

**KENYA HUMAN RIGHTS
COMMISSION**

VIOLATING THE VOTE

A Report of the 2007 General Elections

FINAL REPORT

September 15, 2008

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Abbreviations/ Acronyms

CAPF	–	Coalition for Accountable Political Financing
CDU	–	Central Depository Unit
COG	–	Commonwealth Observer Group
CRECO	–	Constitution Reform Education Consortium
CSOs		Civil Society Organizations
ECC	–	Electoral Code of Conduct
ECK	–	Electoral Commission of Kenya
EMRC	–	Election Monitoring and Response Centre
EUOM	–	European Observation Mission
IDPs	–	Internally Displaced Persons
IMLU	–	Independent Medico-Legal Unit
IPPG	–	Inter-Parties Parliamentary Group
KACC	–	Kenya Anti-Corruption Commission
KBC	–	Kenya Broadcasting Corporation
KHRC	–	Kenya Human Rights Commission
KHRI	–	Kenya Human Rights Institute
KICC		Kenyatta International Conference Centre
KNCHR	–	Kenya National Commission on Human Rights
KPTJ	–	Kenyans for Peace with Truth and Justice
LSK	–	Law Society of Kenya
MMPR	–	Mixed Member Proportionate Representation
NARC	–	National Rainbow Coalition
NGOs		Non-Governmental Organizations
ODM	–	Orange Democratic Party
ODM-K	–	Orange Democratic Party of Kenya
PNU	–	Party of National Unity
RPP	–	Release Political Prisoners Trust
SMS	–	Short Messaging Service
UDHR	–	Universal Declaration of Human Rights

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1.0 The Kenya Human Rights Commission (KHRC)'s Electoral Engagement

Over the years, the KHRC has engaged with the electoral process so as to promote accountable and human rights-centred governance in Kenya. During the 1997 General Elections, the KHRC focused on assessing the impartiality of the Kenya Broadcasting Corporation (KBC)'s coverage of electoral issues and events. The KHRC published and disseminated reports and books highlighting human rights violated, perpetrators involved and interventions required. The KHRC saw the 2002 General Elections as offering a transitional moment to effect regime change to end despotism, grand corruption and other abuses of power. In the 2005 National Referendum, the KHRC, in collaboration with the Kenya National Commission on Human Rights (KNCHR), organized joint observation to enhance transparency and accountability as well as expose statements by politicians amounting to incitement to violence and/or hatred of those from other ethnic groups.

2.0 Monitoring the 2007 General Elections

2.1 Breadth and Scope

Borrowing from this history, the KHRC thus planned to monitor and respond to human rights violations during the 2007 electoral process – including the pre-elections period (including political party nominations), polling day and the post election period, all marked by violations of the rights to life, food and water, security, housing and property ownership among others. Its report, *Violating the Vote*, concentrates on the pre-election period and the immediate aftermath of the 2007 General Elections to show the manifestations, nature and extent of human rights violations that occurred.

The KHRC's goal was to contribute towards a conducive electoral environment in which both voters and candidates would not face unreasonable limitations to their fundamental freedoms and be free to participate lawfully in the 2007 General Elections. The objectives were to: a) monitor and document the observance of human rights by all actors in the electoral process; b) to seek accountability and redress for such human rights violations; and c) campaign for the observance of human rights during the electoral process.

There were four areas of focus. First, monitoring political violence, including: oath-taking, incitement to violence, issuing political threats, disruption of political rallies by opponents or state security forces, politically-instigated violence and any other actions in breach of public peace and security. Second, monitoring violence against women and other marginalised groups. The issues included human rights violations impeding the campaigns of female and physically-challenged candidates.

Third, monitoring the use of hate speech and propaganda, which are utterances which are prejudiced, stereotypical, discriminatory or illegal in the sense that they are intended to incite contempt, hatred, hostility, suspicion and violence against those from other ethnic communities, religious groups or racial groups in Kenya. Finally, monitoring corruption and abuse of public resources including: buying and destroying voter cards, bribery and/or expedient provision of public services and misuse of public resources in the campaign period as well as the harassment of opposition supporters and the media by arbitrary arrest, detention and torture, among other practices prohibited under domestic, regional and international human rights law.

The KHRC monitored in 79 constituencies across all eight provinces with 117 monitors composed of 88 field monitors and 29 media correspondents. On polling day, the KHRC, through the Electoral Commission of Kenya (ECK), accredited 156 observers, including the 117 monitors, the KHRC's staff and some international observers to monitor three areas of focus. First, the management of the voting process including: whether voters had the freedom to participate in voting; the physical arrangement of the polling station; the autonomy, impartiality and administration of the polling process; the freedom and professionalism of the media; the presence, role and conduct of electoral, security and other public officers; and levels of voter turn out. Second, compliance with electoral procedures, including: the opening and closing times of polling centres; the polling and counting procedures; the sealing of ballot boxes, and access to the polling, counting and tallying centres.

Finally, other critical issues about polling and counting, including: the manner in which voters were delayed; the order in which voters were allowed to cast their ballots; whether secrecy of the vote was observed; the use of the voter register and the 'black book'; the duration it took to cast votes; procedures to assure security of the ballot boxes; the counting and tallying of votes; whether the announcement reflected the true count and tally; the freeness and fairness of the voting process, especially for women, the physically challenged and the elderly, among other marginalized groups; and general orderliness.

2.2 Constituencies Covered

The Report is drawn from reports received from 72 constituencies in eight provinces: Central province (13 constituencies); Rift Valley (15); Western (8); Nairobi (8); North Eastern (7); Nyanza (10); Eastern (2); and, Coast province (9 constituencies). The reports received from the monitors were 387, with monitors based in Rift Valley sending 83 reports, those in Nairobi sending 75 reports, those in Central sending 70 reports; those in the Coast sending 41; those in Eastern sending 23; those in North Eastern sending 24; those in Nyanza sending 36; and those in Western sending 35. The reports documented human rights violations in the four areas of focus and were compiled by the monitors who covered and/or attended events in the electoral process.

The monitors attended 278 events including those organised by political rallies (176), political meetings (49), party nominations (41) and road shows (12) at the

civic, parliamentary or presidential levels. The monitors attended 140 civic-level events; 240 parliamentary-level events; and 47 presidential-level events. In attendance were area councillors (seven per cent), parliamentarians (32 per cent), government ministers (35 per cent), provincial administration staff (ten per cent), senior public officers (five per cent), diplomatic officials (two per cent) and the president and vice-president (two per cent).

3.0 Our Findings

3.1 Political Violence

Electoral violence includes any act that causes or is likely to cause harm or threat of harm, to an individual or group of people and damage to property if the act or series of acts are intended to influence electoral outcomes. The KHRC received reports ranging from death, attempted assassination, displacement, disruption of political meetings or rallies, battery, arson, theft and destruction of property and the communication of threats of violence via leaflets. In the pre-elections period, 72 incidences of electoral violence were reported to the KHRC, with Central province leading with 19 incidences; Coast (3); Rift Valley (17); Nyanza (3); North Eastern (3); Rift Valley (14); Western (4); and Eastern (7). There was electoral violence throughout the pre-election period, which worsened in the post-election period.

In some cases, the incidences of violence were incited by politicians. In all provinces save for Coast, there were reported cases of incitement to violence. Comparing the violence to the incitement, variations existed from province to province. While Central, Central and Rift Valley, had the highest cases of violence, the highest correlation between the number of cases and incitement to violence were in North Eastern and Nyanza provinces, where the incitement to violence accounted for about 60 per cent of the violence. The violence was manifested differently, through the disruption of rallies, theft and destruction of property and gender-based attacks, among others. Of the cases reported, there was one incidence of disrupting rallies, eight incidences of theft, 12 incidences of destruction to property and 14 incidences of gender-based attacks.

In all the incidences of physical attacks, there was use of both crude and conventional weapons. The use of clubs (*rungus*) accounted for 13 per cent, machetes (eight per cent), spears (one per cent), stones (42 per cent), pick axe (three per cent), use of firearms, especially in Rift Valley and Nyanza (13 per cent), wooden sticks (15 per cent) and whips (5 per cent). Use of such weapons resulted in deaths or injuries, where seven deaths were reported, while 80 injuries (35 cases of lacerations and 2 cases of bullet wounds) were reported countrywide.

3.2 Violence and Discrimination Against Women

Violence and other forms of discrimination against women are acts perpetrated by men against women aimed at devaluing, demeaning and de-humanizing them and their specific identity as women so as to promote men's dominance in

electoral politics or intimidate women into withdrawing from political contests.. One form of such violence was SMSs with texts whose content was dehumanizing and demeaning to women. Other forms of gender-based violence targeting women included rape, stripping of clothes and other forms of indecent assault, sexual harassment and various unfair restrictions aimed at alienating women from political contest.

Although an unprecedented number of women were nominated by political parties, the electoral outcomes have thus neither reflected women's proportions within the population nor the full potential of women aspiring to leadership. Many cases of gender-based violence and other forms of gender-based discrimination such as harassment, intimidation and verbal abuse, were reported to the KHRC. Two cases of sexual harassment were reported in Nairobi and also Western; two cases of stripping of clothes in Nairobi and Nyanza; and 14 cases of gender-based attacks across the country. The Report further documented specific cases in terms of who was abused, where and when.

3.3 Hate Speech

Hate speech includes categories of speech outlawed in international law that have the potential to lead to xenophobia, intolerance and discrimination on the protected grounds of ethnicity or regional background among other grounds. Two key features of hate speech were identified: first, utterances and/or publications of words, epithets, and idioms intended to cause emotional harm to, offend or marginalize certain groups. Second, hate speech was intended to incite violence or hatred against particular groups. Hate speech was circulated through email, SMS, photos and publications. 119 incidences of hate speech were reported to the KHRC, ranging from ethnic hatred (28 per cent), discrimination (21 per cent), incitement to violence (15 per cent), attacks on gender identity (12 per cent) and use of stereotypes (24 per cent).

All types of hate speech were prevalent all over the country, the worst being ethnic hatred against other communities, followed by prejudiced or stereotypical expressions against other ethnic communities and groups such as women. Second, in the Rift Valley, hate messages aimed at promoting ethnic hatred accounted for 36 per cent of the hate speech in that category nationally (it is not, therefore, surprising, that in the post-elections violence in the Rift Valley, ethnic groups that are not Kalenjin have been attacked and displaced from their homes). Third, the Coast province is the only province that did not witness cases of incitement to violence—although violence occurred, it was on a lower scale than in other provinces. Fourth, Central province has the highest number of cases of gender-based hate speech, accounting for 43 per cent of cases reported to the KHRC. The KHRC has further documented selected texts of what was printed, emailed, SMSed, blogged or photographed and graphically altered to misrepresent certain candidates or disseminate hate messages. Although the Report did not cover the role of the media in spreading hate speech, the KHRC also received reports that media houses, especially local language radio stations, were also spreading hate speech.

3.4 Bribery and Abuse of Public Resources

The KHRC received reports of 216 incidences of bribery. In all provinces, there was voter bribery, with Central leading with 21.3 per cent of the total cases reported; Coast (12.0 per cent); Eastern (8.8 per cent); Nairobi (13.0 per cent); North Eastern (3.7 per cent); Nyanza (12.0 per cent); Rift Valley (16.7 per cent); and Western (10.6 per cent) of the total cases reported. These incidences of bribery were categorized as: monetary handouts (81 per cent); vote buying (4 per cent); gifts (11 per cent); and the expedient provision of public services (4 per cent). The Report details the cases and where they took place.

With regard to the abuse of public resources, reports indicated the misappropriation of publicly-owned resources and the also the presence of public officers at campaign events. There were 30 incidences of public officials being present at campaign rallies, with 10 incidences in Eastern province. In addition, government-plated vehicles were present (64 cases), 29 of which were in Eastern province and 18 in Western; and government helicopters were used (6 incidences), half of which were in Eastern province.

In all provinces, public resources were utilized for campaigns. In all provinces, save for North Eastern, government-owned vehicles were used, either by politicians or public officers, including parastatal heads and the Provincial Administration. Publicly-owned helicopters were used in three provinces, Eastern, North Eastern and the Rift Valley. In all provinces, except Central and Nyanza, public officers attended campaign events, contrary to the Public Officer and Ethics Act and the National Assembly and Presidential Elections Act. The Report documents these cases in detail.

4.0 Breaking the Laws of Kenya with Impunity

To campaign against impunity, the KHRC documented laws broken during the electoral process. Key laws that govern or relate to elections include: the Constitution of Kenya; The National Assembly and Presidential Elections Act; the Election Offences Act; the Public Officer Ethics Act; the Local Government Act; the Societies Act; the Penal Code; the Anti-Corruption and Economic Crimes Act; the Public Order Act; and, the Preservation of Public Security Act, as amended. Other relevant Acts include: the KNCHR Act, which establishes the KNCHR and empowers it to conduct independent investigations into human rights violations; and the KBC Act, which enjoins the national public broadcaster to give balanced coverage to all aspirants and political parties.

The KHRC observed that, in the 2007 General Elections, these laws were broken with impunity. For example, the electoral violence documented in the Report's Chapter 3, could and should have been prosecuted since the criminal acts perpetrated are prohibited under the Penal Code and the Elections Offences Act. The Constitution outlaws discrimination, including on the basis of sex, while sexual violence is outlawed in the Sexual Offences Act. Public servants are barred from engaging in political campaigns for any political party and abusing publicly-owned resources under the Public Officers Ethics Act as well as the National Assembly and Presidential Elections Act. And the Penal

Code, by proscribing incitement to violence, addresses hate speech. Yet impunity thrived—a recurrent problem during election periods, when Kenya seems to suspend laws or provide ‘collective impunity’ for breaches of the same.

Connected with impunity is the ‘blame game’ by the responsible institutions. The ECK blamed the Kenya Police Force, while the Kenya Police Force cast aspersions on the ECK for being indecisive. The Attorney General attributed his failure to mount prosecution on the omission by the Kenya Police Force to furnish evidence to support the prosecution of offenders. On its part, the Kenya Anti-Corruption Commission was slow in responding to allegations of corruption in the electoral process. Some politicians criticized the KNCHR for being partisan when it condemned the human rights violations in the electoral process and subsequent to its violent aftermath. The upshot was impunity.

5.0 Conclusions and Recommendations: Some Highlights

On December 26, 2007, a day before the General Election, the KHRC noted seven issues which could jeopardize the freeness and fairness of the 2007 General Elections. First, the right to the security of the voter had not been guaranteed especially in conflict areas, which led to lower voter turnout and influenced outcomes of the elections both in those areas and nationally. Second, the right to be elected for office, particularly for women, had been compromised through gender based forms of violence. Third, the right to freedom of conscience had been abused, through among others, hate speech. Fourth, the right to freedom of assembly had been violated in instances of denials of permits by the Police, which affected voting patterns. Fifth, the misuse of public resources and the expedient ‘allocation’ of districts and other public goods particularly by the incumbent compromised the right to vote freely. Sixth, voter bribery through financial inducements compromised peoples’ choices.

In view of these assessments, and the monitoring exercise, KHRC concluded that: first, the chief custodian of the right to vote is the ECK. The independence, efficiency and integrity of the ECK became questionable, particularly in the tallying of the presidential election results at the Kenyatta International Conference Centre. In line with its advocacy for an independent and effective electoral management body, the KHRC recommended that the ECK is disbanded and reconstituted, taking into account the involvement of political parties among other stakeholders. Secondly, the KHRC observed that the electoral system of first-past-the-post is not suitable for Kenya, and therefore recommended that constitutional, legal, policy and administrative changes be made to replace the current electoral system with Mixed Member Proportionate Representation (MMPR).

