



**ELECTION MONITORING REPORT ON
THE SITUATION OF HUMAN RIGHTS
DEFENDERS, ELECTION MONITORS
AND JOURNALISTS DURING THE
2017 ELECTIONS IN KENYA**

SUMMARY OF KEY FINDINGS BY THE NCHRD-K
BETWEEN APRIL – NOVEMBER 2017

About NCHRD-K

The National Coalition of Human Rights Defenders (NCHRD-K) is a national organization incorporated in the Republic of Kenya as a Trust. It works primarily for the protection of human rights defenders in Kenya and its mission is to strengthen their capacity to work effectively and without fear. NCHRD-K works towards the achievement of its mandate through three programmes – Protection, Advocacy and Capacity Building. The first aims to develop appropriate preventative and intervention strategies for the protection of HRDs by offering legal, medical and psychosocial support; the second strives to achieve a conducive legal and policy environment for HRDs through coordinating and harmonizing NCHRD-K advocacy interventions with those undertaken by its partners; while the third works towards skill enhancement of HRDs, equipping them with the necessary skills and security management techniques to ensure their own safety in the defense of human rights.

In order to safeguard the working environment for HRDs during the 2017 elections, the NCHRD-K deployed one hundred and two (102) election monitors, spread across all forty-seven (47) counties to monitor, document and report on the working environment for election monitors, journalists and HRDs; and human rights violations against the same in order to allow for timely intervention.

Overview of the Exercise

The one hundred and two (102) human rights defenders were equipped with requisite skills to enable their safety and security during the process, develop evidence based reports and offer intervention at community level. The training concluded with a meeting between the HRD monitors and representatives from relevant State institutions to identify areas of collaboration in achieving a free, fair and credible election.

The monitoring exercise commenced in April 2017 to cover the pre-election process and 8 August elections. This was however extended to November 2017 following the annulment of the presidential election by the Supreme Court on 1 September 2017. IEBC scheduled repeat elections on 26 October 2017.

This report covers the findings of the following three periods of the monitoring exercise.

- Pre-election phase: This started with the monitoring of party primaries and the campaign period.
- Election phase: This entailed monitoring of the actual day of voting – 8 August 2017 and repeat presidential election of 26 October 2017.
- Post-election phase: Monitoring of the period after the closing of the polling stations and the announcement of the final results for both the 8 August 2017 General Election and the repeat presidential election on 26 October 2017.

Data collection tools

Election monitors were equipped with tools to enable them document election malpractices, human rights violations and triggers of violence within their localities. Data collection templates ensured that reporting was standardized. Among data collected are the political, civil, social, cultural and economic factors that impacted on their working environment, human rights violations and electoral malpractices observed. In addition, they proposed corrective action to be taken and to ensure greater participation of various groups in the election process. The reports also provide recommendations to various actors involved in the electoral process.

The NCHRD-K launched *Mtetezi*- mobile application for reporting. The *Mtetezi* platform was made available for monitors to share

cases of HRDs at risk on a regular basis for urgent response by the NCHRD-K and partners. All reports received, both from the reporting tool and the mobile application, go through a strict verification process to confirm their factual accuracy and authenticity. The final verified reports are then shared with NCHRD-K's partners for urgent intervention and to inform the development of rapid response measures and early warning systems to ensure the safety of the election monitors.

To ensure professional conduct, all election monitors signed a Code of Conduct developed by the NCHRD-K. Monitors were issued with a copy of the Code of Conduct – a pocket guide book that also contains security management tips and emergency contacts.

Engagement with State bodies on the monitoring project

At the commencement of the project and during the monitoring process, NCHRD-K organized national forums that brought together NCHRD-K election monitors and various government institutions responsible for the conduct of elections, human rights and security. The purpose of the meetings was to build strong working relationship with critical institutions concerned with election management and facilitate flow of information for timely remedy. Participants at these meetings included officials from the Independent Electoral and Boundaries Commission (IEBC), Kenya National Commission on Human Rights (KNCHR), National Gender and Equality Commission (NGEC), Independent Policing Oversight Authority (IPOA) and the National Police Service Commission (NPSC). Also in attendance were representatives from civil society including the Election Observation Group that dispatches election monitors across the country.

