



# CATALYZING CHANGE:



“Strategies for Transforming Kenya’s  
Electoral Landscape”

A report of the 2022 National Post -Election Observers Symposium



“Elections are  
a celebration  
of fundamental  
human rights as  
enshrined in Art 38  
of the Constitution  
of Kenya”

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POST-ELECTION  
SYMPOSIUM**

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# ABBREVIATIONS AND ACRONYMS

<b>BBI</b>	Building Bridges Initiative	<b>IDEA</b>	Institute for Democracy and Electoral Assistance
<b>CAS</b>	Chief Administrative Secretary	<b>IDRMs</b>	Internal Dispute Resolutions Mechanisms
<b>CEO</b>	Chief Executive Officer	<b>IEBC</b>	Independent Electoral and Boundaries Commission
<b>CMD-K</b>	Centre for Multi-Party Democracy	<b>IMLU</b>	Independent Medical-Legal Unit
<b>COK</b>	Constitution of Kenya	<b>IPOA</b>	Independent Policing Oversight Authority
<b>COVID</b>	Corona Virus Disease	<b>JCE</b>	Judiciary Committee on Elections
<b>CRECO</b>	Constitution and Reform Education Consortium	<b>JLAC</b>	Justice and Legal Affairs Committee
<b>CSO</b>	Civil Society Organization	<b>KEG</b>	Kenya Editors Guild
<b>DRC</b>	Dispute Resolution Committee	<b>KICD</b>	Kenya Institute of Curriculum Development
<b>DRG</b>	Dialogue Reference Group	<b>KLRC</b>	Kenya Law Reform Commission
<b>EACC</b>	Ethics and Anti-Corruption Commission	<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>ECES</b>	European Centre for Electoral Support	<b>MoU</b>	Memorandum of Understanding
<b>ED</b>	Executive Director	<b>NDI</b>	National Democratic Institute
<b>EDR</b>	Electoral Dispute Resolution	<b>NGEC</b>	National Gender and Equality Commission
<b>ELGIA</b>	Electoral Law and Governance Institute for Africa	<b>NPS</b>	National Police Service
<b>ELOG</b>	Elections Observation Group	<b>ORPP</b>	Office of the Registrar of Political Parties
<b>FAQs</b>	Frequently Asked Questions	<b>ODPP</b>	Office of the Director of Public Prosecution
<b>FBOs</b>	Faith-Based Organizations	<b>PPDT</b>	Political Parties Dispute Tribunal
<b>FIDA</b>	Federation of Women Lawyers	<b>PPF</b>	Political Parties Fund
<b>FORD</b>	Forum for the Restoration of Democracy	<b>PPLC</b>	Political Parties Liaison Committee
<b>ICJ - K</b>	International Commission of Jurists-Kenya	<b>PWDs</b>	Persons with Disabilities
<b>ICT</b>	Information and Communications Technologies	<b>SIGs</b>	Special Interest Interests Groups
		<b>UDPK</b>	United Disabled Persons of Kenya

# FOREWORD



I would like to congratulate the conveners of the **Post-Election National Observers Learning and Dialogue Symposium 2022** under the coordination of the Uchaguzi<sup>1</sup> Platform and the CSOs Technical Working Group on Elections (TWG)<sup>2</sup> for successfully organizing the symposium themed “**Towards Consolidating Gains From the 2022 Electoral Processes for an Improved 2027 Electoral Processes**” which was geared towards learning and sharing of experiences, key findings and recommendations arising from the observation of the 2022 electoral processes, which has culminated in the production of this report.

Secondly, I would like to sincerely thank members of the Uchaguzi Platform (ELGIA, CRECO, TI-Kenya, Mzalendo Trust, FIDA-K, CMD-K and ELOG for the immense support towards development, publication and launch of this report. Members of the Uchaguzi Platform came together to work towards the provision of technical support in Election Administration and Management and Elections related matters in the sector; consolidate elections monitoring and observation findings and recommendations following post General Election; champion and advocate timely administrative and legal electoral reforms geared towards enhancing democratic space in Kenya; harmonize institutional skills and resources in current/ongoing interventions; and address the public on pertinent electoral issues as and when required through institutional leadership.

The link between elections, democracy and governance, is well espoused in Kenya’s Constitution. Articles 3, 10, 81, 4(2) and all other enabling principles call for integrity, accountability, and transparency in Kenya’s electoral processes. Further, the Constitution of Kenya envisions that the electoral system shall comply with the following principles: -

- a. The Republic of Kenya shall be a multi-party democratic state founded on the national values and principles of governance;
- b. Freedom of citizens to exercise their political rights under Article 38;
- c. Not more than two-thirds of the members of elective public bodies shall be of the same gender;
- d. Fair representation of persons with disabilities;
- e. Universal suffrage based on the aspiration for fair representation and
- f. equality of vote; and
- g. Free and fair elections, which are –
  - i. By secret ballot;
  - ii. Free from violence, intimidation, improper influence, or corruption;
  - iii. Conducted by an independent body;
  - iv. Transparent; and
  - v. Administered in an impartial, neutral, efficient, accurate and accountable manner.

Only when the country's elections abide by these principles in their totality will we confidently say that Kenyan elections are credible, peaceful, free and fair. The focus must always remain on making every vote count. I hope that through the learnings from the conference, the relevant state and non-state electoral actors will focus on actions that will translate in the realization of the aforementioned constitutional provisions.

All relevant stakeholders should ensure that they engage within the entire electoral cycle (pre, during and post) to address challenges and emerging issues impacting the political and electoral landscape in order to enhance the contribution made towards the realization of credible, peaceful, free and fair elections.

*Joshua Changwony*

*Uchaguzi Platform Convener/*

*Executive Director-Constitution and Reform Education Consortium (CRECO)*

# ACKNOWLEDGEMENT



The Uchaguzi Platform in partnership with CSO TWG on Elections<sup>3</sup> would like to profoundly thank the different institutions and individuals that offered support in convening the ***Post-Election National Observers Learning and Dialogue Symposium*** on 5th and 6th December 2022 themed Towards Consolidating Gains From the 2022 Electoral Processes for an Improved 2027 Electoral Processes” ***and follow up meetings for the finalization of the report***

Uchaguzi platform specifically thanks the European Union (EU), United States Agency for International Development (USAID),

National Council of Churches of Kenya (NCCK), International IDEA, URAIA Trust, National Endowment for Democracy (NED), Netherlands Institute for Multi-Party Democracy (NIMD), and the Foreign, Commonwealth & Development Office-International Foundation for Electoral Systems (IFES-FCDO), for the generous financial support that led to the production of this valuable report.

We wish to thank civil-society organizations; religious groups; youth-serving organizations; professional bodies; media representatives; Independent Electoral and Boundaries Commission (IEBC), Parliament (National Assembly-Justice and Legal Affairs Committee), Judiciary Committee on Elections (JCE), Commission of Administrative Justice (CAJ-Ombudsman), Ethics and Anti-Corruption Commission (EACC), Office of the Registrar of Political Parties (ORPP), Political Parties Dispute Tribunal (PPDT), National Cohesion and Integration Commission (NCIC), National Gender and Equality Commission (NGEC), Kenya National Commission on Human Rights (KNCHR) and Media Council of Kenya (MCK) among others for their invaluable insight and contributions at the symposium.

Further acknowledgment and appreciation goes to the Uchaguzi Platform for its strategic leadership under the convenor Joshua Changwony (Constitution and Reform Education Consortium-CRECO) and its membership consisting of Anne Ireri (Federation of Women Lawyers), Mulle Musau (Elections Observation Group), Felix Owuor (Electoral Law and Governance Institute for Africa-ELGIA), Caroline Gaita (Mzalendo Trust), Frankline Mukwanja (Center for Multi-Party Democracy-CMD-Kenya) and Sheila Masinde (Transparency International-Kenya).

Immense gratitude goes to the CSO TWG on Elections leadership members such as Abubakar Said (Education for Africa-EfA), Dr. Benard Mogesa (Kenya National Commission for Human Rights-KNCHR), William Oloo Janak (Kenya Correspondents Association-KCA), Nyangori Ohenjo (Center for Minority Rights Development-CEMIRIDE) and Rosalia Omungo (Kenya Editors Guild (KEG) among others.

Further gratitude goes to the Uchaguzi Platform and CSO TWG on Elections planning technical team: Hilda Mulandi (ELOG), Jacinta Nyambura (CRECO-Kenya), Range Mwita (CMD-Kenya), Brenda Isabel (ELGIA), Sarah Kinanu (ELOG), Philip Gichana (Mzalendo Trust), Zipporah Abaki (ELGIA), Sabrina Semanzi (ELGIA), Derrick Makhandia (TI-Kenya), Brenda Shirley (ELOG) and Brian Kituyi (KNCHR) who were ably coordinated by Marcus Ageng'a (ELOG). We appreciate the efforts and contributions of all the technical members representing the Uchaguzi platform and CSO TWG on Elections that provided deep insights during the report development and writing retreat held on 8th to 10th February 2023 at Aberdare Country Club, Nyeri County.

Further acknowledgment goes to Bethseba Ominde and Lynn Buoga (Rapporteurs-ELGIA), Sarah Kinanu and Eustace Kinyua (final compilers-ELOG) for the development and compilation of the report.

We hope that the recommendations proposed herein as well as electoral realities, demands and commitments will not only elicit healthy conversations and positive dialogue around the electoral reform agenda in Kenya but also call upon all the relevant electoral state and non-state actors among them, the duty bearers as well as the civil society to action.



**Executive Director, FIDA-K  
and Chairperson-ELOG Steering Committee**



# EXECUTIVE SUMMARY

This report provides an overview of the symposium on electoral processes and institutions held in 2022, with a focus on the performance of key electoral institutions and the legal framework surrounding elections. The symposium aimed to assess the progress made since the previous symposium in 2017 and identify areas for improvement.

In the introduction, the objectives of the symposium are outlined, emphasizing the need to enhance the transparency, accountability, and integrity of Kenya's electoral processes. The report then delves into the workshop content, starting with the welcoming remarks and context setting, followed by a keynote speech that provided valuable insights into the challenges and opportunities in Kenya's electoral landscape.

The report further examines the performance of key electoral institutions for the purposes of the 2022 electoral processes as compared to the 2017 electoral processes. The Independent Electoral and Boundaries Commission (IEBC), Office of the Registrar of Political Parties (ORPP), Political Parties Disputes Tribunal (PPDT), Parliament, Judiciary, National Police Service (NPS), and the Media were all assessed in terms of their effectiveness and contribution to fair and credible elections. Additionally, the report explores the elections and legal framework, focusing on electoral dispute resolution mechanisms. It highlights the experiences shared during the symposium through testimonials, shedding light on practical challenges and best practices in handling electoral disputes.

The report then delves into the themes of accountability, leadership, integrity in elective office, and the relationship between elections and peace, cohesion, and mediation. It emphasizes the importance of political party processes and campaign financing in ensuring a level playing field for all candidates.

Further, the report examines the participation of the special interest groups (SIGs), acknowledging both the challenges and significance of inclusivity and representation of women, youth, persons with disability, minorities and marginalized communities. The impact of media coverage on elections, including hate speech, fake news, and misinformation, is also discussed, underscoring the need for responsible journalism and effective regulation of electoral related information amidst widespread mis/disinformation.

Finally, the report concludes with closing remarks and a vote of thanks, recognizing the contributions of all participants and emphasizing the importance of continued collaboration and dialogue to strengthen electoral processes and institutions.

Overall, this report provides a comprehensive overview of the symposium, its objectives, and the key findings and recommendations that emerged from the discussions. It serves as a valuable resource for policymakers, electoral officials, and stakeholders involved in improving electoral processes and ensuring free and fair elections.





# 1.0 INTRODUCTION

On 5th and 6th December 2022, Uchaguzi platform<sup>4</sup> together other Civil Society Organization under the umbrella of the Technical Working Group (TWG) on Elections<sup>5</sup> held a two-day (2 days) Post Election symposium which created a platform where domestic election observers, civil society organizations, independent commissions, legislators and other policymakers, judiciary, associations, and academia came together to charter pathways for advancing constitutionalism, good governance and social justice in Kenya for the next five years. The symposium further provided an opportunity for electoral actors to share their experiences, lessons learnt and propose practical recommendations arising from the observation and interventions of the 2022 electoral processes and performance of electoral duty bearers. The two-day symposium was held at the Boma Hotel and attracted over 200 participants drawn from the aforementioned sectors.

The 2022 general election, the 3rd under the present constitutional dispensation, fell against the backdrop of the appointment of 4 new commissioners to the Electoral Management Body (IEBC), the Building Bridges Initiative (the Handshake) and attendant political re-alignments, social class grievances driven by the rising cost of living and poverty levels, perineal electoral related violence, late amendments and adoption of new laws such as the Political Parties (Amendment) Act. These elections provided a unique opportunity to measure Kenya's democratic growth through a number of interventions and initiatives that were mounted by civil society organizations and electoral duty bearers after the 2017 elections. These interventions included: Provision of technical support to electoral institutions and actors, tracking of the performance of electoral institutions, observation of electoral processes including E-Day processes and results among others.

In the spirit of collaboration and coordination, an opportunity for Civil Society actors, therefore, presented itself to share their experiences, document lessons learnt, share key findings and recommendations arising from observation of the 2022 electoral processes and actors.

### **The symposium achieved the following objectives**

- a. Provided a platform for learning and sharing of experiences arising from the observation of the 2022 electoral processes.
- b. Mobilized and consolidated commitments by civil society actors towards pushing for identified legal and policy adoption/reforms.
- c. Provided a platform for sharing key findings and recommendations arising from the observation of the 2022 electoral processes.
- d. Connected perspectives on the civic space through a broadened participation of stakeholders working on human rights protection at national and grass roots level.



**2.0**

**DELIBERATIONS**

**DAY ONE**

## 2.1 Welcoming Remarks/ Context Setting

**OPENING REMARKS:** *Mr. Joshua Changwony*, Convener, Uchaguzi Platform & Executive Director, Constitution, and Reform Education Consortium (CRECO)



Mr. Changwony, the Uchaguzi Platform<sup>6</sup> Chair, welcomed the participants and requested them to sing the National as an appeal to national unity. He thanked them for availing themselves for the two-day conference and stated that membership of Uchaguzi Platform came together to work towards the provision of technical support in Election Administration and Management and Elections related matters in the sector; consolidate elections monitoring and observation findings and recommendations following

post General Election; champion and advocate timely administrative and legal electoral reforms geared towards enhancing democratic space in Kenya; harmonize institutional skills and resources in current/ongoing interventions; and address the public on pertinent electoral issues as and when required through institutional leadership.

He stated that the platform provided citizens and actors an opportunity for periodic engagement and appraisal on electoral and governance related issues. During the 2017-2022 electoral cycle, Uchaguzi held periodic meetings and engagements with electoral institutions to champion for constitution's implementation for safeguarding electoral integrity and other key issues affecting peaceful, free, and fair elections. Further, numerous press conferences were held to inform the country on the state of electoral preparedness and key issues affecting the electoral processes.

The Uchaguzi Platform and other Civil Society Organizations under the umbrella of the Technical Working Group (TWG) on Elections planned this event to bring together domestic and international election observation organizations and electoral duty bearers to reflect on the 2022 elections. The symposium event was expected to provide space for learning and sharing of experiences, lessons learned, key findings, and recommendations arising from the observation and monitoring of the 2022 electoral processes in Kenya.

## Key Highlights and Reflections

Article 1 of the Constitution of Kenya 2010 (CoK) provides that the people's sovereign power shall be vested in the Executive, Legislature, and Judiciary. This provision aims at safeguarding against arbitrary and capricious governance and the abuse and constitutional order. However, tensions between the Judiciary and the other arms of government were noted prior to the 2022 elections. Unfortunate incidents of members of the Legislature and Executive disregard for court orders were also witnessed thus separation of powers weakened! The Constitutional Commissions appeared weakened in the past electoral cycle through capture by the State to the extent that they did not have substantive input to or oversight of the electoral processes. Parochial political considerations and interests also emerged as a determinant in the constitutional implementation process, especially in the annual budget allocations.

It was noted that the Independent Electoral and Boundaries Commission (IEBC) spent much time asking for money closer to the election month instead of the actual preparation for the elections. As a result, the golden opportunity to enact water-tight and responsive legislations and their implementation, especially regarding elections, human rights, and expanding civic space, was significantly undermined. Furthermore, late funding to IEBC grossly affected timely implementation of critical processes like voter education. He then shared three critical issues that he thought would shape the symposium engagement as follows:

### 1) The Problem of Political and Elite Interference and Manipulation of Processes and Actors

Uchaguzi Platform concluded that the standard menu for achieving credible elections-legal reform, reconstitution of the EMB and widespread use of technology - will not work unless accompanied by sufficient political goodwill and commitment to safeguarding the integrity of the processes. A section of civil society actors has argued that the problem faced by Kenya is one of political and elite interference and manipulation and has cited this problem as a key lever that drives the high levels of corruption-fraud, waste, and abuse-in Kenya's political governance and electoral processes.

When governance institutions, election management bodies, including judicial institutions, become targets of such interference and manipulation, they are subverted and repurposed to private ends; they become ineffective, and are fixed through manipulated processes, formal mechanisms of accountability exist, but the enforcement pathways are often obstructed, powers are separated and formally defined but institutional controls to safeguard the independence of such public institutions, are routinely overridden. Very likely, such manipulation and interference, which continues unabated, has culminated in an overall sense of powerlessness and apathy among Kenyan voters, disillusioned many citizens, and is turning them away from full engagement and participation in the country's democratic and governance processes. Within the context of the election, elite

interference often led to predetermined outcomes making elections a mere formality and not a reflection of the will of the voters.

## 2) Lack of Institutional Accountability, Transparency and Operational Efficiency

There was a concern that processes in institutions of governance such as Parliament, Political Parties, County Assemblies, etc., in Kenya were characterized by low levels of accountability (prone to abuse, interference, and manipulation), and inefficiency and weak oversight systems and structures in these institutions. The results, which include; non-compliance with laid down legal and policy regimes, misapplication of procurement and tendering protocols, a lack of clarity around effectively discharging administrative functions, role overlaps, low levels of synergy between cross-functional teams, inefficiencies, duplicated efforts, bloated staffing patterns, cost pyramids, communication failures and, lack of effective oversight that enabled wastage of public resources, all combined to make Kenyan elections among the most expensive globally. Money has become a necessary evil in Kenya's elections.

As to the question- Is the disbandment of EMB a solution to Kenya's electoral problems? Indeed, this has fueled fears that the country could regress on positive milestones such as election operations and logistics planning, stakeholder engagement, use of technology, and voter registration, thus negating the successes gained from in 2017 and 2022 with a particular focus on the management and transmission of election results. Such incidents, if not addressed, could undermine the country's democratic gains and aspirations of the peoples and increase the exclusion of many Kenyan citizens (especially women and minorities) from participation in elections and democratic activities towards the 2027 elections in Kenya.

## 3) Emerging Wave of Electoral Disinformation and Misinformation

Credible media information and news are essential to free and fair elections. During Kenya's 2022 transitional elections, Kenya experienced the proliferation of mis and disinformation- fake adverts by politicians to push their agenda at the disadvantage of citizens. Mis and disinformation destroy democracy and pose a clear threat to free and fair elections. The media is critical in informing voters and players in election management and administration. Still, in the age of mis and disinformation, they also offer news and information which voters and other electoral actors rely on to make informed decisions. Malicious, coordinated, in-authentic attacks which seek to silence members of civil society, tarnish their reputations, and stifle the reach of their messaging is a growing problem in Kenya. The proliferation of social media platforms in Kenya promises a renewed definition of freedom of speech. He reiterated that the



Uchaguzi Platform would continue to engage electoral institutions and organizations in the democracy and governance sector on key electoral issues and champion democratic processes in our country.

***In conclusion, and using the quote from Political Analyst, Larry Sabato, he said, “Every election is determined by the people who show up.” The theme of our symposium, “Towards Consolidating Gains from the 2022 Electoral Processes for Improved 2027 Elections in Kenya”, is the yardstick against which our performance will be measured in the 2022-2027 election cycle.***



## Welcoming Remarks/ Context Setting

**OPENING REMARKS:** Ms. Anne W. Ireri, Chairperson ELOG, and Executive Director, FIDA-Kenya



Ms. Ireri made her opening remarks and stated that since 2014, CSOs and other electoral actors have convened similar exercise to evaluate past electoral processes in Kenya. For example, Post 2013 elections an observers’ symposium was held in Naivasha and Post 2017 elections, an observers’ symposium held in Nairobi in 2018.

The chair noted that this meeting was timely as it would provide a unique intervention post-2022 elections, including, among other things;

- a. Tracking of electoral institutions and other institutions of governance and democracy;
- b. Provision of technical support where needed;
- c. Observation and tracking of the electoral process;

She emphasized the need to share candid experiences and document lessons learned from the 2022 election processes and that the insights from these discussions will act as a blueprint for subsequent lobbying and implementation of future elections.



**Dr. Joyce Mwikali Mutinda**, Chairperson, National Gender and Quality Commission (NGEC)

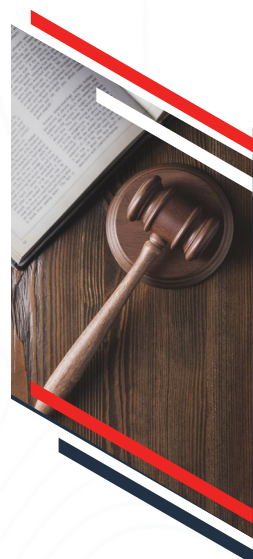


Dr. Mwikali indicated that the National Gender and Equality Commission (NGEC) is a constitutional Commission established in 2011 with a mandate to promote gender equality and freedom from discrimination among all persons in Kenya with a focus on Special Interest Groups (SIGs), including, women, youth, children older members of society, PWDs, and minority and marginalized groups.

Since 2013, NGEC has been an accredited body to monitor all general elections in Kenya (2013, 2017, 2022), by-elections, and institutional elections (e.g., LSK, Maendeleo ya Wanawake, universities student body elections, etc.). The chair outlined that participation of the special interest groups in the electoral processes in Kenya is guided by several legal and policy regimes which included the following:

### Legal Framework:

- i. The Constitution of Kenya, 2010 Article 27 (8)-equality and freedom from discrimination; Art 38-political rights, Articles 54, 55 and 56; Chapter 7 on the representation of people specifically Articles: 81, 82 (2c), 83-92; Articles 97-100; just to mention a few, Electoral laws including;
- ii. The Elections Act No. 24 of 2011 and Elections Laws (Amendment) Act No.1 of 2017 [section 104];
- iii. Election Offences Act No. 37 of 2016, [section 5-6];
- iv. Political Parties Act No. 11 Of 2011 [Schedule 2, Rule 19];
- v. Political Parties Amendment Act, 2022;
- vi. Elections Campaign Financing Act No. 42 of 2013 (amended in 2021);
- vii. Independent Electoral and Boundaries Commission Act. No. 9 of 2011.



## Policy Framework:

- i. The Elections (General) (Amendment) Regulations, 2017,
- ii. The Elections (Voter Education) Regulations, 2017,
- iii. The Elections Party Primaries and Party (Lists) Regulations, 2017;
- iv. The Elections (Technology) Regulations, 2017 especially regulations 4 (2) and 15 (3).

Establishment of quasi-judicial bodies, e.g., Political Parties Disputes Tribunal established under Section 39 (1) of the Political Parties Act No.11 of 2011 Code of Conduct, e.g., Electoral Code of Conduct by IEBC [Code No. 6]; 2020 Political Party code of conduct.

## Administrative Mechanisms: Guidelines and Manuals, e.g.,

- i. NGECC Guide for County Government Leadership on Integration of Gender Equality and Inclusion in County Development;
- ii. ORPP political parties manual; Administration of the Political Parties Fund
- iii. Checklists, e.g., political party nomination rules, checklist of political party constitutions [checklist six (6) on membership of requirements], checklist for coalition political party Committees and programs, e.g., The 2012 Judiciary Elections Committee;
- iv. IEBC Election Security Arrangement Program;
- v. The Caucus on Disability Inclusion in 2022 elections;
- vi. Committee for women inclusion in the 2022 elections, peace, and conflict management initiatives, GBV during elections prevention and response programs.

## Political Processes

She outlined that SIG participation has largely taken the following forms:

- i. The Parliamentary women, youth, and other group leagues
- ii. Direct nomination of SIGs to political spaces
- iii. Reservation of SIG quotas. For example, gender quota
- iv. Waiver to political party fees and other political requirements for SIGs
- v. Social change: The slow acceptance of the community for SIGs' political leadership, e.g., women governors, women speakers,
- vi. Expanded alternatives to participating in elections. In 2022 there were over 7110 independent candidates compared to 4000 in 2017 and 350 in 201
- vii. Political party primaries that applied mixed closed and open methods, e.g., consensus, direct nomination, polls, delegates, zoning, etc.



## Exclusion of SIG in the 2022 General Election, e.g., How and by Whom?



- i. Delayed legislation and implementation of statutes promoting inclusion of SIGs in elections. Most electoral laws and policy amendments were affected three to six months before the election date.
- ii. Huge financial muscle is required to run for any political office, e.g., it is estimated that an aspirant requires KES. 39 M to win a Senate seat in 2022 compared to KES. 35M in 2017 (a 12.3% increase)
- iii. Costs of campaigns disfranchise youth, women, and PWDs in Kenyan Politics
- iv. Stumpy media coverage of manifestos of SIG candidates
- v. Expensive pathway to justice for SIGS (In 2020, a court ordered that XYZ's property be auctioned following failure to settle the costs of an election petition).
- vi. Unbearable social costs of elections, including gender-based violence in elections, political violence, and covert abuse.
- vii. Negligible investments towards incisive elections and politics.
- viii. Negative social norms lead to a low pace of community acceptance of SIG leadership.
- ix. Electoral infrastructure. e.g., voter education and voter registration was limited, untimely printing of ballot papers, electoral processes were blemished with injunctions, and many judicial declarations



## Key Challenges to Full Participation of SIGs in the 2022 General Elections-Legal and Policy Framework

- Pending legislations in Fifth Schedule of the CoK, 2010 that ought to protect the electoral and political spaces for SIGs.
- Article 27 (8) on the not more than two-thirds gender principle
- Article 100 on the greater representation of SIGs in Parliament (Five years)
- Non-compliance of the political parties with the principle of representation of SIGs as provided in CoK and statutes.
- Partial and selective implementation of the affirmative actions including on financing. There is no explicit legal framework guiding the implementation of Articles 54, 55, and 56.

## Key Challenges: Social

NGEC identified the following as key challenges:

- **Moral decadence.** Duty bearers continue to scramble for the gender quotas and opportunities reserved for the SIGs. E.g., 22 counties have zero PWD MCA, & 17 have only one PWD in the county assemblies. Only eight (8) counties have complied with the requirements of having a minimum of 2 seats reserved for PWDs in County Assemblies- [Lamu, Garissa, Tana River, Kirinyaga, Murang'a, Kiambu, Kisii, and Homabay].
- **Youth apathy in elections.** The number of youth (18-34 years old) registered to vote in 2022 was 39.84%, a decline of 5.27% to 2017. The highest decline was recorded among female youth voters (7.75%).
- **Low and decreasing voter turnout.** The 2022 general elections had the lowest voter turnout of 65% (assuming we know the figure) compared to 78% in August 2017 and 86% in March 2013.
- **Unfounded and sometimes justified sense of insecurity.** The 2022 general elections were anticipated to be stained with high violence levels of violence
- **Planned political violence** (including covert violence).

## Key Challenges-Political

NGEC identified the following as key challenges:

- Electoral architecture. Competitive and largely.
- Excludes smaller parties from 'fair' representation-often run by SIGs.
- Excludes SIGs from the political races.
- Encourages development of political parties based on clan, ethnicity, or region,
- Exaggerates the phenomenon of 'regional fiefdoms' where one party wins all the seats in an area, sometimes leaving nothing for others.
- Create a sense of hopelessness for smaller parties and independent candidates.
- Are dependent on the electoral boundaries. These are often contentious, as we shall experience soon during the next delimitation of electoral boundaries in Kenya.

## Beyond 2022: Opportunities

The chairperson outlined the following as possible opportunities towards improving the new electoral cycle:

- Enact all pending legislations per the Fifth Schedule of CoK, 2010, and develop a framework for implementing Articles 54-56.
- Review and amend all discriminatory provisions within electoral laws that hinder SIGs from meaningful involvement and full participation in elections.
- Implement envisioned affirmative actions and programs on political participation of SIGs.
- Provide incentives to youth and general populations to participate in electoral processes. Incentives include civic education, commitment to deliver credible and fair elections, timely delivery of political promises, and continued investment in electoral technology.
- Reduce social and fiscal costs of elections.
- Fully implement the recommendations from election observers and the remaining recommendation of the 2008 Independent Review Committee (IREC/ Krieger Commission).



### Remarks by Hon. George Murugara- Justice and Legal Affairs Committee-Chairperson



He started his remarks by stating that acts of parliament to enhance electoral processes lapsed, and there is a need to push for its legislation. He further agreed that some form financial muscle was needed to clinch elective positions. However, he said, the narrative changed in the 2022 elections, where there were persons such as Toto and Peter Salasya who were able to gain the seats but did not have the money as ordinarily the case for political contestants. He emphasized the need to be able to appeal to the

voters. He also stated that Meru voted for the first lady in parliament in 1974.

He recognized different stakeholders and stated that election preparedness in 2022 was excellent, and the decision of the Supreme Court post-2017 elections guided the

country into the right direction. According to him, disputes were resolved expeditiously and concluded that achieving the 2/3 gender rule was challenging unless achieved through nominations.

He commended the planners of the symposium for an early start on the reforms required and he assured the civil society actors that JLAC would be happy to engage with them in ensuring that timely and comprehensive reforms are enacted ahead of the 2027 elections.



**CONTEXT SETTING, MULLE MUSAU  
ELOG NATIONAL COORDINATOR, ELOG**



He stated that the last symposium was held in 2018 and brought CSOs and electoral experts together on the 2017 elections and produced a report named 'Points Taken'. The report contained recommendations that were used for advocacy on electoral reforms for the 2022 electoral processes.