The Kenya Police Force is mandated by law to guarantee the constitutional right to security and integrity of the person. While acknowledging the role of the police on polling day, the police also used excessive force against Kenyans

and was not accountable to the public. To address the accountability deficits, the KHRC recommended that a Police Service Commission be established, and a Civilian Oversight Board, based on international normative and institutional frameworks that exist for checking excesses of the police.

With regard to hate speech, the KHRC recommended that the Force and the KNCHR investigate sources of leaflets, emails, blogs and SMS propounding hate speech and prosecute those responsible. We further recommended that the Force monitor and investigate audio and video footage of politicians in campaign rallies and prosecute those responsible for inciting violence. Lastly it was recommended that the Tenth Parliament enact hate speech legislation.

On the right to access information, the KBC has an obligation to broadcast in a balanced manner as to give effect to the right. The same applied to all media, including local language radio stations, according to the Guidelines for Elections Reporting of the Media Council of Kenya (MCK). We therefore recommended that not only the MCK but also the Communications Commission of Kenya (CCK) investigate audio records of local language radio stations between August 2007 and February 2008 and mete punishment for those found guilty of hate speech. Further, it was recommended that the Freedom of Information Bill be enacted and related policy formulated and implemented. With regard to KBC, it was recommended that the management of the KBC be de-linked from the State and it be transformed into a genuine national public broadcaster through appropriate legislation and policies.

The KHRC documented the manner in which women and other marginalized groups were subjected to discrimination through hate speech and violence. Although women form the bulk of the population, only a handful made it through to civic seats and parliament. The KHRC recommended that electoral reforms encompass the establishment of a system for special representation of marginalised groups. Further, it was stated that the principle of ensuring women's representation in appointive and elective offices be enshrined in all public staffing policies, in accordance with international normative standards.

With regard to corruption in the electoral process, KHRC noted a contributory factor as the absence of a ceiling on campaign financing. It was recommended that the Police, the Attorney General and the KACC investigate all campaign financing between September and December 2007 and prosecute all those suspected in engaging in acts of corruption.

The KHRC further noted the extent of presidential controls over many public institutions in charge of the electoral process, from appointments to the ECK, the judiciary, which presides over election petitions and the Provincial Administration. Therefore, the KHRC suggested that the new Constitution devolves the powers of the presidency in relation to these institutions, and generally, the constitutional framework. Further, it was recommended that the state undertakes comprehensive judicial and related institutional reforms.

Finally, KHRC was appalled by institutionalised impunity in Kenya. Constitutionally, the powers of prosecution are vested in the Attorney General, but whose omission to prosecute has led to a culture of impunity. In addition to restructuring these institutions, the KHRC recommended that transitional justice mechanisms be established to deal with past and present impunity for human right violations in Kenya.

1.0 INTRODUCTION

The Kenya Human Rights Commission (KHRC) is a national non-governmental organization founded in 1992 with a mission to promote, protect and enhance all human rights for all. The KHRC's current work is founded on Vision 2012, the roadmap through which it seeks to create a vibrant social movement towards a human rights state. The KHRC's strategic objectives are:

1. Communities organized around specific human rights issues, strengthened and developed into powerful advocacy networks by 2012;
2. Accountable human rights-centred governance amongst State and key non-State actors enhanced by 2008 and attained by 2012;
3. Capacity of the KHRC as a leader in human rights discourse, advocacy and democratic development enhanced by 2008 and attained by 2012;
4. The KHRC's capacity to learn, adapt and innovate attained by 2008; and,
5. Financial sustainability of the KHRC significantly secured by 2008 and attained by 2012.

1.1 KHRC's Interventions in Elections

Over the years, the KHRC conceptualized and implemented electoral interventions geared towards ensuring accountable and human rights-centred governance of political affairs in Kenya¹. During the 1997 General Elections, the KHRC focused on two initiatives. First, a joint media monitoring initiative with ARTICLE 19, the International Centre Against Censorship. The goal of this project was to assess the impartiality and independence of the Kenya Broadcasting Corporation's coverage of different political parties' issues and events, both in scope and substance. The assessments from this monitoring effort were compiled into monthly reports that were disseminated to a wide audience in Kenya and abroad². Second, was an initiative to monitor and document politically instigated violence during the 1997 General Elections. The KHRC published and disseminated reports highlighting the rights violated, perpetrators involved and interventions required.³

The KHRC's position regarding the December 2002 General Elections was that they offered a transitional moment to effect regime change that would ensure that post Moi-Kenya was free of despotism, national decomposition and the culture of official corruption and abuse of power⁴. Thus, KHRC's focus in the

¹ During the past three multiparty elections in 1992, 1997 and 2002, the electoral environment in Kenya had been characterized by serious and routine acts of repression, electoral fraud and other crimes. These were perpetrated by state-security agencies and politicians of the then ruling party and their opposition counterparts, and outlawed informal gangs and militias. These patterns of the breakdown of the rule of law during elections in Kenya has had the net effect of restricting the political and procedural rights that guarantee free and fair elections.

² For details, see *Elections' 1997: Media Watch and Media Monitoring in Kenya* (KHRC / Article 19) September 1997.

³ See for instance, *Killing the Vote: State Sponsored Violence and Flawed Elections in Kenya* (KHRC 1998); *Kayas of Deprivation, Kayas of Blood: Violence, Ethnicity and the State in Coastal Kenya*, KHRC, 1997; *Kayas Revisited: A Post Election Balance Sheet*, KHRC 1998.

⁴ See 'Why and How to Bring About Regime Change in Kenya' in *Eyes on the Prize*, KHRC 2002

2002 General Elections was to ensure that the political transition put Kenya on the trajectory towards democratic governance and political accountability by:

1. Informing the political process by setting the agenda on ‘Why and How to Bring About Regime Change in Kenya⁵’; and,
2. Independently and in partnership with the Central Depository Unit (CDU) Trust and the organizations constituting its board of trustees, monitoring and publishing reports on human rights violations committed during and immediately after the 2002 General Elections⁶.

In the November 2005 National Referendum on the Proposed New Constitution, the KHRC, in collaboration with the Kenya National Commission on Human Rights (KNCHR), organized a joint observation project. The main objectives of this campaign were to inter alia: enhance transparency and accountability in the public sphere by working to strengthen democratic governance; and, to expose statements and or speeches by political ‘leaders’, which amounted to incitement or calls for ethnic nationalism and/or hatred of external ethnic groups.⁷

Borrowing from this 15-year history of monitoring the electoral process, KHRC thus planned to monitor and respond to violations of the electoral process during the 2007 General Elections – specifically, the pre-elections period such as political party nominations, events on polling day itself and also the post election period. All these periods were all marked by violations of the rights to life, food and water, security, housing and property, among other rights. This Report, *Violating the Vote*, concentrates on the pre-election period and the immediate aftermath of the 2007 General Elections. It documents and examines the nature, character, manifestations and extent of the human rights violations that occurred.

⁵ Ibid,

⁶ CDU was incorporated as a public trust on August 7, 2001. It was a coalition of six (6) Kenyan non-governmental organizations which were previously involved in monitoring political and electoral violence in Kenya. The six organizations are: The Kenya Human Rights Commission, The League of Kenya Women Voters, The Centre for Governance and Development, The Tawasal Foundation, and the National Council of Churches in Kenya. Its mission was to provide a centre with the capacity to receive, analyze, compile and disseminate information relating to electoral violence to all stakeholders and other potential users of information in order that this information is used to prevent, reduce and eliminate electoral violence. For details see *Report of Election Violence: January-April 2002, Institutional Management of Election Violence in Kenya: A Case Study by CDU; Monitoring Election Violence: Final Report of the 2002 General Elections*, CDU 2003, *Political Violence in Marginalized Areas: A Case Study of Samburu and Lamu Districts*, CDU 2003; *Darkness at Noon: the Politics of Cattle Rustling and Political Violence in Transmara*, CDU, 2003

⁷ Other objectives were to strengthen the fight against corruption by exposing the abuse of public office and the abuse of public resources during the referendum campaigns; enhance the fight against impunity through holding individual politicians and senior public officials accountable to the rule of law; monitor incitement and use of hate speech along ethnic lines in the campaigns or while carrying out ‘civic education’; name and shame political leaders, public officials and media agencies guilty of using hate speech and other exhortations to ethnicity as a means of gaining support for their position on the referendum. Other objectives included reducing campaign violence by exposing and holding to account politicians and public officials guilty of violating the public trust and; encouraging Kenya women and men to participate in exposing abuse of public office and waste of resources by exercising their rights to take part in the conduct of public affairs in the country. See *Behaving Badly, Deception, Chauvinism and Waste during the Referendum Campaigns: Promoting Accountability in the Political Process in Kenya*, KHRC and KNCHR, 2006

1.2 The Election Monitoring and Response Centre

The Election Monitoring and Response Centre (EMRC) was established with the objective of: *Enhancing Accountability and Equity in Electoral Governance in Kenya*. Founded on the principles embodied in the Universal Declaration of Human Rights (UDHR),⁸ the goal of the EMRC was to support the creation of a conducive electoral environment where voters and candidates would not face limitations that would adversely undermine their fundamental freedoms in the course of participating in the 2007 General Elections.

The objectives of the EMRC were to monitor and document the observance of human rights standards by all actors in the electoral process; to seek redress for the violations of human rights; and, to campaign and lobby for the observance of human rights standards through public interest media campaigns and civic engagement.

To realize the above objectives, the EMRC undertook the following specific activities:

- a) Recruiting, training and managing a network of election monitors. A total of 117 monitors were recruited, trained and deployed as 88 constituency-based monitors and 29 media correspondents;
- b) Assessing adherence of election monitors to the *KHRC Code of Conduct for Election-Monitors* in order to affirm their impartiality and commitment to upholding the integrity of the electoral process. The Monitors were supervised throughout the electioneering period (pre-election and the immediate post-election period) to ensure compliance with the *Code*;
- c) Collecting, collating and verifying information from the field and other sources such as reports of other observer groups and media houses;
- d) Entering data, analysing it and generating cumulative statistics on the nature and types of incidents of human rights violations related to the elections. A total of 387 Election Monitoring Tools were keyed into the database⁹;
- e) Processing complaints requiring the intervention. The EMRC Received numerous complaints from monitors through call-ins and e-mails, which were promptly dealt with;
- f) Releasing bulletins and press statements on major incidents or patterns of violations as the situation dictated. The EMRC released a

⁸ UDHR, Article 21: "The will of the people shall be the basis of the authority of government; and will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

⁹ For a detailed picture of which areas were covered, see Figure 1.2 in this Chapter

bulletin in October 2007 and also wrote numerous statements on election-related offences; and,

- g)** Working with other election observers, the Electoral Commission of Kenya (ECK), major political parties and civil society groups during the monitoring process.

Through the above activities, the EMRC embarked on comprehensive documentation of human rights violations related to the 2007 electoral process. In its monitoring and documentation work the EMRC was guided by a Working Paper on Elections, which outlined the basic political and procedural rights that are to be guaranteed, protected and promoted for the elections to be termed a reflection of the will of Kenyans. As demonstrated in Chapter 2, monitoring compliance and respect for these rights by both state and non-state actors was at the core of the elections project.

2.0 METHODOLOGY

2.1 Planning for Monitoring

The criteria for mapping constituencies to be monitored were based on the following considerations:

- First, constituencies with women aspirants thus requiring protection against harassment, discrimination among other gender-based injustices during elections;
- Second, constituencies in areas that were already experiencing and/or are prone to grave electoral violence;
- Third, constituencies with a likelihood of experiencing abuse of public resources and state institutions/ facilities;
- Fourth, constituencies with high propensity of voter and or electoral irregularities and malpractices; and
- Fifth, constituencies where minorities, underprivileged among other marginalized and excluded groups reside and/or have sought elective office.

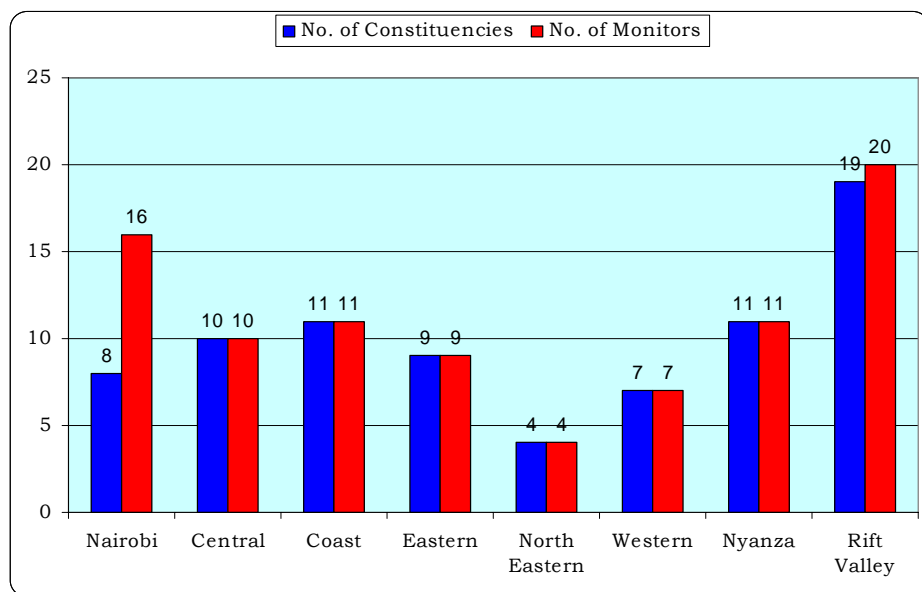
In this regard, the EMRC monitored four key pillars. First, political violence, which included but was not limited to: oath-taking, incitement to violence, issuing political threats, disruption of political rallies either by opponents and or by the State security apparatus, politically-instigated violence and/or killings among other practices meant to breach public peace and security. Second, the EMRC monitored violence against women and other groups, which included investigating and tracking violations and injustices, which may disadvantage women and the physically-challenged civic, parliamentary and presidential candidates. Such injustices included but were not limited to political harassment, discrimination, rape, killings, assaults, insults, inadequate campaign infrastructure among other violations.

Third, the EMRC monitored the use of hate propaganda and political utterances that are illegal and intended or calculated to incite feelings of contempt, hatred, hostility, stereotypes, suspicions, violence or discrimination among different ethnic communities or religious groups in Kenya.

Finally, the EMRC monitored corruption and abuse of State resources. This involved the tracking of vote-buying, destroying votes, bribery and expedient provision of public services and misuse of public resources in campaign rallies. Such misuse of state resources included the use of government-plated vehicles among other State resources and machinery in campaign activities. It also included the misuse of the state security apparatus to harass opposition supporters and media reporters by arbitrary arrests and torture, among other cruel and degrading practices prohibited both in international and domestic laws.

Using these four pillars, KHRC monitored the election process in all 8 provinces, in 79 constituencies with 88 monitors, (assisted by 29 media correspondents). Figure 2.1 below depicts the areas KHRC monitored, in terms of provinces, respective constituencies and number of monitors therein.

