

2013

# COUNTDOWN TO THE MARCH 2013 GENERAL ELECTIONS

Interim  
Elections Monitoring Report





**COUNTDOWN TO THE MARCH 2013  
GENERAL ELECTIONS: INTERIM  
ELECTIONS MONITORING REPORT**

**2013**

# KENYA HUMAN RIGHTS COMMISSION



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**KENYA HUMAN RIGHTS COMMISSION**

Opp. Valley Arcade, Gitanga Road, Lavington| P.O. Box 41079 - 00100 Nairobi

Tel: +254-20 2044545, +254-20 2106709, +254-20 3874998

Fax: +254-20 3874997| [admin@khrc.or.ke](mailto:admin@khrc.or.ke)| [www.khrc.or.ke](http://www.khrc.or.ke)

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Countdown to the March 2013 General Elections

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# INTERIM ELECTIONS REPORT

## FOREWORD

The general elections slated for March 4<sup>th</sup> 2013 have been variously described as ‘a referendum vote against the ICC’; ‘an opportunity to change the ‘old guard’ in politics and replace them with an infusion of the ‘new blood’ as postulated by the younger politicians’; and, ‘a contest between pro-reform politicians against the anti-reform politicians’ among a plethora of other political phrases and rhetoric that has come to characterize the political campaign platforms of various political parties/coalitions.

However, away from the political rhetoric being propagated by politicians, the 2013 general elections are significant because of the following key factors: First, this will be the first general election under a newly promulgated Constitution of Kenya (COK). The COK 2010 offers the true promise to Kenyans for a new socio-economic and political beginning. It is therefore imperative that the men and women who will be elected into office at both the county and the national government levels must be committed to delivering the governance promise captured in the COK 2010.

Second, and even more important, the March 4<sup>th</sup> 2013 general elections are the first one to be conducted against the backdrop of the worst form of political violence which saw the country totter dangerously ‘on the brink of the precipice’ following the 2007 general elections. The forthcoming election are therefore a litmus test for the country as whole on whether it has learned from mistakes of the past and is therefore willing to conduct credible, non-violent, free and fair elections.

In order to advocate for the election of men and women who will honor and defend the constitution once in office, and in order to discourage the brand of politics that will take us down the precipice path, KHRC set up an Electoral Processes Monitoring Centre (EPMC) in July 2012 to look into the core electoral mechanisms, procedures and actors and their impact on the outcome and aftermath to the 2013 general elections. The EPMC team has also, over the last six months, been engaged with monitoring both the preparation being made to facilitate free, fair and informed electoral processes ahead of the March 4<sup>th</sup> 2013.

This interim report provides a summary of the key findings in ahead of the March 4<sup>th</sup> 2013 general elections on the question of the preparation for elections. It is hoped that the findings made here in will be applied by the relevant actors and duty bearers to ensure that the fundamental aim of the electoral process under the new constitution – conceived in the aftermath of the violence and destruction of the previous elections and birthed in the public desire to ensure substantive change in the governance of the republic – is secured.

May God’ guidance be with us!

## **EXECUTIVE SUMMARY**

Electoral processes in post-independence Kenya have been marked by some of the most aberrant forms of electoral malfeasance and human rights violation, with the 2007 general elections producing the greatest measure of electoral and human rights violations ever experienced in the country's history.

In the aftermath of the post-election violence period several legal policy and institutional reform processes were initiated in a bid secure the country and its people against similar violations in the future. The most significant of these processes was the popular ratification and promulgation of the constitution of Kenya in 2010 which put in place a new regime of laws for the purpose of elections management.

The Constitution of Kenya 2010, establishes a progressive set of laws, institutions and procedures related to elections including a devolved system of government, an independent elections management body and requirements for affirmative action measures meant to guarantee the representation of marginalized and minority groups within the country.

Kenya Human Rights Commission (KHRC) has engaged in monitoring and advocacy around various electoral processes since its formation in 1992. In July 2012 KHRC undertook to monitor not just on the institutions and political personalities that will be involved in the electoral contest but has tried to capture the possible role and influence of the party that is most interested in the upcoming elections – the electorate

This report looks primarily at analyzing the nations' readiness to conduct free fair and informed elections – less than a month away from the appointed date. The report first looks into the civic preparation of the voters to undertake the process of suffrage in a manner that is informed and responsible. This part of the report assesses the voters' knowledge and understanding of the elective choices that they will be making under the new constitution in March of this year.

The report thereafter looks into the voter registration process, noting the various successes and challenges that were identified during the process. This part is followed by a review of the nomination process that was concluded in January 2013, providing an assessment of the challenges that hampered the process.

The fourth part of the report seeks to itemize the developments of concern in the lead up to the general elections as they relate to the questions of security, use of public resources as well as incidences of violence and intimidation against women. This is followed by an assessment of the controversial question of leadership and integrity laws in Kenya as they relate to the electoral processes and the respective state institutions.

The report concludes with an analysis of the implications of the findings in the preceding chapters and sets out the shorter and long-term engagements that need to be undertaken to secure a more informed suffrage process if credible and accountable governance is to be realized in the aftermath of the 2013 elections. The conclusion points specifically to the following needs:

- Comprehensive and continuous civic education to secure an informed public for future elections
- Progressive application of the provisions of Chapter Six of the Constitution on leadership and integrity

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- Limitation of the potential avenues for electoral malfeasance including voter bribery, the abuse of the provision for assisted voting and the use of criminal groupings to intimidate voters and aspirants



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## I. VOTER PREPARATION

The EPMC monitors interviewed over 1500 individuals across 17 counties between September and December 2012. In terms of assessing the levels of voter preparation ahead of the March 4<sup>th</sup> 2013 General Elections, the EPMC Monitors gathered and analyzed information on the following variables:

- The Gender of the respondents
- The Age of the respondents
- Possession of identity cards
- The respondents levels of understanding on the units of political representation
- The respondents levels of understanding of the elective positions
- The respondents levels of understanding of the role of the holders of the various elective positions.

The variables above were intended to speak to the levels of voter preparation ahead of the March 2013 general elections as well as assess their levels of civic awareness to make informed political choices during the said elections. The following is a summary of the findings on the foregoing variables:

### 1. RESPONDENT DEMOGRAPHIC

#### 1.1 The Gender of the Respondents

Out of a total number of 1311 respondents (see table 1 below), 52% were male while 48% were female (Fig 1). Although the number of women respondents is slightly lower than that of men, we can safely conclude that the views collected by our monitors on the upcoming general elections strike a fair balance between men and women voters and are therefore sufficiently representative.

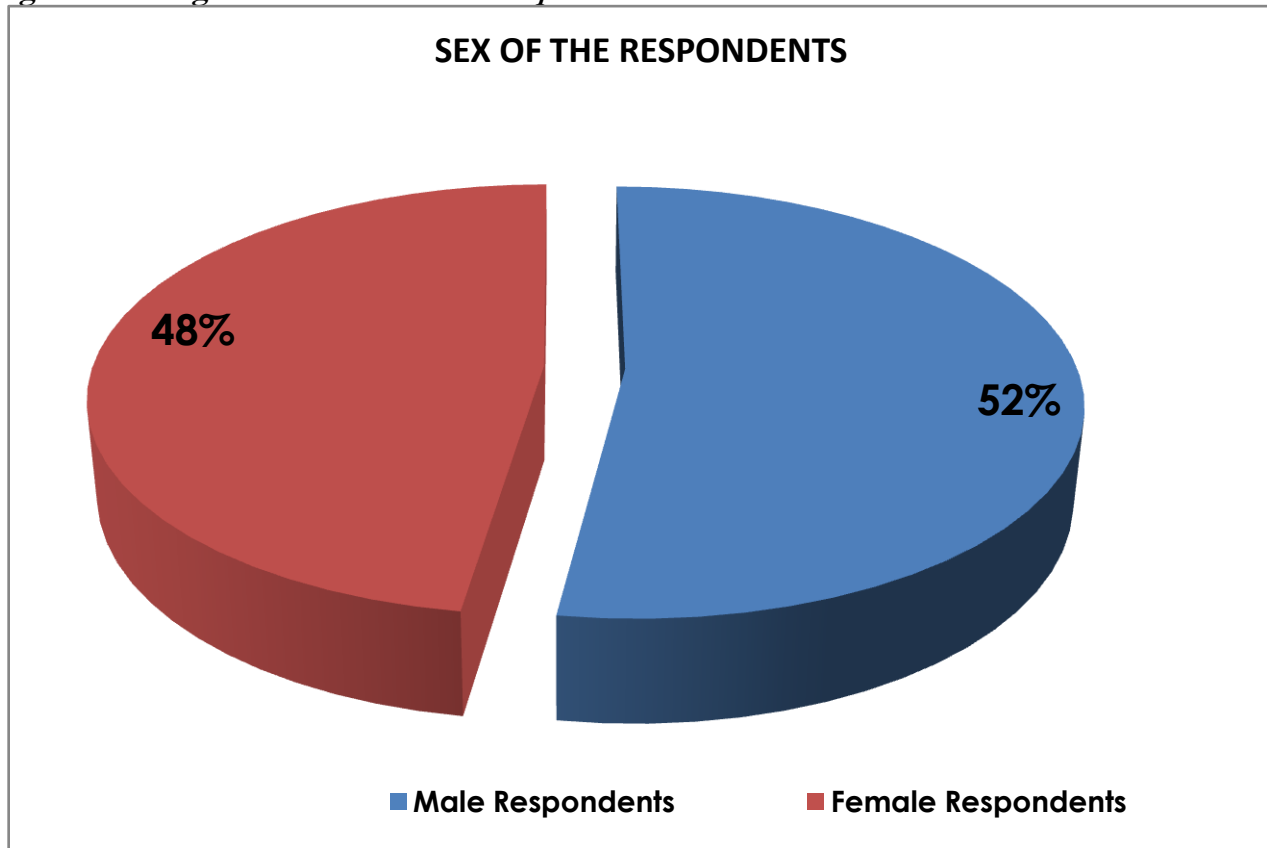
*Table 1: Sex of the respondents*

Sex of the Respondents			
County	Male Respondents	Female Respondents	Total
Bungoma	34	21	55
Elgeyo	43	44	87
Embu	24	16	40
Isiolo	26	28	54
Kajiado	63	81	144
Kisii	31	24	55
Kisumu	64	61	125
Kitui	27	32	59
Kwale	30	42	72
Migori	72	62	134
Nairobi	136	99	235

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Nakuru	25	28	53
Nyeri	51	29	80
TaitaTaveta	34	24	58
UasinGishu	27	33	60
	<b>687</b>	<b>624</b>	<b>1311</b>

*Fig 1: Percentage of male and female respondents*



### 1.2 Age of the Respondents

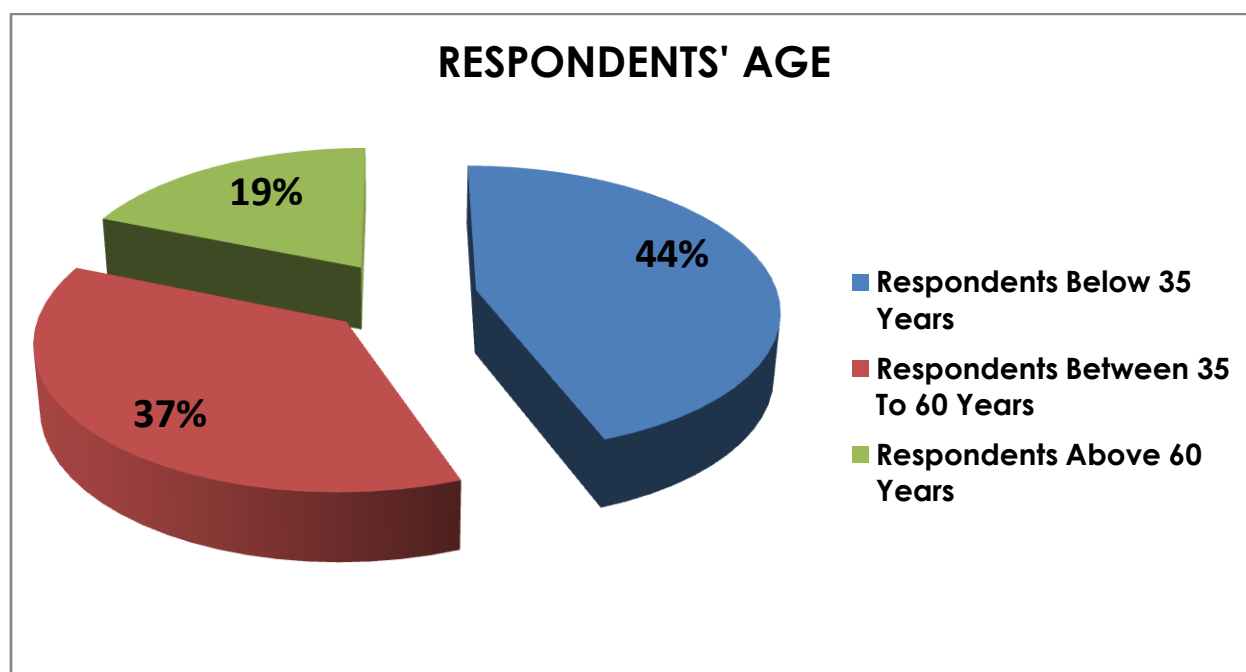
The EPMC monitors interviewed individuals of varying ages on matters concerning their preparedness to engage in the 2013 polls. Out of the 1283 respondents who provided information on their age, 44% of the respondents were under 35 years, 37% of the respondents are between 35 and 59 years while the remaining 19% are above 60 years (fig 1.2). This information is in keeping with the demographic trends in the country where the youth are a majority.

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*Table 2: Respondents by age*

Respondents' Age group				
County	Respondents Below 35 Years	Respondents Between 35 To 60 Years	Respondents Above 60 Years	Total
Bungoma	23	24	8	55
Elgeyo	43	26	18	87
Embu	17	15	8	40
Isiolo	16	17	21	54
Kajiado	71	39	34	144
Kisii	29	18	7	54
Kisumu	28	51	51	130
Kitui	17	27	15	59
Kwale	20	30	19	69
Migori	56	61	16	133
Nairobi	137	61	8	206
Nakuru	16	28	9	53
Nyeri	40	26	14	80
TaitaTaveta	16	32	10	58
UasinGishu	40	18	3	61
	<b>569</b>	<b>473</b>	<b>241</b>	<b>1283</b>

*Fig 2: Percentage of respondents by age*



## INTERIM ELECTIONS REPORT

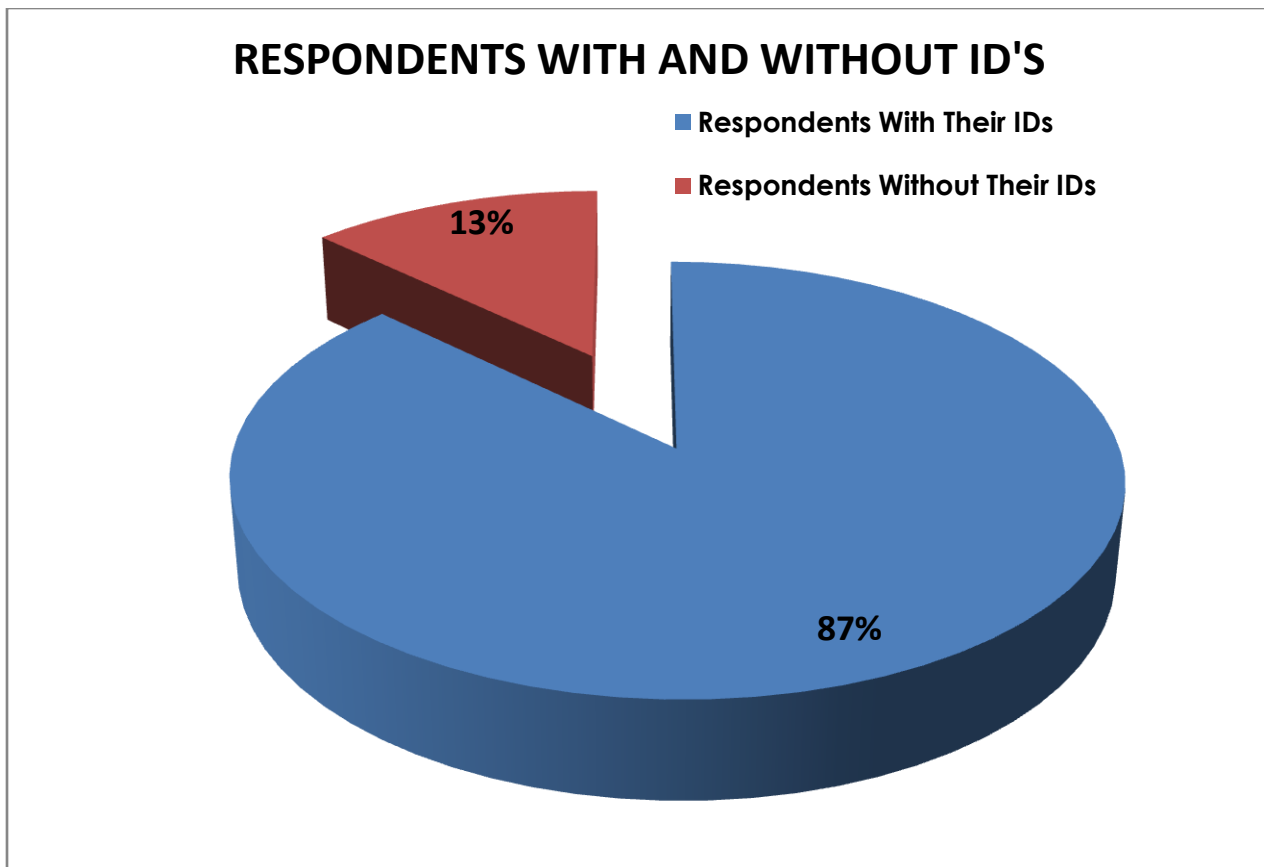
### 2. POSSESSION OF IDENTITY CARDS

The EPMC received 1379 **responses** from the questionnaires that were distributed by our field monitors. Out of these, 87% of the respondents had identification cards while the remaining 13% of the respondents had no identification cards. (Fig 1.1).The main reasons provided by those lacking identity cards include: 1) custody of the identity card by relatives –this was common amongst older respondents, 2) loss of identity cards with most respondents claiming that they found the process of acquiring a replacement too long, therefore avoiding the process altogether or using their waiting cards. Overall, the figures indicate that a majority of those interviewed have IDs, a key document that voters will have to produce before being allowed to vote in the upcoming general elections.

**Table 3: Possession of Identity Cards**

<b>Respondents with IDs</b>			
<b>County</b>	<b>Respondents With Their IDs</b>	<b>Respondents Without Their IDs</b>	<b>Total</b>
Bungoma	50	5	55
Elgeyo	40	47	87
Embu	35	0	35
Isiolo	78	7	85
Kajiado	136	5	141
Kisii	86	11	97
Kisumu	92	23	115
Kitui	48	11	59
Kwale	58	14	72
Migori	119	1	120
Nairobi	204	29	233
Nakuru	38	15	53
Nyeri	78	2	80
TaitaTaveta	57	4	61
UasinGishu	83	3	86
	<b>1202</b>	<b>177</b>	<b>1379</b>

**Fig 3: Percentage of respondents with identity cards**



### 3. LEVELS OF UNDERSTANDING OF THE POLITICAL UNITS OF REPRESENTATION

With the passage of the COK 2010, the review of the electoral boundaries, in accordance with the recommendations in the Report of the Independent Review Commission (IREC) also called the Kriegler Report after its chair Johann Kriegler<sup>1</sup>, set in motion with the amendment of Section 41 of the 1963 Constitution by Parliament in 2008. The amendment disbanded the ECK and in its place, established the Interim Independent Electoral Commission (IIEC) (Section 41A), and the Interim Independent Boundaries Review Commission (IIBRC) (Section 41B).

The IIBRC was mandated to review the boundaries drawn by the ECK in 1996 according to the recommendations of the Kriegler Commission. With the ratification and the promulgation of a new constitution in 2010, the task of reviewing electoral boundaries was taken over by the IEBC<sup>2</sup>. By Article 89 of the 2010 Constitution, the number of constituencies was increased from 210 to 290 and the IEBC was mandated to review the names and boundaries of the said constituencies.

The IEBC, in October 2012 published the names and boundaries of the 290 constituencies and 1450 county wards. Of the former provinces, Rift Valley received the greatest increase in the number of added

<sup>1</sup> Ibid, IREC, p. 106

<sup>2</sup> Article 88 (4) (c) of the Constitution of Kenya 2010 read together with Section 27 and 28 of the Sixth Schedule of the constitution.

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constituencies from 49 to 76. Central Province had an additional 5 seats from the previous 29 while Nairobi doubled in the number of seats from 8 to 16. Nyanza province got 10 seats to add to the previous 31 with North-Eastern receiving 7 new seats from its previous 11. Eastern, Western and Coast provinces received 8, 10 and 5 new seats respectively.

Although the electoral process has radically changed under the new constitution, the IEBC (the body given the mandate to carry out civic and voter education) has not done enough to educate the public on the new units of political representation as well as on the electoral processes in general. For example, our monitors found out that during the voter registration exercise, IEBC recruited voter-educators whose work was mainly restricted to directing voters to registration centers and mounting IEBC posters. Due to lack of voter-education, the levels of awareness exhibited by voters in regards to the units of political representation (i.e. electoral boundaries) and the various elective positions remain quite wanting (for graphic representation of the findings, please see the tables and figures below).

