



IRI/NDI INTERNATIONAL ELECTION OBSERVATION MISSION TO KENYA

FINAL REPORT OF THE 2022 GENERAL ELECTION



IRI/NDI Kenya International Election Observation Mission

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ACRONYM LIST

ANC:	Amani National Congress
BBC:	British Broadcasting Company
BBI:	Building Bridges Initiative
CCEC:	Code of Conduct Enforcement Committee
CEMIRIDE:	Center for Minority Rights Development
CEO:	chief executive officer
CREAW:	Center for Rights Education and Awareness
CS:	Interior Cabinet Secretary
CSOs:	civil society organizations
CSOESR:	Civil Society Organizations Elections Situation Room
DCI:	Directorate of Criminal Investigations
DICC:	IEBC Disability and Inclusion Coordination Committee
DRC:	IEBC's Dispute Resolution Committee
EACC:	Ethics and Anti-Corruption Commission
ECVR:	Enhanced Continuous Voter Registration Exercises
ELOG:	Election Observation Group
EPWL:	Eminent Panel of Women Leaders
ESAP:	Electoral Security Arrangement Program
FBO:	faith-based groups
FIDA-Kenya:	Federation of Women Lawyers
FORD-Kenya:	Forum for the Restoration of Democracy in Kenya
FPTP:	first-past-the-post
IAU:	Internal Affairs Unit
ICT:	Information and Communication Technology
ID:	identification
IDRM:	Internal Dispute Resolution Mechanism
IEBC:	Independent Electoral and Boundaries Commission
IEOK:	International Election Observation to Kenya
IG:	Inspector General of police
IMLU:	Independent Medico-Legal Unit
INEND:	Initiative for Equality and Non-Discrimination
IPOA:	Independent Policing Oversight Authority
IPPMS:	Integrated Political Party Management System
IRI:	International Republican Institute
JSC:	Judicial Service Commission
KEG:	Kenya Editors Guild
KEPP:	Kenya Eminent Peace Panel

KIEMS:	Kenya Integrated Election Management System
KMSWG:	Kenya Media Sector Working Group
KNCHR:	Kenya National Commission on Human Rights
KUJ:	Kenya Union of Journalists
LGBTIQ+:	lesbian, gay, bisexual, transgender, intersex, or questioning
LTA:	long-term analysts
MCA:	Members of County Assembly
MCK:	Media Council of Kenya
MIP:	ethnic minorities and indigenous peoples
MOU:	memorandum of understanding
MP:	Members of Parliament
NARC-K:	National Rainbow Coalition-Kenya
NASA:	National Super Alliance
NCIC:	National Cohesion and Integration Commission
NDI:	National Democratic Institute
NPMT:	National Peace and Mediation Team
NPS:	National Police Service
NSAC:	National Security Authority Council
NTC:	National Tallying Center
ODM:	Orange Democratic Movement
ODPP:	Office of the Director of Public Prosecutions
ORPP:	Office of Registrar of Political Parties
PEAMs:	pre-election assessment missions
PPA:	Political Parties Act
PPDT:	Political Parties Dispute Tribunal
PPLC:	Political Parties Liaison Committee
PVT:	parallel vote tabulation
PWDs:	persons with disabilities
SCOK:	Supreme Court of Kenya
SGBV:	sexual and gender-based violence
STOs:	short-term observers
TI-K:	Transparency International-Kenya
UDA:	United Democratic Alliance
VAW-E:	violence against women in elections
WDM:	Wiper Democratic Movement
WSR:	Woman Situation Room

While the outcome of the presidential election was again contested, Kenya's 2022 general elections overall saw the country further consolidate multiparty democracy, amidst its accompanying political complexities. Electoral, political, and civic actors and institutions in Kenya remain resilient, despite over a decade of fraught elections, and the electoral process continues to adapt and evolve from past challenges. Important gains in transparency, inclusion, and peace and security throughout the electoral period reflect the collective efforts of stakeholders and voters to advance democratic principles and overcome conventional narratives around Kenya's political and conflict dynamics. Serious concerns about the tabulation of results, due in part to flaws in 2017, did not materialize as the process was markedly more transparent than in the past. At the same time, the country faced shifting political alliances, a rise in voter apathy, confusion over conflicting results tallies from the media, significant discord within the election commission and challenged election results, leaving the political class highly divided. As narrow margins of victory and disputed outcomes remain the norm in Kenya, efforts by political and civic leaders to reengage citizens in the democratic process, pursue needed electoral reforms, and ensure that Kenya's democracy serves to improve the lives of all her citizens will continue to be critical in navigating this next chapter.

The International Republican Institute (IRI) and the National Democratic Institute (NDI) organized the joint International Election Observation to Kenya (IEOK) mission for the 2022 general elections. Recognizing that elections are about more than just election day, the IEOK conducted two pre-election assessment missions in May and July, deployed long-term analysts to Kenya who monitored the pre- and post-election period for four months; and deployed a delegation of short-term observers for the August 9 elections.

The IEOK methodology is based on a comprehensive gathering of information for fact-based, politically impartial analysis that is presented in the mission's findings and recommendations. The mission analyzed the legal framework and conditions in the pre-election period; the voting, counting, and tallying process; and the resolution of complaints. The IEOK was guided by the Declaration of Principles for International Election Observation as well as international and regional standards and carried out its activities in accordance with the laws of Kenya. This report reviews Kenya's electoral environment and processes and offers recommendations to various stakeholders based on NDI's and IRI's comparative experience, in the spirit of international cooperation and with respect for the sovereignty of Kenya.

KEY FINDINGS

The 2022 elections took place against a backdrop of three consecutive disputed presidential elections. The electoral landscape leading to the August 9 elections was dynamic, including a realignment of alliances among major political parties. While the election saw coalitions formed around ideologies more so than in previous cycles, ethnic identity politics continues to be an important factor in building support bases. The main two presidential candidates vying for office were former Prime Minister Raila Odinga, leader of the Azimio la Umoja (One Kenya Coalition) who was supported by President Uhuru Kenyatta, his former political rival; and Deputy President William Ruto, leader of the Kenya Kwanza alliance and who was President Kenyatta's former ally.

The electoral legal framework – grounded in the 2010 Constitution of Kenya and related election legislation – provides a strong foundation for political and electoral rights. However, some key stipulations that have the potential to bolster electoral inclusion and transparency – specifically the gender quota and campaign finance regulations – have yet to be implemented. In addition, frequent and late-stage litigation around election issues demonstrated varied interpretations of the law and hindered electoral preparations. The judiciary remains highly regarded among Kenyans and demonstrated the ability to address election-related disputes professionally throughout the electoral cycle.

Election Administration

The Independent Electoral and Boundaries Commission (IEBC) had to overcome significant public scrutiny and doubt, following a series of contentious elections that over time has eroded public confidence in election administration. Strides were made in reasserting the IEBC's independence, improving its engagement with stakeholders, increasing transparency, and addressing shortcomings from previous elections. The IEBC's bilateral outreach efforts helped promote "parallel tallies" by the media and political parties, which can improve transparency and boost confidence in the historically fraught results transmission and tabulation process. Despite persistent apprehension about elections-related technology, there were limited Kenya Integrated Election Management System (KIEMS) kit failures on election day, and the results transmission system appeared to run relatively smoothly following the close of polls.

However, the IEBC failed to provide sufficient information to the public about electoral preparations throughout most of the pre-election period. Budget delays and shortfalls also resulted in late and inadequate civic and voter education. Negative and sometimes partisan reactions that frequently followed IEBC procedural decisions could have been avoided with earlier and greater consultations with political actors. Election information also often failed to meet standards for open data. Among other things, the full aggregated register of voters was never made available to civil society or the public in advance of election day and polling station level election results information is not currently available in an easily analyzable, machine-readable format.

Disunity within the IEBC, which became publicly apparent following the announcement of presidential results, appeared to fall along political lines and exposed serious vulnerabilities that undermined the integrity of the electoral process. Some commissioners also reported incidents of intimidation and harassment of IEBC staff by security forces. These issues highlight the need to better safeguard the independence and impartiality of commissioners and prevent undue government influence in the future.

The Campaign and Security Environment

The campaign environment was vibrant – in-person, through traditional media, and online – and largely free from violence. Successful changes to the Political Parties Act contributed toward more peaceful party nomination processes and primaries, though concerns were raised about opaque internal party democracy processes that made it more difficult for first time candidates or candidates from underrepresented groups to compete. In addition, the absence of campaign finance regulations created an uneven playing field for electoral contestants, favored male candidates from the major parties and disadvantaged candidates from marginalized groups, including women, youth, and persons with disabilities (PWDs), who lack the same access to financial capital and networks of donors. Voter bribery and the abuse of state resources was a concern throughout the campaign period.

Importantly, there was a marked improvement in the security environment in the pre-election period, in part due to stronger partnerships between civil society and the police, better security training, and increased public tolerance. Notably presidential candidates ran more

peaceful campaigns than in previous elections. More robust training and interventions around gender-based violence have begun to address a serious and ongoing issue in the country. Kenyan youth continue to be exploited by elite leaders to advance their political aims and remains a challenge for future elections.

Gender and Inclusion

More women ran for elective positions in 2022 than in 2017, both in absolute numbers and as a share of the total number of candidates, and including the nomination of three female deputy presidential candidates for the first time. Both Azimio and Kenya Kwanza coalitions also campaigned on women's political participation during rallies, and highlighted various party inclusion strategies to advance women's role in public office. However, there continues to be no immediate path to realize and implement the constitutional "not more than two-thirds" gender quota, despite the IEBC's attempt to enforce the requirement ahead of the recent polls through the use of a gender quota for parties' candidate lists. In addition, many women candidates reported verbal abuse and other acts of psychological violence from both male and female opponents and their supporters, and some media coverage of women candidates used gendered tropes and double standards.

Youth dissatisfaction and apathy was a notable challenge ahead of the 2022 elections, reflected in low rates of youth voter registration, especially for those that turned 18 after the 2017 elections. Stakeholders noted that registration outreach and tactics did not directly target young people and did not attempt to utilize digital platforms. Election day also saw a decline in voter turnout from 77 percent in 2017 to 65 percent, although more disaggregated information is needed to examine turnout specifically among youth.

Participation of PWDs in public office is also yet to meet the five percent threshold required by the Constitution. Few substantive efforts were made to increase the participation of PWDs, especially within political parties' governing bodies and candidate nomination processes. Positively, the IEBC for the first time recorded new voters' disability status and the type of disability they have on the voter registry, and allowed older PWD voters to update their disability status with the assistance of a voter verification clerk.

The Information Environment

Traditional media embraced its role as a watchdog and took steps to ensure more consistent and accurate flow of information to the public ahead of the 2022 elections, including establishing fact-checking desks, signing a memorandum of understanding (MOU) with the IEBC to improve communications and coverage, and increasing transparency through live parallel tallying of polling station-level voting results. However, these efforts fell short once most polling station results forms were available on the IEBC's portal. The media houses processing and tabulating the forms were ill-prepared and uncoordinated for the exercise and also proved to be unwilling to implicate a winning candidate, ultimately abandoning updating their results totals once they were close to completion. This ended up introducing more, not less, confusion in the electoral outcome and demonstrates the need for greater media preparedness, empowerment and independence.

Kenyan voters increasingly receive electoral and political information online and on social media, where information can spread quickly but with less transparency. Both political campaigns used paid bloggers, influencers and other users to shape the political discourse and discredit their opponents on various social media platforms. The spread of misleading or falsified content online appeared to benefit both major candidates. Such tactics were also used in the immediate post-election period to undermine confidence in the electoral results and target political and electoral officials. New platforms like TikTok emerged as powerful amplifiers of divisive content, while traditional media such as local vernacular radio stations also played a role in disseminating inflammatory messages. Local languages, which evade detection by social media threat-detection algorithms, were used as tools for coded messaging and inciteful speech, some of which targeted women or used ethnic-based attacks.

Election Day and Civic Participation

Budget delays, intricate legislative requirements related to timelines and the use of technology, ongoing litigation and extremely late changes in procedure threatened timely election preparations and the perceived administrative competence of the IEBC. On the eve of the elections there was considerable confusion about election day procedures, following last minute decisions related to the use of the manual voter registry. This undermined the IEBC efforts to effectively train polling station staff and ensure consistent application of voting and counting procedures. In addition, ballot printing errors resulted in eight elections having to be delayed at the last minute, including governorship elections for Kakamega and Mombasa counties.

Despite this confusion, election day, itself, was generally peaceful, with polling station staff managing procedures capably and ensuring that eligible voters were able to

vote. Most polling stations opened on time with all election-related materials present. Security forces acted professionally and did not interfere in the process. Political parties trained and deployed agents in large numbers across the country. While agents for parties contesting the presidential election were given a copy of the official 34A presidential results form, a copy was not always posted at the conclusion of counting for the public to see.

Despite funding constraints, civil society proactively engaged in mitigation and peace efforts, election observation, and monitoring violence against women in elections (VAW-E) and were active on election day. Importantly, citizen observers conducted, in the interest of electoral integrity, a parallel vote tabulation (PVT) for the presidential election to provide an independent check on the final results.

Tabulation and Announcement of Results

To increase transparency and avoid missteps from previous elections, the tabulation of polling station results included several levels of verification of electronic results forms with the accompanying paper trail, typically in the presence of party agents, which drew out the process over six days. Despite the prolonged tabulation process, the public remained largely patient in receiving the final results. However, the IEBC reported incidents of harassment and intimidation of staff during the process and there were isolated incidents of violence throughout, including the disappearance and death of an IEBC Returning Officer, and skirmishes between party agents were common. Importantly, though the verification process ran longer than in previous elections, the speed of the transmission of 34A forms from the polling stations to tallying centers and the IEBC's online results portal exceeded expectations and promoted transparency around the process.

The announcement of the results of the presidential election were blemished by last minute chaos at the National Tallying Center (NTC), fragmentation in the election commission over the outcome, and subsequent accusations of rigging. Despite increased political tensions in the weeks following the elections, all contestants utilized the courts to settle disputes, the presidential candidates appealed to their supporters to respect the legal process, and stakeholders and citizens remained both highly engaged and calm. The absence of substantial electoral violence was a break from the past, and the Supreme Court ruled expeditiously on the presidential election petitions that were presented, even in the tight 14-day timeframe. However, rumors and disinformation were rampant in the immediate post-election period, with little or no accountability for those amplifying and generating specious claims about the electoral process.

The 2022 polls marked the third election since Kenya's adoption of a new Constitution in 2010. Significant efforts have been made over the last decade to apply the spirit of the Constitution to the more technical exercises of government and the electoral process. The 2022 elections tested the strength of Kenyan institutions, and in doing so highlighted areas for further improvements and reforms. In the spirit of international cooperation, IRI and NDI respectfully offer the following 10 priority recommendations for review, consideration and adoption by the IEBC, the executive and legislative branches of government, political parties, civil society, and other stakeholders. A more comprehensive list of recommendations is included at the end of this report.

To the Government of Kenya and the Parliament

- Urgently pass legislation to implement the two-third gender rule in both chambers, in compliance with constitutional provisions.
- Reform the appointment process for IEBC chairpersons and commissioners to ensure broad and merit-based consensus around nominees and to fill vacancies in a timely manner in advance of elections.
- Clarify the role of IEBC commissioners across all functions, in particular the results process, as suggested by the Supreme Court.

To the IEBC

- Undertake institutional reforms to ensure the commission acts as an independent, impartial, and cohesive body, in accordance with the recommendation of the Supreme Court.
- Develop and implement a strong strategic communications plan that builds on lessons learned from the 2022 elections to promote transparency and public trust. This includes more

frequent and open communication with election stakeholders through regular press conferences and public statements to debunk falsehoods and promote public understanding of key elements of the electoral process.

- Apply the Election Campaign Financing Act (2013) by setting limits on donor contributions and expenditures and imposing disclosure and reporting requirements for candidates and political parties.
- Make polling station-level results available to the public online in a timely, machine-analyzable, and bulk format for all elected positions, in accordance with open data principles.

To Political Parties

- Put in place robust recruitment and promotion strategies to facilitate the full participation of women, young people, people with disabilities, and other marginalized groups in parties' governing bodies, including national executive committees, as well as their inclusion in candidate lists.
- Refrain from unfounded, misleading, or inflammatory claims regarding the electoral process, and hold accountable those party members who spread false information or violent rhetoric that could destabilize the political environment.

To the Media

- Earnestly fulfill their role of informing voters about key events in the electoral process, before, during, and after election day and including election results, and reach out to technical experts to provide context when relevant. Fact-based reporting in politically tense moments is essential for ensuring voters have access to accurate information about the electoral process.

Following an invitation from the Government of Kenya, the National Democratic Institute (NDI) and the International Republican Institute (IRI) conducted the joint International Election Observation to Kenya (IEOK) mission for the country's 2022 general elections on August 9. The mission's purpose was to demonstrate the international community's continued interest in and support for a peaceful, inclusive, transparent, and accountable election process in Kenya, as well as to provide Kenyan citizens, election and government officials, civic organizations, and the international community with an objective, impartial assessment of electoral processes and the surrounding political environment and practical recommendations for improvements. The mission communicated with other international observer missions and Kenyan nonpartisan citizen observation groups. IRI and NDI are grateful for the cooperation and support from Kenyan citizens, election and government officials, candidates, party leaders and members, and representatives of civil society and the media.

The IEOK's methodology was based on comprehensive gathering of information towards fact-based, impartial analysis, findings, and recommendations. The IEOK conducted its activities in accordance with Kenyan law and the **Declaration of Principles for International Election Observation (Declaration of Principles)**, which establishes the basis for credible international election observation and is endorsed by over 50 intergovernmental and non-governmental organizations. The mission's activities were also conducted in accordance with international and regional standards for credible elections, including the **African Charter on Democracy, Elections and Governance**.

NDI's and IRI's methodology for assessing elections is based on the premise that all aspects of the electoral process must be considered. These include: the legal framework for the elections; the administrative and logistical framework for the elections; the pre-election period before and during the campaign; the voting process; the counting process; the tabulation of results; the investigation and resolution of complaints; and the formation of a new government. The IEOM, therefore, included long-term monitoring components to provide comprehensive monitoring of the pre-election and post-election periods that complement the assessment of election day processes. The mission's core team included five international

long-term analysts (LTAs), one of whom also served as coordinator for the long-term component of the mission, who worked in-country for approximately five months to provide ongoing monitoring and analysis of thematic areas related to the legal framework, election administration, political campaign, gender and inclusion, information environment, and election violence and security. The LTAs were joined by an LTA assistant to inform long-term analysis. Information collected by LTAs from their research and engagement with stakeholders informed analysis and findings throughout the mission.

As part of IRI's and NDI's emphasis on long-term, comprehensive monitoring for supporting credible elections, the mission deployed two pre-election assessment missions (PEAMs) to Kenya to assess the political environment and electoral preparations, and to provide independent, impartial information and actionable recommendations prior to election day. The PEAMs held high-level consultations with a variety of key electoral and political stakeholders, including representatives of the IEBC, presidential candidates, political parties, civil society, business associations, media representatives, religious leaders, the judiciary, and government actors.

The first PEAM deployed from May 16 to 20, and comprised Jean Mensa, Chairperson of the Electoral Commission of Ghana; James Lahai, the National Coordinator of National Election Watch of Sierra Leone; Nicole Rowsell, Acting Vice President of NDI; and Yomi Jacobs, Resident Program Director of IRI in Kenya. The first PEAM [statement](#) offered 26 recommendations to help build public confidence in the elections. From June 27 to July 1, a [second pre-election assessment mission](#) was deployed to Kenya to further assess the political environment, electoral preparations, and progress made on previous recommendations from the community of international and citizen observers to Kenya's elections. The second PEAM comprised His Excellency Dr. Goodluck Jonathan, former President of Nigeria; Babra Bhebe-Dube, Executive Director of the Election Resource Centre of Zimbabwe; Lionel C. Johnson, NDI board member and former U.S. diplomat; Julia Brothers, NDI Senior Advisor for Elections; and Gregory Kearns, IRI Regional Director for Africa. The second PEAM statement detailed progress on recommendations previously made during the first PEAM as well as challenges that remained.

From August 4 to 11, the IEOK deployed an international delegation of short-term observers (STOs) representing 13 countries co-led by: His Excellency Joaquim Chissano, former President of the Republic of Mozambique; Donna Brazile, NDI Board Member and former Acting Chair of the Democratic National Committee; Randy Scheunemann, IRI Board Vice Chair; and Ambassador Johnnie Carson, former Assistant Secretary of State for African Affairs and NDI Board Member, as well as Scott Mastic, IRI Vice President for Programs, and Richard Klein, NDI Global Director for Elections. The delegation deployed approximately 30 STOs in teams to 12 counties¹ in Kenya. Throughout their

deployment STOs engaged with various stakeholders including national and local government officials, party representatives and candidates, civic leaders, IEBC representatives and staff. On election day, STOs observed the opening, voting, and counting processes and the overall election day environment. On August 11 the IEOK published a preliminary [statement](#) that provided initial analysis of the pre-election period and election day process. The IEOK continued to monitor the post-election environment, including the tabulation, transmission, and announcement of election results and the adjudication and resolution of electoral disputes.



1. STO deployed to: Embu, Homabay, Kericho, Kiambu, Kirinyaga, Kisumu, Mombasa, Murang'a, Nakuru, Nairobi, Nyeri, and Uasin Gishu. Deployment selection criteria included political strongholds as well as areas that were considered highly competitive between the major party alliances.

POLITICAL CONTEXT

Political leadership in Kenya has long been dynastic, with the families of former president Uhuru Kenyatta and former prime minister and opposition leader Raila Odinga dominating Kenyan politics since the country secured its independence in 1963. Elections in Kenya have often been highly contentious and, at times, led to widespread violence. Claims of irregularities and ethnic tension, often incited by political elites, resulted in violence surrounding the 1992, 1997, and 2007 elections. In particular, the rejection of the 2007 presidential election results by the main political opposition coalition, combined with the swift inauguration of the incumbent without due consideration of growing questions of legitimacy, caused violence to erupt across Kenya, during which nearly 1,500 people were killed and an estimated 600,000 were displaced.

In an effort to bring an end to the political crisis following the 2007 elections, President Mwai Kibaki and opposition leader Raila Odinga signed a coalition agreement in 2008, ushering in a new coalition government. Under the new structure, Raila Odinga served as the prime minister and his Orange Democratic Movement (ODM) party received half of the ministerial positions. The coalition government included a 43-person cabinet, by far the biggest in Kenya's history, and two deputy prime ministers, each representing the ruling and main opposition party. Kibaki chose Kenyatta and Odinga selected Musalia Mudavadi, respectively, as deputy prime ministers. The power-sharing cabinet was the key component of a peace agreement brokered by the former United Nations (UN) secretary general, Kofi Annan, at the end of February 2008. The agreement effectively ended ongoing post-election violence and set the stage for significant electoral and parliamentary reforms, and a new constitution that was adopted by popular referendum in August 2010.

In 2013, the first general election under the new constitution, incumbent Mwai Kibaki was term-limited under guidelines set forth by the new constitution. The election pitted Uhuru Kenyatta, and his new 'Jubilee Alliance' against Raila Odinga. Kenyatta prevailed with just over 50 percent of the votes. While Odinga challenged the results, citing irregularities in biometric vote tallies, the Supreme Court unanimously rejected the petition. Odinga subsequently accepted the results. The 2013 elections were viewed as a step forward from the 2007 crisis, with both international and citizen observers highlighting improvements in transparency, peace,

and security, although some shortcomings remained related to the procurement and integration of elections technology for voter registration, voter identification and results transmission.

The 2017 presidential election, which saw the reelection of President Kenyatta, was annulled by the Supreme Court on September 1, 2017, in a ruling citing that the IEBC had prematurely certified the election results and failed to meet transparency requirements prescribed by the constitution. Despite the annulment and opportunity for a rerun, Raila Odinga, his ODM party and supporters in the National Super Alliance (NASA) coalition boycotted the fresh presidential election on October 26, 2017. Tensions and violence rose following the announcement of President Kenyatta's subsequent victory, and in an effort to quell any protracted violence, Kenyatta and Odinga publicly shook hands in what was popularized as the 'handshake.'

Following the March 2018 handshake, a growing rift emerged between President Kenyatta and Deputy President (DP) William Ruto. Through an Executive Order issued in January 2019, the President elevated Interior Cabinet Secretary (CS) Fred Matiang'i to oversee all government coordination, which included running of state agencies and the day-to-day running of government (including coordination with parliament and ministries). In August 2019, the President added more responsibilities to the CS role including coordinating delivery of national priorities and flagship programs, thus elevating him to what many understood as a 'super Minister.' As these roles were officially the domain of the DP, the decision from President Kenyatta to expand the CS' powers displeased many of Ruto's supporters, who accused the president of sidelining Ruto in favor of Matiang'i and Odinga. As such, Ruto left the Jubilee Party in 2021 and joined the United Democratic Alliance (UDA). Not-too-soon afterward, Ruto began campaigning for president on a populist platform. In February 2022, Kenyatta's Jubilee Party joined a coalition led by Odinga, and on March 12, Kenyatta publicly endorsed his longtime rival for the presidency over his own deputy Ruto. Thus, the elections were widely viewed as a contest between five-time presidential candidate Odinga and the Deputy President Ruto, who had been politically allied with Kenyatta since 2013. The shifting alliances and Kenyatta's falling out with Ruto increased political tensions across the country, affecting races for lower-level elected offices as well.

Though most major political parties that have contested presidential elections over the past six decades have historically revolved around four prominent ethnic groups (Kikuyu, Luo, Kalenjin, Luhya), 2022 saw new and unusual alliances emerge. Political realignments occurring in the run-up to the 2022 elections were characteristic of the shape-shifting nature of Kenyan electoral politics and in some ways rebuked staid tropes that Kenya's political parties are formed around ethnic lines to expand ethnic representation and coalesce with that objective in mind. In 2022, Odinga's ODM and Kenyatta's Jubilee parties—joined forces with more than twenty other parties under the Azimio la Umoja (One Kenya Coalition) party. Ruto's UDA party also established a strong coalition, the Kenya Kwanza alliance. Leveraging popular distaste among Kenyan youth for politics, Ruto campaigned on a 'hustler vs. dynasty' platform, promoting a 'bottom-up' model of wealth distribution. The narrative resonated among large swaths of poor youth, who were frustrated by what they viewed as elite political alternance over successive elections.

In the lead up to elections, Ruto and Odinga polled within close margins of each other signaling the competitive nature of the presidential race which was punctuated by the nominations of vice-presidential running mates, who were perceived as having the potential to help their running mates expand their vote share. For the first time, a presidential candidate from a major political party, ODM, selected a female running mate, amplifying the potential for women's role in political life and positions of power.

LEGAL FRAMEWORK

The 2022 General Elections in Kenya were governed by the 2010 Constitution of Kenya, the Elections Act of 2011, the Political Parties Act of 2011, the Election Offences Act of 2016, and other relevant legislation. Kenya has ratified or signed most of the international and regional instruments related to elections, and its electoral legal framework is largely in line with these instruments.² The legal framework establishes a sufficient foundation for conducting democratic elections, although some gaps remain, and

some key stipulations that could bolster electoral inclusion and transparency have failed to be implemented. In addition, frequent litigation around election issues and late-stage proposals to amend electoral procedures in the country are common and can result in last minute changes to the framework and its application.

The 2010 Constitution recognizes fundamental human rights and freedoms, such as the freedoms of movement, expression, and opinion, as well as the right of association and assembly. Equality and freedom from discrimination are also recognized with the provision that the State should implement measures to realize these rights, including the principle that elected and appointed bodies should not be composed of more than two-thirds of members of the same gender. However, this principle has yet to be fully implemented. The right to passive and active suffrage is also recognized, but some limitations exist, such as the exclusion of persons of unsound mind, which is at odds with international standards.³ Amendments to the Constitution were proposed in 2019 under the banner of the Building Bridges Initiative (BBI), which sought to address women's participation, increase the number of seats in the National Assembly, and "resolve issues of divisive elections arising from electoral processes," among other issues.⁴ However, the Supreme Court found the BBI process to be unconstitutional in March 2022.

Prior to the August general 2022 elections, the IEBC proposed amendments to the Elections Act, seeking in part to address the Supreme Court decision nullifying the 2017 elections by allowing for a complementary method of presidential results transmission and detailing the presidential results pathway, among other changes. The proposed amendments also sought to harmonize language with the amended Political Parties Act. While the proposed amendments were approved by the National Assembly in April 2022, the Senate recessed without considering their passage prior to the General Elections⁵ As a result, the IEBC also proposed accompanying amendments to the five election regulations,⁶ which were rejected by the National Assembly in June.

2. Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of Persons with Disabilities (CRPD); United Nations Convention against Corruption (UNCC); African Charter on Democracy, Election and Governance; African Charter on Human and Peoples' Rights; and African Youth Charter, among others.

3. General Comment 25, CCPR; Article 29, CRPD

4. <https://www.bbi.go.ke/constitutional-reforms>

5. Section 109 of the Elections Act No. 24 of 2011

6. The five regulations include the Elections (General) Regulations, Elections (Registration of Voters) Regulations, Elections (Technology) Regulations, Elections (Voter Education) Regulations, and Elections (Party Primaries Lists) Regulations.

The Political Parties Act of 2011, last amended in January 2022, introduced changes in the distinctions between parties and coalitions, limitations on party-switching, a new requirement that parties publish and file their internal nomination processes with the Office of Registrar of Political Parties (ORPP), and more inclusive eligibility criteria for the Political Parties Fund, among other alterations. The newly adopted legislation encouraged more coalition building, allowing for the formation of “coalition parties”, by providing a stronger framework for parties to share power and resources. The amendments also resulted in an increase in the organization of party primaries which contributed to a more peaceful process. However, internal party democracy remains a significant challenge as the newly-permitted coalition parties and indirect methods of nomination raised questions of transparency, inclusion, and meaningful participation.

The Election Campaign Financing Act of 2013, which provides a framework for lawful contributions and donations, including the prohibition of anonymous or foreign funders, was suspended for the 2017 elections and remains unenforced. However, in preparation for the 2022 general election, the IEBC submitted new proposed financing regulations⁷ to the National Assembly in August 2021, which specified allowable funding sources and expenses as well as rules for disclosure and reporting. Shortly thereafter, the IEBC published campaign spending and contribution limits in Gazette Notice 8024 of 2021.⁸ However, the regulations were rejected for late submission, lack of public consultation, and for publishing the spending and contribution limits before Parliament approved the regulations, among other reasons, which resulted in the annulment of Gazette Notice 8024. In May 2022, the High Court ruled that spending and contribution limits as well as campaign finance regulations do not require parliamentary approval, which paves the way for oversight, increased transparency, and a more level-playing field for future elections, but left the 2022 campaign utterly unregulated.⁹

Electoral System

Kenya has a complex electoral system with voters casting six separate ballots for: president and deputy president; members of the National Assembly; women members to the National Assembly; members of the Senate; county governors and deputy governors; and members of County Assemblies. Both the president and governors may serve for no more than two five-year terms while all other elective positions have no term limits. The president is elected by obtaining both 50 percent +1 of the national vote as well as at least 25 percent of the vote in 24 of the 47 counties. If no candidate passes this threshold, a second round is held between the two candidates who received the highest number of votes in the first round.

For the 349 members of the National Assembly, 290 are elected from single-member constituencies on a first-past-the-post (FPTP) basis. In addition, 47 women members are elected, one from each county, also on a FPTP basis while 12 special seats for youth, PWDs, and workers are allocated proportionally by party based on National Assembly seats. For the 67 members of the Senate, 47 are elected on a FPTP basis from single-member constituencies. In addition, 16 seats for women are allocated proportionally by party Senate seats while two for youth (one man and one woman) and two for PWDs (one man and one woman) are allocated proportionally by party parliamentary seats.

For each of the 47 counties, a governor and deputy governor are elected on a FPTP basis. Members of the 47 County Assemblies are elected from each of the 1,450 wards in the country also on a FPTP basis. Each County Assembly also has special seats for marginalized groups, including youth and PWDs. Further, the Constitution stipulates that each County Assembly will have a sufficient number of special seats for women to ensure that no more than two-thirds of its members are of the same gender.

