



A Society Free From Torture and Related Violations

FRONTLINES OF DEMOCRACY:

Safeguarding Human Rights in Kenya's 2022 Elections



Election Monitoring Report

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Foreword

This report titled *Frontlines of Democracy: Safeguarding Human Rights in Kenya's 2022 Elections* is a culmination of over 4 years of IMLU's engagement in the 2022 electoral process. It captures in great details, IMLU's theory of change which is not only response driven but also prevention oriented. It speaks to the long-term strategy IMLU has taken in election monitoring based on analysis of lessons learned from the previous elections and the reality of Kenya's politics. The prevention approach focussed on strengthening the capacity of the citizen agency and duty bearers. This report is a blow-by-blow account of IMLU's four-year electoral preparation and elections monitoring activities.


Our long-term strategy was premised on the observation that in Kenya, the end of one election is unusually the beginning of the other. No sooner had the winning Presidential candidate in the 2017 election been declared than the mobilization for the 2022 elections begun. Bearing this in mind, IMLU's 2018-2022 strategy was an outcome of our electoral situation analysis and an acknowledgement of the need for a longer-term strategy that suites the ever-changing political dynamics in Kenya in line with the Swahili proverb *Usipo Ziba Ufa Utajenga Ukuta* loosely translated to mean a stitch in time saves nine or simply put "prevention is better than cure".

With this in mind, IMLU had to go back to the drawing board and conceptualize electoral violence as a product of accumulation of human rights related grievances stemming from unresolved, ever-evolving conflicts, carried forth from one election, one generation to the next. The central idea behind this theory of change being that early interventions that promote collective reflection, progressive dialogue and meaningful engagements have the potential of preventing escalation, transforming the conflict and strengthening existing social contract with a positive net effect in terms of human and national security. This strategy needed to carry everyone along from critical public sector actors and key role stakeholders to community agencies, media, faith institutions, professional bodies and civil society.

The Project adopted a two-phased approach. The first phase of the project sought to explore five aspects of the conflict dynamics: human rights violations, Sexual and Gender Based Violence (SGBV), public order management and critical aspects of police reforms such as police station-based budgeting, and social cohesion and

conflict mitigation. 62 dialogues bringing together 1231 participants drawn from community policing and were mobilized and engaged with security sector actors from NPS and Ministry of Interior through their respective commanders in 13 police stations. A total of 156 police commanders from all eight regions in Kenya were engaged through training designed to respond to the recommendations of the community dialogues. The second phase was mainly about eight months of election monitoring, which is extensively covered in this report.

Most Sincerely,



*Peter Kiama, Executive Director,
Independent Medico-Legal Unit, IMLU*

Abbreviation & Accronyms

ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Charter on Human and People's Rights
ADR	Alternative Dispute Resolution
AIE	Authority to Incur Expenditure
APS	Administration Police Service
BBI	Building Bridges Initiative
CBO	Community Based Organizations
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CIPEV	Commission of Inquiry into Post Election Violence
CJAK	Crime Journalists Association of Kenya
COVID 19	Corona Virus Disease 2019
CPA	Community Policing Authority
CPC	Community Policing Committee
CRPD	Conventions on the Rights of Persons with Disabilities
CSOs	Civil Society Organizations
ED	Enforced Disappearance
eGBV	Electoral Gender Based Violence
EJE	Extra-Judicial Executions
EVEWPRC	Electoral Violence Early Warning, Prevention and Response Capacity
eSGBV	Electoral Sexual and Gender Based Violence
FSO	Force Standing Order
GSU	General Service Unit
HIV	Human Immuno-Deficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IDEA	Institute for Democracy and Electoral Assistance
IEBC	Independent Electoral and Boundaries Commission
IGA	Income Generating Activities
IO	Investigating Officer

IMLU	Independent Medico-Legal Unit
IPOA	Independent Policing Oversight Authority
JOCC	Joint Operations Command Center
KDRA	Kenya Dialogue and Reconciliation Accord
KePS	Kenya Prisons Service
KFS	Kenya Forest Service
KHRC	Kenya Human Rights Commission
KPR	Kenya Police Reservists
KPS	Kenya Police Service
KOBO	A mobile data collection application
KWS	Kenya Wildlife Service
NACADA	National Authority for the Campaign against Alcohol and Drug Abuse
NARC	National Rainbow Coalition
NCIC	National Cohesion and Integration Commission
NPS	National Police Service
NPSC	National Police Service Commission
NYS	National Youth Service
ODM	Orange Democratic Movement
ODPP	Office of the Director of Public Prosecutions
OHCHR	Office of the High Commissioner for Human Rights
ORPP	Office of the Registrar of Political Parties
PLWD	People Living with Disabilities
PPDT	Political Parties Dispute Tribunal
PRWG-K	Police Reforms Working Group -Kenya
SOP	Standard Operating Procedure
SOWED	Social Welfare Development Programme
SYLO	Station Youth Liaison Officers
TIMS	Thermal Infrared Multispectral Scanner
TJRC	Truth Justice and Reconciliation Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHRTB	United Nations Human Rights Treaty Bodies

Executive Summary

The question that this report is looking to answer is: did the election cause acts of torture, cruel, inhumane and degrading treatment and as a result of this was there a disruption of peace? The simple answer is, yes. While in overall the election was well managed there were still pockets of violence with 115 incidences of violence reported in 41 Counties; out of which 21 constituted serious human rights violations including five fatalities. It can't be denied that this year's general election had fewer incidents of violence compared with previous elections. As IMLU our stand remains that every single incidence of violence perpetrated by State Agencies is unacceptable. The report uses data from this year's election monitoring exercise juxtaposed with data from IMLU's routine human rights monitoring to illustrate two contrasting sides of an electoral coin. On one hand, the report commends the reduction in violent incidents while calling out for accountability.

The report acknowledges the operating context where the country was still experiencing the COVID-19 pandemic although the curve had reduced but most important the way the police enforced the protocols put in place to manage the spread. In September 2020, IPOA received 93 complaints of police misconduct while enforcing the curfew, which included 20 deaths and 73 injuries from shootings, assaults, and inhumane treatment. In addition, the high inflation rate witnessed as the country recovered from the pandemic which saw rising cost of living pushing the prices of essential commodities including fuel and food out of the reach for many households, who were still reeling from the long-drawn impact. It is during this period, that the Building Bridges Initiative, an initiative that had been flaunted and globally hailed as the dream journey towards Kenya's transformation from a Country of blood ties to a Country of Ideals, collapsed. The collapse, perhaps the first red flag of a simmering political revolt.

Particularly, the report declares that electoral Gender-Based Violence (eGBV) remains one of the key features of political violence in every election cycle in Kenya. Although the scope of these violence has tended to differ from election to election, the targeting of women aspirants as well as electorates has remained the same; killings, assault, insults, rape, gang rape and forced circumcision among other manifestations of eGBV.

IMLU's configuration of the election monitoring exercises was guided by the organization's election strategy 2018-2022. The configuration involved the interfacing of two approaches; preparatory stage which was mainly preventative and the responsive stage which was the actual monitoring of the occurrence of incidences of human rights violations relating to police action or inaction in situation of public order management. In total we contracted 122 monitors who were active in a total of 41 Counties. This comprised of 86 seasonal or long-term human rights monitors and later during the election day an additional 36 short-term monitors. Further to this, we trained, deployed and contracted 11 community journalists in October 2021 to complement the work of the seasonal monitors on GBV monitoring in Busia and Kakamega Counties. 58% of the monitors were male while 42% were female. 2% of total number of monitors were PWDs.

The report removes all doubts that indeed the electoral violence this time around was not organized, widespread or systematic. But observes that in the same electoral period, our data shows that the election was conducted in an already suppressed security environment.

By the time of writing this report IMLU, in its routine human rights monitoring activities from Jan- Nov 2022 had documented a total of 224 serious human rights violations by security agencies among them 75 fatalities and 10 enforced disappearances, and 113 cases of torture. Data from the two previous years paint a picture of an unsettling trend. In 2020, IMLU documented a total of 136 cases of serious human rights violations which included torture, enforced disappearances and extra judicial killings. Similarly, in 2021, IMLU recorded a total of 210 cases. The report uses this data pattern to show that there was no change of significance in the state's human rights record if one broadens the analytical lens. That two of this year's electoral fatalities involved two IEBC officials who died in suspicious electoral circumstances, one of them following disappearance, creates a new worrying trend that relates to targeting of election officials.

In conclusion, the report doesn't answer all questions that one would have about this year's election however it provides data analysis and reflections that create an opportunity for further studies to connect separate dots that make up a holistic view of electoral violence. The report concludes that despite having less incidents of violence there were new trends such as rise in civilian-to-civilian violence, targeting of IEBC officials and unexplained police inaction, and that all factors considered can't be said to have been entirely peaceful because it occurred in a suppressed electoral environment.

Chapter One

1.1 INTRODUCTION

This year's general election was the seventh (7) since the introduction of multiparty democracy in Kenya and the third under a new constitutional dispensation. Suffice it to mention, that elections have taken place in Kenya from as far back 1920 when the first election was held. Since then, Kenya has held a total of 27 elections to date¹. Out of these, four elections stand out in the way that they have continued to impact subsequent elections. Firstly, it was in the 12th election of 1961 when the aspect of universal suffrage was introduced for the first time in Kenya. Secondly, in the election of 1992 the country reverted back to multiparty democracy from a 1969 constitutional amendment that had made Kenya a one-party state. Thirdly, the 2007 election witnessed unprecedented level of post-poll violence that nearly plunged Kenya into abyss and triggered internationally brokered far reaching reforms that have bearing on the electoral landscape to date. Lastly, the 2012 election was the first one to be held under a new constitution heralding a new beginning in the Country.

The drafting of Kenya's 2010 Constitution took into account the historical violations of human rights, fundamental freedoms of the people by the state, and therefore provided requisite safeguards, checks and balances to tame state power and enhances accountability and access to justice. Chapter 4 of this constitution under the Bill of Rights provides for a number of very progressive political rights and fundamental freedoms. When creating the National Security Organs in Chapter 14 of the Constitution, the Constitution guarantees the protection of these rights in all security functions that may require the National Police Service to use force in situations such as public order management. The Constitution states that national security shall be pursued in compliance and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms. One of these is the freedom from torture and cruel, inhuman or degrading treatment or punishment.

To guard against undermining democracy, the constitution went ahead to describe the fundamental principles that must at all times characterize our electoral system and created a baseline framework that can be used to measure the freeness and fairness of elections. Accordingly, the integrity and credibility of an election is dependent on the environment in which it was conducted. The environment needs to be peaceful and devoid of violence, intimidation, improper influence and corruption. Additionally,

¹ 920, 1924, 1927, 1931, 1934, 1938, 1944, 1948, 1952, 1956, 1957, 1961, 1963, 1966, 1969 (mini-election), 1974, 1979, 1983, 1988, 1992, 1997, 2002, 2007, 2012, 2017, 2017 (repeat poll) and 2022.

there is need to demonstrate that an election was conducted in adherence with the principles of universal suffrage based on the aspiration for fair representation and equality of vote through a secret ballot, and that the electoral body that presided over such an election was truly independent from direct or indirect or external or internal interference. The election must also measure up to international standards of transparency, impartiality, neutrality, accuracy and accountability.

One of the major players in the management of elections is the National Police Service (NPS). NPS is a creation of both the Constitution and the law. The main role of the National Police Service (NPS) is to prevent, control, detect and investigate crime. The government has invested heavily in policing reform in the last 10 years, mainly in the hardware of policing: tooling and kitting, a costly investment depended upon to transform the service from its earlier outlook of a force. Moreover, police is one of the public institutions most overlooked. Yet, despite this investment and oversight, little has changed in the attitudes and practices of police officers with most of the police service remaining fixed towards regime policing rather than providing security and safety services to the people. They have been unable to shed the image of a force and to transform into a service.

1.2 CONTEXT ANALYSIS

1.2.1 Democracy Test

Since the advent of multiparty democracy, successive elections in Kenya have been characterized by a high degree of ethnic polarization, civil unrest, economic turmoil, insecurity, violence and general despondency among the population. Like elsewhere in the world, elections in Kenya are not conducted in a vacuum rather they are an outcome of history, experiences, aspirations, events and evolving internal and external turmoil. In the past general elections such as year 2007, 2012 and 2017, cases of excessive use of force by police officers towards civilians were reported and documented. These included violent suppression of opposition supporters, voter and candidate intimidation, arbitrary detentions, brutal crackdown on protesters, extortion; theft, abusive operations, extrajudicial killings and unnecessary beatings amongst other forms of human rights violations².

This election like the two others that preceded it in 2012 and 2017 trailed in the shadows of the 2007/08 post elections violence. The evolving history of electoral malpractices, voter suppression, human rights violations and deepening ethnic fragmentation had reached the highest crescendo in 2007 triggering the worst violence in history of Kenya's elections that lasted well up to 2008. Over 1200 people were killed with more than 400 of those deaths being attributed to police actions³.

2 Kenya: Post-Election Killings, Abuse: <https://www.hrw.org/news/2017/08/27/kenya-post-election-killings-abuse#:~:text=In%20the%202007%20post%2Delection,region%2C%20which%20includes%20those%20counties.&text=Yet%2C%20accountability%20for%20police%20abuses,missing%2C%20Human%20Rights%20Watch%20said.>

3 Ibid

In the 2017 general election, Kenya experienced two presidential elections after the first was nullified by the Supreme Court. According to the Kenya National Commission on Human Rights (KNCHR), ninety-two (92) people were killed by police and civilians in the aftermath of the August and October elections while 247 persons were tortured and injured⁴. In the same year, police neutrality and impartiality were questioned with human rights watchdog groups accusing them of various excesses⁵. Additionally, police and security agencies were accused of poor planning and preparedness and failure to act on intelligence received while restoring and maintaining law and order during the electioneering period⁶.

1.2.2 Enforcement of COVID19 Protocols

The August 2022 election was being carried out in the backdrop of various social and economic challenges brought about by internal and external forces. Among the most significant challenge is the post COVID 19 pandemic recovery environment. The advent of COVID19 had resulted in the economic disruption of unprecedented magnitude that the country was obviously least prepared for despite having had the time to make important adjustments as the Virus ravaged the rest of the world and made advancements towards Africa. The loss of income, disease burden, unemployment and the extent of wealth destruction by the pandemic had far reaching adverse effects in every household leading to loss of political cohesion in the country and enormous pressure for the government to undertake fundamental economic, political and security sector reforms.

