



**PRELIMINARY STATEMENT OF THE  
NATIONAL DEMOCRATIC INSTITUTE'S  
INTERNATIONAL ELECTION OBSERVER MISSION  
TO KENYA'S AUGUST 8, 2017, ELECTIONS**

*Nairobi, August 10, 2017*

This preliminary statement is offered by the National Democratic Institute's (NDI) election observer delegation to Kenya's 2017 general elections.

The 30-member international and bipartisan delegation with members from 12 countries was co-led (alphabetically) by: Dr. Aisha Laraba Abdullahi, former Commissioner for Political Affairs of the African Union; Hon. Karen Bass, Ranking Member, U.S. House of Representatives Foreign Affairs Subcommittee on Africa; Professor Attahiru Jega, former Chairman, Independent National Election Commission of Nigeria; Justice Yvonne Mokgoro, former Justice of the Constitutional Court of South Africa; Hon. Christine Todd Whitman, former Governor of New Jersey; NDI senior associate and director of electoral programs Patrick Merloe; NDI senior associate and director for Southern and East Africa, Keith Jennings. Through this delegation, NDI seeks to: express the international community's interest in and support for credible, peaceful elections in Kenya; provide an accurate and impartial report on the character of the election process to date; and offer recommendations to improve future electoral processes.

The delegation visited Kenya from August 3-10, 2017. It builds upon the findings of NDI's pre-election assessment conducted from April 3-7 and benefited from the ongoing analysis of political developments and the broader work of NDI's Kenya office. The delegation conducted its activities in accordance with Kenyan law and the *Declaration of Principles for International Election Observation* and collaborated with other international observer missions that endorse the Declaration. NDI also provided technical assistance to Kenyan election monitoring organizations, assisted 5,000 women who contemplated competing in the election as candidates from various parties and as independents, and conducted political party poll watcher trainings.

The delegation is grateful for the warm welcome and cooperation it received from all Kenyans with whom it interacted, including election officials, candidates, party leaders, citizen election monitors, religious leaders, and civic activists. NDI does

not seek to interfere in the electoral process and recognizes that it is the Kenyan people who will ultimately determine the credibility of their elections.

**The delegation would like to stress that this statement is preliminary in nature. The official results are yet to be finalized, and electoral challenges, if any, are yet to be lodged and adjudicated. NDI will continue to monitor electoral developments and will issue further statements, if needed, and a final report.** The Institute expresses its appreciation to the U.S. Agency for International Development, the National Endowment for Democracy, the U.K. Department for International Development, and the Danish International Development Agency, for their support to NDI's activities related to Kenya's 2017 elections.

## **I. SUMMARY OF ELECTION DAY OBSERVATIONS**

The people of Kenya made their voices heard in a peaceful fashion through credible election processes on August 8. Candidates and their supporters should see the results tabulation process through to its conclusion in an equally peaceful manner, while documenting any challenges they might consider taking before the courts. Electoral authorities should be allowed to transparently complete the determination of the presidential outcome within the seven-day constitutional timeframe.

Voters turned out in very large numbers, and they waited patiently in long lines to cast their votes. The Independent Elections and Boundaries Commission (IEBC) delivered well-managed polls, even though it faced serious challenges in the few months it had leading to the vote. Late openings in many polling places contributed to waits but did not appear to dent the voters' resolve. Electronic voter check-in technology worked smoothly in the vast majority of polling places, and election officials worked long hours with determination to carry out their duties according to law.

Women participated in large numbers on election day and were well represented among the IEBC's staff, political party agents, and Kenyan election observers. Party agents from competing sides and independent candidate agents, as well as nonpartisan election monitors, were present at the vast majority of polling locations observed. Security officers were deployed at polling locations as well. News media (including Kenyan and international, traditional and digital) provided robust coverage of election developments, which contributed to public awareness and helped dispel rumors.