Interventions

The NCHRD-K established an information collection and intervention hub to receive reports from election monitors. The information received through phone calls and emails from the NCHRD-K monitors and monitors working for other groups like ELOG, Kura Yangu Sauti Yangu as well as alerts submitted by monitors through *Mtetezi* phone application ensured timely intervention and escalation of information to other partners including IPOA, KNCHR, NPSC and IEBC for intervention depending on their mandates.

Intervention by the NCHRD-K during the election period included urgent relocation, legal representation, bail and bond as well as medical and psychosocial support for victims. Twenty HRDs benefitted from NCHRD-K's urgent intervention programs during this period

Findings

The NCHRD-K election project confirms a chilling pattern of attacks of human rights defenders, CSOs and journalists during the election process. While such attacks have taken place at other periods, the right to vote appears to create a particularly volatile period for advancing human rights, informing the public and exposing malpractices for timely remedy. The attacks, intimidation and threats of deregistration of CSOs, personal attacks, destruction of equipment, denial of access and even killings of Journalists, HRDs, and election monitors have been perpetrated by state and non-state actors despite constitutional safeguards and the existence of laws and policies that recognize the critical role played by HRDs, journalists and other civil society actors in exposing human rights violations and providing vital information to citizens.

The 52 cases of human rights violations targeting HRDs, journalists and CSOs documented by the NCHRD-K since it kicked off the election monitoring exercise in April 2017, and covering both 8 August 2017 elections and the 26 October 2017 presidential elections illustrate critical debate regarding measures needed to ensure justice for victims, hold accountability of perpetrators to account and arrest future occurrence by putting in place necessary intervention measures and support programmes. These are highlighted below.

Threats, intimidation and harassment

1. On 18 July 2017, at Ahero, a HRD was reportedly intimidated by a member of one of the gubernatorial aspirant's campaign team when she took pictures of their activities.
2. On 8 August 2017, the presiding officer at the Lomekwi Polling Station, Turkana County threatened monitors who raised concerns over the manner in which party agents and the presiding officers were assisting illiterate voters.
3. On 10 and 11 August 2017, HRDs and journalists at Kondole who were documenting public protest and the conduct of police were intimidated by the police. Some journalists claimed that the police barred them from taking photos and threatened to delete the photos from their cameras at Kondole slum, Kisumu County.
4. A HRD based in Kawangware, Nairobi had to flee after he received threats from police officers because he had documented by video, police officers were apparently intimidating voters during the 8 August elections.
5. On 13 August 2017, five (5) HRDs from Mathare 4A (Mabatini) and one (1) HRD from Dandora in Nairobi, reported that they had received threatening phone calls and were under police surveillance This was after they provided information and accompanied researchers from local and international human rights organisations that documented human rights violations including police brutality

following announcement of presidential election between 9 and 12 August 2017. The risk of physical harm from police increased when reports of police brutality were widely published contradicting official government statements to the contrary.