Particularly, the conduct of state security agencies was characterized by harsh enforcement of COVID19 prevention protocols. This resulted in public outcry with IMLU and other stakeholders calling on government to investigate the National Police Service (NPS) for reported acts of killings and violence, laxity in the provision of security, bribery and extortion. Media and several human rights watchdogs reported police excesses while enforcing the COVID 19 prevention measures leading to deaths and serious injuries. At the advent of COVID 19 in March 2020, it was reported that police officers had killed at least six young people within the first ten days since the imposition of the dusk to dawn curfew in the country. Human rights organizations documented no fewer than eight killings of young people between December 2020 and February 2021 in the low-income settlements of Nairobi's Mathare, Kasarani and Majengo area. It's important to note that with the advent of COVID 19 in the country, young people were increasingly being caught up in new violent encounters with law enforcement agents, almost always ending up in arbitrary arrests, bribery, injuries or even fatalities.

4 Still a mirage at Dusk. A Human Right Account of 2017 fresh presidential elections. Kenya National Commission On Human Rights (KNHCR) (2018).

5 Patrick Mutahi, (2019) Violence, security and the policing of Kenya's 2017 elections, The University of Edinburgh, United Kingdom.

6 Arne Tostensen (2009) Electoral Mismanagement And Post-Election Violence In Kenya – The Krieglger And Waki Commissions Of Inquiry.



Figure 1: Police assault a Kenyan on March 27, 2020, as the nationwide curfew commenced Courtesy| Reuters

In September 2020, IPOA took note that it had received 93 complaints of police misconduct while enforcing the curfew, which included 20 deaths and 73 injuries from shootings, assaults, and inhuman treatment. Furthermore, IPOA reported that it had received 161 complaints regarding deaths resulting from police actions or inactions between July 2019 and June 2020, as compared to 119 complaints received between July 2018 and June 2019. On April 2021, President Uhuru Kenyatta publicly apologized for police violence related to the curfew; nonetheless, reports of abuses continued. During this period some of the significant human rights violations included unlawful or arbitrary killings, extrajudicial killings; enforced disappearances; torture and cases of cruel, inhuman, or degrading treatment or punishment; harsh and life-threatening prison conditions; arbitrary arrest and detention; arbitrary interference with privacy; serious interference with the freedom of peaceful assembly and freedom of expression; serious acts of corruption; lack of investigation and accountability for violence against women and girls.

1.2.3 Cost of Living and Economic Hardships

The high inflation rate witnessed in the post COVID-19 recovery period and rising cost of living had pushed the prices of essential commodities including fuel and food out of the reach for many households, who were still reeling from the long- drawn impact of COVID19. This was compounded by severe drought affecting not only the pastoralist regions traditionally prone to famine but also the breadbasket regions in Central, Upper Eastern, Rift valley and Western Kenya, as well as the entire horn of Africa region. By the date of election, the drought was already heading to the proportion of national disaster with Counties such as Nyeri and Meru sounding alarm bells.

To make matters worse, the February 24th Russia's invasion of Ukraine had resulted in a protracted internationalized conflict that rendered a devastating blow to the slim, slow and fragile chances for global economic recovery. In Kenya, the price of fertilizer, fuel and food threatened to take the Country back to the political and economic precipice.

1.2.4 Building Bridges Initiative

Perhaps the first red flag of a simmering political revolt was the collapse of Building Bridges Initiative (BBI). The initiative had been flaunted and globally hailed as the dream journey towards Kenya's transformation from a Country of blood ties to a Country of Ideals. The government led initiative had proposed several constitutional and legislative amendments that required a national referendum. According to the initiative, Kenyans decried the fact that Kenya was a country besieged by ethnic antagonism and competition, lacked long-term thinking and a sense of national ethos and was increasingly a nation of distinct individuals instead of an individually distinct nation.



Figure 2 The Former President H.E. Uhuru Kenyatta addressing the BBI Steering Committee during the release of the Time Table.

The BBI report⁸ had gone ahead to make a raft of recommendations including greater political, economic and religious inclusivity and observed the need for urgent reform of the electoral system to make the executive structure more inclusive and end ethnic violence caused by the winner-take-all system; criminalising hate speech and the use of violence especially prior to, during and after elections; fairer and more equitable planning and sharing of national revenue; efforts to address the profound concerns of the youth, people living with disabilities (PLWD), women and girls, minorities and historically marginalized, the underserved and the poor; the need to address historical injustices and land reforms once and for all and; implementation of past Commission and Taskforce reports.

1.2.5 Transition Complexities

Chapter Nine of the constitution has set strict presidential limits of two five-year terms. In this election, the incumbent was not eligible for re-election, raising the stakes higher. President Uhuru Kenyatta was completing his second and final term and overseeing the Country's transition into the fifth administration, which was the third presidential transition election in the history of multiparty elections in Kenya. Likewise, 21 out of the 47 Counties were undergoing a similar transition where the first cohort of incumbent Governors was completing their constitutionally prescribed two term-limit. For Counties, it was the first election since the promulgation of the Constitution in the year 2010 in which Governors were overseeing constitutionally occasioned change of guard given that this was the third election since devolution took effect in 2012. The August 2022 election had other uniqueness that made it an election of its own kind in the history of political jurisprudence and in the contemporary practice and tradition of multiparty democracy in Kenya.

Since 2002, when the first pre-election coalition arrangement was hatched, multiparty elections in Kenya have tended to pit two major political coalitions. The 2022 election was not exceptional except that the ruling Jubilee party formed an unprecedented coalition with the leading opposition party Orange Democratic Movement (ODM) thereby throwing the weight of the executive led by the outgoing President behind the opposition candidate. It was also the first time that a sitting Deputy President was running as a Presidential candidate while still occupying a state office.

7 https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.the-star.co.ke%2Fnews%2F2020-01-31-bbi-steering-committee-releases-timetable-conditions-for-forums%2F&psig=AOvVaw3_cl4jKfXkL4eF4z6a5Eu5&ust=1668966173489000&source=images&cd=vfe&ved=0CBAQjRqFwoTCiWptPluvsCFQAAAAAdAAAAABAJ

8 Government of Kenya, October 2020, Report of the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report Building Bridges to a United Kenya: from a nation of blood ties to a nation of ideals



Figure 3 DP Ruto Campaign Rally



Figure 4 Azimio's Raila's Campaign Rally

Moreover, it was the first time that the Country was going into elections without a substantive leader of official opposition. This meant that there were two government affiliated leading candidates; on one hand a sitting deputy president of the Republic of Kenya, and on the other hand a candidate of the ruling executive sponsored by the President of the Republic of Kenya. While this was an anticipated misnomer that lacked precedence in Kenya, it split the government into two halves but also somehow levelled the playing ground for the two leading coalitions, and by so doing downgraded the stakes that tenderized the contest.

1.2.6 Electoral and Security Reform

According to Kriegler's report, one of the two commissions formed out of the power-sharing agreement reached within the Kenya Dialogue and Reconciliation Accord (KDRA), the 2007 election was heavily bungled and bitterly contested. It was characterized by vote-buying and selling, unapologetic use of public resources for campaign, participation of public servants in campaign activities, ballot stuffing, zoning of regions and intimidation of opponents, use of marauding gangs, using, cheering and uploading of hate speech and ethnic sentiments and, use of sexist tactics to keep women out of the race.

The Kriegler commissions had observed that the vulnerability of the 2007 election was the failure to protect the electoral processes from these unacceptable actions despite the existence of sufficient legal frameworks. All the three National Accord Commissions (Waki, Kriegler and TJRC) recommended far reaching constitutional, legal and institutional reforms to address these weaknesses and gaps in the effective enforcement of laws, administration of justice and promotion of equality and accountability, and safeguarding human rights in all processes throughout the entire electoral cycle. These reforms were going to address the long-standing issues that had set the stage for the 2007 post-election conflict.

In particular, the Truth Justice and Reconciliation Commission (TJRC)¹⁰ also established under the framework of the National Accord had observed that the Police have been at the center of the country's history of violations of human rights. They have either committed the violations themselves or have failed to protect Kenyan citizens when required to. These violations of human rights include massacres, unlawful killings, enforced disappearances, torture and ill-treatment, as well as rape and sexual violence. According to the Commission, the Police lacked professionalism and efficiency, and were the main perpetrators of these violations.

Further that there was cover-up of cases of violations of human rights by the State, especially those committed by security agencies; the Commission observed that the State had never shown commitment to investigate and prosecute State agents for violations of human rights in the past. The TJRC report had therefore recommended a raft of measures to address these shortcomings including the need for rapid, effective and transparent implementation of the proposed police reforms.

The report also recommended the introduction of new operating procedures on the use of force, based on international standards, the repealing of Force Standing Order (FSO) number 51 which allowed the use of lethal force to protect property, formulation of new code of conduct and ethics, in line with constitutional values-including disciplinary and accountability measures, sufficient resourcing of children and gender desks at police stations and capacity building of the officers working there.

1.3 INTERNATIONAL LEGAL SAFEGUARDS FOR HUMAN RIGHTS

The United Nations defines Human Rights as the rights essential to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status¹¹. The Bill of Rights in Chapter Four of the 2010 Kenyan Constitution explains that rights and fundamental freedoms belong to each individual and are not granted by the State. The constitution places fundamental duty on every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms with the view to preserving the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings¹². Article 4 (2) and 10 (2) further affirms that Kenya is a multi-party democratic State founded on the national values and principles of good governance, patriotism, national unity, the rule of law, democracy and participation of the people, human dignity,

9 <https://www.google.com/url?sa=i&url=http%3A%2F%2Fgadocartoons.com%2Fkriegler-commission-report%2F&psig=AOvVaw3Vdp11RuAA8AExFWXF7Ki&ust=166896860022000&source=images&cd=vfe&ved=0CBAQjRxqFwoTCKCwhdzuuvsCFQAAAAAdAAAAABAD>

10 Kenya Human Rights Commission, August 2013, Kenya Transition Justice Network; Summary-Truth Justice and Reconciliation Commission <https://www.knchr.org/Portals/0/Transitional%20Justice/kenya-tjrc-summary-report-aug-2013.pdf?ver=2018-06-08-100202-027>

11 <https://www.un.org/en/global-issues/human-rights>

12 The Constitution of Kenya 2010.

right without unreasonable restrictions to be registered as a voter, to campaign for a political cause or party and to make political choices in a free, fair and regular election based on principles of universal suffrage expressed through a secret ballot in any election or referendum. Article 29 requires the state to take all necessary measures to ensure that citizens exercising the sovereign power under Article One (1) are shielded from any form of human rights violations including cruel, inhuman or degrading treatment, insecurity or violence from either the state, members public or private agencies.

These principles are not a creation of Kenya specific context rather they are a part of a body of international standards whose primary sources are a broad range of global instruments for the protection of human rights. According to United Nations Human Rights Treaty Bodies (UNHRTB)¹³. Particularly, the 1948 Universal Declaration of Human Rights (UDHR) proclaimed that the advent of a world in which human beings enjoy freedom of speech and belief and freedom from fear is the highest global aspiration that binds together all humanity. The declaration laid the foundation for the universality, inalienability and interdependence of all human rights. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) makes requirements for state parties to take deliberate measures to eliminate barriers that hinder women from enjoying equal rights in management and execution of public affairs. Conventions on the Rights of Persons with Disabilities (CRPD) safeguards the political rights of People who are Living with Disability (PLWD) and requires member states to take necessary steps to ensure PLWDs have equal rights in all stages of electoral process including running for office and holding positions of leadership. Both the 1966 International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) guarantees an individual's right to self-determination and provides guarantee for their participation in political processes such as elections in safe and secure environment as an important reflection of respect for fundamental human rights in civil, political, economic and cultural contexts. The 1981 African Charter on Human and People's Rights (ACHPR) also known as the Banjul Charter which provides safeguards for human rights and fundamental freedoms and obligations in the governance of a country's political affairs and goes further to outline preconditions for free and fair election, the African Charter on Democracy, Elections and Governance (ACDEG) places an obligation on states to put in place measure of legislative and administrative nature to hold regular and credible elections, and to strengthen democracy and citizen engagement. Lastly,

13 UN Treaty Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN

the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa also known as the Maputo Protocol provides an overarching framework for the advancement of women rights through political participation, enabling legislation and affirmative action.

Considering that Article 2(5) (6) of Kenya's constitution provides that general rules of international law, and treaty or convention ratified by Kenya shall form part of the law of Kenya, these instruments therefore comprise an important framework for evaluation of the freeness and fairness of an electoral process. Besides being domesticated in our constitution they are also operationalized in Kenya through six (6) important pieces of legislations.

1.4 LEGAL SAFEGUARDS FOR ELECTORAL PROCESSES IN KENYA

Briefly, the Elections Act, 2011 is the main frame in a body of legislative instruments on which elections in Kenya are conducted. It breaks down an electoral cycle into constituent processes, stages, procedures and timelines. Elections Offences Act, 2016 describes electoral offences and consequences and penalties including prohibiting convicted persons from running in elections. Election Campaign Financing Act, 2013 is a landmark legislation that seeks to regulate and manage expenditure and accountability of election campaign funds during electoral events and for all other connected purposes. Unfortunately, despite the law having been passed in 2013, it hasn't been made operational due to postponement by the National Assembly.

The other two legislation are the Independent Electoral and Boundaries Commission Act, 2011 a law that establishes IEBC and describes the composition, functions and other related aspects of the electoral management body, and the Political Parties Act, 2011 a legislative framework that establishes Office of the Registrar of Political Parties (ORPP) and Political Parties Dispute Tribunal (PPDT) and regulates the formation and conduct of political parties.

1.5 ELECTORAL JURISPRUDENCE

The question of process versus outcome of an electoral process is an important one in the context of safeguards for human rights. It basically raises fundamental arguments regarding the qualities that constitutes a free and fair election and promotes the centrality of human rights and fundamental freedoms in processes, stages and procedures of an election.

The laws in Kenya have provided the threshold for measuring the freeness and fairness of an election. Accordingly, the validity and credibility of an electoral process and the legitimacy of the resulting outcomes is measured on both

quantitative and qualitative parameters. These measures the process as well as the outcome. The process is an important point of measurement because it evaluates the extent to which electoral processes, in all their inputs, stages, manifestations and entirety, adhere to the national values and principles, including most importantly, human rights and fundamental freedoms. This is given sufficient emphasis by legal jurisprudence in Kenya and elsewhere in the world.

In pronouncing itself on the definition of election in the case of *Kanhiyalal Omar v. R.K. Trivedi & Others*¹⁴ and *Union of India v. Association for Democratic Reforms & Another*¹⁵, the Supreme Court of India, argued that the term 'election' is used in a broad sense to include the entire process of election which comprises of several interrelated stages that involves many steps, some of which may have a critical impact on the outcome of electoral processes.