Figure 2.1: Province, Constituency & Monitors



(Source: EMRC Data)

During the Election Day and thereafter, the EMRC in liaison with the ECK, accredited 156 observers, including the 117 field monitors, KHRC Staff and international observers. These were to observe the elections in relation to three areas. First, the management of the voting process, which included whether voters had freedom to participate in voting; physical arrangement of the polling station; autonomy, impartiality and administration of the polling process; exercise of freedom and professionalism by the media; presence, role and conduct of security and other government officers; and, levels of voter turnout.

Second, the observers monitored compliance with electoral procedures which related to: opening and closing time of polling centres; polling and counting procedures; sealing of ballot boxes, and, whether media and election observers were given access to the polling, counting and tallying centres.

Finally, all observers were to monitor other critical issues on polling day and counting night, which included but were not limited to: the manner in which voters were delayed; order in which voters were allowed to cast their ballots; whether secrecy of the vote was strictly observed; the use of the voter register and 'black book'; the duration it took to cast a vote; procedures that assured security of ballot boxes; counting and tallying of votes; whether the election result announcements reflected the true count; freeness and fairness of the voting process especially with regard to women candidates among other disadvantaged groups; and, the general orderliness of the entire exercise.

2.2 Events Covered

The Monitors attended various events ranging from campaign rallies to political meetings, party nominations, and other events such as road shows organized by the political parties or individual politicians. Table 2.1 below gives a summary of the events attended by KHRC monitors.

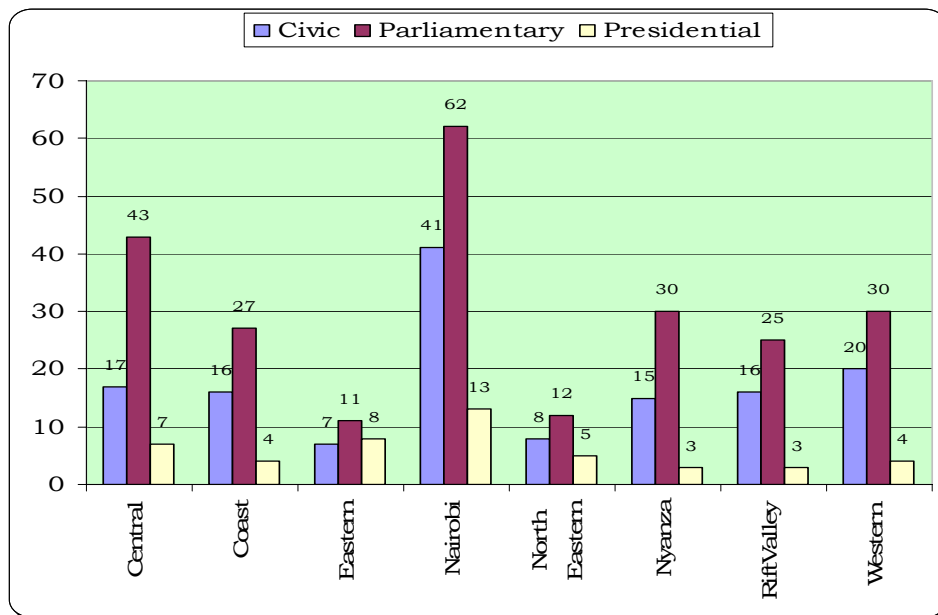
Table 2.1: Events covered by Monitors

Province	Rallies	Meetings	Party Nominations	Road shows
Central	27	6	8	4
Coast	28	6	5	
Eastern	13	1		
Nairobi	33	16	15	3
North Eastern	11	2	2	
Nyanza	21	8	3	3
Rift Valley	23	3	2	1
Western	20	7	6	1
Grand Total	176	49	41	12

(Source: EMRC Data)

Averagely, each of the 88 monitors attended at least 2 rallies or events similar events related to civic, parliamentary or presidential campaigns. In sum, the monitors attended 140 civic-related events; 240 events by potential parliamentarians; and 47 events related to presidential campaigns. In attendance of these events were various personalities such as area councillors (7 percent), MPs (32 percent), government ministers (35 percent), provincial administration (10 percent), senior public officers (5 percent), diplomatic officials (2 percent), and the President and the Vice-President 10 (percent). Figure 2.2 below summarizes the nature of these events and where they took place.

Figure 2.2: Nature of Events

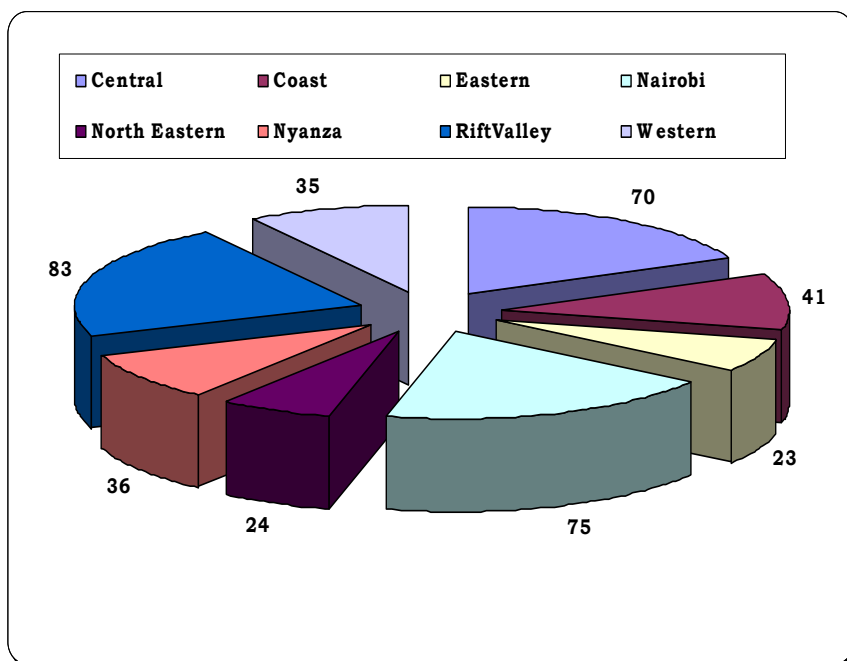


(Source: EMRC Data)

2.3 Reports Received

As said above, the EMRC received 387 monitoring tools from all over the country, with Rift Valley sending the largest (83), while Nairobi followed with 75 tools. Figure 2.3 provides a summary of tools from each province.

Figure 2.3 Monitoring Tools by Province



(Source: EMRC Data)

These tools were received from 70 constituencies, as shown in Table 2.2 below.

Table 2.2: Reports Received by Constituency

Province	Constituency	Total	Province	Constituency	Total
Central	Gichugu	13	Coast	Bura	2
	Githunguri	2		Changamwe	3
	Juja	4		Garsen	2
	Kandara	6		Kisauni	9
	Kangema	6		Lamu West	4
	Kiambaa	11		Likoni	4
	Kibwezi	2		Magarini	10
	Kitui Central	2		Taveta	5
	Mathira	5		Voi	2
	Mwingi North	10		Coast Total	
	Ndia	3	Eastern	Isiolo North	16
	North Imenti	3		South Imenti	6
	South Imenti	3	Eastern Total		22
Central Total		70			
North Eastern	Dujis	2	Nairobi	Dagoretti	7
	Isiolo North	3		Embakasi	13
	Laisamis	2		Kamukunji	5
	Mandera West	5		Kasarani	22
	North Horr	9		Langata	4
	Wajir East	2		Makadara	8
	Wajir South	2		Starehe	7
			Westlands	9	
North Eastern Total		24	Nairobi Total		75
Nyanza	Alego Usonga	3	Rift Valley	Ainamoi	2
	Kisumu Town East	5		Eldoret North	10
	Kisumu Town West	6		Eldoret South	8
	Kitutu Chache	1		Kapenguria	11
	Migori	4		Konoin	1
	Nyando	3		Laikipia East	3
	Nyaribari Chache	1		Marakwet East	9
	Rarieda	5		Marakwet West	9
	Rongo	1		Molo	1
	South Mugirango	7		Mt Elgon	6
Nyanza Total		36	Naivasha	2	
Western	Butere	2	Nakuru Town	1	
	Cherang'any	1	Narok South	1	
	Funyula	6	Ol' kalau	13	
	Ikolomani	6	Subukia	6	
	Kimilili	4	Rift Valley Total		83
	Lurambi	5			
	Mumias	2			
	Sabatia	9	GRAND TOTAL		387
Western Total		35			

(Source: EMRC Data)

2.4 Scope and Purpose of the Monitoring Exercise: Rights guaranteeing Free and Fair Elections.

Generally and with relevance to the electoral process and democratic governance, it has been argued that three critical political rights must be guaranteed for elections to qualify as a genuine reflection of the people's will.¹⁰ These are: the *right to campaign* in order to fill an elective public office; *right to elect* representatives at regular intervals by secret ballot, and the availability of effective choice between candidates and parties; and, the *right to vote* directly in a referendum on substantial changes to the Constitution or other policy matters.

However, the enjoyment of these three rights alone is not sufficient to guarantee a high quality of participation in the electoral process. Therefore, the individual voter should not face any unreasonable limitations or constraints that may adversely affect his or her freedom to act autonomously in the course of participating in an election.

Further, there should be an equal measure of respect for each individual's dignity and worth with reference to other individuals, and subsequently, the value of his or her own vote. So if these fundamental elements of liberal democracy are to have a useful influence on representation, there is a range of inter-related and inter-dependent political and procedural rights of each eligible voter which must be respected, protected and promoted by the state and all other central actors in the electoral process. The most obvious of these inter-related and inter-dependent rights, respect for which provides an enabling environment for *free and fair* elections, are the:

1. *Right to integrity and security of person*: Citizens' personal safety and security, or right to be free from physical violence, fear and intimidation, must be guaranteed;
2. *Right to free expression* or to freely impart and receive information;
3. *Right of the independent press to operate freely*: The media must be able to research, document and report responsibly on the politics and administration of the electoral process from the viewpoint of their choosing;
4. *Right to access information*: Citizens must be able to learn about any aspect of the electoral process and must not be restricted from monitoring that process;
5. *Right to freedom of assembly*: There should be no restrictions against political meetings, processions, public rallies and other types of peaceful gatherings;
6. *Right to freedom of association*: Individuals and groups should be able to form and join any kind of political organization or movement that intends to participate in the electoral process;

¹⁰ See David Beetham, "Freedom as a Foundation," *Journal of Democracy* 15 (4) 2004.

7. *Right to freedom of movement*: Individuals and groups must be able to move unrestrained around any part of a country to build support for their political platforms;
8. *Right to judicial petition*: In cases of disputed election outcomes there must be an independent, predictable judicial process which reviews and rules on such disputes when and where they arise; and,
9. *Right to due process before the law* (during judicial petitions).

All these rights must apply equally to everyone, be they individuals or groups without discrimination of any kind. Further, these rights must be safeguarded at all times and with great vigilance during the electoral process at which time they take on a very special significance. However, it is a norm in human rights discourse that there are instances where an independent tribunal could temporarily rule to restrict rights if there are reasonable grounds in the public interest to justify such restrictions.

Secondly, these rights may be subverted by what has been referred to as “intentional” and “unintentional” structural factors.¹¹ These may not be direct infringements that are specific to any particular electoral period in a country but are in fact longstanding outcomes of socio-cultural, political, economic, constitutional, legal and administrative imperfections and imbalances that characterize any particular country. Of course, dominant political actors may not necessarily take the initiative to address these structural factors, and subsequently, their implications on rights, especially where these factors work to their advantage during the electoral process. Some of the factors include:

- An electoral system or constituency boundaries that systematically advantage some parties and candidates over others;
- Systematic exclusions or disadvantages for particular groups of citizens in system of registering voters;
- Unequal access to elective public office for particular social groups;
- Government discretion over timing and duration of elections;
- Preferential use of official state resources by the governing party during the election campaign; and,
- Lack of regulation on political finance.

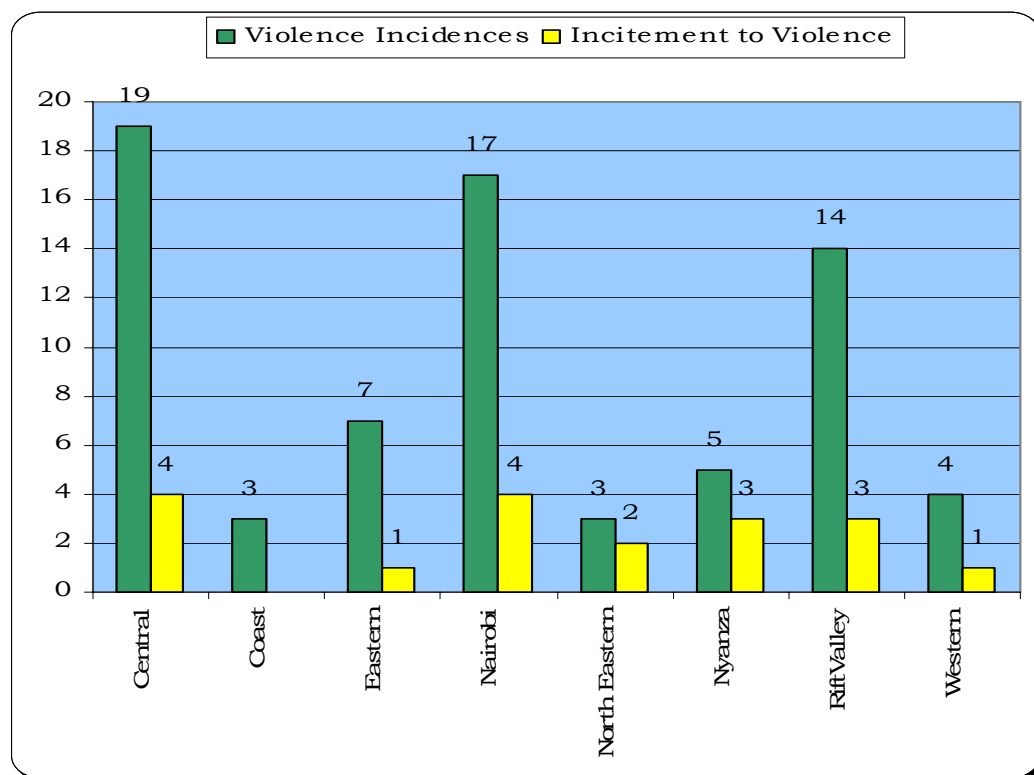
¹¹ See David Beetham, “Freedom as a Foundation,” *Journal of Democracy* 15 (4) 2004.

3.0 POLITICAL VIOLENCE

Electoral violence includes any act(s) that causes or is likely to cause harm or threat of harm, to an individual or group of people and damage to property, if the act or series of acts are intended to influence electoral outcomes.¹² The EMRC received reports ranging from killings, attempted killings, displacement of populations, disruptions of political meetings or rallies, battery, arson, looting and destruction of property, and incitement to violence. Following the incidences of political violence monitored by the EMRC, the KHRC, in its first bulletin issued in October 2007, made specific recommendations to the Attorney General, Commissioner for Police, Electoral Commission of Kenya and political parties on how to curb political violence in the election. The KHRC also demanded action on Mt. Elgon and Kuresoi, which had been engulfed in violence for about a year and, second, violence that occurred during party nominations in November 2007.