### 3.1 Understanding of County Boundaries:

Out of the 1397 respondents who replied to the question concerning their understanding of electoral boundaries, the findings were as follows: 56 % of the respondents exhibited a poor understanding of their county boundaries. 16% of the Respondents had a good understanding of the county while 28% of the Respondents had a fair understanding of the county boundaries (see Fig 4 below). Compared to the other counties, Respondents in Kisumu and Nyeri indicated a higher understanding of their county boundaries. Respondents for Nyeri indicated that they had been exposed to civic education and were intensely interested in governance issues as the President was from their region. Respondents in Kisumu stated they had a good understanding of Kisumu County because it was only the name which had changed from Kisumu district to Kisumu County. Most of the Respondents in Kajiado, Bungoma, Kwale, TaitaTaveta and Uasin-Gishu illustrated a poor understanding of their county boundaries.

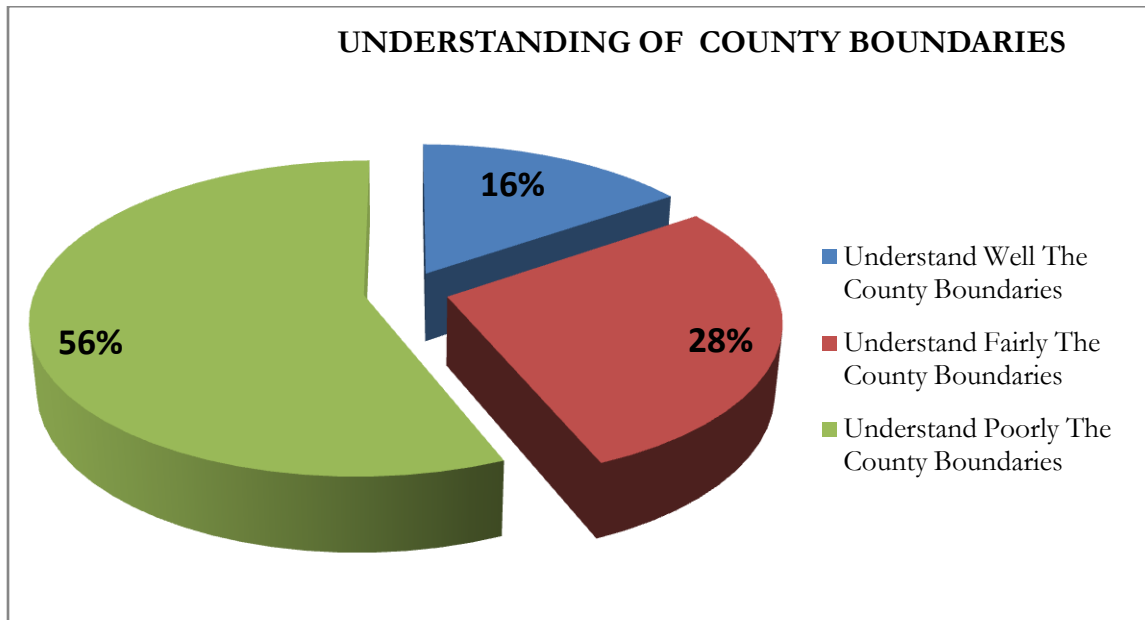
**Table 4: Respondents levels of understanding of county boundaries**

COUNTY BOUNDARIES				
County	Understand Well The County Boundaries	Understand Fairly The County Boundaries	Understand Poorly The County Boundaries	Total
Bungoma	4	10	41	55
Elgeyo	15	46	25	86
Embu	6	20	14	40
Isiolo	16	25	42	83
Kajiado	4	22	117	143
Kisii	0	22	58	80
Kisumu	54	51	36	141
Kitui	2	11	46	59
Kwale	0	17	55	72
Migori	30	35	57	122

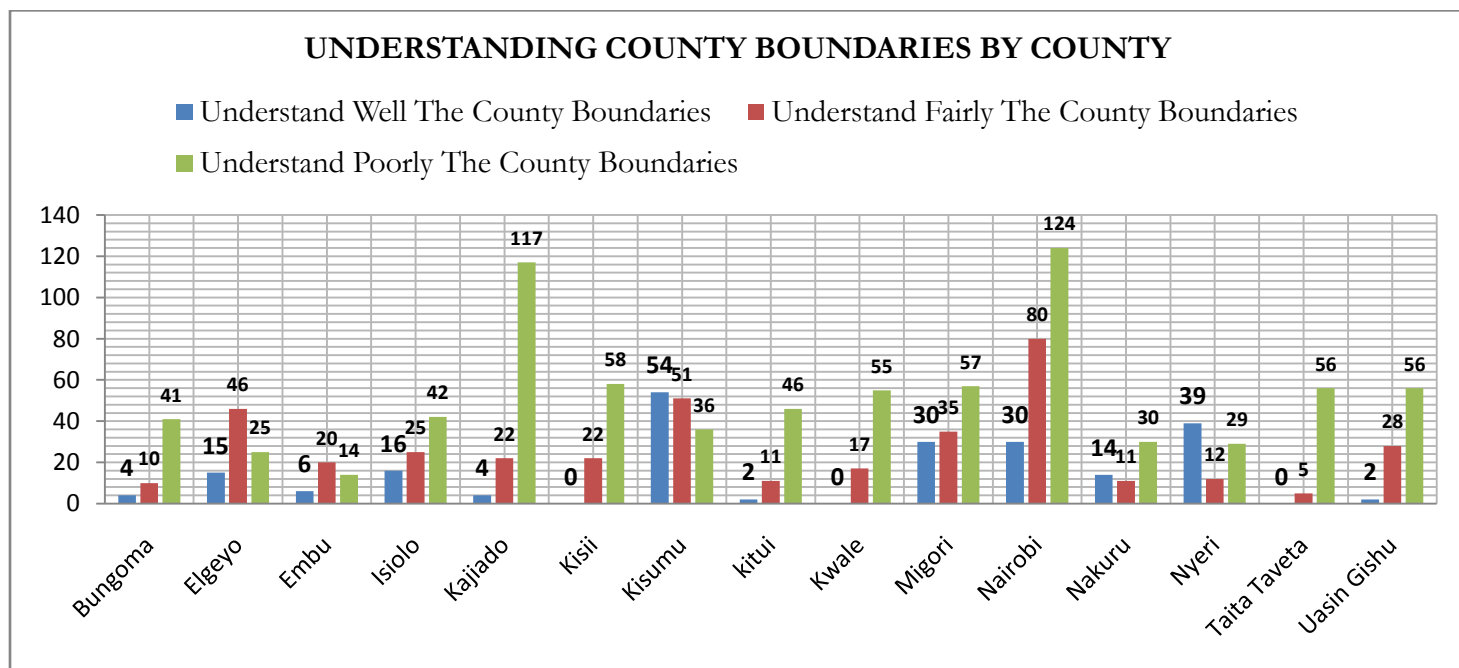
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Nairobi	30	80	124	234
Nakuru	14	11	30	55
Nyeri	39	12	29	80
TaitaTaveta	0	5	56	61
UasinGishu	2	28	56	86
	<b>216</b>	<b>395</b>	<b>786</b>	<b>1397</b>

*Figure 4: percentage of respondents on levels of understanding of county boundaries.*



*Chart 4: Respondents understanding of county boundaries by county*

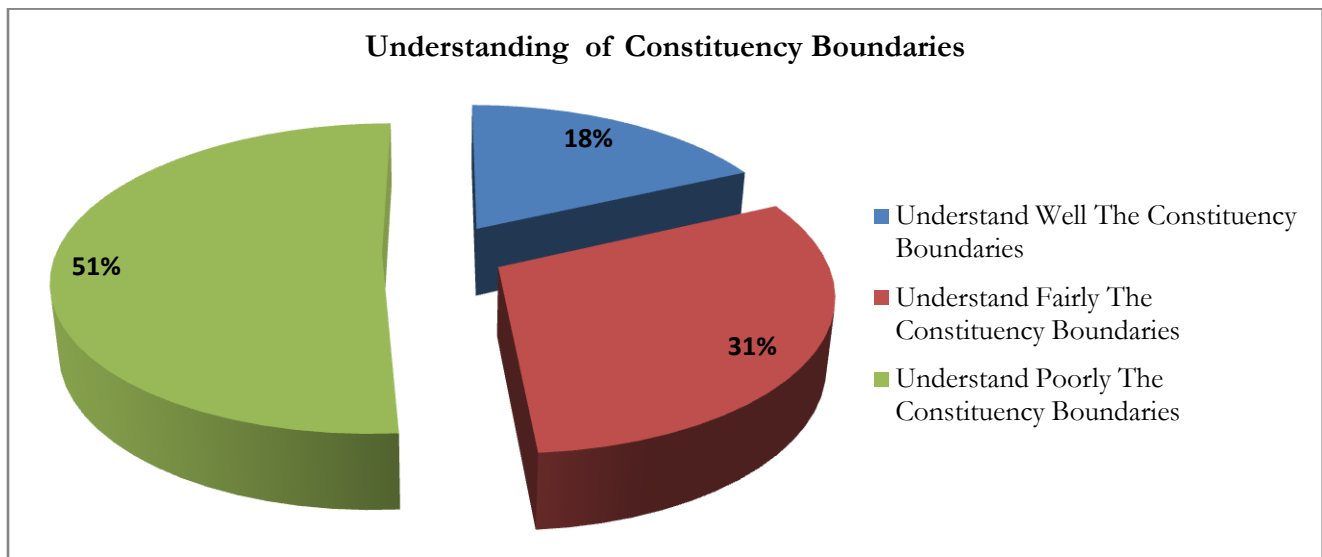


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### 3.2 Understanding of Constituency Boundaries

Out of the 1397 respondents, 51% had a poor understanding, 31% had a fair understanding while only 18% exhibited a good understanding of the constituency boundaries. (Fig 2.2). Kisumu, illustrated a significantly high degree of understanding of the county boundaries Respondents in Kisumu stated they had a good understanding of Kisumu county because it was only the name which had changed from Kisumu district in Kisumu County. Bungoma, Isiolo and Migori Nairobi illustrated marginally higher understandings of the constituency boundaries compared to the remaining counties. Kisii, TaitaTaveta, Kitui and Kajiado appeared to reveal the lowest understanding of the constituency boundaries (Table 1.4.2).

**Figure 5: Levels of understanding of Constituency Boundaries**



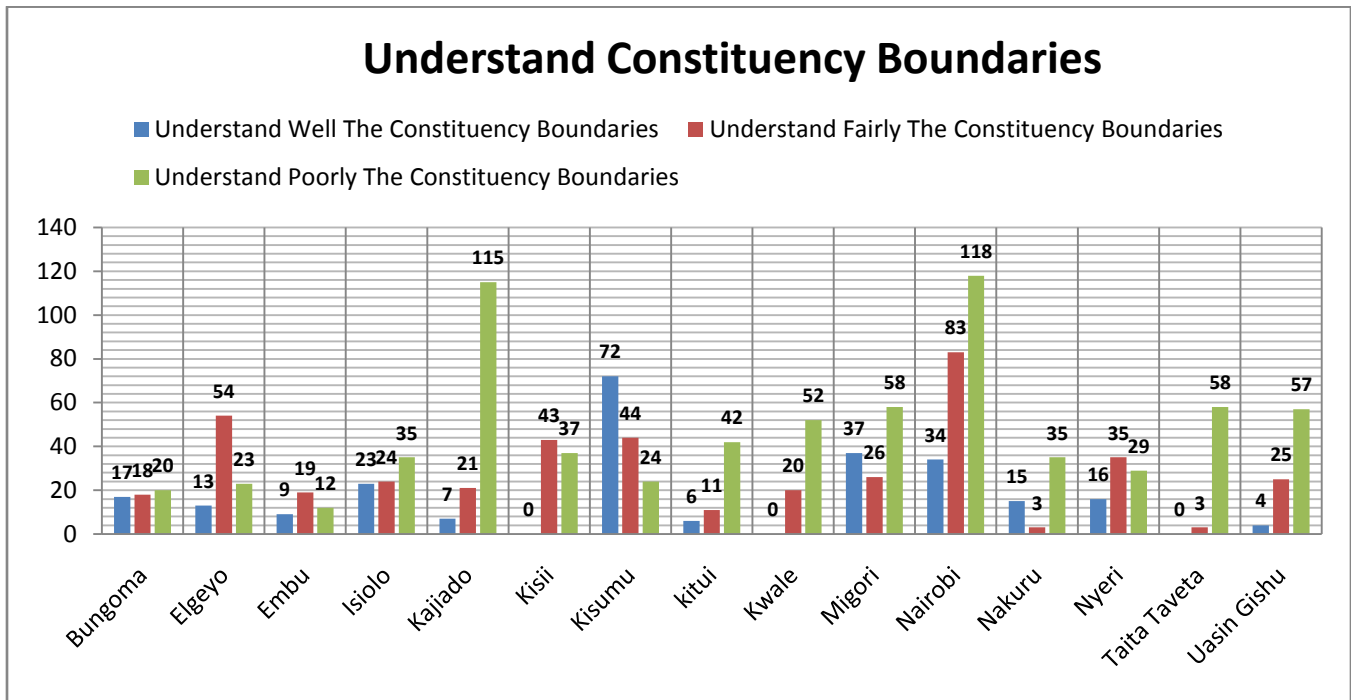
**Table 1.4.2: Respondents understanding of the constituency boundaries**

CONSTITUENCY BOUNDARIES				
County	Understand Well The Constituency Boundaries	Understand Fairly The Constituency Boundaries	Understand Poorly The Constituency Boundaries	Total
Bungoma	17	18	20	55
Elgeyo	13	54	23	90
Embu	9	19	12	40
Isiolo	23	24	35	82
Kajiado	7	21	115	143
Kisii	0	43	37	80
Kisumu	72	44	24	140
Kitui	6	11	42	59
Kwale	0	20	52	72
Migori	37	26	58	121



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Nairobi	34	83	118	235
Nakuru	15	3	35	53
Nyeri	16	35	29	80
TaitaTaveta	0	3	58	61
UasinGishu	4	25	57	86
	<b>253</b>	<b>429</b>	<b>715</b>	<b>1397</b>



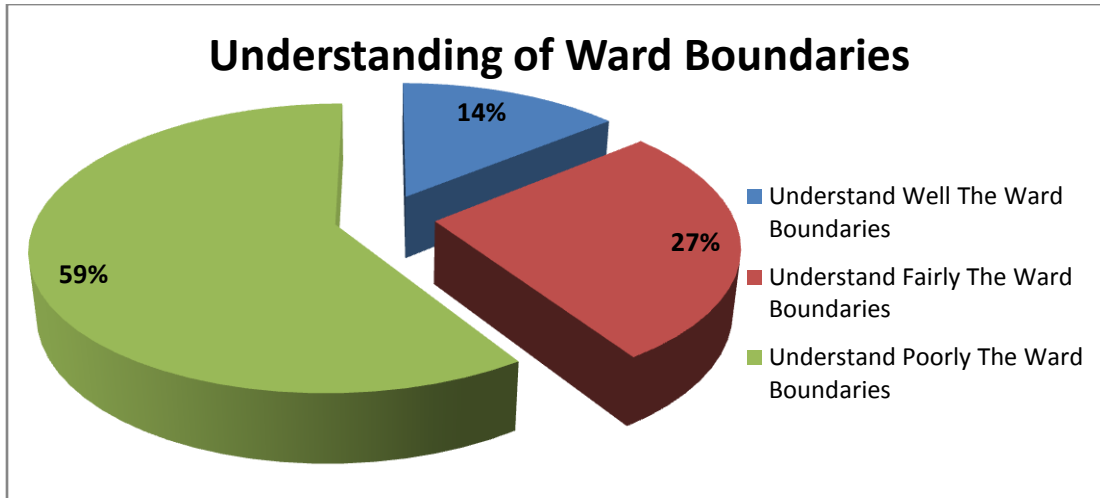
*Chart 5: Understanding of Constituency boundaries by County*

### 3.3 Levels of Understanding of the Ward Boundaries

60% of the 1397 respondents illustrated a poor understanding of their ward boundaries a fact most attributed to the reviewing and renaming of former area wards. Others had little to no understanding of the ward boundaries. 27 % showed a fair understanding of their ward boundaries while only 13 % illustrated a good understanding of the ward boundaries. While there seemed to be an overall poor level of understanding of electoral ward boundaries, respondents from Bungoma, Kisumu and Migori illustrated marginally higher levels of understanding of their respective ward boundaries than respondents from the other counties.

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*Fig 6: Levels of understanding of Ward Boundaries*

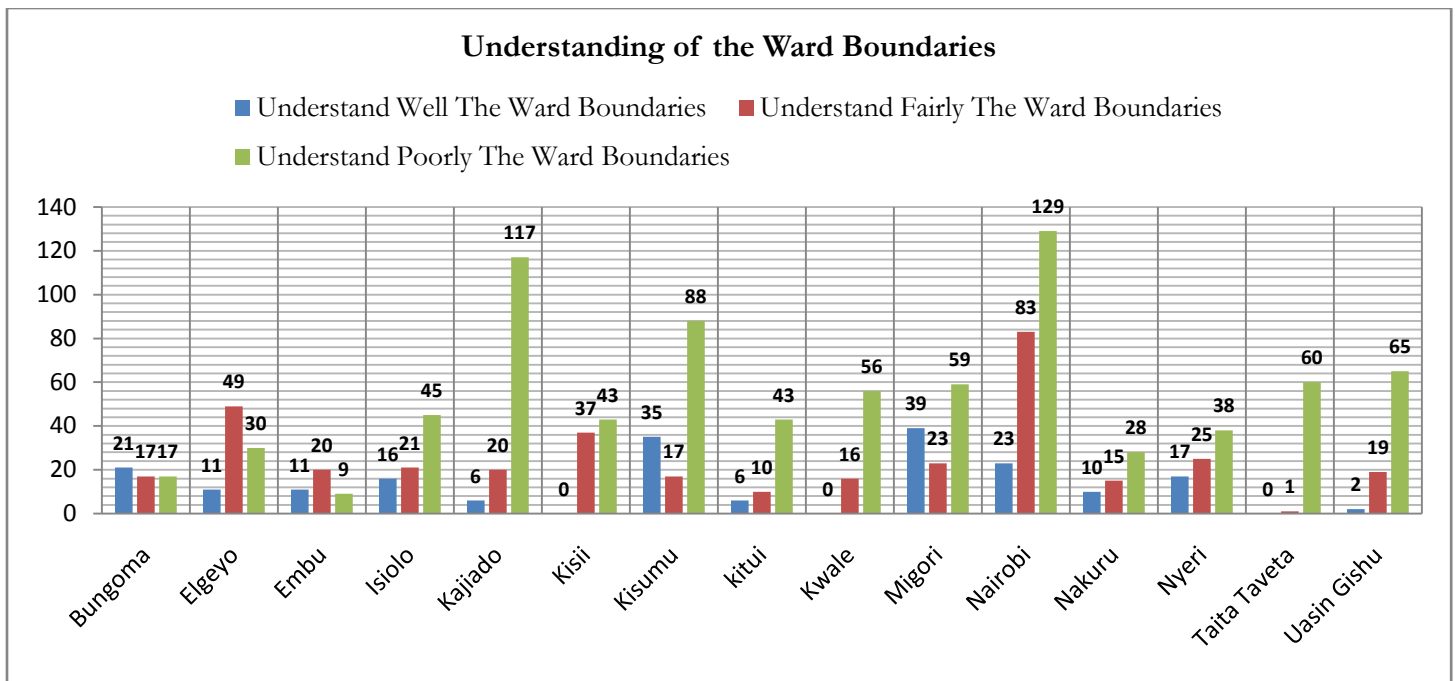


*Table 6: Respondents understanding of ward boundaries*

WARD BOUNDARIES				
County	Understand Well The Ward Boundaries	Understand Fairly The Ward Boundaries	Understand Poorly The Ward Boundaries	Total
Bungoma	21	17	17	55
Elgeyo	11	49	30	90
Embu	11	20	9	40
Isiolo	16	21	45	82
Kajiado	6	20	117	143
Kisii	0	22	58	80
Kisumu	35	17	88	140
Kitui	6	10	43	59
Kwale	0	16	56	72
Migori	39	23	59	121
Nairobi	23	83	129	235
Nakuru	10	15	28	53
Nyeri	17	25	38	80
TaitaTaveta	0	1	60	61
UasinGishu	2	19	65	84
	<b>197</b>	<b>373</b>	<b>827</b>	<b>1397</b>

*Chart 6: Respondents understanding of ward boundaries*

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## 4. LEVELS OF UNDERSTANDING OF THE VARIOUS ELECTIVE POSITIONS

With the promulgation of a new constitution in 2010, the governance system of the country experienced significant changes. The new constitution created six elective positions where before, there had only been three. The structure of government also changed with the introduction of a devolved government system, providing for national and county government structures.

The elective positions under the new constitution include, the Presidency, the Senate, the National Assembly, Women Representatives elected from each county, the Governor and the County Assembly. The public exposure to the existence of these positions and the manner in which they are to be filled was considered a matter of importance vis-à-vis the responsibilities of suffrage.