Lady Justice Georgina Wood, the former Chief Justice of Ghana, made the same point and added other stages when she stated:

“The Electoral process is not confined (alone) to the casting of votes on an election day and the subsequent declaration of election results thereafter. There are series of other (important) processes”

The aspects of a free and fair election are; good governance; patriotism, the rule of law, democracy and unrestricted participation of the people, human dignity, universal suffrage, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the the rights of the marginalised including the rights of women, youth, minorities and People Living with Disabilities (PLWD) are important ingredients drawing from universal values and principles of democracy and human rights and feeding into the accuracy, impartiality, transparency and accountability of an election process. All together, they form the corner stone upon which the electoral playing field is said to be even, and the election free and fair.

The core purpose of these measures is to help in assessing the extent to which the entire electoral processes comply with universal values of electoral justice as espoused in the national constitutions and presiding legal and policy frameworks.

In actual sense, for an election to be said to be free and fair it must be seen, tested and proved to be truly free from all forms of violence, coercion, undue influence and corruption using established constitutional, legal and policy yardsticks. It must

¹⁴ *Kanhiyalal Omar v. R.K. Trivedi & Others* Supreme Court of India on 24 September, 1985; 1986 AIR 111, 1985 SCR Supl. (3) 1.

¹⁵ *Union of India v. Association for Democratic Reforms & Another* Appeal (Civil) 7178 of 2001.

also be fair in the sense that it was conducted in a manner that promotes democratic values and principles, and administered in an impartial, neutral and efficient manner by an independent body recognized by law.

In advancing this qualitative rationale, Justice Kimaru in *William Kabogo Gitau v George Thuo & 2 Others*, argued that such determination should be based more on the electoral system and process malpractices than just the mere quantitative outcome of a flawed process. In other words, the integrity of each stage in the whole process of an election that results in a disputed quantitative outcome is an important measure of the validity and credibility of the election.

In *Kajembe V Nyange & 3 Others*, the court ruled that on account of the widespread violence in the constituency during the voting day in which a person was killed at a polling station and a few more injured, and other irregularities that included late opening and early closure, shortage of ballot papers as well as merger of polling stations without notice the election can't be said to have been free or fair and on those qualitative grounds alone the election results were invalidated. In allowing the petition, the learned judge expressed himself as follows:

“It was noted that due to the excessive violence which erupted in the early hours of the voting day, many people were prevented from voting. If those who were kept away by violence had voted, we do not know how they would have voted but could have affected the final result”

Similarly, Justice Gikonyo in her judgment in the case of *Musikari Nazi Kombo v Moses Masika Wetangula & 2 Others*¹⁷, argued that even a single commission of an electoral offence such as bribery of voters in an election by the candidate is enough qualitative ground to invalidate an election and it will not be necessary to prove a series of bribery of voters for such an election to be declared void.

In *Mbondo v Galgalo & Another*¹⁸, in which the petitioner was compelled and coerced by the respondents to withdraw his candidature during a nomination, the High Court allowed the petition on grounds that intimidation is an aspect of undue influence of an electoral process. In the *Dudley Case*¹⁹, it was expressed that intimidation that prevents free voting voids an election.

¹⁶ Lady Justice Georgina Wood, “International Standards in Electoral Dispute Resolution” in the Book *Guidelines for understanding Adjudicating and Resolving Disputes in Elections*, Guarde, Edited by Chad Vickery (2011) at page 8.

¹⁷ *Musikari Nazi Kombo v Moses Masika Wetangula & 2 Others*, Bungoma High Court Election Petition No. 3 Of 2013

¹⁸ *Mbondo v Galgalo & Another* (2008) 1 KLR (EP) 142.

Here in Kenya, the issue of elections as a process was discussed in the case of *Karanja Kabage v. Joseph Kiuna Kariambegu Nganga & 2 Others*²⁰ where the High Court observed that:

“An election is an elaborate process...In determining the question of the validity of the election of a candidate, the court is bound to examine the entire process up to the declaration of results....The concept of free and fair elections is expressed not only on the voting day but throughout the election process....Any noncompliance with the law regulating these processes would affect the validity of the election of the Member of Parliament.

¹⁹ Dudley Case (1874) 2 O’M&H 155.

²⁰ *Karanja Kabage v. Joseph Kiuna Kariambegu Nganga & 2 Others*, Election Petition No. 12 of 2013; (2013) eKLR.

Chapter Two

2.1 SGBV MONITORING

2.1.1 Background

Particularly, electoral Gender-Based Violence (eGBV) remains one of the key features of political violence in every election cycle in Kenya. The country has experienced politically instigated electoral gender-based violence since the advent of multiparty politics in 1991. Although the scope of these violence has tended to differ from election to election, the targeting of women aspirants as well as electorates has remained the same; killings, assault, insults, rape, gang rape and forced circumcision among other manifestations of eGBV.

During the COVID-19 pandemic period, cases of GBV nearly quadrupled. According to an April survey by Kenya’s Department of Gender, over 5000 cases of GBV were reported in Kenya over the past one year since the first reported case of COVID19 in the country. This is nearly five times the number of reported cases in 2019. According to National Gender and Equality Commission (NGEC, 2016), prior to the advent of COVID19, about 39 percent of women and girls in Kenya aged 15 and above had experienced physical violence, with approximately one in four experiencing such violence every year. The combined effect of post-COVID recovery period and the elections was anticipated to have the worst outcomes in the context of eGBV. As a result of this IMLU put in place early prevention intervention measures that forms the content for Chapter two of this report.

2.2 COMMUNITY & SECURITY SECTOR ENGAGEMENTS



Figure 5: IMLU's Advocacy Officer, Lisanza with officers during one of the CPCs meetings.

In the preparatory stage October 2018–October 2021, we trained a total of 156 police commanders, 8 of who were regional commanders drawn from the eight regions and a further 18 County Commanders *drawn from areas perceived to be potential for hotspots for violence during the electioneering period* and 130 station-level commanders drawn from the Counties where IMLU runs programs together with Community Policing Committees. For instance, *between February 27th and March 9th, 2022, the Independent Medico-Legal Unit (IMLU) with the support of OHCHR successfully trained 8 Regional Police Commanders and 18 County Police commanders drawn from areas perceived to be potential for hotspots for violence during the electioneering period. The training which dwelt on Gender Based Violence prevention and response and human rights sensitive public order management, was part of our broader organisational goal of realizing the establishment of a sustainable environment for accountability, justice and healing for all cases of torture and related violations in Kenya during the elections. The training went a long way in contributing to a peaceful, credible and accountable electoral and democratic process in the 2022 general elections. The trained senior commanders were comfortably able to implement the concepts they had learned and also to cascade the learning within their rank and file. These trainings were held in collaboration with the Directorate of Training based in the National Police Service (NPS). The training covered eSGBV, Standards Operating Procedures (SOPs), Public Order Management Act, the Service Standing Orders and relevant human rights standards. A total of 62 dialogues bringing together 1231 participants drawn from community policing and Nyumba-Kumi were mobilized and engaged with security sector actors from NPS and Ministry of Interior through their respective commanders in 13 police stations. The dialogues focussed on human rights, public order management, gender-based violence and police station-based budgeting. The dialogues were held in Nyeri, Isiolo, Nakuru and Kisumu.*

2.3 SUMMARY FINDINGS

During these dialogues participants some of whom were survivors of GBV reported not being able to access psycho-social support and that they faced with many barriers in their quest for access to justice. According to participants from *Iriani* and *Karatina* in Nyeri County, most survivors are first taken to the police before being referred to health facility, mainly government, for examination and treatment. But when it comes to access to psycho-social support and justice that was where the challenges begin.

When it comes to GBV of sexual nature participants decried that the cases are often commercially “managed” at the police station level with the Investigation Officers (IO) and some family members turning into “brokers” particularly where the violation involves minors or teenagers. The most commonly used excuse for the

brokerage is the importance of Alternative Disputes Resolution (ADR) in preserving the dignity of survivors, saving the family of the survivor time and cost of litigation, preserving friendship and good neighbourliness and maintaining family unity especially in the case of incest

A significant proportion of the cases which reach police station don't proceed to court. Majority of those that reach the court are lost due to weak evidence or intimidation or unwillingness of survivors to proceed. Participants across the four Counties pointed an accusing finger at the role often played by police as the intermediary between the survivor or the survivors' family and the perpetrator or perpetrator's family in slowing down or stalling the wheel of justice.

This occurrence of brokerage is worse in police posts and patrol bases, which mostly lacked designated children and gender desks and designated competent officers trained in handling of GBV cases. Participants viewed this as a paradox considering that police patrol bases and posts are the frontiers of police presence in communities, meaning that they are located deep in rural or remote communities where GBV mostly happens whereas police anchor stations are usually located in urban areas.

The rural populations served by the police posts and patrol bases are often timid, low in literacy levels, much less informed or aware of the law, processes and procedures and are therefore more vulnerable to exploitation by mischievous police officers working in cahoots with cheeky members of community policing who are often the first responders.

Furthermore, the anchor stations where the Gender desk is located, is often far in physical distance from where the patrol bases and police posts are situated so that both survivors and officers prefer to deal with cases at the police patrol and post level considering that most of these police outposts don't have vehicles, budget or enough personnel to effectively refer cases.

Across the four Counties participants explained that stigma is an important reason why majority of the SGBV cases are hardly reported. The fear that comes with a survivor being labelled as promiscuous for women and gay for men and the view that information reported to the police could leak to the public "paralyzes" survivors from the sheer thought of reporting the violation. This creates the avenue for brokerage and commercialization of SGBV cases, and the use of "ADR" with the view to families settling the matter amicably out of formal processes out of the eye of public.

Where the information about the violation leaks to the public, survivors are highly stigmatized and discriminated in social circles -schools, workplaces, family and community. According to one of the participants “all of a sudden, people feel this strong urge to protect their spouses and children from the survivor as if the survivor is morally loose”. That angle of morality exposes survivors more vulnerably for repeated assault since according to public perception “they are loose anyway”. Some survivors have lost their marriages with their spouses walking out on the marriage in protest, shame and stigma. The social backlash is so harsh that it makes survivors dread reporting these incidents.

Participants also reported an increasing number of women covering up for their husbands in cases of incest where their husbands are suspected or accused of having defiled their own children. The cover up involves relocating or coaching the children to change their statements from implicating the actual perpetrators to being used to settle family scores through fabrication, lies and deception. This happens often, when where the families are involved in long running wrangles such as land succession issues resulting in the need to “fix” some family members to disadvantage them on matters of family inheritance or other family squabbles.

Police also explained that witness’ apathy towards the police, court and the entire criminal justice system is a threat to the survivors attempt at accessing justice. The fact that there are no special courts that handle SGBV matters make prosecution of these cases complex in many ways; tedious, long and expensive not just for the survivors but also for them. One officer shared that “Police transfer decisions by their superiors don’t factor in the fact that one could be handling a case that is already before a court and as the investigating officer they are critical to the case”.

Despite an officer being transferred far away from the court jurisdiction, the officer must still appear in court for as long as the case is before the court. More often than not, they have to use their own resources to travel to attend the court session. On one hand, the case isn’t in the jurisdiction of the station where they have been newly posted and so the station doesn’t feel the resource obligation to facilitate their movement. On the other hand, the station where the case is domiciled doesn’t feel the obligation of facilitating the officer who is no longer working there. In that case, the officer is left to shoulder alone the resource burden of appearing in court. If the survivor doesn’t come “through” for the officer, the perpetrator will.

Officers explained that they encounter very many instances where SGBV cases are sabotaged by family members of the survivors. This is most common in cases

of defilement. Despite recording a statement in court, parents fail to present the affected children in court to testify throwing the case into jeopardy. According to one of the officers, "If they don't want the case to proceed, they just don't show up and in the worst-case scenario they relocate the affected child". When asked why this happens, the officers explained that most of their clients complain that there is no reparation in the court process. "Even if the perpetrator is jailed, how do I benefit?" an officer explained from a survivor's point of view.

Being that all criminal cases are viewed as an offence against the state, then it should follow that the state should take up the burden of facilitating the witnesses to appear in court. At the moment, the survivor has to foot the bill of ensuring that the witnesses and the investigating officers appear in court. One participant put it this way; "This whole access to justice thing is so economically disruptive and punitive -yet it has no material benefit to anyone not even the survivor nor his or her family. We leave our work to attend frequent court sessions losing both time, opportunities and money. In fact, it can be said to be more in the favour of the perpetrators' families who don't have to pay a coin in reparation. Once their kins are sentenced to a jail term the obligation for reparation is lifted. We then both walk home, the family of the survivor and that of the perpetrator -and real enmity begins that could last a century - what for?"

There is also poor coordination in the management of GBV cases between police stations and police posts/patrol bases. The police outposts are often reluctant to refer and release the cases to the anchor station in a supremacy battle in which survivors are caught up in something akin of a crossfire. The outposts feel demeaned if a survivor asks to be referred to the station and the station feels undermined if the cases are not forwarded to them. Sometimes, the tussle results in the bungling up of the cases such as withholding of some crucial information, deliberate delay in response, denial of mobility, failure to summon witnesses among others to frustrate each other. In the end the survivor ends up being the loser.

Both the community members and the police officers are unaware of the laws and policies on GBV, attributing to management of GBV cases. "There are so many national documents relating to management of GBV cases. Some are initiated by the state and others are initiated by NGOs together with the state. They all complement the law such as the sexual offences Act yet the documents are not effectively distributed or disseminated. You only come to learn about them before a court when you hear for the first time a judge, a prosecutor or a lawyer refer to them" explained one of the officers. Apparently, these documents prescribe important processes and procedures that are important in the way a case is captured, analyzed and presented

among others. If an officer is not familiar with this new information the case will tend to lack merit and is likely to be lost on flimsy grounds of technicalities.

In terms of prevention of GBV cases, participants observed that poor beat organization, choice of patrol methodology and uninformed zoning of crime-areas was responsible for poor selection of strategy and ill-informed deployment of officers leading to inability of police to manage crime including SGBV. An example was given of Lolwe and Migosi police posts as some of the most affected by this occurrence within Kisumu County.

Participants complained that they experienced serious delays by police in response to their distress calls relating to the occurrence of GBV and other crimes which forms a predictable pattern that is often exploited by criminals with a sense and touch of reckless impunity. “Thugs know how long it will take for cops to respond even if the alarm is raised. They know where the officers are patrolling and where else they move after that. They know how many officers are deployed. They know how they will get to the scene of crime. They simply know too much. They use this to their advantage” narrated a participant.

In other instance, cases are never investigated at all despite being reported to the police. They are booked in the Occurrence Book (OB) and it all ends there. No officer is assigned the case, no investigations are carried out, no follow up contact is made, and no visit to the scene of crime is done. The case is left unattended. For instance, in Garbatulla Police Station, GBV perpetrators easily give bribes to the officers who then abandon the cases leaving the perpetrator stranded.