Generally, there was violence throughout the pre-election period, albeit incidental. Incidences of political violence reported to the EMRC totalled 72, with Central province leading with 19 cases of violence. These incidences of violence were in the most part incited by politicians, as shown in Figure 3.1 below.

Figure 3.1 Incidences of and Incitement to Violence by Province



(Source: EMRC Data)

¹² As defined by KHRC and the Central Depository Unit (CDU). See CDU, *Ghasia Watch*, 2002

From the foregoing, apart from Coast, all other provinces had reported cases of incitement to violence. While there was no consistent direct causal link between incidences of violence and incitement to violence, there was a high correlation in North Eastern and Nyanza provinces, where the incitement to violence accounted for about 60 percent of the violence that occurred. Nonetheless, Central and Rift valley provinces had the highest cases of violence overall.

Political violence was manifested variously through disruption of rallies, looting, destruction of property and gender-related attacks. Of the cases of violence reported, there were 2 incidences of disrupting rallies, 8 incidences of looting, 12 incidences of destruction to property and 14 incidences of gender-related attacks. Table 3.1 below shows the provinces where these incidences took place.

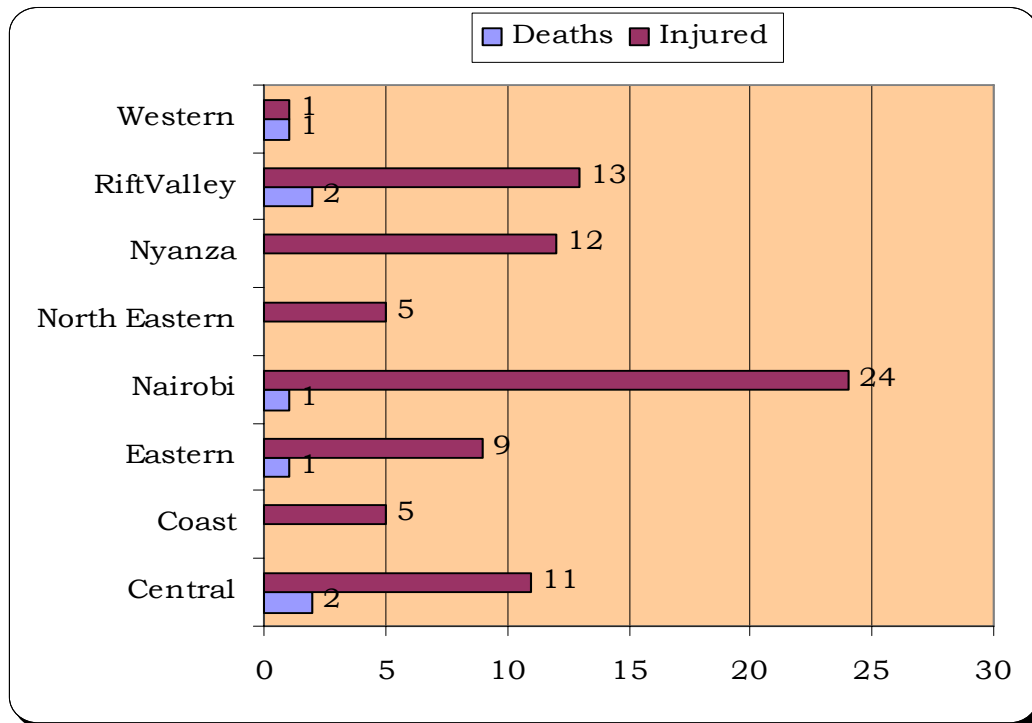
Table 3.1: Manifestations of Violence

Province	Disruption of Rallies	Cases of Looting	Destruction of Property	Attacks on Gender Identity
Central		1	2	6
Coast				1
Eastern			1	
Nairobi		6	1	2
North Eastern	1		1	
Nyanza			3	2
Rift Valley		1	3	3
Western			1	
(blank)				
Grand Total	1	8	12	14

(Source: EMRC Data)

Crude weapons as well as more 'conventional' weapons were used in these violent attacks. The use of clubs/*rungus* accounted for 13 percent, machetes (8 percent), spears (1 percent), stones (42 percent), pick axes (3 percent), use of firearms especially in the Rift Valley and Nyanza (13 percent), wooden sticks (15 percent) and whips (5 percent). The use of these weapons resulted in 7 deaths, while 80 cases of injuries (35 cases of lacerations and 2 cases of bullet wounds) were reported. Figure 3.2 below depicts where the deaths and injuries occurred. All these acts of violence were either attributable to State security agencies, especially the Kenya Police Force in Rift Valley and Nyanza, or marauding informal gangs, be they organized or not.

Figure 3.2: Deaths and Injuries by Province



(Source: EMRC Data)

From the figure above, in the pre-election period, all provinces had cases of injuries while five provinces reported deaths with the exception of Nyanza, North Eastern and Coast. Below are sampled incidences of violence.

Sampled Cases

- On 3rd November 2007 at Kerugoya Town Kirinyaga Central Constituency, at Kagumo market, a group of young men shouted and threw stones at the convoy of the then incumbent MP thereby disrupting his rally. Five vehicles were damaged. Some individuals escaped with minor injuries. Similarly, in Mukindori village, the then incumbent MP was accosted by a rowdy group of people throwing stones and shouting but he escaped unhurt while five other vehicles were damaged.
- On the 27th October 2007 in Imenti South Constituency, a meeting/rally/gathering organized by ODM was disrupted. Crude weapons such as pangas were recovered but no suspect was arrested.
- On the 15th November 2007, in Katulani market in Kitui Central Constituency, supporters of Mwendwa Munyasya mobilized a gang which confronted PNU supporters forcing them to retract the claim that Mwendwa had decided to step down for the PNU candidate Paul Mutisya.
- Police officers recovered crude weapons from supporters of Water assistant minister Raphael Wanjala after Mr. Wanjala 's (PNU) supporters clashed with those of his rival Mr. Ababu Namwamba (ODM) at Mukhobola area. One person was seriously injured while several others sustained light injuries during the skirmishes. The weapons were confiscated

by Mr. Namwamba's supporters who handed them over to the police. The assistant minister, however, denied any knowledge of the incident.



- On 16th December 2007, Belgut MP Charles Keter escaped death narrowly when eight armed gangsters accosted him as he was leaving Unilever International Training Centre hotel on the outskirts of Kericho town See the picture below.



- On the 23rd November, 2007, in Banana Town, Kiambaa Constituency, violence broke out after an alleged confrontation between the aspirants, SM Githunguri and Hon Njenga Karume.
- On the 16th November, 2007, during the nominations in Westlands constituency which were scheduled to take place at St. Marks Catholic Church hall, it is alleged that the venue was changed by Hon. Fred Gumo to his offices at Brookside off Waiyaki Way. This was done without informing the other candidates and by 8:30 a.m the stations were not yet open and the exercise had not started. It is alleged that Hon. Fred Gumo declared himself the unopposed ODM candidate at around 11:20 am. It is also alleged Amin Walji Jr, who was also an aspirant, came in with three vehicles, two range rovers and a Nissan *matatu* full of hired youth. The youth went on the rampage and destroyed window panes and chased away everyone on sight. At the Kangemi City Council Social Hall, hired youth, armed with pangas and stones engaged in violence, but were repulsed by the public. It is alleged that one of Mr. Waljis bodyguards drew a gun and threatened to shoot as they were hit by stones. A number of people were injured.



Middle background, Amin Walji is escorted out of a polling center by his bodyguards as one of them carries away the ballot papers.

- On the 7th November 2007, during a political rally in Marani division, Kitutu Chache constituency attended by Musalia Mudavadi, PNU supporters allegedly threw stones and sticks at Mudavadi's ODM convoy, leaving about 15 people injured. The alleged perpetrator, Nicholas Bengo Mango, who had apparently hired the youth, appeared in court on November 8th 2007.
- On October 27th 2007, in Embakasi constituency, Mugabe Were allegedly hired youth who violently disrupted a PNU rally at Soweto.
- On the 19th November 2007 in Kandara constituency, Alice Wahome was beaten by alleged Maina Kamau supporters at PNU headquarters. She was taken to hospital with serious injuries.

The picture below shows the injured feet of a man who was roughed up in Chebigen in Ainamoi Constituency, Kericho District.



- On the 16th November 2007, PNU and ODM nominations in Isiolo North Constituency were marred by violent protests and demonstrations owing to irregularities in the nomination process such as lack of electoral materials. The names of some candidates were even omitted from the ODM ballot papers. For example in Wabera Ward the names of civic aspirants Osman Happi and Hussein G. Shano were missing. In one instance, ten people were injured when supporters of two civic aspirants fought over allegations of rigging. This degenerated into a violent clash between the Turkana and Ajuran (Somali speakers) community. Weapons such as stones and rungas were used.
- On 16th October, 2007, during the nominations at Kibera Primary School in Langata Constituency, a fight allegedly broke out between two aspiring councillors, Christopher Odhiambo and Mohammed Gore. The weapons used were umbrellas. Two people were injured.

(Source: EMRC Data)

3.1 Violence against Women

Violence and other forms of discrimination against women, in the context of elections, are acts perpetrated by men against women with the aim of devaluing, demeaning and de-humanizing them and their specific identity as women so as to promote men's dominance in electoral politics thereby influencing electoral choices and outcomes¹³. During the monitoring period, for example, texts intended to demean or offend women were circulated via cellular Short Messaging Services (SMS).

Forms of gender-based violence and discrimination targeting women included rape, stripping and other forms of indecent assault, sexual harassment and various unfair restrictions aimed at alienating women in politics. These violations against women were carried out to intimidate women into withdrawing from political contests and campaigns. Consequently, although there were an unprecedented number of women nominated by political parties, the electoral outcomes of the 2007 General Elections neither reflected the number of women in Kenya nor the role of women in leadership.

Cases of violence and other forms of discrimination against women were reported to the EMRC, with 2 cases of sexual harassment being reported in Nairobi and Western Province; 2 cases of stripping in Nairobi and Nyanza; and 14 cases of gender-based violence across the country. The Box below illustrates actual cases of physical violence and other forms of discrimination against women.

Sampled Cases

- On 6th October 2007, Asha Hussein was violently attacked as she returned to her home in Dandora after a political rally in Nakuru. Asha said it was about 9 pm when she alighted from a public service vehicle in Dandora. Since it was fairly late in the evening, she chose to hire the services of a guard to walk her home. Just a few meters to her home, she was suddenly surrounded by a group of unidentified young men wielding machetes and other weapons including an AK-47. Sensing danger, the guard ran away leaving her alone. The gang proceeded to assault her while one member pointed a gun at her warning her against vying for the seat. Apart from the beatings, Asha said, the gang insulted her, questioning her morality. They continued to torture her until she agreed to denounce her political ambitions.
- On the 28th October 2007 at Kianyaga Town, Gichugu Constituency, the DP aspirant for Kabare ward, Jeremiah Geteri allegedly warned people against electing women as they will do nothing apart from looking for men. Allegedly referring to Martha Karua, the aspirant asked, "We elected her when she was a Mrs. Now she is a miss. How many people agree that she should now go and marry?"
- On 16th October, 2007 at Kibera Primary School in Langata constituency, one aspirant said, "Wanawake endeni mkapike" ("women go and cook") ... "tokeni ama tutawarape" ("go

¹³ See KHRC, *The Status of Human Rights Protection in the Electoral Process: October to November 2007*, First Bulletin Of the EMRC

away or else we shall rape you”). This made all the women to run away. The reason for the intimidation was because they were supporting aspirant Opete-Opete.

- On 16th November at Dandora Secondary school Embakasi Constituency, Asha Ali was assaulted when a conflict arose between the supporters of Waititu and her supporters.
- On 16th November at Dandora Secondary school Embakasi Constituency during the party nominations, aspirant Jecinta Mwangi was discriminated against at Dandora Area Two. They said, “People of Dandora cannot vote for a woman”. Some asked her, “umepikia bwana malaya wewe ODM si ya Wakikuyu” (have you coked for your husband you harlot, ODM does not belong to the Kikuyu). She was abused, intimidated and threatened.
- On Friday, November 16, 2007 in Narok North Constituency, Faizah Mohammed was harassed by a police officer and barred from entering a stadium to campaign. Her identity was also questioned by those that were guarding the entrance to the stadium because she was a Muslim.
- On November 16, 2007 in Uasin – Gishu in Eldoret South Constituency, it is alleged that campaigners of Julius Sang said that other aspirants ‘are thieves and are very immoral’. Alleged supporters of David Koros hurled insults on Peris Jephumba saying ‘they cannot be led by uncircumcised women.
- On the 16th November 2007, hate speech directed at women was circulated via SMS. For example: “Why you should be in ODM! ODM women scream YAWA, yawa, YAWA, in praise of NYUNDO while men in PNU are busy telling their wives to PANUA ili kazi iendelee. Women in ODM-K are so wet that their men keep asking WAPI WIPER!”...END...”

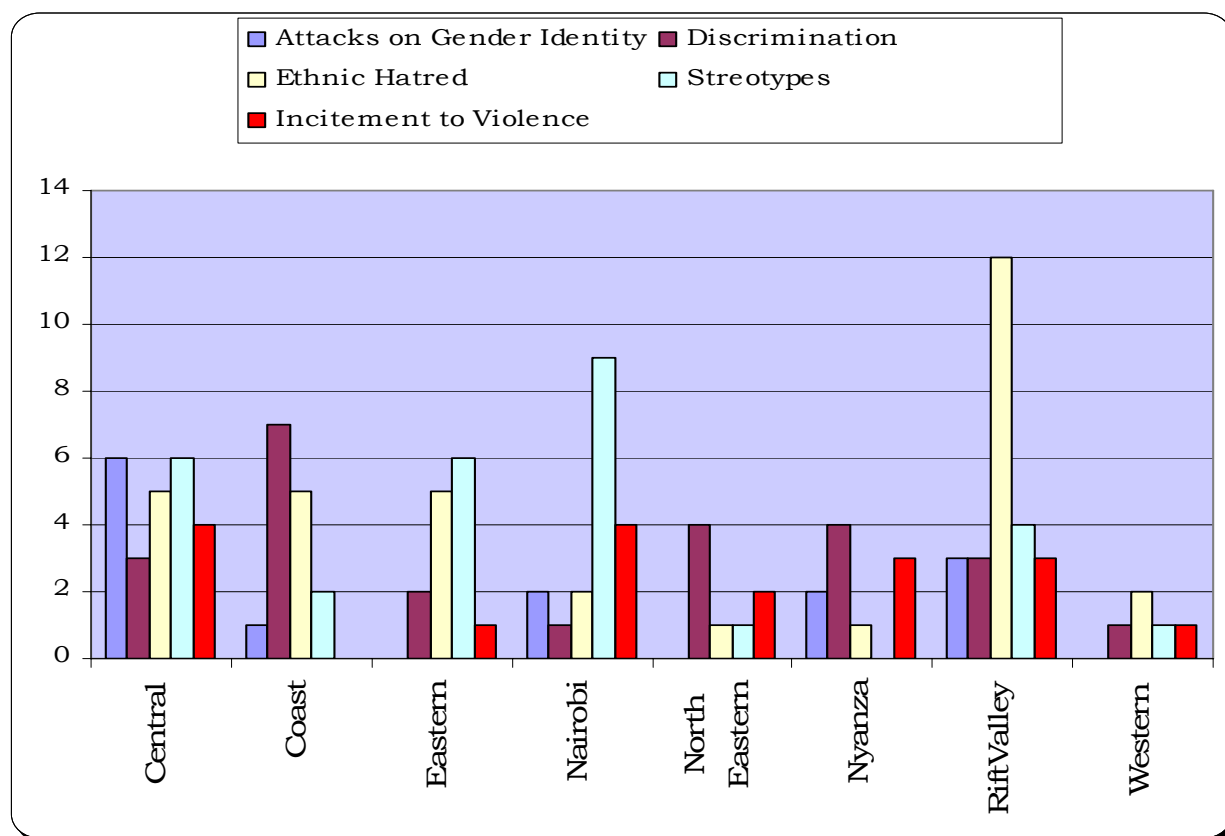
(Source: EMRC Data and other sources)

4.0 HATE SPEECH

Hate speech includes categories of speech outlawed in international law which have the potential to lead to xenophobia, intolerance and discrimination on grounds of ethnicity or regional background among others. The threshold for hate speech is that it should not be mere ridicule, but rather intended to spur hatred against a particular person or group. Two key features of hate speech were monitored during the electoral process. First, utterances and/or publication of words, epithets or subtle idioms intended to cause emotional harm, offend or marginalize certain groups. The second form of hate speech was incitement to violence or hatred against particular groups, directly or indirectly.

