



Press Statement: Preliminary Findings on the Monitoring and Observation of the 2017 General Election.

The Kenya National Commission on Human Rights calls you today to give your our preliminary findings on the status of human rights that we observed in the 2017 General Election Polls. The KNCHR deployed a total of 264 staff and monitors on August 8th to document the polling process in 37 counties where we closely monitored the preparations, the voting process, the tallying and transmission of results. The objective of the KNCHR monitoring is to protect and promote the right to vote and be voted to in the 2017 Elections. Our teams are also on the ground to monitor the post-election scenarios from a human rights perspective and we are receiving reports round the clock at our Election Monitoring Hub.

With regards to political participation, the KNCHR notes that Kenyans turned out in in large numbers and were able to cast their votes in a peaceful manner and we laud all for the same. We also observed that to a large extent, the KIEMS kits worked and apart from a few isolated cases, Kenyans were able to exercise their democratic right. In terms of the right to information we appreciate the efforts of the Independent Electoral and Boundaries Commission in availing the requisite information to the members of the public. We further observe that the tallying process at the Bomas is being carried in a transparent manner and observers and agents and allowed to monitor the process

The KNCHR wishes to appreciate all Kenyans that despite the heightened tensions, most people have been able to restrain themselves as the country waits for the final results. We call upon everyone to call to continue with the same as we wait for IEBC to announce the final results.

Our preliminary findings from our monitors and staff in the field indicate that certain areas of our country are already experiencing violence, unrest and tension. We have also received reports that in some areas, people are either moving to what they consider to be 'safer areas' and a significant number of people are still holed-up in their homes, unable to move about their usual business for fear of attacks.

The KNCHR is extremely concerned about a number of human rights violations and atrocities that have so far been brought to our attention. So far, we have received cases of killings; 2 in Mathare, 1 in Kisii and 1 in Tana-River, which have been committed by both the police and members of the public. We are still investigating on two more reported deaths in Tana River. Destruction of property has also been reported in Mathare, and Kisumu. As a Commission, we

call upon the Inspector General of Police and all the security actors to strictly comply with constitutional and statutory provisions with regards to the use of force and firearms and the use of lethal force should only be used as a last resort when saving lives. We also urge members of the public, to exercise their rights, including their right to demonstrate and picket, strictly within the confines of the law as stipulated in article 37 and 38 of the constitution.

We also further call upon Kenyans to remain calm and maintain law and order as they did on August 8th 2017 and as we await for the tallying, tabulation and announcement of final results of the various elective positions that were being vied for. The Independent Electoral Boundaries Commission is by law allowed to announce the final poll results on or within 7 days of the polling process. Today is only day two and what is displayed/beamed by the IEBC or the media houses are only preliminary results. In line with the Court of Appeal judgement and as per Article 86 (b) of the Constitution, the votes cast in all the 40,833 polling stations must be counted, tabulated and the results promptly announced by the Presiding Officers. The results at the polling station must then be accurately entered in Form 34A, and after the sign-off by the respective party agents, the same must be electronically transferred to the respective Constituency Returning Officers.

The General Elections Regulation of 2012, under regulation 82 provides that all provisional results must be transmitted electronically via Form 34A to the Constituency Tallying Center. Under Regulation 83, the Constituency Returning Officer shall tally all the Form 34As, and in the presence of agents and observers, enter the results in Form 34B and declare the same as the final results for the presidential candidates. The Form 34Bs are then transmitted to the National Tallying Centre by the Returning Officers, and it is on the basis of the total tally of the results in the Form 34Bs from the 290 Constituencies that the Chairperson of IEBC then announces the presidential winner as reflected in FORM 34D. We urge the IEBC to make available all their Form 34As in their public portal as is required by the law and also urge them to announce the final results in strict adherence to the law.

We further wish to give the following preliminary findings on the polling day:

1. Voter Turn out

The Kenya National Commission on Human Rights congratulates Kenyans for coming out in large numbers to exercise their democratic right to vote on August 8th 2017. This big turn-out is a reflection and indication that the democratic space in the country is growing and that Kenyans are truly interested in exercising their civic and democratic responsibility in determining the socio-economic and political direction of the country by electing political leaders of their choice. We take this opportunity to thank all the Kenyan voters who turned up to vote—some woke up very early—some of them as early as 3 AM—and most braved long queues, the chilly and rainy morning to cast their vote.

2. KIEMS

The IEBC through their regular updates prior to elections had assured Kenyans that the electronic voter identification systems would work. While the foregoing was generally the case on polling day, in the approximately 1200 Polling Centers the Commission monitored, there were cases of poor handling of the KIEMs reported in a few isolated areas. For instance, in one Polling Center in Nakuru, the polling clerk in charge of the KIEMs was allegedly recalling voters from their homes through known neighbors to retake their fingerprint details as the system had failed to capture them. This call was after they had already left the station and some managed to go back, including one of our monitors. In other areas, some IEBC officials forgot their passwords and had to wait for the same to be reset, which further delayed the opening times of the voting.

