

KENYA HUMAN RIGHTS
COMMISSION

Journey to the Ballot

A Policy Brief on the Management of Electoral Processes in Kenya

August 2015

ISBN 9966-941- 94-0

Published by:

KENYA HUMAN RIGHTS COMMISSION

Opposite Valley Arcade, Gitanga Road,
P.O Box 41079, 00100 GPO, Nairobi, Kenya.

Tel. +254-020-3874998/9 3876065/6

Fax. +254-020-3874997

Email: admin@khrc.or.ke

www.khrc.or.ke

TABLE OF CONTENTS

EXECUTIVE SUMMARY	5
CHAPTER 1	7
KHRC's ENGAGEMENTS WITH ELECTORAL GOVERNANCE PROCESSES IN THE SOCIETY	7
CHAPTER 2	8
PROBLEM STATEMENT, SCOPE, OBJECTIVES AND METHODOLOGIES OF THE STUDY	8
The Problem Statement	8
Scope of the Study	8
The Elections Management Body	9
The Electorate	9
The Justice Sector	9
Political Parties	9
The Political Parties Registry	10
Objectives Study	10
Research Methodology	10
CHAPTER 3	11
KEY FINDINGS AND RECOMMENDATIONS	11

ACRONYMS AND ABBREVIATIONS

BVR	Biometric Voter Registration
CPR	Civil and Political Rights
DAP	Drivers for Accountability Programme
DPP	Director of Public Prosecution
ELOG	Elections Observer Group
EMB	Elections Management Body
EMBs	Elections Management Bodies
EPMC	Electoral Processes Monitoring Center
EVID	Electronic Voter Identification Devices
ICJ-Kenya	Kenya Section of International Commission of Jurists
IEBC	Independent Electoral and Boundaries Commission
IED	Institute for Education in Democracy
JWCEP	Judiciary Working Committee on Election Preparations
KHRC	Kenya Human Rights Commission
RPP	Registrar of Political Parties

ACKNOWLEDGMENTS

KHRC hereby recognizes the great effort offered by various individuals in the development of this publication.

We acknowledge James Mawira, the Programme Associate at KHRC, who conceptualized the project and oversaw the research process. James was responsible for the management of our Electoral Processes Monitoring Centre (EPMC), between July 2012 and January 2014. His steadfast commitment to this project is highly underscored. We also appreciate Beverline Ongaro, a lawyer and governance consultant who carried out the study and submitted a draft report to the KHRC. Her technical investment to this project is appreciated.

Carol Werunga, Programme Advisor - Electoral Governance at KHRC is highly appreciated for fast tracking the project as she succeeded James. Carol provided critical insight in the implementation of this project. George Morara, the Senior Programme Manager, Civil and Political Rights (CPR) programme of the KHRC also provided technical oversight for this project and his efforts are highly appreciated. We equally appreciate Andrew Songa, the Programme Manager, CPR Programme (formerly Transformative Justice programme) who succeeded George. His technical leadership saw the revision of the draft report and the logical conclusion of this project.

We are grateful to Davis Malombe, the Deputy Executive Director of the KHRC, for fine-tuning the final report and providing the requisite moral and institutional support. We also appreciate Atsango Chesoni, the KHRC's Executive Director (2011 – 2015), for providing the indispensable strategic support and leadership in the development and implementation of this project.

The Communications Department provided support in editing, design, publication and dissemination of the final report; we are thankful for their efforts.

We thank the Danish Embassy (through the Drivers for Accountability Programme-DAP), for their technical and financial support that ensured the implementation of this project. However, the views expressed in this report remain those of the KHRC.

Finally, we appreciate the support accorded by all partners-both state and non-state actors in pursuit of our mandate of *enhancing human rights centred governance at all levels* where human rights-centred electoral governance remains one of our core areas of interest.

EXECUTIVE SUMMARY

This report is part of KHRC's engagements with the electoral governance processes. It complements such the 'Compilation of findings and recommendations on Kenya's 2013-2015 By-Elections'; which assesses the gains and challenges realized in managing the emerging by-elections). It also complements 'The Case Digest on Electoral Governance Processes in Kenya' ; that assesses the emerging jurisprudence with respect to electoral governance processes and outcomes in Kenya.

It also reinforces a report developed in partnership with the Institute for Education in Democracy (IED) and the Kenya Section of International Commission of Jurists (ICJ Kenya) titled: *From Pillar to Post: Transforming the Election Agenda in Kenya: An Electoral Stakeholders Recipe for Reforms*. This report addresses the key administrative, operational, legal, policy and political challenges that continue to bedevil the electoral processes post the 2013 general elections.

The policy brief therefore looks at the progress realized by the key players in relation to electoral governance: The Electoral Management Body - the Independent Electoral and Boundaries Commission-IEBC, the Justice Sector; the Political Party Registry - Registrar of Political Parties (RPP), the media and civil society. KHRC has relied on primary data and the findings and recommendations of *The Democratic Paradox: A Report on Kenya's 2013 General Election* report, and policy briefs and updates from the IEBC as well as stakeholders' perspectives.

