



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

**August 11, 2022**

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

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

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

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

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

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

## **I. INITIAL FINDINGS AND RECOMMENDATIONS**

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

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

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

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

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

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

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

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

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

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

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

#### **To the IEBC**

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

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

#### **To Political Parties and Candidates**

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

#### **To the Judiciary**

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

#### **To the Government**

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

#### **To the Security Forces**

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

#### **To Civil Society, Religious Leaders, and the Media**

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

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

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

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

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

## **II. DETAILED FINDINGS**

### **Electoral Context**

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

### **Legal Framework**

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

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

### **Judiciary**

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

### **Election Administration**

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

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

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

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

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

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

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

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

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

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

### **Political Parties and Campaigns**

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

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

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

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

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

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

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

### **Election Security**

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

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

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

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

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



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

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

*Peace and mitigation efforts:* As part the of the Uchaguzi Bila Noma roadmap to peaceful elections, an initiative of the National Cohesion and Integration Commission (NCIC), state agencies and non-state peace actors initiated a series of peace activities under the UWIANO platform<sup>4</sup> and the #LetPeaceWin campaign launched on June 18. Though the operationalization of the overall strategy remained opaque, agencies primarily focused on the conflict-prone counties identified by a hotspot mapping survey released at the end of May by the NCIC. The hotspot map showed 16 counties that were at greater risk of electoral violence with Nairobi, Nakuru, Kericho, Kisumu, Uasin Gishu, and Mombasa, among the top six. Peace activities included peace caravans, peace runs and walks, situations rooms, and consultation forums with media, boda bodas, political parties, CSOs, faith-based groups (FBO), women and PWDs. Efforts targeting youth and the prevention of youth violence were also implemented.

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

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

### **Inclusion: Women, Youth, and Persons with Disabilities**

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

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

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

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

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

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

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

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

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

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

### **Information Environment**

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

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

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

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

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

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

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

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

### **Civil Society Engagement**

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

### **Election Day**

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

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

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

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

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

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