6. On 13 April in Baringo County, a monitor was threatened and abused by a sitting MCA because of calling on the government to hold to account local leaders that were not accountable. Other HRDs that were known to spearhead peace initiatives in the area were threatened and forced to flee their homes.
7. On 13 August 2017, civil society organizations in Mombasa held a press conference on the state of human rights in the region, following which, one of the vocal HRDs present at the press conference received a threatening phone call from a senior security official. The caller accused CSOs of misleading the public and promised to deal ruthlessly with the HRD and other CSOs.
8. On Friday 11 August 2017, immediately after the announcement of presidential results by the chair of IEBC, residents of Ahero town, Kisumu County started demonstrating and blocked off the main road while others broke into shops and kiosks looting property. One victim of the looting was a HRD and shop owner. When he went to his shop in an effort to salvage some of his belongings he was barred by the police officers that were quelling the unrest. He started to video record using his phone the incidences including alleged police involvement in break-ins. The police noticed that he was recording and confiscated his phone, broke it into pieces and burnt it. He was also beaten up in the process and sought medical attention.
9. On 9 August 2017, a journalist with Nam Lolwe Radio was physically assaulted by some youth at Martha Mission of Kenya at Suna West tallying centre, Migori County.
10. On 10 August 2017, a radio and Standard Newspaper freelance journalist was beaten up at a press conference held by Ochilo Ayacko at Hill View hotel in Migori.
11. On 11 August 2017 Onagi Radio in Migori county was attacked by supporters of one of the aspirants resulting in the destruction of equipment. Closely linked to this attack were reports that one of the journalists working at the radio station had received threats in June and July 2017 ahead of the elections.
12. In Kisumu, a reporter with Citizen TV was arrested together with her cameraman after her live recording during prime time news on 11 August 2017. It took the intervention of senior officers in Nairobi to secure their release.

13. On 12 August at Olympic stage in Kibra, Nairobi, a KTN News reporter, was arrested while reporting on excessive use of force by the police after the announcement of the presidential election results.
14. In October Anti-riot police especially from the General Service Unit (GSU) invaded homes in estates in Migori, and harassed journalists who were covering the demonstrations, as the GSU tried to move through Migori Town.
15. On 27 October, Ebru TV cameraman in Migori County reported that he received verbal threats from a police officer who said that he (the officer) would discipline the cameraman during the demonstrations. He was not harmed.

Discrimination

Fearing targeted arrest, intimidation and attacks during election period, most sexual minority groups elected to not participate in public activities that exposed them to risks including elections. Despite such measures,

1. 4 LGBTIQ members of Upper Rift Minorities were arrested on 4 August 2017 in Lodwar, Turkana County and released the following day with no charges preferred against them. This incident instilled fear on the LGBTIQ community to participate in public activities including elections
2. In July the offices of two LGBTIQ organizations in Kisumu were broken into and their equipment stolen.
3. On 12 August 2017, an LGBTIQ activist from Nyamasaria in Kisumu received threats from *boda boda* operators on account of his sexual orientation. However, the HRD got wind of the impeded attack and with the help of partner organisations managed to avert the attack.

Denial of access to election centres and campaign meetings

1. In Kiambu County, an HRD and an election monitor working in Thika attended a campaign rally at Thika Stadium on April 18 with another monitor. As they went about their work, a government officer insisted that they should not take photos and demanded they leave the stadium.
2. On 12 April 2017, women leaders from Tharaka Nithi and Meru attended a meeting at Gitoro Conference Centre. According to the HRD assigned to that county, the discussion focused on women leadership in the region. Towards the end, non-Jubilee supporters were asked to leave after which the discussion turned into a strategy session during which an aspirant instructed the women to mobilise voters who could be persuaded to vote twice in the nominations. As this was going on, someone noticed the HRD recording the discussion and she was promptly thrown out after being forced to delete the video recording.



