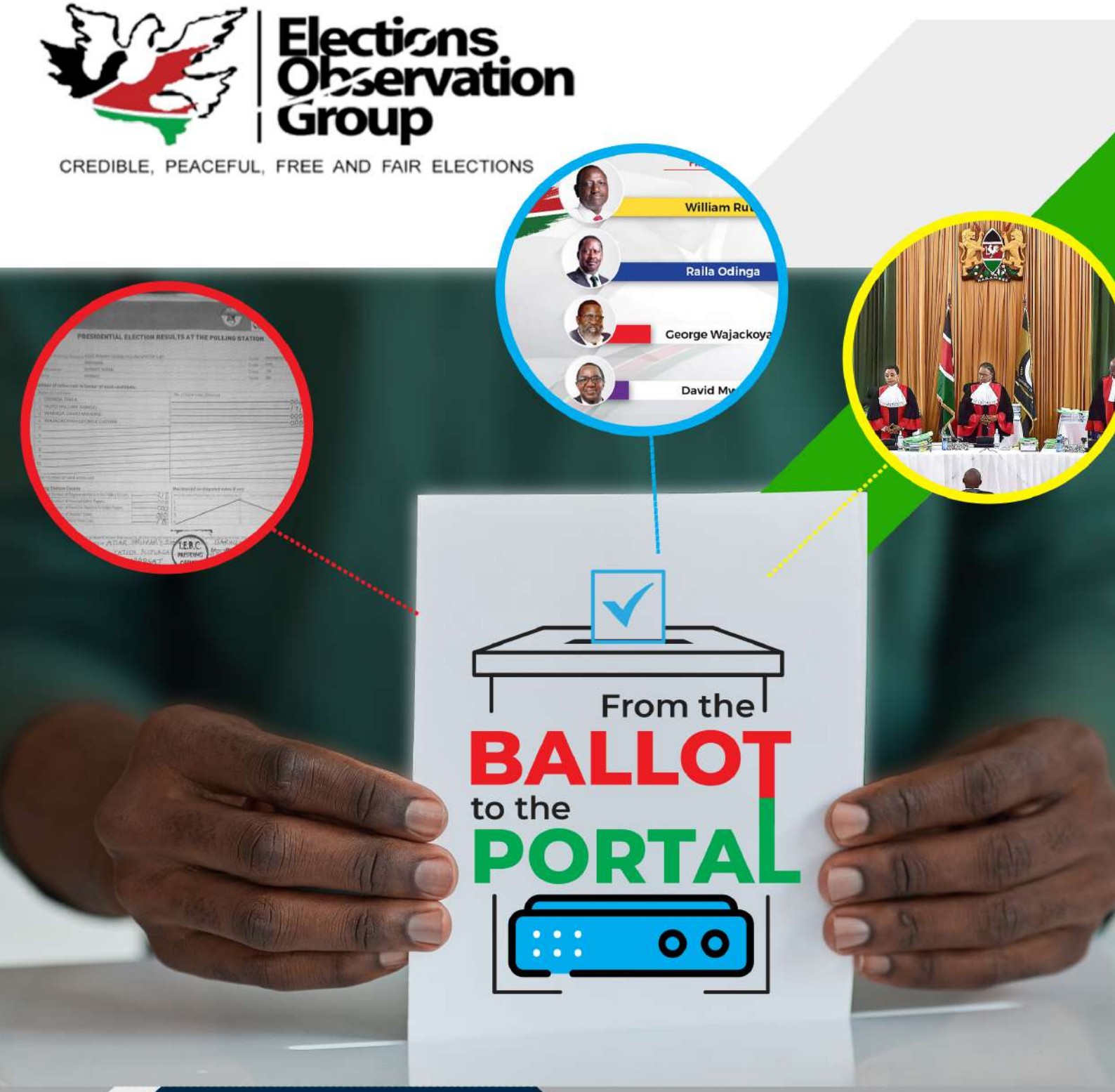
Elections Observation Group

CREDIBLE, PEACEFUL, FREE AND FAIR ELECTIONS



OBSERVATION REPORT FOR THE 2022 GENERAL ELECTIONS IN KENYA

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"ABBREVIATIONS & ACRONYMS"

ANC	-	The African National Congress
BVR	-	Biometric Voter Registration
CEMIRIDE	-	Center for Minority Rights Development
CGD	-	Center for Governance and Development
CJPD	-	Catholic Justice and Peace Department
CMD-K	-	Center for Multi-Party Democracy- Kenya
COMESA	-	Common Market for Eastern and Southern Africa
CRECO	-	Constitution and Reform Education Consortium
CSO	-	Civil Society Organization
CVR	-	Continuous Voter Registration
DAP-K	-	The Democratic Action Party-Kenya
DRC	-	IEBC Dispute Resolution Committee
ECJP	-	Ecumenical Center for Justice and Peace
ELF	-	Emerging Leaders Foundation
ELOG	-	Election Observation Group
ESAP	-	Electoral Security Arrangement Program
EU	-	European Union
FBO	-	Faith-Based Organizations
FCDO	-	Foreign, Commonwealth and Development Office
FIDA - K	-	Federation of Women Lawyers, Kenya.
FORD-K	-	Forum for the Restoration of Democracy-Kenya
ICJ Kenya	-	International Council of Jurist-Kenya
ID	-	National Identity Cards
IDRM	-	Internal Dispute Resolution Mechanism
IEBC	-	Independent Electoral and Boundaries Commission
IED	-	Institute for Education in Democracy
IFES	-	International Foundation for Electoral Systems.
IRI	-	International Republican Institute
JCE	-	The Judiciary Committee on Elections
JUBILEE	-	The Jubilee Party of Kenya
KANU	-	The Kenya African National Union
KEG	-	Kenya Editors Guild
KEHC	-	Kenya High Court
KIEMS	-	Kenya Integrated Elections Management System
KNHRC	-	Kenya National Commission on Human Rights
LTO	-	Long Term Observation
MCA	-	Member of County Assembly
MCC	-	Maendeleo Chap Chap Party
MCK	-	Media Council of Kenya
MOA	-	Media Owners Association
MP	-	Member of Parliament
NARC	-	National Alliance of Rainbow Coalition
NARC-K	-	National Alliance of Rainbow Coalition-Kenya
NCCK	-	National Council of Churches of Kenya
NCIC	-	National Cohesion and Integration Commission
NPS	-	The National Police Service
ODM	-	Orange Democratic Movement
ODPP	-	Office of the Director of Public Prosecution
ORPP	-	Office of the Registrar of Political Parties
PNU	-	Party of National Unity
PVT	-	Parallel Vote Tabulation
PWDs	-	Persons with Disabilities
SIG	-	Special Interest Groups
SUPKEM	-	Supreme Council of Kenya Muslims
TEAM	-	Transform Empower for Action Initiative
UDA	-	United Democratic Alliance
UDPK	-	United Disabled Persons of Kenya
USAID	-	United States Agency for International Development
WIPER	-	Wiper Democratic Movement
YAA	-	Youth Agenda

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Anne W. Ireri

CHAIRPERSON

ELOG Steering Committee & Executive Director, FIDA-K

EXECUTIVE SUMMARY

The 2022 general elections were the third general elections and the fourth presidential election since the promulgation of the Constitution 2010. They were also the 7th periodic general elections since the re-introduction of multi-party democracy in Kenya in 1991. They were transitional election for Kenya as they marked the end to the incumbent President Uhuru Kenyatta's two terms in office. Similarly, there were 22 transitions at the county governors' level due to the expiry of respective 2 term limits.

Since the re-introduction of multi-party politics in 1991, Kenyan elections have remained very high stakes affairs that are characterized by heightened socio-economic and political and ethnic tensions. While the 2022 general elections were no exception, they were nuanced by an additional layer of new political shifts and narratives that emphasized socio-class and identity-based grievances and tensions. Other numerous issues and factors such as rising cost of living, high unemployment and poverty levels, corruption, bulging public debt, general insecurity, political patronage, among others, also defined and shaped the context and environment in the lead up to the 2022 elections. These factors were compounded by the challenges of Covid-19 pandemic, splintered ruling party, class and intra elite tensions, existential politics of survival and the exponential cost of elections, to make the 2022 general elections unprecedented, unpredictable, complicated and challenging.

The two top contenders for the presidential position, Raila Odinga and William Ruto, in some way had a claim to incumbency and attracted a near equal political support base across the country. Opinion polls over

the period also showed a close margin between the two top presidential contenders and a possibility of the presidential election outcome tilting in favor of either of them at the finish line. They also portrayed a potential of neither of the two top presidential candidates crossing over the 50%+1 threshold, thus the likelihood of a run-off.

Out of a national population of 47.6 million, 22,120,458 Kenyans (49.12% female and 50.88% male while 39.84% were youth between 18-35 years) were registered to vote in the 2022 general elections at the 46, 233 gazetted polling stations across the 1,450 electoral wards in the country. Even though this was an increase from the 19.6 million registered voters in 2017, general apathy and lack of interest, among others, as well as the consequent low voter registration characterized the voter registration drives for the 2022 general elections. The registered voters were required to simultaneously cast six ballots for the election of a President, Senator, Member of National Assembly, Woman Representative, County Governor and Member of County Assembly.

The IEBC cleared and registered a total of 16,100 candidates to contest for the 1,882 elective seats across the country. Out of these, 11,574 (72%) contested on political parties' tickets while 4,526 (28%) contested as independent candidates. While the majority of the candidates were vying through political party tickets, these elections also had a record high number of independent candidates as compared to previous elections. Out of the 7,128 aspirants who showed interest to contest as independent candidates, 4,526 were cleared and registered to contest as independent candidates.

The 2022 general elections had the lowest number of presidential candidates cleared to contest since the restoration of multi-party system in 1991. Out of the 4 cleared presidential candidates, two of them, Raila Odinga of the Azimio la Umoja, One Kenya Coalition and William Ruto of the UDA/Kenya Kwanza Alliance, were clearly the front runners. The other two presidential candidates George Luchiri Wajackoyah of the Roots Party and David Waihiga Mwaure of the Agano Party also attracted the imagination of Kenyans with their campaign agenda.

In its tradition and buoyed by its long experience, established professionalism, neutrality, impartiality and developed niche in election observation in Kenya and the region, ELOG observed the August 2022 general elections through the use of eight thematic areas by deploying 5,108 citizen observers. ELOG employed long-term and short-term strategies and methodologies that covered the pre-election environment, Election day processes and immediate post-elections period.

The broad-based and holistic approach to election observation that ELOG utilized enabled it to speak authoritatively and objectively on the broader electoral processes, based on a broad outlook. For the Elections Day (E-Day) on 9th and 29th August 2022, ELOG utilized short-term elections observation methodology that combined Parallel Vote Tabulation and General Observation to enable ELOG to give a comprehensive and credible national account and outlook of the entire Elections Day processes.

ELOG's observation findings and assessment of the 2022 elections indicate significant improvements towards the management of election day processes and related activities that culminated in the declaration of the electoral outcomes by the IEBC. In particular, ELOG noted significant improvements in the set-up, opening and closing of polling stations, enhanced efficiency in the management of KIEMS kits (failure rate dropped from 7.6% in 2017 to 6.1%) and the general improved transparency of the transmission of results.

The improvements in the results transmission system were largely borne out of the challenges experienced in 2017, which eventually led to the nullification of the presidential election results. It was also partly attributable to the simulation exercises that ELOG had observed before the elections where the performance by the IEBC raised many concerns. It was remarkable that the IEBC was able to transmit more than 95% of the Forms 34A from the polling stations by the end of the 2nd day after the close of polls.

ELOG observed some remarkable progress and elements in the 2022 electoral processes that included use and application of technology especially in the transmission of results and the open and accessible results portal that enabled stakeholders and the public to access and interact with the elections results. For the first time and in a departure from previous elections, results data from the polling stations were posted and publicly made accessible through a public portal, which the IEBC provided. The Kenyan media, in particular, accessed the results for display and to run their own tallies and provided 24-hour analysis of the polls, setting a new norm worth emulating. The media streaming of the results enabled political parties, civil society organizations and citizens to concurrently interact with and track the results. ELOG also commends the judiciary for its critical role as a neutral and trusted arbiter in the political and electoral arena that provided significant guiding jurisprudence towards the 2022 electoral processes.

However, many areas and elements of the electoral processes remained retrogressive. First for the first time in 3 electoral cycles, the voter turnout dropped to below 70% further corroborating the fears of growing voter apathy initially demonstrated during the voter registration process.

Our observation also noted increased reliance on social media platforms during the electioneering period and increased fake news, mis/disinformation, and propaganda during the elections especially on the results management process and the suspension of some elections due to inconsistencies in some of the strategic materials.

There were some incidents that were reported on election related violence, voter bribery, intimidation, and the non-admission of some observers at election venues. However, ELOG did not record any serious, systematic, or pattern of planned aberrations that could have undermined the integrity and credibility of the E-Day processes and impugned the overall electoral outcomes.

Three incidents around the transmission, tabulation, and verification of results, however, stood out for mention. First, despite the reported success of the transmission of results, the action by the media to stop the broadcast as well as the lack of the final results updates from the IEBC plunged the country into darkness and created unnecessary tensions and anxiety that had been mitigated by the earlier transparency.

Secondly, the altercations and chaos that were witnessed at the National Tallying Centre at Bomas of Kenya that eventually crystallized into two IEBC factions, one led by the Chairman who declared the final results, and the other led by the Vice Chairperson who disputed the same, was unprecedented in Kenya's electoral history. Had it not been for the surprising public restraint and calmness, and interventions by individuals including religious leaders and security officials, these actions could have plunged the country into chaos and violence.

Finally, and in the petition process that followed the disputed presidential outcomes, all parties rode on the confidence that had been established by the bold and assertive

decisions of the Supreme Court Kenya (SCOK) in previous disputes in 2013 and 2017 to submit their case to the Supreme Court for adjudication. The SCOK, while appreciating the limited timelines (14 days) within which the petitions needed to be determined, embraced a generous inclusive approach that allowed some late submissions and inclusion of more parties to the hearing process.

The IEBC declared William Ruto as the president elect with 50.49% of the votes over his close rival Raila Odinga who had 48.85% of the valid votes cast. ELOG established that the official presidential election results that were announced and declared by the IEBC were within its projected PVT ranges and for that reason, ELOG's PVT projected results corroborated the IEBC official results for each of the 4 presidential candidates who contested the 2022 presidential election.

The IEBC announced the total voter turnout to be 64.8% of the registered voters. The ELOG PVT projection for final voter turnout was 65.1% with a margin of error of +/- 0.7%.

The PVT projection for the final rejected ballots was **0.8%** with a margin of error of **+/- 0.1%** while the official results announced and declared by the IEBC indicated the rejected votes were 113,614, constituting 0.79%. Again, the PVT projection corroborated the IEBC official figure of rejected votes.

Having observed electoral processes since 2010, ELOG notes with concern that the following have remained recurrent features of every election cycle:

- Inadequate voter education
- Campaign period regulation
- Late attendance to electoral reforms
- Questionable integrity of the voter register
- Use of technology in electoral processes
- Problems with the corporate governance of the IEBC
- Lack of regulation of campaign and political financing
- Non-achievement of the two-thirds gender rule and inclusion of women and PWDs

Therefore, while being mindful of and reiterating previous recommendations and while emphasizing the elements that keep recurring, ELOG notes that in the 2022 elections, there were still institutional, legal, policy, administrative and technical issues, and concerns that duty bearers and stakeholders as well citizens should address to strengthen and improve the political and electoral processes and ultimately promote constitutionalism, democracy, governance, human rights, and rule of law moving forward. The outstanding issues and concerns are largely the products of the elements that keep recurring. Consequently, ELOG makes the following key targeted recommendations, which will be useful towards that end.

Independent Electoral and Boundaries Commission

- Need for Kenyans to dialogue, review, rationalize and re-evaluate the electoral system and infrastructure, including the EMB model in Kenya with a view to identifying a system and infrastructure that best suits the political dynamics and nuances in Kenya. ELOG proposes that considerations should be put in place for Kenyans to dialogue and build consensus over the most suitable electoral system and infrastructure as well as the Commission model based on the need for inclusivity, integrity and independence.

- ELOG reiterates the Supreme Court recommendation that there is an urgent need to clarify the policy, strategy and oversight roles and functions of the Chairman and Commissioners through legislative reforms.

- Need for clarity and delineation of the policy and administrative domains of the Commission through clear separation of the roles and responsibilities of the Commission from those of the Commission Secretary and Commission staff.

- The IEBC should convene an independent post elections review and evaluation of the 2022 elections and other electoral processes including the role and performance of key duty bearers and right holders in the electoral processes.

Political Parties and Political Leaders

- Need for political parties should improve and strengthen internal party governance and democracy to promote inclusivity and increase the participation of all members especially the special interest groups.

- Need for Political parties should review internal constitutions and rules especially the elections and nomination rules to promote good governance and transparent and accountable internal party processes including elections of party officials and nomination of candidates for elective positions. This includes keeping and using bona fide members' registers for critical decision making activities such as party nominations.

- Need for parties to ensure compliance with the two-thirds gender rule in all party elective positions, in the nomination of candidates for elective positions and in all administrative and leadership organs of the parties.

- Parties should improve and strengthen the internal dispute resolution mechanisms to promote timely and fair adjudication of internal party disputes, especially those arising from party nominations. This should involve adequate training of party election boards and improving the dispute resolution rules.

The Judiciary

- The judiciary should invest in improved training to judicial officers on election dispute resolution to enhance skills such as on technology driven processes, knowledge base and efficiency of those tasked with election dispute resolution.

- The Judiciary should improve on the prioritization and management of pre-election dispute cases to ensure that they are managed and determined efficiently and promptly bearing in mind the strict constitutional and legal timelines for elections.

- Judicial officers should remain mindful of the gains that Kenyans have made and realized through the promulgation of the Constitution 2010 and therefore should aim to promote the realization of the purposive and progressive spirit and gains in the Constitution rather than undermining them through retrogressive interventions and decisions.

Parliament

- Need to work with the IEBC and other stakeholders to ensure that all electoral legal reforms and amendments that were delayed and not enacted in the 2022 election cycle are introduced, debated, and enacted in a timely manner and in line with international best practice which recommends a cut-off point of 2 years to the elections, bearing in mind the requirement for public participation under the Constitution 2010.

- Need to move with speed to ensure that enabling laws and regulations are enacted to operationalize the Campaign Financing Act and the two-thirds gender rule.

- Need to provide effective oversight and timely approvals for the IEBC annual budgets based on the electoral cycle approach to ensure robust engagement by the Commission in implementing its activities in the discharge of its mandate.

Office of the Registrar of Political Parties (ORPP)

- Engage with stakeholders and political parties to review and implement the regime of party financing to ensure more transparent, equitable and accountable public funding for political parties throughout the election cycle. Make efforts towards promoting accountability in campaign financing by encouraging political parties to support the implementation of Campaign Financing Act.

- Observe strict supervision of political parties to ensure open, democratic, professional, and accountable management of political parties and party affairs. Pay more attention towards internal governance processes of parties to ensure democratic and accountable governance structures and processes including democratic conduct of party elections and nomination of candidates.

- Enhance partnership and collaboration with the IEBC and the PPDT to ensure better management of party affairs such as nominations and dispute resolution during the election period.

National Police Service

- Ensure that adequate and accountable security is provided to all stakeholders during the elections. This includes security towards elections materials and election officials, security during elections, announcement and declaration of election results, and security to citizens, voters, and election observers.

- In particular, the police should comprehensively investigate and prosecute individuals who contravened electoral laws including the Electoral Code of Conduct. Similarly, the police should move with speed to investigate the circumstances under which election officials fell victims of political profiling, were maligned, were attacked, and injured, and circumstances under which some of them were abducted and some killed.

- Improve on the collaboration and partnership with other elections duty bearers such as the IEBC to ensure better provision and management of security during the elections.

Communications Authority of Kenya and the Media

- The Authority should work with internet service providers to resolve internet connectivity concerns during elections and roll out internet connectivity in all parts of the country including all gazetted polling stations.

- The Authority should reign in and make accountable parties, leaders, bloggers and influencers and individuals who use and deploy social media to promote insecurity, political animosity, fake news, misinformation, disinformation and hatred, and breach public peace.

- The media and media owners should safeguard and maintain their independence, professionalism, impartiality and fairness in the coverage and reporting on elections as well as uphold their role as public educators and watchdog during the electioneering period.

- The Media Council should invest more in the regulation of the media and journalists to ensure adherence to media code of conduct and standards of professionalism, neutrality, non-partisanship, objectivity, fair coverage and reporting, and respect for the law and diversity.

- The media should be more creative and adaptive to the challenges of elections and improve on their capacity, competence, and efforts to pivot on delivery of comprehensive election coverage and undertaking tallying and display of election results in tandem with IEBC's speed.

Civil Society Organizations

- Civil society should always endeavor to remain neutral, impartial, professional, and objective during the elections. They should promote partnership and collaboration with duty bearers and other stakeholders to support and implement activities and programs that strengthen electoral processes and citizens' engagement and participation in the processes.

- Civil society should continue to keep vigil and consolidate advocacy and activism around respect for human rights and the rule of law during elections and to promote adherence to electoral laws including international best practice on elections as well efforts towards operationalization of the Campaign Finance Act and the two-thirds gender rule in the next election cycle.

- Promote collective and individual advocacy, lobbying and activism with Electoral Management Bodies and governments to bolster, institutionalize and domesticate the recognition of the legitimate work of and need for better protection for election monitors and observers as critical human rights defenders and civil society actors as envisioned under the UN Declaration on Human Rights Defenders that was adopted by consensus through GA Resolution 53/144 of 9 March 1998.

Data Protection Commissioner

- Ensure that enabling regulations are enacted to fully operationalize the Data Protection Act to enable implementation of data protection measures to combat illegal personal data mining and sharing as well as unethical and illegal intrusion on citizens' privacy with unsolicited SMS text messaging by politicians and parties during the electioneering period.

To Citizens/Voters

- Citizens should recognize that they are the biggest stakeholder group and beneficiary of elections and for this reason be aware that their conduct and behavior is very critical in determining the quality of elections.

- Citizens should desist and refrain from and resist voter bribery and involvement in corrupt and illegal political and electoral practices such as political incitement and violence. They should be part of setting the agenda for elections by making meaningful demands and holding political parties and political leaders accountable.

- Citizens should always endeavor to maintain positive attitudes, behavior and active agency towards democratic and governance processes. Therefore, citizens' interest in democratic and governance processes such as elections should be reinvigorated and employed for meaningful and value-based governance changes in society.

International partners & observers

- Adopt the electoral cycle approach in election monitoring and observation as a basis for long term and sustainable positive interventions. This will also ensure that the entire election cycle and electoral processes are observed and suitable interventions made.
-
- Invest in synergy building, collaboration, coordination and wider consultations and engagement amongst observer missions and groups to build consistency, avoid duplication of efforts and maximize coverage across the whole country and complementarity of efforts.

- Guided by lessons from Kenya, to continue strengthening regional south to south and local partnerships, knowledge and technical experience and skills sharing and coordination amongst regional observation groups, including support solidarity during elections.

- Render comprehensive and timely observation statements and reports and invest in follow up with key duty bearers such as the IEBC to track and address observation findings and implement observation recommendations.

The Private Sector

- The private sector, both local and international, should continue to play its support role in elections through ethical and professional conduct in their engagements with key election stakeholders. They should render their services in a manner that respects the sovereignty of the Kenyan voters and in accordance with the laws of the country.

- The private sector should also consider building partnership and collaboration with civil society organizations during elections specially to support election observation and in particular supporting civil society with resources and funds that can support civil society work in promoting democracy and good governance including election observation.

Head of National Democratic Institute-International Republican Institute (NDI-IRI) Joint International Election Observer Mission Excellency Joaquim Chissano, former President of the Republic of Mozambique, during a tour of the ELOG Parallel Vote Tabulation (PVT) data centre

01

CHAPTER ONE

1.1 Introduction
1.2 Background
1.3 Challenges
1.4 ELOG's Observation Strategy and Methodology

1.1 INTRODUCTION

This chapter seeks to contextualizes ELOG's observation missions and overall observation journey since its establishment in 2010. It highlights some of the challenges that ELOG experienced as it strategically planned for its observation missions for the 9thAugust 2022 General elections.

This chapter details ELOG's various observation missions for the elections. The chapter highlights the strategies and methodologies that ELOG adopted in seeking to effectively and efficiently watch over the entire 2017-2022 electoral cycle that culminated in the August 2022 polls. ELOG's observation approach considered the fact that there were a number of deferred elections that were subsequently held on 29th August 2022. This chapter therefore provides a foundation upon which ELOG's broad-based observation approaches, findings, assessment, evaluation, and recommendations are built.

1.2 BACKGROUND

The Kenya Constitution 2010 contemplates electoral democracy as a key pillar of governance in Kenya.[1] *Larry Diamond defines electoral democracy as* ***"...a civilian, constitutional system in which the legislative and chief executive offices are filled through regular, competitive, multiparty elections with universal suffrage."*** [2]

By virtue of the Constitution, periodic de jure and participatory elections are held in Kenya every electoral cycle of five years. 9th August 2022 marked the timeline for the holding of such periodic elections, after the previous 2017 elections. The 9thAugust 2022 elections were the 7th periodic elections to be held since 1991 when multi-party democracy was restored in Kenya. Further, this year's elections were the 3rd general elections to be held after the promulgation of the Kenya Constitution 2010. In the 2022 elections, a total of 16,108 aspirants showed interest to vie, out of which 7,128 candidates were cleared by the IEBC to contest for 1,882 elective seats across the country.

ELOG, whose vision is to achieve credible, peaceful, free, and fair electoral processes in Kenya and the Africa region[3] , observed the August 2022 elections with the aim of promoting electoral integrity and enhancing public confidence in the electoral processes. In so doing, ELOG was guided by its belief in the critical role that elections play in promoting effective governance of a modern liberal state, which Lindberg, Staffan captures as follows:

"All human beings are born equal, with equal rights to participate in government. Elections, despite their flaws, are the best available mechanism for translating this right into the effective governance of a modern state. Even countries that at a glance may not seem to possess the necessary preconditions for democratic rule may still benefit from participatory and legitimate elections. Such elections provide more than just an arena for political contestation: they sometimes give rise to new independent institutions and often force political actors to adapt at least partly to voter preferences." [4]

Moreover, in his book Democracy and Elections in Africa[5] Lindberg established that there is no general negative trend either in the frequency or the quality of African elections and so informed by this observation, he extended Dankwart Rustow's scholarly theory that democratic behavior produces democratic values.[6] Lindberg then proceeded to observe the value of elections in Africa as follows:

"Rather, the inception of multiparty elections usually initiates liberalization, and repeated electoral activities create incentives for political actors fostering the expansion and deepening of democratic values. In addition to improving the democratic qualities of political regimes, a sequence of elections tends to expand and solidify de facto civil liberties in society. Controlling for other standard factors of democratization... the impact of repetitive elections, even if "imported", is consistent in Africa's diverse contexts making the case that electoral processes are an important causal factor in the development of democracy."[7]

Therefore, in its endeavor to observe the August 2022 elections and the deferred elections, ELOG was guided not only by the significant value of elections towards consolidating democracy in Africa but also the Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations and the Code of Conduct for Non-Partisan Citizen Observers and Monitors,[8] to which ELOG subscribes. The Declaration and Code of Conduct prescribe global standards that require domestic election observers and monitors to remain non-partisan, impartial and politically neutral in assessing and evaluating the conduct of elections, and to undertake election observation and monitoring for the benefit of the country.

More specifically, ELOG observation strategies and methodologies for observing the 9thAugust 2022 elections and the deferred elections were grounded on the principles that require non-partisan election observation and monitoring by citizen organizations to evaluate the electoral processes and elements *"...accurately, impartially and as systematically as possible, in order to properly characterize processes according to national legal requirements and applicable international obligations and commitments."*

Founded in 2010 as a permanent, inclusive, and professional domestic election monitoring and observation platform [9]ELOG has evolved over the years as one of the leading election monitoring and observation bodies in Africa. It uses the electoral cycle approach to enable broad-based monitoring and observation that encompasses non-election-year electoral processes. Accordingly, ELOG has since its inception adopted long-term and short-term strategies and methodologies to monitor and observe elections.

Further, ELOG has over the years carved a niche as the only local election monitoring and observation platform in Kenya and the region that uses innovative, and technology driven methods to monitor and observe elections. ELOG has continued to deploy a combination of long-term observation (thematic based) and short-term observation, which includes General and Parallel Vote Tabulation approaches for its monitoring and observation processes.

ELOG has deployed these strategies and methodologies over the years to monitor and observe the Kenya constitutional referendum of 2010, the Kenya general elections of 2013 and 2017, numerous by-elections held since 2013 and the general elections held in August 2022. ELOG's journey and preparations toward monitoring and observing the 9th August 2022 general elections started immediately after the 2017 general elections.

One of the peculiar aspects of the August 2022 elections was that it elicited significant international and regional interest as it pitted the incumbent president supporting the opposition leader against his deputy and the "abnormal" shift of alliances witnessed in the runup to the elections. Indeed, Kenya being a regional economic powerhouse and strategic geo-political positioning, its elections attracted attention and interests well beyond its borders. For these reasons and on its part, ELOG had to relate with the attention and interest from partner citizens' observation groups in the region. In this regard, ELOG played host to missions from election

observer groups from Nigeria, Ghana, Liberia, Sierra Leone, Togo, Gambia, Cote d'Ivoire, Benin, Gabon, Senegal, Burkina Faso, Uganda, South Sudan, Ethiopia, Tanzania, and Zimbabwe. In total, ELOG hosted 40 observers from these groups in a first time joint-African observers initiative to foster south-to south benchmarking, knowledge, learning, and experience sharing as well as strengthen partners' solidarity in elections observation. Part of the team of observers from the region was incorporated into the ELOG technical teams as part of ELOG observer missions.

1.3 CHALLENGES

ELOG's journey and preparations were marked by a myriad of challenges, some of which are listed herein below.

1.3.1 LACK OF SUSTAINABLE FUNDING

In 2019, ELOG developed its Strategic Plan for the period 2019-2023. In the new blueprint, ELOG proposed some key interventions to cover the electoral cycle leading up to the 2022 elections. This plan also covered the interventions proposed for the pre, during and post 2022 elections. However, ELOG not only faced funding challenges in the development of the plan but also in implementing the proposed interventions. ELOG's journey towards observing the 2022 general elections was anchored on this strategic plan, which it could not implement fully and effectively due to lack of funding. Lack of sustained funding has become a recurrent challenge that Civil Society Organizations (CSOs) continue to face and is not unique to ELOG. The problem is compounded by the increasing unhealthy competition amongst CSOs over the limited funding that is available from development partners. Consequently, for ELOG, it meant lack of capacity to prepare adequately and effectively to undertake comprehensive interventions and to interact with the environment that built up towards the 2022 general elections. ELOG also missed a foundation and the opportunity for long-term technical capacity and experience building for the entire 2022 electoral cycle.

For the 2022 general elections, ELOG commenced negotiations with key development and donor partners as early as 2019 as it prepared to undertake the crucial journey of observing the 2022 general elections. However, despite promises and prospects for sufficient and timely funding, from the release of funding by development and donor partners was delayed, thus affecting prompt commencement of planned interventions as well as key engagements towards observation of the 2022 general elections. For instance, a key component of ELOG's observation strategy and methodology, the Parallel Vote Tabulation, experienced a funding shortfall that was only bridged at the last minute.

ELOG had also hoped to consolidate the capacity of the East and Horn of Africa (regional) domestic elections observation platform (E-HORN) during the 2022 election cycle as a way of building a support observatory and solidarity platform for citizens in the region. Again, lack of sustained funding strained these efforts with only limited opportunities for strengthening the capacity of E-HORN realized in the 2022 election cycle. As the E-HORN Secretariat and host organization, ELOG only managed to hold on transnational responses to electoral insecurity and campaign financing in May 2022. The one-off intervention was not enough to prepare ELOG and its partners in the region for the Kenya 2022 general elections, which was expected to be of monumental value to the region.

1.3.2 VERY HIGH EXPECTATION LEVEL FROM STAKEHOLDERS AND PARTNERS

As usual, elections in Kenya are often high stakes political affairs that generate significant tension and anxiety. In this regard, the 2022 general elections, especially the presidential election, generated extreme tension and anxiety mainly on account of the fact that the two leading presidential candidates enjoyed almost equal support from the voters as well as incumbency privileges. As the elections drew near, opinion polls and the media showed, amidst accusations of bias, that the two leading presidential candidates were neck-to-neck thus creating the risk of a very close election with a possibility of a re-run or a very slim victory margin for the winner.

For these reasons, stakeholders and partners including the media, development and donor partners and international observer missions shifted focus and placed a very high premium and expectation on ELOG's PVT as the only platform for objective data and clarity, especially the results management process.

1.3.3 INSECURITY AND CONFLICT IN PARTS OF THE COUNTRY

Continued insecurity and conflict in many parts of the country, especially the Northern and Central Rift Valley parts of the country not only impacted the social environment in the lead up to the elections but also affected the preparations by stakeholders. ELOG experienced a number of setbacks in its preparations to observe the elections as a result of insecurity and conflict in the North-Eastern and Central Rift regions. ELOG experienced logistical and financial challenges in recruiting, training, and deploying observers to these regions. The challenges resulted in delayed trainings and increased transportation costs, which included airlifting of trainers to some venues in these regions.

1.3.4 DELAYS IN PUBLISHING THE VOTER REGISTER

For ELOG to comprehensively evaluate the electoral processes, it requires access to the officially certified voters register. For the 2022 elections, it took longer for the IEBC to consolidate, certify, and publish the voters register and this meant that ELOG had to wait for the final register, which the IEBC published and made publicly available on 21st June 2022. ELOG's PVT, in particular, relies on the list of gazetted polling stations and the final published voter registers to statistically sample the polling stations where PVT observers were deployed. These are also necessary for purposes of supporting PVT simulation exercises that require to be undertaken in good time before the elections. This resulted in the delayed recruitment, training, and deployment of ELOG's PVT observers. ELOG overcame this challenge by planning in advance for a back-to-back crush program of recruitment, training, and deployment of PVT observers.

The delays in the publishing of the register also meant that ELOG could not conduct a pre-election audit of the voters register. ELOG considers pre-election audits as critical components for a comprehensive election observation process

1.4 ELOG'S OBSERVATION STRATEGY AND METHODOLOGY

ELOG's observation strategy and methodology is grounded on the electoral cycle approach. ELOG believes that Election Day activities are just part of a continuum of processes that together constitute the broader electoral cycle. For this reason, ELOG deploys a strategy and methodology that ensures comprehensive monitoring and observation of elections. Therefore, in its tradition, ELOG employed a strategy and methodology that covered the pre-election environment, Election Day (E-Day) processes, and immediate post-elections period, including contestations related to the presidential election results and outcome. The broad-based and holistic approach to election observation enabled ELOG to speak authoritatively and objectively on the broader electoral processes, based on a broad outlook.

For the 2022 electoral cycle, ELOG began to monitor and observe the electoral processes as early as 2021 in anticipation of a possible referendum based on the Building Bridges Initiative (BBI)[10]. When the BBI Initiative failed ELOG began to focus on the 2022 elections with the deployment of 290 long-term thematic observers in the 47 Counties in Kenya. ELOG also built a coordination layer of Regional Observation Platforms (ROPs)[11] , derived from ELOG member organizations, and aligned them with the 290 long-term observers. The layer of ROPs reinforced the long-term observers and supported their work to ensure comprehensive reporting on the pre-election environment. An additional 46 trained monitors were deployed in selected hot-spot areas to monitor, document and report on electoral violence. The long-term observers were well trained, equipped with data collection tools and deployed to observe the pre-election environment, based on the following selected thematic areas:

IEBC preparedness

Adherence to the legal framework

Political party activities, including party primaries and political campaigns

Use of state resources

Civic and voter education activities

Electoral violence/security

Media monitoring

Participation of special interest groups (SIGs)

For the E-Day, ELOG utilized short-term elections observation strategies and methodologies that combined Parallel Vote Tabulation and General Observation to enable ELOG to give a comprehensive and credible national account and outlook of the entire Elections Day processes. In this regard, ELOG proposed to recruit, train and deploy 5,108 observers to observe the 9th August 2022 E-Day processes and results announcement and declaration.

The IEBC gazetted 46,233 polling stations across the 1,450 electoral wards in the country. Ideally, a comprehensive deployment would have entailed the deployment of an observer in each of the polling stations, hence a total of 46,233 observers across the country. ELOG deployed 5,108 observers that were stationed at designated polling stations

and across the constituencies and counties in Kenya. These observers were recruited, trained, and deployed based on a strategic Parallel Vote Tabulation (PVT) Observation, General Observation and Tallying Centers Observation samples and plans.

The PVT observation deployment plan entailed recruitment, training, and deployment of 290 Constituency Supervisors to cover the 290 constituencies in Kenya, recruitment, training, and deployment of 1,000 observers stationed at sampled polling stations across the country and the recruitment, training, and deployment of 6 Zonal Coordinators. ELOG recruited and trained a team of 20 trainers who in-turn trained the 290 PVT Constituency Supervisors and prepared them to recruit, train and deploy the 1,000 observers at designated sampled polling stations. Together, the personnel formed part of ELOG's special PVT team that was led and technically supported by the ELOG PVT Secretariat team composed of PVT Advisor, PVT Manager, PVT ICT Manager, 6 Zonal Coordinators and 30 Data Clerks.

PVT is an advanced Election Day observation methodology that is based on sound and time-tested statistical principles, which uses a nationally representative random sample of polling stations. PVT can be relied upon to rapidly provide the most comprehensive and accurate picture of the quality of E-Day activities and processes for the entire country, and to project results based on a very small margin of error. [12] PVT enabled ELOG to confidently comment on the Election Day and tabulation processes. It also enabled ELOG to provide an independent assessment of the Presidential Election results as announced and declared by the IEBC.

The General Observation deployment plan entailed recruitment, training, and deployment of 290 Constituency Observers and 290 Tallying Center Observers to cover the 290 constituencies. The team of Constituency and Tallying Center Observers reinforced a team of 3,050 General Observers that were recruited, trained, and deployed at designated polling stations across the 1,450 electoral wards in the 290 Constituencies. The General Observation Team was led and technically supported by a Secretariat team that consisted of Electoral Process Officer, General Observation Coordinator, ROPs Coordinator, 2 Assistant ICT Managers, 10 Regional Coordinators, 5 Zonal Coordinators and 19 Data Clerks. A team of 30 trainers were recruited and trained and in turn trained 10 Regional Coordinators, the 290 Constituency Observers, the 290 Tallying Center Observers and the 3,050 General Observers.

The 3,050 general observers were deployed for the 9th August 2022 general elections. Another team of 35 general observers were deployed as roving expert observers for the deferred elections that took place on 29th August 2022.

ELOG's General Observation strategy for the August 2022 general elections took into account the fact that it is not conceivable to deploy observers to all the 46, 233 polling stations across the 1,450 electoral wards in the 290 Constituencies. In view of this fact, ELOG proportionately deployed GO stationary observers to the Constituencies and in selected polling stations. In particular ELOG's strategy ensured that at least 2 stationary General Observers were deployed in selected polling stations across the 1,450 electoral wards in the country for purposes of the August 2022 general elections. However, for the deferred elections, ELOG deployed roving teams of expert observers proportionately across the counties and constituencies that were affected.

The strategy also enabled ELOG to have maximum and comprehensive observation and reporting on the E-Day activities and processes, and official elections results. In the overall deployment plan was ward-based random selection of at least 2 polling stations in each ward using the urban/rural criteria. ELOG paid particular attention

to considerations like the population of a given electoral area as well as electoral areas that were deemed as *"hotspots"*[13] to deter, detect and report on incidents of electoral violence, fraud, and other malpractices.[14]

In a nutshell, ELOG relied on a combination of PVT-sample based observation and General Observation methodologies on E-Day for the 9th August 2022 elections and on General Observation for the deferred elections. This enabled ELOG to collect and submit comprehensive data on the quality of the E-Day activities and processes, and on the official results at designated polling stations and at constituency levels. The methodology also ensured that election results Forms 34A, Forms 34B, Forms 37A and Forms 37B were collected at polling stations, Constituency and County Tallying Centers respectively and submitted to ELOG for processing and analysis. The overlay of Constituency Tallying Center Observers enabled ELOG to not only observe tallying of votes at constituency, county and national levels, but also collect the relevant official results forms at these tallying levels. [15]

Head of the Electoral Observation Mission of the Electoral institute for Sustainable Democracy in Africa (EISA), Former Nigerian president Goodluck Bele Jonathan, with a section of ELOG leadership during a tour of ELOG's Parallel Vote Tabulation (PVT) data centre

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CHAPTER TWO:
The 2022 General elections Context

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2.3 The BBI Process and Courts Judgments
2.4 Setting the Stage for the August 9, 2022, General elections: Politics of betrayal, polarization, and intra-elite tensions
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THE 2022 GENERAL ELECTIONS CONTEXT

2.1 INTRODUCTION

This chapter highlights and discusses some of the key issues and factors, in an attempt to illuminate the context and environment for the 2022 elections. This is necessary to enable an understanding of the character and dynamics of the 2022 elections, particularly what defined, shaped, and determined the elections agenda and eventual outcomes.

Kenya conducted the general elections on August 9, 2022. The elections had four presidential candidates that included the then Deputy President Hon. William Samoei Ruto of the United Democratic Alliance (UDA)/Kenya Kwanza Alliance, Former Prime Minister, Rt. Hon. Raila Amolo Odinga of the Azimio la Umoja, One Kenya Alliance; Hon. George Luchiri Wajackoya of the Roots Party of Kenya, and Hon. David Waihiga Mwaure of the Agano Party of Kenya. As the campaigns evolved, the presidential election increasingly became a two-horse race that involved the two front runners for the presidential race, namely: the Deputy President Hon. William Samoei Ruto and veteran opposition leader and former Prime Minister, Hon. Raila Odinga. The presidential election campaigns that ensued were contentious and bruising.

The other two candidates George Wajackoyah and David Mwaure Waihiga became fringe candidates and with time, were characterized by low single-digit polling during the campaign period, including in an opinion poll conducted by ELOG's partner, South Consulting in May-June 2022. However, the votes projected to go their way could have tilted the outcomes into a scenario where neither of the two front-runners secured a majority, i.e., 50%+1. The realization of a scenario of that kind could have pushed the presidential race to a re-run.

In context, the elections took place amidst heightened political anxiety and expectation of violence, significant economic burden occasioned by COVID-19, and discontent in Kenya. These were compounded by widespread concerns over rising cost of living, rising poverty and unemployment levels, food insecurity, bulging public debt, corruption, and a splintered ruling Jubilee Party. Furthermore, the incumbent President Uhuru Kenyatta was completing his second and final term and hence ineligible for re-election. A leadership transition was therefore inevitable, regardless of the outcome of the 2022 elections.

2.2 THE POST-2017 POLITICAL/ELECTIONS TERRAIN AND DYNAMICS: POLITICAL FRAGILITY AND VOLATILITY

Fragility and volatility in the political environment in the lead up to elections have been recurring features of Kenya's electoral cycles in Kenya's post-independence history. This is particularly the case since the re-introduction of multiparty politics in 1992. Auma and Campbell aptly capture the recurring trend and causality of political and electoral violence in Kenya's electoral cycles as hereunder:

"The months leading up to, and after, elections have been the most violent periods in Kenya's post-independence history, with thousands killed and hundreds of thousands displaced in election cycles since 2007. The advent of multi-party democracy in Kenya in 1992

led to the ethnicization of politics, with parties coalescing around tribal power brokers and an ever-changing political landscape as inter-ethnic alliances were formed and fell apart. This continues to characterize Kenya's electoral landscape today. In the absence of political parties based on a consistent political ideology, the instrumentalization of tribal identities and manipulation of ethnic grievances remain the primary basis of political mobilization, with the threat of violence – and often its use – hanging over every election cycle". [16]

Kenya has experienced varied levels of political and electoral violence since the first multi-party elections in 1992. The 2007/8 post-elections violence sticks out as the worst case of political and electoral violence that Kenya has ever experienced[17]. In the 2013 elections, some degree of political calmness prevailed. However, the 2017 electoral cycle and environment was very shaky and over stretched by incidents of ethno-political tension and reports of political zoning as ELOG Long Term Observer (LTO) reports indicated.

The 2022 electoral environment was borne out of the fragile and volatile 2017 post elections environment. Four fundamental features characterized the 2017 electoral cycle and environment. First, the political environment in the lead up to the 2017 elections was extremely tense. Second, the 2017 presidential elections results were hotly contested at the Supreme Court. Third, the Supreme Court annulled the 2017 presidential election results and ordered a fresh election to be conducted within 60 days. Finally, the opposition decided to boycott the fresh presidential election. As a result, heightened ethnic and political tensions persisted and left the country deeply polarized along political and ethnic lines.

Based on scenarios ELOG built with its partner, South Consulting, the pre-election environment in Kenya in 2022 was polarized. Electoral institutions were technically but not politically ready and economic drivers dominated the political rhetoric. The context also showed a close race, with a razor-thin margin of results projection between the two top presidential candidates and therefore likelihood of a re-run. The potential for violence was also likely depending on how the incumbent president and his preferred candidate, and the Deputy President would view the results. It also depended on how the police, the political elite and citizens would behave themselves in the wake of a disputed outcome. Therefore, Kenya headed to the 2022 elections with a great potential for political and civic unrest, as well as outbreak of violence .

Indeed, research into the political and electoral environment in the post 2017 elections and the lead up to the 2022 elections indicated a great potential of recurrent political and electoral-related conflicts and violence.[18] The 2022 political and electoral environment was already experiencing a rapid rise in inflammatory political rhetoric and polarized ethnic narratives as ELOG media monitoring reports indicated. These were compounded by cases of hate speech, fake news, and mis/disinformation. The combination of these factors heightened political and ethnic tensions that were already characterizing the political and electoral environment ahead of the August 2022 elections.

The famous political handshake in March 2018 between the incumbent President Uhuru Kenyatta and his former archrival and opposition leader, Raila Odinga, created shifts in political alliances and loyalties. These shifts generated far-reaching political narratives, constellations and realignments as the 2022 elections environment evolved which significantly impacted and shaped the 2022 elections campaigns. They also created a wave of political, socio-economic, and class tension and unrest that risked degenerating into violence.

The wave of political shifts included a shift in political narratives from the traditional

ethno-political based narrative to a new inter-class narrative. The new narrative capitalized on socio-economic grievances and class identities.[19] It also pitted the under-privileged (hustlers)[20] against the privileged (elites and dynasties) in society. It swiftly gained traction across the country and gave rise to the *"hustler" versus the dynasty"* narrative. It was mostly popular amongst the unemployed and those in the informal and blue-collar sectors. The proponents of the populist "hustler" narrative crafted it into a strategic campaign platform in the form of a Bottom-Up economic model.

The "hustler" narrative and brand of politics reverberated across the country and had a huge potential to cause horrendous political and socio-economic upheavals. It manifested as a political movement and brand campaign insignia. It became a key pillar of the 2022 campaign rhetoric and messaging. It was also embraced as a form of political agitation and rebellion by the underprivileged populace against the privileged elites and political dynasties in society. It depicted and portrayed the privileged elite and dynasties in society as the cause of the burdens and struggles of the "hustlers". It also portrayed the elite as impervious and aloof towards the burdens and struggles of the hustlers.

Basically, the *"hustler"* narrative and brand of politics was aimed at instrumentalizing and mobilizing social and class grievances and inequalities to serve the interests of the political elite. Ethnic identities have been instrumentalized and mobilized in similar ways in the previous elections.[21] The narrative significantly impacted, redefined, and shaped the politics and political campaigns for the 2022 elections. It also had a definitive impact on the voting patterns and outcomes of the 2022 elections. It resonated with many Kenyans due to widespread poverty, entrenched in-equality in Kenya and the impacts of Covid-19.[22]

The above factors were compounded by other factors such as the devastating socio-economic impact of Covid-19; unresolved historical injustices; general sense of insecurity across the country; perceived deep state support and inclination towards one political side; and prevalence of hate speech, fake news and mis/disinformation. Consequently, the combined factors produced an atmosphere of political apprehension and anxiety. In turn, there was a high expectation of violence during the 2022 elections.[23]

Further, above factors also played a critical role in informing political actors and stakeholders to identify and map hotspot areas for closer scrutiny and surveillance.[24] They also shaped the 2022 political and electoral contingency planning and preparedness. Even though many Kenyans and stakeholders remained worried about the risk of recurrent violence and instability, efforts were made to ensure that disruptions of the electoral process remained minimal, regardless of the outcome of the polls. [25]

2.3 THE BBI PROCESS AND COURTS JUDGMENTS

The nullification of the 2017 presidential election results and the subsequent fresh presidential election (FPE) increased political tension and ethnic polarization across the country. These factors also created an environment of significant political rivalry and fallout between President Uhuru Kenyatta and Hon. Raila Odinga and their respective political supporters across the country. The beginning of Uhuru Kenyatta's second term as the President was, therefore, marked with intense political bitterness and fierce rivalry between him and Raila Odinga. Amidst the rivalry, Raila Odinga was sworn in by his supporters as "the peoples' president"[26]. It is against this backdrop that back-end covert political

reconciliatory engagements took place and led to Uhuru and Raila burying their political differences and resolving to work together. The political reconciliation between the two was demonstrated through a public political "handshake" on 9th March 2018.

The handshake and the newfound political dalliance attracted equal measure of optimism and pessimism from the public and political leaders[27] . However, it brought a sense of calm and relief into Kenya's otherwise polarized political and ethnic environment. More notably, the handshake led directly to the formation of the Building Bridges Initiative (BBI). The BBI blueprint was launched officially under the stewardship of President Uhuru Kenyatta and the Hon. Raila Odinga[28]. The blueprint proposed a few salient issues perceived to be critical toward entrenching peace, unity, and cohesion in Kenya. It also sought to amend the Constitution 2010 to promote a series of key governance, institutional and structural reforms in Kenya[29].

The proponents of the BBI initiative exonerated it as a progressive political initiative and labeled its purpose as geared towards radically redefining and transforming the future of Kenya's governance and politics. The opponents , impugned it as a mechanism of fraud and public deceit, meant to undermine and amend the Constitution to expand the executive by creating leadership positions of Prime Minister and two deputies for individuals. They also attacked it as a move to ensure that President Kenyatta continued to rule after the end of his two-term limit, and to gag the Judiciary through an Ombudsman for the Courts.

The antagonism over the BBI became so fierce and pronounced in the context of the political campaigns that were already shaping up in the country. It created fallout amongst the political elite. Citizens were also split over the BBI debate with Hon. Raila Odinga's followers fully supporting the BBI while Hon. William Ruto's followers opposed it. Ultimately, the BBI was challenged in Court just as the IEBC was preparing to hold a referendum over some of the issues that had been identified and publicly canvassed during the BBI process.