Electronic transmission of polling station results allowed the IEBC to present the aggregated presidential vote at the national level, though digital display of the

corresponding declaration of results forms (Form 34A for each polling station) was significantly delayed, contrary to expectations. Their display would allow candidates to compare copies of the forms provided to their agents at polling stations with the national database in order to confirm data and/or identify inconsistencies. The IEBC pledged that no final presidential outcome will be announced until all electronically transmitted copies of Forms 34A and corresponding Forms 34B from the constituency tally centers are reconciled with their original signed copies. This demonstrates the importance of open electoral data for safeguarding electoral integrity.

The National Super Alliance (NASA) alleged on August 9 that the IEBC database was hacked on election night, and a large-scale addition of votes for the Jubilee Party's presidential candidate took place. The IEBC Chairman firmly denied the allegation. The IEBC's process of comparing original tally sheets, which are legally recognized documents, to the database results should reveal whether that took place and simultaneously preserve the integrity of the process. The verification of polling procedures and results tabulation based on a nationally representative statistical model (commonly referred to as a nonpartisan parallel vote tabulation) conducted by the Elections Observation Group (ELOG) should provide a critical independent safeguard of electoral integrity.

The delegation would like to draw attention to NDI's August 1 statement concerning the brutal murder of the IEBC's IT manager Mr. Christopher Msando, where the Institute expressed its deepest condolences and joined with those calling for protection of IEBC staff and a full and effective investigation to bring the perpetrators to justice. The delegation deplores such violence in or outside the electoral context.

In the spirit of international cooperation, the delegation respectfully offers recommendations at the conclusion of this statement. NDI will continue to monitor the process and engage with Kenyans working to ensure electoral integrity and democratic progress.

## **II. THE ELECTION CONTEXT**

The 2017 presidential election is a repeat contest between two long-standing Kenyan politicians, whose constituencies result from a series of alliances between political parties representing different population groups. The presidential and other contests should be understood in light of the 2013 elections, and are the first national polls organized after the suspension of cases pending before the International Criminal Court that resulted from the devastating 2007-08 post-election violence.

The 2013 Kenyan elections marked a significant milestone in the country's political history. They represented the first polls conducted after comprehensive changes to the political system. Among those changes were the adoption of the 2010 Constitution and the creation of a new election management body: the IEBC (or Commission). The 2010 Constitution provides a significantly more complex electoral architecture than that which previously existed, including establishing 47 counties with governors and county assemblies. These changes took place alongside a series of sweeping reforms, which had been discussed in Kenyan politics since the 1990s and were implemented in response to the 2007 post-election violence that killed more than 1,000 people and internally displaced more than 600,000.

Consequently, on August 8, Kenyan voters cast six separate ballots for: the president; members of the National Assembly; senators; county governors; members of County Assemblies; and one woman representative to the National Assembly from each of the 47 counties. For the presidential election, incumbent Uhuru Kenyatta of the Jubilee Party again faced his principal challenger in 2013 Raila Odinga of the newly constituted National Super Alliance. Multiple opinion polls conducted in advance of election day predicted a very close race between the two. Competitive elections were also held at other levels under Kenya's decentralized post-2010 system of government, as 19.6 million registered voters considered more than 14,500 candidates for the country's 1,882 elected posts.

### **Election Administration**

Despite the considerable progress made in the 2013 election cycle, public confidence in the IEBC diminished as a result of technical failures in the polling process and criticisms of its performance by opposition parties, their supporters and others, following Raila Odinga's unsuccessful court challenge of the 2013 presidential election result. Allegations of corruption concerning the commission added to its problems. The opposition mounted large-scale protests against the IEBC in 2016, some of which were accompanied by isolated acts of violence. Resulting negotiations led the government to replace the IEBC commissioners and to reduce the number of Commission members to seven.