The brief is organized into three (3) chapters and sections:

1. KHRC's engagements with electoral governance processes - documenting KHRC's work from 1997 to date.
2. Problem statement, scope, objectives and methodologies of the study-justifying why and how the KHRC's invested in this project.
3. Key findings and recommendations. This is presented within the following tabular and analytical framework: electoral processes, actors, issues being assessed, emerging recommendations on the issue, sources of information, recommendation, progress in implementation and further action.

There are several issues addressed:

- Voter nomination;
- Audit of electoral technology;
- Voter education;
- Election campaign financing;
- Party and dispute nominations;
- Elections day procedures (under IEBC);
- Dispute resolution and enforcement of electoral laws (under justice sector-judiciary and security actors);
- Civic education, membership and nominations for political parties(under the RPP) and
- Media and civil society engagements.

From the analysis, it is evident that although there has been progress, Kenyans are yet to see transformative developments with respect to the key electoral issues enumerated above.

In conclusion, the KHRC identifies with the Francis Aywa's observation that: "...one reality remains: Kenya is far from realizing its aspirations for elections that provide a fair opportunity for electoral competition, free from fraud. Rather than despair, the lessons from the 2013 general election should energize all stakeholders in the electoral process to re-think the continuing shortcomings of the electoral process and its management with a view to making whatever further changes necessary to entrench electoral democracy in the country. Abroad national agenda for electoral reforms can coalesce"¹.

¹See: "Kenya – Francis A. Aywa" in *Election Management Bodies in East Africa A comparative study of the contribution of electoral commissions to the strengthening of democracy*, OSF, 2015, p. 68.

CHAPTER I

KHRC's ENGAGEMENTS WITH ELECTORAL GOVERNANCE PROCESSES IN THE SOCIETY

Kenya Human Rights Commission (KHRC) is the premier non-governmental human rights and governance organization established in 1992 within a mandate to *enhance human rights centred governance at all levels*. The institution is currently implementing the 2014/2018 Strategic Plan whose Vision is *to secure human rights states and societies*. Towards this, KHRC has formulated an operational goal of *challenging social, economic and political injustices in the society*. Within this vision, mandate and goal, KHRC aims to utilize its human rights-based approaches and long experience in democratic governance to ensure that *flawed electoral systems are exposed and improvements effected at all levels*. Unequal access to decision making by marginalised groups in particular women; youth; persons with disabilities; ethnic, racial, religious and sexual minorities have been integrated as cross cutting issues.

The KHRC has consistently monitored and advocated for the respect and protection of human rights standards within the 1997, 2002, 2007 and 2013 General Elections and 2005 and 2010 referenda in seeking to enact a new constitution in Kenya. The organization has also invested in policy research and advocacy with a view to ensuring accountable and human-rights centred electoral governance systems. From 2012, this work was expanded to regional levels with the objective of *promoting human rights based electoral governance and democracy in Africa and beyond*.

The research and advocacy work done in respect to the March 2013 General Elections in Kenya provided one of the most defining and opportune moments for the KHRC in its tenacious engagements with electoral. As a result, the KHRC published a report entitled: *The Democratic Paradox: A Report on Kenya's 2013 General Election*. The organization termed these polls a *democratic paradox* because although the rules of engagement were largely democratic, the implementation by some political actors and the IEBC did not deliver complete acceptability. The legal, operational and political anomalies identified and recommendations canvassed in the *Democratic Paradox* report formed the basis for the conceptualization and execution of this study whose main focuses is the key institutions and actors responsible for the management of elections in Kenya.