Even though the Court ultimately nullified the BBI,[30] its proponents continued to hold together in the newfound political pact as a mobilizing platform for contesting the 2022 elections. Conversely, the nullification of the BBI provided a political momentum and impetus that emboldened its opponents[31]. The BBI debate promoted a foundation and psyche for a new political constellation and alliance under the leadership of the Deputy President.

Notwithstanding the defeat of the BBI at the Courts, the proponents proceeded to build a new political formation and alliance under the leadership of Hon. Raila Odinga and President Uhuru Kenyatta. The spirit behind the handshake and the BBI, viewed in the context of the immediate post-BBI political developments, marked the beginning of a new political movement and coalition. It also laid the ground for Raila Odinga's political campaigns for the presidency. This manifested through "... political gatherings and the unveiling of a new slogan Umoja Inawezekana – Azimio la Muungano (Unity is possible – Our desire to unite our people and the country)[32]."

While the BBI directly led to the political formations that were led by the Deputy President and Raila Odinga, other political formations also sprung up as the BBI context evolved. These included the One Kenya Alliance that brought together Hon. Kalonzo Musyoka of the Wiper Party, Hon. Martha Karua of NARC party; Hon Musalia Mudavadi of Amani National Congress (ANC) party, Hon Moses Wetangula of Ford-Kenya party, and Hon. Gideon Moi of KANU party. While some of the leaders in the One Kenya Alliance opposed the BBI, others supported it or remained neutral. Eventually, One Kenya Alliance disintegrated due to political differences amongst the leaders and as a result, some of the leaders such as Hon. Kalonzo, Musyoka, Hon Gideon Moi and Hon. Martha

Karua joined Azimio la Umoja, One Kenya Alliance, while others such as Hon Musalia Mudavadi and Hon. Moses Wetangula joined UDA, Kenya Kwanza Alliance.

In a nutshell, the BBI process marked the political turning point towards the consolidation of shifting elite coalitions. Such coalitions are not new in Kenya's politics. They are usually built as the elections approach on the basis of unstable elite bargains[33]. Beyond the BBI, other political formations emerged to offer alternatives to the two big formations that were led by the Deputy President and Raila Odinga. These included the Roots Party of Kenya that was led by Hon. George Luchiri Wajackoya and Agano Party of Kenya that was led by Hon. David Waihiga Mwaure

2.4 SETTING THE STAGE FOR THE AUGUST 9, 2022, GENERAL ELECTIONS: POLITICS OF BETRAYAL, POLARIZATION, AND INTRA-ELITE TENSIONS

The 2013 election victory for President Uhuru Kenyatta and his Deputy William Ruto was perceived as a vote against the indictment of the two at the International Criminal Court (ICC)[34]. The two capitalized on the ICC indictment process to rally and mobilize their ethnic communities to vote en-masse and deliver victory for them in 2013. They repeated this feat in 2017 to get re-elected.

Country's leadership for two-terms in 2022, after Uhuru Kenyatta's two term-periods [35]. The ICC dynamics generated a political narrative of **"Kumi Kumi"** term periods (Swahili coinage for two terms of ten years for Uhuru Kenyatta followed by two terms of ten years for William Ruto) for Uhuru and Ruto respectively.

However, the relationship between Uhuru Kenyatta and William Ruto began to thaw soon after the commencement of their second term in 2017. Without waste of time after their re-election, William Ruto began to focus his attention on building his political image and profile across the country. Together with his diehard followers in the ruling Jubilee party, he began early political campaigns that were aimed at building a network of political support across the churches, youth, and other social support groups across the country. However, these early campaigns led to cracks within the Jubilee party and resulted into two factions. One faction supported the President while the other supported the Deputy President.[36]

The elite political polarization in the ruling party, Jubilee, paved the way for significant political realignments. It also led to consolidation of new elite coalitions in the presidential succession battle. As a result of the polarization, the Deputy President led his team into joining a little known United Democratic Alliance (UDA), which later mobilized other allies to form the UDA, Kenya Kwanza Alliance. On his part, the President strengthened his political dalliance with Raila Odinga and led his Jubilee party to join hands with Raila Odinga's Orange Democratic Movement (ODM) and other allies to become Azimio la Umoja, One Kenya Alliance.[37] This type of political realignment and elite coalitions are not new to Kenya's politics since the country's transition to multi-party democracy in 1991[38].

Consequently, in the political campaigns that ensued, the Deputy President projected Raila as a project of the President. He also depicted the duo as belonging to a pact of elite leaders and dynasties that remained aloof to the plight of ordinary Kenyans. In their rejoinder, Raila Odinga and the President criticized the framing as an ill-attempt to divide Kenyans along socio-economic identity and class lines,

and instead propagated Raila Odinga's campaign based on messages of unity and national cohesion.

The Deputy President also framed the political dalliance between Uhuru Kenyatta and Raila Odinga as politics of conmanship. He also portrayed it as a pact of individuals who had betrayed him and failed to reciprocate the past political support that he had offered them - for Uhuru Kenyatta in the 2002, the 2013 and the 2017 elections respectively and for Raila Odinga in the 2007 elections. The Deputy President also used the fallout to fashion his 2022 campaign as a competition between dynasties that were banking on ethnic mobilization against the underprivileged and down-trodden hustlers. This narrative was instrumentalized to mobilize political support under the mantra of **"kazi ni kazi"** (Swahili coinage for respect for one's job, irrespective of whether it is low-income)[39].

The early campaigns were also used to entrench **"hustler"** political narrative. The narrative capitalized on inter-class identities and to offer alternative socio-political and economic incentives that attracted the youth, the unemployed and the poor towards the Deputy President's campaign. Furthermore, and with particular reference to the vote-rich Central Kenya region where the rivalry between Uhuru Kenyatta and Ruto was most prominent and where the hunt for swing vote was fiercest, the early campaigns were used to foment political rebellion against Uhuru Kenyatta. At the same time, Raila was projected as the perennial antithesis of Uhuru Kenyatta and the Kikuyu nation. The narrative was, thus, deployed to tilt the political ground in the Mount Kenya region in favor of the Deputy President. [40]

On the other hand, Raila Odinga actively campaigned to outmaneuver the negative political narratives advanced by William Ruto. Raila Odinga projected himself as the legitimate heir apparent who had the support and blessing of Uhuru Kenyatta and the establishment. Raila Odinga also moved to build a broad alliance with other key opposition figures such as Kalonzo Musyoka, the leader of the Wiper Democratic Movement, and Gideon Moi, the leader of the Kenya African National Union. This was a strategy aimed at lending credit to the Raila campaign as geared towards building national unity and cohesion. In addition, Raila also settled on Martha Karua, a veteran politician from the Kikuyu community as a running mate to further amplify the national character of his campaign. This was also a strategy to appeal to the Kikuyu voters and bring the critical numbers to Raila's advantage.

The nuanced political campaign dynamics and trajectory made the race to succeed Uhuru Kenyatta in the 2022 elections very contentious and tense. It was summed up as follows:

"... even though recent polling data shows Odinga building a narrow lead, Ruto appears to have benefited from widespread popular discontent. By casting the vote as a battle between "hustlers" and Kenya's political "dynasties" and contrasting his humble origins with Kenyatta's and Odinga's elite upbringings, Ruto's campaign has gained traction with many young voters, even though Ruto himself is hardly a political outsider. He has centered his campaign around a bottom-up economic model grounded in investments in small businesses, farmers, and informal workers. Odinga's alliance with Kenyatta, on the other hand, has (ironically) made it more difficult for the former opposition leader to distance himself from the incumbent's track record. He has countered Ruto's messaging by promising to bolster Kenya's manufacturing sector, expand social protections (through monthly direct cash transfers to needy households), and launch new job creation programs, among other priorities".[41]

Beyond the campaign narratives of the Deputy President and Raila Odinga, the other two presidential candidates George Luchiri Wajackoya and David Waihiga Mwaure also framed their campaigns

in a bid to appeal to Kenyan voters. In his campaign, Wajackoyah promised to legalize marijuana for commercial purposes, introduce snake farming, export dog meat and hyena testicles, shut and bring down the standard-gauge railway, hang the corrupt, suspend the Constitution 2010, introduce four-day work week, move the capital city from Nairobi to Isiolo, create 8 states instead of the 47 devolved Counties, and repatriate idle foreigners.

The Agano Party presidential candidate David Mwaure promised to move the country forward and start a new slate in terms of leadership, pledged to promote family values, women, youth, persons living with disability, county governments, workers, business owners, the economy, religious institutions, the environment. He also promised to recover public monies stashed in offshore accounts.

2.5 THE UNPREDICTABLE AND POTENTIALLY COMBUSTIBLE POLITICAL ENVIRONMENT

The August 2022 elections, particularly the presidential election, were unprecedented and unique in many ways. First, the incumbent President Uhuru Kenyatta was poised to retire after serving his last term in office and, therefore, ineligible for re-election. In 2002, a similar political scenario unfolded. In 2002, President Moi was retiring after his two terms in office and, therefore, ineligible for re-election. In the 2002 elections, President Moi settled on Uhuru Kenyatta as his chosen successor and project. However, Uhuru Kenyatta was defeated despite the support from President Moi and the then state machinery.

Second, the 2022 electoral contest was characterized by an unexpected political fallout and rivalry between the incumbent Uhuru Kenyatta and his Deputy, William Ruto. William Ruto was instrumental in Uhuru Kenyatta's election victory in the 2013 and 2017 elections. For this reason, Uhuru had pledged to support Ruto's presidential bid. However, Uhuru Kenyatta reneged on the promise to reciprocate and support Ruto in 2022. Instead, Uhuru Kenyatta chose to support his erstwhile political rival, Raila Odinga.

Third, the 2022 presidential election was peculiar on account of the political antecedents of the top two contestants, Raila Odinga and William Ruto. At the age of 77 years, Raila was making his fourth and possibly final bid for the presidency.[42]

On the other hand, Ruto was, at the age of 55 years, making his inaugural run for the presidency. However, the two are very well known for their brand of abrasive politics and as astute political mobilizers with great mastery of Kenyan political nuances and dynamics.

William Ruto's political astuteness and mastery traces back to the 1992 elections when he played an instrumental role in the election of President Moi. He mobilized the youth under the Youth for KANU '92 (YK 92) platform to help secure victory for Moi. The lessons learnt from this informed the instrumental role that Ruto later played as Raila Odinga's key point man in the 2007 election and as Uhuru Kenyatta's key point man in the 2013 and 2017 elections.

On the other hand, Raila Odinga is a veteran opposition leader and a son of Kenya's first Vice President, Jaramogi Oginga Odinga. Raila Odinga unsuccessfully vied for the country's presidency in the 1997, 2007, 2013 and 2017 elections, losing very narrowly and controversially. The support and blessing of Uhuru Kenyatta and backing from the state machinery, which Raila Odinga enjoyed in the 2022 elections added to the already rich political profile and for his supporters, made his Statehouse bid a sure bet.

Moreover, William Ruto and Raila Odinga had worked very closely together and were on the same political side in the

2007 elections. In the 2002 election cycle, William Ruto supported Raila Odinga until the ICC indictment of William Ruto led the their fallout.

The underlying political antecedents of the two seem to have defined and shaped their respective political strategies and approach to the 2022 elections. Consequently, an election context and environment where either candidate remained wary and cautious of each other during the campaigns, and carefully chose when to unleash strategic campaign maneuvers, unfolded. The environment was not only dramatic, but it also evinced all the characteristics of a perfect election storm.

Fourth, two other factors seem to have played out prominently in the prelude to the 2022 elections. One, the 2022 elections were characterized by acute intra-elite tensions and existential politics of survival. The political fallout and polarization between Uhuru Kenyatta and William Ruto created deep suspicion within the ruling Jubilee party and government. The fallout and polarization also heightened intra-elite tensions. Second, the co-joining of Uhuru Kenyatta and Raila Odinga into the succession political equation, drove intra-elite tensions a notch higher by creating an environment where both Raila Odinga and William Ruto potentially laid a claim to the benefit of incumbency. For Raila Odinga, the claim was founded on his political pact with Uhuru Kenyatta and enabled him to enjoy some degree of state protection and support. For William Ruto he was a Deputy President and enjoyed some degree of state protection and support.

Politics of patronage and the desire to protect the economic interests of the elite also played a significant role in the 2022 elections. The elite pact between Uhuru Kenyatta and Raila Odinga was predicated on their desire to safeguard their political careers and economic interests. It should be noted that the influential elite Mount Kenya Foundation, which has vast economic interest in Kenya, dialogued with the key presidential candidates around their economic concerns before settling on Raila Odinga as their preferred candidate. On the other hand, while the Deputy President rolled out his campaign as a "son of nobody", despite having been in government for many years as Cabinet Minister and having served as Deputy President for two terms.

The political campaigns that ensued and preceded the August 2022 elections was a do or die or now or never not only for Raila Odinga on account of his advanced age and previous election losses, but also for Raila Odinga and Uhuru Kenyatta on account of the fear of existential peril to their huge political and economic interests and those of their networks. For William Ruto, a win at all costs was necessary on account of the innate desire to protect his political career and his vast economic interest and wealth from potential political saboteurs.

Therefore, the ground and context for the 2022 elections was getting shaped for a grueling political duel between heavyweight political camps led by Raila Odinga and Uhuru Kenyatta on the one hand and William Ruto on the other. Furthermore, as William Ruto and Raila Odinga's abrasive campaigns crisscrossed each other across the country, ethnic and class tensions acutely spiked up. William Ruto's campaign was emboldened by his populist "hustler" brand of politics that was increasingly gaining traction across the country while Raila Odinga's campaign was power rocketed by his political pact with Uhuru Kenyatta and the backing from state machinery. A fierce political collision between two gigantic and high-powered campaign machineries was inevitable. This scenario complicated the political and electoral context further.

The totality of these factors conspired to generate a combustible environment towards the 2022 elections and escalated the elections from a very hot and to a very bitter contest. In the premise, no side was willing to leave anything to chance, but instead threw in their all until it was

ultimately done. Consequently, the political and electoral context that ensued in the build up to the 2022 elections stretched and tested institutions of governance, especially the electoral management body and the security agencies, beyond their limit. The campaigns drove political anxiety and tension in the country to the brink of the precipice.

Also, given that the 2022 elections were shaping up to be a very close race between Odinga and Ruto, a potentially combustible electoral environment was in the making. The potential of a very close call not only spiked the political stakes in the elections to an all-time high level but also created a potential risk of either side contesting the outcome and rejecting the results. Therefore, the 2022 elections were shaping up to a possibility of becoming extremely charged and disputed polls with a potential to degenerate into a bitter political fallout and polarization in the country.

Finally, in these elections, opinion polls including a poll by ELOG's partner, South Consulting, showed that the two top rival political contenders, Raila Odinga and William Ruto, enjoyed massive and near equal political support bases across the country, save in areas that were perceived as zoned political strongholds. The possibility that the elections could be stretched to the wire with a likelihood of the outcome swinging in favor of either candidate at the last minute remained very real.

This possibility reinforced the already existing anxiety and fear in the political environment and bred a ground that could easily trigger post-elections violence. The fear of post-elections violence occurring was further buttressed by the fact that most opinion polls showed a possibility of a re-run as neither candidate was getting over the 50%+1 threshold. Under the prevailing circumstances, a re-run posed high political risks that could easily stretch the already existing political, ethnic, social, and elite tensions beyond limit and drive the country to the brink of the precipice.

2.6 MONEY IN POLITICS

According to International IDEA, modern elections are massively complex events that entail immense logistical challenges. They are often referred to as the largest peacetime activities ever undertaken within a nation. For these reasons, modern elections require heavy financial investment to manage and deliver successfully and therefore, come with a heavy financial burden to governments.

In Kenya, the cost of elections has increased exponentially over the previous elections with the budgetary allocation standing at Kshs. 24.3Billion in 2013 and rising to 53.5 billion in 2017 due to the repeat presidential elections. Based on the 2017 budgetary allocation, the cost of elections per voter in Kenya stood at Kshs. 2,500 per voter, considering that Kenya had 19.2 million registered voters. This made the cost of elections in Kenya one of the most expensive in the world, surpassing the Average Cost per Registered Voter Index benchmark of Five Dollars per voter by a very huge margin. With 22,120,458 registered voters in 2022 and a budgetary allocation of Kshs. 44.6 billion, the cost of elections in Kenya reduced to Kshs. 2,000 per voter, still significantly above the Five Dollar international benchmark.

As if this is not enough, there is a perennial wild attraction towards Kenya's politics that makes it a very high-stake activity reserved for the big spenders. The allure is attributable to the pay perks that derive from elective positions and the benefits that derive from patronage and connections that are linked to political and elective positions. For this reason, there is always a very fierce competition

for political and elective positions, not just at inter-party levels but also at intra-party levels. The more a candidate spends, the higher the chances of winning an elective position. This is exacerbated by public perception of politicians as **"money bags"** and mobile ATMs and the pressure from voters to receive handouts during political campaigns. The phenomenon of vote trading or vote buying is a very significant problem that keeps recurring during every election cycle.

A study conducted by Karuti Kanyinga and Tom Mboya indicated that it would cost about KShs. 39 million (roughly US$390,000 as at November 2022) for a candidate to win a Senate seat in 2022 elections, which translates to an aggregate of 1.8 billion Kenya shillings (US$18 million) for all the 47 Senate seats in the country. For the Woman Representative seat, a candidate would require an average US$240,000 to successfully win the 2022 elections, which translates to spending in excess of US$11 million in aggregate for the 47 Women Representative seats in the country. A candidate for the Member of National Assembly seat would require an average of US$222,000 to win in the 2022 elections, which translates to an aggregate of US$64.4 million (KSh6.4 billion) for the 290 constituency seats across the country. For the Member of County Assembly seat, a candidate would require about US$31,000 to win in the 2022 elections, which translates to an aggregate US$45 million (KSh4.5bn) for all the 1,450 electoral seats.

The foregoing is a clear indication that money would play a very significant role in the 2022 elections. Money would be a critical determinant and influencer on the planning, management and delivery of the elections by the IEBC. It would also be a critical determinant on the nature and style of political campaigns that political parties and candidates were expected to mount across the country as well the ultimate outcomes of the elections. It was also going to be a big influencer on the political behaviour of citizens including the patterns of voting in the elections. In other words, it was expected that campaign money would decide who would win the various elective seats in the 2022 elections at the expense of ideological and political capacities and competence of the candidates.

This impact of money in the 2022 political contest, was compounded by the fact that strict oversight over elections and campaign financing was not expected since Parliament had shot down attempts by the IEBC to reign in on campaign financing through capping of campaign expenditure. In a nutshell, the 2022 elections, particularly, the political campaigns and the outcomes were expected to be largely defined, shaped and determined by the impact of money. The allure of money in politics, which derives from the huge perks, benefits and patronage networks that lead to easy self-enrichment, is a factor that creates huge interest in politics and drives candidates to outdo each other in campaign expenditure to get elected. For these reasons, also, it was expected that the 2022 elections would attract many candidates and the various elective positions would become theatres of competing campaign war-chests.

ELOG remained concerned over the high costs of politics in Kenya for various reasons. One, it reduces elections to a mere transactional affair, which transforms elections into a type of trade as opposed to a key pillar of democratic governance. Two, it undermines the viability and functionality of representative democracy. Third, it undermines the principle of inclusion in politics and elections as it excludes capable candidates that are less endowed with resources, such as the marginalized categories of women and youth candidates. Fourth, it entrenches political patronage and promotes patronage networks. Fifth, it promotes abuse of public office as it encourages theft of public resources and undermines effective oversight over use of public resources. Finally, the handouts that come with huge political campaign spending promotes public dependency

syndrome.

In ELOG's view, high cost of elections is not sustainable in a country like Kenya, with a vulnerable economy that is struggling with a myriad of socio-economic challenges and is therefore faced with competing public spending priorities. In this sense, high costs of elections undermine the value of democratic processes and institutions and is, therefore, a threat to democracy and good governance.

2.7 THE DEFERRED ELECTIONS

A number of Gubernatorial, Member of National Assembly and County Assembly Wards elections for the electoral areas where elections were not held on the 9th August 2022 due to technical errors on the printed ballot papers, which the IEBC realized on the eve of the 9th August 2022 elections. These areas included Kakamega and Mombasa for gubernatorial elections, Member of National Assembly elections for the Kitui Rural, Kacheliba, Pokot South and Rongai Constituencies and elections for Members of County Assembly for Nyaki Ward in North Imenti Constituency in Meru County and Kwa Njenga Ward in Embakasi South Constituency in Nairobi County.

Being part of the 9th August 2022 elections, the deferred elections were grounded on similar context as the 9th August 2022 elections. What is significant about the deferred elections is the fact that they arose out of acts of omission and failure to conduct due diligence attributable to both IEBC and the ballot printing firm. ELOG largely blames the omissions that led to technical errors being noticed by the IEBC on 8th August 2022 as a failure on the part of the IEBC to conduct due diligence during the printing of the ballot papers.

Consequently, voters in the areas where the elections were deferred were denied the opportunity to vote on the same day with other Kenyans. The low voter turnout for the deferred elections was indicative of elections context and environment that was characterized by voter apathy. Furthermore, voting in these areas occurred after the results of other elections were already known. In this regard, the deferred elections represented yet another extension of the close and bitter campaign rivalry between Hon. Raila Odinga and Hon. William Ruto. The two counties, four constituencies and two wards became further grounds for determining whom between the two political protagonists would get a majority in seats in the National Assembly and amongst the elected governors.

2.8 CONCLUSION

Since the re-introduction of multi-party politics in 1992, Kenyan elections have often manifested as very high stakes affairs that are characterized by heightened political, ethnic, and social tensions and polarization. While the 2022 elections were no exception, it was nuanced by an additional layer of emerging new political shift and narrative towards socio-class grievances and tensions, which exacerbated the situation further.

Judging by the numerous issues and factors that were already at play to define and shape the context and environment in the lead up to the 2022 elections, there could only be one logical deduction, that is, the 2022 elections were shaping up to be extremely tense and potentially fragile and volatile. These factors were compounded by the exponential cost of elections that was expected to complicate

the 2022 elections farther. A multiplicity of new aggravating factors such as class and identity-based grievances, intra-elite tensions and existential politics of survival and patronage-based politics also made the 2022 elections to be unprecedented, unpredictable and challenging.

The challenging and unpredictable nature of the 2022 elections in which the two top contenders in some way had a claim to incumbency; had near equal political support base that could easily tilt in favor of either at the finish line, and; the unpredictable close call nature of the polls, with a possibility of neither side crossing over the 50%+1, further aggravated tensions and polarization and effectively pushed the elections from a hotly contested poll to a bitterly contested one.

Even though other factors existed that worked to somehow mitigate the heightened stakes and level of ethno-political tensions, such as the fact that the populous Central Kenya region did not pitch their own candidate in the presidential succession race, the 2022 elections still stretched the anxiety of Kenyans and the national institutions of governance and security beyond limits and threatened to tear them apart.

Head of the Electoral Observation Mission of the Electoral institute for Sustainable Democracy in Africa (EISA), Former Nigerian President Goodluck Bele Jonathan, with ELOG Chairperson Anne W. Ireri during a tour of ELOG's Parallel Vote Tabulation (PVT) data centre.

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CHAPTER THREE:
Thematic Observations and Findings on Pre-Elections Environment

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THEMATIC OBSERVATIONS AND FINDINGS ON PRE-ELECTIONS ENVIRONMENT

3.1 INTRODUCTION

In this chapter, ELOG provides a context as well as its observations and findings on the pre-election environment. These are drawn from its long-term thematic observation missions that were deployed during the 2022 pre-election environment. ELOG also examined and made observations on the role of key actors and stakeholders such as the IEBC, the Judiciary, the Office of the Registrar of Political Parties, Political Parties, the Police, the Media, CSOs, among others during this period. ELOG further provides its findings and observations on key electoral processes such as the legal framework, party nominations, political campaigns, voter education, and voter registration in Kenya and in the Diaspora as well as audit of the voter register. These examinations, observations and findings are critical for a broad understanding of the 9th August 2022 elections as well as the elections that were deferred to 29th August 2022.

3.2 THE PRE-ELECTION ENVIRONMENT

ELOG deployed a specialized and comprehensive approach to assess and analyze the pre-election environment based on key electoral themes. This was done through deployment of pre-election thematic observation missions. Critical actors and processes in the pre-election environment were assessed, analyzed, and examined and observations made. Apart from deploying a number of thematic observation missions, ELOG also utilized its convening power to engage stakeholders in focused assessment and examination of critical themes in the pre-election environment. These included engagement with stakeholders in violence monitoring, media monitoring, legal framework review and preparedness of the IEBC and Technical Working Groups. ELOG deployed appropriate tools to collect, collate and analyze data that was gathered and also convened stakeholder forums. ELOG also made critical interventions as were necessary during the pre-election environment, through stakeholder engagements, media and press statements and releases.

3.3 THE LEGAL FRAMEWORK

Kenya's electoral environment is imbued with a fairly comprehensive and robust legal framework that resonates well with international and regional conventions, some of which Kenya has assigned and ratified. In addition, Article 2(5) of the Constitution of Kenya 2010 provides that "general rules of international law shall form part of the laws of Kenya". Furthermore, Article 2(6) provides that "any treaty or convention ratified by Kenya shall form part of the laws of Kenya". Therefore, international and regional declarations, treaties and

conventions that prescribe principles and standards for elections are embedded as part of Kenya's electoral laws

3.3.1 INTERNATIONAL AND REGIONAL FRAMEWORK

The relevant international and regional treaties, conventions and declarations that set out principles and standards for democratic elections, which Kenya has ratified and is bound by include the following:

1. The Universal Declaration of Human Rights, 1948.
2. The International Covenant on Civil and Political Rights, 1966.
3. The International Covenant on Economic, Social and Cultural Rights, 1966.
4. The Convention on the Rights of Persons with Disability.
5. The African Charter on Human and Peoples' Rights, 2005.
6. The African Charter on Democracy, Elections and Governance (2007).
7. The Convention on the Political Rights of Women (1952).
8. The Convention on the Elimination of All Forms of Discrimination against Women (1979).
9. The Maputo Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003).
10. The Solemn Declaration of the African Union on Gender Equality in Africa (2004).
11. The East African Community Principles for Election Observation and Monitoring.

In a nutshell, the relevant international and regional legal norms and framework prescribe the minimum human rights standards that should be accorded to every person in the exercise of their civil and political rights. They are the foundation of electoral rights of citizens as they seek to influence the governance and democratic processes in their country. They also lay the foundation for regular and periodic democratic elections as representing the free will of the people and serve as the basis for the legitimacy and authority of the government. Finally, they lay the foundation for the integration of key norms and principles of equality, freedom, security, equity, inclusivity, dignity, participation, and non-discrimination into legal frameworks governing electoral processes.

3.3.2 NATIONAL FRAMEWORK

The Constitution of Kenya 2010 is the ground norm which lays the foundation upon which Kenya's legal regime on elections is built. The robust and transformative Constitution builds the relevant institutions and anchors the legal regime that impacts directly and indirectly on the electoral processes in Kenya. The constitutional framework and prescriptions on electoral processes, institutions and infrastructure are elaborated and operationalized through various statutory and subsidiary legislations that include the following:

1. Elections Act, 2011 (No. 24 of 2011).
2. Election Offences Act, 2016 (No. 37 of 2016).
3. Election Laws (Amendment) Act, 2016.
4. Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011).
5. Political Parties Act, 2011 (No. 11 of 2011).
6. Election Campaign Financing Act, 2013 (No. 42 of 2013)
7. Leadership and Integrity Act, 2012 (No. 19 of 2012).
8. Public Officer Ethics Act, 2003 (No. 4 of 2003).
9. The National Cohesion and Integration Act.
10. Kenya Information and Communications Act.
11. Kenya Broadcasting Corporation Act.
12. The Police Act.
13. The Public Order Act.
14. The Penal Code.
15. Publication of Opinion Polls Act, 2012

(No. 39 of 2012)
16. County Governments Act, 2012 (No. 17 of 2012).
17. Supreme Court Act, 2011 (No. 7 of 2011).
18. Appellate Jurisdiction Act (Cap. 9).

3.3.3 CASE LAW AND JURISPRUDENCE FROM COURTS OF LAW

Apart from the above codified national legal regime, the conduct, administration, and management of elections in Kenya has also been significantly defined and shaped by case law and jurisprudence that have emerged from courts of law. Although case law and jurisprudence from the judiciary will be discussed later under the role of the judiciary as a key stakeholder, it suffices to note that the judiciary has played a very significant role in the development and implementation of electoral laws in Kenya over the years. The judiciary has been very pivotal in providing legal and judicial interpretations, direction and clarity that have helped to strengthen the electoral process and environment in Kenya and to promote contemporary developments towards the realization of credible, peaceful, free, and fair elections.

Kenya's judiciary has, therefore, remained a key source of case law and jurisprudence that have greatly impacted the electoral processes and infrastructure in Kenya. Majority of the case law and jurisprudence have emerged from public interest litigation, courtesy of the litigious culture of the Kenyan society. Judicial precedents that have spanned the entire 2022 election cycle have augmented the electoral legal regime and particularly generated opinions and recommendations that have improved Kenya's electoral legal and institutional regimes through requisite operational and administrative action on the part of election duty bearers.

3.3.4 AMENDMENTS TO THE LEGAL FRAMEWORK

In the 2017 Elections Observation Report, ELOG had recommended that the IEBC should develop a clear strategy and framework for initiating, managing, and implementing post-2017 electoral cycle reforms, including amendments to the legal framework. ELOG recommended an open, timely, consultative approach and process that brought all stakeholders on board for broader participation, buy-in and ownership of reforms and amendments.

While reiterating these concerns, ELOG took cognizance of the several deficiencies that the Supreme Court pointed out in its decision to annul the August 2017 presidential election. ELOG remained aware of the fact that the ruling Jubilee party had introduced into the National Assembly several controversial amendments to the elections laws for the purpose of addressing several deficiencies pointed out by the Supreme Court. The controversial Election Laws Amendment Bill was hurriedly passed on October 11, 2017, just before the fresh presidential election that was held on 26th October 2017. The amendments introduced important changes in the management of election results, declaration of results, and annulment of elections as well as other changes that had significant implications in the management of elections.[43]

Even though the President did not assent to the Amendment Bill, it became effective after the date of the fresh presidential election by operation of law. The Bill published in the Kenya Gazette Supplement No. 162 (Acts No. 34) on November 2, 2017, as The Elections Laws (Amendment) Act, 2017. However, the amendments to the Act were short-lived as they were struck down by the High Court in April 2018 as unconstitutional.

Post the annulment of the controversial amendments, there hasn't been any legal reform process that was undertaken even though the discrepancies which the Supreme Court had pointed out in 2017 were still not addressed. However, ELOG observed that the IEBC in the discharge of its role to facilitate electoral legal reforms convened a few stakeholders to undertake review of electoral laws. Consequently, amendments were proposed, and the following Bills were submitted to Parliament (both Houses) in 2020 but none was passed by the time Parliament proceeded on recess for the 2022 general elections:[44]

a. The draft Referendum Bill, 2020.
b. The IEBC Amendment Bill submitted on May 20, 2020.
c. The Election Campaign Finance (Amendment) Bill 2020 submitted on August 21, 2020.

Additionally, the IEBC prepared and submitted to both Houses of Parliament a report titled, "Report on Electoral Law Reform in Kenya: The IEBC Experience" on October 19, 2020[45]. In the report, the IEBC detailed a comparative analysis of similar electoral systems and provided an understanding of the basic threshold that electoral systems must meet. The report also identified areas of electoral legal framework for review and specifically recommended the laws that should be amended or enacted to improve the regulation and conduct of elections. While ELOG lauded the report in terms of its detailed findings and recommendations, it was not clear what the IEBC expected Parliament to do with the report. ELOG can only conclude that the report was meant to be an advocacy tool given that Parliament could not act suo moto to enact amendments in the absence of specific drafted Bills. The IEBC should have accompanied the report with specific Amendment Bills for Parliament to review.

In January 2022 in the period preceding the 2022 general elections, Amendments to the Political Parties Act of 2011 were submitted to Parliament and enacted[46]. President Uhuru Kenyatta assented to the Amendments on 27 January 2022. The Amendments introduced the concept of coalition political parties by providing for their formation and governance; allowed candidates to run on either coalition party tickets or individual parties; outlined functions of political parties; and changed the criteria of assessing the Political Parties Fund. The amendments also empowered the Registrar of Political Parties to certify party nomination rules and party membership registers or lists.

ELOG takes the view that the amendments to the Political Parties Act introduced some positive measures that were geared towards strengthening the management of political parties and enhancing democracy. In particular, the amendments dealt with the recurrent thorny question of how to structure, manage and fund political groupings that were often quickly assembled during elections for short-term convenient elite political bargains and shifting political agenda, and soon thereafter disbanded, based on disagreements. Therefore, the amendments improved the legal framework for the formation, structuring, organization, and funding of coalition parties and bolstered a sense of nationalist identity and regional representation in politics.

However, ELOG remained concerned that the Amendments were passed under very rushed and controversial circumstances and, therefore, did not benefit from broad based participation and bi-partisan support and ownership. The Amendments were perceived as a win for President Uhuru Kenyatta and his handshake partner Raila Odinga that would enable them to build a formidable cross-party coalition ahead of the 2022 elections. The amendments were fiercely opposed by the Deputy President William Ruto and his political camp.

In an attempt to curb the loopholes which, the Supreme Court had pointed out in its decision that nullified the 2017 presidential

election, the IEBC prepared and submitted to the National Assembly the following five sets of regulations.

a. The Draft Elections (Registration of Voters) (Amendment) Regulations, 2022
b. The Draft Elections (General) (Amendment) Regulations, 2022
c. The Draft (Voter Education) (Amendment) Regulations, 2022
d. The Draft Elections (Party Nominations and Party Lists) Amendment Regulations, 2022
e. The Draft Elections (Technology) (Amendment) Regulations, 2022

This marked yet another positive attempt by the Commission to comply with the directives arising from the Supreme Court decision of 2017 by amending the Elections Act, 2011 (No. 24 of 2011). However, the manner in which the Amendments were handled remained unclear. The IEBC is reported to have submitted the regulations to Parliament in May 2022[47] well out of the statutory timeline prescribed by the Elections Act. According to Section 109 (3) of the Elections Act, the IEBC is required to publish the regulations that have been approved by the National Assembly in the gazette notice 4 months preceding general elections and not later than 60 days before the date of general elections. Based on this provision, the National Assembly had no option but to reject the amendments. The chairperson of the Parliamentary Committee on Delegated Legislation is reported to have accused the IEBC of not only submitting the regulations out of time but also submitting them without subjecting the regulations to public participation. The regulations were further impugned to have drafting errors that were not in tandem with the Constitution and Elections Act 2021 and contrary to Section 13(a) of the Statutory Instruments Act 2013 and, thus portraying the IEBC as a body crippled with professional deficiency. [48]

With the failure to enact the amendments in time for the August elections, the status quo prevailed. This also implied that the IEBC had failed to comply with the directives given by the Supreme Court in the decision that annulled the 2017 presidential election. In a nutshell, elections stakeholders, particularly political parties, were left very concerned regarding the level of preparedness of the IEBC to conduct the 2022 elections.

In its Strategic Plan 2020-2024, the IEBC acknowledged that *"despite the clarity in the Constitution on the threshold on the conduct of an election, it has consistently faced challenges which include... amendment of electoral laws closes to the elections date."* Similarly, in his remarks during a meeting with faith-based organizations, the IEBC Chairman Mr. Wafula Chebukati identified one of the key challenges that the IEBC faces and made a corresponding recommendation as follows:

"The real issues are late enactment of electoral laws too close to the election undermining planning and implementation of activities within the set electoral timelines. The international best practice is to cease enactment of electoral laws at least two years before a General elections[49]."

Therefore, this begs the question why the IEBC developed and submitted to the National Assembly regulations to amend the Elections Act too close to the 9th August general elections in flagrant disregard of the statutory timelines. Critical questions arise, for instance: why did the IEBC drag its feet on the matter or was it simply a case of negligence given that the directives it sought to comply with were given by the Supreme Court in 2017, a clear cycle of 5 years to the 2022 general elections?

3.4 ELECTORAL LAW ENFORCEMENT AND STATUS OF CAMPAIGN FINANCING LAW

Electoral crimes and offenses continue to be recurrent features in Kenya's electoral history and processes. Electoral crimes and offenses fall within the remit of the Elections Offences Act and the Electoral Code of Conduct. Therefore, effective implementation and enforcement of the Elections Offences Act and the Electoral Code of Conduct remain critical in the realization of peaceful, credible, free, and fair elections. During the previous 2017 elections, ELOG observed that the agencies mandated to implement and enforce the Elections Offences Act and the Electoral Code of Conduct remained lackluster and were crippled by inconsistency, overlap in jurisdiction and lack of clear rules of procedure. These challenges continued to dog these agencies during the 2022 general elections. The consequent lapse in implementation and enforcement of the Elections Offences Act and the Electoral Code of Conduct compounded the anxieties and uncertainties that clouded the 2022 elections.

Under Article 252(1)(a) of the Constitution of Kenya 2010, the IEBC has the power to conduct investigations on its own initiative on complaints made by members of the public on any violations, malpractices or offenses committed during the election. The election offenses are provided for under the Elections Offences Act. In other words, the Constitution of Kenya 2010 confers jurisdiction over election offenses under the Elections Offences Act. Furthermore, the Constitution mandates the IEBC to ensure appropriate structures and mechanisms to eliminate electoral malpractice. Yet, Section 21 of the Elections Offences Act also gives the Office of the Director of Public Prosecutions (ODPP) jurisdiction to order for investigation and prosecution of the offenses under the Act, with the timeline being prescribed as within a year of the election. At the same time, the Chief Justice has power under the Elections Offences Act to constitute special courts to hear and decide cases of election offenses.

As a result of the overlap in jurisdictions, effective and efficient implementation and enforcement of the Elections Offences Act would require synergy and collaboration between the IEBC, the ODPP and the Courts and other law enforcement agencies. As in the 2017 elections, lack of effective synergy remained a challenge that hampered the practical application of the Elections Offences Act. Additionally, investigations and prosecutions by the ODPP are known to be very slow processes that involve tasking the police to investigate, prepare and submit the file to the ODPP for review and if there is sufficient evidence, the ODPP proceeds to prosecute before a magistrate's court. The prosecution process is also known to be very slow, sometimes taking more than one year to finalize.

Politicians and their supporters took advantage of the processes under the statutory remit of the ODPP to commit election offenses during the 2022 elections. In many instances, the IEBC passively watched as election offenses were flagrantly committed, particularly given that it lacks the power and machinery to order prompt investigations and prosecutions. As a result, this emboldened political actors and supporters who openly caused chaos and violence at various political rallies during the campaigns. Some of the major incidents of violence included the chaos and violence at the campaign rally held at the Jacaranda Grounds in Nairobi involving Kenya Kwanza Alliance supporters and those of Azimio la Umoja; violence in Marsabit County where supporters of the incumbent Governor, Mohamud Ali and those of his rival Chachu Ganya fought ahead of a campaign rally by Azimio la Umoja presidential candidate, Raila Odinga; and, violence in Mandera where the supporters of rival candidates

clashed ahead of a rally by Azimio la Umoja presidential candidate, Raila Odinga.

ELOG has consistently raised concerns over Section 14 of the Election Offences Act, which has remained problematic to enforce in every election cycle. Section 14 of the Election Offences Act prohibits the use of public resources for the purpose of campaigning during an election or a referendum unless where authorized under the Act or any other written law. Challenges on practical enforcement of this provision keep recurring in every election. As a result, it has become very difficult for the IEBC to effectively regulate use of public resources by candidates, state officers and public servants during campaigns.

ELOG understood that the IEBC kept trying to enforce Section 14 of the Election Offences Act by requiring candidates to declare in writing the public facilities and equipment in their custody by virtue of their official status and office. The IEBC would send a notice to the candidates requiring compliance within fourteen (14) days. The challenge is that the IEBC lacks the mandate under the Act to enforce compliance. Furthermore, the IEBC lacks investigative and prosecutorial mandate to enable effective compliance and accountability for false or non-compliance. Politicians therefore keep taking advantage of these challenges during every election cycle to blatantly undermine the law as well as IEBC's efforts to secure compliance. This is the reason why misuse and abuse of public resources remain recurring phenomena during campaigns.

Enforcement of the Electoral Code of Conduct is yet another challenge that the IEBC keeps experiencing during every election cycle. The Electoral Code of Conduct is provided for under the Second Schedule to the Elections Act. The Code is operationalized under Section 110 of the Elections Act, which requires that every political party and every person who participates in an election or referendum under the Constitution and the Elections Act signs the Electoral Code of Conduct. The Code is anchored on Article 88 (4) (j) of the Constitution of Kenya 2010 which mandated the IEBC to develop a code of conduct for candidates and parties contesting elections. It is also reinforced by Article 84 of the Constitution of Kenya 2010 which requires that in every election, all candidates and all political parties must comply with the code of conduct prescribed by the Commission. The objective of the Code is to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance in which political activity may take place without fear, coercion, intimidation, or reprisals

It is the mandate of the IEBC to enforce the Electoral Code of Conduct and for that reason, Paragraph 15 of the Second Schedule to the Elections Act allows the IEBC to establish Electoral Code of Conduct Enforcement Committee of not less than five members of the Commission and shall be chaired by a member appointed by the Chairperson. The Elections Act also requires that the chairperson of the Committee should be qualified to hold the office of Judge of the High Court.

In the context of the current IEBC and the qualifications of the Commissioners, the Committee's chairperson can only be the IEBC Chairperson. This raises practical challenges to the Commission given the multitude of responsibilities and tasks that the IEBC Chairperson has to discharge. Additionally, the Act is unclear about the quorum required for the Committee to sit and discharge its business. The presumption, therefore, is that all the 5 members must be present at all material times, which is neither realistic nor practical.

Finally, the challenge of conflicting jurisdictions in relation to the application of the Code arises and keeps undermining the application of the Code during every election cycle. The IEBC is empowered by the Elections Act to investigate and prosecute breaches to the electoral code of conduct. At the same time, the

Elections Offences Act specifically creates the offenses of breach of the Electoral Code of Conduct and vests the ODPP with the power to order investigations and prosecute them.

The High Court decision in Nairobi Constitutional Petition No. E073 of 2022, Hon. Sabina Wanjiru Chege Vs Independent Electoral and Boundaries Commission effectively ended the IEBC's powers to enforce the Electoral Code of Conduct. In this case, a Member of Parliament by dint of being the Woman Representative of Muranga County was indicted and summoned by the IEBC on allegations of rigging that she had allegedly made at a campaign rally in Vihiga County. The petitioner was accused of contravening the Electoral Code of Conduct and consequently summoned to appear before the IEBC's Electoral Code of Conduct Enforcement Committee on 15th February 2022. The petitioner moved to the High Court to challenge the jurisdiction of the Committee and the proceedings against her.

The High Court established and pronounced that the IEBC lacked jurisdiction to either summon any witness or to conduct any hearing in relation to a complaint on breach of the Electoral Code of Conduct and found that the Electoral Code of Conduct Enforcement Committee was illegal and unconstitutional. The Court was also categorical that the petitioner was not bound by the Electoral Code of Conduct as the code only applied to candidates who have been formally nominated and their names submitted to the IEBC after nominations.

The Court further held that the IEBC can only carry out investigations and refer the matter to the Director of Public Prosecutions or opt to institute appropriate proceedings at the High Court after its investigations. In other words, the Court held that the IEBC lacked the power to summon and prosecute election related offenses. The Court described the IEBC's Electoral Code of Conduct Enforcement Committee as a 'constitutionally-dead horse', which the IEBC could not ride on. This judgment nullified the IEBC's Electoral Code of Conduct Enforcement Committee. The IEBC lodged an appeal at the Court of Appeal against the judgment, but this was scheduled for hearing in November 2022 well after the August 2022 elections, a matter, which the IEBC protested. [50]

Buoyed by the High Court decision, politicians and candidates had a field day flagrantly breaching the Electoral Code of Conduct during the campaigns for the 2022 elections. But the IEBC was also to blame for prematurely setting in motion a chain of events that culminated into judgment on this matter. It was abundantly clear that the official election campaign period for the 2022 elections had not commenced in accordance with the calendar and timetable issued by the IEBC. Moreover, the petitioner was not yet a candidate duly nominated for the elections and hence was not yet bound by the Electoral Code of Conduct.

The Judiciary was also to blame for rendering two conflicting judgments from the same Court. In a previous case, Nairobi High Court Judicial Review Misc. Application No. 592 of 2017 Republic Vs. the Independent Electoral and Boundaries Commission and 2 Others ex parte Prof. Philip Kaloki, the High Court on a judicial review application challenging the jurisdiction of the Electoral Code of Conduct Enforcement Committee, upheld and validated the powers and mandate of the Committee as well as the procedures adopted by the Committee. ELOG is optimistic that the Court of Appeal will be able to reconcile the two conflicting decisions and provide a clear forward-looking jurisprudence when the appeal is heard and determined in November 2022. However, the decision from the Court of Appeal will only be applicable to the next election cycle 2027.

In the meanwhile, the status quo is that the power and mandate to investigate and prosecute election offences or breaches

of the Electoral Code of Conduct vest in the ODPP. Therefore, it behooves the IEBC to improve the synergy and collaboration with the ODPP and other law enforcement agencies such as the Judiciary, the Police, among others, to build an effective and efficient framework and mechanism for dealing with and managing election offences and breaches to the Electoral Code of Conduct.

3.5 STATUS OF CAMPAIGN FINANCING LAW

In democratic and competitive elections, political parties require money to finance and publicize their election campaign platforms and routine operations. Campaign financing therefore enables electoral contestants to pursue effective campaigns. Andre Munro has defined campaign financing ***"...as the raising and spending of money intended to influence a political vote, such as the election of a candidate or a referendum."***[51] Regulation of campaign financing therefore becomes necessary for purposes of preventing corrupt political practices and to limit undue influence of money in politics.

Under Article 88 (4) (i) of the Constitution of Kenya 2010, the IEBC is mandated to regulate the amount of money that may be spent by or on behalf of a candidate or party in respect of any election. The constitutional provision has been operationalized through the enactment of the Election Campaign Financing Act, 2013 (No. 42 of 2013), which defines campaign financing as resources spent by a candidate or political party during an election period for purposes of campaign. The Act seeks to regulate and limit campaign fund raising and spending, which is critical towards safeguarding the integrity of electoral processes. In August 2016, the IEBC made an effort to operationalize the Campaign Financing Act through a Gazette Notice No. 6307 of 8th August 2016 that regulated and limited campaign spending by contestants for the 8th August 2017 elections.

However, in January 2017, the High Court suspended the application of the Campaign Financing Act, thus nullifying the IEBC efforts. The operation of the Campaign financing law was further suspended by the National Assembly through Election Laws (Amendment) Act, No. 1 of 2017, until after the 2017 elections.

To operationalize of the Election Campaign Financing Act, 2013, Section 5 of the Act mandates the IEBC to create regulations to be approved by the National Assembly at least 12 months before a general elections. In a bid to operationalize the provisions of the Campaign Financing Act the Commission in 2021, IEBC developed and published the Election Campaign Financing Regulations 2021 pursuant to Section 5(a) of the Act. The Regulations had capped campaign spending for presidential candidates at Kshs.4.4 billion and for political parties at Kshs.17.7 billion over the campaign period. The IEBC had published the spending limits in a Gazette Notice No. 8024 of 2021.

The National Assembly, however, frustrated the IEBC's efforts and refused to approve the Regulations. The National Assembly rejected the Gazette Notice on the claim that it was published without the consent and approval of Parliament. Furthermore, the National Assembly claimed that the IEBC submitted the Regulations out of time.[52] Therefore, in rejecting the Gazette Notice and refusing the approve the Regulations, the National Assembly succeeded in cornering the IEBC to revoke the Gazette Notice and nullify the 2021 Regulations

Consequently, the Election Campaign Financing Act of 2013 remained inoperative and ineffective during the 2022 elections. This created an environment that encouraged political parties and candidates to raise and spend

campaign money without any regulation or limitation. The uncontrolled influence of money in politics encourages corrupt electoral practices and distorts the level playing ground for all political parties and candidates contesting in elections. It also has the potential negative impact of raising the stakes in elections by making them become very expensive and by unduly influencing the outcome of the elections.

A study by Kennedy Masime and Charles Anderson Otieno, which drew data from the CAPF Monitoring Report of the 2007 general elections in Kenya,[53] indicated a very high level of campaign expenditure for the 2007 elections. In the 2007 elections, the main political parties spent Kshs. 5.6 billion (PNU - Kshs. 1.5 billion; ODM - Kshs. 1.2 billion; ODM-K - Kshs. 157 million; Kshs. 1.5 billion spent through misuse of public resources; Kshs.0.8 billion spent by third parties on behalf of PNU). In the 2007 elections the 210 MPs spent an overall Kshs.1.4 billion, which works out to averagely Kshs.7 million per MP.[54]

A more recent study by Karuti Kanyinga and Tom Mboya showed an exponential rise in the level of campaign expenditure for the 2017 elections. The study emphatically established that:

"It cost Kshs. 35.5 million (US$ 350,000) on average to run for Senate seat; and Kshs. 22.8 million (US$ 228,000) to contest for the county Woman Rep seat in the National Assembly. Running for the constituency MP seat, on the other hand, costs just Kshs. 18.2 million (US$182,000); Kshs. 4.6 million less than what it costs to contest the Woman Rep seat, with the same benefits, in the same house. Running to be an MCA cost, on average, Kshs. 3.1 million (US$ 31,000)[55]" .

The inevitable deduction from the study is that for one to win elections in Kenya they must be at least a multimillionaire who spends heavily in his campaign; but one should not be a woman. This depicts politics in Kenya as a show of affluence rather than passion and aptitude. Based on the study, the 2022 elections were set to follow the same pattern with the cost of contesting the elections getting even much higher.[56]

Already and based on the IEBC budgets for the management of elections, Kenya's elections are among one of the most expensive in the world at averagely Kshs.2,500 (USD.25) per voter.[57] ELOG concurs with Columnist Victor Bwire on the point that when considered cumulatively, the overall "cost of politics in Kenya is a time bomb whose human effect is an unmitigated disaster."[58] The situation becomes even perilous given the political machinations and maneuvers by the National Assembly that has effectively undermined the operation of the Election Campaign Financing Act 2013 and crippled the efforts by the IEBC to reign in on campaign financing in every election cycle since 2013. Victor Bwire has succinctly captured the sad situation in his column as follows:

"The heavy commercialization of our campaigns comes at a great cost—not just to individuals who have to pay out these monies but the general citizenry, who lose out on the development agenda as cash becomes the be-all and end-all of the electoral process. We must change this culture of handouts if we are to rescue our democracy from imminent collapse".[59]

3.6 STATUS OF THE TWO-THIRDS GENDER PRINCIPLE AND INCLUSION OF SPECIAL INTEREST GROUPS

A decade after the promulgation of the progressive Constitution of Kenya 2010, the two-thirds gender principle still remains elusive. The progressive Constitution of Kenya 2010 sought to eliminate gender disparities and other forms of discrimination by embracing inclusion of women, youth, persons with disabilities, ethnic minorities and persons from marginalized communities and groups in democratic governance.