3. An editor of a local media house, *Wajir Chronicles*, in Wajir County, was barred from entering the venue of a political rally; he was mishandled by a group of youths on 8 April before colleagues rescued and took him to a safer place.
4. While monitoring party primaries at Nairobi's Mathare Polytechnic and Mathare Special School for both the ODM and Jubilee parties on 26 April 2017 and 30 April 2017 respectively, a human rights defender and monitor with NCHRD-K was barred from accessing the polling stations as she did not have an IEBC identification card. At Mathare Polytechnic, vote tallying came to an abrupt stop, violence erupted and the monitors were locked inside the polling station; gunshots could be heard outside.
5. In Kibra Constituency an ELOG monitor was refused to leave her house and monitor how elections were being carried out.
6. On 8 August 2017, some monitors from the Catholic Diocese of Lodwar were denied access to tallying centre at Konon polling station because they did not have accreditation letters in addition to their identification badges. They were later allowed in after other monitors intervened.
7. Similarly, at Nguthero Primary polling station, a monitor was denied entry into the polling station ostensibly because he did not have an introductory letter and oath of secrecy.¹
8. On 8 August 2017, a police officer threatened to shoot a monitor and barred him from entering Sori High School polling station in Migori County, despite having his observer's identification badge with him. IEBC officials intervened and the monitor was allowed into the polling station.
9. On 7 August 2017 in Amalemba, Shinyalu, Kakamega County in the Western region, two HRDs were attacked after making a comment about one of the aspirants. This is after chaos broke when the supporters of the aspirant tried to repulse people who were opposed to bribing of voters. The HRDs were rescued and relocated immediately.
10. On the night of the Election Day, during the tallying process at Mandera North constituency tallying center, one of the NCHRD-K monitors stepped out of the tallying hall to attend to a call of nature at around 2.30 am. Before he reached the toilet, some goons shouted at him and started to chase after him. They pursued him for 3 km before he hid in a person's house until the rescue team was sent to evacuate him.
11. On 11 August after the pronouncement of the results and skirmishes erupted in Kisumu, monitors from InformAction based in Kisumu monitored the situation while taking videos of the happenings. Together with other journalists they were denied access to operation areas where police engaged demonstrators overnight.

1. Observers and Monitors are not required to swear oaths of secrecy, which is required of party agents.

Negative profiling and Intimidating statements

1. HRDs residing along the Nandi/Kisumu border were continuously threatened with risks because of their alleged support for cases at the International Criminal Court in The Hague following Kenya's post-2007 election violence. Such allegations instilled fear among HRDs or community refused to share information with them affecting on their monitoring role. This was also witnessed in Uasin Gishu county where a journalist with *The Star* newspaper, was forced to delegate his duties to colleagues for fear of victimisation.
2. Intimidating statements and negative rhetoric by politicians, government officials, party officials and police were continuously made during political rallies. Trans Nzoia County Governor Patrick Khaemba, for instance, dismissed HRDs as "*wale watu wakuleta fitina*" (malicious people), at a funeral ceremony on 26 April 2017.

Arrests

1. During the First Jubilee party primaries in Laikipia County, more than 30 Samburu and Turkana youth were forcefully arrested in the Kinamba, Sosian Ward, Laikipia North Sub-County. Among these were HRDs who were monitoring the exercise. They were harassed, threatened and accused of influencing the outcome of the elections.
2. In Garissa County, an observer with the Election Observer Group (ELOG) was arrested on 13 April and detained in a police station as she covered a fight between two rival Jubilee camps. The elections monitor in the area intervened and she was released.
3. On 10 August 2017 at about 1.00 pm the ELOG Regional Coordinator for Trans Nzoia, Elgeyo Marakwet and Uasin Gishu and the constituency supervisor were arrested. The two were seated at local hotel in Kitale to compare notes and to collect the monitoring reports from their colleagues in the constituency when they were arrested and taken to Kitale Police Station. They were later presented before court and charged with the offence of being in possession of documents purporting to be Form 34B. The magistrate released them on a pre-trial bond of KES 400,000 (approximately USD 2000). They were detained overnight at the Kitale Prison as they were unable to raise the bond. Following interventions by NCHRD-K and KNCHR that convinced the court that the two were *bona fide* election observers under ELOG, the prosecutor withdrew the charges the following day and the two were released unconditionally.
4. On 11 August 2017 another election observer was arrested at 6.00 pm at Kitale Police station where she had gone to inquire about her two colleagues who were arrested on 10 August 2017. At the time of her arrest, she had with her all relevant documents identifying her as the Constituency supervisor for Elections Observations Group (ELOG). These included an introduction letter, contract of engagement and IEBC observer accreditation badge. She was detained for some time but was released unconditionally by the Officer in Charge of Station (OCS) following the intervention by the KNCHR.