CHAPTER 2

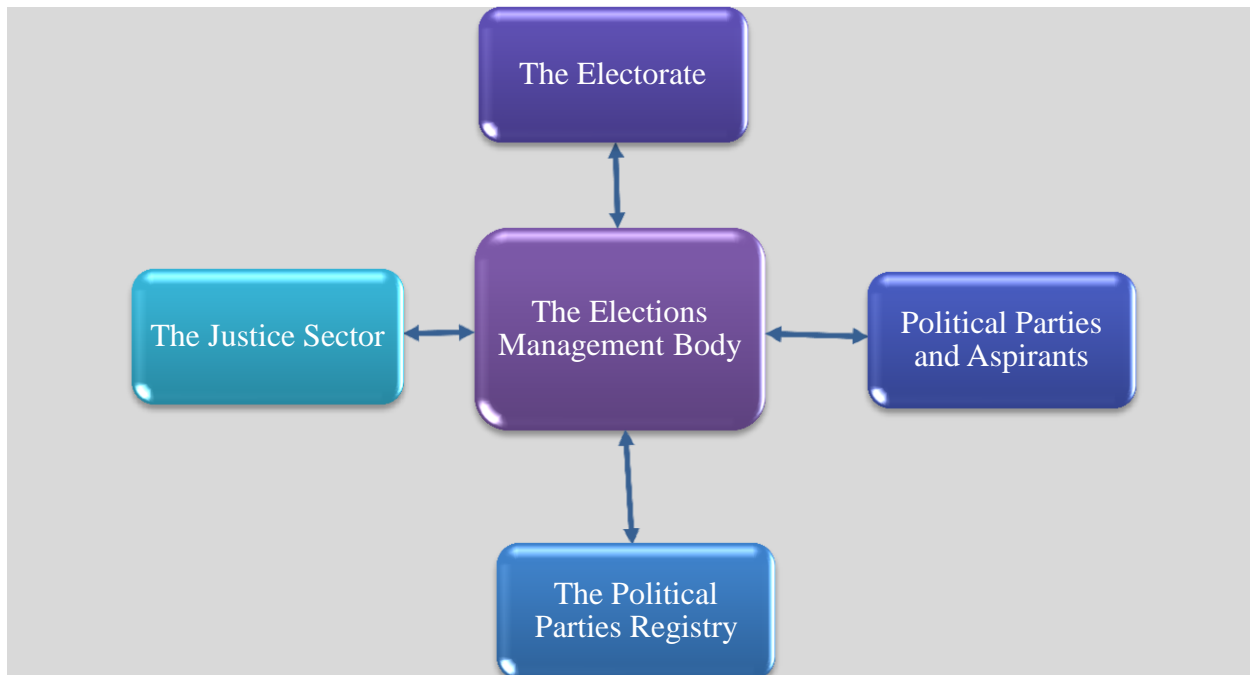
PROBLEM STATEMENT, SCOPE, OBJECTIVES AND METHODOLOGIES OF THE STUDY

The Problem Statement

Elections management here refers to those processes that are integral to the proper conduct of elections. These invariably include registration, voter education, validation of the nomination of participants in an election, conduct of polling, counting of votes, and the tabulation of vote count². An effective analysis of the challenges that attend to elections and the realization of effective representative government at all levels must look at the contributions of the different stakeholders that directly affect the conduct of any elections – i.e. the electorate, the political formations, the elections management body, and the justice sector.

Scope of the Study

The study undertakes an assessment of the key stakeholders in the elections management process in Kenya illustrated below:



² IDEA, *Electoral Management Design; The International IDEA Handbook*, International IDEA (2006), pg 5

The Elections Management Body

Elections management bodies (EMBs) are at the centre of most processes. They coordinate the conduct of elections according to the prescribed laws and regulations. These bodies take different forms varying from independent offices to departments within other state offices., EMBs bear the greatest responsibility in ensuring the transparency and credibility of the electoral process as they are responsible for the maintenance and operationalization of the elections management system. The Independent Electoral and Boundaries Commission (IEBC) is the Kenya's version of EMBs.

The elections management body must never the less contend with significant distortive influences to its operations both internally and externally. Transparency, proficiency and accuracy of the elections process forms the backbone of any credible elections.

The Electorate

The informed and erudite participation of the electorate is instrumental to any electoral process. The electorate, which is made up of individuals from divergent socio-economic backgrounds, must understand not just the process of elections but the overall purpose of the electoral process – which is to secure good governance through the prudent selection of the most competent and ethical public servants.

This requires that the electorate rise to their civic responsibility to carefully vet and select their representatives, and abide by processes provided by law by which the selection is to be conducted. However, the reality concerning the public's participation in the electoral process in Africa and around the world illustrates the immense lack of civic prudence in the engagement with electoral processes.

The Justice Sector

The justice sector here refers to those institutions of government that are charged with protecting, enforcing and interpreting the law as it regards the conduct of elections. These invariably include the EMB, state internal security agencies, the investigative and prosecutorial state agencies as well as the judiciary.

There is therefore need for an assessment of the challenges that attend to the relevant arms of the justice sector - specifically the law enforcement and prosecution agencies – as well as the EMB in attending to electoral misconduct.

Political Parties

Parties in politics ideally serve as the vehicle for the assembly of the electorate around specific social, economic and political ideals and interests. These formations, in the context of any democracy, ought to derive their purpose from the electorate whose interests and ideals they are formed to represent.

Political parties however, have long since lost their link with social, economic and political ideals or interests of their adherents. Party membership in Kenya is seasonal, motivated by the desire to promote ethnic advantage in government through tribe-based personality and patronage politics.

The Political Parties Registry

Political party formations must be officially registered in order to participate in the electoral contest. These processes are usually undertaken by an official body – whether independent of forming part of a large public body. The purpose of the registration process is often to ensure that these institutions work to serve the broader ends of facilitating the organization of popular will in the context of a representative democracy.

In the lead-up to the March 2013 elections, the RPP faced challenges in the process of registration as it became apparent that some parties had listed individuals who had no interest or affiliation with the respective parties. A full inquest on this matter was not undertaken. It is therefore difficult to ascertain the extent to which this misrepresentation was instrumental in securing the registration of most political parties.