In a nutshell, Mulle Musau outlined the context for the 2022 electoral processes as follows:

**The political / environmental context in 2022 included:**



Covid 19 environment



War in Ukraine



Handshake and the BBI initiative



Continuous campaigns



Hustler vs. Dynasty narrative



Double incumbency.

## The electoral context

- Nullified presidential elections - 2017. Over 16,000 candidates cleared for 2022.
- Ethical questions on the clearance of candidates
- Quieter political party nominations
- More visible EDR processes for the Parties and IEBC
- Indications of increasing voter apathy; registration and turnout
- Transparent RTS, to a point
- Contested electoral outcomes-Within and without IEBC
- The petition processes.

## Recurring electoral issues

- Gaps in electoral laws for example the 2/3 gender rule
- Campaign Financing Act
- Perceived lack of independence and trust of the EMB
- Problems with technology driven processes.
- High costs of elections
- The metamorphosis of election mis/disinformation

## THE EXPECTED NEXT STEPS

The ELOG national coordinator outlined the following as the expected next steps after the deliberations from the symposium

- o Consolidation of findings and recommendations
- o Development of a reform agenda based on the report.
- o Targeted stakeholder engagements with duty bearers and other key actors.
  - IEBC and other independent agencies
  - Parliament
  - ORPP and Political Parties
  - Media
  - Judicial Committee on Elections and PPDT
  - National Police Service
  - Other related actors





# 3.0

**ELECTIONS  
ADMINISTRATION AND  
MANAGEMENT; ELECTIONS  
SECURITY AND HUMAN  
RIGHTS; ELECTORAL  
TECHNOLOGY; CIVIC AND  
VOTER EDUCATION**

The panel discussed the following broad areas of interest:

1. Performance of key electoral institutions: A Comparative look at 2017 and 2022 electoral processes;
2. Security and Human Rights guarantees during elections: A critical focus on the 2022 elections in Kenya;
3. Is deployment of Technology in Kenya's electoral processes enhancing integrity? A Case study of 2022 elections in Kenya;
4. Is Voter Education serving its purpose of enhancing electoral democracy in Kenya? A look at 2022 Elections in Kenya



## MULLE MUSAU, ELOG National Coordinator Moderator Peter Aling'o

This session focused on the performance of key electoral institutions comparing their performance in 2017 and in 2022, security and Human rights in elections, examination of guarantees in the electioneering period guarantees during elections, the role of technology in enhancing integrity in Kenya's electoral processes as well as the role of voter education in enhancing electoral democracy especially in 2022.

### 3.1 PERFORMANCE OF KEY ELECTORAL INSTITUTIONS IN 2022 AS COMPARED TO 2017

Mr. Mulle Musau picked out the various parties associated with elections in Kenya, such as IEBC, NPS, Judiciary, Media, ORPP, Political parties, PPDT, and parliament and gave a brief of their performance in the 2022 elections and compared to 2017.

## 1) Independent Electoral and Boundaries Commission (IEBC)

- IEBC was better prepared for the 2022 elections than the 2017 ones.
- Improved transparency of their activities in 2022 as compared to 2017.
- Improved their stakeholder engagements.
- Internal division among IEBC officials was witnessed both in 2022 and 2017.
- IEBC delayed publishing the voter register.
- IEBC experienced delays in funding which affected areas such as voter education.
- Inadequate voter education in both 2017 and 2022.
- Minimal implementation of the Supreme Court findings from 2017.
- Mistrust by the electorates in 2017 and 2022
- IEBC was better prepared for the presidential petition than the 2017 presidential petition.



## 2) Office of the Registrar of Political Parties (ORPP) and Political Parties' Activities.

- Negotiated democracy was witnessed during party primaries in 2022.
- Unregulated campaign financing.
- Calmer Political Party Primaries in 2022 compared to 2017
- ORPP fostered political hygiene through digitization of registration of independent candidates, certification of the membership of political parties, and certification of the party lists of political parties.
- Non-adherence to statutory campaign periods in 2017 and 2022.
- Integrity issues.
- Divisive campaigns in both 2017 and 2022
- ORPP cleared the inclusivity of political parties. 83 out of 90 political parties in 2022.
- Cases of voter bribery, inducement, intimidation, coercion, and buying identification cards continue to be witnessed.
- Political intolerance through political zoning in the parties and ethnic strongholds.



### 3) Political Parties Disputes Tribunal (PPDT)

- Decentralization of PPDT in 2022 compared to 2017 by having 18 ad hoc committee members. Established eight other tribunals in various towns in the country.
- Digitized case management in 2022 compared to 2017.
- Improved efficiency and effectiveness in 2022 by hearing and determining 314 cases.



### 4) The Parliament

- Parliament encouraged public participation in the amendment of electoral laws.
- Parliament amended electoral laws close to the elections (Political Parties Act Elections Act), which happened very late.
- Parliament failed to operationalize the campaign financing act and the 2/3 gender rule in the 2017 and 2022 elections.
- Failure by parliament to develop and enact guidelines on incumbency.
- Non-prioritization of electoral reform agenda by parliament.



### 5) The Judiciary

- Judiciary was inconsistent with rulings, especially elections-related ones.
- Failed to prosecute electoral offenses perpetrators.
- Adjudication of disputes that arose from the elections in 2017 and 2022.
- Judiciary developed an online filing system that enabled online filing and tracking elections-related cases.
- Poor case management by the Judiciary, leading ultimately to late resolution of electoral dispute cases.
- Lack of public participation in legal reforms.



### 6) The National Police Service (NPS)

- Improved preparation and training by NPS in readiness for the 2022 elections.
- NPS Proactively secured volatile and high-risk areas compared to 2017.
- There was an improved collaboration between the liaison office and IEBC for a robust training guide for all levels of security practitioners.
- NPS showed more restraint in 2022 compared to 2017



- NPS collaborated with the IEBC to implement the Electoral Security Agreement Program (ESAP) in 2022.

## 7) The Media

- Encouraged issue-based debates in 2022 compared to 2017
- Made good efforts in broadcasting results
- Provided better coverage of electoral activities in 2022 compared to 2017
- Improved collaborations with stakeholders such as IEBC and CSOs
- Little collaboration between media houses was witnessed.
- Decrease in breaches of the code of conduct for the practice of Journalism.
- Media performed poor voter education in both 2017 and 2022.
- There was an increase in misinformation and disinformation from 2017 to 2022
- Poor coverage of SIGs in 2017 and 2022.
- Skewed coverage of political parties and candidates' activities.



**JACKLINE KWANUSU, Independent Medical-Legal Unit (IMLU)  
Moderator Peter Aling'o**

Ms. Kwanusu began by providing an organizational framework for responding to the extremely worrying cases of electoral related torture in Kenya within the context of politics and governance. She discussed the threats to electoral security, and the importance of

elections security management and named the gains and challenges associated with election security management. Below were some of the highlights of her presentation.

- That serious human rights violations have always marred elections in Kenya.
- The 2022 elections had fewer incidences of violence than the three previous elections.
- IMLU recorded 115 incidents of a peace disturbance in the 2022 elections. 21 of these involved serious human rights violations and 5 of the 21 incidents resulted in fatalities. Additionally, none of the fatalities was attributed to police action. 95% of the 21 incidents involved localized politically motivated civilian-civilian violence
- Human rights violations were rampant during the electoral cycle, and they occurred in three stages: Before, during, and after elections and post-election violence being the deadliest.
- Post-poll violence tends to revolve around disputes arising from the declaration of the results of the presidential elections
- Always, according to Jackline, violence follows allegations of rigging of election by the “Government Candidate”
- Violence involves the police and civilian protestors.
- The violations occur on the streets and in residential areas meaning the violations involve the police, protestors, and residents.
- The violence involves excessive force and misuse of firearms during operations by police leading to fatalities and serious injuries.
- House-to-house security operations usually involve breaking down doors, destruction, beating people, theft, and sexual harassment of women.
- Most SGBV cases involve rape or molestation of women in residential areas.
- Protestants almost always close roads, light fires, protest matches, sing resistance songs, use stones, twigs, banners, logs, and tires, and rarely crude weapons.

## Threats to Election Security

- Cyber security.
- Violent political protests and mass actions.
- Hate speech, political incitement, and ethnic intolerance.
- Fake news, media bias, and propaganda.
- Criminal gangs and terrorism.
- Sexual Violence related to elections.
- Illegal public gatherings.
- Negative ethnicity and clannism in electoral mobilization.
- Cattle rustling and proliferation of small arms and light weapons.
- Resource-based conflicts.
- Use of state resources to influence elections.
- Exclusivity in political participation
- Lack of trust in government institutions.
- Corruption

- Historical injustices
- Recurring electoral conflict.
- Commercialization of elections.
- High stakes of the winner-take-all system.
- Importance of elections Security

## Importance of Elections Security

- To provide a peaceful election environment that facilitates a free, fair, and credible election.
- Assurance of security during the electoral cycle is essential in inspiring the confidence and commitment of all stakeholders and participants in the electoral process.
- Boosts voter confidence, the integrity of records, voter turnout, and election results.
- Enables voters to vote and election monitors/observers to carry out their duties without intimidation.
- Ensures that candidates can campaign without fearing their supporters being harmed.

## Elections Security Management-Principles of Operations Management (POM)

- Maintaining a secure and peaceful electoral environment while preserving the law.
- Impartiality-The police should not take sides or demonstrate preferential support for any candidate or party.
- Equal treatment and non-discrimination-The Police should ensure equal protection for all participants throughout the electoral cycle.
- Accountability-Police officers providing election security services will be held accountable for their actions. They are expected to respect and protect human rights.
- Rule of Law-Police should carry out their operations per the law.
- Parameters of Elections Security Management
- Preparedness and Coordination-This involves the preparation of looking for resources to facilitate the training, training curriculums, and carrying out the actual training.
- Police transfers are to be done six months before the elections.
- Operation orders and composition of Officers-Done from the police station to the regional police commander's office to the IGs office.
- Welfare and working hours of police, which should be in line with NPS standing orders that require the police to work for a maximum of 8 hours.
- Provision of police equipment and facilitations which includes riot gear and allowances.
- In using force and firearms, the police need to use proportionate force,

carry out their duties in line with the rule of law, be accountable for their actions, and only use force and firearms when necessary.

- Deaths and serious injuries-The Sixth schedule of the NPS act provides that when a death occurs, it must be reported to IPOA or the police supervisor. In the case of injury, police must provide first aid and ensure access to the nearest medical facility.

## Challenges facing Elections Security Management.

- Inadequate resources.
- Region police vs. democratic police.
- Non-cooperation and coordination among security policing agencies
- Impunity and disobedience of the rule of law.
- Systemic human rights violation
- Lack of public confidence in the police service

## Gains attained so far by NPS in Election Security Management

- Independence of NPS regarding finances and decision making.
- Democratic police.
- Continued training of police and other security agencies on POM.
- Standard Operating Procedures for justice actors on police series human rights violations.
- Fully operationalize community policing to enhance trust and confidence between the public and police.
- Accountability for human rights Violation-Investigations and prosecution
- The transition from the Police force to Police Service.







### MR. ALI ABDULLAHI, Deputy Registrar of Political Parties, Office of the Registrar of Political Parties (ORPP)

Mr. Abdullahi thanked the symposium conveners, which came alongside many other post-election evaluations across the country convened by other electoral actors. He went ahead and stated that the ORPP was finalizing its post-elections report and that, as ORPP, they felt that post-elections review was an integral part of the electoral cycle as it enables election stakeholders to see what worked well, what did not work, and why and that the output of such events, post elections review meetings, will add to the ever-growing literature of recommendations that is going to help this country make its future elections more credible, transparent, more fair and more free as well as dispute free.

The ORPP were of the view that the 2022 elections showed remarkable improvement from the 2017 elections and this was attributed to the post elections review meetings held after the 2017 elections and advocacy meetings held since the 2017 elections. He stated that the ORPP was one of the greatest beneficiaries of this agenda and that they have instituted several policies and legal and administrative reforms that made the 2022 elections better than 2017. According to him, this culminated into the passage of the Political Parties Act, which brought huge milestones in the governance of political parties in Kenya. He stated that the ORPP gained a lot of dividends from the reforms they undertook in terms of;

- Preparation of political parties to participate in elections.
- Capacity building of political parties to improve their party organs as well as to improve transparency in their political party activities.
- Improved stakeholder approach by ORPP with election management stakeholders.

- Provision of adequate support to IEBC.

This, in turn, led to a better election in 2022 than in 2017. Mr. Abdullahi said that the ORPP also achieved the following towards the 2022 elections. This includes.

- Supporting political parties in developing their nomination rules.
- Monitoring political party primaries.
- Certification of the membership of political parties.
- Certification of the party lists of political parties.
- Capacity building of IDRM of political parties
- Capacity building election councils/boards of the political parties.
- Institutionalization of Political parties IDRM reduced the number of election disputes going to IEBC, PPDT, or courts by 60%.
- Increased engagements between ORPP and security agencies (NPS). ORPP developed a curriculum for the training of election security personnel training, which according to Mr. Abdullahi, ensured that the police were able to balance between maintaining law and order and respecting human rights.
- On inclusion of SIGs, the ORPP ensured that all political parties adhered to this through their party lists.
- On electoral violence, ORPP, together with the PPLC, engaged in peace caravans across the 47 counties to spread the message of peace during the election period.
- Digitization of systems to clear independent candidates, certification of party members' registers, and certification of party lists.
- ORPP, with support from International IDEA, developed a political education resource book.
- Held engagements with candidates during party nominations and after nominations by IEBC to capacity-build them on good political leadership.





**MR. ABUBAKAR SAID,**  
**Executive Director,**  
**Education for Africa (EFA)**

In his remarks on election security and management, he intimated that the presidential candidates and their supporters, during the final tally at the Bomas of Kenya, should be allocated other waiting rooms which are not in Bomas to ensure a favorable environment for IEBC to tally elections as well as to reduce the tension during that period.

Speaking on the role of the media in enhancing access to electoral information, Mr. Said, said that CSOs needed to hold broadcasters accountable, especially the national broadcaster (KBC), as the Elections Act provides that the national broadcaster should provide electoral information from civic education all through to the announcement of election results. Mr. Said then highlighted the need to sensitize the public and police on the election offenses act to enable them to understand the various election offenses.



# PLENARY SESSION



Below are the questions asked during the plenary session after the above session and the reactions/views given.

QUESTION/COMMENT	RESPONSE
<p>Are there legislations to protect election observers, monitors, and human rights defenders as they carry out their work during the election cycle?</p>	<p>Human rights defenders, election observers, and monitors are human beings. The constitution of Kenya protects human rights, such as the Bill of Rights in the Kenyan constitution (Article 19). Implementing the constitution here in Kenya to protect the rights of these people is a problem.</p>
<p>On police training geared towards the election period, are there positive outcomes of these training?</p>	<p>There were fewer cases of use of force/ police brutality in the 2022 elections than in the 2017 elections. Currently, there is ongoing prosecution of police officers who were involved in these cases.</p>

QUESTION/COMMENT	RESPONSE
<p>The 2022 elections saw violence moving from the streets (Physical violence) to social media. How do we curb online violence and cyberbullying? How do we also deal with the issue of spreading dis/misinformation on social media and mainstream media?</p>	<ul style="list-style-type: none"> <li>• ORPP engaged youth from universities to sensitize them on the importance of maintaining peace during the elections, which reduced violence cases.</li> <li>• The presence of political parties' code of conduct also prevented candidates from engaging in violence especially hate speech and intimidation</li> <li>• Verified social media accounts used to spread false information were closed.</li> <li>• The communications authority and the Media Council of Kenya Monitoring mainstream media broadcasting.</li> <li>• The Kenya information and communications bill is legislation that regulates how people are supposed to behave on social media. This is there, although Kenyans also have freedom of speech catered for in the Constitution.</li> </ul>
<p>What shall we do to ensure that recommendations from such symposiums are implemented and not left hanging?</p>	<p>CSOs need to hold right holders accountable and follow up on action plans raised during meetings and symposiums of such calibers. CSOs should Endeavor to champion the enactment of laws still pending.</p>





MEDIATOR



# 4.0 ELECTIONS AND LEGAL FRAMEWORK; ELECTORAL DISPUTE RESOLUTION

This session considered the following questions:

- ✓ Is the legal framework the problem with Kenya's elections? A close examination of the efficacy of 2022 electoral legal framework;
- ✓ Electoral Disputes Resolution in Kenya: Judiciary Preparedness and Access to Justice during the 2022 General elections.



### **FELIX O. OWUOR, Executive Director, Electoral Law and Governance Institute for Africa (ELGIA)**

The session began with Mr. Owuor giving the context setting on the Legal Framework for Elections and EDR processes in Kenya. The starting point was that Kenya had held seven (7) multi-party elections since the re-introduction of multiparty democracy in 1991 and three (3) elections since the promulgation of the 2010 Constitution.

He noted that there was a need to appreciate that one of the reasons why the 2010 Constitution was hailed as both transformational and progressive was because of how it chose to provide a new framework to guide Kenyan elections. A substantial section of the Constitution was the voting regulations. In 2011, a set of election laws was passed to strengthen the electoral framework and process. But despite that, there have been persistent challenges that continue to recur. In the just concluded electoral cycle, the problem is there was never an enactment of comprehensive legal reforms.

In the run up to the 2022 elections, it appeared that the fate of the country was tied to the BBI as the expectation was that reforms would be achieved through this process, but when BBI was dismissed by the courts, for the first time since 1992, Kenya went into an election, where the only tangible amendment was the amendment of the Political Parties Act that was passed in January of 2022. He noted that in this new electoral cycle,

a comprehensive audit needs to be undertaken with the question being asked, what is it that can be done differently to secure and strengthen the legal framework in this new electoral cycle leading to 2027 and to fix some of the problems and some of the gaps that have been noticed.

In 2010, Parliament was expected to pass all the laws related to elections within the first year of the promulgation of the Constitution. The danger here was that, whereas Parliament made some progress in passing these legislations, this was the pathway of the Elections Act 2011, the IEBC Act 2011, and the Political Parties Act 2011. Certain laws were never passed, and the legal regime to operationalize the electoral framework has yet to be realized, at least as it was intended to be done by the Constitution. No laws or frameworks governing the Election Campaign Financing Act exist; the other gap is the lack of Referendum Law. This Law was expected to be passed in 2011. Another gap absence of a law to govern boundaries delimitation process. As it were, the first delimitation was guided by a schedule in the IEBC Act that lapsed with the first delimitation exercise in 2012. Kenya is expected to conclude the successive boundaries delimitation by the year 2023, and yet there is to be a legal framework to govern the same.

With the 13th Parliament now in place, there is an opportunity to enact the first amendment. The first amendment was expected to be on the boundaries delimitation; however, it was on the IEBC Commissioners.

Regarding reforms, he considered what was needed as follows:

- 1. Management and Administration (the weakest link)** - The Supreme Court has tried dealing with leadership and corporate governance issues. The Electoral Commission's composition and outlook have changed seven (7) times since 1992. Changing the Electoral Commission by itself does not necessarily guarantee credible elections.
- 2. Voter Registration** - The KPMG audit is a starting point for this.
- 3. Results Management** - This has been a challenge in every election regarding tabulation, transmission, and verification of results.

In the judiciary and the election dispute resolution regime, he noted that there are two areas of electoral dispute resolution, pre-election dispute stage, where the PPDT had jurisdiction, political parties' internal disciplinary processes, and IEBC hearing disputes concerning the nomination.

In the 2022 concluded electoral cycle, the judiciary as an electoral institution was probably the most prepared. ELGIA took part in the training of the magistrates to the Supreme Court. At the Supreme Court level, they invited judiciaries from other jurisdictions. The judiciary used technology that not only helped with the COVID pandemic situation but also in case management. They have finalized the Bench Book, guiding them through the EDR processes. The Judiciary is open to constructive discussions regarding the EDR processes.

Only two (2) Supreme Courts in Africa have invalidated presidential elections. Kenya



in 2017 and Malawi in 2020. The Malawi Supreme Court agrees with every legal aspect of the Kenyan Supreme Court apart from the Standard of Proof. In Kenya, the Supreme Court has pegged the Standard of Proof to an intermediate standard, higher than the civil standard on the balance of probabilities. It becomes difficult for a petitioner to prove challenges/gaps in an election petition. The Supreme Court of Malawi disagreed with the Kenyan Supreme Court that if a human rights perspective is applied, and if the issue of access to justice is considered, then it cannot impose on a petitioner a higher standard of proof beyond what is in the civil standard. This conversation has begun with the Kenyan Judiciary.

The timeline for the resolution of the presidential electoral disputes is also an issue of concern. Parliament needs to consider this as a discussion for the amendment because 14 days is insufficient. In the pre-election disputes, the IEBC has jurisdiction to entertain disputes arising from party primaries. IEBC Returning Officers conduct the party primaries; therefore, the IEBC itself cannot be seeking justice, yet their Returning Officers conduct it.



### **HON. EDWIN MULOCHI, Member, Judiciary Committee on Elections (JCE)**

Hon. Mulochi began by mentioning that the Judiciary is right at the center of the election disputes. In this regard, the Judiciary has a committee under the Office of the Chief Justice known as the Judiciary Committee on Elections (JCE). Initially, it was an ad hoc committee formed by Chief Justice Mutunga, and the rationale behind the establishment of that committee was the controversy surrounding elections. It became a permanent committee under Chief Justice Maraga as it was considered an integral part of EDR. The Committee comprises members of the Supreme Court, judges from the High Court, magistrates and other members from the Judiciary, and a Council too.

Their mandate includes but is not limited to the following;

- Advise the Judiciary on the administrative arrangement and measures to dispose of election-related disputes efficiently.
- Develop and undertake training programs for judicial officers, judges, and judicial staff in preparation for EDR, among other roles they play.

In preparation for the 2022 election cycle, they conducted a training series with support from ELGIA. There were 13 training sessions in total. They trained all the judges of the Supreme Court and their staff in preparation for EDR. They trained both judges of the Court of Appeal, 68 judges of the High Court, 342 magistrates, 63 registrars of the High Court, 119 ICT officers, and court assistants and administrators in preparation for this election. Apart from the intense training, they involved other key stakeholders in the electoral system, like the IEBC, the police, ODPP, and all other players in the electoral system, in preparation for the EDR.

They have also worked on a Bench Book, a critical resource for judges, magistrates, and even lawyers in private practice. It contains jurisprudence and past decisions on election cases which guides judges and magistrates on EDR. Aside from this, they also came up with an FAQ document on EDR.

More than 99% of election petitions were filed online this time, and this was the first time. There were 125 election petitions in total which 33 have been concluded. Some have been withdrawn and dismissed due to technicalities, and less than 100 are now in the system. Unlike before, the PPDT is now decentralized (Kisumu, Kakamega, Nakuru, Mombasa, Meru, Eldoret) and can conclude 318 appeals.

JCE was engaged in monitoring and evaluating the management and administration of those disputes as resolutions go on in the courts of law. A report will be prepared and shared with JCE's stakeholders.

He noted that Judiciary was being blamed for delayed cases, yet some petitioners were filing cases up to three (3) days before the elections. Just as there are timelines for elections disputes, there is a need to have some management anchored in the law, whereby there should be timelines where one can move to the dispute resolution committee (DRC) of the IEBC and timelines in which the DRC is supposed to render a decision and timelines within which any dissatisfied person should move to the High Court to appeal the decision of the DRC.

The Magistrates Court deals with disputes on the levels of the County Assembly, whereas those of the Parliamentary seats go to the High Court. This is stipulated in Section 75 of the Elections Act. If a case is not too satisfactory from the High Court, they can forward this to the Court of Appeal within 30 days of the rendering of the decision. The Court of Appeal then has six (6) months to hear and determine that appeal.

Section 85(A) deals with certification issues rendered at the Magistrate Court, but there is a gap as Section 75 needs to state clearly if that certification is withheld when it

moves to the Court of Appeal. There is also a need to look at the legal electoral regime or framework and ensure that the challenges and gaps above are filled.

Hon. Mulochi concluded his statement by mentioning that Public Financing is also a challenge or gap and is one significant contributor to corruption in the country.



## Presentation from **DUDLEY OCHIEL**, Litigation Counsel Katiba Institute

Mr. Dudley started by referring to Section 87 of the Election Act and mentioned that the standard of proof demanded it is above the balance of probabilities and that trials had two elements namely, disturbing the element of the election and the criminal element. The Supreme Court ordered Parliament to separate these. The High Court held that the IEBC had no jurisdiction to enforce the Electoral Code of Conduct.

After the above presentations, there was a chance for the discussants to give their views. Below are the highlighted discussions:

- Presidential petition 14 days is not enough, and there is a need for serious advocacy from Civil Societies to consider enlarging this period.
- Ongoing commercialization of politics in Africa. There is a need to enact the Campaign Financing Act.
- EDR, unlike any other process, has yet to receive the attention it deserves. Kenyans need to be made aware of the same.
- ICJ, through the Bench Book, has been able to start documenting these processes, and these can be accessed through the Electoral Compendium on the ICJ website [https://icj-kenya.org/news/sdm\\_downloads/compendium-](https://icj-kenya.org/news/sdm_downloads/compendium-)

of-2017-election-petitions/

- There is a need for legislation of access to information. The KPMG audit revealed some findings that should be of interest.
- The judiciary and other electoral agencies must demonstrate competence, impartiality, fairness, and a remarkably high sense of accountability to the public.



## **DR. JACOB OTACHI** **Constitutional Lawyer & Governance expert,** **Kenya Law Reform Commission (KLRC).**

Mr Otachi from the law Reform Commission noted that:

- KLRC, ensures that all Kenyan Laws, both at the National and County levels, conform to the Constitution of Kenya
- Only two (2) have yet to be passed out of the Bills tabled in Parliament. KLRC participates heavily in this.
- There is a need for technology in the electoral processes in Kenya
- There is a need to build trust among the electoral institutions even as the 2027 general elections are approached
- There is a need to have credible sources of information during elections. This can be fast-tracked by Civil Societies and other stakeholders to have a regulatory regime within the social media space which seems to have a lot of influence in the electoral management space in Kenya
- Elections are not just an event; they must be a process, following proper guidelines, including voting registration, education, and other functions up to the announcement of the outcome
- What has emerged from the 2022 petition is that even the process of declaration of the results is as important as the process of voting
- Having a perfect election is not possible, but there is a need to work toward

achieving the constitutional principles of having a transparent, credible, and viable election through a proper regulatory regime

- KLRC collaborates with the Judiciary and other bodies
- There is a need to strengthen the Leadership and Integrity Act to have credible persons run for office in elections
- In the legal regime, there is a need to have a framework where intersex persons will be appropriately identified and participate in the electoral process



## PHILIP NYAKUNDI

### Head of Programs and Partnerships, Mzalendo Trust

He began by mentioning that there was still room to legislate more elections policies till things are right

- Some critical components were tabled before Parliament less than three (3) months before the election, and this did not give ample time for comprehensive consideration by the legislature.
- On Electoral Campaign Financing, he observed that there were two (2) bills, both at the National Assembly, by Jeremiah Kioni, on the Elections Campaign Financing Amendment Act and at the Senate, similar, but also with different proposals on how to ensure a proper regulatory framework. This did not go through.
- The Constitution stated that the IEBC should regulate the Elections Campaign Finance in Kenya
- The Political Party Amendment Act/Bill needs to be looked at in all aspects
- The Election Amendment Bill 2021 had proposals to amend the issue of academic qualifications. This started at Parliament and was quickly picked up by the Judiciary

## Plenary Discussion

The panelists and discussants prompted various views and opinions from the attendees. Below are the views/reactions given:

- IEBC was not considering water points (tides) when people from the Coastal region travel for EDR. When a case is brought into the courts, a judge looking into the case can only make a judgment on a case they have already received. So, the water tides issue is not entirely for the blaming of the courts.
- A County government could approach the Supreme Court for an advisory opinion; the Supreme Court has the leeway to give their opinion and render their thoughts on when to advise.
- All votes cast are tabulated and tallied and are used to determine the votes. Different countries have different ways of doing this, e.g., Ghana uses valid votes while Colombia allows for abstinence of votes and tallies this.
- IPOA is overwhelmed (understaffed) and has no prerequisite support from the government as it should. There is the interagency blame game; this has been a great challenge, but going forward, it is being worked on, and there is a policy to try and regulate the same.
- The public participation threshold is constitutional (Article 1 and 10). This includes sufficient information, time, and feedback.
- Different stakeholders should be engaged in Campaign Financing, and a shared understanding of this subject needs to be arrived at.
- There is a need to refrain from overly relying on other institutions.



## EXPERIENCE SHARING – TESTIMONIALS

**ANGELINA KALABAI - ELOG long term observer & HUDSON ARAKA MATARA - Member, Kenya Correspondent Association & KBC Journalist**

### MODERATOR: FRANCIS AYWA

Mr. Matara shared the challenges which included but were not limited to:

- Misleading or misinformation on nominations
- Media coverage was limited.
- There were candidates with pending court cases
- Other journalists were compromised by candidates
- Physical, emotional, and online threats

Ms. Kalabai, expressed her disappointment in IPOA, especially in the rural areas. She asked about IPOA objectives and the lack of implementation towards police related brutality. She further recommended the need to have observers, as human rights defenders, be accorded some form of insurance as their working conditions was a significant threat to their lives.

Plenary Discussion

## REFORM MEASURES

- Lack of regulation, such as the Public Financial Act not adopted before the elections.
- No referendum laws
- Voter registration process should be re-looked.
- The result management process- has reformed over time, but there is a need to improve.
- Use of block chain technology.
- Election Dispute Resolutions-strike a balance between the period of determination.14-day high-pressure litigation
- Disputes arising from primaries handled in a way that does not delay the electoral process
- Timelines on the electoral process should be relooked.
- Conflicting judicial decisions.
- Commercialization of politics that sees the need to adopt statutory laws.
- Access to information-need on the way to manage social media.
- Leadership and integrity act need to be revisited-statutory framework needs to be reenacted
- Relationship between IEBC and Parliament should be distinguished



# 5.0

**ELECTIONS,  
ACCOUNTABILITY,  
LEADERSHIP, INTEGRITY  
IN ELECTIVE OFFICE;  
ELECTIONS AND PEACE,  
COHESION & MEDIATION**



## DELIBERATIONS - DAY TWO

This session discussed the following areas:

- ✓ How critical is the contribution of faith-based organizations to cementing lasting cohesion during elections: A review of the participation of FBOs in the 2022 elections;
- ✓ Leadership and Integrity gains and losses in the 2022 electoral cycle



### AMB. ANTONY OKARA, Pro-Peace-European Centre for Electoral Support (ECES)

ECES was tasked with running pro-peace Kenya and providing electoral support to Kenyans' electoral processes. It worked with NCIC, which has the legal mandate that provides cohesion in the institutions and electoral support. Over time, there has been progressive and marked improvement and engagements among the executive, institutions, and civil society groups. He reiterated that he had come from an event in Maputo, and Kenya had been emulated as an icon in conducting credible elections. He noted the key challenges across all institutions.