7. Campaign Financing Regulations of 2020

8. Under Sections 5 and 18 of the Election Campaign Financing Act of 2013, the IEBC should make campaign finance rules and should gazette spending and contribution limits at least 12 months before a general election

9. Consolidated Constitutional Petitions NO. E540 & E546 OF 2021 Katiba Institute & three others vs IEBC & two others (2021), May 5, 2022

ELECTION ADMINISTRATION

Elections in Kenya are administered by the IEBC, which is established by the Constitution as an independent commission responsible for supervising and conducting elections and referenda including, but not limited to, such processes as voter registration, candidate registration, boundary delimitation, developing a code of conduct for political parties and candidates contesting the elections, and regulating campaign finance spending limits.¹⁰ For the 2022 elections, the election administration included the Commission and Secretariat in Nairobi, 47 county offices, 290 constituency offices, and 46,229 polling stations.

The Commission is composed of a chairperson and six commissioners who are shortlisted by a selection panel appointed by the President, approved by the National Assembly, and then finally selected by the President. The Chairperson and two commissioners were appointed in late January 2017 while four commissioners were appointed in September 2021.

The late appointment of the four commissioners contravened recommendations that a complete commission be in place at least two years before a general or presidential election as put forward by the Kriegler Commission report following the 2007 elections.¹¹

The Commission is supported by a professional secretariat which is headed by a chief executive officer (CEO) and has nine directorates. The CEO, who was acting since 2018, was appointed in March 2022 along with three directors while two directors remained in an acting position as of the elections. While the IEBC assured the public of unity within the Commission, accusations of divisions persisted during the pre-election period, which culminated in the public divisions between the Chairperson and two commissioners appointed in 2017 and those appointed in 2021 when the presidential results for 2022 elections were announced.

The recent history of disputed elections in Kenya, including the 2017 nullification of the presidential election, has substantially eroded public confidence in the IEBC. However, interlocutors did note a concerted effort by the commission to build trust and reassert its independence following the last elections, including improved engagement with stakeholders and attempts to address regulatory gaps from past elections. Increased consultations with the judiciary, the National Police Service (NPS), the Communications Authority, and the ORPP helped promote interagency coordination. Positively, in late June, the IEBC announced that media houses, candidates, and political parties could conduct parallel tallying of the election results while only the IEBC could declare the results.

The IEBC built an impressive field structure to recruit, train, and maintain polling staff, and met most statutory deadlines. The IEBC also expanded diaspora voter registration and polling efforts to a total of 12 countries, up from just five countries in the 2017 elections¹². However, preparations were impacted by such factors as budget delays, intricate legislative requirements, ongoing litigation, and lack of consultation with key stakeholders, such as political parties. In particular, the IEBC initially intended for the ballot paper printing process to be completed between July 1 and 29, however, this was not completed until August 5, just five days before the elections due to ongoing litigation regarding candidate registration. In addition, concerns were raised by Azimio La Umoja and UDA when the IEBC's decision to print two booklets of 34A results forms for each polling station emerged in late July. Though the IEBC's intent was to improve results transparency by ensuring enough carbon copy 34As would be available for all agents and observers at a polling station, the parties expressed concern that duplicative booklets heightened the risk of results manipulation. Following a meeting between the IEBC and representatives of the four presidential candidates on July 29, an agreement was reached and gazetted that only one 34A booklet would be used on election day while the second would be sealed in a tamper proof bag and placed in a ballot box.

10. Article 88(4) of the Constitution of Kenya 2010

11. Kriegler and Waki Reports Summarized Version Revised Edition 2009

12. Countries with diaspora voting in the 2022 elections include Burundi, Canada, Germany, Qatar, Rwanda, South Africa, South Sudan, Tanzania, the UAE, Uganda, the United Kingdom, and the United States.

The safety of election officials was a serious concern leading up to the 2022 elections. While the IEBC reportedly implemented a number of security protocols to keep staff safe, the IEBC Chairman Wafula Chebukati noted increased propaganda, false allegations, intimidation, harassment, and other forms of violence used against the commission throughout the pre-election period, including by Kenyan security forces, media, and political actors.

IEBC Communications and Public Outreach

In March 2022, the IEBC and the Kenya Media Sector Working Group (KMSWG) signed a Memorandum Of Understanding (MOU) with two main objectives: to provide training to the media; and to provide access to electoral information through the establishment of a media center and the IEBC's public portal. Due to ongoing information gaps on the part of the IEBC and to further bolster the relationship between the IEBC and the media, a Joint Media & IEBC task force was established in July. The task force comprised five media representatives and five IEBC representatives, and was formed to be a bridge between the IEBC and the media. Following the establishment of the task force, the IEBC along with the Kenya Editors Guild (KEG) and Kenya Union of Journalists (KUJ) signed a new protocol, the Results Transmission Protocol and Media Guidelines on July 19. The protocol established the parameters for how the KMSWG would conduct their election tallies. On July 31, the IEBC launched both the National Elections Call Center and the Media Center. The IEBC provided daily briefings at Bomas of Kenya, which was also the location of the National Tallying Center (NTC), starting from August 1.

While the MOU demonstrated genuine efforts to increase transparency and reinforce the role of the media as a key

watchdog in the electoral process, civil society, political parties, and the media regularly expressed frustration with the absence of regular communication from the IEBC in the pre-election period, and its slow response to information requests. Many stakeholders noted the late availability of the final polling station list, as well as difficulty in obtaining clear and detailed polling and tallying procedures. Though the IEBC became more visible in the remaining weeks leading up to election day, the lack of clear communications about electoral preparations and procedural decisions impeded voter education and contributed to public confusion over the results transmission and tabulation process, undermining public confidence in the IEBC. The IEBC's untimely communication also impeded adequate countering of election-related disinformation.

Voter Education

The IEBC is required to conduct continuous voter education according to Article 88(4)(g) of the Constitution, but fell short of meeting this mandate between 2017 and 2022 due to lack of funding. For the general elections, the IEBC implemented voter education in four phases, including for the two enhanced continuous voter registration exercises in October through November 2021 and January through February 2022, during the voter registration verification period, and for 40 days prior to election day. The IEBC employed 3,237 voter educators, including 47 county-level educators, 290 constituency-level educators, and two educators in each of the 1,450 wards while utilizing such methods as flyers, posters, brochures, TV clips, social media platforms, and local FM radios. Interlocutors highlighted that voter education efforts were insufficient, particularly at the grassroots-level and in areas with minority and indigenous populations. In addition, stakeholders also noted that the IEBC's model of two educators per ward had limited impact in both high population density areas as well as in more expansive rural areas with smaller population numbers. Voter education tactics also overlooked media outlets where young people receive and share information, such as social media platforms.

ELECTION TECHNOLOGY

One of the most contentious and scrutinized elements for the IEBC in the lead up to the 2022 elections was the procurement, testing, and management of election technology, particularly given the outsized role the results transmission process has played in previously disputed elections. Section 44 of the Elections Act establishes an integrated electronic electoral system and requires that the technology utilized must be “simple, accurate, verifiable, secure, accountable, and transparent” in line with Constitutional requirements for the voting system under Article 86. For the 2022 elections, the IEBC employed biometric voter registration and an electronic voter authentication and results transmission system, collectively known as the Kenya Integrated Election Management System (KIEMS). To this end, the IEBC prepared and deployed 55,601 KIEMS kits which provided for the 46,229 polling stations as well as six backup kits in each of the 1,450 wards to replace a failed kit at a polling station.

Following the 2017 elections, the IEBC procured a new election technology provider, Smartmatic International, to supply, deliver, install, test, and maintain the KIEMS kits. Throughout the pre-election period, several media houses and politicians cast doubt on the security and integrity of Smartmatic, with critics particularly noting the use of its products in questionable elections in the Philippines, Uganda, and Venezuela and called into question the due diligence of the IEBC in selecting the vendor. These allegations were exacerbated by the high-profile arrest of three representatives of Smartmatic by the NPS at Kenyatta International Airport in Nairobi for reportedly possessing election stickers which were not declared, about which the police had allegedly not been notified, and the IEBC had not accompanied their arrival. The IEBC regularly defended the selection of Smartmatic as well as the procurement process and characterized the arrest of the Smartmatic staff as an attempt to harass and intimidate the Commission. Election technology vendors in Kenya in previous elections

have also come under fire for issues related to electoral data security, transparency, and ownership, highlighting tensions between the country's legally-mandated use of election technologies and its practical application.

Alongside the biometric authentication of voters, Section 44(A) of the Elections Act requires that the IEBC put in place a complementary method of identifying voters on election day.¹³ In June, the IEBC decided that both the primary and complementary methods of identification would be based on the voter register loaded on a secure digital memory card in each KIEMS kit instead of using a physical copy of the register as the complementary method. If a voter was not identified biometrically, they would be identified alphanumerically on the KIEMS kit's electronic register by keying their identification or passport number. According to the IEBC, their decision not to use the manual register was an effort to prevent voting irregularities and was made in accordance with a 2017 Court of Appeal judgment.¹⁴ The IEBC later clarified that a sealed physical copy of the register would be available at each polling station to be used as a last resort in the event of failure of the KIEMS kit, but not as the complementary method. However, stakeholders, including both civil society as well as the Azimio coalition, expressed concern about the IEBC's decision noting lack of public consultation, concerns about disenfranchisement due to technological failure, and failure to adhere to election regulations which require the use of a physical register.¹⁵ In response to a petition filed by several civil society organizations, on August 4 the High Court found the IEBC's decision unconstitutional and compelled the IEBC to use the register in compliance with Regulation 69 of the Elections (General) Regulations.¹⁶ Thereafter, the UDA appealed to the Court of Appeal which issued a stay of the High Court decision on August 8, just one day before the elections, leaving voters unsure of what process to expect when the polls opened and raising concerns about how polling station staff would handle the verification of voters given the changes.¹⁷

13. Section 44(A) of the Elections Act

14. According to the IEBC, the Court of Appeal's decision in Civil Appeal 328 of 2017 NASA vs IEBC and two others recognized the use of the alphanumeric search as the complementary method, and the ruling had not been challenged.

15. Under Regulation 69(d) of the Elections (General) Regulations, an election official shall cross a voters name off from the printed register after they are identified using a fingerprint scanner.

16. Petition E306 of 2022 Kenya Human Rights Commission & six others vs IEBC & two others, August 4, 2022

17. Civil Application E288 of 2022, United Democratic Alliance Party vs Kenya Human Rights Commission & eight others, August 8, 2022

The IEBC prepared to conduct the results transmission process in compliance with the 2017 Supreme Court decision in which the 34A forms from each polling station would be considered the final results of the presidential election. To support the transmission of scanned copies of the 34A forms to both the constituency and national tallying centers after the close of polling, each KIEMS kit contained two SIM cards and satellite modems were procured for 1,111 polling centers that lacked a minimum of 3G network coverage. The IEBC also met with Kenya's mobile service providers to ensure the optimization of the 3G network before the elections. The IEBC also enacted enhanced security measures such as Virtual Private Networks (VPN), firewalls and security access codes to protect against data hacking.

In line with the requirement to test, verify, and deploy the technology at least 60 days before the elections under Section 44(4)(b) of the Elections Act, the IEBC organized a public simulation of the electronic results transmission system on June 9. In the two and a half hours that the simulation took place, results were received from less than half of the 2,900 polling stations sampled. This raised significant concerns about the ability of the IEBC to deliver timely information to voters during the critical immediate post-election period. A second simulation was conducted in the latter part of July whereby 580 polling stations were sampled. In that simulation, most polling station results were received after approximately two hours of testing. While stakeholders noted improvements after the second simulation, concerns remained about network coverage and the length of transmission time, as well as a general lack of confidence and understanding of the process and

security measures put into place by the IEBC. A full load test of the system was never publicly conducted ahead of the elections.

The IEBC planned to display the scanned images of received 34A forms through a publicly available online portal, an important step in electoral transparency. Despite the underwhelming results of the pre-election simulations and in a marked improvement from 2017, scanned images of 34A forms were uploaded quickly to the online portal after the polls closed as were the subsequent 34B forms once tallying was completed at constituency centers.

The speed of the image transmission, and a more user-friendly portal, helped to build confidence in the results transmission process and reduce an information vacuum in the immediate post-election period. However, the IEBC's decision not to make polling station level results available in any other format presented a challenge for individual citizens to publicly verify the results, as downloading or scraping of the scans, or manually inputting results data from image files is highly time-intensive and effectively impossible to aggregate big data sets.

Limitations to timely, machine-readable, in-bulk results data limited the public's ability to fact-check results-related misinformation and disinformation.



VOTER REGISTRATION

A citizen of Kenya may register to vote provided that they are at least 18 years of age and possess a valid identification document or passport. The law imposes some restrictions, including for cases of persons who have been convicted of an electoral offense within the last five years, are declared to be of unsound mind, and are undergoing bankruptcy. Voter registration is both active and continuous and is only halted during the general elections, by-elections, and periods of violence.

The IEBC engaged in two Enhanced Continuous Voter Registration Exercises (ECVR) from October to November 2021 and from January to February 2022. The law provides for continuous voter registration until 60 days before election day, but the IEBC suspended the process on May 4, or just under 90 days before the elections, to reportedly allow for adequate time for verification of the register. Approximately 3.2 million (less than 15 percent) of registered voters checked their registration details via SMS, web portal, or in person to rectify any errors during the verification period, which lasted until June 2. For the August 9 elections, the register of voters was composed of a total of 22,120,458 voters, which included 10,443 voters abroad as well as 7,483 voters in prison. While the total number of registered voters increased by 12.79 percent from 2017, only approximately 2.5 million new voters were added to the list falling short of the IEBC's target of six million new voters. The shortfall was attributed to inadequate engagement of marginalized communities such as pastoralists, as well as lack of outreach and education about the ECVR. Some political parties engaged in efforts to mobilize voters to register, however, others were hindered by the COVID-19 pandemic. Other factors that contributed to voter registration shortcomings included high levels of youth voter apathy, difficulty obtaining identification cards required for registration, COVID-19, and voters' preoccupation with the deteriorating economic situation.

According to section 8A of the Elections Act, the IEBC may contract a reputable professional firm to audit the voter

register not less than six months before the elections. In April, the IEBC contracted KPMG to audit the register, however, the process transpired concurrent to the voter verification exercise instead of before it reportedly due to delays in funding, court petitions challenging the procurement of the election technology provider, and delays in the transfer of data from the previous election technology provider. On June 20, the IEBC shared highlights of the findings of the KPMG audit as well as the steps the IEBC took to address recommendations and issues identified. The preliminary audit results found 970,351 registration records with issues including 4,757 duplicate registrations, 226,143 cases of names not matching identification or passport numbers, 481,711 cases without or with duplicate identification (ID) or passport numbers, 164,269 cases of invalid passport or ID numbers, and 246,465 cases of deceased persons. The IEBC removed all identified deceased persons and addressed approximately 47 percent of the remaining issues while noting that the biometric voter identification system would prevent unlawful voting on election day. Stakeholders continually called for the full final audit report to be shared with the public. On August 2, the IEBC posted only 26 pages out of the over 150-page audit report along with a matrix of the IEBC's actions to address the audit recommendations. While the IEBC was not obligated to make the report public, publishing the full report would have increased transparency and improved public perception of the election administration.

The IEBC initially announced that the register of voters would be certified and published on or before June 9, but this was postponed to June 20 to allow for incorporation of the preliminary findings of the audit process. However, the IEBC only gazetted the certification of the revised register of voters on June 21, and the full aggregated register of voters was not made available in advance of election day, which prevented nonpartisan citizen election observers and other stakeholders from being able to independently verify the quality of the voter list.

PARTY NOMINATIONS AND CANDIDATE REGISTRATION

Political Party Nominations

In April 2022, political parties conducted their nominations to select their candidates for the six elective positions. Under the 2022 amendments to the Political Parties Act (2011), parties are permitted to directly nominate candidates through universal suffrage of their membership, or to indirectly nominate them through interviews, internal polls, delegates, or consensus.

Interlocutors noted that indirect candidate nominations resulted in decreased levels of intra-party violence, reduced spending by parties and aspirants, and led to fewer complaints lodged with parties' Internal Dispute Resolution Mechanism (IDRM) and with the Political Parties Dispute Tribunal (PPDT) as compared to 2017. The nomination process, however, did not result in more transparency despite increased oversight authority conferred to the ORPP

outlined in Sections 38C, 38E, 38F, and 38G of the amended Act. Nominations were often opaque and marred by nepotistic selections over competitive processes, which often excluded young aspirants, particularly women. As a result, many candidates chose to run as independents. The IEBC received registration applications from more than 7,000 independent aspirants, but only 4,526 were ultimately cleared, representing 28 percent of all candidates.

While UDA organized direct nominations in most cases, ODM, Jubilee, the Wiper Democratic Movement (WDM), Amani National Congress (ANC), and other parties opted either for a mixed approach or for strictly indirect nomination methods. ODM nominations were particularly fraught in Mombasa and Nakuru counties, where national party leaders sometimes granted certificates of nomination to a preferred slate of candidates, with little consultation or over the objections of local party members. In Nakuru county, UDA conducted primaries that were marred by disorganization, fraud allegations, and violence.¹⁸

Candidate Registration

The right to stand as a candidate is guaranteed by the Constitution of Kenya for political parties and independent candidates. Eligibility requirements are found in various articles of the Constitution as well as other parts of the legal framework which define citizenship, voter registration status, nomination criteria, as well as moral and ethical requirements. Disqualification of a candidate may be based on holding certain State or public offices, serving as an IEBC commissioner within the five years prior to an election, serving or being sentenced to certain prison sentences, and owing allegiance to a foreign state. The Elections Act requires that candidates hold degrees from universities recognized in Kenya but High Court decisions in 2021 and 2022 found the educational requirements for aspirants seeking to register as candidates for Members of County Assembly (MCAs) and Members of Parliament (MPs) under Section 22(1)(b)(ii) and (i) of the Elections Act, respectively, to be unconstitutional.¹⁹ However, degree requirements for presidential and gubernatorial candidates remained for the 2022 elections.²⁰ These degree requirements along with requirements to be of sound mind and not an undischarged bankrupt are at odds with international standards.²¹

18. According to a CSO interlocutor, results announced inside polling stations were sometimes different from those published by UDA officials, and the party allegedly used an outdated IEBC voter registry instead of its official membership list cleared by the ORPP. Furthermore, the polling center at Menengai Social Hall in Nakuru Town East was stoned by youth hired by one of the MP aspirants. UDA interlocutors refuted those allegations, explaining that the IEBC voter registry was used only to compare it to its membership list and ensure that members participating in the nomination process were actually registered voters.

19. Constitutional Petition E229, E225, E226, E249 & 14 OF 2021 (Consolidated) County Assembly Forum & six others v Attorney General & two others; Senate of the Republic of Kenya (Interested Party); Constitutional Petition 28 OF 2021 & Petition E549, E077, E037 & E065 OF 2021 (Consolidated) Wambui & 10 others v Speaker of the National Assembly & six others

20. On September 30, 2022, the High Court ruled Section 22(2) of the Elections Act to be unconstitutional for requiring gubernatorial candidates to hold a university degree while members of county assembly candidates are not, which conflicts with Article 180(2) of the Constitution. However, the decision will not take effect until the 2027 general elections.

21. CCPR General Comment 25, Article 29, CRPD

The candidate registration period for the six elective seats commenced on May 29 and concluded by June 7. The IEBC cleared a total of 16,100²² candidates to contest the 2022 elections, which is an increase from the 14,523 registered in 2017. Of the total for 2022, 11,574 or 72 percent of candidates represented political parties while 4,526 or 28 percent were independent. Despite the overall increase in the number of candidates, the representation of party nominated and independent candidates remained approximately the same as 2017 with 10,521 or 72.4 percent and 4,002 or 27.6 percent, respectively. The total number of candidates for 2022 included four for president; 2,132 for member of national assembly; 341 for senator; 360 for county woman representative to the national assembly; 266 for governor; and 12,997 for member of county assembly.²³

Under the Elections (General) Regulations, both party-nominated and independent presidential aspirants must submit copies of the identification documents of voters who provided supporting signatures as part of the registration requirements.²⁴ In addition, independent aspirants applying as candidates for all other elective positions are required to submit copies of the identification documents of voters who provide supporting signatures.²⁵ Some independent candidates reported to the IEOK that the requirement was unfair due to costs, lack of party resources, and voters' lack of willingness to provide their identification documents. The requirement was noted to be particularly challenging for aspirants in rural areas. A group of independent aspirants together with the Free Kenya Initiative, a movement seeking to form a coalition of independent candidates, filed a petition with the High Court seeking the regulations be declared unconstitutional, among other reliefs sought. On July 5, the High Court ruled that the requirements were unconstitutional and created an unnecessary burden for independent candidates,

among other decisions.²⁶ The IEBC appealed to the Court of Appeal which granted a stay of execution of the High Court judgment on July 29.²⁷ While clear rules should guide the process for verifying signatures for candidate registration, these requirements should not be unreasonable and burdensome.

Both independent and party nominated aspirants must meet the moral and ethical requirements of the Leadership and Integrity Act and of Chapter 6 of the Constitution in order to register as candidates. Aspirants must submit a self-declaration form addressing moral and ethical questions to the IEBC together with their other registration documents which some stakeholders noted had little impact in deterring corrupt candidates from running for office. In addition, the IEBC submitted a list of 21,865 aspirants to the Ethics and Anti-Corruption Commission (EACC), whose mandate is to ensure compliance with leadership and integrity requirements of Chapter 6 of the Constitution. The EACC identified 241 aspirants with integrity issues, such as allegations of corruption, abuse of office, or failure to resign from public office. The EACC recommended that the IEBC take these concerns into consideration before clearing each of the 241 candidacies.²⁸ However, the IEBC did not disqualify most aspirants due to constitutional provisions for the presumption of innocence until proven guilty as well as to prevent disqualification until all opportunities for appeal were exhausted. Following the EACC's list of aspirants with integrity issues, the IEBC initially reported that six candidates were disqualified for integrity issues, however the IOEK noted that at least four of the six were ultimately still included on the ballot on election day. Stakeholders expressed frustration about the lack of clear criteria and vetting process for meeting the leadership and integrity requirements as well as frustration that aspirants with integrity issues would be registered and potentially elected to office.

22. On August 8, 2022, the Chair announced that the total number of candidates that would contest in the elections was 16,105.

23. In 2017, the 14,523 registered candidates included eight for president; 1,893 for member of national assembly; 256 for senator; 299 for county woman representative to the National Assembly; 210 for governor; and 11,857 for member of county assembly.

24. Regulation 18(2)(c) of the Elections (General) Regulations

25. Regulations 24(2)(c), 32(2)(c), 36(2)(c) of the Elections (General) Regulations

26. Petition E160 of 2022 Free Kenya Initiative and 17 others vs IEBC and three others

27. Civil Petition NAI E241 of 2022 IEBC vs Free Kenya Initiative and 22 others.

28. Of the 241, three were aspirants for president and deputy president, 63 for county governor or deputy governor, six for Senate, 19 for county woman member of the National Assembly, 58 for member of National Assembly, and 94 for member of the county assembly.

THE CAMPAIGN ENVIRONMENT

The campaign period officially began on May 29 and ended 48 hours before the elections on August 9.

Under the 2022 amendments to the Political Parties Act, political parties allowed to join forces as a Coalition Party and register that coalition as a political party – under a new name, symbol, and constitution – upon the submission of its agreement to the ORPP at least 120 days before the general elections.²⁹ The Azimio la Umoja (One Kenya Coalition), led by Raila Odinga, registered as a coalition party and initially comprised 23 members dominated by ODM, Jubilee, and WDM. Kenya Kwanza, led by William Ruto and co-founded by UDA, ANC, and the Forum for the Restoration of Democracy in Kenya (FORD-Kenya), was registered as a traditional coalition, rather than a coalition party, and comprised 12 parties.

Despite their different legal status, Azimio and Kenya Kwanza operated in similar ways during the campaign and experienced related challenges. Azimio and Kenya Kwanza kept a full campaign schedule and organized large rallies for their respective presidential tickets in all 47 counties. The large events were complemented by sophisticated audiovisual and digital campaigns primarily conducted on Facebook, Twitter, and WhatsApp. While both coalitions established regional campaign organizations to coordinate the activities of their respective presidential candidates, individual party members were responsible for supporting their own candidates from the position of governor to MCA. Parliamentary and MCA candidates were more likely to organize small public gatherings as well as door-to-door canvassing, and received banners, posters, and other branding materials from their party's headquarters. Pre-election agreements allowing for the registration of a single coalition candidate were enforced in a handful of electoral areas, including in Nakuru where Azimio and Kenya Kwanza fielded a Jubilee and a UDA candidate for governor, respectively. However, in most cases, Azimio and Kenya Kwanza leaders were unable to convince aspirants from smaller parties to withdraw in favor of stronger ones and renounced most of their zoning plans following the finalization of the IEBC list of candidates.

Both Azimio and Kenya Kwanza experienced internal divisions and disagreements in a majority of counties where coalition party members slated multiple candidates. One of these disagreements turned violent on June 23 in Marsabit county, where supporters of two rival Azimio parties competing for the gubernatorial elections clashed at a rally attended by Raila Odinga and Martha Karua. Likewise, UDA was strongly criticized by smaller members of Kenya Kwanza for exclusively supporting its candidates in Kiambu and Nakuru counties and calling on voters to vote UDA for all six elective posts.

While both presidential candidates concentrated largely on matters of personality as well as criticism of the IEBC, the police, and other institutions, they also discussed key provisions included in their manifestos. UDA presidential candidate William Ruto centered his campaign around the 'hustler vs. dynasty' message, promoting a bottom-up model of wealth distribution, which resonated with large swaths of the country's youth. Raila Odinga promised to strengthen Kenya's manufacturing sector, its devolved system of government, as well as its fight against corruption. Positively, both camps also highlighted gender equality and inclusion issues, particularly during the first month of the campaign period.

Despite the withdrawal of Raila Odinga from one of two presidential debates, the broadcasting of dozens of candidate debates helped enhance the plurality of Kenya's political system and informed voters' choice.³⁰ In addition to the two debates featuring the deputy presidential candidates, at least 29 gubernatorial debates across 24 counties were broadcast live on traditional and social media. Numerous debates introducing candidates for the four other elective posts were also conducted.

29. Section 10(b) of the Political Parties Act (2022)

30. Two presidential debates were scheduled on July 26. George Wajackoyah of the Roots Party boycotted the other debate. He was supposed to face David Mwaure Waihiga of the Agano Party.

Freedoms of assembly, expression, and association were broadly respected, though there was little political pluralism in party strongholds where candidates affiliated with the opposing coalition often operated in limited political space with few opportunities to openly campaign. In Kisumu County, the IEOK heard numerous reports that any overt campaigning by Kenya Kwanza parliamentary and MCA candidates in locations such as Kisumu Central constituency would not be tolerated by most local residents. Indeed, on May 27, Kisumu City Manager Abala Wanga banned political parties and candidates from holding rallies in the Central Business District ostensibly to protect public property and fight traffic congestion. While alternate sites were designated for campaign rallies outside the city center, the city ordinance violated fundamental freedoms of assembly and association.

Through August 6, the IEOK recorded physical attacks against candidates and their supporters in Nairobi (21), Bungoma (17), Busia (10), Uasin Gishu (7), Homa Bay (5), Migori (5), Kakamega (4), Mombasa (4), Machakos (3), and Siaya (3) counties. Candidates across Kenya also routinely violated an IEBC regulation limiting campaign activities in public spaces from 6:00 pm to 7:00 am.³¹

The 48-hour silence period was generally followed by political parties and candidates despite a handful of minor violations. Kenya Kwanza supporters accused President Uhuru Kenyatta of rallying voters in support of Azimio presidential candidate Raila Odinga during an interview granted to Kikuyu vernacular television and radio stations on August 7.³²

Campaign Finance and Misuse of State Resources

Money occupies a central role in Kenyan politics, particularly during the campaign period. Given the Election Campaign Financing Act (2013) has never been applied and there were no provisions regulating fund contributions, expenditures, or disclosure requirements for registered candidates in 2022, the playing field for electoral contestants was not level and favored male gubernatorial and parliamentary candidates from ODM and UDA who

were more likely to raise funds from businesses and other professional networks with the assistance of their party. At the presidential level, Azimio and Kenya Kwanza spent large sums of money to mobilize voters, dwarfing the resources expended by the Roots and Agano parties, which organized sporadic campaign events and relied on press conferences, televised one-on-one interviews, and social media platforms to reach out to potential supporters. The lack of campaign finance regulations also disadvantaged candidates from marginalized groups, including women, youth, and PWDs, who lacked access to networks of donors and suffered from low visibility.

Campaign largesse remains widespread in election campaigns in Kenya. Specific cases of distribution of money or foodstuff were reported to the IEOK in Nairobi, Nakuru, and Kisumu. In one instance, citizen observers in Nakuru Town East witnessed the incumbent Member of National Assembly (MNA) distributing Ksh 300³³ to households across the constituency's five wards on multiple days. In Kisumu Central, the IEOK witnessed the ODM MCA candidate distributing Ksh 300 to supporters at a small rally in Kondele ward. Several candidates and party officials argued that the distribution of money and foodstuff was a deeply ingrained feature of Kenyan political culture and constituted a humanitarian gesture that impoverished supporters had come to expect.

Reports from citizen observer groups and civil society organizations described both Azimio and Kenya Kwanza affiliates misused state resources throughout the campaign period.

Transparency International-Kenya (TI-K) deployed 30 monitors to record specific instances of misuse of state resources across seven counties. Throughout the campaign period, TI-K categorized and uploaded their reports on a public portal that contained more than 2,000 separate cases.³⁴

31. See Gazette Notice No. 430, 431, 432, 433, 434, and 435 published on January 20, 2022.

32. See "Uproar Over Uhuru's Interview With Kikuyu Vernacular Stations," Kenyans.co.ke, August 7 at www.kenyans.co.ke/news/78130-uproar-over-uhurus-interview-kikuyu-vernacular-stations

33. As of November 3, 2022, \$1 USD = 120.71 Ksh.

34. Transparency International-Kenya's portal can be found at <http://campaignwatch.tikenya.org>

The most common offenses identified were the use of state facilities (519 cases) followed by the unveiling of government projects during campaign events (378 cases) and the use of state funds, such as the National Government Constituencies Development Fund (290 cases). TI-K also found that President Uhuru Kenyatta and Azimio generally had control of county executives and other state personnel.

The UDA coalition accused the Azimio coalition of state capture and expressed concern about the involvement of key cabinet secretaries and county commissioners in political activities, as well as President Uhuru Kenyatta's interference in the electoral process. Ruto's presidential running mate Rigathi Gachagua alleged on July 5 that local chiefs were summoned by the Nyeri Deputy Commissioner and ordered to welcome Azimio presidential candidate Raila Odinga at a rally in Karatina.³⁵ Local chiefs are civil servants and therefore barred from taking part in campaign activities by Section 23 of the Leadership and Integrity Act (2012). In a counterattack, William Ruto accused the Kenyatta government of misusing the National Intelligence Service to bolster Azimio's campaign and manipulate the elections, in violation of Sections 12 and 14 of the Election Offences Act (2016).³⁶ On the other hand, in a letter to the IEBC on June 20 the Azimio coalition alleged that the Deputy President was using his office's hospitality funds and official residence to finance and host Kenya Kwanza's political gatherings. Raila Odinga's campaign team also alleged that Ruto's office was employing civil servants to spread disinformation on media outlets and social media platforms, in violation of Section 23(2) of the Leadership and Integrity Act (2012).

Political Parties Liaison Committee

The Political Parties Liaison Committee (PPLC) was established by the Political Parties Act to serve as a platform for dialogue between parties, the ORPP and the IEBC. IEOK interlocutors, including the PPLC's Organizing Secretary, agreed that the Committee was relatively inactive in 2022 compared to previous years. Severe financial constraints, the overrepresentation of small political parties at the leadership level, along with the lack of involvement of the larger parties, have caused the PPLC to lose influence and credibility as an institution. PPLC interlocutors informed

the IEOK that it held only one formal meeting with the ORPP and IEBC in May 2022 and that subsequent requests for meetings with the IEBC went unheeded. Positively, the PPLC partnered with the ORPP and the National Cohesion and Integration Commission (NCIC) to conduct peace caravans across the country during the campaign period.

GENDER AND INCLUSION

Women's Participation

At the time it was enacted, Kenya's 2010 Constitution was hailed as one of the most progressive in the world for women and minority rights. While it provides a framework for an inclusive political process, barriers to increasing representation of women, youth, and PWDs in political life continue to exist. Articles 27(8) and 81(b) of the 2010 Constitution specifies that no more than two-thirds of elected public bodies be occupied by either gender. However, more than 10 years later, the government is yet to enact legislation to fully implement this constitutional requirement. Women represent 49.12 percent of voters registered, while men represent 50.88 percent, demonstrating that women are still underrepresented in the register of voters.