Use of hate speech was reported and documented through email, cell-phone SMS messages, photos, and other publications. Incidences of hate speech reported to the EMRC totalled 119 cases ranging from messages spurring ethnic hatred (28 percent) to discrimination (21 percent), incitement to violence (15 percent) attacks on gender identity (12 percent) and use of stereotypes (24 percent). This latter category may not have constituted hate speech *strictu sensu*, but in their effect. Figure 4.1 gives the overall outlook on the incidences of hates speech and where they were used.

Figure 4.1: Incidences and Types of Hate Campaign



(Source: EMRC Data)

From the figure above, it is evident that all types of hate speech were prevalent throughout the country, the worst being messages invoking ethnic hatred against ethnic communities followed by stereotypical expressions against other ethnic communities and groups such as women. In terms of sites where hate speech was prevalent, Rift Valley province led in frequency of hate speech, accounting for 36 percent of hate speech messages relating to ethnic hatred. Third, while the coastal region seemed to be the only province that did not have reported cases of incitement to violence, violence indeed occurred albeit on a lower scale than other provinces.

The following boxes show selected texts of print, email, SMS, blog, or photograph, caricature, graphic [mis]representations and other forms of hate messages. Although this Report has not dwelt on the role of the media in spreading hate speech, the EMRC received reports that media houses, especially local language FM stations, also spread and/or condoned the broadcast of hate speech.

A) Hate Campaign against ODM and its Presidential Candidate

WHAT DOES THIS MAN WORSHIP?
KALONZO is a Baptist?
KIBAKI is a Catholic?
RAILA is a WHAT?

PENTAGON
Did you know Pentagon is the sign of Devil Worship?

Taka hapal
Kila kabila irudi kwao!

Kenya's Burden

KENYA UNDER MAJIMBO - UGAFUZI -

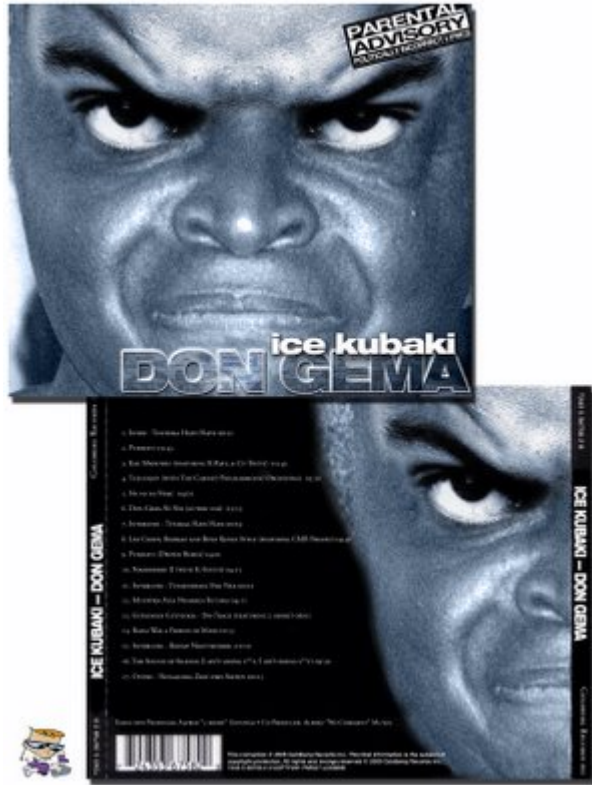
LOOK WHO IS TALKING

Raila Odinga wants to save Kenya from himself after stealing Luos' hard earned money CONTRIBUTED QND ENTRUSTED TO HIM TO buy shares in the Molasses plant
The "Youth for KANU 92" are now "Men for ODM 07"
Cyrus Jirongo is now masquerading as born again Christian
William Ruto is a political High Priest in Heaven - in the process of being deodorized by Agwambo with Powerform, after stealing land and selling the Kalenjin for 30 pieces of silver
Gumo is a moral Counsellor in Anti-Corruption, wher is our parking? And all the plots in Nairobi?
Musalia Mudavadi is now the Innocent, Clean Choir boy, towing behind Agwambo for lack of spine.
Kipkalya Kones is suddenly a Peace Maker but with blood dripping from his hands from the tribal clashes
Charles Njonjo is now a Multi-party Activist after a lifetime of arrogance and spitting on Africans
Henry Kosgey could almost host ODM Olympics after stealing from the All Africa Games, bringing Kenya National Assurance to its knees and grabbing his peoples' land in Tinderet
Sally Kosgey will hug ministers not slap them in public. She wants corrupt ministers charged before she returns the Railway corporation land she grabbed on Forest land
Charity Ngilu will give a testimony in Bishop Wanjiru's church on how to lead a moral life after REAL ACTION in the Parklands Parking lot
Bishop Wanjiru must repent and intercede for her children after helping them cut their days on earth by abusing Kamangu, their father

(Source: Various Sources)

B) Hate Campaign against PNU and its Presidential Candidate

KIBAKI'S NEW ALBUM



“Rattlesnake Me-Chuki: his eyes... Cunning and snaky!”



“Martha Karua: the most arrogant and ugly

ever...she dates a Catholic priest”.

GOLDENBERG RECORDS

- 1.INTRO -TULITOKA HAPO HAPO 00.31
2. PUMBAVU 03.43
- 3.KAE MWATHIE (FEATURING K-RAY2 & CY-TOTTY) 05.43
- 4.TUJI - ENJOY (WITH THE CABINET PHILHARMONIC ORCHESTRA) 03.20
minister in Kenya
5. MY NUMBER TWO (WAMBUI REMIX) 04.01
- 6.DON GEMA NI NIE (GUTIRE UGE) 03.53
- 7.INTERLUDE - TUTAKAA HAPA HAPA 00.29
- 8.LEX, COOPS, BIMMAZ AND BENZ KENYA STYLE (FEATURING CMB PREZZO) 04.01
- 9.PUMBAVU (DRIVER REMIX) 04.01
10. NAIROBERRY II (FEATRING K SOUTH) 04.15
- 11.INTERLUDE - TUTAENDELEA VILEVILE 00.21
- 12.MUGWIKI ATIA NDAREGA KUUMA ? 04.11
13. GITHONGO GUTHUKIA - DIS TRACK (FEATURING K-SHORT) 06.01
14. RAILA WAS MY FRIEND 02.55



(Source: Various Sources)

C) SMS Text Messages and Leaflets

a) “We, as the Gikuyu, Embu and Meru communities, possess six million votes. You want us to be ruled by an uncircumcised people [Luo people] and go back to the jobless corner? Come out in large numbers to re-elect President Mwai Kibaki so that the country is not ruled by an uncircumcised man who will make the Kikuyus wear shorts. Circulate this message to five or more members of the Gikuyu, Embu and Meru communities. Your vote is the one that will prevent us from going back to Egypt.”

(Received as an SMS, and written in Kikuyu)

b) “Under Kalonzo’s government, sex will be legalized and free.”

(Received as an SMS, and written in Kikuyu)

c) “Why you should be in ODM! ODM women scream YAWA, YAWA, YAWA, in praise of NYUNDO while men in PNU are busy telling their wives to PANUA ile kazi iendelee. [(Spread legs so that ‘the job’ may continue]. Women in ODM-K are so wet that their men keep asking WAPI WIPPER! [where is the wipper]”...END...”

(Received through SMS, written as it is and minus translations [within], and targeted both at women as a group and also PNU and ODM-K political parties.)

d) “May God protect you from all the harms of the devil, including diseases, thieves, fleas, ticks, weevils, lice, bedbugs, and especially, ODM.”

(Received as an SMS, written in Kikuyu, and send through cell-phones)

e) “We as Kalenjin Community would like to inform the Kikuyu who live here at Solai (in Riffit Valley) to immediately leave the farms you occupy or else we warn you that we shall attack you forcefully anytime”

(Received at EMRC as a leaflet, written in Kiswahili, and signed as “Jamii ya WaKalenjin” (Kalenjin Community))

(Source: Various Sources)

D) Sampled Cases

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- On 18th October 2007, a former Kinangop MP allegedly said in a public meeting that: “Raila hates the Kikuyu people and when elected, he will revenge by forcing the Kikuyu to wear kaptulas (colonial-era shorts) and eat omena (a specie of fish).” Speaking at the same function, another politician claimed: “The majimbo system propounded by Raila will result in the eviction of Kikuyu people from Nyanza and Rift Valley by the Luo and Kalenjin communities, respectively.”
- On the 3rd November 2007 at Ithare-ini Market, in Gichugu Constituency, during a rally also attended by aspirants and the provincial administration (Martha Karua, Njera Gachoki, Kiaura Marua, Gichugu District Officer and Gichugu Officer Commanding Police Station), the Narc-Kenya chairman Gichugu branch allegedly said that if Luos took over the next government, they would force everybody in the country to learn dholuo and make it the national language.

- On the 2nd November 2007 at Thika Municipal stadium in Juja Constituency, Mr Kiruma of muchene comedians Troupe allegedly referred to PNU as “Pea Njuguna Ugali” and that they are baboons. The rally was also reportedly attended by ODM- K’s Kalonzo Musyoka, Julia Ojiambo, Mutula Kilonzo and Samuel Poghisio.
- On the 16th November 2007, during a rally in Isiolo North Constituency organized by the ODM parliamentary aspirant, Godana Jarsa allegedly castigated his ODM opponent in the words: “Nina ujumbe ya watu wa Oldonyiro na Kipsing (eneo la Wasamburu), na wamewaambia nyinyi watu wa Isiolo town kwamba iwapo mtachagua Mokku basi mjitayarishe kutoa majembe na vijiko chini ya vitanda vyenu kwa matumuizi ya kuzika watu.’ (That if the people of Oldonyiro elect ODM they should be prepared to bury the dead).
- On 10th November 2007 at Khadija Primary School grounds in Kisauni Constituency, one aspirant allegedly said that people had elected “mbunge muozo na mwizi” (rotten and fraudulent). He was referring to former MP Anania Mwaboza.
- On 11th November 2007 at Frere Town Primary School grounds in Kisauni Constituency, one politician, referring to Raila, said, “Kwanza apashwe tohara” (Raila must be circumcised). Another politician, while referring to a parliamentary aspirant Joho said “Dumbwasha, si mume kamili, hana elimu kiroboto na chihako cho” (That he is an object without shape, not man enough and an illiterate tick. He also likened him to the lower part of the body.
- On 8th November 2007, in Ruth Guest House Taveta constituency, an aspirant, at a KANU delegates meeting, allegedly told those present that they should avoid Basil Criticos as he is a white man and a colonialist. She also allegedly added that Basil Criticos and Raila Odinga were enemies of Islam.

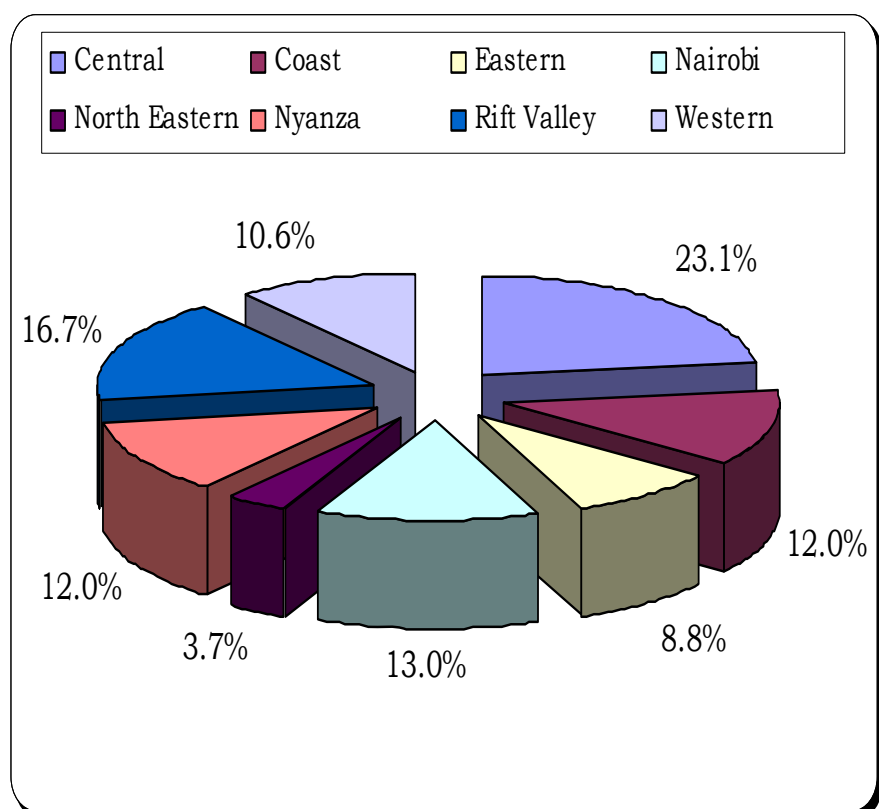
(Source: EMRC Data)

5.0 BRIBERY AND ABUSE OF STATE RESOURCES

5.1 Bribery

216 incidences of bribery were reported to the EMRC. Figure 5.1 illustrates the frequency of reported voter bribery.

Figure 5.1: Bribery Incidences by Province



Province	Incidences
Central	50
Coast	26
Eastern	19
Nairobi	28
North Eastern	8
Nyanza	26
Rift Valley	36
Western	23
Total	216

(Source: EMRC Data)

(Source: EMRC Data)

These incidences of bribery may be categorized as: monetary handouts (81 percent); vote buying (4 percent); gifts (11 percent); and the expedient provision of public services (4 percent).

Sampled Cases

Bribery

- On 28th October 2007 in Kianyaga Town, Kirinyaga District, Gichugu Constituency, the campaign teams of the area councilors and aspirants (Harry Mugo and Jeremiah Gateri) allegedly gave youth and women groups in the area hand outs ranging from Kshs 50-200 per person.
- On 31st October 2007, at Kamigua Youth Polytechnic grounds, in Kirinyaga District, an aspirant from Gichugu Constituency, Jackan Gutu allegedly gave several groups of women and youth cash up to about Kshs 100 each.

