, policy, constitutional provisions and candidates; and engage citizens by providing platforms through which they can contribute;</p> <p>Need for more investment on content on electoral issues;</p> <p>Push for equal coverage of male and female candidates during the electioneering period;</p> <p>Lobby media houses to synergize their coverage to enhance substance/content of coverage.</p> <p>Media monitoring endeavors should be devoid of tribal influence.</p> <p>Media houses should endeavor to uphold independence and stick to code of conduct.</p> <p>The general citizenry needs to be sensitized so that they are not swayed by fake news.</p> <p>There is need to introduce new legislation to regulate conduct of media houses, journalists and social media users with regard to elections. Media houses should conduct civic education as part of their corporate social responsibilities</p>
5	Elections Administration and Management	<ul style="list-style-type: none"> • IEBC needs to re-build public confidence. • IEBC should continuously engage other stakeholders on various thematic concerns. • IEBC should hire staff with integrity. • Electoral processes should be transparent. • Voter register needs to be thoroughly cleaned. • IEBC should endeavor to uphold its independence especially by making concerted efforts towards limiting executive influence. • IEBC should develop a mechanism for post-election evaluation of its processes and this should be done within 18 months and report shared with stakeholders. • IEBC should ensure broad public participation and information sharing amongst stakeholders in the interest of stock taking. Voters' list assessment should be done in an open manner. • Stakeholders should re-think the current IEBC structure and introduce a new one to enhance performance. • There is need for advanced/staggered voting though this can only be achieved if the current constitution and legal framework are amended.

No	Thematic Area	Broad Recommendation
6	Electoral Legal Framework	<ul style="list-style-type: none"> Invest in a legal/constitutional culture that demands respect for the law; Invest in creation and promotion of a vigilant citizenry – internalizing and keenly monitoring the implementation of the numerous electoral laws; Explore having legal obligations for Electoral transmission by IEBC, for all results and not only for presidential results; Emphasize on adherence to the Code of Conduct during Elections, including procedure of appointments to institutions working on Elections; Empower magistrates across the country to resolve local party nomination disputes so as to solve the burden of political party members having to travel to Nairobi to trace law courts' political party tribunals – devolving disputes.
		Address claw-backs
		Sensitize citizens to internalize and keenly monitor implementation of the numerous electoral laws;
		Review the clearance criteria for candidates – the credibility of a good number of candidates cleared was wanting;
		Consider devolving resolution of disputes resulting from local party nomination processes to magistrates across the country rather than the services being centralized at political party tribunals in Nairobi.;
		Last minute amendment of laws makes it difficult for IEBC to incorporate new laws into its operations.
7	Electoral Technology	<p>Lobby for comprehensive legal framework on data protection;</p> <p>IEBC to develop a system that safeguards the integrity of the vote, as well as efficiency of transmission;</p> <p>Continuous engagement with the tech community;</p> <p>Integrate security before publication of databases with personal information;</p> <p>Register of devices used in the election including GPS coordinates;</p> <p>Tech audit of the electoral systems to identify points of failure;</p> <p>Early and comprehensive training of staff;</p> <p>Voter identification system - Publish identification data such as number of people identified using the different systems with poll results (support docs);</p>

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No	Thematic Area	Broad Recommendation
		Electoral Technology
		Use of mechanisms such as Universal Service Fund (USF) to provide connectivity to underserved areas
		The Elections Laws (Amendment Act 2016) as currently enacted has outlined mechanisms aimed at reducing failure and should be adopted (e.g. Election Technology Committee, staff training, early deployment, verification and testing of technologies).
		Consider electronic voting through an app such as Mpesa.
		Consider Running Elections on Blockchain Infrastructure. This provides higher security and trust. (Decentralized, Distributed, Immutable properties)
		Strategize on timely preparation of conducting elections by IEBC officers to avoid last minute operation e.g. recharging of KIEMS kit and dispatch of electoral materials;
		Professionalize deployment platforms;
		Liberate election data and platforms especially the register;
		Timely procurement of electoral electronic devices and not 3 months before elections as was done in 2017. This is because if done hurriedly it may affect the quality of devices that end up inconveniencing officers and compromising the whole process.
		Cater Center recommendations on Electoral Technology: <ul style="list-style-type: none"> • Both the electronic and manual transmission of election results to work concurrently as different results paths, meant to countercheck each other. • Need to carefully look at the log files and IEBC web pages and have them secured to avoid hacking. • Avoid the use of manually updated KIEMS and go for dynamically configured KIEMS systems. This is important as it makes it easy to use the devices even in short notices. • Need for one year before the deployment of the KIEMS system with at least 6 months given to security the systems and the other remaining months for training personal on system utility. • Need for open electoral information and transparency on electoral technology security. • Need for IEBC to have more control in terms of how much leverage they give to the vendors (electoral technology) and how much they retain to address issues like vendor locking.

No	Thematic Area	Broad Recommendation
8	Civic and Voter Education	<p>Continuous and well-coordinated civic and voter education, interfaced with other education programmes;</p> <p>Civic education to contain an element of preparation for both voters and candidates to accept the outcomes of elections;</p> <p>A substantial aspect of civic and voter education in the primary and secondary education curricula;</p> <p>Coordination of all actors;</p> <p>De-politicization of Civic and voter education;</p> <p>Lobbying for adequate budgetary allocation for civic education at the national and county level from the Kenya Government in order to enhance public participation and voter education;</p> <p>Innovation in dissemination of information in order to address the limited resources available for civic education, counter the culture of financial handouts expectations from citizens and the political campaigns which compete with the voters' attention during the election period. This can include the use of short edutainment videos that can be shared on WhatsApp, use of theatre at the local level during public participation sessions organized by the County Government and Baraza sessions;</p> <p>Intense lobbying for IEBC to carry on voter education throughout the electoral cycle and for them to be reminded of their mandate continuously by election observation groups;</p> <p>The KNICE rollout needs to begin in order to buttress on-going civic education work at the County level;</p> <p>Concerted efforts to shift away from the monetization of civic education by media houses. Media houses should conduct civic education as part of their CSR initiatives;</p> <p>Enhanced synergy building of civic education providers in order to ensure effective mapping and coverage of the country.</p>
9	Elections and Security	<p>Put in place measures to deal with security incidents for observers;</p> <p>Develop mechanisms for taking action against security personnel who violate the law with regard to conduct of elections;</p> <p>Observers should operate cautiously with regard to their personal security. Moreover, accreditation for observers should be availed on time since proper identification has security benefits to the observer;</p> <p>Expand security arrangements during elections to include protection of electoral systems from unauthorized access to electoral data and voters' personal information;</p> <p>Security for IEBC staff should be staff should be conducive to enhance their independence.</p>

SECTION 1 INTRODUCTION

The 2017 electoral processes were historic; First, it was the first ever election that saw the presidential elections nullified by the Supreme Court and a fresh one ordered and second, it yet again, pitted the incumbent President Uhuru Kenyatta against Rt. Hon. Raila Odinga as the top two favorite candidates (as was the case in the previous 2013 election), thus, taking the historic character of an epic electoral grand re-match between the two.

The Technical Working Group (TWG) on elections in Kenya currently operates as an informal network of civil society organizations working on democracy and electoral processes¹. It works towards the provision of technical support in Elections Administration and Management and Elections related matters in the sector; consolidation of elections monitoring and observation findings and recommendations post the general elections; championship for timely administrative and legal electoral reforms geared towards enhancing democratic space in Kenya; harmonization of institutional skills and resources in current/ongoing interventions and addressing the public on pertinent electoral issues as and when required through institutional leadership. For the 2017 electoral period, ELOG and KHRC were the co-conveners for the TWG membership.

In its attempt to consolidate the election monitoring and observation findings post 2017 electoral processes, ELOG through the financial support of donor partners (DFID/DDP and NDI) and the TWG membership, facilitated to hold a National Observers Symposium in Nairobi that brought together over 60 participants drawn from Civil Society organizations to share their experiences, key findings and recommendations arising from observing the 2017 electoral processes. The symposium's deliberations took the format of presentation of papers from experts and plenary discussions.

Further, the papers were presented along the TWG appointed thematic areas namely: Elections and Participation of the Special Interest Group, Electoral Legal Framework, Elections Administration and Management, Elections and

Human Rights, Elections and Electoral Technology, Elections and Political Party Processes, Elections and Media, Elections and Security and Elections and Civic/Voter Education. Finally, the symposium had a session on building consensus on key conference positions which were critical in defining the way forward for the electoral reform agenda in Kenya.

1.1 Symposium Objectives

The National Observers Symposium was an initiative of the TWG as stated herein above. The symposium sought to:

- a) Consolidate findings that would inform/enhance future electoral processes based on the observers experiences, successes, challenges and lessons learnt.

- b) Adopt, advocate and implement framework based on a thematic approach in order to promote a clear road map for the implementation process of the recommendations, i.e., timelines, activities, key players/ stakeholders among others.

¹ its membership comprised FIDA, CJPC, LSK, KHRC, UDPK, KATIBA, URAIA, NCCK, and National Coalition for Human Rights Defenders, Youth Agenda, Kituo cha Sheria, ECJP, CRECO, CGD and ELOG.

SECTION 2 WORKSHOP CONTENT / PROCEEDINGS

2.1 Remarks

Welcoming Remarks/ Context Setting

Regina Opondo, Chairperson, ELOG's Steering Committee

Alice Njau, Senior Programs Manager, National Democratic Institute (NDI)

The ELOG chairperson gave an overview of TWG since its inception in 2014 and further shared the objectives and importance of the symposium.

The objectives were stated as follows:

- a) Consolidate findings that would inform/enhance future electoral processes based on the observers experiences, successes, challenges and lessons learnt.
- b) Adopt, advocate and implement a framework based on a thematic approach in order to promote a clear road map on the implementation process of the recommendations, i.e., timelines, activities, key players/stakeholders among others.

The chairperson observed that ELOG as well as the membership of the technical working group in elections were central in the push for free, fair, peaceful and credible elections in Kenya and the region. She underscored the critical role played by TWG membership, led by the two co-conveners (ELOG and KHRC) and she exuded confidence in a successful symposium that would register long term positive effects in the management and administration of elections.

She noted that nullification of August 8th Presidential Elections called for a closer scrutiny of electronic transmission of results as well as other processes in the electoral cycle. She noted that ELOG continued to operate in line with the Universal Declarations and the Code of Conduct on election observation of electoral processes.

Alice Njau, speaking on behalf of NDI, congratulated ELOG and the members of the TWG for working tirelessly towards the realization of the symposium. She noted that there was need to improve domestic observation in subsequent elections by coming up with new (innovative) methodologies for observation.

She observed that stakeholders needed to make domestic observation more effective by developing mechanisms to ensure that recommendations by observation groups are implemented by the electoral body and other related institutions. Finally, she encouraged all stakeholders to enhance partnerships with other observation groups for purposes of enriching observation methodologies.

Key Note Address: The Importance/Role/Credibility of Election Observation in Kenya

Francis Aywa, Team Leader, Deepening Democracy Programme

He stated that Domestic Observation groups should be open to all forms of criticism and to use the same to improve the observation process. Observation processes, he urged, should be cognizant of the local context so that the process captures aspirations of the immediate public thereby giving them a chance to have a stake in public governance. He concluded by emphasizing on the need for observation groups to endeavor to communicate the verdict truthfully but without antagonizing the parties involved so that the role of an observer is held in high regard.

Closing Remarks

Grace Maingi, Chief Executive Director, URAIA Trust

Grace Maingi took the opportunity to thank all the CSOs that had contributed to making the two day event a success and in particular thanked the presenters, the members of TWG and all the organizations represented at the symposium. She noted that the consensus arrived at during the symposium would accord the members of the civil society unity of purpose and voice in engaging with electoral duty bearers as well in championing electoral reforms in the country.

She reminded the participants that the symposium was basically a learning event where lessons learnt and recommendations made would then be drafted into a report. The symposium report, she said, would then inform the engagement in the forthcoming National Stakeholder Learning and Dialogue Forum which would draw participants from IEBC, ORPP, Judiciary, NGECC, CAK, Parliament, NPS, DPP and other stakeholders. This learning and dialogue forum was expected to among other things, concretize the reforms process with specific roadmap and framework for the implementation of the reform agenda.

2.2 Presentations

2.2.1 Elections Administration and Management in Kenya

Regina Opondo, Executive Secretary, CRECO and Chairperson, ELOG Steering Committee

Presentation:

Challenges in Administration & Management of Elections

- Despite the existing laws, the management and administration of elections still faces serious challenges.
- The question of integrity of the electoral process inevitably switches focus to how the IEBC managed and administered elections in 2013 and 2017.
- 2017 presidential petitions were an indictment of IEBC's administration and management of the two elections.
- Some of the challenges in 2007 and 2013 on management of elections still arose in 2017 due to the failure to fully implement observation recommendations.
- These challenges affected the performance of the Commission in 2017 elections in so far as the management of the electoral process was concerned.

a. Transmission of Results;

- The Kriegler Commission recommended the use of technology to enhance transparency. However, even with the introduction of technology there still seemed to be little or no transparency in managing electronic transmission of results, for instance, IEBC's failure to comply with SCoK order to provide access to the servers

b. Overall Cost of Elections;

- Kenya's elections were among the most expensive in the world yet very divisive – which points to lack of trust among players.

c. Security of IEBC Staff;

- The killing of IEBC ICT manager Chris Msando, resignation of IEBC commissioner Dr. Akombe and threats to IEBC staff and commissioners.

d. Political Influence;

- Influence of political class on the recruitment of commissioners and suspicious amendment to election laws by parliament.

e. Gender Audit and Management of SIG in General;

- IEBC doesn't have a gender-inclusion policy and lacks strategies to enhance the voting rights of those who are not able to cast their votes on Election Day, for instance, IEBC officials, security officers, observers, the hospitalized, diaspora voters etc. Article 81 of the CoK 2010 establishes the freedom of citizens to exercise their political rights under Article 38.

f. Clearance of Candidates to vie in Election;

- IEBC lacks mechanisms to back-check cleared candidates thus resulting unqualified and ineligible candidates vying for elections

g. Lack of leadership and unity of purpose (commissioners among themselves, commissioners vs. secretariat)

- In the run up, during and after 2017 elections, the infightings in the commission resulted in the resignation of a commissioner, and there were conflicting communication from the secretariat and the commissioners. This undermined professionalism and observance of corporate governance and ethics. The image of IEBC was equally mired in controversy.

h. Procurement of Election Material and Technology;

- Due to the failure to adhere to certain laws (including ensuring public participation), IEBC was faced with several litigations regarding the management of the procurement process.
- The decision to host the servers in France did not make sense because the servers could as well have been hosted in Kenya. This also raised the issue of vendor-locking.
- The ballot printing tender and the printing of 2 million extra presidential ballot papers raised anxiety among Kenyans. Even though IEBC managed to hold elections as planned, it exposed itself to numerous litigations that led many cases clearly affecting the implementation of the 2017 project.

i. Voter Education and Registration

- IEBC largely limited its voter education towards the election year while they hardly engaged the public (particularly new voters).
- IEBC did not have ongoing voter education post-2013. This contributed to an increase and voter apathy during voter registration (2017).
- Inadequate strategies and resources for continuous voter registration processes as provided in the law. This hampered the ongoing registration processes and yielded low turnout.

j. Legal Framework

- The existing legal frameworks have limited the chairman's powers in making critical decisions.

k. Budgetary Issues;

- The National Treasury reduced the initial budget for the August elections by nearly KES 10 billion (for GE) and another reduction for FPE. This affected the strategies put in place by IEBC insofar as the management of the 2017 election was concerned.

l. Six Elections;

- Conduct of six elections in one day proves an ambitious task by IEBC and cumbersome for the general public. This poses inevitable challenges of holding numerous elections in a day.

m. Electoral Disputes;

- Resolution of electoral disputes arising before declaration of results including disputes related to or arising from nominations by IEBC under Article 88(4) (e) of the CoK poses jurisdiction conflicts with Section 40 of the Political Parties Act 2011 that provides for the jurisdiction of PPDT.
- The constitutional role of the IEBC to resolve disputes emanating from party nominations burdens and conflicts with other mandated bodies.

n. Two-Thirds Gender Rule;

- The constitutional two-thirds gender principle rule is a looming challenge. There is lack of structured and purposive methodologies to realize the

two-third gender rule for elective positions as well as party nominations.

o. Presidential Petitions

- Short timelines for the filing and determination of presidential petition. Currently the law provides for 21 days to file and determine presidential petition.

Recommendations

- IEBC should invest in rebuilding public confidence in the Commission through an elaborate long-term strategy that goes beyond an election cycle.
- Strengthening of the PPLC to the extent that people and political parties believe in it. Additionally, the visibility of the PPDT in settling electoral disputes should be enhanced.
- Implementation of the not more than two-thirds gender rule. Quick steps must be put in place for this realization to happen.
- Proper and timely user testing and rolling out of technology in the election process is paramount especially in view of the challenges faced in 2017.
- IEBC must aspire to hire staff with integrity and without questionable character or political affiliation.
- Political Parties and candidates must learn to adhere to the rule of law. The law must also be amended to seal the loopholes that facilitated the disregard of the law in 2017.
- The process of clearing candidates must adhere to the constitutional and legal requirements of integrity of the aspirants. The IEBC must not wait for a court case to be filed and determined before it can bar a candidate with integrity issues from the electoral process.
- In light of the court cases in 2017, the IEBC must put in more effort to ensure that there is broad public participation and information sharing among stakeholders in the exercise of stock taking.
- In international best practice post-election evaluation must be completed within 18 months. IEBC must ensure that this evaluation is done on time and reports shared with stakeholders.

- Inspection of voter register is critical in conducting a successful election. The manner in which the audit is done must not be gainsaid. It is in the interest of the public that the audit is conducted hence it must reflect openness.
- Advanced voting and staggered voting may not work well under the current constitutional and legal framework for elections and therefore amendments must be made if this is to be realized.
- It would be important for stakeholders to re-think the current structure of IEBC and introduce a new structure (for both commissioners and staff) that would effect greater work ethic, performance, openness, transparency, little or no political interference and as well improve administration of elections.

Conclusion

Everything else fits within the umbrella of administration and management of elections; sorting the latter two, cures everything else. IEBC is the central pillar in the administration and management of elections; a central pillar must always be firm enough to buttress the roof. The key to improving electoral administration and management thus lies with the strategy of making IEBC a truly firm central pillar that can buttress Kenyans from electoral violence, electoral injustice, bad leadership and violation of political rights of Kenyans, as well as re-awakening the aspirations and dreams for peaceful, free, fair and credible elections.

2.2.2 Elections and Electoral Technology: The extent and effectiveness of the electoral technology for the 2017 elections.

Grace Githaiga, CEO KICTANet

Daudi Were, Electoral Technology Expert.

1st Presentation: *Grace Githaiga, CEO, KICTANET*

Introduction

KICTANet is a platform for persons and institutions working in ICT policy. Considering that its focus was on technology, the Network focused on the use of ICT before, during and after Kenya's 2017 General Elections.

2.2.2.1 Stages of Observation

Several aspects observed before elections included the registration process, access to election information by citizens as well as use of online spaces during the electioneering period.

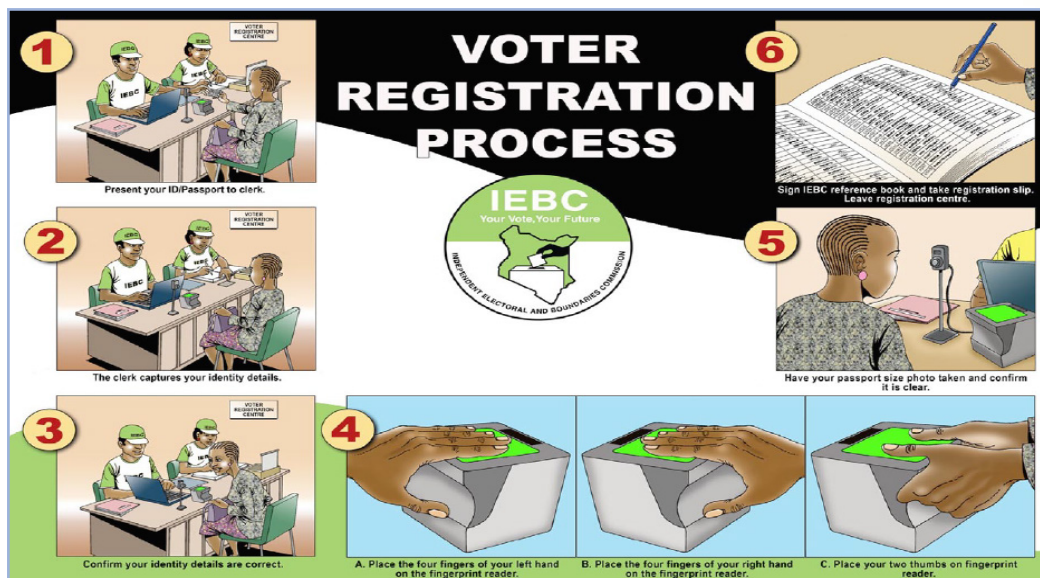
a) Pre-Election

KICTANet's observer mission was particularly interested in the use of the Kenya Integrated Elections Management Systems (KIEMS) during the registration process.

b) Registration of Voters

The Biometric Voter Registration (BVR) kits were used for scanning of fingerprints, documenting of facial pictures which were taken on site. The aim was to have storage of the retina². Voters registering had also to provide their identity details as captured in their identity cards. Further, emails and phone numbers were obtained. The Independent Electoral and Boundaries Commission (IEBC) had an illustration (see diagram 1), where the registration process using technology was demonstrated.

Diagram 1: The registration process (Source: IEBC)³



² Each person's retina is unique and usually remains unchanged from birth to death. And other than DNA, it is the next most reliable aspect to identify an individual. Read more info: Retina scan https://en.wikipedia.org/wiki/Retinal_scan

³ IEBC. How to register <https://www.iebc.or.ke/registration/?how>

At the end of the registration process, the IEBC consolidated into a single voter register all voters who participated in the biometric registration. It then went ahead to provide a portal for voters to confirm registration details. The aim was to avoid double registration, and offer another chance for re-registration for those who did not appear in the register⁴.

a) Access to Information.

KICTANet's focus was on the availability of election info for citizens mainly as disseminated by the IEBC. It was noted that the commission uploaded the voters' database for inspection and two concerns were noted⁵:

- a) Security of the system- the database lacked a safeguard that would protect the database from being harvested effortlessly; and,
- b) Privacy and data protection of personal information contained in the IEBC register was lacking.

KICTANet raised these concerns with the IEBC and made suggestions on how IEBC could make the system secure. In response, the Commission integrated a *captcha*⁶ functionality on the portal. Nevertheless, not all challenges were addressed.

Notably, citizens were able to access their voter information including the stream number that they would be voting from at their polling station. This was achieved through sending a short Message (SMS) to the number 70000, as well as through the online voter verification portal⁷.

KICTANet noted the need for comprehensive legal framework for data protection.

b) Use of Online Spaces for Electioneering

The 2017 general election saw the use of social media for campaigning in unprecedented ways. Political actors, parties and candidates including

⁴ Walubengo, J. (2018, March 13). Electoral Electronic Systems: How they Work, Risks & Alternatives. A paper presented during the KICTANet and Global Partners Elections and Cybersecurity Roundtable.

⁵ KICTANet. (August 11, 2017). The Kenya ICT Action Network (KICTANet) Preliminary Observations on Technology Deployment in Kenya's General Election 2017. <https://www.kictanet.or.ke/wp-content/uploads/2018/02/KICTANET-PRELIMINARY-ELECTIONS-REPORT.pdf>

⁶ Captcha is system that is used to make sure that a human being, not a machine, is using a computer. The person may be asked to type in a series of letters or numbers, or to complete a simple game. The word captcha is made up of the first letters of words in the phrase Completely Automated Public Turing test to tell Computers and Humans Apart. <https://dictionary.cambridge.org/dictionary/english/captcha>

⁷ IEBC voter verification portal. <https://voterstatus.iebc.or.ke/>

the President, the Deputy President, and the leader of the main opposition party made use of social media for campaigning, voter mobilization and engagement on their manifestos. Furthermore, there was massive negative campaigning, spread of fake news and disinformation online. This was taken to mean that politicians and political parties had made a conscious effort to influence online conversations and had therefore dedicated resources for this purpose⁸.

Accordingly, National Cohesion and Integration Commission (NCIC) threatened social media users with dire consequences saying that the commission was monitoring social networks to identify those who were circulating provoking messages aimed at inciting violence during the general election period of 2017⁹. In addition, the Communications Authority of Kenya released draft guidelines on social media use for the electioneering period. These guidelines were intended to “bar political messages that were offensive, abusive, insulting, misleading, confusing, obscene or profane language”.¹⁰

Fake duplicate websites were on the increase inspite of the issuance of these guidelines. In particular there were those that looked like the genuine media websites such as the BBC, CNN, K24, Citizen TV etc¹¹. These had fake news that ordinary citizens shared widely oblivious that they were sharing false information.

c) Election Policy and Legal Processes

There was suspicion that the government would likely shut down the Internet during the elections. This skepticism was grounded in a pattern that had been observed in the region where governments had instigated an internet blackout in instances of elections or political agitations. For this reason, KICTANet produced a policy brief on *Internet Shutdowns in Kenya: Building Trust between the State and Citizens*.¹² The deduction of the policy brief was

⁸ Mutungu, GN. (2018). Moving forward while looking back: freedom online in Kenya's 2017 elections. file:///C:/Users/USER/Downloads/Freedom-online-in-Kenyas-2017-election.pdf

⁹ DW. (July 17, 2018). Kenya warns of social media crackdown ahead of polls. <http://www.dw.com/en/kenya-warns-of-social-media-crackdown-ahead-of-polls/a-39783282>

¹⁰ Moseti, B. (JULY 6 2017). Fears emerge over social media rules. <https://www.nation.co.ke/news/Fears-emerge-over-social-media-rules-/1056-4003444-cbrlx0z/index.html>

¹¹ The Star. (Aug. 30, 2017). How social media, fake news are battering traditional media in Kenya. https://www.the-star.co.ke/news/2017/08/30/how-social-media-fake-news-are-battering-traditional-media-in-kenya_c1626069

¹² KICTANet. (July 6, 2017). Internet Shutdown and Elections in Kenya policy brief in Kenya. <https://www.kictanet.or.ke/?p=36626>

that there was no legal justification, and urged state agencies to promote an open internet during the elections and after.

In a meeting with KICTANet representatives, the Chair of IEBC gave an update of the status of preparedness by the Commission on technology deployment. KICTANet got a confirmation that the IEBC was against the shutting down of the Internet during the general election in the likelihood that there would be agitations “as this would drastically affect the transmission of results, and access to information”¹³.

In January 2017, KICTANet contributed to a national discussion on Election law (Amendment) Bill 2016, through a Memorandum on Election law (Amendment) Bill) 2016 to the Senate¹⁴. Overall, the Network proposed that IEBC develops a system that safeguarded the integrity of the vote, as well as efficiency of transmission.

2.2.2.2 Observations during Elections

Observation during the actual elections was at several levels.

a) The Day before

Observation for the day before going to the polls focused on the preparations for the actual day. This included a check on whether the KIEMS kits were delivered, who the custodian of the password(s) was, the availability of power banks, and whether there was an election operations manual, and other election materials.

b) Opening of the Polling Stations and Set Up

It was noted that there was one KIEMS kit per polling station, power banks and chargers for each of the kits, and two technicians on standby (meant to server an entire constituency if a technical issue arose).

Polling stations were opened through the KIEMS kit where the Presiding Officer logged in, scanned the Quick Response Code (QR code)¹⁵ to confirm that there were no tallies.

¹³ KICTANet. (July 27, 2017). @kictanet sharing the Internet and elections Policy brief with the Electoral Commission <https://twitter.com/KICTANet/status/890511062990282752>

¹⁴ KICTANet. (January 3, 2017). Senate letter on electoral laws. <https://www.kictanet.or.ke/?p=36403>

¹⁵ (QR code- a unique matrix barcode to identify objects)

It was observed that the KIEMS kit was a dual sim device that allowed for the identification as well as verification of voters who had previously been captured on the Biometric Voter Register (BVR) before they could participate in the voting process. It also aimed at eradicating voter impersonation duplicate voting and ballot stuffing.