Objectives Study

The main objective of the study was to assess the best practices and progress in policy developments in elections management by key actors in Kenya.

The specific objectives of the study were to:

- Assess the gaps and progress in the implementation of recommendations captured in KHRC's among other reports.
- Provide policy recommendations in relation to the key issues and actors in elections management.

Research Methodology

The research process involved:

- Desktop research on elections materials, elections observer reports, international and domestic laws on elections, and reports by the DPP and IEBC.
- Interviews with i) a prosecutor appointed by the Office of the Director of Public Prosecution to steer Joint Rapid Response Team, and ii) The Elections Legal Practitioners that represented petitioners in the Political Parties Tribunal and the elections petitions filed in the courts.

CHAPTER 3

KEY FINDINGS AND RECOMMENDATIONS

	ELECTORAL PROCESSES ACTOR/ STAKEHOLDER	ISSUE	RECOMMENDATION	SOURCES OF INFORMATION	IMPLEMENTATION PROGRESS	NEXT STEPS AND FURTHER ACTION
I.	EMB/ IEBC	Voter registration	<p>Regarding the registration of voters in the Diaspora, the IEBC should commission a study on comparative jurisdictions to enable them to effectively register all Kenyans living abroad, so that they exercise their constitutionally guaranteed rights in the next elections</p> <p>Unfortunately, the IEBC Post Election evaluation report did not touch on the registration of Diaspora voters.</p> <p>During election petitions in various superior courts, it was made clear that there was a possibility of multiple voters' registers. In this regard, IEBC should squarely deal with this matter and have not only the voter register cleaned up, but</p>	<p>KHRC's Democratic Paradox Report</p> <p>IEBC Post 2013 general election evaluation report</p> <p>KHRC's Democratic Paradox Report</p>	<p>As part of the registration of voters in diaspora initiative, IEBC in February, 2015 launched an online mapping tool that will enable Kenyan citizens who are above 18 years and who are interested in participating in the 2017 elections to submit their details online at http://www.iebc.or.ke/diaspora</p> <p>In April 2014, IEBC rolled out its continuous voter registration exercise countrywide; however the registration exercise is neither staggered nor targeted; making it difficult for stakeholders to monitor the process and for</p>	<p>We commend IEBC for the noble initiative of collecting voters' data including disability status that will enable them to effectively plan and roll out the registration of voters in diaspora. It is however important for IEBC to ensure that the data on the diaspora voters is effectively used in planning and development of effective strategies that will promote the participation of voters in the diaspora in the electoral process.</p> <p>The need to amend section 4(a) of the IEBC Act to include staggered and targeted registration of voters.</p> <p>While the conducting of 2 mass registration exercises before the next general</p>

			ensure that there is continuous and period voter registration.		the electorate to come out in large numbers to register. Further IEBC has been able to register only 38,304 as at April 2015, a year after the continuous voter registration process was re-launched by IEBC. Cognizant of the low voter registration turn out, IEBC through its CEO has promised to register more voters moving forward by conducting at least 2 mass registration exercises across the 24,000 registration centres before the next general elections. ³	election is commendable and appreciated, the slashing of the IEBC voter registration budget by treasury from Ksh. 1.1 Million to 1.8 Million ⁴ possess a big hurdle in realizing this. However we recommend that IEBC begins to look at other sources of funding and establish effective partnerships with civil society organizations in order to realize this objective.
			IEBC should implement intensified, staggered and targeted continuous voter registration supported by appropriate voter education strategies	IEBC Post 2013 general election evaluation report		
		Audit of Electoral Technology	The IEBC should audit the entire procurement system with regard to the BVR kits, and have those responsible for purchase of non-functioning machines, dysfunctional batteries, lack of training of officers, and those responsible for faults in the tallying system (which is also a function of computers that could be sub-standard) be dealt with in accordance with the law.	KHRC's Democratic Paradox Report	IEBC conducted various stakeholder meetings including meetings with the civil society organizations to discuss the effectiveness of technologies among them the application of BVR during the 2013 electioneering period. In October, 2013 senior IEBC officials including the CEO Mr. James Oswago were charged in Court for failure to comply with procurement laws and abuse of office during the	Many stakeholders including the KHRC attended the consultative forum that was held in September, 2014 at the Sarova Panafric Hotel and made recommendations with regards to use of technologies in the elections; however the consolidated report on the findings and recommendations not been published. It is therefore paramount that IEBC publishes the report as soon as possible with the

³ http://www.standardmedia.co.ke/article/2000161902/credible-polls-begin-with-valid-voter-register?articleID=2000161902&story_title=credible-polls-begin-with-valid-voter-register&pageNo=2