- Trust among the citizens. If the trust is low, then there is conflict
- Integration in the institutions that would determine the trust among the people
- Faith-based leadership is the most trusted and therefore plays a key role in elections; therefore, need for capacity, efficient processes, and trust.

He further stated that the country had been operating on fragility that was permeated by mistrust, and suspicion among the communities. Direct engagement with faith-based

organizations to solve disputes. He stated they organized symposiums that provided direct intervention and general influence on the public since the faith-based organization preached peace.

As an institution, they organized leadership and building capacity towards dispute resolution that saw over 200 persons trained. He further stated that the difference between the West and Kenya is the traditions and norms; Kenya is of the mindset that once the laws and regulations are written, they will self-implement, which is not the case. He emphasized engagements with different stakeholders in continuity. Traditions and norms should be consistent with our laws. Having faith-based organizations involved and their engagement in electoral processes is paramount.



## **ABRAHAM MISOI** **Head of Programmes Transparency International – Kenya**

He stated that he would speak about leadership and integrity for the purposes of the 2022 elections. A comparison was made between the 2017 and 2022 elections, upholding Chapter 6 of the COK in ensuring leaders of integrity hold public office. Our constitution is one of the most progressive constitutions in the world. Before 2010, we had challenges and mass stakeholder engagements. However, Chapter 6 of the COK faced challenges and has not been progressively implemented.

- Lack of constitutional mandate; overload of roles IEBC and EACC conflict of auditing people who want public office
- Lack of objectivity and standards such as criminal issues, Article 9(3) one is assumed to be a criminal in nature
- Lack of public appreciation and participation



## MOST REV. MARTIN KIVUVA, Archbishop of Catholic Archdiocese of Mombasa and Chairperson, KCCB.

He emphasized the need for continuous engagements with different stakeholders, and further classified the role of faith-based institutions into three roles: Role of faith-based institutions

- **Preventive Role:** This could be done through set up panels and national levels. By promoting strong interfaith with other religions, such as Muslims and Hindus.
- **Reactive role;** This could happen through the emphasis on peace and democracy.
- **Transformative role:** This could be done through diplomacy, dialogue, and continuous engagement through civil education.

He indicated that there was need for all stakeholders, such as the FBOs, civil societies, and independent offices, to work together. Traditional values vis-a-vis practice depended on practice over time. Much must be done on public trust to create an ethos in our institutions. Research and knowledge, and partnerships amongst the FBOs are encouraged.



# PLENARY SESSION

QUESTION/COMMENT	RESPONSE
<p>Politician engagement with the interfaith influence them, How do they deal with the interference?</p>	<p>FBOs should not outwardly favor a politician but influence the public to choose wisely.</p>
<p>How do they implement peace programs?</p>	<p>Resources were released late, but those are lessons learned over time. He emphasized the need to enhance EDR resolutions to conflict-based areas and encourage programs that create cohesion.</p>
<p>How can we give life to Chapter 6 of the Constitution of Kenya?</p>	<ul style="list-style-type: none"> <li>• To give life to the constitutions, there should not be an overlap of the mandate of IEBC and EACC. The enforcement of laws should be key (art 9(3). there should be clarity of roles amongst our institutions.</li> <li>• There is a need to adopt Chapter 6 of the constitution, especially for our Leaders-Leadership and integrity.</li> <li>• Example Catholics devised guidelines on matters in Harambee for developing churches. There should be a need for checks and balances.</li> </ul>
<p>How can we address the issue of corruption in FBOs and address the biases of a political leader?</p>	<p>Generally, there was a need for FBOs to be independent-minded and decipher politics from church matters.</p>

## ABDI LATIFF Partner Dialogue Reference Group

He referred to post 2007 elections where Kofi Annan looked for FBOs when engaging with the conflict in the presidential elections. They became ambassadors of the project and provided a good political trajectory. There have been engagements with NCIC however, there was need to upscale these engagements moving forward. With the 2022 elections, the discussions began in February 2021. The FBOs played an oversight role, and the young people spoke outwardly against violence.



# 6.0 VOTER EDUCATION AND ELECTION TECHNOLOGY

**MODERATOR- ABUBAKAR SAID**  
Executive Director, EfA.

**MR. OLIVER WAINDI**  
Executive Director, Uraia Trust



Mr. Waindi gave reflections and lessons learned as URAIA Trust on the 2022 elections four months after the elections. He begun by indicating that URAIA Trust’s major mandate was to provide civic education for the public across the country. According to Mr. Oliver, organizations tend to implement programs in a rush in the fourth last year before the fifth year of elections. Still, he called upon organizations to start implementing those programs as early as 2023 to prevent the last-minute rush of implementing programs in 2026 or early 2027 when the elections are fast approaching.

He indicated that URAIA Trust prided itself in preparing the citizenry to partake in the joyous journey of electing its leaders every five years and ensuring that the citizens perform their roles and embrace their civic rights in this country. According to him, in the fifth year (Election year), URAIA redesigned its programs to ensure that they speak to the urgency of the matter regarding elections.

The two pieces of legislation that came to pass at the beginning of the year forced URAIA to re-think its mode of delivery, audiences, and curriculum to ensure that people understand the dispensation of elections and the role and entry points of citizens as far as this compensation is concerned. Strong apathy was witnessed on the ground leading

to extremely progressive low voter turnout, especially of the young people during the elections, and this should prompt stakeholders to redesign how they deliver civic education programs and engagements to ensure that the young people and other citizens meaningfully engage in the electoral process because the power of the ballot is so strong. URAIA trust held a symposium of similar nature, which gave them some key issues that emerged from elections.

According to him, these post elections evaluations enable stakeholders to pick these key election issues that will inform preparations for the 2027 elections. Mr Waindi called upon the organizations to do the following in preparation for the 2027 elections.

- Design civic education programs to meet the needs of the citizenry ahead of the 2027 elections.
- Reemphasize the importance of elections.
- Organize post-election activities such as the audit of the 2022 elections.
- Develop initiatives that will reduce voter apathy among young people.
- Introduce programs aimed at the political mobilization of citizens.
- Strategic collaboration among the CSOs to ensure that the civil society space does not shrink
- Design programs that will enhance the role of political parties in Kenya's democracy.
- Need to continue sensitization on civic education from 2023 to 2027.
- Include an aspect of the economic situation on civic education programs, as voter apathy in the 2022 elections was majorly attributed to tough times brought by COVID-19 and unemployment among the youth.
- Design programs to reflect the centrality of ICT in elections. Leverage the use of technology in civic education conversations.





**MR. JOHN WALUBENGO,  
CISA, CDPSE, (OGW), ICT lecturer,  
Multimedia University of Kenya and Trustee at KICTANet**

Mr. John Walubengo took to the stage to speak on the role of technology in elections. According to him, KICTANet is an NGO that catalyzes ICT Reforms and deals with ICT-related policies, regulations, and roles. He highlighted four (4) components/Interventions ICT has played in elections since 2013. These interventions include;

- Biometric Voter Registration (BVR)-used by IEBC to register voters based on their digital prints before elections to create a single register of potential voters. Risks associated with BVR are power, battery, and software failure.
- Electronic Voter Identification System (EVID)- It allows voters who had previously been captured by the BVR to be verified and allowed to vote. It eliminates voter impersonation, duplicate voting, and ballot stuffing. Risks associated with EVID are power, battery, software failure, and failure of a fingerprint reader that causes positive and negative false alarms.
- Results Transmission System (RTS)- once votes have been counted, allows presiding officers at the polling station to electronically transmit the election results and the prescribed Forms to an online public portal. Risks associated with RTS are mobile network failure, mobile handset failure, and database failure.
- Logs-the digital diary of events in the polling station as recorded by the KIEMS kit. It keeps an audit trail of what digital events happened and the time they happened.

Mr. Walubengo then took time and shared his experiences from the Supreme Court Presidential petition from a technology aspect since he was an amicus curia, and they



provided the third perspective. According to him;

- Some of the affidavits were withdrawn after the IT technical team submitted their amicus curiae report.
- The logs were not prepared, despite the defendant having objected to their validity.
- The supreme court did not allow the friends of the court to observe the scrutiny. Only the petitioner and defendants were allowed. This was a big letdown as the IT experts thought observing this process would have informed future elections technology-wise.
- The petitioner was asking for orders, but as amicus curiae, they felt they forgot to ask for a review and access to the KIEMS kit log-ins.

Mr. Walubengo recommended that the country consider mobile or electronic voting at the polling station. He emphasized the importance of digital voting as it would provide an audit trail compared to manual voting, which will not provide a mechanism to work backward.

The moderator thanked Mr. Walubengo for the insightful session and invited the discussants to comment. He handed over to Mr. Abdullahi of the ORPP to give his reactions on the topic. Mr. Abdullahi reiterated the importance of increasing citizens' awareness of their civic rights to increase their participation in the democratic process of Kenya. He acknowledged the many efforts put in by state and non-state actors and emphasized the need to check the efficacy of the efforts made by all stakeholders.

He further acknowledged that IEBC, one of ORPP's key partners and the body mandated with voter education, has done well in this area. Still, more needs to be done, especially in the areas of citizens understanding their rights and responsibilities to vote and their rights to participate in policy making, which enables them to have a say in how they are governed. He applauded the efforts by CSOs in carrying out civic education and emphasized the need to reflect on why there has been low voter turnout since 2013. Technology, according to Mr. Abdullahi, technology is an enabler, and at ORPP, they have adapted technology to improve the efficiency of their programs and activities. He challenged organizations to take advantage of technology and ensure they do not overlook the risks involved, such as interference and manipulation. He also advised the participants to ensure that the ICT reforms or practices they take up are anchored on law and cannot be challenged.



**JOSEPH KIRAI,**  
**Implementation Officer**  
**Ushahidi Platform**

Mr Kirai took the stage and delivered apologies from Ushahidi ED, who could not come due to unforeseen circumstances. He began by indicating that Ushahidi was a global cloud technology company aimed at empowering communities to thrive due to access to data and technology. Ushahidi develops tools and services that enable people to get technology solutions, mobilize communities for good, and empower the users to gather, analyze, respond and act on data and information rapidly and purposely. Ushahidi's flagship product, "Ushahidi Platform," is an open-source crowd-sourcing tool.

In his remarks, he said that the extent to which an election advances democratic order depends on the larger but existing electoral systems, its nature, and its acceptable nature by the stakeholders in the electoral process. The application of information technology in elections is getting increased consideration, and technology in the electoral process is seen as a remedy for numerous electoral challenges ranging from establishing a reliable and accurate voter register, to streamlined voting and quicker transmission of election results.

The election process in Kenya has confirmed that the application of ICT comes with some challenges, such as failure of electoral equipment, disputed integrity of machines, and exposure to a chy, as alleged in the 2017 disputed elections. With the help of mobile phones, Ushahidi used crowdsourcing technology to raise underrepresented community voices to set the standard for data collection. Ushahidi supported the Uchaguzi led Situation Room with a customized platform that offered 19 CSOs partners a technology tool to coordinate election situation activities. According to John, Kenyan citizens used familiar channels like WhatsApp, USSD, Facebook, and other social media platforms to express their sentiments

and report on events during the election period. Uchaguzi collected 93,236 reports, and out of this, 12,000 were published on the Uchaguzi Platform.

The reports were analyzed and verified by 91 digital volunteer respondents from different parts of the countries through the crowd that taps into the crowd's intelligence and verification that involves Uchaguzi evaluating the information and determining its credibility. Ushahidi then forwards this information to the various organizations and individuals who can interpret it. In his closing remarks, Joseph noted that digital platforms present the potential for improved gender participation in decision-making.

Mr Abubakar Said summed up the presentation by URAIA, KICTAnet, and Ushahidi by recommending the inclusion of civic education in secondary schools and higher education learning institutions. Increased civic education translates to informed citizens. He also applauded Ushahidi for their innovations and encouraged the participants and organizations to use digital tools for civic education. He encouraged CSOs to partner with IEBC to diversify and broaden aspects of civic and voter education.

As he began giving his remarks, Joshua Changwony engaged the participants briefly in a question-and-answer session. His questions revolved around counting and recognition of rejected and spoiled ballot papers. From the answers, it was evident that there was a gap in voter education in Kenya. He emphasized the need to educate the urban residents as they are relied upon by people in rural areas to educate them on elections. IEBC, according to Mr. Changwony, is mandated by the supreme court to carry out voter education (Article 88(4g). CSOs, faith-based organizations, and the private sector just complement the process of voter education. Voter education in this country is characterized by last-minute, popcorn approach voter education. As an outcome of the symposium, election stakeholders should adopt a five-year approach to voter education that is impactful to every citizen in the country as we move toward 2027.

Inadequate funding for voter education programs is one of the challenges facing voter education. There is a need to advocate for setting aside funding for voter education by the treasury as early as possible. He encouraged the use of digital platforms to carry out voter education as well as sharing of information on the electoral process. CSOs, faith-based organizations, and the private sector must collaborate to ensure meaningful, diversified, and productive civic education at the county and national levels. In his final remarks, he emphasized the need to attach elections to livelihoods in our programming and the need to tap into opportunities /resources like the digitalizing curriculum of voter education by IEBC as well as publicizing and digitization of the political education manual book developed by ORPP with support from International IDEA as well as sensitizing Kenyans on the civic education curriculum developed by KICD. Using these resources will enable and inform a better electoral cycle as moving toward 2027.



# 7.0 POLITICAL PARTY PROCESSES AND CAMPAIGN FINANCING



Maturity and progressiveness of politics- 2022 electoral cycle, have our parties become mature?

### **DR. KARATU KIEMO**

Lecturer at the University of Nairobi and consultant

### **FRANK MUKWANJA**

Executive Director, CMD-Kenya

### **Moderator, PETER ALING'O**

Dr. Karatu Kiemo conducted a study on behalf of CMD – Kenya with support from International IDEA. The study was done to research governance and political reforms in Kenya titled A Knowledge Production; The experience of governance and political reforms in Kenya, was conducted against a backdrop of building desirable democratic processes and anchoring institutions. According to Dr. Kiemo, the recent reforms to expand the democratic space included but not limited to the following;

- Decomposition of power to the 47 counties that solves the imperial presidency.
- Introduction of the position of the chief minister or prime minister.
- Constitution of cabinet from members of the National Assembly to reduce incidences of by-elections.
- Reducing government size was discussed in the UDA campaign and in the punguza mzigo bill.
- Abolishing the position of assistant ministers, which was brought back by the Jubilee Party regime as Chief Administrative Secretaries (CAS).

His study targeted areas around restructuring the executive, and legislature, independence of electoral and administrative institutions, the timing of electoral reforms, fair representation, public participation, strengthening devolution, and combating corruption to find out why the country has stagnated in its quest for genuine governance reforms

and establish ways to change the behavior of duty bearers and different actors to realize genuine reforms. The Key gaps in the 2010 constitution identified by Dr. Kiemo during his research were as follows;

- The ambiguity in the role of deputy president in the joint presidency.
- The exclusion of the office of assistant ministers.
- The exclusion of cabinet recruitment from elected representatives in parliament.
- The exclusion of clauses to safeguard the independence of government institutions such as IEBC.
- The exclusion of binding clauses to direct the implementation of Article 104 on the right of recall and Article 27 on gender equity.

Dr. Kiemo gave 10 key reforms that need to be considered to bridge the gaps identified above. These key reforms include;

1. Establishment of the office of the chief/Prime minister.
2. Appointment of cabinet ministers from the National Assembly.
3. Establishment of the office of assistant ministers.
4. Establishment of the office of the leader of the opposition.
5. Establishment of an opposition shadow cabinet from the members of the National Assembly.
6. Professionalization of the recruitment process of IEBC commissioners.
7. Provision of a minimum period by which a vacancy of an IEBC member shall be filled.
8. Amendment of the Elections Act 2011 to provide a minimum period by which any electoral-related legal amendment can be made before an election and provide the minimum period by which all parties related to the candidate's eligibility must be concluded.
9. Amendment of the Elections Act 2011 to provide the mechanisms by which individuals declared ineligible due to corruption and abuse of office by EACC and barred by IEBC from contesting in an election.
10. Promotion of fiduciary culture by which political office bearers should take responsibility for failure in office by tendering resignation.

**Mr. Franklin Mukwanja the Executive Director CMD** - Kenya thanked Dr. Kiema for his presentation and acknowledged the presence of representatives of political parties at the symposium. In his presentation, stemming from the question of whether political parties have matured, Mr. Mukwanja acknowledged that in the 2022 Kenyan elections, out of 98 registered political parties, 78 participated in elections, with 49 of the parties securing elective positions. This was the highest number of registered political parties.

He questioned whether that was a sign of maturity amongst political parties or was it just motivation created by the availability of political parties' funds. Considering the change in the formula of allocation or distribution of funds from the number of elected officials to the number of votes garnered. He questioned why the 20 political parties did not field candidates in the 2022 elections. He attached this to the fact that in Kenya, political



parties are used merely as special-purpose vehicles for individuals to get into political office and acquire wealth. He suggested the need for these political parties to continue engaging their members systematically.

According to him, the Political Parties Fund forms the basis for financing political parties in Kenya. Consequently, qualifying parties are largely funded by taxpayers, but what needs to be evaluated is whether expanding funding to political parties with the PPF guarantees that they will be stronger and accountable institutions, having in mind that the previous political parties funded have not demonstrated this?

He encouraged political parties to be fully accountable to Kenyans in how they use their share of the political parties' funds. He also stated that political parties that do not receive PPF should also be accountable to their members. The business of political parties according to Mr Mukwanja, is not important to very elite Kenyans and as it is it is only the responsibilities of the few members of political parties in the audience. After all, political parties exist because of their membership. He encouraged stakeholders to review and look into the importance of the PPF in progressing political parties.

On Kenya's political culture, he lauded the good progress made by Kenya in sanitizing its political fabric from the stains of violence, and this according to him, this is good progress and cannot be separated from political parties as they play a key role in perpetuating or preventing election-related violence. The challenges facing political parties, as raised by Mr. Mukwanja, the challenges facing political parties are as follows;

- Election-related violence.
- Lack of knowledge and understanding of political parties' ideologies, especially by party members
- Lack of political ideologies in political parties.
- Personalization of political parties.

On the Performance of political parties in 2022, he stated that during the party primaries, there were challenges associated with the use of party members' registers, weak compliance to legal framework notably, the 2/3rd rule which was disrupted by court ruling and development of party lists. IEBC, in November 2021, returned all the party lists requiring the parties to comply with what was required of them by the law. On electoral disputes resolutions, the institutionalization and enhanced efficacy of IDRMs resulted in a decrease in the number of electoral disputes to a tune of up to 60% and the change in modes of nominations (direct and indirect nominations) as well as expansion and decentralization of PPDT.

In terms of campaign financing, the ED CMD Kenya acknowledged that Kenya has a long way to go, as there are complicit voters, a defective law, and a reluctant parliament because, since 2005, there have been conversations around the implementation of this law, which continues to be difficult. On Electoral Violence, the 2022 elections witnessed less violence than the 2017 elections, which is attributed to the efforts put in place by peace actors and religious leaders. More professionalism and impartiality among security agencies were witnessed in the 2022 elections. In terms of technology, the ORPP did a commendable job in automating services, especially certification of party lists, member registers, and independent candidates' certification. Online violence and the spread of dis/misinformation, rampant in the 2022 elections, must be looked at ahead of the 2027 elections.

Kenya has continued to witness the formation of coalitions since 2002, when the first coalition arrangement, the National Rainbow Coalition, won the general elections. The impact of the evolving coalitions on multiparty democracy in Kenya needs to be critically examined. Certainly, according to Mr. Mukwanja, both positive and negative impacts relate to the larger political system, governmental system, and parties themselves, but on the positive side, especially the grand coalitions, they are all-inclusive and moderate the polarization of the country along party lines. Coalitions make it possible for key social cleavages, especially ethno-regional ones, to be represented in government through their respective parties and to have a meaningful voice in both the executive and the legislature. Despite these positive impacts, coalitions weaken ideologized politics to the extent that they are marriages of convenience that bring together parties of diverse political orientations in their raw quest for power. The only remedy to this, according to him, is to strengthen political parties to minimize their negative impacts on pluralism and that is why CMD Kenya advocated and backed the legislation for coalition building to regulate the formation and management of coalition governments, to protect individual party ideologies and platforms, to ensure that the voters are still able to make real choices amongst the competing parties and formations, to stabilize coalition governments, and to strengthen partner parties is very useful.

Regarding issue-based politics, Mr. Mukwanja said that the 2022 election was the one election in Kenya's history whose agenda was issue-based on most counts. The two major coalitions campaigned on policy-based agendas, with the Azimio coalition leveraging on good governance and anti-corruption as the basis for building a prosperous country and the Kenya Kwanza coalition focusing on what they dubbed "the bottom up" economics aimed at growing the economy by facilitating the bottom majority to grow. Questions of



public debt, cost of living, unemployment, industrialization, and foreign policy, amongst others, were prosecuted on basis in public rallies. For example, the role of China in Kenya's economy, previously a question considered a non-issue in any campaign, made its way into both coalitions' conversations. The Azimio coalition took issue with what they considered irresponsible borrowing from China. In contrast, the Kenya Kwanza team took issue with the economic disruption brought about by cheap, low-quality Chinese products flooding the market, the proliferation of small businesses run by Chinese nationals, and Chinese workers currently flooding the Kenyan labor market.

He noted that the institutional framework that manages elections in Kenya is far from perfect, as was noted by the Supreme Court in their recent ruling on Monday, September 5 but that he believed that there had been progressive evolution that has systematically built the confidence of Kenyans in believing that there is a place for strong, credible, accountable, and transparent institutions at different levels of government, and being part of an electoral architecture that is capable of delivering free, fair, and peaceful elections. This confidence in institutions has played a significant role in diffusing tensions and providing avenues for addressing grievances, thereby preventing violence and conflict during elections. As he concluded, he stated that the Kenyan election process of 2022 displayed a maturing democracy on various fronts and recommended that there is a need for a change in perspective on the nature of political engagements as well as the need for political parties to lay out legislative agendas that are in sync with their ideologies, not just their ever-changing manifestos.

The moderator appreciated the presentation by Mr. Frankline Mukwanja and Dr. Kiemo. He invited the discussants to share their thoughts on the presentations made by the two lead speakers. Felix Odhiambo of ELGIA attributed the talk of electoral reforms, seven multiparty elections later to choice-less democracies (countries that can choose but cannot vote), the inconclusive electoral cycle which he attributed to result unaddressed issues related to election management that arise subsequently in every election and thirdly, state and elite capture of the reform process. Philip Gichana from Mzalendo Trust questioned the role of negotiated democracy among political parties, which, according to him, alienates the common mwananchi from participation in elections.

He spoke about the gaps in the law regarding the majority and minority leaders in both houses and parliament and questioned the powers of the ORPP concerning this. On IEBC and legal reforms, he reiterated the importance of not having electoral reforms in the election year, which has not been the case, especially in the 2022 elections, where electoral reforms were made six months before the elections which is against the recommendations from the Kriegler report that no electoral reforms should be done one year before the elections. Implementation of chapter six of the Kenyan constitution continues to be a problem, according to Mr. Philip, because key institutions like parliament, constitutional bodies established to implement this chapter, the executive by its behavior, and the judiciary still need to implement chapter six. Dennis Omondi, NDI Kenya's country director, commended and appreciated the role of political parties in expanding Kenya's democratic space.

He encouraged the CSOs to engage more with political parties toward strengthening multiparty democracy in Kenya. On the institutionalization of political parties, he

highlighted the need to consider and look at the role of membership in political parties, as the members play significant roles in the leadership and management of these parties. According to him, there is a need to ensure that political parties are effective in between elections and strengthen the political parties' branches. He encouraged CSOs to hold political parties accountable for the utilization of PPF. He noted that the 2022 party primaries happened against a backdrop of a calmer environment as compared to the 2017 elections.

The CSOs, according to Mr. Omondi, need to continuously sensitize the importance of citizens taking part in party primaries. He highlighted the need for inclusive political party organs and frameworks that support inclusivity in political parties. He stated the importance of having the most critical decision makers of political parties (Chairperson or secretary general) sitting at the PPLC and not just any other member of the political parties, as this will strengthen decision-making at and for the party. The Party hopping law, according to Mr. Omondi, needs to be reviewed. On campaign financing, he suggested the need to disclose the amount of money one plans to use for their campaigns instead of regulating campaign financing. Stephen Namusyule, the ED FORD Kenya, a member of CMD Kenya, was called upon by the moderator to share his perspective from a political parties' point of view. He thanked the organizers of the symposium and emphasized the importance of post-elections review meetings, which enable election stakeholders to reflect on the gains and challenges from the 2022 elections to inform better elections in 2027.

He highlighted that most political parties have ideologies, and as political parties, they have made it their business to publicize their ideologies to their members and citizens. He advised on the need to review the by-elections' statutory laws, electoral code of conduct, political parties' code of conduct, and streamlining of the elections campaign financing act. He reminded faith-based organizations and media of their important roles in elections and emphasized their need to be non-partisan. The senior compliance officer at the ORPP was the last discussant in this session. He noted that political parties continue to be demonized, although as ORPP, they have a good working relationship with the parties.

He said that all the political parties in the 2022 elections were compliant with the ORPP regulations and witnessed increased publicity by political parties in the party primaries. As an office ORPP, according to Mr. Loserian, carried out capacity-building sessions for parties' women, youth, and people-abled leagues and their election boards differently and strengthened the political parties' IDRM. On the inclusion of SIGs, the ORPP ensured that party lists adhered to this and organized structured dialogues with IEBC and PPLC where electoral issues were discussed. He concluded by applauding the progress made by political parties in carrying out primaries, dispute resolution, and inclusion of SIGs across the board.



# **8.0 ELECTIONS AND SPECIAL INTEREST GROUPS**

- ✓ The 2022 Electoral processes and Inclusion; Challenges that continue to impede the full participation of SIG in the electoral processes.



## **DR. LAWRENCE MUTE** **United Disabled Persons of Kenya (UDPK)**

Dr. Mute began by mentioning inclusion and how to communicate with each other, and having temporary ramps for PWDs, stating that inclusion is key in such meetings. Dr. Mute openly expressed his dislike for the term Special Interest Groups. There needs to be a better term for that in the Constitution.

The IEBC noted that PWDs registered for the election in 2022 were 8.7%, a diverse range of people. The 2022 general elections were daily exclusive because PWDs could have been involved more. The IEBC worked with the Caucus of Disability Rights Advocates to form the Disability Inclusion Coordination Committee. Nothing concrete came out of this, and it did not make a difference.

On membership, it was observed that IEBC did not have publicized disaggregated data or numbers of staff with disabilities. The majority of polling centers were not PWDs friendly. Voters using assistant voting were undermined because it had officers surrounding the person going to vote, yet they have an assistant; the process should be a secret. There is a key concern for PWDs as they are not well represented in political parties. In the electoral cycle in 2022, at least 22 County assemblies presently do not have MCAs living with disabilities. This is a higher number compared to the 2017 and 2013 electoral cycles. Dr. Mute quoted Article 7A of the County Governments Act, which states, "A County Assembly shall NOT be fully and duly constituted for the first sitting after a general election unless all the members provided for under paragraphs (b) and (c) of Article 177(1)

of the Constitution have been duly nominated and their names published in the Gazette.” Dr. Mute finalized his statement by mentioning that the IEBC, Courts, and Political parties need to interpret the law as it should be. He also noted that good faith is a fundamental principle of good governance, requiring parties to deal fairly with each other and not cynically, to represent their motives and purpose truthfully, and to refrain from taking any unfair advantage.



**NYANG'ORI OHENJO,**  
**Executive Director,**  
**Center for Minority Rights and Development (CEMIRIDE)**

CEMIRIDE is an advocacy organization devoted to strengthening the capacities of minority and indigenous communities in Kenya and East Africa to secure the respect, promotion, and protection of their rights.

Mr. Nyang'ori began by mentioning that he will touch on minorities in the context of representation and participation in the just concluded elections and moving forward. He indicated that blanketing Special Interest Groups disempowers these groups and should be ceased immediately for avoid further marginalization. This was particularly important because the emphasis on the Constitution and Article 1 is based on very specifically identified groups. So, the idea of coming up with other terminologies in 'a one size fits all' kind of situation is not something to be encouraged.

Within their context, there is no uniform definition of either minorities or indigenous peoples. International Covenant on Civil and Political Rights, article 27, recognizes that these groups of people or communities suffer discrimination of all sorts. So, there must be evidence of having suffered discrimination, there must be evidence that they have some sense of belonging, some cultural togetherness that they want to uphold, and this will be in different groups, ethnic minorities, which are identified in the Constitution. People talk

of national minorities, linguistic minorities, whereas in this case, it is linguistic minorities. These communities have suffered isolationist tendencies within other groups. In the Kenyan scenario are the Ogieks, Terik, and the Yaku in Laikipia. This was a policy issue in 1933 when the government targeted those communities. Because of their distinctiveness, they are sometimes viewed as uncivilized. So, the idea is to have these people accepted and assimilated into communities.

On SIGs, these groups of people need to be protected. The Constitution lays them out as marginalized groups it speaks to. Those are women, youth, persons with disabilities, ethnic and other minorities. This provides a basis for the information, and the electoral framework then needs to move ahead to ensure that it meets the provisions of the Constitution concerning the representation and participation of minorities and the marginalized as identified. Affirmative action is provided for these communities to participate in governance and other spheres of life. These communities continue to be excluded from political processes. Minorities are not just necessarily the numbers; it is essential to note that other factors need to be considered. With this, Mr. Nyang'ori concluded his statement.



## **VICTOR NYONGESA** **Executive Director Youth Agenda**

Mr. Nyongesa began his remarks by mentioning that fair elections are not in the outcome but in the process. In the just-concluded polls, negotiated democracy and direct nominations were highly witnessed in the political party processes. The majority of the losers in this were young people. There needs to be a candid conversation about this and how to mitigate it.