Article 27 (3) of the Constitution 2010 outlines equal rights and opportunities for men and women irrespective of gender while Article 27(6) requires the state to implement policies, laws, and measures, including affirmative action programs and policies, designed to redress any disadvantage suffered by individuals or groups because of past injustices, including discrimination. Further, Article 27(8) of the Constitution 2010 obligates the state to additionally take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

In order to implement the two-thirds gender principle, Article 81(b) of the Constitution of Kenya 2010 demands that the electoral system shall comply with the principle. Article 177 of the Constitution outlines how the gender principle should be implemented at the County level. Finally, Article 56(a) requires the state to put in place affirmative action programs designed to ensure that minorities and marginalized groups participate and are represented in democratic governance.

In 2012, the Supreme Court of Kenya rendered an advisory opinion to the effect that the gender principle is a general principle whose implementation should be progressive. The Supreme Court provided a deadline of 27th August 2015 for the implementation of the principle. As the deadline approached with no action taken by Parliament, lobby groups led by the Center for Rights Education and Awareness (CREAW) petitioned the High Court for a declaration that Parliament had failed to enact legislation within the specified timeframe. They also sought an order compelling Parliament, the Attorney General and the Commission on Implementation of the Constitution and an order directing Parliament to draft and enact such legislation before the deadline of 27th August 2015. On 26th June 2015, the Court granted the orders and directed that the necessary legislation should be enacted within 40 days to meet the deadline.

The Two-Thirds Gender Rule (Amendment) Bill 2015 was prepared and tabled in Parliament but before it could be debated and passed, Parliament decided to exercise its prerogative under Article 261(2) of the Constitution to extend any deadline in the Fifth Schedule by one year. Accordingly, Parliament managed to circumvent the deadline by extending it to 27 August 2016. Yet again, Parliament was apathetic and consequently failed to meet the new deadline of 27th August 2016.

This prompted lobby groups comprising of CREAW, the Community Advocacy and Awareness Trust and the Kenya National Commission on Human Rights to petition the High Court on 26th September 2016. On 29th March 2017, the High Court found that Parliament had contravened the Constitution and ordered Parliament to enact the required legislation within 60 days or risk being dissolved under Article 261 (7) in the event of failure to comply. However, Parliament failed to act before the deadline and went on recess at the end of its term on 28th May 2017 without enacting the required legislation.

The 2017 elections were scheduled to take place on 8th August 2017 and for that

reason, the petitioners made a strategic decision to wait and see if the outcome of the 2017 elections could deliver on the two-thirds gender principle. However, the outcome fell below expectation as only 23 women were directly elected to the National Assembly, which together with the 47 Woman Representatives and 6 nominated women brought the total number to 76 women. There was a shortfall of 41 women to satisfy the gender principle. At the Senate, 3 women were directly elected while 16 women were nominated by political parties, 1 woman was nominated to represent the youth while another 1 woman was nominated to represent persons with disabilities. This totaled to 21 women, leaving a shortfall of 2 women to satisfy the gender principle.

Faced with this grim reality, lobby groups comprising CREAW, CRAWN-Trust, Kenya National Commission on Human Rights, Law Society of Kenya and National Gender and Equality Commission petitioned the Court yet again in September 2017. The petitioners sought a declaration that Parliament had contravened the Constitution and had failed to meet the two-thirds gender principle. They also sought an order compelling Parliament to enact the required legislation by making it the first order of business upon resumption of business. However, the High Court dismissed the petition on technical procedural grounds. The outcome left the matter in abeyance but since the prior High Court petition is still pending, the hope remained that it could be rejuvenated, and an order or advice sought under Article 261 (7) for the dissolution of Parliament.

In the post-2017 period, some attempts were made to introduce proposals to Parliament for consideration in a bid to implement the two-thirds gender principle. However, the proposals failed to succeed. In late 2018 and in February 2019, attempts were made to introduce Bills in Parliament for debate and adoption in a bid to implement the principle. These two attempts also failed on account of lack of quorum in Parliament. Consequently, the implementation and realization of the two-thirds gender principle remained uncertain and in limbo as the country approached the 2022 elections.

The only hope that remained came through the case of Katiba Institute Vs Independent Electoral and Boundaries Commission [2017] eKLR. The Katiba Institute had petitioned the High Court to compel political parties that were contesting in the 2017 general elections to adhere to the two-thirds gender principle during their party nominations. The High Court upheld the petition and ordered political parties to comply with the principle in all their undertakings, including party nominations. The High Court mandated the IEBC to ensure that political parties complied and failure to which would result in the IEBC rejecting their party nomination lists. The Court judgment was issued too close to the 2017 elections and for that reason, the Court deferred the application of the judgment to the next general elections in 2022.

In a bid to apply the judgment in the Katiba Institute petition of 2017, the IEBC issued a directive vide a letter dated 27th April 2022 to political parties to ensure that they complied with the two-thirds gender principle as ordered by the High Court in the Katiba Institute petition, failure of which the IEBC would reject their nomination lists. The IEBC directive was challenged in Court through Constitutional Petition No. E211 of 2022 and High Court Judicial Review Misc. Appl. No. E071 of 2022.

The two cases were consolidated and heard together. In the judgment, the Court found that there was no public participation before the directives were made. The Court also found that the directive was administrative in nature and consequently failed to meet the test of reasonableness and procedural fairness under Article 47 of the Constitution 2010. As a result, the Court nullified the IEBC directive. The decision marked yet another negative milestone in the implementation and realization of the two-thirds gender principle.

Also, the decision effectively meant that Kenya was headed to the next general elections in 2022, over two decades after the promulgation of the Constitution 2010, without any concrete or positive efforts on the long journey towards realization of the two-thirds gender principle. This means that stakeholders will now have to go back to the drawing board to strategically reflect on the next steps and how best to lobby Parliament to embrace wisdom and take positive responsibility over the two-thirds gender principle.

3.7 ROLE OF KEY INSTITUTIONS AND ACTORS IN THE 2022 GENERAL ELECTIONS

3.7.1 THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (COURT RULINGS; APPOINTMENT OF NEW COMMISSIONERS AND CEO; PREPARATIONS FOR THE ELECTIONS)

3.7.1.1 CONTEXT

The Electoral Management Body in Kenya the IEBC is mandated under Article 88 of the Constitution 2010 to conduct and supervise elections and referenda, continuously register voters, revise the voters roll, carry out voter education and facilitate observation, monitoring and evaluation of elections, among other roles. In its preparations to conduct and manage the 2022 elections, the IEBC operated under very challenging environment and circumstances that arose out of internal and external factors.

In most instances, the IEBC was under siege especially from the political and electoral actors and stakeholders on account of the heightened stakes, anxiety and uncertainty that clouded the 2022 elections. In ELOG's observation, there were significant hits and misses that characterized IEBC's preparations to effectively conduct and manage the 2022 elections in line with the legal and constitutional requirements as well as the expectations of the public and stakeholders.

The 2022 elections took place in an environment that was largely informed and influenced by the decision of the Supreme Court (SCoK)that nullified the 2017 presidential election. Accordingly, as the institution that was at the center of focus in the 2017 Supreme Court judgment, the IEBC approached the 2022 elections with extreme sensitivity and caution. While the 2017 SCoK nullification of presidential elections did not attribute any culpability of the action on any person in the EMB, it had indicated that should similar circumstances be presented before it, this would lead to a similar decision.

3.7.1.2 IEBC ON ELECTORAL LAW REFORMS

From the outset, the IEBC was minded about ensuring that the challenges and loopholes that had led to the nullification of the 2017 presidential election were fixed in time for the 2022 elections. Many of these challenges and loopholes required reform and amendments to the legal framework on elections.

Although the IEBC made some remarkable progress in its preparations for the 2022 elections, ELOG remained concerned about what seemed to be an element of lethargy on the part of the IEBC in relation to ensuring that reform and amendments to electoral laws were undertaken timeously and expeditiously. ELOG was particularly concerned that expert advice that electoral laws should be in place at least two years before the next general elections remained ignored.

ELOG also remained concerned over what appeared to be a tug of war between the IEBC and Parliament with regard to reform and amendment of electoral laws. Consequently, ELOG observed delays and last-minute attempts, which have been cited earlier in the report to amend and reform critical electoral laws. Political squabbles between the IEBC and Parliament also led to many of these attempts being ignored or blocked by Parliament.

In ELOG's view, the IEBC should have been strategic and more tactful in its engagement with Parliament in the 2022 election cycle to harness the support and ownership of Parliament in the electoral law reform agenda. This could have avoided the intrigues and sideshows that stakeholders were treated to as the IEBC and Parliament publicly traded accusations and blamed each other on the failure to enact critical electoral law reforms in time for the 2022 elections. Consequently, many several pieces of electoral legislation that could have sealed the loopholes and addressed the challenges that the Supreme Court had pointed out in 2017, either remained in limbo or were not enacted in time for the 2022 elections. Critical reforms that could have addressed the plans to securely transmit election results on Election Day remained unclear even as the Election Day approached.

3.7.1.3 IEBC ON DEFICITS IN PUBLIC TRUST AND CONFIDENCE

The post-2017 elections period was also characterized tumultuous resignation of 4 Commissioners (one on 18th October 2017 and three on 16th April 2018) left the IEBC in turmoil with its image and credibility significantly dented.[60]

The result is that the IEBC suffered serious deficit in public trust and confidence, and immense erosion of its credibility. This is corroborated by a 2019 Afrobarometer Survey which showed that trust and confidence in the IEBC amongst Kenyans had dropped significantly, with more than half of respondents indicating that they had least or no trust in the IEBC .

ELOG observed and noted the various concerted and positive efforts that the IEBC put to rebuild trust and confidence and reassert its independence following the 2017 crisis. These included attempts to improve involvement and engagement of stakeholders and the public in the electoral processes and IEBC activities, and attempts to address the challenges, concerns and loopholes that arose from the 2017 elections. The IEBC also prepared and launched its Strategic Plan 2020-2023, Elections Operation Plan and Boundaries Review Operation Plan on 15 June 2021 to clearly demarcate its journey and plans towards the 2022 elections and beyond. It is on the basis of the Strategic Plan and the Elections Operations Plan that the IEBC rose to overcome the crisis and challenges that flowed from the botched 2017 elections. Consequently, public trust and confidence in the IEBC grew as demonstrated by a survey that was conducted by South Consulting in May/ June 2022, which showed the trust and confidence level to have risen to 70%.

Consequently, the IEBC was able with significant amount of success to plan and complete most of its procurement needs for the 2022 elections, conduct voter registration, audit the register and consolidate the final register for the elections. The electoral body was also able to nominate and clear candidates for the elections, set up and pilot a biometric and results transmission system for the elections, build an elaborate infrastructure of trained field officials for the August polls and ultimately and successfully conducted and managed the August polls.

However, ELOG observed that the remarkable preparations and operations by the IEBC were defined and shaped by complex constitutional and statutory requirements as well as strict legal and administrative timelines that the

IEBC had to carefully maneuver; high turnover of Commissioners and staff of the Commission; budgetary and funding delays, cuts and shortfalls; delayed, frustrated and last minute reforms and amendments to electoral laws, as alluded to above; political acts of intimidation, blackmail and interference by politicians to erode the independence of the IEBC; and, numerous and incessant litigations aimed at undermining or influencing the Commission's decisions and operations, with some critical Court decisions either being delayed or being delivered too close to the elections, thus negatively impacting on the Commission's decisions and preparedness.

3.7.1.4 IEBC HOUSE, A GLASS HALF EMPTY – CRACKS IN THE COMMISSION AND QUORUM ISSUE

ELOG observed that for most part of the 2022 election cycle, the IEBC operated at less optimal at leadership levels. When fully constituted, the IEBC should comprise of a chairperson and 6 members of the Commission (Commissioners) and a fully functional secretariat headed by a Commission Secretary/Chief Electoral Officer.

Cracks and fallout in the Commission started on 18th October 2017 with the resignation of one Commissioner, Dr. Roselyn Akombe, who subsequently fled to the country to the US. On 16th April 2018, three more Commissioners resigned publicly citing lack of trust and confidence in the leadership of the Commission chairperson. The three Commissioners were Connie Nkatha Maina, the Vice Chairperson,[61] Margaret Mwachanya and Paul Kurgat. At this time, the Commission Secretary/CEO Ezra Chiloba was internally indicted and suspended from office. This left the Commission with only the Chairperson, Wafula Chebukati and Commissioners Prof. Abdi Yakubu Guliye and Boya Molu, but with no substantive Secretary/CEO. The embattled CEO Ezra Chiloba was ultimately relieved of his duties on 12th October 2018.

ELOG observed with great concern that it took too long, almost over three years, for the vacancies in the Commission to be filled. It was not until April 2021 that the President appointed the Selection Panel, with the 4 Commissioners eventually getting appointed and sworn in on 2nd September 2021. The substantive Commission Secretary/CEO was also appointed on 8th March 2022. The delay was extremely inordinate and abnormal and seemed besmirched with traits of political sabotage and scheming with a potential to undermine the functional and operational autonomy and capacity of the IEBC.

ELOG was equally surprised by the IEBC's conduct, which seemed to have resigned to fate and acquiesced to the status quo, even where this posed a great risk to the Commission's composition, functional and operational capacity, and competence, including its decisions and preparedness for the 2022 elections. As a result of the status quo, the IEBC's composition, functional and operational capacity, and competence was challenged and impugned in three Court cases that nearly nullified some of the IEBC's functional and operational decisions and actions.

In the Katiba Institute & 3 Others v The Attorney General, the gist of the petitioner's case was that the composition of the IEBC did not comply with the provisions of the Constitution and Sections 4, 5 and 7 of the Second Schedule of the IEBC Act following the resignation of the four commissioners, and therefore the IEBC lacked the quorum to conduct any business and/or undertake its constitutional mandate. The Court held as follows:

"Quorum being the minimum number of Commissioners that must be present to make binding decisions, only majority commissioners' decision can bind the Commission. Quorum was previously five members out of the nine commissioners

including the Chairman, a clear majority of members of the Commission. With membership of the Commission reduced to seven, including the Chairperson, half of the members of the Commission, or three commissioners now form the quorum. Instead of making the quorum higher, Parliament reduced it to three which is not good for the proper functioning of the Commission. In that regard therefore, in decision making process where decisions are to be made through voting, only decisions of majority of the commissioners should be valid. Short of that anything else would be invalid. For that reason, paragraphs 5 and 7 of the Second Schedule are plainly skewed and unconstitutional."

In another case,[62] the constitutionality and legality of the composition of the IEBC was challenged and accordingly its competence, capacity, and ability to conduct and carry out its business including conducting by-elections impugned on account of lack of quorum following the resignation of the 4 commissioners. The High Court invalidated the purported resignation of the 4 commissioners and found that they were still validly in office and as such, their resignation did not affect the composition and quorum of the IEBC.

While dismissing the case, the Court found that since quorum is composed of a clear majority of members of the commission it cannot be a constant number as it is dependent on the actual number of the commissioners appointed at any given time. The court observed that issue of quorum, apart from being a matter provided for under the statute, is also regarded as a matter of common sense and construction depending on the total number of the commissioners appointed at any given time because it is the total number of commissioners appointed that would determine the quorum of the commission and not the other way round.

The Court also found that occurrence of a vacancy in the IEBC did not invalidate the composition of the commission but reduced the number of commissioners with the result that it limited the IEBC's operations with respect to raising the quorum required for meetings especially when dealing with policy issues. The court concluded that the IEBC could conduct by-elections because this did not require a quorum to decide.

In yet another decision that departed from the holding in the Isaiah Biwott Kangwony case, a bench of 5 Judges of the High Court in the famous Building Bridges Initiative (BBI) case[63] found that the IEBC Act was clear and required that the IEBC should have five commissioners to conduct any business. The statute does not distinguish between "policy" and other business. The Court stated that the statute (IEBC Act) requires the IEBC to have the minimum of five commissioners in order to conduct any business. Therefore, the Court concluded that since the resignation of the 4 commissioners, the IEBC lacked a quorum to conduct any business including verification of BBI signatures for purposes of a referendum.

The BBI case proceeded to the Court of Appeal,[64] which upheld the High Court's finding and decision on the IEBC quorum. The Appeal Court held that the IEBC does not have the requisite quorum for purposes of carrying out its business relating to the conduct of the proposed referendum, including the verification whether the initiative as submitted by the Building Bridges Initiative Secretariat is supported by the requisite number of registered voters in accordance with Article 257(4) of the Constitution (with one Court of Appeal Judge, Fatuma Sichale dissenting).

The BBI case was ultimately and finally determined at the Supreme Court[65] and on the question of IEBC's quorum, the Supreme Court held that since Article 250(1) of the Constitution envisages that an IEBC composed of three (3) Commissioners is competent to discharge its constitutional mandate. According to the Supreme Court the IEBC's quorum ought to be construed to reflect the normative expectation

flowing from the Constitution that IEBC can discharge its constitutional mandate with at least three Commissioners in office. Accordingly, the Supreme Court concluded that the IEBC with three Commissioners had the requisite quorum to undertake the impugned BBI signature verification process.

Therefore, even though the Supreme Court finally settled the vexing question of the IEBC's quorum to conduct business, the fact that appointment of new commissioners was left in abeyance for over three years is unfathomable. This is particularly the case on account of the fact that it was foreseeable that the vacancies could create a potential of negative consequences flowing from the decisions and actions of a Commission that functioned with a questionable quorum of only three commissioners. Yet, neither the appointing authority nor the IEBC was concerned. Could this have been deliberate and if so, who stood to gain in the event that IEBC's decisions and actions, related to its preparations for the 2022 elections, were impugned and nullified?

Finally, on this matter, it is worth recalling that the four commissioners resigned on the basis of allegations of very serious internal governance squabbles within the Commission that pointed to a dysfunctional corporate entity. In their public resignation statement,[66] the three commissioners impugned the management and leadership of the IEBC pointing out that they had lost faith and confidence in the Commission chairperson and his leadership. They further claimed that the problems that bedeviled the IEBC arose out of leadership failure that resulted into a dysfunctional IEBC that was too vulnerable to internal and external meddling. These claims echoed those that had been made by Commissioner Roselyn Akombe who had resigned earlier and fled the country, fearing for her life. Incidentally, the split in the Commission that led to the resignations was nearly down the middle, with the chairperson backed by commissioners Prof. Abdi Guliye and Mr. Boya Molu in one camp and the vice chairperson and the others, on the other camp.

Curiously, a similar split in the Commission and similar claims arose at the tail-end of the management of the results of the 2022 presidential election, which generated chaos that nearly jeopardized the final announcement and declaration of the presidential results. Four commissioners (vice chairperson and three commissioners) disagreed with the chairperson over the final verification and tallying of the presidential election results at the Bomas of Kenya. The four commissioners walked out of the process and proceeded to issue their own press statement at the Serena Hotel. In their statement, the renegade commissioners impugned the leadership and management style of the chairperson and his style and manner of handling the presidential election results, which they termed as opaque and for that reason, they disowned the final presidential election results, which the chairperson ultimately announced.

Affidavits that were filed by the four renegade Commissioners impugned the leadership and management style of the chairperson, which they claimed they had no confidence in. They further claimed that the Bomas of Kenya fallout was not an isolated event but part of a systematic effort to sideline them in critical decisions of the IEBC since their appointment. They further claimed that at the Bomas of Kenya, the chairman had deliberately sidelined them from the core constitutional function of the Commission by assigning them peripheral and menial roles.

The fallout in the Commission during the 2022 presidential election results verification and tallying was very concerning and indeed baffling for stakeholders, including ELOG. It was one of the issues, which the Supreme Court had to deal with in terms of its impact on the validity of the final presidential election results. The Supreme Court found that the fallout at the Bomas did not impugn the

presidential election results or subvert the sovereign will of the people but it was an epitome of serious problems in the IEBC's governance. According to the Supreme Court, the fiasco portrayed the IEBC as a dysfunctional corporate entity with dysfunctional internal governance that required to be fixed.

By its very nature and impact, a split or disagreement in the Commission in the course of discharging its mandate is a weighty matter. For this reason, the Supreme Court did not hesitate to recommend that there is an urgent need to clarify and demarcate the policy, strategy and oversight roles and functions of the chairperson and commissioners through legislative reforms. At the same time, the court declared that there was need for clarity and delineation of the policy and administrative domains of the Commission through clear separation of the roles and responsibilities of the Commission from those of the Commission Secretary and Commission staff.

ELOG concurs with the Supreme Court recommendations and believes that the IEBC will convene a broad-based participatory reflection and engagement forum with stakeholders to reform and amend the relevant Electoral Laws and administrative guidelines to conform to the findings and verdict of the Supreme Court and to cure the unfortunate internal governance challenges that keep occurring at the IEBC. ELOG further proposes that stakeholders should reflect on and consider setting out procedures and modalities to guide the management and public communication of dissenting views and opinions that could arise amongst the Commissioners during the process of verifying and tallying and announcement of presidential election results.

3.7.1.5 PROCUREMENT OF ELECTIONS MATERIALS AND DEPLOYMENT OF ELECTIONS PERSONNEL

ELOG observed that with the provision of the general elections budget in the Financial Year 2021-2022, the IEBC commenced the procurement of general elections materials, equipment, and services. In general, ELOG observed that the IEBC conducted the procurement exercise successfully, with materials, including strategic materials being delivered in time for the 9th August general elections. Compared to 2017, the IEBC procurement exercise was not marred by numerous court cases to impugn the credibility and integrity of the processes. This means that the IEBC had improved its procurement processes thus improving in the level of legality, transparency, and accountability of procurement processes.

With the provision of the general elections budget, the IEBC was also able to successfully build a comprehensive and impressive infrastructure for the management and conduct of the general elections. This included the recruitment, training, and deployment of over 400 permanent and non-permanent staff for the elections. Permanent staff from the IEBC Secretariat were trained and deployed as County Returning Officers, Constituency Returning Officers, and Deputy Constituency Returning Officers. The temporary staff that were recruited, trained, and deployed included: Deputy County Returning Officers, Second Constituency Deputy Returning Officers, Presiding Officers, Deputy Presiding Officers, Poll Clerks, and Logistic Assistants.

While ELOG lauds the IEBC for the massive investment that it made towards putting

in place a well-trained cadre of personnel on the ground for the elections, ELOG observes that there is still room for the IEBC to improve and strengthen the capacity of the personnel. This should be done through timely, comprehensive, and consistent training based on comprehensive training curriculum and manuals such as those recommended under BRIDGE. On election day, ELOG observers reported inconsistent management and handling of issues, such as the handling and use of the Manual Register and the controversial Form 34A Book 1 of 1 and Form 34A Book 2 of 2. This showed an element of inconsistency in training and instructions given to the elections personnel on the ground.

3.7.1.6 IEBC AND ELECTRONIC TRANSMISSION OF RESULTS

Electronic transmission of elections results being a critical component of integrity and credibility in elections should always be emphasized during the training of elections personnel so that potentially fatal mistakes such as those that were raised during the hearing of the presidential petitions can be avoided. For example, it was the petitioners' case at the Supreme Court that elections result Form 34A were allegedly being intercepted mid-way through transmission, downloaded, manipulated, and altered then uploaded onto the IEBC elections public results portal by a Venezuelan national Jose Carmago. This allegation was founded on uploaded Forms 34A bearing the name "Jose Carmago", some of which were submitted from some polling stations including Gacharaigu Primary School Polling Station in Kangema Constituency. Even though these contentions were not proved at the Supreme Court, they underscore the need for the IEBC to improve the transparency of the results transmission system and build public and stakeholder confidence around it.

The IEBC defended these as inadvertent mistakes that arose during the photo image capturing of Forms 34A by Presiding Officers at polling stations using the KIEMS kit before transmitting the photo image to the IEBC results portal. According to the IEBC, the mistakes were occasioned through inadvertent overlay of Forms 34A on elections papers bearing the name "Jose Carmago". The Supreme Court accepted the IEBC explanation and put this matter to rest, even though the petitioners remained concerned and unconvinced by the IEBC's explanation.

3.7.1.7 IEBC ON STAKEHOLDER ENGAGEMENT

ELOG lauds the IEBC for developing and launching a Strategic Plan 2020-2024 on 15th June 2021. The Strategic Plan was shared with stakeholders including ELOG. The Strategic Plan was the IEBC's blueprint that outlined the roadmap for the work of the IEBC within the covered period of five years, within which the August 2022 elections fell. ELOG also lauds the IEBC for developing the Elections Operations Plan for purposes of operationalizing the Strategic Plan. However, this critical operational document, the Elections Operations Plan, was not shared with stakeholders such as ELOG. Furthermore, ELOG noted that even though the Strategic Plan and Elections Operations Plan were very critical, strategic documents for the IEBC's preparations for the elections, their development did not benefit from broad-based stakeholder engagement and consultations.

Throughout the pre-election period, ELOG noted the IEBC's efforts to sensitize stakeholders and the public through press briefings, press releases, media engagements and stakeholders' forums. However, ELOG still noted lack of regular and structured stakeholder and public engagement, including consultations and communication. The IEBC was also not pro-active and in most cases engagement, consultation and communication with stakeholders and the public were ad hoc and reactive and driven by crisis.

The stakeholder engagement forums were mostly spaces where the IEBC was invited to as opposed to spaces planned and organized by the IEBC. The fora that were organized by the IEBC were mostly crisis-driven for purposes of reactive crisis management. Some of the examples include the political parties engagement and consultative forum held on 29th June 2022 at the Windsor Golf Hotel which deliberated over the IEBC's unilateral and controversial decision to use electronic register as the only document to be used for identifying voters during the 9th August 2022 elections and the consultative forum held on 28th July 2022 at the Bomas of Kenya whose key agenda was to manage the crisis generated by the IEBC's unilateral and controversial decision to print two sets of Forms 34A (Book 1of 1 and Book 2 of 2) and failure to print Forms 34B.

The IEBC was also very slow to respond to requests for information, which together with regular and structured engagement, made key stakeholders such as civil society, political parties and the media to raise concerns about the IEBC's state of preparedness for credible and transparent elections. Lack of regular and structured engagement, consultation and communication with stakeholders and the public led to increase in propaganda, misinformation and disinformation around the elections, the IEBC, and its staff.

The way the case involving the three Venezuelans was handled also demonstrated the poor level of stakeholder engagement and consultations on the part of the IEBC. The three Venezuelans were apparently IEBC's official visitors who were travelling into the country on official duty from the foreign Venezuelan company, Smartmatic International, which the IEBC had contracted to provide elections technology including IT support and to maintain its elections servers. The three Venezuelan officials Jose Gregorio Camargo Castellanos, Joel Gustavo Rodriguez Garcia and Salvador Javier Sosa Suarez who were employees of Smartmatic International were also travelling to deliver some non-strategic elections materials to the IEBC. Yet, the IEBC did not find any reason to engage and inform other government agencies regarding the visit and mission of the three Venezuelans into Kenya. An affidavit that was filed at the Supreme Court by one of the IEBC Commissioners, Irene Masit, indicated that only the IEBC chairman knew about the travel and mission of the three Venezuelans .

The three were intercepted by Immigration officials upon their arrival at the airport and subjected to questioning upon being found with elections materials and other electronic devices that had data and information related to the 9th August 2022 elections. They were consequently arrested by the police and detained for further interrogation. The public altercations that ensued between the IEBC and the police following the arrest and detention of three Venezuelans were very unfortunate. They showed that the collaboration and engagement between the IEBC and the police was very poor and characterized by bad blood akin to that of two tough pugilists sizing each other before the epic fight.

Under normal circumstances, it was expected that such official visit and mission is drawn to the attention of the relevant government departments especially the immigration and security agencies, through official protocol, not just for their knowledge but also for purposes of providing security to the expected officials including the elections materials they were travelling with. This is the collaboration and protocol that the IEBC adopted when strategic election materials, such as ballot papers, were shipped into the country from Greece. In this case, the security agencies ensured that strategic elections materials arrived from Greece safely for safe keeping at the IEBC's warehouse before being dispatched across the country for the elections. Stakeholders, including ELOG, remained concerned why the Venezuelans'[67] case was handled in a contrary manner.

3.7.1.8 IEBC ON POLITICAL PARTY NOMINATIONS AND REGISTRATION OF CANDIDATES

Nomination and registration of political parties and candidates for the elections is yet another area where the IEBC discharged its mandate with a mixed bag of fortunes. The IEBC is mandated by law to regulate the process by which political parties are cleared and candidates registered to participate in the elections. Accordingly, political parties including a coalition party submitted their rules for the IEBC to review and as a result, 83 political parties were cleared for the 2022 general elections. The registration of candidates to participate in the 9th August 2022 elections began on 29th May 2022 and was successfully completed by the IEBC on 6th June 2022.

Candidates' registration exercise was aimed at determining whether the aspirants met the legal and constitutional criteria for registration as the candidates for the 9th August General elections.

The key findings included the following:

a. Candidate registration processes were reported in 99% of the constituencies observed. Observers reported that the IEBC undertook candidate registration in 99% of constituencies observed.
b. Approximately, seven (7) candidates were reported to have been cleared by the IEBC per day.
c. Women aspirants were reported as having been part of the candidate registration exercise in fourteen 14% of the constituencies observed.
d. The average number of Persons with Disabilities (PWDs) who took part in candidate registration was two (2) per county with only 7% of Constituencies reported to have PWD candidates being registered by IEBC.
e. In 29% of constituencies observed, candidates expected to be cleared did not show up for the exercise.
f. IEBC was reported to have rejected the registration of candidates in 30% of constituencies observed with the reason for rejection varying from lack of required qualifications to lack of the IEBC nomination fees.
g. There were varied reasons for the rejection of bids by the Commission. The common reason was that the presidential aspirants lacked copies of identification cards for the 48,000 supporters list they had presented to the Commission from 24 counties. Additionally, aspirants were rejected for lacking the required academic qualifications for the position of the president.
h. A lower percentage of pre-registration meetings were recorded towards the end of the month after the conclusion of candidate registration processes.

The presidential race had initially attracted 48 aspirants out of which IEBC scheduled 18 aspirants for clearance with only 16 showing up for clearance. Hon. Kalonzo Musyoka, one of the scheduled candidates who were scheduled for clearance, pulled out of the presidential race while Ford Asili candidate, Hon. Njeru Kathangu, did not show up.

Eight of the presidential aspirants were vying on independent tickets, another eight on political party's tickets and one on a coalition party ticket. One candidate, Kalonzo Musyoka opted out. The gender composition of the presidential aspirants was such that two were females while the rest were of the male gender.

The critical incidents that were noted during the registration process that included:

a. An independent candidate for a parliamentary seat in Turbo Constituency, Raymond Kipkosgei, never turned up for the IEBC clearance process claiming that he was unwell. He later on filed a case with the IEBC in order to gain an opportunity to submit his papers.

b. A gubernatorial aspirant for Bungoma County, Francis Wangutusi Wamukuta, never submitted his papers claiming that he was threatened by his opponents. The aspirant relayed this information to the Returning Officer.
c. In Mkomani Ward in Lamu West an MCA aspirant Yahya Ahmed Shee with his youthful supporters cause chaos at the registration centre prompting the police to intervene. Yahya was cleared to run for the position on 29th May 2022.
d. In Kamukuywa Ward in Kimilili, an independent candidate, Gerald Wakasala Wanjala, who was cleared allegedly gave handouts to his supporters who had waited for him outside the registration center. In response, the police were called upon to disperse the crowd away from the area.

At the end of the candidates' clearance exercise, the IEBC had successfully cleared 16,100 candidates out of which 11,574 (72%) were cleared to vie on political parties' tickets while 4,526 (28%) were cleared as independent candidates. The total number of candidates that the IEBC cleared per category included:

a. 4 candidates for the presidential election
b. 266 gubernatorial candidates
c. 341 candidates for the Senate
d. 360 candidates for election of Woman Representative
e. 2,132 candidates for the National Assembly, and
f. 12,997 candidates for the Member of County Assembly.

ELOG observes that the critical component of the clearance entailed vetting of the candidates on leadership and integrity as required by Chapter Six of the Constitution and on legally prescribed educational qualifications. The IEBC may have failed to meet this threshold. This is discussed below.

3.7.1.9 IEBC ON VETTING OF CANDIDATES ON LEADERSHIP AND INTEGRITY

ELOG was impressed by the initial collaboration between the IEBC and the Ethic and Anti-Corruption Commission (EACC) in relation to clearance of candidates as part of the registration process. In this regard, ELOG lauded the IEBC for submitting a list of 21,865 candidates to the EACC to review for purposes of compliance with the leadership and integrity requirements under Chapter Six of the Constitution of Kenya 2010. ELOG was further impressed when the EACC flagged 241 candidates with leadership and integrity issues that included corruption and abuse of office. The EACC recommended to the IEBC to consider these concerns before clearing and registering these candidates for the elections. However, ELOG was concerned about the IEBC's reluctance to implement the EACC recommendations to disqualify majority of the candidates and advise them to seek court redress. The IEBC claimed that its hands were tried on account of the constitutional threshold of presumption of innocence until proven guilty by a court of law.

As a result, several implicated candidates slipped through the EACC dragnet and got cleared and nominated by the IEBC. This exhibited lack of action and commitment by the IEBC to enforce the constitutional leadership and integrity standards for candidates. Furthermore, ELOG noted inconsistency in the manner in which the IEBC applied the leadership and integrity requirements under Chapter Six of the Constitution. Consequently, stakeholders, including ELOG, expressed concerns that candidates with leadership and integrity concerns would consequently get elected. It led to a public spat between the IEBC and the EACC over their respective mandates and responsibilities in relation to nomination and clearance of candidates with leadership and integrity concerns.

Tied to vetting of candidates on

leadership and integrity was the vetting of candidates based on the required educational qualifications for the elective positions. The IEBC was expected to adopt a collaborative and consultative approach with key stakeholders such as Commission for University Education and the Judiciary for a concerted and coordinated process of vetting and clearing candidates based on the requisite constitutional educational threshold.

The IEBC adopted a near lone-ranger approach based on the argument that it does not have the means to verify educational qualifications of candidates but would simply rely on educational certificates that had been certified and authenticated by educational institutions and the Commission for University Education. However, it was not clear how the IEBC was authenticating the certifications. IEBC also seemed to have made a decision that in instances where controversies arose in the authentication of educational qualifications of candidates, the onus and burden of proof rested on the body and individual disputing the qualifications. Similarly, the IEBC relied on Court pronouncements for guidance and direction on educational qualifications for candidates.

The candidacy that was mostly affected by controversies over educational qualification was the gubernatorial elections, where the Elections Act requires candidates to be holders of a university degree from a university recognized in Kenya. The controversy over Nairobi gubernatorial candidate Johnson Sakaja's degree, for example, was a back and forth between the IEBC and the Commission for University Education and also involved the Political Parties Dispute Tribunal and the Judiciary, for interventions. Ultimately, the IEBC relied on the decision of the Court to clear Hon. Sakaja, amidst concerns from the Commission for University Education TEAM University that allegedly awarded the degree, and the public. A similar process was also observed in the clearance of gubernatorial candidate for Kilifi County, Hon. Aisha Jumwa. The IEBC also cleared Oscar Sudi, Kepseret MP, despite an on-going Court case challenging the authenticity of his degree qualification.

Even though the High Court delivered a ruling on 30th September 2022 that declared as unconstitutional the educational requirement for candidates vying for elective positions especially that of Governors, ELOG observed that the controversies that were observed during the IEBC's vetting of candidates based on educational qualifications dented the credibility and integrity of the IEBC vetting process. ELOG further noted that such rulings from the Judiciary were retrogressive as they undermine the gains made in the Constitution of Kenya 2010 in terms of prescribing thresholds for credible, professional, and authentic public leaders and good governance. ELOG hopes that the IEBC lodged an appeal against the retrogressive ruling from the High Court.

ELOG urges the IEBC to conduct the candidate registration and vetting rigorously and meticulously and to consider the processes as winnowing opportunities that filter out individuals facing questions with respect to their integrity and qualification from contesting for office. ELOG also urges the IEBC to act as the gatekeepers in the electoral processes, in order to lock out persons implicated in corruption scandals and abuse of office from contesting for public office as provided for in the Constitution of Kenya 2010 and the principles of governance provided under Article 10 including Chapter Six of the Constitution on Leadership and Integrity.

3.7.1.10 IEBC ON RESOLUTION OF DISPUTES FROM CANDIDATES REGISTRATION

The IEBC launched the electoral dispute resolution process on 11th June 2022 pursuant to Section 74 of the Elections Act which provides that electoral disputes shall be determined within ten days

of the lodging of the dispute with the Commission. For purposes of determining the disputes, the IEBC established a Disputes Resolution Committee (DRC) that consisted of a three- (3) panel committee (consisting of a presiding chairperson with a legal background, two commissioners from IEBC and secretaries to the respective panels. There were 262 disputes arising from the clearance of candidates by the IEBC for various elective seats. The disputes arose from the decisions made by the IEBC Returning Officers either by registering or declining to register candidates. The cases ranged from Member of County Assembly (MCA) to the Presidential Candidate aspirants. The types of complaints filed included:

1. Aspirants who were dissatisfied with the IEBC's decision not to clear them, who further went forth to lodge complaints challenging the decisions made by the returning officer.
2. Complainants who were dissatisfied with the IEBC's decision to clear certain aspirants and therefore lodged complaints with the Tribunal challenging the decision made by the Returning Officer.

ELOG's findings indicated that there were challenges with the cause lists being availed on time and proceedings starting late. ELOG further noted a good practice related to use of a case management system whereby cases involving numerous parties could be heard and determined expeditiously and effectively.

ELOG noted that out of the three hundred and twenty-five (325) cases that were lodged with the IEBC DRC, 39 complaints (12%) were allowed, 269 complaints (82.7%) were summarily dismissed for want of jurisdiction, prosecution and on merit, 17 cases (5.2%) were withdrawn, and 31 cases proceeded to the High Court. This was remarkable on the part of the IEBC.

3.7.1.11 IEBC ON TECHNOLOGY, RESULTS MANAGEMENT AND TRANSMISSION SYSTEM

One of the key successes that the IEBC has made over the years is in the adoption and deployment of technology in elections in two areas: voter registration and results management including results transmission. As in the 2013 and 2017 elections, the IEBC yet again deployed the Kenya Integrated Electoral Management System (KIEMS) as mandated under Section 44 (1) of the Elections Act, 2011. Despite Parliament rejecting the amendments which the IEBC had proposed to respond to the loopholes that led to the nullification of the 2017 presidential elections, especially on electronic results management and transmission, the IEBC made remarkable efforts to enhance the elections results management framework to enable transparent, accurate, verifiable, and proper management and transmission of results.

For these reasons, the IEBC conducted a simulation exercise (dry run) of the Result Transmission System (RTS). By law, the Commission was required to test and simulate the system 60 days before elections. The process was expected to transmit images of result forms signed by the Returning Officer and all the agents from the constituency tallying centers, for presidential results immediately after counting, tallying and announcement of the results at the Constituency Tallying Centre and National Tallying Centre (as no text results would be transmitted).

The exercise was carried out at the Bomas of Kenya (the scheduled National Tallying Centre) on 9th June 2022. During the simulation exercise carried out at Bomas of Kenya, the Commission sampled 2900 out of the 46,000 polling stations. The objective of the exercise was to assess its

technological capacity to administer and manage the 9th August 2022 electoral processes. Further, the exercise was designed to pick-out challenges on the transmission of electronic copies of the election results used to collate provisional election results at the National Tallying Center.

From the exercise, the Commission also wanted to determine the areas that were within the 3G and 4G networks. Out of the 46,232polling stations, it was indicated that 1,111 stations did not have the network coverage and to mitigate challenges posed by this, the Commission procured satellite modems to be used in the aforementioned stations. Other notable issues that the IEBC raised in respect to the technology included:

1. Since the Commission did have its own Mobile Network Operator (MNOs), the Commission would work with private Mobile Network Operators to optimize the networks to ensure faster transmission of results.
2. There would be no room for manipulation of figures on the images of results being transmitted.
3. The transmitted information would be secured.
4. The Intrusion Detection System (IDS) would be put in place to ensure that all data in the servers were protected.
5. Each Kenya Integrated Election Management System (KIEMS) would be equipped with two (2) power banks to ensure that the results were transmitted continuously. Smart phones would not be used to transmit results but would use the KIEMS kits instead.

During the 9th June 2022 testing and simulation of the RTS by the Commission, the system was noted to be slow in streaming results from the sampled polling stations. By the end of the simulation exercise, only 1,350 out of the 2,900 polling stations sampled polling stations had sent in their results, equivalent to 46.6%. Therefore, the success rate recorded was 46.6%. The dismal performance raised serious concerns given that the country was just a few months away from the polls scheduled for 9th August 2022 considering that a simulation exercise performed as dismally as it did.

On July 19th , 2022, IEBC conducted the second simulation exercise of the RTS at the Bomas of Kenya. The exercise involved transmission of Forms 34A from a sample of 580 polling stations out of the 46,232 polling stations across the country. In the second simulation, the IEBC reported a 98% success rate on the exercise and assured stakeholders that the system had improved and was better than the one used in 2017, with key areas of improvement being traceability, usability, and accuracy RTS.

ELOG commended the IEBC for successfully conducting the second simulation exercise on the RTS. However, ELOG noted that similar to the first simulation exercise, the IEBC did not share the location of the sampled polling stations with stakeholders other than indicating the sample size, thus raising concerns about the transparency and accountability of the process. ELOG is minded to restate that simulation exercises of this nature were significant as they contributed towards building of confidence and trust in the system and infrastructure for transmission of election results. There was also a question with the sample size used for the exercise which was smaller i.e., 580 polling stations out of 46,233 polling stations, and thus not representative enough to depict the real picture of the challenges that could occur in the transmission of results from all polling stations.

3.7.2 POLITICAL PARTIES

Articles 91 and 92 of the Constitution of Kenya of Kenya 2010 provide the basic legal framework for the formation,

management, and operations of political parties. Under Article 4 of the Constitution 2010, political parties are envisaged as the critical pillars upon which a multi-party system of governance is founded. In that regard, political parties are significant pillars of democratic values and principles of governance in Kenya. Under Section 34 (e) of the Political Parties Act, 2011 the Office of Registrar of Political Parties (ORPP) is mandated to maintain a register of political parties and the symbols of political parties. In line with this provision, there were ninety (90) fully registered political parties in Kenya whose corporate particular were maintained by the ORPP as at May 2022.

During the 2022 election cycle, political parties in Kenya provided platforms for citizens to participate and aggregate their interests in the political and electoral processes. This includes a platform for citizens to register as members, to participate in party programs and activities and to stand for leadership and elective positions.

Political parties are regulated by the Office of the Registrar of Political Parties (ORPP), which is a state office established under Article 260 of the Constitution of Kenya 2010 and the Political Parties Act, 2011. The key mandate of the ORPP is to regulate the formation, registration, and funding of political parties in accordance with the Constitution and the Political Parties Act.

In order to prepare the registered political parties for the elections, the ORPP issued a circular that highlighted the salient legal activities and timelines that were applicable as a result of the Political Parties (Amendment) Act 2022. The amendment changed the regime of political parties by restructuring party nominations, providing for the formation, structure, and management of coalitions, and restructuring the management of the political party's fund.

Accordingly, political parties were required to submit their party membership lists to the ORPP by 26th March 2022 for verification and certification.

The ORPP subsequently submitted the certified lists to the IEBC by 9th April 2022. Political parties were required to conduct party nominations and to resolve intra-party disputes that arose from the nominations by 22nd April 2022 ahead of candidates' registration by the IEBC. Most importantly, parties were required to notify the ORPP the date, venue of their party nominations and the method that they intended to use for their nominations in line with their rules. These rules had to be submitted to the ORPP and the IEBC for approval ahead of the party nominations. For purposes of direct nominations, parties were required to share with the ORPP the list of party members qualified to participate in the direct nominations, the particulars of the party organ to conduct direct nominations and the procedure to be used in direct nominations. For purposes of indirect nominations, the ORPP required parties to submit a list of delegates if the parties intended to use delegates in indirect nominations. The parties were also required to submit their assets and liabilities to the ORPP 30 days before the elections and to submit their party lists by 11th June 2022.

The ORPP engaged with political parties and stakeholders to sensitize them on the new amendments to the Political Parties Act and in particular issues related to formation, structure, and management of coalitions ahead of the elections. On party nominations, the ORPP endeavored to ensure that the process was credible by recruiting, training, and deploying 155 monitors to observe the processes across the 47 Counties. The ORPP also trained party election boards, secretary generals, and party leaders on Internal Dispute Resolution Mechanisms (IDRMs) to prepare them in the task of resolving disputes that were expected from then party nominations.

In order to effectively manage the large number of independent candidates,

the ORPP deployed an Independent Candidate Management System (ICMS) which was used to process applications by independent candidates with respect to their symbols. The system was also deployed in vetting independent candidates to ensure they were not affiliated with any political party, for purposes of their registration by the IEBC.

3.7.2.1 PARTY PRIMARIES

As a requirement, registered political parties submitted their constitutions, rules and regulations to the IEBC and the Registrar of Political Parties for review before being cleared to participate in the 2022 elections. For this reason, 83 political parties that included coalition parties were cleared to participate in the 2022 elections and accordingly the IEBC and the Registrar of Political Parties regulated the processes by which they nominated their candidates for the elections.

It was expected that the Political Party Primaries Bill, 2020 that had been proposed would be enacted ahead of the party primaries to regulate the party nomination processes. However, this crucial legislative proposal was not passed into law. A new legislation, Political Parties Amendment Act, 2022, was passed and used to regulate the manner in which the party nominations were conducted. Key aspects of this new law included the introduction of a regime on coalition political parties and additional methods that parties could use to nominate their candidates, which included consensus, negotiations and popularity methods.

Political parties carried out nomination of candidates from 1st of April to 22nd April 2022. ELOG sampled 12 political parties and deployed the observers to observe their party primaries. These included ODM, WIPER, JUBILEE, DAP-K, UDA, KANU, ANC, FORD-K, NARC K, PNU, MCC and NARC parties.

In summary, ELOG observation findings showed a mixed bag of the good, the bad and the ugly practices and experiences out of the party primaries. In general, and in comparison, to the 2013 and 2017 elections cycles, the party primaries for the 2022 elections met the democratic standards and best practice as well as constitutional and legislative requirements. The party primaries were generally compatible requirements that every political party should abide by the democratic principles of good governance, promote and practice democracy through regular, fair, and free elections within the party as stipulated in the Political Parties Amendment Act 2022.

The key ELOG observation findings on the party primaries included the following:

3.7.2.1.1 ACCESSIBILITY OF POLLING STATIONS

ELOG noted that 91% of the polling stations used by the parties observed was easily accessible to persons living with disability while 10% was not. While this is a marked improvement from the 2017 elections nomination exercise, it is still imperative that all political parties take positive steps in ensuring that all polling stations are accessible to all members.

3.7.2.1.2 ABRUPT CHANGES IN SOME OF THE POLLING STATIONS

ELOG observed that nominations across some of the political parties were moved from one polling station to another without prior notice to party members. For example, UDA's nomination that were scheduled to take place at Nyawita polling station in Kisumu County was moved abruptly moved to Kachar and the one that was scheduled at Segero Secondary School to Sagero Primary School without prior notice to members, thus leaving them stranded on the nomination day.

3.7.2.1.3 OPENING AND SET-UP OF THE POLLING STATIONS

Out of the 77 polling stations observed across the sampled political parties, 8% of them opened between 6 am and 7 pm, 29% opened between 07:00hrs and 08:00hrs, while 61% opened after 08:00hrs and 2% never opened. Some of the reasons for delayed opening ranged from lack of strategic materials, lack of polling officials, lack of security officers, among others. Examples of these areas included Kibwezi for UDA primaries and Rarieda for ODM primaries. ELOG noted that the polling stations that never opened did so because of the direct tickets that were issued by the political parties.

3.7.2.1.4 AVAILABILITY OF THE STRATEGIC MATERIALS

ELOG observed that 86% of the UDA polling stations observed had all the strategic materials while 6% of the stations observed had no ballot boxes, and 2% of the polling stations observed had no ballot papers. Only 4% of stations observed had no register of voters while 6% of polling stations did not have indelible ink or stamp. In polling stations without indelible ink or stamp, ELOG noted the probability of people voting more than once.

ELOG was impressed by the use of digital voting system by ODM in all its polling stations. This was commendable and effectively eliminated the use of strategic materials such as ballot boxes, ballot papers, result declaration forms, party register and indelible ink. The system enabled only registered and bona fide members of the party to vote for their preferred aspirants. The system successfully addressed incidents of multiple voting. Further, information on the nomination process and exercise was also available on political party websites.

However, there were hitches with technology that led to some of the voters to doubt the security of their votes. ELOG observers in Kisumu reported an incident of disgruntled voters when one of the voting gadgets failed and required a password to unlock it. This incident forced voters to wait unnecessarily long for the gadgets to get unlocked.

Further, ELOG observed that there were technical capacity gaps in the use of digital voting gadgets as was evidenced by the high number of assisted voters. Names of some bona fide party members were missing from the gadgets even though they could be found in the hard copy registers that were also present at the polling stations. Besides, some party members were not well educated on the use of the gadgets while others complained of inaccessibility of the gadgets owing to technical delays. in view of this, ELOG vouches for investment in comprehensive education on the use of such gargets as well as adequate prior training of personnel and testing of the gadgets before deployment.

3.7.2.1.5 REGISTER OF VOTERS

ELOG observers reported the use of the 2017 IEBC voter register at all the polling stations that were used by United Democratic Alliance (UDA), Amani National Congress (ANC) and Ford Kenya for their party primaries. On the other hand, the Wiper party and the ODM party used their party membership lists at all the polling stations for their party primaries. ELOG remained concerned that some political parties disregarded the law guiding nominations of party candidates and used the 2017 IEBC register of voters to conduct their primaries, thus disenfranchising party members who included young people who were newly registered as party members but were not on the 2017 IEBC register of voters. This, therefore, effectively locked them out of the party primaries. The use of the IEBC register of voters could also be used as an opportunity for fraud through voting by non-members. The use of other registers other than party membership lists is bad practice, which is against the law and should not be encouraged

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3.7.2.1.6 INEPT POLLING OFFICIALS

In a number of the polling stations observed, party officials in charge of the elections were not easily identifiable and had no tags. Some of them were openly biased in favor of particular candidates. For example, in Nakuru East, ELOG observed that all officials presiding over the nominations were allied to one aspirant contesting in the UDA party nominations. For this reason, the party cancelled the nominations and ordered that repeat nominations be conducted.