The new IEBC commissioners, who include three women and Chairman Wafula Chebukati, were appointed in early 2017 and installed with just over six months before the elections. The new Commission faced widespread scrutiny and concern over its ability to organize general elections in that short timeframe, especially given the commissioners' inexperience in managing elections. While the IEBC's staff had continued electoral preparations, key decisions by the Commission were required about legislatively mandated technologies, ballot procurement and other matters. Those and other decisions were met with a plethora of legal challenges by

companies that lost bids, civil society groups, and opposition parties. The litigation volume and substance challenged the IEBC's ability to organize the polls on time.

The IEBC faced tremendous challenges on a large number of fronts and met them with resolve over its short tenure. The brutal murder of the IEBC's IT manager less than two weeks before the elections underscored such challenges.

*Electoral Technologies.* The election commission employed biometric voter authentication and electronic results transmission technologies, collectively known as the Kenyan Integrated Election Management System (KIEMS). In addition, it used hand-held devices for authenticating voters based on national identification card and fingerprint data, known as the Electronic Voter Identification Devices (EVIDs). Use of similar technologies in 2013 proved controversial, because they failed to function for a large portion of polling stations. That added to pressures concerning the procurement, testing and functioning of such systems for the 2017 polls.

The IEBC reassured the public concerning deployment of the technologies, though simulations and stress testing were limited. When the immediate pre-election simulation was held, NASA alleged that it was given an incorrect access code. On August 6, the IEBC announced that 11,155 of the polling places (approximately 27 percent) would not have sufficient bandwidth to electronically transmit results, which would delay their transmission until officials in these locations could transport copies of results to one of the 290 constituency tallying centers. The number of such polling places was increased because the IEBC split transmission protocols among the country's three telecommunication companies, and assignments were not based on best available service at each polling place. That issue added to criticisms about electoral administration expressed in traditional and on social media.

*Voter Register.* The IEBC finalized the voter register in June, though it remained a point of controversy. The final register included 19,611,423 registered voters out of the country's estimated 25.2 million eligible voters. That represented a 36 percent increase from the 2013 roll.

An independent audit of the voter register undertaken by KPMG between early April and June 9 indicated that it included 92,277 deceased persons and close to 200,000 duplicate registrants. Additionally, the audit found that half a million records had incomplete registrant details. The IEBC said that it expunged 88,602 deceased individuals from the registry but that it retained 171,476 records of potentially deceased voters, where the National Registration Bureau database and the voter register did not correspond. The IEBC explained that it took this approach to minimize disenfranchisement.

There also was a public display period for individuals to check and correct their registration status. On August 3, the high court ordered IEBC to publicly gazette the voters register, and open it within 48 hours for inspection at polling stations or in a public portal. The Commission then made the register available on its website, which allowed individuals to see their records, though the late posting did not provide for timely independent verifications of the register.

Open Electoral Data. The late posting of the voter register and posting it without it being in complete and bulk form fell short of best practices for open electoral data. An important opportunity for timely independent verification of the register and consequent public confidence building was thus missed. The IEBC planned to make available through an online portal polling station results transmissions from the 40,883 polling places and results tabulation transmissions from the 290 constituency tabulation centers. Accomplishing that in a timely, machine readable, complete and bulk format that would allow for easy analysis, and volatility about the election results would be greatly diminished. Instituting such open electoral data practices would also be an inoculation against circulation of fake results and similar disinformation about the elections.

Voter Education. The IEBC is constitutionally mandated to conduct voter education. (Article 84(4)(g)). Recognizing the rights of civil society organizations to engage in voter education and the need to mobilize multiple sectors, the IEBC issued materials and accredited a number of groups to conduct such programs. This included the IEBC engaging 2,900 voter education facilitators, two per ward. Long-term election observation efforts reported that there was an uptick in voter education activities in the latter part of the pre-election period but that more efforts were needed.