⁴ <http://www.nation.co.ke/news/politics/Over-eight-million-voters-targeted/-/1064/2717946/-/6bjwpl/-/index.html>

					procurement of electoral technologies including the BVR. Consequently, IEBC suspended Mr. Oswago and other 3 senior officials ⁵ effective November 1, 2013.	stakeholders considering the candid findings and recommendations for improvement that were made during the meeting.
			<p>Validate the policy on the use of BVR technology in voter registration and re-examine, enhance and maximize the potential of the voter registration software to ensure quality control and data security</p> <p>Develop procurement plans linked to work plans at all levels of the Commission and adopt a staggered procurement approach especially for bulk supplies and materials</p> <p>Strengthen the procurement function in the commission in terms of having qualified personnel and appropriate systems.</p> <p>Strengthen IEBC's managerial capacity and structures for the registration technology including establishment of a maintenance plan for the BVR Kits; and</p>	IEBC Post 2013 general election evaluation report		IEBC self-evaluation report recommends the need to validate the policy on the use of BVR technology in voter registration which implies that IEBC has the mentioned policy in place, and if that is the case, there is need for IEBC to share such policy with stakeholders. Additionally, there is need to expeditiously develop procurement plans that are linked to work plans.

⁵ <http://www.iebc.or.ke/index.php/2015-01-15-11-10-24/press-releases-statements/item/press-release-on-suspension-of-iebc-senior-officials>

			<p>review and enhance the technical and logistic support to registration officials.</p> <p>Increase the training period for BVR personnel to allow them adequate time to familiarize and interact with the technology during training; and employ experienced ICT experts as trainers. In addition, strengthen the monitoring and evaluation of the training on registration in order to identify training gaps.</p>			
		Voter Education	Both IEBC and K-NICE should conduct an audit/ assessment on the levels of public awareness of the different positions, functions and electoral process under the new constitutional dispensation.	KHRC's Democratic Paradox Report	<p>The research has not been conducted in this regard and if this is not the case, the information with regards to the research has yet not been shared hence there is no public knowledge of the same.</p> <p>Although the Audit/research has not be done and shared by the public, IEBC on 15th May, 2015 launched an Annual Voter Education Week that was meant to run from 18th to 23rd of May. During the mentioned period, IEBC will purposely seek to sensitize the public on the importance of participation in the electoral process as well boosting the ongoing continuous voter registration process. IEBC will</p>	<p>An audit/research that will evaluate the needs of various categories of voters including women, youth and persons with disabilities is highly recommended especially with regards to an inclusive, credible and transparent electoral process. To this end, IEBC should take measures to commission the mentioned audit/research as soon as Possible.</p> <p>Whereas the Annual Voter Education Week will provide IEBC with a platform to disseminate important information to the electorate, IEBC should use this opportunity to highlight what will work and what won't as</p>

					also highlight issues to do with electoral technology; inclusion of marginalized groups in the electoral process; and political tolerance	well as use the opportunity to conduct an evaluation of the entire exercise in order to come up with recommendations that will assist them to develop effective and timely voter education strategies
			Conduct research to identify the voter education needs of the major categories of voters and develop cost effective strategies, platforms and methodologies of delivery of voter education to each category, group or region.	IEBC Post 2013 general election evaluation report		
			Invest in a robust monitoring and evaluation framework to monitor the implementation of voter education programmes to capture key lessons and best practices that can be used to enhance its effectiveness. The voter education providers should submit completion reports on the voter education activities they have undertaken.	IEBC Post 2013 general election evaluation report	This is yet to be done	Coming from its own evaluation report, it is important that IEBC puts in place an M & E framework as soon as possible. Such framework will effectively guide the implementation of voter education activities during the 2017 electioneering period while mitigating the challenges that were witnessed during the 2013 electioneering period.

			<p>Establish K-NICE as a long term civic awareness programme that builds the public's understanding of governance processes. This programme should be devolved at County Wards so as to ensure effective public outreach and engagement.</p>	<p>KHRC's Democratic Paradox Report</p>	<p>Regarding the compendium of credible voter education providers being developed, this is yet to be done; if it has been done it has not been shared publicly.</p> <p>With regards to K-NICE being established as a long term civic awareness programme, this is also yet to be done.</p>	<p>Whereas K-NICE mandate is to develop and implement nationally owned and sustainable programme of civic education through which citizens can be actively engaged with regards to various governance issue, it only comes to fore during an election year and disappears immediately after the elections. In the current post 2013 general election period, K-NICE has not even featured during the numerous by-elections that IEBC has conducted. Additionally its website http://www.knice.go.ke/ is non- operational and its Facebook page was last active in December, 2013. Clearly it is a program that has been abandoned, hence the need to operationalize the K-NICE programme and establish it as long term civic awareness programme as earlier recommended by KHRC.</p>
			<p>Identify and develop a compendium of credible voter education providers throughout the country based on appropriate criteria for their selection; and build their capacities for the provision of quality voter education.</p>	<p>IEBC Post 2013 general election evaluation report</p>		
			<p>Develop and entrench into law, regulations governing the provision of voter education with a view to regulating the activities of voter education providers and infusing quality</p>	<p>IEBC Post 2013 general election evaluation report</p>	<p>This is yet to be done</p>	<p>Regulations on voter education are equally important as the Regulations on voter registration hence the need for IEBC to develop and gazette the mentioned</p>