3.7.2.1.7 SECRECY OF BALLOT.

ELOG found that the secrecy of the ballot was observed in 7% of the polling stations observed thus raising fundamental concerns on the sanctity of the vote during the party primaries. This concern cut across all the parties that were observed and all the polling stations that were observed. In all the ODM polling stations where ELOG deployed observers, there was severe overcrowding at the desks where the digital gadgets were being observed. This compromised the secrecy of the vote.

3.7.2.1.8 DIRECT NOMINATIONS DURING THE NOMINATION PROCESS AND THE CONCERNS AROUND NEGOTIATED DEMOCRACY.

Unlike the 2017 political party primaries, ELOG noted with concern the increased number of 'negotiated and consensus building' meetings and pronouncements across all the political parties on the choice of those to be nominated for the 2022 elections. ELOG noted that these methods were adopted based on the provisions in the rules and regulations of some of the political parties.

However, these methods have the potential of strangling inter and intra party democracy. ELOG found that the potential biggest losers from these methods were the youth, women, and PWDs. While ELOG noted that there were some women who benefited from negotiated democracy, the inherent dangers of these methods include the potential to alienate the party from the voters as the methods discount their voices and disenfranchises them. Further, ELOG noted that negotiated and consensus building methods by their very nature are exclusive and often elite driven. Finally, ELOG noted that some of the aspirants and party members showed up in some of the polling stations to cast their votes oblivious of the fact that direct tickets had been issued. Therefore, these methods will require to be reviewed further by stakeholders for better comprehension of their pros and cons before use in the next elections.

3.7.2.1.9 ELECTORAL VIOLENCE

Despite the enhanced security during the 2022 party primaries as compared to the 2017 primaries, there were still ugly cases of violence reported in different counties. ELOG noted with concern the increased ugly instances of violence around the party primaries. Violence was reported in 25% of the polling stations where ELOG observers were deployed. For example, the UDA nominations in Jamhuri High School, Starehe Constituency, were disrupted when unknown rowdy people came to the polling station shouting. They broke the ballot boxes and took away the ballot papers. In Embu County, violence rocked the exercise as voters set ablaze ballot boxes during the primaries. Police officers were injured during the fracas. Other incidents of violence were reported in Kisumu, Homa Bay and Migori counties during the ODM party primaries.

3.7.2.1.10 ADVISORY BY THE ODPP ON PROSECUTION OF CORRUPTION CASES DURING THE ELECTION

While the party primaries were underway, ELOG noted with concern a communication

from The Office of the Director of Public Prosecutions indicating that the office did not intend to prioritize prosecution of corruption cases against politicians, until after the August 2022 general elections, ostensibly because such cases did not have a direct bearing on the election of leaders. ELOG holds the position that that Kenyans needed to be well informed on individuals suspected of corruption and other crimes, to enable them make informed decisions when presented with a choice during elections. As such, shelving prosecution processes during the 2022 party primaries and the 2022 elections undermined the rule of law and potentially set the country on a path towards a leadership crisis. ELOG remained concerned that corrupt individuals could get nominated by the parties and get elected, thus presenting the electorate with bad leadership. The ODPP communication, therefore, marked an ugly moment during the party nomination exercise.

3.7.2.1.11 COUNTING, DECLARATION AND ACCEPTANCE OF RESULTS

The results of the party primaries were accepted in 90% of polling stations observed across the sampled political parties but not in 10% of the stations. Consequently, the nominations were cancelled in the polling stations where results were not accepted and repeat nominations scheduled.

3.7.2.1.12 POLITICAL PARTIES CLEARING INDIVIDUALS WITH TAINTED INTEGRITY TO CONTEST FOR POLITICAL SEATS

During the party nominations, ELOG observed that some candidates who had been adversely mentioned, charged in court, and implicated in cases related to corruption and abuse of office were allowed to participate in the nominations and even given direct nominations. ELOG noted that parties conduct due diligence or deliberately failed to vet candidates on leadership and. All political parties that were observed allowed impeached and suspended governors and other candidates with tainted reputation to participate in the nomination processes despite their impeachment, indicting court decisions, adverse mentions in investigative reports, and publicly known unethical behavior. This was contrary to Section 38(h) of the Political Parties Act that requires parties to conduct vetting of candidates on nominations on several aspects including leadership and integrity.

3.7.2.13 SUBMISSION OF ASPIRANT NAMES FOR ELECTORAL POSITIONS (PRESIDENT, COUNTY GOVERNOR, AND DEPUTY GOVERNOR

The IEBC set 16th May 2022 as the deadline for political parties and independent candidates to submit the names of persons of were nominated in the party primaries to vie in the 9th August 2022 general elections. The number of names submitted per position included 55 presidential aspirants (14 political party aspirants, 1 coalition party aspirant and 40 independent candidate aspirants), and 244 gubernatorial aspirants (167 political party aspirants, 77 independent candidate aspirants).

Further, the Commission stated that the registration of aspirants as candidates (candidate registration exercise) would take place from 29th May 2022 to 7th June 2022. In this respect, the Commission held a pre-nomination meeting with all presidential aspirants (or authorized representatives) on 23rd May 2022 at the Bomas of Kenya to brief them on the requirements and procedures for registering candidates.

At the end of the exercise, the IEBC had cleared 16,100 candidates out of which 11,574 (72%) were cleared to vie on political parties' tickets while 4,526 (28%) were

cleared as independent candidates. The total number of candidates that the IEBC cleared per category included, 4 candidates for the presidential election; 266 gubernatorial candidates; 341 candidates for the Senate; 360 candidates for election of Woman Representative; 2,132 candidates for the National Assembly, and; 12,997 candidates for the Member of County Assembly.

Additionally, forty-eight (48) aspirants had declared interest in the presidential seat, and only eighteen (18) met the set requirements with 2000 signatures collected across twenty-four (24) counties countrywide and only four (4) out of the eighteen (18) were cleared to run for the presidency.

One of the consequences of the party primaries was that that ELOG noted was that the number of independent candidates participating in the 2022 general elections rose to unprecedented levels. Information that was publicly shared by the Office of the Registrar of Political Parties showed that 47 presidential candidates were vying as independent while 7,125 were vying as independent candidates for various elective seats. This showed a clear indication that the majority of independent candidates did not have faith in political parties' nomination processes.

3.7.2.1.14 PRESIDENTIAL RUNNING MATE INTERVIEWS

For the first time in the history of elections in Kenya, ELOG was impressed to observe that some political parties adopted a competitive and open process of nominating the presidential running mates. The Azimio la Umoja-One Kenya Alliance coalition conducted interviews for its possible candidates who were expected to become Raila Odinga's running mate. Martha Karua, Wycliffe Oparanya, and Sabina Chege were some of the aspirants interviewed by a panel of eminent persons that had been set up for that purpose. In this respect, Martha Karua emerged as the running mate for Azimio's presidential candidate Mr Raila Odinga.

The Kenya Kwanza Alliance also conducted interviews for the deputy presidential candidate position whereby Tharaka Nithi Senator Kithure Kindiki and Mathira Member of Parliament Rigathi Gachagua were the leading contenders. Rigathi Gachagua was declared the running mate for Kenya Kwanza's presidential candidate Deputy President William Ruto.

Other political parties that participated in the presidential election did not conduct competitive and open interviews for the running mate position and simply announced who the running mate was. These included the Roots Party presidential aspirant Prof. George Wajackoyah who announced that Ms. Justina Wambui Wamae would be his running mate, and Agano Party presidential candidate David Wahiga Mwaure who announced Ms. Ruth Mutua as his running mate.

3.7.2.1.15 POLITICAL PARTIES INTERNAL DISPUTE RESOLUTION MECHANISMS

Paragraph 23 of the Second Schedule to the Political Parties Act No.11, 2011, requires every political party to have an internal dispute resolution mechanism (IDRM). Under Section 40 of the Political Parties Act the IDRM should focus on hearing and determining disputes within parties (between members of a party, or between a member and his or her party), disputes between parties. These also include disputes on party lists and party primaries.

Section 13 (2A) of the Elections Act No. 24 of 2011 requires that IDRM should hear and determine all intraparty disputes arising from political party nominations within 30 days. Furthermore, the Elections (Party Primaries and Party Lists) Regulations of 2017 categorically require in adjudication of disputes through an IDRM respect to rules of natural justice is paramount. [68]Under Section 41 (2) of the Political Parties Act, decisions arising from an IDRM may be

appealed to the PPDT, and from there to the High Court on points of law and facts, and to both the Court of Appeal and the Supreme Court points of law.

In compliance with these provisions, the major political parties that conducted party primaries, especially ODM and UDA, established an Elections Board that was charged with, among others, the task of hearing, determining and resolving disputes that arose from the conduct of the party primaries. The law mandates and obligates political parties to address and resolve party nomination disputes internally before aggrieved parties seek other avenues available in law. However, and as was observed by ELOG, this is more in the realm of idealism considering that political parties are yet to fully appreciate the role and essentials of IDRMs. [69]

In adjudication of disputes that arose from the 2022 elections party primaries, ELOG observed a number of challenges that undermined the efficacy of the IDRMs. These included lack of properly established organs on internal dispute resolution; frustration of the adjudication process by some party organs in terms of delays, facilitation and resourcing, and; outright non-compliance with rules of natural justice. Consequently, many aggrieved party members overlooked the IDRMs and proceeded directly to the PPDT, which also has original jurisdiction on party primaries under Section 40 (2) of the Political Parties Act. This undermines the IDRMs and renders them dysfunctional and nugatory, besides piling up the workload and nature of disputes at the PPDT and IEBC.

ELOG observed that during the party primaries, parties adopted direct nomination methods that involved negotiations and consensus building. In ELOG's view, this method undermined intra-party democracy and limited the ability of IDRMs of parties to resolve disputes fairly. Direct nominations could be useful in safeguarding the overall interest of political parties and reduce the burden of costs associated with competitive nominations. However, direct nominations are only valuable where parties have one candidate interested in the nominations. Where there are competing candidates, direct nominations are potential triggers of conflict and violence.

ELOG observed that while the key political parties made good efforts to resolve internal disputes that arose from party primaries through IDRMs, the processes were largely shambolic and tainted with favoritism. This observation is reinforced by the Court findings in the case of Republic v Independent Electoral and Boundaries Commission & 3 others: Ounda & 4 others (Exparte) (Judicial Review E086 of 2022) [2022] KEHC 10200 (KLR) (Judicial Review) (13 July 2022) (Judgment)[70] . In this case an aspirant, Nicholas Ounda Ouma vied for nomination under the ODM ticket for the Nyayo High-Rise Member of County Assembly and lost. ODM proceeded to issue Kennedy Oyugi Odhiambo with a Provisional Nomination Certificate. The aspirants and five others who participated in the nomination lodged a formal complaint vide a letter to the ODM National Elections Board Chair objecting to the outcome and seeking a fair, credible process to be conducted but the Elections Board Chair did not respond.

The six aspirants proceeded to the IEBC Elections Appeals Tribunal which rendered a verdict on 27th April , 2022 annulling the nominations exercise for Nyayo Highrise Ward and ordered a repeat nomination exercise or in the alternative, requiring ODM to employ any other formula for arriving at a party candidate for the ward seat, pursuant to ODM constitution and rules provided that the process was fair, credible, verifiable and accountable. The verdict was served on the ODM party National Elections Board but was ignored. The party proceeded to issue a direct party ticket to the same person, Kennedy Oyugi Odhiambo. This prompted the aspirant to seek redress at the IEBC Dispute Resolution Committee (DRC) but his complaint was dismissed for want of jurisdiction.

The aspirants then proceeded to the High Court for judicial review of the IEBC DRC's decision. The aspirants contended that the ODM nominations were shambolic and marred with serious irregularities, which rendered the whole exercise a façade. They also contended that no credible results were rendered from the nomination exercise.

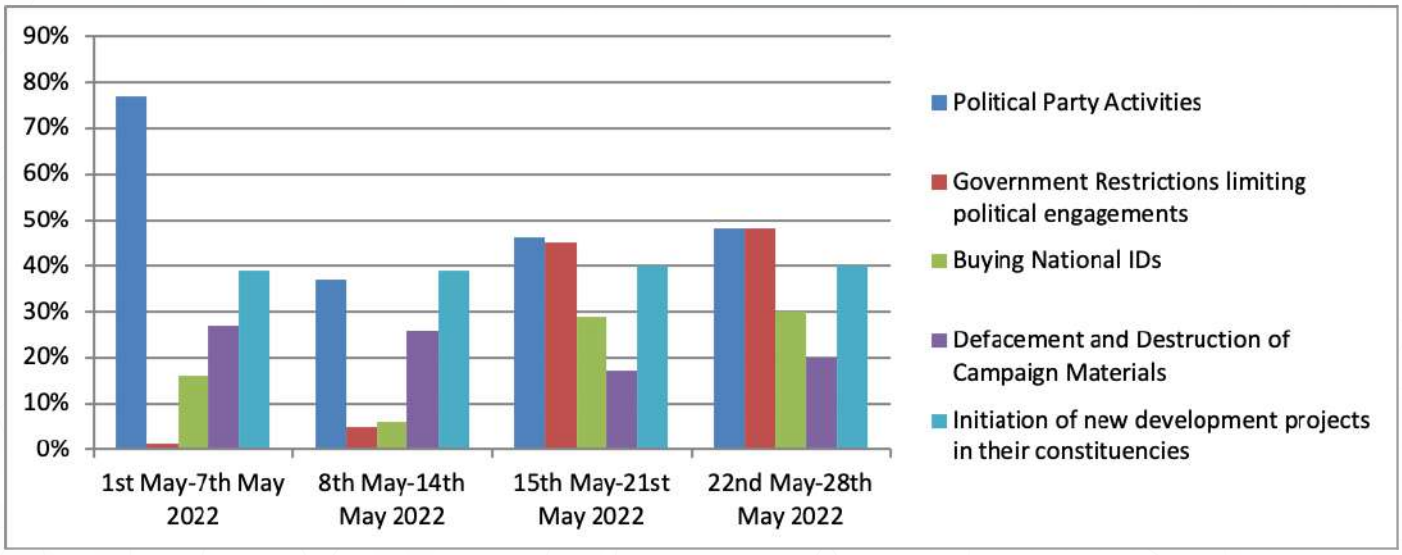
The High Court dismissed the case and held that the applicants should have invoked their party's IDRM regarding the second repeat nominations, before approaching the IEBC DRC. The Court held that a fresh cause of action or dispute had arisen between the members of a political party and the party, consequently the aggrieved members' first port of call was the party's IDRM and the IEBC DRC was spot on in declining jurisdiction.

This case demonstrates the frustration which party members who were aggrieved by the outcome of the party primaries faced in seeking redress. The case demonstrates the internal nuances and complexities, including the presumption of bias and favoritism that characterized the IDRMs that were established by political parties. It is difficult to comprehend how aggrieved members could submit to an internal IDRM that had ignored their complaint, ignored rules of natural justice, ignored a verdict from the IEBC DRC and issued a direct ticket to their opponent.

3.7.2.1.16 PARTY CAMPAIGNS

ELOG observed that political parties and candidates largely ignored IEBC's call on them to avoid early campaigns and started the campaigns for the 2022 elections way before the statutory campaign period, which officially began after the clearance of the candidates by the IEBC.

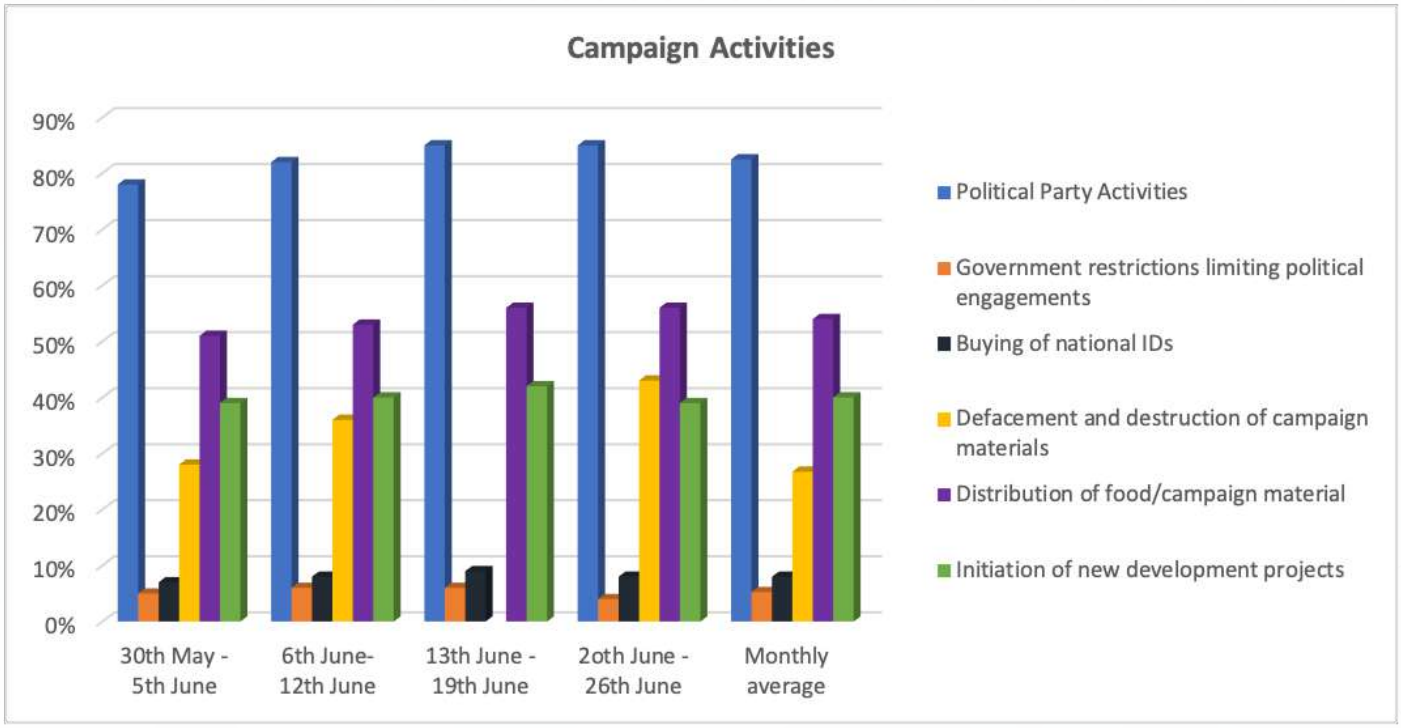
Through its LTOs, ELOG observed that political parties and aspirants continued with campaign activities outside of the official campaign window. In May 2022, ELOG LTO reports showed that the campaigns were characterized by voter bribery in the form of distribution of foods and services by parties and candidates; political party candidates buying or attempting to buy National Identity Cards (IDs), and the initiation of development projects by candidates. Further, instances of destruction of party or candidates' posters were reported in May 2022.



Infograph PP001: *Reporting on Political Parties Activities and Conduct of Campaigns for May 2022*

The official campaign period began on the 29th of May 2022. In this respect, the IEBC required parties and candidates to conduct their campaign activities from 6:00 am to 7:00 pm. After the IEBC had cleared a large number of party sponsored candidates and as independent candidates for the 9th August 2022 general elections, ELOG noted an increase in the percentage of campaign activities carried out in all the constituencies in the month of June 2022.

ELOG observers reported that political parties and independent candidates distributed food and campaign materials ostensibly to encourage people to vote for them. Further, some candidates were reported to have initiated new developmental projects, promising to complete them once they were elected. The campaign activities observed in June 2022 are captured in the info graph below:



Infograph PP002: ***Reporting on Political Parties Activities and Conduct of Campaigns for June 2022***

ELOG also noted that disputes that arose from the candidate registration activity, which the IEBC completed on June 4th led to conflict and violence, especially during political rallies and political meetings. ELOG observed that there was an increase in incitement to commit acts of violence while the percentage of candidates barred from holding meetings was constant throughout the month of June 2022.

Critical incidents noted during the period of June 2022 included:

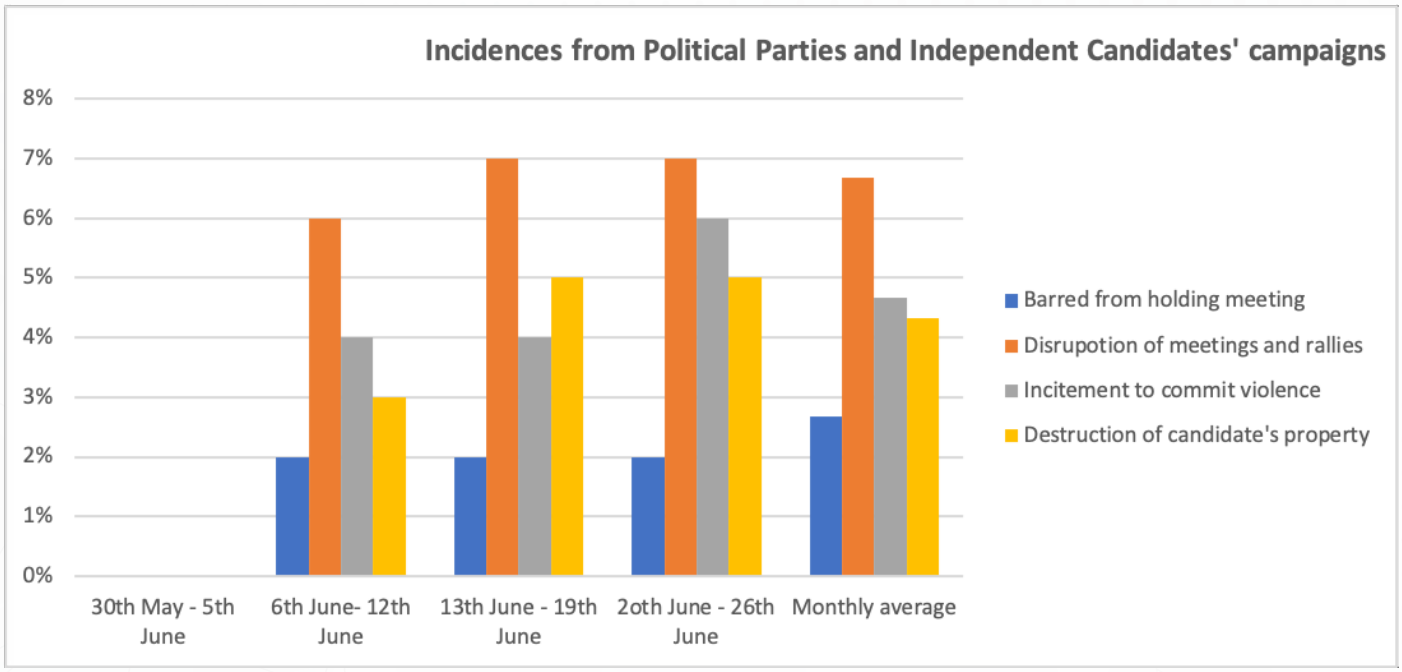
a. Violence erupted in Jacaranda grounds in Embakasi East Constituency (Lower Savannah Ward) on 19th June 2022 as supporters of two popular parties i.e., Kenya Kwanza Coalition and Azimio la Umoja, One Kenya Alliance reportedly pelted stones at each other leading to violence and injury of one of the candidates vying for the parliamentarian seat from the UDA Kenya Kwanza Alliance, Francis Mureithi. The supporters of his opponent Babu Owino had allegedly claimed that the venue was within the Azimio la Umoja, One Kenya Alliance zone.

b. Kisumu County government had issued a directive with respect to restricted areas in the county within Kisumu Central Constituency, which were under renovations. The former governor Jack Ranguma forced his

way into the restricted area together with his supporters on 6th June 2022 after he was cleared by the IEBC, with an aim of addressing voters. Violence erupted and the police were called upon to disperse the feuding crowd.

c. In Kisumu West Constituency, during a rally that was convened by the incumbent governor Prof Anyang Nyong'o, one of the invited guests Fred Outa who was an independent candidate vying for the parliamentary seat was accosted by rowdy people who were armed with machetes and a wooden club. Outa was considered to not support Azimio la Umoja, One Kenya Alliance. The police intervened and quelled the situation.

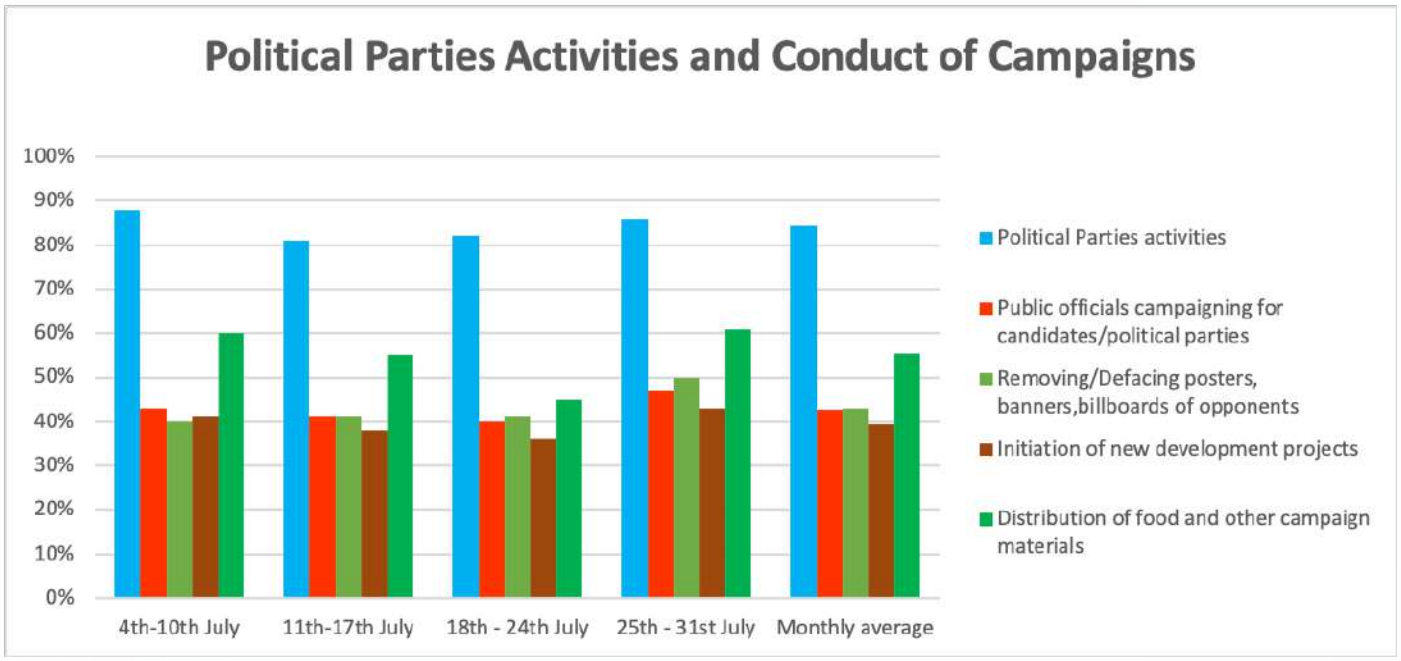
d. Other incidents that were observed during the campaigns in the month of June are depicted in then infograph below:



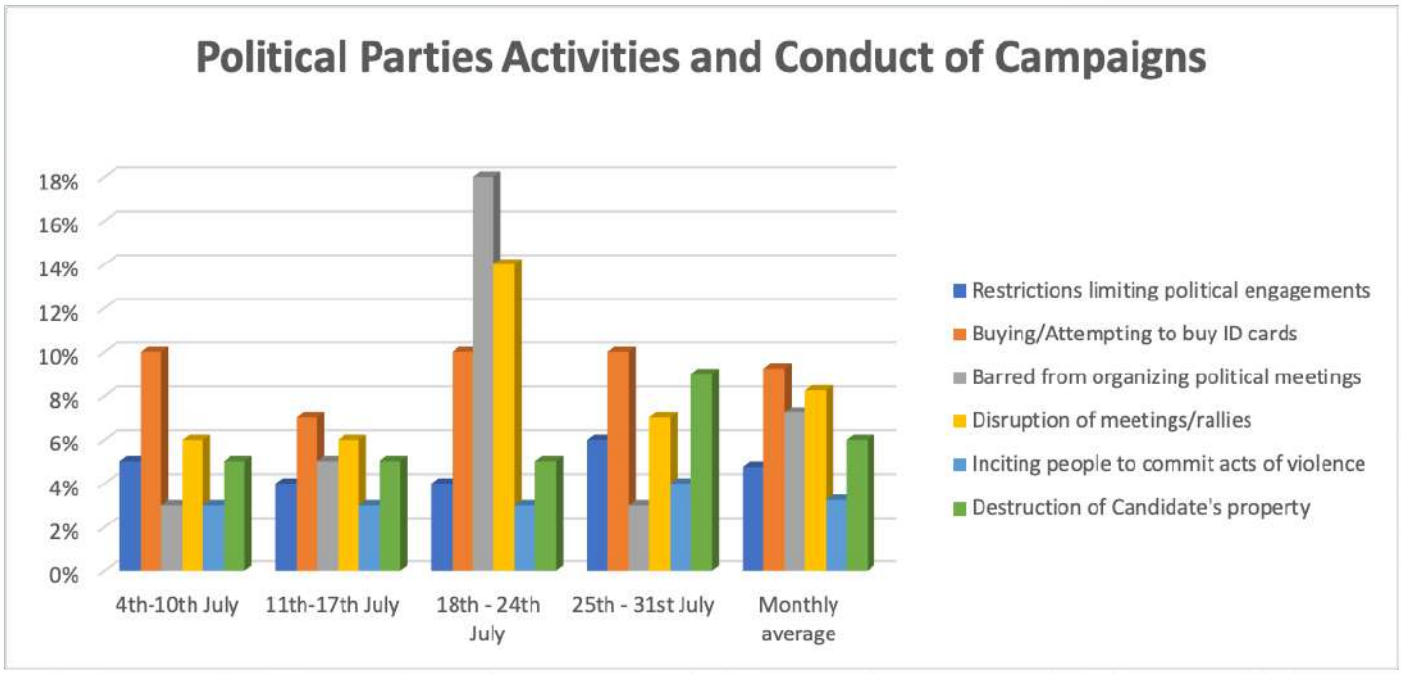
Infograph PP003: *Reporting on Political Parties and Independent Campaigns Activities for June 2022*

In July 2022 with only one month until the elections, political parties' activities intensified throughout the country. ELOG observed that numerous political rallies and meetings were held and candidates appealed to the public to vote for them on 9thAugust.

ELOG observers also reported that supporters of political party candidates and independent candidates defaced and destroyed opponents' posters and billboards. The info graphs below depict the activities that occurred in July 2022:



Infograph PP004: *Reporting on Political Parties Activities and Conduct of Campaigns for July 2022*



Infograph PP005: *Reporting on Political Parties and Independent Campaigns Activities for July 2022*

3.7.3 THE JUDICIARY

The Judiciary Committee on Elections (JCE) led the Judiciary's strategy on the preparations for the 2022 elections. The aim of the Committee was to strengthen and enhance the capacity of the Judiciary to handle and manage election petitions justly and expeditiously. Under the leadership of the Committee, the Supreme Court Rules on Presidential Elections and the Parliamentary and County Assembly Elections Petitions Rules were reviewed. The Committee also developed an online filing system that could enable online filing and tracking of elections related cases. This system enabled litigants and the judiciary to file and track elections petitions online, thus creating an environment for expeditious follow up and determination

of cases in line with the prescribed constitutional and statutory timelines.

ELOG observed that the Committee also partnered with the Judiciary Academy and civil society partners to build the capacity of judicial officers on election dispute resolution. Accordingly, 68 High Court Judges, 18 Court of Appeal judges, 7 Supreme Court judges and 342 magistrates were trained across the country to prepare them to manage and handle the numerous elections related cases that were expected. In addition, 183 judicial support staff that included deputy registrars, court clerks, and researchers were also trained.

The Judiciary also benefited from the appointment of a new Chief Justice, who in a bid to prepare the Judiciary to handle and manage elections cases, gazetted 119 Magistrates across the country to hear and determine elections petitions. A compendium and source book on elections jurisprudence was also developed and launched in August 2022 to aid judicial officers, litigants, and their lawyers on election dispute resolution.

But the critical contribution of the Judiciary to the 2022 elections in ELOG's observation was in the significant role that it played in the adjudication of disputes that arose from the political environment and the electoral contest. This role is not unique to the 2022 elections but has increasingly become the hallmark of judicial forays and interventions into the political and electoral spheres in Kenya since the promulgation of the Constitution 2010.

The unique role of the Judiciary in matters that are out rightly political has been termed as the judicialization of politics in Kenya, which has evolved by design, owing its foundation in the transformative 2010 Constitution. [71] In the context of the political and electoral processes in Kenya, judicial interventions have either contributed to the democratization process or led to draw backs that have undermined the institutional credibility and efficiency as well as social legitimacy of the judiciary. These conclusions are supported by a review of some of the key judicial interventions in the 2022 political and electoral process.

Judicialization of politics has seen the Judiciary venture into sometimes pure or mega politics or matters of an outright political nature or significance, such as regime legitimacy, which often attracts fundamental disagreement. Dancun Okubasu[72] Omunabi has described the judicial forays into political territory in Kenya as follows:

"Participation of courts in Kenya in political processes has been ubiquitous since 2010. Though it may be controversial whether this is as a result of "judicialization of politics" by design- the invitation of courts to render themselves on matters perceived to be under the competence of other institutions-not necessarily representative one-is common aspect of Kenya's post 2010 political economy. Broadly conceived, it can be said that there are four classifications of disputes epitomizing direct engagement with politics by the judiciary. The involvement of the judiciary has taken various forms, ranging from review of appointments or executive orders by the president, to review of processes leading to removal of sitting governors by County Assemblies- and Senate in some cases, to assessment of constitutionality of legislation from Parliament by the judiciary or even the appraisal of pre-election and post-election processes and results. Some of the judicial interventions have been cross-cutting."[73]

The progressive Constitution of Kenya 2010 provides the normative justification for judicial intervention in the political and electoral arenas in Kenya. In other words, the Judiciary in adjudicating political and electoral matters should ensure that the constitutional judicial mandate is exercised to enable the democratic process to function and ensure that the channels of democratic change are not clogged. In this respect, ELOG concurs with the

evaluation given by some scholars on the role of the Judiciary in reinforcing electoral democracy,[74] which if played properly, can elevate the Judiciary to the rank of guardians of electoral democracy especially in a transitional electoral democracy like Kenya.[75] In this role and as observed by ELOG in the 2022 elections, the Judiciary played a significant responsibility of safeguarding the integrity of the electoral processes. As demonstrated by the numerous cases that the Judiciary heard and determined during the 2022 election cycle, the Judiciary discharged the critical role of reinforcing electoral democratic processes by establishing the rules that regulate the political and electoral contest, and by leveling the political and electoral playing field. Walter Khobe Ochieng has elaborated the two ways the Judiciary discharges this critical role as follows:

"...by resolving disputes over the rules (that is whether the legal framework creates an even playing field for the electoral contest) and by overseeing that the parties stick to the rules throughout the election process. When courts exercise the first function-securing a level playing field-they are rule-evaluating. They decide whether the rules regulating the election process are in accordance with the superior norms and principles laid down in the constitution. When they exercise the second function-securing far play-they are rule enforcing. They act as referees of the electoral competition with a mandate to decide complaints and sanction violations of laws and regulations in the course of the election process, and ultimately nullify the elections." [76]

ELOG observed that the Judiciary proceeded to hear and determine the numerous petitions and cases that arose during the 2022 election cycle on the basis of these two functions. But even more important, was the steady evolution of the Judiciary as an institution and force that fiercely safeguarded its autonomy in adjudicating political and electoral cases, and championed democracy even in the face of executive onslaught. [77]

An example of the cases when the Courts played these two roles during the 2022 election cycle include :

- Civil Appeal No. 119 as Consolidated with Civil Appeal No. 139 of 2017 [2022] KECA 15 (KLR) Public Service Commission and Others Vs Erick Cheruiyot and Others. This case revolved around resignation of public servants seeking elective offices and the requirement under Section 43 (5) of the Elections Act, 2011 that obligates public servants to resign six months before the date of a general elections and in the case of a by-election, within 7 days of the declaration of the vacancy. This was an appeal from the decision of the Employment and Labour Court that had declared that these requirements are unconstitutional and have no legal basis.

The Court of Appeal held that public officers seeking elective offices should resign in good time as required under Section 43 (5) and (6) of the Elections Act, 2011. According to the Court of Appeal, Section 43 (5) and (6) were meant to promote the principle of good governance and value of integrity prescribed under Article 10 of the Constitution 2010. The Court noted that these requirements are reasonable, justifiable, and rational in an open and democratic society. Therefore, the Appeal Court's jurisprudence set the record straight in relation to the requirement that public officers who seek elective offices must resign with a prescribed timeline.

ELOG noted that the Kenyan Judiciary has evolved as an independent institution that Kenyans could trust to litigate their political and electoral differences, rather than resort to chaos and violence. It is this heightened judicial autonomy and increased citizens' trust in the judicial process that led many Kenyans to move to court to seek redress or clarity on the disputes and grievances they had during

the 2022 election cycle. The decision by the opposition leader, Raila Odinga to pursue legal channels to seek redress over his 2022 presidential election loss was largely motivated by the renewed sense of public trust and confidence in the judicial process as well as the heightened autonomy and credibility of the Courts as political and electoral oversight institutions.

Therefore, despite some shortcomings, the Kenyan Judiciary acquitted itself very well during the 2022 election cycle by heightening the bar and the standards for elections through the numerous cases the courts adjudicated. In instances where the electoral management body could not provide leadership or take requisite action or provide clarity necessary for stakeholders to prepare and participate in the 2022 elections, the judiciary came in handy. The penultimate Supreme Court process and decision that upheld the validity of the 2022 presidential election results demonstrated how closely contested elections can be peacefully and credibly resolved through independent and impartial institutions. The Supreme Court verdict portrayed the Judiciary as an institutional stabilizer in the arena of contested political and democratic processes.

Some of the shortcomings that ELOG observed from the interventions by the Judiciary in the political and electoral processes included:

1. Conflicting decisions that created confusion as demonstrated by: a) the decisions on the validity and legality of the IEBC's composition as well as its quorum, and b) the decisions on the powers of the IEBC to enforce Election Offences particularly the Electoral Code of Conduct.

2. Poor case management in some instances resulted in decisions being rendered too close to the elections date as demonstrated by the decision on the use of the manual register vis-à-vis the electronic identification that was delivered 4th August 2022 by the High Court and a reversing ruling delivered by the Court of Appeal in Civil Appeal No. E288 of 2022 United Democratic Alliance Party Vs Kenya Human Rights Commission and Others[78] on 8th August 2022, on the eve of the elections. Further, in the Reuben Kigame case where the High Court delivered a judgment on 18th July 2022, some 19 days to the elections, yet the judgment had the potential of postponing the 9th August elections were it to be implemented by the IEBC.

3. Delaying some critical Court interventions and fixing hearing dates well after the elections as was demonstrated by:

a. the Appeal that was lodged by the United Democratic Alliance Party (UDA) on the use of the manual register case, which the Court of Appeal scheduled for hearing in November 2022, despite issuing temporary orders of stay of the impugned High Court decision, [79]
b. the Appeal that was lodged by the IEBC against a High Court order in the Reuben Kigame case compelling the IEBC to accept and consider Reuben Kigame's nomination papers, which the Court of Appeal scheduled for hearing in November 2022 despite issuing temporary orders of stay against the High Court decision, and
c. The Appeal that was lodged in Civil Appeal No. 241 of 2022 Independent Electoral and Boundaries Commission Vs Free Kenya Initiative and Others, in which the Court of Appeal issued a stay order suspending the decision of the High Court in Nairobi Constitutional Petition No. E160 of 2022 Free Kenya Initiative and Others Vs Independent Electoral and Boundaries Commission and others. This substantive appeal is yet to be scheduled for hearing as at the time of filing this report.

4. Confusing decisions that were

rendered too close to the elections as demonstrated by the High Court decision issued on 4th August 2022 on the use of the manual register vis-à-vis electronic identification and the subsequent stay order that was issued by the Court of Appeal on 8th August 2022 in Civil Appeal No. E288 of 2022 United Democratic Alliance Party Vs Kenya Human Rights Commission and Others.

5. Attempts by the Supreme Court to limit the right to freedom of expression by prohibiting and gagging parties, advocates and their agents and the public from expressing their views and opinions on the merits or demerits of presidential petitions or predicting the outcome in a manner that would prejudice or impede the court process before judgment. The ban and gag was contained in the Supreme Court (Presidential Election Petition) (Amendment) Rules, 2022 that was published on 20th May 2022 in Kenya Gazette Supplement No. 77 of 2022 as Legal Notice No. 79 of 2022. The purported ban or gag was challenged in Petition No. E242 OF 2022 Omwanza Ombati Vs Hon. Chief Justice and President of the Supreme Court and Others and declared unconstitutional and consequently nullified.

6. Retrogressive decisions that undermined the progressive spirit of the 2010 Constitution such as:

a. Negation of attempts by the IEBC to realize the two-thirds gender principle and rule as was demonstrated by the decision in Petition No. E 211 as consolidated with High Court Judicial Review
b. Misc. Appl. No. E 071 of 2022 Cliff Marube Ombeta and Another Vs Independent Electoral and Boundaries Commission that nullified and thwarted attempts by the IEBC to implement the Katiba case judgment of 2017 to enforce the two-thirds gender principle on party nomination lists for the National Assembly and the Senate. This decision came as a final nail on the casket in which the quest for the implementation and application of the gender principle and rule during the 2022 election cycle was buried.
c. Undermining and belittling the educational requirements and threshold for elective and leadership positions:

i. County Assembly Forum & 6 others v Attorney General & 2 others; Senate of the Republic of Kenya (Interested Party) (Constitutional Petition E229, E225, E226, E249 & 14 of 2021 (Consolidated)) [2021] KEHC 304 (KLR) (Constitutional and Human Rights) (15 October 2021): This decision of the High Court (Judge Anthony Mrima) nullified Section 22(1)(b)(ii) of the Elections Act as unconstitutional and declared it in operational, of no legal effect and void ab initio for lack of public participation. This law required that a person must possess a degree from a university recognized in Kenya to qualify to be a Member of a County Assembly.
ii. The decision of the High Court (Judge Odunga) in Musyoka v Returning Officer, Independent Electoral and Boundaries Commission, Machakos County & 3 others (Constitutional Petition E004 of 2021) [2022] KEHC 160 (KLR) (11 February 2022): This decision nullified the degree requirement for Members of Parliament under Section 22 (1) (b) (ii) of the Elections Act. The High Court decision (Judge Anthony Mrima) of 13 April 2022: This decision nullified then degree requirement for Members of Parliament under Section 22 (1) (b) (ii) of the Elections Act.
iii. The High Court decision (Judge Anthony Mrima) of 30th September 2022:[80] This decision nullified and scrapped the degree requirement for Governors under Section 22(ii) of the Elections Act. The Judge stated that Section 22(ii) of the Election

Act contravenes Article 180(2) of the constitution by creating an avenue for differentiation between the eligibility requirement of a governor and member of county assembly hence to that extent it is unconstitutional.

ELOG is of the view that the nullification of the educational qualifications' threshold entrenched in the Elections Act for political candidates is unfortunate and dangerous as it is a potential avenue for breeding mediocrity. It also undermines the value of academics and skills development in society and sets a bad precedent for the youth. Higher levels of leadership and political engagements in society require individuals who are endowed with debating skills over alternative ideas and competence to resolve contemporary issues and to find solutions for future challenges. This should be the domain of sufficiently educated people. Furthermore, and considering that elected political leaders play key roles in representation and oversight that includes stewardship of huge amounts of resources, trivializing the role of tertiary education and the competence of these leaders to discharge these roles is defeatist and damaging to society. The society needs leaders that are adept in articulating, scrutinizing, and interrogating complex policy, budgetary and administrative issues as well as articulating priority and development needs.

7. Rendering progressive decisions too close to the elections without taking into account the full range of ramifications of those decisions on the elections. For example, the High Court decision in the Reuben Kigame case, which though progressive was rendered some 19 days to the elections, yet it had far reaching consequences for the elections in light of the strict elections timelines prescribed under the Constitution and election laws. This particular decision posed serious challenges given the strict timelines for elections, including a huge budgetary requirement of nearly Kshs.971 Million, to the IEBC. The IEBC only got reprieve after Appealing to the Court of Appeal [81]and securing an order of stay from the Court of Appeal. While issuing the stay order, the Court of Appeal [82]noted that there was a likelihood of the 9th August 2022 elections being postponed were the IEBC to comply with the High Court orders.

8. Confusing decision by the High Court that seemed to countenance illegal and unconstitutional acts in the case that impugned the approval and appointment of IEBC commissioner Irene Cherop Masit as illegal and unconstitutional since she was not eligible for appointment under Article 88(2) of the Constitution 2010, which states that "a person is not eligible for appointment as a member of the commission if the person has, at any time within the preceding five years, held office, or stood for election as a MP or a MCA; or holds any state office, or a member of the governing body of a political party." The High Court held that Commissioner Irene Cherop Masit who contested in the 2017 polls but lost was appointed illegally since it was unconstitutional as she was not eligible for the job. However, the Court gave her the green light to continue serving in order to avoid interfering with the preparations of the August 9, 2022 General elections and also cause a constitutional crisis in the country.

3.7.4 THE POLITICAL PARTIES DISPUTES TRIBUNAL (PPDT)

The PPDT is a quasi-judicial body established under Section 39 of the Political Parties Act. Its members are appointed by the Judicial Service Commission to serve on a part-time basis for a renewable term of 6 years. The PPDT operates as part of the Judiciary and has specific jurisdiction under Section 40 of the Political Parties Act to settle disputes involving political parties, which are outlined as follows:

1. Disputes between the members of a political party
2. Disputes between a member of a political party and a political party
3. Disputes between political parties
4. Disputes between independent candidate and a political party
5. Disputes between coalition partners
6. Disputes arising from party primaries

The procedures followed by the PPDT in adjudicating and determining disputes are provided for under the Political Parties Disputes Tribunal (Procedure) Regulations. The PPDT is required to determine and finalize all disputes lodged before it within a time frame of 3 months.

Despite these achievements, ELOG observed a number of challenges that undermined the PPDT and negated its efforts to dispense justice during the 2022 election cycle. These included the following:

1. The challenge of enforcing the PPDT orders. In a number of cases, respondents defied the orders issued by the PPDT thus prompting filing of contempt application before the PPDT. In a number of cases where the PPDT ordered for fresh party nominations to be conducted, the political parties defied the orders and proceeded to issue direct nomination to the candidates whose nomination had been faulted by the PPDT. This not only undermined the PPDT but also rendered its orders futile.
2. Overlap of jurisdiction with the IEBC over disputes arising from party primaries, nomination, and party lists. During the 2017 elections, ELOG observed that the IEBC and the PPDT entered into a Memorandum of Understanding to resolve the challenge of overlapping jurisdictions. This did not happen in the 2022 elections, thus creating room for potential forum-shopping by aggrieved parties.
3. Moving forward, the PPDT will require additional resources to enable deployment of additional personnel that can provide critical support services such as legal research and legal clerks to the PPDT members to improve the efficiency of the PPDT. Additional resources will also enable improved public communication of information on the PPDT work.

In the course of its operation, ELOG observed some degree of inconsistency related to the jurisdiction of the PPDT. While the PPDT has original jurisdiction over disputes arising from party primaries, there is a requirement that these should first be subjected to parties' internal disputes resolution mechanism. The inconsistency is whether the PPDT has original jurisdiction or both original and appellate jurisdiction. The inconsistency prompted a High Court intervention in Election Petition Appeal No. 5 of 2017 Nyamuthe v s. Orange Democratic Movement and 4 Others [2017] eKLR[83] that provide clarity to the effect that the PPDT's original jurisdiction cannot be circumvented by a requirement of a prior internal dispute resolution mechanism. The Court observed that internal disputes resolution mechanisms are available as alternative mechanisms of resolution of disputes that help to lessen the burden of the PPDT.

During the 2022 election cycle, ELOG observed that in March 2022 the PPDT established 7 panels that were decentralized across the country. The panels consisted of 3 members, one being

an experienced advocate of the High Court. ELOG also observed that in the course of its operation since March 2022, the PPDT received a total of 189 disputes, which it was able to hear, determine and finalize by 1st July 2022. The PPDT adopted both virtual and physical in-person hearings. Out of these cases, 20 cases proceeded on appeal to the High Court as provided for under the Political Parties Act.

ELOG observed a remarkable improvement in the manner in which the PPDT dispensed the cases that came before it as compared to 2017. First, cases were dispensed expeditiously within an average of 30 days. Second, the PPDT also adopted an electronic case management system that improved tracking and management of cases. Third, additional personnel of 18 ad hoc members were appointed to the PPDT, which increased the capacity of the PPDT to expeditiously hear and determine cases. Four and most important, the PPDT prepared well for cases that were expected in the 2022 election cycle. The preparations were reinforced by a Party Nominations Debriefing and Planning Retreat, which the PPDT held on 8th to 11th June 2022 in Mombasa. During the retreat, the PPDT drew lessons and shared experiences and came up with a raft of forward-looking recommendations that assisted to strengthen the PPDT for the expected disputes arising from party lists. A further training for the PPDT members and personnel was conducted on 17th June 2022.

Therefore, the key success stories from the PPDT process, which ELOG observed include the following:

1. Adoption of electronic cases management, which included e-filing of cases to complement manual filing. The digitized process enabled timely and expeditious filing of cases. ELOG noted that over 90% of the cases were filed through the digitized platform.
2. Decentralization of the PPDT panels in 7 locations across the country, which made the PPDT very accessible to nearly all corners of the country. This brought the panels near the aggrieved parties and reduced the cost of seeking justice through the PPDT.
3. Digitized case management together with the increase in personnel as well as virtual remote hearings resulted in increased efficiency of the PPDT thus enabling the PPDT to hear and determine many cases efficiently. Cause lists and virtual hearings were made accessible through links that were provided. Poor internet connectivity created initial teething challenges but these were quickly resolved by the Judiciary.

3.7.5 PARLIAMENT

ELOG observers reported a mixed bag of successes and failures on the role of Parliament towards the 9th August 2022 elections. The notable things that Parliament delivered included the vetting and approval of the Selection Panel that was set up to recruit 4 commissioners of the IEBC in July 2022. Following the recruitment, Parliament again on 24th August 2021 vetted and approved the list of 4 commissioners that had been recommended by the President for appointment. With the approval of Parliament and subsequent appointment of the 4 new commissioners by the President, the IEBC was now fully constituted as required under the Constitution and the IEBC Act.