He mentioned that generation Z is not interested in elections, and only a few registered as voters in the just concluded election. There is a need to find a way to change their mindset. They do not have trust in the political processes. Civic education in these elections was

less than in the 2013 and 2017 elections. There is a need to convince young people to vote through civic education.

Mr. Nyongesa concluded his remarks by mentioning that young people are still less informed about political parties, and something needs to be done in this regard.

## **BERNARD OPIYO** **ELOG Observer**

Mr. Opiyo highlighted some of the challenges they experienced, especially on D-Day.

- **Infrastructure** - Some of the polling centers were upstairs and had no wheelchair ramps
- There is a need to plan and have those with special needs given a particular room for the voting exercise.
- **Language barriers** - There is a need to have an interpreter in each polling center
- **Lack of braille material** for those visually impaired
- There is a need to have these ready by the year 2025 and have people trained on using them before the next elections cycle

Mr. Opiyo finalized his statement by asking who should be responsible for police brutality in terms of re-dress mechanisms.



## SOPHIE KAIBIRIA

Senior Program Officer,  
Federation of Women Lawyers- Kenya (FIDA-K)

Ms. Kaibiria began her sentiments by reiterating that FIDA-K advocates for the rights of young girls and women. As mentioned by some speakers above, Ms. Kaibiria expressed that Special Interest Groups is not a befitting term even when women fall into this category. She observed that FIDA represents all women; women in marginalized communities, women living with disabilities, young women (youth), etc. Political parties are the gatekeepers when it comes to empowering women and young girls.

When it comes to financing and resources during the electioneering process, women often did not benefit from this. Another challenge was security for women; an example was given of nomination certificates being issued in the wee hours of the night which poses a security challenge for the women who must go back home.

There has been progress in having more women in elective posts since the last elections. Not only this, but also in significant offices like the IEBC, ORPP, and the Judiciary. There is also a need for Civil Societies and other stakeholders to discuss and implement ways in which there can be solutions for the engagement and participation of Special Interests Groups in electoral processes.

## PLENARY DISCUSSION

The panelists and discussants prompted various views and opinions from the attendees. Below are the views/reactions given:

- Elections offenses should have fair play across the board, meaning that if a PWDs commits an election offense, then they should face similar consequences to the rest of the people
- When facilitating PWDs, the assistants need to be considered as they are as essential to attend the meetings as the PWDs.
- Some political parties used the 2017 register, and therefore, some youths were left out of the nomination process.
- There is a need to engage Generation Z in the elections because most were yet to be interested in this.
- FIDA-K, for the next five (5) years, is planning the Women Leadership Academy, which is a continuous initiative focusing on mentorship, capacity building, and the likes of Civic Education
- FIDA-K continues to push the relevant stakeholders in the electioneering process to ensure that the ⅓ gender rule is put in place one way or another and come up with recommendations for the same
- Political parties need to look at the Constitution, check the threshold for PWDs in Senate and County Assemblies, and use this to inform their nominations.





# 9.0

**MEDIA COVERAGE  
ON ELECTIONS, HATE  
SPEECH, FAKE NEWS,  
MIS/DIS-INFORMATION**

This section considered the following areas:

- ✓ Critical Analysis of the role of media with respect to coverage of the August 2022 General Elections;
- ✓ Impact of the wave of Misinformation and Disinformation in Kenya: A case study of 2013-2022 electoral processes in Kenya



**ROSALIA OMUNGO**  
**Executive Director,**  
**Kenya Editors Guild (KEG)**

Ms. Omungo began by mentioning that the media used to operate on its own in the previous elections but in 2022, this changed, and they worked with different institutions outside the media. In 2017, the media was doing their tally of the elections in line with their technological ability. This changed in 2022 as they came together as media institutions to do a common tally. 22 media associations came together in preparation for the media and how they will work together in the 2022 elections.

The media has several institutions, including associations with political journalists, the Editors Guild, Civil Society Groups, etc. All these groups came together on how to work together during the elections. They started working together in March of 2021 with institutions mandated to bring the elections. They did an MoU with the IEBC to facilitate better access to information for five (5) media personnel who were to act as liaisons with the IEBC. This process was to champion credibility and excellence in election coverage. This also ensured that journalists were accorded space to do their work during the process and access to information and independence of the media during the process.

They then mapped what they considered hotspots and areas that had the support of either of the candidates. They engaged IEBC and ORPP and embarked on training of journalists,

and the key subject of the training was electoral management, peace & security, and fake news & dis- information.

Another concern was the vernacular radio stations and protecting them during this process. Some of the things put in place included but were not limited to; fact-checking (working with existing institutions). On mis/dis- information, there are three (3) basic rules, Imposter Content Manipulation, False Content, and Misleading Content. Most of these are usually to suit specific narratives. The fact-checking included credentials, political values, manifesto launches, and political debates. This allows others to give their alternative fact checks. This is a complex process and highly depends on what is used to fact-check.

Ms. Omungo concluded by mentioning that collaboration of the media and training was a great plus for the media, and in the presidential debate, the media fell short in the presidential tallying because of the different technological advancements of the media houses. Moving forward, the media industry needs to begin the election process early enough to understand the entire electoral process. The credibility of news needs to be checked, and those spreading fake news must face the law.



**MR. JOSHUA CHANGWONY**  
**Executive Director,**  
**Constitution and Reform Education Consortium (CRECO)**

Mr. Changwony presented on CRECO's experience in monitoring electoral mis and dis-information. CRECO is a consortium of Civil Society Organizations. This was a compiled presentation of what they have been doing in different parts of the country, including their partnership with the media and government institutions. Below are the highlights from the presentation and experience sharing;

- There has been a communication revolution and evolution. This involved debunking information
- Data security
- Data on different social media platform users
- Five (5) essential aspects
  - ◊ **Mal-Information** - Mal-information is information based on reality, but it is used to inflict harm on a person, organization, or country.
  - ◊ This involves catfishing
  - ◊ **Dis-Information** - false information deliberately and often covertly spread (as by planting rumors) to influence public opinion or obscure the truth.
  - ◊ **Mis-Information** - incorrect or misleading information.

Mr. Changwony illustrated this using videos falsely translated from vernacular to English or Swahili.

- **Fake News** - fabricated information that mimics news media content in form but... lacks (s) the news media's editorial norms and processes for ensuring the accuracy and credibility of information.
- **Hate Speech** - public speech that expresses hate or encourages violence towards a person or group based on race, religion, sex, or sexual orientation.

Mr. Changwony noted that they documented most mis/dis/mal information. During the election period, they had a WhatsApp number where people could share most of these. IEBC was gracious enough to give them a commissioner to communicate with them directly regarding these, asking whether the information is accurate and disseminating it to Kenyans.

They created awareness amongst civil society members and trained them to identify fake news. The media, more often than not, fell victim to dis-information baits. There needs to be championing an online code of conduct and re-evaluating freedom of expression. Mr. Changwony concluded his presentation by showing another video falsely translated from vernacular to Swahili.





**MULLE MUSAU,**  
**National Coordinator,**  
**Elections Observation Group (ELOG)**

Mr. Musau began by stating that ELOG tracks how the media covers the electoral processes, how they conduct voter education, and understands the processes. Their major finding is that social media/digital space is the leading platform of fake news, mis/di-information. There was also skewed coverage of the presidential candidates, where the two (2) leading presidential candidates were getting most of the coverage. There was also skewed coverage of women; male aspirants were getting more coverage.

Information was being distorted on social media platforms, and the Communications Association of Kenya and the media needed to regulate the social media space regarding hate speech and mis/dis-information.



## **WILLIAM JANAK OLOO,** **Chairperson,** **Kenya Correspondents Association (KCA)**

Mr. Oloo began by posing a question about how many people buy newspapers, watch TV and listen to the radio. The media space has changed in Kenya, and during the elections, major political parties ignored the legacy media and set up their own. The media worked under challenging circumstances during the election. They had a technical team called the Kenya Media Working Group, which is a platform to bring media stakeholders together (IEBC, Civil Societies, Political Parties, etc.).

The sense of communication and the technological issues within the commission were apparent way before the elections. The systems were down for several days. There are challenges in the media sector, and these include but are not limited to the following;

- **Perceived biases** - This might not work in Kenya due to the ethnic diversity, unlike most developed countries.
- **Regime change** - leaders changing to align
- **Staffing** - Many were laid off during the COVID pandemic

Between now and 2027, there will be significant changes in the media landscape in a manner that will help maintain sanity in the industry. There will also be the training of journalists. There is a challenge where some media houses are owned by politicians, which affects the media space.

Mr. Oloo concluded his remarks by mentioning a need for more conversations on this and understanding the media landscape, including the political parties.

## **PLENARY DISCUSSION**

The panelists and discussants prompted various views and opinions from the attendees. Below are the views/reactions given:

- Media houses have their technologies and have competition for coverage especially during elections.
- The spread of fake news is usually faster, especially using social media platforms.
- Media houses must know how to sieve fake news from legit news.
- There is a need for citizen journalism, and this should be differentiated from fake news online.
- In some parts of the country, the leading network providers have not fully penetrated the areas, which needs to be looked into. However, it should be noted that they are business and profit-making entities.
- The media is in business and profit-making, and sometimes this is a challenge

- regarding coverage.
- The government is also a victim of mis/dis information.
- There are people who are agenda setters of mis/dis information and even writing articles that are published in newspapers. Some of these are investments as they are paid to spread the dis-information through different channels.
- The media needs to fact-check and verify the information before publishing it for public consumption.

## CLOSING REMARKS/VOTE OF THANKS

Mr. Joseph Ronoh began his closing remarks by thanking the organizers, secretariat, partners who sponsored this symposium, and participants who made this workshop successful. On behalf of the leadership of the Symposium, Mr. Ronoh mentioned that the reports and discussions would be sent to the participants once they were ready. With this, he concluded his remarks and wished everyone the best.

The Symposium came to a close with the singing of the East African Anthem.



THEMATIC AREA/ CONCERN	KEY FINDINGS/ISSUES (FROM EOMS AND DUTY BEARER REPORTS)	NATURE OF REFORM	RECOMMENDATIONS			RESPONSIBLE DUTY BEARER	LEAD CSO
			SHORT TERM 2023-2024	MIDTERM (2025-2027)	LONG TERM (AFTER 2027)		
<b>Legal Framework</b>	<p>1. Minimal implementation of the Supreme Court findings from 2017.</p> <p>2. The Election Campaign Financing Act has been in place since 2013, but no regulations to give effect to the legislation have ever come into force.</p> <p>3. The IEBC would set spending limits and enforce compliance. To this end, the IEBC submitted campaign finance regulations to the NA in 2016, but they were rejected. These regulations were resubmitted by the IEBC in 2021, with the intention that they would apply to these elections.</p> <p>4. Despite publication in the Gazette by the IEBC, the regulations were subsequently nullified in Parliament.</p> <p>a) Article 99 (2)(e) of the constitution excludes “persons of unsound mind” from standing for election. However, the UN Committee on the Rights of Persons with Disabilities, in its concluding observations on the initial report of Kenya in 2015 recommended that the State repeal constitutional provisions that restrict the right of persons with disabilities to be elected as members of Parliament.</p>	Legislative;/ Admin		<p>Extension of the constitutional timeline set aside for the determination of a Presidential Election Petition to 30 days as this is likely to allow for not only the efficient case management by the Court but would also afford the parties sufficient time to ventilate their cases</p> <p><b>CORPORATE GOVERNANCE</b></p> <p>Parliament should consider enhancing the statutory and regulatory framework on the separate policy and administrative remit of IEBC.</p> <p>IEBC ought to effect formal internal guidelines that clearly delineate the policy, strategy, and oversight responsibility of the Chairperson and the Commissioners; and develop institutionalized guidelines on how to manage the separation of administrative and policy domains.</p> <p>The roles of the Chairperson, Commissioners, and the Chief Executive Officer, other staff and third parties should be clearly set out in both the legislative and administrative edicts as stipulated above.</p>		1 (a) Parliament/ IEBC/ Relevant State Department for ICT/ Communication Authority of Kenya (CAK), IEBC/ CSOs	1 (a) ELGIA 3(a) ELGIA and CMD; Katiba Institute;



	<p>b). In addition, whereas the requirement of a degree for membership of county assemblies and of the NA was struck down, the requirement stands for other elections. The EU EOM found this to be in contravention of the authoritative interpretation of the International Covenant on Civil and Political Rights, which has characterized educational requirements as unreasonable and discriminatory</p> <p>c). EU EOM observers received reports of a Principal Secretary as well as Chiefs and Assistant Chiefs organizing support for the Azimio presidential candidate locally, thereby contravening the legally required political neutrality for public officers.</p> <p>d). U EOM observers also witnessed the misuse of state resources, including vehicles and facilities, by campaigning officials and, in one case, the use of a public function for campaign purpose for Azimio candidates.</p> <p>e) Need for Kenyans to dialogue, review, rationalize and re-evaluate the electoral system and infrastructure, including the EMB model in Kenya with a view to identifying a system and infrastructure that best suits the political dynamics and nuances in Kenya.</p>			<p><b>ELECTION TECHNOLOGY</b></p> <p>To avoid suspicion from stakeholders, unless where and when it is absolutely necessary, access to the servers supporting the transmission and storage of Forms 34A, 34B and 34C should be restricted to IEBC staff during the election period.</p> <p>1(f) IEBC should ensure that the servers supporting the elections and those serving their internal administrative work are distinct and separate. This would then allow the Court, should the need arise, to carry out forensic imaging of the same without compromising and/or infringing any third-party agreements. On Statutory Forms</p> <p>1(g) IEBC may consider simplifying and restructuring the Form 34A and include a column that accounts for stray ballots. In addition, it may consider having only one section for total valid votes. The independent body may also find it prudent to thoroughly train its Returning Officers as to what constitutes valid votes per this Court's decision.</p> <p>1(h) IEBC ought to put in place specific mechanisms to allow for special voting as contemplated under Regulation 90 of the Elections (General) Regulations 2012.</p> <p>2(a) Parliament to approve campaign finance regulations</p> <p>3(a) Consideration could be given to remove restrictions on the right to stand for elections for person with intellectual disabilities as well as restrictions requiring an educational degree to stand.</p> <p>4 (a) Remove exemptions for cabinet secretaries and members of county executive committees from the requirements of political neutrality (section 23, Leadership and Integrity Act, 2012).</p>			
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				<p>a) That there is an urgent need to clarify the policy, strategy and oversight roles and functions of the Chairman and Commissioners through legislative reforms.</p> <p>(b) Need for clarity and delineation of the policy and administrative domains of the Commission through clear separation of the roles and responsibilities of the Commission from those of the Commission Secretary and Commission staff.</p>			
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<p><b>Security and Human Rights</b></p>	<p>In adherence with the Constitution of Kenya 2010, the electoral system is obligated to comply with the requirements set down to ensure free and fair elections, free from violence, intimidation, undue influence and corruption. The IEBC therefore must ensure that the electoral environment is free from threats, manipulation, fear and is above all peaceful.</p> <p>Police and other security forces play a dual role in an election setting. Effective law enforcement during an election period requires a balance between the need for electoral security and maintenance of order and non-interference with fundamental freedoms and participation rights to maintain or create an environment free of intimidation. Security was therefore a key priority prior and during the 2022 general election with the need to deliver election security during the entire election process with specific regard to a necessity for physical, personal, information based and surrounding electoral operations to be heightened by both the IEBC and National Police Service working symbiotically.</p> <p>The Election Security Arrangement Programme (ESAP) was conceptualized and envisaged as a multi-agency framework for coordination, collaboration and partnership involving state and non-state agencies in provision of election security for 2022 elections. ESAP was therefore implemented by IEBC in collaboration with the NPS, Office of the Director of Public Prosecution (ODPP), the Judiciary, National Cohesion and Integration Commission (NCIC), Independent Police Oversight Authority (IPOA), National Steering Committee on Peacebuilding and Conflict Management (NSC), Office of the Registrar of Political Parties (ORPP) and Civil Society. Despite this, there were still a few inadequacies within the security framework that came to light within the IEBC Post- Election Evaluation report.</p>	<p>Legal/ Policy/ Admin</p>	<ul style="list-style-type: none"> <li>• Equip duty bearers to be able to investigate and prosecute cases of online election violence</li> <li>• Censure political parties and their members who practice aggressive electoral practices against women</li> <li>• Address affirmative action in the context of intersectionality ensuring SIGs are not excluded.</li> <li>• Community outreach approach to address issues on violence against women, human rights and Changing community norms</li> <li>• mainstreaming elections security management in the curriculum of national police service</li> <li>• Focus on de-escalation on use of force by security agencies during public order management operations</li> </ul>	<p>To tackle this, the commission proposed the inclusion of election security in the Police Training Curriculum.</p> <p>Implementing ESAP using an electoral cycle approach</p> <p>Undertake a conflict analysis on emerging and dynamic conflicts during the election cycle to ensure the commission and its supporting bodies can not only be aware of the different types of conflicts to expect but more importantly be prepared to tackle them prior to the electoral process.</p> <p>Integration of election security in the accreditation framework for the national tallying Center.</p> <p>Review leadership and integrity laws to ensure exclusion of unfit leaders.</p> <p>The relevant authorities such as NCIC, NPS, and ODPP to trace and bring to book the individuals who were propagating hate speech who would interfere with the peace and cohesion in Kenya</p> <p>The use of police recruits in policing elections and deployments/ transfers done a few months to the elections are not encouraged as most are not well conversant with the elections terrain.</p> <p>Review public order management practices and make recommendations to ensure they conform to human rights and constitution Command responsibility within the National Police Service, holding senior officers responsible for the election related violence Guidelines and laws protecting public officers against intimidation and bullying.</p>			
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	<p>These being;</p> <ul style="list-style-type: none"> <li>• Election security training is not included in the National Police Service training.</li> <li>• Moreover, ESAP has been noted to only be implemented during the election year</li> <li>• The problem of constant mutation of Electoral security risks was another issue highlighted by the commission as a setback to security efforts.</li> <li>• Electoral security breaches at tallying centers were another also noted as one of the main hindrances to attaining security within the electoral period.</li> <li>• Finally, the commission highlighted the fact that the ESAP curriculum was blatantly missing elements of human rights and electoral gender-based violence.</li> <li>• Aggressive election practices not conducive to women</li> <li>• Training of regional commanders, county commanders and ward commanders on public order management</li> <li>• Elections manual to ensure uniformity in elections security</li> <li>• Level of malpractices by police reduced</li> <li>• violence against women is now in cyberspace</li> <li>• political interference /intimidation of police officers during duty impunity by politicians</li> <li>• Overlapping chain of command issues in the poll station as the police are under the direction of the head of the polling station but are under the command and control of the IG</li> <li>• weak oversight by election oversight bodies that fail to censure politicians who flaunt election rules</li> <li>• Deaths of poll bearer a worrying trend since every time an election is held it does emanate to a life lost and many will tend to question, is working for the IEBC an end to your life?</li> </ul>			<p>The police to stick to the guidelines on the use of force, that it should be proportionate, legal, accountable and neutral.</p> <p>There is a need to strengthen awareness on Human Rights &amp; eGBV and to remove barriers for victims &amp; survivors' access to justice and medical support.</p> <p>Strengthening of Referral Pathways and sensitizing the public on the existence of a referral network in their communities.</p> <p>Revive and broaden police reforms to include other law and order sector institutions IEBC/NPS to put up mechanisms to safe guard the lives of the election's officials</p>			
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<p><b>Civic and Voter Education</b></p>	<p>Article 88(4)(g) of the Constitution of Kenya, 2010 mandates the Commission to conduct voter education.</p> <p>1. (a) The importance of voter education is to equip voters with the requisite information, knowledge, skills and attitudes to enable them to make informed choices on various electoral processes. The evaluation found out that the Commission conducted successful voter education programs that resulted in a peaceful election, low number of rejected ballots and an informed electorate.</p> <p>(a) During the last electoral cycle and until less than a year before the 2022 elections, Parliament allocated only the necessary funds for the conduct of everyday operations while minimum resources were allocated for programmes and activities necessary to be implemented on a continuous basis for the IEBC's successful discharge of its constitutional duties, such as voter education</p> <p><b>FROM IEBC EVALUATION</b></p> <ul style="list-style-type: none"> <li>• Insufficient budgetary allocation hampering the conduct of voter education throughout the electoral cycle</li> <li>• Weak mechanism to measure the performance of ward-based VE Difficulty in provision of voter education in vast Wards in some Counties</li> <li>• Inadequate involvement of the youth in the electoral process</li> <li>• Lack of a comprehensive legal framework on voter education</li> </ul>	<p>1 (a) Policy/ Legal 2 (a) Legislative</p>	<ul style="list-style-type: none"> <li>• Adequate budget allocation for Voter education throughout the electoral cycle</li> <li>• Develop an online and real- time monitoring and evaluation tool for Ward- based voter education</li> <li>• Increase the number of Ward-voter educators and have better coordination of IEBC with the 111 accredited institutions.</li> <li>• Targeted voter education for the youth</li> <li>• Develop a comprehensive legal framework to cover various aspects of voter education</li> <li>• Integrate voter education in education curriculum</li> </ul>	<p>1(a) The development of an integrated software to marry details regarding membership between the ORPP and the IEBC.</p> <p>2.(a) In support of efforts to enhance inclusivity in the electoral process, the commission is also seeking to provide appropriate assistive measures and devices for persons with disabilities.</p> <p>3.(a) The commission is rallying for a faster rate of establishment of digital villages and information resource centers in the rural areas as outlined in the National Development Vision 2023.</p> <p>This would directly curb the issues caused by the unstable internet connection in certain parts of the country which caused staff to use a cocktail of electronic and manual records thus resulting in missing records of some aspirants, inconsistencies in the application of procedures, rejection of some candidates, incomplete applications and other such issues.</p> <p>The establishment of digital villages would therefore enhance internet connectivity which would in turn improve usability of CRMS (Candidate Registration Management System). The commission further calls for CRMS to be configured to work offline to cater for areas that have no or low internet connectivity.</p>			
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<p><b>Elections and Electoral Dispute Resolution</b></p>	<p>1. Whereas the training of IEBC officials included simulation exercises and group work, limited focus was placed on filling out the polling station statutory forms and the polling station diary, as well as on the importance of correct packaging of sensitive materials.</p> <p>2. Several cases were submitted to the HC seeking judicial review of actions of the IEBC, alleging violations of constitutional rights.</p> <p>3. The subject matter of the election-related cases heard by the HC included the voting times of the diaspora, the inclusion of photographs on ballot papers, the applicability of the two-thirds gender rule 1. to political party lists, the display of the voter registers outside polling stations, and the use of the manual voter register in polling stations.</p> <p>4. These cases all took the form of standard constitutional petitions. This meant that the expedition with which the above-mentioned election disputes were handled did not apply.</p> <p>5. The adjudication of the case on the manual voter register caused great difficulties for the IEBC, as it was uncertain as to the procedures which would have to be followed until the HC decided the case. A decision was delivered on 4 August, but this was followed, on 8 August, by an order from the Court of Appeal which restrained the enforcement of the HC order.</p> <p>6. From the KNCHR Election Observation Report, political parties need to strengthen their dispute resolution mechanisms so as to have fairness in complaints handling mechanisms and disallow selective application of these mechanisms as some elders purported to resolve electoral disputes outside this process.</p> <p>7. Hearing of disputes with regard to IEBC's clearing of candidates to vie for the various seats were marred by delays and inefficiencies due to lack of a cause list (ELOG Report)</p>	<p>Administrative</p> <p>Legislative</p> <p>Legislative/Judiciary clarification</p>	<p>2 (a) Consider imposition of a deadline on appeals to the HC against PPDT decisions on candidate nomination and IEBC DRC decisions on candidate registration and consider introduction of a deadline to restrain cases against the IEBC to the HC Constitutional Bench in the two-month period prior to election day. Exceptions should be permitted for urgent matters, where the law is not settled before elections. We recommend continuous Capacity building, technical assistance and comparative analysis on jurisprudence in a bid to harmonize Judicial officers' understanding of the electoral laws and processes.</p> <p>6. Capacity building of political party structures on dispute resolution</p>	<p>1. IEBC to implement improvements in election technology based on regular audits and stakeholder consultations and to improve consistency and transparency.</p> <p>2. IEBC to introduce clear and detailed procedures for the uploading of all results forms to the public portal to ensure verifiability.</p> <p>3. Social media platforms and the big technology giants are encouraged to increase the level of transparency around their content moderation activities in Kenya and to dedicate more resources to the region</p> <p>4. IEBC should ensure that the servers supporting the elections and those serving their internal administrative work are distinct and separate. This would allow investigators to carry out forensic imaging of the same without compromising and/or infringing any third-party agreements</p> <p>5. In order for IEBC to ensure that digital evidence provided to the court or petitioners is authentic and admissible in a court of law, IEBC should develop administrative processes /frameworks that need to be followed to protect the security and authenticity of the digital image.</p> <p>6. Take measures to prevent vendor lock-in the acquisition and maintenance of technology infrastructure.</p> <p>7. IEBC should grant observers access to back-room server operations on the processing of results forms.</p> <p>8. IEBC should ensure all technologies and devices to be used in the elections are all tested prior to deployment to ensure efficient and seamless performance.</p> <p>9. IEBC should ensure comprehensive training of all election personnel well before the elections, especially on the aspects of the use of technology and devices.</p> <p>10. IEBC should collaborate with electricity and telecommunications</p>	<p>6. Political parties ORPP</p> <p>7. IEBC</p> <p>8. Parliament OAG IEBC</p>	<p>10. Parliament /Judiciary</p>
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	<p>8. Last minute litigation undermined compliance and uniform application of procedures by poll staff e.g. use of the manual register for voter identification</p> <p>9. Insufficient time for filing and resolution of the Presidential petition</p> <p>10. The impact of the 2016 reforms on standard of proof in election petitions. The Kenyan elections courts currently exercise a purely civil jurisdiction because of the 2016 amendments to the Elections Act, 2011. Those amendments followed the Supreme Court's decision in <i>Moses Masika Wetangula v. Musikari Kombo &amp; 2 Others</i> Pet 12 of 2014 (2015) EKLK concerning the need to separate the criminal jurisdiction from the civil election-dispute. As opposed to the former section requiring the court to determine persons proved guilty of election offences, the current reading of section 87 of the Elections Act 2011. Therefore, the section is more consistent with proof on the balance of probabilities.</p> <ul style="list-style-type: none"> <li>• In <i>Raila Odinga v Independent Electoral and Boundaries Commission &amp; Others</i> (2013) Eklr the Court did state that the threshold of proof should be "above the balance of probability, though not as high as beyond reasonable doubt-save that this would not affect the normal standards where criminal charges linked to an election are in question.</li> <li>• In <i>Raila Odinga 2017</i>, the Court expressly reiterated the intermediate standard, it still used language consistent with proof on the balance of probabilities. It stated: "We recognize that some have criticized this higher standard of proof as unreasonable, however, as we have stated, electoral disputes are not ordinary civil proceedings hence reference to them as <i>sui generis</i>. It must be ascertainable, based on the evidence on record, that the allegations made are more probable to have occurred than not .</li> </ul>			<p>service providers to ensure robust network and coverage during the elections, including ensuring that satellite backup is used in areas without 3G/4G network coverage</p> <p>11. Communications Authority of Kenya (CA) should work with telecommunications service providers to extend their 3G network coverages to cover all IEBC polling stations countrywide and specially to extend their network to the 1272 polling stations.</p> <p>12. IEBC should ensure that there's adequate communication to the public on the Results Transmission Systems to curb misinformation and disinformation by the political class.</p> <p>13. (a) Targeted efforts to equip the youth with education surrounding the electoral process would be key in increasing and encouraging the youth's participation in the next general election. Need to collaborate with the County Governments on provision of civic education. Civic education is a function of the County government and has allocated budget thus areas of commonalities need to be exhausted.</p> <p>14. (a) IEBC to be provided sufficient funds immediately after the end of the current electoral cycle and throughout the next one, to implement continuous voter education activities.</p> <p>15. Political parties should ensure that their internal procedures for complaints handling are clear, well- articulated and available to all members.</p> <p>16. Deploy a case management system to enhance efficiency</p> <p>17. Introduce a statute of limitations on election day-related legal action</p> <p>18. Enlarge time for resolution of presidential petition from 14 days to 30 days</p>			
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	<ul style="list-style-type: none"> <li>• Raila Odinga 2022, referred back to the standard of proof in the Raila Odinga 2013.</li> <li>• One important point to consider is that the Raila Odinga 2013 has been criticized by many courts including the apex court in Seychelles in Ramkawan vs Electoral Commission &amp; Others (SCA 1 of 2016) where the court stated: "If the standard is raised high in civil petitions which has only civil remedies and limited to cases only where the corrupt man is elected, then we are adding unnecessary hurdles in a democratic process. The answer in our view does not lie in changing the rule but ensuring that the rule is properly applied having regard to the principle of proportionality."</li> <li>• Most Commonwealth countries either adopt the civil or criminal without intermediate point e.g. UK, Canada, Australia, Scotland, Mauritius etc.</li> <li>• However, the Malawi apex court departed from this trend in Mutharika &amp; Another v Chilima &amp; Another where the court reasoned that: "Setting the standard too high for a petition to substantiate his grievance might impinge on the average(citizen)'s right to vote."</li> <li>• The Court further found it improbable that it could have been "the scheme of the law to saddle a petitioner with an onerous burden of proof in the discharge of the initial burden of, considering how the Malawian Constitution "views and guards the human rights of the people" alongside the "heavy duties both the Constitution and electoral statutes place on the Commission"</li> <li>• In addition, the Malawian Court adopted a position requiring the petitioner to: "discharge this initial burden of proof with a prima facie standard of proof, before the burden shifts to the Commission as a duty bearer. Once the burden so shifts, owing to the powers, functions, and duties the Constitution and the electoral statutes have conferred on the Commission, the Commission must discharge the burden of proof in rebuttal of the petitioner's allegations on a balance of probabilities".</li> </ul>			<p>19. The judiciary should invest in improved training to judicial officers on election dispute resolution to enhance skills such as on technology driven processes, knowledge base and efficiency of those tasked with election dispute resolution</p> <p>20. The Judiciary should improve on the prioritization and management of pre- election dispute cases to ensure that they are managed and determined efficiently and promptly bearing in mind the strict constitutional and legal timelines for elections.</p> <p>21. Judicial officers should remain mindful of the gains that Kenyans have made and realized through the promulgation of the Constitution 2010 and therefore should aim to promote the realization of the purposive and progressive spirit and gains in the Constitution rather than undermining them through retrogressive interventions and decisions.</p>			
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	<p>functions, and duties the Constitution and the electoral statutes have conferred on the Commission, the Commission must discharge the burden of proof in rebuttal of the petitioner’s allegations on a balance of probabilities”.</p> <ul style="list-style-type: none"> <li>• The Malawian approach is consistent with the purpose, text, and principles of Kenya’s Constitution on many grounds. First, the Constitution sets out national values and principles of governance including accountability, transparency, and openness which the High Court in <i>Katiba Institute &amp; 3 Others v Attorney General &amp; 2 Others</i> (2018) Eklr.</li> <li>• Therefore, the court must not adopt a standard of proof which makes it onerous to prove constitutional violations. Secondly, under Article 20(3)(b) the court must adopt the interpretation which most favors the enforcement of a right or fundamental freedom.</li> <li>• The apex court needs to clarify the law further on the applicable standard of proof against the post <i>Wetangula</i> case being amended section 87(1) alongside the Elections Offences Act, 2016.</li> </ul>						
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<p><b>Political Party Processes &amp; Campaign Financing</b></p>	<p>1. The Supreme Court proposed an extension of the constitutional timeline set aside for the determination of a Presidential Election Petition</p> <p>2. In addition to this, the commission proposed that this would be integral to not only identifying but addressing any potential foreseen setbacks that could easily be avoided prior to the election. In addressing this, the commission proposed an increasingly heightened engagement with both parliament and the senate in order to fast track important proposed legislation.</p> <p>3. Simultaneously, the enactment and review of electoral laws and regulations at least 24 months prior to the General Election in adherence to recommendations made by IREC and best international practice was suggested to be key in achieving the problems of delays in enactment of key legislation. If implemented, the Electoral Commission proposed that any changes made to legislation following the lapse of the 24 months should be rendered inapplicable to the current General Election. Resultantly, this would allow for not only a well thought out legal framework to be considered and put in place prior to the election, but would also allow for the necessary measures, structures and personnel to be put in place, trained and equipped for a more efficient electoral process.</p> <p>4. The IEBC tended to be more reactive rather than proactive in its communication with external stakeholders, at times only releasing crucial information on sensitive matters after problems had occurred.</p> <p>5. Moreover, whereas the IEBC made daily use of its social media accounts and established public information, call and press center at the NTC, its website was lacking important information and was not updated on a regular basis.</p>		<p>1(a) Extension of constitutional timeline is likely to allow for not only the efficient case management by the Court but would also afford the parties sufficient time to ventilate their cases.</p> <p>2(a) legal reforms be undertaken to tackle the problem of delays in the enactment of proposed amendments to existing legislation.</p>	<p>13. Need for political parties to improve and strengthen internal party governance and democracy to promote inclusivity and increase the participation of all members especially the special interest group.</p> <ul style="list-style-type: none"> <li>• Legislative drafting, increased advocacy and lobbying efforts for legislative change</li> <li>• Judicial engagements (legislative and non-legislative) on Chapter 6</li> <li>• Stakeholder engagements and public sensitization</li> <li>• PPDT tried to decentralize its services to 8 Regions during the 2022 Electoral Cycle through Ad hoc Members. There is a need to recruit and deploy Members of the PPDT on a permanent basis in the 8 Regions.</li> </ul>	<p>Accountable internal party processes including elections of party officials and nomination of candidates for elective positions. This includes keeping and using bona fide members' registers for critical decision-making activities such as part.</p> <ul style="list-style-type: none"> <li>• There is need to amend the provisions in the Constitution of Kenya to transfer the mandate of election disputes related to party nomination from IEBC to PPDT</li> </ul>	<ul style="list-style-type: none"> <li>• Need for parties to ensure compliance with the two-thirds gender rule in all party elective positions, in the nomination of candidates for elective positions and in all administrative and leadership organs of the parties.</li> <li>• Strengthen the internal party dispute resolution mechanisms to promote timely and fair adjudication of disputes.</li> <li>• Enforce code of conduct for political parties and candidates.</li> <li>• Train agents on monitoring voting procedures.</li> <li>• Promote political education</li> </ul>	
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	<p>6. In September 2021, the IEBC published the tender for the supply, delivery, installation, testing, commissioning, support and maintenance of KIEMS which was awarded to Smartmatics International Holding B.V.</p> <ul style="list-style-type: none"> <li>• The IEBC did not publish the evaluation either for this or the additional election technology- related public procurement processes, undermining transparency, and leaving room for speculation.</li> <li>• Moreover, while party agents and stakeholders were given the opportunity to observe the assembling of the</li> <li>• KIEMS kits and the IEBC published information on the security and contingency measures implemented in the KIEMS kits, no equivalent information was provided on the KIEMS backend applications used by the Constituency Returning Officers (CRO) and the National Returning Officers (NRO) nor on the hosting infrastructure, limiting stakeholders' capacity to assess the election technology.</li> </ul> <p>7. The EU EOM observed unequal performance of the kits raising questions on their maintenance sustainability.</p> <ul style="list-style-type: none"> <li>• For example, at the Constituency Tally Centers, the procedures were loosely followed resulting in many CRO not</li> <li>• Using the KIEMS application to generate the Form 34B, preventing the traceability of the operations carried out at that level and resulting in a variety of forms published on the Results Public Website.</li> <li>• Furthermore, the time needed to complete that process varied from one to three days, raising questions about the Efficiency, the integrity, and the transparency of the process.</li> </ul>						
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<b>Elections, Accountability, and Leadership &amp; Integrity in Elective Office</b>	<ul style="list-style-type: none"> <li>• Lack of trust/belief in ethical values by the society</li> <li>• Lack of clarity/overlaps on institutional mandates on enforcement of Chapter 6 in elections</li> <li>• Lack of an objective &amp; proper applicable standard on Chapter 6</li> <li>• The role of FBO in promoting peace and ethics (preventive, reactive and transformational)</li> <li>• Falsification and forgery of academic documents</li> </ul>	<ul style="list-style-type: none"> <li>• Civic education and awareness</li> <li>• Legal reforms to provide clarity on legal and institutional framework on Chapter 6</li> <li>• Jurisprudential action</li> <li>• Legislative reforms</li> </ul>	<ul style="list-style-type: none"> <li>• continued sustained civic engagement forums</li> <li>• Initiate multi-stakeholder dialogues for consensus on critical reform issues</li> <li>• Challenge jurisprudence on Chapter 6</li> <li>• Review of jurisprudence on issues relating to academic qualifications</li> </ul>		<ul style="list-style-type: none"> <li>• Legislative impact assessments,</li> <li>• Continued advocacy for reforms,</li> <li>• Legislative reforms to strengthen the requirements for academic qualifications for all elective positions</li> </ul>	<ul style="list-style-type: none"> <li>• PPDT</li> <li>• Parliament</li> <li>• Political Parties &amp; Coalitions</li> <li>• Civil Society Organizations</li> </ul>	TI-Kenya URAIA Katiba
<b>Elections and Peace, Cohesion &amp; Mediation</b>	<ol style="list-style-type: none"> <li>1) Religious leaders are important actors in ensuring peaceful and credible Elections, this is mainly because of their moral authority together with broad institutional networks and command.</li> <li>2) Faith based Organizations through their structures and influence are strategically positioned to enhance peace during and after Elections.</li> <li>3) Inadequate peace and civic education.</li> <li>4) Lack of Trust in IEBC and division within the commission as a threat to peace and national cohesion.</li> <li>5) Ethnic political mobilization for selfish political gains.</li> <li>6) Manipulation of youths by politicians for selfish interest in exchange of financial assistance.</li> </ol>	Pastoral care to Political leaders especially the trouble makers where identified leaders are attached to religious leaders to talk to them whenever they engage in divisive politics	Training and accreditation of more youths towards the observation of 2027 GE. Using youth as agents of peace to shun divisive politics.			NCIC, IEBC, DCI, MPs, MCAs, Governor, Executive Parliament, IEBC, Political parties	KCCB, NCCK, SUPKEM, IRCK DRG, CDRG
<b>Media Coverage on Elections;</b>	1. Disjointed media efforts especially around the tallying of results/results transmission	1. One secretariat to handle joint transmission premised on the Presidential Debate coordination	1. Analyse the infrastructure needed to run a joint tally	1. Establish secretariat to begin work early. 2. Develop guiding framework on guiding media houses, media owners and journalists on party politics		1. MCK (MOA)	1. KEG