- On 3rd November 2007 in Ithare-ini Market, Kirinyaga district Gichugu Constituency aspirants Martha Karua, Njera Gachoki, Kiaura Marua allegedly gave women, men, youth groups and party delegates money ranging from Kshs 100 and Kshs 200 at various locations.
- On 16th November 2007 in Tinganga Township School grounds in Kiambaa Constituency, aspirant Wanyanga allegedly transported voters from one polling station to another (from Tinganga to Mboi-Kamiti).
- On 7th November 2007 at Mukindori Town Kirinyaga Central Constituency the incumbent Member of Parliament Daniel Karaba allegedly gave residents of Somo village Kshs 100 each.
- On 19th November 2007 at Murang'a Town (Kiharu Constituency) Kembi Getura and Ngenye Kariuki's agents allegedly gave out money ranging from Kshs 50 to Kshs 200.
- On 15th November 2007 in Kitui District in Katulani market (Kitui Central Constituency) supporters of PNU aspiring candidate Paul Mutisya allegedly bribed voters.
- On 16th November 2007 in Wajir South Constituency, Ibrahim Rashid allegedly bribed ODM officials.
- On 6th November 2007 at the home of the chairman of Wajir County Council Ali Msh'd Yalahow allegedly bribed voters and also gave them gifts such as vests and umbrellas in Wajir district (Wajir East Constituency).
- On 16th October, 2007 at Kibera Primary School in Langata Constituency, Said Salimini allegedly bribed the youth with Kshs 300 each.
- On 16th November at Dandora Secondary school in Embakasi constituency, a parliamentary aspirant Mr. Waititu allegedly gave voters Kshs 200 and Kshs 500.
- On 16th November, 2007 at Maringo, Mbotela and Jericho wards in Makadara constituency, Dick Wathika and Dan Shikanda allegedly gave voters Kshs 100 each.
- On 6th November, 2007 in Kasarani constituency, aspirant Orié Rogo Manduli allegedly bribed voters with Kshs 100 each.
- On 7th November 2007 at Marafa in Magarini constituency in Malindi District, at a market place, Francis Baya allegedly gave a total of Kshs 21,000 to 7 different women groups.
- On 31st October 2007 in Likoni Constituency, Suleiman Shakombo allegedly gave 67 of his supporters Kshs 500 each at ACK hall in Likoni, Mombasa.
- On November 16, 2007 at Consolata primary school in Likoni Constituency, Mama Rebecca, a PNU aspirant allegedly bought voters cards from voters during the nominations.
- On 5th November 2007 in Kwale, Tiwi ward (Likoni Constituency) Chirau Mwakwere allegedly ferried supporters and allegedly gave them Kshs 1000 each during a PNU campaign. On the same day, Suleiman Shakombo allegedly ferried supporters at Mtongwe market and gave them Kshs 1,000 each.
- On 16th November 2007 at Umoja primary school in Kipevu ward, Changamwe constituency, Peterson Mitau, an ODM aspirant, allegedly gave his supporters Kshs 200 each.

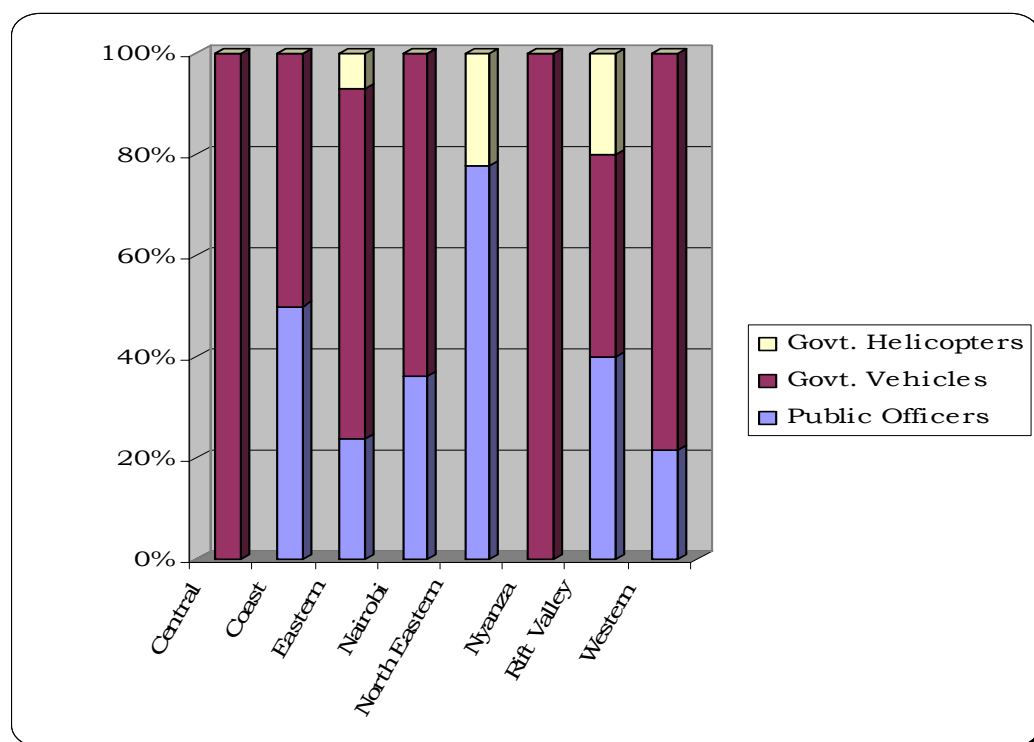
- On 16th November 2007, Ramadhani Kajembe of Changamwe Constituency allegedly gave his supporters in Kaloleni, Kilifi and Kwale, 200 Kshs each.
- On 16th November 2007 in Mvita constituency, various Somali workers were allegedly given Kshs 200 and 250 each at Tononoka Social Hall in Mvita. In the same constituency, a parliamentary aspirant allegedly gave his campaigner Kshs 2,500 to share with other women in the village.
- On 21st October 2007 in Voi Constituency, Naomi Shaaban gave Muslim women Kshs.10,000 through Farida at Kariakoo mosque in Voi.
- On 16th November 2007 in Uasin- Gishu District, Eldoret South Constituency aspirants Jepchumba Peris, Koros and Kibet Biwott allegedly gave voters Kshs 50 each so as to win their votes.
- On 3rd November 2007 at Masyungwa primary school in Mwingi District, Josephat Musyimi allegedly gave Peter Syengo Kshs 4,300 to distribute it to his supporters.
- On 3rd November 2007 in Ruai, Embakasi constituency, John Kamangu a PNU aspirant allegedly gave Kshs 100 each to about 200 women to buy their votes. On the same day, he also allegedly bought some youth and women, suits and shoes.
- On 27th November 2007 in Soweto, Embakasi Constituency, Mugabe Were, an ODM aspirant allegedly bought voters cards from women and youth.
- On 1st November 2007 at Kabazi, Subukia Constituency, Wachira Njuguna (KANU) in a meeting at a National Cereal Produce Board premises allegedly gave out Kshs 12,400 to participants who were about 50 in total. The meeting was allegedly co-ordinated by Kiarie Ndungu (KANU) who was also an aspiring councilor.
- On 6th November 2007 at Kabazi (Subukia Constituency), in Cannors Grounds, Waiganjo Mwangi, Hilda Kimatta and Mwangi Waithaka allegedly gave Hannah Wanjira Gichuki Kshs 5,000 to a group (casual workers). Waiganjo allegedly gave Kshs 3,000, Hilda allegedly gave Kshs 1,000 and Waithaka allegedly gave Kshs 1,000.
- On 16th November 2007 at in Kieni polling stations, Kieni Constituency former MP Chris Murungaru and outgoing councilors Mwangi Kibuu and Wanyaga Gathaka allegedly gave voters money during the nominations exercise. In Kangaita village in Tetu constituency, an aspirant F.T Nyammo allegedly gave voters between Kshs 100-1000 to win their votes.
- On 11th November 2007 at Makutano Kilimambogo Township Juja Constituency former MP W. Kabogo, accompanied by Juja Constituency Development Committee chairperson Sammy Onyango allegedly brought in water drilling equipment for the Kilimambogo Water Project.
- On 16th November, 2007 at Kirigu Primary School in Dagoretti Constituency John Mwaura Muiruri, an aspiring councilor allegedly gave young men Kshs 100 each so as to interfere with the nomination process. The young men who were paid disrupted the meeting, destroying and looting property. Some women were also allegedly given Kshs 50 to Kshs 100.

5.2 Abuse of State Resources

There were reports of misuse of public resources and the presence of public officers in political meetings. 30 incidences of public officials present at campaign rallies were reported with 10 incidences of these occurring in Eastern province. There were 64 reported cases of the use of government-owned vehicles, 29 of which were spotted in Eastern Province and 18 in Western; and, 6 incidences of use of government helicopters half of which were reported in Eastern province. From Figure 5.2 below, it is evident that in all provinces in Kenya, government/public resources were utilized for campaigns.

Second, it is notable that in all provinces except Central and Nyanza, there were incidences of public officers attending political activities contrary to the Public Officer and Ethics Act and also the National Assembly and Presidential Elections Act. Other than these statistics, sampled cases are documented below.

Figure 5.2: Incidences of Abuse of State Resources



(Source: EMRC Data)

Sampled Cases

Abuse of State Resources

- On 4th November 2007 at a place of worship in Kirinyaga District (Gichugu Constituency), parliamentary aspirant Martha Karua allegedly used vehicle number GKA 435 H Land cruiser during her campaign.

- On 3rd November 2007 at Ithare-ini Market, Kirinyaga District Gichugu Constituency aspirants and provincial administration (Martha Karua, Njera Gachoki, Kiaura Marua, Gichugu DO and OCS Gichugu respectively) allegedly used government vehicle number GKA 435 H Land Cruiser to campaign for PNU. After the rally, several unidentified men, wearing Narc-K caps were allegedly hanging on the vehicle as it escorted Ms Martha Karua.
- On 27th October 2007 at Raimu Primary School in Kianyaga Town, there was alleged corruption in access to free medical camp which had been organized by immediate former MP for Gichugu, Martha Karua. Those perceived to be anti Narc-K were allegedly discriminated against in access to medical care. NARC-Kenya supporters were allegedly favoured and even allowed to pass over the queues.
- On 14th December , 2007, misuse of government vehicles was reported at Kamungei Primary School in Sotik District where former President Daniel arap Moi was campaigning for re-election of President Mwai Kibaki.



- On 6th November 2007, in Wajir East Constituency, Government officials such as Mohammed Galore and Ibrahim Hussein participated in PNU campaigns.
- During one of their rallies in Kasarani constituency political aspirants led by Maina Kamanda, Kamau Ruhangi, Beth Mugo, Joseph Gachina and Waihenya Ndirangu allegedly used a government vehicle GK 710G cream in colour to campaign.
- On 3rd November 2007, during a public rally in Tana River District (Garsen Constituency) allegedly attended by Chief Abdallah Bakelo and District Officer Wanyoike, the following vehicles were spotted: GK A378L navy blue Land Rover and GK 1085B white Land Cruiser.
- On 19th and 20th October Koigi allegedly used GK A600H at Maili Kumi in Subukia Constituency office where he received councilors who were defecting to Chama Cha Mwananchi (CCM) and made a meet the people tour using he same vehicle.

(Source: EMRC Data)

6.0 THE LEGAL FRAMEWORK GOVERNING THE CONDUCT OF ELECTIONS IN KENYA

6.1 LAWS RELATING TO THE CONDUCT OF ELECTIONS IN KENYA

The legal and administrative framework governing elections in Kenya has improved notably within the period of the four multiparty elections. Save for the flawed 2007 presidential election, there have been some significant improvements in the conduct of elections, partly brought about by the minimum reforms initiated by the Inter-Parties Parliamentary Group (IPPG) in 1997. Key laws that govern elections include: the Constitution of Kenya; The National Assembly and Presidential Elections Act; the Election Offences Act; the Public Officer Ethics Act; The Local Government Act; The Societies Act; The Penal Code. The Anti-Corruption and Economic Crimes Act and, the Public Order Act also provide standards which have an indirect bearing on the conduct of elections.

Other legislation relevant to electoral governance include: the Kenya National Commission on Human Rights Act, which establishes the KNCHR and empowers it to conduct independent investigations into cases of alleged human rights violations. Secondly, the Kenya Broadcasting Corporation Act, which provides that the publicly owned media house should give balanced coverage to all aspirants and political parties. In the past the media house has been misused to campaign for the incumbent government.

While all these laws exist, many political, social and economic crimes have been committed during the electioneering period. Acts of omission and commission in defiance of the Constitution and the plethora of laws of Kenya that govern the conduct of elections became the norm rather than the exception. Simply put, a 'culture' of impunity has captured the electoral process, undermining its role in electoral accountability and justice.

As explained in previous parts of this Report, misuse of state resources, political violence, violence against women, corruption and hate speech are all proscribed in Kenyan law. Political violence documented in Chapter 3 constitutes criminal acts prohibited under the laws of Kenya. Violence against women including sexual violence and all forms of discrimination are prohibited by various laws. For example, Section 82 of the Constitution outlaws discrimination of any nature, including on the basis of sex. The Sexual Offences Act also prohibits sexual violence against women, yet in the course of the elections, these crimes went unprosecuted. In relation to corruption and abuse of public office, the Anti-corruption and Economic Crimes and the Public Officer and Ethics Act make penalties and consequences for breach, with consequences for candidates. The National Assembly and Presidential Elections Act and Election Offences Act also sanction these acts.

In relation to hate speech, although Kenya does not have a specific law that deals with hate speech, section 77 and section 96 of the Penal Code outlaws the publication of material or speech that is calculated to incite violence. There were no reported cases of recommendations for prosecution by the Police, ECK, KACC, and/or prosecution by the Attorney General. Instead, each of the institutions blamed the other for failure and/or neglect to act decisively.

Below is an analysis of the laws or regulations governing elections and the electoral process, and how they were breached with impunity.

6.1.1 The Constitution of Kenya

Chapter V of the Constitution of Kenya provides for the protection of fundamental freedoms and individual rights. These include the right to life (s. 71), personal liberty (s. 72), protection from inhuman treatment (s. 74) and deprivation of property (s. 75), freedom from arbitrary search (s. 76), freedom of conscience (s.78), freedom of expression (s. 79), freedom of assembly (s. 80), freedom of movement (s. 81) and protection from discrimination (s. 82). During the elections, these rights were state and non-state actors failed to respect, protect and promote these rights. Considering the interdependence of human rights, this affected the rights related to free and fair elections. While these rights are partly self-enforcing in relation to elections, the state through the Police, ECK, KACC, Attorney General and the courts of law have the primary responsibility to ensure that the rights are respected, protected and fulfilled. Non-state actors have yet another duty to respect these rights.

6.1.2 Penal Code

Most of the acts related to corruption, political violence and violence against women are criminal in nature. Instigating violence or participating in violent acts are both prohibited under the Penal Code. Section 94 and 95 prohibit conduct likely to cause a breach of the peace. Further, Section 96 outlaws verbal utterances or printing of materials that could incite acts of violence. It reads:

- a) Any person who, without lawful excuse, utters, prints or publishes any words or does any act or thing indicating or implying that it is not, or might be desirable to do or omit to do, any act, the doing or omitting which is calculated, to bring death or physical injury to any person or to any class, community or body of persons; b) to lead to the damage or destruction of any property; c) to prevent or defeat by violence or by other unlawful means the execution or enforcement of any written law or to lead to defiance or disobedience of any such law or to any lawful authority, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

The Code, read together with the Anti-Corruption and Economic Crimes Act, also prohibits bribery and other corrupt activities.