5. Police officers arrested a Constitution and Reform Education Consortium (CRECO) observer on 26 October 2017. The observer was speaking on the phone with an NCHRD-K election observer updating him on what was happening at Kaptechung Polling Station, Jepkoyai ward, Hamisi Sub-county, Vihiga County where a number of youths were demonstrating and preventing people from voting. The police arrested him and held him in a police vehicle accusing him of informing the youths who was voting. The observer was released with no charge after the intervention of the NCHRD-K officials.

Physical attacks

1. In Kisumu County, youths forced an election monitor to preside over party primaries on 25 April at Nyangoma Ward polling station because the presiding officer was not available. To “cajole” her, they slapped, called her names and then one of them hit her on the back of the neck causing her to ooze blood through the nose.
2. Harassment of HRDs was also reported in Nakuru Town East and West. An HRD was accosted by a candidate and his supporters for taking photos of aspirants fighting at Mwariki Polling station in Rhoda Ward, on 26 May. Similarly, at Outreach Church polling station, some agents buttonholed a monitor for being in the voting hall and taking photos of the voting process. The HRD left the polling stations with the support of citizens who had turned up for the exercise.
3. On 10 August 2017 in Migori County a standard photojournalist was allegedly beaten up by supporters of a gubernatorial aspirant at a press conference. He was treated at Ombo Hospital. There were allegations that he was set up by a colleague who was supporting a different candidate. This case was acted on by the bureau chief of the media house.
4. A HRD from Baringo County states that in May, a militia group attacked his homestead forcing him to flee with his family. They have yet to return.
5. A photojournalist in Kisumu who was taking videos and doing advocacy work on social media during the skirmishes received threats from unknown people, sending him threatening messages on his phone as well as Facebook page and telling him to stop posting the happenings in Kisumu informal settlement areas or else they will kill him.
6. On 26 October, in Busia County, a monitor dislocated her hip when she tripped and fell in a stampede when police lobbed teargas at a crowd at Cereals polling station in Malaba town. A crowd had gathered and was attempting to block transportation of election materials to Amagoro Tallying center, when the police lodged teargas canisters to disperse the group of demonstrators that converged.
7. On 26 October, a Parallel Voter Tabulation (PVT) monitors deployed by Elections Observation Group (ELOG) to monitor in Ruaraka Constituency, Nairobi County, was physically assaulted and robbed of her observation materials

by a group of young men who had barricaded a road. She was rescued by officers from the Ruaraka Administration Police Camp and thereafter received treatment for minor injuries. The timely and professional conduct by the officers is recognized and appreciated.

8. On 26 October at Bangladesh polling station, Jomvu constituency, Mombasa County, police left the station unmanned, leaving the election observers and IEBC officials at polling station by police. Some youth in the area that were opposed to the conduct of elections noticed that police officers had left and decided to enter the polling station to disrupt the voting exercise. This forced the observers and Independent Electoral and Boundaries Commission (IEBC) officials to scamper for safety. Residents neighbouring the polling station assisted them to escape.
9. In Nyali Polling station, Mombasa County an ELOG observer was harassed and assaulted by unknown assailants on his way to his assigned polling station, preventing him from carrying out his duties. In the same constituency, another observer was threatened by a group of young men at around 5:30 am while she was on a *boda boda* (motorcycle) headed to her assigned polling station. They threatened to beat her up in case she returned to the polling station. She defied their orders and returned to the polling station an hour later and reported that it had been opened but was unable to complete her observation role due to the intimidation. This took place on 26 October.
10. In Tom Mboya polling station, Nairobi county, a Supreme Council of Kenya Muslims (SUPKEM) monitor was harassed by rowdy youths as he proceeded towards Kinyago polling station on 26 October 2017.
11. In Idavaga polling station Vihiga County, A UN observer was attacked with stones by youths on 26 October 2017. He suffered injuries on the face on.
12. On 28 October, a Standard Media Group Journalist based in Migori town was attacked by GSU officer. He stated that he was in his house when he heard commotions outside. He took his camera and press card and went outside to see what was happening. He then saw some GSU officer approaching him while pointing their guns at him. Despite him surrendering and introducing himself as a journalist from the Standard Group, he was beaten and his camera memory card taken away by the officers. His memory card was later returned to him.
13. Radio Milambo Journalist was, on 26 October, assaulted by GSU officers while coming from his home at Awendo. The officers physically assaulted him, took away his press card, cash and phone. They then forced him to clear barricades placed on the road by demonstrators amid beating him on the head and joints before leaving him unconscious. He was rushed to St. Ombo Mission Hospital for treatment.