There are local health facilities that don't provide post rape care services (PRC) and survivors have to seek those services in facilities far-away under difficult movement circumstances. For instance, in Kisumu survivors nearest to JOOTRH level five facility have to walk all the way to Nyalenda to access PRC services. In some cases, survivors of GBV have to contend with poor-to-no services at all mainly due to protracted systemic challenges and attitudinal barriers experienced at the service delivery centers including at the police stations.

Unfortunately, community health volunteers and CPC members who are often the first responders -are also often part of the cartel looking to influence investigations and the outcome of prosecution, block the cases from reaching the court or to stall the case. In most instances, this happens in dysfunctional CPCs where the leadership is weak, and the membership is amorphous, untrained and unrestrained. There are also instances where SGBV survivors lack proper information regarding what to

do when for example rape or defilement happens. They then do nothing further emboldening the perpetrator who goes unpunished.

These are examples of some of the issues relating to GBV that were unearthed during community dialogues ahead of the elections. Unfortunately, in Kenya, sexual violence has been a recurrent as well as a disturbing misnomer that has sadly continued to characterize our elections, which are also regrettably often marred by deadly violence, unrest and other forms of serious human rights violations and abuses. Outbreaks of sexual violence during elections have been documented since the 1990s. Following the post-election violence in 2007/2008, Commission of Inquiry into Post Election Violence (CIPEV) documented 900 cases of sexual violence perpetrated by security agents, militia groups and civilians against men, boys, women and girls.

In 2020, the Kenyan courts made a defining judgement on the 2007 post-election SGBV petition. The High Court sitting in Nairobi ruled in favor of four survivors of post-election sexual violence.

In the Constitutional Petition No. 122 of 2013 the Court found that the Government of Kenya was responsible for failure to conduct independent and effective investigations and prosecutions of SGBV related crimes during the post-election violence.

The court further found that the state's inability to investigate and prosecute perpetrators was a violation of the survivors' right to life and security of person and the right to protection from torture, cruel, inhuman, and degrading treatment, and the security of person. The judgement marked the first time ever in Kenya that post-election sexual violence has been legitimately recognized by the government and survivors have been offered compensation for the harm suffered.

This was a landmark ruling considering that in Kenya, five in every 10 women in the age bracket 15 to 49 (about 47%) have suffered one form or another of violence. Between January and December 2020, a total of 5009 cases were recorded through the National GBV toll-free helpline 1195, which showed an increase of cases reported from the previous year.

Available data from the GBV toll-free help line 1195 indicates that Nairobi, Kakamega, Kisumu, Nakuru and Kiambu Counties reported the highest cases of GBV.

2.4 RECOMMENDATIONS

2.4.1 Vetting of Actors & Candidates

There is the need for the vetting of all actors in the electoral processes including police officers assigned to the gender desks, CPC officials and aspirants to ensure that they are persons of high moral and integrity standards. The NPS should make available the right vetting tools and working with IEBC and other actors avail a mechanism established for that purpose.

2.4.2 Sensitization of CPCs and Police Officers on Policy and Legislation

All actors in electoral processes require to be sensitized about the GBV related legislation, policies, strategies, procedures and guidelines. An example of such a policy is the National Policy for Prevention and Response to Gender Based Violence and the NPS Standard Operating Procedures (SOPs) GBV.

2.4.3 Strengthening of Referral Pathways

Strengthen multi-agency referral pathways and sensitize the public on existence of a referral network in their communities. This should be complemented with information on forms of GBV, management of evidence, and use of emergency or hotline numbers.

2.4.4 Gender Desks

Lobby for devolvement of gender desks all the way down to police post level in order to ensure that GBV prevention and response services are available and accessible at the lowest possible level of police service delivery centres while at the same time advocating for increased devolved budget for the Directorate in Charge of Community Policing, Children and Gender to finance the activities of the Desks/ Units.

Chapter Three

3.1 FINDINGS

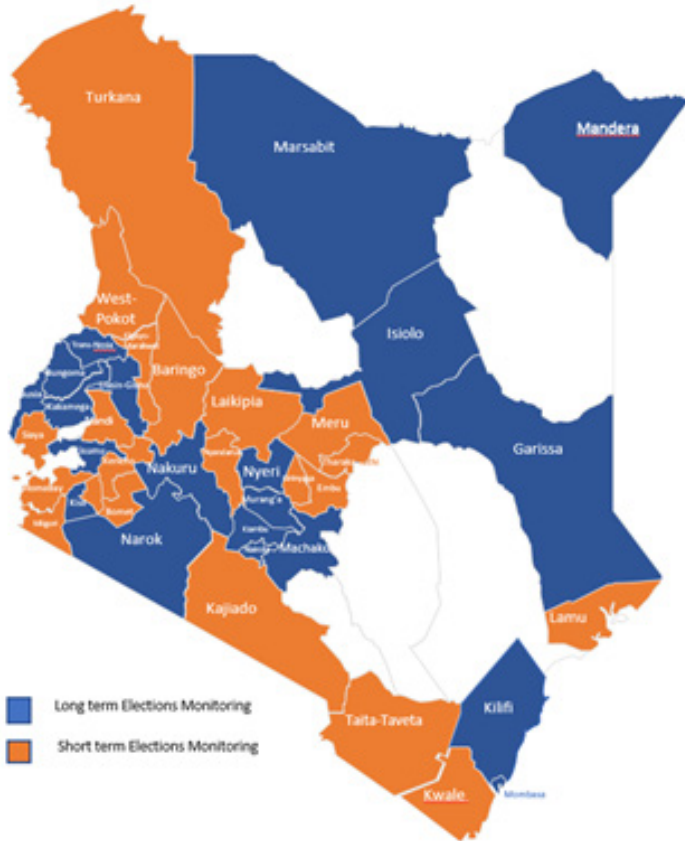


Figure 6 IMLU's Deployment Pattern.

IMLU's configuration of the election monitoring exercises was guided by the organization election's strategy 2018-2022. The configuration involved the interfacing of two approaches; preparatory stage which was mainly preventative and the responsive stage which was the actual monitoring of the occurrence of incidences of human rights violations relating to police action or inaction in situation of public order management. In total IMLU contracted 122 monitors who were active in a total of 41 Counties. This comprised of 86 seasonal or longterm human rights monitors and later during the election day an additional 36 short-term monitors. Further to this, we trained, deployed and contracted 11 community journalists in October 2021 to complement the work of the seasonal monitors on GBV monitoring in Busia and Kakamega Counties. 58% of the monitors were male while 42% were female. 2% of total number of monitors were PLWDs.



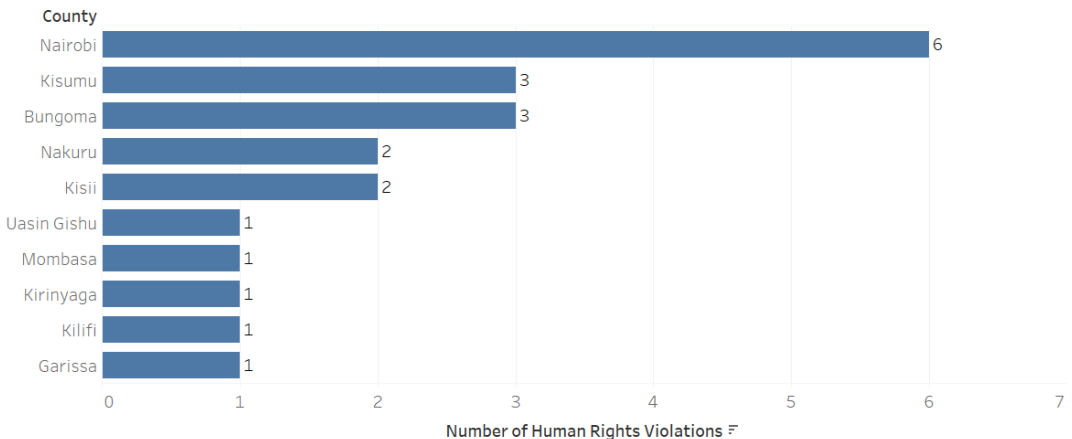
Figure 7: Monitors training at Swiss Lenana, Nairobi, March 2022



Figure 8: P.O Advocacy and Security Reforms Mr. Nyando, taking through a session.

In the eight months period leading to, during and after the election day (between March 21st and October 2nd 2022) which represents the second stage of our monitoring strategy we received a total of 12,333 reports received through KOBO Collect in our election monitoring hub from across the 41 Counties and 1200 reports through our tollfree line 0800721401. Through the KOBO Collect, 115 incident alerts were received out of which 5 were reported as electoral related fatalities. However, upon further investigations by our Rehabilitation Department we narrowed down to a total of 21 incidents involving serious human rights violations. Five (5) of the 21 cases were on fatalities: one (1) in Laikipia, Two (2) in Nairobi, Two (2) in Bungoma. None of these cases related to police action.

Human Rights Violations Reported to IMLU during Election Period.



Human Rights Violations by County. (Source: IMLU Elections Hub)

Figure 9: Human Rights Violations

Our monitors observed in a total of 135 polling centers.

3.1.1 MONTHLY BREAKDOWN OF PRE-ELECTION FINDINGS

3.1.1.1 IEBC ELECTIONS CALENDAR.

The Independent Elections and Boundaries Commission IEBC shared the elections calendar with the public early on in the pre-elections phase as required by law.

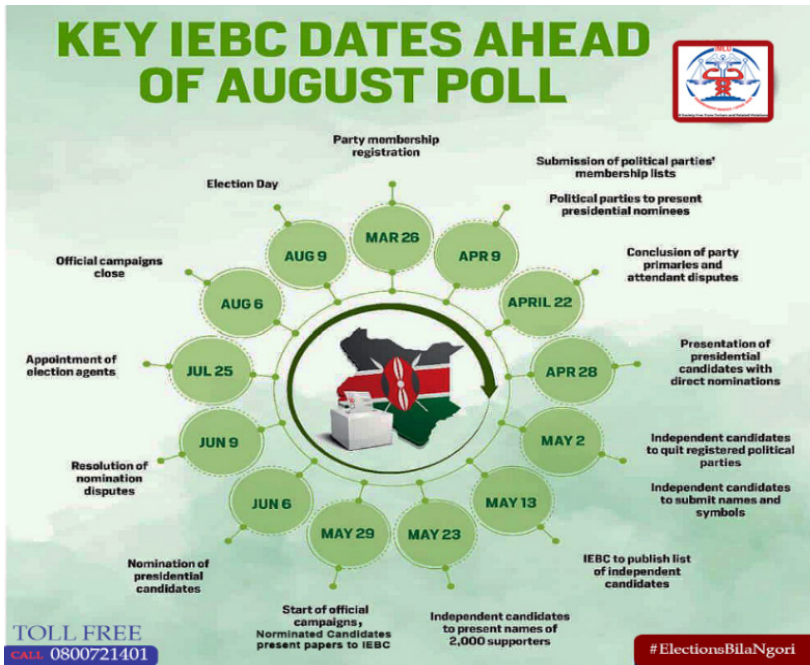


Figure 10: IEBC Official Elections Calendar 2022.

3.1.1.2 21st March to 24th April 2022

In the first month of pre-election observation period running between 21st March to 24th April 2022, we observed that the majority of public order events in that period were the party membership registration, submission of political parties' membership lists, political parties' campaigns, party primaries and resolution of attendant disputes and also presentation of presidential nominees by the political parties.

These activities were characterized by mass action involving processions, protests, demonstrations and related security operations. During these events IMLU documented a total of 46 incidents that involved the use of violence that affected 45% of the reported mass action in 18 out of the 20 counties. The 46 incidents were picked from 46 reports out of a total of 1516 reports that were received from the monitors for that month. Each report was designed to only capture one incident.

Twenty (20) of the 46 incidents involved politically motivated gang violence while 19 incidents affected processions (10), violent protests (7), violent demonstrations (5), and four (4) of those involved police security operations where the use of excessive force was recorded.

From the monitors observation, 20 of the violent incidents were perpetrated by youth estimated to be below 35 years while 22 cases involved mostly political party officials and their supporters as the perpetrators and also mostly as the victims, meaning they were mainly fighting amongst themselves. Additionally, 13 of the 46 incidents were perpetrated by politicians who were positioning themselves to obtain party nominations and their supporters amongst the members of the public including boda-boda riders. The remaining four cases perpetrated by police officers.

Out of the 46 cases of violence reported within that month, IMLU picked four that were falling within the organization's election observation mandate. Two of the four cases involved torture and Rape committed by police officers. These two incidents involved a male and a female victim and occurred in Bungoma County, Mt. Elgon Constituency resulting in one death. IMLU responded with preliminary legal documentation and medical forensic autopsy. The remaining cases involved assault by police and were recorded in Nairobi, Dagoreti South and Muranga's Kiharu Constituency.

3.1.1.3 25th April - 24th May 2022

In the one month, April 25 - May 24, a total of 1694 field monitoring reports were received and analyzed. Out of these reports, 80 (4.7%) of them reported events of public order interest. In the IEBC's electoral calendar of events, the IMLU's election observation month (April 25-May 24) covered presentation of presidential candidates with direct nominations, and the deadline for independent candidates to quit registered political parties and to submit names and symbols. IEBC was also required to publish a list of independent candidates. Independent candidates were also required to submit names of 2000 supporters. Out of the 80 events of public order interest picked by our monitors, 17 of these incidents had the use of varied degrees of violence representing 21% of all reported public order interest events for that month.

The political party meetings, rallies and party primaries accounted for the highest percent at 81.2% of a total of six (6) public order interest events in which violence was recorded by our monitors. The police accounted for the second highest percent (10%) during the security operations to restore public order with the remaining 8.8% of the violence being sporadically instigated by random members of public -majority of those being boda-boda riders.

Based on the data from the previous month involving use of excessive force by police where only four (4) cases were reported, the number grew in the second month (April 25-May 24) of the analysis by 100% to 8 incidents. It was not immediately

clear what precipitated this rise, however further analysis of the reports indicate that police violence was most likely to happen in public order events that didn't have police notification as required by Public Order Act. Nearly 50% of all political rallies and meetings held in that month didn't have police notifications.

3.1.1.4 25th May -24th June 2022

In this month (May 25-June 24) political parties comprising of the aspirants and the supporters topped the rank of perpetrators of violence with 47.1% replacing the youth at 31.7%, based on data from the previous month as the leading perpetrators of violence. Whereas the acts of hooliganism, gang violence and other forms of violent criminality by the youth continued to be recorded across the 20 counties, the rising political temperature coming from the party primaries can to some extent explain the increase in politically motivated violence.

Sporadic incidents of violence by random members of public accounted for 7.8% while the police accounted for 7% of all the violence that occurred in that month. From the analysis one can easily be able to see that the use of live bullets accounted for 33.3% of police response to public order situations. A total of five (5) instances were recorded where police used live bullets to restore public order.