However, the approval and subsequent appointment of one of the Commissioners, Irene Cherop Masit was controversial and ended up being questioned in a Court of Law by a rights activist who petitioned the High Court arguing that the approval and appointment was unconstitutional since she was not eligible for appointment under Article 88(2) of the Constitution 2010, which states that "a person is not eligible for appointment as a member of the Commission if the person has, at any time within the preceding five years, held office, or stood for election as a MP or a

MCA; or holds any state office, or a member of the governing body of a political party."

The High Court held that Commissioner Irene Cherop Masit who contested in the 2017 polls but lost was appointed illegally since it was unconstitutional as she was not eligible for the job. However, she was given the green light to continue serving in order to avoid interfering with the preparations for the 9th August 2022 general elections and also cause a constitutional crisis in the country. This controversy, which nearly rendered the appointment nugatory and which the High Court circumvented based on other considerations, showed that Parliament had failed or ignored due diligence during the vetting and failed to properly advise the President on the legality and suitability of this appointment.

In order to facilitate the IEBC to conduct the 9th August 2022 elections successfully, Parliament through the Parliamentary Budget and Appropriation Committee, reviewed and approved the elections budget. On 17th February 2022 the Parliamentary Committee approved Kshs. 21.7 billion in addition to Kshs. 14.5 Billion that had been approved earlier. On 25th March 2022, the Committee again approved another Kshs. 8.86 billion. While ELOG applauded Parliament for approving the elections budget to facilitate the 2022 elections, ELOG remained concerned at the delayed approval of the elections budget and the high cost of elections in Kenya.

ELOG believes that Parliament's oversight role over elections budget is not being discharged effectively and for that reason, the cost of elections in Kenya keeps rising at an alarming rate. Given the budgetary constraints and competing priority budget allocation needs, ELOG urges Parliament to maintain strict oversight and scrutiny over elections budget and expenditure to ensure that the IEBC adopts and utilizes creative methods of reducing the cost of elections.

Parliament also failed to perform its role in the review and reform of electoral laws in order to strengthen the electoral legal framework for the 2022 elections. These include Parliament's failure to approve Regulations to operationalize the Campaign Financing Act. ELOG observed that Parliament is not keen on implementing this law as it will bring to an end the culture of the influence of money in politics and elections and make it impossible for candidates to use money to influence the electorate.

ELOG further observed that Parliament lacked interest and good will to enact laws to operationalize the two-thirds gender rule. The two-thirds gender rule debacle in Parliament stood out as one area for legal strengthening that Parliament ignored and dilly-dallied on for the last one decade even when faced with the threat of dissolution.

ELOG also observed that several pieces of electoral legislation, including laws that were geared towards sealing the loopholes that the Supreme Court had identified in 2017, remained pending in Parliament as late as June 2022, leaving the IEBC and stakeholders frustrated and confused on the status of the legal framework for the 2022 elections.

3.8 OTHER KEY INSTITUTIONS

3.8.1 MEDIA COUNCIL OF KENYA

The Media Council was established by the Media Council Act of 2013 as an independent institution. It plays critical roles in the media industry and environment in Kenya, which includes setting media standards and ensuring that the media complies with legal and policy requirements set out by the government. It also promotes and protects the freedom of the media, enhances ethical and professional standards of journalists and media outlets, advises the government and the regulatory authority on professional and educational matters that pertain to the media and journalists.

In order to prepare the media and journalists to report professionally and objectively on the 2022 elections, the Council, with support from various stakeholders, trained over 3,500 journalists and media practitioners from across the 47 counties. The training covered ethical principles in reporting elections with emphasis on independence and fairness; reporting on opinion polls; digitization; online reporting and new media laws.

In the 2022 elections, the Media Council collaborated with the IEBC to facilitate the accreditation of over 11,000 local and international journalists and media practitioners to cover the elections across the country. This enabled journalists to access polling stations and tallying centers across the country including the national tallying center where the IEBC had set up a media center that hosted some 200 journalists daily.

As part of its mandate to promote media freedom, independence and professionalism, the Media Council of Kenya supported media houses and journalists in various ways prior to, during and after the elections. In partnership with other actors, the Media Council ensured that media coverage was professional, fair, comprehensive, accurate and informative. It also undertook media monitoring and monitored the fairness and credibility of the electoral process physically and through online presence.

Together with professional media support groups, the Media Council signed a Memorandum of Understanding with the IEBC on access to information and working relations and established a steering committee on media and elections.

Jointly with the Kenya Editors Guild (KEG) and Media Owners Association (MOA), MCK successfully organized and conducted media debates including Presidential, Deputy President/, Nairobi Governor debate at the national level and select county debates. However, the presidential debates were not attended by Azimio la Umoja One Kenya Alliance presidential candidate, Hon. Raila Odinga and Roots Party of Kenya presidential candidate, Hon. George Wajackoyah.

In partnership with UNDP, the Media Council established a fact-checking platform iVerify that helped to address misinformation and propaganda during the election period. Fact-checkers drawn from the media including TV, radio, print, and digital media were trained, equipped with tools for information verification and fact-checking. The Media Council also deployed some 70 media analysts to monitor editorial content of mainstream media and online media. This was aimed at mitigating the spread of hate speech, misinformation, and political extremism. The other key contribution of the Media Council during the elections included:

a. Development and implementation of an election safety plan for journalists and media practitioners.
b. Setting up a rapid response mechanism to protect journalists
c. Holding media and security dialogues.
d. Development and signing of a charter

on safety for journalists.
e. Creation of an emergency safety fund.
f. Setting up media practitioners.
g. Issuing journalists were with press cards and press jackets to ensure visibility and protection while on duty during the election.

3.8.2 THE COMMUNICATIONS AUTHORITY OF KENYA

The Communication Authority of Kenya is an oversight authority that regulates the communication sector in Kenya. With a new Director General, Ezra Chiloba, appointed on 28th September 2021, the Authority poised itself to play a critical role in the 2022 elections that included ensuring connectivity at polling stations level in order to ensure seamless transmission of results for the elections. In this regard, the Authority was at the center-stage of ensuring that the results are transmitted from the polling stations to the Constituency, County and National Tallying Centres without delay.

In addition, the Authority collaborated with the IEBC to ensure that the polling stations with poor internet connectivity were well connected before the election date. Apart from coordinating the connectivity of polling stations, the Authority also monitored different media platforms to ensure that they adhered to the programming code during the electioneering period. The Authority also manned and monitored the cyberspace during the campaigns and elections period to ensure safety and security of the infrastructure and that the infrastructure is free from information and other risks that could be dangerous and harmful to the electorate.

3.8.3 THE MEDIA

According to the Ace project the media plays an indispensable role in the proper functioning of a democracy. [84] In the context of elections, the media functions focus on its "watchdog" role, which the media discharges through unfettered scrutiny and discussion of the successes and failures of candidates, governments, and electoral management bodies and holding them to account. The media also enables the public to participate in elections through the following ways:

a. Educating voters on how to exercise their democratic rights.
b. Reporting on the development of an election campaign.
c. Providing a platform for the political parties and candidates to communicate their message to the electorate.
d. Providing a platform for the public to communicate their concerns, opinions, and needs, to the parties/candidates, the Electoral Management Body (EMB), the government, and to other voters, and to interact on these issues.
e. Allowing the parties and candidates to debate with each other.
f. Reporting results and monitoring vote counting.
g. Scrutinizing the electoral process itself, including electoral management, in order to evaluate the fairness of the process, its efficiency, and its probity.
h. Providing information that, as far as possible, avoids inflammatory language, helping to prevent election-related violence.

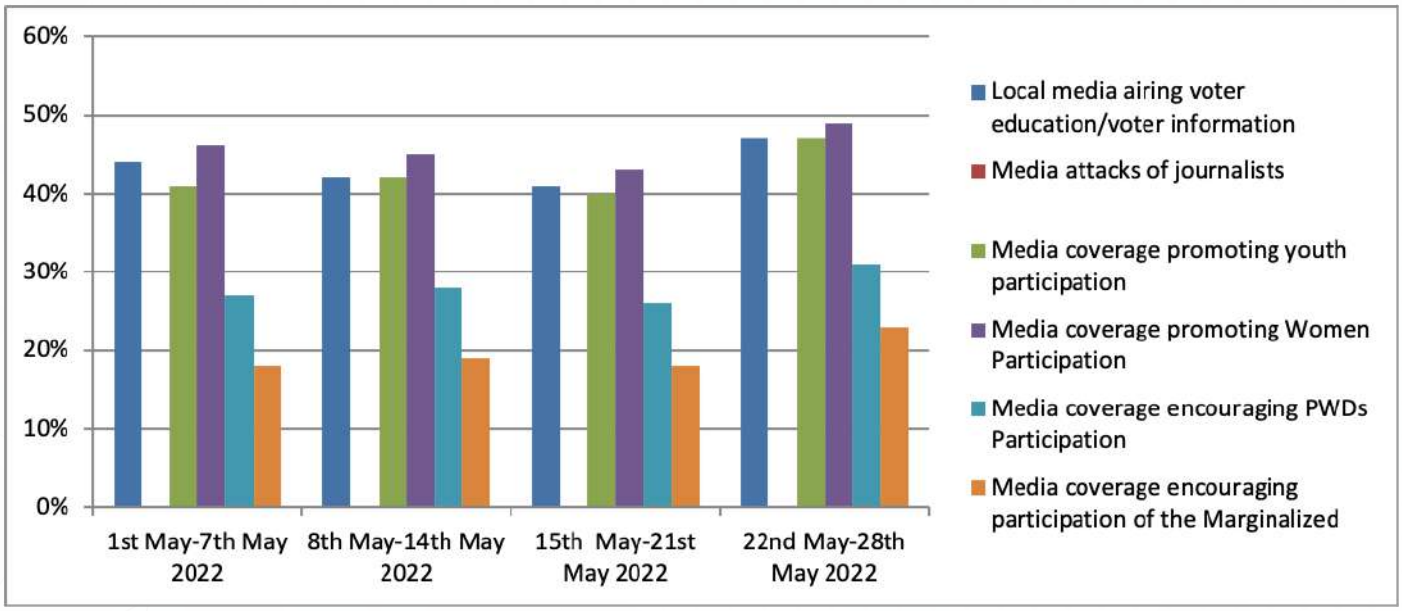
In Kenya, politics and elections have traditionally been shaped by the mainstream media. However, the mainstream media has in the past been captured by a number of challenges that include elite, political and class interests, and ethnicity. This has undermined the media's capacity to provide professional, objective, and fair coverage and reporting during elections. The 2007 coverage and reporting on elections is a good example that indicted the media for elite and class capture, lopsided and sensational coverage, and reporting of elections.

Because of the trust deficit in mainstream media, social media platforms have

emerged as the alternative platforms for coverage and reporting on elections. According to the Communication Authority of Kenya, there were 59 million connected mobile phone devices in 2021, and 53.4% of the mobile phones were smartphones. This is indicative of the high number of Kenyans who were following the 2022 elections on social media.

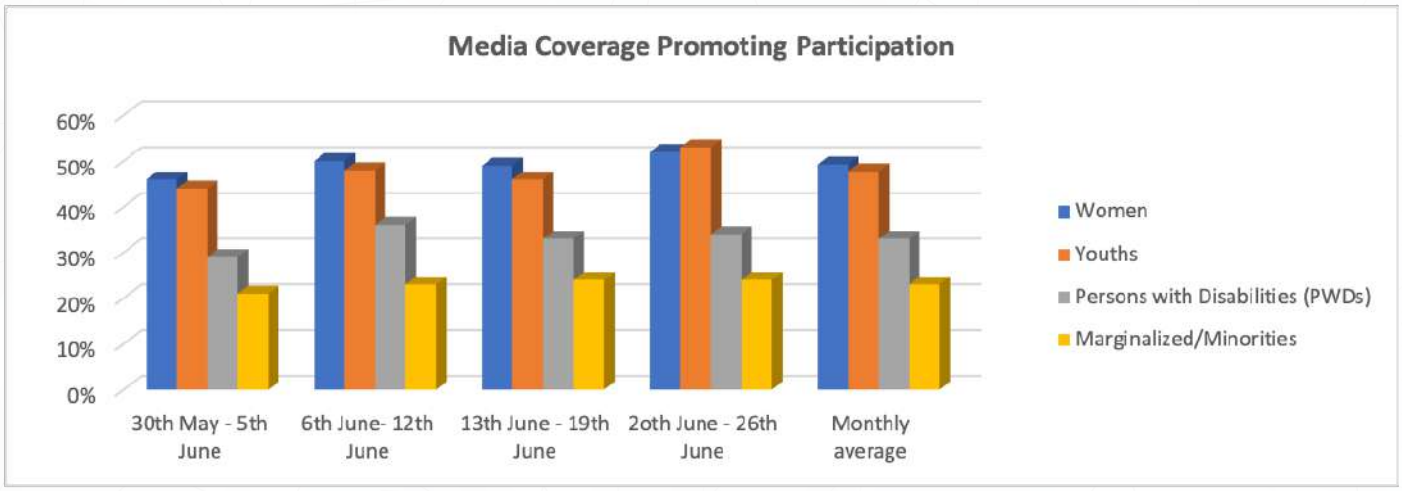
Therefore, in the context of the 2022 elections, social media platforms Facebook, Twitter, Instagram, TikTok, WhatsApp as well as the online video sharing platform YouTube became important sources of information and platforms for direct engagement on elections and in many ways contributed in reframing electoral democracy in Kenya. Political Parties and candidates used these platforms during the campaign to push their campaign agendas and manifestos. However, these platforms also became powerful tools for disinformation and misinformation.

In its media monitoring especially during the months of May, June, and July 2022, ELOG observers reported the following in relation to media coverage and reporting on elections:



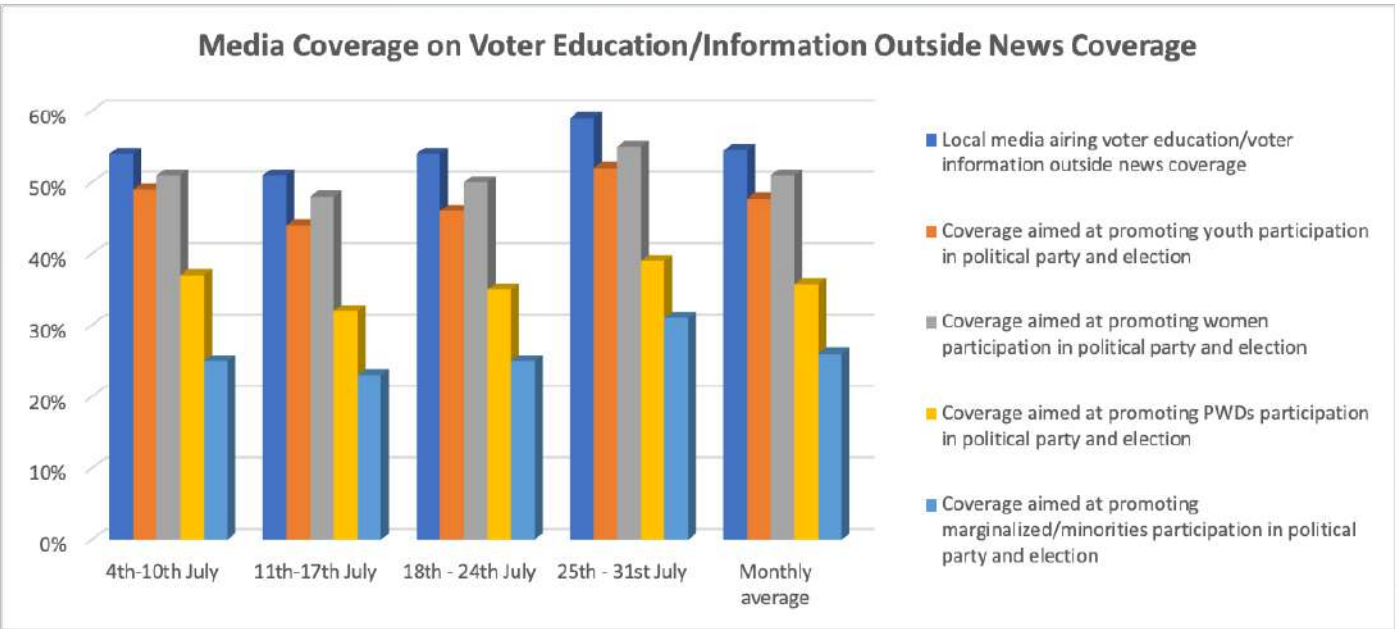
Infograph MM001: *Reporting on Media Coverage on Electoral-Related Matters for May 2022*

ELOG noted that with the commencement of the official campaign period at the end of May 2022, there was an increase in media coverage, especially on the special interest groups. Media coverage encourage positive participation in electoral-related matters. This is depicted in the info graph below:



Infograph MM002: *Reporting on Media Coverage on Electoral-Related Matters for June 2022*

In July, observers reported an increase in the engagement between IEBC and the media platforms. Media coverage focused on candidate debates and advertisements. Compared to the previous months, there was an increase in media coverage of the candidates and political parties and a decrease in coverage on voter education and information. Unequal coverage was also observed on the candidates and political parties. Media platforms had a higher coverage in promoting youth and women participation in elections while a lower coverage was recorded for the marginalized communities and persons with disabilities. This is depicted in the info graph below:



Infograph MM003: *Reporting on Media Coverage on Electoral-Related Matters for July 2022*

ELOG noted that the media was well prepared for coverage and reporting on the 2022 elections. In general, media coverage and reporting on the elections were professional and responsible. However, ELOG observed that there were cases of violation of media and press freedom including profiling of journalists and media outlets, online trolling of journalists and media outlets and in some cases physical attacks on journalists during the 2022 elections period. ELOG was impressed by some of the key initiatives of the media for the 2022 elections that included:

a. Successfully organizing and conducting media debates including Presidential, Deputy President, Nairobi Governor debates at the national level and select county debates. However, the presidential debates were not attended by Azimio la Umoja One Kenya Alliance presidential candidate, Hon. Raila Odinga and Roots Party of Kenya presidential candidate, Hon. George Wajackoyah.
b. Media tallying of election results. ELOG noted that the media houses largely relied on the IEBC public portal to get the results which were displayed on their screens. However, different methodologies were applied and varying sizes of human capacity deployed thus leading to different media houses displaying different results at the same time.
c. ELOG noted that despite the variation in the methodology of displaying the results, all the results displayed by media houses were accurate and only sourced from the IEBC public portal. ELOG also noted that different

media houses started counting and displaying the results at different times, others counted and displayed them in descending order and others in alphabetical order.

d. ELOG noted that while the media houses had adopted a joint and synchronized approach and process in the organization of the presidential debates, this was not the case with the counting, tallying and display of the elections results. ELOG also noted that the media could not keep up with the pace of the random numbers that were coming from the IEBC public portal. The presence and availability of Forms 34A from the polling stations at the portal seem to have caught the media flat footed.

e. Though the media tallying and display of the results largely tempered the anxiety and tension in the country, it also heightened the political atmosphere in the same breadth. ELOG was dismayed by the decision of the media houses to suspend display of the results, which seemed to have been occasioned by external pressure. ELOG noted that the public was left in total darkness in the six days preceding the final announcement and declaration of the presidential results by the IEBC. Consequently, anxiety, panic and tension heightened across the country and the lacuna was exploited by social media bloggers and influencers to spread propaganda, fake news, misinformation, and disinformation about the elections results.

3.8.4 SOCIAL MEDIA AND FAKE NEWS, MISINFORMATION, AND DISINFORMATION

Social media platforms became the political and electoral battlefield with bloggers and influencers affiliated to political parties and presidential candidates, especially Azimio la Umoja-One Kenya Alliance and UDA/Kenya Kwanza Alliance engaging in all manner of vitriol and tricks to gain psychological advantage over their opponents in the closely and bitterly contested elections. The battle in the digital space characterized pre-election E-Day and post-elections period.

ELOG noted that throughout the entire election cycle, Kenyan social media and media digital space was littered with fake news, misinformation, disinformation, hate speech and propaganda. The media digital space became a dumping ground for online garbage. Tech-savvy digital experts, bloggers, influencers, communication specialists and journalists who acted as proxies for the two main political coalitions and presidential candidates tried to outmaneuver each other in the digital space

ELOG also noted that political parties, top politicians and competing candidates invested heavily in digital campaigns to shape public opinion online and employed various strategies to influence the political agenda, expand their reach, interact with their supporters, market their manifestoes and agenda and to appeal to voters as well as to spread relentless maligning propaganda, fake news, disinformation and misinformation to disparage each other's campaign.

ELOG observed that the relentless campaign of fake news, disinformation and misinformation went on unabated in the social media and media digital space through the whole campaign period and climaxed on the E-Day and the period before the final announcement and declaration of presidential results by the IEBC. ELOG noted that social media bloggers and influencers with massive online following were used by some political parties and candidates or their proxies to spread fake news, propaganda, misinformation, disinformation, and defamatory statements against their opponents.

This included use of falsehoods through image distortion, wrong translations, use of wrong photos, use of automated

bots and creation of parody accounts to impersonate credible individuals, companies, and media organizations or even to defame some political actors. It also included doctoring polls to give the impression that their preferred political parties and candidates were leading.

3.8.5 THE NATIONAL POLICE SERVICE

The National Police Service (NPS) was created under the National Police Service Act, 2011 and the National Police Service Commission Act of 2011. The NPS is created as an independent body under the command of the Inspector General of Police. It consists of the National Police Service, the Administrative Police Service, and the Directorate of Criminal Investigations. The critical role of the NPS during elections emanates from its mandate which include the following, among others:

a) Maintaining law and order
b) Preservation of peace
c) Investigation of crimes
d) Collecting criminal intelligence
e) Preventing and reducing crime
f) Enforcing laws and regulations
g) Apprehending offenders
h) Protecting life and property

By virtue of its mandate, the NPS plays a very significant role during elections. This is predicated on the fact that for democratic elections to happen there has to be a conducive environment where rule of law, peace and order prevail. Furthermore, elections are inherently a manifestation of human rights that belong to citizens and stakeholders. This underscores the need for secure nation and environment where citizens and stakeholders can freely and peacefully exercise their democratic rights

In order to prepare for their role in the 2022 elections, the NPS launched the Election Security Management Manual for the Police Commanders to provide standard operating procedures to guide police officers in their engagement and work during the 2022 elections. This manual served as the standard operating procedures for providing security and preserving law and order during the 2022 elections. The NPS also proactively collaborated with the Independent Policing Oversight Authority and Civil Society Organizations such as the UN Women, Office of the High Commissioner for Human Rights, Kenya National Commission on Human Rights (KNHRC) to develop training curriculum and manuals that enabled diverse training to be given to security personnel from county and sub-county levels on broader management of elections and human rights, including women's rights as well as gender-based sexual violence.[85] The topics that were covered during the trainings included crowd control, human rights, sexual and gender-based violence, and police accountability.

Through these trainings, a total of 141 police commanders were trained on election. An additional 846 security officers across 12 counties that were mapped as potentially violent hotspot areas, including Kilifi, Mombasa, Kisumu and Nakuru, were also trained in public order management and prevention and response to violence against women during elections. The training also exposed the personnel to the process of developing County Election Security Operation Plans, with clear action plans.

While the training was a positive step towards preparing the security personnel for the elections, one of the outstanding challenges that ELOG observed is that the training targeted mainly the top echelons of the NPS and a few lower-level personnel. This left the majority of the lower-level personnel untrained and ill-equipped for the rigorous election security role that they were to discharge. It remained unclear how the trainings were to be cascaded to ensure broad-based training for all personnel that were to be deployed for the elections. The deployment plan for the

security personnel during elections was also not readily available to stakeholders.

From past practice since the 2017 elections, ELOG observed that the NPS continued to collaborate with the IEBC to implement the Electoral Security Arrangement Program (ESAP), which is an institutionalized multi-agency platform run by the IEBC to provide security for the elections. However, the launch and cascading of the ESAP was undermined by the incessant conflicts and squabbles between the IEBC and the NPS, and only happened in late May 2022, some three months behind schedule.

During the 2022 elections, ELOG observed that the collaboration between the NPS and the IEBC was challenged owing to differences that were perceived to be political. The squabbles and altercations involving the three Venezuelan citizens is a good example. The conflict and altercations with the Office of the Director of Prosecutions over the mandate to draw charge sheets and prosecute offenders is another example that derailed and undermined effective and efficient enforcement of the Electoral Offences Act and the Electoral Code of Conduct.

ELOG also observed the efforts by the NPS to quickly resolve some of the challenges that were undermining its role in the 2022 elections. Quick private and ad hoc engagements and meetings with actors and stakeholders including CSOs as well as citizens were held to find solutions to the challenges. In conflict prone areas such as West Pokot, Elgeyo Marakwet, Turkana and Marsabit, the NPS convened regular multi-sectoral meetings on security and election preparedness as part of managing the on-going conflicts in those areas and preventing election violence. In similar manner, the NPS collaborated with the National Cohesion and Integration Commission (NCIC) on identification and mapping of security and hot spot areas ahead of the 2022 elections and supported the laying out of proper planning and coordination of timely and rapid response preparedness and mechanisms to avert violence and ensure the 2022 elections are conducted peacefully[86].

3.8.6 CIVIL SOCIETY

Despite the challenging operational environment, which includes funding constraints, civil society (international and national) has remained a key pillar and player in Kenya's electoral cycle for many years. In the 2022 electoral cycle, civil society played key roles in elections strengthening and support programming, in the strengthening and support towards electoral actors and stakeholders, including the Electoral Management Bodies and supporting citizens' engagement, participation and inclusion in the electoral processes. Most importantly, civil society remained the key pillar that supported citizens' awareness through civic and voter education. Civil society also supported and provided platforms for citizens' oversight and human rights defending during the elections.

The Kenyan civil society remained a key player in the 2022 electoral cycle. Over 115 CSOs were accredited by the IEBC to provide voter education across the country for the 2022 elections. The IEBC also accredited over 15,000 observers to monitor and observe various aspects of 2022 electoral processes, including election observation. Besides these initiatives, civil society groups organized themselves and partnered with other stakeholders to support peace building and conflict mitigation efforts during the entire cycle of elections.

Do we include FBOs here as part of the broader CSO teams?

3.8.7 NATIONAL COHESION AND INTEGRATION COMMISSION

The National Cohesion and Integration Commission was established under the National Cohesion and Integration Act No. 12 of 2008. The Commission is mandated to promote national cohesion and integration

through elimination of ethnic animosity and discouraging incitement to violence and hate speech. Based on its mandate, the Commission has since its creation in 2008 the Commission has endeavored to reign over incitement to violence, ethnic hatred, hate speech as well as insulting and vulgar language during elections. However, ELOG has observed that over the past election cycles in 2013 and 2017, the Commission was not able to effectively deal with hate speech and incitement to violence that were perpetrated by politicians and other actors especially on social media platforms.

During the 2022 election cycle, the Commission initiated a number of efforts that were aimed at promoting peace and building national cohesion and integration ahead of the 2022 elections. These initiatives included the launch of a Roadmap for peaceful 2022 general elections, which was a blueprint that was dubbed Uchaguzi Bila Noma, to ensure peaceful electioneering period while outlining challenges to peaceful elections on 10th December 2020. This was followed by a joint 5-day training with the Parliamentary Committee on National Cohesion and Equal Opportunities on Structural Vulnerability Assessment and Resilience Assessment Framework that was supported by COMESA and the African Union in May 2021.

Between August 2021 and June 2022, the Commission trained and sensitized journalists from various media houses as well as bloggers on conflict sensitive reporting, hate speech and ethnic contempt ahead of the 2022 elections. These trainings were conducted in Kericho, Narok, Kisumu, Nandi and Kakamega and targeted over 100 journalists and bloggers.

As part of the roadmap for peaceful elections, the Commission also collaborated with other state agencies and non-state actors to implement a series of peace activities under the UWIANO Platform and the #LetPeaceWin campaign. The peace initiatives that began in June 2022 targeted the potential hotspot counties that the Commission had mapped. The peace campaign activities included peace caravans, peace walks and runs, situations rooms, and fora for consultation with the youth, media, boda bodas, political parties, CSOs, faith-based organizations (FBO), women, and people with disabilities (PWDs).

While the Commission was more proactive ahead of the 2022 elections as compared to previous elections in 2013 and 2017, ELOG observed that it still experienced a number of challenges in the course of discharging its mandate. ELOG noted that the Commission's efforts to deal with inciting, insulting and harmful campaign jargon such as the use of the word **"sipangwingwi"** (Sheng for "no one dictates to me what to do with my life", a statement of defiance) that was popular with the Kenya Kwanza campaigns, was dealt a blow when the High in a petition by an aggrieved party quashed and nullified the Commission's decision to ban and prohibit the use of the phrase during the 2022 electioneering period. In addition, the Commission lacked the authority and mandated to hold perpetrators of hate speech and incitement accountable as it lacks prosecutorial powers.

3.9 VOTER REGISTRATION/LISTING EXERCISE

Voter registration remains a significant but very expensive part of the electoral process. This is because the voters register is what determines eligibility to vote and for that reason confers legitimacy to the electoral process. In other words, the register of voters is the foundation upon which political and electoral rights to vote and be voted to elective office can be realized. It is the foundation of any democratic, credible, transparent, free, and fair elections. Voter registration is also one of the areas of the electoral cycle where ICT is increasingly becoming applicable and influential.

Kenya has adopted a continuous voter's register, which means that voter registration is continuous and for that reason the voters register has to be maintained and updated regularly, by adding, deleting, removing, altering, and updating details of voters in the register. Kenya has also adopted technology in its voter registration system and process through the use and deployment of Kenya Integrated Electoral Management System (KIEMS) as provided for under Section 44(1) of the Elections Act. The KIEMs kits are used to electronically capture the details of the voters including their biometrics, which are consolidated and finalized into a final voter register for the elections.

For the IEBC, efforts to list new voters were part of the key activities for the 2022 election cycle. In particular, the IEBC targeted the youth who had turned 18 and had acquired national identity cards. Therefore, on 15th October 2018, the IEBC launched a continuous voter registration exercise in Makueni County. However, at the end of the exercise on 31st August 2021, only a paltry 180,938 new voters were registered.

In its efforts to capture more voters, the IEBC marked the start of the 2022 General elections electoral cycle with the launch of Continuous Voter Registration (CVR) at an event that was held in Makueni County on 15th October 2018. From the date of the launch to 31st August 2021 the Commission had registered a total of 180,938 new voters. On 4th October 2021, the IEBC launched and rolled out an Enhanced Continuous Voter Registration exercise in Nakuru County. The exercise, which was carried out in all the 1,450 Wards of the 290 constituencies in Kenya targeted 6 million unregistered voters, majority of who were estimated to be youth-with the number estimated at 4.5 million. But by the close of the exercise on 5th November 2021, another paltry 1,519,294 eligible new voters had been registered. The IEBC committed to a further last round of voter registration exercise, which it launched in January 2022 and proceeded until 3rd May 2022 with an aim of meeting its target of 6 million new voters.

At the end of the last round of voter registration, the results were very dismal, with only 2.5 million new voters getting registered. The IEBC had failed to meet the target of 6 million new voters and limped away with a paltry figure in one of the worst voter registration returns since the first multi-party elections in 1992. Even though the final register for the 2022 elections had a total of 22.1 million voters-up from 19.6 million voters in the last 2017 elections, the returns from the 2022 voter registration drives indicated a dismal performance on the part of the IEBC considering the time and resources that were committed to the exercise.

ELOG observed and noted that the low voter registration numbers were partly the result of poor planning and coordination of the exercise by the IEBC. There is a sense in which the IEBC failed to complement the voter registration exercise with an aggressive voter education campaign. The IEBC also did not coordinate the exercise with the National Registration Bureau that is in-charge of registration of citizens

and issuance of national identity cards as well as local administration in whose custody issued national identity cards remain for collection. Furthermore, the low registration numbers were driven by a broader sense of disillusionment and an increasing pattern of disengagement with electoral politics in Kenya especially amongst the youth. It was also driven by a growing apathy amongst Kenyans who no longer find meaning in investing in electoral politics as they consider elected leaders as corrupt, inept and without the political will to provide solutions to voters' socio-political and economic challenges.

In relation to the youth, the IEBC only succeeded to register 12% of the estimated 4.5 million potential young voters in Kenya. In the final register which had a total of 22,120,458 registered voters, the number of youth voters aged between 18-35 years stood at 39.84%, a decline of 5.27% compared to 2017.[87] Further analysis of youth voter enrolment statistics showed a decline of 7.75% in the number of registered female youth voters and a decline of 2.89% male youth enrolment in 2022 as compared to 2017.[88] Yet, according to the Kenya 2019 population and housing census, Kenya is a country of the youth, with the population of the youth under 35 years comprising 75% of the country's population of 47.6 million. It is therefore understandable that as Kenya headed for the 9th August 2022 elections, there were serious concerns that one giant voting block - the youth, wouldn't participate in the election.

A survey research that ELOG conducted and launched on 22nd July 2022[89] depicted the low voter registration amongst the youth. The low voter registration among the youth was contributed to by a number of factors including lack of national identity cards, disinterest in the elections, non-appreciation of the significance of elections, and lack of trust in the election process, as presented in the figure below:

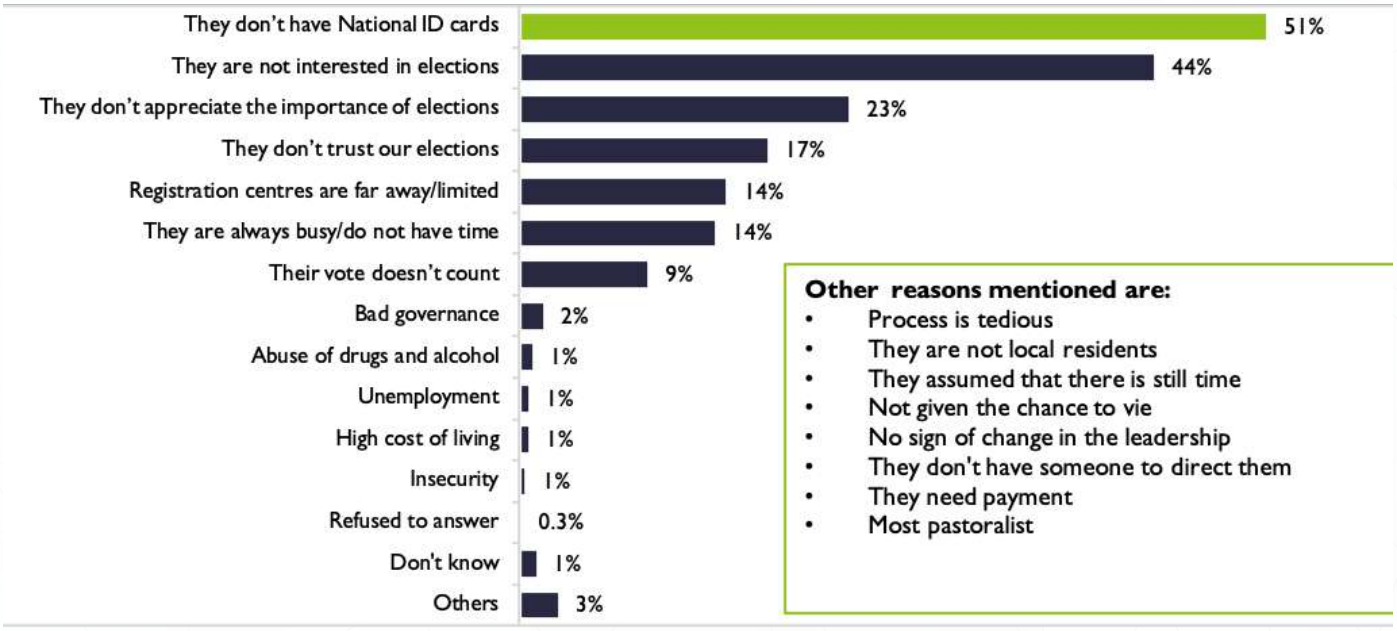


Figure VR001: *Reasons for the Youth not Registering as Voters*

Also, women represented 49.12% of 22,120,458 registered voters as compared to men who represented 50.88% of the total registered voters. This demonstrated that women are still under-represented in the register of voters and their voices could also have remained missing as Kenya headed for the 9th August 2022 polls. ELOG's survey research study [90] indicated the driving factors for low number of women registered voters to include disinterest in elections, lack of time, non-appreciation of the impor[91]tance of elections and distant/limited registration centers as presented in the figure below:

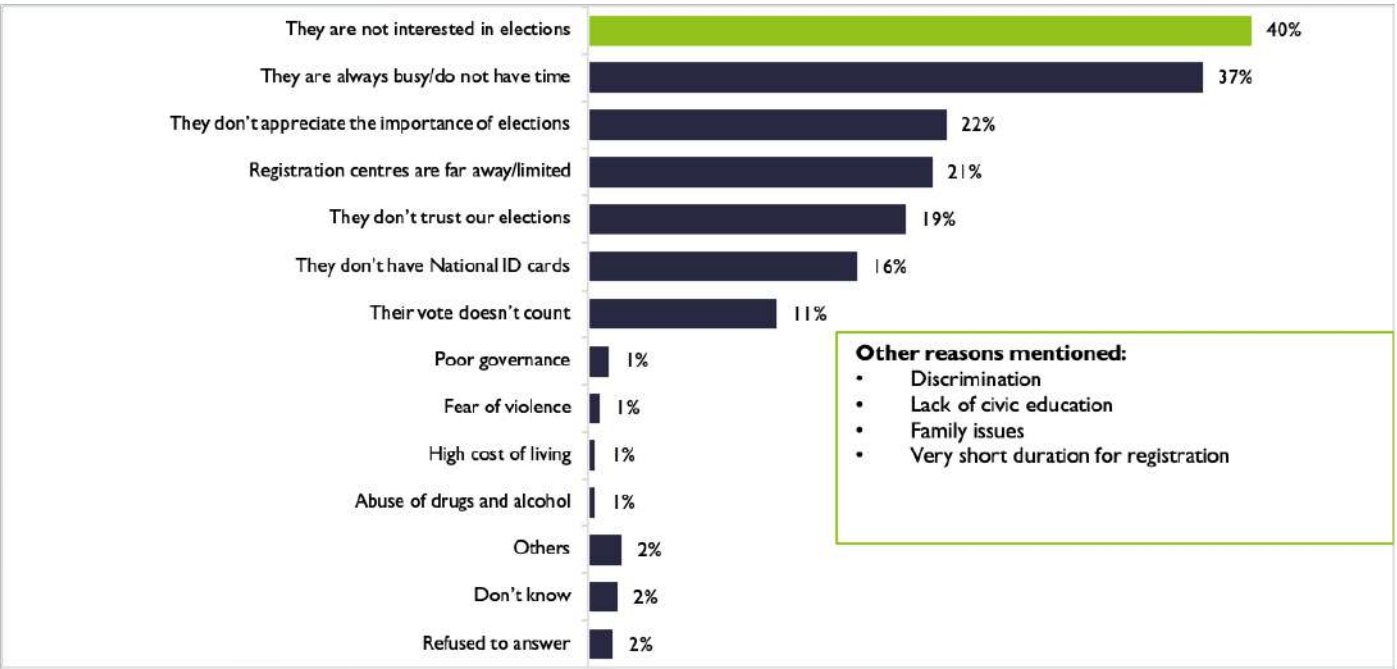


Figure VR002: *Reasons given by the women who did not Register as Voters*

In tandem with the Constitutional provisions, the IEBC continued to progressively register Kenyans living abroad in the Diaspora and prisoners in order to enable them to realize their constitutional progressive right to vote. In the voter registration drive that happened between January and May 2022, the IEBC registered Kenyans residing outside the country in 12 states as compared to 6 states in 2017: United States of America (USA), United Kingdom (UK), Canada, Germany, Qatar, United Arab Emirates, Tanzania, South Sudan, South Africa, Uganda, Rwanda, and Burundi. The total number of Diaspora registered voters was 10,433[92]. The IEBC also designated the 12 states for voting in the 2022 presidential election[93]. As for prisoners, the IEBC registered them in some 121 prisons across the country. The total number of prisoners registered to vote in the 2022 presidential election was 7,483. [94]

As provided for under Section 6 of the Elections Act, 2011, the IEBC afforded an opportunity to the registered voters to inspect and verify their registration details in the voters register before the elections. The law requires that this opportunity should be accorded at least sixty (60) days before the elections. The IEBC provided this opportunity between 4th May 2022 and 2nd June 2022. Voters inspected and verified their details physically at registration centers, electronically/online and using an SMS USSD code that IEBC had provided. However, ELOG observed that voters were not enthusiastic in this exercise and at the close of the exercise, few voters had inspected and verified their details. There were also complaints that the SMS text messaging attracted charges that many voters could not afford. Ultimately, the IEBC proceeded to consolidate, finalize, certify, and publish a final register of voters, which had a total of 22,120,458 registered voters, on 20th June 2022.

3.10 VOTERS LIST/REGISTER AUDIT

Audit of the voter register is an exercise that has become crucial in the electoral process as it provides electoral stakeholders with the opportunity to understand the processes for building, cleaning, updating, consolidating, and finalizing the voters register. It also enables electoral stakeholders to assess, verify and ascertain the status of the voters register before elections. According to international best practice outlined by the Ace Electoral Knowledge Network,[95] the electoral cycle approach provides three entry points for the audit of voter registration processes as follows:

1. **Pre-electoral period:** in this case audit becomes part of the planning and implementation of the elections operations and enables the Electoral Management Body to assess the quality of the register and clean and update it, if necessary.

2. **Electoral period:** This should be a second audit to address emerging issues including updated voter's details, corrections and changes made after inspection and verification of the register by voters and objections raised by voters. This will enable subjective issues to be removed from the register to improve its quality and credibility.

3. **Post-electoral period:** This should be done after the elections as part of post elections audit and evaluation activities and should enable improvements to be made to the voters' register.

The goal of auditing and assessing the voters register is to not only improve it, but also ensure its credibility and integrity and promote confidence in the register as well as elections. This is achieved when the register is audited periodically as stated above and independent stakeholders are involved in the audit and assessment exercise. However, the IEBC has adopted an audit process that is conducted once after completion of voter registration before the register is consolidated, finalized, certified, and published for the elections. The IEBC audit process is also done internally by an audit firm that is procured and contracted by the IEBC. For these reasons, the IEBC voter register audit process is not fully independent and does not involve external independent stakeholders.

For the 2022 elections, the IEBC procured and contracted an audit firm, KPMG, to conduct an audit of the register. The IEBC had initially planned to publish the final register of voters on 9th June 2022 but this was postponed to 20th June 2022 to enable the audit firm to complete the audit exercise and for the IEBC to address the audit findings and recommendations. KPMG conducted the audit and submitted its report to the IEBC on 18th June 2022, which had valuable findings that included 246,465 dead voters, 481711 duplicate records and 226,143 voters registered with National Identity Cards that did not belong to them, and 164,269 voters registered with invalid identification documents.

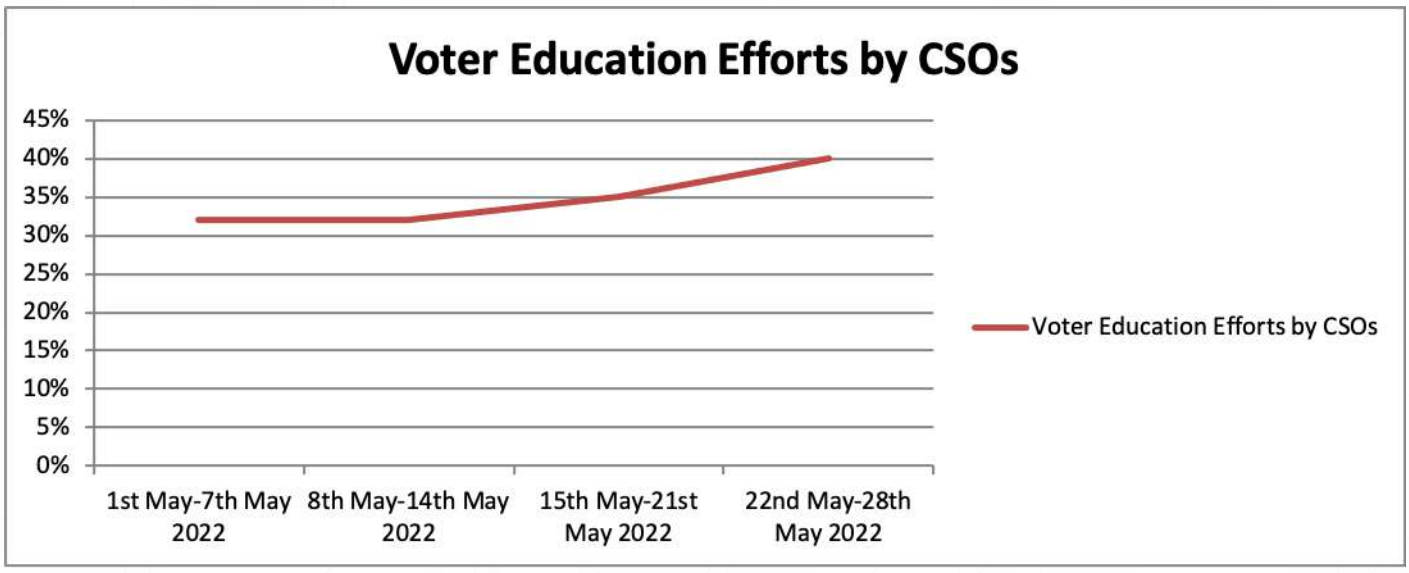
Except for the above findings – which were highlighted in a press briefing when the IEBC received the KPG report, most of the findings in the report were not made public. Further and with the exception of Parliament, the IEBC neither made the full KPMG report public nor shared it with stakeholders. Stakeholders were therefore not given an opportunity to interact with and interrogate the KPMG audit findings and recommendations. The extent to which the IEBC acted upon and addressed the findings of the KPMG audit report was also not clear as neither were the stakeholders involved nor did the IEBC give a full public report and account to that effect. This remained a vexing issue and concern to stakeholders especially the political parties and presidential candidates who continued to raise questions regarding the quality and status of the voters' register.

ELOG observed that there were still a number of serious questions and concerns regarding the credibility and integrity of the voters' register that was used for the 2022 elections. Moreover apart from procuring and contracting KPMG to conduct an internal audit of the register, IEBC should have involved other independent stakeholders, such as ELOG, to conduct external and independent audit, as part of monitoring voter registration, to verify and complement the internal audit findings. Similarly, external independent stakeholders should have been involved in the process of addressing and implementing the audit findings. For the above reasons, ELOG believes that there is a compelling case and basis for a post-election independent audit to be conducted as part of post elections audit and evaluation, and the findings and recommendations used to improve the status of the voter register.

3.11 CIVIC/VOTER EDUCATION

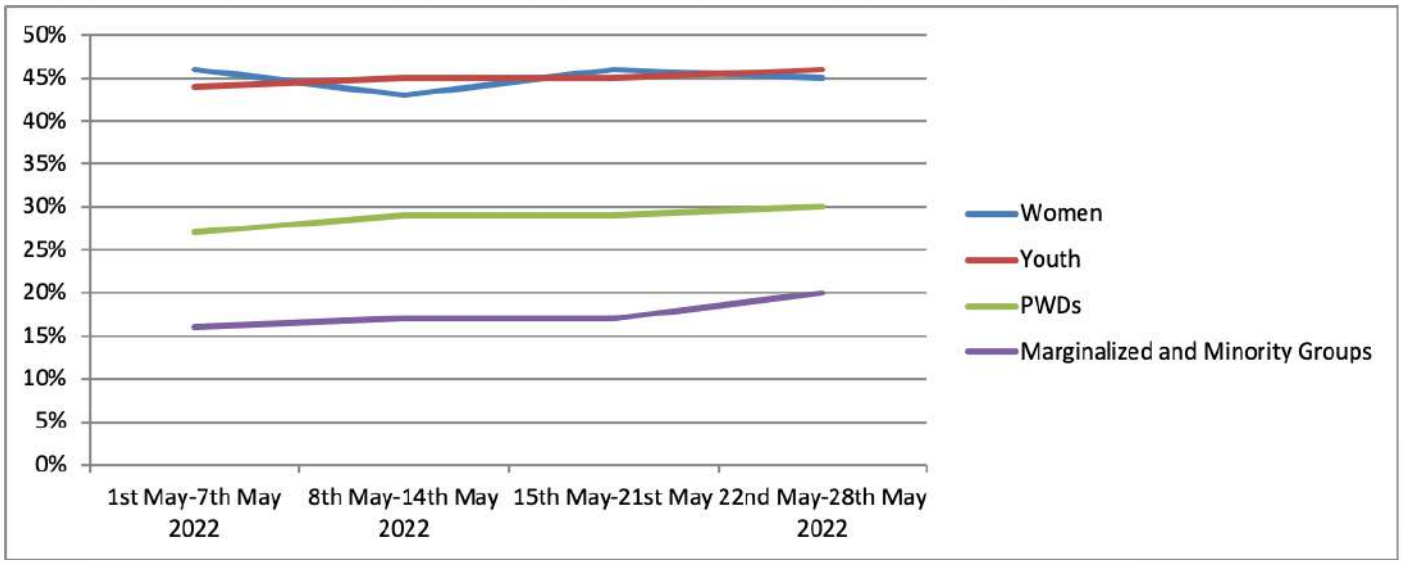
Civic and voter education began in May 2022 with the IEBC's launch of a program called the Kenya Electoral Conflict Mitigation and Voters' Civic Education, targeting the youth and women in order to ensure a high voter turnout and peaceful elections. The targeted counties included Kwale, Mombasa and Kilifi. The program on voter education increased in June and July 2022 with the support of some 115 CSOs, which the IEBC had accredited to implement voter education initiatives. ELOG observed that there was a general lack of coordination of civic/voter education initiatives, with outreach levels and targeting lagging behind. ELOG also observed a general lack of planned and structured civic and voter education provision that was not guided by standardized curriculum and manuals.