<p><b>Hate Speech, Fake News,</b></p>	<p>2 .Media stand on political camps support vis-à-vis security of journalists</p>	<p>2. Disconnect media house/media owner support vs. stand of the journalist Fact Checking and debunking</p>	<p>2.Review editorial policies on election coverage Media house invest in digital literacy and fact checking</p>			<p>(MOA) 2.MCK Stakeholders Working Group KCA</p>	<p>2.KEG Media Stakeholders Working Group KCA</p>
<p><b>Elections and Special Interest Groups</b></p>	<p>WOMEN.</p> <ul style="list-style-type: none"> <li>• Women’s disinterest in elections (Women made up 49.12% of the 22,120,458 registered voters, despite constituting 51% of the population.)</li> <li>• The number of women seeking elective office in the 2022 elections increased when compared to the 2017 elections, but the number of women cleared to run remains low in comparison to men.</li> <li>• The IEBC cleared and registered 1,962 candidates to run for various elective positions in the 2022 elections, accounting for 12.8% of the total.</li> <li>• In addition, three of the presidential candidates in the 2022 election named women as their running mates, and the number of women running for governor positions more than doubled compared to the 2017 elections.</li> <li>• In the 9th August 2022 elections, Kenyans elected 30 female Members of the National Assembly, up from 23, in the 2017 elections, 7 female governors, up from 3, in the 2017 elections, and 3 female senators, the same number as in the 2017 elections,</li> <li>• There is no legislation for politically motivated SGBV.</li> <li>• IEBC’s jurisdiction in enforcing the Electoral Code of Conduct Socio Cultural issues - Some women do not have access to their own identification (Husbands are custodians of voting documents)</li> </ul>	<p>Legal, Policy, Administrative,</p>		<ol style="list-style-type: none"> <li>1. Restructuring Kenyan political parties to include minorities and the marginalized.</li> <li>2. Implementation of the policies governing diaspora registration process</li> <li>3. Develop an online registration system that can allow registration of voters worldwide.</li> </ol> <p><b>CREATE A TASK FORCE FOR THE SIG</b></p> <ol style="list-style-type: none"> <li>1. Kenya Prisons to facilitate transfer of prisoners back to their registered voting centers</li> <li>2. Need for a National dialogue, to re- evaluate the electoral system and infrastructure, including the EMB model in Kenya with a view to identifying a system and infrastructure that best suits the political dynamics and nuances in Kenya.</li> </ol>	<ol style="list-style-type: none"> <li>1. Enhanced voter and civic education on the importance of voting throughout the election cycle.</li> <li>2.. Women’s meaningful participation, involvement, and inclusion in political parties (Empowered female party leaders and transparency within political parties)</li> <li>3. Review the Election Offenses Act</li> </ol>	<p>IEBC, County Government</p>	<p>FIDA-Kenya</p>

	<p><b>YOUTH.</b></p> <ul style="list-style-type: none"> <li>• Out of the total number of registered voters for the 2022 elections, the registered youth voters aged between 18-35 years stood at 39.84%, which was a 5.27% decline compared to 2017.</li> <li>• Lack of sufficient information on voter registration resulting to low registration of youth (number of registered male youth voters decreased by 2.89% while the number of registered female youth voters decreased by 7.75% as compared to 2017). Lack of patriotism</li> <li>• Candidates, who often have lower resources, face significant challenges due to the lack of campaign finance regulations that set spending limitations.</li> <li>• Youth under-representation in governance structures hinders the development of accountability mechanisms.</li> </ul>	Nature of reform Administrative			<ol style="list-style-type: none"> <li>1. More civic education is required to raise awareness of the importance of voting and electoral engagement, which would increase the number of ballots cast and reverse voter apathy in general elections.</li> <li>2. Election campaign financing laws and regulations are fully implemented. This will lead to reverse the transactional participation model</li> <li>3. Improving accountability mechanisms to ensure youth participation in and influence over governance structures.</li> </ol>	County government, NGEC and Ministry of Youth Affairs	ELGIA
	<p><b>PWDS</b></p> <ul style="list-style-type: none"> <li>• Many PWD are subjected to the same requirements as able bodied</li> <li>• Inaccessibility to polling stations, lack of tactile ballot papers, standardized voting booths</li> <li>• Lack of inclusive environment</li> <li>• Insecurity, lack of evacuation measures in cases of violence for both candidates and voters.</li> <li>• The level of inclusion and participation of PWDs in the 2022 elections remained dismal</li> <li>• The efforts made by political parties to include and involve PWDs in internal party affairs and activities and elections remained largely tokenistic. (22 counties do not have PWD representation which is a drop from 17 counties)</li> <li>• People with disabilities are frequently restricted to discussing exclusively issues related to their disabilities and are not always treated seriously.</li> </ul>		1. Educating PWDs on political parties so that they can understand IEBC procedures.		<ol style="list-style-type: none"> <li>1. Pass pending legislation, such as the SIG Amendment Bill.</li> <li>2. Improve the ability of Kenyan political parties to include people with disabilities, for example a 5% representation of poll workers</li> <li>3. Improve Kenyan CSOs' ability to advocate for PWDs' political participation by allowing them to form part of specialized PWD committees.</li> <li>4. The IEBC must evaluate, review, and improve mechanisms and protocols at polling centers and polling stations in order to accommodate people with disabilities and the elderly and improve their access to these locations.</li> </ol>	IEBC	Legal Resources Foundation (LRF) Judiciary

	<ul style="list-style-type: none"> <li>• Lack of knowledge and exclusion from the initial voting process prevents them from being registered in the voters' register, which restricts their ability to participate in the election.</li> <li>• Many people with disabilities have not had the same opportunities to attend school and receive an education, which not only results in a lack of capacity.</li> <li>• The IEBC proactively included PWDs in the elections by increasing the registered PWDs to 8.7% out of the total registered voters for the 2022 elections.</li> <li>• For the first time, the IEBC allowed older PWD voters to update their disability status in the register.</li> <li>• The IEBC for the first time deliberately documented the disability status as well as the nature of disability of newly registered voters.</li> <li>• The IEBC included creating and availing voter education materials in Braille format and deployment of sign language interpreters as voter educators.</li> </ul>				<p>5. The IEBC must develop protocols that allow for the proper capture of details and nature of disability for people living with disabilities, the elderly, and special interest groups in the voters' register, as well as their accommodation during elections, in order to promote inclusivity in electoral processes. This should include the availability of Braille voting materials, special voting booths, responsive signage, and sign language interpreters.</p>		
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	<p><b>MINORITIES &amp; MARGINALIZED COMMUNITIES</b></p> <ul style="list-style-type: none"> <li>• Disempowerment: Those with political interests exploit the illiterate.</li> <li>• Many candidates feel abandoned by their parties' disregard for the constitution's inclusionary clauses, claiming that party rules and regulations do not help them.</li> <li>• Parties intentionally mislead or fail to inform minorities about the necessary dates and procedures for running for office, preventing them from doing so.</li> <li>• Negotiated democracy, in which powerful people compile and endorse a list of preferred candidates, has historically kept them out of politics.</li> </ul>				Making specific laws for minorities to increase their participation.		LEAD CSOs
	<p><b>PRISONERS</b></p> <ul style="list-style-type: none"> <li>• They are barred from exercising their voting rights.</li> <li>• Because the vast majority of them lack identification, they are unable to register to vote.</li> <li>• They are limited to only vote for the presidential candidate</li> <li>• Administrative process like transfers deny them the right to vote</li> <li>• Prisoners do not get adequate voter, civic and political education</li> </ul>		<ol style="list-style-type: none"> <li>1. Facilitate the issuance of identification cards to prisoners and the registration of prisoners to vote</li> <li>2. Deliberate planning for voter, civic and political education for prisoners</li> </ol>		<ul style="list-style-type: none"> <li>• Advocate for prisoners' right to vote for all political seats</li> </ul>	Kenya Prisons Service	
<b>Elections and Voter Registration</b>	<p>1(a) With regards to efforts towards inclusivity, the commission noted that there was limited awareness among staff on the implementation of gender and social inclusion policy. This would of course hamper or limit any significant gains towards gender inclusivity despite the need for more efforts to attain and sustain it within the electoral process.</p>	Admin		<ol style="list-style-type: none"> <li>1. In order to build a culture that values democratic processes, young people must be engaged, particularly while they are still in basic learning institutions.</li> <li>2. The IECB should begin collecting evidence-based data on the drivers and factors that breed public apathy and disillusionment with political and electoral processes. This will allow the IECB to develop and implement tailored responses and solutions that will increase and promote citizens' interest, engagement, and participation in these critical democratic processes.</li> </ol>	1 (a) The training of electoral staff to be improved, especially of the presiding officers.	1 (a) IECB, 2 (a) Parliament/Judiciary	ELGIA, ELOG, CRECO



				<p>3. Voter education that is targeted is required.</p> <p>4. Must comprehend the significance of affirmative action and why it is critical for all stakeholders.</p> <p>(a) Increase community awareness. For a 5% representation of poll workers</p> <p>(b) The need for a multi-stakeholder approach involving national and government actors to make it easier for young people to obtain ID cards.</p>	<p>2 (b) Consideration could be given to complement regular training before elections with a knowledge- based online system for all IEBC staff.</p>		
	Voter apathy	Administrative	<p>Provide targeted continuous civic/voter education to citizens in and out of the country on the need to register as a voter and vote</p> <p>IEBC to utilize online platforms – face book, twitter etc. to disseminate Voter education messages</p>	<p>Provide targeted continuous civic/voter education to citizens in and out of the country on the need to register as a voter and vote</p> <p>National treasury through the parliament to provide adequate finances to facilitate the implementation of continuous civic/voter education</p>	<p>Provide targeted continuous civic/voter education to citizens in and out of the country on the need to register as a voter and vote</p>		
<b>Low Coverage of Diaspora Registration</b>	Legal		<p>Amend the 1st Schedule of the Constitution to provide for the 48th Diaspora County and subsequent additional constituency for diaspora.</p>				
			<p>The Ministry of Foreign Affairs (MFA) to seek support of the Kenya National Bureau of Statistics (KNBS) and ensure that a Housing and Population Census for citizens in the diaspora is undertaken next year in August</p> <p>Ministry of Foreign Affairs and KNBS establish and maintain a structured engagement with diaspora non-state actors to support in acquisition of diaspora data</p>				

			<p>The Ministry of Foreign Affairs (MFA) to seek support of the Kenya National Bureau of Statistics (KNBS) and ensure that a Housing and Population Census for citizens in the diaspora is undertaken next year in August</p> <p>Ministry of Foreign Affairs and KNBS establish and maintain a structured engagement with diaspora non-state actors to support in acquisition of diaspora data</p>				
			<p>Review existing Diaspora policy to take into cognizance the context and challenges that Kenyan in the diaspora face in their quest to exercise their voting rights to inform the diaspora voter registration and voting procedures E.g. voting by proxy or advance voting to address the issue of time zones.</p>				
		<p>IEBC to strengthen collaboration with electoral stakeholders such as Uraia to develop effective and efficient continuous online platforms for diaspora voter education.</p>	<p>IEBC to strengthen collaboration with electoral stakeholders such as Uraia to develop effective and efficient continuous online platforms for diaspora voter education.</p>	<p>IEBC to strengthen collaboration with electoral stakeholders such as Uraia to develop effective and efficient continuous online platforms for diaspora voter education.</p>			
<p><b>Under registration of Women Voters</b></p>	<p>Administrative; policy</p>	<p>Implement targeted voter education for women.</p> <p>Have targeted sensitization fora for men to change their attitudes towards women rights and women empowerment.</p>	<p>Implement targeted voter education for women.</p> <p>Have targeted sensitization fora for men to change their attitudes towards women rights and women empowerment.</p>	<p>Implement targeted voter education for women.</p>		<p>IEBC</p>	

	Low registration rates for the youth	Admins/ policy	Initiate and maintain youth friendly voter education strategies especially targeting those coming of age (18-19yrs)	Initiate and maintain youth friendly voter education strategies especially targeting those coming of age (18-19yrs)		IEBC	
		Admin/ policy	<p>National Registration bureau to explore ways of issuing ID Cards to students 18 years before they leave high school.</p> <p>Location of registration centers in institutions of learning such as universities and Colleges</p> <p>Engagement of youth as election officials and observers</p> <p>Encourage the youth to enroll to Governance, Leadership and Elections programmes</p>	<p>National Registration bureau to explore ways of issuing ID Cards to students 18 years before they leave high school.</p> <p>Location of registration centers in institutions of learning such as universities and Colleges</p> <p>Engagement of youth as election officials and observers</p> <p>Encourage the youth to enroll to Governance, Leadership and Elections programmes</p>	<p>National Registration bureau to explore ways of issuing ID Cards to students 18 years before they leave high school.</p> <p>Location of registration centers in institutions of learning such as universities and Colleges</p> <p>Engagement of youth as election officials and observers</p> <p>Encourage the youth to enroll to Governance, Leadership and Elections programmes</p>		

<b>Elections Administration and Management</b>	IEBC suffered deficits in public trust and confidence, but made efforts to improve	Admin	Undertake an independent review of the 2022 electoral process:	1. Changes in behavior and attitudes to eliminate the entitlement mindset.	Need for a National dialogue, to re-evaluate the electoral system and infrastructure, including the EMB model in Kenya with a view to identifying a system and infrastructure that best suits the political dynamics and nuances in Kenya.		Uchaguzi platform members
		Legal	Need for a National dialogue, to re-evaluate the electoral system and infrastructure, including the EMB model in Kenya with a view to identifying a system and infrastructure that best suits the political dynamics and nuances in Kenya.	<ul style="list-style-type: none"> <li>• Amend the IEBC Act to provide for the creation of IEBC Fund, equivalent to</li> <li>• Operationalize IEBC Fund</li> <li>• Operationalize IREC report recommendation to have a commission in place at least 2 years before an election</li> <li>• Amend article 140 (1 &amp; 2) of the constitution to increase the timeline for filing, hearing and determination of the presidential elections within 30 days.</li> </ul>		IEBC	
	Budgetary and funding delays and shortfalls.	Admin	Funding to the IEBC to take an electoral cycle approach			Parliament	Uchaguzi Platform Members
	Bloated elections budget - High Cost of Elections (Kshs.2500 per voter in 2017 and Kshs. 2000 per voter in 2022)	Admin			Amends to Constitution and Elections Act for consideration of alternate forms of voting (long-term)	Parliament, IEBC	Uchaguzi platform members
	Delayed and last-minute attempts to amend and reform critical electoral laws.	Legal	Enact and review electoral laws and regulations 24 months before the General Election in line with IREC recommendations and best international practices.			Parliament, IEBC	Uchaguzi platform members

	High turnover of Commission staff, Delayed/late appointment of Commissioners.	Administrative	Having the four (4) commissioners appointed into office			Parliament	Uchaguzi Platform
	Some critical SoPs not relayed to polling staff e.g. handling of the manual register and Forms 34A Book 1 of 1 and Book 2 of 2.	Policy	IEBC to develop comprehensive SOPs to be used by its field staff			IEBC	Uchaguzi Platform
	<b>Remarkable handling of nominations disputes - out of the three hundred and twenty-five (325) cases that were lodged with the IEBC DRC, 39 complaints (12%) were allowed, 269 complaints (82.7%) were summarily dismissed for want of jurisdiction, prosecution and on merit, 17 cases (5.2%) were withdrawn, and 31 cases proceeded to the High Court.</b>	Constitutional			Constitutional amendments to streamline EDR processes with IEBC delinked from hearing and determination of petitions arising from nominations.	Parliament	Uchaguzi Platform
	Constrained timelines for the filing and determination of presidential elections petition					Parliament	Uchaguzi Platform
	Lack of strategies to enhance the voting rights of those who are not able to cast their votes on Election Day e.g. Observers, Security officers, those who are hospitalized etc.		Amend the Elections Act 2011 to provide for advanced voting (Introduce early voting)			Parliament	Uchaguzi Platform-ELGIA

<p><b>Hate Speech, Fake News,</b></p>	<p>1. Classification of electoral disinformation. Cybersecurity threat? Electoral fraud and offense? Terrorism? Election interference and targeted disinformation campaigns on voter fraud are a real threat in elections. 2018 Brazil elections, 2020 US Presidential elections – January 6 Capitol attack, Ukraine and Russia. There is a need to put a tag on it.</p> <p>2. The ferocity of the advances in AI. Fast, furious and scary. Google launched Bard AI on 7th February to rival CHATGPT, launched in November 2022 by OpenAI. ChatGPT - a search engine, can also be used to generate essays and even code in a matter of seconds, it requires a very small amount of contextual input from the user, and creates a result of text mimicking human language to an extreme likeness. In the hands of bad actors, these technological advancements can have detrimental outcomes.</p> <p>3. Cognitive hacking: a cyberattack that seeks to manipulate the perception of people by exploiting their psychological vulnerabilities and cognitive biases. It takes away the ability to think critically. 'Baba amesema', radicalization, erosion of public trust, zombified citizenry, rise of 'alternative facts' that characterized Trump's administration.</p>	<ul style="list-style-type: none"> <li>• Legal reform to classify electoral mis-disinfo as a serious crime</li> <li>• Data sovereignty</li> <li>• Government intervention (not regulation) to ensure that social media companies adhere to their own rules (but not government overreach)</li> <li>• Policymakers should focus on regulating the platform, not subject matter</li> </ul>	<p><b>1. Policymakers should focus on regulating the platform, not subject matter.</b> The distribution of online content rather than the subject matter itself, which may have implications for freedom of speech.</p> <p><b>2. Coordinated technical response to electoral mis disinfo.</b> Dedicated research arm/academia/policy analyst/constitutional commission to checker advancements in technology that might promote exponential spread of mis-disinfo.</p> <p><b>3. Educational campaigns and media literacy</b> – Stop. Reflect. Verify to help people spot and report mis/disinformation and fake news.</p> <p>4. There should be government intervention (not regulation) to ensure that social media companies adhere to their own rules (but not government overreach)</p>	<p><b>1. Intersectionality approach;</b> All forms of freedoms and rights are mutually reinforcing and must therefore be analyzed and addressed simultaneously to prevent one form of freedom from infringing on another right. Untangle the lines that create the complex web of contention between freedom of speech and reining in on mis-disinfo. <b>The disinformation debate needs to be reformulated to cover systemic issues rather than merely technical or security concerns.</b> A lag in regulatory development has led to systemic vulnerabilities. In this context, policymakers need to push for more evidence-based analysis, which is only attainable if technology companies engage in honest debate and allow meaningful access to data – as determined by government appointed researchers rather than the companies themselves – considering and respecting users' privacy.</p> <p>2. Legacy media need to urgently consider the issue of '<b>strategic silence</b>', and avoid being co-opted by political actors aiming to manipulate the accelerated, reactive news cycle by engaging in divisive 'clickbait' rhetoric verging on disinformation and propaganda. When strategic silence is not an option, contextual analysis is fundamental.</p>	<p><b>1. Data sovereignty;</b> Data governance and security needs to be the focus of attempts to tackle disinformation. Data's implications for information, market and power asymmetries, feed into and exacerbate the problem.</p> <p><b>2. To legislate or not?</b> Approaches to disinformation from a legal perspective include topics such as censorship vs. free speech, company liability for content as reflected in Communications Decency Act, privacy of individual data, anti-trust legislation, surveillance, regulating social media platform functionality and algorithms, and pursuit of existing criminal law. We must avoid rushed regulation that may condone enhanced surveillance or censorship.</p>	<p>Public sector actors</p> <ul style="list-style-type: none"> <li>• Communications Authority (CA)</li> <li>• Independent Electoral and Boundaries Commission</li> <li>• Judiciary of Kenya</li> <li>• Kenya Copyright Board</li> <li>• Kenya Film Classification Board</li> <li>• (KFCB)</li> <li>• Kenya National Commission on Human Rights (KNCHR)</li> <li>• Media Council of Kenya (MCK)</li> <li>• Ministry of ICT, Innovation and Youth Affairs</li> <li>• Ministry of Interior</li> <li>• National Cohesion and Integration</li> </ul>	<p>CRECO/ EL OG, KICTANET, USHAIDI, MICAKATI</p>
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<p>4. Self-regulation is not working. In the past, countries have opted to encourage the large internet platform companies to self-regulate fake news, for example by signing them up to a Code of Practice on Disinformation, community standards. These initiative commits the companies, including Meta, Google, Twitter, TikTok and Microsoft, to close down fake accounts and demonetize the spread of disinformation. Recent events such as the rise of fake news during elections have however persuaded many governments that these approaches don't go far enough.</p> <p>5. Freedom of speech equals NOT the Freedom of reach/ algorithms; Policymakers should Look away from content creators and focus on regulating platform power as a more efficient way to do more about disinformation.</p> <p>6. 5b. Current flaws that affect content moderation practices on main social media platforms, such as a lack of country-level data on content moderation; algorithms that prioritize and amplify extreme, divisive, and polarizing content; low public awareness and limited access to content rules in local languages; ineffective complaint mechanisms and remedies; marginalization and exclusion of communities; lack of consideration for the various dimensions of the local context in content moderation practices; and inconsistent application enforcement of content rules.</p> <p>7. There's an assumption that fake news/mis-disinfo exacerbates polarization. But it might be the case that polarization exacerbates fake news. Chicken and egg. But I think it's extremely hard to extend baseless hate/ disinformation/violence close up.</p> <p>8. The global nature of mis-disinfo. Permeable boundaries. Global village.</p> <p>9. Gendered mis-disinfo; mansphere – Andrew Kibe, Amerix. Women in politics are disproportionately targeted by gendered disinformation campaigns that feature fake stories and threats, as well as humiliating and sexually charged images. The goal of these attacks is to frame female politicians and government officials as inherently untrustworthy, unintelligent, or too emotional or libidinous to hold office or participate in democratic politics.</p> <p>10. Disinformation is mainly the result of <b>inefficient gatekeeping of highly extractive digital companies</b>. The old gatekeepers, journalists and their respective regulators, need to be actively engaged in devising the new regulatory framework.</p>		<p>5. Given the global nature of electoral mis-disinfo, develop regional joint advocacy, communication, and engagement strategies; Such a coalition could be a useful platform to organize, engage, and co-create local, strategic solutions and responses to tackle the spread of problematic content on social media in Kenya. These conversations feed into the global initiatives. A COP 27 sort of a platform, for disinformation.</p> <p>6. It is critical for stakeholders to hold platforms accountable for their human rights impact, including on their transparency in complaints handling, flagging of content from the region, handling content affecting marginalized and vulnerable groups, and the measures in place to promote awareness of the content policies and internal complaints and reporting mechanisms.</p>			<p>Commission (NCIC)</p> <ul style="list-style-type: none"> <li>• National Communications Secretariat</li> <li>• National Cybercrimes Coordination Committee (NC4)</li> <li>• National Gender and Equality Commission (NGEC)</li> <li>• National Police Service – Cybercrimes Unit</li> <li>• National Steering Committee on Peace Building and Conflict Management</li> <li>• Office of the Attorney General (OAG)</li> <li>• Office of the Director of Public Prosecutions (ODPP)</li> </ul> <p>Social media companies</p> <p>Academia</p> <p>Private actors</p>	
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## CONSOLIDATED MATRIX OF 2022 KENYA ELECTION OBSERVATION FINDINGS AND RECOMMENDATIONS FROM EU-EOM, ELOG, IRI/NDI AND CARTER CENTER OBSERVATION REPORTS