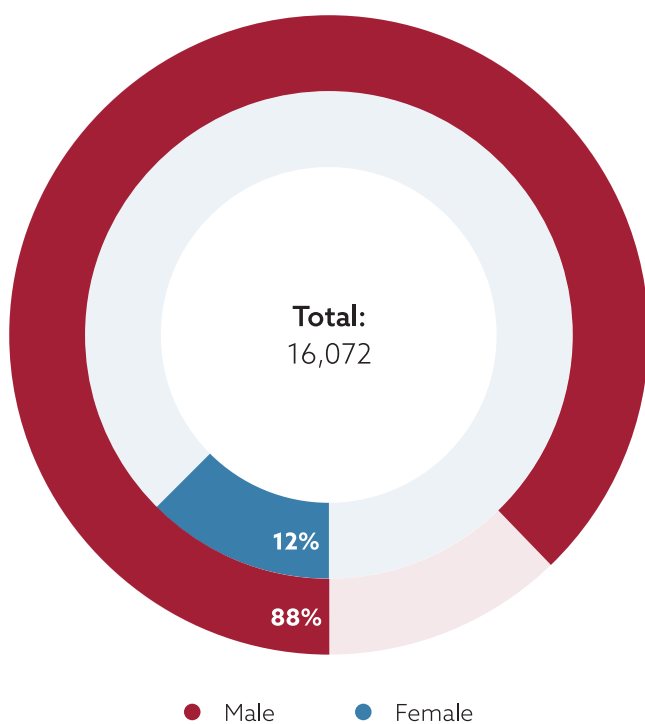
Positively, more women ran for elective positions in 2022 than in 2017, both in absolute numbers and as a share of the total number of candidates. According to the IEBC, of the 16,100 candidates were cleared for the 2022 polls, women represented 12.18 percent or 1,962 candidates. Three of the four presidential candidates nominated a woman as a running mate, and there was a significant increase in the number of women candidates for the five other elective positions. For example, 23 of 266 gubernatorial candidates and 62 out of 266 deputy gubernatorial candidates were women, representing a 156 percent and a 94 percent increase compared to 2017.

35. See Facebook post at www.facebook.com/profile/100057148162198/search/?q=Karatina%20Azimio

36. On May 31, Principal Secretary for Interior Karanja Kibicho declared publicly that Odinga would win the presidency in the first round with 60 percent of the vote, based on data collected by NIS. The claim prompted UDA to lodge a complaint with the Intelligence Service Complaints Board over the misuse of national security bodies to advance the interests of a political organization.

Likewise, 45 out of 341 senatorial candidates and 216 out of the 2,132 candidates for National Assembly were women, representing a 114 percent and 61 percent increase over the last elections. Lastly, 1,324 out of 12,997 candidates for MCA were women, a 66 percent increase since the last elections. Furthermore, several political parties appointed women as secretary general or executive director, including the UDA, the Amani National Congress, and the National Rainbow Coalition-Kenya (NARC-K). For the first time, ORPP enforced the two-third gender rule for party membership lists through its Integrated Political Party Management System.³⁷

GENDER BREAKDOWN OF CANDIDATES (TOTAL %)



The IEBC also played an important role in defending women's representation. In accordance with the ruling delivered in the Constitutional Petition No. 19 of 2017 in Katiba Institute vs. IEBC, and in conformity with Article 27(8) of the Constitution, the Commission issued a directive on

April 27 requiring that all candidates' lists comply with the two-third gender rule. While the IEBC directive was struck down by the High Court, the overwhelming majority of the candidates' lists from 81 parties were eventually compliant.³⁸ Regrettably, the IEBC failed to disaggregate the final list of candidates, as well as the election results, by gender, age, or disability status.

Despite the significant increase in women candidates in 2022, women continued to face cultural and economic barriers to political participation. Most women candidates lacked the ability to mobilize resources to sustain their campaigns throughout the election period, remained excluded from business networks, and rarely partook in informal fundraising events.

During the 2022 electoral period, dozens of women candidates were harassed online and on the campaign trail, which hampered their ability to move freely and interact with voters.³⁹ Many women candidates were also subjected to verbal abuse and other acts of psychological violence from both male and female opponents and their supporters, who often criticized their physical appearance or marital status.

For example, during a July 19 rally, Deputy President William Ruto attacked the marital status of Kitui Governor Charity Ngilu, a member of Azimio's Council, who was widowed in 2006.

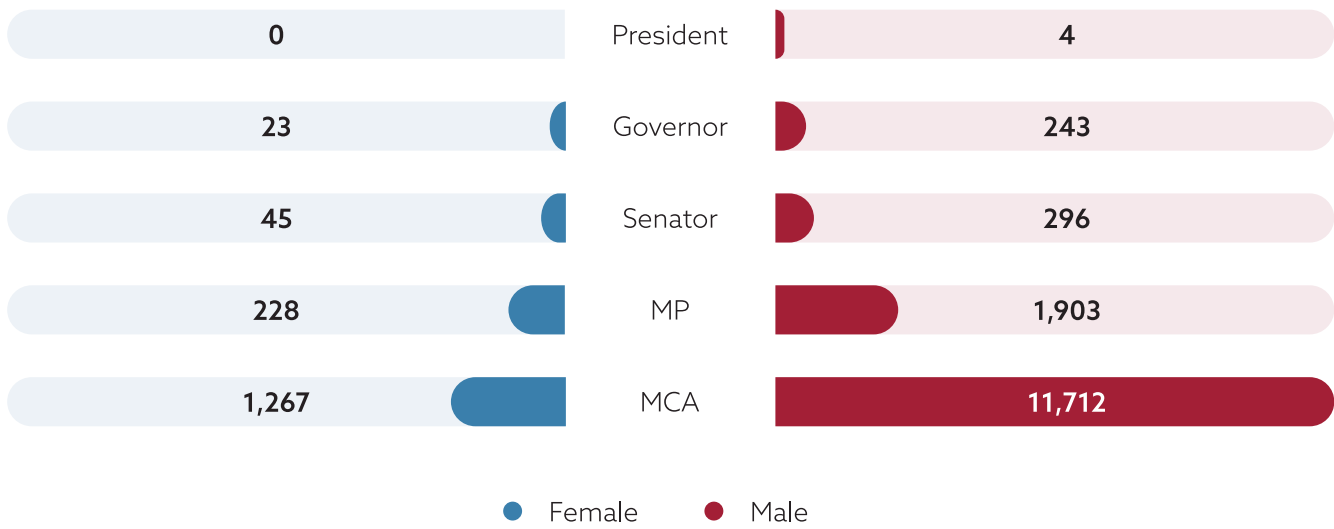
Women, youth, and PWDs remain significantly underrepresented in political parties and elective bodies, which may complicate their promotion to leadership positions in the long term. According to the ORPP, women represent 36 percent of political party members nationwide, while only 8.1 percent of registered parties are led by women. Women, youth, and PWD party leagues are also under-resourced and underutilized, and are usually activated during the electoral period to mobilize party supporters and voters.

37. Created in 2021, the Integrated Political Party Management System (IPPMS) is a digital platform that allows the ORPP to handle large submissions to the party membership register, as well as manage and verify party membership. IPPMS also enables Kenyan citizens to opt out of party membership unilaterally.

38. On June 14, the High Court ruled that the IEBC directive was unconstitutional for failing to conduct public participation.

39. For example, UDA MCA candidate Caroline Wanjiku, who competed in Karumandi ward, Gichugu constituency (Kirinyaga County), told the IEBC that she stopped scheduling campaign meetings in late afternoons following a physical assault on June 22. To protect herself, Wanjiku also hired extra security personnel and paid for their transportation, which drained her limited resources.

GENDER BREAKDOWN OF CANDIDATES PER POST



Youth Participation

Youth dissatisfaction and apathy was reported as a notable challenge ahead of the 2022 elections. This was reflected in low rates of youth voter registration, especially for those who turned 18 since the 2017 elections. On June 21, the IEBC gazetted the revised register of voters, which showed youth of ages 18 to 34 comprise 39.84 percent of voters, 5.27 percent less than in 2017, with male youth voters declining by 2.89 percent and female youth voters declining by 7.75 percent. IEOK noted that registration messaging did not directly target young people and did not attempt to utilize digital platforms during outreach. In Mombasa, Nakuru, Nairobi, and Kisumu youth gangs were hired by candidates to disrupt opponents' campaign events or dissuade voters from casting their ballots during the nomination process. Positively, beginning in June, youth organizations trained dozens of young voter educators at the county level on the electoral legal framework and voting procedures, in cooperation with the IEBC's Youth Coordinating Committee. This initiative outpaced IEBC's own voter education program, which began in mid-July. For the first time, the IEBC also accredited hundreds of students from the Universities and Colleges Students' Peace Association of Kenya as election observers.

Participation of Persons with Disabilities

The right of PWDs to participate in civic and political life is enshrined in Article 29 of the Convention on the Rights of Persons with Disabilities in 2008, which Kenya ratified in 2008, as well as Articles 54 and 100(b) of the 2010 Constitution. The Constitution and the Elections Act also provide that at least two PWDs are nominated to represent the interests of their community in the Senate, the National Assembly and in all County Assemblies.⁴⁰ However,

political parties have been unable to ensure that persons with disabilities are identified, recruited, and supported to participate effectively in internal party processes and when engaged, the efforts have largely been symbolic. According to the ORPP, less than one percent of party members are PWDs, and the IEBC Disability and Inclusion Coordination Committee (DICC) estimates that about 400 PWDs were candidates for the elections. Following the publication of the political parties' nomination lists for special seats in the Parliament and County Assemblies on July 27, disabled persons organizations criticized political parties for not adhering to the law by nominating individuals unregistered with the National Council for Persons with Disabilities.

Positively, the IEBC for the first time recorded new voters' disability status and the type of disability they have on the register of voters, and allowed previously registered PWDs to update their disability status. According to the IEBC, PWDs comprise 8.7 percent of all registered voters. In addition, the Commission launched a number of initiatives to facilitate the inclusion of PWDs in the electoral process, including the development of a Braille version of voter education materials and the training of Kenya Sign Language interpreters as voter educators. Interlocutors, including the DICC, viewed these initiatives positively but criticized the Commission for not using a more participatory approach in its decision-making and for relying on ad-hoc projects rather than long standing policymaking. Moreover, while located on the first floor, the majority of polling stations still lack ramps to facilitate access for voters with limited mobility, according to the DICC and IEOK observers. However, presiding officers and other temporary poll workers provided adequate assistance to voters with disabilities, in line with Section 104 of the Elections Act (2011) and regulation 72 of the Elections (General) Regulations of 2012.

40. See Articles 97(c), 98(d) and 177(c) of the 2010 Constitution and Section 36(f) of the 2011 Elections Act.

Other Marginalized Groups

Articles 56, 100(d) and 100(e) of the Constitution, which call on the State and Parliament to enact affirmative action policies and legislation promoting the representation of ethnic minorities and marginalized communities in Parliament, remain unfulfilled. According to the Center for Minority Rights Development (CEMIRIDE), ethnic minorities and indigenous peoples (MIPs) are relatively poor and tend to live in geographically isolated communities where government services, including civic and voter education programs, infrequently reach them. According to CEMIRIDE, there are no special voting arrangements or affirmative action measures included in the Elections Act or regulations meant to enhance the participation of MIPs in the electoral process. For example, there are no special provisions for ensuring that marginalized communities register to vote, and the enhanced voter registration exercise reportedly failed to capture several pastoralist communities in 2022. Furthermore, CEMIRIDE, a member of the Election Observation Group (ELOG), indicated that the participation of MIPs was not properly assessed by domestic observers on election day due to insufficient resources.

According to the Initiative for Equality and Non-Discrimination (INEND), a non-profit organization that promotes the rights of gender and sexual minorities in the Coast region, members of the lesbian, gay, bisexual, transgender, intersex, or questioning (LGBTIQ+) community are deeply marginalized in Kenyan society and, therefore, skeptical of engaging in the electoral process. Same sex relationships remain outlawed by sections 162 and 165 of the Penal Code. Nevertheless, INEND conducted a civic education program titled “Queering the Ballot Campaign,” and deployed 50 observers in Nairobi, Mombasa, and Western regions, in partnership with the National Gay and Lesbian Human Rights Commission and Elite LBQ, to record possible incidents against LGBTIQ+ voters. Positively, the IEBC granted accreditations to INEND observers and those of other LGBTIQ+ organizations without discrimination. In addition, the Commission registered and recognized for the first time one intersex candidate, who ran for MCA in Mukuru Kwa Njenga ward (Embakasi East constituency, Nairobi) for UDA.⁴¹



41. During a July 8 briefing on election preparedness with accredited observers at the Bomas of Kenya, the IEBC confirmed that 14,137 male candidates, 1,962 female candidates, and one candidate “of other gender” would be standing for elections.

INFORMATION ENVIRONMENT

Traditional Media

Kenya enjoys a diverse and liberalized media environment with numerous newspaper, radio, and television outlets. Radio remains the most widely consumed medium, with significant reach into rural areas through 54 private vernacular radio stations broadcasting in 19 different languages. Digitization is a significant aspect of Kenya's media space with the introduction of digital terrestrial television transmission in 2015 which led to a significant increase in the number of television channels. The Kenyan media was the focus of many of the key narratives during the electoral process, which included questions about their preparedness to cover the elections, a lack of experienced journalists, and fears around partisanship and political capture.

While Kenya's media environment is quite diverse, concerns about political capture persist because the majority of media houses (83 percent) are owned by politicians or individuals with overtly partisan leanings. In the pre-election period, William Ruto persistently criticized Royal Media Services, which owns an estimated 60 percent of the media market in Kenya including such platforms as Citizen TV, due to the owner's public statements declaring support for Raila Odinga. According to a quantitative assessment⁴² of mainstream media's coverage and reporting of 17 presidential aspirants during the period of April to early June, Odinga received 61.24 percent of the total media coverage followed by Ruto with 38.2 percent, George Wajackoyah with 0.54 percent and David Mwaure with 0.02 percent. In addition, Odinga had a higher share of the coverage over Ruto across radio, television, and print media.

Political ownership also had an adverse effect on journalists, some of whom were targets of violence in the pre-election period, especially in strongholds where the owners of media platforms expressed partisan support for the opposition. Press freedom violations were noted by the Media Council of Kenya (MCK) during the election period, including online trolling and physical attacks on journalists. Threats to journalists run counter to the 2010 Constitution, which has been praised for expanding freedoms of expression and the press, and specifically prohibiting the government from interfering with editorial independence. However, in 2018, parliament passed a bill⁴³ to combat fake news, which

gave the government expanded powers in determining what qualifies as mis- or disinformation. Interlocutors also noted the need for sections of the Computer Misuse and Cybercrimes (Amendment) Bill 2021⁴⁴ to be declared unconstitutional, specifically sections on defamation, which is a tool used to attack media houses who are critical of the government.

Fears around the media's readiness to report on the elections drew in large part from the fallout of the COVID-19 pandemic during which time an estimated 300 to 500 journalists lost their jobs. As a result, at least one-third of the journalists who covered the elections had no prior election experience. In addition, many experienced media practitioners and journalists had migrated either to private communications consultancy firms or to the communication teams of political party campaign offices.

To address the lack of election experience as well as concerns regarding partisan reporting, the MCK conducted extensive training programs across the country for journalists, producers, media practitioners, public information officers, faith-based communicators, and media managers. The MCK trained a total of 3,064 personnel in 45 counties, of whom 1,766 were men and 1,298 were women. They covered 47 TV stations, 39 print and digital (including independent producers) media outlets, and 183 FM stations across the 45 counties. Following the elections, the MCK updated this number to over 3,500 personnel.

Gaps in the mainstream media's ability to disseminate election-related information existed, particularly in rural areas where there is often a lack of telecommunications signal. Community and vernacular radio stations often fill those gaps and speak on localized issues and conflicts. Privately-owned vernacular stations were highlighted as an information integrity risk because they are used to speaking to particular population groups, such as particular ethnic groups. Most privately-owned vernacular radio stations are owned by politicians or aspiring politicians and are used as their personal campaign vehicles, including to attack political opponents, and there is little capacity to effectively moderate these stations for hate speech or mis- or disinformation.

42. Media Council of Kenya, Media Monitoring Research Report on Election Coverage April - June 2022

43. The Computer Misuse and Cybercrimes Act, 2018. See here: <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ComputerMisuseandCybercrimesActNo5of2018.pdf>

44. This bill proposed a number of changes to the existing Computer Misuse and Cybercrimes Act, 2018 including increased limitations to rights to freedom of expression and access to information. This bill was heavily opposed and as yet has only passed the first reading.

Social Media

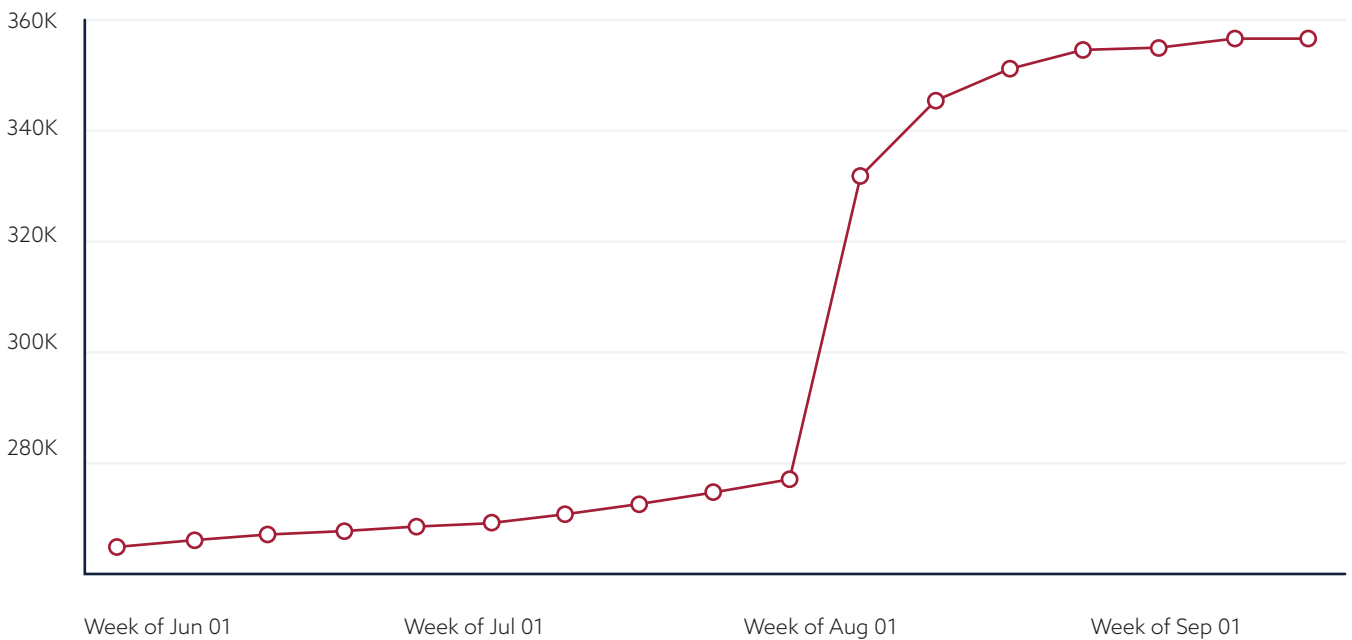
Kenya maintains one of the highest internet penetration rates in Africa (85.5 percent), which has driven the expansion and adoption of social media across the country. A 2021 study⁴⁵ of online users in Kenya revealed that up to 76 percent source their news from social media. This increasing reliance on social media was reinforced by several interlocutors who also noted that even in the rural parts of the country, content jumps from platforms like TikTok to messaging services like WhatsApp, thereby increasing the reach of viral content, especially false content.

In addition to their official campaigns, both the Azimio and UDA coalitions relied on “keyboard warriors” – paid bloggers, influencers, and pundits – to spread campaign narratives and discredit opposing candidates on a number of different platforms, including Facebook, WhatsApp, and Twitter. In the pre-election period, messaging often centered on candidates’ academic qualifications or lack

thereof, Ruto and Gachagua’s associations with the Moi era, and Odinga as part of the Kenyan political dynasties.

Key institutions involved in the electoral process, such as the IEBC and the Judiciary, also utilized social media to disseminate election-related information. In the immediate pre-election period, the IEBC maintained a relatively consistent rate of messaging with 21 posts per week on Facebook; this surged to over 120 posts during the election week, with a steep drop the following week. The pre-election period saw relatively low engagement and a significant spike during the election week. Both the IEBC and Judiciary, in particular, saw increased followership and engagement on their platforms as the electoral period progressed. In particular, the Judiciary’s use of social media during the petition hearings in the post-election period was an exemplary show of transparency and openness.

IEBC FOLLOWERS



FOLLOWER GROWTH > 06/01/22 - 09/26/22

FOLLOWERS
357.5K

GROWTH
+84.9K

% GROWTH
+31.14%

45. Reuters Institute Digital News Report 2021

Disinformation, Gendered Disinformation, and Hate Speech

Social media was central to the dissemination of political and election-related information and disinformation. The use of pseudo accounts, bots, targeted hashtags, astroturfing,⁴⁶ fabricated photos and news stories, and partisan posts from notable influencers with high-follower counts (one million or more) galvanized the online political debate. Institutions, such as the IEBC or the Supreme Court of Kenya (SCOK), as well as high profile individuals, such as the IEBC Chairman, were frequently the targets of smear campaigns. While numerous platforms were utilized, TikTok, the most downloaded social app in 2021, emerged as a powerful new platform for hateful, divisive, and false messaging during the pre-election period. Edited videos with mistranslated subtitles, edited speeches, falsified statements attributed to individuals and institutions, and misleading or misidentified images were commonplace.

Women candidates were often the target of gendered attacks and disinformation which often contained commentary on marital status or physical appearance. When Agnes Kavindu announced her candidacy for a Machakos Senatorial seat, the coverage by the press included gendered language, such as her coming from a “broken home” or her suitability for the position as a divorced woman, while Martha Karua, Azimio’s candidate for Deputy President, was reportedly harassed online. Interlocutors noted that other politically active women, including journalists and activists, also suffered from verbal abuse and other acts of psychological violence, particularly in the digital space where a lack of transparency creates challenges for investigation, oversight, and accountability. Local languages, which evade detection by social media threat-detection algorithms, were used as tools for coded messaging and hate speech, some of which targeted women or used ethnic-based attacks on a number of online platforms.

A research report from June 2022 also found extremist networks operating on Facebook through a highly-coordinated online propaganda machine, spreading narratives in Kiswahili, Somali, and Arabic supporting al-Shabaab and the Islamic State, and presenting them as protecting the interests of Muslims in Kenya against the foreign imposition of democracy.⁴⁷ An investigation by Global Witness published on July 28 revealed that Facebook failed to sufficiently detect hate speech ads in both English and Swahili.

A day after the Global Witness report, during a July 29 press conference, the Commissioner of the NCIC stated that Facebook had violated the constitution and the law of Kenya noting that Facebook was unable to detect several cases of hate speech. They further provided an ultimatum that if Facebook did not respond to the reports of hate speech and failed to comply with requirements from NCIC and the Communications Authority of Kenya within seven days, Facebook would be suspended in Kenya.

While the NCIC developed a hate-speech lexicon (hatelex) of 23 words, which should not be used by politicians or others, they proved ineffective at holding political actors to account when the words are used, particularly in digital spaces or in local languages. Interlocutors noted that the NCIC’s approach fails to address the role that intent plays in identifying disinformation or hateful content and suggested that a more nuanced framework that reflects how hate speech operates and spreads on different platforms could have been more effective. In addition, the highly localized coverage areas of vernacular radio stations and the limited monitoring capacity of the Communications Authority of Kenya meant that it was difficult to effectively identify false and hateful narratives on local radio.

Fact-Checking

To address mis- or disinformation in the pre-election, election day, and post-election periods, numerous fact-checking organizations were active and consistently published fact-checks. There is a high degree of collaboration through platforms such as the Fumbua Network, who amplify the work of Africa Check, PesaCheck, and Piga Firimbi. Fact-checking efforts were also bolstered by the establishment of the MCK’s iVerify Network, which was launched on July 1 and provided a platform for traditional media to work with the MCK to increase fact-checking efforts.

However, while fact-checking efforts were high, concerns about their efficacy were also expressed by fact-checking organizations. Additionally, fact-checkers reported to the IEOK that during the election period some social media platforms pushed them to respond to claims around the tally process and results which was impossible because fact-checkers did not have the capacity to tally and verify the results themselves. In addition, fact-checking itself does not operate at the speed at which information is disseminated during high information volume periods such as elections. Fact-checkers highlighted the need for platforms to put more of an effort into adjusting their algorithms to reduce the prominence of posts or tweets that make unsubstantiated claims about election results and boost official media sources, instead of solely relying on fact-checkers.

46. Astroturfing refers to the act of making a sponsored and coordinated messaging campaign look as if it has emerged and spread organically.

47. Under-Moderated, Unhinged and Ubiquitous: Al Shabaab and the Islamic State Networks on Facebook, Institute for Strategic Dialogue, June 14, 2022, <https://www.isdglobal.org/isd-publications/under-moderated-unhinged-and-ubiquitous-al-shabaab-and-the-islamic-state-networks-on-facebook/>

ELECTORAL VIOLENCE AND SECURITY

Overall, the 2022 electoral process was largely peaceful with fewer incidents of violence and a limited number of casualties compared to previous elections.

The destruction, removal, or defacing of campaign materials made up the bulk of the election-related offenses and physical attacks against candidates and clashes among opponents' supporters and/or hired youths were recorded in 29 counties during the campaign. The IEBC was also the target of violence which was attributed to mistrust and a perceived lack of electoral integrity which grew as elections neared. As a result, poll workers were profiled in Kisii and Nakuru, and IEBC meetings were attacked in Nyamira and Kisii where several poll workers and/or police officers were injured. In various statements, the IEBC and the media reported that the poll workers endured harassment, intimidation, ethnic profiling, character assassination, abductions, destruction of material, physical attacks, arbitrary arrests, murder, and serious injuries. While the tallying phase was tense, including at the NTC, the announcement of the presidential results was met with short-lived spontaneous violence in parts of Kisumu and Nairobi mainly. In Uasin Gishu, criminal arson targeting the houses of individuals with alleged diverging political opinions were quickly curtailed by the police.

Citizen observers were also the targets of electoral violence. ELOG received physical threats while attempting to observe rallies in Kisii and Embu and on social media in the post-election period, and a human rights defender was attacked on election day in Embakasi East Constituency, Nairobi.

Altogether, media and other observer groups reported at least seven lost their lives throughout the election process, including a polling official, and that many more were injured. In a clear violation of section 6(c) of the Election Act Code of Conduct, the IEOK further noted cases of misuse of firearms by candidates in Migori, Siaya, and Bungoma, where it led to the death of one person. Overall, tensions ran higher in Nairobi, Bungoma, Busia, Migori, Uasin Gishu, Kakamega, and Wajir, which witnessed the single most violent event in Eldas constituency, then other counties throughout the electoral period.

Election violence is primarily regulated by Section 11 of the Election Offences Act and complemented by the Election Act's Code of Conduct and the Political Parties Code of Conduct which further provide an ethical standard for candidates and parties to abide by and promote. The

codes encourage electoral contestants to refrain from violence, condemn it, and take the necessary steps for party members and supporters to respect the terms, but lack sufficient oversight and enforcement mechanisms. Political parties and most candidates failed to adhere to and enforce the codes of conduct or to respect the peace pledges they signed ahead of the elections. Positively, many candidates, including the primary presidential contestants, conceded defeat or sought legal redress to address disputes over the election results rather than engaging in protests which contributed to limited outbreaks of violence.



Electoral Security

Unlike in previous elections, the police generally acted professionally and with restraint. No fatalities were caused by the police when handling volatile situations during the campaign, polling, and tallying or during spontaneous outbreaks of violence. According to stakeholders, this change stemmed from a political will to incorporate lessons learnt from the 2017 elections and to open up to civil society as well as extensive and multi-thematic training.⁴⁸ Dialogue and information-sharing between the police and civil society contributed to bridging the communication gap with grassroots organizations, addressing the trust deficit, and enhancing response mechanisms.

Since 2017, election security has been delivered through the Electoral Security Arrangement Program (ESAP), an institutionalized multi-agency framework implemented by the IEBC in collaboration with state actors and civil society.⁴⁹ To coordinate its activities, ESAP relied on several components including the national advisory committee co-chaired by the IEBC Chairperson and the Inspector General of police (IG), a multi-agency technical coordination committee on electoral preparedness sitting at the national level, and multi-agency coordination committees at the county and constituency levels. Election security is further regulated by section 105 of the Election Act that requires police with election duties to cooperate and follow IEBC's instructions.

Cooperation and coordination between security agencies and the election administration were productive at the county level but proved challenging at the national level. Some stakeholders told the IEOK that disagreements between the IEBC Chairman and the IG delayed the implementation of training which started three months behind the initial plan. Others viewed the arrest of three Smartmatic personnel at Nairobi airport on July 21 as

the result of a tumultuous relationship between the two institutions and a lack of coordination. Stakeholders also warned against the possible politicization of their divisions.

Training is a key component of ESAP and the ongoing security sector reform aimed at transforming the national police force into a citizen-centered police service in accordance with the 2011 National Police Act. ESAP provided multi-stakeholder cascade training on election security, amongst other topics, from May to August. As part of the reform, the NPS designed new training manuals as well as training curricula in partnership with the Independent Policing Oversight Authority (IPOA) and international and national human rights organizations. Trainings on election duty, including but not limited to crowd management, human rights, sexual and gender-based violence (SGBV), and police accountability, were rolled out from the regional to the sub-county Commanders. While lower-level officers were briefed through ESAP on the eve of the elections, they did not benefit from the thorough training delivered by the NPS and their partners.

In addition to election-related violence, security concerns included pre-existing community-based conflicts and rising prevalence of criminal gangs driven by socio-economic grievances and opportunism on the Coast and in the Rift Valley. To reduce the potential insecurity on voting caused by these factors, the police deployed additional units in key areas and implemented curfews in Marsabit, West Pokot, Elgeyo Marakwet, and parts of Baringo counties. In addition to ESAP coordination meetings, the police also organized ad-hoc security meetings to mitigate election-related conflicts when the need arose. However, insecurity in the border areas with Somalia remained a challenge for voters to freely exercise their rights.

48. Building upon the 2017 experience and heavy misconduct of the police, the Interior Cabinet Secretary (CS) suspended all transfers early June and instructed all commands to remain local.

49. ESAP state partners comprise the National Police Service (NPS), the Office of the Director of Public Prosecution (ODPP), the judiciary, the National Cohesion and Integration Commission (NCIC), the Independent Police Oversight Authority (IPOA), the National Steering Committee on Peacebuilding and Conflict Management (NSC), the Office of the Registrar of Political Parties (ORPP).

Despite initial skepticism, civil society mostly praised the police for their behavior during the electioneering period.