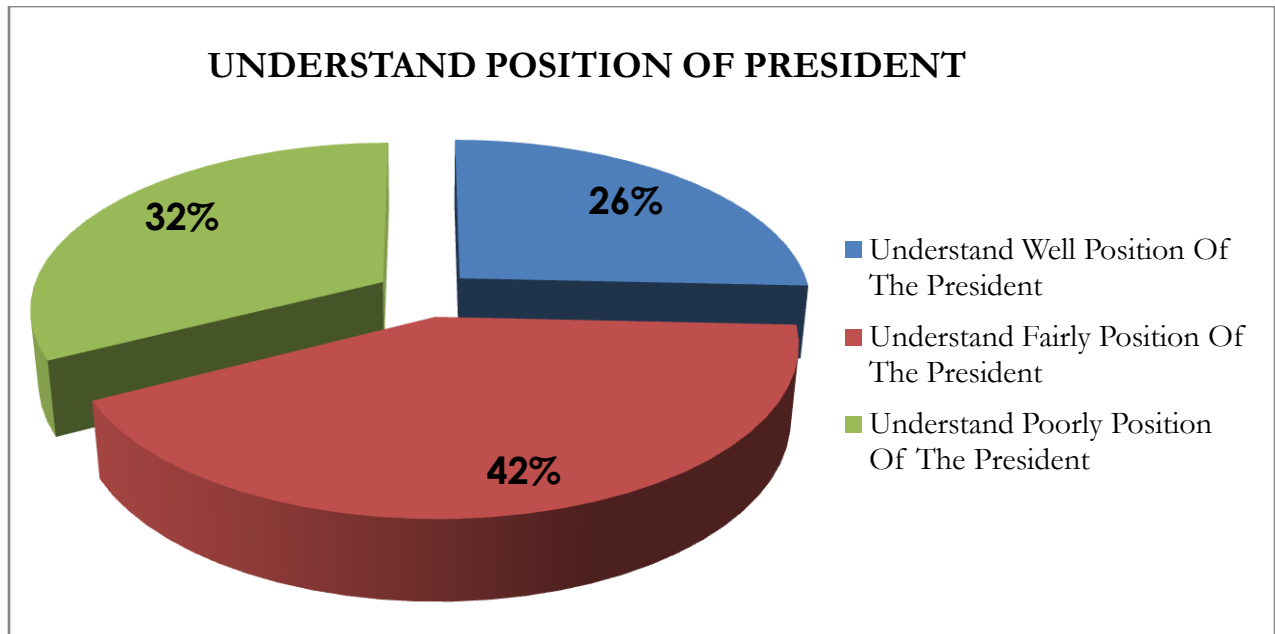
The EPMC monitors were therefore required to inquire into the voter's appreciation of the elective positions that are to be filled in the March 4<sup>th</sup> 2013 general elections. Respondents' levels of understanding were judged based on a fairly simple criterion that required them to name the elective positions identified in the COK 2010. From the answers provided by a total of 1392 respondents, the EPMC monitors obtained the following data in relation to the levels of understanding on the position of the president:

### 4.1 Levels of Understanding on the Position of the President

42 % of the respondents illustrated a fair understanding position of the President while 26% of the respondents had exhibited a good understanding of the said position. The remaining 32% of the respondents demonstrated a poor understanding of the position of the President. (fig 7). Respondents from Kisumu, Migori and Nakuru illustrated a high understanding of the position of the president (chart 7) compared to the other counties.

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**Fig 7: Levels of Understanding on the Position of the President**



*Table 7: Levels of understanding on the position of President*

UNDERSTANDING ON THE POSITION OF THE PRESIDENT				
County	Understand Well Position Of The President	Understand Fairly Position Of The President	Understand Poorly Position Of The President	Total
Bungoma	17	15	23	55
Elgeyo	21	45	21	87
Embu	10	24	6	40
Isiolo	32	32	18	82
Kajiado	15	79	49	143
Kisii	4	33	43	80
Kisumu	77	36	26	139
kitui	33	11	15	59
Kwale	0	23	49	72
Migori	48	37	36	121
Nairobi	54	147	33	234
Nakuru	29	10	14	53
Nyeri	15	23	42	80
TaitaTaveta	2	30	29	61
UasinGishu	1	36	49	86
	<b>358</b>	<b>581</b>	<b>453</b>	<b>1392</b>

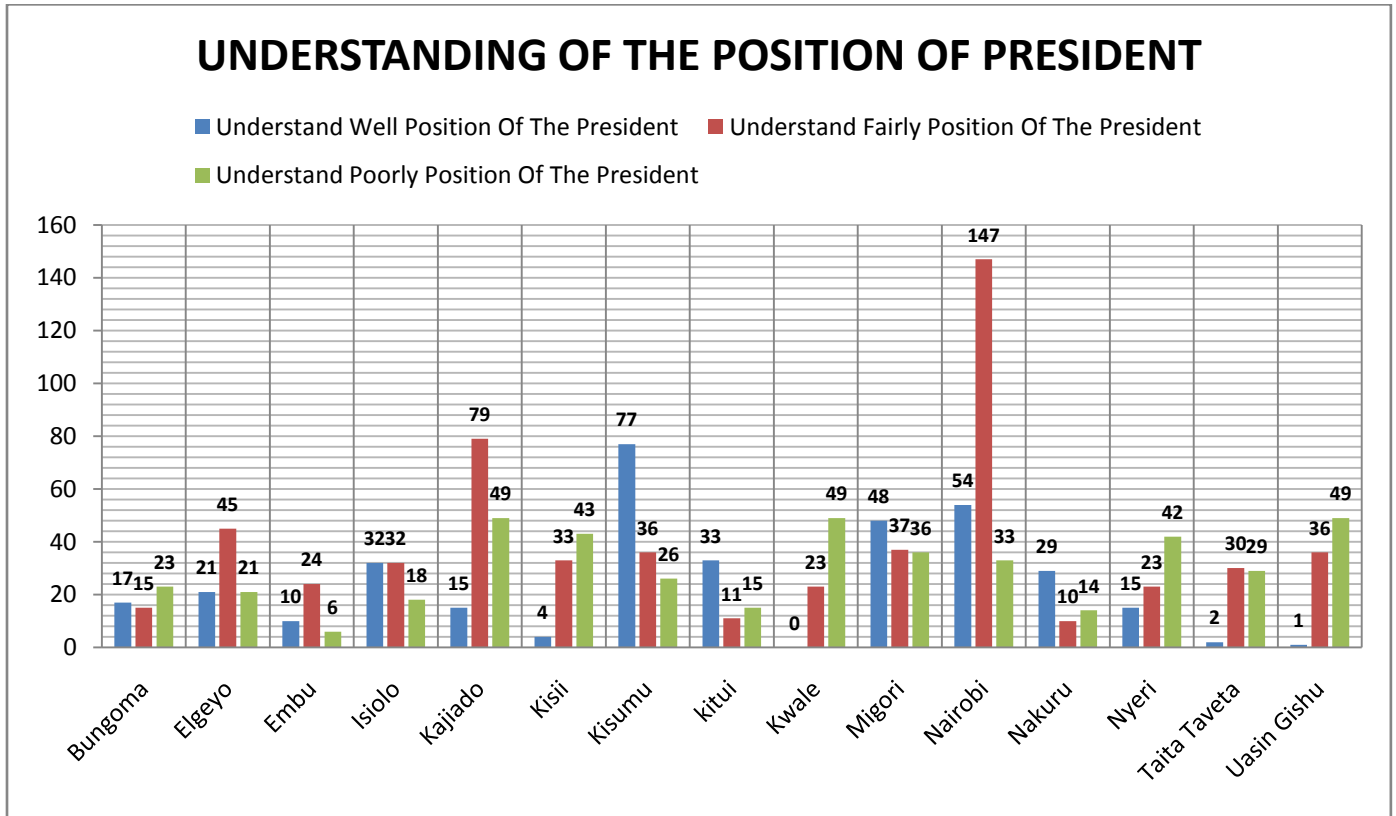


Chart 7: Levels of understanding of the position of president per county

Respondents in Kisumu illustrated a high understanding on the position of the president. The respondents stated that the position is not new and they know the president is elected by all registered voters at the national level. A significant number of the respondents in Nairobi and Kajiado demonstrated a fair understanding of the position of the president. Elgeyo-Marakwet County also illustrated a high numbers of respondents showing a fair understanding of the position of the President. This was largely attributed to the respondent’s exposure civic education activities conducted by CBO’s and community leaders in the area.

4.2 Levels of Understanding on the Position of Senator

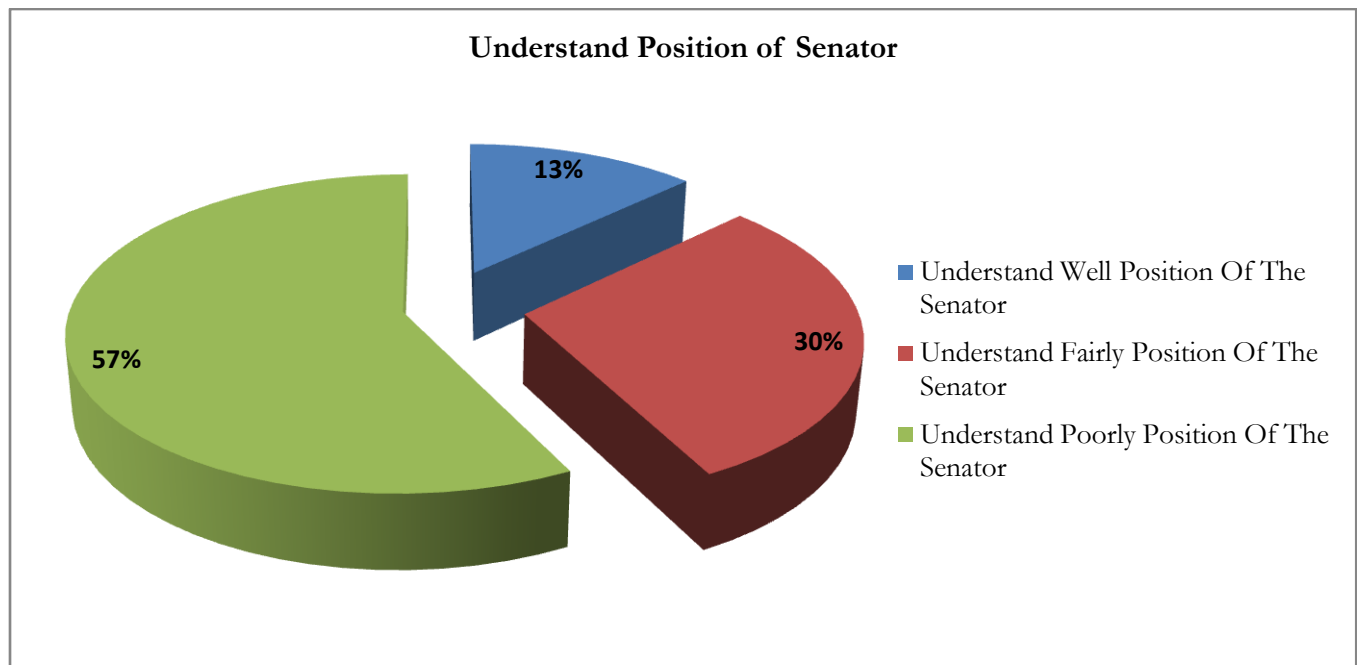
Out a total of 1395 Respondents, 57% of the respondents illustrated a poor understanding of the position of the Senator. Only 13 % of the respondents showed a sound understanding of the said decision with 30% demonstrating a fair understanding of the said position (Fig 8).

THE POSITION OF THE SENATOR				
County	Understand Well Position Of The Senator	Understand Fairly Position Of The Senator	Understand Poorly Position Of The Senator	Total
Bungoma	7	14	34	55
Elgeyo	8	33	46	87
Embu	7	16	17	40

## INTERIM ELECTIONS REPORT

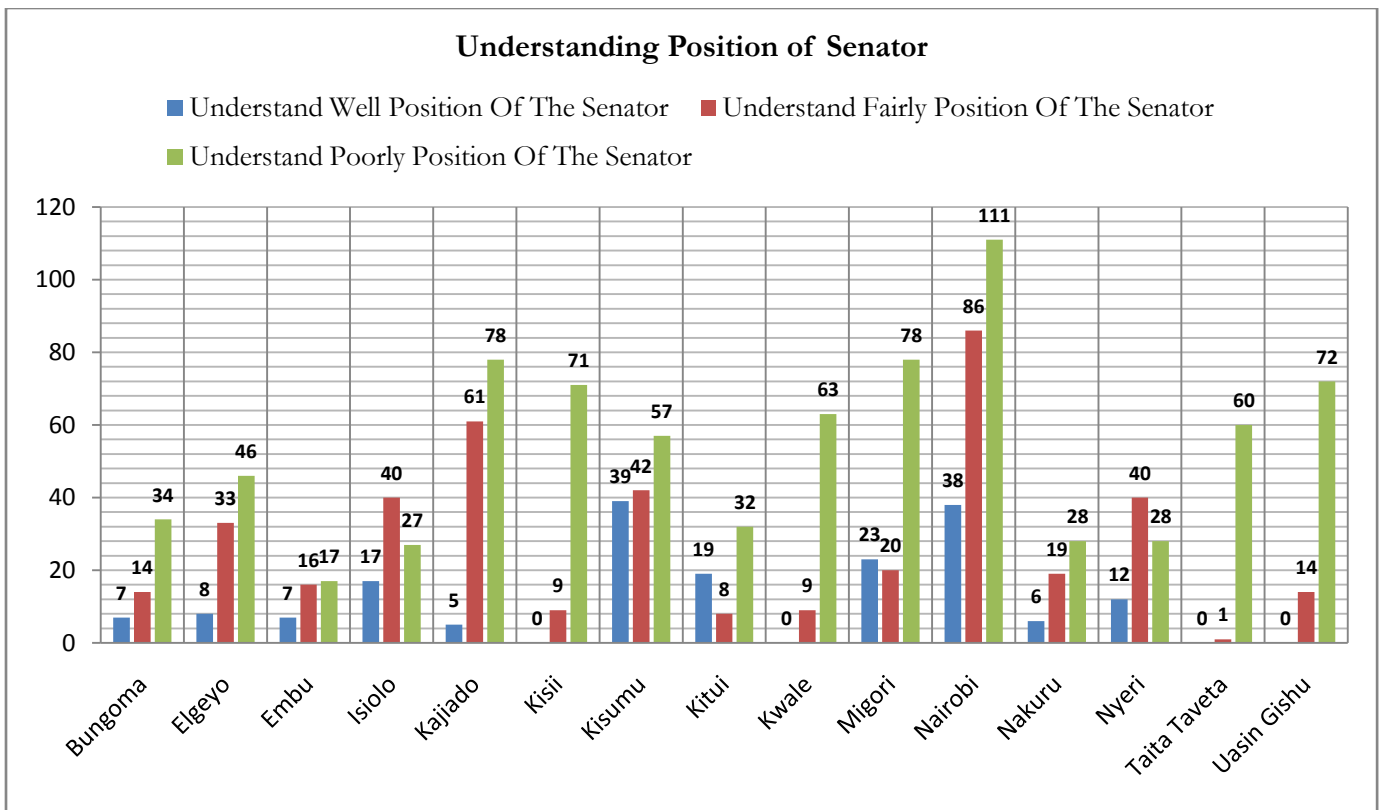
Isiolo	17	40	27	84
Kajiado	5	61	78	144
Kisii	0	9	71	40
Kisumu	39	42	57	138
Kitui	19	8	32	59
Kwale	0	9	63	72
Migori	23	20	78	121
Nairobi	38	86	111	235
Nakuru	6	19	28	53
Nyeri	12	40	28	80
TaitaTaveta	0	1	60	61
UasinGishu	0	14	72	86
	<b>181</b>	<b>412</b>	<b>802</b>	<b>1395</b>

*Table 8: Levels of understanding on the position of Senator*



*Fig 8: Levels of understanding on the position of senator*

# KENYA HUMAN RIGHTS COMMISSION

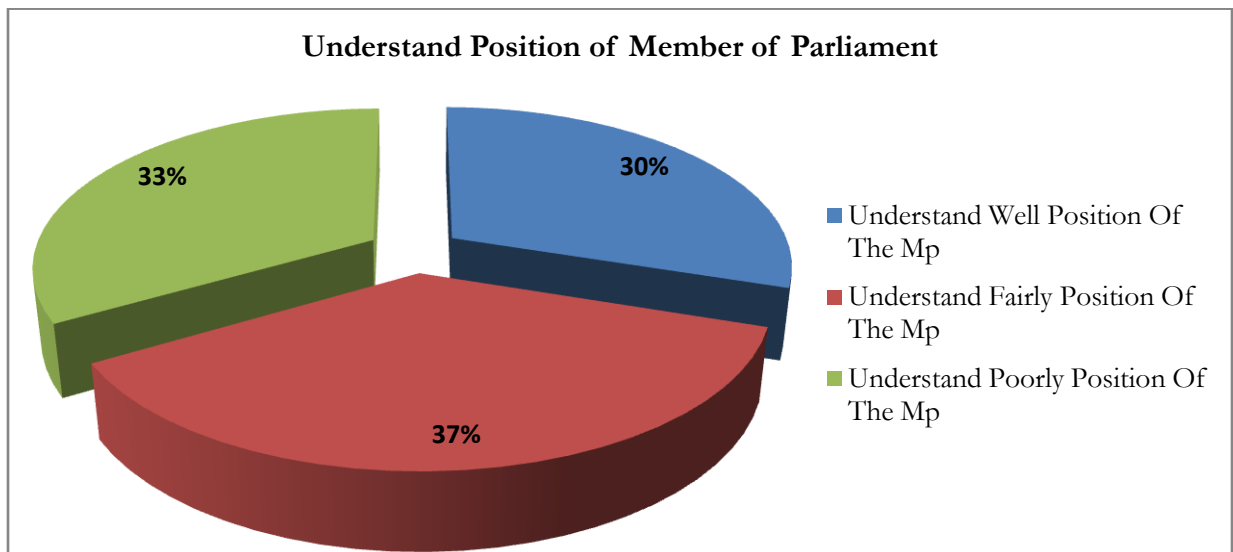


*Chart 8: Responses to questions on understanding of position of Senator by county*

### 4.3 Levels of Understanding on the position of Member of Parliament

A significant number of the respondents from Nairobi, Kitui, Kisumu, Migori and Bungoma illustrated a sound understanding of the position of the Member of Parliament. This is because the respondents stated that the position is not new and they knew that the Member of Parliament was normally elected by all registered voters at the constituency level.