In the month of May 2022, ELOG noted an increase in voter education, particularly voter education activities conducted by the IEBC. However, the level of targeted voter education activities observed towards women and youth remained relatively consistent over the month as depicted in the graph below:



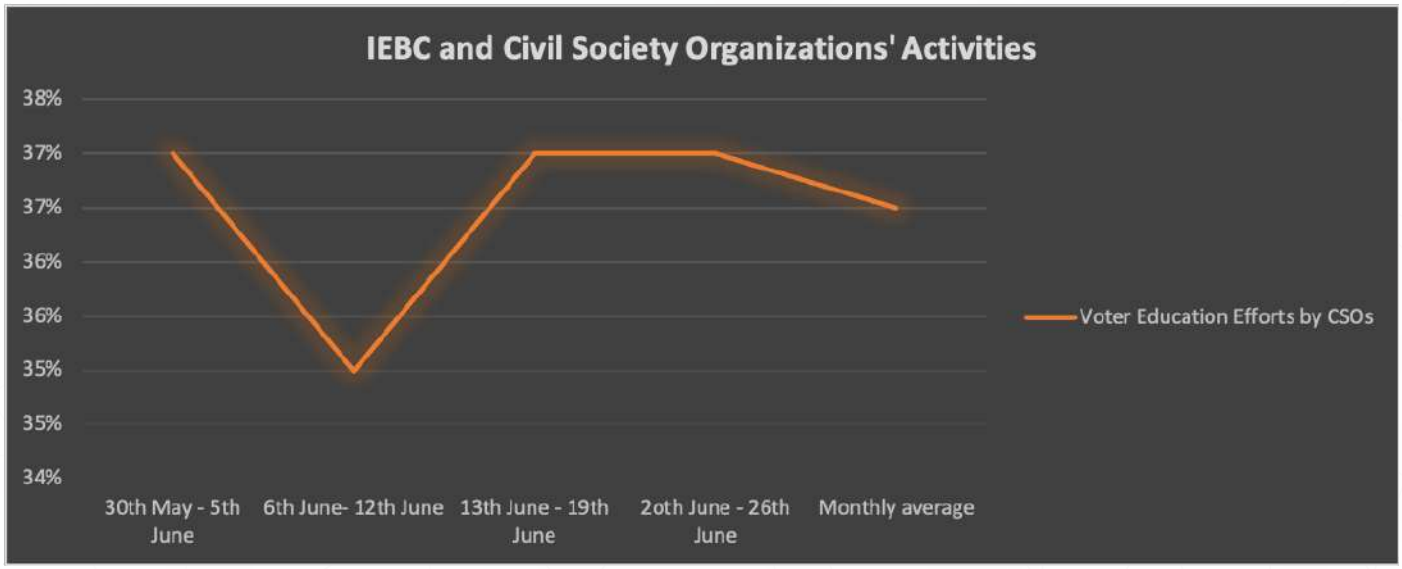
Infograph VE001 *Civil Society Organizations' Voter Education Efforts*

REPORTING ON IEBC ACTIVITIES AND CSOS VOTER EDUCATION EFFORTS DURING THE MONTH OF MAY 2022

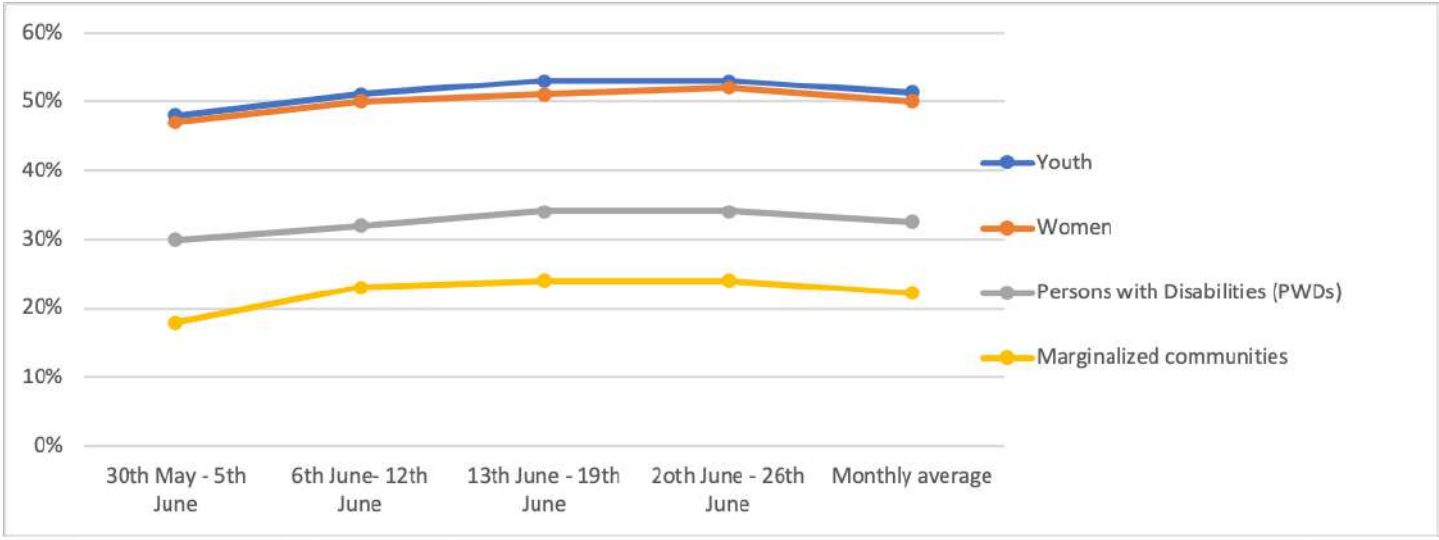


Infograph VE002: *Reporting on IEBC's Voter Education efforts during the month of May 2022*

In the month of June 2022, ELOG observed a relative increase in voter education provision especially targeted at Special Interest Groups (SIGs). The major voter education campaigns were aimed at sensitizing the youth and educating them on the importance of participating in electoral activities while maintaining peace and unity. This is shown in the graph below:

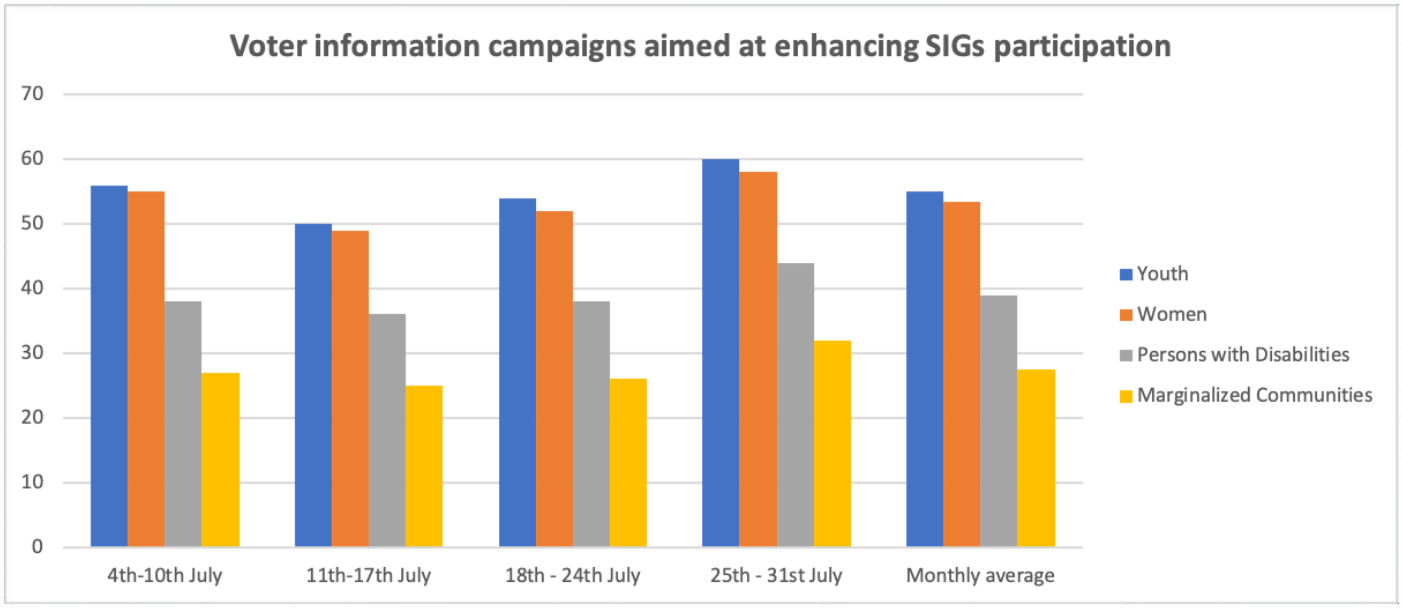


InfographVE003: *CSOs voter education efforts*



Infograph VE004: *Reporting on IEBCs Voter Education efforts during the month of June 2022*

However, in comparison to the previous months of May and June, there was a decrease in voter education activities in the month of July. This was attributed to other IEBC's internal preparatory activities geared towards Election Day. Throughout the month of July, ELOG observers reported voter education activities focusing on women and youth. However, there was a decrease in voter education activities centered around Persons with Disabilities and marginalized communities. These findings are depicted in the graph below:



Infograph VE005: *Reporting on IEBCs Voter Education efforts during the month of July 2022*

In the month of July 2022, ELOG observers reported incidents of harassment of voter educators in Gatundu South and Molo constituencies .

3.12 PARTICIPATION OF VULNERABLE/SPECIAL INTEREST GROUPS

The Constitution of Kenya 2010 is very progressive in relation to inclusion of vulnerable and special interest groups in politics and public affairs. Under Article 100 of the Constitution 2010, Parliament is mandated to enact laws to promote the representation of women, PWDs, youth, ethnic minorities, and marginalized communities. The Constitution of Kenya 2010 also contemplates implementation of affirmative action to promote the inclusion of youth, minorities, and marginalized groups in public affairs. Articles 10, 20, 21, 27, 54, 81, 82, 97, 99 and 177 of the Constitution of Kenya 2010 further anchor inclusion and participation of vulnerable and special interest groups in all public spheres. Despite the progressive spirit of the Constitution 2010, there are still numerous challenges that hinder inclusion and participation of vulnerable and special interest groups in political processes.

As previously indicated, women represented 49.12% of the 22,120,458 registered voters as compared to men who represented 50.88% of the total registered voters. Besides demonstrating that women are still under-represented in the register of voters, it also showed that women's voices could have been silenced in the elective decision making on the 9th August elections and the deferred elections that took place on 29th August 2022. ELOG study highlighted the challenges and obstacles that lead to low women's participation in voter registration and elections, some of these obstacles include disinterest in elections, lack of time, non-appreciation of the importance of elections and distant/limited registration centers.

Despite the low voter registration numbers for women, a positive trend was shown in the number of women who sought elective offices in the 2022 elections as compared to the 2017 elections. Out of the 16,100 candidates who were cleared and registered by the IEBC to run for various elective positions in the 2022 elections, 1962 were women, making up to 12.8%. It is also positive to note that three of the presidential contenders in the 2022 presidential election named women as their running mates while the number of women who contested for gubernatorial seat doubled up as compared with the 2017 elections. A number of women were also named as top leaders, as secretary general or executive director, of the various political parties that participated in the 2022 elections. This is notwithstanding the fact that the progressive two-thirds gender rule is yet to be fully implemented, some 10-years after the promulgation of the 2010 Constitution.

Despite these challenges, Kenyan women made a historic breakthrough in the journey towards gender parity in the 9th August 2022 elections as Kenyans elected 30 female Members of the National Assembly, up from 23 in the 2017 elections, 7 female governors, up from 3 in the 2017 elections, and 3 female senators, the same number as in the 2017 elections.[96] In the 2022 elections, women candidates won gubernatorial seats in politically influential and "tight-race" counties which included Kirinyaga, Machakos, Meru, Nakuru and Homabay. In Nakuru County, women won 8 elective positions that included Governor, Senator, and Member of National Assembly positions. History was also made by a young female candidate, Linet Chepkorir "Toto", who won a National Assembly seat in Bomet County, thus becoming the youngest female elected Woman Representative in the National Assembly at the age of 24 years. These gains for women in the 2022 electoral politics can be attributed to some shift in the patriarchal mindset in the Kenyan society.

Despite some of the gains realized in the 2022 elections in terms of election outcomes for women, ELOG observed that women who seek political and elective positions in Kenya still have to face and overcome a myriad of societal and financial barriers. ELOG observed that the majority of women still lack financial resources and networks to mount effective political campaigns. Further, women are still largely regarded as outliers in the typical Kenya patriarchal society. Women also face the wrath of hostile political campaigns that are often very rough and extend into the nights, thus exposing women to insecurity. ELOG also observed that throughout the 2022 election cycle, women aspirants and candidates experienced harassment, verbal abuse, and other forms of psychological assault including negative and disparaging remarks about their appearance or marital status. These were perpetrated by their male and female adversaries and supporters physically and especially through social media and online platforms.

A study survey conducted by ELOG that was commissioned on 22nd July 2022 [97]showed that youth discontent and apathy posed a significant challenge for the 2022 elections, including voter registration. ELOG noted the evidence of this in the low voter registration rates amongst the youth, particularly for those who had turned 18 since the previous 2017 elections. The ELOG study identified the driving factors for the low voter registration, albeit low participation in politics, amongst the youth, and these factors includes lack of national identity cards, disinterest in the elections, non-appreciation of the significance of elections and lack of trust for the elections. As already indicated elsewhere in the report, out of the total number of registered voters for the 2022 elections, the registered youth voters aged between 18 - 35 years stood at 39.84%, which is a 5.27% decline compared to 2017. [98]Further, the number of registered male youth voters decreased by 2.89% while the number of registered female youth voters decreased by 7.75% as compared to 2017.

Apart from discontent and apathy, ELOG observed that voter information and voter education messaging that was rolled out by the IEBC to reach the youth were inadequate. Furthermore, ELOG found that IEBC's voter education came late and only got underway in mid July 2022. It was also not targeted and relied mostly on traditional methods of dissemination as opposed to digital platforms and channels that appeal to the youth.

In relation to people with disabilities, the level of their inclusion and participation in the 2022 elections remained dismal notwithstanding the affirmative action provisions in the Constitution of Kenya 2010, and the electoral laws especially the Elections Act and the Political Parties Act. First, the efforts made by political parties to include and involve PWDs in internal party affairs and activities remained largely tokenistic. Very few PWDs were targeted and registered as party members, let alone getting the opportunity to become top party leaders or presidential candidates. Lack of interest by political parties to promote PWDs in their top ranks is demonstrated by the testimony of a PWD presidential aspirant, Reuben Kigame. According to Kigame, his bid to get nominated by a political party for the presidential election was rejected by many political parties, thus prompting him to take the independent candidate route. [99]

The Reuben Kigame's case, which ELOG followed with keen interest, was the epitome of the challenges, including discrimination, which PWDs still face in politics and elections despite the progressive Constitution 2010. Even after braving all odds to launch his presidential bid, Kigame's effort was still thwarted by the IEBC Returning Officer on account of failure to meet the presidential nomination threshold of presenting not fewer than 2000 signatures from each of a majority of the Counties. Aggrieved by the decision of

the IEBC Returning Officer to block his bid, Kigame filed a complaint with the IEBC Dispute Resolution Committee, which upheld the decision of the Returning Officer that Mr. Kigame failed to comply with the requirements for registration of presidential candidates as set out in Article 137 of the Constitution of Kenya, 2010.

This prompted Kigame to sue the IEBC at the High Court for what he termed as violation of his constitutional right as a PWD, failure to accord him dignity and respect as a PWD and failure of the IEBC to develop regulations that would accommodate people living with disability such as Braille and any other form of communication.

In a landmark judgment [100] The High Court held that Kigame had not been treated fairly and accorded an opportunity to achieve equalization of opportunity and that the IEBC had not accorded him any assistance to overcome the disability in complying with election requirements. The Court observed that the IEBC ought to have applied affirmative principles in determining the fate of Kigame and for that reason, he should not have been disqualified on account of failure to present sufficient number of voter signatures. According to the Court, the IEBC had placed the bar too high for Kigame as a PWD as compared to non-disabled presidential aspirants. The Court ultimately found that IEBC's decision not to nominate Kigame was unfair, unreasonable, irrational, and unproportional in the unique circumstances of the case. The Court quashed the decision of the DRC and compelled the IEBC to accept Kigame's nomination papers and to consider them in line with the Court Judgment, the Constitution of Kenya 2010, and the law.

Aggrieved by the High Court decision, the IEBC appealed to the Court of Appeal, which issued an order of stay on the High Court judgment pending the hearing and determination of the substantive appeal. The Court of Appeal noted that there was a likelihood of the 9th August 2020 elections being postponed if Kigame was to be included on the presidential ballot in accordance with the High Court judgment. Interestingly, the Court of Appeal set the hearing date in November 2022, thus locking Kigame completely out of the 2022 presidential election. [101]

Besides the Kigame case, ELOG observed that political parties adopted a lackluster and tokenistic approach towards including PWDs in their party nomination lists. As a matter of fact, after the political parties' nomination lists were made public on 27th July 2022, there was a huge uproar from organizations that represent PWDs. These organizations had accused political parties of contravening the law by purportedly nominating persons who are not registered with the National Council for Persons with Disabilities.

ELOG also observed some positive developments on the part of the IEBC to proactively include PWDs in the elections. According to the IEBC, the number of PWDs registered voters stood at 8.7% out of the total registered voters for the 2022 elections. For the first time, the IEBC allowed older PWD voters to update their disability status in the register. In addition, the IEBC for the first time deliberately documented the disability status as well as the nature of disability of newly registered voters. Also as noted elsewhere in this report on voter education, the IEBC implemented a number of positive measures aimed at enhancing the inclusion and participation of PWDs. These included creating and availing voter education materials in Braille format and deployment of sign language interpreters as voter educators.

As shown elsewhere in this report on the findings on elections day, ELOG observed that even though a majority of polling stations had no ramps or were located on upper floors of buildings, elections officials and Good Samaritans made deliberate efforts to minimize the challenges experienced by PWDs by providing

assistance to facilitate their mobility to vote on the elections day as contemplated under the applicable Regulation 72 of the Elections (General) Regulations of 2012.

Based on its observations, ELOG believes that there is still room for the IEBC to improve on the inclusion and participation of PWDs in political and electoral processes. This will require more sustained broad-based and participatory engagement with all PWDs through the various organizations that represent them including the National Council for Persons with Disabilities. This engagement should be based on sustainable policy and decisions as opposed to stand alone ad hoc projects.

3.13 PARTICIPATION OF DIASPORA VOTERS

As contemplated under Article 82 (1) (e) of the Constitution of Kenya 2010, the right of Kenyans living outside Kenya (the Diaspora) to participate in elections is progressively being realized. This includes the right to register as voters. In 2017 elections, the IEBC registered eligible Kenyans living in the Diaspora as voters in five designated countries, namely; South Africa, Uganda, Tanzania, Rwanda and Burundi. For the 2022 General elections, the Commission included eight more countries for the Diaspora voter registration exercise namely; the United Kingdom, Canada, the United States, South Sudan, Qatar, the United Arab Emirates and Germany.

Therefore, pursuant to Kenya Gazette Notice No.194, Vol. 7 of 14th January 2022, the IEBC published that conduct of voter registration for Kenyans living in the above 12 countries would be conducted from 21st January 2022 until 3rd May 2022. For this reason, the Commission mapped voter registration centers in Kenyan Embassies and Consulates in Uganda (Kampala), Tanzania (Dar-Es-salaam and Arusha), Rwanda (Kigali), Burundi (Bujumbura), South Africa (Pretoria), South Sudan (Juba), United States of America (Washington DC, New York and Los Angeles), United Kingdom (London), United Arab Emirates (Abu Dhabi and Dubai), Qatar (Doha), Germany (Berlin) and Canada (Ottawa, Toronto and Vancouver)

These registration centers were mapped based on the following parameters; presence of a Kenyan Mission (Embassy, High Commission or a consulate) as stipulated in law; number of registered citizens with Kenyan Missions in host countries; political environment in host governments which should be conducive, stable and predictable, and, financial sustainability to support logistical, operational and administrative costs of carrying out such an activity. The registration centers were also gazetted as Diaspora polling stations for the 2022 elections.

For purposes of Diaspora voter registration, the Commission allocated one Biometric Voter Registration (BVR) kit in each registration center to capture the biometric and biographic details of voters. An additional BVR kit was opened at the IEBC Headquarters in Nairobi to register citizens who had traveled to Kenya but still wished to vote in the Diaspora on 9th August 2022. The Commission also committed to observe and adhere to COVID-19 prevention measures and protocols of the designated countries while conducting voter registration and during the voting on election day. Therefore, for the Diaspora voters, the Commission registered a total of 10,433 voters in the voter registration exercise that began on 21st January 2022 and ended on 3rd May 2022. [102]

As guided by the Elections Act, 2011 and the Election (Registration of Voters) Regulations, 2012, Kenyans living in the Diaspora were required to produce a valid passport to enable them register as voters. However, this was reversed

following a High Court Constitutional Petition No. E004 of 2022 Okiya Omtata Okoiti vs The Hon. Attorney General and the Independent Electoral and Boundaries Commission [2022] eKLR.[103] The High delivered a ruling in this petition on 31st January 2022 and ordered the IEBC to register Kenyan citizens living abroad using either a valid passport or Kenyan Identity Card. Accordingly, the IEBC stood guided by the High Court decision and proceeded to register Diaspora voters using the two documents. [104]

However, because of the progressive nature of the rights of Kenyans in the Diaspora to vote, this right is still restricted to voting for a presidential candidate. ELOG believes that Kenyans living in the Diaspora play a very significant role in the Kenyan financial sector developments through high remittance and for that reason, Diaspora voting should be graduated from the current restricted voting for presidential candidates only. According to the Central Bank of Kenya (CBK) Weekly Statistical bulletin, Diaspora remittance inflows to Kenya in May 2022 totaled US$ 339.7 million compared to US$ 315.8 million in May 2021, a 7.6% increase.[105] The strong remittances inflow has continued to support the current account and the stability of the exchange rate. This conclusion is supported by a study, which highlighted the importance of remittance inflows into Kenya from the Diaspora, which has gained prominence in the contribution to the foreign capital inflows, thus significantly impacting capital formation and specifically the financial sector developments in Kenya. [106]

Based on the above, ELOG believes that there is a compelling case and basis for graduating and further progressing Diaspora voting beyond the current limitation on voting for presidential candidates only. The first step should be to designate more Diaspora countries for voter registration and polling. Second, the IEBC, the government and stakeholders should consider putting in place additional legal and administrative mechanisms and parameters that could allow the Diaspora voters to vote for other candidates including the Governors, Senators, Members of National Assembly, Woman Representative and County Assembly Member. Finally, additional legal and administrative mechanisms and parameters should be put in place to create an additional constituency for purposes of direct representation of the Diaspora in the National Assembly, to begin with and in accordance with the progressive spirit of the Kenya Constitution 2010.

3.14 CONCLUSION

The pre-election environment for the 2022 elections was characterized by challenges, tensions, political pressure and anxiety that pushed key stakeholders and duty bearers to the limit. However, while key duty bearers such as the IEBC, the Judiciary and political parties showed resilience and remained committed to ensure that necessary preparations were in place for the 2022 general elections, ELOG observed that they operated under a very challenging environment that hamstrung their preparations and undermined their roles and performance. For these reasons, ELOG noted a mixed bag of hits and misses as stakeholders and duty bearers prepared for the 2022 elections.

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CHAPTER FOUR:
Election Day Observation and Findings

4.1 Introduction
4.2 Deployment and Observation Findings
4.3 ELOG PVT Projections
4.4 Voter Turnout
4.5 Critical Incidents Observed on Elections Day on 9th August 2022

ELECTION DAY OBSERVATION AND FINDINGS

4.1 INTRODUCTION

This chapter discusses the findings and analysis of the 9th August 2022 general elections. These include the findings and analysis of the elections that were deferred and subsequently held on the 29th August. These findings and analysis are based on the information and data that ELOG collected using different strategies and methodologies as will be explained below.

ELOG deployed both Parallel Vote Tabulation and General Observation observers to sample polling stations across the country. As discussed in the previous chapter, ELOG's buttressed the E-Day observation with long term observers as well electoral violence monitors deployed to collect relevant data in the pre-election period. ELOG also relied on the Elections Situation Room for additional verifiable data on election related incidences.

ELOG collected a variety of evidence-based elections related data, which were rigorously verified and analyzed to not only give a holistic national and global picture of the elections but also evaluate the quality of the elections as well as making accurate projections of the official results.

During the elections, ELOG systematically issued press statements that reported findings related to various stages of the voting, closing, counting and declaration of final elections results. These press statements are annexed to this report.

This chapter concludes with ELOG's overall evaluation, opinion and conclusion drawn from the findings and analysis of the entire August 2022 general elections.

4.2 DEPLOYMENT AND OBSERVATION FINDINGS

ELOG's deployment for the 2022 general elections entailed the deployment of 1,000 highly trained Parallel Vote Tabulation (PVT) observers to a nationally representative random sample of 1,000 polling stations. In addition, ELOG deployed 3,044 General Observers distributed in sampled polling stations in all 1450 electoral wards to ensure a wider spread across the country so as to collect data and information from all the 290 constituencies.

ELOG deployed another layer of 580 Constituency Supervisors to all the 290 constituencies to support the deployed PVT and General Observers. The Constituency Supervisors coordinated activities and operated as roving observers in their respective constituencies. Another team of 290 Constituency Tallying Observers was also deployed across the country to observe the tallying and declaration of election results at the tallying centers, and to collect and confirm election results forms.

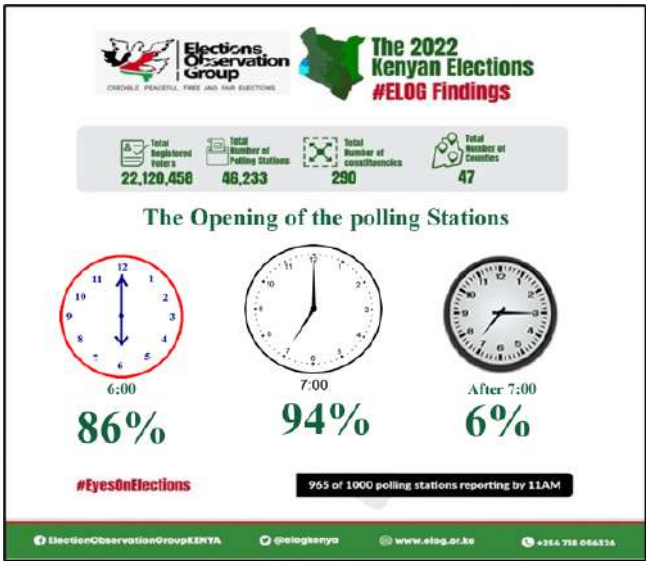
ELOG's observation strategy on E-Day entailed collection of coded data via SMS and standardized checklists from the deployed observers who were stationed at polling stations and across the constituencies to observe throughout the day. Critical incident reports were also sent by the PVT and General Observers as well as the deployed roving observers. The data and information received from the observers were complemented by data and information that came through

the Elections Situation Room, which ELOG and partner civil society organizations had set up.

Both the PVT and General Observers efficiency levels for field data and information collection stood at 99.7% and 89% respectively, thus giving ELOG's overall observation very high confidence rates.

ELOG's methodologies and strategies complemented each other and provided data and information that played a corroborative role. ELOG was thus able to efficiently collect data and information on E- Day processes and results.

4.2.1 SET-UP, OPENING AND MANAGEMENT OF POLLING STATIONS



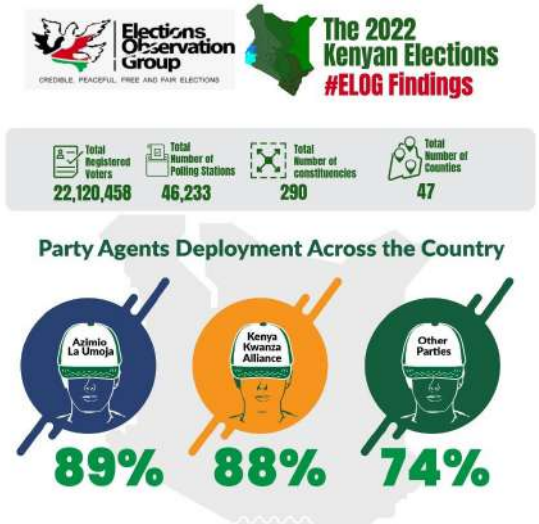
Polling time is provided for under Clause 66 of the Elections (General) Regulations, 2012, which stipulates that voting should commence at 6:00 am and end at 5:00 pm of the polling day. Therefore, guided by this requirement, ELOG established that the set-up and opening of polling stations across the country largely adhered to requirements and procedures. Polling stations opened on time with 86% of them opening by 6:30 am across the country. By 7:00 am, 94% of the polling stations had opened while 6% of the polling stations opened past 7:00 am. In 99.6% of the polling stations observed, the ballot boxes were shown to be empty before being sealed as required under Clause 67 of the Elections (General Regulations, 2012.

In accordance with Clause 61 of the Elections (General Regulations), which requires polling stations to have requisite election materials, ELOG established that 99.6% of the polling stations had the Kenya Integrated Elections Management System (KIEMS) kits. In most of the polling stations, 99.3%, the requisite strategic materials (ballot boxes, ballot papers, IEBC stamp, indelible ink, and the Results Form 34A) were present during the voting and counting.

ELOG observed that accessibility of polling stations was a challenge that affected people living with disabilities (PWDs). In this regard, ELOG noted mobility challenges in 18.4% of polling stations that were not located on the ground floor of buildings that were used during the polling, yet these buildings did not have ramps or other alternative friendly facilities for people living with disabilities.

ELOG was concerned that in some polling stations, voters who had challenges on account of disabilities were compelled to go up the stairs to access the polling stations. ELOG established that this state of affairs did not promote the requirements under Articles 27, 38 and 54 of the Constitution 2010 related to the participation of PWDs in elections.

Section 30 of the Elections Act No. 24, 2011



and Clause 61 of the Elections (General) Regulations, 2012 provides for the appointment of agents and their admission into polling stations respectively. Therefore, in line with these provisions, ELOG observed that in 88.8% of the polling stations, a presidential party agent for Azimio la Umoja- One Kenya Alliance was present. Additionally, in 88.3% of the polling stations, there was a presidential party agent for United Democratic Alliance (UDA)/Kenya Kwanza present, while in 73.5% of the polling stations, there was a party agent representing another presidential candidate other than Azimio la Umoja/One Kenya Alliance or UDA/ Kenya Kwanza.

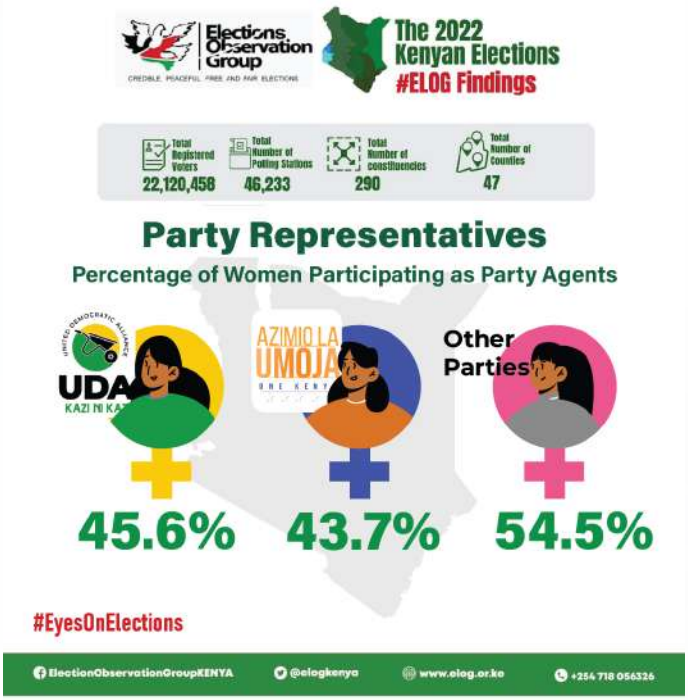
In 99.6% of the polling stations, there was a uniformed police officer present, with 36.5% of the officers deployed in the stations sampled being females.

4.2.2 COMPLIANCE WITH COVID-19 MITIGATION MEASURES

The August 2022 elections were held in the context of the COVID-19 pandemic. As such, the applicable World Health Organization and Kenya Ministry of Health COVID-19 prevention and safety protocols and measures required to be adhered to. The IEBC made commitments to comply with and adhere to these protocols and measures in the conduct and management of the August 2022 elections.

ELOG's findings, in this regard, established that in 59.9% of the polling stations, polling officials were observed to have had COVID-19 protective measures, including face masks and sanitizers. However, only 35.7% of the polling stations had hand washing or sanitizing facilities. Social distancing (1.5 meters) was maintained between all persons in 37.8% of polling stations. Only 7.7% of the polling stations had thermal scanners for taking temperatures at polling stations. However, out of these polling stations, only 5.6% made use of the scanners to take the temperature of all persons entering the polling stations.

4.2.3 PARTICIPATION OF WOMEN IN THE ELECTORAL PROCESS



ELOG established that on average there were a total of 8 IEBC polling officials at the polling stations. Out of these, the number of women officials was average. In 38.1% of the polling stations, the Presiding Officer was a woman while 36.5% of the polling stations had a female security officer.

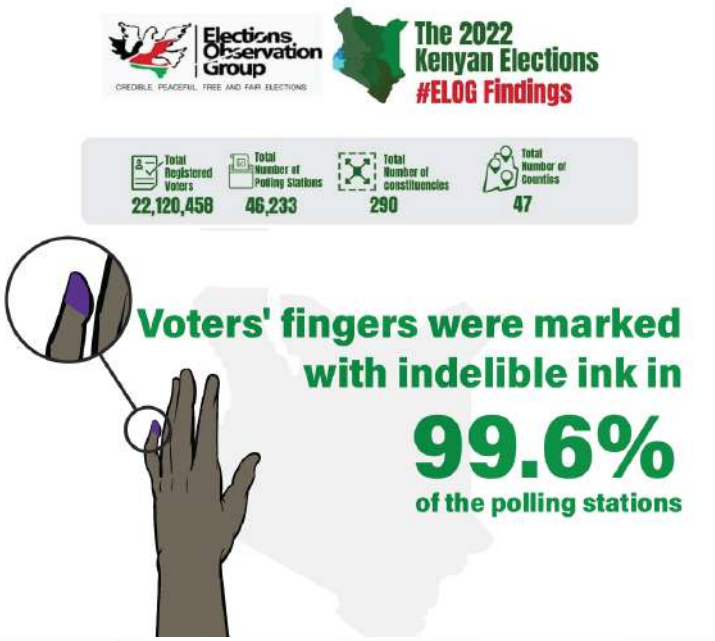
43.7% of party representatives for Azimio la Umoja-One Kenya Alliance party were women, while 45.6% of party representatives for the United Democratic (UDA)/Kenya Kwanza Alliance were women. Other political parties were also represented by women, with the female representation standing at 54.5% for these other political parties. This shows that women participation in these positions was above the required 2/3rds gender threshold.

4.2.4 OBSERVATION OF THE VOTING PROCESS

The procedures for voting are prescribed under Clause 69 of the Elections (General)

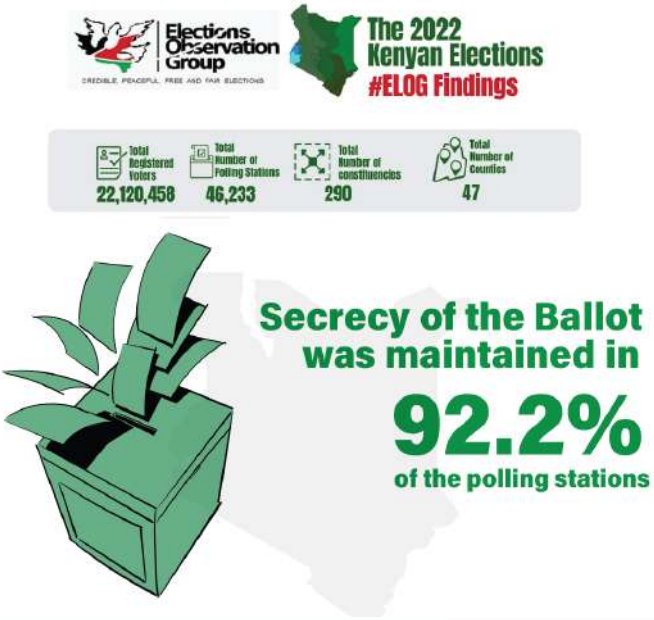
Regulations and for purposes of the 2022 elections, they involved identification of the voters, issuance of 6 stamped ballot papers for each position in the elections, marking of the ballot papers, deposition of the marked ballots in the respective ballot boxes, ending with marking of the voter finger with indelible ink as prescribed by the Commission.

In 99.4% of the polling stations, polling



officials verified voters biometrically or by name through the KIEMs kit before voting.

In 97.1% of the polling stations, every potential voter's finger was checked for indelible ink prior to voting. Ballot papers were stamped with the IEBC official stamp before being issued in 99.6% of the polling stations, with voters in a similar number of stations (99.6%), having their fingers marked with indelible ink after voting. 79.7% of the polling stations had a physical register of voters, helping to address challenges in voter identification that arose in 6.1% of the stations where the Kenya Integrated Elections Management System (KIEMS) kits malfunctioned at some point during the Election Day. This was compatible with the requirements under Section 44 and 44A of Elections Act No.24 of 2011 that provide for use of technology (electronic voter identification) in elections and complementary mechanisms for



identification of voters, respectively.

This failure rate of the KIEMS was an improvement as compared to the 2017 elections where the KIEMS kits failed in 7.6% of the polling stations. Secrecy of the ballot was maintained in 92.2% of the polling stations, thus substantially complying with Article 38 of the Constitution 2010 and Clause 59 of the Elections (General) Regulations, 2012.

Assisted Voting is provided for under Clause 72 of the Elections (General) Regulations, 2012 and pursuant to that, ELOG observed that in 25% of the polling stations, many people (i.e., more than 25 per polling station) were assisted to vote. A majority of those assisted to vote were women.

Persons with disabilities (PWDs), pregnant women, the sick, nursing mothers and the elderly were allowed priority voting in 99.4% of the polling stations.

In 10% of the polling stations, where ELOG's deployed observers, it was noted that some people (1 to 25 people) or were not permitted to vote. Many of these cases were attributed to three reasons, namely; the voters going to the wrong polling station, the voters not verified in the KIEMS, or the voters not carrying the identification documents used at registration.

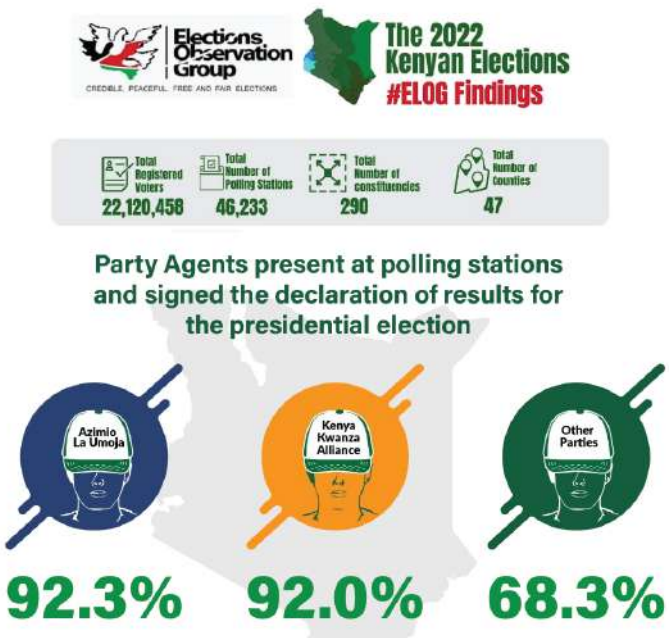
There were still queues at 5:00 pm in 76.8% of the polling stations. Of those stations with a queue at 5:00 pm voters were properly permitted to vote in 96.6% of the polling stations.

4.2.5 CLOSING AND COUNTING PROCESS

Clause 66 of the Elections (General) Regulations prescribes the time for closing of polls as 5:00 pm.

In line with this, ELOG observed that 24% of the polling stations where ELOG had observers closed by 5:00 pm; 57% of the polling stations closed between 5:00 pm and 6:00 pm while 12% of the polling stations closed between 6:00 pm and 7:00 pm. Another 4% of the polling stations closed between 7:00 pm and 8:00 pm while 4% of the polling stations closed after 8:00pm, including a few polling stations that closed past midnight.

Closing Time	Percentage of the Polling Stations
5:00 pm	24%
Between 5:00 pm and 6:00 pm	57%
Between 6:00 pm and 7:00 pm	12%
Between 7:00 pm and 8:00 pm	4%
After 8:00 pm	4%



Procedures for closing the poll are provided under Clause 73 of the Elections (General) Regulations, which ELOG noted that polling stations generally complied with.

ELOG's findings indicated that in 99% of the polling stations, the ballot box seals were intact before counting began. ELOG also noted that Clause 74 of the Elections (General) Regulations, 2012 that permits the presence of agents during closing and counting processes were adhered to across the board. ELOG noted that during the closing and counting process, Azimio la Umoja-One Kenya Alliance was represented by an agent in 93.2% of the polling stations, and in the stations where they were present, the Azimio la Umoja- One Kenya Alliance agents signed the declaration of results forms for the presidential elections. The United Democratic (UDA)/Kenya Kwanza Alliance was represented by a party agent in 92.0% of all the polling stations. In the stations where they were present, the UDA/Kenya Kwanza agent signed the declaration of results forms for the presidential elections. Agents for other parties other than Azimio la Umoja-One Kenya Alliance or UDA/ Kenya Kwanza Alliance were present in

68.3% of all the polling stations. In the polling stations where they were present, the agents signed the declaration of results forms for the presidential election.

As prescribed under Clause 80 of the Elections (General) Regulations, 2012, requests for recount were allowed and accordingly, ELOG observed that in 1% of the polling stations, one or more political party agents requested a recount of the presidential ballots. In compliance with Clause 79 of the Elections (General) Regulations, 2012, ELOG noted that in 94.8% of the polling stations, a copy of the Presidential Results Form (Form 34A) was publicly affixed outside the polling stations as required by law. This was an improvement of the 2017 elections where it had been done in 86.5% of the polling stations.

4.2.6 ANNOUNCEMENT AND DECLARATION OF RESULTS

On 15th August 2022, the IEBC chairperson, acting as the National Returning Officer for the presidential election, announced and declared the official presidential election results for the 2022 general elections in compliance with Article 138 (1) (c) of the Constitution of Kenya 2010.

The results were initially scheduled to be announced at 3:00 pm on 15th August 2022, with all the presidential candidates being invited to attend the event. However, the announcement was delayed because of an apparent split and fallout amongst the commissioners regarding the final verification and tallying of the presidential election results.

Four (4) Commissioners, led by the vice chair, Juliana Cherera differed with the Chairman Wafula Chebukati and two others commissioners on the final results and consequently staged a walk-out. They then held a separate press conference at a different location (Serena Hotel) and stated that they could not take ownership of the results claiming that the process followed by the chairperson to arrive at the final results was **"opaque".**

The presidential election results were ultimately announced and declared at 6:00 pm by the IEBC chairman, Wafula Chebukati. With the exception of Raila Odinga, all other presidential candidates attended. Before the results were announced and declared, chaos and violence erupted at the Bomas of Kenya auditorium just as the IEBC chairman and the two commissioners made their way to the auditorium. The security personnel restored calm enabling the IEBC chairman to make the announcement which declared William Ruto as the president-elect.

The official presidential election results by candidate in descending order and the percentages as sourced from the IEBC are shown below:

1: IEBC official Results.

Presidential Candidate	Running Mate	Political Party	Votes	Percentage
Ruto, *William* Samoei	Rigathi Gachagua	United Democratic Alliance/Kenya Kwanza Alliance	7,176,141	50.49
Odinga, Raila Amolo	Martha Karua	Azimio la Umoja, One Kenya Alliance	6,942,930	48.85
Wajackoyah, George Luchiri	Justina Wamae	Roots Party Kenya	61,969	0.44
Waihiga, David Mwaure	Ruth Mutua	Agano Party	31,987	0.23
TOTAL			**14,213,027**	**100.00**
VALID VOTES CAST			**14,213,027**	**99.21**
REJECTED/INVALID VOTES			**113,614**	**0.79**
TOTAL VOTES			**14,326,641**	**100.00**

On 16th August 2022, the four (4) commissioners issued an elaborate statement on the division within the Commission and claimed that results were excluded in the final processing and analysis of the results by the chairperson. They further claimed that the chairperson had exceeded his constitutional and statutory mandate, failed to provide the total number of registered voters, or rejected votes and proceeded to announce and declare the results prematurely without considering the votes from some counties. On his part, the IEBC chairperson defended his mandate and accused the renegade commissioners of attempting to force a re-run of the presidential election.

The final presidential results announced and declared by the IEBC chairperson were rejected by Raila Odinga and his Azimio la Umoja-One Kenya Alliance. Raila Odinga announced that he would pursue legal means of challenging the results. On 22nd August 2022, Raila Odinga filed a petition at the Supreme Court to challenge the presidential election outcome. A number of other petitions were also filed by other parties who felt aggrieved. The elections petitions were consolidated and heard by the Supreme Court and on 5th September 2022, Supreme Court in a unanimous decision dismissed the petitions and upheld William Ruto's victory.

4.3 ELOG PVT PROJECTIONS

In a preliminary statement that was released on 16th August 2022 after the official announcement and declaration of the presidential election results by the IEBC, ELOG clarified that the IEBC was the body that was constitutionally mandated to announce and declare the final and official elections results. ELOG's PVT presidential results projections, therefore played a complementary role of verifying the final and official results as announced and declared by the IEBC.

ELOG received, verified, and analyzed observation reports and data from 99% of its PVT observers deployed in 990 polling stations out of the overall sample of 1,000 polling stations. The PVT observers arrived at their sampled polling stations at 5:30 am and remained there throughout the voting and counting until the results of the presidential election for the polling stations were announced and posted. The PVT observers reported the official results as announced by the Presiding Officers for the sampled polling stations via coded text messages using their mobile phones.

Because PVT findings and estimates rely on scientific statistics, they have a margin of error, which can be thought of as a range within which the true, final, and official results should fall. The PVT margin of error is not a measure of quality but rather how precise the estimate is. Accordingly, ELOG's PVT estimates were consistent with the official results declared by the IEBC for the presidential election. Following in view of ELOG's assessment of the E-Day processes and given that IEBC figures fell within the projected ranges, the PVT projections of estimates, therefore, corroborated the official results.

The ranges projected by ELOG PVT for each of the presidential candidates as compared with the official IEBC presidential election results, are reflected in the table below.

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

2: ELOG PVT Projections for 2022 General elections Results

4.4 VOTER TURNOUT

The 2022 general elections recorded a much lower voter turnout than the two previous elections (2013 & 2017). By midday on Election Day, some 6,567,859 voters, constituting 30% of registered voters had cast their ballots. An hour before the closure of polling at 5:00 pm, the IEBC announced a voter turnout of 12,065,803 voters, constituting 56.17% of the registered voters. However, on 10th August 2022, IEBC announced that 14 million voters, who were identified electronically using the KIEMS kits, had voted, thus bringing the total voter turnout percentage to 65.4%. However, the IEBC later revised this figure to 64.8% based on what it termed as an error.

The shifting voter turnout percentages created public confusion and became a key issue of contention at the Supreme Court during the hearing of the petitions that contested the official presidential election results and declaration of Ruto, William Samoei as the president elect. The petitioners claimed at the Supreme Court that the voter turnout figures were like shifting goal posts, which the IEBC had manipulated for purposes of ensuring that the president elect had met the 50%+1 votes threshold as required by the Constitution 2010.

The ELOG PVT projection for final voter turnout was 65.1% with a margin of error of +/- 0.7%. While the shift in voter turnout led to public confusion, it did not indicate any manipulation as both figures announced by the IEBC fell within the margin of error of the ELOG PVT estimates.

VOTER TURNOUT IN KENYAN ELECTIONS SINCE 2002

Year	2002	2007	2013	2017 - A	2017 - B	2022
Turnout	56.08%	69.08%	85.91%	79.51%	38.84%	64.77

3: Official Voter Turnout percentages since 2002 elections by IEBC

4.4.1 REJECTED VOTES

The PVT projection for the final rejected ballots was 0.8% with a margin of error of +/- 0.1% while the official results announced and declared by the IEBC, the rejected votes were 113,614, constituting 0.79%. Therefore, the PVT projection corroborated the IEBC official figure of rejected votes.

4.5 CRITICAL INCIDENTS OBSERVED ON ELECTIONS DAY ON 9TH AUGUST 2022

A number of critical incidents were recorded during the elections. Through the incidence reporting framework observers reported on critical issues that affected the electoral process. In sum, ELOG observers recorded critical incidents from different parts of the country. These were also corroborated through the CSO Election Situation Room (ESR) that had been set-up in collaboration with other CSOs.

Some examples of reported critical incidents are recorded below.

4.5.1 OBSERVERS NOT PERMITTED TO OBSERVE

During the opening of polls, some ELOG observers were denied access to polling stations by Presiding officers who demanded oaths of secrecy for observers and stamped IEBC letters. This is contrary to the IEBC election guidelines and requirements for observers.

ELOG worked closely with IEBC officials both at headquarters and in the constituencies to speedily resolve the issues and ensure observers gained access to the polling stations. ELOG notes that this same confusion in credentials required by different presiding officers to facilitate observers into polling stations has been a recurring problem since the 2013 elections.

4.5.2 POLLING STATIONS OPENING LATE OR VOTING SUSPENDED

ELOG observers reported incidents, where polling stations did not open on time for voting or were suspended for some time during the initial voting. The challenges included malfunctioning or unavailability of the KIEMS kits e.g., Marycliff Primary School in Mvita Constituency, Luthie Primary School in Tigania East Constituency, Muslim Primary School in Kanduyi Constituency.

4.5.3 MISSING OR WRONG STRATEGIC MATERIALS

There were reported incidents of missing or wrong materials in Rongai Constituency (Nakuru County) where the ballot papers for the Member of National Assembly position were missing. This led to the postponement of the election for this position. In Nyaki West Ward - North Imenti an Independent Member of County Assembly was not on the ballot. In Yala Primary School in Karachuonyo Constituency (Homabay County), the wrong materials for the MP seat were received. This was resolved in about one hour.

The IEBC also postponed the elections

of Member of National Assembly for Eldas Constituency in Kacheliba, Kitui Rural Constituency in Kitui County, and Pokot South Constituency in West Pokot County. This brought the total number of constituencies affected to four, including the already mentioned Rongai Constituency in Nakuru County. The elections of Member of County Assembly in Nyaki West Ward in North Imenti Constituency of Meru County and Kwa Njenga in Embakasi South Constituency in Nairobi County. The IEBC postponed the above elections on account of what it described as technicalities, continued harassment of the IEBC staff, and insecurity.

The IEBC also postponed gubernatorial elections in Mombasa and Kakamega Counties over technicalities involving printing errors on ballot papers. According to the IEBC, the Kakamega County gubernatorial election ballots had wrong candidates' pictures and details printed on them while for Mombasa, the ballots had wrong candidates' pictures printed on them.

4.5.4 VIOLENCE AT POLLING STATIONS

In Obware Primary School in Nyatike Constituency, a party agent attacked a polling official whom he claimed was partisan. At Chongoi Primary School (Sirisia Constituency), there was violence at the polling station after an MCA candidate who was in the company of his supporters was confronted by supporters of another MCA. Police officers at the station brought the situation under control.