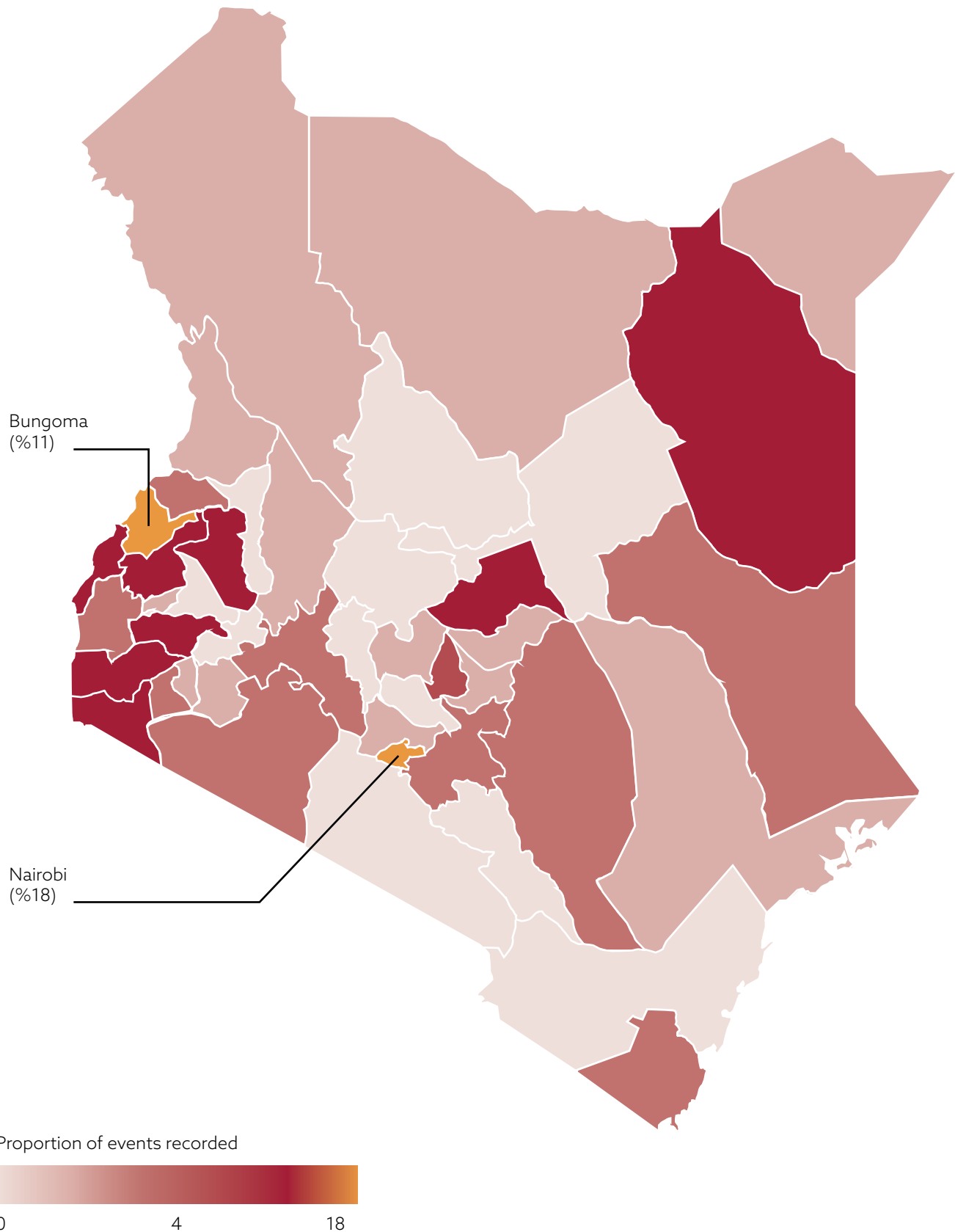
However, the police have yet to fully extend their professional conduct to the handling of non-election related matters which would be in line with security sector reform and the evolution of the police from a force to a more accountable and mitigation-oriented police service. In addition, the mostly positive assessment was tarnished by reports of partisanship between the NPS and county administrations in Kisumu, Uasin Gishu, and Siaya counties. In Siaya, for instance, the police allegedly ransacked the campaign material and house of the UDM governor candidate, and main opponent to James Orengo (ODM), the then-sitting senator vying for governorship. While article 239(3)(a) of the Constitution stipulates national security bodies shall not act in a partisan manner, it contributed to persistent disbelief Kenyans had about the genuine intention of the police to serve, care, and protect them. On August 15, the National Security Authority Council (NSAC), a powerful security body in Kenya, requested a meeting with the IEBC Chairman during the presidential results tallying process. The visit caused many to question the motive of the state security apparatus as the 2012 National Security Authority Council Act does not convey any election duty to the Council.

Furthermore, media houses regularly reported that various electoral offenses were under investigation by the Directorate of Criminal Investigations (DCI). Yet, little was concluded and communicated to the public regarding the status of these cases as of the end of the electoral period. Of note, the police did not share updates about the murder of IEBC Returning Officer for Embakasi East Constituency, Daniel Musyoka, after August 17, which has left many fearing the case will remain unresolved as was the case for Chris Msando, the IEBC Information and Communication Technology (ICT) Manager killed in 2017. Swift investigations and effective remedy would reassure Kenyans that the law is enforced, that offenders are held accountable within the timeframe of the election, while also encouraging candidates, especially women, to report offenses when they occur.

Oversight of police conducted by the IPOA and the police Internal Affairs Unit (IAU) contributed to professionalism and accountability of the NPS. Prior to the official campaign period, the prosecution of police officers for misconduct also contributed to forging professionalism and accountability. In order to further reinforce the trust in the police as well as to build capacities, the police must cooperate fully with oversight authorities, the security sector reform should continue and resources increased.



GEOGRAPHICAL DISTRIBUTION OF ELECTION-RELATED VIOLENCE (%)



Source: LTA analysis of confirmed incidents of electoral violence

Mitigation Measures

Civil society, women's organizations, cohesion and early warning monitors, religious leaders, government institutions and statutory bodies, and the NPS all played an important role in mitigating election-related violence and fostering peaceful elections.

In 2020, the NCIC developed a roadmap to peaceful elections dubbed, 'Uchaguzi bila Noma' a part of which state agencies and non-state actors initiated as a series of peace activities under the UWIANO platform and the #LetPeaceWin campaign which launched on June 18.⁵⁰ UWIANO peace activities included the deployment of early warning cohesion monitors, situation rooms, focused consultations, and sensitization forums with media, boda bodas, political parties, CSOs, faith-based groups (FBO), youth, women, and PWDs. Peace caravans, peace runs and peace walks, multi-ethnic sports events, and peace messages on social media, including by the NPS, were also initiated.

The NCIC also engaged in efforts to have candidates, institutions, and individuals sign the Political Decency and Peace Charter developed in September 2021.⁵¹ While over 70,000 peace pledges were signed nationwide, this was a symbolic gesture with minimal commitment. With limited resources and no power to hold violators accountable, NCIC mostly relied on local partners to monitor and mitigate conflicts but failed to communicate on the actions taken. Transparency would enhance accountability of both the NCIC and the authors of violence.

Mitigation efforts carried out by state agencies primarily focused on the conflict-prone counties identified by a survey hotspot map released at the end of May by the NCIC. The map identified 16 counties as having a greater risk of electoral violence with Nairobi, Nakuru, Uasin Gishu, Mombasa, Kisumu, and Kericho among the top six. However, monitoring of election-related violence by the IEOK and other observer groups revealed that the NCIC's map failed, except for Nairobi, to capture new political

dynamics that fueled electoral conflicts during the 2022 electoral period, as most incidents recorded occurred outside the areas identified by the NCIC map.⁵² While the NCIC reported that their security assessment, which informed their mapping, was ongoing, it failed to reflect it in their preventive strategy that remained based on the map produced in May. Yet, stakeholders acknowledged that the NCIC had been more proactive with their mitigation efforts than in previous elections and peace messaging was widespread.

Civil society also proactively engaged in mitigation and peace-building efforts coordinated by the National Forum of Peace Actors, a nascent body. Early warning and early response mechanisms, support to mediators, electoral conflict analysis, community dialogue, and training on public order management were among the key peace actions undertaken. A Civil Society Organizations Elections Situation Room (CSOESR) was also established through which ELOG collected real time incidents from August 3 to 12 that were processed by the Ushahidi crowdsourcing and data center platform. Nonetheless, peace initiatives were more limited in scope compared to 2017 due to funding constraints, which created an information gap and limited preventive mechanisms in some parts of Kenya.

To ensure a peaceful transition of power following the declaration of the election results, the National Peace and Mediation Team (NPMT), a 14-member strong multi-sectoral entity, was created on July 18. The Team engaged with the presidential candidates before and after the elections. The Kenya Eminent Peace Panel (KEPP) launched by the NCIC on August 8 mirrored the NPMT by its mandate. In both cases, membership was dominated by religious leaders and women constituted one-third of the members. While religious leaders play a significant and positive role in peace and mitigation efforts in Kenya, their public endorsements of specific candidates may undermine their influence in mediating conflicts. In addition, community dialogue by civil society and heavy deployment of police curtailed immediate post-election violence in Nairobi informal settlements, as well as in Uasin Gishu.

50. The NCIC is a statutory body established under the National Cohesion and Integration Act of 2008 with the aim of bolstering cohesion and integration nationwide. UWIANO is cohesion in Kiswahili.

51. KNCHR also developed a peace charter for candidates to sign but their work was overshadowed by the publicity surrounding the NCIC and the platform. In addition to the peace charter, the KNCHR also released two hotspot maps which lacked granularity to apprehend electoral violence though.

52. According to the IEOK monitoring, about two-thirds of the election-related incidents took place in counties that were not identified as hotspots.

Peace and Marginalized Groups

At the grassroots level, women joined early warning and response mechanisms as monitors, participated in women only consultation meetings, and enjoyed a wider representation within the local peace committees. However, systematic gender mainstreaming and gendered data disaggregation were in general poorly implemented by all actors engaging in peace efforts. Exclusion of women from high level mediation and peace work was also denounced by the Eminent Panel of Women Leaders who merged with the NPMT, the National Council of Elders, and the National Council of Persons with Disabilities.

Efforts were also undertaken with the aim of preventing youth electoral violence, including identifying peace champions within the youth community, a youth action week, peace concerts, a peace song, and consultation forums with a focus on youth. However, addressing the use of youth-for-hire by politicians will require a long-standing preventive approach that goes much beyond the election cycle.

Violence Against Women in Elections

VAW-E presents significant barriers to women's participation and affects electoral integrity and the level playing field more broadly. In 2022 elections, women aspirants, candidates, and journalists as well as women supporters and voters were affected to varying degrees by physical, psychological, verbal, and economic violence. Kenya is a State Party to the Maputo Protocol, and has ratified all major international and regional conventions pertaining to violence against women, but the Election Offenses Act fails to name and define the various types of VAW-E which would facilitate awareness raising and sensitization to VAW-E amongst communities.⁵³

According to observer groups and the media, female candidates, including Azimio la Umoja presidential running mate, Martha Karua, were subject to insults and propaganda questioning their sexual morality, marital status, physical appearance, and age in an attempt to discredit their ability to govern. Many women candidates also reported that they were subject to threats and intimidation via telephone calls and text messages and some others noted suspicious cars parked outside their homes.

Destruction of campaign material and at times private property, was also common for women candidates. In addition, the IEOK noted reports of women being physically assaulted in Bungoma, Kirinyaga, Mombasa, and in Nairobi where supporters were forcibly undressed.

VAW-E was committed by groups of young men hired by rowdy politicians, as well as both male and female candidates, supporters, and residents. Spouses and relatives were also identified as perpetrators of VAW-E with husbands confiscating their spouse's ID card and divergent political views sparking domestic violence. Politically motivated domestic violence is yet to be addressed by policy makers and mentioned in the revised 2015 Protection Against Domestic Violence Act. In addition, the prevalence of VAW-E was attributed to patriarchal attitudes exacerbated by the competitive context or nascent women's political participation, and impunity. Positively, there were no reports of police committing sexual offenses during the electioneering period, save for one assault against a female police officer in Bungoma which was under investigation by IPOA as of the end of the election period.

Despite the NPS reiterating several times its will and ability to secure female candidates, lack of protection was identified as the key factor preventing them from campaigning more actively and reaching out to women supporters who were hesitant to show their open support for fear of violence.⁵⁴ The cost incurred to hire private security, which some women candidates resorted to, disproportionately impacts young women, first-timers, and MCA candidates who rarely have sufficient funds to pay for their protection.

Several state agencies and CSOs put in place a more robust framework, as compared to the 2017 elections to prevent and respond to VAW-E with a focus on SGBV. For example, police commanders, prosecutors and journalists were sensitized and trained on election-related SGBV, and Policare, a comprehensive victim-centered one-stop support initiative, was launched. A range of toll-free numbers and call centers established by the Independent Medico-Legal Unit (IMLU), the KNCHR, the Center for Rights Education and Awareness (CREAW), the Wangu Kanja Foundation and Federation of Women Lawyers (FIDA)-Kenya as well as a distress app developed by CRAWN Trust were also available for women to report incidents to the NPS and the CSO-organized situation rooms.

53. Kenya is a State Party to the African Charter on Human and Peoples' Rights (ACHPR) and to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), which aims at prohibiting, punishing and preventing "all acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm," and all forms of violence against women, including sexual and verbal violence.

54. According to the Election Security Management Manual for Police Commanders (2022), equal treatment and protection of candidates throughout the electoral process are both a principle and an objective of election security management.

For the first time in Kenya, FIDA-Kenya monitored instances of electoral SGBV. FIDA-Kenya's 100 monitors collected over 900 incidents of electoral SGBV nationwide with Nairobi, Kericho, Vihiga, Kisumu, Siaya, Mombasa and Kakamega, accounting for over 30 percent of all cases. The highest number of cases occurred both in counties that had among the highest ratio of MP and MCA women candidates, such as Vihiga, Mombasa and Nairobi, and the lowest, Kericho, Siaya and Kisumu. Section 10 of the Election Offenses Act prohibits the use or the threat to use force and violence, including sexual violence, but omits any mention of GBV and SGBV, which would allow the election courts to deal with offenses more swiftly. The Sexual Offenses Act of 2006 tackles many forms of sexual violence, including rape and sexual harassment, but fails to address online modern forms of sexual violence, which represented over 20 percent of the cases garnered by FIDA-Kenya, mostly perpetrated by male opponents' supporters.

Stakeholders reported that though female candidates tended to be more informed of the mechanisms for filing complaints than in previous elections, most explained they did not file any complaints or seek redress. They viewed it as a waste of time and costly, which resulted in VAW-E being underreported. Some reported they were requested to pay for the offenses to be investigated upon by the police.

PRE-ELECTION ELECTORAL DISPUTE RESOLUTION

Electoral litigations in the pre-election period are frequent and common in Kenya, placing various frameworks and their interpretations by electoral institutions under regular scrutiny. The courts generally enjoy high public confidence, although the numerous levels of possible appeals and timelines coupled with the tight electoral calendar sometimes affected electoral preparations. While

the Supreme Court – the highest judicial body in Kenya – has exclusive jurisdiction for hearing and determining petitions relating to the election of the president, a variety of different actors are charged with processing different election-related disputes in the pre-election period.

The Political Parties Dispute Tribunal (PPDT) is responsible for hearing and determining disputes relating to political party affairs, including disputes arising from party primaries or nominations. The amendments to the Political Parties Act (PPA) expanded the PPDT from seven permanent members serving six-year terms to include up to 18 ad-hoc members serving one-year terms. The expanded 25 member tribunal allowed for the formation of eight panels instead of two, as in 2017, which increased the tribunal's ability to process disputes in a timely manner in the lead-up to the 2022 elections. The PPDT also increased accessibility through the use of an e-filing system; hybrid hearings by which some complaints were heard online; and a process of decentralization resulting in panels in six locations in the county, including two in Nairobi as well as one each in Kisumu, Kakamega, Nyeri, Meru, and Eldoret. The amendments to the PPA also clarified that the PPDT's jurisdiction included disputes arising from party nominations.⁵⁵ At the same time, stakeholders noted that the experience of the 2017 MoU between PPDT and IEBC, which clarified this jurisdiction, also informed parties that nomination-related disputes should be filed with the PPDT.

While the PPA provides for the PPDT to hear a complaint within three months from the time of filing, the PPDT worked towards IEBC deadlines during the pre-election period and reported determining the majority of the 201 nomination-related cases within the three to four weeks before the registration process commenced. The number of complaints filed in 2022 was lower than the approximately 300 complaints filed in 2017, which was attributed to enforcement of the requirement that a dispute must be heard by a party's Internal Dispute Resolution Mechanism (IDRM) before filing with the PPDT.⁵⁶ The PPDT also registered at least 113 disputes arising from the party list process.⁵⁷

55. Section 40(1)(fa) of the Political Parties Act No. 11 of 2011

56. Section 40(2) of the Political Parties Act of 2011

57. As of September 26, 113 cases relating to party lists were filed with the PPDT.

Disputes related to the candidate registration process may be filed with the IEBC's Dispute Resolution Committee (DRC). Any person may file a complaint regarding an IEBC decision on the registration of a candidate. While the initial deadline to file complaints was June 9,⁵⁸ the IEBC extended the period to file until approximately three days before the end of the DRC due to the high number of individuals who came to the IEBC Nairobi offices to file. A total of 325 appeals were filed, which were heard over a 10-day period by three different benches in Nairobi each of which was composed of a presiding chairperson and committee members who were supported by secretaries. This marks an increase from 2017 when one bench was responsible for hearing all cases. Complaints observed by the IEOK pertained to such issues as late submission of required documents, inadequate numbers of support signatures, authenticity of university degrees, and failure to resign from public office in accordance with legal timeframes. According to the IEBC, 269 or 82.7 percent were summarily dismissed for want of jurisdiction, merit, or prosecution; 39 or 12 percent were allowed; and 17 or 5.2 percent were withdrawn.

Decisions of the PPDT may be appealed to the High Court and further to the Court of Appeal while decisions of the DRC may be appealed up to the Supreme Court. In addition to hearing appeals of lower-level dispute resolution mechanisms, the Court also heard numerous petitions pertaining to different aspects of the election process throughout the pre-election period due to the broad confidence in the Judiciary among Kenyan stakeholders. While the law does not provide clear timelines for hearing and deciding election-related cases by the courts, the Judiciary prioritized election-related matters to ensure they were heard in a timely manner. Despite this, the timing of some hearings and decisions as well as the numerous levels of possible appeals resulted in delays in some electoral preparations.

Enforcement and adjudication of the Electoral Code of Conduct was an ongoing challenge ahead of the 2022 elections. Under Section 15 of the Second Schedule of the Elections Act, the IEBC establishes a Code of Conduct Enforcement Committee (CCEC) to hear complaints regarding violations of the Code of Conduct. However, in April 2022, the High Court found the CCEC to be unconstitutional and revoked several sections of the Code of Conduct as well as of the Rules of Procedure on the Settlement of Disputes, which empowered the CCEC to hold hearings and summon witnesses.⁵⁹ The IEBC filed an appeal that was not scheduled to be heard until November 2022, well after the completion of the electoral process. As a result, the CCEC did not sit and hear complaints during the campaign period, but reportedly referred cases to the Office of the Director of Public Prosecutions (ODPP), which has the power to order investigations of and prosecute violations of the Code of Conduct as well as other violations of the Election Offences Act under Section 21 of that Act. The ODPP took steps to address election-related offenses including establishing a Hate Speech and Electoral Justice Division in 2021, and launching a Compendium of Electoral Justice, which includes sample charge sheets and rapid reference guides, as well as training over 250 prosecution counsels on hate speech and electoral offenses. In addition, the Chief Justice appointed 119 magistrate judges to hear cases of election offenses. However, only 74 cases of electoral violations were reported by the ODPP as of August 11, despite stakeholders reporting widespread violations, such as vote buying. In addition, the Election Offences Act does not provide for an expedient timeframe to address election-related offenses as the ODPP may take up to 12 months from the date of elections to commence proceedings.⁶⁰ An effective and timely mechanism for addressing both Code of Conduct violations and election offenses would deter violations and curb an environment of impunity.

58. Gazette Notices No.430, 431, 432, 433, 434, 435 of January 20, 2022

59. Constitution Petition No. 073 of 2022 Hon. Sabina Chege vs. the IEBC

60. Under Section 22(1) of the Election Offences Act No. 37 of 2016

POLLING PROCESS

On August 9, the polling day commenced in a generally calm and peaceful environment with IEOK observers noting queues of eager voters. In a few instances, polling stations opened late, causing long lines at polling centers which eventually diminished once the polling stations opened later in the morning. Required materials were available at all polling stations observed including the KIEMS kit. Opening procedures were generally well followed with ballot boxes shown to be empty to all persons present before being sealed in all stations observed. In addition, presiding officers removed the second of two booklets for the Declaration of Election Results Form for the presidential election (form 34A) and sealed it in a tamper-proof envelope in the majority of polling stations observed per the instructions of the IEBC.⁶¹

Overall, IEOK observers found that voting procedures were generally well conducted in a transparent manner. Presiding officers were mostly knowledgeable and professional in the performance of their duties. Furthermore, youth were observed participating as polling officials. Required materials were available, including KIEMS kits which largely functioned. However, in some cases voters could not be identified biometrically, particularly the elderly and manual laborers. In these cases, voters were identified through alphanumeric search on the KIEMS kit. In addition, IEOK observed inconsistent adherence to procedures regarding the use of the printed register of voters during the voter identification process.

In most polling stations, the printed register was present, but not utilized. However, in some polling

stations, voters were first identified using the KIEMS kit and thereafter with the printed register. According to the IEBC, the use of the manual register to verify voters was authorized in 238 polling stations, or less than one percent of all polling stations, where KIEMS kits failed.

In some polling stations observed, polling booths were set up with voters' backs facing clerks who would be able to see how voters mark ballots, which compromised the secrecy of the ballot. In cases when voters were assisted, including in cases where voters were assisted by a person of their choice, party agents witnessed the process. However, no other accommodations for visually impaired voters, such as tactile ballot folders, were observed. Additionally, accessibility at polling stations for people with disabilities was a challenge as not all entrances were accessible to people using wheelchairs. However, most observers noted that PWDs, pregnant women, nursing mothers, and the elderly were given priority in the queue to vote. In addition, security officials largely managed long lines, maintained order and security throughout the day, and did not cause tension with citizens.

Candidate and party agents were widely present at polling stations, notably from Azimio and UDA as well as representing independent candidates, and they participated actively in their roles. Citizen and international observers were also present, but, in some instances, were asked for additional documentation including formal oaths of secrecy – a condition not required by the IEBC – to be granted access to polling stations.



61. According to Gazette Notice No. 9280 of August 3, 2022, Presiding Officers were required to remove booklet 2 of 2 of the Presidential Result Form 34A and seal it in a tamper proof envelope which was to be sealed Presidential ballot box upon completion of the counting process.

The IEOK found that party and candidate agents generally had access to polling stations and vote tallying centers and that they were able to perform their duties without interference. However, interlocutors from several political parties noted that access was sometimes restricted or denied to their agents when they were deployed in opposition strongholds. Furthermore, some political party interlocutors informed the IEOK that the IEBC at the constituency and national levels initially had a different understanding of the accreditation requirements for party and candidate agents, which sometimes led to their exclusion on election day. The problem was mostly apparent in Mount Kenya and parts of the Rift Valley where election officials rejected unstamped accreditation letters or required that the letters be signed by the presidential candidate instead of the Chief Agent. However, the IEBC reportedly fixed the issue by mid-day.

According to several interlocutors, there were fewer Azimio agents working at the presidential level compared to their UDA counterparts. They attributed that discrepancy to internal competition and disorganization among Azimio coalition members. As a result, Azimio agents reportedly collected far fewer 34A forms than UDA, thereby undermining Azimio's subsequent vote tallying efforts.

Counting processes at polling stations were conducted in accordance with procedures. Ballot papers were counted first for the presidential election, followed by member of National Assembly, member of County Assembly, Senator, women member of National Assembly, and, finally, gubernatorial elections. Ballot papers placed in the wrong ballot box were declared "stray" and rejected in accordance with procedures. While this did not affect a large number of votes, it resulted in some valid ballot papers being rejected and creating challenges for reconciling official polling station results. Party agents were consistently given copies of the official presidential results forms 34A. However, copies of the official presidential results were not posted at polling stations for the public in many of the stations the IEOK observed, in contrast to past elections.

Following the pattern of voter apathy from the registration period, turnout for the 2022 elections was significantly lower than in previous elections. The 34C posted by the IEBC shows turnout at 64.7 percent, a more than 10 percent drop from the turnout of the August 2017 elections at 77.7 percent.

Election Day Security and Violence

Throughout the day, the atmosphere remained largely calm and orderly save for isolated cases of violence and intimidation in Bungoma, Busia, Mombasa, Kakamega, Uasin Gishu, Kisii, Nakuru, Garissa, and Siaya. A few protests broke out due to electoral malpractices and irregularities, but all were professionally contained by the police. However, an attack by armed militia allegedly organized by an Eldas sitting MP prevented the dispatch of voting materials and the elections were postponed in the constituency until August 10. Although some candidates were arrested in Kakamega, Mombasa, and Nakuru for misconduct, many among the political class, religious leaders, and the NPS conveyed peace messages throughout the day.

Except for a tragic incident in Wajir involving a police officer, the police largely behaved professionally. About 150,000 police officers drawn from the Kenya Police, the Kenya Prisons Service, the Kenya Wildlife Service, and the National Youth Service provided security at polling stations, IEBC offices and personnel, and warehouses and escorted election materials. The set up was completed by mobile patrols dispatched in key areas and special units placed on stand-by. ELOG reported security was present in 99.6 percent of the polling stations they observed, with women police officers amounting to slightly over a third. IPOA noted some police commanders did not share the operation orders and some police officers did not display their name and ID number as required by section 10 of the Sixth Schedule of the National Police Act, both limiting accountability.

Both FIDA-Kenya and the Eminent Panel of Women Leaders (EPWL) deployed 104 and 300 VAW-E monitors on election day, respectively. The Woman Situation Room (WSR), manned by the EPWL, collected 74 cases of GBV throughout the 200 polling stations they observed on election day. Of those, the majority of the incidents were cases of physical violence, followed by psychological or emotional violence, with no cases of sexual or socio-economic violence reported. Women candidates or women party agents were most frequently the victim in the incidents reported.

Election Day Information Environment

Campaign silence was broadly respected on social media on election day. However, social media was active with other election-related content, including calls for peace as well as local and religious leaders calling for the population to go out and vote in vernacular and local languages. In addition, users utilized various social platforms to pose questions related to voting, including how to identify the polling station to which they were assigned and how to find their names on the register of voters, which may reflect the inadequacy of voter education highlighted by many stakeholders in the pre-election period.

As the day progressed, narratives about the functioning of the KIEMS kits emerged, largely based on the failure of the KIEMS kit's biometric recognition of Rigathi Gachagua, the running mate of William Ruto. Others on social media flagged incidents of KIEMS kits having problems with biometric or the alphanumeric identification processes. The IEBC responded to these narratives, notifying the public that KIEMS kit failures was not a widespread

Postponed Elections

On the eve of the elections and as election day began, the IEBC announced that, due to a ballot printing error, eight elections would be postponed including gubernatorial races in Mombasa and Kakamega, MNA races in Kacheliba, Pokot South, Kitui Rural, and Rongai constituencies; and MCA Ward in Nyaki West of North Imenti constituency, Meru county and in Kwa Njenga of Embakasi South Constituency, Nairobi county. The last-minute postponement drew outcry from political contestants and civil society, and ultimately served as the basis for some election petitions challenging the presidential results, including accusations that some elections were purposely postponed to suppress turnout in Azimio strongholds.

The eight elections were initially postponed to August 23,⁶² followed by an indefinite postponement reportedly due to security concerns. The elections were finally scheduled for August 29.⁶³ and were free of violence except for a few incidents in Kakamega, Kitui, and Nakuru. In addition, ELOG reported that no serious irregularities were recorded, however, turnout was reported to be low.

Due to security issues, elections in Eldas constituency were postponed to August 10. MCA elections in five wards around the country were also postponed until December 8, 2022 due to the death of candidates prior to election day.⁶⁴

TABULATION AND ANNOUNCEMENTS OF RESULTS

The tabulation process commenced immediately after the counting process was completed at each polling station. Presiding officers transmitted scanned copies of the presidential results form 34A to both the NTC in Nairobi as well as their constituency tallying center using the KIEMS kit. The physical copy of the 34A form was also transferred to the constituency tallying center where the 34As were compared to the scanned images before completing a constituency results form 34B. Thereafter, the constituency returning officer transmitted a scanned

phenomenon, and only affected approximately 200 out of the 46,229 polling stations. The posting of ballot papers was also rife prompting another statement from the IEBC warning voters not to post marked ballot papers online. Coordinated messaging and amplification among Kenya Kwanza-affiliated bloggers and supporters was also identified by the IEOK after the polls closed, promoting a graphical analysis predicting Ruto's win.

image of the 34B and brought the hard copies of both the 34As and 34B to the NTC in Nairobi for verification and compilation of the national-level results form 34C. In line with the 2017 Supreme Court decision, 34As could not be cured or fixed in any way at the constituency or national levels, even if the form showed an error, although errors were separately logged. For the other five elected positions, tallying transpired at the constituency and county tallying centers.⁶⁵

According to Article 138(10) of the Constitution, the Chair of the IEBC must declare the results of the presidential election within seven days from election day. The IEBC completed the presidential tally and verification process within the legal timeframe, declaring the results after six days, which was three days more than in the 2017 elections, largely due to the process of verifying paper 34As against their scanned images. However, the IEOK observed adjustments in the tallying and verification setup at the NTC – including increased staffing, tables, and computers – to accelerate the processing of 34As and 34Bs and the compilation of the 34C.

Though tallying at the NTC initially appeared to move slowly, the speed of the transmission of 34A forms to tallying centers and the online portal exceeded expectations. By the morning of August 11, the IEBC had posted the scans of over 99 percent of the presidential results forms 34A from the 46,229 polling stations on its web portal. Scans of the constituency-level results form 34Bs were also available on the public portal. The availability of the results information greatly increased the transparency, particularly in light of the protracted formal tallying process.

62. Gazette Notice No. 9617, August 12, 2022

63. Gazette Notice No. 9865, August 22, 2022

64. Gazette Notice No. 11944, October 4, 2022. Wards effected included Oloinasani ward, Emurua Dikirr constituency, Narok county; Kyome/Thaana ward, Mwingi West constituency, Kitui county; South Gem ward, Gem constituency, Siaya county; Utawala ward, Embakasi East constituency, Nairobi City; and Mumias North ward, Mumias North constituency, Kakamega county

65. Results forms for the other five elective positions are also physically transferred to constituent tally centers where they were verified before compiling a constituency-level results form. The results for both member of national assembly and member of county assembly elections were declared at constituency tally centers while collated results forms for senate, county woman representative to the national assembly, and governor were taken further to county tally centers where they were again verified, collated, and declared.

According to the monitoring of the IEOK, the tallying process was disrupted and suspended in at least 12 centers following outbreaks of violence at tallying centers due to irregularities and malpractices, delays in announcing the results, all perceived or real, and the contestation of the results.⁶⁶ Attacks on tallying centers prompted the KNCHR to evacuate their monitors from the tallying process in Kirinyaga and Vihiga. To limit escalation, the IEBC decided to announce the results for the Narok gubernatorial seat and the Wajir North and Eldas parliamentary seats at the NTC in Nairobi instead of in the respective constituency or county tallying centers. On August 11, Returning Officer Daniel Musyoka went missing shortly after he arrived at the Embakasi East tallying center. In addition, police in Eldas constituency, Wajir allegedly voluntarily shot Presiding Officer Mohammed Ahmed Kanyare in the leg resulting in its amputation. At the NTC, party agents of the four presidential candidates, observers, and other accredited persons were able to observe the process at the NTC. On several occasions, arguments due to accusations of rigging or other misbehavior between party agents from UDA and Azimio disrupted the tally process. In addition, interlocutors informed the IEOK of both direct and indirect threats to journalists and the media during the tallying period. According to the MCK, at least 43 cases of harassment of journalists were noted, 37 of which were denied access to designated polling stations and tallying centers.

The IEBC completed the verification and tallying process for the presidential election in the morning of August 15. After several candidates, party agents, observers, and others assembled and awaited the results announcement for several hours at the NTC, chaos ensued when a scuffle broke out on the podium, resulting in the injury of the IEBC Chairman, two commissioners, and the IEBC CEO despite heavy security deployed in the auditorium.⁶⁷ While the scuffle was broadcasted on national television, very few stakeholders publicly condemned the events, aside from a few actors such as the KNCHR and the Angaza movement who called for prosecution of the culprits.

After order was reestablished, the IEBC Chairperson declared Deputy President William Ruto as the next President of Kenya obtaining 7,176,141 or 50.49 percent of votes as well as over 25 percent of valid votes in 39 counties, while the other three candidates received the following: Raila Odinga obtained 6,942,930 or 48.85 percent of votes along with over 25 percent of valid votes in 34 counties; Waihiga obtained 31,987 or 0.23 percent of votes and did not receive over 25 percent of valid votes in any of the counties; and Wajackoyah obtained 61,969 votes or 0.44 percent.

CANDIDATE	PARTY	TOTAL VOTES	PERCENTAGE	NUMBER OF COUNTIES WITH OVER 25% VOTE SHARE
William Ruto	UDA	7,176,141	50.49	37
Raila Odinga	Azimio	6,942,930	48.85	34
George Wajackoyah	Roots	61,969	0.44	0
David Waihiga	Agano	31,987	0.23	0

66. Kirinyaga, Kisii, Kwale, Migori, Nairobi, Narok, Trans Nzoia, Vihiga, Wajir, and West Pokot

67. On August 22, a group of goons also attacked IEBC personnel while preparing their response to the presidential election petitions at the Panafric hotel.