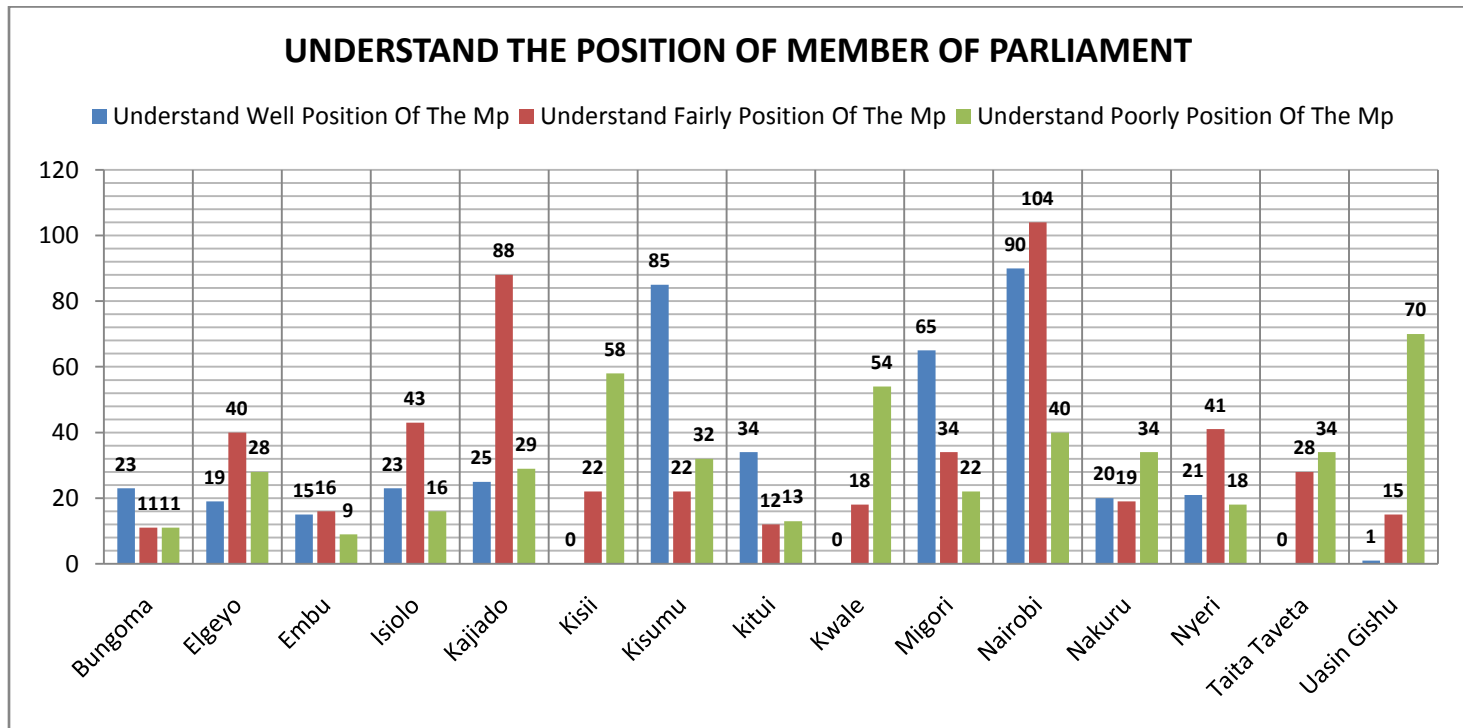
*Figure 9: Levels of understanding of the position of Member of Parliament*



## INTERIM ELECTIONS REPORT

*Table 9: Levels of understanding on the position of Member of Parliament*

THE POSITION OF MEMBER OF PARLIAMENT				
County	Understand Well Position Of The MP	Understand Fairly Position Of The MP	Understand Poorly Position Of The MP	Total
Bungoma	23	11	11	45
Elgeyo	19	40	28	87
Embu	15	16	9	40
Isiolo	23	43	16	82
Kajiado	25	88	29	142
Kisii	0	22	58	80
Kisumu	85	22	32	139
Kitui	34	12	13	59
Kwale	0	18	54	72
Migori	65	34	22	121
Nairobi	90	104	40	234
Nakuru	20	19	34	73
Nyeri	21	41	18	80
TaitaTaveta	0	28	34	62
UasinGishu	1	15	70	86
	<b>421</b>	<b>513</b>	<b>468</b>	<b>1402</b>





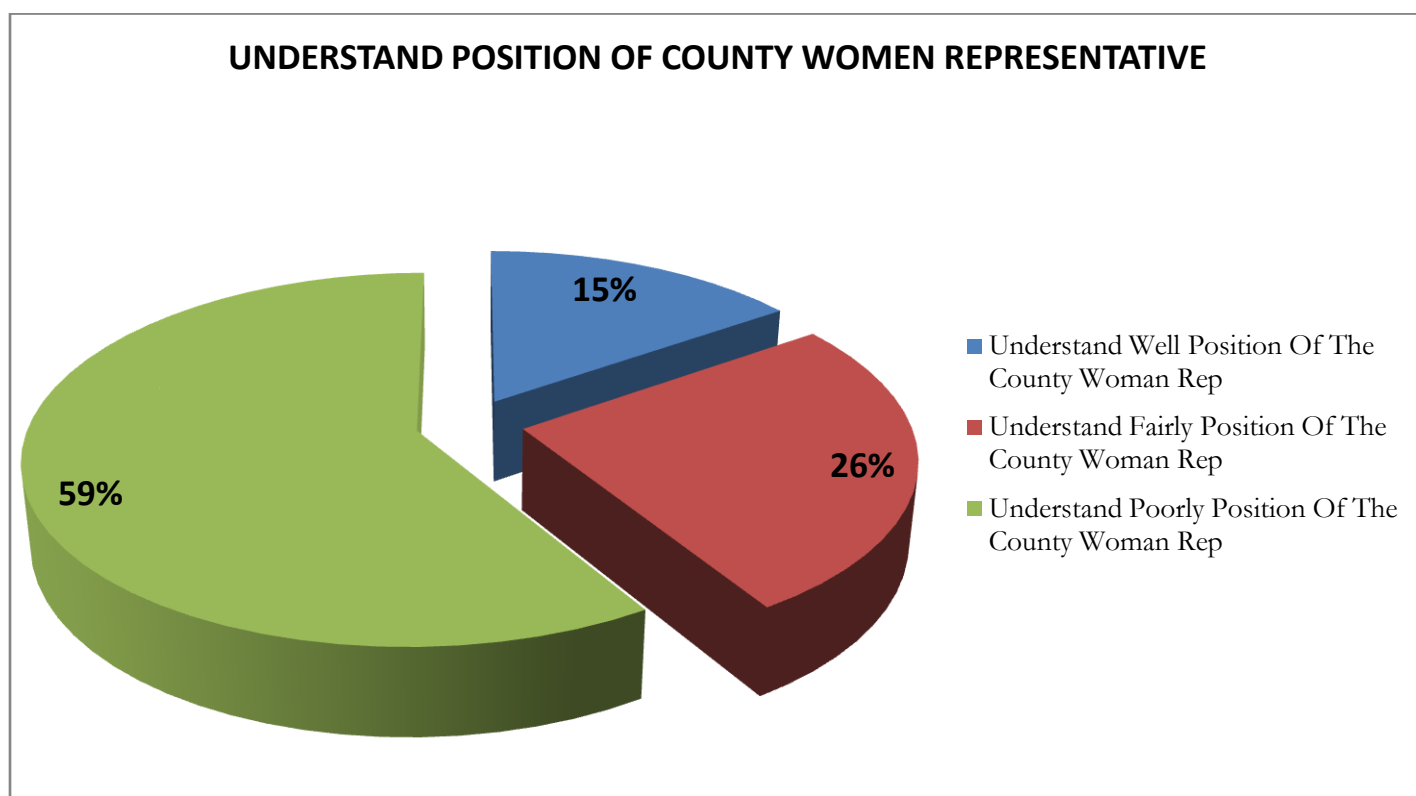
## KENYA HUMAN RIGHTS COMMISSION

*Chart 9: Levels of understanding on the position of Member of Parliament by county*

### 4.4 Levels of Understanding on the position of County Woman Representative

Out of the total number of 1357 Respondents interviewed, 59% exhibited a poor understanding of the position of County Woman Representative. 26 % showed a fair understanding of the position, with only 15% saying that they understood this position well. Of the other counties, Nyeri showed the highest level of understanding on the position of county women representative (chart 10)

*Fig 10: Percentage of levels of understanding on the position of County Women Representative*

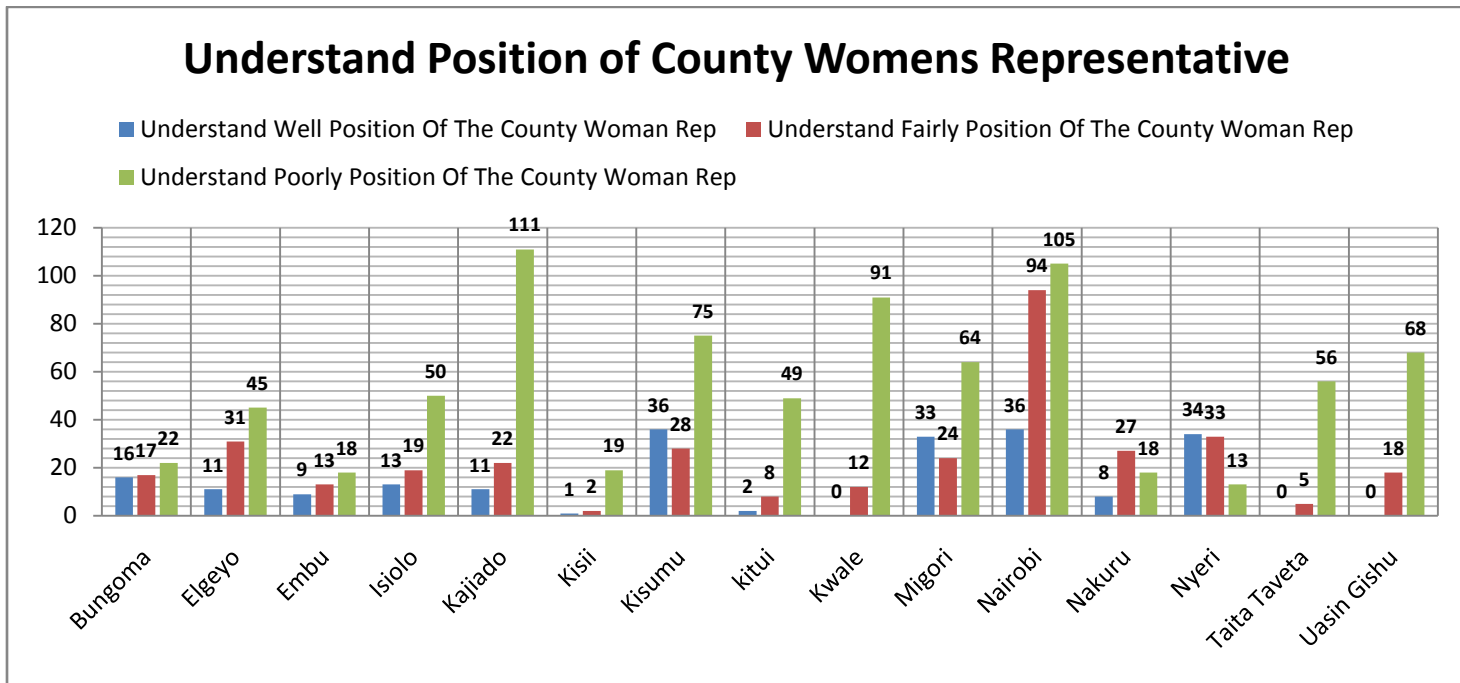


*Table 10: Levels of understanding on the position of county women representative*

THE POSITION OF THE COUNTY WOMAN REPRESENTATION				
County	Understand Well Position Of The County Woman Representative	Understand Fairly Position Of The County Woman Representative	Understand Poorly Position Of The County Woman Representative	Total
Bungoma	16	17	22	55
Elgeyo	11	31	45	87
Embu	9	13	8	30

## INTERIM ELECTIONS REPORT

Isiolo	13	19	50	82
Kajiado	11	22	111	144
Kisii	1	2	19	22
Kisumu	36	28	75	139
Kitui	2	8	49	59
Kwale	0	12	91	103
Migori	33	24	64	121
Nairobi	36	94	105	235
Nakuru	8	27	18	53
Nyeri	34	33	13	80
TaitaTaveta	0	5	56	61
UasinGishu	0	18	68	86
	<b>210</b>	<b>353</b>	<b>794</b>	<b>1357</b>



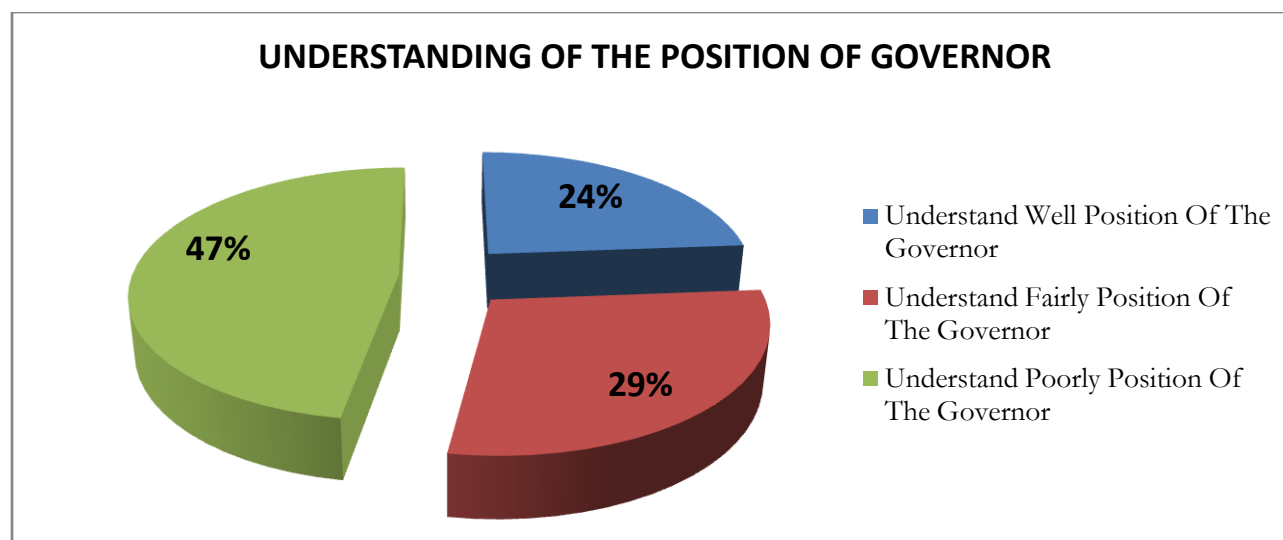
*Chart 10: Understanding of position of county women representative by county*

#### 4.5 Levels of Understanding on the Position of Governor

Out of a total number of 1391 respondents, 47% of the respondents illustrated a poor understanding of the position of the Governor while 29% exhibited a fair understanding of the said position. Only 24 % of the respondents illustrated a good understanding of the position of the Governor

## KENYA HUMAN RIGHTS COMMISSION

*Figure 11: Understanding of the position of Governor*

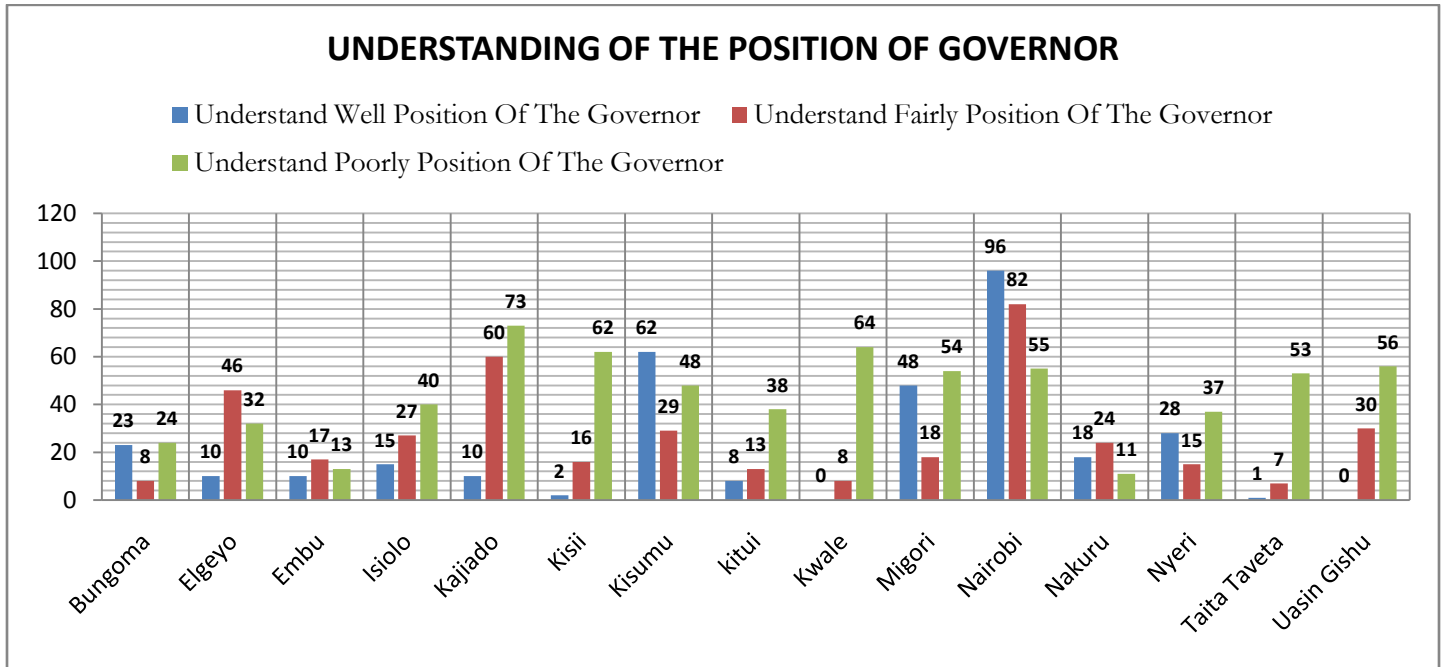


*Table 11: Levels of Understanding of the position of Governor*

THE POSITION OF THE GOVERNOR				
County	Understand Well Position Of The Governor	Understand Fairly Position Of The Governor	Understand Poorly Position Of The Governor	Total
Bungoma	23	8	24	55
Elgeyo	10	46	32	88
Embu	10	17	13	40
Isiolo	15	27	40	82
Kajiado	10	60	73	143
Kisii	2	16	62	80
Kisumu	62	29	48	139
kitui	8	13	38	59
Kwale	0	8	64	72
Migori	48	18	54	120
Nairobi	96	82	55	233
Nakuru	18	24	11	53
Nyeri	28	15	37	80
TaitaTaveta	1	7	53	61
UasinGishu	0	30	56	86
	<b>331</b>	<b>400</b>	<b>660</b>	<b>1391</b>

## INTERIM ELECTIONS REPORT

Respondents in Nairobi and Kisumu illustrated a better than average understanding of the Governor. This could be attributed to the political interest that these positions have attracted in these two metropolitan and politically sentient areas.

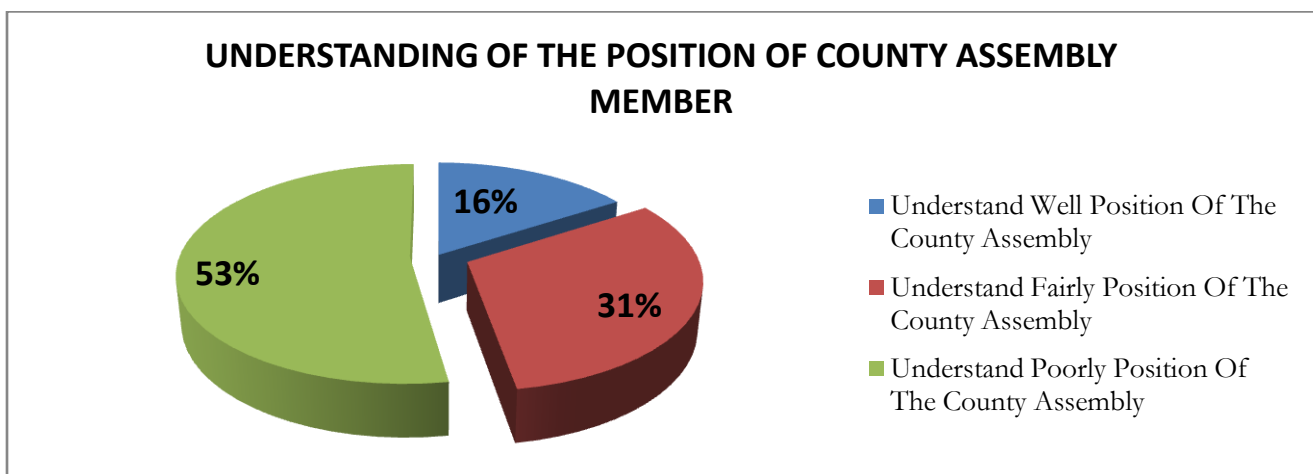


*Chart 11: Understanding of the position of Governor by County*

### 4.6 Levels of Understanding of the position of County Assembly Member

Our monitors got responses from a total of 1394 interviewees. Out of this number, 53% of demonstrated a poor understanding of the position of the county assembly member with 31% exhibiting a fair understanding. Only 10% the respondents demonstrated a sound understanding of the aforementioned position.

*Figure 12: Levels of Understanding on the position of the Member of the County Assembly*



## KENYA HUMAN RIGHTS COMMISSION

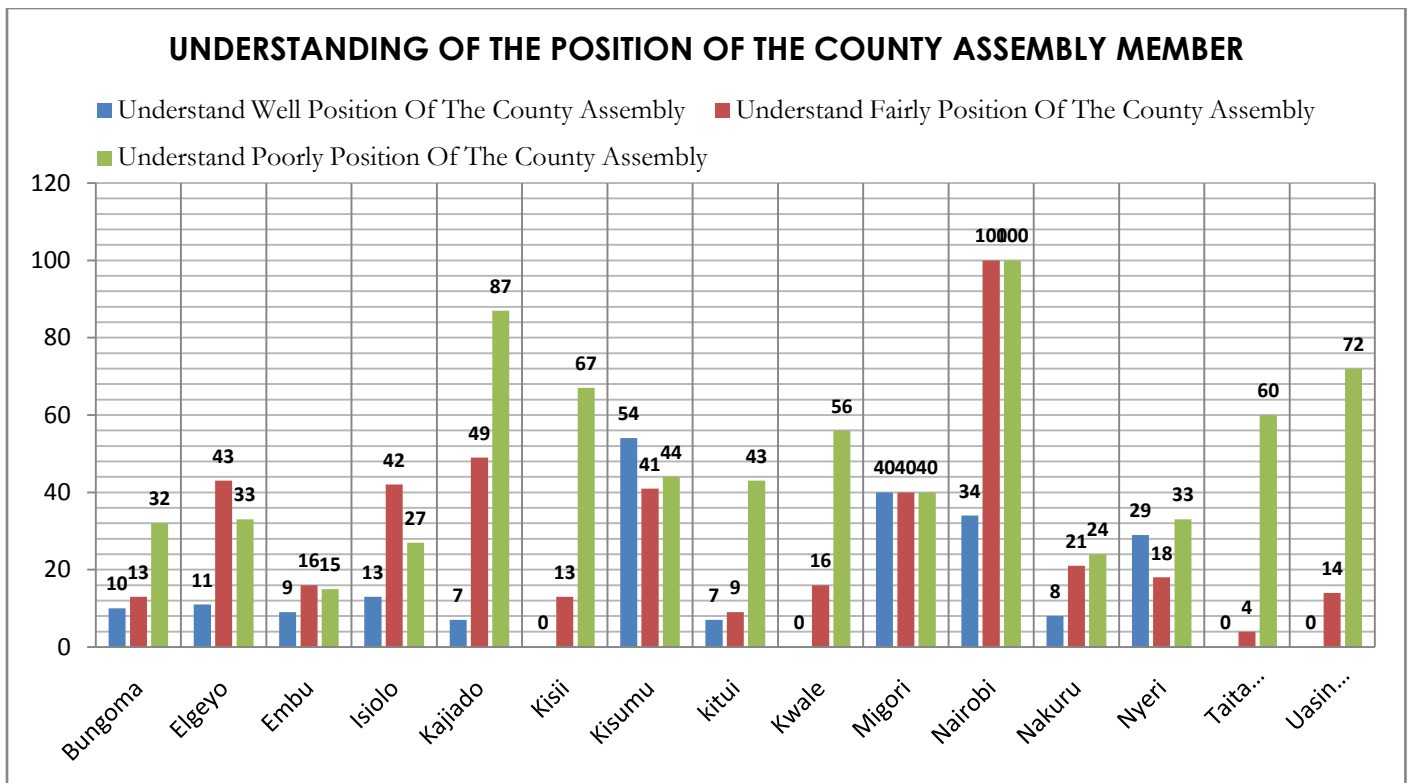
*Table 12: Levels of understanding on the position of the Member of the County Assembly*

THE POSITION OF THE COUNTY ASSEMBLY MEMBER				
County	Understand Well Position Of The County Assembly	Understand Fairly Position Of The County Assembly	Understand Poorly Position Of The County Assembly	Total
Bungoma	10	13	32	55
Elgeyo	11	43	33	87
Embu	9	16	15	40
Isiolo	13	42	27	82
Kajiado	7	49	87	143
Kisii	0	13	67	80
Kisumu	54	41	44	139
Kitui	7	9	43	59
Kwale	0	16	56	72
Migori	40	40	40	120
Nairobi	34	100	100	234
Nakuru	8	21	24	53
Nyeri	29	18	33	80
TaitaTaveta	0	4	60	64
UasinGishu	0	14	72	86
	<b>222</b>	<b>439</b>	<b>733</b>	<b>1394</b>

*Chart 12: Levels of Understanding on the position of the Member of the County Assembly by County*

Respondents from Kisumu and Migori illustrated a higher than average understanding of the functions of the Member of the County Assembly. This may be attributed largely to fact that respondents in these counties stated that they had been exposed to some levels civic education on the electoral processes and the positions.