Three (3) people lost their lives and a total of 21 persons were injured where two of these injuries were due to direct police shooting during an ODM nomination event in Nairobi. Two of the deceased male persons were shot by a GSU officer in Luckysummer area at St.Bakhita Kiwanja in Nairobi County. One was admitted in Kenya National Hospital (KNH) with a bullet lodged in his body. They were both below the age of 34.

IMLU picked one case that occurred in Nairobi County, Kibra Sub-County that involved Extra-Judicial Execution of a Male person with the rest (2) cases being referred within the already existing survivors' support network. IMLU commenced preliminary case, legal documentation and medical on the three cases (two injuries and one fatality) immediately. The organization also begun carrying out medical forensic autopsy and drafted petition to the Independent Policing Oversight Authority, (IPOA).

Arrests by police officers accounted for 26.7% and threats by officers to shoot represented 13.3% of all the public order response by the law enforcement officers. The fourth most popular response by the Police was inaction. Lastly, 6.7% of police response to public order situation represented dialogue with the police being reported to have peaceably engaged with traders asking them to close down their businesses for fear of violence and looting by members of public during a mass action. In terms of weaponry, 44% of the officers were armed with firearms, 28% were armed with teargas cannisters, 20% had runguns and 8.0% had whips (Nyahunyo).

During the party primary events that took place in the reporting period, Kenya Police Service (KPS) accounted for 47.4% of all security officers deployed to keep law and order. Administration Police Service (APS) had the second highest presence in the field with 21.1% followed by General Service Unit (GSU) and National Youth Service (NYS) with 5.3% each. In some instances, Militia groups affiliated to either aspirants or political parties accounted for 10.3% with private security guards including personal bodyguards accounting for the remaining percent, 10.6%.



Figure 11: Garissa MP. Aden Duale, after being cleared to vie for MP.

3.1.1.5 25th May to 24-June

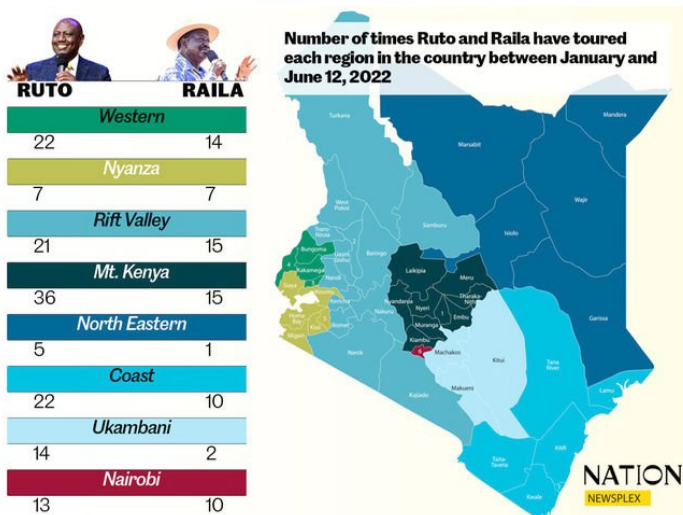


Figure 12: Campaign trail for UDA and Azimio Courtesy|Nation

In the fourth month of IMLU's observation covering the period between 25th May to 24-June 2022, we received a total of 1968 field reports from 86 monitors and 11 community journalists spread across 20 counties. 47 of these reports documented events of public order nature which were marked with some level of violence.

In this period, the highest number of the perpetrators were political players at 48.9% comprising of political aspirants, political party officials and party members and particularly the youth. Marauding gangs accounted for 14.9% of all the 47 reported incidents of violence while the police officers accounted for 6.4 %, this mainly during security operations to restore public order. The rest involved sporadic violence carried out by random members of public during demonstration, processions and protests.



Figure 13: Nakuru residents protesting against the gruesome murder of one girl by a stray bullet.

Protest against police shooting two innocent schoolgirls at lake view Estate, when the police had gone to arrest the so called confirm gang who are terrorizing people in Nakuru east sub-county

“Police officers were at patrol in lake view estate when they met a group of youth in the estate whom they tried to arrest but they started running away, the Bondeni OCS who was in command pulled out a gun and fired a gun shoot which went astray and hit two school girls who are students at Nakuru Central Secondary school, the girls were walking together when the bullet hit and them. One girl succumbed to the injuries while the other was said to be stable with

a gun shot on her hand in the same hospital. the resident demonstrated this morning blocking Langa lang road and lake view road before they proceeded to Nakuru county commissioner to demand the arrest of Bondeni OCS. They were addressed by county commissioner before they agreed to go back home”

It is important to highlight that this was the period covering the official commencement of national campaigns in the IEBC calendar of electoral events.

It is also the period when on 6th June, Presidential candidates were being nominated and disputes arising from the nominations were being resolved. That could form part of the reason why there was a rise in the number of human rights violations arising from police actions that fell within the purview of IMLU’s elections observation mandate.

3.1.1.6 24th June to 25th July

In the fifth month of the pre-election period falling on 24th June to 25th July 2022 we received a total of 1814 reports from 20 counties. This period covered the appointment of election agents and was the second last observation month before entering the election period. From these reports 1046 political rallies were observed, 354 community engagements, 88 workshops, 31 IEBC engagements and other 294 activities of public order interest as follows: -

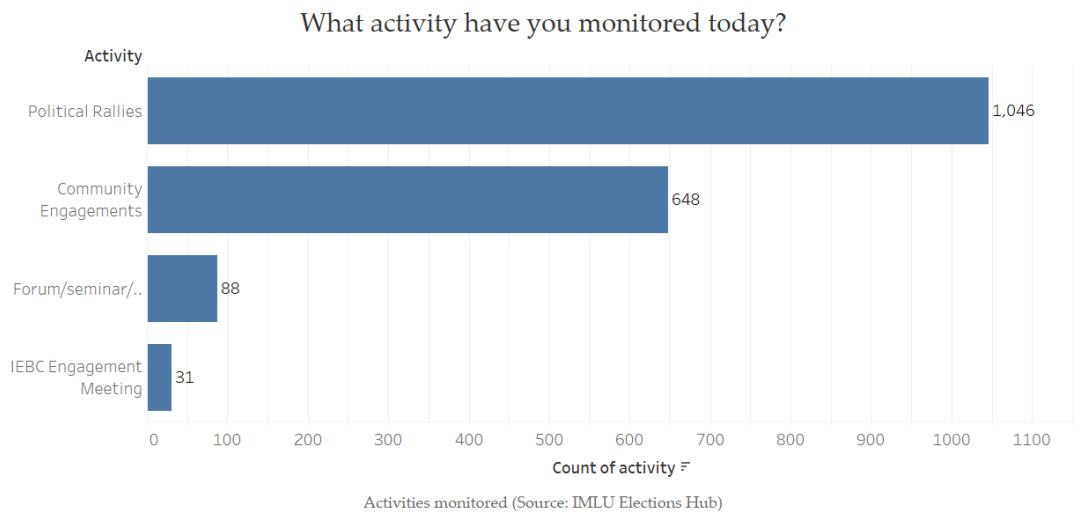


Figure 14: Activities Monitored

From all these activities, IMLU’s monitors picked four cases that fell within the organization’s election observation mandate in two Counties: Nakuru and Nairobi. 75% of the four cases involved the use of torture, with only one reported case

involving police harassment in Nakuru. All the victims of these violations were male. Nairobi was leading with two cases of torture while Nakuru accounted for one case of torture. This is summarized in the table below.

County	Number of cases	Sex of victim	Type of violation
Nairobi	2	Male	Torture
Nakuru	1	Male	Torture
Nakuru	1	Male	Police Harassment

Table 1: Human Rights Violations (Source: IMLU Elections Hub)

3.1.1.7 26th July to the 7th of August

The last month of pre-election observation for IMLU took place 26th July to the 7th of August 2022. This reporting month covered the period up to the closure of the official campaign window (May 29th-August 6th) according to IEBC’s electoral calendar.

During this period, the organization received a total of 1647 reports from 20 Counties. A total of 525 campaign rallies were reported through the reports out of which 289 were IEBC engagement meetings with 47 of these being workshop forums. Additionally, there were 755 general community engagement meetings.

From the analysis, a total of 19 violent incidents were reported: Three (3) of these incidents involved politically motivated gangs and occurred in Kakamega, Kisumu and Nakuru. Two (2) incidents involved use of excessive force by the police during security operations in Mombasa and Uasin-Gishu.

There was a total of 10 incidents of violence that were reported to have occurred during various campaigns rallies and other political activities: Nairobi (5), Bungoma (2), Kisumu (1), Kakamega (1) and Garisa (1). Lastly, there were four (4) incidents of mass action in the forms of protests/demonstrations/processions where incidents of violence were picked by our monitors; Kisumu (3) and Narok (1).

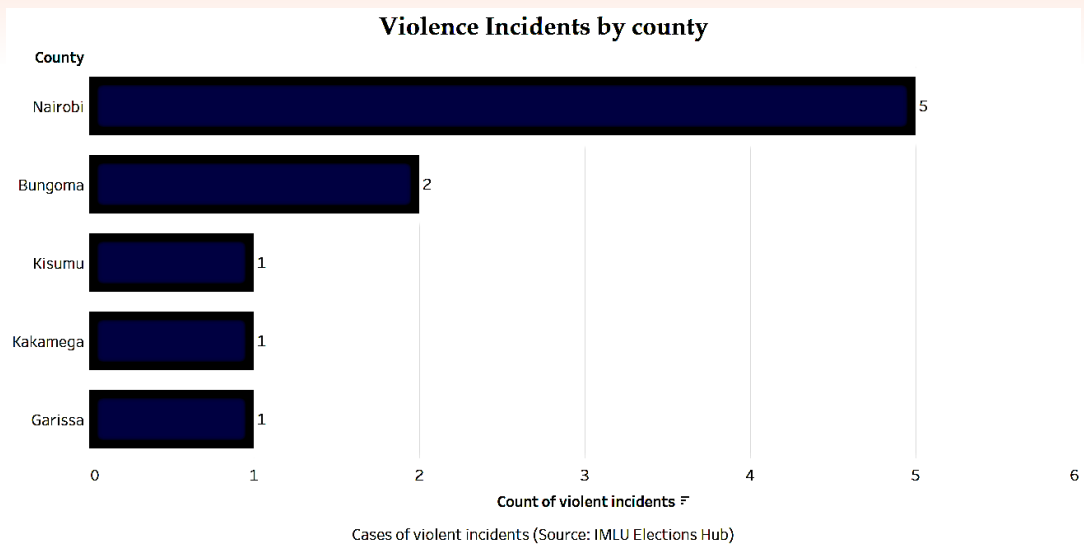


Figure 15: Violence Incidents by county

During this time, three (3) fatalities were recorded and reported by the monitors one each in Nairobi and Mombasa.

Mombasa

“There was an incident of violence reported during the Azimio Alliance Mega Rally in Tononoka Grounds. A section of youth who were attending the rally, indiscriminately attacked pedestrians and other road users from Nyali bridge all the way to Kongowea area. During the incident one youth was stabbed in the back and later succumbed to his wounds. It took the efforts of police to disperse the rowdy youth and restore peace”

Nairobi

“After a campaign rally in Embakasi North, Dandora Ward where an aspirant was distributing money to his supporters at 9.30pm there was an incident in which one person died after being stabbed with a knife while fighting for the campaign money, while his attacker was killed in revenge attack by a mob”

These were civilian to civilian cases typical of what was mostly picked and reported across the 20 Counties by our monitors. Although they involve the use of violence, they fall outside IMLU’s election observation mandate, and would only necessitate referral to other agencies such as the National Police Service.

3.1.2 ELECTION DAY: DAILY FINDINGS

As highlighted elsewhere in this document, IMLU’s election day observation begun on the eve of elections on the 8th August and terminated two days after the actual day of election on 11th August, 2022. In other words, the Election Day observation took a total of four (4) days. However, it is the Election Day findings that form the heart of this part of the report, given that not much was observed on the eve of the election and the days after the election on the 9th, August.

3.1.2.1 Eve of Election

On the eve of Election Day, IMLU received a total of 48 reports from 20 counties, which streamed in throughout the day. The reports didn’t observe any major incident involving the use of violence or violation of human rights. This can be attributed to the fact that it was only two days after the culmination of the official campaign period on the 6th August 2022 and therefore didn’t have an event of major significance according to the IEBC’s electoral calendar of events.

Notwithstanding, the IEBC’s electoral calendar this was the day when polling stations were being demarcated and set up in polling centers. It was also the day when the election materials were being distributed to all the 46, 232 polling stations across the country, an activity that also involves the transportation of these materials from the constituency tallying centers, which has been recorded as a major loophole in electoral malpractices.



Figure 16: Distribution of Ballot papers at Kandara Constituency, Muranga County.

3.1.2.2 Day of Election

On the 9th August, 2022, the day of elections 36 additional monitors were deployed to observe elections in 21 more counties bringing the total number of elections monitor to 122 in a total of 41 Counties. Various indicators, key among them the National Cohesion and Integration Commission (NCIC) report were used to determine the 21 additional counties. A total of 714 reports were received from 135 polling stations in 41 Counties. 342 of these reports were received from six Counties: Kisumu, Kakamega, Nyeri, Nakuru, Nairobi and Mandera representing 48% of feedback from the field.



Figure 17: police officer manning a polling station after voting

Emphasis on these counties is explained by IMLU's monitors' deployment plan in organization's elections management strategy. The strategy requires deployment of monitors based on certain parameters. In this case, NCIC report formed an important reference point for this evaluation. The six Counties were profiled on the basis of their historical propensity to violence, and population and demographic characteristics such as cosmopolitan nature of population in these counties.

A county like Mandera was picked due to its geographic dynamics which include vastness and being a County that shares Kenya's international border with Somalia. The County has also suffered incessant terror attacks targeting mainly non-Muslim working communities and has also recorded a higher degree of political intolerance and sporadic politically motivated violence in the past. The number and distribution of polling stations by IEBC was also another determinant in IMLU's deployment plan for election observation monitors.

According to the field reports, all the 135 polling centers that were monitored had security officers who were either drawn from the Kenya Police Service (KPS), Administration Police Service (APS), National Youth Service (NYS), Kenya Prisons Service (KePS), General Service Unit (GSU), Kenya Wildlife Service (KWS), Kenya Police Reservists (KPR), and Kenya Forest Service (KFS). On average, each of the observed polling stations were reported to have at least 2 security officers. The officers were armed with Guns, Batons (Rungus) and Tear gas. A total of 85 incidences of violence were recorded across 41 Counties.

3.1.2.2.1 General Disruption

Among the 85 reported incidents that involved the use of violence, disruption of the voting exercise was the leading recorded incident accounting for 24%. This involved general disruption of the free flow of queues with people jumping ahead of the others on the queues, acts of drunkardness and disorderly, thuggery targeting voters on the queue, crowds milling around the entrance of polling centers or in other spaces within polling centers interfering with voters in the pretext of helping them identify their polling stream, and tension and anxiety arising from technological failure and human error on the part of polling clerks.