			into voter education programmes.			regulations before the 2017 electioneering period.
			IEBC in partnership with other state and non-state actors should ensure effective coordination and implementation of the voter education programmes, at least one year before elections.	KHRC's Democratic Paradox Report	This is yet to be done	Lack of coordination of voter education activities among partners during the 2013 electioneering period saw overlaps in activities and ineffective delivery of voter education. We therefore recommend that all stakeholders come up with platforms where they can start creating synergies before implementing any voter education initiatives
			Develop strategies for school-based voter education targeting primary and secondary schools. The current crop of secondary school and college students are potential voters in 2017 while their counterparts in primary schools are a great influence on their parents and can, therefore, serve as effective agents of voter education messages.	IEBC Post 2013 general election evaluation report		
			The State agencies in charge of education and devolution should consider making voter and civic education part and parcel of their trainings programmes both	KHRC's Democratic Paradox Report		

			to students and adults respectively.		integrity from an early age.	
			Review the voter education curriculum in order to enhance its utilization and to provide for continuity and expansion in scope to cover the entire electoral value chain; and to encompass some aspects of civic education such as devolution, conflict resolution and Political rights.	IEBC Post 2013 general election evaluation report		
			IEBC and other stakeholders should plan to adopt and implement a radical form of political education, as opposed to the current ‘voter education’, which clearly has not resulted in any change when it comes to voting patterns	KHRC’s Democratic Paradox Report		
			The Commission should engage its staff with skills in curriculum development in order to emerge with a curriculum that is relevant and which attends to all the facets of the electoral cycle.	IEBC Post 2013 general election evaluation report	Looking at IEBC annual report ⁶ for 2013 – 2014, there has been no training that has been conducted for the IEBC staff with regards to voter education and development of an effective curriculum.	We recommend that IEBC trains its Staff that work in the Voter education department on voter education strategies and the development of an effective curriculum among other things.

⁶ <http://www.iebc.or.ke/index.php/2015-01-15-11-10-24/research-publications/> - IEBC Annual Report 2013 – 2014 , pg. 42

		Election Campaign Financing	IEBC should put in place concrete programmes and resources to monitor and ensure accountability in the use of state resources and offices at all times.	KHRC's Democratic Paradox Report	IEBC has at May 7, 2015 come up with first draft regulations for elections campaigns financing. The regulations are meant to operationalize and address gaps in the Elections Campaign Financing Act, 2013.	This is a good step towards levelling the playing field for all candidates come 2017 as well as eliminating voter bribery, curbing the use of public resources for political campaigns. However, IEBC should not ensure that the regulations per se are not only for the show but are implemented to the letter.
			Establish regulations and mechanisms for enforcing the Election Campaign Financing Act, 2013 to regulate the amount of money that may be spent by or on behalf of a candidate or party in respect of any election.	IEBC Post 2013 general election evaluation report	Specifically, the regulations seek to address an array of issues including the spending limit for candidates, political parties or referendum committees during the election period. IEBC plans to share the draft regulations with the civil society and political parties for their inputs before it is presented before the National Assembly for approval.	
			The executive should refrain from the temptation to exploit its incumbency and limit the use of state resources to provision of security to state officers who deserve such privileges during the campaigns among other political events.	KHRC's Democratic Paradox Report		
		Party Nomination	Develop and share widely with stakeholders the process of political party nominations and dispute settlement.	IEBC Post 2013 general election evaluation report	This is yet to be done despite the over 20 by-elections that have been conducted post 2013 elections by IEBC.	Considering the shambolic nomination process that was witnessed during the 2013 electioneering period, it will be paramount for IEBC does come up, and share widely and timely the political party nomination process. Additionally there is need for IEBC to begin standardizing
			Standardize the regulations for nominations by political parties	IEBC Post 2013 general election evaluation report	This is yet to be done	

						the nomination regulations as earlier as possible so that they are shared by political parties and other stakeholders on time.
			Enforce strict deadlines for submission of party lists before nomination of candidates; and the name of the contestant should not appear on the party list.	IEBC Post 2013 general election evaluation report	This has not been done yet considering the timeline for party list development and submission is yet to be declared by IEBC since the next general elections are scheduled for August, 2017.	
		Dispute resolution	Lobby parliament to enact law to empower IEBC to exercise oversight over party primaries; and deal with political parties that fail to promote free and fair nominations of candidates.	IEBC Post 2013 general election evaluation report	This is yet to be done.	This should be done as soon as possible.
			Lobby for the Political Parties Dispute Tribunal to be a branch of the High Court in order to minimize contact between IEBC and Political Parties before Elections.			
		Election Day	The mechanical hitches with	KHRC's	IEBC has conducted a candid	IEBC should document the