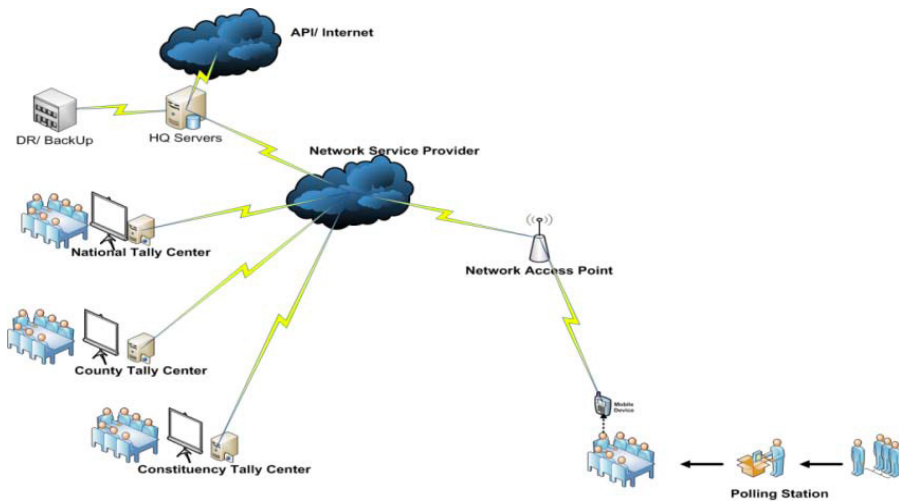
c) Closing Procedures

The KIEMS kit was used to ascertain the first and the last voter, the total number of people who had voted vs. the registered number of voters in that station, and the voter turnout percentage. Further, it marked the number of voters identified through biometrics, and through alphanumeric, as well as the time the polling station closed.

d) Transmission

Once the closing procedures were initiated and ballots counted, the duly filled form 34A was scanned and transmitted to an online public portal using the KIEMS. A confirmation of message and displayed on the device. Diagram 2 below illustrates the transmission process from the polling stations to the constituency, county and national tally centers as well as to the backup in the cloud.

Diagram 2: Results Transmission System¹⁶



¹⁶ Walubengo, J. (2018, March 13). Electoral Electronic Systems: How they Work, Risks & Alternatives. A paper presented during the KICTANet and Global Partners Elections and Cybersecurity Roundtable.

There were challenges in some polling stations since some mobile networks were down, which meant that the screen could not show the messages on confirmation. The Presiding Officer would then switch onto the alternative network to transmit the results. This was noted as a grey area, as it was not clear where the results were being transmitted to, despite the confirmation message. A display module should have been used as evidence to the public of the incoming results in real-time.

a) Tallying centers

At the tally centers, there were screens and projectors that were used for the display of results from the IEBC website.

2.2.2.3 Gaps

Several gaps were noted among them:

- **Confidence on the use of the KIEMS:** When the polling stations opened, the clerks in various polling stations struggled to figure out which finger to place on KIEMS and the amount of pressure to put on.
- **Technical challenges:** It was noted that some KIEMS would reboot whenever there was a change of a power source. However, this did not take long and the device would be back in operation. Further, access to mobile networks would from time to time not be available.
- **Possibility of KIEMS having malfunctions:** If there was failure of KIEMS, the alternative would be for the polling clerks to use the manual printout to identify voters. On this one, a risk would be the possible manipulation of the register where if the polling officer were compromised, s/he could mark out those who had not showed up. Further and following the closing of the poll station, the Polling Clerks/Agents, especially in strongholds would be able to conspire to impersonate the absentee or dead voters and 'vote'.
- KIEMS could also be affected by power failure, battery failure, software failure etc.

2.2.2.4 Recommendations

Based on the 2017 general elections, a few recommendations should be considered by the players running the general election. Some of these were:

- The IEBC should consider continuous engagement with the ICT 'tech' community;
- Integration of security features before availing the voters databases that contained personal information;
- The devices used for the election exercise should incorporate the GPS coordinates;
- Utilization of mechanisms such as the universal service fund to provide connectivity to underserved areas;
- IEBC and all stakeholders / players should mull over electronic voting through an application (App) such as the mobile money services App¹⁷. There is sufficient time between now and the next general election to create, test, and make it readily available for the 2022 elections. This will not only allow for trust (similar to mobile money) but will ensure that peoples schedules are not interrupted, and they can vote from wherever they will be including in Matatus.
- The government and the IEBC should consider running the elections on a Blockchain Infrastructure which is distributed, and decentralized. Blockchain provides higher security and trust.

2.2.2.5 Conclusion

The use of technology in voter identification and transmission of results to a large extent enhanced the efficiency of the election. Further, the KIEMS served the intended purpose. The country should therefore consider adoption of technology during the registration, the voter identification process, the voting, tallying and transmission of results to allow for a more efficient and transparent electoral process in 2022.

¹⁷ Githaiga, G. (August 18, 2017). Electronic voting will eliminate fraud in 2022 polls. https://www.the-star.co.ke/news/2017/08/18/electronic-voting-will-eliminate-fraud-in-2022-polls_c1618765

2.2.2.6 Additional Points by Daudi Were, Electoral Technology Expert.

Important dates:

Is Opening Election Data Important?

“We didn't build libraries for an already literate citizenry. We built libraries to help citizens become literate. Today we build open data portals not because we have a data or public policy literate citizenry, we build them so that citizens may become literate in data, visualization, coding and public policy” – *David Eaves, Open Knowledge Foundation*

“Official data belong to the people and should be open to all. They should be open by default.” – *Africa Data Consensus*

2.2.3 Elections and Security: Role of Security Personnel on Elections and Observer Security

Salome Nduta, Programs Manager, National Coalition of Human Rights Defenders (NCHRD-Kenya)

2.2.3.1 Introduction:

The legal environment for elections Kenya is hinged on provisions drawn from the Constitution of Kenya, 2010, the Elections Act, the Election Offences Act, the IEBC Act, the Political Parties Act, the Leadership and Integrity Act, the Election Campaign Financing Act, the Election Laws Amendment Acts of 2016 and 2017 and the Political Parties Amendment Act of 2016.

It is important to note that the 2017 General Election were preceded by significant changes in the laws regulating the conduct and management of elections, which inevitably had an impact on the operating environment of the elections, the outcome and integrity of those elections. The amendments triggered discordant voices across the political divide.

The Supreme Court decision on the election led to the introduction in Parliament of a bill to amend the Elections Act, with retrospective application.¹⁸ The law which was passed by majority members of parliament from the Jubilee Party, provided that the deputy chairperson of the IEBC could act as the returning officer of the presidential election, in the absence of the Chairperson who is the returning officer by law. This introduction of electoral laws amendments was criticized as being in

bad taste especially given that the amendment was introduced too late in the day and close to an election. However, it is worth noting that the amendments were not implemented in the repeat October 26 elections.

2.2.3.2 Freedoms and Rights entrenched in the Constitution of Kenya

Article 38 of the Constitution guaranteed the right of every citizen to participate in political processes. In addition to this, the Constitution guaranteed various rights and freedoms attendant to the exercise of political rights. These included: Article 33 on freedom of expression; Article 35 on right to information; Article 36 on freedom of association; and Article 37 on the freedom of assembly, including the right to demonstrate and petition public authorities.

NCHRD-K thus focused its election monitoring on how these rights were being violated and documented the cases of Human Rights Defenders, Human Rights Organisations, Journalists and monitors deployed by various organisations were violated during the election period.

NCHRD-K deployed a team of 102 monitors who observed the electoral process beginning April 2017 to November 2017. The main focus was the political, policy and legislative, administrative, electoral environment within which the targeted groups were working in during the monitoring period, violations against them and interventions/response to the violations by various election actors including state and non-state one. The following security incidents showed the security situation during the electoral period as reported by NCHRD-K monitors and covered by some media houses. Although NCHRD-K intervened in some of the matters, others were dealt with at the local level by HRDs and other partners.

- Monitors in Mvita sub-county feared being attacked by opposition supporters who had boycotted the elections. This could also have been castigated by some presiding officers who were reportedly very harsh and unfriendly to HRD monitors and denied them entry in polling stations.
- One monitor from CJPC was attacked in Dandora Phase 4 for wearing her identification badge. HRDs working in the area were viewed with suspicion and judged on the basis of ethnic affiliations and some had to

¹⁸ <http://www.parliament.go.ke/the-national-assembly/news-and-events/item/4317-the-election-laws-amendment-bill-2017-and-election-offences-bill-2017-read-a-first-time-in-the-national-assembly>

flee their homes temporarily. Monitors in Nyanza region could not identify themselves with badges during the repeat polls for fear of attacks by the public.

- On October 26, one monitor was tracked to her house by some youth who went to check if she had gone to the polling station in Kisumu county. Thus, the monitor could not leave her house at any given time. On the same day, houses of election monitors were locked from outside by the youth to prevent them from going out of their houses in Siaya.
- An elections monitor was threatened by a rowdy crowd in Butere who threatened to confiscate his phone if he took photos of the barricaded roads. Some monitors who took photos during political rallies where politicians used public resources to campaign were either threatened or thrown out of political meetings.
- Election monitors and HRDs were not allowed to record the use of force by security agents. One HRD, upon recording the security agents looting his shop on his phone, the monitor was badly beaten and his mobile phone crushed and burnt.
- Secrecy of the ballot was not ensured in some polling stations such as in Nakuru Town West Constituency where voters in the queue had clear views of the polling booths and in some instances voters shared polling booths. The voters felt this as a security threat to them and also for their ballots.
- IEBC staff in the Nyanza region did not turn up on the election day for fear of attacks and victimization by the residents and thus the repeat election was not conducted in most parts of the county. There were reports of MCAs and other elected leaders in Kisumu county who had mobilized 'gangs' in their wards to ensure that IEBC officials did not have access to the polling stations. In some areas residents barricaded the roads leading to the polling stations with the intention of preventing election materials from passing through.
- IEBC's attempts at training election officials in the county were hampered as those who attended the trainings were threatened and roughed up by the members of the community. In turn, they rejected the offer to serve as election officials.

- In some areas of Nyando, Kisumu County, voters who had travelled from Nairobi and Nakuru to vote, claimed to have been warned of violence by perceived Jubilee supporters. They thus had to seek refuge in their native homes.
- After the declaration of the presidential election results on 11 August 2017, NCHRD-K monitors and Media stations reported that security agents used brutal force while dispersing groups of protesters in various parts of the country, resulting in deaths, injuries and destruction of property. In one such incidence, fatal injuries were inflicted on a six-year-old child who died while undergoing treatment at the Aga Khan Hospital in Kisumu. Scaring off protesters with gun shots and tear gas, spent cartridges were strewn all over, evidencing the use of live bullets by the police while dispersing the protesters.
- Delayed vote counting and results transmissions caused tension in most parts of the Country and in some areas agitated members of the public who would storm tallying centres, this resulted in violence and the security agents were forced to disperse crowds and in some instances denied monitors access to tallying centres such as in Trans Nzoia.
- Some presiding officers attempted to abandon unsealed ballot boxes in some tallying centres because the tallying process was very slow and they ran out of patience. Some of these officers were arrested as they tried to go home and taken to police station.
- Some elected leaders threatened voters openly not to vote for certain political factions unless they were ready to vacate their counties. Despite these threats, no arrests were made to put the leaders into account.
- The imposition of curfews in certain areas of the country like in Garissa County made the work of IEBC officials and Human Rights Defenders (HRDs) difficult since they could not move freely in the areas under curfew. An Al-Shabab attack in Lamu County that affected government officials made it even tougher for election observers to monitor the area.
- Pastoralists and indigenous communities thematic HRDs reported unrest owing to banditry and cattle rustling activities in some areas like Tiaty, Mwingi North, Isiolo and Laikipia. This did not only influence the voter turn-

out but also made it hard for election observers and monitors to navigate their areas.

- The Deputy Chief Justice's driver and body guard was shot in Hurlingham, Nairobi a few days to the repeat election. This caused anxiety amongst judicial officers and was seen as a direct threat to the Judiciary to alter their independence.

Other cases that were monitored and raised with relevant electoral bodies included:

1. Media and monitors attacks in Kakamega where a journalist had his camera confiscated and a monitor deployed by KHRC had her phone taken by police.
2. Three HRDs deployed by ELOG were arrested in Trans-nzoia county and it took the intervention of NCHRD-K and KNCHR to be released.
3. Three monitors in Nairobi, Mombasa and Kisumu were beaten both by police officers and goons during the election of August, 2017.
4. In Nairobi during the demonstrations against IEBC, police infiltrated the demonstrators and beat them thoroughly.
5. Harassment of organizations and individuals under Kura Yangu Sauti Yangu election observation group.
6. Intimidation of petitioners of the presidential repeat elections.
7. Death of an ELOG election monitor.

2.2.3.3 Section Conclusion:

There was need to train election monitors on their security during the election period. Election monitoring bodies should consider creating synergies with others to act as a protection platform for each other.

2.2.4 Civic and Voter Education: Effectiveness of Civic and Voter Education, Coverage of the Voter Education.

Grace Maingi, CEO, URAIA Trust

2.2.4.1 Introduction

Civic education had been described as citizen education or democracy education – the provision of information and learning experiences to equip and empower citizens to participate in democratic processes with the overall goal of promoting civic engagement and supporting democratic and participatory governance.¹⁹ Voter education, which was a subset of civic education, as defined in the Elections (Voter Education) Regulations 2017 was all forms of information or communication whose purpose was to educate citizens on their rights and responsibilities in the electoral process. Civic education broadly covered democracy while voter education specifically focused on electoral processes, which was part of democracy.

Civic and voter education had been traditionally undertaken in Kenya by civil society organizations. The Kenyan Government had in the more recent past come in to support civic education for example, in 2011 the Kenya National Integrated Civic Education Programme (K-NICE) was launched as a multi-stakeholder government led process for creating the necessary civic awareness, reorienting the national psyche for the new dispensation and engendering robust public engagement in the implementation process of the Constitution of Kenya, 2010.²⁰

Article 88(4) (g) of the Constitution of Kenya stated that the Independent Electoral and Boundaries Commission (IEBC) was responsible for undertaking voter education. Section 40 of the Elections Act 2011 mandated the IEBC to establish mechanisms for the provision of voter education and development of a voter education curriculum and section 40(2) required the Commission to put in place systems of collaboration with state and non-state actors in voter education. Section 109(a) of the Elections Act provided for the Commission to make regulations for mechanisms for carrying out effective voter education.

¹⁹ Jennifer Rietbergen-McCracken. Civic Education. https://www.civicus.org/documents/toolkits/PGX_B_Civic%20Education.pdf

²⁰ The Kenya National Integrated Civic Education Programme Strategic Plan 2017-2022.

The IEBC Strategic Plan for 2015-2020 envisioned a credible electoral management body committed to strengthening democracy in Kenya through its mission which was to conduct free and fair elections and to institutionalize a sustainable electoral process.²¹ The IEBC sought to undertake this through three goals including; fostering trust and participation of Kenyans in the electoral process through its third pillar of Trust and Participation. The Strategic Plan went on to explain that voter education programmes and constructive dialogue among stakeholders were expected to nurture the atmosphere of trust and participation in the electoral process.

The IEBC Strategic Plan for 2015-2020 Strengths, Weaknesses, Opportunities and Threats Analysis (SWOT) identified existing partnerships with stakeholders as one of its strengths, weak internal and external communication as one of its weaknesses whilst acknowledging unpredictable and inadequate funding of electoral activities, political polarization along ethnic lines and voter apathy as some of the threats it faced. These challenges manifested themselves during the electoral cycle for the 2017 General Elections and continue to bedevil the Commission. There was therefore a need for concerted and innovative efforts to address the challenges posed by the landscape of the Kenyan electoral cycle.

The SWOT analysis further viewed increased communication platforms for engaging with citizens, development partners' interest in Kenya's elections and potentially enthusiastic electorate as opportunities.²² It was therefore essential for Kenyans to assess how the IEBC leveraged these opportunities to the enhancement of the management of elections in Kenya.

The IEBC identified partner/stakeholder roles and interests within the Strategic Plan. It also identified the media, the Ministry of Education, civil society organizations, the business community and private sector, county governments and national government structures as playing different roles in the provision of voter education.²³ The IEBC notably relied on these stakeholders during the 2017 General Elections.

The IEBC identified its strategic initiatives relating to voter education as:

- a) Reviewing and implementing a relevant voter education curriculum including mainstreaming voter education in the national school curriculum;

²¹ The Independent Electoral and Boundaries Commission Strategic Plan for 2015-2020 Page 34

²² The Independent Electoral and Boundaries Commission Strategic Plan for 2015-2020 page 24.

- b) Building the capacities of voter education providers;
- c) Strengthening collaboration and partnerships in delivery of voter education;
- d) Providing targeted voter education for special groups including Kenyan citizens living outside the country, persons with disabilities, youth, women and marginalized groups;
- e) Mounting periodic voter education campaigns or voter registration, general elections and other electoral events.

It aimed at reaching at least twenty million (20,000,000) Kenyans directly or indirectly with voter education information prior to a major electoral event, having the IEBC voter education programme implemented in all the forty-seven (47) counties either directly or indirectly through partners commencing December 2015 and having at least one thousand schools facilitated to incorporate voter education in the School curriculum by 2018. The proposed budget allocation for the result area of Kenyans empowered to effectively participate in the electoral process through voter education for the year 2016/2017 was put at Kenya Shillings eight hundred and thirty eight million (838,000,000/-) and for 2017/2018 at Kenya Shillings one hundred million (100,000,000/-) respectively.²⁴

Following the 2013 Elections, various recommendations were made in regard to improving voter and civic education in Kenya. In August 2013 various stakeholders including the KNICE Programme, Uraia Trust, UNDP Amkeni and UNWomen held a joint conference on civic and voter education following the 2013 March General Elections. The Conference covered strategies for the future on the overall approach to civic education, content, methodologies and the need for innovation and inclusion. Key recommendations included the need to ensure that civic education was continuous, interfaced with other education programmes and was well coordinated. This Conference was significant as it was the first joint civil society, government and development partners meeting on civic education under the new Constitution of Kenya, 2010 and an opportunity to chart the way forward for comprehensive civic education led by the Government.

²³ The Independent Electoral and Boundaries Commission Strategic Plan for 2015-2020 page 27-28.

²⁴ The Independent Electoral and Boundaries Commission Strategic Plan for 2015-2020 page 61.

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In 2014 the Technical Working Group (TWG) on elections²⁵ came together under the leadership of Institute for Education in Democracy (IED), The Kenya Human Rights Commission (KHRC) and The Kenyan section of the International Commission of Jurists (ICJ-Kenya) to host an electoral stakeholders conference to reflect on the 2013 March General Elections. A raft of recommendations were made with regards to voter education including the need for civic education to be begin early, be continuous and for it to contain an element of preparation for both voters and candidates to accept the outcomes of elections. Recommendations included the need for increased public funding for voter education and for it to begin at the primary school level. Partnerships between IEBC and political parties in the provision of voter education and the use of part of political party funds towards voter education. Setting up of an independent body to carry out the provision of voter education, specific voter education for the groups being targeted and all stakeholders must work with the IEBC in facilitating voter education, particularly by sharing data gathered on methods that work.²⁶

In February 2014 Uraia Trust in partnership with the Ministry of Devolution and Planning, the now defunct Transition Authority and with technical assistance from the Kenya Institute for Curriculum Development began a process of developing a curriculum and training manuals on civic education. The curriculum and training manuals were to standardize the content and methodology of delivery of civic education. The process underwent extensive stakeholder engagement and participation that saw the further involvement of key institutions including the Council of Governors, County Governments, Office of the Attorney General, Development Partners and Non State Actors and culminated in 2016 with the launch of the curriculum and training manuals.

The Devolution and Public Participation in Kenya Civic Education Curriculum was divided into three modules covering an overview of the Constitution, Devolution and Public participation. Within the module on the overview of the Constitution unit three covers representation of the people, which essentially focused on voter education.²⁷ The development of this curriculum contributed greatly to

²⁵ A consortium of twelve civil society organisations and two development partners namely the Institute for Education in Democracy (IED), Kenya Human Rights Commission (KHRC), The Kenyan section of the International Commission of Jurists (ICJ-Kenya), National Council of Churches (NCCCK), Youth Agenda, EISA, ELOG, CRECO, UDPK, CMD, Kituo Cha Sheria, IFES, NDI and Uraia Trust.

²⁶ From pillar to post: transforming the election agenda in Kenya. An Electoral Stakeholders Recipe for Reforms. Institute for Education in Democracy (IED). April 2015

the continuous provision of civic education in Kenya by providing the necessary instructional material for the same.

2.2.4.2 Key Observations

This section covers the voter education programmes that were run by the IEBC and other non-State Actors as well as analyzing reports from both local and international observers on voter education.

As in the past a number of Development Partners supported work around voter education ahead of Kenya's 2017 General Elections. UNDP Kenya through its Support to Electoral Processes in Kenya (SEPK) project which was a multi-donor basket Fund and co-implemented with UN Women supported IEBC's voter education and training and capacity support to civil society groups on civic and voter education.²⁸ IFES through its Kenya Electoral Assistance Programme (KEAP) funded by the United States Agency for International Development (USAID) supported the IEBC and civil society organisations as well. Various other Development Partners supported civil society groups directly for civic education including the Embassy of Denmark, Embassy of Finland, Royal Netherlands Embassy, Diakonia Sweden, the Deepening Democracy Programme funded by the United Kingdom Department for International Development (DFID).

IEBC Voter Education Programme

The IEBC set aside 1.4 billion Kenya Shillings for voter education and had a target of 5.2 million new youth voters who needed voter education ahead of the 2017 General Elections.²⁹ No information currently exists in the public domain as to the amount actually spent on voter education and as to whether this was adequately used for the same.

The IEBC Elections Operation Plan (2015-2017) outlined the priority areas for voter education as follows:

- i. Voter Education Regulatory Framework;
- ii. Conduct continuous voter education;
- iii. Voter education for mass voter registration and inspection of the register of voters;

²⁷ <http://uraia.or.ke/wp-content/uploads/2017/06/CIVIC-EDUCATION-TRAINERS-CURRICULUM-13-WEEKS-PROGRAMME.pdf>

²⁸ http://www.ke.undp.org/content/kenya/en/home/operations/projects/democratic_governance/electoralreforms.html

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- iv. Voter education for general election period;
- v. Voter education for post general election period.

IEBC was able to establish a regulatory framework for the provision of voter education by putting in place a Voter Education Policy and the Voter Education Regulations 2017. The regulatory framework came into force in early 2017 leaving little to no time for stakeholders to internalize the same effectively. The delay in putting in place the regulatory framework had a knock on effect on the IEBC's quick turn around time to produce the necessary voter education materials namely the Handbook on elective positions, the revised voter education curriculum and manuals.

IEBC accredited two hundred voter education providers³⁰ however a majority of the accredited voter education providers lacked resources to undertake voter education. This greatly hampered voter education for the general election as well as the envisioned continuous voter education.

The roll out of the voter education curriculum for schools was yet to begin though outreach to school going children had begun through IEBC's participation in the Schools National Drama Festivals of 2017³¹. IEBC recruited 2,900 ward based voter educators on the 30th of June 2017 ahead of the General Election.³² The timing of this initiative was delayed in light of the Strategic Plan that envisioned the commencement of continuous and countrywide voter education in December 2015. The late deployment of the ward based voter educators had a significant negative effect on the reach of the IEBC voter education Programme as it coincided with heated political campaigns and was rolled out in less than two months to the August 8th General Elections. For a ward based voter education Programme to be effective it requires adequate time to recruit, train and deploy the educators in order to assure quality education. Further to this, the adequate mapping of the ward needs to be undertaken to avoid overlaps and gaps of areas not covered and community trust building initiatives between the ward educators and the locals to raise buy in to the voter education.

²⁹ <https://www.standardmedia.co.ke/article/2001248596/fears-over-poor-voter-education>

³⁰ http://www.ke.undp.org/content/kenya/en/home/operations/projects/democratic_governance/electoralreforms.html

³¹ Source: IEBC

³² https://www.facebook.com/IEBCKenya/photos/a.315382521866226.71929.297270380344107/1046345912103213/?type=3&comment_id=1046354132102391&comment_tracking=%7B%22t%22%3A%22R%22%7D

The IEBC undertook a media voter education campaign that included a social media campaign to target the youth entitled “Y-vote” with support from International Foundation for Electoral Systems (IFES) and carried out live voting day simulation on television.³³ The IEBC Commissioners and staff also appeared severally on television and radio closer to the 8th of August elections to speak on voter education as well as other electoral matters.

The IEBC used its Facebook page to share important information including the revised election timelines following amendments to the law³⁴. As of March 2018 two hundred and thirty eight thousand people followed the IEBC Facebook page³⁵ against an approximately five million Kenyan active Facebook users.³⁶ The IEBC twitter handle as of March 2018 had at least three hundred and ninety nine thousand followers³⁷ whilst its Instagram page had two thousand three hundred and nineteen followers³⁸. Whilst this may be seen as a very small percentage other factors such as interest need to be taken into account. IEBC’S Facebook followers’ number was similar to the Facebook followers of the South African Electoral Commission, which had as of March 2018 three hundred and thirty nine thousand Facebook followers³⁹. IEBC also used youthful slang phrases and captions to attract attention such as the poster developed for the registration deadline, which was falling on 14th February, Valentine’s Day. The poster creatively asked Kenyans to first put aside Valentine’s Day in order to register.⁴⁰

A review of the IEBC’s social media work and its impact would be important to guide the Commission moving forward on how to maximize its benefits. Media engagement could be an extremely valuable and effective tool for voter education especially when it had no cost implication. In order to ensure continuous voter education the IEBC continued to use its social media pages such as Facebook to communicate to the public.

³³ Ibid

³⁴ <https://www.facebook.com/IEBCKenya/photos/a.315382521866226.71929.297270380344107/1262992863771849/?type=3&theater>

³⁵ <https://www.facebook.com/IEBCKenya/>

³⁶ <http://www.dotsavvyafrika.com/the-5-biggest-social-media-platforms-in-kenya/>

³⁷ @IEBCKenya

³⁸ IEBC Instagram page

³⁹ <https://www.facebook.com/IECSouthAfrica/>

Voter Education Initiatives by other Actors

Various State and Non State Actors undertook voter education programmes throughout the country. This section does not capture all the initiatives but only highlights a small fraction of these.

Kituo Cha Sheria through the Prisons Working Group advocated for the voter education within the Prisons by having meetings with the Kenya Prisons Service. The Prisons Working Group focused on the realisation of Article 38 of the Constitution of Kenya and highlighted issues pertaining to registration, verification and observation of the elections within the Prisons.⁴¹ Transparency International undertook a national media voter education advocacy project in addition to its county voter education project in Machakos and Uasin Gishu counties.⁴²

A youth focused campaign titled “Jiactivate” ran voter mobilisation and leadership accountability campaigns through various social media platforms.⁴³ Jiactivate identifies itself as a non-partisan social movement by and for the youth⁴⁴ and was born out of a partnership of the Red Cross Society, Well Told Story, the Organisation for African Youth and Geopoll⁴⁵.

The State Department of Gender Affairs, with support from UN Women conducted a series a countywide civic education programmes in order to strengthen the capacity of women to participate in the electoral process.⁴⁶

2.2.4.2 Summary of Voter Education Activities Implemented by Uraia Trust.

Uraia Trust with support from its Development Partners supported Twenty-seven (27) county-based implementing partners (CSOs) to conduct mass voter education activities disseminating simplified awareness sessions using the IEBC voter education materials. The strategies/methodologies utilized included;

- a. Mass voter education forums (in baraza, religious settings, markets, institution of leaning, villages, water points etc.),
- b. Mobilization for voter verification through roadshows,

⁴⁰ <https://www.facebook.com/IEBCKenya/photos/a.315382521866226.71929.297270380344107/1364202363650898/?type=3&theater>

⁴¹ <http://kituochasheria.or.ke/kituo-prisons-discuss-prisoners-voter-education/>

⁴² <https://tikenya.org/end-line-survey-elections-project-kagua-kiongozi-machakos-county-11th-15th-september/>

⁴³ <http://jiactivate.org/>

⁴⁴ https://www.facebook.com/pg/JIACTIVATE/about/?ref=page_internal

⁴⁵ <https://blog.geopoll.com/geopoll-study-informs-creation-of-jiactivate-youth-social-movement-in-kenya>

- c. Voting simulation activities (mock elections undertaken in partnership with IEBC Constituency civic educators).

The mass voter education platforms directly reached an estimated individual of eight hundred thousand (800,000) citizens with voter education knowledge and voting skills. This improved the civic and voter knowledge of the individuals reached across the counties.