Political Party Codes of Conduct. Parties are subject to the Electoral Code of Conduct contained in the electoral law and the IEBC's Political Party Code of Conduct. Their provisions pertain to party leaders and members concerning actions toward each other and toward the public. While the enforcement of those codes depends on parties educating and disciplining members, the courts and the IEBC have enforcement roles. For its part, the IEBC invoked these provisions, calling candidates to task on 71 occasions and imposing sanctions on candidates, including fines and the disqualification of one candidate for member of parliament.

## **Election-Related Litigation and Dispute Resolution**

NDI's April 2017 pre-election delegation statement noted that Kenya's court system prepared diligently for electoral contests. This included training judges in

the specifics of electoral challenges and reserving space on judicial calendars to ensure timely processing of cases.

In the lead-up to the August polls, companies that were unsuccessful in their IEBC procurement bids, civil society groups, and NASA took numerous cases to court related to election administration. The courts demonstrated capacity and independence in their proceedings, providing a number of significant rulings in favor of challengers and deciding others in favor of the IEBC. In the face of criticism of judicial officers and court decisions by the two major parties, the Chief Justice of Kenya made a strong public statement against political leaders casting aspersions on the courts and undermining public confidence in them for political gain. These and other actions by the courts will likely raise public trust in the judiciary in the long term, even as both political camps continued to express some mistrust ahead of the 2017 election.

Several examples of important judicial rulings are summarized below.

- *Selection of the voter register audit firm:* A petition was lodged at the High Court against the selection of KPMG as the auditor of the voter register, citing insufficient consultations in the tender. The High Court initially granted an injunction suspending the tender to allow for a full hearing on the matter. In its ruling, the court dismissed the petition and KPMG was eventually able to move forward with the audit.
- *Procurement of ballot papers:* Unsuccessful bidders challenged the procurement process for ballot papers, thus delaying selection of a vendor. The IEBC eventually chose to “single-source” the contract to a Dubai-based firm. The opposition then brought a case to court, which cancelled the printing of presidential papers until the Court of Appeal reversed the decision on July 20.
- *Finalizing results at the constituency and polling station levels:* In 2013, the returning officers in each constituency transmitted results to the national tally center in Nairobi, at which point the results were collated after mistakes were corrected and eventually results were announced as final. The opposition successfully challenged this system, receiving a ruling that in 2017 all presidential results are declared final at the constituency level before they are submitted to the national tally center, where results must be tabulated without making corrections. A later case similarly ruled that polling station results would be final and thus not subject to correction at higher administrative levels.
- *Use of technology on election day:* The High Court dismissed a case filed by NASA seeking to make the August polls exclusively electronic. NASA also lost its bid to have polls postponed in areas where breakdowns of the electronic system occurred in the 2017 polls. The petition argued that the

IEBC had failed to put in place a complementary system as required by law, but the High Court ruled that the Commission had instituted sufficient mechanisms (a manual backup) to manage such problems.

As noted in NDI's April 2017 pre-election assessment statement, the Political Parties Disputes Tribunal (PPDT) appeared to be under-resourced. It later received approximately 300 petitions concerning the political parties' primary elections, which challenged its capacities. The 30-day period for resolving such petitions had to be extended, and complaints were lodged at the High Court, claiming that petitions did not receive adequate process by the PPDT. A number of such court complaints were pending as the elections approached, which may contribute to legal challenges to some of the August 8 polls.

The Ethics and Anti-Corruption Commission reviewed candidates and supplied the IEBC with the names of approximately 100 individuals standing for various offices who may not meet constitutional requirements for leadership and integrity. All of the candidates were allowed to stand in the elections, highlighting the need to consider criteria that should be used concerning those provisions in the future.

## **Political Parties and Campaigning**

*Party Primaries.* In April 2017, the major political parties conducted primaries to determine their general election candidates. While the 2013 primaries were widely perceived as permitting pre-selected aspirants to advance to the general elections, this year's primaries were characterized by sharp competition at all levels of office. Notably, large numbers of incumbents lost to challengers at the primary level.