Concurrent to the chaos at the NTC, four IEBC Commissioners, all of whom were appointed in 2021, held a press conference at the Serena Hotel during which time they reported that they could not take ownership of the results “because of the opaque nature” of the tallying process.⁶⁸ Further details⁶⁹ about their position were provided in a separate press conference the following day, which included four points: first, the aggregation of the percentages of results obtained by the four presidential candidates equaled 100.01 percent, which they called “a mathematical absurdity that defies logic;” second, the results declared by the Chair did not include the total number of registered voters, the total number of votes cast, or the total number of rejected votes which is contrary to the Constitution and legislation; third, the results declared by the Chair belonged to him and did not represent a declaration and announcement of the IEBC as a whole, which they argued was guided by the Maina Kiai case⁷⁰; and fourth, the Chair announced the final results prior to all constituency results being formally announced.⁷¹ The IEBC Chairperson responded in a statement several days later maintaining that the Chairperson is the National Returning Officer for the presidential election, is permitted to declare the results within seven days under Article 138(10) of the Constitution, and is not dependent upon the Commission plenary decisions. He further noted that the cited 0.01 percent increase in the results raised by the four Commissioners was false and misleading, while alleging that the same four individuals had sought to modify the results to force a run-off election. Some stakeholders also noted that the thin grounds of some of the points outlined by the four Commissioners – particularly those based on technicalities or misrepresentation of decimal rounding – called into question the seriousness of the challenge.

On August 16, the same day as the dissenting Commissioners’ second press conference, ELOG released the findings of their PVT, which were consistent with the results announced by Chairman Chebukati.⁷² However, ELOG noted that the PVT projections for the two leading contestants were so close that they both fell within the margin of error of 50 percent +1, making it impossible to definitively determine whether Ruto had crossed the threshold or not.

Despite the availability of the forms 34A and 34B on the IEBC public portal and the presence of party agents as well as international and domestic observers at the NTC where results were manually verified, trust or the absence of trust in the tallying and verification process of the presidential results was an ever-present theme in the press coverage and narratives in traditional and social media.

For much of the period preceding the announcement of results, the information environment was filled with false tallies, allegations of foreign influence, hacking and vote rigging, which largely targeted the IEBC’s public portal and the media’s tally and often utilized fabricated news sources, fake screenshots, or altered videos.

The IEBC Chair was a clear target of disinformation through the use of hashtags, such as #ArrestChebukati and #ThePeopleVersusChebukati, or petitions calling for his arrest spread by Azimio networks on Facebook.

Following the announcement of the final results and the concurrent press conferences of the four dissenting Commissioners at the Serena Hotel, allegations of compromise and interference by President Kenyatta in the IEBC emerged, such as images shared on WhatsApp, Twitter, and Facebook of IEBC Vice Chair Juliana Cherera, who spoke at both press conferences on behalf of the dissenting four, together with high-profile Azimio politicians with accusations that the Commissioners were planted by Kenyatta. The four commissioners’ claim of a “mathematical absurdity” was also highly parodied. Furthermore, following the release of the Commissioners’ full statement the following day, a number of hoax accounts impersonating the Vice-Chair emerged, few of which were taken down and remained online for weeks despite Juliana Cherera publicly stating that she did not have any social media accounts and fact-checkers flagging account content.

68. <https://www.the-star.co.ke/news/2022-08-15-four-iebc-commissioner-reject-presidential-results/>

69. “Statement by the Independent and Electoral Boundaries Commission,” August 16, 2022, <https://s3-eu-west-1.amazonaws.com/s3-sourceafrica.net/documents/121148/Press-Statement-by-Four-IEBC-Commissioners-16th.pdf>

70. Petition No.106 of 2016 as upheld by the Court of Appeal in Civil Appeal No.105 of 2017 and affirmed by the Supreme Court of Kenya

71. The IEBC did not announce the verified results of 27 constituencies prior to the declaration of the winner, which was attributed to chaos that ensued just prior to the final results declaration.

72. <https://elog.or.ke/elogs-statement-on-the-official-2022-presidential-results/>

Media Tally of Results

According to the MoU signed in March between the IEBC and the KMSWG, the media had the freedom to conduct their own results tallies by accessing the forms 34A directly from the IEBC's public portal, which was available to all accredited media platforms and the general public. However, on August 10, one day after the elections, stakeholders publicly expressed concern over the lack of consistency in the tallies across media houses. In a statement on the same day, the MCK indicated that they were in consultation with media owners and editors to find a solution to the inconsistencies. On August 11, however, at close to ten o'clock, tallies were suspended by Citizen TV, the Nation, and other media platforms, with no immediate explanation as to why. The information vacuum that followed was filled with conspiracy theories online suggesting collusion between the "deep state" and the media against Ruto, who was leading by less than one percentage point at the time that the tallies were suspended, as well as narratives about attempted hacking, some of which were published in traditional media outlets.

After Kenyan news platforms ceased their tally processes, international news platforms, including the British Broadcasting Company (BBC) as well as a collaboration between Google and Reuters, continued to do so. However, an error by the Google/Reuters stream which showed a very high figure for Raila Odinga fueled speculation that their systems had also been hacked. The error was swiftly corrected, and Reuters released a statement that the figure was due to human error in data entry. In addition, on August 13, the Reuters live tally stopped appearing on Google searches. The BBC was the only media house, local or international, that completed their tally.

Interlocutors were emphatic that there was no external pressure to stop the tally, but that the media was guided by a desire not to engender chaos in the country as a result of differing election results. In an article in the Nation, the Editor-in-Chief explained that the outlet's tally stopped due to the need to keep their livelihoods, their staff safe, and their offices open.⁷³ While journalist safety is a legitimate concern in Kenya, the media's hesitancy to fully process the election results weakens its role as an independent check on power and arbiter of accurate election information.

IEOK interlocutors attributed the differences in the various media tallies to conducting the tabulation in different orders of polling stations. Moreover, many media houses underestimated the time and resources that would be required to download, transcribe, and tabulate over 40,000 image files, and efforts were often moving at very different speeds. While media interlocutors expressed to the IEOK that collaboration would have likely ensured a more cohesive process, each one put their own system in place. In addition to using the information from the IEBC's public portal, some media outlets devised their own systems for accessing forms 34A, including deploying agents to polling stations across the 290 constituencies to manually collect and transmit their own copies of the forms 34A. However, inadequate logistical preparation for this undertaking led to media houses to ultimately utilize the public portal, but many lacked the requisite number of data clerks to process the data.



73. Mutuma Mathiu: Hold tight, professionals in control. The Nation, 2022. Accessed here: <https://nation.africa/kenya/blogs-opinion/opinion/mutuma-mathiu-hold-tight-professionals-in-control-3911866>

ELECTION PETITIONS

Within seven days of the announcements of results of the presidential election, a person may file a petition challenging the election with the Supreme Court.⁷⁴ Thereafter, the Supreme Court must hear and determine the petition within 14 days of its filing.⁷⁵ The decision of the Supreme Court is final and cannot be appealed. By the deadline of August 22, nine petitions were filed by both presidential candidates, including Raila Odinga and Martha Karua, as well as by voters, former candidates and aspirants, civil society, and a Senator-elect. Two petitions were rejected for failing to meet the Constitutional threshold under Article 140 of the Constitution.⁷⁶

On August 30, the Supreme Court consolidated the remaining seven petitions into Presidential Election Petition No. E005 of 2022 Raila Odinga and Another vs. IEBC and eight others in which William Ruto, Rigathi Gachagua, the IEBC, each of the seven IEBC commissioners, and the Attorney General were named as respondents.

On September 5, the seven judge-bench of the Supreme Court dismissed the petition in a unanimous decision finding that the election of William Ruto was valid. The Supreme Court then provided its full written judgment on September 26.

Summary of Supreme Court Written Judgement, September 26

- The petitioners did not convince the Court that the technology deployed for the elections did not meet the standard of integrity, verifiability, security, and transparency in accordance with Article 86(a) of the Constitution.
- The petitioners did not present credible evidence of interference in the transmission and uploading of forms 34A from the polling stations to the IEBC public portal, and that there was no difference in the forms 34A produced at the polling station as compared to those received at the NTC and provided to party agents.
- With regard to allegations that the IEBC did not have the power to postpone the eight elections, the Court found that the IEBC did have this power under Section 55(b) of the Elections Act and that there was no evidence that this postponement resulted in voter suppression to the detriment of Raila Odinga and Martha Karua. There were no unexplainable differences in the number of votes cast for the presidential elections as compared to the other five elections.
- The tallying and verification process at the NTC was conducted by the IEBC in accordance with Article 138(3)(c) and (10) of the Constitution despite the divisions among the Commissioners.
- At the same time, the Court noted that the power of tallying and verifying the results of the election is collectively shared, and that the Chairperson has no authority to exclude members of the Commission from this process. The Court also found that William Ruto met the Constitutional threshold by attaining 50 percent +1 of the total votes cast in the presidential election.
- Finally, the Court also did not find that there were irregularities or illegalities of such a degree as to affect the final results.

74. Article 140(1) of the Constitution of Kenya, 2010

75. Article 140(2) of the Constitution of Kenya, 2010

76. Petitions struck out included Petition No. 006 of 2022 Moses Kuria and Geoffrey King'ang'i Muturi vs Hon. Raila Amolo Odinga and Azimio La Umoja One Kenya Party as well as Petition No. 009 of 2022 Reuben Kigame Lichete vs. IEBC and The IEBC Chairperson

The Supreme Court heard and rendered the judgment in accordance with the statutory timelines, however, numerous stakeholders noted that 14 days is not an adequate time frame for the process. Procedures and guidelines for hearings were presented clearly for all parties and the public to understand.

All parties had the opportunity to present their arguments and evidence as well as to respond to questions posted by the Court. The Court limited the number of persons attending the proceedings in-person due to both security and COVID-19 precautions, but established a spillover room on the Court premises for members of legal teams and others to watch the proceedings while the proceedings were also broadcasted via livestream on social media and regular media. In addition, the Court further ensured both transparency by providing regular updates to the public, making all petition-related documents publicly accessible, and allowing the presence of observers. The judiciary had also taken proactive steps in advance of the 2022 elections to enhance its capacity to address results transmission disputes, such as by building in-house expertise to better understand and scrutinize electoral technologies.

In the 14 days during which the Supreme Court of Kenya heard and considered the presidential election petitions, a number of disinformation narratives emerged online targeting the Judiciary. These largely included fabricated letters of resignation from Justices, false quotes attributed to Justices supporting one of the presidential candidates, and allegations of bribery. At the same time, both influencers and established news platforms published content about the alleged rigging of the elections without

addressing potential disinformation or false claims. Some stories published allegations by political parties without establishing or exploring the truthfulness of the claims, and thus served to popularize the narrative of rigging. The media also gave minimal space to technology experts who understood the technology being deployed by the IEBC and could therefore provide a more informed assessment of the claims. In addition, following the Supreme Court judgment on the presidential petition, the IEOK observed a lack of follow-up or initiative to reinvestigate hacking claims, related disinformation, or the wider context of technology in the elections. The media was simply a platform to air claims on either side of the political spectrum.

Petitions related to the other five elective positions must be filed within 28 days of the announcement of results.⁷⁷ Those challenging elections for MCA may be filed with the Resident Magistrate's Court, while those challenging elections for MNA, County Women Representative to the National Assembly, Senate, and Governor may be filed with the High Court. Petitions must be heard within six months from the time of filing. Decisions of the Resident Magistrate's Court may be appealed to the High Court within 15 days of the decision and must be heard within six months of filing. Similarly, first-instance decisions of the High Court may be appealed to the Court of Appeal. A total of 123 petitions were filed by the deadline, including 12 challenging gubernatorial elections, two challenging senatorial elections, four challenging County Women Representatives to the National Assembly elections, 28 challenging MNA elections, and 77 challenging MCA elections.



77. Article 87 of the Constitution of Kenya, 2010

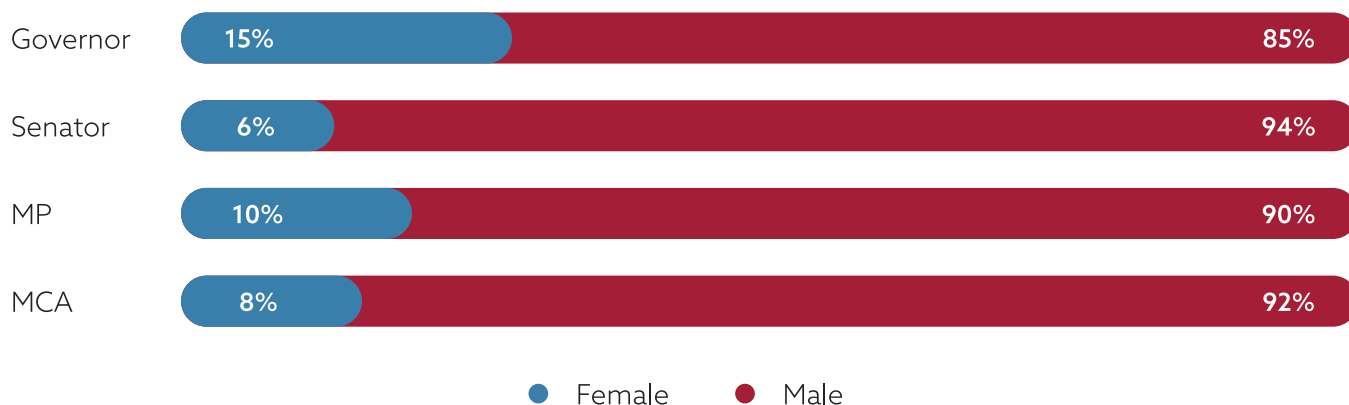
ELECTION RESULTS DATA

Election Results and Representation of Marginalized Groups in Elective Positions

While the 2022 general elections represented an improvement compared to 2017, they failed to produce a Parliament compliant with the two-thirds gender rule and there is no immediate path to overcome the unconstitutional circumstance. Based on an IEOK independent analysis, 29 women were elected to the National Assembly – in addition to the 47 county women representatives – up from 23 in 2017. In addition, seven women were elected governor compared to three in the previous elections. Alternatively, only three women were directly elected to the Senate, as in 2017. Based on these figures, the 13th Parliament will not be compliant with the two-thirds gender rule even when considering the National Assembly's 12 nominated seats reserved for members of special interest groups, the Senate's 16 nominated seats reserved for women, as well as the Senate's four nominated seats reserved for youth and PWDs, which must be split between men and women.

According to an IEOK review of the results of the County Assembly elections, at least 113 women were elected which represents a modest improvement compared to 2017 when 96 women won elected office. However, women remain significantly underrepresented at the county level, comprising only 7.80 percent of the 1,450 elected office holders.⁷⁸ The outcome of the elections also revealed deep regional disparities in regard to the distribution of elected women MCAs. Data shows that voters failed to elect a single woman in four counties – Kajiado, Mandera, Marsabit, and Nyamira – most of which are located in the conservative communities.⁷⁹ An additional 15 counties elected only one woman to their assemblies – Kirinyaga, Kitui, Makueni, Kwale, Meru, Isiolo, Narok, Nyandarua, Elgeyo Marakwet, Garissa, Kericho, Kisii, Taita Taveta, Turkana, and Wajir. Thus, 19 out of 47 counties, or 40 percent, elected either one woman or none at all.

2022 ELECTED OFFICIALS BY GENDER (%)



According to the IEBC Youth Coordinating Committee, at least 17 candidates under the age of 35 were elected, including one male governor, two male senators, three male MNA, one female MNA, and 10 male MCAs. Likewise, the DICC found that eight PWDs were directly elected to office. They include one County Woman Representative from Makueni county, one male MNA from Westlands constituency (Nairobi county), one male MNA from Webuye East constituency (Bungoma county), one male

MNA from Isiolo North constituency (Isiolo county), and four male MCAs from Kiambu, Kilifi, Siaya, and Wajir counties. While these figures represent an improvement compared to the 2017 elections, PWDs remain significantly underrepresented as elected officeholders, falling short of the five percent threshold for public elective and appointive positions as stipulated in Article 54(2) of the Constitution – even when considering nominated seats in Parliament and County Assemblies.

78. Five seats remained vacant due to the premature death of candidates resulting in with relevant elections scheduled for December 8, 2022.

79. It is also noteworthy that no women were nominated as candidates in Mandera county aside from the position of County Woman Representative to the National Assembly.

Party Lists for Nominated Seats

Compliance with the requirements for political party lists remains an issue. The Constitution and the Elections Act fail to establish distinct guidelines regarding who can be on the lists and do not clearly define key constituencies such as workers and ethnic minorities, enabling parties to nominally adhere to the law while violating its intended goals. The IEBC initially rejected all 79 parties' lists on July 15 because they failed to meet the criteria as required by law, including ensuring proper gender representation. Several lists also included names of individuals who were already candidates for an elective position, in violation of the law.

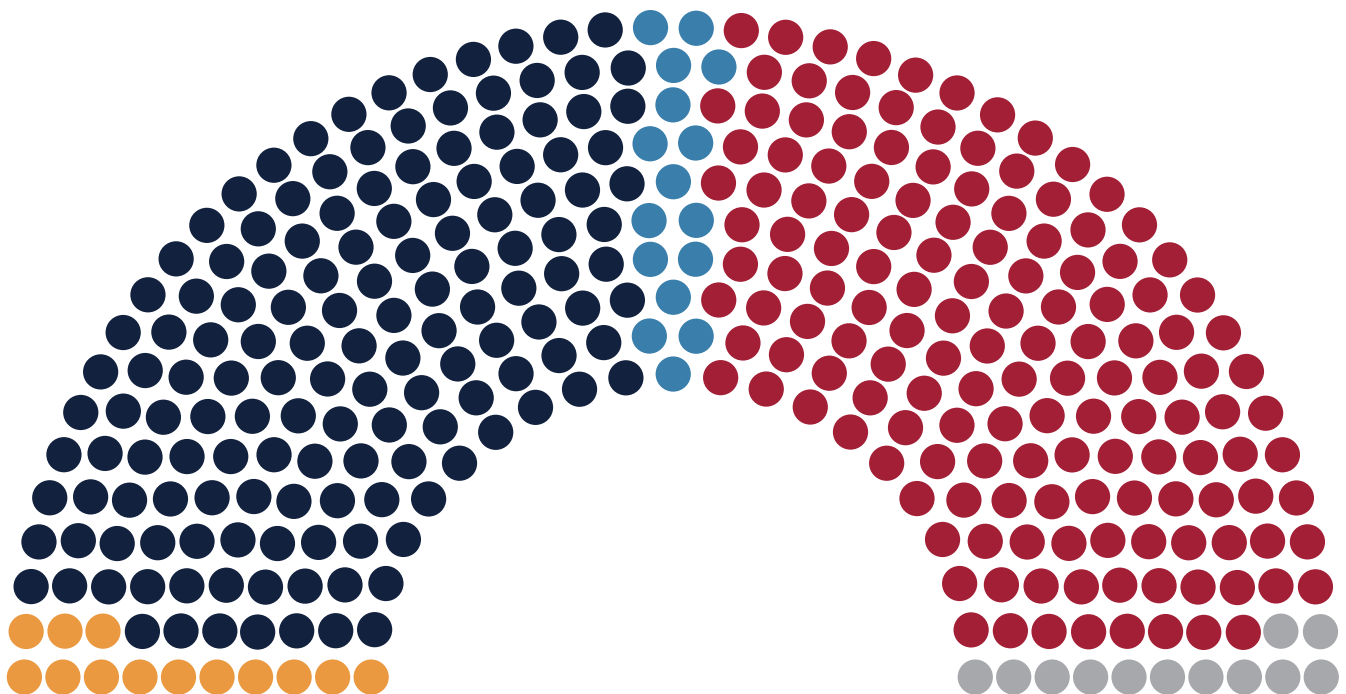
The party lists published by the IEBC on July 27 indicate that top slots were often reserved for party loyalists, relatives of party leaders, as well as unsuccessful aspirants from party nominations. For example, ODM placed National Elections Board Chairperson Catherine Mumma first on its list of women nominees in the Senate, while UDA offered Secretary General Veronica Maina the first slot on that same list. Likewise, Jubilee placed Kristina Wambui Kenyatta, sister of outgoing President Uhuru Kenyatta,

on its list of women nominees in the Senate while ANC Executive Director Margaret Ndanyi was also offered a top slot in the party's Senate list.

The IEBC gazetted 32 political party nominees to the 13th Parliament on September 7, including 12 members in the National Assembly, 16 women to the Senate, as well as two youth nominees and two nominees representing PWDs in the Senate. Kenya Kwanza parties earned six nominated seats, including five for UDA and one for the ANC in the National Assembly. Azimio won five nominated seats in the Lower House, including three for ODM, one for Jubilee, and one for UDM. A sixth seat was eventually allocated to WDM after a court order temporarily blocked the Commission from doing so.

In the Senate, Kenya Kwanza earned eight seats for women nominees and two seats for its youth and PWD nominees, all of whom belong to UDA. Azimio won the other eight seats for women nominees in the Senate, including five for ODM, one for Jubilee, one for WDM, and one for UDM. The remaining two seats for youth and PWD nominees went to ODM.

2022 KENYA NATIONAL ASSEMBLY



Party 2022

- KWANZA Women
- KWANZA
- AZIMO Women
- AZIMO
- Independent

The top-up clause enshrined in Article 177(1)(b) of the Constitution ensured that a sufficient number of special seats were added in each of the non-compliant county assemblies to conform to the two-thirds gender rule. On September 9, the IEBC gazetted the final list of party nominees, as well as the full gender top-up list, for Kenya's 47 county assemblies. A total of 185 out of 188 seats – or four nominated seats per county assembly – were allocated to ethnic minorities or marginalized groups, youth, and PWDs. Three seats have yet to be allocated in Bungoma (1), Busia (1), and Siaya counties (1). The unallocated seat in Siaya was meant for PWD nominees who failed to provide their certification of disability by the National Council for Persons with Disabilities. Two other seats from Bungoma and Busia counties remained vacant because of conflicting orders from the party's Internal Dispute Resolution Mechanism.

On September 17, UDA PWD nominees in Kericho county accused the party of placing them in lower slots on the party list, thus diminishing their prospect for a successful nomination to the county assembly. Benjamin Koech, a former MCA aspirant, indicated that UDA initially placed him third on the party list before assigning him to a lower slot once the nomination exercise was concluded. As a result, he was not nominated to the Assembly. According to the IEBC gazetted list of nominees, none of the four nominees to the Kericho county assembly are PWDs. Moreover, PWDs failed to gain any of the special seats in 20 additional counties across the country. Interlocutors from CRAWN Trust informed the IEOK that they received numerous complaints following the conclusion of the nomination process from nominees whose names were allegedly changed on the lists or whose seats were allocated to an able-bodied person.

Open Election Results Data

At the time of this final report's publishing, the IEBC had still not made available a machine-readable, disaggregated dataset of polling station level results for the presidential election. Though the scanned images of 34As, 34Bs, and

the disaggregated 34C are online and readily available, they are not in a format that can be easily analyzed, which could help build more confidence in the results. This also prevented the IEOK from doing in-depth analysis of polling station level results to identify trends in turnout. Moreover, the IEOK noted that disaggregated polling station level results are not available online for almost all the other five elected positions from the 2022 elections, in any form.

CIVIL SOCIETY ENGAGEMENT

Despite facing funding constraints, Kenyan civil society was a key player throughout the 2022 electoral process. The IEBC accredited approximately 115 civil society organizations (CSOs) to implement voter education under regulation 20 of the Elections General (Voter Education) Regulations utilizing a range of activities in accordance with IEBC-approved curriculum. However, many interlocutors noted a delayed start in voter education activities by the IEBC impacted civil society's ability to begin these activities, which were also limited by lack of funding. The IEBC also accredited observers from 795 citizen observer organizations to monitor the electoral process. Civic groups also engaged in violence monitoring and anti-corruption and peace campaigns throughout the pre-election period. Though civil society was generally able to operate and execute their missions freely, some observer groups did note ongoing challenges with election accreditation logistics, and ELOG flagged that almost three percent of their observers were initially barred from entering polling stations on election day. Efforts were also made to include women in peace building activities via women-specific forums, recruitment of women as early warning monitors and engendered indicators, and budget lines. ELOG's PVT and the findings of other nonpartisan citizen observers was critical to reducing uncertainty in the post-election period, especially when media outlets abandoned their tallies, and civic and religious leaders helped encourage patience throughout the elongated tabulation process.

The IEOK delegation believes that with political will and through inclusive and coordinated efforts, Kenya has the opportunity to enhance citizen confidence and participation in the electoral process. In the spirit of international cooperation, the delegation offers 35 recommendations in order to promote more inclusive, transparent, and accountable elections and political processes as Kenya moves forward. The IEOK's specific recommendations include:

Recommendations for the Government of Kenya and Parliament

- Approve and obligate IEBC's requested budget in a timely manner and ensure other government agencies involved in the election receive appropriate funding as well. Specifically, funding should be approved so that effective voter sensitization and education can be implemented continuously and especially ahead of key electoral activities.
- Reform the appointment process for IEBC chairpersons and commissioners to ensure broad and merit-based consensus around nominees and to fill vacancies in a timely manner and in advance of elections.
- Clarify the role of IEBC commissioners across all functions, in particular the results process, as suggested by the Supreme Court.
- Clearly define the criteria for meeting Leadership and Integrity Act requirements as well as the vetting process for aspirants and candidates.
- Enforce the ban on the use of public resources during the campaign period and expand the application of the Leadership and Integrity Act to cabinet secretaries and members of county executive committees.
- Urgently pass legislation to implement the two-thirds gender rule in both chambers, in compliance with constitutional provisions.
- Disaggregate all data as per the Five-Year Gender Sector Statistics Plan (2019-2024), including with respect to violence, security, and peace efforts.
- Incorporate gender-based violence and sexual gender-based violence into the Election Offences Act and online gender-based and sexual gender-based violence into the Sexual Offences Act.
- Empower and establish the NCIC as the lead and coordination body on peace efforts. Allow more resources for NCIC to monitor its peace pledges and reinforce communication to increase transparency.

- Amend the legal framework to expand the period for hearing and deciding presidential petitions by the Supreme Court from 14 to 30 days.
- Review the Computer Misuse and Cybercrimes Act to ensure that freedom of the press and freedom of expression are upheld.
- Review exclusionary candidate qualification requirements outlined in the legal framework – particularly related to educational credentials and soundness of mind – and bring them in line with international standards.

Recommendations for the Independent Electoral and Boundaries Commission

- Undertake institutional reforms to ensure the Commission acts as an independent, impartial, and cohesive body, in accordance with the recommendation of the Supreme Court.
- Develop and implement a strong strategic communications plan that builds on lessons learned from the 2022 elections to promote transparency and public trust. This includes more frequent and open communication with election stakeholders through regular press conferences and public statements to debunk falsehoods and promote public understanding of key elements of the electoral process.
 - Prioritize building confidence and an understanding in the results transmission process, such as specifics of the chain of command and redundancies built into the process to safeguard its integrity, and to manage expectations of the parties, the media, and public regarding how and when results information will be available.
 - Take proactive steps to inform the public on the nature and the integrity of the election technology being used, as well as the cybersecurity infrastructure so as to engender more public trust in their capacity to protect sensitive election data.
 - Proactively counter misleading and false narratives about the electoral process with an emphasis on the tabulation process, particularly on social media.
- Make polling station-level results available to the public online in a timely, analyzable, and bulk format for all elected positions, in accordance with open data principles.

- Apply the Election Campaign Financing Act (2013) by setting limits on donor contributions and expenditures and imposing disclosure and reporting requirements for candidates and political parties.
- Accommodate voters with disabilities by locating polling places at ground level, building ramps for voters with limited mobility, and providing accessible voting booths, tactile ballots, and other materials.
- Strengthen partnerships with Disabled Persons Organizations to train presiding and deputy presiding officers on voter assistance best practices and recruit persons with disabilities as poll workers.
- Capture and make available candidate information and elected positions disaggregated by gender, age, and disability status in a machine-readable format.
- For verification purposes, make the full voter registry available in a timely manner and in machine-readable format to nonpartisan, independent civil society organizations.
- In line with the Supreme Court ruling, review, and revise signature verification regulations for the candidate registration process to develop clear rules that are not unreasonable and burdensome.
- Ensure that senior-level staff positions through the IEBC, including the Secretariat, are appointed and trained in advance of the election period.
- Review the manner of enforcing the Electoral Code of Conduct, including increasing coordination and communication with relevant government agencies, including the ODPP and the NPS, among others.



Recommendations for Political Parties

- Rededicate time and human resources to the Political Parties Liaison Committee to enhance its credibility as an interlocutor with the IEBC and ORPP and strengthen its capacity to promote parties' interests.
- Establish robust recruitment and promotion strategies to facilitate the full participation of women, young people, people with disabilities, and other marginalized groups in parties' governing bodies, including national executive committees, and increase inclusion of these groups in candidate lists.
- Commit to and implement strengthened mechanisms for internal political party democracy.
- Refrain from unfounded or misleading or inflammatory claims regarding the electoral process and hold accountable those party members who spread false information or violent rhetoric that could destabilize the political environment.
- Political actors should make efforts to reduce public cynicism around democratic processes by acting in good faith and working together to genuinely respond to social challenges and the needs of citizens.

Recommendations for Civil Society and Religious Leaders

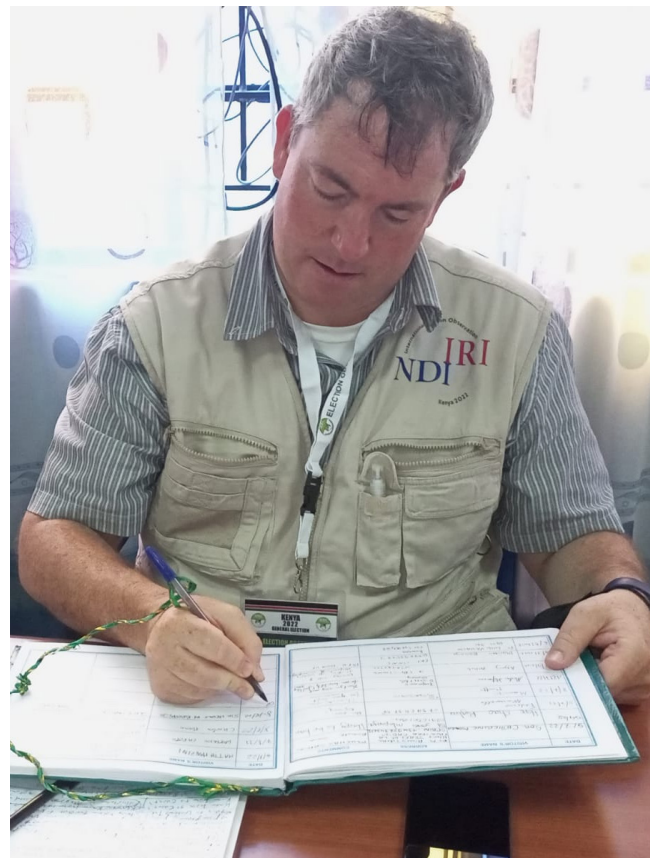
- Continue efforts to enhance the participation of marginalized groups, including women, youth, and persons with disabilities.
- Refrain from engaging in partisan politics, especially religious leaders engaged in mediation efforts.

Recommendations for the Media

- Earnestly fulfill their role of informing voters about key events in the electoral process, before, during, and after election day and including election results, and reach out to technical experts to provide context when relevant. Fact-based reporting in politically tense moments is essential for ensuring voters have access to accurate information about the electoral process.
 - Better plan for, professionalize, and coordinate election results tallying and provide greater transparency about data sources, including numbers and location of polling stations processed.
- Continue to support fact-checking desks and proactively address rumors and false information about electoral and political processes.

Recommendations for the International Actors

- Provide timely support to Kenyan civil society, media, and political parties to promote civic engagement, transparency, inclusion, internal party democracy, and election reform initiatives in the period between elections, and enable stakeholders to begin voter education, election monitoring, and violence mitigation campaigns early in the election process.
- Technology platforms should bolster efforts to promote a healthy information environment during the entire election process, including more proactive fact-checking efforts, prioritizing authoritative information sources, mitigating violence against politically active women online, and modulating algorithms to reduce risk, especially at vulnerable times such as the counting, transmission, and announcement of election results. Platforms should ensure that content moderation is culturally and context-sensitive to the local environments by listening to local communities and engaging local stakeholders.



ABOUT IRI AND NDI

A nonprofit, nonpartisan organization, the International Republican Institute (IRI) advances freedom and democracy worldwide by helping political parties to become more responsive, strengthening transparent and accountable governance, and working to increase the role of marginalized groups in the political process - including women and youth. Since 1983, IRI has monitored over 200 elections in 60 countries through international observation missions and assessments. More information is available at www.iri.org.