# INTERIM ELECTIONS REPORT



## 5. LEVELS OF UNDERSTANDING OF THE ROLES OF THE VARIOUS ELECTIVE POSITIONS

The dismal understanding of the elective positions as illustrated in the aforementioned tables and charts, mirrors to a larger degree, the levels of understanding of the functions of the various elective offices. A fairly liberal criterion was developed to gauge the levels of the respondents' understanding of the roles of the various elective positions. Hence, if a respondent was able to identify more than three roles for a given position, s/he was deemed to understand that position well. Those who could identify only one or two functions for a given position elicited a fair grade while those who could not identify any function at all or who provided wrong functions got a grading of poor understanding. The following were the key findings from the field for the various elective positions.

### 5.1 Levels of Understanding of the role/ functions of the President

Out of those interviewed, 33% illustrated a good understanding of the position of the President with 41% exhibiting a fair understanding of the roles associated with this position. 26% showed a poor understanding of the functions of the president.

*Figure 13: Levels of Understanding of the roles/functions of the President*

# KENYA HUMAN RIGHTS COMMISSION

## Understanding of the Role of the President

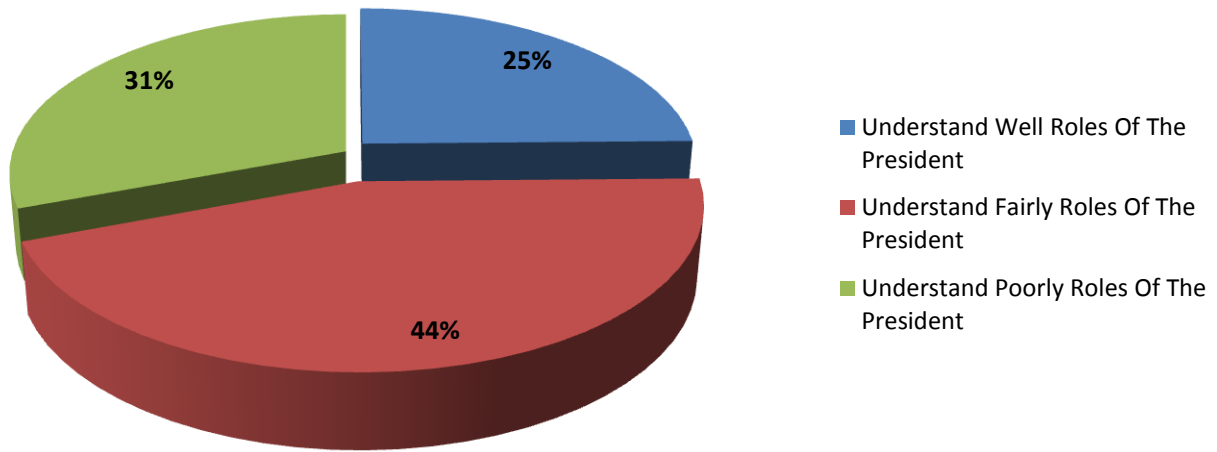
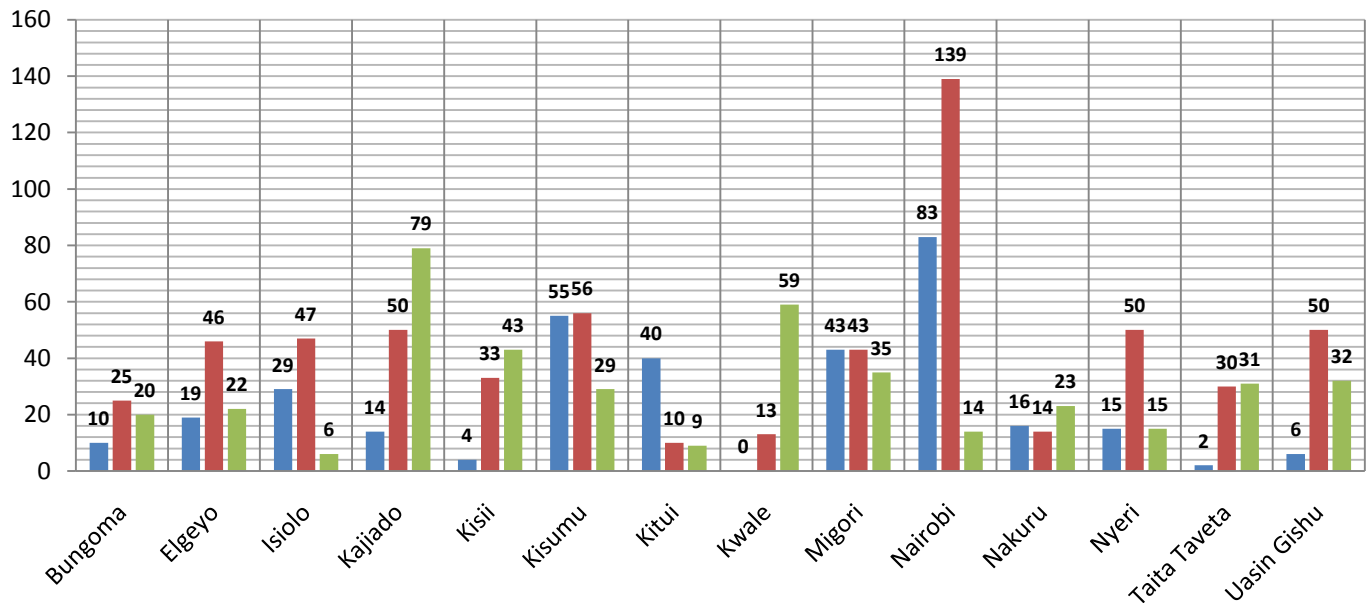


Chart13: Levels of Understanding of the roles/functions of the President

### UNDERSTAND THE ROLES OF THE PRESIDENT

■ Understand Well Roles Of The President  
 ■ Understand Fairly Roles Of The President  
■ Understand Poorly Roles Of The President



The respondents in Kitui, Migori and Kisumu illustrated a high degree of understanding of the roles of the President. The respondents in these counties identified the president’s role as being the Head of state, Chair cabinet meetings and the Commander in chief of the Armed forces.

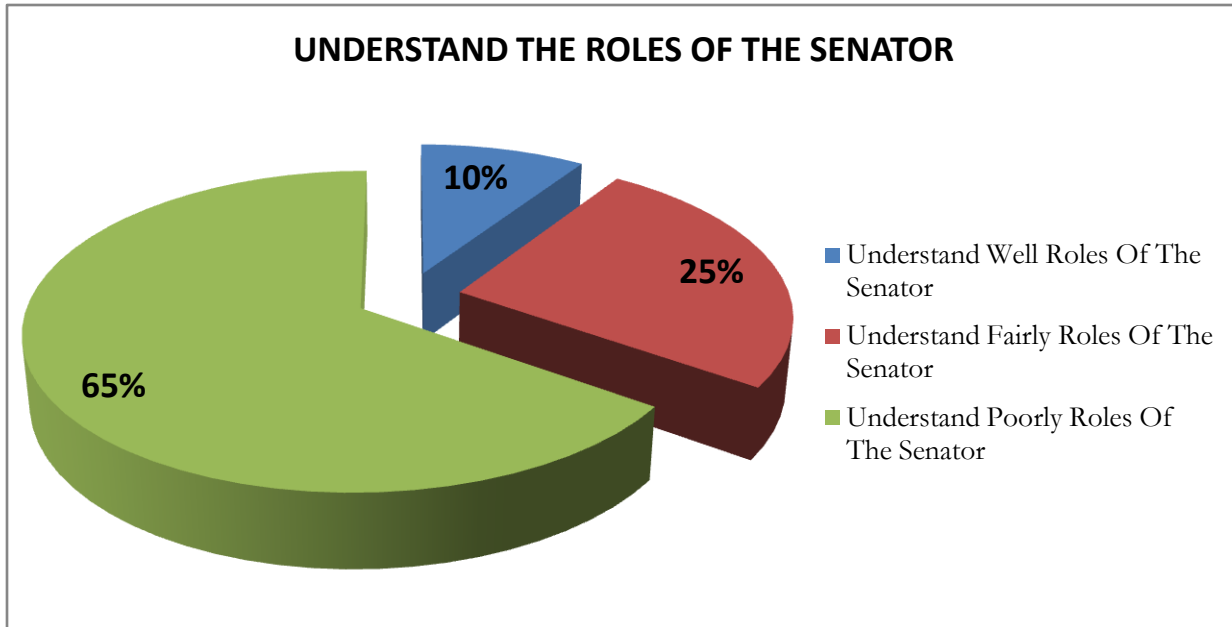
## 5.2 Levels of Understanding of the roles of the Senator



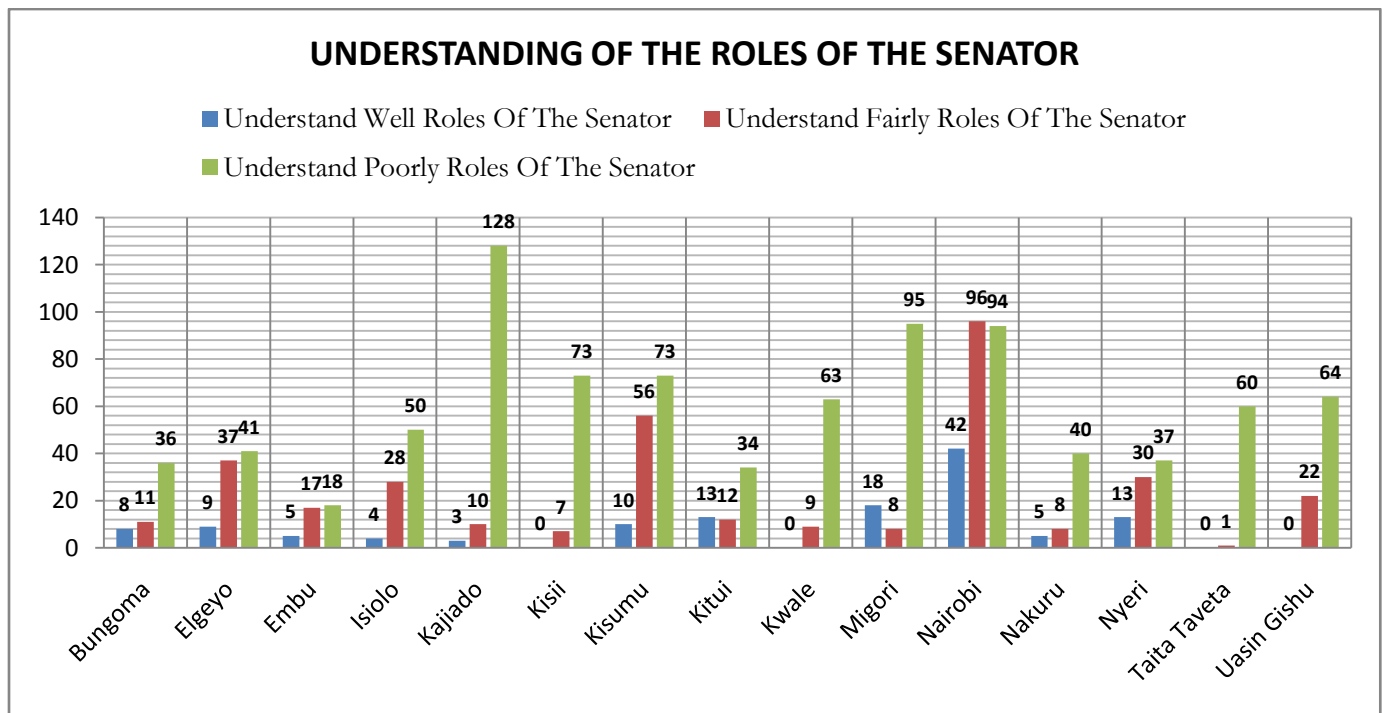
## INTERIM ELECTIONS REPORT

65% of the respondents illustrated a poor understanding of the roles of the senator while 25% of the respondents showed a fair appreciation for the said roles. Only 10% of the respondents could demonstrate a good understanding of the roles of the senator.

**Fig 14: Levels of Understanding of the roles of the Senator**



*Chart 14: Levels of Understanding of the functions of the Senator by county*



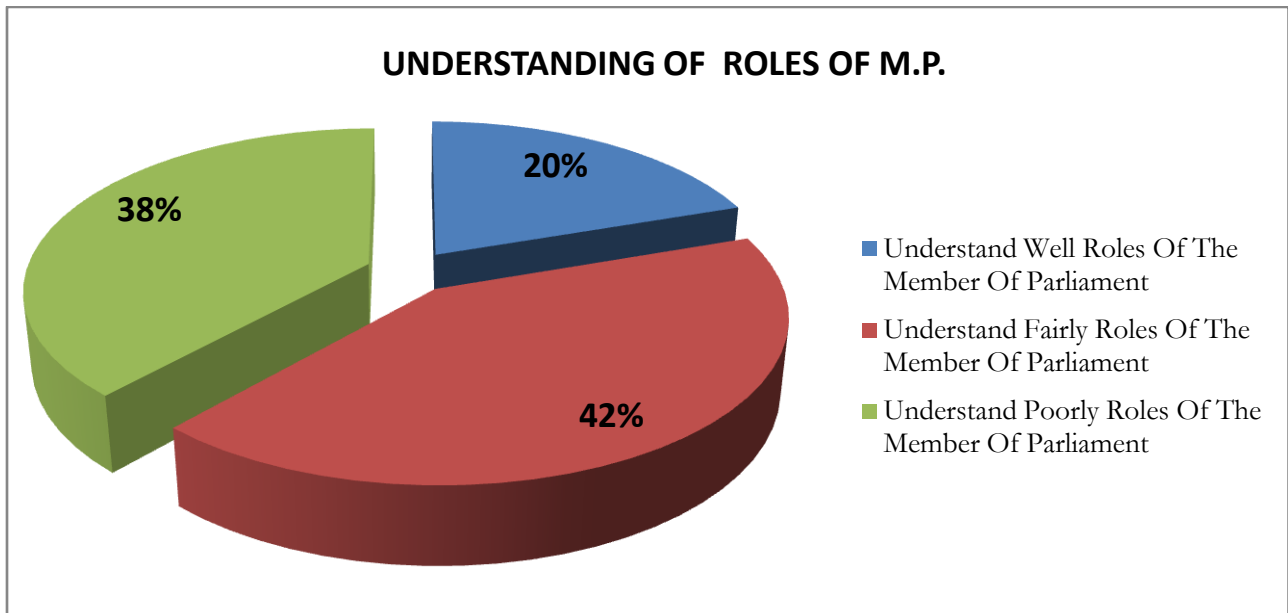
### 5.3 Understanding of the roles of the Member of Parliament



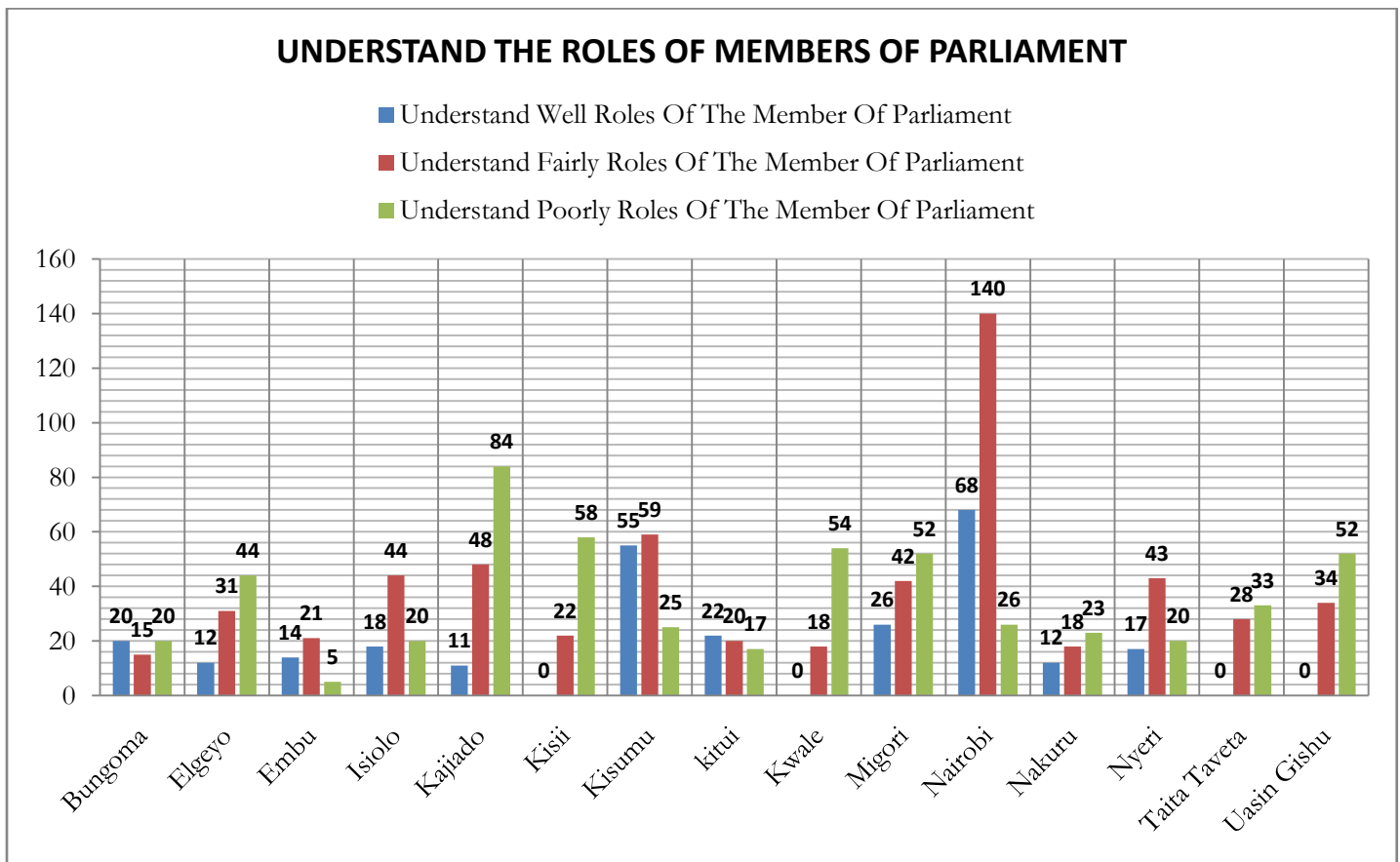
## KENYA HUMAN RIGHTS COMMISSION

42 % of the respondents illustrated a fair understanding of the roles of the Member of Parliament. Only 20% of the respondents exhibited a good understanding of the roles of the Member of Parliament while 38 percent showed a poor understanding of the functions.