However, poor organization posed problems, including some candidates being left off ballots, precincts that did not receive ballots, inadequate means to ensure that voters were members of parties in whose primaries they voted, and disenfranchisement of some prospective voters whose party membership could not be established. There were consequent charges of rigging and isolated incidents of violence, though violence did not materialize on scales that had been feared beforehand. The number of women who emerged as primary winners was disappointing, with women representing only 11 percent of party nominations and 7 percent of those who made it to the ballot on August 8 (excluding women-only seats). (Please see the section on Inclusion, below.)

A record number of independents registered to compete in the 2017's general elections, representing approximately 25 percent of the candidates in the August 8 polls. Incumbent defeats and the merger of former Jubilee Alliance parties into the



Jubilee Party (which reduced the number of party nominations) likely contributed in part to the increase of independent candidates.

*The Election Campaign.* Campaigning began officially just over a month ahead of the elections and ended two days before the polls opened. The two main presidential campaigns were robust with caravans and rallies held across the country, although with some difficulties, in their opponent's stronghold areas. Campaigns for other offices were hotly contested as well, albeit on smaller scales. Campaigning also included person-to-person contacts at homes, in markets, and other places, and spreading messages through various media.

Two presidential debates were scheduled to be broadcast, though one, featuring the two leading presidential candidates' running mates, was cancelled because the two main candidates said they would not participate. Raila Odinga attended the second debate, though President Kenyatta did not, stating that the debate rules were not developed with proper consultation. Mr. Odinga benefited from the solo platform, though the population was deprived of the opportunity to directly compare the two candidates in that forum.

Presidential campaigns, with uneven coverage favorable to the incumbent, received attention across print, broadcast and social media. This allowed both presidential candidates to be known to the public, though they concentrated largely on matters of personality and criticism of the IEBC and courts, rather than on substantive policy issues. This approach reinforced ethnic based politics. Unfortunately, disinformation including "fake news" and attacks on social media polluted the campaign. (Please see the Media Environment section below.)

Recently passed campaign finance regulations were suspended until the next Kenyan elections. Both presidential campaigns were significantly resourced, though there were persistent complaints of the use of government resources for the electoral advantage of incumbents at all levels. Allegations were widespread of vote buying by all sides, which corrodes public integrity through petty political corruption.

### **Security and Concerns about Election Related Violence**

There were sporadic incidents of politically motivated violence during the campaign period, including threats and some clashes of opposing sides at rallies. Hate speech and incitement remained a troubling part of campaigning in a variety of ways, including at some rallies, over the airwaves and social media. In Siaya county, the IEBC suspended political rallies for one week to avert escalation of violence and gubernatorial campaigning was suspended in Marsabit County, while in Homabay county, a bodyguard to a female candidate, Millie Mabona, was

crushed by a vehicle during a violent confrontation with opponents. Physical violence and threats of it, as in all countries, has a prejudicial impact on women's participation as candidates, election officials and voters. (See the section on Inclusion below.)

The IEBC took action to address incidences of violence during campaigns by summoning candidates for disciplinary hearings. As the election date drew near, the brutal murder of the IEBC's IT manager, a deadly incident at the deputy president's home, media reports of increased potentials for election related violence led some to depart areas where such violence could break out after the polls.

The pre-election period witnessed some clashes based principally on deeply rooted cleavages related to access to land and water. They added to concerns about potentials for electoral violence, particularly related to county level political rivalries. Such incidents occurred in Kenya's eastern and southeast regions, including in Laikipia and Baringo Counties in the Rift Valley and in Narok County. Al-Shabaab also conducted attacks during the pre-election period in counties bordering Somalia, including Mandera County in the northeast and Lamu County in the south. Elections provide a target of opportunity to such violent extremists bent on destroying the stability of legitimate states, and the potential for extremist attacks added to concerns about violence related to the polls.