In addition to this Uraia undertook a mass voter education intensive campaign through eight (8) radio stations and five (5) television (TV) stations took place in the month of June, July and August 2017. The radio presenters and Uraia resource persons discussed voter education thematic topics, which were then followed by call-ins from citizens for contribution, clarifications and answers. The media program galvanized voter education through radio talk shows and TV infomercials. The themes cover the power of vote, elective positions, leadership and integrity, leadership and gender, electoral offences and electoral violence reaching out to an estimated ten million (10,000,000) individuals.

In order to ensure continuous civic education Uraia supported Three hundred and sixty-eight (368) civic educators to deliver mass and sustained voter education to community groups in the forty-seven (47) counties. The civic educators used the IEBC Information Education and Communication (IEC) materials and were able to reach a cumulative figure of three hundred and eighty thousand two hundred and thirty-six (380,236) individuals directly. This resulted in individuals acquiring voter knowledge and skills that facilitated them to participate in the electoral process. In the counties members of the groups educated took initiatives to educate other citizens in the villages, religious platforms and chiefs Baraza.

Uraia was also able to develop and disseminate gender responsive and youth focused Information Education and Communication (IEC) materials on the electoral process. Youth friendly voter education illustration posters covering eight thematic areas of: gender and elections; youth and voter bribery; leadership and hate speech were printed and distributed across the 47 counties. Uraia distributed a total of two million one hundred and fifteen thousand (2,115,000) pieces of posters; each county getting three thousand five hundred (3,500) of assorted posters.

⁴⁶ <http://www.unwomen.org/en/news/stories/2017/7/feature-in-kenya-women-gear-up-for-county-elections>

Uraia was also able to re-print IEBC voter education IEC materials that were distributed to all the 47 counties. The usage of these materials contributed towards improved voter knowledge, including voting skills of the citizens.

2.3 What Observers said about Voter Education

The penetration and uptake of voter education was one of the more difficult issues to monitor. This was due to the traditional view that voter education only occurred when a person attended a voter education workshop this left out other media through which voter education could be given for example by listening to a radio programme on elections or looking at a poster on elections. Further to this measuring penetration required robust sampling cover a range of different categories of persons.

Speaking to the timeliness, penetration and effectiveness of voter education was a key pillar in any observation as it captured to what extent the electorate had been informed and prepared for the election.

2.3.1 Kenyan observation reports

The Elections Observation Group (ELOG) deployed long-term observers in the 290 constituencies in early March 2017⁴⁷ and in the month of May 2017 they reported increased voter education efforts from the IEBC, civil society organisations and the media.⁴⁸ The May report noted relatively consistent targeted voter education activities towards women and youth and a modest increase in voter outreach toward persons with disabilities in May.

In May 2017 the African Centre for Open Governance (AfriCOG) presented an Assessment of Kenya's preparedness for the 8th August 2017 General Election in which it highlighted the challenges in undertaking voter education following the shrinking space for civil society. Within the report the Africa Center for Open Governance (AfriCOG) sites the President Uhuru Kenyatta's 2016 Jamhuri Day speech in which he said that foreign money was coming into the country "in the guise of supporting good governance or civic education". This statement was closely followed by the suspension of the International Foundation for Electoral Systems (IFES) elections based programme and many organisations thereafter felt pressured to carry out civic education in a less overt manner.⁴⁹

⁴⁷ ELOG Long term observation key findings in the month of July / August 2017

The AfriCOG assessment went on to highlight late rolling out of the voter education programme and delays on the part of IEBC to develop the updated voter education materials and a lack of coordination between those who are providing voter education, the IEBC and the national government that would lead to inefficient and possibly repetitive programming.

In June 2017 the Kenya Human Rights Commission and Kura Yangu Sauti Yangu⁵⁰ citizen movement published a briefing paper entitled “*The Road to credible 2017 elections*” in which it further emphasized the shrinking space for human rights defenders and civil society organisations working around promotion of democratic governance.⁵¹ In addition to reiterating the effects of the President’s Jamhuri Day speech it went on to give more examples of actions geared towards limiting civic space including announcements made by Mr. Jackson Mandago, Uasin Gishu County Governor on the need to vet all civil society groups planning to undertake civic education and peace work in the Rift Valley and for county security teams need to clear all NGOs. The briefing paper also touched on the January 6th 2017 government directive addressed to the forty-seven county Commissioners from the Interior Principal Karanja Kibicho asking for stricter monitoring on civil society organisations throughout the country.

On the 5th of July 2017 ELOG released a further press statement entitled “The 2017 General Election Observation Mission: State of Preparedness” that noted that the voter education drive by IEBC was below 40% in March and April but rose to about 80% in May and June when the voter verification drive was on but dropped to around 56% immediately after the voter verification drive. The report further noted that voter education efforts by civil society and media remained constantly higher than the IEBC at 50% over the period and rose sharply in May and June to an average of over 70% during the voter education drive and dropped by 10% immediately after the voter verification drive. The report noted that voter education targeting women and youth averaged between 64-68% from March to June but low for PWDs and averaged between 34-40% over the same reporting period and further dropped from 24% to 18% over the last two weeks of June 2017.

⁴⁸ ELOG Long term observation key findings in the month of May 2017.

⁴⁹ May 2017. Africa Centre for Open Governance (AfriCOG). Ready.... or not? An Assessment of Kenya’s Preparedness for the 8th of August 2017 General Election.

⁵⁰ Citizen movement spearheaded by a number of like minded organisations – KHRC, IMLU, CRECO, AfriCOG, IFA, CSO-RG, Inuka Kenya Ni Sisi, Katiba Institute, DTM, ICJ Kenya, Awaaz Magazine, Mazingira Institute, MUHURI, NWSC, KPTJ who have come together to proactively support Kenya’s preparations for the 2017 elections with a view to ensuring that the country minimizes the risks related to dysfunctional electoral systems and practices.

⁵¹ The Road to Credible Elections - page 10

The ELOG Long term observation key findings in the month of July / August 2017 reported an erratic reporting in voter education activity particularly by IEBC a trend that the report captures as an indication of insufficient access to vital electoral information that would possibly have dire consequences on the quality of voting on the election day. The report called on civil society organisations, the corporate sector political parties and media to collaborate with the IEBC to boost their efforts to reach more voters during the remaining week. The report indicated a slight growth of voter education campaigns by the media from 64% to 73%. The report indicated a growth from 38% reach in voter education by IEBC on 17th March 2017 to 91% on the 4th of August 2017; a growth from 47% reach in voter education by civil society organisations on the 17th of March 2017 to 75% on the 4th of August 2017 and a growth from 54% reach in voter education by the media on the 17th of March 2017 to 78% on the 4th of August 2017. The report noted that late disbursement and lack of resources as some of the causes as to why voter education materials did not reach the voters. ELOG called upon stakeholders and the corporate sector in particular to go out of their way and educate the masses with or without resources.

In its Preliminary report “*Mirage at Dusk*” - A human rights account of the 2017 General Elections, the Kenya National Commission on Human Rights noted that the Police Reforms Working Group (PRWG) made considerable efforts to ensure that prisoners were sensitized on the elections however it noted that many prisoners said that they felt they needed more sensitization on voting and registration.

2.3.2 International observers

The Carter Center in its July 27th 2017 press release noted a lack of education on voting day procedures. The Center went further to urge the IEBC, political parties and civic society to use the available time before Election Day to increase voter education and outreach efforts.⁵² In its 7th of November 2017 press release the Carter Center noted that although the IEBC redeployed voter education staff for the October 26th election the Center observers reported seeing few such activities.⁵³ The press release did note that the voter education efforts for the fresh presidential elections were significantly less than for the 8th of August election.

Human Rights Watch in its 9th August 2017 Statement on election process stated that the civil society leaders they spoke to pointed to a cycle of intimidation that undermined civic education initiatives more generally and voter education in

particular.⁵⁴ Further to this the Statement makes reference to a reduction in funds towards voter education, which had affected voter education programmes in the Coast region.

The National Democratic Institute (NDI) deployed an international delegation to Kenya from the 3rd to 7th of April 2017 and the team issued a statement of the pre-election assessment mission on the 7th of April 2017 that recommended that the IEBC, civil society and political parties should conduct broad campaigns to inspire electoral participation especially among the youth.⁵⁵ NDI in its 10th of August 2017 preliminary statement stated that its long term election observation efforts reported that there was an uptake in voter education activities in the latter part of the pre-election period but the report noted that more efforts were needed.⁵⁶

The European Union Election Observation Mission Final Report on the Kenya General Elections 2017 recommended that civic education programmes needed to be implemented as a multi stakeholder exercise with a focus on individual choice, inclusion, accountability of those elected and electoral integrity issues⁵⁷. The Report also called for a focus on youth and marginalized communities and that resources at the community level needed to be used to complement school curricula. The Report documented that the European Union Long term Election Observers consistently reported activities as primarily run by the IEBC with only limited CSO cooperation.

1. Lobbying for adequate budgetary allocation for civic education at the national and county level from the Kenya Government in order to enhance public participation and voter education.
2. Innovation in the dissemination of information in order to address the limited resources available for civic education, counter the culture of financial handouts expectations from citizens and the political campaigns, which competed with the voters' attention during the election period. This could include the use of short edutainment videos that could be shared

⁵² <https://www.cartercenter.org/news/pr/kenya-072717.html>

⁵³ https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/kenya-prelim-nov2017.pdf

⁵⁴ <https://www.hrw.org/blog-feed/kenya-elections-2017>

⁵⁵ <https://www.ndi.org/sites/default/files/FINAL%20-%20Kenya%20PEAM%20statement%20-%20For%20Release.pdf>

⁵⁶ <https://www.ndi.org/sites/default/files/NDI%20Election%20Statement%20-%20Kenya%20-%2008%20August%202017%20-%20final%20version%203.pdf>

⁵⁷ <https://www.ndi.org/sites/default/files/NDI%20Election%20Statement%20-%20Kenya%20-%2008%20August%202017%20-%20final%20version%203.pdf>

on WhatsApp, use of theatre at the local level during public participation sessions organized by County Governments and Baraza sessions.

3. There was need for pressure to be put on IEBC to carry on voter education throughout the elections cycle and for them to be reminded of their mandate continuously by election groups.
4. The KNICE rollout needed to begin in order to buttress on going civic education work at the County level.
5. Concerted efforts to shift away from the monetization of civic education by media houses. Media houses should conduct civic education as part of their CSR initiatives.
6. Enhanced synergy building of civic education providers in order to ensure effective mapping and coverage of the country.

2.4 Elections and Human Rights: How did the 2017 Electoral Processes promote, protect Human Rights?

Andrew Songa, Programme Manager, Transformative Justice, Kenya Human Rights Commission (KHRC)

Nexus between Elections and Human Rights

- Every citizen has the right, without any discrimination and without unreasonable restrictions, to take part in the conduct of public affairs, to vote and to be elected to government. Free and fair elections are those held periodically, through universal and equal suffrage, by secret vote and the result of free political participation and the expression of the will of electors.
- Participation in the electoral process cannot be effective unless a wide range of rights are respected: freedom of expression and opinion, freedom of peaceful assembly, freedom of association, freedom of movement, freedom from discrimination, and freedom from fear and intimidation. – OHCHR Manual on Human Rights Monitoring, Chapter 23:

Monitoring Human Rights in the Context of Elections

- African Charter on Elections, Democracy and Governance- Article 4 Para 1: State Parties shall commit themselves to promote democracy, the principle of the rule of law and human rights.
- Article 4 Para 2: State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people.
- Constitution of Kenya 2010's specificity of Political Rights as part of our Rights and Fundamental Freedoms:
- Art 38 (2): The right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors.
- Art 38 (3): The right without unreasonable restrictions to be registered as a voter, vote by secret ballot in any election or referendum; and to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected to hold office.

3.4 Kura Yangu Sauti Yangu (KYSY) Six Electoral Issues

Issue one: Leadership and governance in the management of elections (IEBC Issues):

- The credibility of the current commissioners
- The Transition Issues within IEBC
- Management of the financial resources (accountability)
- Low public confidence and trust in the IEBC
- Lack of Impartiality
- Low competence level in management of electoral process
- Lack of transparency
- Respect and consultation of only specific stakeholders
- Political insensitivity towards the opposition

Issue two: The Credibility of the Electoral Governance Process;

- What constitutes a voter register
- Management of the voter registration process

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- Tallying of presidential results
- The use of technologies
- Clarity on valid votes vs. votes cast,
- Management of the party nominations exercise

Issue three: Security in Electoral Governance

- Inadequate accountability mechanisms in place Public order policing
- What is the role of the National Intelligent Service (NIS)
- Issue of independence i.e the Executive interference
- Securitization of the political dialogue

Issue four: Discrimination in Electoral Governance

- Implementation of the 2/3 gender rule
- Participation of the ethnic minorities and persons with disabilities in elections

Issue five: Dispute Resolution in Electoral Governance

- Transition issues at the Supreme Court
- The Credibility of some of the Judges

Issue six: Coordination among Public Agencies working on Elections

- The silo mentality when working together
- Low public confidence and trust in all public agencies working on

What KYSY has done this far

- Conducted bilateral consultations with the various state and non-state actors namely: IEBC; The Women's Movement; the Kenya Correspondents Association (KCA); LSK; trade union; faith based organizations, Federation of Kenya Employers, CSOs, judiciary, political leaders both in opposition and government, the media and development partners. Culminated in the National Elections Conference of 2017.
- Developed a National Electoral Dialogue Framework to guide the current Dialogue process on the IEBC issue and the WE THE PEOPLE movement in the post-August 2017 environment

- Advocated for the expansion of the dialogue agenda from IEBC's commissioners to other electoral issues
- Strong influence on the election agenda: the Judicial Service Commission (JSC) selected some of the KYSY recommendations around voter registration, tallying of presidential results, use of electoral technologies, voting process and credibility of IEBC Commissioners.
- Continuous demand for accountability and the credibility of the electoral process: Criticized the exit package for the outgoing IEBC commissioners as brokered by the JSC; Criticized the initial shortlist of IEBC chair; calls for investigations by DPP into conduct of IEBC officials; Presidential Election Petition No. 4 of 2017.
- Conducted community forums in order to include citizens voice in the national dialogue on the electoral reforms agenda.

Human Rights Monitoring of Elections

- Traditionally, the Commission has monitored the following four aspects of electoral processes:
- Political mobilization and the use of hate speech & offensive language in electoral campaigns
- Electoral Violence
- Sexual and Gender – based Violence (SGBV)
- Political campaigns (The use of state resources).

The New Approach

The Commission embraced a Rights Based approach in 2013 to scrutinize the extent to which the fundamental rights and freedoms necessary for the democratic and accountable conduct of the electoral process were applied, protected and promoted in accordance with the letter and spirits of the Constitution.

Monitored Rights and Freedoms

- Freedom of expression
- Freedom of Assembly
- Freedom of movement

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- Freedom of the media
- Access to information
- Equality and freedom from discrimination
- Political rights (CoK 2010)

Interventions from KHRC and its Partners

- KYSY deployed 20 Long term observers and 300 short term observers for the August 8th 2017 election and 2000 short term observers for the October 26th Fresh Presidential Election who observed elections and reported on human rights violations.

Findings – Pre-Election

- The lack of effective communication with the public on key electoral issues
- A lack of clarity on how issues arising during mass voter registration would be resolved as instances such as shared identity numbers and persons already registered were missing from the register emerged
- Insufficient information on the audit of the register of voters;
- Lack of clarity on the complementary mechanisms to electoral technology even though the law made provisions for it
- The lack of credibility in the procurement process for ballot papers
- A failure to enforce the leadership and integrity provisions of the Constitution;
- Unfulfilled constitutional imperatives on the Constitution's 'two-thirds gender principle';
- Instances of violence leading into the election
- Shrinking civic space and;
- Inefficient coordination between state agencies in a manner that hampered law enforcement in relation to electoral offences

Elections and Post-Elections

- Failure of Kenya Integrated Elections Management System: Occasioned delayed voting and turning away of voters.

- Electoral Malpractices: Unduly guiding voters on how to vote
- Lack of support to special interest groups: Accessibility to the polling stations; lack of ramps, braille ballots for the
- Visually impaired voters, lowered voting booth for people on wheelchairs and sign language interpreters.
- Violence at polling centers
- Discrepancies in tallying of votes and failure to avail Information as required Form 34A in particular
- Increased intimidation and shrinking of civic space

Findings of October 26 Elections

- The election was not free from violence, intimidation, improper influence or corruption;
- The fresh Election was not conducted by an independent body;
- The fresh Election was not transparent; and
- The fresh Election was not administered in an impartial, neutral, efficient, accurate and accountable manner.
- The fresh Election was further marred by illegalities and irregularities

Way Forward on Electoral Reforms

- An empowered people's movement that localizes the debate and equips the public to engage directly.
- Mobilize interest groups and defining the public interest as a counter to ethnic mobilization. (Accountability, non-discrimination)
- Continuous engagement with all stakeholders including those who disagree with us
- Knowledge & research that clarifies the issues and defines the organizing question for reforms and transformation.

2.5 Elections and Political Parties Processes: Conduct of Party Primaries, Dispute Resolution and Campaign Processes

Kennedy Masime, CEO, Center for Governance and Development (CGD).

2.5.1 Introduction

The importance of political parties is strongly affirmed by the political science literature. As Schattschneider (1942: 1) aptly puts it, “democracy is unthinkable save in terms of parties”. Some of the most influential definitions of political parties emphasize their role in elections. For example: to Sartori (1976: 57), “a party is any political group that presents at elections, and is capable of placing through elections, candidates for public office”; whilst for Joseph Schlesinger (1991: 16), “a political party is a group organized to gain control of government in the name of the group by winning election to public office”. Political parties play a number of important roles in the electoral process; the structuring of the vote, political integration and mobilization of public participation, and recruitment of political leaders (King 1969). Additional functions include:

- Broadening political goals and extending politicians implementation time-frames (Sartori 1976: 24-29; Gross 2013: 23);
- Focusing on programmes and thereby helping prevent the emergence of personalistic and authoritarian leaders (Mainwaring and Zoco 2007; Ezrow 2011: 2-3; Concha 2014);
- Facilitating the inclusion of hitherto disenfranchised social groups into the political system thereby checking socio-economic inequality in new democracies (LeBas 2005: 5);
- Simplifying elections (Gross 2013: 23; Ezrow 2011: 4) by reducing information costs for voters (see Sartori 1976: 28; Ayee 2009; Van Dyck 2014) and educating citizens on democratic norms and practices (Ayee 2009; Ezrow 2011: 2); and
- Mediating and resolving conflicts between groups (Randall and Svåsand 2002).

The Constitution of Kenya 2010 comprehensively provides for the regulation of the conduct of political parties and candidates during elections. It, among other things, variously provides that political parties should:

- Promote and uphold national unity.
- Promote and practice democracy through regular, fair and free elections.

- Respect the right of all persons to participate in the political process, including minorities and marginalized groups.
- Respect and promote human rights and fundamental freedoms, and gender equality and equity.
- Not engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person.
- Not engage in (voter) bribery or other forms of corruption.

These provisions are further elaborated in the enabling legislations (i.e. the Political Parties Act 2011 and the Code of Conduct for Political Parties, the Election Campaign Financing Act 2013, the Independent Electoral and Boundaries Commission Act 2011, the Elections Act 2011 and the Election Code of Conduct and the Election Offences Act 2016, and the respective regulations). The operations of the Election Campaign Financing Act 2013 was, however, suspended during the 2017 General Elections. It came into force immediately after the elections.

2.5.2 Assessment

ELOG deployed 85 observers to observe the party primaries around the country focusing on three political parties: ODM, WIPER and Jubilee between 13th and 21st April 2017. Article 38 of the Constitution of Kenya 2010 gives a number of political rights including the right to make political choices, participate in regular free and fair elections, and vote or vie for public office. But the conduct of political parties during the 2017 General Elections, especially their handling of party nominations, dispute resolution and the general campaigns, undermined the same.

Party Nominations

Because of amorphous party membership, political parties used non-updated voter registers compiled by the Independent Electoral and Boundaries Commission (IEBC) to conduct party nominations. In other words, they adopted universal suffrage in conducting their nominations but without the requisite budgets. The party nominations in April 2017 were, thus, marred by massive irregularities and challenges, including:

- Late opening of polling stations (as a result of delayed delivery or mix-up of voting materials);
- inadequate voting materials;

- Substandard voting material (e.g. ballot papers without serial numbers or missing candidates names and pictures); and
- Few and inadequately trained polling officials (at times making it necessary for agents and security official to lend a hand).
- Indeed, all the major parties were forced to postpone the exercise on the first day due to massive logistical failures.

Due to the non-implementation of the campaign and political financing provisions of the party law regime, money was a very dominant factor in party nominations. Wealthier candidates (usually older men), had an advantage over the less wealthy ones (usually women, youth and people living with disabilities). The party founders who double up as funders usually contribute a disproportionate amount of money to the parties, and thus, they have a commensurate amount of say and influence. In addition to this, those who contributed substantial amounts of money to the party or party leaders were favoured in the issuance of nomination certificates, sometimes resulting in blatant rigging-out of popular candidates who were not resource endowed thereby disenfranchising their supporters.

Political parties continued to submit fraudulently acquired membership lists that they themselves could not use during their nominations, hence the unfortunate recourse to outdated IEBC voters registers. Party nominations were messy and the fallout was massive. It was not unusual to find two returning officers announcing different results from the same elections. Indeed, they were characterized by mass defections by losers to other parties.

In the 2017 General Elections, the window for defection to other parties was very narrow while that of becoming an independent candidate was relatively wide. This saw a remarkable rise in the number of independent candidates. A total of 4, 940 individuals stood as independent candidates. In fact, the independent candidates held a national conference and even formed a caucus.

Election Campaigns

Given the high stakes involved, coupled with inadequate supervision and general impunity, parties and candidates employed all the means possible to emerge on top. Voter bribery, treating voters, threat of violence (especially the circulation of anonymous leaflets), actual violence (e.g. disruption of rallies and even the

nominations themselves), hate speech, threats and actual attacks on minorities especially women, name them, characterize party nominations.

The electorate was unaware of the party nomination rules and regulations and the schedules. Yet in the Kenyan context, where strong regional parties exist, the real elections took place at the party nomination level. The Election Observation Group (ELOG) documented very high rates of assisted voting during the 2017 party nomination; for example, 1 out of 5 voters and 8 out of 10 women were assisted to vote, respectively, in Kiambu and Kilifi counties. However, sometimes assisted voting was fuelled by voter bribery and was used as an 'accountability' mechanism by perpetrators to ensure that recipients delivered on their end of the bargain. The campaigns were generally characterized by lack of mutual toleration. Political parties largely treated their competition as enemies and not worthy opponents.

Dispute Resolution

Due to widespread malpractices, the number of disputes following party nominations was colossal. Indeed, the Political Parties Dispute Tribunal (PPDT), the IEBC Dispute Resolution Committee and the courts in 2017 cancelled several certificates and ordered fresh nominations.

Political parties attempted to forestall and minimize the impact of defections arising from nominations fall-outs by pushing them as close as possible to the deadline thereby worsening an already bad situation. Consequently, there was no ample time for dispute resolution.

The High Court extended the deadline for party nominations from 27th April 2017 to 1st May 2017 following a petition by Angaza Empowerment Network. Due to the tight election timelines IEBC was under pressure to print the ballot boxes. Justice was therefore sacrificed at the altar of efficiency.

305 nomination dispute cases were filed in court of which 125 ended in the High Court and 12 in the Court of Appeal. The judiciary thus struggled to determine the cases. Over 300 cases were filed before PPDT. In fact IEBC extended the deadline for PPDT from 10th May to 14th May 2017 to conclude the cases. PPDT was poorly funded and staffed. It only had two panels sitting in Nairobi to handle all the cases.

Political parties engaged in alternative dispute resolution mechanisms that tended to undermine democracy and disenfranchise the voters. The parties, especially the ruling party, dissuaded disgruntled candidates from pursuing justice by promising alternative positions and government jobs for supporting a party's favoured candidate.

Even when parties had the opportunity to enhance inclusivity through party list nominations they still messed it up. Yet disgruntled candidates were just given a weekend to lodge complaints. Political parties did not adequately recruit, train and deploy agents; and vet their candidates thus complicating dispute resolution.

2.5.3 Conclusion

There were a number of positive developments including: prompt response by security agents; increased responsiveness of political parties' election boards in addressing disputes; high voter turnout; and accessibility of some centres for people living with disabilities. Nevertheless, the party primaries were generally characterized by the parties' failure to abide by the letter and spirit of the Constitution and the enabling legislations, codes of conduct and regulations. The legal framework was largely adequate. The gap is in the implementation.

2.5.4. Recommendations

- Rationalize the timelines and stagger party nominations.
- Review and implement the Election Campaign Financing Act 2014.
- Enhance the capacity of dispute resolution institutions and oversight institutions (i.e. Office of the Registrar of Political Parties and IEBC). Boost funding for PPDT in particular and devolve its function to the counties.
- Observers should focus adequate attention on party nomination and campaigns.
- There was need to focus on the institutionalization of the party system too not just individual parties.
- Only dully-registered party members should vote.
- Implement party and/or election laws.

2.6 Youth Participation in Elections

Susan Kariuki-Mwongera, Executive Director, Youth Agenda (YAA).

(Presented by Mildred Nzau, Program Manager, YAA)

3.6.1 Introduction

After months of pulsating campaigns, the elections finally came to a close on 26th October 2017. "When the curtains are closed and the lights are out, when the campaign adverts are silent and the billboards are pulled down and when the ever crowded political parties are left to a few individuals, what next after elections, what lessons can we learn about the participation of youth?" This is the question that this section seeks to answer in the context of 2017 Kenya's General Election

Evidently, 2017 elections were complex and politically charged compared to 2013 whose outcomes were different because of internalized lessons from the bloodbath, spontaneous, organized and retaliatory violent eruptions that led to the death of thousands, displacement of hundreds of thousands and gross destruction of property from the disputed 2007 presidential elections which had imprinted a bitter legacy on the national psyche which no one wanted to repeat. In 2017 it was also clear among some Kenyans that there are areas worth correcting and safeguarding to celebrate democratic elections in the years to come.

Youth Agenda a strong proponent of youth electoral participation, closely monitored the participation of youth in the 2017 directly and through ELOG observers, engaged in advocacy, provided voter education, influenced a national youth agenda, mobilized citizens to vote for youth candidates, and championed for peace by rallying the youth to become peace ambassadors. Immediately after the elections, YAA also mapped out uptake of appointive positions by youth and whose findings are detailed in this report.

The good; even with a threatening voter apathy during the voter registration process, the number of registered voters was relatively high. Most political parties articulated the youth agenda in their party manifesto which was an indication that they had for the first time understood the magnitude of Kenyan youth problems and their solutions. Young people demonstrated their willingness to participate right from the party primaries and in the general election. Some of the gains

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included a clear articulation of young people's agenda at county and national levels by those seeking elective positions.

The bad ; There was a drop in the number of elected and nominated youth, a drop in the number of youth in political party leadership, as compared to 2013, non-enforcement of youth affirmative action provisions and a lack of disaggregated data by age and if it was done this was not shared with the public. We also observed that a number of young people lacked information, they had negative perception about politics especially among 18-24 years, and they were co-opted in election violence (goonism) and generally also lacked a common shared vision and agenda for the country and for youth

Despite the absence of a level playing field for youth and an unfavorable political environment, YAA noted that affirmative action is useful in spurring historically marginalized groups to elective positions and addressing youth agendas. The latter and others are some of the key recommendations we are suggesting in order to make the youth factor count in the next general election.

SECTION 3 THE FINDINGS

3.1 High Numbers of Youth Registered As Voters

The Kenyan youth can be considered as the proverbial phoenix rising from the ashes; in spite of the notion that millennial are not interested in elections, the youth continue to post a strong showing on election registration. By the end of the second Mass Voter Registration drive, IEBC registered a total of **19,611,423** voters. Of these, young people were **9,951,899** strong, effectively making up 50.7% of the total registered voters.