4.5.5 HARASSMENT AND INTIMIDATION

At Voi Primary School (Voi Constituency), a party agent harassed the presiding officer for refusing to allow the agent access to the polling station. After a short confrontation, the agent was allowed into the station to monitor. At Obware Primary school (Nyatike Constituency), a party agent confronted the presiding officer claiming that the presiding officer was partisan. At Tongaren DEB Primary School (Tongaren Constituency) there was a harassment incident where some party supporters were involved in a non-violent altercation with a group of women heading to the polling station to vote.

4.5.6 ONE PERSON(S) ASSISTING MANY TO VOTE

At Indoli Primary School (Matayos Constituency), Keringet Secondary School (Kuresoi South Constituency) and Ngei PAG (Mathare Constituency), there were incidents where party agents assisted multiple people to vote against the electoral regulations.

4.5.7 USE OF THE PHYSICAL VOTERS' REGISTER

At Kimboo Primary School (Kibwezi West Constituency), the KIEMS kit failed to function, and the presiding officer resorted to using the manual voter register for voter identification.

4.5.8 THE DEFERRED ELECTIONS

On 8th August 2022, IEBC indefinitely postponed the gubernatorial elections in Kakamega and Mombasa Counties on technical reasons (as mentioned above) that the IEBC claimed were only detected on the eve of the 8th August 2022 general elections.

The IEBC also indefinitely postponed elections for the position of Member of National Assembly for Kitui Rural Constituency in Kitui County, Eldas Constituency in Kacheliba, Pokot South Constituency in West Pokot County and Rongai Constituency in Nakuru County. Elections for the position of Member of County Assembly Ward in Nyaki West in North Imenti Constituency of Meru County and Kwa Njenga in Embakasi South

Constituency in Nairobi County.

On 17th August 2022, the IEBC chairperson, in a press statement, reiterated the postponement of the above elections and communicated that the deferred elections would take place on 23rd August 2022. The IEBC chairperson also disclosed that the printer who was responsible for printing the ballot papers had owned up to the errors and had agreed to reprint the ballot papers at no additional cost.
However, on 22nd August 2022 after a meeting with the candidates involved in the deferred elections, the IEBC and the candidates reached a consensus to hold them on 29th August 2022. The IEBC allowed the candidates a further four days of campaigns, which had to cease 48 hours to the elections date on 29th August 2022.

The deferred elections were ipso facto an extension of the 8th August 2022 general elections. In order to holistically observe these elections, ELOG deployed a core team of observers to coordinate the observation mission. This included deployment of a roving team of expert observers and tallying center observers.

ELOG deployed observers in Kakamega and Mombasa Counties and in Rongai, Kacheliba, and Pokot South Constituencies during the by-elections held on 29th August 2022. However, ELOG did not deploy observers in Kitui Rural Constituency, Nyaki Ward and Kwa Njenga Wards. This was informed by the fact that the by-elections in Kitui Rural and the two wards were not as competitive as the other by elections that were observed. Furthermore, the elections ELOG observed pitted strong candidates from the UDA/Kenya Kwanza Alliance and Azimio la Umoja-One Kenya Alliance, and were considered an extension of the political contest between the leading presidential candidates, William Ruto and Raila Odinga.

As is the case with all elections, the key elements of E-Day processes observed included the following: setup and opening of the polling stations, voting process, closing, and counting of votes and tallying and announcement of results. For the roving observers, they were required to consolidate their data on each station visited before proceeding to the next within their assigned constituencies. The method allowed observers to record events as observed or as briefed by the polling officials, party agents and the voters. A total 450 polling stations were visited and observed by the roving observers across all 21 constituencies ELOG deployed observers (each team observed in approximately 20 polling stations on by-elections day).

Of importance to ELOG was the fact that the data gathered had an element of swift verification since the roving observers had an advantage of on-the-spot-verification of any report, from either the IEBC officials, or security agents on the ground hence giving them an upper hand in comparison to the stationed observers who only observe and record. ELOG ensured that its data collection tools were developed in an evidence-based approach to capture information. Similarly, ELOG mounted a presence at the tallying centers so as to enable it to speak to the credibility of the tallying process and announcement of results.

4.5.9 CONCLUSION

Based on the above observation findings, ELOG's assessment of the 9th August General elections which includes the delayed elections held on the 29th of the same month indicates significant improvements towards the management of E-Day and related activities that culminated in the declaration of the electoral outcomes by the IEBC. In particular, ELOG noted significant improvements in the set-up, opening and closing of polling stations, enhanced efficiency in the management of KIEMS kits (failure rate dropped from 7.6% in 2017 to 6.1%) and the general improved transparency of the transmission of results.

The improvements in the results transmission system were largely borne

out of the challenges experienced in 2017, which eventually led to the nullification of the presidential election results. It was also partly attributable to the simulation exercises that ELOG had observed before the elections and in which the performance by the IEBC raised many concerns. It was remarkable that the IEBC was able to transmit more than 95% of the Forms 34A from the polling stations by the end of the 2nd day after the close of polling and counting.

However, a number of retrogressive elements were also observed in the elections. First for the first time in three electoral cycles, the voter turnout dropped to below 70%, further corroborating the growing voter apathy initially indicated during the voter registration process. ELOG also noted increased fake news and mis/disinformation during the elections especially on the results management process and the postponement of several elections due to inconsistencies in some of the strategic materials. There were many incidents that were reported on election related violence, voter bribery and the non-admission of observers. However, ELOG did not record any serious, systematic, or planned aberrations that could have impinged upon the integrity and credibility of the E-Day processes to the extent of undermining the outcomes.

Three incidents around the transmission, tabulation, and verification of results, however, stand out for mention. First, despite the reported success of the transmission of results, which was done using a public portal by the IEBC and which the media and Kenyans were using to follow proceedings, the action by the media to stop the broadcast as well as the lack of the final results updates from the IEBC plunged the country into darkness and created unnecessary tensions and anxiety that had been mitigated by the earlier transparency.

Secondly, the altercations and chaos that were witnessed at the National Tallying Centre at Bomas that eventually crystallized into two IEBC factions, one led by the chairperson who declared the final results, and the other led by the vice chairperson who disputed the same was unprecedented in Kenya's electoral history. Had it not been for the surprising public restraint and interventions by individuals including religious leaders and security officials, these actions could have plunged the country into chaos and violence.

Finally, regarding the petition process that followed the disputed presidential outcomes, all parties rode on the confidence that had been established by the bold decisions of the Supreme Court in previous disputes in 2013 and 2017 to submit their case to the Supreme Court for adjudication. The Supreme Court of Kenya, while appreciating the limited timelines (14 days) within which the petitions needed to be determined, embraced a generous approach to allow for some late submissions and for inclusion of more parties to the hearing process.

While the entire Supreme Court petitions hearing process went on professionally and smoothly without any incident leading to a unanimous decision by the Court, it was the perceived 'strong' language used by the bench in its judgement that seemed to have raised many eyebrows. Despite this, all parties, including those who did not agree with the decision, agreed to respect, and abide by it.

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CHAPTER FIVE:
Conclusion and Recommendations

4.1 Introduction
4.2 Deployment and Observation Findings
4.3 ELOG PVT Projections
4.4 Voter Turnout
4.5 Critical Incidents Observed on Elections Day on 9th August 2022

CONCLUSION AND RECOMMENDATIONS

ELOG observed some remarkable progress and elements in the 2022 electoral processes that included use and application of technology especially in the transmission of results and the open and accessible results portal that enabled stakeholders and the public to access and interact with the elections results. ELOG also commends the Judiciary for its critical and positive role as a neutral and trusted arbiter in the political and electoral arena that provided significant guiding jurisprudence towards the 2022 electoral processes. However, there are still many areas and elements of the electoral processes that remain retrogressive.

As usual with Kenya's elections, the operating environment was very challenging, tense, and volatile, and characterized by heightened anxiety. The political and electoral contest remained a high stakes affair that stakeholders, duty bearers and citizens weathered with a remarkable degree of maturity and resilience. Kenyans and the security agencies deserve to be commended for conducting themselves well during the entire electioneering period and holding elections that were largely peaceful with no pattern of serious and systematic violence that had become a hallmark of Kenya's previous elections in 2007, 2013 and 2017. ELOG lauds Kenyans for maintaining tolerance and exercising restraint especially during the sensitive moment of announcement of presidential election results and for making the 2022 elections a worthy democratic exercise.

Coming from an observation history since 2010 to date, ELOG makes the following recommendations in the backdrop of its observation findings and evaluations.

MATRIX - HIGHLIGHTS OF PREVIOUS RECOMMENDATIONS

Data Clerks at the ELOG Parallel Vote Tabulation (PVT) data centre

2010 Recommendations Focus Themes	2013 Recommendations Focus Themes	2017 Recommendations Focus Themes	What has been implemented since 2010	What keeps Recurring in every election
• Inadequate voter education • Campaign period regulation • Speedy electoral reforms • Cleaning the voter register • Use of technology in electoral processes • Relationship between the commissioners and the secretariat • Use of state resources • Campaign and political financing laws • Hate speech • Reduction of rejected votes • Inclusion of SIGs • Two-thirds gender rule • Facilitation of observers	• Speedy electoral reforms • Stakeholder engagement in post-election audit • Campaign and political financing laws • Two-thirds gender rule and affirmative action legislation • Adaptation and use of election technologies • Openness and transparency in election management • Transparency in voter registration • Issue based politics • Regulation of political party nominations • Provision of voter education • Election security • Inclusion of PWDs • Support to observer • Validity and invalidity if the presidential elections	• Independent review of the electoral process • Enhance use of electronic system • Speedy electoral reforms • Campaign and political financing laws • Address forum shopping in EDR processes • Clear electoral calendar • Reduce cost of elections • Regulate campaigns • Party financing • Robust stakeholder engagement • Voter education • Integrity of the voter register • Inclusion of PWDS • Two-thirds gender rule • Leadership of the IEBC • Electoral justice • Secure elections • Credible party processes • Code of conduct for media • Sustained vigilance by CSOs • Electoral offences and Code of conduct • Building trust in electoral processes • Respect for independent institutions • National dialogue on elections	• Stakeholder engagement EMB – CSO forum, Youth Forum, ETAC • National dialogue on elections – BBI, DRG • Improved party processes – New law • Code of conduct for media – Code developed/MOU with EMB • Sustained vigilance by CSOs - ECA • Clear electoral calendar – IEBC operations plan and SP • Openness and transparency of the elections – progress • Regulation of political party primaries – progress	• Inadequate voter education • Campaign period regulation • Speedy electoral reforms • Integrity of the voter register • Use of technology in electoral processes • Corporate governance of the EMB • Campaign and political financing • Two-thirds gender rule and inclusion of women and PWDs • Facilitation of observers

The highlights reveal that the following have been implemented to some degree:

- Stakeholder engagement EMB – IEBC has improved engagement through establishment of CSO forum, Youth Forum, ETAC etc. but challenges related to consistency, regularity and structuring of the engagements still exist.

- National dialogue on elections – Progress has been driven mainly by CSOs, FBOs and political parties to convene and drive platforms and initiatives that focus on national dialogue on elections. IEBC has been invited to participate in some of these.

- Improved party processes – Progressive developments have come through the enactment of the amendments to the Political Parties Act to improve party processes BUT there are still some challenges related to inter and intra party internal democracy and governance especially issues on inclusion of SIGs.

- Code of conduct for media – Media Council of Kenya has provided positive leadership on this and has engaged other critical actors such as the EMBs through MoUs.

- Sustained vigilance by CSOs – CSOs and FBOs have positively engaged in electoral processes individually and collectively through permanent and ad hoc platforms.

- Clear electoral calendar – IEBC has endeavored to develop and implement strategic plans and elections operations plans even though IEBC has never engaged stakeholders in the development of these.

- Openness and transparency of the elections – IEBC has progressively improved on this but there are still challenges especially on procurement, technology and open data.

- Regulation of political party primaries – some good practices are emerging even though there are still incidents of violence, failure to vet candidates on leadership and integrity thresholds and challenges arising from direct and negotiated methods of nominations.

However, ELOG notes with concern that the following have remained recurrent features of every election cycle:

- Inadequate voter education
- Campaign period regulation
- Speedy electoral reforms
- Integrity of the voter register
- Use of technology in electoral processes
- Corporate governance of the EMB
- Campaign and political financing
- Two-thirds gender rule and inclusion of women and PWDs
- Facilitation of observers

While being mindful of and reiterating previous recommendations and while emphasizing the elements that keep recurring, ELOG notes that in the 2022 elections, there were still institutional, legal, policy, administrative and technical issues, and concerns that duty bearers and stakeholders as well citizens should address to strengthen and improve the political and electoral processes and ultimately promote constitutionalism, democracy, governance, human rights, and rule of law. Therefore, ELOG now makes the following recommendations, which will be useful towards that end.

5.1 INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

5.1.1

The one critical issue that surfaced during the 2022 elections is the unfortunate split and fall out amongst the IEBC commissioners that threatened to undermine the credibility and integrity of the final presidential election results. It clearly demonstrated that the IEBC was in dire need of a makeover. For this reason, ELOG concurs with the Supreme Court finding that the unfortunate and unprecedented fallout portrayed the IEBC as a dysfunctional entity with dysfunctional internal governance.

ELOG also reiterates and supports the recommendations given by the Supreme Court in their judgment in respect to corporate governance. ELOG reiterates the Supreme Court recommendation that there is an urgent need to clarify and demarcate the policy, strategy and oversight roles and functions of the chairperson and commissioners through legislative reforms. At the same time, there is need for clarity and delineation of the policy and administrative domains of the Commission through clear separation of the roles and responsibilities of the Commission from those of the Commission Secretary and Commission staff.

ELOG also observes that due to the continuous assault on the independence of the Commission, there is a need to revisit debate on the model of the Electoral Management Body (EMB) to embrace a more politically inclusive and representative structure.

5.1.2

ELOG urges the IEBC to move with speed to convene relevant stakeholders and subject matter experts to further explore these recommendations and the best methods of incorporating and operationalizing them. ELOG vouches for a broad-based participatory reflection and engagement forum with stakeholders and subject matter experts to reform and amend the relevant Electoral Laws and administrative guidelines to conform to the findings and verdict of the Supreme Court and to cure the unfortunate internal governance challenges that keep occurring at the IEBC. ELOG further proposes that the IEBC together with stakeholders and subject matter experts should reflect on and consider setting out legal and policy parameters, procedures and modalities to guide the management and public communication of dissenting views and opinions that could arise amongst the commissioners during critical decision-making such as the process of verifying and tallying and announcement of presidential election results. In effecting these recommendations, ELOG reminds the IEBC of the necessity of public participation.

5.1.3

Convene an independent post elections review and evaluation of the 2022 elections and other electoral processes including the role and performance of key duty bearers and right holders in the electoral processes. The review and evaluation should be comprehensive and should involve the participation of a broad-based spectrum of electoral actors and stakeholders. This will enable the IEBC to benefit from independent and objective review, evaluation, and audit beyond the internal post elections evaluation, which the IEBC has already conducted. The envisaged review, evaluation and audit should also benefit from the IEBC's own internal post elections evaluation. In this regard, ELOG recommends that the IEBC should make public the findings and recommendations made during its own internal post elections evaluation and share the full report with stakeholders.

5.1.4

ELOG urges the IEBC to be mindful of the Supreme Court decision of 2017 and the reasons that led to the nullification

of the 2017 presidential elections results to ensure that electoral legal reforms and amendments that were not enacted as required are quickly reviewed and introduced in Parliament for enactment at the earliest possible date. A further review of all electoral laws is also necessary to identify areas that would require improvement and strengthening.

ELOG recommends that the IEBC should move quickly to develop a strategy and framework for developing, managing, and implementing post- 2022 elections reforms for the next electoral cycle. ELOG vouches for a broad-based and open participatory and consultative process towards electoral legal reforms and amendments that involves all key stakeholders.

5.1.5

Specifically, ELOG remains particularly concerned about the delay and failure to implement the Election Campaign Financing Act and the constitutional two-thirds gender threshold in elective positions. ELOG urges the IEBC to quickly get back to the drawing table to review and address the challenges that continue to delay and frustrate the implementation of these critical laws.

5.1.6

Cost of elections and financial audit. The cost of elections in Kenya is one of the highest in the world and remains a concern in view of the vulnerability of the economy, the budgetary constraints and the competing development and public spending priority needs in the country. For the 2022 elections, the cost of elections in Kenya stands at Kshs.2,000 (USD.200) per vote, slightly lower than the Kshs. 2,500 (USD.250) per voter in 2017. This is by far beyond the internationally recommended benchmark of USD. 5 per voter. This cost is not sustainable in the long-term and furthermore, it undermines the value of democratic processes and institutions and consequently is a threat to democracy and good governance. ELOG believes that the staggering costs of elections could be reduced significantly through innovative approaches in procuring and using election materials, resources, and services. The IEBC should work towards identifying and reviewing high-cost drivers and take measures towards reducing and minimizing them to affordable levels and to avoid wastage. Staggering the elections could also help in reducing the high stakes and suspicion around elections, which could in turn reduce the costs associated with the costly security marks and protocols on the ballot papers.

The costly security details on the ballot papers could also be reduced if the IEBC invests in building trust and confidence amongst the public and political players. Enhanced trust and confidence in the IEBC and electoral processes could also support consensus building and political good will towards printing of ballot papers and other critical election materials locally in Kenya to reduce costs, after all, printing of the Kenyan currency is undertaken locally in Kenya.

ELOG also urges the IEBC to conduct a transparent and accountable post elections financial audit and make the report public to enable Kenyan taxpayers to come to terms with the spiraling cost of elections and assess value for money in the enterprise.

5.1.7

The IEBC should embark on collecting evidence-based data on the drivers and factors that breed public apathy and make citizens disinterested in and disillusioned with political and electoral processes. This will enable the IEBC to craft and implement tailor made responses and solutions that could improve and promote citizens' interest, engagement, and participation in these key democratic processes. The level of apathy, especially amongst the youth and women, that characterized voter registration drives and voter turnout in the 2022 elections was concerning and will require concerted action by the IEBC and other electoral actors and stakeholders to engage and improve. Of interest would

be the need to engage young people especially while they are still in basic learning institutions in order to build a culture that values democratic processes. This engagement should be a co-creation process involving the youth and should be properly structured to appeal to the interests of the youth, especially through creative and youth-friendly frameworks.

5.1.8

Improve on the provision and implementation of voter information and education throughout the election cycle. ELOG urges the IEBC to standardize voter information and voter education materials that can enable the IEBC and voter education providers to maintain consistency in implementation of voter education. Furthermore, the IEBC should facilitate and accredit more voter education providers and work with them through partnership and collaborative process to ensure that the country is mapped and fully covered, and all corners of the country reached with voter information and education. This will also reduce the high number of spoiled and invalid votes/ ballots that was experienced in the 2022 elections.

5.1.9

The IEBC should engage and work with stakeholders within and outside government to review, audit and improve the use and application of technology in elections, especially the KIEMS and elections results transmission system. Early deployment and frequent testing of technology through simulation exercises should be adopted to improve on effectiveness and efficiency and enhance uniformity and transparency of the technology.

As an independent body, IEBC needs to demonstrate that they have the technical capacity to manage and operationalize technology driven electoral processes. Where this capacity is sought from without, a transparent framework for the engagement of consultants must be in place to forestall vendor locking and ensure respect for the sovereignty of the Kenyan nation and voter.

Lastly, the question of trust must be addressed when it comes to technology. As directed by Article 86 of the Constitution of Kenya 2010, whatever system is used, it needs to adhere to the principles of simplicity, security, transparency and accountability. All election related technology must therefore be assessed for compliance with this requirement and in regular intervals to secure public confidence.

5.1.10

The IEBC to engage with stakeholders to consider and introduce mechanisms and procedures for special voting to accommodate the large number of election officials, security personnel and voters engaged on critical public duty and provision of essential public services on the polling day. Special voting could also be considered for pastoralists who move around with their cattle during the elections. Appropriate security measures should be put in place for special voting in advance of the Election Day to avoid multiple voting and to secure the ballots.

5.1.11

Improve stakeholder engagement and public relations and communications during the election cycle for inclusive and broad-based awareness and ownership of processes, actions and activities undertaken during the election cycle. Improved engagement, relations and communications will also promote stakeholder and public trust and confidence in the IEBC and the electoral processes.

5.1.12

The IEBC should review, improve, and strengthen the internal mechanisms and protocols for due diligence in procurement of election related services and election materials and equipment to ensure accuracy, verification, and accountability. Lack of due diligence and negligence that

led to late detection of defects in ballot papers and consequently postponement of some elections should not be repeated.

5.1.13
ELOG urges the IEBC to conduct the candidate registration and vetting rigorously and meticulously in every election and to consider the processes as winnowing opportunities that filter out individuals facing questions with respect to their integrity and qualification from contesting for office. ELOG also urges the IEBC to act as the gatekeepers in the electoral processes, in order to strictly lock out persons implicated in corruption scandals and abuse of office from contesting for public office as provided for in the Constitution of Kenya 2010 and the principles of governance provided under Article 10 including Chapter 6 of the Constitution on Leadership and Integrity.

5.1.14
Security and welfare of election officials during the elections are critical. The IEBC should work with stakeholders in and out of government to improve the security of election materials, security at polling stations and tallying centers and the security of election personnel. ELOG believes that the work of election officials should not expose them to political profiling or danger or lead to their death. The welfare of election officials including their emoluments should be improved to ensure that they are not tempted to engage in corrupt practices during elections. Improved security will also ensure that incidents such as the chaos and fighting that were experienced at the National Centre at the time of announcing presidential results do not recur.

5.1.15
Evaluate, review, and improve mechanisms and protocols at polling centers and polling stations to accommodate people with disabilities and the elderly and improve their accessibility to these places. Similarly, the IEBC should put in place protocols that can enable proper capturing of details and nature of disability of people living with disability, the elderly and special interest groups in the voters register and to accommodate them during elections for purposes of promoting inclusivity in electoral processes. This should also include availing of voting materials in Braille, special voting booths, responsive signage, and sign language interpreters.

5.1.16
Ensure that the recruitment and training of election officials is comprehensive, timely, standardized, and uniform and is based on internationally approved training curriculum, materials, and methodology such as BRIDGE. Instructions and operating procedures that are applicable on polling day should also be standardized and consistent and timely shared with all election officials.

5.1.17
Consider election monitors and observers as critical human rights defenders and civil society actors during the elections and facilitate them and their work to the fullest in line with the UN Declaration on Human Rights Defenders that was adopted by consensus through GA Resolution 53/144 of 9 March 1998. This should involve recognizing the importance and legitimacy of their work as well the need to better protect them. It should also entail timely accreditation, sharing of information and materials to aid them in their work and unlimited access to places where election related activities are being conducted. In this regard, clear standard operating procedures should be provided and conveyed to all election officials at polling and tallying centers to avoid confusion regarding the roles and functions of observers, accreditation, access requirements and protocols and identity as well as to ensure security of observers at polling stations.

5.1.18
ELOG believes that Kenyans living in the Diaspora play a very significant role in the Kenyan financial sector developments

through their high remittance and for that reason, Diaspora voting should be graduated from the current restricted voting for presidential candidates only. ELOG proposes the following graduated process. The first step should be to designate more Diaspora countries for voter registration and polling. Second, the IEBC, the government and stakeholders should consider putting in place additional legal and administrative mechanisms and parameters that could allow the Diaspora voters to vote for other candidates including the Governors, Senators, Members of National Assembly,

Woman Representatives and County Assembly Members. Finally, additional legal and administrative mechanisms and parameters should be put in place to create an additional Constituency for purposes of direct representation of the Diaspora in the National Assembly, to begin with and in accordance with the progressive spirit of the Kenya Constitution 2010.

5.2 POLITICAL PARTIES AND POLITICAL LEADERS

5.2.1
Improve and strengthen internal party governance and democracy to promote inclusivity and increase the participation of all members especially the special interest groups. Despite current court rulings, political parties need to develop firm affirmative action policies within the constitutional framework to support the participation of special interest groups such as women and PWDs.

5.2.2
Review internal constitutions and rules especially the elections and nomination rules to promote good governance and transparent and accountable internal party processes including elections of party officials and nomination of candidates for elective positions. This includes keeping and using bonafide members registers for critical decision making activities such as party nominations.

5.2.3
Work with stakeholders including elected Members of Parliament to support progress towards operationalization of the Campaign Financing Act and the two-thirds gender rule. Ensure compliance with the two-thirds gender rule in all party elective positions, in the nomination of candidates for elective positions and in all administrative and leadership organs of the parties.

5.2.4
Improve on the conduct and management of party nominations by improving on their transparency, inclusivity and accountability and subjecting them to independent observation and evaluation. Invest in further scrutiny and evaluation of direct nomination methods such as negotiation and consensus to fully comprehend their impact on internal party democracy before implementing them in the next election cycle.

5.2.5
Improve and strengthen the internal dispute resolution mechanisms to promote timely and fair adjudication of internal party disputes especially those arising from party nominations. This should involve adequate training of party election boards and improving the dispute resolution rules.

5.2.6
Engage with stakeholders to find ways of reducing the cost of elections and the cost of getting elected which keep rising at alarming rates with every election. Political actors should make efforts to reduce or remove the allure of money in politics by demystifying and dis-incentivizing elective positions, changing institutional

incentives to make elective positions less lucrative, discouraging and shunning big political spenders, putting reasonable limits on political and campaign financing, and exposing, shaming, and punishing corrupt practices and patronage in parties and during the elections.

5.2.7
Political actors should also consider embracing change in social norms and political behavior aimed at disrupting and breaking down the marketplace for vote trading and vote buying including negative turnout buying, which is sometimes used by political actors to dis-incentivize voters from voting for their opponents. Political actors could begin by focusing on efforts to disrupt and destroy the supply side of the vote buying marketplace and proceed to engage the demand side. These efforts could be signaled in public through public signing of and commitment to pre-elections pacts that specifically reference vote trading and vote buying.

5.2.8
Engage with stakeholders including professionals to promote issue-based campaigns and political activities that are not divisive and polarizing. Promote tolerance and restraint in political activities and campaigns and invest in peace promotion during the electioneering period.

5.3 THE JUDICIARY

5.3.1
Invest in improved training to judicial officers on election dispute resolution to enhance skills such as on technology driven processes, knowledge base and efficiency of those tasked with election dispute resolution.

5.3.2
Improve on the prioritization and management of election dispute cases to ensure that they are managed and determined efficiently and promptly bearing in mind the strict constitutional and legal timelines for elections. This will also avoid unfortunate situations where election decisions are rendered too close to the elections, including on the eve of the elections and where cases are scheduled for hearing well after the elections.

5.3.3
Collaborate and work closely with the IEBC and other law enforcement agencies such as the ODPP to improve the effectiveness and efficiency of judicial interventions during the election period.

5.3.4
Judicial officers should remain mindful of the gains that Kenyans have made and realized through the promulgation of the Constitution 2010 and therefore should aim to promote the realization of the progressive spirit and gains in the Constitution rather than undermining them through retrogressive interventions and decisions.

5.4 PARLIAMENT

5.4.1
Work with the IEBC and other stakeholders to ensure that all electoral legal reforms and amendments that were delayed and not enacted in the 2022 election cycle are introduced, debated, and enacted in a timely manner and in line with international best practice which recommends a cut-off point of 2 years to the elections, bearing in mind the requirement for public participation under the Constitution of Kenya 2010.

5.4.2
Avoid complacency and move with speed to ensure that enabling laws and regulations are enacted to operationalize the Campaign Financing Act and the two-thirds gender rule.

5.4.3
Work with the IEBC to reduce the cost of elections in Kenya and rationalize the elections budget and value for money in elections. At the same time, work with the government, including the Treasury and the Salaries and Remuneration Commission to change and moderate legal, institutional and policy incentives that make elective positions very alluring and financially attractive. This will reduce the high stakes in politics and moderate the prevailing fierce competition and huge monetary investment by political candidates to win elective positions.

5.4.4
Provide effective oversight and timely approvals for the IEBC annual budgets based on the electoral cycle approach to ensure robust engagement by the Commission in implementing its activities in the discharge of its mandate.

5.4.5
Operationalize the campaign financing laws by attending to bills presented on the same by IEBC and other stakeholders. In the same respect, take leadership in establishing a clear legal mechanism for achieving the required two third gender principle in elective and appointive positions.

5.5 OFFICE OF THE REGISTRAR OF POLITICAL PARTIES

5.5.1
Engage with stakeholders and political parties to review and implement the regime of party financing to ensure more transparent, equitable and accountable public funding for political parties throughout the election cycle. Make efforts towards promoting accountability in campaign financing by encouraging political parties to support the implementation of Campaign Financing Act.

5.5.2
Observe strict supervision of political parties to ensure open, democratic, professional, and accountable management of political parties and party affairs. Pay more attention towards internal governance processes of parties to ensure democratic and accountable governance structures and processes including democratic conduct of party elections and nomination of candidates.

5.5.3
Enhance partnership and collaboration with the IEBC and the PPDT to ensure better management of party affairs such as nominations and dispute resolution during the election period.

5.5.4
Encourage political parties to operate

within the constitutional and legal provisions that govern them and instill accountability measures including meting out appropriate sanctions to delinquent parties and party officials.

5.5.5
Maintain strictness on political parties to comply with the two thirds gender rule in their affairs including nominations and elections.

5.6 THE NATIONAL POLICE SERVICE

5.6.1
Ensure that adequate and accountable security is provided to all stakeholders during the elections. This includes security towards elections materials and election officials, security during elections, announcement and declaration of election results, and security to citizens, voters, and election observers.

5.6.2
In particular, the police should comprehensively investigate and prosecute individuals who contravened electoral laws including the Electoral Code of Conduct. Similarly, the police should move with speed to investigate the circumstances under which election officials fell victims of political profiling, were maligned, were attacked, and injured, and circumstances under which some of them were abducted and some killed. Those found culpable should be apprehended and brought to book without fear or favor. Always maintain independence, neutrality, and impartiality in the discharge of security related duties during elections.

5.6.3
Improve on the collaboration and partnership with other elections duty bearers such as the IEBC to ensure better provision and management of security during the elections.

5.6.4
Law, order and peace are very critical during elections. Accordingly, security agencies should strictly maintain law and order and peace and ensure that those who break electoral laws and other laws of the land during the election period are promptly investigated, apprehended, and charged in Court with relevant offenses.

5.7 COMMUNICATIONS AUTHORITY OF KENYA AND THE MEDIA

5.7.1
The Authority should work with internet service providers to resolve internet connectivity concerns during elections and roll out internet connectivity in all parts of the country including all gazetted polling stations.

5.7.2
The Authority should reign in and make accountable parties, leaders, bloggers and influencers and individuals who use and deploy social media to promote insecurity, political animosity, fake news, misinformation, disinformation and hatred, and breach public peace.

5.7.3
The media and media owners should safeguard and maintain their independence, professionalism, impartiality and fairness in the coverage and reporting on elections as well as uphold their role as public educators and watchdog during the

electioneering period.

5.7.4
Before, during, and after the elections, social media platforms should take more proactive measures to combat fake news, misinformation, disinformation, hate speech and other malign activities on their online platforms.

5.7.5
The public funded broadcaster, the KBC, should always ensure that there is equity, fair play, and equal allocation of airtime to all competing political candidates and political parties during the electioneering period.

5.7.6
The Media Council should invest more in the regulation of the media and journalists to ensure adherence to media code of conduct and standards of professionalism, neutrality, non-partisanship, objectivity, fair coverage and reporting, and respect for the law and diversity.

5.7.7
The media should be more creative and adaptive to the challenges of elections and improve on their capacity, competence, and efforts to pivot on delivery of comprehensive election coverage and undertaking tallying and display of election results in tandem with IEBC's speed.

5.8 CIVIL SOCIETY

5.8.1
Civil society should always endeavor to remain neutral, impartial, professional, and objective during the elections. They should promote partnership and collaboration with duty bearers and other stakeholders to support and implement activities and programs that strengthen electoral processes and citizens' engagement and participation in the processes. Similarly, they should uphold their watchdog role during elections by empowering citizens and demanding accountability from electoral duty bearers.

5.8.2
Civil society should continue to keep vigil and consolidate advocacy and activism around respect for human rights and the rule of law during elections and to promote adherence to electoral laws including international best practice on elections as well efforts towards operationalization of the Campaign Finance Act and the two-thirds gender rule in the next election cycle.

5.8.3
Promotecollectiveandindividualadvocacy, lobbying and activism with Electoral Management Bodies and governments to bolster, institutionalize and domesticate the recognition of the legitimate work of and need for better protection for election monitors and observers as critical human rights defenders and civil society actors as envisioned under the UN Declaration on Human Rights Defenders that was adopted by consensus through GA Resolution 53/144 of 9 March 1998.

5.9 DATA PROTECTION COMMISSIONER

5.9.1
Ensure that enabling regulations are enacted to fully operationalize the Data Protection Act to enable implementation of data protection measures to combat illegal personal data mining and sharing as well as unethical and illegal intrusion on citizens' privacy with unsolicited SMS text messaging by politicians and parties during the electioneering period.

5.10 CITIZENS/VOTERS

5.10.1
They should recognize that they are the biggest stakeholder group and beneficiary of elections and for this reason be aware that their conduct and behavior is very critical in determining the quality of elections. For this reason, they should desist and refrain from and resist voter bribery and involvement in corrupt and illegal political and electoral practices such as political incitement and violence. Further, they should be part of setting the agenda for elections by making meaningful demands and holding political parties and political leaders accountable.

5.10.2
They should always remember that they are the sovereign to whom the nation belongs and for that reason should remain the guardians of peace, national unity, and cohesion during the electioneering period.

5.10.3
Sustaining democratic governance in Kenya will require the involvement and participation of citizens. Accordingly, citizens should always endeavor to maintain positive attitudes, behavior and active agency towards democratic and governance processes. Therefore, citizens' interest in democratic and governance processes such as elections should be reinvigorated and employed for meaningful and value-based governance changes in society.

5.11 INTERNATIONAL AND DOMESTIC ELECTION OBSERVERS

5.11.1
Adopt the electoral cycle approach in election monitoring and observation as a basis for long term and sustainable positive interventions. This will also ensure that the entire election cycle and electoral processes and observed and suitable interventions are made.

5.11.2
Invest in synergy building, collaboration, coordination and wider consultations and engagement amongst observer missions and groups to build consistency, avoid duplication of efforts and maximize coverage across the whole country and complementarity of efforts.

5.11.3
Guided by lessons from Kenya, to continue strengthening regional south to south partnerships, knowledge and technical experience and skills sharing and coordination amongst regional observation groups, including support

solidarity during elections.

5.11.4
Render comprehensive and timely observation statements and reports and invest in follow up with key duty bearers such as the IEBC to track and address observation findings and implement observation recommendations.

5.11.5
Conduct observation and monitoring of elections professionally, impartially, and objectively guided by international standards and code of conduct for international and domestic observers and Kenyan laws and avoid negative competition, rivalry, impersonation and engaging in partisan political and other activities that undermine the credibility of observers.

5.11.6
Promote collective and individual advocacy and activism with Electoral Management Bodies and governments to bolster, institutionalize and domesticate the recognition of the legitimate work of and need for better protection for election monitors and observers as critical human rights defenders and civil society actors as envisioned under the UN Declaration on Human Rights Defenders that was adopted by consensus through GA Resolution 53/144 of 9 March 1998.

5.12 THE PRIVATE SECTOR

5.12.1
The private sector, both local and international, should continue to play its support role in elections through ethical and professional conduct in their engagements with key election stakeholders. They should render their services in a manner that respects the sovereignty of the Kenyan voters and in accordance with the laws of the country.

5.12.2
The private sector should also consider building partnership and collaboration with civil society organizations during elections specially to support election observation and in particular supporting civil society with resources and funds that can support civil society work in promoting democracy and good governance including election observation.

ELOG Chairperson Anne W. Ireri with members of the ELOG Steering Committee

ELOG THEMATIC AREAS AND RECOMMENDATIONS

#	THEMATIC AREA	KEY FINDINGS/OBSERVATION	KEY RECOMMENDATIONS
1	**Voter Education**	• Inadequate and late commencement of voter education • 115 CSOs were accredited by the IEBC to implement voter education initiatives. • General lack of coordination of civic/voter education initiatives, with outreach levels and targeting lagging behind. • General lack of planned and structured civic and voter education provision that was not guided by standardized curriculum and manuals. • Low level voter education in May, which relatively increased in June but decreased in July (owing to other priority preps by the IEBC), but generally lacked in targeting. • Few sporadic incidents of harassment of voter educators were reported in some parts of the country.	• Need to undertake voter education throughout the electoral cycle to keep voters appraised on changes in the electoral framework. • Need to improve on standardization and dissemination of voter information and voter education materials that can enable the IEBC and voter education providers to maintain consistency in implementation of voter education. • The IEBC should facilitate and accredit more voter education providers, based on demonstrated technical capacity and experience on civic/voter education work in Kenya and work with them through partnership and collaborative process to ensure that the country is mapped and fully covered. • Review funding mechanisms to ensure adequate funds are sourced to facilitate continuous voter education throughout the electoral cycle.

2	**Voter Registration**	• Two voter registration drives to complement continuous voter registration were undertaken. • Dismal voter registration exercises that failed to meet the target - worst voter registration returns since the first multi-party elections in 1992. • Poor planning and coordination of voter registration exercises. • Inadequate voter education to complement voter registration. • Low registration numbers driven by a pattern of disillusionment and disinterest by citizens especially youth. • Registration of diaspora voters and prisoners increased. More registration centers (12 from 6 in 2017 for diaspora and more prisons gazetted for voter registration and polling). • Inspection and verification of voters details in the register were conducted physically, online and through SMS USSD Code – turnout was low and challenging. • Voters register was audited once in the pre-election period by the IEBC – contracted an audit firm KPMG for the internal audit. • Audit findings/recommendations were only highlighted in a media brief. Full report not made public or shared with stakeholders.	• Need for evidence-based data on the drivers and factors that breed public apathy and make citizens disinterested in and disillusioned with political and electoral processes. This will enable the IEBC to craft and implement tailor made responses and solutions that could improve and promote citizens' interest, engagement, and participation in these key democratic processes. • Need to engage young people especially while they are still in basic learning institutions in order to build a culture that values democratic processes. • Need for the IEBC to make public the full KPMG audit report in a timely manner. • Need for an independent, citizen lead audit of the register of voter's audit, as part of monitoring voter registration, to verify and complement the internal audit findings **To increase the registration of the Diaspora, the following should be considered:** 1. Designation of more Diaspora countries for voter registration and polling. 2. The IEBC, the government and stakeholders should consider putting in place additional legal and administrative mechanisms and parameters that could allow the Diaspora voters to vote for other candidates including the Governors, Senators, Members of National Assembly, Woman Representatives and County Assembly Members. 3. Additional legal and administrative mechanisms and parameters should be put in place to create an additional Constituency for purposes of direct representation of the Diaspora in the National Assembly, to begin with and in accordance with the progressive spirit of the Kenya Constitution 2010 (See ELOG report, The Other Electorate).

3	**Electoral legal framework**	• Fairly comprehensive and robust legal framework that resonates well with international and regional conventions, some of which Kenya has signed and ratified. • Case law and jurisprudence from the judiciary augmented the electoral legal framework. • The deficiencies that the Supreme Court identified in 2017 were not addressed. • Rushed and bi-partisan amendments to the Political Parties Act – introduced and framed the concept of coalition political parties etc. • Key amendments to the Elections Act were submitted late and rejected by Parliament. • Ineffective and lackluster enforcement of electoral laws especially the Elections Offences Act and Electoral Code of Conduct. Overlap of jurisdictions (ODPP vs IEBC) + IEBC's Electoral Code of Conduct Enforcement Committee nullified by the Court. • Parliament frustrated attempts to enact Regulations to operationalize Election Campaign Financing Act, 2013. • Election Campaign Financing Act of 2013 remained un-operationalized and ineffective during the 2022 elections. • Parliament failed to enact laws to operationalize the two-thirds gender rule. • Court frustrated IEBC's attempts to enforce the two-thirds gender rule.	• Need to comprehensively consider and action the recommendations from the 2017 Supreme Court decisions on the nullification of the presidential election. • Need for a broad-based and open participatory and consultative process towards electoral legal reforms and amendments that involves all key stakeholders. • The IEBC should quickly get back to the drawing table to review and address the challenges that continue to delay and frustrate the implementation of these critical laws. • Purposive determination of issues by the courts to forestall claw backs on reform issues • IEBC should move quickly to establish the regulations on campaign finance as well as set up the spending limits after the court opened the way for this. • Termination of effect for all electoral law amendments within six months to an election. • Review of the evidential threshold for electoral offences/petitions to make it easier for one to prove a case.
4	**Political Parties and Election Campaign Financing**	• As at May 2022 there were 90 fully registered political parties in Kenya whose corporate particulars were maintained by the ORPP. • 83 political parties that included a coalition party were cleared to participate in the 2022 elections. • Mush-rooming of smaller political parties – some elements of dictatorship of smaller parties were observed.	• Need for political parties should improve and strengthen internal party governance and democracy to promote inclusivity and increase the participation of all members especially the special interest groups. • Need for political parties need to develop firm affirmative action policies within the constitutional framework to support the participation of special interest groups such as women and PWDs.

		• Party primaries were in general conducted fairly well. • Challenges were noted included violence, late opening of voting, abrupt changes of polling venues, use of 2017 IEBC register of voters, challenges related to direct nominations/ negotiated and consensus building methods (strangled inter and intra-party democracy-exclusive and elite drive-disenfranchised and alienated party members/women/youth and PWDs). • Parties nominated candidates with integrity Issues. Parties also engaged in discriminative practices of nominating relatives and confidants. • Emerging good practice of using digital voting system and gadgets by political parties – ODM. • At the end of the party nominations, the IEBC cleared 16,100 candidates out of which 11,574 (72%) were vying on political parties' tickets while 4,526 (28%) were independent candidates - (4 candidates for the presidential election; 266 gubernatorial candidates; 341 candidates for the Senate; 360 candidates for Woman Representative; 2,132 candidates for the National Assembly, and; 12,997 candidates for the Member of County Assembly). • Adjudication of disputes arising from party primaries were conducted well by the IEBC, PPDT and Courts – challenges of overlapping jurisdictions – forum shopping, still apparent. • Parties and aspirants conducted early campaigns outside the legal campaign window – ignored the IEBC and took advantage of weak electoral law enforcement. • Campaigns were generally issue-based compared to previous elections but ethno-based political undertones still remained.	• Need for Political parties should review internal constitutions and rules especially the elections and nomination rules to promote good governance and transparent and accountable internal party processes including elections of party officials and nomination of candidates for elective positions. This includes keeping and using bona fide members' registers for critical decision making activities such as party nominations • Need for political parties should work with stakeholders including Members of Parliament to support progress towards immediate operationalization of the Campaign Financing Act and the two-thirds gender rule. • Need for parties to ensure compliance with the two-thirds gender rule in all party elective positions, in the nomination of candidates for elective positions and in all administrative and leadership organs of the parties. • Need for political parties to improve on the conduct and management of party nominations by improving on their transparency, inclusivity and accountability and subjecting them to independent observation and evaluation. • Need for political parties to Invest in further scrutiny and evaluation of direct nomination methods such as negotiation and consensus to fully comprehend their impact on internal party democracy before implementing them in the next election cycle. • Parties should improve and strengthen the internal dispute resolution mechanisms to promote timely and fair adjudication of internal party disputes especially those arising from party nominations. This should involve adequate training of party election boards and improving the dispute resolution rules. • Need for political actors should make efforts to reduce or remove the allure of money in politics by demystifying and dis-incentivizing elective positions, changing institutional incentives to make elective positions less lucrative, discouraging and shunning big political spenders, putting reasonable limits on political and campaign financing, and exposing, shaming, and punishing corrupt practices and patronage in parties and during the elections. • Citizens/voters should desist and disengage completely from the phenomena of vote trading and vote buying during the electioneering period.

		• Fairly peaceful and competitive campaigns compared to previous elections. • High cost of elections – Influence of money in politics - Big spending by parties and candidates due to very limited oversight on campaign financing/Non-operation of Campaign Finance Act. • Vote-trading and vote buying and inducement of voters were rampant. • Elements of political zoning and violence were experienced, but violence was sporadic • Incidents of political intimidation and undue influence of voters. • Misuse of public/state resources + elements of abuse of incumbency. • Involvement of incumbent President and state officers in bi-partisan campaigns. • Mis/dis-information, fake news and propaganda characterized the campaigns especially through the digital space/social media. • Isolated/sporadic incidents of incitement to violence and hate speech during political campaigns. • Social media/digital space, bloggers etc. became key influencers/purveyors/" guns for hire" for political campaigns including malign political activities. • Derogatory/inciting language targeted at women during campaigns.	• Need for political actors to consider embracing change in social norms and political behavior aimed at disrupting and breaking down the marketplace for vote trading and vote buying including negative turnout buying, which is sometimes used by political actors to dis-incentivize voters from voting for their opponents. Political actors could begin by focusing on efforts to disrupt and destroy the supply side of the vote buying marketplace and proceed to engage the demand side. These efforts could be signaled in public through public signing of and commitment to pre-elections pacts and MoUs that specifically reference vote trading and vote buying. • Need for parties to promote tolerance and restraint in political activities and campaigns and invest in building a political culture that promotes peace and national cohesion during the electioneering period. • Need for parties to refrain from engaging in the practice of illegal mining of personal data from existing registration systems or Mpesa logs to "forge" party membership. • Need for citizens/voters to recognize that they are the biggest stakeholder group and beneficiary of elections and for this reason should be aware that their conduct and behavior is very critical in determining the quality of elections. • Citizens/Voters should desist and refrain from and resist voter bribery and involvement in corrupt and illegal political and electoral practices such as political incitement and violence. They should also be part of setting the agenda for elections by making meaningful demands and holding political parties and political leaders accountable. • Citizens/Voters should always remember that they are the sovereign to whom the nation belongs and for that reason should remain the guardians of peace, national unity, and cohesion during the electioneering period. •

5	**Election Security/ Violence**	• Improved preparations and training by security agencies (the NPS) for the elections. • Hot-spots mapping, early warning and preparedness – NCIC and Security Agencies and CSOs. • Electoral Security Arrangement Program was in place – collaboration of the NPS and IEBC. • The NPS covered conflict prone areas such as West Pokot, Elgeyo Marakwet, Turkana and Marsabit, and convened regular multi-sectoral meetings on security and election preparedness to manage on-going conflicts in those areas and prevent election violence. • Public altercations between NPS and the IEBC over security • Public altercations between ODPP and the NPS over drafting of charge sheets and prosecution of offenders – impact on enforcement of electoral offences and Electoral Code of Conduct. • Some incidents of violence were noted throughout the 2022 election cycle including during party primaries, political campaigns, on elections day and on 15th August when the presidential election results were announced and declared. • Violence was, however, sporadic/intermittent and not pervasive and with no systematic pattern. • Intimidation, hate speech, inciting and vile language was also noted especially during political campaign period, on Election Day and the post-election day period – targeted political opponents and IEBC officials. •	• Need for adequate and accountable provision of security to all stakeholders during the elections. This includes security towards elections materials and election officials, security during elections, announcement and declaration of election results, and security to citizens, voters, and election observers. • Need for the NPS to comprehensively investigate and prosecute individuals who contravened electoral laws including the Electoral Code of Conduct. • Need for the NPS to maintain independence, neutrality, and impartiality in the discharge of security related duties during elections. • Need for the NPS to improve on the collaboration and partnership with other elections duty bearers such as the IEBC to ensure better provision and management of security during the elections. • Need for the NPS to strictly maintain law and order and peace and ensure that those who break electoral laws and other laws of the land during the election period are promptly investigated, apprehended, and charged in Court with relevant offenses. • Enhanced collaboration between FBOs, CSOs, EMBs, security agencies and local actors to mitigate conflict, manage and prevent violence and promote peace and tolerance.

		• On Election Day and a few days thereafter, violence targeted election officials – A Presiding Officer in Wajir, Eldas, was shot and elections postponed; the Returning Officer for Embakasi East Constituency, Daniel Musyoka was abducted, tortured and killed. • CSO and faith based organization's engagement on peace messaging, hotspot mapping and political dialogue were noted throughout the entire 2022 election cycle especially during the campaign period, on Election Day, on the day the presidential results were announced and declared and the period during the Supreme Court petition hearings and delivery of judgment.	
6	**Media Monitoring**	• Media Council of Kenya prepared journalists and media houses well for elections coverage – provided targeted trainings/collaborated with the IEBC on accreditation of journalists/ ensured that media coverage was professional, fair, comprehensive, accurate and informative/conducted online media monitoring for fairness. • Media Council + Media Owners Association + Media Editors Guild conducted successful joint and synchronized media debates including Presidential, Deputy President, Nairobi Governor debates at the national level and select county debates. • Media Council established a fact-checking platform iVerify that helped to address misinformation and propaganda during the election period + deployed some 70 media analysts to monitor editorial content of mainstream media and online media. • Communications Authority (CA) – supported internet connectivity at polling stations especially those that lacked internet connectivity.	• Need for collaborative efforts with internet service providers to resolve internet connectivity concerns during elections and roll out internet connectivity in all parts of the country including all gazetted polling stations. • Need for Communication Authority to reign in and make accountable parties, leaders, bloggers and influencers and individuals who use and deploy social media to promote insecurity, political animosity, fake news, misinformation, disinformation and hatred, and breach public peace. • The media and media owners should safeguard and maintain their independence, professionalism, impartiality and fairness in the coverage and reporting on elections as well as uphold their role as public educators and watchdog during the electioneering period. • Social media platforms should take more proactive measures before, during, and after the elections to combat fake news, misinformation, disinformation, hate speech and other malign activities on their online platforms.

		• The CA monitored different media platforms to ensure that they adhered to the programming code during the electioneering period. • The CA monitored the cyberspace during the campaigns and elections period to ensure safety and security. • Social media platforms emerged as the alternative platforms for coverage and reporting on elections. • Social media platforms Facebook, Twitter, Instagram, TikTok and WhatsApp became key sources of information and platforms for direct engagement on elections – Parties and politicians invested heavily on social media/ bloggers and influencers. • Social media platforms were also powerful tools for disinformation/misinformation/ fake news/propaganda/hate, derogatory and inciting speech and other malign activities including defamation of opponents. • May/June/July media covered and aired voter education and voter information + promoted participation of SIGs. • Unequal coverage of candidates and political parties during the campaigns was observed. • Generally, media coverage and reporting on the elections were professional and responsible as compared to previous elections even though some media houses and journalists were partial. • Positive media effort to tally and display elections results – but methods of display varied/not synchronized. • Tallying and display of results were abruptly suspended for unknown reasons – media blackout – heightened panic and anxiety-created space for mis/disinformation, fake news and propaganda.	• The public funded broadcaster, the KBC, should improve and sustain the threshold of equity, fair play, and equal allocation of airtime to all competing political candidates and political parties during the electioneering period. • The Media Council should invest more in the regulation of the media and journalists to ensure adherence to media code of conduct and standards of professionalism, neutrality, non-partisanship, objectivity, fair coverage and reporting, and respect for the law and diversity. • The media should be more creative and adaptive to the challenges of elections and improve on their capacity, competence, and efforts to pivot on delivery of comprehensive election coverage and undertaking tallying and display of election results in tandem with IEBC's speed.