Civil society organizations engaged in a number of efforts to mitigate potentials for electoral related violence. These included dialogue promotion, early warning/early response efforts and long-term observation of the campaign environment. (See the section Citizen Engagement below.)

To provide for safety and security on election day, the IEBC and the National Police Service announced that two security officers would be posted at each polling station. A combination of security forces mobilized the deployment of 180,000 officers for election day. In the lead-up to election day, press releases were issued about the tear gas, crowd control, and firearms that security personnel would be given to respond to protests and electoral violence. Serious concerns were expressed in multiple quarters that the officers lacked adequate training to manage large and active crowds without escalating a situation, and calls were made to use only appropriate, proportionate measures to ensure public safety. Fears that the Kenyan Defense Forces were also placed on standby to protect against large-scale electoral related violence led many to question whether overreaction was taking place and whether the heavy security measures had the potential of suppressing voter participation, particularly if the forces were aggressively deployed in opposition strongholds.

## **Media Environment, Disinformation and Hate Speech**

Kenya benefits from an active print, broadcast and social media environment. The Kenya Broadcasting Corporation is the state-run media organization, while privately owned organizations include the Nation Media Group, the Standard Group (owned by former President Moi), Royal Media Services, and Mediamax Network Limited (owned by the Kenyatta family). Media ownership reflects some geographic, ethnic and political orientations, while government advertisement revenues are mainstays for these media houses, which many report has a limiting effect on reporting.

Social media has mushroomed in Kenya, where reportedly 90 percent of the population uses mobile phones (over 40 percent of which are smartphones). WhatsApp is the most widely used platform, while Twitter, Facebook and other platforms are also significant. These and other digital platforms have been used to create accountability and mitigate potentials for violence. (See the Citizen Engagement section below.) Media houses and a number of investigative reporters are active on social media as are various organizations. For many people, social media exchanges have complemented or replaced traditional media as news sources, which has both enhanced freedom of expression and made it more difficult to determine the credibility of reports.

Fake news (false reports consciously manufactured) and other forms of disinformation are not new to Kenyan elections, but they took on new, significant dimensions through social media in the lead-up to August 8. A May 2017 study conducted by the communications consulting firms Portland Africa and GeoPoll suggested that 90 percent of Kenyans had seen or heard false news concerning this year's elections<sup>1</sup>. A false Facebook posting that went viral reported that ballot papers marked in favor of President Kenyatta were stored at a Nairobi army barracks. That fabrication was likely generated by his detractors. Online attack ads replete with false information and even scenes of impending violence and fake websites, like "Real Raila" ([www.therealraila.com](http://www.therealraila.com)), potentially swayed the decisions of some voters. Software programs that create robotic multiplication of hits on a site (bots) force sites such as Real Raila to the top of search engines and increase viewings of such disinformation sites. Fake videos made out to be from BBC and CNN circulated on social media stating falsely that new opinion polls showed a likely incumbent electoral victory. They were likely created by Odinga's detractors.

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<sup>1</sup> Secondary findings from the research indicated that most Kenyans trust the media, with approximately 76 percent of Kenyans saying that information obtained through television is accurate.

Disinformation often plays off social, ethnic and other divides with the intent to exacerbate them and either motivate a political base to action or depress an opponent's supporters from participating in elections. In Kenya, fake news and other such tactics blend into hate speech and incitement, which heightens potentials for politically motivated violence in and beyond elections. This makes disinformation and hate speech over social media particularly dangerous. Such tactics can only be countered with expanding media literacy, accountability for those propagating disinformation on behalf of political actors, wide access to key electoral data to inoculate against fake reports, and a robust media and civil society.