Some of the party agents didn't have appropriate contracts from their parties appointing them to their positions and deploying them in the polling stations. In some cases, they lacked proper identification documents or had conflicting identification badges. It was difficult for IEBC to sort out these issues particularly where two teams were claiming to be the right agents for a particular party. In other cases, the agents of the major parties were absent or came in late. All these delayed the commencement of the voting exercise.

In Nakuru County at Kambi-ya-Moto during the by-election some IEBC election officials refused to take the bread and milk offered by IEBC fearing that they would be poisoned. Considering the length of the electoral processes, the officers were drained, hungry and fatigued, irritable and anxious. Similarly, In Yatta in Masinga, the Returning Officer (RO) allegedly procured expired milk from an aspirant who somehow was prequalified and awarded the tender to supply these items for use by the IEBC officials despite the conflict of interest. Because of the fatigue and hunger, some of these officials collapsed on their desks and slept. Clearly, they lost interest and were no longer keen. As a result, some parties kept on changing the agents.

In Likoni, some ballot boxes were not properly sealed and there were allegations that additional empty ballot boxes might have been sneaked in at some point, which caused suspicion, tension and anxieties this was brought about by exhaustion. The election officials as well as the agents refused to take the milk and bread.

In Mbalambala Constituency in Garissa County, there was a serious delay in the delivery of elections materials that stretched to the morning of the day of election. This heightened anxiety and tension in a background already characterized by mistrust and hostility between community members and security officers. Some of the clerks didn't know how operate the TIMS kit. They had challenges finding voters' name and were not well supported by their supervisors. Clearly, they lacked sufficient training.

In Mathioya Constituency TIMS kit had challenges reading the fingerprints of the elderly people. Majority of them didn't vote despite being registered voters. Their plea that the fingerprints could have been destroyed by the plucking of tea leaves was not considered. This was experienced in a number of other Counties where tea plucking is a means of livelihood. It was also observed that in most instances the vulnerable people such as the sick, the elderly, PLWDs and expectant mothers were not accorded priority and didn't receive assistance from the IEBC officials. This was also reported in Langata Constituency, in Nairobi County.

3.1.2.2.2 Abusive Language

The second highest incident of violence involved the use of abusive language at 19% of the 85 incidents reported from across 41 Counties. Abusive language is a form of violence that involved mainly voters or pitied voters and security officers or in some instances it involved voters and polling officials. There are cases where swift response from the security officers to manage the escalation of the evolving public order situation reportedly also involved the use of excessive force by the police that caused even more concern amongst the public, a stir that interfered with the free flow of voting queues.

In Mandera North and South, IEBC officials declined to accept introduction letters from some of the election observers. They also refused to share with the observers the timetable scheduling election rallies and were arrogant and dismissive to the monitors asking them to raise their concerns with the Court.

3.1.2.2.3 Bribery

The third highest was bribery at 18%. Bribery occurred at three different points. The first point was at the household level. Some voters reported being approached by some candidates or their agents in the evening of the eve of the voting day or in the early morning of the election day before they could leave their houses to go and vote. Secondly, voters were way-laid by agents of candidates on their way to or at

the entrance of the polling centers. Thirdly, people were approached on the queues by “queuing” agents who would spark a seemingly innocent yet guided or at the entrance of the polling centers. Thirdly, people were approached on the queues by “queuing” agents who would spark a seemingly innocent yet guided conversation.

The voters were offered money, airtime and other incentives. In some instances, people were offered some cash as down payment, required to take photo of the marked ballot paper proving they voted for a particular candidate, send the image afterwards to agents of the particular candidate for them (voters) to receive the agreed upon remaining balance. Some voters were also recruited and used as agents for purposes of distributing cash on the queues.

In Nyeri town constituency the buying of ID cards begun as early as 6am on the day of polling. Each ID was surrendered in exchange for KES. 2000. This targeted the youth and was meant to ensure they are not able to cast their votes. In Likoni, there were allegations of voter bribery in Jomvu which was being done in the open. In Kibra at Olympic Primary School some of the candidates used their agents to distribute money to voters.

In most informal settlements in Nairobi food was the main means of voter bribery. All factions were involved in distributing mainly maize floor (unga). This was most pronounced in Kariobangi, Kariokor and Mukuru kwa Njenga. In the Rongai by-election, in Nakuru County at Kambi-ya-Moto voters were taking photos of their ballot papers without being firmly restrained by the election officials or security officers. Voters would then go outside the polling station within the polling center where a huge crowd of people gathered -show the images of the ballot papers and would be given money.

An Observer from the Kenya National Commission on Human Rights (KNCHR) was roughed up when he attempted to take photos of the dealings. Security officers refused to take responsibility for what happened outside their designated polling stations even if it involved outright voter bribery or use of violence, even if this was happening within the polling centers.

In Nakuru East Constituency, one candidate was arrested for voter bribery and although he was released later, his arrest sparked violent demonstration and police who were called in acted swiftly to restore peace and calm. In Bungoma, Mt. Elgon Constituency in Chemondi Polling Station ID cards were being bought and voters being bribed while still on the que. In Mbalambala Constituency in Garissa County, at the Constituency Tallying Center there were allegations of bribery involving the Returning Officer who was accused of attempting to tamper with the results. This led to an altercation that quickly escalated into a commotion.

In Kakamega, police were used to help in organizing the queue to ensure there was order for people to receive money from aspirants. Although this was reported to happen before in the electioneering period it is one of the classic cases of abuse of police. Unlike other elections in the past, this time around money was dished out openly. The public was hostile towards election observers who appeared to monitor the bribery for fear that politicians would be intimidated. However, there were instances where the aspirants encouraged monitors to attend their campaign rallies to form the excuse for not giving out money.

3.1.2.2.4 Hooliganism, Vandalism and Voter Intimidation

General acts of lawlessness were witnessed at 22% of all incidents reported across the 41 Counties. This was broken down as follows; hooliganism 13%, voter intimidation 5% and destruction of property at 2%. This lawlessness wore the face of hooliganism, vandalism and intimidation. There were reported incidents of vandalism or damage of motor vehicle or motorbikes belonging to voters, idleness and passive harassment of female voters with crowds of youth making funny comments or noises targeting female voters, petty theft of mobile phones and cash, voters harassing politicians or government officials by demanding cash or other forms of incentives or favor including being facilitated to jump ahead of the que and also this crowds ganging up around a voter who sought any kind of assistance from one of them. The shoving and pushing, and generally, waywardness by prowling groups of idle youth intimidated a lot of voters who opted to ask for help. Some police officers carried alcohol with them and hid it in their bags and uniforms. They would put it in water bottles to disguise it as water and sip publicly without any fear of retribution. There are those among them who would get too much intoxicated that they became hyperactive, lost sense of objective judgement, became irritable and a public nuisance.

In Kibra on the day of election and two days thereafter there was heavy presence of police officers from the Rapid Deployment Unit (RDU) stationed at the Sub-County Administration office's grounds and tat SaraNgombe. This intimidated people and caused fear and apprehension with some people using this to anticipate the outbreak of violence and opting to relocate. At Olympic Primary School polling station, people fought over milk and bread allegedly supplied by IEBC meant for the election officials. In Kakamega, it was also alleged that two leading candidates had their own militias who were armed with rungas or what is locally known as khimisho. This was witnessed in Khwisero and Butere Constituencies.

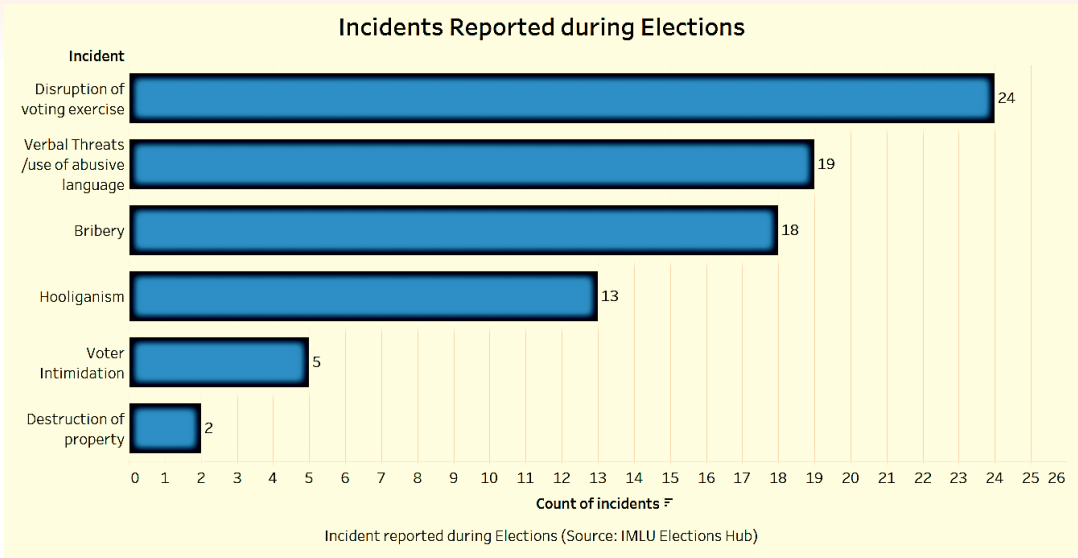


Figure 18: Incidents

3.1.2.2.5 Police Presence and Reaction

In 42 of the 85 incidents of violence reported police were able to contain the incidents in a peaceably and in professional manner while in 11 of the remaining instances police did not take any action at all. They watched and allowed the issue to resolve itself or for interventions from members of public to sort out the public order situation. However, in four (4) of the remaining cases police were overpowered as the public order situation evolved and threatened to get out of hand. In two (2) of those instances, they consequently had to apply excessive force to bring the situation under control.

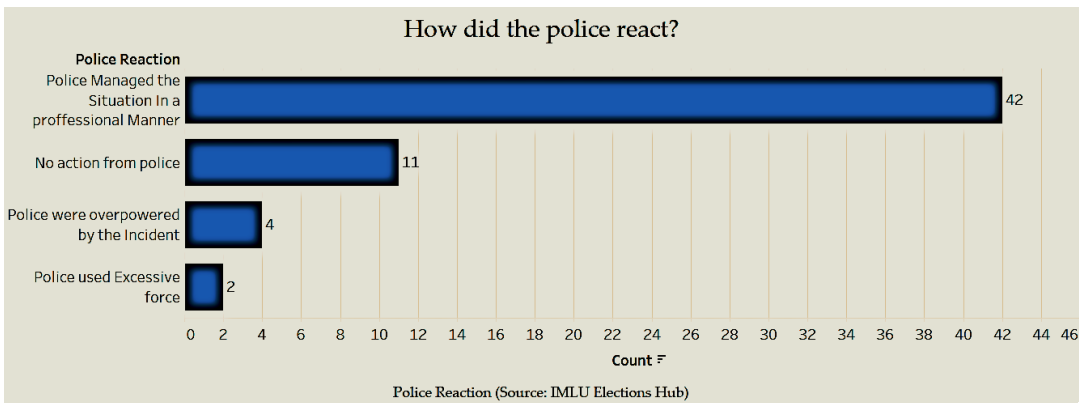


Figure 19: Police Reaction

In Bungoma, Mt. Elgon Constituency in Chemondi Polling Station a voter was dragged out of the queue by one of the candidates and beaten right in the presence of the security officers and IEBC officials. The police didn't even attempt to restrain the

attacker or rescue the voter help. In Nyando Sub-County, St. Anne Ahero Primary School Polling Station police refused to act and just watched as a commotion evolved into a violent incident. It took the intervention of IEBC officials to calm down the situation that threatened to disrupt the voting process.

In Kanyangoro Polling Station, a man lost four upper teeth during a violent altercation between him and other party supporters. Police officers didn't move in to restore calm. In this Station voters were supplied with bread, milk and water by some of the candidates.

In Machakos County, and particularly in Masinga and Mavoko our monitors observed that some stations had a huge deployment of security officers than was needed while others had fewer officers who were shared between polling stations in one polling center. Some of these officers were unfamiliar with the area. They lacked a brief on local electoral context and political and ethnic dynamics. They were not able to hear or converse in the local dialect and therefore were vulnerable and largely incapable of telling what was going on.

In Isiolo, four new polling stations were allegedly created without any public knowledge. There was no public participation as required in law. One such polling station was created in Kina Ward. There was also one such polling station inside an Administration Police Service (APS) camp. The others were Kabisera and Koticha polling stations allegedly with about 352 and 300 voters respectively. Kabisera was initially located in Koticha Primary School as a 2nd stream. The voters in the new polling stations were said to be alien and strange to the locals and were escorted by heavily armed contingents of security officers. Whereas all the other polling stations had two officers each -the new polling stations had more than two officers. In one curious instance, a whole lorry of Multi-Agency Force (MAF) was deployed in one of the newly created polling stations and provided 24 hours security. Voters were escorted by the police as they went in and as they left these new stations. This rekindled in locals, the bitter memories of the Shifta war and caused apprehension, tension and voter apathy.

3.1.2.2.6 Human Rights & Violence

In terms of Human Rights Violations, a total of 33 incidences were reported across 41 counties. 29 or 87% of these violations involved police action or inaction. Where the police either used disproportionate force that resulted in violations of human rights or refused to respond to an unfolding public order situation and in so doing condoned the violation of human rights. 62% of the 29 reported cases involved harassment of members of public by police officers. Police harassed members of

public mainly by using force to deny them rightful entry to a polling station to cast their votes or violently dispersing them after casting their ballot.



Figure 20: Voter's commotion when the Azimio's candidate was arriving to vote at Olympic Primary School, Kibra.

There was a total of six (6) such instances where police resorted to the use of excessive force particularly when they felt that they were being overpowered by members of the public, mainly youth. For instance, in Nairobi Kibera, when the Azimio la Umoja coalition presidential candidate arrived at a local Primary School to vote, there was a huge disruption of the voting exercise. Our monitors reported that the police used excessive force in trying to maintain order in the ensuing commotion. Figure 20: Voters commotion when the Azimio's candidate was arriving to vote at Olympic Primary School, Kibra.

The remaining 11% of the cases were human rights violations that stemmed from police inaction. The inaction here paints a picture of two distinct scenarios; one is where members of public who were faced with a public order situation that had the potential of violating their rights were deliberately left to their own devices meaning that police were present and able to respond effectively and appropriately to prevent the violation but were unwilling or slow to assist. The second scenario is where the police just simply didn't show up at all when called upon by members of public to respond to a public order situation.