		procedures	respect to the EVID equipment should be resolved. There should be an inquiry on the cause of the hitches (in addition to that of the electronic transmission of results). Moreover, the IEBC should, in future conduct test-runs on all logistical aspects of voting and respond accordingly to forestall large-scale systemic failures as was observed during the 2013 general elections.	Democratic Paradox Report	evaluation of the 2013 electoral processes including the utilization of electoral technologies among them the EVID. For the by-elections that IEBC has conducted, the EVID technology has effectively been utilized as KHRC noted its by-election monitoring reports specifically the Mathare parliamentary and Homabay senatorial by-elections.	factors that have enabled the EVID work during the by-elections in order to come up with an effective EVID application strategy that will be used in 2017. In addition, IEBC should implement all the recommendations that have been with stakeholders and in its own evaluation report to the later.
			Avail the EVID technology early enough to facilitate inspection, configuration and testing. The equipment should also be available during the training of poll staff.	IEBC Post 2013 general election evaluation report	IEBC has fallen short when it came to merging the data captured by BVR with the EVID and principle register. Casing point being Homabay by-election that was conducted on 12 th February, 2015 where some voters could not be identified with EVID despite them having their biometrics while their details had been captured clearly with the Principal Register.	
			Train Returning officers as ToTs using expert trainers and use them to train the rest of the polling officials	IEBC Post 2013 general election evaluation report		
			Ensure that the generation of SD Cards from BVR data for use in EVIDs delivers accurate data that is consistent with the data in the principal register	IEBC Post 2013 general election evaluation report		
			IEBC should provide each	KHRC's		

			polling station and tallying centre with sufficient declaration forms to ensure that every agent accredited for each party receives a copy of the said accreditation form after it has been duly dated and signed by the respective PO/RO as well as the agents present.	Democratic Paradox Report	In all by-elections monitored, KHRC noted that IEBC provided sufficient declaration forms. However the statutory forms are still the same as those used during the 2013 general elections.	As we move towards ensuring that the 2017 general elections are credible and transparent, there is need for IEBC to begin to strategically think on how the statutory forms can be used to improve the effectiveness, efficiency, transparency and credible counting and tallying process.
			Review the design of the statutory forms for tallying of election results with a view to simplifying them; and revise the training manual for poll officials to address the gaps identified in counting, tallying and filling of the statutory forms.	IEBC Post 2013 general election evaluation report		
			IEBC should ensure that it recruits sufficient polling staff to relieve over-stretched staff during the polling period and ensure that they have the necessary rations and provisions including ample food and refreshments.	KHRC's Democratic Paradox Report	In all by-elections monitored, KHRC noted that the polling staff engaged were sufficient as such were able to effectively execute their roles.	IEBC should work towards ensuring that the polling staffs they engage during the 2017 general elections are sufficient to efficiently and effectively achieve their objectives.
			Undertake streaming of voters during registration using a maximum of 500 voters per	IEBC Post 2013 general election evaluation	As a result of lower turnout in	We commend IEBC for what

			polling station; and inform voters of their stream during inspection. Streaming should be done serially as per the dates of registration.	report	the by-elections that have conducted and managed by IEBC compared to the high turnout that is usually witnessed during the general elections, the case of having over 500 voter in a polling stream has not been observed. However, IEBC has been able to distribute voters per stream according on their names in an alphabetical order.	they have done during the by-elections. We however recommend that IEBC replicates what it has done so far during the by-elections in 2017 and should ensure that the recommendation of maximum of 500 voters per polling station is upheld.
			The distribution of voters among polling stations and polling streams needs to be reviewed and a mechanism for ensuring an equitable allocation should be implemented in order to avoid over-stretching of polling stations on Election Day.	KHRC's Democratic Paradox Report		
			It is important for the IEBC to clarify what should be done with rejected votes.	Not yet there: Examining Elections	This is yet to be done	Considering the challenge it posed during the determination of the electoral petitions, it will be paramount moving forward to ensure that this issue is dealt with as soon as possible.
2.	JUSTICE SECTOR- JUDICIAL AND SECURITY ACTORS	Dispute Resolution	The need for the Judiciary to audit some of the jurisprudence they brought forth during the hearing and determinations of election petitions, part of which contains irreprehensible jurisprudence from other not-so-worthy countries.	KHRC's Democratic Paradox Report	The only audit that was conducted by the Judiciary was the Post –Election evaluation ⁷ audit that was done by the Judiciary working committee on election. The report although touches on the electoral Jurisprudence, the analysis was not candid and did not provide any	The need for such audit either conducted by the judiciary or any other independent stakeholder to be done and the findings and recommendations thereof shared with stakeholders.