The National Democratic Institute (NDI) is a nonprofit, non-partisan, non-governmental organization that works in partnerships around the world to strengthen and safeguard democratic institutions, processes, norms and values to secure a better quality of life for all. NDI envisions a world where democracy and freedom prevail, with dignity for all. Over the past 35 years, NDI has conducted more than 250 election observation missions in 70 countries. For more information, visit www.ndi.org.



This report is based on information gathered through the joint NDI/IRI IEOK, which was present in Kenya from June to September 2022. While many individuals participated in the IEOK's activities, the Institutes take full responsibility for the content of this report. The IRI/NDI IEOK present the information herein with the hope that it contributes to the body of evidence that inform legal and/or regulatory reforms aimed at improving Kenya's future electoral processes.

A comprehensive election mission is, by its very nature, a complicated exercise. NDI and IRI thank the Kenyan people for the warm welcome that they provided the IEOK. The IEOK has been privileged to witness the enthusiasm for democracy and rule of law that has been evident throughout this period.

Many Kenyan government officials, political party leaders, civil society activists, and representatives of the international community met with our pre-election and election day delegations, as well as our long-term analysts on multiple occasions. We are grateful for their generous donation of time and their contribution to our understanding of Kenya's political dynamics.

The Institutes also express sincere appreciation for the critical contributions of the more than forty volunteer observers who participated in the pre-election and election day delegations. In particular, we would like to recognize the Hon. Jean Mensa, Chairperson of the Electoral Commission of Ghana; James Lahai, the National Coordinator of National

Election Watch (Sierra Leone); Nicole Rowsell, Acting Vice President of the National Democratic Institute (USA); and Yomi Jacobs, Resident Program Director of the International Republican Institute in Kenya (Nigeria) who participated in the first pre-election assessment mission; His Excellency Dr. Goodluck Jonathan, former President of Nigeria; Babra Bhebe-Dube, Executive Director of the Election Resource Centre of Zimbabwe; Lionel C. Johnson, NDI board member and former U.S. diplomat; Julia Brothers, NDI Senior Advisor for Elections; and Gregory Kearns, IRI Regional Director for Africa who participated in the second pre-election assessment mission.

Notably the IEOK is immensely grateful for the leadership of His Excellency Joaquim Chissano, former President of the Republic of Mozambique; Ms. Donna Brazile, NDI Board Member and former Acting Chair of the Democratic National Committee (DNC); Mr. Randy Schuenemann, IRI Board Vice Chair; and Ambassador Johnnie Carson, NDI Board Member and former Assistant Secretary of State for African Affairs; as well as IRI Vice President for Programs, Mr. Scott Mastic and NDI Global Director for Elections, Mr. Richard Klein who collectively represented and led the short-term observation mission. The IRI and NDI also relied on the considerable experience and analysis from Natasha Rothchild, Marie Allegret, Gregoire Houel, Alhassan Ibrahim, and Sasha Pajevic whom without their invaluable contributions to the IEOK mission this report would not be possible.

APPENDICES

Appendix A: Map - Ratio of Women MP Candidates to Registered Voters

Appendix B: Map - Share of Opposition Members within County Assemblies

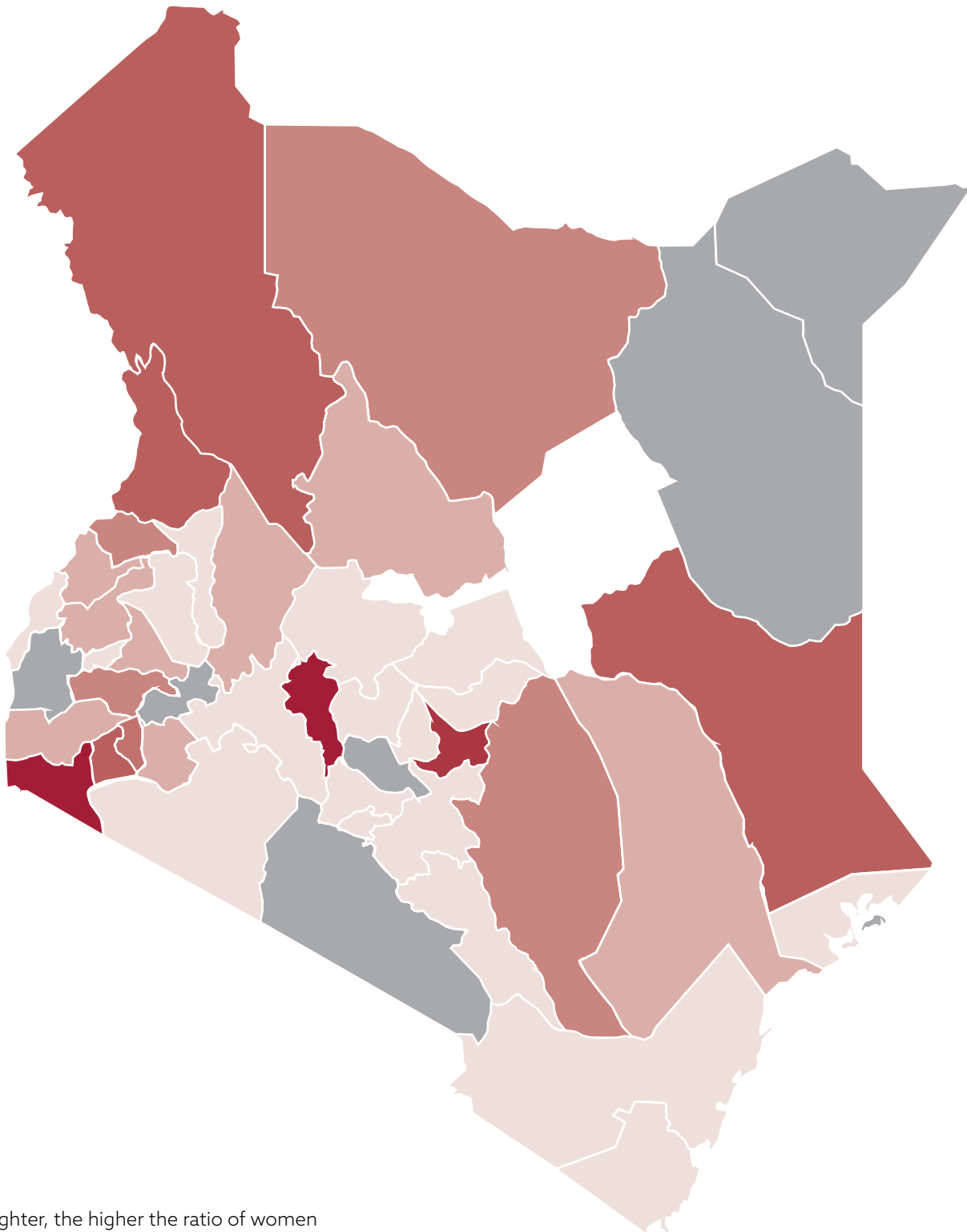
Appendix C: List of Delegates for the NDI/IRI Mission to Kenya's 2022 General Elections

Appendix D: [Statement of the Joint IRI/NDI Pre-Election Assessment Mission to Kenya, May 2022](#)

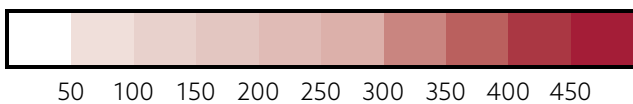
Appendix E: [Statement of the Second Joint NDI/IRI Pre-Election Assessment Mission to Kenya, July 2022](#)

Appendix F: [Preliminary Statement of Initial Findings and Recommendations of the IRI/NDI International Election Observer Mission to Kenya's August 9, 2022 General Elections](#)

APPENDIX A: MAP - RATIO OF WOMEN MP CANDIDATES TO REGISTERED VOTERS

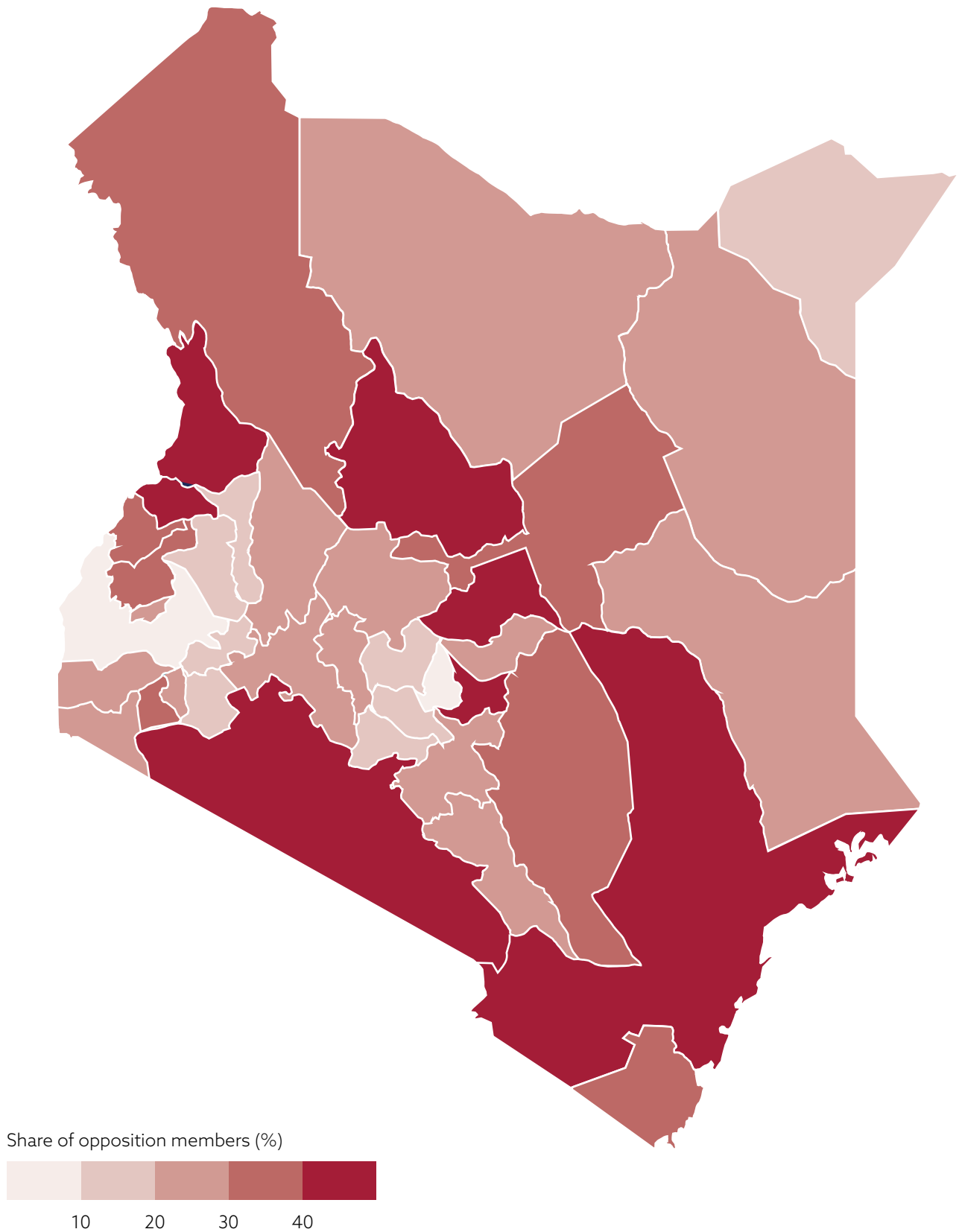


The lighter, the higher the ratio of women MP candidates in the county (1/1000)



Grey areas correspond to counties which had no women among their MP candidates - Kajiado, Kericho, Mandera, Wajir, Siaya

APPENDIX B: MAP - SHARE OF OPPOSITION MEMBERS WITHIN COUNTY ASSEMBLIES



APPENDIX C: LIST OF DELEGATES

Lead Delegates

His Excellency Joaquim Alberto Chissano

Ambassador Johnnie Carson

Donna Brazile

Randy Scheunemann

Richard Klein

Scott Mastic

Delegates

Ginny Badanes

Babra Bhebe

Lensa Biyena

Lauren Blanchard

Sir Urias W. Brooks Jr

Carrie Calbelka

Issac Arteaga Cano

Reverend Canon Emmanuel Chikoya

Gloria Dede

Mvemba Pheo Dizolele

Ryan Gallogly

Rachel Hoff

Priscilla Isaac

Samson Itodo

Grace Jerry

Phatso Jumbe

Jerry Lavery

Honorable Angèle Makombo

Robina Namusisi

Rhoda Osei-Afful

Dobrica Veselinović

APPENDIX D: STATEMENT OF THE JOINT IRI/NDI PRE-ELECTION ASSESSMENT MISSION TO KENYA, MAY 2022



Statement of Joint IRI/NDI Pre-Election Assessment Mission to Kenya May 20, 2022

From May 16 to 20, 2022, the International Republican Institute (IRI) and the National Democratic Institute (NDI) jointly conducted a pre-election assessment mission (PEAM) as part of their overall observation of Kenya's 2022 general elections. The purpose of the PEAM assessment to Kenya is to:

- Assess the current political environment as well as the electoral preparations in advance of the August 2022 general elections;
- Provide independent, impartial information as well as practical recommendations before election day to improve the process; and
- Demonstrate international support for credible and peaceful electoral processes in Kenya.

In this context, the PEAM assessment of the pre-election environment serves as an important component of NDI and IRI's overall observation of Kenya's electoral process, which also includes the presence of long-term analysts based in Nairobi.

The assessment delegation comprised Jean Mensa, Chairperson of the Electoral Commission of Ghana; James Lahai, the National Coordinator of National Election Watch (Sierra Leone); Nicole Rowsell, Acting Vice President of the National Democratic Institute (USA); and Yomi Jacobs, Resident Program Director of the International Republican Institute in Kenya (Nigeria).

The delegation conducted its activities in accordance with the *Declaration of Principles for International Election Observation*, which was launched in 2005 at the United Nations, and in compliance with the laws of the Republic of Kenya. All activities were conducted on a strictly nonpartisan basis and without interfering in the election process. The delegation met with a wide array of election stakeholders, including: the Independent Electoral and Boundaries Commission (IEBC), political parties, civil society, business associations, media representatives, religious leaders, the judiciary, and government actors. The delegation expresses its appreciation to everyone with whom it met for sharing insights from which the mission benefited greatly.

IRI and NDI are nonpartisan, nongovernmental, nonprofit organizations that support and strengthen democratic institutions and practices worldwide. The Institutes have collectively observed more than 200 elections in more than 50 countries over the past 30 years. NDI and IRI will conduct a second pre-election assessment mission to assess progress toward key recommendations before Kenya's general elections scheduled for August 9, 2022.

Executive Summary

The 2022 general elections have the potential to be a pivotal milestone for democratization in Kenya. Elections in 2007, 2013, and 2017 were marred by challenges with the results transmission process and related lack of public confidence in official outcome, resulting in widespread post-election violence in 2007 and 2008 and the nullification of the 2017 presidential election results by the Supreme Court. The 2022 elections will take place against a backdrop of shifting political alliances and newly enacted and evolving amendments to the Electoral and Political Parties laws and provide an opportunity to break with the past.

The delegation notes positive efforts being made to conduct more transparent, accountable, and inclusive elections. These include: The Independent Electoral and Boundaries Commission's (IEBC) efforts to rebuild trust and assert its independence; improvement in political party nomination processes; increased stakeholder engagement by police; nomination of a female vice-presidential candidate; reliance on the judiciary to resolve disputes; and the judiciary's preparedness for legal challenges that may arise in the post-election period. However, stakeholders expressed concerns about remaining vulnerabilities that could undermine confidence in the 2022 elections and increase the potential for election-related violence. Electoral amendments that could affect the conduct of the elections are pending within parliament, creating confusion among the electorate. Persistent distrust over the transmission and announcement of results remains while parliament's failure to approve limits on campaign financing means that campaign-related expenditures will continue to play an outsized role during the elections. The delegation also heard reports of state resources being misused for campaigning, in violation of the electoral code of conduct. The use of hate speech across the political spectrum to incite violence remains a concern as well. The lack of economic opportunity for young people makes them potentially more vulnerable to being exploited by political leaders to engage in violence. Further, the prevalence of mis- and disinformation not only disrupts the flow of accurate election-related information to citizens, but also contributes to raising tensions and polarization among political factions and ethnic groups. The delegation heard concerns about the neutrality and role of certain elements of the security services in maintaining peace.

Kenyans have the potential to break the pattern of disputed elections and prevent election-related violence in 2022. However, this will require concerted efforts not only by the IEBC, the constitutionally mandated body to conduct elections, but equally by all political parties, security services, civil society, the media, and others. All stakeholders, especially political parties, must work together to promote tolerance, peaceful elections, and respect for historically marginalized groups – including rejecting violence against women in elections. With less than three months until the 2022 Kenyan presidential, legislative, and county elections, the delegation notes there is still time for all stakeholders to take tangible steps to reassure all voters of the potential for a credible electoral process and an outcome Kenyans may view as a reflection of their will.

Political Context

The 2022 polls will be Kenya's third elections since the adoption of a new constitution in 2010. Claims of irregularities have often accompanied Kenya's elections, resulting in widespread violence following the 2007 election and the nullification of the presidential election in 2017 by the Supreme Court, necessitating a rerun later that year. Political realignments occurring in the run-up to the 2022 elections are characteristic of the shape-shifting nature of Kenyan electoral politics, with coalitions of convenience coming together prior to elections. Parties are largely formed around ethnic lines, and as a result, every large ethnic group seeks to field its own candidates; and parties coalesce with this objective in mind. However, the term-limited incumbent President Uhuru Kenyatta is backing his long-time rival, Raila Odinga. More than twenty parties—including Odinga's Orange Democratic Movement (ODM) and Kenyatta's Jubilee parties—have joined forces under the Azimio la Umoja (One Kenya Coalition) party. This alliance pits the outgoing President Kenyatta against his closest ally in the 2013 and 2017 elections, current Deputy President William Ruto. Ruto has since

propagated the ‘hustler vs. dynasty’ campaign messaging, promoting a ‘bottom-up’ model of wealth distribution. The narrative has been picked up by large swaths of the country’s youth, who are disproportionately disadvantaged economically and increasingly frustrated by what they view as elite political alternance over successive elections. Ruto’s United Democratic Alliance (UDA) party has also established a strong coalition, the Kenya Kwanza Alliance. Recent public opinion research indicates the race for president will be closely contested, with Ruto and Odinga polling within close margins of each other.

The competitive nature of the presidential race is punctuated by the recent nomination of vice-presidential running mates, who are perceived as having the potential to help their running mates expand their vote share. For the first time, a presidential candidate from a major political party has selected a female running mate, amplifying the potential for women’s role in political life and positions of power. The candidate nomination process was generally well-administered by parties; compared to 2017, when over 300 complaints were filed, this year’s process saw the number reduced to approximately 150 complaints. The process was still contentious, however, resulting in more than 7,000 aspirants declaring as independents – a sizeable majority of whom were frustrated by party nomination processes, which they deemed to be opaque and inconsistent with declared party rules.

Legal Framework

General elections are governed by the 2010 Kenyan Constitution, the Elections Act of 2011, the Political Parties Act of 2011, and other relevant legislation. Recent amendments to the Political Parties Act included changes in the distinctions between parties and coalitions, limitations on party-switching, and a new requirement that parties publish and file their internal nomination processes with the Office of Registrar of Political Parties (ORPP). These changes represent a marked improvement by increasing the transparency and organization of party primaries, and encourage stability in the nomination process. However, internal party democracy during candidate nomination processes remains a significant challenge.

Global standards are to strongly avoid substantive changes to the administration of elections within six months prior to election day, however the Kenyan parliament is still currently considering amendments to the Elections Act. One proposal by the IEBC is for the removal of the requirement for electronic results transmission. Another would allow ballot boxes to be reopened at the constituency or county tallying centers, should the need arise. Civil society and parties have expressed concern that any further changes would seem rushed and, by extension, less consultative and transparent. Changes in sensitive procedures such as ballot handling without clear communications so close to an election could also sow confusion and mistrust. Even if the amendments are ultimately not passed into law, their pending nature just three months out from the election are enough to cause ambiguity. Ahead of the 2022 elections, the IEBC has been preparing to conduct results transmission based on the 2017 Supreme Court ruling, but must still prepare for the possibility that the procedures could be amended by parliament.

For example, the IEBC, the courts, and parliament continue to clash around detailed but critical aspects of the Elections Act. The Elections Act stipulates that election results be transmitted simultaneously from the polling station to the constituency tallying center and the national tallying center. In 2017, the IEBC failed to ensure simultaneous transmission for over 11,000 polling stations. In a subsequent ruling, the Supreme Court further affirmed the finality of results announced at the polling stations. Parliament attempted unsuccessfully to reverse the ruling through passage of an amendment, however, the Supreme Court ruled this amendment to be unconstitutional. During the PEAM, interlocutors expressed confidence and optimism that the courts are prepared to resolve election-related disputes in an independent and timely manner and for the Supreme Court, within the 14-day period provided in the law.

Election Administration

The IEBC

The recent history of disputed elections in Kenya, including the 2017 nullification of the presidential election, continues to cast public doubt about the IEBC's ability to conduct elections in a transparent and competent manner. However, interlocutors noted the concerted effort of the commission to build trust and reassert its independence following the last elections, including improved engagement with stakeholders and attempts to shore up gaps from past elections. The IEBC has completed almost all of its election procurement needs, has been conducting pilots of the biometric system used to check in voters on election day to troubleshoot potential issues, and has built an impressive field structure to recruit, train, and maintain polling staff. Though the IEBC is mandated to organize all aspects of the electoral process in Kenya, operations are shaped, and may be hamstrung, by intricate legislative requirements, ongoing litigations, funding shortfalls, and last-minute changes in the legal code. In 2020, the IEBC submitted to parliament a number of electoral reforms to address shortcomings from previous elections, some of which remain stalled in the legislature, as noted above.

Additionally, internal and external challenges to the commission remain. Civil society, political parties, and the media expressed frustration with the absence of regular communication from the IEBC, and slow response to information requests. Communications challenges were also cited as an impediment to voter education and effectively managing public expectations, and as giving rise to conflicting narratives regarding the results management process. The IEBC is aware of the danger of election-related disinformation. Through a memorandum of understanding (MOU) with the Union of Journalists and Editorials Guild, the IEBC hopes to coordinate regularly on voter information and electoral operations, to support accurate coverage of the process.

Election Day Technology and Results

Stakeholders frequently flagged the results transmission and management system as one of the most critical elements for ensuring the legitimacy of the electoral outcome. The IEBC is currently legally obligated to collate and transmit polling station results electronically. Failures and lags in the electronic transmission in previous elections heightened tensions in the crucial hours and days after the polls closed, and contributed to distrust around the outcome. The heightened interest in and scrutiny of the results pathway necessitates transparent, early, and comprehensive testing and comprehensive voter education regarding the timing and functionality of the process. The IEBC has traditionally hosted a portal for the public to view transmitted results in real time which helps promote transparency and follows good practices for open election data. Careful consideration regarding the display and framing of such data – for instance clarifying the provisional nature of the results and making them available in analyzable formats – can help decrease confusion and build confidence in the results.

Campaign Finance

The Election Campaign Financing Act of 2013, which provides a framework for lawful contributions and donations, including the prohibition of anonymous or foreign funders, remains unenforced. New campaign finance regulations (Election Campaign Financing (Amendment) Bill, 2020) sponsored by the IEBC and submitted to parliament in 2020 sought to strengthen the regulatory framework by establishing contribution and spending limits for political contestants and disclosure requirements for campaign donations. However, the legislature rejected the reforms, resulting in an adjudicated court case. In early May 2022, the High Court declined to reinstate the spending regulations but refuted the decision of the National Assembly to annul the campaign financing limits published by the IEBC. The High Court ruling paves the way for the IEBC to put forward new political finance regulations in the next election cycle but does nothing for the current election.

Stakeholders noted that this development seriously hampers transparency and anti-corruption safeguards and could exacerbate disenchantment and cynicism around the political process. A lack of substantive campaign finance regulation benefits incumbents and disproportionately disadvantages women, youth, and members of marginalized groups, who are typically competing with less personal wealth and resource networks to back their campaigns. Similarly, some stakeholders raised concerns about government officials' use of state resources for electoral advantage, which constitutes abuse of power.

Voter Registration

On May 4, 2022, the IEBC suspended the ongoing voter registration process without clear or advance communication to the public. Voter registration was slated to continue one more month to align with provisions in the electoral act that allow for citizens to register to vote until 60 days before the election date. The IEBC announced that the abrupt closure of voter registration was to allow adequate time for voters to verify their information and to allow for an independent audit. The provisional voter roll stands at 22,152,441 voters, expanding the list by over 2.5 million voters from the 2017 roll. However, the increase still falls short of the IEBC's goal of adding 6 million voters to the list, and likely does not accurately reflect the size of the country's young electorate.

Currently, the IEBC is cleaning the voter list, supplemented by an external audit being conducted by KPMG. At the same time, voters who wish to review and verify their registration information can do so via SMS, greatly increasing accessibility for voters and providing additional mechanisms to keep the list up-to-date.

Voter Education

Though the IEBC is mandated to directly provide voter education, the Commission can also accredit civic groups to conduct voter education activities to maximize dissemination and promote targeted outreach to diverse communities. Accreditation for civil society to conduct voter education ahead of the 2022 elections is open, however, at the time of the assessment, the IEBC has yet to select civic groups or produce voter materials. Additionally, as the IEBC has not received its fully allocated budget, the Commission has chosen to prioritize spending on essential procurements and electoral security. As a result, some civic organizations, religious groups, and media outlets are trying to address the current lack of voter education initiatives, since women, youth, and marginalized groups in particular will be most impacted by insufficient information about the election, and some fear that unequal or inconsistent voter education may be used as a political tool to suppress turnout.

Political Parties and the Campaign Environment

All political parties completed their primary process by the constituted deadline of April 22, 2022. Several stakeholders noted that the party primaries were notably less violent in comparison to previous election cycles, due in part to consensus-building efforts and increased security measures, as well as regulatory changes to the nominations process which were well-managed by the Office of the Registrar of Political Parties (ORPP). However, there were reports of disgruntled party members and aspirants who disrupted voting processes to denounce parties' candidate selection methods. Parties are permitted to directly nominate their candidates through universal suffrage of their membership, or indirectly nominate candidates through interviews, polls, delegates, or other methods. The delegation noted that the opaque nature of party primaries lends itself to nepotistic selections over competitive processes which have the potential to increase opportunities for emerging or first-time aspirants to enter political life. As a result of the murky nature of party candidate selection processes, many candidates choose to run as independents. As such, the IEBC received candidate registrations from well over 7,000 independent aspirants.

The Kenyan constitution stipulates that not more than two-thirds of the members of any elective public body shall be of the same gender. However, broad implementation of this rule has been fraught with challenges. Several interlocutors with whom the delegation met remarked that the principle was difficult to attain during the candidate nominations process. Some parties were unable to secure applications from women aspirants. Others were hesitant to nominate women in fear that they would lose to viable male candidates, and therefore decided to nominate women in regions with the lowest party support to meet the minimum requisite quota. The IEBC received nomination lists on April 28, but granted two extensions (to May 9 and May 12) to parties that had not met the two-thirds gender rule in their first submission. Gender advocates noted that the same patriarchal attitudes which informed the nomination process could also hinder party support to women candidates, who generally do not have the same name recognition and access to financial resources as their male counterparts.

The monetization of politics is a significant risk for the credibility of elections in Kenya. The lack of strong campaign finance regulation negatively impacts the participation and competitiveness of women, youth, and candidates from marginalized groups, who are persistently under-resourced to run for public office. From profit-making ventures stemming from uncapped campaign funds to voters' expectation of financial handouts during the campaign period, national elections have become a moneymaking business for many Kenyans. Additionally, the proliferation of money of unknown provenance, either from abroad or from state coffers, contributes to the exorbitant cost of running for office.

Inclusive Elections: Gender, Youth, and Persons with Disabilities

While Kenya's constitution provides a framework for an inclusive political process, barriers to increasing the representation of women, youth, and persons with disabilities as political actors continue to exist. Interlocutors noted that there are a number of challenges – including a lack of good will from members of the political elite, insufficient voter outreach and education, financial barriers, and entrenched patriarchal norms and political elitism – that prevent the meaningful inclusion of nontraditional candidates in the electoral process.

As highlighted above, Kenya's 2010 constitution established a groundbreaking gender quota, requiring “not more than two-thirds of elective public bodies shall be of the same gender.” However, more than ten years later, and after several attempts, the government is yet to enact legislation to fully implement this constitutional requirement. The lack of implementation underscores the significant barriers that continue to impede the full and equal participation of women in all spheres of political life.

On April 28, 2022, the IEBC ordered all political parties participating in the upcoming general election to adhere to a two-thirds gender quota for all the required elective posts, despite the absence of a parliamentary two-thirds gender rule. Though the IEBC's efforts to support women's representation and the spirit of the constitution are commendable, the court later suspended the IEBC decision, noting that political parties were not provided enough time nor guidance to adhere to the quota.

The continuation of male-dominated political parties, along with the emergence of mega party coalitions, has crowded out space for less established aspirants, spurring many women to seek nomination on smaller party tickets or as independent candidates to gain a spot on the ballot. While smaller parties and independent candidacies increase opportunities for political competition, access to funding and running campaigns without party support continue to constrain such efforts. Women aspirants also have to contend with violence directed at them, their families, and supporters, as well as an unbalanced political party nomination processes. A postelection evaluation of women political participation in the 2017 general election, established that women candidates were subjected to various forms of violence, including harassment, intimidation, physical assault, and economic abuse; as well as threats, coercion, and abuses via social media platforms. Stakeholders

noted that when women take these issues to the courts it is difficult to secure an effective and efficient remedy, given that such abuses are not deemed election-related matters – meaning they are dealt with by the magistrate courts, as compared to the electoral courts. While numerous challenges continue to exist for women candidates, the announcement of Martha Karua as Odinga’s running mate could result in Kenya gaining its first ever female deputy president.

Youth dissatisfaction and apathy was reported as a notable challenge ahead of the 2022 elections. This is reflected in low rates of youth voter registration, especially for those that have turned 18 since the 2017 elections. Stakeholders noted that registration messaging did not directly target young people and did not attempt to utilize digital platforms during outreach. Interlocutors also noted that youth apathy toward the electoral process could negatively impact their turnout.

Participation of persons with disabilities (PWDs) in public office is yet to meet the required threshold. Article 54 (2) of the Constitution of Kenya (2010) provides that ‘the State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.’ Political parties have been unable to ensure that PWDs are identified, recruited and supported to participate effectively in the internal party processes and when engaged, the efforts have largely been tokenistic. The elections act provides that at least two PWDs are nominated to represent the interests of the PWD community in the Senate, the National Assembly and in all County Assemblies. While this provision was adhered to in parliament, 18 county assemblies failed to have the required representation of PWDs, amplifying the failure of parties to adhere to the law and IEBC in enforcing the requirement for representation of PWDs.

Media Environment and the Pre-Election Information Space

In 2017, the media was roundly criticized for not providing timely and accurate information to the public, contributing to widespread confusion and heightened pre- and post-election tensions. To correct for previous shortcomings, some media actors such as the Union of Journalists and Editors Guild – who signed an MOU with the IEBC – are working to ensure a consistent and accurate flow of information during the electoral cycle. Among other items, the MOU calls for the establishment of media centers for journalists, coverage of regular IEBC press conferences to inform the public on electoral preparations, and information-sharing on the media's efforts to collect polling station-level voting tallies to project results. Media associations are also working to train new journalists on responsible and effective election reporting to minimize incidents of misleading reports and to expedite the reporting of results across the country.

Despite these advancements, some actors noted larger political issues to the freedom of the press, including ownership, political coercion, and censorship of media houses by government actors as well as politically-motivated violence against reporters. Another challenge is the proliferation of mis- and disinformation in both traditional and social media. Though radio remains the most widely consumed medium in Kenya, social media has become a critical source of election-related information, and a fertile ground for political campaigns. To mitigate the same high-levels of mis- and disinformation on social media from 2017, and in preparation for the 2022 polls, members of the press corps and other media outlets have established joint fact-checking desks to increase cooperation between newsrooms.

Laws regarding hate speech are governed by Kenya’s National Cohesion and Integration Commission (NCIC), and an election code of conduct has been established by the IEBC. However, they are not effectively enforced, nor do they sufficiently address online violence against politically active women. Most social media platforms also have terms of service related to abusive behavior and voter disinformation, though the burden of flagging such content often falls to users. The NCIC noted positive cooperation with Meta to monitor and remove harmful content ahead of the elections, however other civic and media actors reflected on the

challenges to systematically tracking and responding to the sheer volume of online disinformation and hate speech.