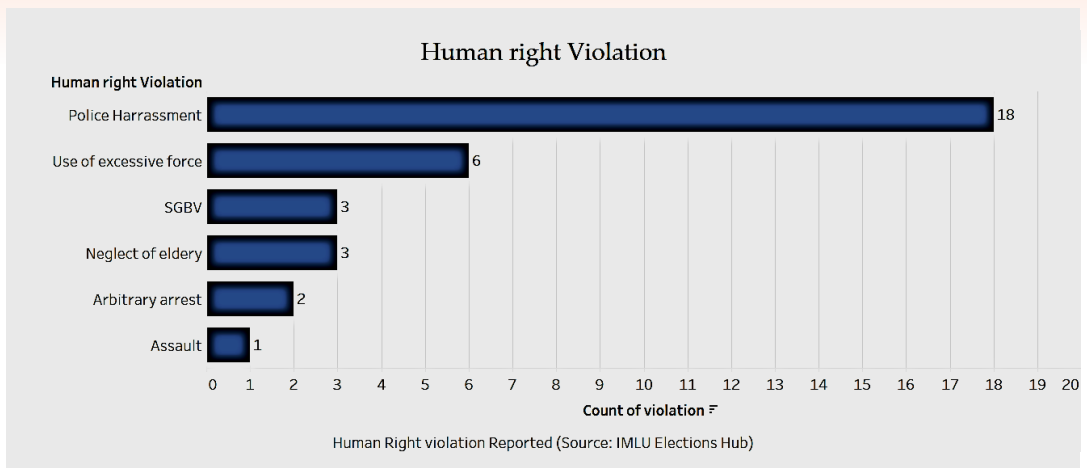


Figure 21: violations

In Uasin Gishu County, Kapseret Constituency there was a violent incident pitying supporters of gubernatorial candidates that resulted in the shooting of one of the supporters by an Aspirant. The Aspirant later collected and hid the bullet cartridge to make it difficult for investigators to pin him down. The online and live broadcast tallying caused a lot of tension. In Uasin Gishu's Soi Constituency for instance, small crowds of concerned members of public would be witnessed in urban areas and market centers and although the GSU officers were swift to disperse them they kept on emerging. There was Curfew imposed in Moi's bridge, Matunda, Kapkomen and Chukurah areas. The Curfew was enforced from 7pm to 6pm. The curfew was meant to reduce tension which was building in these areas.

In Mbalambala Constituency in Garissa County, at the Constituency Tallying Center the allegations of bribery involving the Returning Officer quickly escalated into a commotion. Several members of community were injured including six (6) National Youth Service (NYS) personnel, with one of the NYS being critically injured and is allegedly recuperating in Intensive Care Unit (ICU).

Human rights violations of electoral Gender Based Violence (GBV) nature were also reported. Three such cases involved female voters. These three cases were as result of a confrontation between a group of women and police officers reported in Kisumu County, Kisumu East constituency, Wathorego primary school. Several women had abusive confrontations with police officers, but IEBC officials stepped in to allow the women access to the station. One other incident involving female voters was reported in Bungoma County, Mt Elgon constituency, at Cheptoror primary school. The female voters were insulted, pushed and shoved by male voters when their fingerprints failed to be picked by the TIMS kit.

In Kisumu, Turkana & Nyeri Counties it was reported that the Elderly felt neglected that their fingerprints could not be easily identified through the TIMS kit, some were frustrated and left to go home without exercising their democratic right. There was a general feeling that this time around the elderly were not accorded sufficient assistance by either the election officials or other voters. Their inability to vote on account of Thermal Infrared Multispectral Scanner (TIMS) kit failure to read their fingerprints was considered a violation of their political rights under the law. In Mt. Elgon, an assault was reported involving the area Member of Parliament Hon. Fred Kapondi as a perpetrator and a private citizen, a voter in the area.

In Bungoma a sitting member of the local County Assembly who was contesting in that election shot and fatally wounded a person following what looked like a disagreement.

In some instance, in Kakamega County it was reported that some Presiding Officers (POs) were overzealous to reject even the slightest mistakes even where the voter's intention was overwhelmingly represented in the rest of the marking on the ballot. This raised concerns that the election officials were not impartial or objective, and that they violated the political rights of the electorates.

3.1.2.2.7 Voter Importation

In the border Counties of Bungoma and Busia and specifically Mt. Elgon and Sirisia, voters were ferried from Uganda to come and cast votes in the election. Some of these alien voters crossed the border a week ahead of the election and some of them were accommodated by their relatives in Kenya or were accommodated in hotels and lodgings. The inhabitants of these regions are cross border communities with their corresponding relatives in Uganda. For instance, The Sabaots are found on both sides of the border where they are referred to as the Sebei. The Bukusu in Kenya are also found in Uganda where they are referred to as Bakisu. The Teso's and the Samias are also found across in Uganda going by those same names. These people are dual citizens holding the Uganda as well as the Kenya's Identity Cards (ID) and registered as voters on both sides of the international border. The communities feared that the alien voters were mainly Militia groups from Uganda. One such Militia Group is the Kabuchai Land Defense Force (KLDF). KLDF fighters are recruited from Uganda and Kenya and have dual citizenship. In one instance when the local voters confronted the alien voters a violent commotion ensued during which five (5) people were allegedly killed on the day of election.

In Western Kenya voter importation also happened across neighboring Counties. Some neighboring Counties are divided by a river. Trans Nzoia, Bungoma and Kakamega are three of such Counties. For instance, in Bungoma Kandui Constituency Mwipuko, Matungu and Namakholopi Polling Station are on different sides of the Chwele and Nzoia Rivers. Being neighbors across shared rivers the voters happen to know one another. In one incident, voters from Mwipuko barred voters from Matungu and Namkholopi from casting their votes there and a violent confrontation ensued which was quelled by the police who were called in and responded in good time.

Massive voter importation was also witnessed in Kakamega County with voters being ferried from Khalaba Ward to cast their votes in Matungu, Mumias North Ward in Mumias West Constituency. Allegations of collusion between Aspirants and IEBC officials were rife and caused unnecessary anxiety among voters who believed that there was a plan to rig the elections. In Kakamega County, Police were okay with monitors from other organizations, and cooperated well them whenever they sought their assistance. However, they didn't extend the same level of support and cooperation to IPOA observers. They accused IPOA observers of harboring ill motives against police officers and noted that whenever IPOA moved in to investigate them even their bosses abandon them. As a result of that, in the event of a violent incident they would rather the citizens sought out their issues even if it means killing each other than attempting to intervene. That way they stay clear off the path of IPOA. According to them it is easier to collect dead bodies than get involved in situations that might get them into trouble with IPOA. In Bungoma, Mt. Elgon Constituency in Chemondi Polling Station cases of voter importation from the neighboring Counties and across in Uganda were reported.

3.1.2.2.8 Electoral GBV Media Monitoring



Figure 22: Bodaboda riders displaying reflector Jackets used as IEC materials to enhance visibility and popularize the toll free.

This project was based on the feedback from community dialogues that preceded it during the preparatory stage (refer to Chapter two). The main goal of the project was to enhance accountability for police-related Electoral Gender Based Violence (eGBV) by improving documentation and reporting of cases by community journalists working hand in hand with our regular human rights and seasonal elections monitors. This happened in the Western Kenya Counties of Kakamega and Busia through primary monitoring and across Kenya through secondary monitoring, involving review of newspapers, social media platforms and other secondary sources of information.

Kakamega County is a county in the Kenya's Western region. The County occupies an area of 3,033.8 km² and borders Vihiga County to the South, Siaya County to the West, Bungoma County and Trans Nzoia to the North and Nandi and Uasin Gishu to the East. The County has a population of 1,867,579, of which 897,133 are males, 970,406 being females, 40 are intersex. The main economic stay of the inhabitants is agriculture, with cash and food crop accounting for 65% of their production.

Busia is border County that neighbors Uganda to the West, Kakamega to the East, Bungoma to the North and Lake Victoria and Siaya County to the South. Busia County has a population of 893,681 persons; of this, 426,252 are females, and 467,401 are 28 Intersex persons. The county has a population density of 527 persons per square kilometer with an average household size of 4.5 persons.

The choice of these two Counties for primary monitoring was informed by IMLU's operational data from the year 2020 which was triangulated with data sourced from other actors including the National GBV toll-free helpline 1195 and the Ministry of Gender. IMLU received, documented and processed a total of 43 cases of various forms of police brutality from Kakamega (25) and Busia (18) counties. This year registered one of the highest cases of GBV due to the unexpected turn of adverse events brought about by COVID19.



Figure 23: Cases of Women assaulted during campaigns on the rise Image Courtesy| Standard 2nd August 2022

A significant majority of these cases were recorded as a result of police enforcement of COVID-19 containment measures. According to statistics obtained from the Ministry of Gender the same year (2020), Kakamega was ranked as one of the counties with the highest prevalence of gender-based violence cases.

Moreover, like most other Counties in Kenya, accountability for police violence, access to support and justice for victims has been a challenge in Kakamega and Busia Counties. This is mainly due to the lack of a coordinated system of documentation, reporting and response, and inadequate skills and knowledge among journalists and grassroots activists and general public awareness.

Furthermore, considering that election periods in Kenya have often been dogged by police-related violence during events or situation of public order management, IMLU used historical data dating from as far back as the 2007 elections to conclude that eGBV was a major concern when it comes to human rights violations. The organization therefore conceptualized and co-created this project together with the Crime Journalists Association of Kenya (CJAK) to bridge the gap using six well-thought aspects of the organization's election strategy.

3.1.3.3.1 Training and Deployment of Journalists

The first aspect involved three-day training for 10 human rights monitors and 11 journalists drawn from the two Counties was conducted. The training was based on a tailor-made curriculum/guide that was informed by an initial needs and gaps assessment that was undertaken at the beginning of the project. The curriculum/guide was developed jointly by IMLU in partnership with CJAK.



Figure 24: Participants in during police county commanders training.

The training was successful in building collaborative strategies and synergy between the monitors and journalists, strengthening information gathering skills, interviewing and documentation, first responders' basic survivor support skills, basic case management, and referral and essential linkages. It also enhanced the participants' knowledge on monitoring, documenting and reporting of SGBV cases arising out of police conduct during electioneering period, and raising participants' awareness relating to personal safety and security during the electioneering period. A total of 11 community journalists were trained alongside 10 election observation and human rights monitors stationed in the two Counties. The resulting joint documentation was directly linked to IMLU's victim support and advocacy teams at the head office and the network of professionals across the Country. The 11 community journalists were linked to election and human rights monitors in those two Counties to ensure that violations picked by the monitors could be translated into blogs, article and themes for radio talk shows, and that these found an avenue on radio, social media, online platforms or print media. The trained journalists have been retained as part of IMLU's network of front-line workers.

3.1.3.3.2 Case Study by Susan Kendi

NAIROBI, Kenya, Jan, 6- Kenyans will line up for hours on Tuesday, August 9, 2022, to cast their votes.

However, the question is whether the government is sufficiently prepared to protect its citizens and more so to prevent and respond to gender-based violence? As the world marks the 30th anniversary of the 16 Days of Activism against Gender-Based Violence (GBV) under the campaign theme, “Orange the World: End Violence Against Women”, this triggers a reflection on the gaps and challenges that the Covid-19 pandemic has exposed in the prevention and response of gender-based violence and most importantly what measures we need to put in place as a country we head towards the electioneering period.

A report launched by UN Women on the eve of the International Day for the Elimination of Violence against Women revealed that 1 in 2 women reported that a woman they know experienced a form of violence since the COVID-19 pandemic hit. Only 1 in 10 women said that victims would go to the police for help. The report was based on data from 13 countries during the Covid-19 pandemic. In Kenya, the 61-page report by the Human Rights Watch, “I Had Nowhere to Go,” shed light on how the government’s failure to ensure services to prevent gender-based violence and provide assistance to survivors under its Covid-19 response measures led to a spike in sexual and other violence against women and girls.

“The pandemic is not the first time Kenya has witnessed increases in violence against women and girls during crises. The government should have anticipated such an increase, but tragically as in the past, it turned a blind eye and failed to protect women and girls against violence,” said Agnes Odhiambo, senior women’s rights researcher and head of the Nairobi office at Human Rights Watch. The pandemic brought to the fore, most of the already existing inequalities but in a greater magnitude. It exposed the gaps in accessing essential services such as quality and timely medical treatment, limited access to shelter or safe houses, protection and financial assistance, mental health and psychosocial support, limited access to justice and inadequate funding from both the national and county governments for GBV prevention, response, and monitoring.

As a country, we have laws in place to tackle various forms of gender-based violence, including the constitution of Kenya 2010, the Sexual Offences Act (2006), the HIV and Aids Prevention and Control Act (2006), the Prohibition

of Female Genital Mutilation Act (2011), the law of evidence, protection against domestic violence the Employment Act (2007), the Protection Against Domestic Violence Act (2015), and the National Policy on the Prevention and Response to Gender-Based Violence. However, execution is still a challenge. "I am a firm believer that we have comprehensive and progressive laws that have very forward-looking provisions that can ensure that perpetrators of sexual violence are held to account...However, in my view, the issue has never been laws; the biggest issue or the biggest gap that we have is in implementation of those laws," said Naitore Nyamu, the Head of Physicians for Human Rights (PHR) Kenya office, during a phone interview.

"How come that we still have survivors being intimidated by perpetrators? How come we have evidence being interfered with despite having very great laws that provide for all the things? Survivors still cannot access psychosocial support in some instances, and we have policies that guide that. So, our issue at the moment is not the laws; the biggest issue is the implementation of those laws and holding people to account," she added. According to the Kenya National Commission on Human Rights (KNCHR) report titled "Silhouettes of Brutality", statistics revealed that sexual and gender-based violations were perpetrated more by the police at 54.5% compared to civilians at 45.5pc, with women forming the larger percentage of victims and survivors.

The report further highlighted that more than 90pc of the victims and survivors were from the lower-income economic bracket, earning less than a dollar a day. Over half of them lived in informal settlements within the urban areas, and a few cases were reported from the rural areas. Holding elections during the Covid-19 pandemic alongside the restrictions of curfews and lockdowns that come with the pandemic might further spike the gender-based violence cases. Based on this and previous election cycles, the pandemic offers an opportunity for the government to correct the failures and gaps by building a strong solid human rights-based framework that will handle any future emergency-related sexual and GBV ahead of the planned general elections in 2022.

The response needs to be "comprehensive, integrated, continuous, coordinated, multisectoral, and across all levels of response" and tailored by a survivor-based approach where the survivors are at the centre of the response. Further, there needs to build the capacity of police officers' capacity and service providers on how to document, investigate, and collect evidence

that will be used in court. There is a need for gender desks in police stations to offer a safe environment to allow victims to report cases without fear of stigmatisation or ridicule. There is also a need to sensitise the public on the free toll number and ensure favourable attitudes and behaviours that are critical for the prevention and response of GBV.