### **Universal and Equal Suffrage and Inclusion in Electoral Processes**

The 2010 Constitution stipulates that sovereignty belongs to the people and that they may exercise sovereign power through elected representatives; it also guarantees equal protection of all rights, free from discrimination based on gender, ethnicity, age or other status, and the right to universal suffrage in democratic elections. (Articles 1, 2, 27 and 36.) While the constitution provides a framework for an inclusive political process, barriers to increasing the representation of women as well as young women and men as political actors still exist. For example, the costs of nomination, campaigning and (if necessary) dispute resolution can pose high hurdles for women and young people. Difficulties in acquiring national ID cards - a prerequisite for voter registration - is still a pervasive problem, particularly for young people, and estimates indicate that youth registration stands at around 57 percent of the eligible youth voting population.

For women, the 2010 Constitution specifies that no more than two-thirds of either gender may occupy elected public bodies. (Article 81(b).) However, the 2013 elections failed to produce that result, and there appears to be no immediate path to overcome the unconstitutional circumstance. Women represent only 20 percent of the 11th Parliament. No women were elected among the 47 county governors, and other organs of government have also not met the rule. The Supreme Court advised in 2012 that the measure had to be progressively implemented, giving Parliament until 2015 to act. Several bills were introduced to that effect, though none passed. In March 2017, the High Court ruled that legislation should be enacted within 60 days to enforce the gender rule, but that did not happen.

The results of the 2017 party primaries demonstrate an improvement in women's engagement over 2013, though the number of women who participated in the party primaries (11 percent) and in the general elections (7 percent) was still well below the constitutionally-required gender threshold. For the first time, the two strongest political alliances put forth female senatorial and gubernatorial candidates in their strongholds. This indicates that Kenya is likely to have the first woman

governor(s) and senator(s) following the 2017 polls. There is also likely to be an increase in the number of women members of National Assembly and County Assemblies. These developments can be attributed in part to initiatives by political parties to increase women's participation, the re-engagement of unsuccessful 2013 women aspirants, and increased opportunities for election at the county level, as well as the gender quota.

Violence against women in elections. Kenyan women still face a wide set of challenges as politicians, voters, candidates and election workers. This includes political violence through physical assaults, threats and coercion (including sexual harassment, sexual extortion, and economic threats). For example, during the party primaries, candidate Millie Odhiambo's house was burned down and her bodyguard was run over and killed by a man driving a rival's campaign vehicle. Eunice Wambui, an aspiring parliamentarian for Embakasi South, was attacked during a voter registration drive in Mukuru Kwa Reuben, one of Nairobi's sprawling slums. Esther Passaris, a candidate for Nairobi County representative, was held hostage at the University of Nairobi by a group of male students.

Violence against women has not only been directed against candidates. Mulika Uhalifu, an organization that highlighted cases of electoral offences and insecurity in Nakuru County, reported that women voters requested separate voting queues during the party primaries to avoid indecent touching. Clashes and threats of violence also inhibit women from political participation. For example, women moving their families away from areas where electoral violence might occur may cause disenfranchisement.

## **Citizen Engagement**

Kenya benefits from a sophisticated, vocal and active civil society, including faith-based and civic organizations, that have made historic contributions to political reform, electoral integrity, and related peacebuilding. In the runup to the 2017 elections their work embraced a range of techniques from direct observation and dialogue promotion to digital tools and social media communications to encourage electoral participation, deter manipulation, and limit potentials for violence.

Thousands of Kenyans monitored the 2017 election process. For example, ELOG (a coalition of civic and faith-based organizations) fielded pre-election monitors in all of Kenya's 290 constituencies and issued five pre-election reports, while it mobilized approximately 8,000 election-day observers throughout the country. It employed a nationally representative statistical sample and rapid short messaging service (SMS) reporting to comment on voting and counting processes. Uraia Trust and other civil society groups engaged in voter and civic education

campaigning for the elections. The Multi-Sectoral Forum established by religious leaders promoted political dialogue to reduce tensions. Uwiano and Ushahidi SMS platforms aided district peace committees through crowd reporting of incidents, while others also joined in anti-violence efforts.