*Figure 15: Levels of Understanding of the roles of position of the Member of Parliament*



*Chart 15: Levels of Understanding of the Functions of the Member of Parliament*

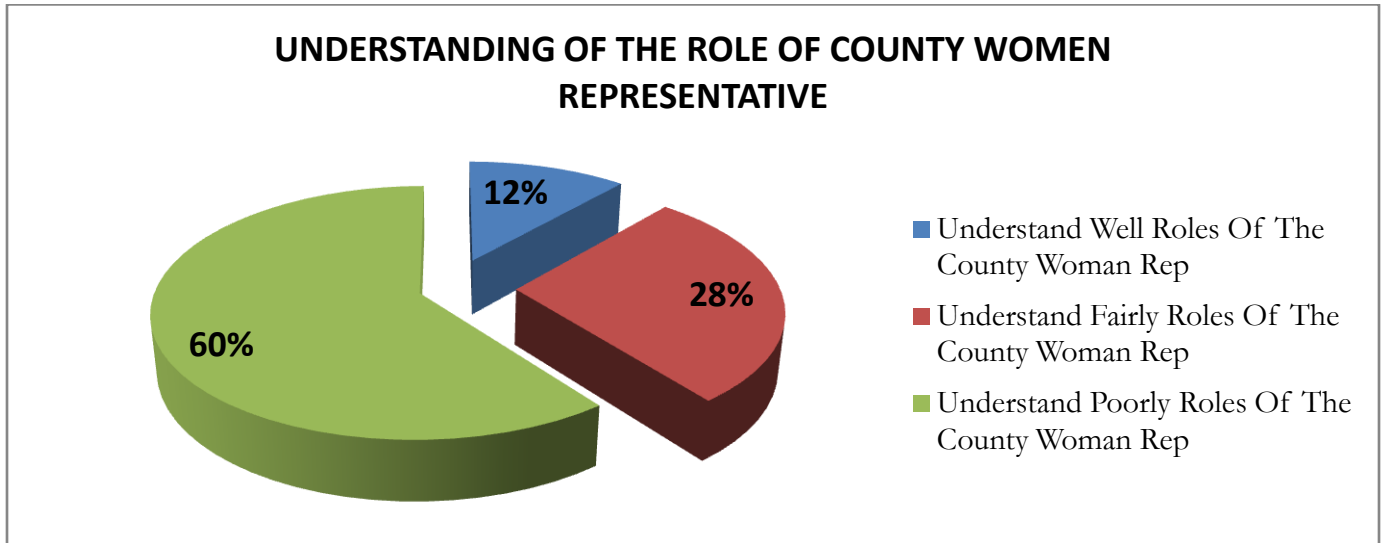


# INTERIM ELECTIONS REPORT

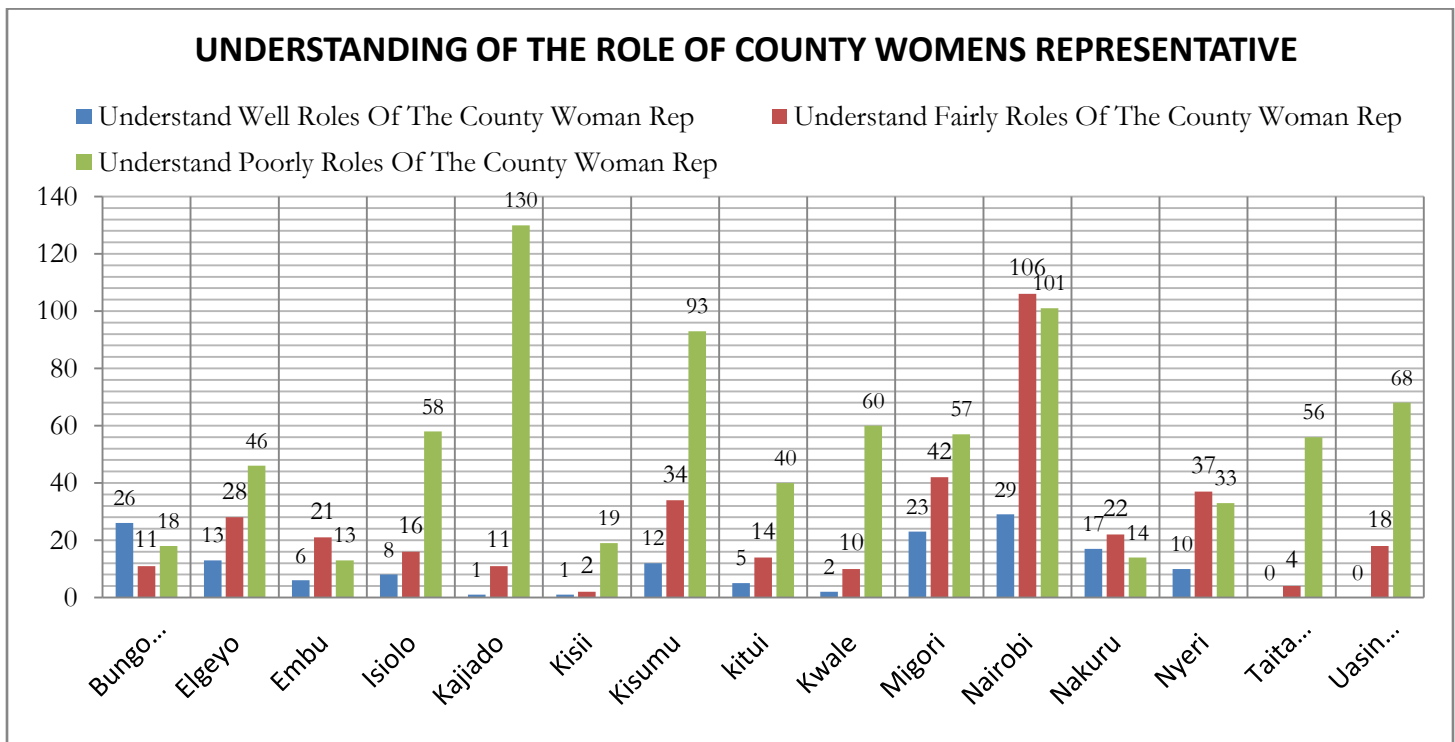
## 5.4 Levels of Understanding of the Role of County Woman Representative

60% of the respondents exhibited a poor understanding of the role of the County Women representative. Only 12% of the respondents illustrated a good understanding of the role of the functions of the county women representative. The appreciation of this position and its functions is amongst the lowest with regards to the elective position.

*Figure 16: Levels of understanding of role of the position of the County Woman Representative*



*Chart 16: Levels of understanding of the role of the county woman representative*

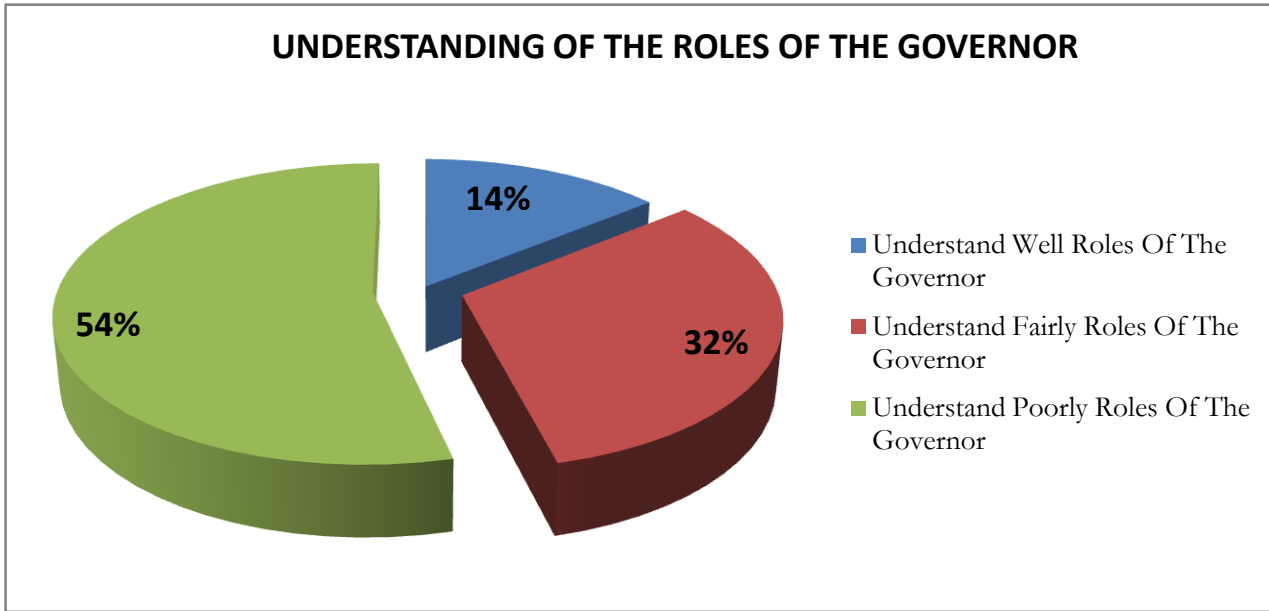


# KENYA HUMAN RIGHTS COMMISSION

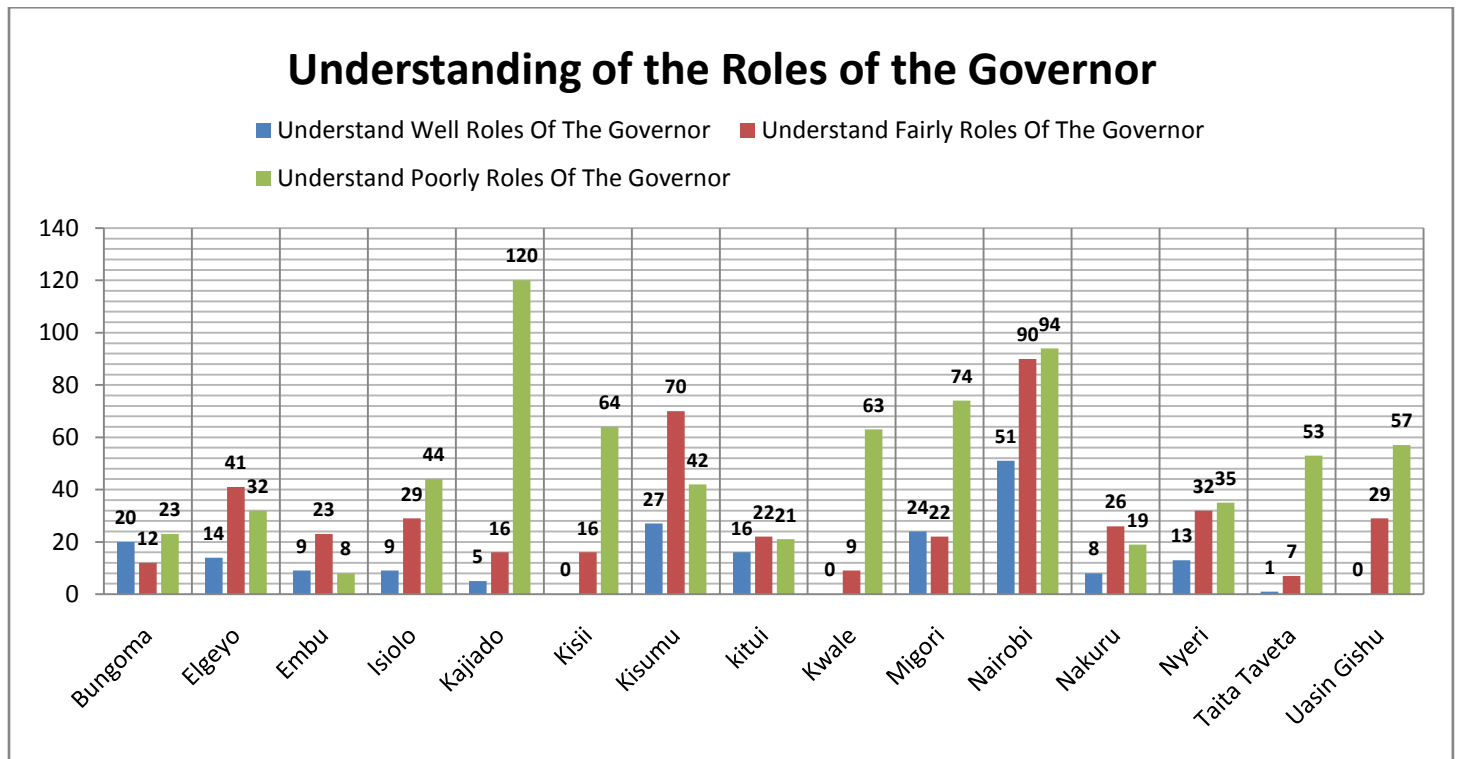
## 5.5 Levels of Understanding of the Role of the Governor

54% of the respondents exhibited a poor understanding of the roles and functions of the Governor. Only 14% of the respondents exhibited a good understanding of the functions of the Governor.

*Fig 17: Levels of Understanding of the Role of Governor*



*Chart 17: Levels of Understanding of the functions of the Governor*

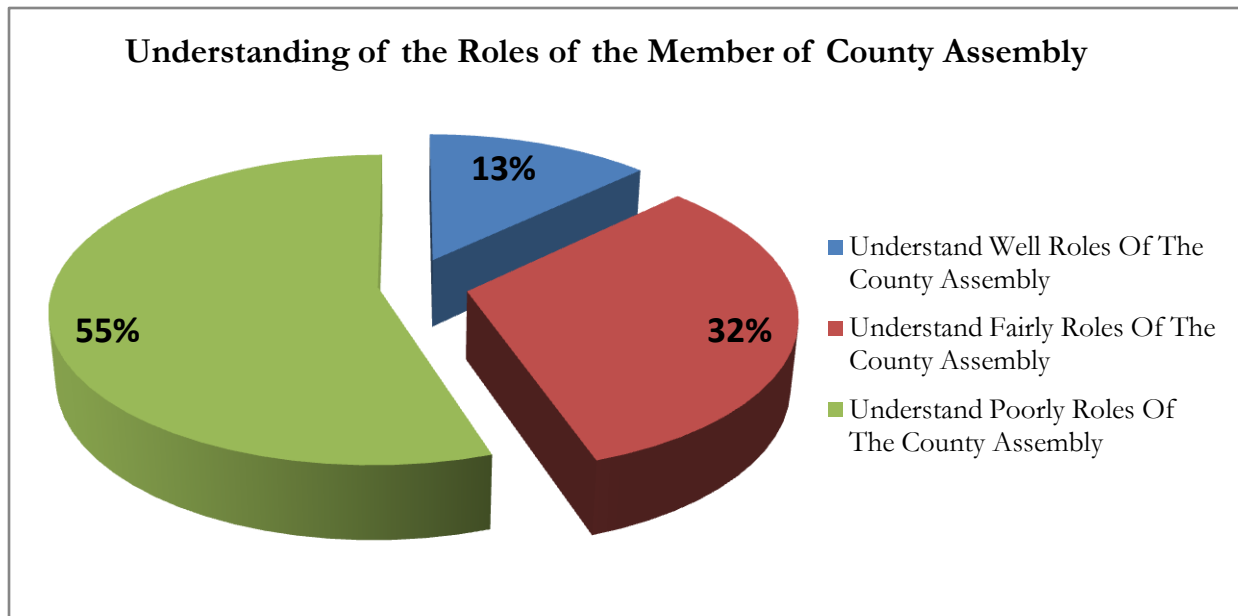


# INTERIM ELECTIONS REPORT

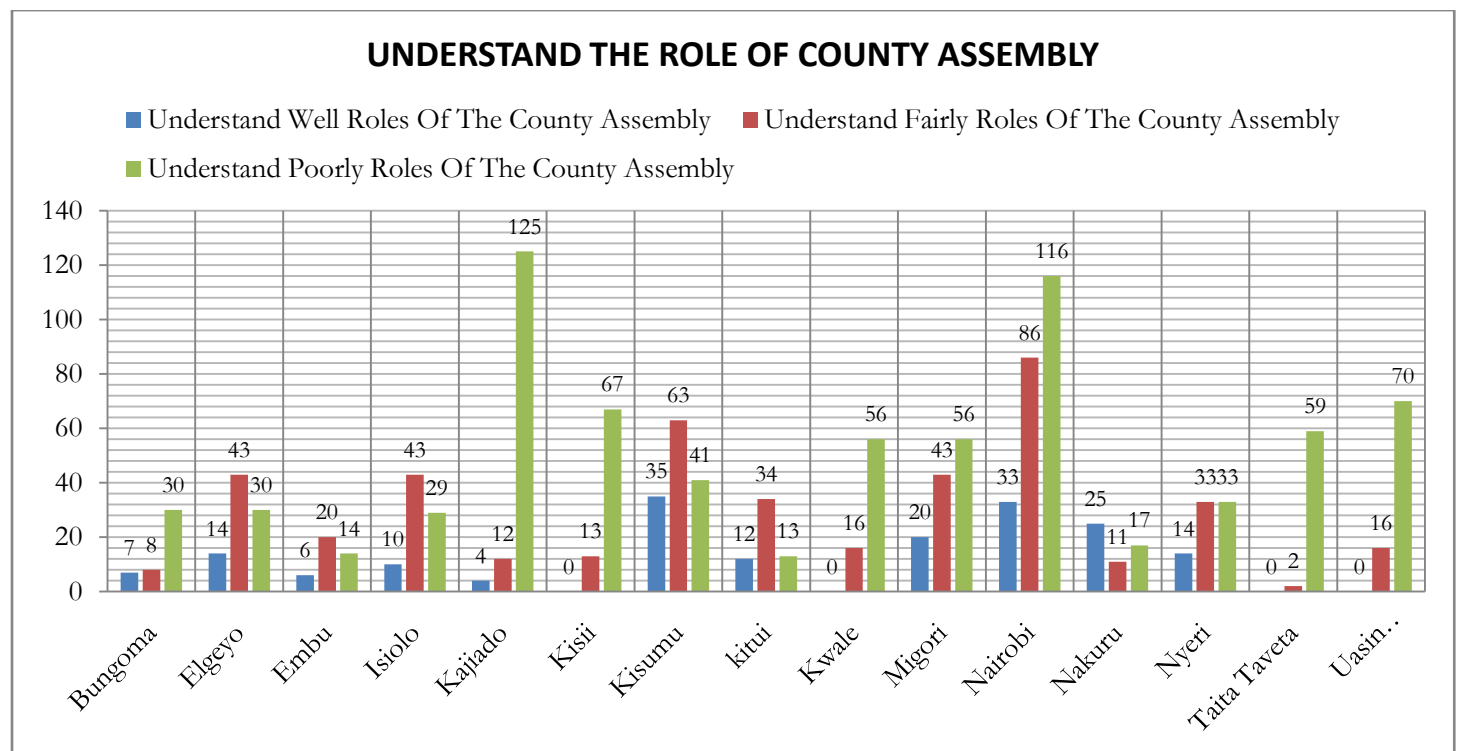
## 5.6 Levels of Understanding of role of the Member of the County Assembly

55% of the respondents illustrated a poor understanding of the roles of the Members of the County assembly. Only 13% of the respondents illustrated a good understanding of the functions of the said state officer.

**Figure 18: Understanding of the role of the Member of County Assembly**



**Chart 18: Levels of understanding of the functions of the Member of the County Assembly**



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The charts, tables and figures above are a damning indictment of the voters' preparedness to engage meaningfully in the process of suffrage. Indeed as with previous periods in history the elective choices will be based on factors beyond the selection of competent men and women to serve in the various elective positions under the constitution in the upcoming general elections. Our politics will largely remain ethnic-driven foisted on the so-called ethnic champion who will rope his or ethnic community into an alliance of political convenience for the sole purpose of capturing power but with no clear agenda on how to improve the socio-economic and political well-being of a vast majority of Kenyans.

### II. THE VOTER REGISTRATION PROCESS

Voter registration is one of the very important processes in actualizing free and fair elections, unlike in the previous elections where manual voter registration was used; IEBC adopted a new system called Biometric Voter Registration (BVR). Although IEBC was faced with challenges in procuring BVR, the limited timeline for registration and poor preparation, it managed to register 14million Voters out of the targeted 18 million voters. The registration exercise was faced with a number of challenges that forced IEBC to revise its 18 Million voters to 12 Million voters. These challenges largely included:

*Fig 19: IEBC Registration Clerks registering voters at the Coast*



#### 1. ISSUANCE AND COLLECTION OF ID CARDS

According to our field monitors reports collected in the last six months on electoral preparedness, eligible youth in the country will miss out on voting as a result of delayed issuance of ID cards. This problem is compounded by the low collection of already processes identity cards.

The collection of ID documents by the youth and individuals from marginalized areas presents a significant challenge to their participation in the electoral process. The lack of identification

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documentation among the youth and communities in marginalized areas was noted as a significant challenge to the realization of IEBC's registration target as many were blocked out of the exercise.

In the process of monitoring the registration exercise it was noted that a majority of those turned away for lack of identification documentation were the youth who largely held waiting. Upon our visits to various chiefs' camps, it was evident that numerous identity documents had been processed by the Ministry of State for Immigration and Registration of Persons (MSIRP) and disseminated to the respective provincial and district administrative offices where they remain uncollected.

### **2. DISTRIBUTION OF BVR KITS**

Although the voter registration process was to a large extent a success, there were a number of teething problems that impacted negatively to the achievement of the initial registration target set by IEBC. The challenges included the improper mapping of registration centers to facilitate equitable distribution of BVR kits. Many centers with high voter population were forced to share kits while some with low population of voter were spotted lying idle, as a result a big number of potential voters may have been locked out.