### EU EOM

Theme	Findings	Recommendations
<b>Legal Framework</b>	<ul style="list-style-type: none"> <li>• While Kenya has ratified many regional and international treaties, there are still some treaties it has not acceded to, such as the International Labor Organization (ILO) Indigenous and Tribal People's Convention and the Convention on the Reduction of Statelessness.</li> <li>• Some constitutional principles, particularly those related to the right to vote and stand for election, have not been fully realized due to the absence of implementing legislation.</li> <li>• Electoral Legislation</li> <li>• Limited progress has been made in electoral law reform, with Elections (Amendment) Bills and draft Elections Regulations introduced but not enacted by parliament.</li> <li>• The Campaign Financing Act, aimed at regulating campaign financing and expenditure, has faced obstacles in its implementation.</li> <li>• The enactment of the Data Protection Act, 2019, and the Political Parties (Amendment) Act, 2022, represents the only significant progress in electoral law reform.</li> <li>• Financial Independence and Transparency</li> <li>• The IEBC's financial independence is secured through a budget allocated by the parliament and paid into a specialized fund.</li> <li>• However, insufficient funds were allocated for important activities, such as voter education, leading up to the elections.</li> <li>• The IEBC Act allows for funds from grants, donations, or other endowments, but the government's request for international support was made late.</li> <li>• Lack of transparency in the allocation of funds and delays in securing necessary resources were identified as issues.</li> <li>• Administration of Elections</li> <li>• There were areas for improvement in training, especially for presiding officers, and the possibility of implementing a knowledge-based online system.</li> <li>• The IEBC's communication strategy was deemed reactive rather than proactive, with delays in releasing crucial information and irregular website updates.</li> <li>• Uncertainties in election day procedures arose due to delayed decisions and prolonged litigation, causing confusion among stakeholders.</li> <li>• Controversial decisions, such as the use of printed voter registers and additional safeguards for electronic voter identification, led to challenges and court rulings.</li> <li>• The use of scanned results from images and the paper trail contributed to the verifiability and transparency of the process.</li> <li>• Efforts were made to address connectivity issues at polling stations without 3G/4G, improving connectivity for 2022 elections.</li> <li>• Electoral Expenditure and Misconduct</li> <li>• The 2022 election was one of the most expensive in the world, with a total cost of KSH 44.6 billion and an average cost of about KSH 2,000 per voter.</li> <li>• Instances of misconduct were observed, such as the arrest and dismissal of polling station staff in Ndhiwa, Webuye East, and Webuye West Constituencies.</li> </ul>	<p><b>Priority Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Provide sufficient funds to the Independent Electoral and Boundaries Commission (IEBC) immediately after the current electoral cycle and throughout the next one, for implementing continuous voter education activities.</li> <li>• Implement improvements in election technology based on regular audits and stakeholder consultations, ensuring consistency and transparency.</li> <li>• Operationalize the Election Campaign Financing Act to regulate the amount of money received and spent by candidates and political parties during elections or referendums.</li> </ul>
<b>Voter Education</b>	<p><b>Findings</b></p> <ul style="list-style-type: none"> <li>• Insufficient voter education</li> <li>• Delayed funds impact voter education:</li> </ul>	



	<ul style="list-style-type: none"> <li>• Funding challenges: parliament allocating 30 million annually for voter education. In the year before the 2022 elections, although the department received a significantly increased budget of KSH 1.1 billion, it was considered too late to have a strong positive impact on the electorate.</li> <li>• Limited logistical support and the inability to reach remote areas hampered voter education activities.</li> <li>• Inclusivity efforts: By November 2021, the IEBC had established the Women Coordinating Committee, Disability Inclusion Coordination Committee, and Youth Coordinating Committee.</li> <li>• The IEBC collaborated with the Ministry of Education and the Kenya University Student's Association to train 2 university trainers for voter education per campuses across the 84 universities in the country.</li> <li>• Braille materials were produced to ensure inclusivity.</li> </ul>	<ul style="list-style-type: none"> <li>• Introduce procedures for special voting of election officials, security personnel on duty, homebound and hospitalized voters, as well as nomadic pastoralists, if necessary, allowing them to vote in a different location from where they registered, while ensuring security measures to prevent multiple voting.</li> </ul>
<p><b>Electoral Technology</b></p>	<ul style="list-style-type: none"> <li>• Effective communication and transparency regarding the implementation of the Kenya Integrated Election Management System (KIEMS)</li> <li>• The legal framework, including the Elections Act and Elections Technology Regulations, establishes the use of an integrated electronic electoral system with specific guidelines for adoption, maintenance, security, and governance.</li> <li>• The tender and contracting process for KIEMS faced legal challenges and delays in implementation, as the contract was awarded to Smartmatic International Holding B.V.</li> <li>• Lack of transparency in procurement processes, such as the KIEMS tender, led to speculation and a lack of transparency due to the non-publication of evaluation reports.</li> <li>• Implementation challenges included delays, deficient planning, and coordination issues, along with discrepancies between tender documentation and the legal framework.</li> <li>• Logistics and coordination issues, including delayed launches, arrests, and poor planning, affected the preparation of KIEMS kits and the hosting infrastructure</li> <li>• Security vulnerabilities were discovered in the Register of Voters and the BVR system, highlighting weaknesses in access control and data privacy regulations.</li> <li>• Limited information sharing about audits, backend applications, and simulation exercises undermined public confidence and assessment of the election technology.</li> <li>• Unequal performance and sustainability of KIEMS kits raised concerns about maintenance and long-term viability.</li> <li>• Transparency in results transmission was achieved for presidential results forms, with a high publication rate within 24 hours, contributing to the transparency of the counting process.</li> <li>• Issues at Tallying Centers, including failure to use KIEMS applications and variations in published forms, raised questions about traceability, efficiency, integrity, and transparency.</li> <li>• Limited observation at the National Tallying Centre prevented assessment of the final step of the tallying process, as access was not granted to observe the results consolidation</li> </ul>	<ul style="list-style-type: none"> <li>• Detail the legal definition of hate speech in legislation, aligning it with international human rights obligations by considering both intention to incitement and imminent violence.</li> <li>• Remove section 22 and 23 of the Computer Misuse and Cybercrimes Act, exploring alternative measures to address disinformation effectively.</li> <li>• Introduce clear and detailed procedures for managing staff and information flow at tallying centers to enhance consistency, efficiency, and public display of aggregated results. Ensure the uploading of all results forms to the public portal for verifiability.</li> </ul> <p><b>Additional Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Enact constitutional affirmative action provisions, including the application of the 2/3 gender principle, representation of persons with disabilities (PwD), and inclusion of marginalized ethnic minorities.</li> <li>• Consider removing restrictions on the right to stand for elections for persons with intellectual disabilities and educational degree requirements.</li> </ul>

<p><b>Voter Registration</b></p>	<ul style="list-style-type: none"> <li>• The IEBC conducts voter registration using the KIEMS system, but factors such as lack of interest, limited funding, delayed funding and insufficient sensitization efforts resulted in a lower number of registered voters than projected.</li> <li>• Newly eligible voters within the 60-day cutoff period before the elections are disenfranchised, preventing their participation in the electoral process.</li> <li>• Gaps in registration were attributed to lack of interest, inadequate sensitization targeting specific groups, and delayed and limited funding, leading to underrepresentation of youth, women, and persons with disabilities in the voter register.</li> <li>• Politically motivated transfers and irregular transfers were reported, indicating potential issues with integrity.</li> <li>• Special voter categories, such as election officials, security forces, and nomadic pastoralists, were not provided with special voting provisions, resulting in de facto disenfranchisement.</li> <li>• An audit of the voter register by KPMG revealed exceptions and anomalies, including duplicate or missing IDs, invalid reference numbers, and discrepancies with census data, raising concerns about accuracy.</li> <li>• The requirement to submit copies of identity cards during candidate registration was deemed unconstitutional, leading to the quashing of relevant regulations.</li> <li>• Assumptions were made to estimate registration rates, and discrepancies were observed in some constituencies where estimated rates exceeded 100%.</li> <li>• Litigation occurred regarding educational qualification requirements for candidacy, with a requirement for a degree struck down for some positions but remaining in place for others.</li> <li>• Integrity issues and disqualifications were reported, but only a small number of candidates were disqualified, with ongoing legal appeals affecting enforcement.</li> <li>• Not all registered political parties participated in the elections, with 83 parties cleared by the IEBC to nominate candidates.</li> <li>• Azimio La Umoja was introduced as a new coalition political party through an amendment to the Political Parties Act.</li> </ul>	<ul style="list-style-type: none"> <li>• Amend the Constitution and relevant legislation to remove discriminatory language, such as “unsound mind” and the educational degree requirement for running in elections.</li> <li>• Strengthen the ban on public resources being used for campaigning, including by removing exemptions for cabinet secretaries and members of county executive committees. Ensure political neutrality.</li> <li>• Impose deadlines for appeals against candidate nomination decisions and restrain cases against the IEBC to the High Court Constitutional Bench within two months before election day, with exceptions for urgent matters.</li> </ul>
<p><b>Campaign Environment</b></p>	<ul style="list-style-type: none"> <li>• • Respect for Fundamental Rights: The election campaign demonstrated a general respect for fundamental rights, allowing contestants to openly campaign and convey their messages to voters.</li> <li>• • Peaceful Campaign with Some Tensions: The campaign was largely peaceful, but tensions and sporadic violence arose in specific places due to local competitions between candidates from different alliances.</li> <li>• • Hybrid Power Constellation: The election featured a hybrid power constellation, with both candidates having elements of incumbency and opposition.</li> <li>• • Focus on Socio-Economic Issues: The campaigns primarily centered around socio-economic issues, with Ruto emphasizing his fight against political dynasties and Odinga highlighting multi-party systems and anti-corruption efforts.</li> <li>• • Allegations of Corruption and Misuse of Incumbency: The campaign witnessed allegations of corruption against Ruto and counter allegations of “state capture” through Kenyatta and Odinga. Misuse of incumbency was also noted, with public officials actively supporting specific candidates.</li> <li>• • Misuse of State Resources: Observers noted the misuse of state resources by campaigning officials, including the use of vehicles and facilities for campaign purposes by government officials.</li> <li>• • Unregulated Use of Money in Politics: The distribution of money in direct handouts to organizers, supporters, and event attendees was observed, contributing to increased campaign spending.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide continuous, comprehensive, and prompt information to election stakeholders, undertake regular stakeholder consultations, and enhance the training of electoral staff, including presiding officers.</li> <li>• Improve public communication on procurement processes, election technology suitability and security, voter registration and identification, and results management processes.</li> </ul>

**Media****Media Environment**

- Media Landscape: Major media houses with political and business ties control influential media groups, leading to concentrated media ownership.
- Impact of the Pandemic: Media houses faced challenges during the pandemic, and became more reliant on state advertising, impacting its independence.
- Efforts by the Media Council of Kenya: The Media Council of Kenya implemented initiatives to enhance reporting standards and address capacity gaps.
- Freedom of the Press: Overall, freedom of the press was respected in Kenya, but journalists faced pressures from media owners regarding political coverage.
- self-censorship was practiced by some journalists when reporting on corruption or sensitive political issues, indicating limitations on press freedom.
- Attacks on Journalists: The Political Journalists Association of Kenya expressed concerns about increased attacks on media practitioners and profiling of journalists during the campaign.
- Harassment, threats, and ejections from political meetings were reported.
- Alleged biases among journalists and media owners for a particular party.

**Legal Framework for the Media**

- Freedom of Expression: The legal framework in Kenya upholds freedom of expression, although concerns exist regarding limitations defined in the Constitution.
- The broad definition of “advocacy of hatred” and the vague definition of hate speech in the National Cohesion and Integration Act raise concerns about potential restrictions on media freedom.
- The High Court of Kenya’s ruling declaring the provision on criminal defamation unconstitutional is a positive development. However, defamation and libel are still considered misdemeanors, which can result in jail terms, presenting challenges for media practitioners.
- Access to Information: The Access to Information Act 2016 establishes a framework for proactive disclosure and information requests from public entities and private bodies. However, the lack of implementing regulations hinders effective access to information, requiring the government’s attention for full implementation.
- Regulatory Bodies: The Communications Authority of Kenya regulates frequency spectrum usage and licensing, ensuring efficient communication infrastructure.
- The Media Council of Kenya (MCK), funded by the state, sets standards for journalists, protects rights, and assesses media compliance with the legal framework.

**Media and Elections**

- Access to State-Owned Media: Lack of regulations under the Election Campaigning Act undermines the effectiveness of these provisions, especially in controlling paid media coverage contributions.
- Regulation of Hate Speech: A high court ruling in February 2017 and relevant articles in the Elections Act address the regulation of hate speech in Kenya.
- Collaboration and Guidelines: The IEBC, KEG, and KUJ signed an MoU to promote transparency and information sharing during elections. However, concerns arose regarding the interruption of media monitoring reports by the regulatory body without prior explanation, leading to criticism from journalists.
- Debates and Fact-Checking: Broadcast debates were organized at various levels, but withdrawals by candidates affected the representativeness of the presidential debate.
- Power cuts during Ruto’s presentation raised suspicions of political motivation.
- Fact-checking was conducted by organizers and media, and the IEBC introduced a web portal for real-time access to election results. However, concerns were raised about poor communication flow, particularly regarding results transmission on election night.

- Enhance continuous voter registration efforts targeting youth, women, and persons with disabilities to ensure universal suffrage.
- Revise the layout of polling stations to safeguard the secrecy of the vote.
- Uphold the right to freedom of expression, investigate and sanction attacks against journalists, and ensure media practitioners’ protection.
- Establish a coordinated effort by media, civil society, and tech companies to debunk disinformation, reinforcing fact-checking initiatives for future elections.
- Develop a self-regulatory Code of Practice on Disinformation through a multi-stakeholder coalition to promote transparency and accountability of big tech companies.
- Make efforts to include persons with disabilities in the election day process, providing tactile ballot papers in each polling station for voters with visual impairments to mark their ballots independently

<p><b>Media Monitoring</b></p>	<ul style="list-style-type: none"> <li>• <b>Extensive Election Coverage:</b> Media outlets dedicated special programs and sections to comprehensive election coverage</li> <li>• <b>Equitable Treatment and Access:</b> State-owned broadcaster KBC provided free airtime to political parties and candidates. However, no clear criteria were established for the allocation of time slots.</li> <li>• <b>Presidential Race Coverage:</b> Private TV channels provided more airtime to Kenya Kwanza candidate Ruto, primarily due to the debate. Overall, private TV channels maintained a balanced coverage of both main political coalitions across all levels of elections. Citizen TV, NTV, and KTN reported extensively on the elections, while newspapers maintained a generally neutral tone, with slightly more coverage allocated to the Azimio coalition. Kenya Kwanza coalition received more critical coverage.</li> <li>• <b>Radio as Primary Information Source:</b> Radio remained the primary source of information for most voters, with vernacular radio stations exhibiting preferences.</li> <li>• <b>Gubernatorial Race Coverage:</b> The gubernatorial race received significant coverage, with TV and print outlets focusing on UDA and Jubilee candidates. ODM's candidates prevailed in radio station coverage.</li> <li>• <b>Paid Advertisement Campaign:</b> The Azimio coalition conducted a comprehensive paid advertisement campaign across various media, particularly focusing on the presidential ticket. The last week of the campaign witnessed a significant increase in TV advertisements from the presidential front runners, with UDA's candidates having more frequent paid airtime.</li> <li>• <b>Collaboration for Voter Education:</b> The IEBC collaborated with national broadcasting media outlets for live simulations on voting procedures.</li> <li>• <b>Financial constraints limited the extent of broadcasted television and radio paid advertisements for IEBC.</b></li> <li>• <b>The NCIC carried out a broad campaign on peaceful elections through advertisements across various media platforms.</b></li> <li>• <b>Gender Representation:</b> Male candidates constituted 87.8% of the total, while female candidates made up 12.2%. The media provided gender-sensitive reporting and adequate coverage of women candidates, with TV channels and radio stations surpassing the 18% female candidate representation. However, newspapers fell slightly behind with 10.9% coverage.</li> <li>• <b>Social Media Engagement:</b> The Roots presidential candidate, Wajackoyah, gained significant attention early in the campaign, generating the most engaging election-related posts on television channels print and Facebook pages. In the final stage, posts about final rallies gained prominence on newspapers and TV channels' Facebook pages, while a statement by Wajackoyah's running mate supporting Odinga received attention on radio stations' Facebook pages.</li> </ul>	
<p><b>Social Media and Digital Communications</b></p>	<p><b>Social Media environment</b></p> <ul style="list-style-type: none"> <li>• <b>Disinformation Campaigns:</b> Extensive and sophisticated disinformation campaigns distorted online political discourse</li> <li>• <b>Social Media Landscape:</b> Kenya had approximately 12 million social media users in 2021, active on platforms like Facebook, YouTube, Instagram, Twitter, and TikTok.</li> <li>• <b>Political parties utilized various online platforms, including websites, bloggers, influencers, and digital campaign managers, for their campaigns.</b></li> <li>• <b>Role of Twitter and Facebook:</b> Twitter played a significant role in shaping narratives and political discourse, while Facebook was primarily used for engaging with the local electorate.</li> <li>• <b>Impact of TikTok:</b> TikTok emerged as a popular platform during the campaign, providing an avenue for the spread of propagandistic and divisive content that might not have received as much attention elsewhere.</li> <li>• <b>WhatsApp for Campaign Organization and Disinformation:</b> WhatsApp was widely used for organizing campaign activities, mobilizing voters, and sharing disinformation through group networks, enabling the coordination and dissemination of misleading information.</li> </ul>	

	<ul style="list-style-type: none"> <li>• Language Use on Social Media: English dominated communication on Facebook and Twitter, while vernacular languages were more popular on TikTok, indicating platform-specific language preferences and targeted audience segments.</li> <li>• Influence of Hashtags: Parties extensively used hashtags to shape online discussions, create trending topics, criticize opponents, and spread disinformation campaigns, playing a significant role in amplifying specific messages.</li> <li>• Manipulation and Fake Accounts: Fake accounts and bot-driven activities were observed, amplifying messages in support of presidential candidates. These manipulative practices contributed to the dissemination of falsehoods to a wider audience throughout the election process.</li> </ul> <p><b>Legal Framework</b></p> <ul style="list-style-type: none"> <li>• Legal Framework: Kenya's constitution prohibits propaganda for war, incitement to violence, hate speech, and advocacy of hatred.</li> <li>• The Penal Code and the National Cohesion and Integration Act contain provisions to address incitement to violence, disobedience of the law, and hate speech.</li> <li>• In 2020, the Communications Authority of Kenya and the NCIC signed an agreement to combat hate speech and misuse of online platforms.</li> <li>• National Action Plan against Hate Speech: The NCIC launched Kenya's National Action Plan against Hate Speech, aiming to reduce inflammatory language.</li> <li>• NCIC established a dedicated social media monitoring unit in collaboration with civil society organizations to track and deter hate speech online during the campaign.</li> <li>• The definition of 'hate speech' as defined by law and implemented by the NCIC is considered overly broad compared to international standards.</li> <li>• Limited Role of NCIC: The NCIC did not regularly release social media monitoring reports, although it was not legally required to do so.</li> <li>• Computer Misuse and Cybercrimes Act: criminalizes the dissemination of falsehoods and misinformation. However, the law falls short of regional and international standards for freedom of expression. The ambiguous terms used in the law, such as "false," "misleading," and "fictitious" data, allow for subjective interpretation. This has resulted in the harassment of journalists, bloggers, and activists in the past.</li> </ul>	
<p><b>Social Media Monitoring</b></p>	<ul style="list-style-type: none"> <li>• Misuse of Online Platforms: spread hate speech and disinformation during the election campaign, despite efforts by CSOs and announcements by Meta, Twitter, and TikTok to address the issue.</li> <li>• Disinformation Campaigns: Sophisticated disinformation campaigns targeting IEBC and its members, was observed using techniques like doctored newspaper front pages, misleading polls, fake quotes, manipulated content, and coordinated inauthentic behavior through false accounts and bots.</li> <li>• Manipulated Profiles and Coordinated Disinformation: Over 300 misleading Facebook and Twitter profiles were created to deceive voters, with identical or manipulated profile pictures.</li> <li>• Fact-Checking Efforts: Fact-checking organizations and civil society groups worked to identify and debunk misinformation, but there was a lack of coordination among fact-checkers, leading to multiple debunkings of the same false narratives.</li> <li>• Lack of Response from Google and YouTube: Google Kenya and YouTube did not respond to requests for a meeting from the EU EOM, raising concerns about their involvement in addressing disinformation</li> <li>• Need for Coordinated Efforts: Coordinated efforts among media, civil society, and tech companies are recommended to combat disinformation, including the development of a network dedicated to debunking false narratives and raising public awareness.</li> <li>• Council for Responsible Social Media and Self-Regulatory Code: The Council for Responsible Social Media, composed of representatives from civil society, called for better accountability from big tech companies and the development of a self-regulatory Code of Practice on Disinformation</li> <li>• Challenges in Content Moderation: TikTok's delayed response to policy violations allowed the spread of incendiary rhetoric and disinformation.</li> <li>• Content moderation in local languages, particularly Swahili, remains a challenge, and greater clarity, resource allocation, and language expertise are needed to safeguard the online space effectively.</li> </ul>	

**Political Party Nomination & Candidate Registration Disputes**

- Access to Remedies: Electoral dispute resolution mechanisms (PPDT) were open and efficient, with hearings conducted publicly online, or in person providing effective access to legal remedies.
- Well-Elaborated Procedures: The legal framework outlined clear procedures for resolving electoral disputes.
- Political Parties Disputes Tribunal (PPDT): The PPDT effectively managed disputes within and between political parties, utilizing electronic filing and hearing systems to ensure accessibility and efficiency.
- Decentralization of Nomination Disputes: Ad hoc members were appointed to address candidate nomination disputes allowing cases to be heard in multiple locations.
- Reduction in Nomination Disputes: The introduction of new party nomination rules led to a significant decrease in disputes brought before the PPDT compared to previous election cycles. All cases were resolved within the required one-month time limit.
- Management of Candidate Registration Disputes: The IEBC Dispute Resolution Committee (DRC) handled disputes related to candidate registration in person, ensuring that all cases were resolved within the designated 10-day timeframe.
- Appeal Process to the High Court: Decisions made by the PPDT and the DRC could be appealed to the High Court, with expedited hearings typically taking place within a few days at any location in the country.
- Absence of Legal Deadlines for Appeals: The lack of legal deadlines for filing appeals to the High Court against PPDT and DRC decisions allowed plaintiffs to delay and submit appeals close to the election day.
- Impact on Ballot Paper Printing: The uncertainty resulting from ongoing disputes led to the postponement of ballot paper printing in several local elections. Misprinted ballot papers were attributed to litigation by the IEBC in some instances.

**Constitutional Petitions on Electoral Rights**

- Several cases were submitted to the High Court (HC) seeking judicial review of actions by the Independent Electoral and Boundaries Commission (IEBC), alleging violations of constitutional rights. They included voting times for the diaspora, inclusion of photographs on ballot papers, the application of the two-thirds gender rule to political party lists, display of voter registers outside polling stations, and the use of the manual voter register in polling stations.
- The adjudication of the case on the manual voter register created difficulties for the IEBC, as it was uncertain about the procedures to be followed until the High Court made a decision. The Court of Appeal issued an order restraining the enforcement of the High Court's decision on the manual voter register, which further complicated the matter. (While open access to the courts to vindicate constitutional rights is crucial, there is a need for some restraint on filing petitions related to settled areas of electoral law shortly before an election.)
- Introducing an administrative practice direction for the High Court to prohibit challenges to settled areas of electoral law within two months preceding an election would provide greater legal certainty for the conduct of elections. However, the High Court's jurisdiction should remain available for urgent applications when there is a potential infringement of electoral rights.

**Election Offence**

- Authority of the ODPP: to order investigations and prosecute electoral offences, ensuring accountability and adherence to the law.
- Compendium of Offences: The ODPP published a compendium of election offences, providing detailed explanations of the elements and characteristics of each offence, aiding in understanding and enforcement.
- Role of the ODPP vs. the IEBC: The High Court determined that the enforcement of the Electoral Code of Conduct by the Independent Electoral and Boundaries Commission (IEBC) was beyond its authority. The ODPP became the sole authority responsible for prosecuting election offences.
- Collaboration between the IEBC and the ODPP: The IEBC and the ODPP collaborate through a Memorandum of Understanding, with the IEBC providing information on potential offences to aid in the prosecution process.
- Standards for Political Parties and Candidates: The Political Parties Act and the Electoral Code of Conduct outline expected standards of behavior for political parties and candidates during the campaign period.
- Time Limit for Proceedings: Proceedings for electoral offences must be initiated by the ODPP within 12 months of the election, ensuring timely action and resolution.
- Incidents of Election Offences: The number of reported election offences during the campaign period was relatively low. However, an increase in incidents, including violence and attacks on IEBC officials, was observed on election day.