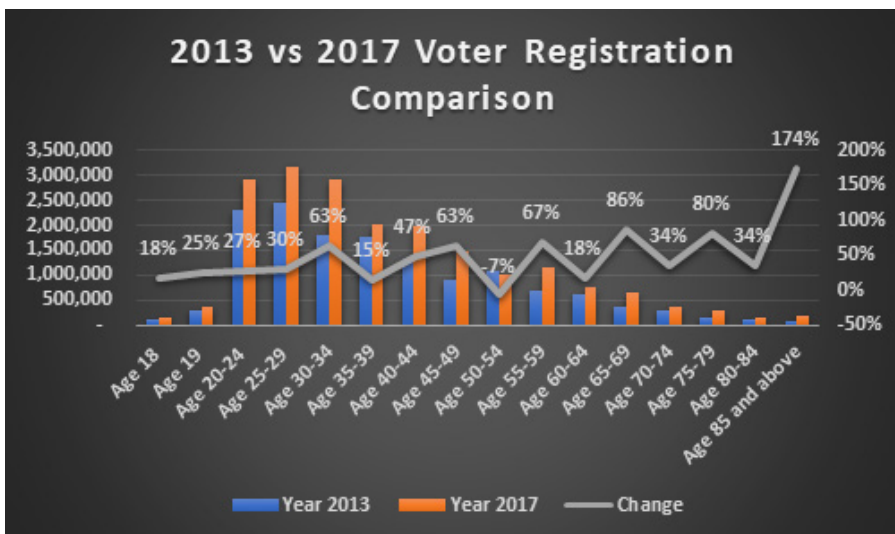


Figure 1: 2013 vs. 2017 Voter Registration

The gender split of the registered youth voters was roughly 50-50 as male youth voters tallied at 5,100,097 while the female voters totaled at 4,851,802. The election also attracted many first time voters between the ages of 18-24 years, though the IEBC projection stood at 5 million new voters, they managed to register 3,425,597 new voters within that age bracket. The largest voting block overall was the 25-29 years age group which registered a total of 3,185,530 this was closely followed by the 20-24 year old age bracket that registered to the tune of 2,928,959.

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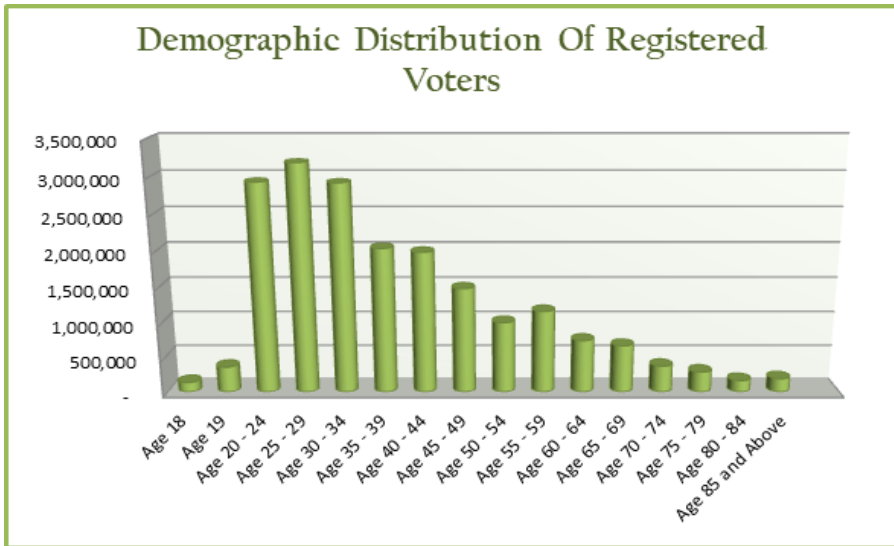


Figure 2: Demographic Distribution of Youth Registered Voters

Geographic distribution of the youth registered voters also revealed the counties that recorded high numbers of youth registration versus those that need to heighten the youth involvement. Numerically, Nairobi led the youth nation with **1,356,317** registered voters followed by Kiambu County with **619,869**. The top five counties with the highest number of youth registered was rounded out by Nakuru with **504,721**, Kakamega at **349,287** and Mombasa with **330,927**. While the top 5 counties registered youth in the hundreds of thousands, the bottom 5 registered hardly 100,000. The bottom 5 counties were led by Lamu who registered only **34,000** voters, followed by Isiolo with **38,874**, Samburu **42,885**, Tana River **61,722** and finally Taita Taveta with **68,279** registered voters.



Figure 3: Top 5 & Bottom 5 Counties- Youth Registered Voters

While observing the geographic distribution of the youth registered voters YAA also noted that the registration of young women voters stood averagely between 45%-50% of their male counterparts. However, in Counties like Turkana, Samburu, Kilifi, Vihiga, Kiambu, Migori and Kitui; more young women voters were registered as compared to male youth voters.

These statistics tell us that though more needs to be done to ensure that we have total and effective participation of young people in the electoral process; this was a sure sign that young people could and wanted to be involved in the decision making processes of the country and that their voice mattered seeing that they made up half of the voting bloc. The gender split also revealed that young women same as men were taking up their spaces in political decision making and in some counties they were taking the lead. Counties that had recorded low numbers of youth registration as voters were also counties that faced high levels of apathy from young people.

3.2 Civic & Voter Education

And while we celebrate that young people demonstrated their right to political participation and carried out their civic duty by registering to vote, we must acknowledge the extensive efforts in conducting civic and voter education.

Though Voter Education conducted by the IEBC begun late and the materials for voter education were not updated, the IEBC through the Directorate of Voter Education was able to collaborate with CSO's that were conducting Voter Education to the electorate. IEBC made strides in reaching out to the youth electorate through efforts such as engaging youth peer educators who created awareness of the election process to their peers through messages that the youth related to such as song, dance, spoken word & more. Additionally, through its collaboration with CSOs it launched the biggest youth voter education drive dubbed 'YVOTE'. The YVote campaign was a combination of online messaging and door to door activation that enlisted youth ambassadors and experiential marketers to encourage youth to 'make an election day plan' to go and vote with family and friends. The campaign which spread to 22 counties saw **59,109** door to door vote education conversations held; **168,298** attend the voter education rallies and **16,667,755** people reached through social & digital media.

3.2.1 Young People Setting the National Youth Agenda

Young people were at the forefront of setting the national agenda for young people through county vetting platforms and on social media this took center stage through *#DearPolitician* where they took to calling out their leaders to share their youth agendas. This was the top trend on the twitter platform attracting 7Million+ young people to speak up on what they wanted their leaders to do for them. The topics ranged from what the incumbents had failed to do to what they needed leaders to promise to do before they could give their vote.

The discussion on social media received media attention as a trending topic forcing the nation to pay attention to the young people's agenda. In a bid to identify the commitments politicians were making to the youth, Youth Agenda developed a questionnaire for all presidential & gubernatorial candidates to underscore their commitment to the things young people cared about and use it as a bond to deliver upon their election. The questionnaire was generated following a country-wide research on 'what youth want'. Young people summarized their needs as: Youth Inclusion in Governance & Decision Making, Access to Market & Ease of doing business, Youth Employment & Wealth Creation, Reproductive health provision, Talent development & the Creative economy as well as other cross cutting issues such as Harnessing ICT for the benefit of young people and action on drug & substance abuse.

Unfortunately, very few candidates responded to the questionnaires presented by Youth Agenda. Indeed, a number of the candidates, subsequently, evaded Youth Agenda convened platforms. Consequently, Youth Agenda decided to analyze available presidential candidates' manifesto to ascertain the extent to which they proposed to address youth issues. Only 4 of the 8 presidential candidates cleared by IEBC to participate in the 8th August 2017 general elections had manifestos published and available online: Raila Odinga of the National Super Alliance (NASA), Uhuru Kenyatta of the Jubilee Party (JP), Ekuru Aukot of the Third Way Alliance and Prof. Michael Kimani Wainaina, an independent candidate.

An analysis of the findings of the Youth Agenda assessment questionnaire revealed varying commitments on the part of the candidates and their parties. On reduction of youth unemployment, which was the number one youth need, Jubilee Party and Prof Michael Wainaina's Manifesto articulated specifically whilst those of

NASA and Third Way Alliance identified job creations interventions but failed to highlight how the youth as a constituency would benefit. Also, only Jubilee and Prof. Michael Wainaina outlined how they intended to establish or expand youth institutional and policy frameworks. On the question of ease of doing business for young people, Jubilee Party, Third Way Alliance and Prof. Michael Wainaina had detailed their interventions whilst NASA has committed to “honor repayment obligation to genuine creditors and agree on sustainable payment programmes” The NASA commitment was rather general and did not specify how the youth would specifically benefit from it.

All the four manifestos were unambiguous in terms of their policies and interventions towards youth skills enhancement. The same was true about Youth inclusion and participation. Manifestos of all the four candidates/party/coalition have elaborate and progressive commitments on youth inclusion. Jubilee promised to “expand youth participation in national development and guaranteed 30% of all appointments, projects and budgets to youth” whilst NASA committed to “establish a government that reflected representation of the Kenyan nation including fair representation of youth” Third Way Alliance committed to “form a cabinet where at least 1/3 was youth and women with a view of making it a 50-50 Cabinet, and structure senior government appointment to ensure 50% of the appointment were women and youth”. Finally, Prof. Michael Wainaina had committed to enact people-driven constitutional reforms to amend Chapter 7, 8 and 11 of the Constitution to achieve 50% representation of youth in national and county government.

In terms of tackling mismanagement of sports and arts, all the manifestos clearly indicated their plans to prioritize and safeguard Kenya's sports and arts industry. However, only the Jubilee manifesto explicitly highlighted how such an initiative would benefit the youth.

Overall, the manifestos did not do a good job of mainstreaming the youth in their policy proposals and interventions. They fell short of the principles and standards envisaged by the constitution. Indeed, Article 55 of the *Constitution of Kenya 2010* obliged the state to take measures, including affirmative action programmes to ensure youth accessed relevant education and training, had opportunities to associate, be represented and participate in political, social, economic and other

spheres of life, access employment and were protected from harmful cultural practices and exploitation.

That said, young people across the country made a pledge "*Bila Agenda Ya Youth Saha Kura Ya Youth*". It clearly emerged that the youth were generally disenchanted with the political processes in the country. They were frustrated with the token of participation opportunities that were availed to them by the national and county governments, and also political parties. They needed to be fully and substantially engaged in political and electoral processes. The youth did not want to be engaged as ushers, campaign agents, hecklers, militias and spanner boys by older politicians. They wanted to be fully involved in decision making.

The youth needed to be afforded participation opportunities that were commensurate with their numbers and the magnitude of the problems that they faced. They needed targeted and user-friendly youth affirmative action programmes and projects. The youth required the official agencies to provide disaggregated data capturing youth participation which was further disaggregated in terms of gender. The call for youth focused action gained a national limelight during the Presidential Debate where the candidates had to outline their agenda for young people.

3.2.2 Partial Waiver on Nomination Fees

An assessment of political parties' constitutions and nomination rules revealed the following: Political parties provided in their constitutions and nomination rules that youth would be levied graduated nomination fees, which meant, that they would pay discounted nomination fees to the political parties.

Only 50% of the assessed political parties provided for graduated nomination fees. Under these political parties, youth could choose to pay discounted nomination fees for various positions they were contesting. Further as it can be seen in the table below Jubilee Party and FORD-Kenya expressly provided in their constitutions and nomination rules that graduated fees did not extend to the position for County Woman representative in the National Assembly. Therefore, the onus was on young women contesting for this position to convince their political parties that they should pay discounted nomination fees. This was particularly challenging and remained a barrier as in any event only 50% of assessed political parties did actually provide for graduated fees for youth.

Party	Nomination Fees Payable by Key Population Candidates	Nomination Fees Payable by Youth and Women as special interest group
Jubilee Party.[1]	<p>Gubernatorial candidates - Kshs. 500,000</p> <p>Senator-Kshs. 250,000</p> <p>Women Representatives- Kshs. 250,000</p> <p>Member of National Assembly candidate- Kshs. 250,000</p> <p>Member of County Assembly- Kshs. 50,000</p>	<p>Women and youth for these positions pay 50% less of the nomination fees.</p> <p>This does not apply to the position of county women representative.</p>
Orange Democratic Movement[2]	<p>Payable fees were not stipulated in the constitution or the nomination rules of the party. This information was also not available in the political party website. However, during the concluded party primaries the following fees were established by ODM's elections board for various positions: -</p> <p>Presidential candidates- Kshs. 1,000,000</p> <p>Gubernatorial candidates- Kshs. 500,000</p> <p>Senatorial candidates- Kshs. 250,000</p> <p>Women Representative candidate-Kshs. 100,000</p> <p>Member of County Assembly candidates- Kshs. 25,000</p>	*Information not available.

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Party	Nomination Fees Payable by Key Population Candidates	Nomination Fees Payable by Youth and Women as special interest group
<p>Wiper Democratic Movement-Kenya[3]</p>	<p>Presidential candidates-Kshs. 1,000,000.</p> <p>Parliamentary candidates-Kshs. 200,000</p> <p>Gubernatorial candidates-Kshs. 500,000</p> <p>Member of County Assembly candidates-Kshs. 20,000</p>	<p>Provision is not elaborate as it states that women and youth pay Kshs. 15,000. Not clear if this is for all the positions.</p>
<p>Forum for Restoration of Democracy-Kenya[4]</p>	<p>Presidential candidates-Kshs. 1,000,000</p> <p>Governor candidates – Kshs. 300,000</p> <p>Deputy Governor-Kshs. 100,000</p> <p>Senator- Kshs. 100,000</p> <p>Women representative-Kshs.100, 000</p> <p>National Assembly candidates-Kshs. 100,000</p> <p>MCA-20,000</p>	<p>Women and youth as SIG pay 50% of the nomination fees.[5]</p> <p>Except for County Women Representative position.</p>
<p>National Rainbow Coalition – Kenya[6]</p>	<p>Presidential candidates-Kshs. 1,000,000</p> <p>Gubernatorial candidates- Kshs. 200,000</p> <p>Parliamentary* candidates- Kshs. 50,000</p> <p>Members for County Assembly candidates-Kshs. 25, 000</p> <p>*Includes Senator and National Assembly candidates</p>	<p>Women and youth as SIG pay less 10% of what the other candidates pay.</p>

Party	Nomination Fees Payable by Key Population Candidates	Nomination Fees Payable by Youth and Women as special interest group
Amani National Congress[7]	Presidential candidates- Kshs. 1,000,000 Senatorial candidates- Kshs. 150,000 Gubernatorial candidates - Kshs. 300,000 Members for County Assembly candidates- Kshs. 20, 000	Women and youth candidates as special interest group pay 50% less for all the position except for MCA candidates that pay standard fees of Kshs. 20,000
Maendeleo Chap Chap[8]	Presidential candidates- Kshs. 1,000, 000 Gubernatorial candidates –Kshs. 250,000, Senatorial candidates – Kshs. 150,000, National Assembly candidates-Kshs. 150,000 Women representative candidates- Kshs- 100,000 county representative- Kshs. 20,000	The constitution and nomination rules of the MCC does not stipulate what is exactly to be paid by special interest group but rather states the nomination fees to be paid by youth will be outlined by its elections board.
Kenya African National Union[9]	Presidential-Kshs. 1,000,000 Gubernatorial –Kshs. 300,000 Gubernatorial Deputy – Kshs. 200,000 Senatorial –Kshs. 200,000 National Assembly -Kshs. 100,000 County Women Representative-Kshs- 50,000 Member of County Assembly- Kshs. 20,000	No provision for graduated nomination fees payable by special interest groups rather the constitution provides that National Elections Board has powers with or without conditions to vary, waive or revise nomination fees to address the needs of vulnerable groups so long as candidates seeking such variation shall apply in writing to National Elections Board, of which the waiver shall not be more than 50% of the nomination fees.[10]

3.2.3 Sustained Advocacy & Affirmative Action Works

Though the number of elected youth reduced compared to 2013 there was a very high number of youth aspirants and a relatively good number of cleared candidates as independent candidates and post party primaries nominees.

Governors and Deputy Governors

Nandi County Governor was the only youth elected as a Governor during the 2017 general elections representing 2% of the elected Governors. However, 8 youth candidates had expressed interest nationally

Five youths were elected as Deputy Governors in the 2017 general elections. These were from Taita Taveta, Wajir, Elgeyo Marakwet, Nakuru and Kajiado counties which represented 11% of the elected Deputy Governors. Out of the five youth elected deputy governors, four were males representing 80% of the total. Females only got one seat i.e. 20%.

[1] Jubilee Party Nomination Fee for 2017 Elections <https://jubileepamoja.co.ke/wp-content/uploads/2017/03/Jubilee-Party-Nomination-Fees-for-2017-election.pdf> [accessed on 19th June 2017].

[2] ODM Election and Nomination Rules.

[3] WDM-K Party Election and Nomination Rules.

[4] FORD-Kenya Nominations and Elections Rules.

[5] FORD-Kenya Public Notice Nomination Fees for FORD-Kenya Candidates <http://www.fordkenya.co.ke/wp-content/uploads/2017/01/fordkenyanominationfeestructure-1.pdf> [accessed on 19th June 2017].

[6] NARC-Kenya Nomination and Elections Rules and Procedures.

[7] ANC's Party and Nomination Rules and Procedures.

[8] MCCP Nomination and Election Rules.

[9] KANU Nomination Rules Amended 2017.

[10] Part 4 of KANU nomination rules.

Senate

Out of the 66 youth candidates cleared by IEBC to vie for the position of senate, only five male youths were elected Senators in the 2017 general elections. These

were from Lamu, Nandi, Kericho, Kakamega, and Nairobi counties representing 11% of the elected senators. This an increase from 2013 which had 4. Nandi has set a good record of electing young leaders having previously elected a youth senator who is now the current Governor. Lamu interestingly even having registered the lowest number of youth voted in a young senator and the good number of young members of county assemblies.

National Assembly

Similarly, a higher number of youth candidates 357 in total had been cleared by IEBC for the National Assembly position but only nineteen youths were elected. They were from the following constituencies: Igembe South, Chuka Igambang'ombe, Runyenjes, Kaiti, Kiharu, Samburu West, Saboti, Emgwen, Molo, Gilgil, Ainamoi, Chepalungu, Butere, Kimilili, South Mugirango, Bomachoge Chache, Langata, Embakasi Central and Embakasi East. The elected youth constitute 6% of the membership of the National Assembly. Out of the nineteen youth elected members of the National Assembly, seventeen (i.e. 89%) are males and 2 (i.e. 11%) are females. The two elected Members of Parliament from Gilgil and Samburu are beneficiaries of nominations which could have given them an upper hand over the other candidates. Out of the 47 elected Women representative to the National Assembly, three are female youths. They are from Garissa, West Pokot and Laikipia. And they represent 6% of all the elected Women Members of the National Assembly. IEBC had cleared 40 female youth for that position.

There were 12,454 County Assembly candidates in ballot papers, 3693 were below 35 years(29.65%) three hundred and three(303) youths were elected as Members of County Assemblies in the 8th August 2017 general elections out of 1450 which represents 23% of elected members of county assemblies. Wajir and Tana River are the only Counties that elected more youth MCA in comparison with mature adult. Garissa, and Mandera elected over 90% youth, Kiambu, Nyandarua had over 60% while Kericho, Nandi, Bomet, Migori, Muranga had at least 40%. Those that performed poorly include Nyamira, Kisii, Kisumu, Siaya, Bungoma, Laikipia, Elgeyo Marakwet, Samburu, West Pokot and Kwale.

Nominations

County Assembly Nominations

Following the conduct of the 8th August 2017 general election 679 leaders were nominated. Out of the two hundred and eighteen (218) youth nominated to the

county assemblies (both the marginalized and the gender top up) fifty four (54) were males and sixty four (64) were females who therefore accounted for 75% of the nominated positions. Vihiga, Laikipia, Kiambu, Tharaka Nithi, Isiolo and Taita Taveta have the highest number of nominated youth.

Nominations in National Assembly and the Senate

Only one out of the twelve nominated members of the national assembly was a youth accounting for only 8% of the nominated seats. Most of the candidates nominated represented women and marginalized group. This was a sharp drop from 2013 which had 5 youth. In 2013, 8 young women formed part of the 16 nominated senators, but this was not the case in 2017. There were 2 nominated senators and when added to the two reserved seats for youth which went to a female and male youth, the current senate had only 4 nominated senators. This had been attributed to a lack of enforcement of youth affirmative action measures by political parties, a youth friendly gain that had been secured in 2013 benefiting more young women.

Speakers, Deputy Speakers and Clerks

There were four elected youth speakers in Wajir, Elgeyo Marakwet, Nandi and Nyamira which constituted 8.51% and none was a young female. There were 11 youth deputy speakers (2 female youth based in Kirinyaga and Tharaka- Nithi while 2 were PWD of the male gender. Kenya now had 3 clerks below 35 years all male from Nyamira, Nairobi and Homabay.)

Youth As Agents For Peace

Young people took it upon themselves to share and carry the message of peace in the counties and online where it trended as a hot topic on #KOT (Kenyans On Twitter). This resulted in major restraint amongst young people amid raising political tensions.

The #ChaguaAmani social media peace campaign also saw us reach 7,621,680 people on twitter; trending in the top 10 during the campaign. 19% of the engagement was text retweets, 70% immediate retweets, 2% replies to tweets and 9% through links and images.

3.2.4 The Gaps

a) Lack of Disaggregated Data

Following the conclusion of the 2013 General Elections, a number of recommendations for process improvement were made to IEBC; chief among them was the need to disaggregate data based on gender and age. By failing to do so IEBC have made it challenging for stakeholders to access data such as how many young people participated in the political party primaries, how many youth participated in the election or how many youth were elected to the various positions.

The data was not only faced by the IEBC alone but also by political parties as well. An assessment of the political parties list revealed that membership lists were poorly maintained and stored, making it virtually impossible to audit the participation of young people on the process.

a) Poor Oversight By The ORPP

While the Office of the Registrar of Political Parties was tasked with ensuring that political parties adhered to the rules and regulations governing political parties, the registrar had done a poor job in providing oversight to political parties particularly on the implementation of affirmative action within the parties. First, a quick dip stick in the political parties revealed that the Political Parties Fund; to which a share should go towards promotion of Youth, Women & Persons with Disabilities, had hardly been utilized for that purpose at all, in fact most parties are at pains to mention what the funds had actually been spent on by the political parties. In addition, the political party members' lists which should be deposited to the registrar, who in turn certified that the party was compliant was hardly in a state to inform this fact. The lists were poorly maintained and as such, one in some instances may not be able to deduce any information on the participation on the youth demographic in the political party membership.

b) Young People Victims and Culprits of Political Manipulation

It was no secret that the youth were the driving force behind every election process. 2017 saw a polarized nation with the stiff political competition from the top two candidates. The unprecedented Supreme Court ruling and subsequent election boycott had supporters of both parties high strung due to political tension. It was unfortunate among the people who lost their lives due to political violence were mostly young people and children.

3.3 Key Recommendations

a) Improve Data Management

IIBC, Political Parties, Registrar of Political Parties office should aggregate its data of aspirants, membership by age to factually authenticate the extent to which youth participate and are represented in the electoral process.

In addition to data, research should be undertaken which could, for example, focus on identifying success and sad stories of youth in leadership, youth leagues/youth in political parties in regard to effective political participation, establishing areas of strength and weakness. The findings of such research would then be synthesized, lessons drawn and emulation of areas of strength undertaken.

b) Taking Active Role and Having in Place Explicit Strategies and Programmes for Promotion of Civic/Voter Education

This is strongly encouraged as it is potential in creation of an informed citizenry. It also enables youth leagues members, party members and the general public attain civic competence. This in turn would account and contribute toward realization of participant political culture in our countries. As noted earlier on, the essence of democratization should be to realize participant political culture.

c) A Call to Political Parties

For political parties to continue being competitive especially among the youth, they would need to purposefully engage them. This would call for allocation of certain positions within the party leaderships to young people (below the age of 35) and ensuring that representative numbers of vying youths are nominated to run for elections. In addition, supporting the youth both financially and leadership mentoring will need to be planned for Political parties ought to publicly make available their constitutions and nomination rules and not to treat them as secret documents. In this regard, it is critical for political parties to publish their constitutions and nomination rules on their websites.

There was need for political parties to revise their constitutions and nominations rules to make them compliant to the Elections (General) (Amendment) Regulations, 2017, Elections (Voter Education) Regulations 2017 and the

Elections (Party Primaries and Party Lists) Regulations, 2017. Once political parties do so, they should strictly adhere to the constitutions and nomination rules.

d) Issuance of IDs

National identity cards should be issued within reasonably short periods of time, with minimal bureaucracies and delivered when promised. In addition to addressing the issues countrywide, there will be a need to focus on marginalized communities

e) Need for Explicit and Strategic Mechanisms for Leadership Grooming and Recruitment within political parties

Although political parties drew their leaders primarily from their own ranks, over reliance on this method of recruitment could result into patterns of recruitment that were rigid and resistant to change, production of photo-type leadership and leadership that was unresponsive to the young generation of leadership. Parties could recruit some of their leaders from the external environment, for example recruitment of leaders from professional bodies such as universities that offered expert services or recruit other potentially well- to- do leaders from other youth leagues by co-opting them, etc.

The issue of leadership grooming and recruitment is hereby underlined because both attraction of members and retention of the same were fundamentally important. It would create good environment for leadership succession, which was a major challenge afflicting contemporary African leadership. It is also critical and important that political parties have facilitative environment and procedures that encourage and promote young women members to actively participate in political leadership (political leadership and gender). This was one of the big but noble challenges in the ongoing democratization process in East Africa.

f) Need for a Youth Affirmative Action

Political Parties should uphold affirmative action principles for nomination processes including a “Zebra Formulae” for top up party list so as to promote young women’s candidature. This should be well documented in party constitutions, political party nomination rules.

IEBC as an enforcer should have a youth responsive checklist for assessing political party nomination rules adherence to youth principles. More specifically

we recommend that IEBC demands for explicit affirmative action provision while generating party lists, aim to standardize nomination procedures including compelling all parties to have youth leagues that benefit from Affirmative Action Fund, provide mechanism for vetting and confirming youth identity and commitment to youth agendas through National Identity Cards and certificate of confirmation from Youth Leagues or National Youth Council .

In addition, IEBC should ensure it safeguards the nomination list from interference by political operatives and provide proper and robust mechanisms to deal with parties that don't follow the nomination guidelines and their own nomination rules.

g) Performance of elected and nominated youth leaders; a good strategy for instilling hope among voters

Good performance of the youth in leadership positions currently would help in positively shaping the perceptions of the electorate and eliminating youth as a reason for not voting a person in. Youth in leadership need to proactively voice their successes throughout the period they are serving their constituents.

h) Youth Empowerment Pre Election Period

Pre-election activities efforts need to be started early and not just in the election year. There was need for immediate youth empowerment especially in financial empowerment. Closely associated with this was the need for the government to create employment opportunities. Gainful engagement of the youth would ensure that they have ownership of what was happening in the country and thereby increase their participation not only in the political arena but also in other aspects of the nation such as the economy. Employment will also mean that youth will no longer be susceptible to negative influences from politicians. This would give youth the opportunity to grow prior to the election period thereby giving them a fair chance to be competitive

3.4 Women and 2017 Electoral Processes

Barbara Kawira, Deputy Executive Director and Head of Programs,
Federation of Women Lawyers (FIDA Kenya)

3.4.1 Introduction

In order for a state to be truly democratic, it must conduct free, fair and credible elections. The credibility of these elections is among other things safeguarded

through election observation both by domestic and international observers.

Election observation was premised on both international conventions and national legal frameworks which guide the manner in which the electoral process is carried out while seeking to safeguard the rights of all citizens to participate in it. In Kenya, domestic observers comprising largely of civil society groups sought to examine and interrogate the electoral process in accordance with legal framework while at the same time establish recommendations for future elections.

In observation of elections, FIDA Kenya focused on women as a special interest group. Through-out the pre and post-election period, FIDA-K, monitored the election cycle and the information gathered portrayed a true reflection of women's participation in the 2017 electoral process. Emerging themes such as violence, intimidation of women during the electoral cycle as well as an unfair electoral playing field characterized the electoral environment for women during the 2017 elections. The same could be said of the voting process and the aftermath of announcement of results in both elections.

Background and Context

The political rights of women to participate fully in the electoral process were enshrined in international and local legislation. Internationally, the Universal Declaration on Human Rights (UDHR), the Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention of the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of All Forms Racial Discrimination (CERD) all of which Kenya has ratified. Locally, the Constitution of Kenya (2010), Elections Act (2013), the IEBC Act as well as the Political Parties Act (2015) guarantee the rights of women's political participation.

Women's political participation was characterized by a myriad of challenges such as patriarchy, retrogressive culture, insecurity, and lack of adequate finances for effective political leadership (Heinrich Boll Stiftung, 2010). This environment disenfranchises women to participate fully in the entire electoral process.

With this in mind, FIDA-K sought to monitor the electoral process focusing on women as a special interest group. Long Term Observers (LTOs) deployed in

over 20 counties examined the electoral process in the pre and post electoral period. Further Short Term Monitors (STOs) monitors in 20 counties were deployed to polling stations on Election Day. A gendered election observation tool was developed and both the LTOs and STOs filled accordingly. An analysis of these reports therefore informs our findings below.