### **3. FEARS OF POTENTIAL ELECTIONS-RELATED VIOLENCE**

A good number of voters, while working in urban centers, preferred to register in their rural or to register in their rural or ethnic homes, based on concerns over securing during and after the polls. This concern over the potential post-poll chaos stems from their experiences in the previous general elections and the perception of inadequate changes to the electoral culture of political and ethnic violence. However, their inability to take time off work and travel to their rural areas to register may have adversely impacted their voting.

### **4. LOW TURNOUT AMONG RURAL WOMEN**

Monitors noted a low turn-out amongst women especially in areas where women make up a significant portion of the labour force in farms or traders in markets. Their week long work commitments coupled with their long working hours made it difficult for them to participate in the registration.

### **5. VOTER INTIMIDATION**

Instances of voter intimidation have been witnessed in Naivasha especially in the flower plantations where the majority of workers are from the Luo, Kisii and Luhya tribes. Workers complained about drastic change in their remuneration package since November 2012. They were poorly paid a basic allowance of Kshs. 4050 and a housing allowance of Kshs. 1800, making it total of Kshs. 5850 a month. Some firms pay a similar amount while others pay as much as Kshs. 8000. This prompted an industrial unrest in the farm, after which, most of the workers were sacked.

It is feared that other flower firms might follow suit especially before elections time since majority of those sacked were the Luos and the Kisii's. It was not possible to get any response from any politician or employer. The area chief Mr. Ndungu of Kamere location within Olkaria ward could not accept to be interviewed and stated, that the position of the government was that everything was okay.

### III. POLITICAL PARTY NOMINATIONS

The political party nominations for the 2013 general elections were required to have been completed at least 45 days before the general elections<sup>3</sup>. Prior to the nominations, political parties had initially been required to submit their nomination rules to the Independent Electoral and Boundaries Commission (IEBC) at least six months before the nomination date<sup>4</sup> and their party membership lists at least three months prior to the nomination date<sup>5</sup>. Under section 31(1) (a) of the Elections Act, qualification for nomination is based upon selection through a process specified in the constitution or rules of the political party, relating to the members of that party who wish to contest. This meant that the various political parties should have submitted their nomination rules by 18th July 2012 and their membership lists by 18<sup>th</sup> October 2012.

However, in a self-serving move aimed at accommodating political expedience, Members of Parliament amended the Elections Act and reduced the period within which parties were required to submit their nomination rules from six to three months. Further amendments to the Elections Act saw the time line within which the political parties were required to submit their membership lists shrink from three months (i.e. 90 Days) before the nomination deadline to one and a half months (i.e. 45 Days) before the date of the general elections<sup>6</sup>.

In setting the original dates, the Elections Act intended to entrench a culture of political party discipline aimed at taming the perennial foot-loose behavior of politicians roving from one party to the next purely on personal political survival considerations as opposed to political party principles or manifestos. Consequently, having created some legal leeway for themselves, politicians were back to their old-habit of party-hopping. In a move aimed at ensuring political survival at any cost, some politicians presented themselves for nomination on more than one political party ticket. They declared and made their intention to run for nomination public on the party they considered popular in their respective elective areas while keeping the second party ‘secret’ as a fallback option in case they lost-out on their first party of choice. Although this duplicitous behavior by the politicians during nominations was a blatant violation of the Political Parties Act, no action was taken by the Registrar of Political Parties against the errant politicians. In addition to the foregoing, the KHRC elections monitoring team identified the following anomalies during the political party nominations exercise:

#### 1. INADEQUATE PREPARATIONS FOR THE PARTY NOMINATIONS EXERCISE

The levels of inept preparations exhibited by political parties (particularly the parties falling under the so-called bigger political coalitions of CORD and JUBILEE) can be largely associated with the politics of survival and expediency. Having created the loophole for political party-hopping, the key players in the political arena were once again scheming on how to minimize the impact of losing their political supporters through what may be called “managing defections”. Consequently, the CORD and JUBILEE coalitions

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<sup>3</sup> Section 13 (1) Elections Act (No 24 of 2011), Government Printer (2011) p. 609

<sup>4</sup> Section 27 Elections Act (No 24 of 2011)

<sup>5</sup> Section 28 Elections Act (No 24 of 2011)

<sup>6</sup> Statute Law (Miscellaneous Amendment) Act of 2012,

[http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/THE\\_STATUTE\\_LAW\\_Miscellaneous.pdf](http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Acts/THE_STATUTE_LAW_Miscellaneous.pdf) (sourced 15th January 2013)



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delayed the nominations of party candidates until the last day before the nominations deadline. This self-orchestrated delay seriously compromised the ability of the parties to conduct last-minute large scale nominations by secret ballot. As a result, the nominations conducted by political parties were saddled by delays and inaccuracies raising serious issues of accountability and transparency<sup>7</sup>. The KHRC elections team identified the following procedural and logistical anomalies at various polling stations across the areas monitored:

### 1.1 Late arrival of the ballot materials:

On 18<sup>th</sup> January 2013, the nominations day, KHRC visited several polling stations and interviewed those who had turned up to vote. Some had turned up as early as 6:00 am hoping to vote and proceed to their respective areas of employment. However, ballot materials were not delivered on time in most stations. Hence, though the voters expected the voting exercise to start at 6:00am in the morning, the exercise started as late as noon or even later in some polling stations. Some of the counties that experienced the inordinate delays in the arrival of polling materials for either ODM, URP, UDF or TNA nominations included Nairobi (especially in Eastleigh), Nyeri, Kiambu, Kisumu, Homabay, Migori, Kisii, Uasin-Gishu, Mombasa, Bungoma, Nakuru, ElgeyoMarakwet, Bomet, and Rarieda Constituency. Returning officers attributed most of the delays to lack of prior planning from the party headquarters.



*Fig 27: Voters queuing to vote at Old Kibera Primary School polling station on 18<sup>th</sup> January 2013, at 4pm.*

<sup>7</sup> The parties' code of conduct addresses the requirement of such accountability. See the First Schedule of the Political Parties Act.

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In Nairobi, at Olympic Primary School, Kibera, GSU officers had to be brought in to bring to quell tension that had been building up over delays with elections materials between the supporters of Sarangombe County Representative aspirants Owino Kotieno, and the supporters of Sikudhani Ajwang, the outgoing councilor Kodiawo who wanted the voting to be done through the *Mulolongo* system (queue voting).

### 1.2 Inadequate ballot papers

Lack of sufficient ballot papers in some polling stations was a major cause of concern. There was a shortage of ballot papers reported in Siboti Primary School in Bungoma County at the New FORD Kenya (NFK) primaries. At Nyayo High-Rise in Nairobi, chaos erupted when Morris Akuku, an ODM County Representative candidate, led a crowd of supporters to demonstrate against the delivery of the wrong batch of ballot papers, the allegation being that ballot papers meant to have been taken to South B had instead been brought to Kibra polling stations. In Nakuru County, at Majani Mingi Primary School, the station was allegedly supplied with only 500 ballot papers against an estimated registered voter population of 1000 voters, which got the crowd furious prompting the area OCPD to intervene and restore order.

### 1.3 Defective ballot materials:

Some of the ballot boxes used most at the polling stations were completely inappropriate for their function. In a number of stations, the ballot boxes were unsealed and where they were sealed, there was little to no inspection of the seals. Ballot boxes included transparent buckets with slots cut into the lids for insertion of the ballot paper.

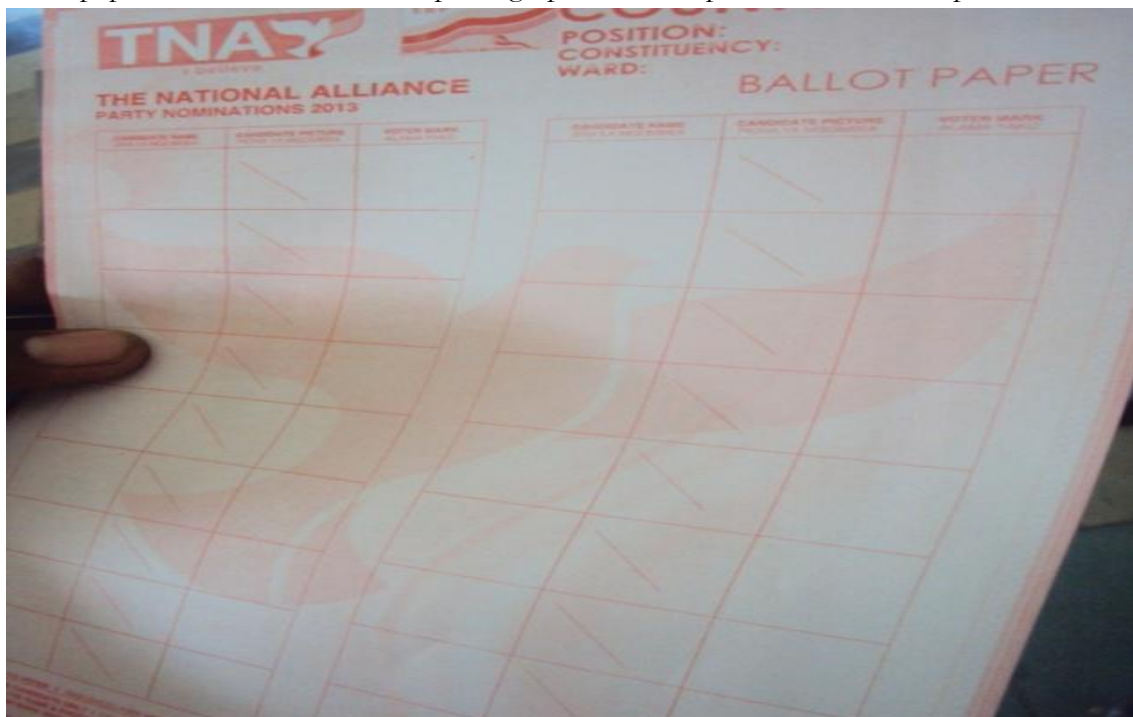


Fig 28: A plastic bucket with no seal at a UDF polling station in Embakasi West



**Fig 29: TNA sealed ballot boxes at Mukerenju Primary School in Kandara Constituency**

In some places ballot papers were defective, lacking photographs, missing names or misspelling the names and of the aspirants, which resulted into tumultuous demonstrations by voters in some areas. In Kendu Bay, for instance, voters protested and lit bonfires over the missing of the name of a parliamentary aspirant Adipo Okuome, who was contesting for the Karachuonyo seat. In Ndaragwa Constituency, the name of a parliamentary aspirant, Waweru Ndiritu, as well as the names of all the county representatives, were missing, leading to protests by voters. In some polling stations, the ballot papers were defective as the photographs of the aspirant were mixed up.



**Figure 30: A ballot paper without aspirants' names and photos during the TNA primaries**

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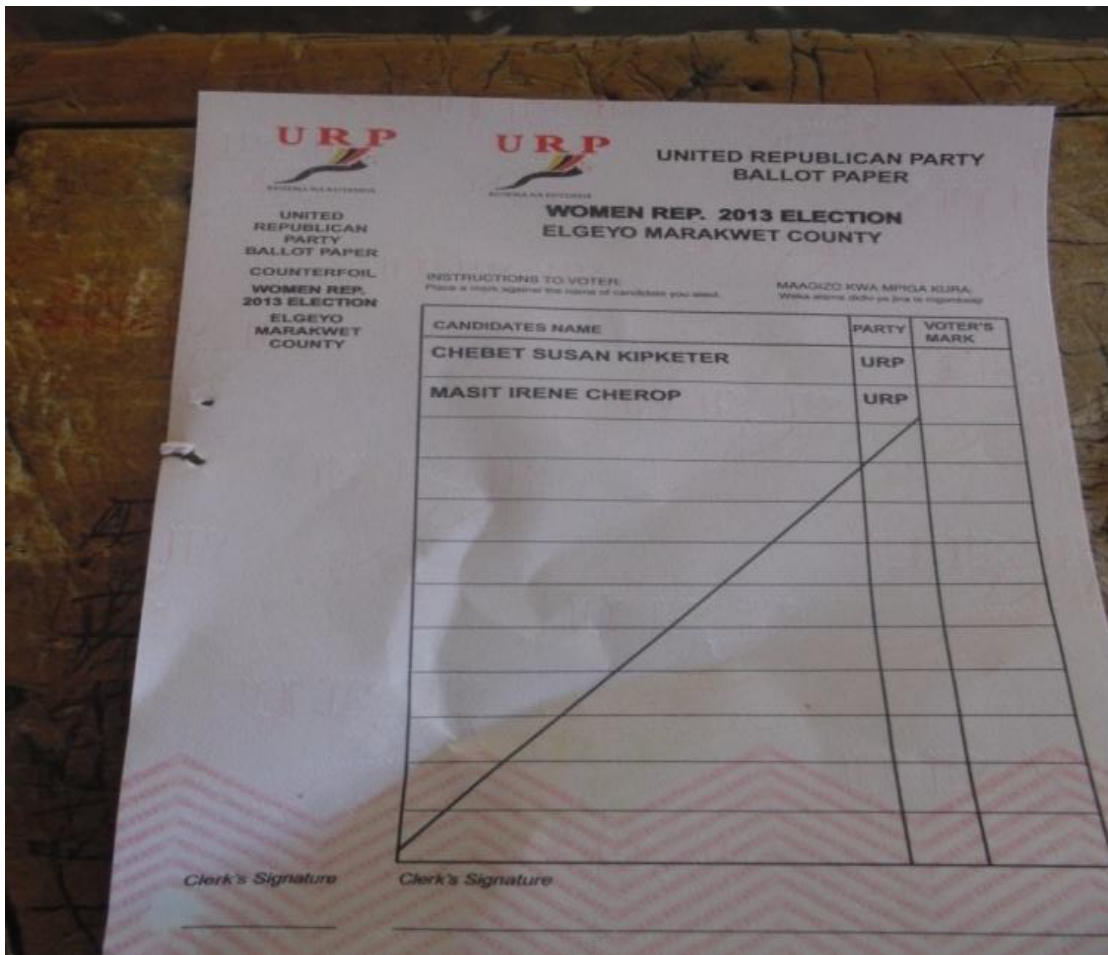


Figure 31: Ballot

paper without aspirants pictures used during URP nominations

## 1.4 Shortage of trained polling officials

It was evident from our monitoring exercise that party officials were overwhelmed with the largenumbers of agitated crowdswaiting to cast their votes. In some polling stations, our team was informed that the clerk had not received any basic training on how to conduct the polling exercise. With little or no training at all, the clerks were ill-equipped to handle the polling exercise in a manner that ensured that the nominations were free and fair and in line with law. Consequently, the nomination exercise was largely a sham that paid more attention to internal party dictates as opposed to sticking to the promotion of the rule of the law in line with the Political Parties Act and the Elections Act.

## 1.5 Voting misconduct

The process of voting during the party nominations witnessed significant acts of of electoral malpractice. For instance, there were allegations of double-voting, contrary to Section 58 (m) of the

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Elections Act. In various constituencies, double-voting was attributed to the fact that in most polling stations, voters were only required to produce their national identity cards which would be matched with the IEBC list of registered voters. Furthermore, the indelible ink which was being used in some stations washed off easily. Consequently, and contrary to Section 61 (b) of the Elections Act, some people would simply wash off the ink and went ahead to re-cast their vote in a different polling station.

In Migori County, at Makerero Ward, during the UDF nominations, there were allegations that voters who had previously voted at the Nyametauro polling station went on to vote at Kugitima polling station as the previous station had no indelible ink. Moreover, no list had been used to identify voters and the production of identity cards was not mandatory. The clerks merely used visual judgment (mainly to determine a voter's age eligibility to vote) to allow persons to vote.

In Malindi, Police arrested a middle aged man, Hamisi Kahindi, who posed as presiding officer<sup>8</sup> and conducted ODM elections at a false polling station at Barani Secondary school. Five ballot boxes were found at the scene with votes already cast for Amason Kingi (Governor Kilifi County), Stewart Madzayo (Aspiring Senator), Esther Koch and Aisha Jumwa (aspiring women representatives) and Daniel Kazungu (aspiring MP Malindi).

### 1.6 Tallying malpractices:

The conduct of tallying as well as the announcement of results was thoroughly mismanaged in some areas leaving the public in these areas speculating on the possibility that the results had been rigged. In Embakasi West constituency, for instance, Parliamentary Aspirant Jerry Obila and his supporters had to be dispersed by Police from the Nyayo Stadium on after contesting the fact that ODM had declared Brian Weke the winner even though the tallying exercise had not been completed. As a show of their displeasure with Brian Weke's alleged ODM nomination, Obila's supporters brandished offensive placards with the following discriminatory message:

*"Raila, we don't want albino in Embakasi West. We want Jerry".* [see placard in photo under Fig. 32 below]

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<sup>8</sup>This is contrary to Section 61(d) of the Elections Act.



Fig 32: Jerry Mark Obila's supporters inspecting ballot boxes scattered at the Nyayo stadium tallying centre



Fig33: Supporters demonstrating against the nomination of Brian Weke

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OburuOdinga's was declared the winner of the **Siaya Gubernatorial seat** under similar circumstances. The resultant chaos in this announcement revealed not only the voter desire to have transparent electoral processes but the aggressive intolerance to electoral malfeasance in some areas. In **Kisumu County**, a returning officer prematurely announced the provisional results declaring winners for Nyando, Kisumu West and Muhoroni Constituency where voting was still on-going. OcholaOgoda was announced as winner for the Senate seat and Ruth Odinga was declared as the ODM governor nominee sparking protests from supporters of Jack Ranguma. The General Service Unit had to be called in to contain the crowd.

## 2. EMERGING CONCERNS FROM THE NOMINATIONS PROCESS

### 2.1 Lack of presidential nominations and the politics of 'reserved seats'.

The KHRC elections team noted that none of the political parties or the political coalitions (CORD, JUBILEE, AMANI, and EAGLE) carried out competitive nominations for the seat of the President and the Deputy President. All the parties offered direct presidential nominations to the most prominent party personalities. Therefore, in spite of the veneration of democracy that most parties or coalitions have been trying to project, most parties were unable or unwilling to put the position of presidential candidate for the party through the process of electoral contest via transparent party nominations. What is more, and especially for the so-called bigger coalitions (CORD and JUBILEE) certain seats (especially the seat of the woman county representative) were excluded from the process of nomination by secret ballot. In certain areas, parliamentary and senate seats within different political parties went uncontested. The parties intended to use these seats for political horse-trading. The foregoing trend points out to the fact that Kenya is yet to establish a strong political party culture. Consequently, political parties are personality-based entities glued together with the sinew of elite-led ethnic alliance-building; a debilitating political vestige inherited from Kenya's colonial past and perfected under the post-colonial era of 'self-rule'.

### 2.2 Missing names of Voters from the IEBC List

This concern was particularly true for political parties that contested their primaries through the ballot process used the IEBC list of registered voters. During the voting process, a number of voters were turned away as their names did not appear in the IEBC list in spite of the fact that most had in their possession, the IEBC acknowledgment slip for the said station. Understandably, the fury of those who were turned away was very much visible as the polling clerks had to endure copious doses of verbal insults.

The IEBC recently closed the opportunity for voters to confirm their registration after the lapse of the period mandated for inspection of the voter register. However, the number of names removed from the list and the reasons thereof is still uncertain. The uncertainty around the reasons for absence from the voter register is a potential cause of conflict/protestations in the general elections slated for March 4<sup>th</sup> 2013. To mitigate this eventuality, the IEBC has a duty to provide

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information, in line with Article 35 of the Constitution, explaining the reasons for the exclusion of certain names from the voters register.

### 2.3 Party Hopping

Last minute defections were a common phenomenon during party primaries pointing to the extreme separation between the political aspirants' ambitions and the support for the political party. Indeed, the nominations proved that political parties in the Kenyan context exist as mere vehicles for ascension or retention of the state office. Several politicians would defect on the nomination day as the prospects for their success within the party appeared unlikely. These included:

ASPIRANT	REGISTERED PARTY	DEFECTED TO	POSITION
AbdallahHemed Mwaura	Wiper Democratic Party	TNA	Governor
Omar Sarai Hassan	ODM	Wiper Democratic Party	Senator
John Mututho	TNA	NARC	Member of Parliament
Hillary Alila	ODM	PDP	Member of Parliament
James Nyoro	GNU	NARC	Governor
Philip Khisia	ODM	FPK	Governor
SoitaShitanda	UDF	New- Ford Kenya	Governor
Noah Wekesa	Ford Kenya	ODM	Governor
Abdulqadir Mohamed Omar	ODM	Ford- Kenya	Member of Parliament
JimnahMbaru	TNA	APK	Governor
William Oduol	ODM	National Agenda Party	Governor
DR. Kones Julius	URP	KNC	Governor
George Nyanja	TNA	UDF	Senator
NgumabuMulwa	Wiper	Narc	Governor
Peter Ondieki	ODM	PDM	Governor
Charles Mochama	ODM	TIP	Governor
Job Nyasimi	TNA	RBK	Governor
OlagoAluoch	ODM	Ford- Kenya	Member of Parliament
Jared Okello	ODM	Ford- Kenya	Member of Parliament
PollynsOchieng	ODM	Wiper	Member of Parliament
Manyala Keya	UDF	New-Ford Kenya	Member of Parliament



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AmukowaAnang we	ODM	FPK	Member of Parliament
Titus Ndundu	Wiper	PDU	Governor
George Munji	UDF	KANU	Member of Parliament
Eng. Phillip Opiyo	ODM	Ford- Kenya	Member of Parliament
William Omondi	ODM	TNA	Member of Parliament

### 3. SECURITY DURING THE NOMINATIONS

Security is the most important pillar in conducting elections and the government provided security to all polling stations as reported by our monitors. Commendably, all polling stations had at least two uniformed police officers stationed and their response was good in places where tension had been building due to delay in voting.