6.1.3 Election Offences Act

To complement the Penal Code, this law provides for the orderly running of elections by prohibiting offences which can compromise the integrity of the election. It prohibits candidates from bribing and influencing voters with handouts, or any other means. Under Section 10 of the Act, offences that are prohibited include: selling, offering for sale, or buying, or offering to buy a ballot paper or voter's card, or bribing a voter with money or anything else of value in order to influence his or her decision to vote. The object of this provision is to ensure that the right to vote and be elected through due process is not compromised. However, as illustrated in Chapter 5, all these offences took place with impunity.

With regard to violence, Section 9 provides that every person shall be guilty of the offence of undue influence who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens any force, violence or restraint, or any temporal or spiritual injury, damage or loss, or any fraudulent device, trick or deception, for the purpose of or on account of:

- (a) inducing or compelling a person to give or refrain from giving his vote, whether to a particular candidate or not, at an election;
- (b) otherwise impeding or preventing the free exercise of the franchise of an elector or voter;
- (c) inducing or compelling a person to refrain from becoming a candidate or to withdraw if he has become a candidate;
- (d) impeding or preventing a person from being nominated as a candidate for an election or from being registered as a voter.

With regard to issues surrounding hate speech, Section 11 of this Act outlaws the printing, publication and distribution of materials such as handbill, placard or poster including advertisements which do not bear the names and addresses of its printer and publisher. Secondly, the Act prohibits the publication or distribution of materials or any false statement in relation to any candidate's personal character or conduct. These provisions, read together with the Penal Code prohibit hate messaging. As Chapter 4 of this Report shows, there were serious breaches of this law without any prosecution.

While the ECK blamed the Police and the AG for failing to prosecute, it is mandated to enforce the Electoral Code of Conduct (which is subsidiary legislation) and ensure that elections are free and fair and are conducted in a climate devoid of fear, intimidation, coercion or reprisals. The Code binds political parties and candidates duly nominated by political parties and calls upon them to "condemn, avoid and take steps to prevent violence and intimidation" (paragraph 5(c)). Section 6 of the same code prohibits, at least on paper, the use of public office to influence political and electoral outcomes.

6.1.4 Public Order Act

The Public Order Act was amended in 1997 to facilitate the holding of campaigns by political parties and candidates. The Act dispensed with the need for licenses and other permits in order to hold public meetings. Prior to that

amendment, political parties and candidates were required to obtain permits from the Police and this had to be approved by the District Commissioner, as head of the District Security Committee.¹⁴ After the amendment, those who need to hold campaign rallies are only required to notify the Officer Commanding Police Division who holds jurisdiction of the area, where the public meeting will be held. The notification must be given not less than three days and not more than fourteen days before the holding of the public meeting. The police can withdraw or refuse to grant permission or disperse the meeting if a breach of the law results or is likely to result from the meeting, sometimes arbitrarily.

Unlike under KANU rule when the Opposition was unable to obtain these permits forcing them to hold what the Police would term 'illegal' meetings often leading to bloody confrontations, there was a general observance of this law in the run-up to the 2007 elections. However, the Commissioner for Police, in his self-fulfilling prophecy, banned any beforehand public meetings after the election. In the post-election period, therefore, there were no public meetings which went undisrupted. Only until the mediation process begun was the ban lifted.

6.1.5 Public Officer Ethics Act

This law governs the conduct of public officers. Section 15 for instance calls upon all public officers that are responsible for the management of public resources to ensure that they do not misuse or misappropriate these. But examples contained in Chapter 5 have illustrated that some officials in the provincial administration and State institutions such as parastatals misused government vehicles in PNU campaigns. Section 16 prohibits public servants from political activities which compromise their neutrality or the discharging of their functions. Reinforcing this provision is section 17 of the National Assembly and Presidential Elections Act which bars public officers from publicly supporting or opposing any of the political parties participating in an election. A breach of this provision carries a fine of not more than Kshs 50,000 and/or imprisonment for 6 months.

6.2 ENFORCEMENT FRAMEWORK

From the above examples, it seems that lack of enforceability of the law in Kenya is one of the major reasons contributing to impunity, since those who breach laws are not prosecuted in accordance with the law. This section highlights the role of three State institutions in ensuring adherence to electoral or related laws.

¹⁴ Under KANU rule, the Opposition was unable to obtain these permits. They held their rallies nonetheless, leaving the police with the option of stopping those meetings mainly using violent means of clobbering the Opposition members, tear-gassing them, and also arresting them and arraigning them in court for holding illegal meetings. As it existed, the Public Order Act breached the freedom of assembly as provided for in the Constitution of Kenya.

6.2.1 The Role of ECK

While the ECK has no power to prosecute offenders, the ECK is guided by the Electoral Code of Conduct when enforcing offences, including those related to violence. The ECK is empowered to issue formal warnings, impose fines and ban political parties or candidates from participating in elections. This may be in relation to instigating acts of violence, hate speech or any other violation of electoral laws or codes outlined above. However, those who face these penalties have the right to go move the High Court of Kenya to grant judicial redress on grounds of procedural or substantive fairness. Secondly, in the absence of powers to prosecute, the ECK has an investigative role, which evidence it should present to the AG to mount prosecutions. Moreover, it is not clear whether the ECK has ever approached the AG to delegate prosecutorial power to its relevant officers, or altogether asked for the secondment of prosecutors.

6.2.2 Kenya Police Force: Maintaining Law and Order?

The Kenyan Police Force is established through the Police Act. The *raison d'être* for the existence of police force in any country is to enforce laws, maintain peace and ensure the fundamental freedoms and rights of individuals are protected. In performing these functions, the police should act without fear of favour. Section 14 of the Police Act prohibits any police officer from acting in a manner likely to show political affiliation.

It has however been documented that the Kenya Police Force, is a 'regime police' which favours the government in power. At its birth, Kenya's police force carried the marks of a punitive and citizen-containment squad, rather than a service-oriented force¹⁵. Subsequently, all post-colonial governments have used them to repress the forces of resistance, be they opposition parties or individual citizens. In fact, in the Kenya Police Force Strategic Plan, there is an admission that the force "has in the past practiced regime policing focusing substantial institutional energy on sustaining the power of the ruling party"¹⁶.

Over the years, the Police in Kenya has had a reputation of being one of the most corrupt State institutions and violator of human rights. As recent as last year, the media reported many incidents where the police force violated rights of Kenyans ranging from extra-judicial killings to police brutality.

Why is it difficult for the police force to maintain law and order using the rule of *just law*? There are three critical factors: First, there are severe administrative problems within the system. The police are largely understaffed, poorly equipped and remunerated, and subject to poor working conditions. Such factors directly contribute to the arrogance, ineptness, and corruption by police officials. The lack of a service commission as was in the independence Constitution of Kenya and recently the Draft Constitution of Kenya has been cited as a major cause of this situation, necessitating the need to establish a Police Service Commission.

¹⁵ KHRC, *Mission to Repress: Torture, Illegal Detentions and Extrajudicial Killings by the Kenyan Police*, KHRC , Nairobi 1998

¹⁶ Government of Kenya, *The Kenya Police Strategic Plan (2004-2008)*

Second, most police officers who commit brutal acts escape unpunished either by the police administration or the judicial system. Part of the problem is the lack of adequate ethical infrastructure and oversight of the police¹⁷. At no point during this process is the police power accountable or kept in check by another body, allowing for a near usurpation of the justice system by the police. Third, there are several Kenyan laws in place which grant the police broad, sweeping powers. Such powers often lead to the violation of the people's fundamental rights and freedoms, including, but not limited to, the rights to life and personal liberty.

In many pre-election reports authored by several organizations,¹⁸ the role of the police stood accused for failing to provide security and carry out prompt, independent and impartial investigations into cases of electoral violence. The reports further made recommendations that the Police prosecute suspects forthwith. However, with the above institutional limitations, this recommendation is overly ambitious given the environment within which the police work.

6.2.2 The Attorney General

Powers of this office are provided for under Section 26 of the Constitution of Kenya. While the Attorney General is appointed vide section 109 of the Constitution by the President, Section 26 gives the office several powers which are exercised without direction from any other authority. These powers include instituting and undertaking criminal proceedings against any person before any court (other than a court-martial) in respect of any alleged offence, taking over and continuing any such criminal proceedings that have been instituted or undertaken by another person or authority and, to discontinuing at any stage before judgment is delivered any such criminal proceedings instituted by the office or any other authority (*nolle prosequi*). Finally, the section provides that the Attorney-General can order the Commissioner of Police to investigate any matter which relates to any offence and report to the Attorney-General upon concluding the investigation. With regard to electoral violence, pre-election reports indicate complicity on the part of the Attorney General for failure to use powers bestowed on that office, instead passing the buck to the Police. This has led to 'institutionalised' impunity.

¹⁷ Power to prosecute is delegated from the Attorney General's / State Law Office, where any police officer at or above the rank of inspector may prosecute for and on behalf of the Attorney General's Office.

¹⁸ These include: Kenya Human Rights Commission, *Elections and Human Rights Bulletin* No. 1, November 2007; Constitution and Reform Education Consortium (CRECO), *State of Kenya Elections 2007 Report* December 2007; Kenya National Commission on Human Rights *Still Behaving Badly: Second Periodic Report of the Elections Monitoring Project* December 2007.

7.0 ELECTION DAY AND ITS AFTERMATH

Thursday, 27th December 2007 was the date of the 2007 General Election. The Election Day was preceded by the following key activities: validation of voter registers; political party nominations; acceptance of nominations by the ECK and thereafter the ‘official campaigning period’ that ended on Monday 24th December 2007. As these events alluded, Kenyans were gearing for the most contested elections ever in the history of the country.

While the Election Day was hailed by many as peaceful and successful, some pre-election developments may have undermined the polling process and the right to vote, hence electoral outcomes. In the first Bulletin¹⁹ released by the KHRC in November 2007, it was observed that the aforementioned human rights violations and pre-election malpractices could jeopardise the freeness and fairness of the 2007 elections if measures were not taken to address them. The state institutions concerned showed no interest in addressing the issues raised therein.

As at the Kenyans prepared for Election Day, little if any action had been taken to stem these violations by the relevant State institutions. Chapter 6 has demonstrated that this was the case, when laws were broken with impunity. Adding to this, other CSOs, under the Constitution Reform Education Consortium (CRECO) pointed out the same issues and called for strict application of the law and due process, before the elections were held.²⁰ On its part, the KNCHR released two reports in December 2007, stating that politicians and public servants were “still behaving badly.”²¹ The Reports also documented the prevalence of electoral violence, hate speech, discrimination against women and misuse of State resources.

In relation to misappropriation of State resources, the Coalition for Accountable Political Financing (CAPF), a conglomerate of 36 CSOs, carried out a revealing study on what it cost the country. CAPF pointed out that the cost of misusing state resources on the part of the PNU amounted to a staggering Kshs 139 million, as at 17th December 2007. CAPF also questioned the sources of the huge sums of money used by the ODM (Kshs 501 million) and the PNU (Kshs 642 million) in their presidential campaigns. CAPF concluded that only 40 percent of such funds were raised legally through open fundraising, and the rest had been raised under the counter through institutional corruption, donations from arm dealers, pyramid schemes, oil companies and such like businesses of dubious legality. Other donations came from legitimate businesspersons ‘financing’ (read corrupting) would be presidents²².

¹⁹ See Kenya Human Rights Commission, *The Status of Human Rights Protection in the Electoral Process: October to November 2007*, Elections and Human Rights Bulletin No. 1, November 2007

²⁰ See CRECO, *State of the Nation*, Issue 1 and 2, released in December 2007

²¹ See, KNCHR, *Still Behaving Badly: Second Periodic Report*, December 2007

²² CAPF, *Interim Report on Presidential Campaign Expenditure*, released on 17th December 2007.

In its pre-election statement issued on 26th December, the KHRC observed that there were seven concerns which would jeopardize the freeness and fairness of the 2007 elections. These concerns were: the right to the security of the voter especially in violence-torn areas. The concern here was that this would also lead to lower voter turnout and influence the outcomes of the elections both in those areas and nationally. Second, the right to campaign, particularly for women, had been compromised, violating the candidates' right to be elected. In turn, this would impact on the ratio between men and women at all levels. Third, the right to freedom of conscience and expression had been abused, through hate speech among other media. Fourth, the right to freedom of assembly had been violated by security forces and private groups, which could affect voting patterns. Fifth, the misuse of state resources and abuse of office through allocation of districts and other public goods could also compromise the right to vote. Sixth, voter bribery through financial inducements, and which continued on the material day of casting the ballot could also compromise the integrity of the vote.

Nonetheless, the KHRC urged Kenyans to be vigilant to ensure that the elections were free and fair and not compromised by electoral malpractices at the polling stations, particularly late in the day and that they should vote in candidates committed to human rights and good governance. Finally, the KHRC urged all contestants and the ECK to respect the verdict of the people, urging restraint from resorting to violence.²³

7.1 Election Day: The Verdict of the KHRC

On this material day, KHRC had 156 election observers who visited a substantial number of polling centres countrywide. Generally, reports reaching the EMRC indicated that all administrative procedures on opening and closing of the polling centres, security at the polling centres, voter turnout and conduct of voting and overall management of the process by ECK officials was commendable. However, there were administrative and logistical problems in some constituencies and polling centres. At the EMRC, reports filed by KHRC monitors and staff who observed the elections in Nairobi province indicated that most polling stations were opened very late, while there were incidences of confusion notably in Makadara constituency, where ballot papers were missing names of some candidates. In some constituencies such as Naivasha, materials for Eldoret North were mistakenly transported there.

There was a huge voter turnout, with long queues as early as 6 a.m. or earlier, which resulted in frustration for the electorate due to delays. Further reports from Nairobi and other areas indicated that the polling clerks seemed either unprofessional or slow in coping up with the process. There was no uniformity too among ECK officials: in some polling centres they gave an elector 3 ballots (for presidential, parliamentary and civic elections) all at once, while in some centres, one ballot was given at a time resulting in delays.

²³ KHRC, Press Release, 26th December 2007.

In most centres, there was confusion about queuing since polling stations were not well marked. Connected to this, there were also crowded ‘polling stations’ (previously referred to as streams), meaning that the ECK did not demarcate surnames in polling stations equally. For instance, in Kabete constituency, polling stations with names beginning with ‘M’, ‘N’ and ‘W’ had very long queues since the constituency is predominantly Kikuyu-speaking, meaning most surnames begin with ‘M’, ‘N’ and ‘W’. In some polling centres in Kibera, Lang’ata constituency, the same was noted for queues with voters whose surnames begin with ‘O’ and ‘A’.