3.4.2 Findings

a) Pre-Election Period

In the pre election period, FIDA-K was able to observe the entire political environment as regards both the female voters and female candidates. Key elements observed include: the legal framework and the election system (DRI, 2015).

The Legal Framework:

The Elections Act (2011) through its various provisions safeguards the rights of women to participate in the electoral process through various ways i.e. it criminalizes any acts of violence that would interfere with an individual's right to vote, further it safeguards representation of minority groups in Parliament. The two third gender principle safeguards women's representation in the county assembly.

Further, the Political Parties Act (2011) subsequent amendments to the Act of 2016 further stipulate measures that seek to ensure women's political participation. For instance Section 7 of the Act stipulates that Political Parties must ensure diversity and gender balance in their composition and leadership structure, further the Political Parties Code of Conduct safeguards the right of women to fully participate in the electoral process (FIDA-K, 2017).

Despite the existence of the legal framework, the electoral environment remained uncondusive for women's political participation. There were several cases of malpractice in the political parties specifically in regard to the party nominations. Violence and chaos marred party primaries across the political divide. As such fewer women were able to attain party tickets and even fewer ended up on the ballot:

"The party primaries for my elective seat were rescheduled severally by my party , all the while the venues kept changing. All this was in a bid to discourage me and my supporters from contesting in the elections. In

the end, the primaries were too violent I decided to remove myself from the race, Female MCA Aspirant, Nairobi

Further, even in instances where women candidates rightfully won the primaries, some parties still went ahead to deny women their rightful tickets and in most instances provide the men with the same.

"I rightfully won the party primaries in my party. I was declared the winner but the party ticket was instead issued to my male competitor, Female MCA Aspirant, Machakos

The Election System

The Independent Electoral Boundaries Commission (IEBC) was the body responsible for the entire electoral process. Its regulatory and administrative function was critical to a free and fair election. It was their mandate to provide up to date information to both the electorate and the aspirants.

Overall, the IEBC managed to provide quick updates on relevant information regarding the elections through its various channels i.e. press statements, Radio, TV as well as Social media channels. These were readily available to all sections of the population. However, regarding information for the women aspirants, it was noted that the numerous timelines proved not only confusing and short notice and as a result some women were locked out of the electoral process. Cases where women did not know the timelines to adhere to were numerous more so in the marginalized areas. For instance in Wajir, just one month prior to the deadline of submission of documents to the IEBC for clearance, some women aspirants were not sure of this process.

In other counties, due to the patriarchal nature of our society, women aspirants relied on the (male) agents to provide them with information regarding the elections. This served as a big deterrent towards their effective participation.

"I am still waiting for my (male) agent to tell me what documents I need for the IEBC clearance. He is the only one who can get me this information, Female MCA Aspirant, Wajir

It was further observed that in some counties, women shied away from getting relevant clearance documents such as HELB, CRB due to the financial implications.

The voter registration verification process was observed to be fair in most counties as both men and women were enabled to confirm their voter status.

The Office of the Registrar of Political Parties (ORPP) was mandated to guide the functions of Political Parties in accordance of the principles of Equality and Inclusion in the Constitution of Kenya (2010) as well as in the Political Parties Act. It was observed that the ORPP was seemingly overwhelmed by the volume of work required as concerned party membership verification. Individuals found themselves registered in parties that they were not aware of.

Further and most significantly, some women aspirants who had changed parties through the official channels still found themselves registered in their initial parties. As such, some of them could not be cleared by the IEBC as they were found to belong to parties different from those they had attained party tickets from. This again reduced the number of women who were cleared to contest in the elections (Rift Valley Institute, 2018).

“After the 2013 elections, I moved from Party X to party Y and wrote officially to the ORPP. I assumed that this had been changed. Just before nominations I discovered that I still belonged to the original party. I was unable to travel to Nairobi to change this and so I gave up on the race”, Woman aspirant

The Media Portrayal of Women and Political Leadership

The media play a critical role in setting the agenda for the society as such they played a critical role in the electoral process in the pre-election period. Coverage of feature stories of women and political leadership remained low. According to Twaweza Communication (2017) both print and digital media did not adequately cover stories on women and leadership. Various civil society organizations partnered with the media to profile women leaders for example, FIDA Kenya produced a documentary titled: Eyes on the Ball that featured aspiring women leaders just before the elections.

Voter Education

Through our field monitors in select counties, it was evident that voter education efforts were present but they were not as intense as compared to the 2013 election period. This can be attributed to many factors among them finances. The IEBC voter education was deemed to be less compared to 2013, the same applied

to the voter education offered by civil society. Radio programmes remained a popular mode of dissemination with women's rights organizations developing programmes on women's participation in the electoral process.

b) The Election Period

FIDA Kenya continued to monitor the electoral process with a focus on women voters and aspirants. The election period consisted outlined thematic areas such as Campaigns, Security and Complaints Mechanisms.

Campaigns

Just a few months to the August 8th Elections, campaigns intensified with candidates who were cleared to contest using a variety of means to make their candidature known. A quick observation revealed that more women utilized social media channels such as Face book and WhatsApp to create pages that would enhance their visibility as compared to 2017. This can be attributed to deliberate trainings from CSOs on the same.

Unfortunately, women candidates were not given adequate visibility support by their political parties. It remained that women candidates would be included in press briefings, campaign rallies mostly to meet the 'gender' requirement but less to profile them. Incidences of violence occurred during the campaigns with both women voters and candidates undergoing the same. In the country's hotspots such as Kisumu, informal settlements in Nairobi, Mombasa etc., violence during the campaign period occurred. According to KNCHR report of August 2017, several incidences of violence occurred after the August 8th Election that affected both women aspirants and voters.

Further and specifically, women aspirants faced violence during their campaigns which sought to deter them from contesting. Reports were made to FIDA Kenya offices and forwarded to the police for relevant action.

"When my competitor found out I had been cleared by IEBC, he sent thugs to attack me in my home. I sustained injuries and was hospitalized, female candidate.

Threats and attacks on female candidates supporters were rampant and were seen as tactics seeking to deter the women from pursuing their elective seats. For example, just after the party primaries in April 2017, Hon. Millie Odhiambo's house

was burnt following her win. Shortly after, her bodyguard died after being run over by one of her opponents vehicles. Ms. Odhiambo indicated that these attacks were meant to intimidate her and force her to abandon her quest for office.

Security and Electoral Violence

Insecurity, threats of violence continued to characterize the electoral period. Women and children bore the brunt of these acts and in some cases women were discouraged from participating in the electoral process either as candidates or as voters.

Through an SMS 21661 portal dubbed “Sema Usikike”, FIDA Kenya received a total of 5 reports of violence and intimidation against women during the electoral period. The reports ranged from threats to violence and intimidation by the police.

It is noted that women voters and candidates alike faced this violence but even fewer were willing to report the cases and seek assistance. Fear of retribution from their communities and the perpetrators. According to Human Rights Watch (2017) female victims of sexual violence indicated that they feared reporting this cases as their perpetrators threatened to come back and attack them “ We will come back in the night to rape and kill,” said one perpetrator.

Voting Day

While incidences of violence occurred in the pre-election period, the actual voting process was peaceful across the country. Reports from election observers indicated that polling stations were peaceful with IEBC staff being respectful of women's concerns. Pregnant women, elderly women and mothers with babies were given priority in the voting lines and further voting clerks assisted them carry their babies while they voted.

Results and Complaints Mechanisms

Before and after conclusion of the August 2017 elections, candidates sought redress through the various complaints mechanisms. Disputes arising from party issues were to be handled first internally by the respective Elections Board, then further escalated to the Political Parties Dispute Tribunal PPDT and later to the Judiciary. Justice within party structures was almost hardly delivered for the women candidates with most complaining of a skewed complaints mechanism within their parties.

Some women candidates reported that their cases would be dismissed by their party tribunals in favor of male candidates. This was especially common where the female candidate was a perceived strong leader.

“After the party primaries were conducted, I had a valid complaint against my opponent who skewed the nominations. I filed a complaint with my party but nothing came out of it. The tribunal simply dismissed my case” Woman Candidate in Nairobi

After the elections, women candidates further complained of the difficult process of election dispute resolution at the Political Parties Dispute Tribunal (PPDT) which they claimed was inaccessible as it only heard cases in Nairobi. The same was said of the IEBC. As a result, due to prohibitive costs of travel, legal fees and transport, some women candidates did not pursue legal action even when there was a chance of justice.

Gaps Identified during the Electoral Period for Women's Political Participation.

After an analysis of the electoral period, the following gaps were identified that directly affected women's full political participation

1. *Lack of adequate security:* While the police officers were present across the counties, in some instances they were the perpetrators of the violence. Further, access of the police by women candidates during times of violence was limited due to fear or inaction from the security forces
2. *Lack of coordinated response mechanism for GBV victims:* throughout the electoral period, women voters and candidates faced violence. However, there was lack of medical support for the victims at their point of need. Human Rights Watch (2017) indicates that the victims could not access medical care due to lack of finances.
3. *Lack of adequate, accessible dispute resolution mechanisms:* Whilst there seemed to be an increase in election petitions, women candidates still faced a challenge in accessing justice either due to patriarchy within political parties or due to prohibitive legal costs.
4. *Lack of adequate candidate information on the electoral process:* Women aspirants and candidates complained that some of the information

they required from the IEBC regarding its regulations and timelines were not readily available. The timelines were sometimes not successfully communicated to the women. Further, confusing information would sometimes reach the candidates causing panic and confusion among them.

5. *Political parties were not controlled in terms of their obligations to the women candidates; A majority of candidates indicated some level of frustration from their parties be it at the party nomination process or during dispute resolution. A majority of women stated that parties were owned and controlled by men who rarely catered for the needs of women.*

3.4.3 Recommendations

An observation of the general electoral environment revealed a prevalent patriarchal society which affected different elements of the election cycle. Amongst the police, their patriarchal nature in some cases did not permit them to attend to violations reported by women, further political parties while they appeared to be gender sensitive in some of their operations, they were not deliberate in their efforts to support women candidates.

Further, the electorate while showing some improvement in attitude towards women leadership, there still existed a larger section of the electorates who did not understand nor favor women's political leadership. Based on this context the following recommendations would contribute to enhanced women's political participation come 2022.

- The IEBC should enhance its regulatory role specifically as concerns political parties. Ensuring that parties adhered to affirmative action in party lists as well as during nominations was critical towards enhanced women's political participation
- The Civil Society should carry out continuous voter education that sought to sensitize the electorate on the value of women leadership
- The Police should develop a proper system of complaints handling on GBV cases with thorough investigations and follow through being provided. This will instill confidence in the criminal justice system
- The ORPP should tighten and enforce regulation on Political Parties that do

not truly mainstream gender in their operations. The punitive measures for parties which do not comply should be fully adhered to i.e. deregistration of parties

- The ODPP should strictly enforce the Election Code of Conduct as a deterrent to would be perpetrators.
- The political parties should in spirit and action embrace affirmative action and provide necessary support to their women candidates.
- Parliament should work towards a practical formula towards the two thirds gender rule at parliamentary level. This will ensure higher representation of women in the legislature
- The PPDT should sensitize the electorate and female candidate on the election dispute resolution process. This will ensure adequate and utilization of the tribunal occurs and will avoid last minute applications

3.5 PWD and the 2017 Electoral Processes

Anderson Gitonga, Executive Director, United Disabled Persons of Kenya (UDPK)

3.5.1 Disability Definition

Disability includes any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long- term effect on an individual's ability to carry out ordinary day-to-day activities; - COK, PWD Act 2003. Article 54.

(1) states that a person with any disability is entitled

- (a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
- (b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
- (c) to reasonable access to all places, public transport and information;
- (d) to use Sign language, Braille or other appropriate means of communication; and
- (e) to access materials and devices to overcome constraints arising from the person's disability.

Article 54 (2) of the Constitution states that *The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.*

PWDs have historically been excluded from exercising their human rights, including the right to political participation. The barriers include;

- Physical – inaccessible buildings, distance, public transport, venue for meetings
- Attitudinal/social – stigma and attitude of public – community and leaders
- Institutional/processes – laws, regulations, registration of births,
- Negate participation of PWDs as Aspirants and as Voters
- Politics is about power which in turn influences allocation of resources – PWDs need to be represented in decision making
- Allocation occurs at the national and county level opportunities (opportunities of devolution to PWDs)
- This requirement is embedded in the CoK, CRPD which Kenya ratified. History of exclusion and marginalization

3.5.2 2017 Overview

IEBC Internal Policy and Management

There was no disability mainstreaming policy and guidelines specifically focusing on PWDs on its wider inclusion and diversity policy. Inclusion was not expressly stated as an aim in their policies e.g., core values (Independence; Team work; Innovativeness; Integrity; Respect for the rule of Law)

Fair Representation of Persons with Disabilities

Widening gap between disability and development 48% drop in representation of PWDs in the County assembly. 17 counties did not nominate a single PWD.

3.5.3 Recommendations

- Internally implement the 5% principle (Article 54), as a bare minimum,
- Provide reasonable accommodation, barrier-free access and movement for PWDs in all its premises across the country

- Continuous registration of voters - ensure disaggregation of registered voters including on the basis of disability.
 - It is essential that IEBC includes at least one Commissioner with disability. – Just like other commissions – NGEC, NLC, KNHRC, TSC,
 - Enforce Article 100 so that there are clear guidelines on nomination of SIGs.
 - PWDs should have a say in determining their representatives
 - Clarity in the manner of distribution of the 12 nominated seats to National Assembly among SIGs (Art 100)
 - Accessible Registration and polling stations- ramps, lifts, IEC materials, sign language, assistive services
 - Consult with DPOs and ensure that the needs of people of varying disabilities are integrated in planning – requirement of UNCRPD and a good practice
 - Collaborate with the National Registration Bureau of Persons to ease registration processes for all legible Kenyans
 - Provide reasonable accommodation measures for PWDs who are voters e.g. sign language interpretation, info in accessible formats e.g. tactile ballots or large-print ballots for visually impaired persons, assisted voting for persons with psycho-social disabilities etc.
 - Training curriculum and materials respond to PWD needs, PWDs participate in such curriculum development
 - Training polling officers and sensitize them on PWD needs across board
 - Ensure that procedures for recording, handling, and management of complaints are conscious of PWD needs Cont. Conduct of Elections
 - Accessible Voter Education materials and modes of communication through partnerships with DPOs targeting various categories of PWDs. e.g. adaptive technology, braille and tactile interpretations
 - E-media adverts have sign language interpretation inserts or legible subtitles

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE
ELECTORAL REFORM AGENDA IN KENYA

- Portray PWDs as active participants -Ensure materials with displays (e.g drawings, pictures), reflect positively on PWDs
- In providing elections-related information, CONTINUE sensitizing the public on the affirmative action for PWDs D. Voter Education
- The interest of SIGs can be addressed through clear and enforceable regulations.
- Provide disaggregated data on each component of SIGs
- Party organ membership do not reflect the 5% principle [Article 54(2)].
- Mergers and Coalitions of parties need to comply to PWD representation threshold
- Political party fund (taxpayer monies) support political participation rights for all Kenyans, including PWDs
- Provision in the law that required IEBC to ensure that elections are inclusive- (for the first time)
- Regulations were developed that promoted new concept of inclusion such as assisted voting, sign language interpretation.
- Gender and social inclusion policy by IEBC.
- Consultation with DPOs- TWG.
- Over 25 PWDs ran for competitive seats - 8 elected.
- Change of public attitude – blind person, a person with albinism, a woman on a wheelchair
- Voter education – accessible formats.

3.5.4 Conclusion

- We must realize full and effective participation of PWDs as enshrined in the constitution and UNCRPD – not an option.
- Participation serves a critical role in democratic institutions
- Participation enhances individual freedom and autonomy by allowing one to retain control over one's life and determine ones destiny.

- It enhances a sense of belonging to a community and fosters education essential for responsible social and political action.
- For PWDs, participation in decision making is a precondition of full realization of rights.
- It pains to be isolated/excluded on the basis of disability.
- Access and participation by traditionally disadvantaged groups, whether persons with disabilities, women, youth, illiterate persons, or ethnic, linguistic, racial, and religious minorities, require specific and targeted interventions

We call upon various stakeholders to promote realization of this right.

3.6 Prisoners and 2017 Electoral Processes

Janet Munyoki, Executive Director, Legal Resources Foundation

“Every adult citizen has the right to without unreasonable restrictions to be registered as a voter”⁵⁸

Executive Summary:

In February 2017, Kenya set a historic feat where 5528 out of 55,000 prisoners were registered by the Independent Electoral Boundaries Commission (IEBC) to vote in the August 2017 General Elections. Though a paltry sum, this number was significant in that this was the very first time that prisoners were going to vote in a General Election. On August 8th 2017, 4369 prisoners succeeded in casting their vote.

The 2017 prisoners voting experience had key lessons to learn and well-managed, it is possible to enable more prisoners to vote for their leaders of choice. The outcomes of the prisoners vote, reminisces a process that needs targeted public participation and role of stakeholders cannot be gainsaid. Sadly even as we celebrate these memorable experiences, it will go down in history that the 2017 elections were devoid of sector wide involvements that led to a disenfranchised prisoner lot.

⁵⁸ Article 38 Constitution of Kenya 2010

3.6.1 Introduction:

Kenya had 118 registered prisons that comprised on average 50,000 to 55,000 prisoners majority who were remands or persons not yet convicted who were undergoing the trial process. Prison population also comprised other persons such as prison officers, their spouses other category of persons who based on other circumstances were deprived of liberty such as children accompanying their mothers in prison amongst others.

In the current Constitutional dispensation, the history of prisoners voting in elections is traced to the landmark judgment⁵⁹ of the Interim Constitutional Dispute Resolution Court 2010 delivered on 23rd June 2010, which allowed prisoners to vote for the very first time in the Constitutional referendum. At the time, the Interim Independent and Electoral Commission (IIEC)⁶⁰ as it was then called, was given 21 days to ensure prisons were gazetted as polling stations; that eligible⁶¹ prisoners were facilitated to register; and that jointly and severally with key stakeholders such as the Attorney General, Kenya Prisons Service and National Registration Bureau, facilitate access to prisoners and their registration documents. It is not clear how many prisoners voted.

Two (2) years later in 2012, and with the now expansive Constitution, the Elections Act 2012 was amended and the IEBC given leeway to make regulations to prescribe the procedure for registration and issuance of voters cards to prisoners and further to provide for the progressive registration of prisoners. Even with these enabling provisions, a lacuna existed on whether prisoners were barred from voting in General Elections. It was therefore necessary to seek legal redress through a public interest petition⁶² and on 21st January 2013, the ground breaking judgment settled⁶³ the voting rights of prisoners to voting in Referenda and General Elections. The IEBC was tasked to put in mechanisms that will adequately prepare prisoners to vote in the 8th August General Elections.

Armed with the January judgment and as the 4th March 2013 General Elections inched closer, it evident that was the timing worked against the registration of prisoners and they were locked out in the public interest.

⁵⁹ Priscilla Nyokabi Kanyua v Attorney General & Another Constitutional Petition 1 of 2010 [2010] Eklr

⁶⁰ <https://www.nation.co.ke/kenyareferendum/IIEC-to-register-prisoners-for-Kenya-referendum/926046-946296-1q0qv3z/index.html>

⁶¹ Eligibility was defined to be prisoners of sound mind, over 18 years and those who had not committed an electoral offence

Fast forward from 2016, transitions within IEBC put a lot at stake. Critical to securing the prisoners vote was the ensuring that the law was well placed and that the IEBC had incorporated prisoners as a category of persons considered in the 2017 voter registration and that all attendant plans to facilitate their voting rights was adequate to accommodate their unique circumstances. There were many obstacles but one stood out of them all, the nature of Kenya's justice system under common law jurisdictions is that judicial pronouncements though law setting, need anchoring in law for enforcement.

The Elections Laws (Amendment) Act 36 of 2016 amended Section 109 (1) to insert the word 'prisoner'. It further, through Section 109 (3) (4), required the IEBC to submit regulations by end of October 2017. This remains an advocacy issue to date.

In January 2017, the IEBC publicly announced that prisoners would vote. The IEBC electoral roadmap confirmed that indeed prisoners would vote⁶⁴ however it was not clear the steps, measures, strategies and methodologies the IEBC had put in place. As a result, it was difficult to engage, participate and communicate clear timelines to prisoners. The surprise announcements regarding the one week voter registration notice from 20th February 2017 to 27th February 2017 caught many unprepared. Further, the announcements that registered prisoners vote would be limited to voting in the Presidential election and that prisoners will only vote from the prisons in which they are registered had serious ramifications.

3.6.2 Prisoners Voter Experiences and Outcomes:

State and Non State actors working on penal reforms under the banner of the Prisons Reforms Working Group (PRWG)⁶⁵ had to step forward seeking dialogue with the IEBC on the implications stated above. Unlike the root taken in 2013 of filing a public interest suit, and in view of the tickling time, lobbying and advocacy were the most favorable strategies to use if prisoners were indeed to vote in August 2017.

⁶² Kituo Cha Sheria v Independent Electoral and Boundaries Commission & Another (2013) eKLR Petition 574 of 2012

⁶³ Article 83(1); Article 38 (3)(a) & (b) Constitution of Kenya 2010

⁶⁴ Election Operations Plan 2015 – 2017 p 44

The prison architecture in the management and conduct of elections was not as could be found in the general public. The questions whether polling centers would be placed inside or outside the prisons; whether released former prisoners could be allowed access to go cast their votes; whether prisoners who had been transferred to other prisons could be returned to the registration prison to facilitate their voting were pertinent questions that required planning and goodwill of key government agencies.

The PRWG reconstituted their programs to focus on joint initiatives with the IEBC inviting them in their forums to conduct voter education. Prisoner's voting was a standing agenda in every initiatives. The most outstanding being the 3rd commemoration of the Prisoners Justice Day which was commemorated on 3rd August 2017 at the Kericho GK prison.

Family tracing in a bid to ensure prisoners who had left their Identification documents at home was done by paralegals. Meetings with the Kenya Prisons Service were held calling on wider stakeholder consultations and flexibilities⁶⁶ to ensure that prisoners were not disenfranchised. Despite the inadequacies that came with insufficient access to voter information, access to registration and identification cards, 5528 prisoners were reported to have been registered. This was relatively low number compared to the 55000 prisoner population.

On 4th August 2017, the IEBC reported that 4331 prisoners had voted out of the 103 prisons polling centers.

3.6.3 Key Findings:

Lack of stakeholder engagement, involvement and collaboration: Public participation was a national value of Kenya's Constitution 2010. A review of the past elections relating to prisoners would confirm that stakeholder engagement, involvement and collaboration by the IEBC had been unstructured raising credibility and fairness questions. Uncoordinated collaborations between the

⁶⁵ The Prison Reforms Working Group (PRWG) is a consortium comprising of both State and Non State actors working on prison reforms namely; Kenya Prisons Service, Department of Probation, Kenya National Commission on Human Rights, National Council on the Administration of Justice, CEFA, Haki Mashinani, Kituo Cha Sheria, Faraja Foundation, Department of Probation, Law Society of Kenya, Legal Resources Foundation Trust (Chair) , The International Commission of Jurists (ICJ Kenya) and African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN).⁶⁶ Article 83(1); Article 38 (3)(a) & (b) Constitution of Kenya 2010

⁶⁶ Section 9 Registration of Persons Act requires that the issuance of an identity card within 30 days of the date of registration and replacement of an identity card within 14 days. This section is self-defeating in the scenarios that presented during the registration and issuance of identity cards to prisoners.

IEBC other authorities such as the Kenya Prisons Service and National Registration Bureau; and Non stake actors such as the PRWG who jointly sought registration as observers and civic educators went in vain. Lack of communication, the stringent demands and deadlines were unfriendly, not transparent and unaccountable.

Disenfranchised prisoners ability to vote.

The question of the role of institutions like the National Registration Bureau in their failure to provide prisoners their national identify cards in time for the elections, was a question requiring more in-depth scrutiny. The observations in the 2010 referendum and the August 2017 General Elections was likely to be a recurring issue. The accountability of such institutions needed to be interrogated and be put to account.

The decision to vote for the Presidential election disenfranchised prison officers:

Although it was not clear how many prison officers were registered to vote, the decision that prisoners vote for presidential election denied Prison officers an opportunity to vote in other electoral positions because only the Presidential ballot papers were availed in prisons on 8th August 2017.

Prisoner candidates: In Kenya, the right to vote goes with the right to be a candidate. Article 38 (3) states every adult citizen has the right without unreasonable restrictions to be a candidate for public office or office within a political party of which the citizen was a member and if elected to hold office therefore, prisoners could be candidates for all elections. That said, in another historic feat, a prisoner at the Naivasha GK prison was cleared to view as a candidate in the General elections for a Member of Parliament electoral position. Whereas he was critiqued by members of the public and declared a joker by justice agencies which was a clear demonstration of voter education ignorance, he provided a unique scenario that the IEBC needed to consider and plan for in future elections. The facilitation to be accorded time to present papers for accreditation according to the Political Parties Act and the Electoral Laws demands was one instance. Facilitation for visitation by political parties, constituents and supporters needed to be thought through and especially to ensure that discrimination was not tolerated on the basis of deprivation of liberty

3.6.4 Recommendations

Prisoner regulations as provided by the Elections Amendment Act 2017, needed to be set up before the next General Elections 2022. According to the Act, these regulations prescribed the procedure for registration and issuance of identifications and to provide for the progressive registration of prisoners. These regulations would set a clear roadmap in enabling future management of prisoners electoral governance. These regulations should be public spirited to accommodate stakeholder collaboration and engagement. The regulations could provide sections such as below;

- a. Stakeholder involvement pre and post elections needed concerted efforts by both State and Non state actors. For instance, incorporating provisions such as the registration of Officer In-Charges as Returning Officers were possibilities that had worked in other jurisdictions. This not only related to the conventional stakeholders but other equally important institutions like the Attorney General, National Council for Law Reporting and Kenya Law Reform Commission who had a unique mandate in ensuring law reforms were spearheaded for the benefit of all.
- b. Access to information and Voter education programs needed to be supported and rolled out in all prisons. Bad timing and inadequate voter education led to high number of rejected votes at 233 out of the total votes cast. In fact, based on the scenario impacting prison officers, it could not be said in certainty that these numbers represented prisoner votes only. Voter education materials specific to prisons needed to be developed.
- c. Boundary limitations in the classification of prisons as voting centers. The IEBC classification of what comprises a polling center i.e. below 700 and what comprises a polling station i.e. above 700 may only apply to maximum prison facilities which were few and therefore this was a critical area in need of review.
- d. Cleaning of the voter register County Number 049 and all attendant activities needed to accommodate Prisoner involvement. IEBC could borrow a leaf from the IIEC of 2010 where a decision was made to withdraw prisoners voter cards as soon as they voted. This to erase fears about the handling of such data. This was critical in voter education too. Progressive voter register

cleaning should be a continuous exercise involving collaboration between the IEBC and Kenya Prisons Service.

- e. Prisoner transfers disenfranchised many who were ready and willing to cast their votes. It was recommended that at least 3 months to the election day, minimize transfers of prisoners to allow as many as possible to vote
- f. The limitation to vote for the Presidential election alone denied prisoners an opportunity to elect their County leaders. The unilateral decision by the IEBC went against the spirit of the 2013 judgment. By 2022, the IEBC had enough time to work through the challenges they anticipated in the 2017 elections. Making use of available provisions in the law such as the Prisons Act that provided for release on parole and conditional releases temporarily for a brief period is possible.

3.6.5 Conclusion:

For seven (7) years, the precedent having been set in electoral management of prisoners voting, the electoral architecture had remained weak and seemingly reactive in the management of the prisoners vote. It could be said that although the IEBC had failed to ensure that a responsive and enforceable legal framework specific to prisons was in place, Kenya did set precedent across Africa and in the world. Observer missions were done by countries such as South Africa⁶⁷ to learn from Kenya's experience. Indeed many years later, the words of the Honorable Chief Justice Earl Warren (1958)⁶⁸ were evident today that surely "citizenship was not a right that expired upon misbehavior. Prisoners retained their civic status throughout their sentences; the right to cast a ballot"

3.7 Diaspora and the 2017 Electoral Processes

Dr Shem Ochuodho, Kenya Diaspora Alliance (KDA)

(Presented by Eng. Chris N. Njenga, KDA).