## ELOG FINDINGS

Thematic Areas	Key Findings/Observation	Recommendations
<b>1. Voter education</b>	<ul style="list-style-type: none"> <li>Inadequate and late commencement of voter education</li> <li>115 CSOs were accredited by the IEBC to implement voter education initiatives.</li> <li>General lack of coordination of civic/voter education initiatives, with outreach levels and targeting lagging behind.</li> <li>General lack of planned and structured civic and voter education provision that was not guided by standardized curriculum and manuals.</li> <li>Low level voter education in May, which relatively increased in June but decreased in July (owing to other priority preps by the IEBC), but generally lacked in targeting.</li> <li>Few sporadic incidents of harassment of voter educators were reported in some parts of the country.</li> </ul>	<p><b>Voter Education:</b></p> <ul style="list-style-type: none"> <li>Implement comprehensive voter education initiatives throughout the electoral cycle to ensure voters are informed about changes in the electoral framework.</li> <li>Standardize voter information and education materials to promote consistency in the delivery of voter education by the IEBC and its partners.</li> <li>Expand the accreditation of voter education providers and establish partnerships to ensure nationwide coverage and effective dissemination of information.</li> <li>Allocate sufficient funds to support continuous voter education efforts.</li> </ul>
<b>2. Voter registration</b>	<ul style="list-style-type: none"> <li>Two voter registration drives to complement continuous voter registration were undertaken.</li> <li>Dismal voter registration exercises that failed to meet the target - worst voter registration returns since the first multi-party elections in 1992.</li> <li>Poor planning and coordination of voter registration exercises.</li> <li>Inadequate voter education to complement voter registration.</li> <li>Low registration numbers driven by a pattern of disillusionment and disinterest by citizens especially youth.</li> <li>Registration of diaspora voters and prisoners increased. More registration centers (12 from 6 in 2017 for diaspora and more prisons gazetted for voter registration and polling).</li> <li>Inspection and verification of voters details in the register were conducted physically, online and through SMS USSD Code – turnout was low and challenging.</li> <li>Voters register was audited once in the pre-election period by the IEBC – contracted an audit firm KPMG for the internal audit.</li> <li>Audit findings/recommendations were only highlighted in a media brief. Full report not made public or shared with stakeholders.</li> </ul>	<p><b>Voter Registration:</b></p> <ul style="list-style-type: none"> <li>Conduct research to identify the drivers and factors contributing to public apathy and disillusionment with political and electoral processes, enabling the IEBC to develop tailored solutions that promote citizen interest and participation.</li> <li>Engage young people in basic learning institutions to cultivate a culture that values democratic processes and encourages their active involvement.</li> <li>Publish the complete KPMG audit report in a timely manner to ensure transparency and accountability.</li> <li>Conduct an independent citizen-led audit of the voter register to validate and complement the internal audit findings, enhancing the monitoring of voter registration.</li> </ul>
<b>3. Electoral legal framework</b>	<ul style="list-style-type: none"> <li>Fairly comprehensive and robust legal framework that resonates well with international and regional conventions, some of which Kenya has signed and ratified.</li> <li>Case law and jurisprudence from the judiciary augmented the electoral legal framework.</li> <li>The deficiencies that the Supreme Court identified in 2017 were not addressed.</li> <li>Rushed and bi-partisan amendments to the Political Parties Act – introduced and framed the concept of coalition political parties etc.</li> <li>Key amendments to the Elections Act were submitted late and rejected by Parliament.</li> <li>Ineffective and lackluster enforcement of electoral laws especially the Elections Offences Act and Electoral Code of Conduct. Overlap of jurisdictions (ODPP vs IEBC) + IEBC's Electoral Code of Conduct Enforcement Committee nullified by the Court.</li> <li>Parliament frustrated attempts to enact Regulations to operationalize Election Campaign Financing Act, 2013.</li> </ul>	<p><b>Diaspora Voter Registration:</b></p> <ul style="list-style-type: none"> <li>Expand the number of designated countries for voter registration and polling to increase the participation of the Diaspora.</li> <li>Collaborate with the government and stakeholders to establish legal and administrative mechanisms that allow Diaspora voters to vote for various candidates, including Governors, Senators, Members of the National Assembly, Woman Representatives, and County Assembly Members.</li> </ul>

	<ul style="list-style-type: none"> <li>Parliament failed to enact laws to operationalize the two-thirds gender rule.</li> <li>Court frustrated IEBC's attempts to enforce the two-thirds gender rule.</li> </ul>	<ul style="list-style-type: none"> <li>Develop additional legal and administrative mechanisms to create a dedicated Constituency for direct representation of the Diaspora in the National Assembly, in line with the progressive spirit of the Kenyan Constitution 2010 (refer to ELOG report, The Other Electorate).</li> </ul>
<p><b>4. Political Parties and Election Campaign Financing</b></p>	<ul style="list-style-type: none"> <li>As at May 2022 there were 90 fully registered political parties in Kenya whose corporate particulars were maintained by the ORPP.</li> <li>83 political parties that included a coalition party were cleared to participate in the 2022 elections.</li> <li>Party primaries were in general conducted fairly well.</li> <li>Challenges noted included violence, late opening of voting, abrupt changes of polling venues, use of 2017 IEBC register of voters, challenges related to direct nominations/negotiated and consensus building methods (strangled inter and intra-party democracy-exclusive and elite drive-disenfranchised and alienated party members/women/youth and PWDs).</li> <li>Parties nominated candidates with integrity Issues</li> <li>Emerging good practice of using digital voting system and gadgets by political parties – ODM.</li> <li>At the end of the party nominations, the IEBC cleared 16,100 candidates out of which 11,574 (72%) were vying on political parties' tickets while 4,526 (28%) were independent candidates - (4 candidates for the presidential election; 266 gubernatorial candidates; 341 candidates for the Senate; 360 candidates for Woman Representative; 2,132 candidates for the National Assembly, and; 12,997 candidates for the Member of County Assembly).</li> <li>Adjudication of disputes arising from party primaries were conducted well by the IEBC, PPDT and Courts – challenges of overlapping jurisdictions – forum shopping, still apparent.</li> <li>Parties and aspirants conducted early campaigns outside the legal campaign window – ignored the IEBC and took advantage of weak electoral law enforcement.</li> <li>Campaigns were generally issue-based compared to previous elections but ethno-based political undertones still remained.</li> <li>Fairly peaceful and competitive campaigns compared to previous elections.</li> <li>High cost of elections – Influence of money in politics - Big spending by parties and candidates due to very limited oversight on campaign financing/Non-operation of Campaign Finance Act.</li> <li>Vote-trading and vote buying and inducement of voters were rampant.</li> <li>Elements of political zoning and violence were experienced, but violence was sporadic</li> <li>Incidents of political intimidation and undue influence of voters.</li> <li>Misuse of public/state resources + elements of abuse of incumbency.</li> <li>Involvement of incumbent President and state officers in bi-partisan campaigns.</li> <li>Mis/dis-information, fake news and propaganda characterized the campaigns especially through the digital space/social media.</li> <li>Isolated/sporadic incidents of incitement to violence and hate speech during political campaigns.</li> <li>Social media/digital space, bloggers etc. became key influencers/purveyors/" guns for hire" for political campaigns including malign political activities.</li> <li>Derogatory/inciting language targeted at women during campaigns</li> </ul>	<p><b>Electoral Legal Framework:</b></p> <ul style="list-style-type: none"> <li>Thoroughly consider and implement the recommendations from the 2017 Supreme Court decisions that nullified the presidential election.</li> <li>Engage in a broad-based, participatory, and consultative process involving all key stakeholders to undertake electoral legal reforms and amendments.</li> <li>Promptly review and address the challenges that hinder the implementation of critical electoral laws, ensuring efficiency and effectiveness.</li> <li>Ensure purposive determination of issues by the courts to prevent setbacks in reform efforts.</li> <li>Expedite the establishment of regulations on campaign finance and define spending limits following the court's endorsement.</li> <li>Establish a provision to terminate the effect of all electoral law amendments six months prior to an election.</li> <li>Review the evidential threshold for electoral offenses/petitions to facilitate easier burden of proof.</li> </ul> <p><b>Political Parties and Campaign Financing:</b></p> <ul style="list-style-type: none"> <li>Enhance internal party governance and democracy to foster inclusivity and increase the participation of all members, particularly special interest groups.</li> <li>Develop affirmative action policies within the constitutional framework to support the participation of special interest groups like women and persons with disabilities.</li> <li>Review internal constitutions and rules of political parties, particularly election and nomination procedures, to promote good governance, transparency, and accountability.</li> <li>Collaborate with stakeholders, including Members of Parliament, to facilitate the immediate operationalization of the Campaign Financing Act and the two-thirds gender rule.</li> <li>Ensure compliance with the two-thirds gender rule in all party elective positions, candidate nominations, and party leadership organs.</li> </ul>



<p><b>5. Election Security/ Violence</b></p>	<ul style="list-style-type: none"> <li>Improved preparations and training by security agencies (the NPS) for the elections.</li> <li>Hot-spots mapping, early warning and preparedness – NCIC and Security Agencies and CSOs.</li> <li>Electoral Security Arrangement Program was in place – collaboration of the NPS and IEBC.</li> <li>The NPS covered conflict prone areas such as West Pokot, Elgeyo Marakwet, Turkana and Marsabit, and convened regular multi-sectoral meetings on security and election preparedness to manage on-going conflicts in those areas and prevent election violence.</li> <li>Public altercations between NPS and the IEBC over security</li> <li>Public altercations between ODPP and the NPS over drafting of charge sheets and prosecution of offenders – impact on enforcement of electoral offences and Electoral Code of Conduct.</li> <li>Some incidents of violence were noted throughout the 2022 election cycle including during party primaries, political campaigns, on elections day and on 15th August when the presidential election results were announced and declared.</li> <li>Violence was, however, sporadic/intermittent and not pervasive and with no systematic pattern.</li> <li>Intimidation, hate speech, inciting and vile language was also noted especially during political campaign period, on Election Day and the post-election day period – targeted political opponents and IEBC officials.</li> <li>On Election Day and a few days thereafter, violence targeted election officials – A Presiding Officer in Wajir, Eldas, was shot and elections postponed; the Returning Officer for Embakasi East Constituency, Daniel Musyoka was abducted, tortured and killed.</li> <li>CSO and faith based organization's engagement on peace messaging, hotspot mapping and political dialogue were noted throughout the entire 2022 election cycle especially during the campaign period, on Election Day, on the day the presidential results were announced and declared and the period during the Supreme Court petition hearings and delivery of judgment.</li> </ul>	<ul style="list-style-type: none"> <li>Enhance transparency, inclusivity, and accountability in the conduct and management of party nominations by subjecting them to independent observation and evaluation.</li> <li>Conduct thorough scrutiny and evaluation of direct nomination methods before implementing them in the next election cycle.</li> <li>Strengthen internal dispute resolution mechanisms within political parties, including training party election boards and improving dispute resolution rules.</li> <li>Reduce the influence of money in politics by discouraging corrupt practices, implementing reasonable limits on political and campaign financing, and exposing and punishing corrupt individuals.</li> <li>Embrace change in social norms and political behavior to disrupt vote trading and vote buying, starting with efforts to disrupt the supply side and engaging the demand side.</li> <li>Promote tolerance, restraint, peace, and national cohesion during political activities and campaigns.</li> <li>Encourage citizens/voters to recognize their role as the primary stakeholders in elections and hold political parties and leaders accountable.</li> <li>Discourage voter bribery, political incitement, violence, and other illegal electoral practices by citizens/voters.</li> <li>Remind citizens/voters of their sovereignty and encourage them to uphold peace, national unity, and cohesion during the election period.</li> <li>Strongly discourage citizens/voters from participating in vote trading and vote buying during elections, emphasizing the importance of free and fair voting.</li> </ul> <p><b>Electoral Security/Violence:</b></p> <ul style="list-style-type: none"> <li>Ensure adequate and accountable security provision to all stakeholders throughout the electoral process, including materials, officials, citizens, voters, and observers.</li> <li>Conduct comprehensive investigations and prosecute individuals who violate electoral laws, including the Electoral Code of Conduct.</li> <li>Maintain independence, neutrality, and impartiality of the National Police Service (NPS) in carrying out security-related duties during elections.</li> <li>Improve collaboration and partnership between the NPS and other election duty bearers, such as the IEBC, to enhance security provision and management during elections.</li> <li>Enforce law and order, promptly investigate, apprehend, and charge individuals who violate electoral laws and other national laws during the election period.</li> </ul>
<p><b>6. Media Monitoring</b></p>	<ul style="list-style-type: none"> <li>Media Council of Kenya prepared journalists and media houses well for elections coverage – provided targeted trainings/collaborated with the IEBC on accreditation of journalists/ensured that media coverage was professional, fair, comprehensive, accurate and informative/conducted online media monitoring for fairness.</li> <li>Media Council + Media Owners Association + Media Editors Guild conducted successful joint and synchronized media debates including Presidential, Deputy President, Nairobi Governor Debates at the national level and select county debates.</li> <li>Media Council established a fact-checking platform iVerify that helped to address misinformation and propaganda during the election period + deployed some 70 media analysts to monitor editorial content of mainstream media and online media.</li> <li>Communications Authority (CA) – supported internet connectivity at polling stations especially those that lacked internet connectivity.</li> </ul>	

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<p><b>7.Participation of the Special Interest Groups</b></p>	<ul style="list-style-type: none"> <li>• Low voter registration of women and youth – Missing Voices as per ELOG's study - Apathy and disinterest etc.</li> <li>• Women represented 49.12% of the 22,120,458 registered voters.</li> <li>• Out of the total number of registered voters for the 2022 elections, the registered youth voters aged between 18-35 years stood at 39.84%, which was a 5.27% decline compared to 2017.</li> </ul>	

	<ul style="list-style-type: none"> <li>• A positive trend was shown in the number of women who sought elective offices in the 2022 elections as compared to the 2017 elections.</li> <li>• Out of the 16,100 candidates who were cleared and registered by the IEBC to run for various elective positions in the 2022 elections, 1,962 were women, making up to 12.8%.</li> <li>• Also, three of the presidential contenders in the 2022 presidential election named women as their running mates while the number of women who run for governor positions doubled up as compared to the 2017 elections.</li> <li>• A historic breakthrough in the journey towards gender parity in the 9th August 2022 elections - Kenyans elected 30 female Members of the National Assembly, up from 23 in the 2017 elections, 7 female governors, up from 3 in the 2017 elections, and 3 female senators, the same number as in the 2017 elections.</li> <li>• The level of inclusion and participation of PWDs in the 2022 elections remained dismal.</li> <li>• The efforts made by political parties to include and involve PWDs in internal party affairs and activities and elections remained largely tokenistic.</li> <li>• The IEBC proactively included PWDs in the elections by increasing the registered PWDs to 8.7% out of the total registered voters for the 2022 elections.</li> <li>• For the first time, the IEBC allowed older PWD voters to update their disability status in the register.</li> <li>• The IEBC for the first time deliberately documented the disability status as well as the nature of disability of newly registered voters.</li> <li>• The IEBC included creating and availing voter education materials in Braille format and deployment of sign language interpreters as voter educators.</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluate, review, and enhance protocols at polling centers and stations to ensure accessibility for people with disabilities and the elderly.</li> <li>• Develop protocols to capture the details and nature of disabilities in the voters' register and accommodate special interest groups during elections, including providing Braille materials, special voting booths, responsive signage, and sign language interpreters.</li> <li>• Implement targeted voter education initiatives to empower special interest groups and encourage their participation in electoral processes.</li> </ul>
<p><b>8. Election Administration and Management</b></p>	<p><b>The IEBC</b></p> <ul style="list-style-type: none"> <li>• The IEBC operated under a very challenging environment and circumstances that arose out of internal and external factors.</li> <li>• Budgetary and funding delays and shortfalls.</li> <li>• Bloated elections budget – High Cost of Elections (Ksh.2500 per voter in 2017 and Ksh. 2,000 per voter in 2022)</li> <li>• Despite some elements of lethargy in the IEBC's preparations, remarkable preparations by the IEBC generally noted.</li> <li>• Delayed and last-minute attempts to amend and reform critical electoral laws.</li> <li>• Poor rapport and political feuds with Parliament.</li> <li>• IEBC suffered deficits in public trust and confidence, but made efforts to improve.</li> <li>• Procurement needs for the 2022 elections were completed. Critical materials like ballot papers were done in time but due diligence was not undertaken- led to technical mistakes on some ballot papers – postponement of some elections.</li> <li>• Voter registration was undertaken but with challenges on low registration turnout.</li> <li>• Audit of the register undertaken but report not shared and no clarity on implementation of KPMG findings/recommendations.</li> <li>• Final register of voters for the 2022 elections was consolidated and certified but not publicized in time.</li> <li>• Built an elaborate infrastructure of trained field officials for the polls and ultimately and successfully conducted and managed the August polls but with some challenges. Training of staff was not consistent and happened late. Some critical SoPs not relayed to polling staff e.g. handling of the manual register and Forms 34A Book 1of 1 and Book 2 of 2.</li> <li>• High turn-over of Commission staff and delayed/late appointment of 4 Commissioners.</li> </ul>	<p><b>Election Administration and Management: IEBC</b></p> <ul style="list-style-type: none"> <li>• Initiate a dialogue among Kenyans to review and evaluate the electoral system and infrastructure, including the EMB model, to align with Kenya's political dynamics and nuances. This dialogue should involve organized, structured, and broad-based bottom-up conversations to build consensus.</li> <li>• Legislate reforms to clarify and demarcate the policy, strategy, and oversight roles of the Chairman and Commissioners, addressing the Supreme Court's recommendation.</li> <li>• Clearly separate the policy and administrative domains of the Commission from those of the Commission Secretary and staff to enhance clarity and delineation of responsibilities.</li> </ul>

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| <ul style="list-style-type: none"> <li>• The IEBC made efforts to engage and sensitize stakeholders and the public through press briefings, press releases, media engagements and stakeholders' forums BUT these were neither regular nor structured – Created crisis and led to increase in propaganda, misinformation and disinformation around the elections.</li> <li>• Registration of candidates undertaken fairly successfully with a few complaints and a few court cases BUT vetting of candidates on Chapter Six of the Constitution was poorly undertaken with no regard to recommendations from EACC – 62 Parliamentary candidates with active integrity cases were elected. Vetting of candidates based on education qualifications was undertaken inconsistently.</li> <li>• Remarkable handling of nominations disputes - out of the three hundred and twenty-five (325) cases that were lodged with the IEBC DRC, 39 complaints (12%) were allowed, 269 complaints (82.7%) were summarily dismissed for want of jurisdiction, prosecution and on merit, 17 cases (5.2%) were withdrawn, and 31 cases proceeded to the High Court.</li> <li>• The IEBC made remarkable efforts to enhance the elections results management framework to enable transparent, accurate, verifiable, and proper management and transmission of results.</li> <li>• However, simulation exercises on the RTS were dismal and below par.</li> <li>• Unfortunate disagreement and fallout amongst the Commissioners at the tail-end of the tallying and verification of presidential election results – depicted the IEBC as dysfunctional entity with dysfunctional internal governance</li> </ul> | <ul style="list-style-type: none"> <li>• Revisit the model of the EMB to create a politically inclusive and representative structure, considering the continuous assault on the Commission's independence.</li> <li>• Develop legal and policy parameters, procedures, and modalities to manage and publicly communicate dissenting views and opinions among Commissioners during critical decision-making, such as verifying, tallying, and announcing presidential election results.</li> <li>• Ensure sustained public participation throughout the electoral processes.</li> <li>• Convene an independent post-election review and evaluation of the 2022 elections and other electoral processes, engaging a broad spectrum of electoral actors and stakeholders.</li> <li>• Make the findings and recommendations from the internal post-election evaluation conducted by the IEBC public and share the full report with stakeholders.</li> <li>• Review and expedite the enactment of electoral legal reforms and amendments, including those that were not enacted as required. Conduct a comprehensive review of all electoral laws to identify areas for improvement and strengthening.</li> <li>• Develop a strategy and framework for post-2022 elections reforms in preparation for the next electoral cycle, following a broad-based, open, participatory, and consultative process involving key stakeholders.</li> <li>• Address challenges that impede the implementation of the Campaign Financing Act and the two-thirds gender rule by reviewing and taking corrective measures.</li> <li>• Explore innovative approaches to reduce the costs of elections by procuring and utilizing election materials, resources, and services more efficiently.</li> <li>• Identify and review high-cost drivers, aiming to minimize and reduce them to affordable levels while avoiding wastage.</li> <li>• Consider staggering elections to reduce high stakes and suspicion, thus minimizing the costs associated with costly security marks and protocols on ballot papers.</li> <li>• Build trust and confidence among the public and political players to reduce the need for costly security details on ballot papers. This could support the possibility of printing ballot papers and other critical election materials locally in Kenya.</li> <li>• Conduct a transparent and accountable post-election financial audit, making the report public to allow Kenyan taxpayers to assess the cost of elections and value for money.</li> <li>• Engage and collaborate with stakeholders, both within and outside the government, to review, audit, and improve the use and application of technology in elections, particularly the KIEMS and elections results transmission system. Deploy and test technology early through simulation exercises to enhance effectiveness, efficiency, uniformity, and transparency.</li> <li>• Adhere to the principles of simplicity, security, transparency, and accountability as outlined in Article 86 of the Constitution, ensuring all election-related technology complies with these requirements and undergoes regular assessments to secure public confidence.</li> <li>• Engage stakeholders to introduce mechanisms and procedures for special voting to accommodate election officials, security personnel, and voters engaged in critical public duties and essential public services on polling day. Implement appropriate security measures for special voting in advance to prevent multiple voting and secure the ballots.</li> <li>• Improve stakeholder engagement, public relations, and communications throughout the election cycle to foster inclusive awareness and ownership of processes. This will promote trust and confidence in the IEBC and the electoral processes.</li> <li>• Review, enhance, and strengthen internal mechanisms and protocols for due diligence in procurement of election-related services, materials, and equipment to ensure accuracy, verification, and accountability. Avoid the repetition of late detection of defects in ballot papers that led to election postponements</li> </ul> |
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### On the management of E-Day Processes and Results

**Setup and Opening:** ELOG observers were properly permitted to observe in 97.2% of polling stations. 94.3% of the polling stations nationwide opened by 7:00am. Of the remaining stations, most opened between 7:00 am and 8:00 am, with some opening past 8:00 am. This is an improvement from 2017 when 53.5% of the polling stations opened on time; 99.6% of polling stations had the Kenya Integrated Elections Management System (KIEMS) present. This is an improvement from 2017. Recall that in 2017, the Electronic Poll Book was present in 99.3% of stations during the opening and setup process.

**Voting:** Our findings noted that the voting process generally went smoothly across the country with isolated incidences reported. In 6.3% of the stations, the Kenya Integrated Elections Management System (KIEMS) failed to function properly. This is an improvement from 2017 when electronic poll books malfunctioned in 7.6% of stations. There was a queue at 5:00pm in 76.8% of polling stations. Of those stations with a queue at 5:00pm, 96.6% were properly permitted to vote.

**Closing and Counting:** 24% of polling stations closed by 5:00pm or earlier. 57% closed between 5:00pm and 6:00pm, 12% closed between 6:00pm and 7:00pm, 4% closed between 7:00pm and 8:00pm, and 4% closed after 8:00pm including a few of them closing past midnight; Azimio la Umoja One Kenya Alliance party agents were present in 92.3% of polling stations and signed the declaration of results for the presidential election; United Democratic Alliance (UDA) party agents were present in 92.0% of all the polling stations and signed the declaration of results for the presidential election; Party agents for other parties were present in 68.3% of all the polling stations. and signed the declaration of results for the presidential elections. A copy of the Presidential Results Form (Form 34A) was publicly affixed outside in 94.8% of the polling stations, as compared to 86.5% in 2017; In 96.9% of polling stations, observers observed the KIEMs kit being used to transmit the results of the presidential election.

- Conduct rigorous and meticulous candidate registration and vetting in every election, using the process as an opportunity to filter out individuals facing integrity and qualification questions from contesting for office.
- Act as gatekeepers in the electoral processes to prevent individuals implicated in corruption scandals and abuse of office from contesting for public office, in line with the Constitution of Kenya 2010 and the principles of governance outlined in Article 10, including Chapter 6 on Leadership and Integrity.
- Ensure comprehensive, timely, standardized, and uniform recruitment and training of election officials based on internationally approved curriculum, materials, and methodology such as BRIDGE. Standardize and timely share instructions and operating procedures applicable on polling day with all election officials.

### The Judiciary:

- Enhance training for judicial officers on election dispute resolution, focusing on technology-driven processes, knowledge base, and efficiency.
- Improve the prioritization and management of election dispute cases to ensure timely and efficient resolution, considering strict constitutional and legal timelines.
- Collaborate closely with the IEBC and other law enforcement agencies to enhance the effectiveness and efficiency of judicial interventions during elections.
- Uphold the spirit and gains of the Constitution of Kenya 2010, promoting progressive and purposive interpretations and decisions that support the realization of constitutional goals.
- Review and re-evaluate the standard of proof in presidential election petitions, considering adopting a balance of probability as the applicable standard.
- Maintain and sustain the new and higher electoral bar set by the Supreme Court, asserting independence and consolidating trust in the judiciary.
- Engage in a public dialogue to review and consider reforms to the strict constitutional timelines for presidential election petitions, allowing sufficient time for preparation, presentation, and detailed hearing.

### Recommendations on the management of E-Day Processes and Results:

- Prioritize the resolution of election-related court cases before Election Day, particularly those impacting election procedures and processes.
- Ensure transparency and integrity in the maintenance of the Voter Register, including providing access to audit reports and independent audits to improve register integrity.
- Provide consistent civic and voter education to inform voters about their rights and responsibilities.
- Punish electoral offenses and enforce codes of conduct for political parties and candidates
- Ensure openness, transparency, inclusive participation, and timely access to information by the IEBC and other election management agencies.
- Ensure physical accessibility of all polling stations for persons with disabilities and the elderly.
- Uphold the constitutional 2/3 gender threshold.
- Implement and enforce campaign finance regulations and undertake timely electoral legal reforms to prevent undue advantages for incumbents.

## 8.Election Results:

**Comparison of Official IEBC Results with ELOG PVT Projections**

Candidate	Official IEBC Result	PVT Projection	Margin of Error	Range	
				Low Limit	Up Limit
Odinga, Raila Amolo	48.85%	48.7%	+/- 2.1%	46.6%	50.8%
Ruto, William Samoei	50.49%	50.7%	+/- 2.1%	48.6%	52.8%
Waihiga, David Mwaure	0.23%	0.2%	+/- 0.1%	0.1%	0.3%
Wajackoyah, George Luchiri	0.44%	0.5%	+/- 0.1%	0.4%	0.6%

- Ensure clarity and comprehensibility of the results transmission process, sharing final election results in a granular and machine-readable format.
- Maintain simplicity and transparency in Election Day processes, ensuring accuracy and verifiability of results management and transmission.
- Ensure safety and security for voters, observers, and stakeholders throughout the electoral process.

### Recommendations for Parliament:

- Work with the IEBC and stakeholders to enact electoral reforms and amendments in a timely manner, considering a cut-off point of 2 years before elections.
- Expedite the enactment of enabling laws and regulations to operationalize the Campaign Financing Act and the two-thirds gender rule.
- Collaborate with relevant stakeholders to moderate incentives that make elective positions financially attractive, reducing the high stakes in politics.
- Provide effective oversight and timely approvals for the IEBC's annual budgets based on the electoral cycle approach.
- Operationalize campaign financing laws by addressing presented bills from the IEBC and stakeholders.

**Turnout:** The PVT projection for final turnout is 65.1% with a margin of error of +/- 0.7%. IEBC's official turnout of 65.4% falls within ELOG's estimated range and accurately reflects the turnout of voters. This is a notable drop from previous elections.

**Rejected:** The PVT projection for the final rejected ballots is 0.8% with a margin of error of +/- 0.1%.

### The Judiciary:

- Well prepared and well trained for the elections related cases.
- Developed an online filing system that could enable online filing and tracking of elections related cases.
- Developed and utilized a compendium and source book on elections jurisprudence.
- Judicialization of politics in Kenya and reinforced electoral democratic processes.
- ELOG observed the judiciary as independent and assertive throughout the 2022 election cycle.
- The judiciary generated public/stakeholder trust and confidence
- Interventions by the judiciary, especially the Supreme Court in the 2022 electoral cycle contributed to distinguish the 2022 elections as unique in propelling Kenya to attain a new and higher electoral threshold in the continent.

- Establish a clear legal mechanism for achieving the required 2/3 gender principle in elective and appointive positions.
- Adhere to Covid-19 protocols, guidelines, and preventive measures.
- Engage in dialogue to promote gender inclusivity in politics and elections, aiming for gender parity in Parliament.
- Engage in conversations on the high cost of elections and explore strategies to mitigate the negative influence of money in politics.
- Conduct a dialogue and review of the electoral system and infrastructure, involving broad-based bottom-up discussions to identify the most suitable model for Kenya.
- Review the use and deployment of technology in elections, evaluating its viability and addressing recurring challenges.

### Recommendations for the Office of the Registrar of Political Parties

- Implement party financing reforms to ensure transparent, equitable, and accountable public funding throughout the election cycle.
- Supervise political parties to ensure democratic, professional, and accountable management, focusing on internal governance processes, including elections and candidate nominations.

<ul style="list-style-type: none"> <li>• Rendered conflicting decisions that created confusion</li> <li>• Poor case management in some instances resulted in decisions being rendered too close to the elections date.</li> <li>• Delaying some critical Court interventions and fixing hearing dates well after the elections.</li> <li>• Confusing decisions that were rendered too close to the elections.</li> <li>• Attempts by the Supreme Court to limit the right to freedom of expression.</li> <li>• Rendered retrogressive decisions that undermined the progressive spirit of the 2010 Constitution.</li> <li>• Rendering progressive decisions too close to the elections without taking into account the full range of ramifications of those decisions on the elections.</li> <li>• The High Court rendering a confusing decision that seemed to countenance illegal and unconstitutional acts.</li> <li>• PPDT was well organized and capacitated and worked well despite challenges of overlap in jurisdictions.</li> <li>• Decentralization of PPDT + Digitized case management + remote hearings – improved efficiency and effectiveness.</li> </ul> <p><b>On Parliament</b></p> <ul style="list-style-type: none"> <li>• Approval of elections budget to facilitate the 2022 elections.</li> <li>• Approval was however, delayed.</li> <li>• Oversight role over elections budget is not effective – this high cost of elections.</li> <li>• Failure to enact critical electoral laws and regulations for the 2022 elections.</li> <li>• Failure to operationalize Campaign Financing Act and the two-thirds gender rule for the 2022 elections</li> </ul>	<ul style="list-style-type: none"> <li>• Strengthen collaboration with the IEBC and the PPDT for better management of party affairs and dispute resolution during elections.</li> <li>• Encourage political parties to comply with constitutional and legal provisions, imposing appropriate sanctions for non-compliance.</li> <li>• Uphold the two-thirds gender rule in party affairs, including nominations and elections.</li> <li>• Require political parties to declare the number of special interest groups as a registration requirement.</li> <li>• Establish mechanisms to prevent illegal mining of personal data by political parties and impose sanctions to deter such practices.</li> <li>• Increase public engagement to educate citizens on the political party regime, including deregistration and resignation procedures</li> </ul> <p><b>Recommendations for Cross-Cutting Issues:</b></p> <p><b>COVID-19:</b></p> <ul style="list-style-type: none"> <li>• The government, electoral actors, stakeholders, and citizens should consistently apply and adhere to Covid-19 protocols, guidelines, and preventive measures.</li> <li>• Encourage broad-based conversations and dialogues among Kenyans to explore politically and socially acceptable strategies for promoting gender inclusivity in politics and elections, particularly to achieve gender parity in Parliament, considering the reluctance to operationalize the two-thirds gender rule.</li> </ul> <p><b>Cost of Elections:</b></p> <ul style="list-style-type: none"> <li>• Facilitate public engagement in dialogues and conversations on the high cost of elections and the expenses associated with running for elective positions.</li> <li>• Foster awareness among Kenyans about the negative impacts of money in politics and encourage efforts to mitigate its influence by condemning corrupt practices, voter bribery, and excessive spending by political candidates.</li> </ul> <p><b>Electoral System:</b></p> <ul style="list-style-type: none"> <li>• Promote dialogue, review, rationalization, and re-evaluation of the electoral system and infrastructure, including the Election Management Body (EMB) model in Kenya. The aim is to identify a system and infrastructure that aligns with the political dynamics and nuances of the country.</li> <li>• Propose the organization of structured and inclusive bottom-up dialogues and conversations among Kenyans to build consensus on the most suitable electoral system, infrastructure, and Commission model.</li> </ul> <p><b>Technology in Elections:</b></p> <ul style="list-style-type: none"> <li>• Conduct a review of the use and deployment of technology in elections, in collaboration with electoral stakeholders, to evaluate its viability. This assessment should consider recurring challenges related to procurement and meeting the constitutional threshold outlined in Article 86 of the Constitution.</li> <li>• Encourage public dialogue and conversations among Kenyans to assess the utility, viability, and efficacy of technology in elections, while also considering the continued reliance on it.</li> </ul>
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## CARTER CENTER