### **III. ELECTION DAY OBSERVATIONS**

NDI teams deployed to 13 counties throughout the country where they observed the opening, voting and counting processes. Overall, they witnessed a calm environment free of significant problems or security incidents. Throughout the day, teams observed long lines of voters in many polling locations. Women with small children and the elderly were given priority in the queues at most polling sites observed. In some small polling sites - especially those that used tents - overcrowding may have created challenges for maintaining secrecy of the ballot.

Teams also witnessed significant numbers of assisted voters throughout the day. The complexities of casting ballots in six separate elections may have contributed to the number of persons who sought assistance. Difficulties distinguishing between closely colored ballots in dim lighting presented challenges for some voters. In addition, most polling stations were not easily accessible to persons with disabilities. Observers expressed concern that procedures allowing multiple party or candidate agents to witness the assisted voting process may have compromised secrecy of the ballot. Inconsistencies in the sealing of ballot boxes in a few polling stations were also noted.

IEBC officials largely adhered to voting procedures and performed their functions professionally despite long hours. The Electronic Voter Identification Devices (EVIDs) were present and functioned in all polling stations observed, although in some locations suffered technical difficulties contributing to delays. Some inconsistencies were noted in the voter authentication process across polling stations, particularly with respect to the number of attempts made at biometric fingerprint authentication. In addition, a few polling stations lacked a printed copy Register of Voters, though this did not have an impact on the voter identification process.

Counting also took place in a calm atmosphere. Officials generally followed procedures. Party and candidate agents were present through the process in the vast majority of polling stations. In some stations the counting process was slow to start. When counting concluded, party and candidate agents signed the Declaration of Results Form in the stations observed.

### **IV. RECOMMENDATIONS**

The delegation urges Kenyan electoral actors to address immediate challenges during the consolidation of results and to apply lessons from the 2017 elections to benefit the post-election political process. In its final report, NDI will offer further, longer-term recommendations concerning enhancing inclusion in political processes and improving electoral processes. In the spirit of international cooperation, the delegation offers the following recommendations, which it believes would strengthen the Kenyan electoral framework.

**To the IEBC:**

- Ensure timely and periodic communications to the Kenyan people and political contestants about the results tallying process, including any issues that may complicate the completion of the process within the constitutional timeframe.
- Provide complete and timely polling station level results in an easily analyzable format.
- Make copies of the scanned 34A and 34B Forms available to the public in a timely manner, as well as the Declaration of Results Forms for the other elections.

**To political parties and candidates:**

- Publicly and vigorously encourage supporters to refrain from any acts of violence and/or intimidation.
- Seek redress for electoral complaints through proper legal channels and abide by the outcomes of judicial proceedings.

**To the Government of Kenya and the Judiciary:**

- Ensure that information about how to file election-related petitions is widely publicized in forms that are accessible for electoral contestants and the general public, including persons with disabilities and persons with limited literacy.
- Regularly inform the public about progress made into the investigation of the death of IEBC IT Manager Chris Msando.

**To security forces:**

- Demonstrate professionalism and exercise reasonable restraint in the maintenance of order if called upon to respond to any security incidents in the post-election period.
- Provide particular instructions to deployed security forces on recognizing and addressing violence against women in elections, including through connecting victims to crisis hotlines and rapid response mechanisms.

**To civil society and the media:**

- Continue to actively monitor electoral processes, including the determination of electoral results and any legal processes related to the August 8 elections.
- Continue to monitor and engage citizens in identifying incidents of hate speech and incitement to violence and coordinate with early warning/early response efforts.
- Engage in responsible, fact-based coverage of post-election developments.
- Civil society and media houses as well as the IEBC should actively address rumors and fake information in the post-election period in order to provide citizens with information they need to enhance political and governmental accountability.

**To the people of Kenya:**

- Exercise restraint as you await the final electoral outcome, continuing the peaceful example set throughout the country on August 8.