Kenyan Diaspora

Diaspora are considered as non-resident Kenyans who live and spend the greater part outside the country . They are estimated to be 3 million in number [Diaspora

⁶⁷ <http://www.africanews.com/2017/08/08/election-observers-give-kenyans-thumbs-up-for-smooth-voting>

⁶⁸ *Trop v Dulles* (1958) 356 U.S 86, United States Supreme Court. <https://supreme.justia.com/cases/federal/us/356/86/case.html>

Policy] out of which 15% are eligible voters. Diaspora's financial and intellectual contribution to the economy are substantial; since 2015, highest foreign exchange earner at US\$ 2.5 billion per year. Diaspora's contribution in terms of knowledge, skill, business networks and diplomacy is not documented but by far exceed the financials.

3.7.1 Challenges during Elections

- IEBC Civic or voter education among the diaspora and monitor the same were completely non-existent
- Courtesy University of North Carolina (USA) and Uraia Trust, some preliminary civic-cum-voter education was conducted online
- Including through online surveys (Qualtrics), E-Nation newspaper, KDA portals and social media.
- Insufficient and severely under-funded
- KDA registered as a Monitor; teamed up with ELOG to conduct monitoring in Rwanda. Logistical hurdles and not allowed to access polling station as badges delayed by IEBC
- Other logistical impediments, during registration ranged from election officials arriving a date or 2 late, or arriving minus biometric devices rendering their presence useless.
- Recommendations that were presented to IEBC by ELOG and IED , on a study that reviewed external voting by select countries, were all ignored.

3.7.2 Diasporans Participation in Elections

- Other than as voters and observers, some diaspora also participated in the election as aspirants/candidates, election officials, supporters and/or fundraisers.
- Dr. Shem Ochuodho was a Senatorial Aspirant, initially approved, enlisted and gazette by IEBC. Subsequently, unfriendly conditions eventually denied him opportunity.
- Other potential candidates were also initially barred from running by virtue of being dual citizens. Appeal Court decision allowed dual citizens to run.
- There have been diaspora candidates running for positions including

presidential, running mates, gubernatorial, senatorial, etc.

- In the 2017, Prof Jeff Kaluyu (USA-based) ran for president, and so did three other ex-diaspora, aka returnees.

3.7.3 Key Findings

It was evident that Kenya was not ready yet for diaspora voting, despite the constitutional provisions, court rulings and even the lip service paid. Very often were Diaspora pundits dismissed by a number of leaders including MPs who retorted: 'Why worry about those outside before we fix our own problems here?'

The infrastructure logistics, etc., were not prepared for Diaspora to vote, neither were resources provided for successful diaspora registration, civic and voter education. IEBC had allocated an insufficient budget which was then further reduced by Parliament. Diaspora registration and voting was handled as an afterthought.

Other Notable Issues

In 2010, KDA wrote to the concerned committee, requesting for 5 of the newly created 90 constituencies to be declared 'diaspora constituencies' – 1 per continent. There were several countries which had diaspora constituencies, including but not limited to France (12 out of 300), Iraq (10), Algeria and Cape Verde (6 each), Mozambique and South Africa (2 each), etc.

In a Diaspora survey [Prof Whitaker] in 2016, asking respondents 'the single most important thing Kenya government would do for diaspora to make them feel a sense of belonging', about 7% said they would want their investments in Kenya secured, a further 8% said they did not want to pay petty bribes for public service, but the bulk majority (54%) said 'they would like to be able to elect their leaders'. The author's premise that an election that deliberately and structurally disenfranchises 30% of eligible voters, half of who are diaspora, (15%) cannot be 'free and fair' in any circumstance. Details in the paper - Voting Day -Calm -Vote Tallying, Transmission & Observation- small numbers do not expect challenges - Technology in Elections –As in rest of the Country. It was a necessary evil in the new world.

3.7.4 Recommendations

Article 100(e) anticipated that parliament would enact laws within 5 years to promote representation of marginalized groups as defined in Article 260 (people previously disadvantaged due to prevailing laws then). Administrative and Legal Reforms may be necessary – even within the existing constitutional framework in which Require of parties to establish diaspora offices and include diaspora in their rank and file, including party nomination lists. Remove the unconstitutional requirement for 'regular passport' to vote - For validation and verification of registered voters, provide secure online facility at least for diaspora.

Article 82 requires parliament to have enacted by now law for continuous registration of voters and progressive registration of diaspora - Evolve a law to clarify on voting by dual citizens -Amend Art 8(4) of Citizenship & Immigration Act which puts unnecessary administrative hurdles on dual citizens - To optimize diaspora voting, remove restriction for voters to vote where they registered.

Provision of necessary and adequate infrastructure to enable diaspora registration, identification and voting in at least 1 country per continent, including diaspora (more so youth, women and PDWs) among the special interest groups Extending continuous voter registration and voter education to include also diaspora. Invest in appropriate technologies, processes and systems to facilitate diaspora voting for the difficult and expensive to register dispersed diaspora.

Presently, there is no authoritative data on diaspora. It would be important to include diaspora in the upcoming national census - GoK to work with KDA and others to automate and grow the 'Diaspora Database' - Cross-link the various diaspora portals and evoke a PPPP to locate and register diasporas. This would then inform the creation of 5 diaspora constituencies (one for every continent) in the upcoming delimitation to deal with the current nil diaspora representation, to give diaspora a voice through their representation as the Representatives as the 48th County.

In creating a database, mechanisms for Diaspora Identification & Census Case of undocumented diaspora should be evolved e.g. hold bilaterals with host countries as well as countries which do not allow dual citizenships like Germany and explore issuance of non-resident IDs like India does etc.

IEBC to identify, early enough, initial regions in which diaspora can vote in 2022 elections, table and consult with stakeholders on budget for it and Immediately initiate process to identify and register diaspora voters –

Civic & Voter Education Noted apathy of diaspora to register and vote -Undertake an independent study to establish why diaspora for instance in RSA, Tanzania did not register in large numbers to vote - Evolve a program for civic and voter education among the diaspora.

Election Observation and Monitoring Fear of diaspora being used to rig elections -Initiate early, candid conversation with key stakeholders on this matter and agree on pilot constituencies/countries & cities - Require of political parties to establish offices in diaspora as a 'virtual county' and identify poll agents early.

Election Observation and Monitoring Difficulty in Monitoring Elections Abroad - Explore reciprocal partnerships with external monitors and/or foreign missions - Establish formal or semi-formal partnerships with active diaspora organizations and political party offices - IEBC to have dedicated Diaspora Liaison Office to streamline and enhance diaspora voter / monitor coordination.

3.7.5 Conclusion

Kenya's diaspora are still disenfranchised from participating in electoral processes. Even the countries where it is claimed that diaspora have voted in 2012/13 and 2017, it is a mere fallacy because so many impediments were put on the way that made the claim at best an absurdity.

Apart from voting, representation is an equally important and emotive matter to diaspora. There are a number of upcoming national exercises (e.g. census, delimitation of boundaries, etc) that should be taken advantage of to enfranchise diaspora.

3.8 Media in Elections: The Role of Mainstream Media and Social Media in the Electoral Processes and the Impact of Propaganda

Victor Bwire, Deputy CEO and Head of Programs, Media Council of Kenya

“The relationship between freedom of expression, access to information and elections need not be overemphasized. Free, fair and credible elections are not possible without free flow of information, free and diverse media and plurality of

views" at one time Special Rapporteur on freedom of expression for the African Union observed.

The African Union through the Declaration of Principles on Freedom of Expression in Africa, notes that "the key role of the media and other means of communication is in ensuring full respect for freedom of expression, in promoting the free flow of information and ideas, in assisting people to make informed decisions and in facilitating and strengthening democracy".

As a result of their ability to reach and influence large numbers of people, the media was perceived to carry immense power in socialization and shaping the course of people's attitudes and behaviour. Fair and accurate journalism and media content that built confidence and counteracted misperceptions had great potential in security and disaster management. The power of the media to influence the course of conflict, policy and intervention had been dubbed the CNN Effect. This effect created a triangular relationship between media, government and the public.

Many times the media had been accused of irresponsible reporting that had led to electoral violence, ethnic hatred and the tendency to focus on side shows and non-issues instead of information that would inform, educate and sensitize the public to make decisions that would bring about positive change. Consequently, this had often led to skeptical attitudes towards the media as a tool for conveying objective information during electoral processes. There were in-house editorial policies that derailed proper channelling of information.

Just as in previous elections in Kenya, the media during the 2017 general election was expected to play a number of roles; watchdog, disseminating information (substance of election), entertain (game of strategy), educate and sensitize (civic) the public to participate in the election. The flow of information was important for the citizen participation in events including voting and the media facilitates this. Without a wide array of information, people's opinions and views would be limited and their impressions and conclusions of the world around them stunted. Journalists were in essence interpreters of information. In this way, the media kept us focused on the issues that mattered in a surveillance-type way.

A General Election was a testing time for media houses, a situation that was complicated all the more by media consumers' biases for or against particular news media. It was a time when, to a large extent, some stakeholders found common ground on the preferred rules of conduct in terms of election coverage. It was also a time when unethical media took centre stage and all but drown their audiences with destructive content. More importantly, it is a time when media houses pull out all the stops to demonstrate their organisational skills, resource mobilisation capacity, journalistic and professional competencies in a bid to outsmart one another, but also as a strategy to affirm their credibility in their drive to engender public confidence and trust.

At a policy level, as earlier noted, the main media houses either generated new election guidelines or enhanced existing ones including committing to abide by several regulations by the Communication Authority of Kenya, Media Council of Kenya, National Cohesion and Integration Commission and invested heavily in staff and technology to address the flaws that tragically undermined effective coverage elections.

The flow of information was important for citizen participation in events, including voter registration, the voting process, reporting the transmission of results and election outcome. In all these, the media were facilitators for, without a wide array of information, people's opinions, ideas and views would be limited and their impressions, understanding and conclusions of the world around them compromised.

Traditional media had for the first time in a big way had to contend with dealing with election coverage content and advertisements with the online platforms (social media) combined with the citizen journalism. Both traditional and online media had to vigorously tackle with propaganda and misinformation during the coverage of the 2017 general election (Cambridge Analytica and other blogs and online influencers/users).

Literature on the performance of the media, both liberty and online during the 2017 general election was varied. Did the media play their role in informing, educating and, ultimately, empowering the Kenyan voter by providing accurate, timely, contextual, relevant and well-researched information about the entire

electoral process? Were the media adequately prepared to cover the electoral process? Did they fulfil their social responsibility mandate? Did they abdicate their cardinal duty of being the public watchdog? Were they complicit in, guilty of, or engaged in, self-censorship and, or, intimidated on account of indictment of one of their own for crimes against humanity by the International Criminal Court (ICC) at The Hague? Were they simply alive to their social responsibility and hence exercised their role in a measured way by adhering to national laws, electoral code of coverage as developed by the relevant players in the industry and media houses' regulations?

Suspicion and speculation were rife about alliances between some media houses and particular political parties. In the case of both Mediamax and the Royal Media Services, which operate on multi-media platforms of print, television, radio and online, this was more than mere speculation.

Prior to the August 2017 General Election, the Media Council of Kenya, jointly with the IEBC and together with other stakeholders and with the support of UNDP and UNwomen, developed election guidelines for journalists. This initiative also brought on board local and international media support organisations, freedom of expression and human rights defenders, constitutional oversight teams, special interests and civil society groups, among others. In total, more than 16 local media houses, institutions and associations were enjoined and committed themselves to adhering to the guidelines on electoral coverage adopted in April 2012.

In the preamble to the electoral coverage guidelines, these stakeholders recognised the importance of the General Election and committed themselves to facilitate a free, fair and democratic process. They further acknowledged that media freedoms came with responsibilities. In that regard, they were determined to assist voters make informed choices; they resolved to adopt and abide by the guidelines during the coverage of the General Election.

The guidelines were aimed at "...helping journalists to provide comprehensive, accurate, impartial, balanced and fair coverage of the elections, thus enabling the voter to make informed choices". The guidelines were intended for all media houses — whether private, or state-owned — as well as the authorities involved in policing the electoral process.

According to the guidelines, “Media houses are corporate citizens of Kenya; they have a stake in the future and wellbeing of the nation. There was a need, therefore, for the media to use the opportunity offered by the elections to work for unity and prevent or reduce conflict and polarisation by promoting the rule of law.”

Additionally, “The media should establish in-house structures and mechanisms of overcoming internal conflict that could negatively influence or compromise election coverage. The media had a duty to reflect a diversity of voice in its coverage, including minorities and marginalised communities. The reporting should be gender-balanced, treating women and men equally as news subjects and news sources.”

On the core values and principles of journalism, the guidelines isolated five:

- Accuracy
- Impartiality
- Sourcing
- News coverage
- Right of reply

The most critical were accuracy and impartiality. With regard to accuracy, the media were obliged to ensure that their reports were factual, accurate, well sourced and based on sound evidence. On impartiality, the media was obliged to produce fair and balanced reports, reflecting a breadth and diversity of opinion that ensures no significant strand of thought is missing or under-presented.

In implementing these guidelines, the media houses would develop individual editorial codes and policies and if in existence, review them using these guidelines as minimum standards and benchmarks. Further, publish these guidelines and any other internal codes for public awareness and public accountability in addition to ensuring proper planning and resource allocation for election coverage and ensure staff was adequately trained to fulfil their obligations as required by these guidelines.

One of the most significant commitments and obligations in the election coverage guidelines was the media's commitment to rely solely on the designated official source, the Independent Electoral and Boundaries Commission, for announcement of the results. The implication here was that they would not, unlike previously, set up their own independent election results tallying centres.

The guidelines discussed above were an important point of reference for any examination of the Kenyan media's conduct during their coverage of the General Election.

Did the media abide by the letter and spirit of the guidelines? If not, were there any extenuating circumstances that forced the media to ignore, deviate from, or trash these guidelines? Were there any external and internal forces and/or pressure that conspired against adherence to these guidelines? Were the media too engrossed in the peace-at-all-costs strategy that they abdicated their public interest role?

3.8.1 Key Findings

Pressure on journalists in Kenya started to build during the political party primaries in April and May this year. Within that period, at least three journalists were physically abused and a number of others received threats. By close of the electioneering period, nearly 32 journalists had reported threats or experienced assault, by police or citizens.

Threats and push for responsible reporting was also experienced at policy level- with immediate implication on self-censorship in the media. The Media Council of Kenya released election reporting guidelines and a training manual that were signed off by a large number of media houses. This was followed by administrative threats by the CS Joe Mucheru to close down any media house that would violate election regulations- on releasing of results.

CA and NCIC released regulations on political messaging, bulk sms and social media editorial content. This effort, though well intentioned, was not received with open arms by all involved. A number of journalists and bloggers, who were interviewed by Human Rights Watch for its May 2017 report on the elections, expressed concern that government officials' claim that the media was being used to spread hate speech was merely a pretext to crack down on free expression.

Media owners, election candidates and interest groups placed great pressure on journalists to censor their news by threatening the loss of millions of shillings in political advertising. In some cases, election campaign adverts were so ubiquitous that they significantly reduced independent editorial content on some radio and TV stations. Faced by tough controls on traditional media, the political elite moved their game online. Attack ads, which could never have seen the light of day on Kenyan TVs were published and widely shared on Facebook and Twitter.

Unfiltered campaign messages were regularly posted on candidates' websites and misinformation about the elections made its way to the popular messaging platform, WhatsApp, and to YouTube and Twitter.

- Patrick Gathara wiring for the Elephant had noted that the media even outside the Court ruling that had declared that elections results publicly declared at polling stations and at constituency tallying centres were final and could be relayed by the media, this didn't happen. Until today, media, outside the John Allan-Namu release through the Africa Uncensored had ever made known their tallying.
- Some people felt that adherence to the principles of truth and accuracy, independence, fairness and impartiality was wanting. There were examples of journalists perceived to be partisan for example Kameme FM broadcasters, some KTN and Citizen anchors and reporters. And that some journalists, including well known television anchors, revealed their political biases by seeming to favour specific candidates and parties.
- Another issue that was raised was that some journalists blurred the lines between the personal and the professional. This was especially problematic on social media platforms. The impartiality expected of journalists was viewed as compromised when they openly expressed their political preferences.
- The elections also came with a range of issues which demanded various levels of inquiry and analysis. The knowledge of many journalists did not always match these demands. At times coverage was shallow and not critically engaging. In addition, while media houses called on dozens of "experts" and "analysts", many could not make contributions that justified

their titles. Television stations paraded what they called “eminent” and “super” panels to little effect. Beyond being large in size, the panels were often thin when it came to substance.

An MCK media monitoring study established that mainstream media did not feature many women. ‘Manels’ (men-only panels) dominated television broadcasts and fewer women were used as news sources and on-air analysts. Women politicians also received significantly less coverage – and far more critical coverage – than their male counterparts.

Dr. George Gathigi of the University of Nairobi noted that compared with previous elections there had been an improvement in live coverage, immediacy, and updates on the campaigns, as well as the Independent Electoral and Boundaries Commission’s preparations. Media houses also followed the various legal challenges relating to the 2017 elections very closely. Dr Gathigi says there were also genuine attempts to encourage issue-based debating platforms and to give different contestants opportunities to argue their positions and engage with the electorate. With the rise of the fact news phenomena, where a lot of lies and misinformation was spread about candidates and political parties (read the 36 bloggers), media houses and media support groups including the AfricanCheck deployed more resources than ever before to cover campaigns in various parts of the country. There were also times when the mainstream media was seen to compete with bloggers to break news. The rush to publish meant that allegations and challenges weren’t verified and that assertions by politicians weren’t checked first.

- Writing for the African Center for Media Excellence, we noted a number of things: the harassment of media practitioners across the country, which led to self-censorship and injury to journalists and loss of equipment. Media enterprises through media owners, editors, advertisers and interest groups were pressurized to skew, drop or camouflage news and views through the guests invited for shows or columnists. The use of advertisements is a new phenomenon that media in Kenya has to contend with. Advertisements have been used to reduce editorial content especially through the broadcast media, sometimes flouting existing laws on media advertisements. Corruption and influence of influenced and public

relations content within the media during the election campaign period was an issue that had faced Kenyan journalists during the elections period.

A study by researchers from the communications consulting firms Portland Africa and GeoPoll revealed that 90 percent of Kenyans had seen or heard false news about the 2017 elections. The survey was conducted in May of 2017 and around 2,000 respondents countrywide of various ages, genders, religions and ethnicities participated. John Murunga from GeoPoll said most Kenyans trusted the media as their primary source of credible news with about 76 percent saying that information gathered from television was accurate. He said that using a multi-channel approach could be a way of countering fake news in the country. However, he noted that misinformation deprived the electorate crucial information to make informed decisions. Stakes could not be higher this election season. In April, residents of Busia in Western Kenya, woke up to news that a leading opposition contender in the county's primaries, Paul Otuoma of ODM, had defected to the governing Jubilee coalition. The "fake news" was carried on leaflets made to resemble the *Daily Nation*; a leading newspaper in the country.

3.9.2 Lessons Learned

The challenges faced by Kenya's media are not new or unique, and neither are the solutions. It is evident that media performance cannot be improved through stricter controls or harsher discipline. Rather, a combination of interventions that involved all stakeholders to support journalists' work and citizens' participation was the best way forward.

The citizenry required a media that could access a broad range of information and voices to interpret, investigate and analyse issues of public concern. The media, on the other hand, needed a citizenry that was engaged, could hold power to account and demanded the best from journalists.

Again, media needs to think seriously about investing heavily in presidential debates and acknowledge the place of social media in political campaigns. The Kenya President had instead heavily invested in use of social media.

3.8.3 Recommendations

For a number of years now, especially around election time in Kenya, media in general and journalists in particular conducted focused and quality coverage of content. However, recently, the word KE Media had gained traction among pundits and the word "githeri media was now common when referring" to coverage of national issues by mainstream media. With a 2009 policy guidelines without a comprehensive media policy for the country, and with the media sector being gradually forced to be anchored under the ICT sector, do we expect serious contribution by the sector in national development? Why does media in Kenya continue behaving the way they do- which seemed to have failed to satisfy Kenyans including the Government?

Even with their deficiencies, the enactment of the Media Council Act 2013 and the Kenya Information and Communication Amendment Act 2013 marked the actualization of Article 34 of the Constitution, officially recognizing and protecting freedom of expression. As expected a number of regulations were to be developed and gazetted by the MCK and CA to promote the freedom. However a number of laws existed that frustrated journalists work including the Kenya Broadcasting Corporation Act, Books and Newspapers Act, Public Security Act, Official Secrets Act, Films and Stage Plays Act, The Defamation Act, The Preservation of Public Security Act, The Public Order Act and Chief's Authority Act, National Police Service Commission Act, National Intelligent Service Act, Kenya Defence Forces Act, Copy Right Act, and the Penal Code) while others created public agencies to regulate the industry (Media Council of Kenya, Communications Authority, Competitions Authority of Kenya, Copyright Society of Kenya, Kenya Films Board.

The current debates and confusion in the manner and contents of the laws relating to media in the country was a direct response to a quest by stakeholders for a media system that would strengthen media freedom, enhance independence, build the capacity of the media to set agenda representing public interest and establish a regulatory framework that cultivates professionalism accountability. The debate needed to move from just improving the media related laws, but include serious efforts by stakeholders to develop a media policy for the country and hard questions on the place public broadcasters and whose interests the media should serve in Kenya.

Media performance was not going to be done through external means by non-media organizations creating laws and administrative codes but journalists themselves through a conducive legal regime that accepted that journalism was a profession and not a craft.

In addition, those investing in the sector must pursue different funding and management models that prioritized the journalists as professionals and audiences as intelligent beings including joint production ventures and seek tax rebates on some items to ensure access to quality content by Kenyans. Media support groups must also consider supporting content generation and dissemination models that will supplement traditional models

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

SECTION 4 MATRIX OF RECOMMENDATIONS

RECOMMENDATION					
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	M&E
Elections and Voter Registration					
Issue	Findings	Short Term Recommendation (August 2018 - July 2019)	Mid- Term Recommendations (August 2018 – August 2022)	Long Tem Recommendations (Beyond 2022)	M&E
	25,323,059 – ID issued by NRB by 15 th May 2017 19,607,030 – Those registered within Kenya by 17 th May 2017	Amend the Constitution and Elections Act, 2011 to provide for the integration of civil and voter registration processes to realize 100% National Voter Registration Rate and save taxpayers money and time.	Amend the Constitution and Elections Act, 2011 to provide for the integration of civil and voter registration processes to realize 100% National Voter Registration Rate and save taxpayers money and time.	Provide targeted civic/voter education to citizens in and out of the country on the need to register as a voter and vote	Interviews with parliamentary members of Justice and legal affairs and IEBC
Voter apathy.	5,716,029 (23%) – Those who did not register yet qualified	Provide targeted continuous civic/voter education to citizens in and out of the country on the need to register as a voter and vote	Provide targeted continuous civic/voter education to citizens in and out of the country on the need to register as a voter and vote	Provide targeted continuous civic/voter education to citizens in and out of the country on the need to register as a voter and vote	Round Table Meetings with IEBC
	19,611,423 – Total Registered by 17 th May 2017 including the diaspora	IEBC to utilize online platforms – face book, twitter etc. to disseminate Voter education messages	National treasury through the parliament to provide adequate finances to facilitate the implementation of continuous civic/voter education		Round table meetings and interviews
	15,493,024 (79%) Voter turn out in 2017		Voter education is integrated in the new education curriculum of 2-6-6-3		Round table meetings and interviews
	4,118,399 (21%) – Those who never turned out to vote.				Ministry of Education, Science and Technology

<p>Low Coverage of Diaspora Registration.</p>	<p>This stands at 0.2% for the last seven years 2,521,506 – Approximate Diaspora eligible voters which is 10% of Eligible voters 4,393 – Registered in 2017</p>		<p>Amend the 1st Schedule of the Constitution to provide for the 48th Diaspora County and subsequent additional constituency for diaspora.</p>		<p>Parliament</p>	<p>Round table meetings and interviews</p>
			<p>The Ministry of Foreign Affairs (MFA) to seek support of the Kenya National Bureau of Statistics (KNBS) and ensure that a Housing and Population Census for citizens in the diaspora is undertaken next year in August</p> <p>Ministry of Foreign Affairs and KNBS establish and maintain a structured engagement with diaspora non-state actors to support in acquisition of diaspora data</p>		<p>KNBS MFA Diaspora Non State actors/ Citizen Organizations</p>	<p>Round table meetings and interviews</p>
			<p>Review existing Diaspora policy to take into cognizance the context and challenges that Kenyan in the diaspora face in their quest to exercise their voting rights to inform the diaspora voter registration and voting procedures E.g. voting by proxy or advance voting to address the issue of time zones.</p>		<p>IEBC PARLIAMENT</p>	<p>Round table meetings and interviews</p>

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Elections and Voter Registration						
			Establish temporary / mobile polling centres in areas with high concentrations of diaspora		IEBC	Round table meetings and interviews
		IEBC to strengthen collaboration with electoral stakeholders such as Uraia to develop effective and efficient continuous online platforms for diaspora voter education.	IEBC to strengthen collaboration with electoral stakeholders such as Uraia to develop effective and efficient continuous online platforms for diaspora voter education.	IEBC to strengthen collaboration with electoral stakeholders such as Uraia to develop effective and efficient continuous online platforms for diaspora voter education.	IEBC	Round table meetings and interviews
Under registration of Women Voters	Despite having more eligible women (501,301) more than men, more male (50.61%) were registered compared to (49.39% female	Implement targeted voter education for women. Have targeted sensitization fora for men to change their attitudes towards women rights and women empowerment.	Implement targeted voter education for women. Have targeted sensitization fora for men to change their attitudes towards women rights and women empowerment.	Implement targeted voter education for women.	IEBC	Round table meetings and interviews

<p>Engagement of youth in the electoral Registration process</p> <p>Low registration rates for the youth aged 18-19 years accounts for (1.05%) of the total registered voters, for a population that makes up (8.19%). Also the number of IDs issued to this age group is only (1.99%) of the total number of issued IDs.</p>	<p>Youth constituted 9,530,239 (48.60%) of the total 19,611,423 voters in the register. This was an increase of 0.6% of registered youth compared to 2013.</p>	<p>Initiate and maintain youth friendly voter education strategies especially those coming of age (18-19yrs)</p>	<p>Initiate and maintain youth friendly voter education strategies especially targeting those coming of age (18-19yrs)</p>	<p>IEBC</p>	<p>FGDs with the youth</p>
			<p>National Registration bureau to explore ways of issuing ID Cards to students 18 years before they leave high school.</p> <p>Location of registration centres in institutions of learning such as universities and Colleges</p> <p>Engagement of youth as election officials and observers Encourage the youth to enroll to Governance, Leadership and Elections programme especially the offered at Catholic University of Eastern Africa</p>	<p>Independent Citizens Elections Observation Groups</p>	<p>FGDs with the youth</p>

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Registration of Persons with Disabilities	Absence of an official register of persons with disabilities from National Council for Persons with Disabilities (NCPD) with unique identifier such as ID card number	KNBS in collaboration with NCPD to conduct census for PWDs next year August to avail official PWD disaggregated data by gender, age, and county	IEBC should ensure that voter education training materials and content delivery strategies are PWD Friendly		IEBC NCPD	FGDs with the PWDs and NCPD
	No tag or any identification mark in the register for PWDs		Ensure that all registration centres are accessible to PWDs	Ensure that all registration centres are accessible to PWDs		FGDs with the PWDs and IEBC
Use of Expired passport as an identification document for voting	Elections Regulations are silent on the issue of expired passport as identification document during voting.		Elections Act, 2011 and the Elections (General) Regulations 2011 be amended to clearly provide that one cannot vote using an expired passport. The system to be used to identify voters in 2022 elections should be configured to detect passport expiry date during voter identification process.			