Killing

1. An election observer Vincent Omondi, working with ELOG was shot dead at Dago market, Nyahera in Kisumu West on the night of 11 August 2017. Vincent had gone to observe the happenings following the announcement of the presidential results.

Limitation of freedom of association

1. On 14 August 2017, in a letter circulated in the media, the NGO Coordination Board, purported to deregister the KHRC accusing it of operating “illegal bank accounts”, employing expatriates without the necessary permits and tax evasion, among others. The KHRC has since denied the allegations and moved to court to challenge the actions of the NGO Coordination Board.
2. In a letter dated 15 August 2017, the NGO Coordination Board wrote to the Directorate of Criminal Investigations (DCI) directing him to close down the operations of AfriCOG and arrest its members and directors for contravening section 22 (1) of the NGO Coordination Act. On 16 August 2017 at about 10:30am officials from the Kenya Revenue Authority (KRA) accompanied by police officers, without notice and on the basis of a defective court order, attempted to gain entry into the AfriCOG offices, ostensibly to carry out a tax audit.

Recommendations

Government Institutions

- Operate in a transparent manner and within the interest of the public so as to inspire confidence in the independence and credibility of public officials and institutions.
- Ensure that the National Police Service complies with constitutional safeguards and standards on human rights and fundamental freedoms, including by avoiding excessive use of force in dispersing demonstrations.
- Ensure that the Constitutional Commissions have sufficient resources to effectively and independently carry out their mandate, including monitoring, reporting and investigating human rights violations as well as protecting human rights defenders at risk.
- Guarantee the fundamental right to freedom of peaceful assembly ensuring that demonstrations are not disrupted with unnecessary and disproportionate violence by the police forces, and that no unnecessary bans or limitations are imposed to peaceful demonstrations and protests.

Constitutional Commissions

- Constitutional commissions should invest in a countrywide monitoring of human rights violations against the public with a focus on the most vulnerable in society and ensure accountability for violation of human rights.
- IEBC to work closely with election observers and election observer groups in identifying and responding to electoral malpractices and holding those responsible to account.
- IEBC to sensitise the public on the role of election monitors, observes and journalists during the election period to mitigate misconceptions.
- Ensure accountability for human rights violations and electoral malpractices during the election period.

HRDs and CSOs

- HRDs and CSOs at county and national level should work towards increased collaboration with all critical stakeholders to minimize and spread the risk as they hold government institutions to account.
- Ensure that all registered civil society organisations are in compliance with the statutory and administrative requirements within the regime under which they are registered.
- Establish early warning systems and rapid response mechanism for HRDs at risk inclusive of psychosocial support to HRDs.

Media houses

- Media houses should put in place safety and security measures and rapid intervention strategies that will ensure the safety and security of all journalists in the event of hostile encounters.

Development Partners

- Development partner should lend their voices in profiling the critical work of election monitors, observers, journalists and HRDs and strongly encourage their safety and security during the election period and beyond.

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