Theme	Findings	Recommendations
<b>Voter Education</b>	<ol style="list-style-type: none"> <li>1. Legal decisions often changed the process only after voter education materials had been delivered. These dependencies compounded challenges rooted in the late onset of preparations by the IEBC, with consequent impacts on adherence to Kenya's constitutional and international obligations around access to information.</li> <li>2. The IEBC was responsible for accrediting election observers and voter educators. For the first time, the IEBC set up an online portal to facilitate these tasks. However, technical glitches and the late provision of accreditation badges presented a mixed image of IEBC preparedness to organizations whose trust it was important for the IEBC to secure</li> <li>3. Civil society organizations interviewed by the Carter Center mission typically reported having seen no voter education at all on the role of technology and estimated that half of their own total funding for voter education 2017-22 came in the final six months of the process.</li> <li>4. The IEBC delivered voter education, including on election technologies, but these efforts were too often concentrated toward the final weeks of the election.</li> <li>5. The capacity of the IEBC and civil society groups to effectively inform voters was also impeded by changes to the election process that were made long after they could be effectively communicated, including regarding use of the paper register. This was facilitated by political parties' diverse objections that should have been resolved months earlier.</li> <li>6. The Carter Center's expert team noted several IEBC actions that improved its provision of voter education around election technologies over the final weeks of the election. For example, the IEBC set up a WhatsApp voter education chatbot that offered key information on technologies such as a list of polling stations without data connectivity, video-based voter education, and explainers on key parts of the process.</li> <li>7. IEBC commissioners, including Chairperson Wafula Chebukati, were also proactive in providing information about election technologies in press briefings during the late stages of the process.</li> </ol>	<p><b>To the IEBC:</b></p> <ul style="list-style-type: none"> <li>• Swiftly launch a review of the successes and challenges of this election to inform a strategic plan for future elections, incorporating election technologies.</li> <li>• Collaborate with other Kenyan governmental organizations to deploy an automatic voter registration service that consolidates different databases to keep the voter register continually up to date.</li> <li>• Profile a typical attacker against the election and use this analysis for a comprehensive security analysis of the entire electoral process.</li> <li>• Explore ways to remove the trust assumption that makes the system's integrity dependent on party agents.</li> <li>• Conduct a study to assess the conditions for introducing risk-limiting audits into Kenyan elections, engaging parties, civil society organizations, and electoral stakeholders in a dialogue if found beneficial.</li> <li>• Develop rigorous requirements, design documents, and security rationales for the results recording software central to the production of the 34C form.</li> <li>• Conduct rigorous system reviews of all election technologies used in the process, addressing any shortcomings and communicating fixes to the public well in advance of the polls.</li> <li>• Publish 34A, 34B, and 34C results forms as digital data on an online portal, allowing citizens to cross-reference them with digital images in one location.</li> <li>• Adopt defined security principles to make IEBC operations less vulnerable to cyberattacks or disinformation campaigns.</li> <li>• Increase provision of voter education on voter verification.</li> <li>• Increase the number of verification tables at the National Tallying Centre from the first day of the verification process.</li> <li>• Ensure official tabulation of paper-based polling center results, improve transparency and verifiability, and provide complete and expedient access to polling center data for independent verification.</li> </ul>
<b>Voter Registration</b>	<ol style="list-style-type: none"> <li>1. Low voter registration turn out. Target was to register 6 million Kenyans between October 4th and November 5th, 2021 but only collecting 1.5million. After the release of more funding from the Treasury, the IEBC conducted a second round of "enhanced" voter registration from Jan. 17 to Feb. 6, 2022.<sup>27</sup> While a third round of voter registration was not formally announced, the process of "continuous voter registration" concluded on May 4, 2022.</li> <li>2. Individuals could visit an online portal (<a href="https://verify.iebc.or.ke">https://verify.iebc.or.ke</a>) and enter their ID number. A message "voter found" with voter registration details would be returned if there was a match of:</li> </ol>	<ul style="list-style-type: none"> <li>• Increase provision of voter education on voter verification.</li> <li>• Increase the number of verification tables at the National Tallying Centre from the first day of the verification process.</li> <li>• Ensure official tabulation of paper-based polling center results, improve transparency and verifiability, and provide complete and expedient access to polling center data for independent verification.</li> </ul>



	<ul style="list-style-type: none"> <li>• ID/ Passport number</li> <li>• Primary or secondary name</li> <li>• Birth date</li> <li>• Gender</li> <li>• Polling station code or name</li> <li>• County</li> <li>• Constituency</li> <li>• Ward</li> </ul> <p>Voters could also send an SMS to 70000 with ID or passport number. If voters found their registration details to be inaccurate, voters could correct them by visiting any IEBC constituency office before a June 2 deadline.</p> <ol style="list-style-type: none"> <li>1. Concerns were expressed as to the limited publicity of the consultation process around voter verification, as well as the relatively short window provided for it. Those factors may have reduced participation in the verification process.</li> <li>2. As with other parts of the election process, voter verification was subject to delays from announced deadlines, which weakened public confidence. The verified register was not gazetted on June 2. On June 8, the IEBC reported that it would happen by June 20. The verified voter register was finally gazetted on 21st June</li> <li>3. The voter verification activity indicated a trend of “abnormal” voter transfers between the 2017 general election and May 2022. Several of the mission’s interlocutors reported that voters had discovered that they had been transferred to a different polling station, often outside their ward, without their knowledge or consent.</li> <li>4. In July 2022, the IEBC announced that the voter register would be “available to stakeholders for a minimal fee.” The legal basis for this distribution, as well as the extent to which the voter register was to be modified, if at all, to limit the disclosure of data around some categories of personal information, including sensitive biometric data, or indeed whether the IEBC acted on this stated intention, was unclear. Uncertainty around this issue underscored the need for increased transparency and effective public communications around data protection issues.</li> </ol>	<p><b>To Lawmakers:</b></p> <ul style="list-style-type: none"> <li>• Establish a funding mechanism for the IEBC that enables strategic operation across the entire election cycle, including election technologies.</li> <li>• Amend the Public Procurement and Asset Disposal Act 2015 to eliminate confidentiality in the tender process.</li> <li>• Clarify in law and guidelines that accessible personal data from the electoral register remains subject to and protected by data protection law.</li> <li>• Encourage media houses to conduct an annual review of the implementation status of recommendations filed by observation groups to hold institutions accountable.</li> <li>• Repeat Sections 22 and 23 of the Computer Misuse and Cybercrimes Act that contradict Kenya’s international obligations on freedom of expression.</li> </ul> <p><b>To Civil Society Organizations:</b></p> <ul style="list-style-type: none"> <li>• Commission training and expertise to enhance capacity for scrutinizing election technologies in line with international standards.</li> </ul> <p><b>To President William Ruto:</b></p> <ul style="list-style-type: none"> <li>• Propose a candidate with expertise in information technologies as part of the nominations process for IEBC commissioners.</li> </ul> <p><b>To the Judiciary:</b></p> <ul style="list-style-type: none"> <li>• Retain, review, and strengthen the e-filing system for petitions.</li> </ul> <p><b>To Political Parties:</b></p> <ul style="list-style-type: none"> <li>• Apply data protection safeguards to the personal information collected and processed, including adopting and publishing data protection policies, conducting audits, and ensuring compliance with data protection requirements by third-party collaborators for advertising purposes.</li> </ul> <p><b>To the Office of the Data Protection Commissioner (ODPC):</b></p> <ul style="list-style-type: none"> <li>• Improve trust and transparency by effectively communicating decisions to the public and openly challenging public and private actors.</li> <li>• Consider building on guidance or codes of practice on data and elections, such as clarifying access to the voter register and issuing guidance during the electoral cycle.</li> </ul>
<p><b>Electoral Legal Framework</b></p>	<ol style="list-style-type: none"> <li>1. Kenya has ratified the main international human rights provisions relevant to elections, each of which has implications for the use and deployment of election technologies</li> <li>2. Kenya has also ratified regional instruments relevant to the implementation of election technologies</li> <li>3. Under the constitution, conventions and covenants signed and ratified are incorporated into the laws of Kenya, creating a comprehensive framework for human rights protections within the state rooted in international standards.</li> <li>4. The full range of political and participatory rights are protected in the constitution, including freedoms of thought, expression, the media, access to information, association, and assembly.<sup>10</sup> Specific political rights, including the right to join a party, the right to vote through universal suffrage, and the right to participate in free and fair elections through secret ballot both as a voter and as a representative, are also protected. These legal provisions conform with international best practice as established under the ICCPR</li> </ol>	

	<ul style="list-style-type: none"> <li>• In its preparations for Election Day, the IEBC decided that polling stations would primarily use the digital voter register contained in the Kenya Integrated Election Management System (KIEMS). KIEMS is an electronic system used for voter registration, verification, and transmission of a digital copy of the results sheet from the polling station. On Aug. 4, the High Court ruled in favor of a petition requesting that the hard copy of the voter register take precedence, finding that technology could fail while the manual register cannot. However, on Aug. 8 the Court of Appeal suspended the High Court decision pending hearing. As a result, the original procedures were reinstated with the manual register supplied under seal and only used if both the KIEMS kits and the backup kits failed.</li> <li>• Under the IEBC guidelines, any person affected by an election activity could file a complaint. While the complaint forms were available online, they had to be filed physically at the IEBC head office, county offices, constituency offices and in polling stations on election day. The IEBC reported that 1,616 forms were downloaded during the election</li> <li>• On Aug. 15, immediately prior to the announcement of the final presidential election results by IEBC Chairperson Wafula Chebukati, four IEBC commissioners left the tally center and conducted a brief press conference denouncing what they termed the “opaque nature” of parts of the tabulation process. They claimed that in refusing to endorse the results, the announcement was rendered illegal. Chebukati rebutted this claim, citing a 2021 Supreme Court judgment.</li> <li>• On Aug. 22, presidential candidate Raila Odinga and the One Kenya Coalition Party filed a petition at the Supreme Court challenging the results.<sup>94</sup> While technology was at the heart of the petitioners’ claims, they made a diverse range of allegations, including: that the announcement of the results in the absence of four IEBC commissioners was illegal; that there was an “elaborate and fraudulent premeditated scheme to interfere with and undermine and defeat the integrity, credibility and security of the Presidential election” that the election results should be invalidated because of the purported “fraudulent intent” of the IEBC chairperson; and that IEBC decisions were subject to inadequate consultation. They requested that a forensic audit of the results be conducted; that access to the logs of all servers and technical equipment be granted; that spoiled and rejected ballots be scrutinized; and that various plaintiffs appear before the Supreme Court.</li> <li>• The Center’s mission notes that Kenya’s judicial system enjoys a high degree of confidence from a majority of the population. Overall, the Center’s mission found that the courts and dispute resolution process system acted in accordance with national laws and consistently with regional and international standards. 108 Judges assigned to the petitions process are well equipped for their roles, having received comprehensive training in international standards and electoral investigation techniques, and are knowledgeable about technical electoral process issues. Overall, the Center’s mission found that the courts and dispute resolution process system acted in accordance with national laws and consistently with regional and international standards</li> </ul>	
<p><b>Political Parties and Election Campaign Financing</b></p>	<ul style="list-style-type: none"> <li>• The right to stand for election is codified in international standards. Kenya used an online candidate nomination and ballot design tool in the 2022 election for the first time, which simplified the process and facilitated adherence to those standards</li> <li>• In 2018, the Office of the Registrar of Political Parties developed the Integrated Political Party Management System (IPPMS), a database of political party members. A test of the upgraded system in June 2021 resulted in many Kenyans’ discovering they were registered as members of political parties without their knowledge and possibly without their consent.</li> <li>• Kenyans took to social media in response to this incident. The data protection commissioner tweeted that she had received over 200 complaints from aggrieved individuals and said she had met with the Office of the Registrar of Political Parties to ensure that the complainants were deregistered.</li> <li>• The Office of the Registrar of Political Parties used bulk SMS to obtain consent from individuals before registering them to a political party. If individuals returned an objection message, they were not added as a member. If individuals did not respond within three days, they were not added. It is noteworthy that a 2021 amendment to the Political Parties Act passed into law on Jan. 27, 2022, states it is an offense for political parties to enlist members without consent [Section 24 1A]. This prohibition aligns with international best practice in personal data protection.</li> </ul>	

	<ul style="list-style-type: none"> <li>Information about meetings or negotiations relating to the alleged data violations was too often not relayed to local civil society organizations and voters, which aroused suspicion. Civil society organizations raised concerns that there seemed to be no investigation of what happened, no determination of who was responsible, and that there was neither enforcement action taken nor penalties imposed. To address these issues in the future, political parties should apply data protection safeguards to the personal information they collect and process.</li> <li>Political parties brought forward court cases against and for the nominations of various candidates, citing allegations of cyber-security vulnerabilities of the online platform, inconsistently applied rules for voter identification, and other concerns. This in turn created delays in the official publication of the final candidate list and consequent delays in printing ballot papers. The IEBC's decision to print ballot papers ahead of the official confirmation of candidates on the ballot highlighted systemic problems in the candidate registration process.</li> <li>Election day was preceded by a relatively calm and measured campaign.</li> </ul>	
<b>Election Security/ violence</b>	<ul style="list-style-type: none"> <li>Several incidents of violence, including against officials serving the democratic process, tainted the election. One presiding officer in Wajir was shot on Election Day.</li> <li>During tabulation, some individuals disrupted proceedings at the National Tallying Center; IEBC officials were injured during a physical altercation.</li> <li>The National Cohesion and Integration Commission identified hate speech during the campaign from both major political forces.</li> <li>After Election Day, prominent political figures from the campaign of Raila Odinga, including the candidate, directed personal attacks at the IEBC chairperson, which inflamed tensions. (On Aug. 16, Odinga called the IEBC chairperson a "dictator" and "threat"; Azimio la Umoja Chief Agent Saitabao Ole Kanchory termed the official a "scumbag" on Aug. 24. These proclamations were broadcast online to thousands of viewers)</li> </ul>	
<b>Media Monitoring</b>	<ul style="list-style-type: none"> <li>Most interlocutors with whom the Carter Center expert mission met expressed confidence in the competence of traditional media, including in the increasing professionalization of vernacular radio relied upon by many rural Kenyans. The Kenya Editors' Guild, the United Nations Development Program and the IEBC played an important role in facilitating this professionalization in the lead up to the election, delivering trainings to more than 650 journalists during 2022.</li> <li>-The lack of political consensus over aspects of the election system, late changes to the process, and the IEBC's lagging preparedness all impeded the media's ability to clearly educate the public on the role of technology in the election.</li> <li>Commendably, the IEBC consulted reporters in a timely manner over the design of the accreditation portal, though many only received their accreditation badges the week of the vote.</li> <li>Kenyan journalists told the Carter Center mission that they hope to assess the implementation of election observers' recommendations over the coming years</li> <li>Over the weeks immediately preceding the election, the IEBC renewed efforts to engage the media. This improved access to information. Daily press conferences were held from Aug. 1 and were sometimes used to provide explanations and updates on election technology.</li> <li>A media center providing computers, refreshments, and office space was set up at the National Tallying Center, helping reporters broadcast and scrutinize IEBC messaging.</li> <li>The IEBC operated social accounts on Facebook, Twitter, YouTube, Instagram, and WhatsApp and disseminated fact-based information about election technologies through these platforms, particularly over the weeks surrounding the election.</li> <li>The IEBC's increased use of social media elevated Kenyans' access to information over the electoral period. The IEBC increased its Facebook followers by as much in the 20 days surrounding the vote as over the previous five years combined</li> </ul>	

	<ul style="list-style-type: none"> <li>• Misinformation about technology, including claims that had first circulated in 2017, emerged throughout the process, including during voter registration and verification. Misinformation related to election technologies was reported by AFP Fact Check and Democracy in Africa during results transmission</li> <li>• The sharing of messages about the election process by automated accounts underscored a level of risk around how information spreads in Kenya, and the need to bolster fact-based messages.</li> <li>• Meta’s fact-checking partnerships with three members of the International Fact-Checking Network active in Kenya – Africa Check, Pesa Check, and AFP – helped to reduce the visibility of disinformation identified by partners during the election. The Access to Information Law 2016 was used by one fact-checker to verify claims.</li> <li>• Social networks rolled out important initiatives to combat misinformation in advance of the vote. For example, Meta rejected 36,000 ads targeted at Kenya in the six months before April 2022 for not undertaking account verification, established a center to specifically target election-related misinformation, and deleted over 79,000 items of content for violating policies on hate speech and incitement to violence.</li> <li>• Prominent individuals used allegations about results transmission to spread content that created tensions; this included highly inflammatory content from senior officials in the Raila Odinga camp which directly targeted Wafula Chebukati.</li> <li>• Tweets that spread highly inflammatory content, as well as imposter accounts that spread misinformation about election technologies, were taken down belatedly or not at all.</li> <li>• Despite the challenges, the additional functionalities of the Meta ad library and the role of partnerships between Meta and local fact checkers were positive steps, as was the proactive role of Kenyan civil society organizations and journalists in holding social platforms to account.</li> </ul>	
<b>Participation of Special Interest Groups</b>	<b>The Carter Center did not address on any of the Special Interest Groups</b>	
<b>Election Administration and Management</b>	<ul style="list-style-type: none"> <li>• Interlocutors regularly raised concerns with the Carter Center expert mission that political forces obstructed the IEBC’s capacity to deliver strategic communications on election technology. The Kenyatta administration’s delay in nominating replacement IEBC members ensured the institution lacked a fully staffed commission until March 2022. This was compounded by delays in parliament approving funding for the IEBC, which made strategic planning difficult.</li> <li>• In addition to these political challenges, internal issues prevented the IEBC from communicating key information. At no point did the IEBC benefit from a commissioner with a background in technology.</li> <li>• Political actors leveled attacks against the IEBC throughout the process and were often accused of doing so to seek material for potential post-electoral appeals. The IEBC noted in an open letter that political interference “plagues our electoral management”. This created challenges in building an effective communications operation.</li> <li>• Despite these challenges, the IEBC showed responsiveness to Kenyans’ concerns by improving its communications around election technologies in the final weeks before election day, including by establishing a call center equipped to respond to queries about technology, launching an online portal to display digitally transmitted polling station results forms, disseminating explanatory content online, and responding to queries on election technologies at press briefings</li> <li>• Procedural changes implemented long after most voter education and training efforts had ended caused confusion about Election Day processes. For example, to prevent votes from being cast fraudulently in the name of voters who had not in fact voted, the IEBC had instructed polling stations and informed the public that paper copies of the voter register would be used to identify voters only in the event of the total failure of the biometric machines.</li> <li>• Just five days before the election, the High Court ruled that the paper voter register should instead be distributed and used in all polling stations. This was then reversed the day before the election, when the Court of Appeal suspended the High Court’s judgment.</li> </ul>	

- The biometric voter register underwent major changes after the 2017 vote, including its transfer into a database provided by a new vendor. The IEBC conducted a comprehensive program of voter verification, during which numerous interlocutors reported learning their registrations had been moved to other parts of Kenya without their consent through this process.
- The register was later updated and reviewed by an external auditor; consequently, 246,465 deceased voters, 481,711 duplicate records, and 226,143 voters registered with IDs and passport numbers that did not belong to them were identified and, to a significant extent, removed.
- The transmission of official, legally binding election results is based on the physical transport and tabulation of the polling station 34A results forms. In parallel, for the purpose of results verification, the IEBC uses an electronic system referred to as the “results transmission system.” Results on the physical forms were checked against electronic scans of results forms at constituency and national tallying centers. Scans were also posted to a searchable online portal. This system was an important measure aimed at improving the transparency and verifiability of the election process and was positively received by civil society organizations in Kenya and the wider region.
- Less than 24 hours after polls closed, scans of 97.71% polling station results forms had already been posted on the public portal. Following verification of submissions with the physical copies, William Ruto was announced as the winner of the election, a declaration subsequently upheld by the Supreme Court of Kenya. Ruto received 7,176,141 votes (50.49%) and Raila Odinga received 6,942,930 votes (48.85%), with a turnout of 64.77%.
- Civil society organizations deemed the IEBC’s creation of a results portal a step forward for transparency.<sup>52</sup> Some 99.5% of the results forms were posted in the first four days following the vote, though Kenyans had to wait longer for the verification and tabulation of the legally binding physical copies
- Nationwide, the IEBC reported that KIEMS kits failures necessitated resort to the manual register in 238 polling stations (of more than 46,000 in total) on election day. Of these, 84 were caused by a faulty removable memory card that stores the relevant parts of the voter register and other configuration and log files; the remaining 154 were due to logistical problems. By Aug. 12, more than 99% of all 34A forms had been received by the public portal. Reports by larger election observation missions identified some problems with the KIEMS kits on Election Day, such as delays in identifying fingerprints, but found that most challenges could be addressed by backup measures built into the KIEMS system, such as via alphanumeric lookup and facial scanning with comparison against the national ID card.

## NDI/IRI

Theme	Findings	Recommendations
<b>Voter Education</b>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>Interlocutors highlighted that voter education efforts were insufficient, particularly at the grassroots-level and in areas with minority and indigenous populations.</li> <li>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.</li> <li>Voter education tactics also overlooked media outlets where young people receive and share information, such as social media platforms.</li> </ul>	<p>To the Parliament or Government of Kenya:</p> <ul style="list-style-type: none"> <li>Address the pending electoral law amendments urgently, either by expediting their review or stating that no further reforms will be entertained before the August polls, to eliminate confusion or suspicion of attempts to manipulate the process.</li> <li>Ensure timely financial transfers to the Independent Electoral and Boundaries Commission (IEBC) to facilitate effective preparations, including voter education campaigns.</li> </ul> <p><b>To the Independent Electoral and Boundaries Commission (IEBC):</b></p> <ul style="list-style-type: none"> <li>Develop and disseminate a clear methodology with appropriate safeguards for the collation, transmission, and declaration of results to build trust among electoral contestants and public confidence in the process.</li> <li>Pilot a nationwide integrated electoral management system (KIEMS) to identify gaps and plan alternatives.</li> <li>Collaborate with the Communications Authority of Kenya to conduct a feasibility study on network coverage and provide alternatives where gaps exist.</li> <li>Publicize the independent audit report of the voter register once it is complete.</li> <li>Finalize the voter education plan and deploy messages and materials in partnership with civil society organizations.</li> <li>Operationalize the Memorandum of Understanding (MOU) with the Union of Journalists and the Editors Guild to provide regular information to the public on the electoral process, including organizing bi-weekly press conferences attended by Commissioners and cascading the content to community radios, social media platforms, and other channels.</li> </ul>
<b>Voter Registration</b>	<ul style="list-style-type: none"> <li>The IEBC engaged in two Enhanced Continuous Voter Registration Exercises (ECVR) from October to November 2021 and from January to February 2022.</li> <li>The law provides for continuous voter registration until 60 days before Election Day, but the IEBC suspended the process on May 4, or just less than 90 days before the elections, to reportedly allow for adequate time for verification of the register.</li> <li>Only approximately 2.5 million new voters were added to the list falling short of the IEBC's target of six million new voters.</li> <li>The shortfall was attributed to inadequate engagement of marginalized communities such as pastoralists, as well as lack of outreach and education about the ECVR.</li> <li>Some political parties engaged in efforts to mobilize voters to register, however, others were hindered by the COVID-19 pandemic.</li> <li>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</li> <li>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</li> </ul>	
<b>Electoral Legal Framework</b>	<ul style="list-style-type: none"> <li>On August 30, the Supreme Court consolidated 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.</li> <li>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.</li> </ul>	

	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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</li> </ul>	<ul style="list-style-type: none"> <li>• Invest in social media monitoring and strategic communications to anticipate and counter misleading or false narratives regarding the electoral process proactively.</li> <li>• Regularly meet with political parties through the Political Party Liaison Committee (PPLC) platform to address their concerns and clarify ongoing electoral preparations.</li> </ul>
<p><b>Political Parties and Election Campaign Financing</b></p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• The nomination process, however, did not result in more transparency despite increased oversight authority conferred to the ORPP</li> <li>• Nominations were often opaque and marred by nepotistic selections over competitive processes, which often excluded young aspirants, particularly women</li> <li>• 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.</li> <li>• 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</li> <li>• 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.</li> <li>• 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.</li> </ul>	<p><b>To the Political Parties, Candidates, and Independent Candidates:</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Refrain from hate speech, cyberbullying, and inciting violence by supporters, including gender-based violence, and cooperate with institutions in investigating incidents.</li> <li>• Engage at senior levels in forums to build consensus and mitigate conflict, including those convened by the PPLC and National Cohesion and Integration Committee (NCIC).</li> <li>• Support campaigns for women, youth, and persons with disabilities (PWD) candidates by allocating dedicated resources and providing access to party and presidential candidates' campaign platforms.</li> <li>• Refrain from illegally raising and spending campaign funds and using money, goods, or services (public or otherwise) to improperly influence prospective voters.</li> <li>• Engage voters through issue-based campaigns and participate in candidate debates. Clearly identify the funding sources of campaign promises to voters.</li> </ul>
<p><b>Election Security/ violence</b></p>	<ul style="list-style-type: none"> <li>• Overall, the 2022 electoral process was largely peaceful with fewer incidents of violence and a limited number of casualties compared to previous elections.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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 was quickly curtailed by the police.</li> </ul>	

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- Prior to the official campaign period, the prosecution of police officers for misconduct also contributed to forging professionalism and accountability.
- 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.
- 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.
- Dialogue by civil society and heavy deployment of police curtailed immediate post-election violence in Nairobi informal settlements, as well as in Uasin Gishu.
- 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.
- The IEOK noted reports of women being physically assaulted in Bungoma, Kirinyaga, Mombasa, and in Nairobi where supporters were forcibly undressed.

### To the Civil Society and Religious Leaders

- Coordinate efforts to advocate for greater transparency and accountability in the electoral process.
- Adhere to the electoral code of conduct and the Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations.
- Use their voice and convening power to ensure credible, peaceful, and transparent elections.
- Contribute to public campaigns to raise awareness among Kenyan citizens about when and where to vote, as well as their rights and responsibilities on election day.
- Continue partnering 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 their platforms for civic and voter education programs and information.
- Cover candidate debates to inform citizens and promote issue-based campaigns.
- Feature the perspectives and concerns of women, youth, and PWD candidates by making special accommodations.
- Prepare for and publicize plans to project provisional election results in accordance with standards outlined in the MOU with the IEBC.



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- 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.
- 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.
- 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.
- 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.
- Prior to the official campaign period, the prosecution of police officers for misconduct also contributed to forging professionalism and accountability.
- 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.
- 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.
- Dialogue by civil society and heavy deployment of police curtailed immediate post-election violence in Nairobi informal settlements, as well as in Uasin Gishu.
- 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.
- The IEOK noted reports of women being physically assaulted in Bungoma, Kirinyaga, Mombasa, and in Nairobi where supporters were forcibly undressed.
- 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.

### To the Civil Society and Religious Leaders

- Coordinate efforts to advocate for greater transparency and accountability in the electoral process.
- Adhere to the electoral code of conduct and the Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations.
- Use their voice and convening power to ensure credible, peaceful, and transparent elections.
- Contribute to public campaigns to raise awareness among Kenyan citizens about when and where to vote, as well as their rights and responsibilities on election day.
- Continue partnering 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 their platforms for civic and voter education programs and information.
- Cover candidate debates to inform citizens and promote issue-based campaigns.
- Feature the perspectives and concerns of women, youth, and PWD candidates by making special accommodations.
- Prepare for and publicize plans to project provisional election results in accordance with standards outlined in the MOU with the IEBC.

	<ul style="list-style-type: none"> <li>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.</li> </ul>	<p><b>To the National Police</b></p> <ul style="list-style-type: none"> <li>Release the plan for election deployment, including protocols to enhance respect for human rights.</li> <li>Commit to swift evidence collection and presentation to the Director of Public Prosecution (DPP) to ensure efficient adjudication of election violence cases.</li> </ul>
<p><b>Media Monitoring</b></p>	<ul style="list-style-type: none"> <li>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</li> <li>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.</li> <li>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.</li> <li>According to a quantitative assessment 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.</li> <li>In addition, Odinga had a higher share of the coverage over Ruto across radio, television, and print media.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>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</li> <li>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</li> </ul>	<p><b>To the Judiciary:</b></p> <ul style="list-style-type: none"> <li>Designate specific courts to have jurisdiction over issues of violence against women in elections and election-related hate speech to ensure efficient handling of sensitive election-related matters.</li> <li>The PPLC should establish a regular meeting schedule with all political parties, ideally weekly, and make the decisions public to address citizen concerns about the election's integrity.</li> </ul>

	<ul style="list-style-type: none"> <li>• Social media was central to the dissemination of political and election-related information and disinformation. The use of pseudo accounts, bots, targeted hash-tags, 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.</li> <li>• 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.</li> <li>• Edited videos with mistranslated subtitles, edited speeches, falsified statements attributed to individuals and institutions, and misleading or misidentified images were commonplace</li> <li>• 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.</li> <li>• 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.</li> <li>• Local languages, which evade detection by social media threat-detection algorithms, were used as tools for code messaging and hate speech, some of which targeted women or used ethnic-based attacks on a number of online platforms.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>	
<p>Participation of Special Interest Groups</p>		

**Election  
Administration  
and  
Management**

- 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. 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.
- 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. 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.
  - - 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.
  - - 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.
  - - It was 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.
  - - 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.
  - - 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.
  - - 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.

## ENDNOTES

- 1 Uchaguzi Platform is a consortium of six (6) civil society organizations consisting of Mzalendo Trust, Centre for Multi-Party Democracy (CMD-Kenya), Constitution and Reform Education Consortium (CRECO-Kenya), Electoral Law and Governance Institute in Africa (ELGIA), Elections Observation Group (ELOG), and Transparency-International (TI-Kenya) that came together to speak as one voice with respect to critical concerns on the state of electoral preparedness of duty bearers' ahead of the 2022 General Elections of the relevant electoral actors ahead of the 2022 General Elections thus minimizing duplication of efforts.
- 2 The TWG works towards the provision of technical support in Elections Administration and Management and Elections related matters in the sector; consolidation of elections monitoring and observation findings and recommendations general elections; championship for timely administrative and legal electoral reforms geared towards enhancing democratic space in Kenya; harmonization of institutional skills and resources in current/ongoing interventions; and addressing the public on pertinent electoral issues as and when required through institutional leadership.
- 3 The Technical Working Group (TWG) on elections has been operating as a network of Civil Society and Faith- Based Organizations working on electoral governance.
- 4 Uchaguzi Platform is a network of civil society organizations working on electoral governance consisting of Electoral Law and Governance Institute for Africa (ELGIA), Mzalendo Trust, Constitution and Reform Education Consortium (CRECO-Kenya), Centre for Multi-Party Democracy-Kenya (CMD - Kenya), Transparency International-Kenya (TI-Kenya) and Elections Observation Group (ELOG)
- 5 A network of civil society and faith-based organizations working in electoral governance.
- 6 Uchaguzi Platform is a Network of six National Civil Society Organizations: Centre for Multiparty Democracy Kenya (CMD-K), Constitution and Reform Education Consortium (CRECO), Elections Observation Group (ELOG), Electoral Law and Governance Institute for Africa (ELGIA), Mzalendo Trust and Transparency International Kenya (TI-K)

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