<p>Non Availability of the register of birth</p>	<p>There is no unique identifier maintained in the Register of Births that would enable the linking of the particulars in the Register of birth to the particulars in the Register of RoV to establish the number of underage voters in the register</p>		<p>State considers implementing an Integrated Citizen Registration System (ICRS) which facilitates the inking of persons' records through the use of a unique personal identifier throughout the full lifecycle of an individual.</p>		
<p>Errors in the 2017 RoV</p>	<p>There are approximate 500,000 Records in the Register with errors e.g. missing ID or passport, use of letters instead of numbers, bad length of ID or Passport number, bad age (1800 to 1899)</p>		<p>Commission reviews the BVR data capture system that can detect errors during data capture and compilation of the register</p>	<p>Commission reviews the BVR data capture system that can detect errors during data capture and compilation of the register</p>	<p>Round table meetings with IEBC</p>

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Errors in the 2017 RoV	The enrolment screen on the BVR kit does not have input controls to enforce the requirements over the validity of voter eligibility documents, national identity document (ID) number or a passport. As a result, it is possible to capture invalid details and particulars in the BVR systems e.g. alphabetic characters in ID number field and numeric characters only in the passport field.					
Elections and Voter Registration						

<p>Presence of dead voters in the Register</p>	<p>No central electronic list of the number of deceased voters in the country that is kept by the registrar of births and deaths.</p> <p>There could be 1,037,260 deceased persons in the 2017 RoV and the process of removing dead voters in the register is ineffective.</p>	<p>IEBC to be proactive invoke Article 35 of the constitution to compel state departments with data and information that is pertinent to voter registration and compilation of an accurate register.</p>	<p>IEBC in collaboration with all electoral actors to develop a removal of dead voters from the RoV Policy</p> <p>IEBC TO Regularly verify voter registration data with external data</p>	<p>IEBC to enhance the use of biometrics to identify voters during voting</p> <p>Nullification of the RoV after two electoral cycles</p>		<p>Round table meetings with IEBC and Registrar of Births and deaths</p>
	<p>There are no formal procedures for multi-agency collaboration in the provision of the comparison data and hence posing a challenge in obtaining the data.</p>					

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Elections and Voter Registration						
Securing the integrity of the party nomination process		Enhance the capacity of dispute resolution institutions and oversight institutions (i.e. Office of the Registrar of Political Parties and IEBC).	Rationalize the timelines and stagger party nominations.	De-link IEBC from determining and adjudicating disputes from party primaries	ORPP, Parliament, IEBC, KLRC	Round table meetings and interviews Fully capacitated and facilitated CEBs. Amended subsidiary legislations- PPA, IEBC Act, CoK Number of policy briefs generated and disseminated.
		Political party county boards to handle grassroots elections and not rely on national boards. Political parties should adhere to their respective Constitutions and hold democratic regular elections failure to which they should be deregistered.	Boost funding for PPDT in particular and devolve its function to the counties. Amend the Section 44 (1) of the PPA to create a Fund similar to PP Fund. Alternatively, amend section 25 of the Act, to allow PPDT to benefit from the fund			

Funding for political parties	Only few political parties are funded;		<p>Amend Section 25 the PPA to provide a specific % of funding for all registered PPs and another % distributed based on performance during the last general election.</p> <p>Amend the PPA to compel the Auditor General to audit all political parties irrespective of whether they receive public funds or not.</p>	ORPP, Parliament, IEBC, KLRC	<p>Round table meetings and interviews</p> <p>Fully capacitated and facilitated CEBs.</p> <p>Amended subsidiary legislations- PPA, IEBC Act, CoK</p>
	<p>Political parties used non-updated voter registers compiled by the Independent Electoral and Boundaries Commission (IEBC) to conduct party nominations</p>	<p>Enforce the provision that requires all political parties to keep updated register of members.</p> <p>The Registrar should conduct spot checks to ensure members provided by PP belong to the said PP</p>		ORPP, Parliament, IEBC, KLRC	<p>Round table meetings and interviews</p> <p>Fully capacitated and facilitated CEBs.</p> <p>Amended subsidiary legislations- PPA, IEBC Act, CoK</p>

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Elections and Voter Registration						
	Few and inadequately trained political party agents.	Need to professionalize party agents in political party processes including nomination. Party agents should be trained in advance and only those that undergo training to be allowed into the polling/tallying centers.			ORPP, Parliament, IEBC, KLRC	Round table meetings and interviews Fully capacitated and facilitated CEBs. Amended subsidiary legislations- PPA, IEBC Act, Cok
	Lack capacity and resources of various leagues to implement their own programmes and be active in party affairs	Parties with support of the ORPP and other stakeholders should develop clear guidelines on how the 50% of monies allocated to the marginalized groups should be shared among themselves.			ORPP, Parliament, IEBC, KLRC	Round table meetings and interviews Fully capacitated and facilitated CEBs. Amended subsidiary legislations- PPA, IEBC Act, Cok

	Lack of regulations to provide for the distribution of the 30% allocated to the marginalized groups.	Parties to ensure that the various leagues within the party have capacity in project management, resource mobilization, budgeting, campaign management among others.			
Under-representation of the marginalized groups within the Governing Body of the Political Parties	The PPA, 2011 does not provide for threshold representation of women, youth and other marginalized groups in the NEC but rather lumps them all in one ambiguous group of the minority and marginalized	Amend Section 7(2c) of the PPA to explicitly provide for representation threshold for women, youth and PWD's within the governing body of the party.		ORPP, Parliament, IEBC, KLRC	Round table meetings and interviews Fully capacitated and facilitated CEBs. Amended sections of the PPA and other legislations.

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Elections and Voter Registration						
Regulating Political Parties Financing	Implement the Election Campaign Finance Act 2014.	Amend Section 25(2)(a) of the Political Parties Act.			ORPP, Parliament, IEBC, KLRC	Round table meetings and interviews
	Enforce regulations requiring political parties to disclose any external financiers.					Fully capacitated and facilitated CEBS. Amended PPA; Observer reports on the number of regulations of regulations enforced.
Promoting integrity	Promoting Efficient Intra-Party Dispute Resolution Mechanisms	Develop model rules for internal dispute resolution mechanisms.			IEBC, ORRP; Political Parties,	Round table meetings and interviews
	Political Parties do not have an internal mechanism for reviewing candidates and clearing them to ensure they comply with chapter six of the constitution.	Create awareness on alternative dispute resolution mechanism within the PPs;				Fully capacitated and facilitated EBs.
		Enforce integrity requirements in the process of nomination.	Political parties with the support of the ORPP should develop standardized guidelines for verification of officials and candidates in compliance with the Leadership and Integrity Act, 2012		IEBC, PP Election Boards; ORPP	Round table meetings and interviews

Elections and Persons with Disabilities (PWD)

<p>Enhancing gender parity, representation of youth, PWDs and marginalised groups</p>	<p>Enact the legislation required by Article 100. Legislation passed should provide a clear framework for political representation of PWDs.</p> <p>Develop regulations to sanction political parties that do not comply with the requirement for youth, women and PWDs nomination.</p>	<p>DPO's and national council of persons with disabilities to lobby this through the parliament</p> <p>DPO's to advocate for this through existing political parties by involving champions with disabilities in the political parties.</p>	<p>DPO's and national council of persons with disabilities to lobby this through the parliament</p> <p>National DPO's to lobby for policy formulation through registrar of political parties</p>	<p>National DPO's</p> <p>NCPWD</p> <p>CVO</p> <p>IEBC</p>	
	<p>Develop a tool for capturing disaggregated data of voter turnout in terms of gender, age and PWDs.</p>	<p>Training of IEBC registration personnel on disability matters</p> <p>National Council to provide data to the IEBC</p>	<p>Training of IEBC registration personnel on disability matters</p>	<p>IEBC</p> <p>NCPWD</p> <p>KNBS</p> <p>UDPK</p> <p>CVO</p>	

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION					M&E
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties
Enhancing participation of PWDs		Develop a policy on Special Groups participation in Elections and continuous monitoring of the policy implementation. Implement the use of tactile ballots to promote the secrecy of ballot for PWDs.	Elections and Persons with Disabilities (PWD)		
			DPO's and CVO to advocate for inclusive (PWD) policy formulation. Training IEBC personnel on use of accessible and disability inclusive material like braille, tactile, plain and simple language for persons with intellectual disabilities, sign language and different types of impairments. DPO's to lobby for this through public service commission. Budget allocation for inclusive services	PWD and DPO to participate in an inclusive policy formulation As part of 5% affirmative action employ champions with disabilities to advocate for inclusive political participation. IEBC to ensure polling stations are physically accessible and they comply with universal design in order to ensure that persons with disabilities are able to participate in political processes on equal basis with others. IEBC to provide a specific desk for persons with disabilities during voting process.	NCPWD UDPK CVO IECP Public service commission.

				IEBC to use technology in ensuring inclusive elections.		
	A definition of a person with a disability must be clearly made.	Need to re-look at the comprehensiveness of the concept of disability as captured in the legal instruments as most disabilities might have been left out in definitions; Combination of definition from the 2003 persons with disabilities Act, Constitution of Kenya, Convention on the rights of persons with disabilities and different impairments recognized by the NCPWD provide a base for defining disability.				
Elections and Security						
Enhancing the role of elections observers, monitors and journalists	Need of clarity on the type of accreditation to be used by observers, monitors and journalists to gain access to a polling station and also the tallying and transmission center.	Civil society to invest in better equipment for the monitors to effectively carry out their monitoring work by providing better devices for video recording.	The role of identifying elections observers should be left to the presiding officers and not security agents manning the polling station.	IEBC	Stakeholder/roundtable meetings between IEBC and other elections stakeholders.	
		Need to build capacities of HRDs on digital security.	The security of IEBC officials should be guaranteed to avoid attacks like it happened in Kisumu in 2017.			
		Strengthening of HRD's capacity and encouraging them to utilize new media in particular social media platforms e.g. Facebook, Twitter and WhatsApp Messenger.				

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION					
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties
Elections and Security					
		<p>CSOs should facilitate multi-stakeholder consultative forums between media, duty bearers, HRDs and other stakeholders in order to enhance effective communication and networking in case of violations against HRDs and journalists within the counties and regions.</p> <p>Civil society should consider developing a faster reporting and response mechanism for HRDs.</p> <p>Civil society should work with IPOA and other HRD organizations to help in monitoring especially in areas that cannot be easily assessed as a result of curfew or clashes.</p>	<p>HRDs should maintain impartiality, credibility and professionalism. HRDs should be thoroughly vetted to ensure that they are not influenced by their political affiliations. HRDs should be vigilant and take precautions for their safety and wellbeing in the course of their work.</p>	<p>HRDs should maintain impartiality, credibility and professionalism. HRDs should be thoroughly vetted to ensure that they are not influenced by their political affiliations. HRDs should be vigilant and take precautions for their safety and wellbeing in the course of their work.</p>	Police Service Commission
Safe-guarding the operating environment of HRDs, journalists, IEBC officials and general public		<p>Provide security for members of the public and their property especially livestock for the pastoralist communities, regardless of their political affiliations.</p>	<p>The government should ensure a conducive working operating environment for HRDs and CSOs in the country that is free from violence and threats.</p> <p>Need to invest in training of security personnel on human rights-based crowd control and security management.</p>	<p>NPSC should consider establishing human rights desks at police stations.</p>	

		Urgently respond to and address electoral malpractices and human rights violations and embark on resolving election conflicts through dialogue and reconciliation programs.			The government should prioritize the security of entrants to the political environment as the incumbent enjoy state security. Train observers.	
Prisoner and Diaspora and Electoral Processes						
Lack of identification cards for inmates				The National Registration Bureau in collaboration with Kenya Prisons should undertake to ensure that all persons that are incarcerated and wish to have ID cards are provided with the same promptly.	National Registration Bureau	
Management of the electoral process in prison.		Prisoner regulations as provided by the Elections Amendment Act 2017, need to be set up before the next General Elections. The regulations will set a clear roadmap in enabling future management of prisoners' electoral governance.			Parliament, IEBC,	

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Prisoner and Diaspora and Electoral Processes						
Campaigns within prisons		In appreciation campaigns as a fundamental aspect of an electoral cycle; and also the security functions of a prison, there is need for a stakeholder engagement to design the best way to address the above issue without compromising either.			IEBC Kenya Prisons Stakeholder	
Prisoner transfers		Once the verification of the voters registration exercise has lapsed, prisoner transfers should be minimized to ensure inmates are not disenfranchised. Alternatively, IEBC should maintain an integrated register across the prisons which should allow inmates to vote from any prison. This is in appreciation of the special circumstances that faces the inmates.			Kenya Prison Service	

Facilitating diaspora voting and representation			IEBC should consider Electronic voting (E-Voting) to be able to address the cost and logistical challenges while voting like was the case in Estonia and GE; M-Vote (M-Kura mobile voting), I-Vote (Online Voting) should be considered and used as alternative/complimentary to the traditional in person voting	Amend Art 8(4) of Citizenship & Immigration Act which puts unnecessary administrative hurdles on dual citizens. Review the law to clarify on voting by dual citizens.		
Prisoner and Diaspora and Electoral Processes						
			A technology-anchored solution (especially mobile, online/electronic, and social media-based) will ensure catchment and participation of a significant Diaspora population.			
			Remove the unconstitutional requirement for 'regular passport' to vote.			
		The decision to have consulates, embassies and other such properties to act as registration and voting systems need to be properly clarified lest it be misunderstood as interference.				Parliament, IEBC, Ministry of Foreign affairs, Diaspora association
Need for clear roles between IEBC, Foreign Ministry and Diaspora Associations						

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Prisoner and Diaspora and Electoral Processes						
		Foster a working relationship with Diaspora organizations in host countries.			IEBC, Diaspora associations	
	Voter Apathy among the diaspora	Undertake an independent study to establish why diaspora for instance in RSA, Tz didn't register in large numbers to vote.				
One Page Online Form		IEBC develops one page online form of not more than 10 questions similar to what Germany, Austria and Switzerland have, to help the commission to identify and map out basic information about Diaspora.				
Need for Extensive Civic and Voter Education			The host government's cooperation, support and facilitation of the dissemination of information, including campaign materials as well as voter and civic education, is critical to the success of any external voting programme (In the Eritrean referendum of 1991, for example, Sudan's cooperation and initiative were essential to the education of voters in refugee camps)			

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Prisoner and Diaspora and Electoral Processes						
		Case of undocumented diaspora. Evolve a mechanism to deal with this matter, e.g. hold bi-laterals talks with host countries as well as countries which don't allow dual citizenships like Germany, or issue non-resident IDs like India does, etc				
	Difficulty in monitoring elections abroad	Explore reciprocal partnerships with external monitors and/or foreign missions				
		Establish formal or semi-formal partnerships with active diaspora organizations and political party offices.				
		IEBC to have dedicated Diaspora Liaison Office to streamline and enhance diaspora voter / monitor coordination.				

Elections and Participation of Women

<p>Realization of the not more than 2/3rds Gender Rule</p>	<p>Amend the Constitution as was proposed in the Mutula proposal (Bill) by amending Articles 91, 96 and 97 of the Constitution. This should be coupled with a ceiling on the number of MPs.</p> <p>IEBC should enhance its regulatory role specifically those relating to political parties. Ensuring that parties adhere to affirmative action in party lists as well as during nominations is critical towards enhanced women's political participation.</p> <p>The ODPP should strictly enforce the Election Code of Conduct so as to deter would be perpetrators.</p>	<ul style="list-style-type: none"> Parliament should work towards a practical formula towards the two thirds gender rule at parliamentary level. This will ensure higher representation of women in the legislature. <p>The ORPP should tighten and enforce regulation on Political Parties that do not truly mainstream gender in their operations. The punitive measures for parties which do not comply should be fully adhered to i.e. deregistration of parties.</p>	<p>Political parties to nominate alternate male and female candidates.</p> <p>Come up with a mechanism through which political parties can be induced into mainstreaming gender within the parties and nominate women to run for political office.</p>	<p>Parliament</p> <p>IEBC/ ORPP</p> <p>Civil Society</p> <p>ODPP</p>
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POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Elections and Participation of Women						
	Lack of adequate security and coordinated response mechanism for GBV victims	<p>The Police should develop a proper system of complaints handling on GBV cases with thorough investigations and follow through being provided. This will instill confidence in the criminal justice system.</p> <p>The police stations to have a human rights desk that is not manned by the police</p>			<p>Parliament</p> <p>IEBC/ ORPP</p> <p>Civil Society</p> <p>ODPP</p>	
			<p>Part of the political parties fund be allocated among political parties as an incentive based on the number of women that a political party has nominated and who have been elected.</p> <p>Impose a party list system with proportional representation in which the parties will nominate alternate male and female candidates.</p> <p>Prescribe and apply stiff penalties against any political party or person who abuses laws and regulations made for purposes of gender inclusivity, empowering the youth and persons with disabilities.</p>			

	<p>Inadequate Public Communication, lack of timely information sharing, sometimes information was not consistent and lacked details.</p> <p>Nullification of presidential elections held on 8th August 2017</p> <p>Failure of substantive number of voters to participate in the presidential repeat elections of October 26th 2017</p> <p>Competing centres of power (Commissioners among themselves, commissioners vs. secretariat)</p>								<p>Establishment of a new Commission to Administer and Manage the 2022 GE and Referenda</p> <p>Review the process of constituting the IEBC selection panel to ensure that it is more inclusive and that it includes electoral professionals bodies.</p>			
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POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Elections Administration and Management:						
			Review the neutral expert approach to the composition of IEBC and compare its strength and weaknesses against other approaches such as IPPG and mixed approaches			
			Evaluation of the performance of the current Secretariat to inform decisions on recruitment of the new secretariat staff			
			IEBC must ensure that staff recruited are of high integrity and have no questionable character or political affiliation			
Lack of trust and confidence in the entire 2017 electoral processes	<p>Audit Issues have been raised on the management of the IEBC resources.</p> <p>Sending of the IEBC CEO on compulsory leave</p> <p>Resigning of the four IEBC commissioners</p>	IEBC should engage an independent evaluator to undertake Post-Election Evaluation to document best practices, challenges and recommend strategies for future improvements	Engage an independent institution to undertake a comprehensive audit of the legal, institutional, technological and operational audit of the IEBC management and administration of the entire 2017 electoral process		IEBC	Interviews with the IEBC and the independent audit body

<p>Logistical and operational challenges in the conduct of 6 elections in a day.</p>	<p>Conduct of six elections in one day proves an ambitious task by the IEBC and cumbersome for the general public. This poses inevitable challenges of holding numerous elections in a day</p>		<p>Amend the Constitution to provide for staggering of the six elections. The constitution should provide that presidential and members of the National Assembly be held at the same day while those of Governors, Senators and MCA elections are held at the same day</p>	<p>Parliament</p>	<p>Discussion meetings with IEBC and other electoral stakeholders</p>
<p>Lack of mechanisms to back-check cleared candidates thus resulting to unqualified candidates vying for elections</p>	<p>Some of the elections petition are based on qualification of candidates, Miguna Miguna case</p>		<p>IEBC Must adhere to the constitutional and Legal requirements of integrity of the aspirants to clear them to vie for various seats</p> <p>The IEBC must not wait for a court case to be filed and determined before it can bar a candidate with integrity issues from the electoral process.</p> <p>IEBC should partners with other government institutions to vet and ensure that all candidates vying for an election meet the legal thresholds</p>	<p>IEBC</p>	<p>Meetings with IEBC staff</p> <p>Interviews with Electoral Candidates</p>
<p>Failure to adhere to some aspects of the law</p>	<p>Due to failure to adhere to certain laws (including public participation), IEBC was faced with several litigations regarding management of the procurement process e.g. issue of ballot paper procurement and Technology. This constrained electoral timelines further</p>		<p>IEBC to strengthen its legal department and strictly adhere to the electoral laws to avoid numerous litigation processes that impact on its work</p>	<p>IEBC</p>	<p>Discussions with IEBC</p>

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Elections Administration and Management:						
<p>Lack of institutional ownership of Technology coupled with lack of transparency and accountability in Elections Results Transmission process.</p>	<p>Even with the introduction of technology, there seemed to be little or no transparency in the management of results transmission e.g. IEB’s failure to comply with SCok order to provide access to the servers.</p> <p>Some leaders felt that Kenya was having computer generated leaders</p>	<p>Advance feasibility studies and simulations of new/reviewed technology should be undertaken three at least two years to elections to test its applicability and functionality before elections</p>			IEBC	Roundtable meetings with IEBC

	<p>IEBC should ensure that there is a complementary mechanism whose procedures are simple, accountable, transparent and verifiable, well-known, and understood by all stakeholders that could be deployed in the event of technology failure.</p>		
	<p>Registration of ICT devices used in the election including GPS coordinates</p>		
	<p>Technology audit of the electoral systems should be undertaken to identify points of failure and strategies for improvement.</p>		
	<p>Review the current results transmission system to identify gaps and document proposals for improvement.</p>		
	<p>Strengthen the results transmission to be more transparent and accountable</p>		
	<p>Consider hosting elections server in Kenya and engaging local ICT experts</p>		

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Amendment of electoral laws too close to elections day	Resulted in compressed timelines leading to operational pressure on the part of IEBC		Invest in best leaders who understand the implications for amending electoral laws few months to elections who should be the ambassadors in the parliament of good practices pertaining electoral legal reforms.		Parliament	Roundtable meeting and interviews with Parliamentary Committee on justice and legal affairs
	e.g Amendment that allowed the IEBC vice Chairman to carry out the chairman's duties in his absence, that reduced the quorum for IEBC Meetings from five to three, allowing decisions to be taken by a vote of just two IEBC members, Lack of adequate consultations on legal reforms (Jubilee unilateral amendment to the electoral legislation during the fresh elections)		Strengthen public participation on electoral legal reform agenda			

Lacks strategies to enhance the voting rights of those who are not able to cast their votes on Election Day e.g. Observers, Security officers, those who are hospitalized etc.	A number of eligible voters were disenfranchised since they could not vote on elections as they were engaged as election officials, security officers, observers etc.		Amend the Elections Act 2011 to provide for advance voting	Parliament	Roundtable meeting and interviews with Parliamentary Committee on justice and legal affairs
Role of IEBC in resolving disputes emanating from party primaries conflicts with that of PPDT	The IEBC role in resolving disputes emanating from party nominations burdens and conflicts with other mandated bodies such the PPDT and the courts	Boost funding for PPDT and devolve its functions to the counties and sub counties	There is need for clear demarcation of the role of IEBC as far as party primaries are concerned. For example for IEBC to either manage the political party primaries or address disputes emanating from party primaries.	Parliament IEBC	Meetings with IEBC and Members of parliamentary Committee on Justice and legal affairs
Constrained timelines for the filling and determination of presidential elections petition	Short timelines for the filling and determination of presidential petition. The law provides for 21 days to file and determine presidential petition		Amend article 140 (1 & 2) of the constitution to increase the timeline for filing, hearing and determination of the presidential elections within 30 days.	Parliament	Members of parliamentary Committee on Justice and legal affairs and Judiciary
Lack of inclusivity of the current Electoral system - winners takes all and the presidential system of governance	There is a general feeling that the current electoral system and system of governance are not inclusive.		There is need to review the current electoral system and system of governance to establish gaps. Need to undertake a comparative analysis on different electoral systems and systems of governance to establish their pros and cons and whether they fit in the Kenyans electoral and political processes.	Parliament and Political parties	Interviews with members of Parliament and political parties

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION					
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	M&E
Elections Administration and Management:					
Failure of IEBC to implement Observer report findings including findings from KPMG Report	Some of the challenges in 2007 and 2013 on management of elections still arose in 2017 due to the failure of IEBC to fully implement observation recommendations.		IEBC need to adopt the CSOs Framework / Matrix with recommendations and commit to implement it. It should provide regular feedback with regard its implementation and challenges experienced to inform continuous engagement with key actors.	IEBC	Meetings with IEBC
Voter Education and Electoral Processes					
Voter Education	Low voter registration	Develop and institutionalize strategies for continuous voter registration.		DoJ/MoD &ASAL; IEBC, NSAs	Existence and operationalization of plan for continuous voter registration
	Lack of resources to support voter education work	Allocate sufficient resources for effective mobilization, implementation management of voter education.		DoJ/MoD &ASAL; IEBC, NSAs	Fully staffed and functional voter registration centers across the country
	Limited reach of voter education	Conduct voter education at the ward levels		DoJ/MoD &ASAL; IEBC, NSAs	Voter education carried out at the ward levels

					County governments have functional & operational civic education units County led/financed Civic education initiatives	DoJ/MoD &ASAL; IEBC, NSAS
Poor resourcing	Lobbying for adequate budgetary allocation for civic education at the national and county level from the Kenyan Government in order to enhance public participation and voter education. support/advocate/demand for the operationalization of section 100 of the CGA 2012 Partner with county governments to operationalize section 100 of the CGA 2012					DoJ/MoD &ASAL; IEBC, NSAS
	Limited engagement by the government in the delivery of civic and voter education	The K-NICE rollout needs to begin in order to buttress ongoing civic education work at the County level.			Operationalization of KNICE Existence of nationwide KNICE led civic education programme	DoJ/MoD &ASAL; IEBC, NSAS
	Limited resources	Need for innovation in dissemination of information in order to address the limited resources available for civic education, counter the culture handouts Community driven Collective philosophy to do away with allowances.			Reduced demand by community members for handouts to attend civic and voter education forums	DoJ/MoD &ASAL; IEBC, NSAS

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Voter Education and Electoral Processes						
	Business as usual in the delivery of civic education	Embrace Technology- use of short edutainment videos that can be shared on social media Use of Art, sports & culture/drama/ cultural events/soccer tournaments			DoJ/Mod &ASAL; IEBC, NSAs	
	Implementation Time frame	IEBC to undertake voter education throughout the election cycle. NSA to source for funds and plan their civic education intervention throughout the election cycle			DoJ/Mod &ASAL; IEBC, NSAs	# of voter / civic education initiatives being undertaken
	Monetization of civic education by media houses.		Media houses should conduct civic education as part of their CSR initiatives. MoU/content development support/training of media hse personnel on civic and voter education etc.. Joint engagement of media house by stakeholders during the running of civic/voter education campaigns		DoJ/Mod &ASAL; IEBC, NSAs	# of media led civic and voter education initiatives carried out monthly/ quarterly etc.

			Enhanced synergy building of civic education providers in order to ensure effective mapping and coverage of the country.			DoJ/MoD &ASAL; IEBC	Joint implementation and planning of civic education indicatives (by all key players)
	Uncoordinated delivery of civic and voter education		Voter education must be practical and the IEBC should conduct simulation exercises of the actual balloting process.			DoJ/MoD &ASAL; IEBC	Practical voter education sessions
	Content of voter Education		Design targeted voter education programmes which are specific to the intended audiences.			DoJ/MoD &ASAL; IEBC	voter specific trainings
			Voter education must prepare of both voters and candidates to accept the outcome of the elections.			DoJ/MoD &ASAL; IEBC	Redesign/ include content to address the issue of losing elections
	Ignorant electorate AND Disengaged electorate					KICD; MoE; DoJ/MoD &ASAL; IEBC, NSAs, ;EACC, NCIC	Civic education incorporated in the school curriculum
						IEBC, NSAs, ORPP	
							Support /infuse civic education in peace clubs in primary schools.
							Provide political education
							Political education content included in civic education materials

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Voter Education and Electoral Processes						
				Undertake civic education competency index	NSA	Availability of Information on the level of civic education knowledge gaps to be used in civic education programming
Youth and Electoral Processes						
Lack of disaggregated data	Aggregate data of aspirants, membership by age to factually authenticate the extent to which youth participate and are represented in the electoral process.	Formulate and enforce regulations requiring that political parties disclose the number of youth that are their members and officials and the Party's policy for affirmative action for women, youth, PWDs and marginalized communities as a requirement for registration.			IEBC ORPP Political Parties Parliament	Aggregated data by youth gender, PWD of nomination, elected leaders and party member list
Lack of IDs	Gazette and implement amendments to the Elections Act allowing voter registration using waiting cards.	Continuous issuance of IDs	Continuous issuance of IDs	Continuous issuance of IDs Mandatory issuance of ID to over 18 youths in institution of learning	Office of the Registrar of Persons IEBC	Number of IDs issued per year Youth of 18 years registered in schools

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION					
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties
Youth and Electoral Processes					
Political Parties not complying with the nomination rules and the constitution.	Safeguards the nomination list from interference by political operatives and provide proper and robust mechanisms to deal with parties that don't follow the nomination guidelines and their own nomination rules.	Prescribe and apply stiff penalties against any political party or person who abuses laws and regulations made for purposes of gender inclusivity and empowering the youth.	Deregistration of political parties that doesn't comply	ORPP IEBC	
Party membership lists poorly maintained and stored	Political Parties to revise their constitutions and nominations rules to make them compliant to the Elections (General) (Amendment) Regulations, 2017, Elections (Voter Education) Regulations 2017 and the Elections (Party Primaries and Party Lists) Regulations, 2017.	Make a mandatory requirement for Political Parties to support the youth candidates vying for elective seats by waiving nomination fee for the youth.			
	Allocating certain positions within the party leaderships to young people (below the age of 35).	Political parties to publish their constitutions and nomination rules on their websites.			