The author, Susan Kendi is a Multimedia Journalist and an egalitarian. She is also a Communications Officer at the International Commission of Jurists-Kenyan Section

3.1.3.3.4 Media Programs Co-Creation and Engagement

The second aspect involved media awareness and advocacy on prevention and response to eGBV. In this respect the project worked with four (4) community radios namely: West FM, Radio Mambo and Sulwe FM in Kakamega, and Butala FM in Busia County with a combined audience of 600, 000 listeners. The project was able to build a critical mass of sensitized radio listeners who are able to engage on the topic of eGBV, and to confidently identify, prevent and respond to any forms of electoral GBV in their communities, and other related human rights violations.

To achieve this, the project co-created, produced and aired a total of 37 live radio programs including talk-shows and short documentary clips or podcasts that featured human rights monitors, community journalists and IMLU staff as guest speakers or subject matter facilitators. The broadcasts were instrumental in creating mass awareness amongst members of public within the combined catchment areas served by the radio frequencies. They were also crucial in IMLU's prevention and response strategy.

The radio awareness activities raised the public profile of eGBV in the two Counties thereby leading to increased identification, reporting and referral of cases as well as strengthening the resilience of communities to prevent and respond to the violations in the two counties. The sensitization underscored the necessity of adequate support to survivors rather than stigmatizing them whilst ensuring that communities know how, why, and where to access requisite services and referrals.



Figure 25: IMLU Executive Director Peter Kiama on NTV discussing electoral security on August 9, 2022.



Figure 26: IMLU Technical Lead Litigation & Legal Advice Isabella Obara during a tv show post-election on September 5, 2022 after the Supreme Court's

3.1.3.3.5 Information, Education and Communication Campaign

The third aspect involved development and dissemination of two categories of IEC materials; branded advocacy T-shirts and Reflector Jackets. These bore advocacy messages on electoral GBV that were co-created together with the human rights monitors and community journalists. The materials were distributed among bodaboda operators, election monitors, journalists and community members. In some instances, police officers, party agents and elections officials who were impressed by the materials whose messages they said reflected the IEBC's spirit of free and fair elections requested and were issued with the materials. The messages also included key local and national emergency response contacts for eGBV.

3.1.3.3.6 Victim Psycho-Social Support

The fourth aspect of this project involved provision of support services to the victims of eGBV. Cases that were reported and documented by our human rights monitors and journalists were referred to IMLU for screening, management or referral. A variety of cases were reported and attended to in the two Counties, which included rape, assault and torture. IMLU's network of doctors, pathologists, counsellors and advocates were assigned the cases as appropriate. They offered requisite rehabilitation services to survivors of torture, violence and discrimination support and are continuing to assist victims of electoral GBV to access justice in about four (4) of the on-going cases.

3.1.3.3.7 Public Awareness Sensitization Forums

The fifth and the last aspect of this project, involved awareness and sensitization forums in communities. Participants were drawn from amongst the officials of local community agencies including women and youth groups, Community Based Organizations (CBO) and bodaboda riders. They were mobilized and sensitized on prevention and response to eGBV. In turn, they were able to cascade the information down to their members. Several follow-up meetings between the official, their members and members of public were recorded in various communities as a result of our initial engagements.

3.1.3.3.8 Social Media Campaign

Social media has greatly changed the information and communication landscape globally. The way individuals, organizations, and communities create, consume and share content is no longer the same. Social networks have helped people break international boundaries and geographical barriers that restricted the speed

<https://youtu.be/7PPnqjHNE4>
<https://youtu.be/Zpihwob465c>
<https://www.facebook.com/watch/?v=1432457703905657>
<https://youtu.be/m2Ub6rknvbQ>
https://youtu.be/Mu0Yn_kn-cE
<https://www.facebook.com/watch/?v=861585968140036>
https://twitter.com/IMLU_org/status/1561705969834418182/photo/1

of communication and the sphere of influence for information. Over the years, Kenya's population that has access to social media has been growing reaching 11.7 million users as of January 2022. This has made it a key platform to distribute and disseminate information. For instance, Twitter has 1.35 million users in Kenya.

For this reason, the sixth aspect our media engagement involved the use of social media to reach mainly the youth who are hard to reach using the traditional media such as radio. Three social media platforms were used namely; Twitter Facebook and LinkedIn, because of their popularity amongst the youth in Kenya, and their message carrying capabilities. For instance, biweekly Twitter Space open forums were held and hosted on SHAHIDI News Twitter handle every Tuesday and Friday. We conducted over six twitter spaces where we discussed different topics. The twitter spaces attracted over 1000 listeners. The campaigns shaped the conversations on different perspectives of the elections like security, children and the electioneering period among others.

The social media platforms were also supported by a Web-based online campaign hosted on IMLU and CJAK's websites and shared with national online news and blog platforms such as SHAHIDI news and TUKO. A total of 39 blog articles/stories were generated, shared and published attracting hundreds of readers from January to October 2022. Out of the 39 articles/blogs/stories 13 were focused on Western Kenya region in general or on Kakamega and Busia Counties in particular. A total of 33 of the 39 blog/articles/stories were published in the seven (7) months period prior to election, two (2) in the month of August and five (5) in September and October.

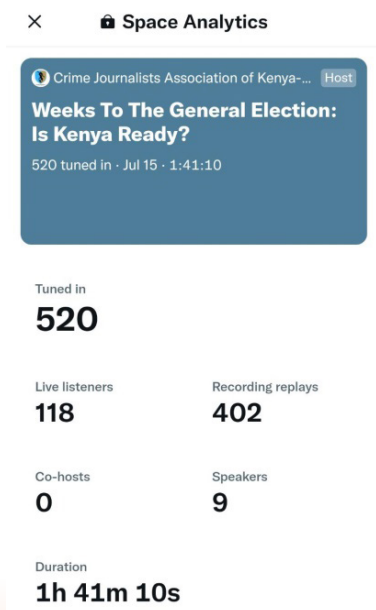


Figure 27: A screenshot of statistics of one twitter space on July 15, 2022



Social media flyer of a twitter space held on July 15, 2022

3.2 RECOMMENDATION

There is the need to strengthen media monitoring across all social media platforms since it was evident that when the government spotlights one platforms social users migrate to a less stringent and less monitored platform. For instance, Tik-Tok was at one time leading in hate and disinformation. According to NCIC the weekly report for the period 25th July -2nd August 2022 out of the 48 reported cases 20 were from Tik-Tok. This was followed by Face-Book.

In a debriefing meeting, the monitors made the following recommendations that could be considered in future elections that form part of this report:

1. Training of police officers on riot and crowd control, elections management, human rights and public order Act should be continuous. For the first time in this election, we witnessed under the glare of cameras, police simulation and drills on crowd control that underpinned the principle of transparency, and that indicated better early preparation.
2. Constantly keep training Human rights monitors on matters of public participation, public order management and human rights. As much as elections occur in 5 years, at county level, human rights monitoring and public participation are continuous.

3. Equip and establish GBV desks at the police stations to enhance reporting of these vices. The context of this elections shows that incidences of GBV increased, and response was not adequate as police were involved in elections. By equipping and establishing more GBV desks at police stations future elections will be peaceful.
4. There should be an internal mechanism within police stations that is able to monitor their conduct during elections at the very local level particularly during political campaigns, party primaries and the general elections. This is particularly important considering that Internal Affairs Unit has not devolved in all the Counties and isn't required to have operating presence in police stations.
5. There is need to de-escalate the simmering conflict between the NPS and IPOA as this is becoming an easy excuse for poor policing. Most of the human rights violations including fatalities and serious injuries that were reported were as a result of police inaction, which can be attributed to the conflict. This could also explain the sudden reduction in the incidences involving direct police action.
6. Peace education should be carried out continuously and concurrently with civic and voter education. Community policing platforms and other community agencies should be utilized for this purpose. In this election there was serious limitation of the civic space in which the civic education could have been carried out. Consequently, a lot of civil society organizations were unable to participate in the education.

Chapter Four

4.1 CONCLUSION AND REFLECTIONS

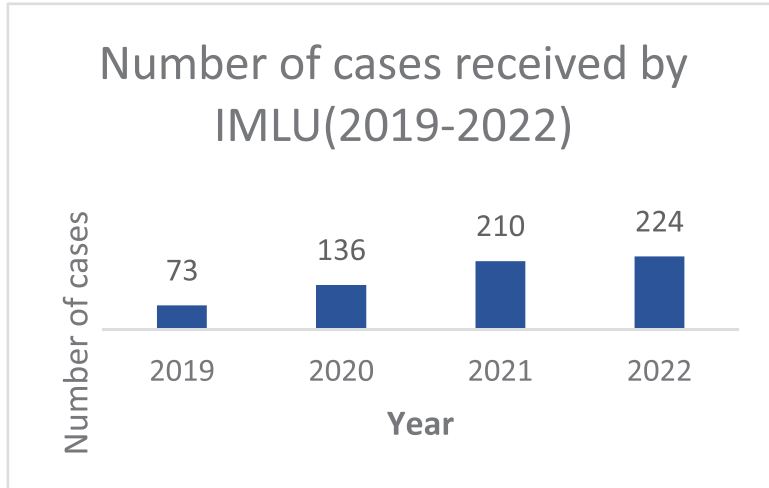


Figure 28: Cases received over years

Police have an important role in promoting and protecting the rule of law including the enjoyment of political rights and fundamental freedoms. The primary function for security agencies during electioneering periods is to restore and maintain order and the rule of law. The mandate of the National Police Service (NPS) during electoral processes is outlined in several legislative documents such as The Constitution of Kenya 2010, The Independent Electoral and Boundaries Commission (IEBC) Act of 2017, the National Police Service (NPS) Act of 2012, The Public Order Act of 2014 and the Election Act of 2012. The key responsibility of the police during the electoral process is to safeguard peace and security; protect lives and property of citizens; ensure safety of electoral officials and election materials before, during and after elections; provide security for candidates during the electoral processes and maintain law and order in and around the polling and tallying centers²¹.

The first national policing conference held in 2017 identified 14 key bottlenecks that form the agenda of the ongoing police reforms: Inadequate coordination among policing actors, inadequate awareness and induction of majority of serving police officers on the new policing guidelines and regulations, low public trust in policing agencies, unlinked data systems among policing actors, lack of a digitized reporting system, inadequate public participation in policing, weak complaints management system in policing, deaths and serious injuries in policing of assemblies, inadequate

21 How National Police Service Delivered 2013 General Elections: <https://www.nationalpolice.go.ke/elections/Peaceful%20elections%202016.40%20Small%20%20Pages%20pdf.pdf>

motivation of police officers, inadequate capacity of police station as central point of service delivery to the citizen, inadequate supervision and mentorship, lack of research based policing, inadequate capacity of the police reforms directorate, insecure and unkempt police premises and suitability and competence of police officers²².

Other challenges related to elections and policing are weak external oversight by the national assembly and IPOA, weak internal accountability mechanisms by Internal Affairs Unit (IAU), and issues related to professionalism; inadequate democratic values within the police service; poor intelligence gathering; political influence and interference; allegiance to government as well as low levels of supervision or close monitoring of police conduct during the electioneering period²³.

Moreover, challenges exist even in public order management. Some of them relate to skills deficiency, financing and staffing gaps, equipment and protective gear, poorly coordinated operations, command issues, lack of clear accountability mechanisms, negative ethnic stereotypes and profiling, poor citizen-police relations, political mobilization of citizens, and political inclinations within the force and minimal organizational support. Additionally, police work is replete with occupational stressors including inherent danger and job risk, poor pay, poor housing, high workload and harsh work conditions.

The myriad of challenges have been used in every electoral cycle to rationalize normalization of unorthodox policing practices that result in gross violation of human rights and fundamental freedoms particularly during security operations and other situations of public order management. Despite the pivotal role played by the police in promoting and protecting the rule of law including the enjoyment of political rights and fundamental freedoms; safeguarding peace and security; protecting lives and property of citizens; ensuring safety of electoral officials and election materials before, during and after elections; providing security for candidates during the electoral processes and maintaining law and order in and around the polling and tallying stations, challenges have been casted as the major excuse why the service is unable to fulfil this primary function during electioneering periods.

However, this time around there was a complete turn-around considering that in the last two elections police were indicted for 40% of the killings that occurred. According to our reports only 5 fatalities were reported in this election and none of

22 National Policing Conference Implementation Matrix 2017

23 Policing Elections in Countries with Emerging Democracies: <https://issafrica.org/amp/iss-today/policing-elections-in-countries-with-emerging-democracies>

them can be attributed to direct police action. This raises several important questions, one of which is what changed? Given that police service was able to play their part without the usual application of brute force one would be excused to wonder if the challenges that have always been cited as the excuse for dismal performance were suddenly addressed and comprehensively redressed. It is apparent majority of the 14 bottlenecks that were identified in the first national policing conference held in 2017 are still there yet the number of deaths and serious injuries in policing of assemblies reduced dramatically in a hotly contested transition election that would have otherwise, going by such previous elections, been bloody.

Well, several things changed, and much as they might not explain the entire phenomenon, they provide some reasonable enlightenment from which lessons can be drawn but also elicits questions that require further studies in future to determine with empirically the theory behind this change. On one hand, we are aware that some of the things that may have changed this time around compared to the previous elections is the early and good level of preparation by the police based on scenario visioning, stakeholder engagement through the Electoral Security Arrangement Program (ESAP), and proper planning. In the run-up to the election, we witnessed police conducting simulation of diverse imaginary scenarios, and drills. We are also aware that there was training and to some extent briefing of officers ahead of deployment.

On the other hand, we are aware that there was sustained early, long-term engagements by IMLU, other CSOs and development partners with respect to human rights-based public order policing. We also know that there was less police deployment this time around in Nyanza, Western and Nairobi compared to the previous years with higher deployments witnessed in areas in Rift Valley and Mt. Kenya region believed to be stronghold for the then Deputy President -whom the regime didn't imagine would win.

However, what requires to be investigated further is the correlation between police presence and electoral violence. In a nutshell, does the police presence in politically charged environment activate or mitigate violence -does it catalyse the escalation or de-escalation of potential conflict in politically charged environment?

Aware of the simmering conflict between IPOA and police officers -the report also attributes the reduction in police killings to disinterest that characterized electoral policing with police officers manifesting unprecedented unwillingness to use their firearms or to intervene in civilian conflicts out of the fear of attracting IPOA's attention whom they accused of harassing police with lawsuits. This also explains

the rise in the number of localized politically instigated civilian-to-civilian violence. The report also uses data from three years in a comparative analysis to conclude that there isn't much change in the attitude and behaviour of police considering that the policing trend in the years 2020, 2021 and 2022 have remained largely the same with the number of human rights violations such as killings resulting from police action painting a grim picture. In conclusion, the change witnessed in the 2022 raises a lot of question, which are not answered in this report and would require a scientific study to unravel.



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