⁷ http://kenyalaw.org/kl/fileadmin/Judiciary_Post-Election_Report_2013.pdf

				recommendations.	
	Enforcement of the electoral laws	The Judiciary should foster collaboration between itself, the National Police Service, and the IEBC to ensure a concerted and collaborative approach towards securing compliance with electoral laws by all stakeholders.	Not yet there: Examining Elections Management Practices in Kenya⁸.	This is yet to be done	KHRC has noted during its human rights monitoring of the post 2013 by-elections that the collaborative approach among the three offices mentioned is lacking. Considering the high rate of electoral malfeasances and malpractices that occurs during the elections period, it is important that these offices come up with a mechanism that will see them work together towards ensuring a free and fair electoral process come 2017.
		The Inspector General and the DPP must also ensure that all the individuals or institutions that violated various aspects of national laws that guide electoral processes be dealt with in accordance with the law.	KHRC's Democratic Paradox Report	Whereas some individuals for example the former CEO of the IEBC have been charged, some senior officials from IEBC have not been charged despite allegation of blatant violations of the national law.	Impunity in the public institutions is one of the major causes of low confidence in these institutions notably the IEBC. It is therefore paramount that the Inspector General and the DPP to take their roles seriously and ensure that individuals are investigated and charged.
	Capacity building	The Judiciary should build its capacity and work in conjunction with the IEBC to continue sensitising the National	Not yet there: Examining Elections Management	Whereas some form of training on elections has been conducted for the police, it has not been adequate considering	It is important that the judiciary continuously build the capacity especially for the Judiciary Working Committee

⁸ A KHRC's audit of the Key Electoral stakeholders conducted by Ms. Beverline Ongaro

			Police Services on elections and related offences.	Practices in Kenya.	the unequal enforcement of the law by the said trained officers.	on Elections Preparations (JWCEP) to enable them carry out their roles effectively come 2017. There is also the need for the Judiciary to work closely with the IEBC and NPS to come up with collaborative strategies that will see them deal with the electoral malefactors.
3.	THE POLITICAL PARTY REGISTRY/RPP	Civic Education	Sensitize the political parties on good governance.	IEBC Post 2013 general election evaluation report	This has not been done and if that is not the case, it has not been shared publicly.	Political parties are one of the key electoral stakeholders and as such play an important role in elections. However political parties have been accused of corruption, discrimination against the marginalized groups, violation of the law etc. It therefore important that political parties are trained on the principles of good governance.
		Political parties' membership	Ensure that the political parties' membership is <i>bona fide</i> and put in place credible mechanisms for verification of its membership.	Not yet there: Examining Elections Management Practices in Kenya.	This is yet to be seen or done.	During the 2013 general elections, political parties were accused of unscrupulously obtaining members in order to meet the registration requirements questioning the credibility of the political parties' registration process. It is therefore important that moving towards 2017, a credible membership

						verification mechanism is put in place.
		Party Nominations	Work jointly with the IEBC to ensure that political parties conduct their nominations early, so that parties, who are aggrieved by the nominations processes, have ample time to exhaust the remedies within their parties.	Not yet there: Examining Elections Management Practices in Kenya.	During the post-2013 by-elections, this has been done. However we will have to wait until the 2017 electioneering period when the election timelines are being developed to effectively evaluate such process.	
		Audit of the Registrar of political parties office.	Registrar of Political Parties to inform the public how it carried out its functions, including challenges and recommendations.	Not yet there: Examining Elections Management Practices in Kenya.	The Registrar was able to share with various stakeholders including civil society organization the challenges the Registrar's offices faced in the implementation of its mandate and offered recommendations. This was done during a forum that was organized by IED, KHRC and ICJ in November, 2014. However a comprehensive audit has not yet been done.	The need to conduct such Audit as soon as possible and share it widely with stakeholders.
5.	OTHERS					
a)	Media		The Media Council of Kenya should re-examine and audit possible ways in which the media houses were compromised or stifled from	KHRC's Democratic Paradox Report	This has not been implemented	The role the media plays in the Elections is paramount and as such should be treated in the same light. To this end, we call upon the media council to

			reporting accurately in accordance with the Media Regulations governing reporting elections, and make these reports public.			conduct the audit and share the findings and recommendations with the stakeholders
b)	Civil society	Media engagement	Engage the media in undertaking advocacy, dissemination of electoral related information, civic and voter education.	From Pillar to Post: Transforming the Election Agenda in Kenya⁹	This has been done by some civil society organizations but a lot still needs to be done.	Whereas some CSOs have engaged the media, some are nowhere to be seen. Considering the role both the CSOs and the media plays, it becomes paramount.
		Civic/Voter education	Develop strategies to ensure broad public participation and information sharing among stakeholders in the electoral cycle.	From Pillar to Post: Transforming the Election Agenda in Kenya	This has not been done	Considering that an informed electorate makes informed decisions, it becomes important for stakeholders especially CSOs to ensure that electorates are trained and receive relevant electoral related information.

⁹ A Learning platform report developed by IED, KHRC & ICJ-K, and published by IED



**KENYA HUMAN RIGHTS
COMMISSION**

KENYA HUMAN RIGHTS COMMISSION
Opposite Valley Arcade, Gitanga Road,
P.O Box 41079, 00100 GPO, Nairobi, Kenya.
Tel. +254-020-3874998/9 3876065/6
Fax. +254-020-3874997
Email: admin@khrc.or.ke
www.khrc.or.ke