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Media and Electoral Processes						
Reporting offenses and feed backing.	Uncoordinated engagement with Media Regulation agencies	Map out these agencies. Seek mutual relationships. Push for issues on Election reporting into media training curriculum?	Sign MoUs and implement.		ELOG Kura Yangu MCK	
Promote programs for journalists on election observation. Educate journalists, reporters	Media misreporting on election related issues.	Project evaluation: lessons learnt, challenges, recommendations.	Engage with KEG. Engage with media owners. “Walk” with editors and reporters in the observation mandate.	Media engagement strategy	ELOG KEG KUJ	
Voter Education -offered through the media	Profit-driven media as a big challenge during elections.	Map out strategies to engage with media owners, editors, reporter CSOs to network/ engage with media owners for probable free electoral education services.			Media Owners, CAK, Media Council, CSOs	

Performance and delivery	Observe/Monitor media role in elections.	Map out partnerships (KAPF, GEO Pol, IPSOS)	Develop and test tools Sign MoU among actors on monitoring the media.	Produce reports with clear recommendations on legal, technical and performance aspects.	Government Agencies (MCK, CA) CSOs	
Attack on the media.	*Violence against Journalism. *Media Censorship	Regulation/license/perform mandate. United effort to agitate against such. Attack on media is attack on democracy!	Monitor, document and act on abuses. Continuous engagement and collaboration with governments. Continuous engagement with security organs. Petition Courts on unconstitutional laws. Engage more with CSOs for coordinated action.		MCK CA	
Unprofessionalism in journalism	Biased coverage during elections.	Regulation/license/perform mandate Train journalists on electoral processes, ethics and expectations.	Standardization of/streamline curriculum in media training. Need for literary programs on targeted topics		MCK Donors. CA.	

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION						
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	Responsible Parties	M&E
Media and Electoral Processes						
Political media ownership	interference with objectivity.		Push for objective management of editorials.	Lobby for more community-oriented (not-for-profit) Radio/TV stations.	Donors. MCK. CA. KUJ. CSOs	
Access to information law	media law benefits not fully realized. Laws against a free media passed by various county governments e.g. Homabay	Conduct Survey to ascertain counties that have enacted such laws.	Review these laws; identify gaps against relevant constitutional provisions and propose changes. Build partnerships with the judiciary for sustainable interventions.		MCK. KUJ. EGK. CSOs.	
Electoral Legal Framework						
Constitutional Reforms						
	Staggering of elections		Amend Articles 101(1), 136(2)(a), 177(1)(a), and 180(1) to stagger elections to have elections on the two levels of government held on separate days.		Parliament, IEBC, CSOs	
Promoting justice and enhancing legitimacy in Presidential Petitions	Time of hearing petitions	Amend Article 140(2) to enlarge time for hearing Presidential Election Petitions to 21 days			Parliament, IEBC, CSOs, Commissions	
Conducting of presidential petition		Amend Article 140(3) to reduce the time for conducting Fresh Election following invalidation of the election of President-elect to 30 days			Parliament, IEBC, CSOs	

Threshold for popular Mandate	Lack of a provision on threshold during a fresh presidential election.		Amend Article 138(4) to increase the threshold for popular mandate to more than half of all the votes cast in the election, by at least fifty per cent of the registered voters		Parliament, IEBC, CSOs, Commissions	
Constitution of IEBC.	Un-replaced IEBC Commissioners	Amend Article 134(2) (b) to enable the replacement of IEBC Commissioners in case of resignation			Parliament, IEBC, CSOs	
		Urgent replacement of IEBC Commissioners pursuant to Section 7A of the IEBC Act as amended by the Election Laws (Amendment) Act of 2016			Parliament, IEBC	
Composition of IEBC commissioners	Trust issues at the IEBC		Amend Article 88(2) to revise eligibility for appointment as IEBC Commissioner to introduce middle ground mix approach incorporating neutral experts and at least two political party representatives		Parliament, IEBC, CSOs	
Regulation of Money in Elections		Review Election Campaign Finance Act to strengthen disclosure requirements on sources and donors of campaign funds.			Parliament, IEBC, CSOs	
Coordination of Election Oversight Agencies		Improve coordination of Election Oversight Agencies for effective enforcement of election laws			IEBC, ORPP, EACC, CAJ, ODPP, NPS, KNCHR, NCIC	
Integrity Issues			Review the Leadership and Integrity Act to enhance legal and social vetting of candidates		Parliament, IEBC, CSOs	

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION					
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	M&E
Electoral Legal Framework					
Appointment of Selection Panel for IEBC			Review law on appointment of IEBC Selection Panels to reintroduce representation from the Judicial Service Commission, Law Society of Kenya, Kenya Anti-Corruption Advisory Board, Association of Professional Societies of East Africa, and religious groups)	Parliament, IEBC, CSOs, religious groups	Responsible Parties
Transmission of Election Results		Amend Section 39(1) of the Elections Act to require electronic transmission of all results			Parliament, IEBC, CSOs
Protecting the integrity of legal framework for elections				Amend the Constitution to restrict amendments to electoral laws six months to elections.	Parliament, IEBC, CSOs
Streamlining the appeals process			Formulate rules to govern election appeals from the Court of Appeal to the Supreme Court.		Parliament, IEBC, CSOs
Streamlining the jurisdictional roles of electoral institutions in electoral disputes and enhancing efficiency of dispute resolution mechanisms	Multiple Jurisdictions		Enhance the visibility of the PPDT in settling electoral disputes.	Amend Article 88(4) of the Constitution to disassociate IEBC from hearing and determining electoral disputes.	Parliament, IEBC, CSOs

	Lack of strategies in use of technology.	Develop and implement strategies for sustainable and reliable use of technology in election administration and management. Undertake feasibility studies before introduction of a new technology. Pilot test any new technology before utilization on a large scale elections.	Integrate security before publication of databases with personal information.	IEBC, Parliament	
		Undertake feasibility studies before introduction of a new technology.	Review technology provisions in all elections laws eg Election Laws (Amendment Act 2016)	IEBC	
		Pilot test any new technology before utilization on a large scale elections.		IEBC	
	Inadequate stakeholder engagement	Continuous engagement with the technology community		IEBC	
		Technological audit of the electoral systems to identify points of failure. Review the staffing procedures for polling stations	Registration of devices used in elections including GPS coordinates. Early and comprehensive training of staff. Use of mechanisms such as the universal service fund to provide connectivity to underserved areas.	IEBC	Voter identification system- Publish identification data such as the number of people identified using the different systems with poll results (support docs).
				IEBC	Explore running elections on Block chain Infrastructure.

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE ELECTORAL REFORM AGENDA IN KENYA

RECOMMENDATION					
Issue	Findings	Short term by December 2018	Mid-term by December 2020	Long term April 2022	M&E
Electoral Legal Framework					
	Lack of adequate funding	Use the universal service fund to provide connectivity to underserved areas.			IEBC
Implementing Open Elections		IEBC to publish openly results of the General Election 2017, electoral boundaries and GPS of polling stations	Develop Open Elections Data policy	Fully compliant with the 9 open elections principles.	IEBC
		Implement security features to protect Electoral Roll data	Implement a full and a open electoral register		
		Push for implementation of comprehensive legal framework for data protection - Elections (Technology) Regulations, 2017			IEBC, CSOs
		Develop Open Elections Data portal - encourages civil society to unite behind single platform			IEBC, Parliament

SECTION 5 PRESENTATION SYNOPSIS

Session 1: Elections Administration and Management in Kenya

Key Points

- IEBC's election budget had been questioned for being very high.
- Integrity of IEBC's management of elections especially results transmission had been criticized with stakeholders citing lack of goodwill on the part of officials.
- IEBC had also been criticized for allowing the political class to meddle in its management of elections.
- Inefficient management of IEBC procurement processes affected planning for elections
- IEBC was also accused of failing to adhere to some laws and regulations, for example, printing of excess ballot papers.
- Voter education management by IEBC did not meet expectations of stakeholders.
- IEBC was also accused of lacking transparency hence failure to open servers as per court order.

Session 2: Overview of the gaps in the Elections legislation in Kenya/ The Role of the Courts in Electoral Processes:

Key Points

- Investment in a legal/constitutional culture that demanded respect for the law ;
- Institution of legal obligations for Electoral transmission by IEBC of all results and not only for presidential results;
- Emphasis on adherence to the Code of Conduct during Elections, including procedure of appointments to institutions working on Elections;
- Empowerment of magistrates across the country to resolve local party nomination disputes so as to solve the burden of political party members having to travel to Nairobi to trace law courts' political party tribunals – devolving disputes

POINTS TAKEN

A CSO PROPOSAL FOR SETTING THE
ELECTORAL REFORM AGENDA IN KENYA

- Address of claw-backs
- Review of the clearance criteria for candidates – the credibility of a good number of candidates cleared was wanting;
- Devolution of resolution of disputes resulting from local party nomination processes to magistrates across the country rather than the services being centralized at political party tribunals in Nairobi.

Session 3: Elections and Electoral Technology: The extent and effectiveness of the electoral technology for the 2017 elections

Key Points

- Security of the system- the database lacked a protection to ensure the database would not be easily harvested;
- Privacy and data protection of personal information contained in the IEBC register. **IEBC's response:** Integration of a captcha functionality on the portal but still not all challenges addressed.
- Confidence on use of the KIEMS (correct finger, amount of pressure to apply on finger)
- Technical challenges (access to networks when power sources were switched, password)
- If the BVID failed and the polling clerks were allowed to use the manual printout from the BVR to identify voters, it gave room for manipulation (manual printouts would have names of those who voted crossed out. Names of those who did not show up remained unmarked).
- Polling Clerks/Agents, especially in strongholds could conspire to 'vote' for the absentee and dead voters (impersonation).
- **RTS fails:** an opportunity for manipulation or change the tabulation form may occur;
- **BVR:** Power failure, Battery failure, software failure.

Destabilizing Effect of Elections on Freedom of Expression, Freedom of Association and Freedom of Assembly

- Censorship through new regulations (regulations on bulk SMSs);
- TV shutdowns;

- Attacks on journalists and other civic expressions;
- Increased incitement and hate speech online and offline;
- Insufficient reporting on Constitutional violations;
- Arbitrary arrest based on flawed laws e.g. arrest of WhatsApp group admins;
- Misinformation: Nuanced approach to fake news: not enough time to check validity of issues, plus a lot of apologies in papers on wrong names and statistics;
- Most attacks, harassments and other violations were not reported to law enforcements; Attempts to deregister KHRC, IFES, AFRICOG;
- Ban of protests in major cities;
- Unlawful conduct to protest by law enforcers;
- Missing link between IPOA investigations and DPP prosecutions.

Session 4: Elections and Security: Role of Security Personnel on Elections and Observer Security

Key points

- Put in place measures to deal with security incidences for observers;
- Factoring security within the election process;
- Take action on law enforcers who have violated the law.
- Need to agitate for Civic Education units in all counties;
- A diversified and interactive approach in civic and voter education;
- Need for observers to operate wisely and cautiously to protect themselves.

Session 5: Civic and Voter Education: Effectiveness of Civic and Voter Education, coverage of the voter education.

Key points

- President Uhuru Kenyatta, in his speech during the 2016 Jamhuri Day celebrations, said that foreign money was coming into the country “in the guise of supporting good governance or civic education”
- The suspension of the International Foundation for Electoral Systems (IFES)

elections based programme and many organizations thereafter felt pressured to carry out civic education in a less overt manner;

- Late rolling out of the voter education programme and delays on the part of IEBC to develop the updated voter education materials;
- A lack of coordination between those who were providing voter education, the IEBC and the national government led to inefficient and possibly repetitive programming;
- Actions geared towards limiting civic space including announcements made by Mr. Jackson Mandago, Uasin Gishu County Governor on the need to vet all civil society groups planning to undertake civic education and peace work in Rift Valley and for county security teams need to clear all NGOs;
- The January 6th 2017 government directive addressed to the 47 county Commissioners from the Interior Principal Karanja Kibicho asking for stricter monitoring on civil society organizations throughout the country.

Session 6: Elections and Human Rights: How did the 2017 Electoral Processes promote, protect Human Rights?

Key points

- There was lack of effective communication with the public on key electoral issues;
- A lack of clarity on how issues arising during mass voter registration would be resolved as instances such as shared identity numbers and persons already registered were missing from the register emerged;
- Insufficient information on the audit of the register of voters;
- The lack of credibility in the procurement process for ballot papers;
- A failure to enforce the leadership and integrity provisions of the Constitution;
- Shrinking civic space and;
- Insufficient coordination between state agencies in a manner that hampered law enforcement in relation to electoral offences

Elections and Post Elections

- Failure of Kenya Integrated Elections Management System: Occasioned delayed voting and turning away of voters;
- Electoral Malpractices: Unduly guiding voters on how to vote;
- Lack of support to special interest groups: Accessibility to the polling stations; lack of ramps, braille ballots for the visually impaired voters, lowered voting booth for people on wheelchairs and sign language interpreters;
- Discrepancies in tallying of votes and failure to avail information as required Form 34A in particular;
- Increased intimidation and shrinking of civic space.
- Concerns over the very heavy fines on Election petition losers and the way forward in either reducing the fees, or setting a standard fee to promote participation of all (wealthy and poor) in the process. **Feedback** (Andrew Songa): The heavy fines were introduced to do away with the many petitions that piled in courts after the 2013 elections. However, the recent fines are extreme, and something must be done to regulate that;
- Attack on human rights defenders to the extent of murder has been a huge challenge to election observers as human rights defenders;
- What is the worst that could happen if independent candidates outnumbered party members in Parliament? **Feedback** (Kennedy Masime): It has both advantages and disadvantages: It helps challenge party members in that they are reminded that there is an alternative to winning elections through political parties, but also, political parties play a critical role in creating frameworks with which to govern.

Session 7: Elections and Political Parties Processes: Conduct of Party Primaries, Dispute Resolution and Campaign Processes

Key points

- The party founders who also double as funders had a commensurate amount of say and influence.
- Political parties submitted fraudulently acquired membership lists that they themselves could not use during their nominations, hence the unfortunate recourse to outdated IEBC voters' registers.
- Party nominations were messy and the fallout was massive. It was not

unusual to find two returning officers announcing different results from the same elections which led to mass defections by losers to other parties;

- Inadequate an substandard voting materials – ballot papers without serial numbers or missing candidates' names or photos;
- Few and inadequately trained polling officials;
- Disruption of party primaries even by party members;
- Lack of mutual toleration - Political parties largely treated their competition as enemies and not worthy opponents;
- The window for defection to other parties was very narrow while that of becoming an independent candidate was relatively wide. This saw a remarkable rise in the number of independent candidates. A total of 4,940 individuals vied as independent candidates. In fact, the independent candidates held a national conference and even formed a caucus;
- Due to widespread malpractices, the number of disputes following party nominations was colossal. The Political Parties Dispute Tribunal (PPDT), the IEBC Dispute Resolution Committee and the courts in 2017 cancelled several certificates and ordered fresh nominations;
- Political parties attempted to forestall and minimize the impact of defections arising from nominations fall-outs by pushing them as close as possible to the deadline thereby worsening an already bad situation. Consequently, there was no ample time for dispute resolution;
- The tight election timelines subjected IEBC under pressure to print the ballot boxes. Justice was therefore sacrificed at the altar of efficiency;
- 305 nomination dispute cases were filed in court of which 125 ended in the High Court and 12 in the Court of Appeal. The judiciary thus struggled to determine the cases. Over 300 cases were filed before PPDT. IEBC extended the deadline for PPDT from 10th May to 14th May 2017 to conclude the cases. PPDT is poorly funded and staffed. It only had two panels sitting in Nairobi to handle all the cases;
- Political parties engaged in alternative dispute resolution mechanisms that tended to undermine democracy and disenfranchise the voters.

Positive Outcomes

- Security agents were responsive in addressing disputes;
- Present and Active Election boards;
- High voter turnout during the primaries;
- The legal framework is largely adequate – the gap is in the implementation.

Session 8: SIG Participation: Youth Participation in Elections

Key Findings

- High number of youth registered as voters – 50.7% of registered voters;
- There was a clear articulation of young people's agenda at county and national levels by those seeking elective positions;
- There was drop in the number of elected and nominated youth, a drop in the number of youth in political party leadership, as compared to 2013;
- Young people were manipulated by politicians to drive political agenda e.g. through bribery, spreading of hate speech and fake news on social media;
- More youth participated in the 2017 elections than 2013;
- Young people were in the forefront of setting the national agenda for young people through county vetting platforms and on social media through hashtags such as *#DearPolitician*
- Political nomination fees for youth were waived in most political parties to encourage participation;
- Youth participated in peace building while also demanding that politicians spell youth agenda in their campaign manifestos;
- Lack of disaggregated data on youth, based on gender and age, remains a challenge.

Women and 2017 Electoral Processes

Key points

- Low implementation of electoral laws and policies that favored women leadership by duty bearers such as IEBC and ORPP;

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- Violence against women (VAW) during party primaries and during the election hampered efficient participation in elections. Online violence was high with threats and intimidation at the forefront;
- Women candidates exhibited well thought out campaign strategies that ensured their election in Senatorial, Gubernatorial and MP seats;
- Electoral dispute resolution mechanisms remained out of reach for a majority of women candidates due to prohibitive financial costs and inaccessible party structures;
- The role of all forms of media in enhancing women's leadership remained relevant with emergent influence of social media on campaigns. Media coverage of women candidates remained wanting
- Overall the voting process on Election Day was peaceful with elderly, pregnant and mothers with children getting priority in the queues.
- Lack of adequate security measures to protect women voters and electorate, in some cases the police were the perpetrators according to victim accounts to civil society and other actors;
- Lack of a proper coordinated response to GBV victims i.e. reporting, medical assistance and psychosocial support. This left many women helpless;
- Lack of timely information on the electoral timelines to the women candidates leading to disqualification for some candidates;
- Lack of transparency and equality in critical party practices such as party primaries, issuance of party tickets and internal dispute resolution mechanisms

PWD and the 2017 Electoral Processes

Key points

- There is no disability mainstreaming policy and guidelines specifically focusing on PWDs on its wider inclusion and diversity policy;
- Some PWDs did not access voter education materials, for instance, the visually impaired ones;
- Right to secret balloting was violated for PWDs who were assisted to vote in 2017 elections;

- BVR kits did not have provisions for some PWDs;
- Widening gap between disability and development-48% drop in representation of PWDs in the County assembly. 17 counties did not nominate a single PWD
- Party nomination exercises lacked adequate measures to promote participation of PWDs high nomination fees levied prohibitive to PWDs.

Plenary on Youth, Women and PWDs

- Disaggregated data on PWDs and their participation is still a great challenge;
- Need to address the negative ethnicity perpetrated by young people on social media;
- Need to create a critical mass that believes in itself in order to support fundamental issues such as gender equality;
- Need to innovatively work on disaggregated data on political parties' statutory members and how to keep up with the continuous recruitment drive of political parties.

Prisoners and 2017 Electoral Processes

Key points

- Critically embrace stakeholder partnerships e.g. the National Registration Bureau and the Prisons' management in ensuring that there are no transfers of prisoners at least 6 months before the elections and ensuring timely issuance of prisoners' IDs;
- Enhanced access to information – availability of IEBC officers and voter information;
- More documentation on our experiences in the participation of prisoners in electoral processes, and the need to enhance the same;
- Access to form 34As which are critical in monitoring participation;
- Need to focus more on prisoners' participation as a right, rather than its political impact;
- More work on the realization of prisoners' needs and rights.

Diaspora and the 2017 Electoral Processes

Key Findings

- Diaspora registration/voting was an after-thought, hence a big portion of diaspora still disenfranchised;
- Voter education in the diaspora was non-existent;
- There is no existing authoritative data/documentation on diaspora votes;
- Fear amongst political players that rigging of diaspora votes during the elections.

Media in Elections: The Role of Mainstream media and social media in the electoral processes and the Impact of propaganda

Key Findings

- Media ownership greatly affected the time allocated for coverage of 2017 electoral processes;
- Some media houses were found to be impartial; either leaning towards opposition or ruling party;
- The political/ideological leanings of media houses affected coverage of 2017 elections with some media houses even being caught up in tribalism;
- Media coverage was skewed, with major political parties/politicians receiving more media coverage than less popular ones.
- Fake news was a fast growing business;
- Presidential debate was not successful due to the commercial deals that went into the planning, a strategy that made candidates withdraw their participation;
- Media monitoring remained unexplored and there was need for more partnership;
- There were embedded journalists or spies in the newsroom that hindered effective coverage of electoral processes.

Social Media - Brian Kimari (CHRIPS)

- Social media was fundamentally invented for citizen participation and engagement. Its benefits ranged from direct communication on/with any subject to spreading information to any part of the world. Politically, it had changed the traditional way of communicating with followers when it came to pitching manifestos during campaigns for politicians, and also provided a platform for citizens to present any pressing issues to candidates.
- Misinformation and fake news played a key role in digital communication. Misinformation was motivated by both financial and ideological factors – information was huge business and could at times be used to fuel tension among supporters.
 - Social media had revolutionized politics by becoming a campaign platform that allowed the electorate to easily interact with political leaders;
 - Social media had led to emergence of fake news which was used for misinformation of voters to malign opponents;
 - Fake news was used to fuel tension during campaign period.

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ANNEXURES

Annex 1: List of Participants

PARTICIPANT	INSTITUTION	DESIGNATION
Grace Maingi	URAI	CEO
Regina Opondo	CRECO	CEO
Kennedy Masime	Center for Governance and Democracy (CGD)	CEO
Anderson Gitonga	United Disabled Persons of Kenya (UDPK).	CEO
Beatrice Odero	Catholic Justice and Peace Commission (CJPC)	Executive Secretary
Susie Ibutu	NCKK	Programs Director
Ven Gathaka	Ecumenical Center for Justice and Peace (ECJP)	Executive Director
Barbara Japan	FIDA-K	Deputy Executive Director
Janet Munywoki	LRF	Executive Director
Mildred Nzau	YAA	Program Manager
Mulle Musau	ELOG	National Coordinator
Marcus A. Ageng'a	ELOG	Program Manager
Ann Marie-Okutoyi	KNCHR	Head of Reforms and Accountability Department
Andrew Songa	KHRC/KYSY	Program Manager
Elisha Ongoya	Kabarak University	Dean-Law School and Advocate
Eng Frank Njenga	KDA	Member
Grace Githaiga	KICKTAnet	CEO
Jalma Abdulahi	MUHURI	Program Officer
Francis Aywa	DAI/DDP	Team Leader
Kristina Wilfw	IFES	County Director
Joram Rukambe	UNDP	Chief Technical Advisor-UNDP
Alice Njau	NDI	Programs Manager
Fatuma Osman	DAI/DDP	M&E Officer
Josefine Hornbeg	Embassy of Sweden	
Cornelius Oduor	CRECO	Chairperson
Elizabeth Kirema	IED	Deputy Executive Director
Victor Bwire	MSK	Head of Programs
Salome Nduta	NCHRD-K	Program Manager
Jackline Owino	IED	Finance Manager
Eusebius Atamalo	CJPC	Program Officer
Juliann Ngairi	KIEL	
Daudi Were	MK	
Lameck Radigo	Vine Africa	

PARTICIPANT	INSTITUTION	DESIGNATION
Ruth Ambogo	Youth Network-Diaspora	
Martin Thairu	CEMIRIDE	
Juliet Mercy Awino	NLP	
Purity Maina	NGEC	
Jeremy Kakwi	NGEC	
Mainer Christopher	Civil Society Reference Group	
Vincent David		
Elijale Rollok	KNCHR	
Agatha Muthoni	KWH	
Maurice Makori	Media	
S. Chandaria	KYS	
Josephat	COTRAP	
Ambrose Nzomo	Narc Kenya	Secretary General
Irene Muchomba	KHRC/KRSY	Program Associate
Sarah Kanini	KimbilioTrust	Program Officer
Conrad Bosire	Katiba Institute	
Onyango Boaz	YAA	Program Assistant
Susan Mungai	Transparency International	
Wanjiru Muhia	NCHRD-K	
Kimani wa Wanjiru	ELOG	Communications Manager
Paul Sigo	UDM	
Joseph Omondi	Mid Rift Hurinet	
Ann Kathurima	ELOG	Program Officer
Otieno Adipo	ELOG	Program Officer
Simon Waweru	ELOG	PVT Manager
Damaris Kariuki	HSF	
Pauline Lemarron	HSF	
Musembi Mutisya	ELOG	Program Officer
Tony Mwit	UDPK	
Laureen Odero	ELOG	Program Officer
Delilah Taabu		Rapporteur
Stella Nderitu		Rapporteur
Maurice Makori	Media	
John Thiruto	Media	
Kamau Mbogoa	Elimu Tv	

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From the Panelists



Salome Nduta, Program Manager NCHRD moderating one of the sessions



Victor Bwire, Deputy CEO, Media Council making his presentation



Regina Opondo, ELOG Chair and CRECO's executive secretary making her presentation



Brian Kimari from CHRIPS making his presentation



Mulle Musau, National Coordinator, ELOG responding to some of the issues arising from the Plenary

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From the Panelists

Kennedy Masime, Executive Director, CGD making his presentation



Venerable Gathaka, Executive Director, ECJP sharing his experiences

Elisha Ongoya, Dean Kabarak University Law School and Electoral Law Expert making presentation during the symposium



Grace Githaiga, Director, KIKTANet making her presentation

Grace Maingi, Executive Director, URAIA Trust, making her presentation during the symposium



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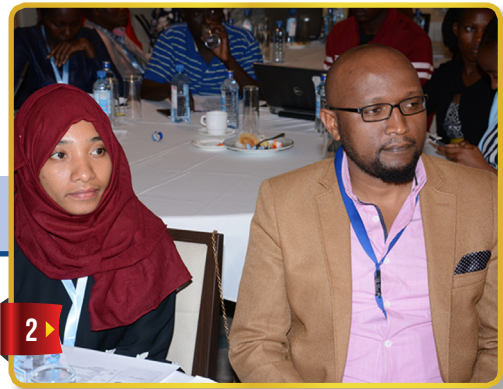


Symposium Session



ELOG Chair, Regina Opondo confers with ELOG's Senior Program Manager, Marcus A. Ageng'a during the symposium

Leo Mutisya of Media Council of Kenya and Jamila Abdalla of MUHIRI



Otieno Adipo, ELOG Program Officer consults with Irene Muchomba, Program Associate KHRC as Fatuma Osman of DDP looks on



Section of the participants during the symposium



Section of the participants during the symposium

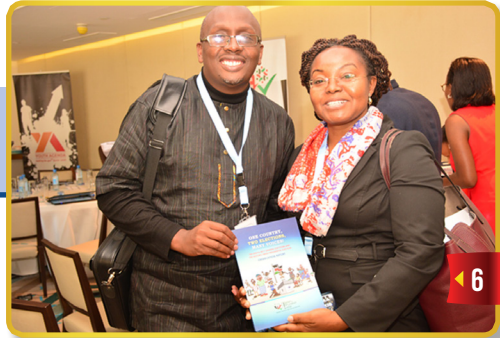


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Symposium Session

Mulle Musau, ELOG National Coordinator shares a photo session with URAIA's CEO Grace Maingi



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ELOG SC members Regina Opondo (CRECO) and Kennedy Masime (CGD)

Ann Marie of KHRC shares a break moment with Eng Chris of KDA and URAIA's Grace Maingi



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Section of the participants

Alice Njau, NDI's Program Manager contributing during the plenary



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Symposium Retreat



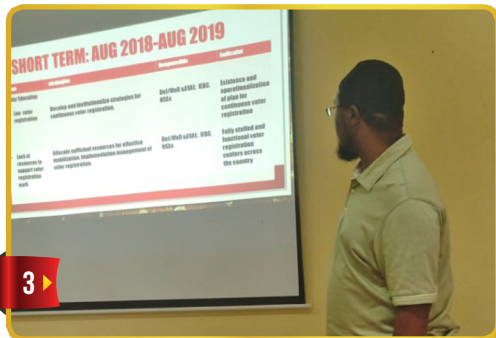
1 ▶

Steve Ogolo, Electoral law expert during the retreat



2 ▶

Daudi Were, Electoral Technology expert, making his presentation during the retreat



3 ▶

Abubakar Said, Civic Education Manager (URAIA), making his presentation during the retreat

Leo Mutisya, Project Leader, Media Council of Kenya, during the retreat



4 ▶

Irene Muchomba, KHRC's Program Associate, making her presentation during the retreat



5 ▶

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Elections Observation Group

1ST Floor, Jumuia Place, Lenana Rd, Nairobi

P.O. Box 43874 – 00100, Nairobi, Kenya

Tel: 0733608694 / 0790484629

Email: info@elog.or.ke

Facebook: Elections Observation Group KENYA

Twitter: [@elogkenya](https://twitter.com/elogkenya)

Web: www.elog.or.ke