*Fig 34: These GSU officers separating supporters of two rival aspirants in Embakasi West constituency.*

### IV. CONCERNS AHEAD OF THE 2013 ELECTIONS

#### 1. SECURITY

Security in the run up to elections remains bleak with the emergence of illegal gangs in the country that are already threatening to take some parts of the country; the China squad and American marine in Kisumu, Siafu and 12 disciples in Kibra, Mungiki in central province and parts of Nairobi are just but some of the notable gangs that seem to have been reactivated.

Mathareslums in Nairobi was one of the areas most hit by the post-election violence in 2007 and early 2008. Many lives were lost, property destroyed and people evicted from their houses that resulted to Internally Displaced Persons (IDP) camps in the Mathare Chiefs camp among other places and integrated IDPs. Through various peace effort by different stakeholders, communities have come back to leave together and continue with their normal life .

Unfortunately, the efforts made to rebuild Mathare following the 2007-08 PEV seem to be in jeopardy following the recent rise of insecurity in the area. The violence has been attributed to the coming elections with politicians from different camps trying to out-do each other in recruiting supporters. A businessman in Mathare 4A summed up the dire insecurity in the area as follows:

*“Many people have been mugged and stabbed in this area as they head to work or on their way home from work. Many have died as a result in particularly at the bridge joining Mathare 4A and 4B”.*

It's reported that the last spate of violence erupted in Mathare slums following the killing of a man by an alleged vigilante group revenging a previous attack. The gang within Mathare 3C stabbed to death Michael Otieno accusing him of being a police informer. The 32-year-old father of six and a resident of neighboring Mathare 4B village was walking home on Friday night when he was attacked at around 9.30 pm.

The killing triggered a wave of violence between the Luo and Kikuyu communities who are the dominant groups living in the area. Residents of Mathare 4B mobilized themselves, attacking their neighbours, accusing them of harbouring criminals disguised as vigilante members. There had been tension occasioned by the killing of two men accused of being thieves and the torching of their houses in Mathare 3. According to Starehe AP Commandant Police Samuel Anampiu, about 100 houses were set ablaze in the latest flare-ups. The torching of the houses in the area is said to have rendered about 300 families homeless with residents accusing politicians of sponsoring gangs in order to sow seeds of discord among the communities living in this area.

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*Figure 20 (a): Migori-Sirare Highway burning due what locals perceive as political murder of one Masese*



*Figure 20 (b): Migori-Sirare Highway burning due what locals perceive as political murder of one Masese*

## 2. MISUSE OF PUBLIC RESOURCES

Even before the official date for campaigning had been declared, politicians were already on the campaign trail and they were flagrantly using public resources to campaign in disregard to the law. At various political venues and events, our monitors captured and document the following cases of abuse of public resources.

VEHICLE	COLOUR	REGISTRATION NUMBER
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1	Toyota Corolla	White	GK A323H
2	Mercedes Benz	Black	GK A616H
3	Toyota Corolla	Light Blue	GK A925U
4	Pajero	White	GK A738N
5	Mitsubishi Gallant	Silver	GK B 602B
6	Toyota Corolla	White	GK A323H



*Fig 21: GK Passat parked at TNA-URP NDC at kasarani.*

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*Fig 22: GK Prado at a CORD Political Rally. Occupant was Dr. Noah Wekesa*



*Fig 23: A Fleet of GK Vehicles heading to a CORD Rally at Uhuru Park.*

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*Fig 24: A Parastatal Van that carried some MPs to the Jubilee NDC*



*Fig 25: GK Toyota at uhuru Park CORD rally.*

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*Fig 26: GK Mercedes Benz at the Uhuru Park Cord rally.*

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### 3. VIOLENCE/INTIMIDATION AGAINST WOMEN CANDIDATES AND VOTERS

Since the introduction of multiparty democracy in Kenya in 1992, female candidates have been meted with violence, abuses and even sexist language directed to them. Violence against women has been recorded in Nyanza especially southern parts of Migori and Homabay and it is worth noting that most parties do not appreciate the two-third gender rule despite being entrenched in the new constitution, where a number of female aspirants have been attacked by hired youth. On 26<sup>th</sup> December 2012 Mrs. Gladys Wanga who is an aspirant for the woman representative seat for Homa-Bay County, organized a rally at Kabuoch in Ndhiwa constituency where a group of youth invaded and disrupted her campaign rally.

Reports from our field monitor in Migori County stated that, in Rongo constituency at Kuja Primary School, Mr. Dalmas Otieno, a senior politician was holding a delegates meeting with participants from all the wards in the constituency. Where an incident occurred that was a direct act of discrimination against women. The victim, Anne Anyanga, (aspiring governor, Migori County) arrived using a helicopter and as soon as she touched down, she was assaulted, manhandled, and had her dress torn ideally with the view to intimidate her, just because she was a woman. She had to bear tons of obscene words; that centered on her sexuality/gender. However, her body guards were swift enough to remove her from the scene. They got her into a speeding vehicle which took her to place safety from where she boarded the chopper. The perpetrators were youthful males.

From our field monitors in Nairobi, Embakasi East Constituency at Komarock School polling centre, a woman aspirant Roselyn Achieng, who was vying for county representative seat under the ODM ticket in the constituency made allegations that, Hezron Omondi, the ODM chairman in the constituency and a parliamentary aspirant had ballot papers that he was issuing to his supporters and that of his preferred person (a male candidate) for the seat of county representative in a bid to lock out Ms. Achieng from the race. Ms. Achieng further alleged that Mr. Omondi had unduly influenced the appointment of the presiding officers and the security men at the polling station. Despite her spirited protestations, Ms. Achieng was forcefully thrown out of the polling station by police officers who did not care to listen to her case. The aspirant, together with her friends, went to record a statement at the Police Station. However, while she was away the results were announced and her rival was declared the winner.

We got information from our field monitor in Kitui County, Mutomo district, that a woman (Pauline Ndela) was stabbed at least 7 times and her arm broken by her husband (Mutuku Nthaka) because the husband wanted her to vote for Micheal Kivoto for nomination for the Member of Parliament post but she went ahead and voted for a woman aspirant Rachael Kaki. The husband was arrested. Also in Kitui County, Mlango location, a husband threatened to disown his wife (Nzemi Mwendwa) for not voting for his brother in law, Samson Mutinda, who was contesting for the County Assembly seat under Wiper Party.

From our field monitor in Kajiado County, there were people going round inciting people not to vote for Peris Tobiko who was aspiring for the Member of Parliament seat in Kajiado East because she is married to a man who hails from Narok County.



## **V. LEADERSHIP AND INTEGRITY**

### **1. THE VETTING QUESTION: WHO SHOULD VET PUBLIC/STATE OFFICERS BEFORE THEY CAN VIE FOR POSITIONS OF LEADERSHIP?**

The upcoming election in 2013 is expected to produce individuals and personalities who will be entrusted with the determination of the social economic and political direction of the country as well as the management of its public resources. This requires that the persons who are selected or elected into office must ensure that they discharge their responsibilities to the highest ascertainable levels of integrity and competence.

As highlighted herein, the previous electoral systems failed to provide sufficient safeguards to ensure integrity and competence at the most sensitive and vital state offices. Indeed, the different regimes since independence have been active in the perpetuation of the same malady that has grafted ethnicity, corruption, incompetence and impunity into the marrow of the country's political and governance frameworks. It was hoped that the COK 2010 would set the benchmarks and standards that would permanently cure the body politic of these ailments. Indeed, the framers of the new constitution sought to introduce significant safeguards against the maladministration of previous regimes by providing for the requirements of leadership and integrity in the conduct of state office through in Chapter Six of the Constitution.

However, the implementation of the provisions of the said chapter has had to contend with a system of impunity and political barbarism that seeks to secure itself against the constitutional transformation of the Republic. In late August, in spite of the conduct of consultative and inclusive discussions to design the legislation that would effectively set the mechanisms and procedures to implement Chapter Six of the constitution in accordance with Article 80 of the said chapter, Parliament impiously passed a vastly diluted Leadership and Integrity law. The Leadership and Integrity Act (No. 12 of 2012), was unilaterally watered down by Cabinet and eagerly rubber stamped by Parliament to render a wholly inefficient law incapable of delivering the requirements of Article 80<sup>9</sup>.

Despite the attempt at subversion, the provisions of Chapter Six remain legally applicable all that was required was for the relevant state organs charged with the duty of protecting the sovereignty of the people, securing the observance of democratic values and principles by all state organs and promoting constitutionalism. However, the very independent constitutional offices that were contemplated by the constitution to serve as the bulwarks of accountability and the guardians of the sovereign's interests in the administration of State Office abdicated their responsibility to engage the suffrage process by facilitating the vetting of prospective state officers. The Ethics and Anti-Corruption Commission (EACC) has chosen to adopt an extremely light-handed approach to their implementation of Chapter Six vis-à-vis the 'vetting' of the aspirants for the upcoming elections. On December 2012, the EACC set out its criteria that merely looked at superficial aspects of the suitability for candidates.

The IEBC and the High Court chose to absolve themselves of the responsibility of applying Chapter Six to secure credible and competent representation in the 2013 elections through vetting. The argument applied

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<sup>9</sup> Article 80 of the Constitution of Kenya 2010 required the enactment of a law that would establish the procedures, and mechanisms for the effective implementation of Chapter Six. These included the imposition of additional penalties, the expansion of the application of chapter six to public officers and the design of such other provisions as would be necessary for the promotion of the principles of leadership and integrity in the said chapter.

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to justify this abstention is that the aspirants in question should first have been proven – beyond reasonable doubt and the possibility of appeal – to have committed acts that violate the provisions of Chapter Six regarding leadership and integrity.

### 2. HOW SHOULD THE LAW ON LEADERSHIP AND INTEGRITY BE APPLIED?

The new constitution, and the political systems set therein, has yet to set roots in the political psyche of the society that has since adapted to the ethicized patronage politics of the past legal regime. As in 1963, the new constitution faces the real threat of subversion and denigration a political class that acceded to the new constitution more by the force of popular reform than by an actual desire to secure the transformation of the governance culture of the country.

The evolution of politics in Kenya has produced a pious class of political personalities for whom liberty means license, politics means plunder and to whom the public interest means nothing and their own individual interests’ means everything. Since independence, many state and public officers have been involved in multiple acts of maladministration and corruption while in state office.

The integrity of most within the political class has and will often times be called into question before courts, constitutional commissions and independent offices. When this subject comes before an appropriate body the following questions on the application the constitutional guarantees of leadership and integrity come to the fore:

- a) What is the mandate of the forum before which the allegation has been brought to look into the question on integrity?
- b) What is the duty of the state officer against whom the allegations have been brought?
- c) What are the proper legal standards to be applied with regards to chapter six?

### 3. DUTY OF COURTS AND INDEPENDENT OFFICES TO LOOK INTO QUESTIONS OF LEADERSHIP AND INTEGRITY

Under Article 249 (1) of the Constitution, the constitutional commissions and independent Offices, in the implementation of their specific mandates, are charged with the duty of protecting the sovereignty of the people, securing the observance of democratic values and principles by all state organs and promoting constitutionalism.

Article 4 (2) of the constitution establishes the Republic of Kenya as a multi-party democracy founded on the national values and principles of governance set out in Article 10. The latter article, under sub-article (1) (a), bind all state organs, state and public officers and person to the national values and principles of governance whenever they apply or interpret the Constitution. This provision reads together with Article 249 (1) imposes upon the said independent bodies the responsibility to apply the lens of the national values and principles whenever a matter raises constitutional questions that it must determine.

Put simply, the institution must analyze the value(s) and principle(s) that are affected by the constitutional issues placed before them for determination and as are relevant to their specific mandates. Therefore,

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questions of leadership and integrity brought before such commissions as are charged with selection, election and oversight of state officers must be addressed in order to achieve the greatest realization of the values and principles that underpin the constitution in Article 10 and Chapter Six. This means that the commissions and independent offices cannot merely dismiss the issue. They must make a determination on the matter in manner and form that explicitly answers the following questions:

- (i) Is this a question of constitutional application or interpretation?
- (ii) Is the matter ‘reasonably’ (as opposed to ‘explicitly’, given that Article 249(1) is worded broadly) within the constitutional mandate of the institution?
- (iii) If so, what are the specific national values and principles affected?
- (iv) What determination and action serves the greatest interest of the identified values and principles affected?

This approach most aptly secures the application of article 259 (1) (a) on the interpretation of the constitution which requires that the constitution be interpreted in a manner that promotes its purposes values and principles.

#### 4. DUTY OF THE STATE OFFICER AGAINST WHOM INTEGRITY ALLEGATIONS HAVE BEEN RAISED

Article 1 (1) of the Constitution asserts that all sovereign power belongs to the people of Kenya and must **be exercised** only in accordance with the Constitution. The sovereign power is delegated to the organs of Parliament, the Executive (at both National and County level) and the Judiciary (Article 1 (3)), and it is asserted in Article 2 (2) that no person may claim or **exercise** authority except as authorized under the constitution.

One of the key ways in which the constitution mandates the exercise of authority is found in the provisions of Chapter Six. Article 73 (1) (a) asserts that authority assigned to a State office is a public trust **to be exercised** in a manner that; (i) is consistent with the purposes and objects of the Constitution; (ii) demonstrates respect for the people; (iii) brings honor to the nation and dignity to the office; and (iv) promotes public confidence in the integrity of the office.

Where the question of a State Officer’s integrity is brought for consideration before a court or independent office under allegations of serious official or private misconduct – past or present – have been leveled, then the inverse application of Article 73 (1) (a) implies that the continued exercise of authority by the said state officer will stand in contravention of Chapter Six to the extent that it fails to promote public confidence in the integrity of the office.

This implies a duty of the relevant state officer to step aside in order to preserve the integrity of the office until a credible inquiry and investigation into the allegations have been conducted or hold office in contravention of Article 73 (1) (a) (iv) - in which case the officers exercise of authority is unconstitutional when read together with Article 1 (1).

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### 5. THE PROPER LEGAL STANDARDS TO BE APPLIED WITH REGARD TO CHAPTER SIX

As illustrated in the here above, the provisions regarding leadership and integrity do not warrant the exhaustion of all possibilities for appeal for them to have legal effect. Article 73 (1) (a) (iv) for instance operates to preserve the dignity of the State Office beyond the finality of a judicial or administrative process that determines the guilt of the state officer vis-à-vis the charges against his or her integrity. The question of public confidence is a matter of perception that needs not a criminal conviction to establish.

Similarly, where there are serious allegations that a state officer has acted in a manner - whether in public or private -that is fundamentally disgraceful, then his/her continuation in office is unconstitutional to the extent that it demonstrates a lack of respect for the people (Article 73 (1) (a) (II)); or denigrates the dignity to the office (Article 73 (a) (III)). Both of these matters are questions of perception and, while a standard of reasonable criteria similar to that applied in civil law may of course be applied, matters of perception are not concretized by criminal convictions that have followed the exhaustion of all available avenues of appeal.

It must be remembered that all political rights have their origin in the public good and that the provision of leadership and integrity are designed to preserve and protect the public good. These provisions seek to ensure that state offices are entrusted to and administered by persons of intelligence, competence and virtue. No man is slighted and all men are benefitted by the public measures which secure intelligence and virtue in the administration of the highest political offices.

## **CONCLUSION**

The post independence constitution of 1963 was, for its time, quite progressive and established much of the same governance structures that exist in the current constitution. However, the promise of a people-oriented system of governance was quickly defeated as the political leaders swiftly adopted the colonial philosophy of the preeminence of governance and subordinated the popular will to the sustenance of hegemonic political ambition.

Popular will, to the extent that it was inconsistent with the policy concerns of the ruling party, was mute and to be subverted, if not eliminated. The rapid deterioration of the institutions of democracy was facilitated by the admixture of shrewd legal maneuvering – that saw the capricious amendment of the constitution to divest the people of their sovereign authority and vesting it in the office of the president – and the political fatuity of the public that failed to question the adverse political actions of the governing establishment. In short, the kakistocracy of the pre-constitutional regimes was secured by inadequacies in the electorate, the laws and the political institutions.

### **A) The Electorate**

The decay in the county's democratic political systems was facilitated and fostered, to a large extent, by the uninformed and misdirected use of the right to vote – as it then was. Political activity was focused toward the attainment of personal interest and the absence of political savvy among the electorate was efficiently exploited to this end. The low politician is the accomplice of the low plutocrat and the low voter is the ready tool for both<sup>10</sup>.

As highlighted in the early portions of this report, the political ignorance that informed the electoral choices of the past elections seems to have endured the violent post-election episodes of 2007 and the ratification of the new constitution. Consequently, the canvas upon which to paint popular political perceptions easily lends itself to deception through the established culture of misinformation, ethnic balkanization, corruption and exploitation.

Democracy demands a well informed and civically educated populous, and the citizenry of any republic are exposed and vulnerable to knavery to the extent to which they are deficient in these important qualities. The task of substantive and continuous civic education is therefore the most significant and meaningful measure toward the protection of the principles of democracy and the aspirations of suffrage. There is therefore the need to establish systems, mechanisms and curricula for comprehensive and continuous civic education that combines political, economic, social and cultural histories, concepts and legal provisions.

The Constitution grants the right to vote equally to all citizens. The conferring of equal political control upon every citizen implies that all citizens are equally prepared to counsel wisely and act patriotically. Civic education must therefore seek to secure this disposition to the extent that it is lacking within the electorate.

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<sup>10</sup> Parkman Francis, *Failure of Universal Suffrage*, North American Review, Vol. 127, No. 263 (Jul- Aug., 1878) pg 13, <http://www.jstor.org/stable/25100650>

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### **B) The Laws**

The new constitution ratified and promulgated in 2010, set the foundation for the review of the laws and institutions of suffrage in a bid to cure the defects that had facilitated the political malfeasance of the previous electoral processes. The new law went further to prescribe integrity standards for the assumption and maintenance of public office.

While the constitution set the principles and broad requirements of leadership and integrity, it required that statute set in place the mechanisms for the broader and effective realization of the laws set out in the sixth chapter of the constitution on leadership and integrity. This was however subverted by sections of the Cabinet that amended the drafty legislation on leadership and integrity to essentially weaken the capability of the law to efficiently actualize chapter six.

The effective operation of chapter six of the constitution on leadership and integrity would have required the establishment of principle, procedures and standards for vetting all individuals aspiring to public office. Compounded by the ineffectual capability of the electorate to select state officers from a position of understanding of the roles and functions of the different elective offices, the leadership and integrity law was essential for protecting the uninformed electorate from the adverse outcome of a debased and irresponsible suffrage.

Nonetheless, the provisions of Chapter six of the constitution are still effectively applicable in as far as they set the principles and broad provisions on leadership and integrity. It will require, however, a bold and progressive approach to the application of the said section of the constitution in the face of a traditionally conservative and timorous culture of legal interpretation especially on matters pertaining to the operations of high state office. Through public interest litigation on integrity concerns, it is hoped that the relevant public institutions will develop progressive interpretations of the provisions of chapters six.

### **C) The political parties**

Political parties since the Moi regime have seldom stood for firm political ideology and have existed merely as vehicles for ascension to elective office. Consequently, the means used by the party machinery to achieve to achieve the ambitions of the political tradesmen are not defined by the party ideology. In previous elections, ethnicity, corruption, public resources, intimidation and violence have all been used to effect the election of party aspirants.

The efficiency of these processes in the face of an electorate that has come to accommodate the culture of patronage, corruption and ethnic balkanization during electoral periods makes them the more preferred instruments of political mobilization. The laws enacted in furtherance of the new constitution have however criminalized most of the aforementioned political practices. Nonetheless, in the absence of enforcement, these practices continue to be applied albeit in a more subdued fashion.

In past elections, rigging was most readily secured misconduct and fraud in the process of voting and tallying, with the latter proffering the greatest avenue for influencing the results through ballot

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destruction, ballot stuffing and irregular tallying. These areas have largely been constricted through the reform of administrative and mechanical procedures in the tallying process.

The voting process therefore presents the greatest avenue for rigging with the main areas of concern being around the voter bribery, voter intimidation and the fraudulent use of assisted voting. These malpractices are commonly facilitated by the use of criminal groupings to execute the said ends on a large scale. These same groupings provide the greatest threat to the internal security of the locations they operate both before and after the announcement of the elections results.

The extent to which parties are restricted access to these criminal groupings in accordance with the laws of the country will significantly influence the fairness of the electoral outcome and the state of the security in the country before during and in the aftermath of the electoral processes.

It must always be borne in mind that the candidate for office is solemnly and patriotically bound to allow all his constituents unrestricted freedom in their suffrages. The resort to tricks and Jugglery in caucus and conventions, not to mention the baser influences of money and whiskey, intimidation and fraud, is only expedient for a demagogical trade whose practice is criminal<sup>11</sup>.

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<sup>11</sup> Winchell, Alexander, *The Experiment of Universal Suffrage*, the North American Review, Vol. 136, No, 315 (Feb., 1883) pg 127, <http://www.jstor.org/stable/25118239>