Electoral Peace and Security

Historically, elections in Kenya have been fraught with distrust, misinformation, and underlying ethnic tensions often exploited by political leaders to further their aims, in some cases leading to violence and instability. Many of the past instances of electoral instability and violence have been fueled by political leaders who have mobilized youth to incite violence against their political rivals. The COVID-19 pandemic has also exacerbated economic disparities throughout the country, creating a more volatile environment. The most violent periods of the electoral process in Kenya have traditionally been the immediate pre-election and post-election periods.

As a high-stakes election approaches, the threat of electoral violence will be significantly heightened. Stakeholders cited concern with the tenor of the political rhetoric across all party lines, most notably around the “hustler” narrative that was launched by one of the political campaigns, which has spread far beyond the campaign itself and has been a tool used to manipulate and increase divisions among community members. There is apprehension that this rhetoric will continue to stoke further tensions as the electoral process continues. Kenyans with whom the delegation met voiced concern that electoral violence is no longer strictly tied along ethnic lines but has also spread to include specific clan and class. Stakeholders also noted concern that the courts are overwhelmed and may be unable to efficiently address cases that could arise around electoral security.

Kenya’s electoral security apparatus comprises the Kenyan military, the police, and the Ministry of Interior and Coordination of National Government. Allegations of police brutality against civilians have marred past elections. The National Police Service (NPS) indicated that they recognized the role police aggression can play in driving electoral violence, especially after the 2017 elections. Starting in 2019, the NPS tasked a specific department to prepare for electoral security, including designing training manuals and curricula for officers around the country on election violence, in partnership with the Independent Policing Oversight Authority (IPOA) and national and international human rights organizations in Kenya. This initiative also sensitizes officers on avoiding the use of excessive force to quell electoral conflicts. The NPS is more proactively working with other agencies and institutions ahead of the 2022 elections. For example, the police worked closely with the ORPP during the party primaries to combat possible violence.

The police indicated that they are constantly monitoring warning signs for electoral violence across the country and updating their list of hotspots as needed, noting that rapidly shifting coalitions are changing the electoral landscape on a weekly basis. At the police station level, commanders are directed to hold regular meetings with ‘boda boda’ (informal transportation sector, composed of two- and three-wheel vehicles) associations and empower them to avoid being used by political parties. Civil society and religious groups have also been engaging in early warning and electoral violence monitoring in the pre-election period, and identifying opportunities for dialogue to preempt conflict. Religious groups and leaders in particular, such as the Inter-religious Council, the Council of Bishops and the Interreligious Council of Kenya (IRCK) have played an important and meaningful mediation role to promote peace, codes of conduct and resolve past election-related grievances.

Recommendations

In the spirit of international cooperation, the IRI/NDI delegation respectfully offers the following actionable recommendations to help build public confidence in the process leading to the August general elections:

To the Parliament or Government of Kenya:

- The Parliament should urgently address the issue of pending electoral law amendments – either expediting their review or stating no further reforms will be entertained prior to the August polls to remove confusion or suspicion of attempts to manipulate the process.
- The Government should ensure timely financial transfers to the IEBC to ensure effective preparations, including voter education campaigns.

To the IEBC:

- To build trust among the electoral contestants and public confidence in the electoral process:
 - Develop and disseminate a clear methodology with appropriate safeguards on the collation, transmission and declaration of results;
 - Pilot a nation-wide integrated electoral management system (KIEMS), to identify gaps and plan alternatives;
 - Collaborate with the Communications Authority of Kenya to conduct a feasibility study to determine network coverage, and provide alternatives where gaps exist;
 - Publicize the independent audit report of the voter register, once complete;
 - Finalize its voter education plan and deploy messages and materials, in partnership with civil society organizations.
- Collaborate with the Union of Journalists and the Editors Guild to operationalize the Memorandum of Understanding (MOU), to provide regular information to the public on the electoral process, including:
 - Organize bi-weekly press conferences attended by Commissioners;
 - Cascade the content to community radios, social media platforms and other channels to target Kenya's diverse electorate.
- Invest in social media monitoring and strategic communications to better anticipate and proactively counter misleading or false narratives regarding the electoral process.
- Leverage the Political Party Liaison Committee (PPLC) platform by regularly meeting with political parties to address their concerns and clarify ongoing electoral preparations.

To Political Parties, their Candidates, and Independent Candidates:

- Demonstrate commitment to ensuring peace before, during and after elections, by publicly endorsing and adhering to the electoral code of conduct, and other peace pledges.
- Refrain from hate speech, cyber bullying, and inciting violence by supporters, including gender-based violence, and cooperate with institutions to investigate incidents.
- Engage at senior levels in forums to build consensus and mitigate conflict convened by actors including the PPLC and National Cohesion and Integration Committee (NCIC).
- Support campaigns for women, youth and PWD candidates through earmarking dedicated resources and access to party and presidential candidates' campaign platforms;
- Refrain from illegally raising and spending campaign funds, and using money, goods or services (public or other) as a means of improperly influencing prospective voters.
- Engage voters through issue-based campaigns and participate in candidate debates. Furthermore, in making campaign promises, political leaders and candidates should identify clearly for voters the funding sources of those pledges.

To Civil Society and Religious Leaders:

- Accelerate coordination and promote efforts to advocate for greater transparency and accountability in the electoral process.

- All citizen monitoring groups should adhere to the electoral code of conduct, as well as the *Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations*, which is endorsed by more than 150 organizations and supported by key international organizations concerned with citizen rights to monitor their elections.
- Religious leaders should use their voice and convening power to ensure credible, peaceful, and transparent elections.
- Contribute to and escalate public campaigns so that Kenyan citizens are aware of when and where to vote, as well as their rights and responsibilities on election day.
- Continue to partner with the NCIC and other institutions to mitigate and mediate conflicts and promote messages of non-violence and social cohesion across Kenya.

To the Media:

- Provide election coverage in accordance with the Code of Conduct for the Practice of Journalism.
- Offer the use of their platforms for civic and voter education programs and information.
- Provide coverage of candidate debates, to inform citizens and promote issue-based campaigns.
- Make special accommodations to feature the perspectives and concerns of women, youth, and PWD candidates.
- Prepare for and publicize plans to project provisional election results, in accordance with standards outlined in the MOU with the IEBC.

To the National Police:

- Release the plan for election deployment, including protocols to enhance respect for human rights.
- Commit to swift evidence collection and presentation to the Director of Public Prosecution (DPP) to ensure efficient adjudication of election violence cases.

To the Judiciary:

- Designate specific courts to have jurisdiction over issues of violence against women in elections and election related hate speech so that these cases are efficiently dealt with as sensitive election related matters.
- The PPLC should establish a regular meeting schedule with all political parties (ideally weekly). The decisions should be made public to address citizen concerns about the election's integrity.

NDI and IRI will continue to observe the electoral process and will carry out a second pre-election assessment mission that will assess progress made towards these recommendations in late June of 2022. IRI and NDI will cooperate with other international observation missions and Kenyan citizen observer efforts in accordance with the *Declaration of Principles for International Election Observation* and Kenyan law.

The delegation's work was funded by the United States Agency for International Development (USAID).

APPENDIX E: STATEMENT OF THE SECOND JOINT NDI/IRI PRE-ELECTION ASSESSMENT MISSION TO KENYA, JULY 2022



Statement of the Second Joint IRI/NDI Pre-Election Assessment Mission to Kenya

July 1, 2022

I. Introduction

From June 27 to July 1, 2022, the International Republican Institute (IRI) and the National Democratic Institute (NDI) jointly conducted a pre-election assessment mission (PEAM) as part of the overall observation of Kenya's 2022 elections. The mission comprised His Excellency Dr. Goodluck Jonathan, former President of Nigeria; Babra Bhebe-Dube, Executive Director of the Election Resource Centre of Zimbabwe; Lionel C. Johnson, NDI board member and former U.S. diplomat; Julia Brothers, NDI Senior Advisor for Elections; and Gregory Kearns, IRI Regional Director for Africa.

This is the second of two pre-election missions designed to assess the current political environment as well as the electoral preparations in advance of the August 2022 general elections; provide independent, impartial findings and practical recommendations before election day to improve the process; and demonstrate international support for credible elections in Kenya. The first PEAM, led by Hon. Jean Mensa, Chairperson of the Ghana Election Commission, took place from May 16 to 20, 2022 and offered 26 priority recommendations to key stakeholders to enhance confidence in the electoral process ahead of the August polls. This second PEAM reviewed changes in the electoral environment since the first delegation, the status of recommendations previously offered by NDI and IRI, and issues that could still be addressed between now and election day to promote an inclusive, transparent, and peaceful process.

The delegation conducted its activities in accordance with the *Declaration of Principles for International Election Observation*, which was launched in 2005 at the United Nations; in adherence to regional standards such as the *African Charter on Democracy, Elections and Governance*, which was promulgated by the African Union in 2007; and in compliance with the laws of the Republic of Kenya. All activities were conducted on a strictly nonpartisan basis and without interfering in the election process. The delegation met with a wide array of election stakeholders, including: the Independent Electoral and Boundaries Commission (IEBC), Office

of the Registrar of Political Parties (ORPP), National Cohesion and Integration Commission (NCIC), political parties, civil society, business associations, media representatives, religious leaders, the judiciary, and government actors. The delegation expresses its appreciation to everyone with whom it met for sharing insights from which the mission benefited greatly.

IRI and NDI are nonpartisan, nongovernmental, nonprofit organizations that support and strengthen democratic institutions and practices worldwide. The Institutes have collectively observed more than 200 elections in more than 50 countries over the past 30 years. To complement the objectives of the PEAMs, NDI and IRI have also deployed long-term thematic analysts based in Nairobi starting May 2022 to provide in-depth and ongoing analysis to the broader mission, and plan to deploy a joint international delegation to observe the August 9 elections in Kenya.

II. Summary

The 2022 polls will be Kenya's third elections since the adoption of a new constitution in 2010. The current political context reflects a realignment of alliances among major political parties, demonstrating the dynamic nature of the Kenyan electoral landscape. While the current campaign has seen coalitions rely more on ideologies and personalities in their political discourse, ethnically-driven identity politics continue to be an important determinant of voter behavior. More than twenty parties – including Raila Odinga's Orange Democratic Movement (ODM) and President Uhuru Kenyatta's Jubilee Party – have joined forces under the Azimio la Umoja (One Kenya Coalition) banner. This new alliance pits the outgoing President Kenyatta against his closest ally in the 2013 and 2017 elections, current Deputy President William Ruto, whose United Democratic Alliance (UDA) party has formed its own coalition, the Kenya Kwanza Alliance.

The August 9, 2022 elections will be a pivotal moment in the country's democratic trajectory. Electoral, political, and civic actors and institutions in the country remain resilient, despite over a decade of fraught elections, and the electoral process continues to adapt and evolve from past challenges. Nonetheless, the current climate is marked by public mistrust and collective anxiety surrounding the conduct of the elections and the acceptance of its outcomes. The first joint IRI/NDI PEAM in May found that “Kenyans have the potential to break the pattern of disputed elections and prevent election-related violence in 2022. However, this will require concerted efforts not only by the IEBC, the constitutionally mandated body to conduct elections, but equally by all political parties, security services, civil society, the media, faith-based organizations and others. All stakeholders, especially political parties, must work together to promote tolerance, peaceful elections, and respect for historically marginalized groups – including rejecting violence against women in elections.”

The delegation found that important improvements have been made since the previous PEAM in May. Some challenges nonetheless remain insufficiently addressed, such as low levels of voter education; gaps in public awareness about election administration procedures; and instances of disinformation, hate speech, and online violence against women. New issues have also emerged, including concerns about the security and timeliness of the transmission of results and

uncertainty around the physical paper voter roll at polling stations on election day. There is still time before election day to enhance the process, but continued diligence will be required of all stakeholders to ensure that the elections are conducted – and perceived – as transparent and credible.

The stakes for the upcoming elections are high. The country’s history of contested elections, in tandem with an intensifying campaign and the public’s lack of confidence in institutions, may predispose candidates to challenge the results. It is paramount that political contestants act in good faith and for election processes to be well-understood, transparent, and verifiable. These polls are an important test of all stakeholders to reflect the will of Kenyan voters who wish to move beyond disputed outcomes, embrace long-term reforms, and support the peaceful democratic transfer of power.

III. Notable Progress to Date

The NDI/IRI delegation recognizes some positive developments initiated by electoral stakeholders – some of which followed the recommendations of the IRI/NDI May 2022 pre-election statement – that are contributing to an enhanced electoral environment:

Progress in Election Administration – The delegation noted forward momentum in election day preparations and developments, including securing sufficient funds to administer the August election, the holding of a public simulation of its results transmission system months in advance of election day, and an external audit of the voter roll with highlights of the findings available to the public in a timely manner. Many interlocutors noted the IEBC’s prioritization of key stakeholder engagement and coordination, such as the IEBC’s partnership with the National Police Service (NPS) to train police officers on the management of election security ahead of the August polls. In addition, the IEBC’s periodic consultations with the judiciary may increase opportunities to build consensus around legal interpretations of both current law and legal precedent to minimize ambiguity and openings for litigation.

Increased Media Engagement and Access – Ongoing discussions and a memorandum of understanding (MOU) between the IEBC and major media houses and associations demonstrate genuine efforts to increase transparency and reinforce the role of the media as a key watchdog in the electoral process. This is further reflected in the IEBC’s support for journalist trainings on key aspects of the electoral process. As a result of these developments and the IEBC’s openly stated support for parallel tallying, media interlocutors expressed their intent to report polling station level results live or in near real-time on election day.

Political Outreach to Women – In addition to the significant nomination of female running mates for three out of the four presidential candidates, many interlocutors anticipate a higher total number of women candidates across down ballot races compared to previous elections. Women’s political participation and inclusion have become predominant campaign issues for Azimio and Kenya Kwanza during campaign rallies, exemplified by the release of the Kwanza coalition’s recent Women’s Charter and Azimio’s addition of a gender inclusion strategy to its manifesto.

Though achievement of the Constitution's two-thirds gender rule¹ remains elusive, there is increased pressure on the major political parties to articulate their gender inclusion strategies, particularly to advance women candidates for elected office.

Greater Interagency Coordination – Many interlocutors reported increased coordination between and among various government agencies, independent commissions, and civic actors as they draw upon lessons learned from the previous election. The IEBC, as an example, indicated having coordination sessions with the Communication Authority, judiciary, security agencies, and other organs (such as the ORPP, the NCIC, the Office of the Directorate of Public Prosecutions, and the media).

Advances in the Peace and Security Environment – Peace and security actors have noted marked improvements in the security environment from previous elections. Lower levels of recorded violence in the campaign period and a reduction of noted hot spots may be attributed to robust conflict mitigation efforts and improvements in the political party primary process. The National Police have engaged civil society more constructively than in previous elections, including to inform gender-sensitive trainings, and have also worked with the IEBC to clarify roles and responsibilities on election day. Numerous peace pledges, facilitated by civic and religious groups, have been signed by candidates and parties, and the NCIC noted a campaign to bring together the leading presidential candidates in a high-profile event to denounce violence. The campaign itself has been relatively peaceful, although isolated incidents of violence and a noted rise in non-elections-related gang activity highlight the importance of continued mitigation efforts around election day, especially for localized violence. In addition, and for the first time, election sexual and gender-based violence monitoring efforts are being implemented by stakeholders.

Responsive Court Processes – The judiciary continues to enjoy the trust of the people and is working proactively to enhance its capacity to address election-related violations and disputes, such as by building in-house expertise to better understand and scrutinize electoral technologies. The courts are well aware of the critical role they play in the electoral process and continue to make preparations to effectively and efficiently adjudicate cases, even in the face of abundant and high-profile election disputes.

IV. Emerging Issues and Ongoing Challenges

Technical Challenges in the Transmission of Results – The delegation notes consensus among political, civic, and governmental stakeholders on concerns around the security and timeliness of the transmission of results. In early June the IEBC organized a public simulation of the electronic results transmission system that was concluded after approximately 2.5 hours, with less than half of the results received. The transmission test reflects unresolved challenges from the 2017 elections, notably the slow uploading of scanned polling station result protocols – form 34A – to the IEBC's centralized portal, which resulted in confusion and distrust in the process. Moreover, 1,111 polling centers are estimated to lack 3G coverage, and although the IEBC has purportedly acquired a sufficient number of satellite modems to cover those centers, those systems have not

¹ The Kenyan constitution stipulates that not more than two-thirds of the members of any elective public body shall be of the same gender.

all been fully tested in the field. This has raised significant concerns about the ability of the IEBC to deliver timely information to voters during the critical immediate post-election period and could contribute to misunderstandings around transmission lag times that are ultimately technical in nature. The electronic results transmission process will be accompanied by a paper trail of the physical copies of the 34As, which will serve as a crucial backup to the electronic system. Citizens and stakeholders should have recourse to these paper records for the purposes of audits, recounts, or verification of the digitized results in the case of disputes.

Verifiability and Open Election Results Data – In a step backward from previous elections, the IEBC does not intend to make polling station level results publicly available in any other format beyond the scanned images of completed 34A forms. This decision will present a challenge for individual citizens to use for public verification, as downloading or scraping of the scans, or manually inputting results data from image files is incredibly time-intensive and effectively impossible to aggregate big data sets. Limitations to timely, machine-readable, in-bulk results data could limit the public's ability to fact-check results-related misinformation and disinformation, particularly in the face of party or media parallel tallies, and contribute to a lack of overall transparency.

Importance of IEBC Communications to Promote Public Confidence – The delegation notes a significant gap in public awareness of election administration procedures due to insufficient communication by the IEBC. Political and civil society stakeholders lack a thorough understanding of the IEBC's intended process for collecting, transmitting, tallying, and safeguarding votes on election day. This opacity regarding procedures has further eroded fragile public trust in electoral institutions and the IEBC's capabilities. Crucially, the general public lacks a shared understanding of the process by which election results will be finalized and communicated. The IEBC has not yet provided public messaging regarding the anticipated timeline and rolling nature of results transmission, which may leave the election environment vulnerable to proliferation of misinformation and conflicting accounts of false results.

Voter Registry – The IEBC recently announced that it would not provide an accompanying hard copy of the register of voters at polling stations alongside the biometric kit, resulting in concerns from some stakeholders and a subsequent court petition alleging a violation of the legal framework. The decision to remove the paper list entirely could exacerbate existing concerns, particularly in the absence of public consultation, and present limited contingencies if the electronic register fails.

Voter Education – Many interlocutors have noted the delayed start in voter education activities by the IEBC, which also impacted civil society's ability to begin these activities. Voter education tactics have overlooked main avenues where young people receive and share information, such as social media platforms.

Election-related Disinformation, Hate Speech, and Online Violence Against Women – The delegation notes continued concerns over instances of disinformation, misinformation, and hate speech which disrupt the flow of accurate election-related information to citizens and can also contribute to discord among the electorate. Concerns remain regarding the IEBC, other electoral stakeholders and social media platforms' preparedness to counter misleading or false claims made about the counting, transmission, or finalization of election results. These concerns extend to hate speech as well, which often targets politically active women. Interlocutors noted that

several women candidates including Martha Karua, Azimio's candidate for Deputy President, have been harassed online or have suffered from verbal abuse and other acts of psychological violence. According to key stakeholders, the inherently opaque nature of malign online activities creates noted challenges for investigation, oversight, and accountability.

Participation of Youth and People with Disabilities – The delegation notes low levels of voter registration among youth, including a decline from the last elections, and consistent exclusion of both youth and people with disabilities (PWDs) from political party leadership and nomination practices. They reported exclusion from competitive party platforms as a result of internal party nomination processes, whereby candidates are selected through prolonged negotiations. Widespread apathy was reported among youth - attributed to barriers in obtaining ID cards and disenchantment with the political establishment. PWDs are also significantly underrepresented as elected office holders and candidates and have little representation in political parties' governing bodies, including national executive committees. Several stakeholders noted that the IEBC's voter education efforts may have been insufficient, particularly in reaching youth, PWDs, and other special interest and marginalized groups.

Candidate Certification – The Ethics and Anti-Corruption Commission (EACC) flagged 241 aspirants with integrity issues, such as allegations of corruption or abuse of office, to the IEBC, recommending that it take these concerns into consideration before clearing their candidacies. The IEBC responded that most of the identified aspirants would not be disqualified citing constitutional provisions for the presumption of innocence until proven guilty, among others. The IEBC and EACC have continued to disagree over their mandate and responsibility concerning the clearance of candidates with integrity issues. In addition, stakeholders have expressed frustration and are concerned that candidates with integrity issues will be elected as a result.

V. New and Continued Recommendations

With just five weeks remaining before the August polls, interventions to improve the electoral process should be strategic and timely. The delegation believes that with political will and through coordinated efforts by all stakeholders, many of the above-mentioned challenges can be addressed in the time allotted to enhance citizen confidence and participation in elections. In the spirit of international cooperation, IRI/NDI's initial assessment report in May identified 26 recommendations to support the upcoming elections. Some of those recommendations have since been addressed by the relevant actors in clear steps to improve the process. Some initial recommendations may no longer be achievable in the limited window leading up to election day, but should nonetheless be considered for long-term reform. However, there are several continued recommendations that remain highly relevant during this critical period and should be reiterated, as well as new ones offered by the delegation to address new and emerging issues.

Building Confidence in Election Results:

- The IEBC should consider conducting a full, countrywide load test² of the entire results management system to garner an accurate estimate of how long the process will take, address any unexpected challenges, and avoid surprises on election night.
- The IEBC results portal should follow open data principles for polling station-level results to make them available to the public in a timely, analyzable, and bulk format.
- The IEBC should prioritize public communications related to the results transmission process, including specifics of the chain of command and redundancies built into the process to safeguard its integrity, and to manage expectations of the parties, the media and public regarding how and when results information will be available.
- Citizen observers should seek to independently verify election results to deter manipulation of the tabulation process.
- Political parties, candidates and media that may report voting results after polls close should act responsibly when conducting real-time reporting, verify information and refrain from drawing premature conclusions based on unrepresentative data.

Election Integrity Backups and Fail Safes:

- The courts should provide a timely resolution of the current debate on the use of the paper voter list alongside the electronic register.
- Political parties, watchdogs and other stakeholders should increase awareness of the election day paper trail and available mechanisms – such as audits or recounts – to build trust in the results in case of a failure in the results transmission technology.

Information Environment:

- The IEBC should prioritize strategic and regular communications with the media and the public, including provision of clear, responsive and timely information regarding all aspects of the electoral process.
- The IEBC should invest in social media monitoring and strategic communications to better anticipate and proactively counter misleading or false narratives regarding the electoral process and in particular to counter misinformation or misunderstandings regarding the transmission and finalization of results.
- Political actors and stakeholders should refrain from unfounded or misleading claims regarding the electoral process, and should hold accountable those party members who spread false information that could destabilize the election environment.
- Technology platforms should bolster efforts to promote a healthy information environment ahead of, on, and immediately after election day. This includes not just strategies to counter hate speech, but also to mitigate violence against women candidates online and to deter election-related disinformation, especially at vulnerable times such as the counting, transmission and announcement of election results.

Campaign:

² A load test is a performance test for software systems to see how they operate under expected usage conditions. Sometimes called a “stress test”, this would mean conducting a results transmission simulation for all 46,000 polling stations at roughly the same time, to mimic the conditions of election night.

- Political parties and candidates should demonstrate commitment to ensuring peace before, during, and after elections by publicly endorsing and adhering to the electoral code of conduct, and other peace pledges.
- Political party leaders should commit publicly to promote an election free of violence before, during, and after the election.

Inclusion:

- All key stakeholders – political parties, IEBC, civil society, media, and the security sector – must put in place urgent measures to remove obstacles that hinder the full participation of women, young people, people with disabilities and other marginalized groups.
- The IEBC should provide accommodations to facilitate voting by people with disabilities and other limitations, including locating polling places at ground level, permitting such voters priority placement in long lines, and providing accessible voting materials.

Voter Education and Pollwatching:

- Voter education efforts should be accelerated throughout the country with a focus on election day procedures and the immediate post-election process, and specific outreach to women, youth, and persons with disabilities.
- The IEBC should develop a simple graphic depiction of the voting process to be posted on key media in order to educate voters and set expectations.
- Political parties should deploy trained representatives to polling stations and ensure they adhere to the IEBC’s code of conduct.

International Community:

- The international community should continue to support the Kenyan electoral process, and the capacity of nongovernmental and governmental organizations. International organizations should also continue to coordinate their various observer efforts while amplifying the voices of Kenyans working to meet the challenges for credible and peaceful elections on August 9.

VI. Conclusion

The delegation again extends thanks to the many Kenyans who generously gave their time to inform its efforts and for the warm welcome that the delegation received. The delegation hopes that the observations and recommendations presented in this statement are strongly considered in the remaining weeks ahead of the August 9 polls. IRI and NDI will continue to monitor the electoral process and plan to organize an international election observation mission during the election itself and look forward to engaging with stakeholders at that time.

The delegation’s work was funded by the United States Agency for International Development (USAID).

APPENDIX F: PRELIMINARY STATEMENT OF INITIAL FINDINGS AND RECOMMENDATIONS OF THE IRI/NDI INTERNATIONAL ELECTION OBSERVER MISSION TO KENYA'S AUGUST 9, 2022 GENERAL ELECTIONS



PRELIMINARY STATEMENT OF INITIAL FINDINGS AND RECOMMENDATIONS OF THE IRI/NDI INTERNATIONAL ELECTION OBSERVER MISSION TO KENYA'S AUGUST 9, 2022 GENERAL ELECTIONS

August 11, 2022

This preliminary statement provides initial findings and recommendations of the International Republican Institute (IRI) and National Democratic Institute (NDI) joint international election observation mission (IEOM) for Kenya's 2022 general elections following voting and counting on August 9.

For Election Day, the joint NDI/IRI mission deployed a 30-member international and bipartisan delegation with members from 13 countries and co-led by: His Excellency Joaquim Chissano, former President of the Republic of Mozambique; Ms. Donna Brazile, NDI Board Member and former Acting Chair of the Democratic National Committee (DNC); Mr. Randy Schuenemann, IRI Board Vice Chair; and Ambassador Johnnie Carson, NDI Board Member and former Assistant Secretary of State for African Affairs, as well as IRI Vice President for Programs, Mr. Scott Mastic and NDI Global Director for Elections, Mr. Richard Klein.

The delegation visited Kenya from August 4-11, 2022. Its observations build upon the findings and recommendations of two high-level pre-election assessment missions conducted in May and June, respectively, and benefited from ongoing analysis of the electoral process by a team of long-term analysts based in Nairobi since the beginning of May. The delegation conducted its activities in accordance with Kenyan laws as well as the *Declaration of Principles for International Election Observation*, and in coordination with other international election observer missions as well as citizen observers. The delegation's initial findings and recommendations are made in reference to international and regional standards for credible elections, including the *African Charter on Democracy, Elections and Governance*, as well as Kenya's legal framework for elections.

Through this mission, IRI and NDI jointly seek to: express the international community's interest in and support for inclusive, transparent, accountable and peaceful elections in Kenya; provide accurate, impartial, and timely information on the conduct of Kenya's 2022 elections; and offer practical recommendations based on internationally accepted practices to enhance the credibility of Kenya's electoral processes. NDI and IRI recognize that it is the Kenyan people who will ultimately determine the credibility of their elections.

The delegation met with a wide array of electoral stakeholders, including from: the Independent Electoral and Boundaries Commission (IEBC), political parties, civic organizations, citizen observer groups, the judiciary and media practitioners. Delegation teams deployed to 12 of the 47 counties across Kenya, representing the diversity of the country and where they observed opening, voting, and counting processes. All activities were conducted on a strictly nonpartisan basis without interfering in the election process. The delegation is grateful for the warm welcome and cooperation it received from all Kenyans

with whom it interacted. The delegation's work was funded by the United States Agency for International Development (USAID).

I. INITIAL FINDINGS AND RECOMMENDATIONS

The delegation stresses that this is a preliminary, rather than final, statement on the 2022 elections and provides initial findings and recommendations based on the broader electoral context, the pre-election period and Election Day through voting and counting. It is important to remember that the critical processes of tabulating and announcing results remain underway; that official results have not yet been announced; and electoral challenges, if any, are yet to be adjudicated.

The 2022 elections take place against a backdrop of three, sequential, disputed presidential elections. Due to constitutional term limits, Kenyans will be electing a new president for the third time since the re-introduction of multiparty politics. The current political context reflects a realignment of alliances among major political parties, demonstrating the dynamic nature of the electoral landscape. While the current election has seen coalitions based more on ideologies, ethnic identity politics continues to be an important factor. The main two presidential candidates are former Prime Minister Raila Odinga, leader of the Azimio la Umoja (One Kenya Coalition) who is supported by President Uhuru Kenyatta, his former political rival; and current Deputy President William Ruto, leader of the Kenya Kwanza alliance and President Kenyatta's former ally.

The 2022 elections are not yet complete. There have been notable positive elements of the process—a more peaceful pre-election period and improved candidate nomination process, and an increase in women candidates. On Election Day, voters were able to cast ballots for candidates of their choice in a generally orderly and peaceful process. The elections have not been without challenges, particularly concerns about last minute changes to Election Day procedures, and about the security and timeliness of the transmission and announcement of results. These challenges could exacerbate pre-existing trust deficits and threaten confidence in the process. In the coming hours and days, we urge all parties to strictly adhere to Kenyan law and allow the electoral processes to conclude without interference.

The 2022 general elections in Kenya were more inclusive of women candidates and peaceful in the pre-election period than in years' past. The Political Party Act was amended contributing to more peaceful candidate nomination processes, but not necessarily a more transparent one. The number of women candidates also increased, including for the first time, the nomination of three female deputy presidential candidates. The number of female deputy gubernatorial candidates also doubled from 30 in 2017 to 62 in 2022. However, the two-thirds gender quota legislation has yet to be adopted. While Kenya's legal framework provides a sound basis for credible elections, efforts to update the law and regulations in light of the Supreme Court's annulment of the 2017 presidential election have not been successful. The judiciary is highly regarded among Kenyans across the political spectrum and from civil society, having confidence in the courts ability to address election-related disputes. Kenya's election commission, the IEBC, took important steps to enhance outreach to key stakeholders. It also entered into a memorandum of understanding (MOU) with major media houses for independent tallying of election results. Following high stakes primaries, the campaign environment was relatively peaceful, save for isolated incidences of violence. Despite funding constraints, civil society proactively engaged in mitigation and peace efforts, election observation, and monitoring violence against women in elections. Importantly, in the pre-election period, there was a marked improvement in the security environment, though the leading presidential candidates declined to sign in-person peace pledges.

At the same time, a number of issues of concern arose during the pre-election period that could undermine credibility of the process. While there are more than 22 million registered voters, this fell short of expectations and voter registration of young Kenyans aged 18 to 35 decreased from 2013. Youth dissatisfaction and apathy was reported as a notable challenge ahead of the 2022 elections. This is reflected in low rates of youth voter registration, especially for those that have turned 18 since the 2017

elections. In contrast to 2017, the KPMG audit report of the voters register was only belated and partially released, reducing transparency. Campaign finance legislation remains unimplemented and the Courts declined to reinstate spending limits. As a result, the cost of elections remains prohibitively high for many—particularly women candidates. Most women candidates reported verbal abuse and other acts of psychological violence from both male and female opponents and their supporters. Few substantive efforts were made to increase the participation of persons with disabilities (PWDs). Widespread disinformation in social media was to the benefit of both major political parties.

On the eve of the elections there was considerable confusion about the Election Day procedures, following last minute decisions related to the use of the manual voters register, and procedures for spoiled ballots and the posting of official results for the presidential elections at polling stations (form 34A). This undermined the IEBC efforts to train polling station staff and ensure consistent application of voting and counting procedures. In addition, printing errors resulted in four elections having to be delayed at the last minute, including governorship elections for Kakamega and Mombasa counties.

Election Day, itself, was generally peaceful. Most polling stations opened on time with all election-related materials present. Voters, including women, often waited patiently in long queues. There were isolated cases of Kenya's Integrated Election Management System (KIEMS) kits not working. The KIEMS kits frequently took multiple tries to verify voters delaying the voting process, but did not result in eligible individuals not being permitted to vote. Polling officials made every effort to ensure all eligible individuals were able to vote. Security forces acted professionally and did not interfere in the process. Confusion persisted over the role of the printed copies of the voters register. While present, they were generally not used for manual voter identification or manually recording who had voted. Six ballot papers caused confusion, at times resulting in ballots being placed in the wrong ballot box and later being rejected. Counting was conducted transparently in the presence of party agents and often citizen observers. While agents for parties contesting the presidential election were given a copy of the official 34A results form, in most cases, a copy was not posted at the time of counting for the public to see, in contrast to previous elections.