EMRC also received reports about intimidation of voters. This was noted in strongholds of various political parties, and also in areas where perpetual violence had occurred such as in Kuresoi and Mt. Elgon. In Nairobi, KHRC staff visited Olympic Primary School, one of the polling centres in Lang’ata constituency where voters who were ‘perceived’ to be anti-ODM were barred from accessing the polling centre by rowdy youth. While the Election Day was relatively peaceful, there were instances of violence in some polling centres. As the anxiety over the announcement of election results built, acts of intimidation and violence were reported in almost all polling centres in Nairobi and some centres outside the province. In its preliminary assessment,²⁴ the KHRC noted the following:

1. **The Electorate:** It was noted that Kenyans had turned out in big numbers to cast their votes. Many were patient, determined, and decisive in braving the occasional delays in opening of the polling centres, counting, tallying and announcement of the results.
2. Secondly, many Kenyans were vigilant, attentive to detail and anxious to ensure the integrity of the electoral process. However, the KHRC was concerned about allegations of electoral malpractices aimed at subverting the will of the electorate. The KHRC demanded that the ECK investigate the strongholds of major political parties, ODM and PNU, where over 80 percent turnout was registered, before any official announcements of the results were made.
3. **Political/Electoral Violence:** With regard to violence, the KHRC observed that in some constituencies such as Garsen, Kamukunji, Starehe, Rongo, and Kajiado North among others, ECK officials were disrupted from undertaking their constitutional mandate. Incidents of death and injuries arising from violence, intimidation and use of inflammatory language were reported in these constituencies. In other constituencies such as Kitutu Chache, Lang’ata, Webuye and Westlands, the EMRC received reports that there were acts of intimidation, where voters, party agents and supporters of candidates intimidated other voters and the ECK officials.

²⁴ See KHRC, *General Elections 2007, A Preliminary Assessment*, released on 30th December, 2007

4. **Voter Bribery:** Acts of bribery were reported to the EMRC, in Gatanga, Ikolomani, Kibwezi and Westlands constituencies, where candidates allegedly bribed voters. While condemning these acts, the KHRC also urged the ECK, the KACC and the Kenya Police Force to immediately start investigations into these and other incidences.
5. **The Kenya Police Force:** In appreciating the role of the Police in protecting the right to security of voters, candidates, party agents, and ECK officials, the KHRC regretted the killing of police officers in constituencies such as Rongo. Additionally, the KHRC noted the difficulties the Force faces in dealing with rowdy mobs and goons hired to disrupt electoral processes.
6. However, reports filed with the EMRC indicated that in some electoral areas such as Kamukunji for instance, the Police was brutal in dealing with people suspected to have broken the law. Further, KHRC was concerned that in some places, the Police did not protect the integrity of the electoral process, watching instead as bystanders. These undermined the role of the Police in protecting and respecting the fundamental rights and dignity of the human person. Towards this end, the KHRC recommended that acts and omissions by the Police be investigated by an independent body, and remedies granted to the victim. More fundamentally, the Police recommended the establishment of a Civilian Oversight Body²⁵ among other reforms to ensure probity, efficiency, accountability and impartiality by the Police.
7. **The Electoral Commission of Kenya:** The KHRC monitors and observers noted that the conduct of the election on 27th December 2007 was generally peaceful and professional. While the KHRC did not witness any serious incidences of overt professional misconduct by officials of the ECK on the polling day, the following problems were noted: a) occasional delays in opening the polling centres, vote counting, tallying and announcement of results; b) late arrival of materials in some centres and c) sending the incorrect ballot papers to some constituencies such as Naivasha.
8. **Electoral Malpractices and the Election Results:** The KHRC received reports that some ECK officials were allegedly complicit in electoral malpractices. Secondly, the KHRC took issue with the inordinate delay in the announcement of elections results, especially the presidential results from some provinces. The concern was that the delay in releasing and announcing the elections results provoked acts of violence and lawlessness in some cities and towns countrywide.
9. As the events turned out and escalated, the KHRC demanded that the alleged anomalies between results announced at the constituency level and

²⁵ See KHRC, *Sessional Paper on the Creation of a Civilian Oversight Body*, July 2007

those announced by ECK Commissioners at the KICC tallying centre be explained. Moreover, the KHRC also demanded that results being submitted to ECK without the requisite signatures on the official forms be nullified in accordance with the law.

10. **Political Parties and the Political Class:** The key object of election monitoring is to ensure the integrity of the electoral process and upholding of human rights. Before and in the course of the rising tensions, the KHRC strongly condemned any resort to violence. The Commission appealed to Hon. Mwai Kibaki and Hon. Raila Odinga to reassure the public that each of them will accept the results of a free and fair election²⁶. The KHRC urged that should any dispute arise, it must be settled within the law by resort to the country's judicial system.

7.2 The aftermath of the Election Day

11. In the history of elections in Kenya, the events that took place after the announcement of the presidential elections are unprecedented. By 30th December, three days after the polling day, anxiety had gripped the nation, and further delay in the announcement of the presidential results did not calm the tensions which heightened by the hour.

12. At the media centre at the KICC, which housed the tallying centre for the presidential vote was, tension was high, with allegations of irregularities in the tallying of presidential elections. After several attempts to announce the final results, the ECK declared Hon. Mwai Kibaki elected the President of Kenya. This was followed by immediate swearing-in ceremony of Hon. Mwai Kibaki as President at State House, Nairobi. The events following were dramatic.

A blanket media ban on live broadcast media was slammed, and security forces dispersed to deal with protesters on the streets. Meanwhile, violence erupted in most parts of the country, with Nairobi, Kisumu and Eldoret witnessing some of the most fierce forms of violence.

Other than just the United States, which congratulated the election of President (and later retracted the same), United Arab Emirates and Uganda, no other foreign head of state or government congratulated Hon. Mwai Kibaki on his re-election. Domestic and international observer groups, such as the European Observation Mission (EUOM) and the Commonwealth Observer Group (COG) stated that there were “serious inconsistencies and anomalies” in the announcement of the presidential elections results at KICC, hence the election outcomes lacked credibility. COG noted with concern that “the delay in declaring results resulted in Kenyans experiencing significant concerns about the validity of the results”.²⁷

²⁶ The KHRC had recommended that any dispute be settled in a court of law, and demanded the expeditious settlement of the same.

²⁷ See COG Report, Op Cit

Locally, an *ad hoc* lobby group called Kenyans for Peace with Truth and Justice (KPTJ) comprising legal, human rights, and governance organisations and individual citizens also expressed concern over the credibility of the presidential election results, noting the inordinately large variances between parliamentary and presidential ballots; suspicious votes both within the ODM and PNU strongholds, which were sufficient to alter the outcomes of the elections; third, the pattern of irregularities consistent with allegations of rigging in President Mwai Kibaki's favour; and fourth, abnormally high voter turnouts in Nyanza province, where five constituencies registered turnouts in excess of 90 percent.²⁸

28, See KPTJ, Op Cit

8.0 CONCLUSION AND RECOMMENDATIONS

Save for the 2007 General Election, successive polls have registered incremental improvements in their general conduct. In 2002, the National Rainbow Coalition (NARC) was elected in what became labelled as a seminal democratic transition in Africa. For many, Kenya had finally embarked on a *new dawn* towards democracy and democratisation. Yet as the chapters above have demonstrated, this was an aborted, perhaps a false start.

In the field of human rights, while the protection and promotion of human rights of Kenyans progressed during the last few years, inadequate political will and commitment was shown by the government to ensure the effective protection and promotion of those rights.²⁹ The flawed election and its aftermath are testament to this. In this regard, from the findings of the election monitoring conducted by the KHRC, the following conclusions and recommendations are made in relation to human rights related to elections:

1. In relation to the Right to Vote

The KHRC notes that the chief custodian of this right is the ECK. As seen in this Report, the independence and/or integrity of the ECK was compromised due to its composition, incompetence and complicity in fraud before, during, and after the election. The events leading up to the announcement of the presidential election results and its aftermath confirm that the electoral process is as important as the outcome. The body mandated to conduct the process must therefore be credible. It must also enforce the law so as to curb incidences of political violence, hate speech, bribery, intimidation, misuse of state resources and so on.

The KHRC therefore recommends that

- a)** The Elections Bill be enacted by Parliament before the end of 2008;
- b)** The entire ECK be reconstituted afresh immediately, and its Commissioners and members of staff appointed through due process. The appointing authorities and the ECK must embark on a process of regaining the confidence of the Kenyan voter in the electoral process.
- c)** In order to create a system of checks and balances on the appointment of the ECK, there should be an opportunity for Parliament to ensure that those appointed by the President are not only qualified but persons of high moral character, proven integrity and who possess experience and demonstrated competence in the conduct of public affairs. This may be done by nominations being

²⁹ See Human Rights House Network – Kenya (2007), *Human Rights in Kenya: The Post Moi Era(2003-2007)* Claripress, Nairobi

done by the National Assembly, but taking into account the input of civil society and relevant professional organisations.

- d) Commissioners and staff suspected to have engaged in fraud and/or any other criminal acts in the electoral process leading up to the announcement of the presidential election results and thereafter should be prosecuted.
- e) The current electoral system be replaced with a system of proportional representation such as the Mixed Member Proportionate Representation (MMPR).

2. In relation to the Right to Security of the Person,

The KHRC notes that the government has failed its responsibility to protect its citizens from political violence and other forms of violations to their right to security. Some forms of these violations have indeed been induced by state agencies, including security forces.

The KHRC therefore recommends that

- a) All individuals who sponsored, perpetrated, abetted or in any other way supported political violence and other forms of human rights violations before, during and after the 2007 General Election be investigated and prosecuted in accordance with the law.
- b) All public officials who were complicit in the political violence before, during and after the 2007 General Election including members of the security forces who gave unlawful orders such as shoot-to-kill be prosecuted.
- c) Comprehensive police reforms be undertaken including the establishment of a Police Service Commission to among other things enforce ethical standards within the Police;
- d) The independence and capacity of the Ombudspersons Office (Public Complaints Committee) be guaranteed through appropriate institutional and legal framework;
- e) An independent, credible and effective Civilian Oversight Body be established to among other things check excesses of the Police.

3. In relation to the Right to Free Expression

The KHRC notes freedom of expression as an important foundational right for any democratic society. The KHRC however notes that freedom of expression comes with responsibility, and regrets the use of hate speech during elections.

The KHRC therefore recommends that

- a) The Police and KNCHR to investigate sources of the leaflets, emails, blogs, and SMS text messages and prosecute those responsible for their broadcast, distribution or any other form of publication.

b) All politicians and persons responsible for incitement to violence before, during and after the 2007 General Election be prosecuted in accordance with the law. Parliament enacts hate speech law.

4. In relation to the Right to Access to Information

The KHRC notes that this right has been violated over the years due to the draconian Official Secrets Act. Within the context of this Report, it has been noted that the KBC has an obligation to broadcast in a balanced manner. The same applies to all media stations which are also enjoined to broadcast in accordance with the Media Council of Kenya Guidelines for Elections Reporting.

The KHRC therefore recommends that

- a) Parliament repeals the Official Secrets Act and immediately enacts the Freedom of Information Act
- b) Parliament amends the Public Order Act that empowers the Minister in charge of Internal Security to decree rules pertaining to live broadcast
- c) Government, through the Communications Commission of Kenya investigates audio records of vernacular FM radio stations between August 2007 and February 2008 by end of 2008 and withdraw licenses of those found guilty of fanning, abetting or condoning hate speech in their broadcasts.

5. In relation to the Right to Freedom of Assembly

The KHRC notes that while many political meetings, campaign rallies and road shows were held without any disruption by security forces, the Police did not provide adequate security to all political parties equitably. In violence-prone areas, freedom of assembly was compromised following the imposition of curfews by the Provincial Administration. Second, following the hasty swearing in of the President, the right to assemble was violated numerous by State security agents.

The KHRC therefore recommends that

- a. That the Police and security forces review their Rules in relation to the containment of civilians to meet international normative standards.
- b. The Police adhere to the principles and values of democratic policing in their operations.

6. In relation to the Right to Freedom of Association

The KHRC notes that while political parties have proliferated in Kenya, democracy has not grown. Moreover, inasmuch as political parties do not respect the principles of internal democracy and fundamental rights and

freedoms, there is a threat to Kenya's march towards democracy. In order to ensure probity in the management and governance of and by political parties, the KHRC welcomes the newly operationalised Political Parties Act.

7 In relation to the Right to Protection from Non-Discrimination

The KHRC regrets that women and other groups have been subjected to discrimination through hate speech, violence and other forms of discrimination in the electoral process. The KHRC notes the restrictions imposed by curfews by the provincial administration in some areas. Yet in some areas, private militia, 'party zoning,' violence against women candidates, and hate leaflets restricted movement of citizens, to the extent that some may have not participated in the election. Such violence and restrictions to freedom of movement not only undermine the candidates' right to campaign and be voted for among other rights, but also the fairness of the outcome of the elections. It is saddening to state that while women form the larger part of the population, only a handful succeeded in the local government and parliamentary elections. The KHRC also noted that another perennial problem of discrimination related the 'zoning' by some political parties, thus excluding 'outsiders' from accessing voters in those regions.

The KHRC therefore recommends that

- a. The ECK be obligated to protect the rights of women and other 'special' groups in the electoral process.
- b. The Constitution of Kenya provide for an electoral system that would ensure fairness in the election of equitable women to parliamentary and local authorities seats.
- c. The the principle of representation of women in appointive and elective offices is enshrined in the Constitution of Kenya and all public/government institutions.
- d. The Police establish a unit to provide security for candidates, and especially women, during political campaigns.
- e. The Political Parties Act be enforced and political parties or persons engaged in inciting 'zoning' be barred from participating in elections.
- f. The Police investigates and prosecutes all incidences of violence against women and other candidates during the 2007 General Election

8 In relation to the Right to Judicial Remedies

The KHRC notes that many of the candidates who lose elections and feel aggrieved have no confidence in the judicial system owing to its inefficiency and slow pace in purveying justice in a timely manner.

The KHRC therefore recommends that

- a) Parliament enacts the Judicial Service Bill;
- b) That specialised courts be established to expedite the hearing of elections petitions within six months of any election.

9 In relation to the Regulation of Political Finance

The KHRC noted that absence or non-enforcement of ceilings on campaign financing undermined the integrity of the electoral process. Effectively, inadequate financial resources for some candidates led to their inability to exercise their right to campaign to be voted for. Secondly, the KHRC also took issue with the sources of funding, noting the ethico-legal issues entailed and the linkages between campaign financing and grand corruption.

The KHRC therefore recommends that

- a) The Police, the Attorney General and KACC investigate all campaign financing between September and December 2007 and prosecute all those guilty of corruption, fraud or any other form of electoral financial impropriety
- b) That the ECK and other relevant agencies operationalize the provisions of the Political Parties Act

10 In relation to the overall framework for the conduct and timing of elections

This Report has documented that the presidency controls many institutions that are in charge of the electoral process. Among these include the ECK, Judiciary and the Provincial Administration all of which have enormous power at different levels of the electoral process.

The KHRC therefore recommends that

- a) The new Constitution of Kenya espouse wide ranging electoral, institutional and judicial reforms aimed at enhancing human rights including those related to elections.
- b) The Provincial Administration be abolished in line with the demands by the people of Kenya to the Constitution of Kenya Review Commission.

11. In relation to the Culture of Impunity

Chapter 7 has illustrated the level of impunity that exists in Kenya, thanks to the inertia and ineffectiveness of the [criminal] justice system.

The KHRC therefore recommends that

- a) A Transitional Justice Mechanism be established following broad consultations between the public and the government
- b) The Government and Civil Society undertakes comprehensive security sector reform to ensure that the system is compliant with international normative standards