3. Security

The Commission witnessed adequate provision of security as guaranteed by IEBC, with the majority of the stations we monitored having recorded presence of at least two security officers. There were few cases of polling centers that had only one security officer or where the security was almost overwhelmed by the big crowds. In St. Anthony High School in Kawangware, and Kariokor Community Center, the police had to call for reinforcement as the deployed personnel were overwhelmed by the large crowds. We laud the Inspector General of Police and his service men and women for providing Kenyans with a safe and secure polling environment on 8/08/2017.

4. Training of IEBC polling officials

KNCHR had alerted IEBC prior to elections to ensure that there was ample time for recruitment and training of their officials to ensure that their services would be efficient come voting day on 8/8/2017. In the areas we monitored, some of the Polling Officers exhibited poor knowledge on the use of the KIEMs and the application and use of Form 32A. The use of Form 32A is clearly stipulated in Rule 69 (e) of the Elections 'general' regulations 2012 which states that form 32A should be used on voters whose fingerprints could not be identified by the EVIDs but could be identified in the printed register of voters. Our monitors however were able to share reports where the form was used on people who could not be identified on the KIEMs and by the alpha numeric system and who were still allowed to vote. In other areas, there were allegations that ROs and party agents agreed to allow people to vote despite their lack of identification on the KIEMs system. However in some stations in Nakuru and Kitui and Kisii Counties, KNCHR monitors recorded various cases of voters who were turned away on the basis that their biometrics had not been identified.

5. Opening and closing of stations

The Elections regulations stipulate that polling should commence by 6.00 am and close at 5.00 pm. However time compensation is given to any station opens late to allow those who will come in the stations late to vote. While most of the stations our monitors visited opened on time, the Commission recorded cases of late opening which caused heightened anxiety and in some cases stampedes and confusion were witnessed in some polling centers in Nairobi. These include Pap Alego Primary School Polling Station in Alego Constituency in Siaya which opened at 8.30am and Kathome Trading Center Polling Station in Machakos which opened at 8.30 am.

6. Voting by prisoners

For the first time in the history of the country, inmates at various correctional facilities were allowed to cast presidential votes within the facilities they are incarcerated. The process went well and thus far there were no general concerns that hampered this historic moment. It thus the Commission's view that this progressive steps should over time be able to allow inmates to be part of the full process by voting for all elective seats. Shockingly, KNCHR established that in Migori Prison, inmates were allowed to vote for the 6 positions while it was clear that they were only supposed to vote for the presidential position only.

7. Special interest groups

To effectively ensure that vulnerable groups are catered for within the polling process, the Elections Regulations Act allows for pregnant women, the elderly and Persons with Disability to be given first priority on the queues. While a majority of persons within this group were able to receive the preferential treatment, challenges were witnessed with the visual and hearing-impaired persons who had to shout the names of the people they are voting for, which the Commission perceives to infringe on the secrecy of the ballot. It is the hope of the Commission that the IEBC would progressively provide braille ballot papers and audio-visual facilities to enhance the right to privacy and secure the voting process of these groups. A common complaint also came from the misuse of children by both men and women to circumvent the queues.

8. Campaigning in polling station

Official campaigns ended on 5th August 2017 and thus all public activities rallying voters either through traditional or new age means were supposed to be halted by all candidates. This includes campaigns during polling day especially through display of candidate or party materials. The Commission has reported cases of people who were spotted distributing campaign material, some who had placed posters at polling centers and a key case of a newspaper vendor who was distributing free newspapers to voters with a header that was biased to a political party.

Our general assessment and conclusion thus far is as follows: We want to state that our assessment is that the first phase of the voting process went on well and despite the challenges identified above, Kenyans were able to participate in the voting process in a manner that was largely credible and peaceful. It therefore our hope that the second phase of this very important national exercise—the counting, tabulating, transmission, tallying and announcement of the final results—will similarly be carried out in an open, credible and transparent manner and in line with the various electoral laws and regulations. We have no doubt that if this second phase is carried out in the prescribed format, then our election will pass muster as having been credible, free and fair.

In conclusion, we want to end by stating that our Constitution has set up independent offices like the judiciary to hear electoral disputes and we call upon all political actors to implore these channels to resolve electoral disputes.

KNCHR will remain vigilant and takes this opportunity to thanks all Kenyans who continue to use our hotline number (0800 720 626) and our SMS platform (22359). These communication channels will remain open until September 2017 and as a Commission will continue to update the country.