Prior to Election Day, the IEBC conducted two simulations, however, both exercises had shortcomings. Of particular concern are 1,000 polling stations without 3G cell phone coverage requiring satellite technology for electronic transmission. To enhance transparency, the IEBC established a webportal with scanned images of the 34A presidential results forms. In addition, both media and political parties are conducting their own parallel tallies. While these have the potential to enhance transparency, they can also be misleading and create confusion if not done professionally. Even more importantly, citizen observers conducted, on behalf of all Kenyans and in the interest of electoral integrity, a parallel vote tabulation (PVT) for the presidential election. PVTs provide truly representative information on the conduct of voting and counting as well as real time verification of the official results as announced by the IEBC.

The IRI/NDI mission stresses that this statement is preliminary in nature and includes initial findings and recommendations. As the tabulation process continues, the joint NDI/IRI mission calls for all parties, candidates, and their supporters to adhere to the commitments they have made to peaceful elections and to reject violence. If disputes arise, we call upon all parties to resolve them peacefully and through appropriate procedural and legal channels.

In this regard, IRI and NDI offer the following practical recommendations that can be taken now to enhance confidence in the tabulation and announcement of results as well as promote a peaceful outcome.

To the IEBC

- In accordance with regulations, post for the public copies of form 34A at all polling stations.
- Immediately post scanned images of 34C constituency results forms on the IEBC web portal.
- In a more timely and frequent manner, communicate with the Kenyan people and political contestants about all aspects of the tabulation process, including any challenges that may emerge or may complicate completing the process within the constitutional timeframe.

- Take proactive steps to counter misleading and false narratives about the tabulation process, particularly on social media.
- Provide complete and timely polling station level results to political parties as well as citizen and international observers in an easy-to-analyze format.

To Political Parties and Candidates

- Publicly and vigorously direct supporters to refrain from any acts of violence during and after the tabulation and announcement of results.
- Work in good faith with the IEBC to resolve any potential discrepancies that may arise during the tabulation of results to ensure the results reflect the ballots cast.
- Adhere to IEBC directives about the independent tallying of results and not prematurely announce final election results or declare a winner.
- Publicly commit to seeking redress for any electoral complaints that may arise through proper legal channels and abide by the outcomes of judicial proceedings.

To the Judiciary

- Continue to play a strong and impartial role in adjudicating any disputes that may arise from the election.

To the Government

- Ensure a smooth and timely transition to the new president, regardless of who is the winner, once all phases of the election are completed, in accordance with Article 141 of the Constitution and the Assumption of the Office of President Act of 2012.

To the Security Forces

- Maintain neutrality, protect citizens, and respect human rights and the dignity of the Kenyan people in carrying out their duties and in response to any incidents related to the tabulation or announcement of results.

To Civil Society, Religious Leaders, and the Media

- Citizen watchdogs and observer groups should continue to independently verify election results while maintaining professionalism, impartiality, and accuracy to deter manipulation of the tabulation process and counter misinformation concerning the veracity of the results.
- The media should adhere to IEBC directives about the independent tallying of results and not prematurely announce final results or declare a winner.
- Civil society and the media, as well as the IEBC, should proactively address rumors and fake news about the tallying process.
- Kenya's religious community should continue to encourage dialogue among political actors and encourage peaceful resolution of disputes through established platforms and legal processes.

Once the electoral process concludes, there should be a peaceful and timely transition of power regardless of the outcome. The challenges facing Kenya's elections, however, are not unique. Today, they affect both young and old democracies around the world. Kenya is a beacon of hope. At this critical moment, when democracy is under threat regionally and globally, Kenya has an opportunity not only to move beyond its past of disputed elections, but also serve as an important model for Africa and all democracies around the world.

Beyond the 2022 election, we hope and expect all Kenyans will work together to ensure Kenya's democracy improves the lives of all her citizens—in particular, marginalized communities including women, youth, and PWDs.

The joint NDI/IRI mission will continue to follow electoral developments, including the tabulation process, adjudication of disputes, announcement of official results, and swearing in of newly elected officials, and may issue further statements and clarifications, as needed. Upon the conclusion of the

August 9, 2022 elections, IRI and NDI will issue a comprehensive report detailing final findings and recommendations.

II. DETAILED FINDINGS

Electoral Context

The 2022 elections take place following three cycles of elections where the results for the presidential results were disputed. The last undisputed presidential election was in 2002. In 2007, serious concerns about manipulation of the tabulation process and the accuracy of the presidential results unleashed widespread post-election violence. In the aftermath, Kenya's legal framework for elections underwent significant reforms resulting in a new Constitution, Electoral Act and related legislation and regulations. Presidential elections in 2013, conducted under the new legal framework, resulted in the winning candidate narrowly avoiding a runoff with just over 50 percent of the vote. The outcome was challenged in the courts, which upheld the results while acknowledging issues with the process. While the margin of victory for the 2017 presidential election was much larger than in 2013, the results were again disputed. This time the courts annulled the results based on the failure to comply with legal requirements rather than evidence that the results had been manipulated. The opposition, however, boycotted the subsequent rerun resulting in voting not being possible in many places and overall turnout under 40 percent (down from nearly 80 percent). It is against this backdrop that the 2022 elections take place.

Legal Framework

Key elements of the legal framework for elections include the Constitution of Kenya, the Elections Act of 2011 and related regulations, the Independent Electoral and Boundaries Commission Act of 2011, the Political Parties Act of 2011, and the Electoral Offences Act of 2016. The legal framework was significantly changed in response to the 2007 elections and subsequent post-election violence.

Recent amendments to the Political Parties (Amendment) Bill were passed into law in 2022 despite strong opposition from Ruto about the introduced changes, such as distinctions between parties and coalitions as well as a new requirement that parties publish and file their internal nomination process with the Office of the Registrar of Political Parties (ORPP). While some noted that the amendments contributed to a more peaceful nomination process, indirect methods of nomination also raised questions of transparency and inclusion. However, an amendment to the Elections Act, which sought to address issues raised by the Supreme Court decision following the 2017 elections, was passed by the National Assembly, but never acted upon by the Senate.

Judiciary

The judiciary enjoyed the trust of the people and worked proactively to enhance its capacity to address election-related violations and petitions. Justices, magistrates, and judicial staff received training on aspects of the electoral process including on results transmission procedures and related technologies. In addition, a bench book, which is a compendium of all election-related cases and judicial resources, was prepared for all members of the judiciary handling election petitions. An electronic filing system was also available and the capacity to hear petitions was also established, however, this will depend on the dynamics of the case.

Election Administration

Independent Electoral and Boundary Commission: The IEBC is a constitutionally independent body consisting of the Chairperson and six commissioners who are identified by a selection panel appointed by the President, approved by the National Assembly, and appointed by the President. The Chairperson and two commissioners were appointed in late January 2017 while four commissioners served in an acting capacity until they were appointed in September 2021. Elections in Kenya are administered by a four-tiered election administration composed of the Commission and Secretariat in Nairobi, 47 county offices, 290 constituency offices, and 46,229 polling stations.

Voter Registration: The IEBC closed voter registration on May 4 despite the Elections Act prescribing that registration remain open up to 60 days before an election. Thereafter, voters were able to verify their registration status in person, online, or via SMS over a 30-day period until June 2. The final voters list included 22,120,458 voters (approximately 85 percent of eligible voters), including 10,443 voters abroad and 7,483 voters in person. The total number of registered voters increased by 12.79 percent, as compared to 2017. However, the total number of new voters registered was 2,509,035, which fell short of the IEBC's target of six million.

The IEBC contracted KPMG to conduct an independent audit of the register of voters. As part of the audit, KPMG made recommendations on such issues as strengthening controls over application, database, and infrastructure to ensure security of the register of voters. The audit also found several exceptions that the IEBC addressed, such as cases of deceased voters and invalid passport or identification numbers. Following the completion of the audit, on June 16, the IEBC indicated that a copy of the report was submitted to the National Assembly and the Senate in accordance with the Elections Act. Stakeholders continually called for the final report of the KPMG audit to be shared with the public. On August 2, the IEBC posted part of the audit report along with a matrix of implementation of recommendations of the audit.

Party Nomination and Candidate Registration: In April 2022, political parties conducted their nomination to select their candidates for the six elective positions. Under the 2022 amendments to the Political Parties Act (2011), parties are permitted to directly nominate candidates through universal suffrage of their membership, or to indirectly nominate them through consensus, internal polls, delegates, or other methods. The process was often opaque and marred by nepotistic selections over competitive processes, which often excluded young aspirants, particularly young women. As a result, many candidates chose to run as independents, and the IEBC received registration applications from more than 7,000 independent aspirants, but only 4,526 were ultimately cleared, representing 28 percent of all candidates.

The candidate registration period began on May 29 and ended by June 10. A total of 16,100 candidates were cleared to contest the 2022 elections, of which 11,574 represented political parties (72 percent) while 4,526 (28 percent) were independent candidates. This includes four candidates for president; 266 for governor; 341 for Senate; 360 for women representative; 2,132 for members of the National Assembly; and 12,997 for members of the County Assembly.

As part of the registration process, the IEBC submitted a list of 21,865 aspirants to the Ethics and Anti-Corruption Commission (EACC) for consideration of compliance with leadership and integrity requirements in accordance with Chapter six of the Constitution. Of those submitted, 241 aspirants were flagged for integrity issues, such as allegations of corruption or abuse of office, with the recommendation that IEBC consider these concerns before clearing their candidacies. Despite the EACC findings, the IEBC did not disqualify the majority of the aspirants, citing constitutional provisions for the presumption of innocence until proven guilty, among others. The IEBC and EACC continued to disagree over their mandates and responsibility concerning the clearance of candidates with integrity issues. In addition, stakeholders expressed frustration about gaps in application of the requirements as well as concerns that candidates with integrity issues will be elected as a result.

Election Technology: The IEBC employed biometric voter authentication and electronic results transmission technologies, collectively known as the Kenya Integrated Election Management System (KIEMS). In addition to biometric identification, the law requires that the IEBC put in place a complementary method of identifying voters on election day. The IEBC decided that both the primary and complementary methods of identification would be based on the digital voter register loaded on a secure digital memory card in each KIEMS kit instead of using a physical copy of the register as the complementary method. If a voter was not identified biometrically, they were identified alphanumerically by keying their identification or passport number into the KIEMS kit. Each ward had six backup kits to replace a failed kit at a polling station. According to the IEBC, their decision not to use the manual register was an effort to prevent voting irregularities. The IEBC later clarified that a sealed physical copy

of the register would be available at each polling station to be used as a last resort. However, stakeholders expressed concern about the IEBC's decision. In addition, several civil society organizations (CSOs) filed a petition with the High Court seeking to compel the IEBC to use the physical register.

Results Transmission System: In accordance with the legal requirement to test the system no later than 60 days before the elections per section 44 of the Elections Act, on June 9, the IEBC conducted a simulation of the results transmission process. At the same time, IEBC announced enhanced security features, such as a Virtual Private Networks (VPN), firewalls, and security access codes to avoid cases of hacking and the development of a public portal to publish scans of the results forms 34A, which were transmitted from the polling stations to the constituency and national tally centers. The simulation involved a sample of 2,900 polling stations or two polling stations in each of the 1,450 wards. However, by the time the simulation exercise concluded, after approximately two and half hours, less than half of the 2,900 polling stations' results had been received. During and after the simulation, concerns were expressed about the slow transmission of forms, the design of the public web portal, the way in which results would be tallied at the national tally center, the security of the transmission process, and other issues. On July 19, the IEBC conducted a second simulation exercise involving only 580 polling stations due to the ongoing servicing and preparation of KIEMS kits in Nairobi. In addition, the IEBC presented an updated version of the public portal, which had incorporated feedback from stakeholders following the first simulation.

Throughout the pre-election period, civil society, political parties, and the media regularly expressed frustration with the absence of regular communication from the IEBC, and its slow response to information requests, which in turn raised concerns about the preparedness and transparency of the commission to administer quality polls. Communications challenges were also cited as an impediment effectively managing public expectations, and as giving rise to conflicting narratives regarding the results management process. In turn, the IEBC reported increased propaganda, false allegations, and attempts to target IEBC staff. As a result, the IEBC requested the Director of Criminal Investigations (DCI) to investigate the propaganda as well as to augment the security of election officials throughout the country.

Political Parties and Campaigns

Campaign Environment: The campaign period officially began on May 29 and ended 48 hours before the August 9 elections. Freedoms of assembly, expression, and association were broadly respected despite violent incidents recorded in at least 27 counties. Through August 6, physical attacks against candidates and their supporters were recorded in Nairobi (21), Bungoma (17), Busia (10), Uasin Gishu (7), Homa Bay (5), Migori (5), Kakamega (4), Mombasa (4), Machakos (3), and Siaya (3) counties. There was little political pluralism in party strongholds where candidates affiliated with the opposing coalition often operated in limited political space with few opportunities to openly campaign.

The Azimio la Umoja (One Kenya Coalition) and Kenya Kwanza kept full campaign schedules and organized large rallies for their respective presidential tickets in all 47 counties. While both coalitions established regional campaign organizations to coordinate the activities of their respective presidential candidates, individual party members were responsible for supporting their own candidates from the position of governor to member of county assembly. Pre-election agreements allowing for the registration of a single coalition candidate were enforced in a handful of electoral areas. However, in most cases, Azimio and Kenya Kwanza leaders were unable to convince aspirants from smaller parties to withdraw in favor of stronger ones; and renounced most of their zoning plans following the finalization of the IEBC list of candidates. Both Azimio and Kenya Kwanza experienced internal divisions and disagreements in a majority of counties where coalition party members slated multiple candidates.

While both presidential candidates concentrated largely on matters of personality and criticism of the IEBC, the police and other institutions, they also discussed key provisions included in their manifestos. Ruto centered his campaign around the 'hustler vs. dynasty' message, promoting a 'bottom-up' model of wealth distribution, which resonated with large swaths of the country's youth. Odinga promised to strengthen Kenya's manufacturing sector, its devolved system of government, and its fight against

corruption. Positively, both camps highlighted gender equality and inclusion issues, particularly during the first month of the campaign period.

Despite the withdrawal of Odinga from one of two presidential debates, the broadcasting of dozens of candidate debates helped enhance the plurality of Kenya's political system and inform voters' choice.¹ In addition to the two debates featuring the deputy presidential candidates, at least 29 gubernatorial debates across 24 counties were broadcast live on traditional and social media. Numerous debates introducing candidates for the four other elective posts were also conducted.

In the absence of the application of the Election Campaign Financing Act (2013), Azimio and Kenya Kwanza spent large sums of money to mobilize voters, unencumbered by regulations on fund contributions and expenditures. Vote buying remains widespread in Kenya and specific cases of distribution of money or foodstuffs were reported to the mission in Nairobi, Nakuru, and Kisumu.²

Complaints emerged on both sides about the alleged misuse of state resources. Throughout the campaign, Kenya Kwanza accused Azimio of 'state capture' and expressed concern about the involvement of key cabinet secretaries and county commissioners in political activities, as well as President Uhuru Kenyatta's interference in the electoral process.³ Likewise on June 20, Azimio wrote to the IEBC alleging that the deputy president was using his office's hospitality funds and official residence to finance and host Kenya Kwanza's political gatherings. Odinga's campaign team also alleged that Ruto's office was employing civil servants to spread disinformation on media outlets and social media platforms.

Election Security

Following high stake primaries, the campaign environment was relatively peaceful save for isolated incidences of violence. The destruction, removal or defacing of campaign materials made up the bulk of election-related offenses. Physical attacks and clashes among opponents' supporters, hired youths and against targeted candidates were recorded in 27 counties and at least two persons were killed in Nairobi and Bungoma. Tensions ran higher in Nairobi, Uasin Gishu, Siaya, and Kisii counties.

Since 2017, election security has been delivered through the Electoral Security Arrangement Program (ESAP), an institutionalized multi-agency framework led by the IEBC. Due to disagreements between the IEBC and the National Police Service (NPS), the IEBC cascaded ESAP training on election security management in late May, three months behind their initial plan. Stakeholders pointed to cooperation challenges between the two institutions at the national level and warned against the politicization of their divisions. Positively, the NPS designed training manuals as well as training curricula in partnership with the Independent Policing Oversight Authority (IPOA), and international and national human rights organizations. Trainings on election duty, including but not limited to crowd management, human rights, sexual and gender-based violence (SGBV) and police accountability, were rolled out from the regional to the sub-county level. Despite the Inspector General of Police (IG) declaring on July 22 that all police officers had been trained, stakeholders voiced serious doubts about their ability to train the lower-level officers in a timely manner and expressed concerns that the deployment plan had not been shared.

¹ Two presidential debates were scheduled on 26 July. George Wajackoyah of the Roots Party boycotted the other debate. He was supposed to face David Mwaure Waihiga of the Agano Party.

² In Nakuru Town East, citizen observers witnessed the incumbent MP distributing Ksh 300 to most households across the constituency's five wards on multiple days. In Kisumu Central, the IEOK witnessed the ODM candidate for member of county assembly distributing Ksh 300 to supporters at a small rally in Kondele ward.

³ Presidential running mate Rigathi Gachagua alleged on 5 July on his Facebook page that local chiefs were summoned by the Nyeri Deputy Commissioner and ordered to welcome Azimio presidential candidate Raila Odinga at a rally in Karatina. Local chiefs are civil servants and therefore barred from taking part in campaign activities by Section 23 of the Leadership and Integrity Act (2012).

With the aim of containing pre-existing conflict and preventing election violence, the NPS deployed additional units to conflict prone areas, implemented curfews in Marsabit and parts of Baringo, West Pokot and Elgeyo Marakwet, summoned conflicting parties to ad-hoc security meetings, and regularly participated in multi-sectoral meetings on election preparedness. Stakeholders welcomed the readiness of the police to consult with CSOs and their openness to information-sharing which contribute to bridging the communication gap with grassroots organizations, address the trust deficit, and enhance response mechanisms. However, reports of collusion between the NPS and county administrations in Kisumu, Uasin Gishu, and Siaya counties may have undermined these initiatives.

Enforcement of the Election Act's Code of Conduct was very minimal. A range of stakeholders promoted peaceful elections, but few candidates called for the respect of the code of conduct unless they or their supporters were attacked. Media houses also regularly reported that various electoral offenses were under investigation by the DCI. Yet little has been concluded to-date.

Peace and mitigation efforts: As part the of the Uchaguzi Bila Noma roadmap to peaceful elections, an initiative of the National Cohesion and Integration Commission (NCIC), state agencies and non-state peace actors initiated a series of peace activities under the UWIANO platform⁴ and the #LetPeaceWin campaign launched on June 18. Though the operationalization of the overall strategy remained opaque, agencies primarily focused on the conflict-prone counties identified by a hotspot mapping survey released at the end of May by the NCIC. The hotspot map showed 16 counties that were at greater risk of electoral violence with Nairobi, Nakuru, Kericho, Kisumu, Uasin Gishu, and Mombasa, among the top six. Peace activities included peace caravans, peace runs and walks, situations rooms, and consultation forums with media, boda bodas, political parties, CSOs, faith-based groups (FBO), women and PWDs. Efforts targeting youth and the prevention of youth violence were also implemented.

The NCIC's peace efforts were recognized as more proactive than in previous elections, however, all stakeholders lamented that the Commission had no power to hold authors of harmful speech accountable. Some also questioned its independence. Moreover, it was difficult to understand how it was able to monitor the thousands of pledges that were allegedly signed.

Violence against women in elections: According to stakeholders, gender-based violence (GBV) and SGBV are widespread and perpetrated by hired youth as well as both male and female candidates, supporters, and residents. The mission collected reports of women candidates being physically attacked in Bungoma, Kirinyaga, and Mombasa. At various women candidates' forums, women also reported being subject to intimidation, insults, and propaganda about their sexual morality, marital status, and age. Despite a robust legal framework and growing attention to sexual violence, the Federation of Women Lawyers (FIDA-Kenya) identified 656 cases of electoral SGBV between the beginning of the primaries and late June 2022. Section 10 of the Election Offenses Act prohibits the use or the threat to use force and violence, including sexual violence, but omits any mention of GBV and SGBV, which would allow the courts to more swiftly deal with offenses. The Sexual Offenses Act of 2006 tackles many forms of sexual violence, including rape and sexual harassment, but fails to address online modern forms of sexual violence, which represented over 30 percent of the cases reported by FIDA-Kenya.

Inclusion: Women, Youth, and Persons with Disabilities

At the time it was enacted, Kenya's 2010 constitution was hailed as one of the most progressive in the world for women and minority rights. While it provides a framework for an inclusive political process, barriers to increasing representation of women, youth and persons with disabilities in political life continue to exist.

Women's participation: Women represent 49.12 percent of voters registered, while men represent 50.88 percent, demonstrating that women are still underrepresented in the register of voters. The 2010

⁴ UWIANO, established in 2010, is a public platform to engage Kenyans in adding their voice to peacebuilding efforts in Kenya.

Constitution specifies that no more than two-thirds of either gender may occupy elected public bodies. However, more than 10 years later, the government is yet to enact legislation to fully implement this constitutional requirement. Positively, more women ran for seats in 2022 than in 2017, both in absolute numbers and as a share of the total number of candidates. According to the IEBC, of 16,100 candidates cleared for the 2022 polls, women represent 12.18 percent or 1,962 candidates. Three of the four presidential candidates nominated a woman as a running mate and several political parties appointed women as secretary general or executive director. For the first time, ORPP enforced the two-third gender rule for party membership lists.

Still, women aspirants in Kenya continue to face cultural and economic barriers to political participation. Most women candidates lack the ability to mobilize resources to sustain their campaigns throughout the election period, remain excluded from business networks, and do not partake in informal fundraising events that typically take place during evening hours. During the 2022 electoral period, women candidates were harassed online and on the campaign trail, which may have hampered their ability to move freely and interact with voters. Many women candidates were also subjected to verbal abuse and other acts of psychological violence from both male and female opponents and their supporters, who often criticized their physical appearance or marital status.⁵

Youth participation: Youth dissatisfaction and apathy was reported as a notable challenge ahead of the 2022 elections. This was reflected in low rates of youth voter registration, especially for those who turned 18 since the 2017 elections. On June 21, the IEBC gazetted the revised register of voters, which showed youth of ages 18 to 34 comprise 39.84 percent of voters, 5.27 percent less than in 2017, with male youth declining by 2.89 percent and female youth declining by 7.75 percent. The mission noted that registration messaging did not directly target young people and did not attempt to utilize digital platforms during outreach. Interlocutors in Mombasa, Nakuru, Nairobi and Kisumu informed the mission that youth gangs were hired by candidates to disrupt opponents' campaign events or dissuade voters from casting their ballots during the nomination process. Beginning June 14, youth organizations trained dozens of young voter educators at the county level on the electoral legal framework and voting procedures, in cooperation with the IEBC's Youth Coordinating Committee. This initiative outpaced IEBC's own voter education program, which began in mid-July. The IEBC also accredited for the first time hundreds of students from the Universities and Colleges Students' Peace Association of Kenya as election observers.

Participation of persons with disabilities: The Elections Act provides that at least two PWDs are nominated to represent the interests of the person with disability community in the Senate, the National Assembly and in all County Assemblies. However, political parties have been unable to ensure that persons with disabilities are identified, recruited and supported to participate effectively in internal party processes and when engaged, the efforts have largely been symbolic. According to the ORPP, less than one percent of party members are PWDs. Following the publication of the political parties' nomination lists on July 27, disabled persons organizations criticized political parties for not adhering to the law by nominating individuals not registered with the National Council for Persons with Disabilities.

Positively, IEBC for the first time recorded new voters' disability status and the type of disability they had on the register of voters; and allowed older persons with disability voters to update their disability status. According to the IEBC, PWDs comprise 8.7 percent of all registered voters. In addition, the Commission launched a number of initiatives to facilitate the inclusion of persons with disabilities in the electoral process, including the development of a Braille version of voter education materials and the training of

⁵ On June 6, South Mugirango MP Silvanus Osoro, who is affiliated with UDA, criticized Martha Karua for her physical appearance and her marital status. Likewise, ODM gubernatorial candidate Gladys Wanga (Homa Bay) and ODM candidate for county woman member to the National Assembly Ruth Odinga (Kisumu) faced sexist online attacks from their opponent's supporters.

Kenya Sign Language interpreters as voter educators.⁶ Interlocutors, including the IEBC Disability and Inclusion Coordination Committee, viewed these initiatives positively, but criticized the Commission for not using a more participatory approach in its decision-making and for relying on ad-hoc projects rather than long standing policy-making. As well, while located on the first floor, the majority of polling stations still lack ramps to facilitate access for voters with limited mobility.⁷ However, presiding officers and other temporary poll workers provided adequate assistance to voters with disabilities, in line with regulation 72 of the Elections (General) Regulations of 2012.

Information Environment

Kenya has a diverse and liberalized media environment with numerous newspaper, radio, and television outlets that report on policy and national interests. Radio is the most widely consumed medium, with significant reach into rural areas through 54 private vernacular radio stations broadcasting in 19 different languages. Kenya also maintains one of the highest internet penetration rates in Africa (85.5 percent), which has boosted the development of online media, and the introduction of digital terrestrial television transmission in 2015 has significantly increased the number of television channels. While Kenya's media environment is quite diverse, the majority of media houses (83 percent) are owned by politicians or individuals with overtly partisan leanings. In the pre-election period, the Kenya Kwanza campaign consistently accused privately owned media houses of biased coverage. In addition, concerns about partisan ownership in the media have been reinforced by high-profile endorsements, such as the owner of Royal Media Services, which holds an estimated 60 percent market share of the media in Kenya, publicly declaring his support for Odinga.

Following complaints of unfair media coverage, on June 24, the Media Council of Kenya (MCK) released a quantitative assessment of the mainstream media's coverage and reporting of 17 candidates vying for the presidency during the period of April to early June. For the four cleared candidates, Odinga had 61.24 percent of the total media coverage, followed by Ruto with 38.2 percent, George Wajackoyah with 0.54 percent and David Mwaure with 0.02 percent. Odinga had a higher share of the coverage than Ruto across radio, television and print media. For all four cleared candidates, radio represented the highest proportion of media coverage.

The 2010 Constitution reduced government penalties for incitement, hate speech, anti-government propaganda in times of war, and breach of privacy. However, in 2018, parliament passed a bill to combat fake news, which gave the government expanded powers in determining what qualifies as mis- or disinformation. While the government quickly began to exert pressure on media institutions and bloggers when their coverage was critical or exposed embarrassing stories, such instances of censorship have slowed. For many people in Kenya, social media has become a main source of election-related information, and a fertile ground for political campaigns.

The campaign period has seen new vectors of disinformation spread through social media. Tiktok (which was the most downloaded social app in 2021 in Kenya) emerged as a powerful new platform for hateful, divisive, and false messaging. Edited videos with mistranslated subtitles, edited speeches, falsified statements attributed to individuals and institutions, and images at rallies to influence perceptions of popularity have all been utilized. Local languages, which evade detection by social media threat-detection algorithms, were used as tools for coded messaging and hate speech, some of which targeted women or used ethnic-based attacks. While the NCIC developed a hate-speech lexicon (hatelex) of 23 words, which should not be used by politicians or others, they have proved ineffective at holding political actors to

⁶ These interpreters were expected to educate some of the 206,000 registered hearing-impaired voters. To achieve its goal, the program used the application 'assistAll' to link hearing-impaired users to sign language voter educators, who answered any questions about the electoral process or voting procedures on a video call.

⁷ The DICC mapped a sample of polling stations across 10 counties where PWD voters are registered based on IEBC's audited register of voters. The mapping exercise sought to inform voters with disabilities of the type of assistance they should expect inside their polling station.

account when these words are used. Journalists were also targets of violence in the pre-election period, especially in strongholds where the owners of media platforms have expressed partisan support for the opposition.

Both political coalitions—through the use of multiple alias groups—used the Facebook platform to disseminate messaging aimed at discrediting their opposition. Themes centered on academic qualifications or lack thereof, associations of the Moi era with Ruto and his running mate, and painting Odinga as part of the Kenyan dynasties. Many targeted attacks revealed a highly-coordinated online propaganda machine spreading narratives supporting al-Shabaab and the Islamic State and pointing to the substantial gap in terms of non-English content moderation across social media platforms. In response, independent fact-checking platforms, such as Pesa Check and Africa Check stepped up their efforts. The IEBC's weak communication and lack of clear strategy for addressing electoral disinformation, particularly in the digital space, impacted their ability to effectively mitigate emergent disinformation, such as conspiracy theories on collusion between the IEBC and Kenya Kwanza to rig the elections.

Civil Society Engagement

Despite facing funding constraints, Kenyan civil society was a key player in the several aspects of the 2022 electoral process. The IEBC accredited approximately 115 CSOs to implement voter education initiatives as well as over 15,000 observers to monitor the electoral process and to engage in a PVT by the Election Observation Group (ELOG). For the first time, hundreds of students from the Universities and Colleges Students' Peace Association of Kenya were accredited as election observers. In addition, peace and mitigation efforts included but were not limited to, early warning and response mechanisms, support to mediators, electoral conflict analysis, public order management, and real time incident monitoring. Efforts were also made to include women in peace building activities via women-specific forums, recruitment of women as early warning monitors and engendered indicators, and budget lines. For the first time in Kenya, a team of election SGBV (E-SGBV) monitors, all human rights defenders, was deployed across the country by FIDA-Kenya.

Election Day

On August 9, voters cast six separate ballots for: president and vice president; members of the National Assembly; women representatives to the National Assembly; members of the Senate; county governors; and members of County Assemblies. The president is elected by obtaining both 50 percent plus one of the national vote as well as at least 25 percent of the vote in 24 of the 47 counties. If no candidate passes this threshold, a second round will be held between the two candidates who received the highest number of votes in the first round.

Opening: The general environment was generally calm and peaceful with observers noting queues of eager voters. A few instances of late openings of polling stations caused long lines at polling centers, though these were eventually resolved when the polling stations opened later in the morning. Required materials were available at all polling stations observed including the KIEMS kit. During the opening process, ballot boxes were shown to be empty before being sealed in all stations observed. All but three teams reported that the presiding officer removed the second of two booklets for the Declaration of Election Results Form for the presidential election (form 34A) and sealed it in a tamper-proof envelope.

Voting: Observers noted inconsistencies in following procedures around the use of the printed register of voters at polling stations. At some, the printed register was used as a second verification of voters' identities after verification through the KIEMS kit, but in most polling stations observers noted that while the printed register was present it was not used. Observers also noted that the use of the printed register seemed to be more common at the start of polling and decreased throughout the day. Required materials were available at all polling stations observed, including the KIEMS kit which generally functioned well throughout the day. However, a few observers noted that some voters could not be identified biometrically, particularly the elderly and manual laborers, though they were able to be identified through alphanumeric search on the KIEMS kit.

Presiding officers were generally knowledgeable and professional in duties. Observers also noted the participation of youth as polling officials. Most observers noted that security officials maintained order and security throughout the day, were able to manage long lines, and did not cause tensions with citizens. Candidate and party agents were widely present at polling stations, notably from the main two political parties and independent candidates, and they participated actively in their roles. In many instances, citizen and international observers were asked for additional documentation as well as to take an oath of secrecy before being granted access to polling stations.

In some polling stations observed, the polling booths were set up with voters' backs facing clerks who would be able to see how voters mark ballots, which compromised the secrecy of the ballot. Some observers also noted that party agents witnessed assisted voting even in cases where a voter was assisted by a person of their choice. Additionally, accessibility at polling stations for people with disabilities was a challenge. Not all entrances to polling stations were accessible to people using wheelchairs, neither were there accommodations for visually impaired voters, such as tactile ballot folders at the polling stations observed. However, most observers noted that PWDs, pregnant women, nursing mothers and the elderly given priority in the queue to vote.

Counting: Counting processes at polling stations were conducted according to procedure. Ballot papers were counted first for the presidential election followed by member of National Assembly, member of County Assembly, Senator, women member of National Assembly and finally governorship elections. According to procedures, ballot papers placed in the wrong ballot box were declared "stray" and rejected. While this did not affect a large number of votes, it resulted in some valid ballot papers being rejected and making reconciling official polling station results more challenging. Party agents were consistently given copies of the official presidential results form 34A. However, copies of the official presidential results were not posted at polling stations for the public in contrast to past elections. By the morning of August 11, the IEBC had posted copies of over 99 percent of the 46,229 polling station presidential results forms 34A on its web portal.