7	**Participation of the Special Interest Groups**	• Low voter registration of women and youth – Missing Voices as per ELOG's study - Apathy and disinterest etc. • Women represented 49.12% of the 22,120,458 registered voters. • Out of the total number of registered voters for the 2022 elections, the registered youth voters aged between 18-35 years stood at 39.84%, which was a 5.27% decline compared to 2017. • The number of registered male youth voters decreased by 2.89% while the number of registered female youth voters decreased by 7.75% as compared to 2017. • A positive trend was shown in the number of women who sought elective offices in the 2022 elections as compared to the 2017 elections. • Out of the 16,100 candidates who were cleared and registered by the IEBC to run for various elective positions in the 2022 elections, 1,962 were women, making up to 12.8%. • Also, three of the presidential contenders in the 2022 presidential election named women as their running mates while the number of women who run for governor positions doubled up as compared to the 2017 elections. • A historic breakthrough in the journey towards gender parity in the 9th August 2022 elections - Kenyans elected 30 female Members of the National Assembly, up from 23 in the 2017 elections, 7 female governors, up from 3 in the 2017 elections, and 3 female senators, the same number as in the 2017 elections. • The level of inclusion and participation of persons living with disabilities in the 2022 elections remained dismal. • The efforts made by political parties to include and involve persons living with disabilities in internal party affairs and activities and elections remained largely tokenistic.	• The IEBC should embark on collecting evidence-based data on the drivers and factors that breed public apathy and make citizens disinterested in and disillusioned with political and electoral processes. This will enable the IEBC to craft and implement tailor made responses and solutions that could improve and promote citizens' interest, engagement, and participation in these key democratic processes. • There is a need to engage young people especially while they are still in basic learning institutions in order to build a culture that values democratic processes. • The IEBC should improve on the provision and implementation of voter information and education throughout the election cycle. • Need for the IEBC to evaluate, review, and improve mechanisms and protocols at polling centers and polling stations to accommodate people with disabilities and the elderly and improve their accessibility to these places. • Need for the IEBC to develop protocols that can enable proper capturing of details and nature of disability for the people living with disability, the elderly and special interest groups in the voters' register and to accommodate them during elections for purposes of promoting inclusivity in electoral processes. This should also include availing of voting materials in Braille, special voting booths, responsive signage, and sign language interpreters. • Need for targeted voter education to capacitate and increase the participation of special interest groups in electoral processes. • There is need for legislative review to allocate specific quotas for each category of SIGs that should be itemized as youth, women, persons with disabilities etc. as opposed to having just one blanket group known as SIGs–SIG tag makes persons with disabilities fall through the cracks.

		• The IEBC proactively included persons living with disabilities in the elections by increasing the registered persons living with disabilities to 8.7% out of the total registered voters for the 2022 elections. • For the first time, the IEBC allowed older person living with disabilities voters to update their disability status in the register. • The IEBC for the first time deliberately documented the disability status as well as the nature of disability of newly registered voters. • The IEBC included creating and availing voter education materials in Braille format and deployment of sign language interpreters as voter educators.	
8	**Election Administration and Management**	**THE IEBC** • The IEBC operated under a very challenging environment and circumstances that arose out of internal and external factors. • Budgetary and funding delays and shortfalls. • Bloated elections budget – High Cost of Elections (Ksh.2500 per voter in 2017 and Ksh. 2,000 per voter in 2022) • Despite some elements of lethargy in the IEBC's preparations, remarkable preparations by the IEBC generally noted. • Delayed and last-minute attempts to amend and reform critical electoral laws. • Poor rapport and political feuds with Parliament. • IEBC suffered deficits in public trust and confidence, but made efforts to improve. • Procurement needs for the 2022 elections were completed. Critical materials like ballot papers were done in time but due diligence was not undertaken- led to technical mistakes on some ballot papers – postponement of some elections.	• Need for Kenyans to dialogue, review, rationalized and re-evaluate the electoral system and infrastructure, including the EMB model in Kenya with a view to identifying a system and infrastructure that best suits the political dynamics and nuances in Kenya. ELOG proposes that considerations should be put in place for Kenyans to dialogue and build consensus over the most suitable electoral system and infrastructure as well as the Commission model through organized and structured and broad-based bottom-up dialogue and conversations. • ELOG reiterates the Supreme Court recommendation that there is an urgent need to clarify and demarcate the policy, strategy and oversight roles and functions of the Chairman and Commissioners through legislative reforms. • Need for clarity and delineation of the policy and administrative domains of the Commission through clear separation of the roles and responsibilities of the Commission from those of the Commission Secretary and Commission staff. •

		• Late procurement of goods and services in some instances • Voter registration was undertaken but with challenges on low registration turnout. Voter registration drives also coincided with the schools calendar. • Voters were required to show utility bills to transfer from one voting location to the other. • Inter-Ward transfers were very common. • Audit of the register undertaken but report not shared and no clarity on implementation of KPMG findings/recommendations. • Final register of voters for the 2022 elections was consolidated and certified but not publicized in time. • Built an elaborate infrastructure of trained field officials for the polls and ultimately and successfully conducted and managed the August polls but with some challenges. Training of staff was not consistent and happened late. Some critical SoPs not relayed to polling staff e.g. handling of the manual register and Forms 34A Book 1of 1 and Book 2 of 2. • High turn-over of Commission staff and delayed/late appointment of 4 Commissioners. • The IEBC made efforts to engage and sensitize stakeholders and the public through press briefings, press releases, media engagements and stakeholders' forums BUT these were neither regular nor structured – Created crisis and led to increase in propaganda, misinformation and disinformation around the elections.	• ELOG observes that due to the continuous assault on the independence of the commission, there is a need to revisit debate on the model of the EMB to embrace a more politically inclusive and representative structure. • Need for a reflection on and consideration of setting out legal and policy parameters, procedures and modalities to guide the management and public communication of dissenting views and opinions that could arise amongst the Commissioners during critical decision-making such as the process of verifying and tallying and announcement of presidential election results. • Need for sustained public participation on electoral reforms and other electoral initiatives that require public participation. • The IEBC should convene an independent post elections review and evaluation of the 2022 elections and other electoral processes including the role and performance of key duty bearers and right holders in the electoral processes. • The review and evaluation should be comprehensive and should involve the participation of a broad-based spectrum of electoral actors and stakeholders. This will enable the IEBC to benefit from independent and objective review, evaluation, and audit beyond the internal post elections evaluation, which the IEBC has already conducted. • Need for the IEBC to make public the findings and recommendations made during its own internal post elections evaluation and share the full report with stakeholders. • The IEBC should ensure that electoral legal reforms and amendments that were not enacted as required are quickly reviewed and introduced in Parliament for enactment at the earliest possible date. A further review of all electoral laws is also necessary to identify areas that would require improvement and strengthening.

		• Registration of candidates undertaken fairly successfully with a few complaints and a few court cases BUT vetting of candidates on Chapter Six of the Constitution was poorly undertaken with no regard to recommendations from EACC – 62 Parliamentary candidates with active integrity cases were elected. Vetting of candidates based on education qualifications was undertaken inconsistently. • Remarkable handling of nominations disputes - out of the three hundred and twenty-five (325) cases that were lodged with the IEBC DRC, 39 complaints (12%) were allowed, 269 complaints (82.7%) were summarily dismissed for want of jurisdiction, prosecution and on merit, 17 cases (5.2%) were withdrawn, and 31 cases proceeded to the High Court. • The IEBC made remarkable efforts to enhance the elections results management framework to enable transparent, accurate, verifiable, and proper management and transmission of results. • However, simulation exercises on the RTS were dismal and below par. • Unfortunate disagreement and fallout amongst the Commissioners at the tail-end of the tallying and verification of presidential election results – depicted the IEBC as dysfunctional entity with dysfunctional internal governance.	• The IEBC should move quickly to develop a strategy and framework for developing, managing, and implementing post 2022 elections reforms for the next electoral cycle. ELOG vouches for a broad-based and open participatory and consultative process towards electoral legal reforms and amendments that involves all key stakeholders. • Need to comprehensively consider and action the recommendations from the 2017 Supreme Court decisions on the nullification of the presidential election. • Need for a broad-based and open participatory and consultative process towards electoral legal reforms and amendments that involves all key stakeholders. • IEBC should move quickly to establish the regulations on campaign finance as well as set up the spending limits after the court opened the way for this. • Ensure the implementation and enforcement of the campaign finance regulation and timely electoral legal reforms to avoid giving an undue advantage to the incumbents. • Termination of effect for all electoral law amendments within six months to an election. • The IEBC should quickly get back to the drawing table to review and address the challenges that continue to delay and frustrate the implementation of Campaign Financing Act and the two-thirds gender rule. • Maintain fidelity to the constitutional 2/3 gender threshold. • The staggering costs of elections could be reduced significantly through innovative approaches in procuring and using election materials, resources, and services. • The IEBC should work towards identifying and reviewing high-cost drivers and take measures towards reducing and minimizing them to affordable levels and to avoid wastage. •

			• Staggering the elections could also help in reducing the high stakes and suspicion around elections, which could in turn reduce the costs associated with the costly security marks and protocols on the ballot papers. • The costly security details on the ballot papers could also be reduced if the IEBC invests in building trust and confidence amongst the public and political players. • Enhanced trust and confidence in the IEBC and electoral processes could also support consensus building and political good will towards printing of ballot papers and other critical election materials locally in Kenya to reduce costs, after all, printing of the Kenyan currency is undertaken locally in Kenya. • Need for a transparent and accountable post elections financial audit whose report should be made public to enable Kenyan taxpayers to come to terms with the spiraling cost of elections and assess value for money in the enterprise. • The IEBC should engage and work with stakeholders within and outside government to review, audit and improve the use and application of technology in elections, especially the KIEMS and elections results transmission system. Early deployment and frequent testing of technology through simulation exercises should be adopted to improve on effectiveness and efficiency and enhance uniformity and transparency of the technology. • Need to adhere to the principles of simplicity, security, transparency, verifiability and accountability under Article 86 of the Constitution. All Election Day processes and all election related technology, including the results management and transmission processes, must therefore be assessed for compliance with this requirement and in regular intervals to secure public confidence. • Ensure the safety and security of voters, observers and other stakeholders throughout the electoral process.

			• Ensure that the results transmission process is clear and understandable to all stakeholders and that the Commission shares with citizens and other stakeholders the final elections results in a granular and machine readable format. • The IEBC to engage with stakeholders to consider and introduce mechanisms and procedures for special voting to accommodate the large number of election officials, security personnel and voters engaged on critical public duty and provision of essential public services on the polling day. Appropriate security measures should be put in place for special voting in advance of the Election Day to avoid multiple voting and to secure the ballots. • The IEBC should conduct the candidate registration and vetting rigorously and meticulously in every election and to consider the processes as winnowing opportunities that filter out individuals facing questions with respect to their integrity and qualification from contesting for office. • The IEBC to engage with stakeholders to consider and introduce mechanisms and procedures for special voting to accommodate the large number of election officials, security personnel and voters engaged on critical public duty and provision of essential public services on the polling day. Appropriate security measures should be put in place for special voting in advance of the Election Day to avoid multiple voting and to secure the ballots. • Need for the IEBC to improve stakeholder engagement and public relations and communications as well as timely sharing and access to information during the election cycle for inclusive and broad-based awareness and ownership of processes, actions and activities undertaken during the election cycle. Improved engagement, relations and communications will also promote stakeholder and public trust and confidence in the IEBC and the electoral processes.

			• The IEBC should review, improve, and strengthen the internal mechanisms and protocols for due diligence in procurement of election related services and election materials and equipment to ensure accuracy, verification, and accountability. Lack of due diligence and negligence that led to late detection of defects in ballot papers and consequently postponement of some elections should not be repeated. • The IEBC should act as the gatekeepers in the electoral processes, in order to strictly lock out persons implicated in corruption scandals and abuse of office from contesting for public office as provided for in the Constitution of Kenya 2010 and the principles of governance provided under Article 10 including Chapter 6 of the Constitution on Leadership and Integrity. • The IEBC to ensure that the recruitment and training of election officials is comprehensive, timely, standardized, and uniform and is based on internationally approved training curriculum, materials, and methodology such as BRIDGE. Instructions and operating procedures that are applicable on polling day should also be standardized and consistent and timely shared with all election officials. • Need to undertake and provide consistent voter education and voter information throughout the electoral cycle to keep voters appraised of their rights and responsibilities, on changes in the electoral framework and to continuously empower and capacitate citizens/voters. • Need to improve on standardization and dissemination of voter information and voter education materials that can enable the IEBC and voter education providers to maintain consistency and maximize outreach in implementation of voter education. •

			• The IEBC should facilitate and accredit more voter education providers, based on demonstrated technical capacity and experience on civic/voter education work in Kenya and work with them through partnership and collaborative process to ensure that the country is mapped and fully covered. • Review funding mechanisms to ensure adequate funds are sourced to facilitate continuous voter education throughout the electoral cycle. • Need for evidence-based data on the drivers and factors that breed public apathy and make citizens disinterested in and disillusioned with political and electoral processes. This will enable the IEBC to craft and implement tailor made responses and solutions that could improve and promote citizens' interest, engagement, and participation in these key democratic processes. • Need to engage young people especially while they are still in basic and tertiary learning institutions in order to build a culture that value and promotes democratic and governance processes. • Need for the IEBC to evaluate, review, and improve mechanisms and protocols at polling centers and polling stations to accommodate people with disabilities and the elderly and improve their accessibility to these places. • Need for the IEBC to develop protocols that can enable proper capturing of details and nature of disability for the people living with disability, the elderly and special interest groups in the voters' register and to accommodate them during elections for purposes of promoting inclusivity in electoral processes. This should also include availing of voting materials in Braille, special voting booths, responsive signage, and sign language interpreters. • Need for targeted voter education to capacitate and increase the participation of special interest groups in electoral processes. •

			• Need for the IEBC to make public the full KPMG audit report and provide clear status update on the uptake of the recommendations in a timely manner and engage key stakeholders including civil society to review and action the report findings and recommendations. • Need for an independent and citizen led audit of the register of voters as part of monitoring voter registration, to verify and complement the KPMG internal audit findings. • To increase the registration and participation of the Diaspora voters, the following should be considered: 1. Designation of more Diaspora countries for voter registration and polling. 2. The IEBC, the government and stakeholders should consider putting in place additional legal and administrative mechanisms and parameters that could allow the Diaspora voters to vote for other candidates including the Governors, Senators, Members of National Assembly, Woman Representatives and County Assembly Members. 3. Additional legal and administrative mechanisms and parameters should be put in place to create an additional Constituency for purposes of direct representation of the Diaspora in the National Assembly, to begin with and in accordance with the progressive spirit of the Kenya Constitution 2010 (See ELOG report, The Other Electorate). • Partner and collaborate with other agencies such as the Office of the Director of Public Prosecutions, the Judiciary and the National Police Service to enforce the Electoral Offenses Act and the Electoral Code of Conduct. Also consider mounting a formidable appeal to overturn the Court decision that nullified the Electoral Code of Conduct Enforcement Committee (The Court decision on the Sabina Chege case).

		The Judiciary: • Prepared and trained for the elections related cases. • Developed an online filing system that could enable online filing and tracking of elections related cases. • Developed and utilized a compendium and source book on elections jurisprudence. • Judicialisation of politics in Kenya and reinforced electoral democratic processes. • Independent and assertive. • ELOG observed the judiciary as independent and assertive throughout the 2022 election cycle. • The judiciary generated public/stakeholder trust and confidence • Interventions by the judiciary, especially the Supreme Court in the 2022 electoral cycle contributed to distinguish the 2022 elections as unique in propelling Kenya to attain a new and higher electoral threshold in the continent. • Interventions by the Supreme Court in the consolidated presidential election petitions raised the electoral bar in Kenya a notch higher and depicted how sufficiently assertive and independent institutions could be relied upon to peacefully and credibly resolve hotly and closely contested elections. • In some instances rendered conflicting decisions that created confusion. • Poor case management in some instances resulted in decisions being rendered too close to the elections date. • Delaying some critical Court interventions and fixing hearing dates well after the elections. • Confusing decisions that were rendered too close to the elections. • Attempts by the Supreme Court to limit the right to freedom of expression.	• The Judiciary should invest in improved training to judicial officers on election dispute resolution to enhance skills such as on technology driven processes, knowledge base and efficiency of those tasked with election dispute resolution. • The Judiciary should improve on the prioritization and management of pre-election dispute cases to ensure that they are managed and determined efficiently and promptly bearing in mind the strict constitutional and legal timelines for elections. This will also avoid unfortunate situations where election decisions are rendered too close to the elections, including on the eve of the elections and where some pre-election disputes are scheduled for hearing well after the elections. • The Judiciary should collaborate and work closely with the IEBC and other law enforcement agencies such as the ODPP to improve the effectiveness and efficiency of judicial interventions during the election period. • Judicial officers should remain mindful of the gains that Kenyans have made and realized through the promulgation of the Constitution 2010 and therefore should aim to promote the realization of the purposive and progressive spirit and gains in the Constitution rather than undermining them through retrogressive interventions and decisions. • There is a need to review and re-evaluate and bring clarity on the standard of proof that is applicable in presidential election petitions. The Supreme Court seem to have adopted a mid-level standard between balance of probability and proof beyond reasonable doubt, which makes it extremely difficult and challenging for petitioners to prove their cases. ELOG proposes that the applicable standard of proof should be on a balance of probability. • ELOG recommends that the judiciary and the Supreme Court, in particular, should maintain and sustain the new and higher electoral bar that it has set in the context of Kenya's politics and elections.

		• In some instances rendered retrogressive decisions that undermined the progressive spirit of the 2010 Constitution. • Rendering progressive decisions too close to the elections without taking into account the full range of ramifications of those decisions on the elections. • The High Court rendering a confusing decision that seemed to countenance illegal and unconstitutional acts. • PPDT was well organized and capacitated and worked well despite challenges of overlap in jurisdictions. • Decentralization of PPDT + Digitized case management + remote hearings – improved efficiency and effectiveness. • The high number of presidential elections petitions that were filed at the Supreme Court - all time high record of 9 substantive petitions that included preliminary applications - demonstrated a higher level of public trust and confidence in the judiciary. However, this record also demonstrates how stretched and stressed the Supreme Court could be, given the 14 days constitutional timeline within which presidential election petitions must be filed, heard and determined amid the political tension and public anxiety that presidential elections petitions generate. • Interventions by the judiciary especially the Supreme Court in the 2022 electoral cycle contributed to distinguish the 2022 elections as unique in propelling Kenya to attain a new and higher electoral threshold in the continent. In particular, interventions by the Supreme Court in the consolidated presidential election petitions raised the electoral bar in Kenya a notch higher by depicting how sufficiently assertive and independent institutions could be relied upon to credibly resolve hotly and closely contested elections.	• ELOG urges the judiciary to continue to assert its independence and consolidate the confidence and trust that Kenyans have bestowed on it as a legitimate legal avenue for resolving political and electoral disputes as well as managing political and electoral conflicts. • ELOG recommends that there is a need for Kenyans to publicly dialogue and review the strict constitutional presidential election petition timelines with a view to enacting reforms to enlarge the timeline from the current 14 days to 28 days to allow space and time for litigants to properly and adequately prepare and present their cases before the Supreme Court and to create room for more detailed, stress-free, purposive, accommodative and inclusive hearing and determination of the petitions.

		On the management of E-Day Processes and Results • **Setup and Opening:** ELOG observers were properly permitted to observe in 97.2% of polling stations. 94.3% of the polling stations nationwide opened by 7:00am. Of the remaining stations, most opened between 7:00 am and 8:00 am, with some opening past 8:00 am. This is an improvement from 2017 when 53.5% of the polling stations opened on time; 99.6% of polling stations had the Kenya Integrated Elections Management System (KIEMS) present. This is an improvement from 2017. Recall that in 2017, the Electronic Poll Book was present in 99.3% of stations during the opening and setup process. • **Voting:** Our findings noted that the voting process generally went smoothly across the country with isolated incidences reported. In 6.3% of the stations, the Kenya Integrated Elections Management System (KIEMS) failed to function properly. This is an improvement from 2017 when electronic poll books malfunctioned in 7.6% of stations. There was a queue at 5:00pm in 76.8% of polling stations. Of those stations with a queue at 5:00pm, 96.6% were properly permitted to vote.	• The quick resolution of election-related court cases ahead of Election Day, particularly those that directly impact election day procedures and processes. • Ensuring the transparency in the integrity and maintenance of the Voter Register, including providing full access to the KPMG audit report and clear status updates on the uptake of recommendations from the report. In addition, working with stakeholders to independently audit the register will help improve the integrity of the register. • Provision of consistent civic and voter education (as provided by the Constitution) to ensure that voters are well informed of their rights and responsibilities. • Punishing electoral offenses and ensuring enforcement of code of conduct for political parties or candidates. • Ensuring consistent openness, transparency, inclusive participation and timely access to information by the IEBC and the other agencies concerned with election management. • Ensuring that all polling stations are physically accessible to persons living with disabilities and the elderly. • Fidelity to the constitutional 2/3 gender threshold. • Ensuring the implementation and enforcement of the campaign finance regulation and timely electoral legal reforms to avoid giving an undue advantage to the incumbents. • Ensuring that the results transmission process is clear and understandable to all stakeholders and that the commission shares with citizens and other stakeholders the final elections results in a granular and machine readable format. • Maintaining simplicity and transparency of the Election Day processes as well accuracy and verifiability of the results management and transmission processes.

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

- **ELECTION RESULTS:**

- Ensuring the safety and security of voters, observers and other stakeholders throughout the electoral process.

Comparison of Official IEBC Results with ELOG PVT Projections

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

		• **Turnout:** The PVT projection for final turnout is 65.1% with a margin of error of +/- 0.7%. IEBC's official turnout of 65.4% falls within ELOG's estimated range and accurately reflects the turnout of voters. This is a notable drop from previous elections. • **Rejected:** The PVT projection for the final rejected ballots is 0.8% with a margin of error of +/- 0.1%.	
		On Parliament • Approval of elections budget to facilitate the 2022 elections. • Approval was however, delayed. • Oversight role over elections budget is not effective – this high cost of elections. • Failure to enact critical electoral laws and regulations for the 2022 elections. • Failure to operationalize Campaign Financing Act and the two-thirds gender rule for the 2022 elections.	• Need to work with the IEBC and other stakeholders to ensure that all electoral legal reforms and amendments that were delayed and not enacted in the 2022 election cycle are introduced, debated, and enacted in a timely manner and in line with international best practice which recommends a cut-off point of 2 years to the elections, bearing in mind the requirement for public participation under the Constitution 2010. • Need to move with speed to ensure that enabling laws and regulations are enacted to operationalize the Campaign Financing Act and the two-thirds gender rule. • Parliament should work with elected leaders in Parliament and the government, including the Treasury and the Salaries and Remuneration Commission to change and moderate legal, institutional and policy incentives that make elective positions very alluring and financially attractive. This will reduce the high stakes in politics and moderate the prevailing fierce competition and huge monetary investment by political candidates to win elective positions. • Need to provide effective oversight and timely approvals for the IEBC annual budgets based on the electoral cycle approach to ensure robust engagement by the Commission in implementing its activities in the discharge of its mandate.

			• Parliament should operationalize the campaign financing laws by attending to bills presented on the same by IEBC and other stakeholders. • Parliament should take leadership in establishing a clear legal mechanism for achieving the required 2/3rd gender principle in elective and appointive positions.
		THE OFFICE OF THE REGISTRAR OF POLITICAL PARTIES • The ORPP issued a circular to political parties that highlighted the salient legal activities and timelines that were applicable as a result of the Political Parties (Amendment) Act 2022. • The ORPP engaged with political parties and stakeholders to sensitize them on the new amendments to the Political Parties Act and on issues related to formation, structure, and management of coalitions ahead of the elections. • The ORPP recruited, trained, and deployed 155 monitors to observe party primaries across the 47 Counties. • The ORPP also trained party election boards, secretary generals, and party leaders on Internal Dispute Resolution Mechanisms (IDRMs).	• Engage with stakeholders and political parties to review and implement the regime of party financing to ensure more transparent, equitable and accountable public funding for political parties throughout the election cycle. Make efforts towards promoting accountability in campaign financing by encouraging political parties to support the implementation of Campaign Financing Act. • Observe strict supervision of political parties to ensure open, democratic, professional, and accountable management of political parties and party affairs. Pay more attention towards internal governance processes of parties to ensure democratic and accountable governance structures and processes including democratic conduct of party elections and nomination of candidates. • Enhance partnership and collaboration with the IEBC and the PPDT to ensure better management of party affairs such as nominations and dispute resolution during the election period. • Encourage political parties to operate within the constitutional and legal provisions that govern them and instill accountability measures including meting out appropriate sanctions to delinquent parties and party officials. • Maintain strictness on political parties to comply with the two thirds gender rule in their affairs including nominations and elections. • Work with political parties and stakeholders to adopt a threshold on special interest groups for political parties as a registration requirement for political parties for them to declare the number of special interest groups in the party.

			• Establish proper mechanisms for ensuring political parties do not engage in illegal mining of personal data from existing registration systems or Mpesa logs to "forge" party membership and ensure that appropriate sanctions are put in place curb this practice. • Ensure greater public engagement to educate the public on the political party regime including deregistration and resignation from parties.
	CROSS-CUTTING ISSUES AND CONCERNS		
	Covid-19 Pandemic	• The 2022 elections took place during the Covid-19 pandemic period • WHO and MoH protocols and guidelines and preventive measures on Covid-19 were applicable • However, these were largely neglected throughout the 2022 election cycle • ELOG noted limited adherence to Covid-19 protocols and guidelines and preventive measures during IEBC voter registration exercises and during IEBC preparations for the elections • Covid-19 protocols and guidelines and preventive measures were largely neglected during party nominations, political campaigns, on Elections Day and during the Supreme Court petition process.	• The government, electoral actors, stakeholders and citizens should at all times apply and adhere to Covid-19 protocols, guidelines and preventive measures
	Constitutional two-thirds gender rule	• A decade after the promulgation of the Constitution 2010 the progressive two-thirds gender rule is yet to be operationalized • Parliament ignored calls and even threats of dissolution and failed to operationalize the rule • Courts also thwarted IEBC efforts to implement the gender rule.	• There is need for Kenyans to have a broad-based conversation and dialogue on other politically and socially acceptable strategies and methods that could be adopted to promote gender inclusivity in politics and elections especially to enable the attainment of gender parity in Parliament, given Parliament's reluctance to operationalize the two-thirds gender rule.

	Campaign Financing	• The Campaign Financing Act was enacted in 2013 but its operation was suspended for the 2013 elections. • In 2017, Parliament extended its suspension. • In 2022, Parliament blocked IEBC's efforts to enact enabling Regulations to operationalize the Act. • Campaign financing was not regulated in 2022, leaving the environment free for all and vulnerable to manipulation • Big spenders and huge money in politics had negative effects on the 2022 elections and remains a recurring feature since 2010. •	• There is need for Kenyans to publicly engage in dialogue and conversations on the high cost of elections and high cost to get elected to elective positions. • There is need for Kenyans to be mindful of the negative impacts of money in politics and to mitigate the negative influence of money by shunning and shaming corrupt practices in elections, voter bribery and the political big-spenders.
	IEBC model and infrastructure	• In the 2022 elections, the IEBC was segmented and operated dysfunctionally with dysfunctional internal governance. • Appointment of Commissioners was delayed into the election year. A disagreement and fallout amongst the Commissioners also occurred during the tallying and verification of the presidential election results. • Fallout amongst IEBC Commissioners and dysfunctioning of the IEBC keep recurring since 2010. • Political intimidation and onslaughts on the IEBC Commissioners and IEBC as an institution keep recurring since 2010	• Need for Kenyans to dialogue, review, rationalized and re-evaluate the electoral system and infrastructure, including the EMB model in Kenya with a view to identifying a system and infrastructure that best suits the political dynamics and nuances in Kenya. ELOG proposes that considerations should be put in place for Kenyans to dialogue and build consensus over the most suitable electoral system and infrastructure as well as the Commission model through organized and structured and broad-based bottom-up dialogue and conversations.
	Technology in elections	• • Despite the robust framework of technology that IEBC has adopted and keep deploying for elections, many challenges and concerns keep recurring over procurement and utility of technology in elections especially with regard to voter registration, voter identification and results transmission. • • ELOG noted these challenges and concerns in the 2022 elections and these largely formed the basis of the 2022 presidential election petitions. • • In 2013 and 2017, similar challenges and concerns were raised during the elections. • • Utility and deployment of technology in elections is useful when it meets the constitutional threshold under Article 86 of the Constitution of being simple, accurate, verifiable, accountable and transparent.	• The IEBC should review with electoral stakeholders the use and deployment of technology in elections to evaluate and assess its viability in the context of the challenges and concern that keep recurring related to procurement and satisfaction of the constitutional threshold under Article 86 of the Constitution. • Kenyans should also engage in public dialogue and conversation over the utility and viability of technology in elections to evaluate, assess it efficacy as well as continued reliance on it.

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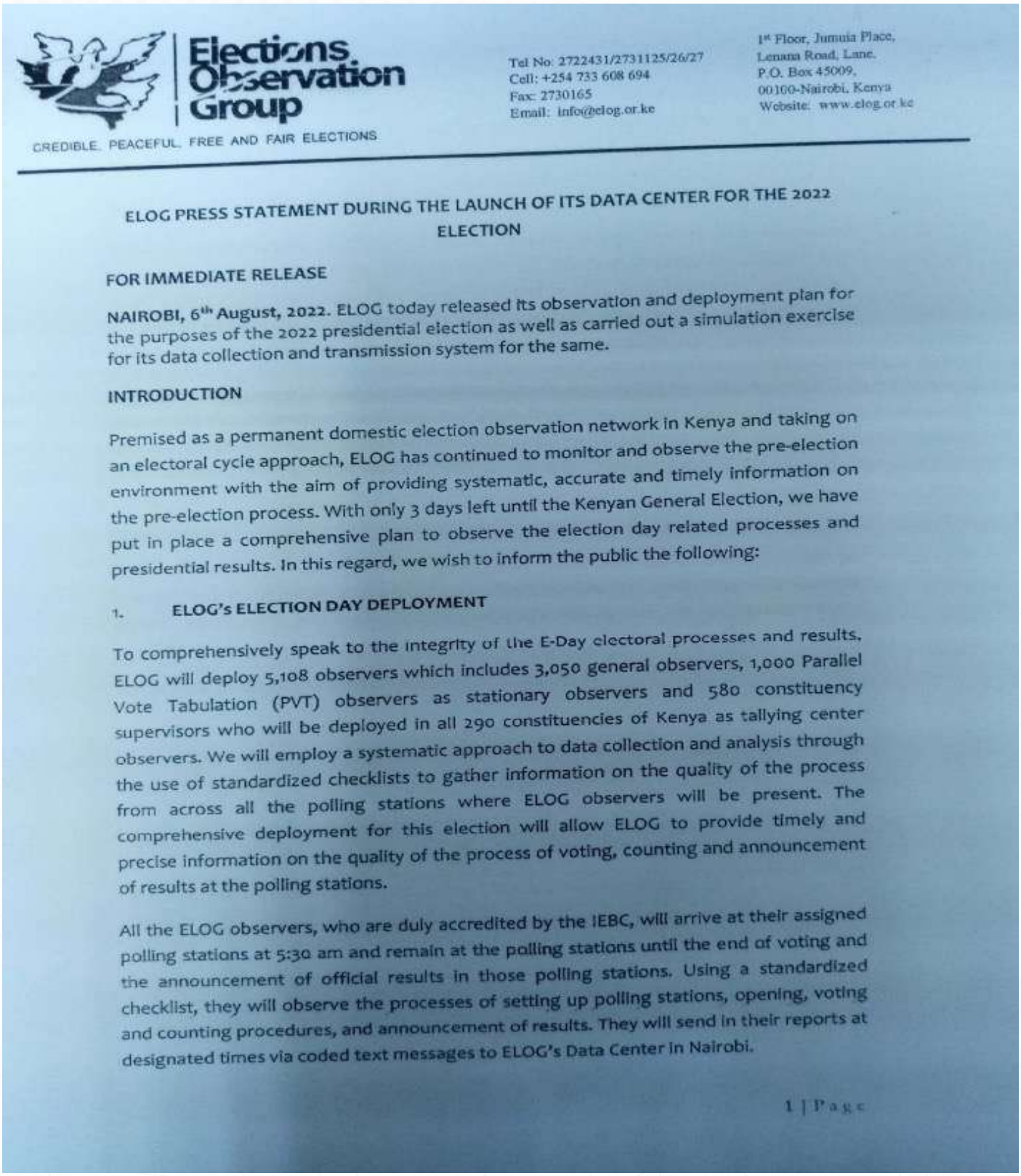
APPENDIX

1: ELOG 2022 PRESS STATEMENTS

PRESS STATEMENT ON THE LAUNCH OF ELOG'S DATA CENTER (6TH AUGUST 2022)



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ELOG PRESS STATEMENT DURING THE LAUNCH OF ITS DATA CENTER FOR THE 2022 ELECTION

FOR IMMEDIATE RELEASE

NAIROBI, 6th August, 2022. ELOG today released its observation and deployment plan for the purposes of the 2022 presidential election as well as carried out a simulation exercise for its data collection and transmission system for the same.

INTRODUCTION

Premised as a permanent domestic election observation network in Kenya and taking on an electoral cycle approach, ELOG has continued to monitor and observe the pre-election environment with the aim of providing systematic, accurate and timely information on the pre-election process. With only 3 days left until the Kenyan General Election, we have put in place a comprehensive plan to observe the election day related processes and presidential results. In this regard, we wish to inform the public the following:

1. **ELOG's ELECTION DAY DEPLOYMENT**

To comprehensively speak to the integrity of the E-Day electoral processes and results, ELOG will deploy 5,108 observers which includes 3,050 general observers, 1,000 Parallel Vote Tabulation (PVT) observers as stationary observers and 580 constituency supervisors who will be deployed in all 290 constituencies of Kenya as tallying center observers. We will employ a systematic approach to data collection and analysis through the use of standardized checklists to gather information on the quality of the process from across all the polling stations where ELOG observers will be present. The comprehensive deployment for this election will allow ELOG to provide timely and precise information on the quality of the process of voting, counting and announcement of results at the polling stations.

All the ELOG observers, who are duly accredited by the IEBC, will arrive at their assigned polling stations at 5:30 am and remain at the polling stations until the end of voting and the announcement of official results in those polling stations. Using a standardized checklist, they will observe the processes of setting up polling stations, opening, voting and counting procedures, and announcement of results. They will send in their reports at designated times via coded text messages to ELOG's Data Center in Nairobi.

1 | Page

Additionally, ELOG will deploy 580 constituency supervisors who oversee the observation missions in their constituencies as well as observe the tallying of results at the 290 constituencies. They will also be reporting on critical incidents.

2. ELOG's NATIONAL DATA CENTER

Today, ELOG is officially launching its National Data Center which will receive and process election day information from the observers. On 9th August 2022, the Election Day, ELOG's Data Centre will open at 5:00 am and will remain open until the counting has finished at all sampled polling stations and all observers having sent in their observation reports. This center will be opened to the public and media at all times.

ELOG is fully prepared to observe the presidential election. We are currently conducting a second live simulation exercise to test the functionality of our data management systems and our observers. All the 1,000 PVT stationary observers are sending in practice reports based on the Election Day scenario, which will be duly processed by the data clerks and the analysis team.

CONCLUSION

With the political campaigns ending today and Kenyans preparing to turn out to vote on Tuesday 9, we call on all citizens, media, political parties and candidates, IEBC and the security agencies to play their parts to peaceful, credible, free and fair elections for a prosperous Kenya.

Thank you and God bless Kenya!

Signed by

Anne W. Ireri, Chairperson
Elections Observation Group (ELOG)

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B. PRESS STATEMENT ON ELECTORAL PREPAREDNESS (8TH AUGUST 2022)

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FOR IMMEDIATE RELEASE

NAIROBI, Monday 8th August, 2022. ELOG today released its report on the pre-election environment, the state of electoral preparedness and other current electoral issues ahead of the August 9th Polls.

INTRODUCTION

Kenya will hold its 7th General Election since the advent of multi-party politics in 1991 in less than 24 hours. Tomorrow's polls will be *transitional* where the incumbent will be expected to hand over power to a new administration. Before Kenyans decide through the ballot, the Election Observation Group (ELOG) is pleased to issue its pre-election statement based on its Long Term and Thematic Election Observation, Media Monitoring Framework and the Election Violence Monitoring Program for the last 6 months.

During the aforementioned period, ELOG had 290 Long Term Observers, 40 Media Monitors and 46 Elections Violence Monitors in all the 290 constituencies. In view of the above, ELOG notes the following;

1. **ELECTORAL SECURITY & VIOLENCE**

ELOG notes that Campaigns in the 2022 General Election cycle have been relatively peaceful compared to 2017. This notwithstanding, sporadic violence incidents have been observed in a few areas. ELOG has conducted a comparative analysis with our key strategic partners and has mapped the following areas as high potential hotspot areas. They include; Nairobi, Nakuru, Kericho, Kisumu, Uasin Gishu, and Mombasa. Such critical information should inform the operations of security agencies in the electioneering period and even more so, tomorrow as citizens go to polls.

ELOG calls on security agencies to partner with community leaders to maintain peace and deploy early response interventions in areas where ethnic tension has been reported. Further, ELOG calls upon Kenyans to maintain peace, political tolerance and moderation during and after the Elections.

2. MEDIA MONITORING FOR HATE SPEECH AND FAKE NEWS

ELOG media observation reports over the period indicated significant self-censorship by the traditional mainstream media in relation to proliferation and spread of hate speech and fake news content, misinformation and disinformation. New media, however, has exposed Kenyans to an unregulated space filled with fake news, dis/misinformation as well as hate speech.

Further, vernacular stations recorded increased spread of hate speech content, particularly during the party primaries and during political party primaries, which mainly targeted women candidates and voters. Twitter topped the list of the social media platforms in the spread of fake news, dis/misinformation and hate speech with Facebook and TikTok following closely.

3. ELECTION ADMINISTRATION AND MANAGEMENT

ELOG noted that the IEBC has in recent days improved its engagement and communication with different government agencies like the National Police Service, the office of the Director of Public Prosecutions and Political Parties. We commend this move by the commission, however, ELOG has noted with concern that IEBC is yet to share and give clarity on the Standard Operating Procedures for Election Day operations.

On the issue of transmission of results, ELOG commends the IEBC's effort of conducting two Electoral Transmission of Results Simulations. However, we took note that the IEBC did not conduct a simulation in areas where it will deploy satellite technology. ELOG hopes that IEBC has put in place measures to mitigate challenges that would occur during the transmission of results on the 9th of August, 2022 especially from the identified 1,290 polling stations with network challenges.

ELOG notes IEBC's effort to deal with the concerns raised by stakeholders on the Form 34A and Form 34B and acknowledges the Commission's discussions with all stakeholders on the handling of Book 2 of 2 of Form 34A. ELOG hopes that thorough and adequate training and instructions were given to the polling officials on how to handle this. Further, we call upon the Commission to share the clear protocols with stakeholders. ELOG is cognizant of the fact that any mistake in the use of Form 34A Book 1 or Book 2 could potentially compromise the entire Presidential Election.

For the purposes of transparency and accountability, we urge the Commission to give periodic updates on Election Day processes. Proactive communication to the public and

other stakeholders will reduce anxiety among Kenyans as they wait to know the outcome of the elections.

4. AUDIT OF THE REGISTER OF VOTERS (RoV).

The credibility of the election depends on the accuracy and completeness of the register of voters for the purposes of tomorrow's election. The Commission undertook an independent audit of the RoV. However, IEBC's failure to publish the findings of the KPMG Audit Report in good time was a great setback. The Commission failed to provide an implementation matrix that could help CSOs such as ELOG to vet the quality of cleaning done on the voter register.

In the absence of a complete report and the matrix, one can only hope that the Commission did a good job and addressed pertinent issues raised by the audit such as ghost electoral officials and weak password systems to mention but a few.

5. PARTICIPATION OF SPECIAL INTEREST GROUPS

ELOG noted that there was insufficient voter education which largely contributed to the exclusion of SIGs in the electoral process. Citizens, especially from minority groups, view the government as accessible to only those with either economic strength or solid ethnic affiliations with holders of political power. Therefore, the inadequate inclusion of the SIGs in public affairs stands out as a significant governance challenge facing the country.

Our long term observation reports indicated that patterns of electoral related violence targeting women, youth, PWDs and ethnic minorities, thus further disenfranchising them from full and active participation in the electoral process, particularly as candidates and voters.

6. VOTER EDUCATION

ELOG notes that there was a slight improvement in voter education especially on the voting process in the past 1 month. Further, during the entire election cycle of 5 years there was a low outreach level necessitated by lack of funds to the Commission. ELOG recommends that the duty bearers consider continuous voter education throughout the

entire election cycle. IEBC could also partner with strategic CSOs to complement the efforts to conduct continuous voter education.

7. CONTINUOUS VOTER REGISTRATION

ELOG notes that the Commission failed to meet its targets of registered voters. IEBC had targeted to register 4.5 million voters but only managed to register slightly above 1.1 million voters. ELOG recommends that IEBC adopts a comprehensive and continuous voter registration process. The voter registration process and the register should then be audited periodically by the IEBC and independent stakeholders, and availed early for inspection and verification before the consolidation into the final register.

ELOG recommends that the Commission and the National Registration Bureau should consider harmonizing the voter register with the civil registry.. This practice has been effective in a number of countries, considering that civil registries contain detailed information on all citizens of all ages. The harmonization will help the Commision run a seamless registration exercise at a significantly reduced cost.

CONCLUSION

ELOG urges IEBC to ensure that polling materials reach the polling stations on time, we urge the Commission to work with all stakeholders to ensure that they deliver credible, peaceful, free and fair elections.

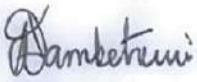
To the Security Agencies, ELOG encourages you to show a high level of professionalism, nonpartisanship, protect the ballot boxes, and swiftly respond to incidents of violence to ensure peaceful elections and public confidence.

To parties and candidates, we urge adherence to the code of conduct and exercise restraint to allow the Commission to discharge its mandate especially on the results management process.

To the citizens, we implore you to turn up in large numbers , and exercise your civic duty to vote peacefully.

God bless Kenya

Signed by



Anne W. Ireri, Chairperson

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C. PRESS STATEMENT ON THE SET-UP AND OPENING OF POLLING STATIONS (9TH AUGUST 2022)

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ELOG PRESS STATEMENT ON THE SET UP AND OPENING OF POLLING STATIONS FOR THE 9TH AUGUST 2022 GENERAL ELECTION

FOR IMMEDIATE RELEASE

NAIROBI, Tuesday 9th August, 2022. ELOG today released a report on its observation of the set up and opening of polling stations for the on-going 9th August 2022 General Election.

Background

The 2022 general elections are the second to be held on the 2nd Tuesday of August as envisaged by the Constitution of Kenya. These elections are also the third since the promulgation of the same Constitution and have been characterized by several changes to the electoral environment. Key among these were changes were the election laws some of which impacted the process positively while others have had the negative effect. The Independent Electoral and Boundaries Commission (IEBC) has in the last year gotten four new commissioners who replaced those who had resigned earlier in the electoral cycle.

Electoral Observation

In its bid to contribute towards a credible, peaceful, free and fair election, the Elections Observation Group (ELOG) today deployed 5,108 observers across all 290 constituencies and 47 counties. Out of these, 1,000 Parallel Vote Tabulation (PVT) observers were specially recruited, trained and deployed to a nationally representative random sample of polling stations. PVT is an advanced Election Day observation methodology which allows ELOG to confidently comment on the Election Day and tabulation processes for all polling stations.

ELOG PVT observers monitored the opening and set-up of the polling stations, recorded key findings on standardized forms, and were required to rapidly report information on the process to the PVT data Centre. This statement is based on verified reports from 97% of sampled polling stations upon commencement of polls, availability of strategic election materials and critical incidents, filed as of 12:00 pm. ELOG has so far observed the following:

FINDINGS

1. **Set-up and Opening of Polling Stations**

   - ELOG observers were initially not permitted to observe in **2.8%** of polling stations compared to 1.6% during the 2017 election. Of these, most were not permitted on account of not having an oath of secrecy, which is not a requirement for accredited observers.
   - **94.3%** of polling stations opened by 7:00 am.
   - In **99.6%** of polling stations, the ballot boxes were shown to be empty before being sealed. This is consistent to 2017 when ballot boxes were also shown empty in in a similar number of the stations.
   - Security was present in **99.6%** of the polling stations which is consistent with the presence in 2017.
   - **99.6%** of polling stations had the Kenya Integrated Elections Management System (KIEMS) kit. This is an improvement from 2017, when **99.3%** of polling stations had the KIEMs kit.

2. **Deployment of Strategic Election Materials**

Most polling stations **(99.3%)** had the requisite strategic materials (ballot boxes, ballot papers, IEBC stamp, indelible ink, and the Results Form 34A). This is a slight improvement from 2017, when 95.5% of polling stations had the requisite strategic materials.

3. **Accessibility of the Polling Stations**

In **18.4%** of polling stations, voters had to go up some steps/stairs to reach the polling stations.

4. **Participation of Presidential Party Agents**

In **88.3%** of polling stations, a presidential party agent for Azimio La Umoja/ One Kenya Alliance was present. Additionally, in 88.8%, there was a presidential party agent for United Democratic Alliance (UDA)/Kenya Kwanza present, and in 73.5% of polling stations, there was a party agent representing another presidential candidate (not Azimio or UDA).

5. **Participation of women in the electoral process**

   - On average, there were 8 IEBC polling officials total at the polling stations, and an average of 4 women officials.
   - 36.5% of the polling stations had a female security officer; and

- 43.7% of party representatives for Azimio la Umoja One Kenya Alliance party were women, 45.6% for United Democratic Alliance (UDA) were women, and other parties' representatives were 54.5% women.

6. COVID-19 Mitigation Measures

- At 35.7% of polling stations had hand washing or sanitizing facilities.
- In 59.9% of polling stations, polling officials were observed to be using COVID-19 protective measures, including face marks and sanitizers.
- Social distancing (1.5 meters) was maintained between all persons in 37.8% of polling stations.
- Only 7.7% of polling stations had thermo-scanners for taking temperatures at polling stations.

CRITICAL INCIDENTS

So far, ELOG has observed critical incidents during the set-up and opening of polling stations process which includes:

1. Observers not permitted to observe

- During the opening of polls, some ELOG observers were denied access into polling stations by Presiding officers who demanded oaths of secrecy for observers and stamped IEBC letters. This is contrary to the IEBC election observer guidelines and requirements for observers. ELOG was able to work closely with IEBC officials both at headquarters and in the constituencies to speedily resolve the issues and ensure observers gain access into the polling stations.
- ELOG notes that this same confusion in credentials required by different presiding officers to facilitate observers into polling stations also was a problem in the 2017 and 2013 elections. By the time of this statement most of ELOG observers had been allowed back into their assigned station. ELOG calls upon the IEBC to speedily resolve any pending cases and allow observers back into the polling stations to enable them to observe the voting, counting and tabulation processes.

2. Polling stations opening late or voting suspended

ELOG observers reported incidents where polling stations did not open on time or voting was suspended for some time during the initial voting. The challenges included malfunctioning or unavailability of the KIEMS kits e.g Marycliff Primary School in Mvita, Luthie Primary School in Tigania East, Muslim Primary School in Kanduyi.

3. **Missing or wrong strategic materials**

There were reported incidents of missing or wrong materials in Rongai constituency (Nakuru County) where the ballot papers for the MP position were missing. This has led to the postponement of the MP election. In Nyachil Ward - North Imenti an Independent MCA was not on the ballot. In Yala Primary School in Karachuonyo Constituency (Homabay County), wrong materials for the MP position were received. This was resolved in about 1 hour.

4. **Violence at Polling Station**

In Obware Primary School in Nyatike Constituency, a party agent attacked the polling official whom he claimed was partisan.

Conclusion

ELOG is committed to its mandate and will remain vigilant and diligent in serving Kenyans by comprehensively monitoring and observing the electoral processes and providing timely, impartial and objective reports and recommendations.

ELOG will continue observing throughout the day and will be releasing some of its key findings on the voting process to the members of the public and will issue a preliminary statement on the conduct of the elections tomorrow, Wednesday, August 10, 2022 at 10:00 am on. Soon thereafter, ELOG anticipates issuing its statement on the presidential result. This will take place immediately after IEBC officially announces/declares the final presidential results.

We take this opportunity to congratulate Kenyans for turning out early and in numbers. We appeal to them to exercise patience and tolerance despite the challenges experienced with the process.

Signed by

Anne W. Ireri, Chairperson

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D. PRESS STATEMENT ON THE ELOG'S PARALLEL VOTE TABULATION AND MEDIA'S DECISION TO STOP BROADCASTING TALLYING OF THE PRESIDENTIAL RESULTS (14TH AUGUST 2022)

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PRESS STATEMENT ON THE ELOG'S PARALLEL VOTE TABULATION AND MEDIA'S DECISION TO STOP BROADCASTING TALLYING OF THE PRESIDENTIAL RESULTS FOR THE 9TH AUGUST 2022 GENERAL ELECTION

FOR IMMEDIATE RELEASE

NAIROBI, Sunday 14th August 2022. The Elections Observation Group (ELOG) today released a report on its Parallel Vote Tabulation (PVT) and decision by the Media houses to stop tallying the presidential results for the August 2022 General Election.

INTRODUCTION

Having deployed over 5,000 observers for the purposes of observing the 9th August elections in Kenya, ELOG continues to observe closely the post-election environment through its long term observation mission and particularly, the verification and tallying processes that are being undertaken by the Independent Electoral and Boundaries Commission (IEBC) at Bomas of Kenya.

1. ***Media decision to stop parallel vote tallies of the presidential results***

For the first time, the IEBC permitted media houses in Kenya to undertake and broadcast their own tallies. This was a positive step which contributed towards enhancing transparency and accountability in the results management systems in the country. However, ELOG observes that media houses have not been consistent in their tallies and consequently, some have stopped broadcasting the tallying process leaving many Kenyans and other stakeholders who were anticipating full/total tallies from this transparent process with anxiety.

ELOG appreciates the editorial teams from some of the media houses like the Nation Group for explaining their decision to stop this process. We noted that tallying results - whether for the IEBC, parties, media houses or citizen observers - is challenging and complex.

2. ***ELOG's Parallel Vote Tabulation (PVT).***

ELOG has long understood the challenges expected from conducting an independent tally of election results from its own experience having mounted such exercises beginning with the 2010 referendum, the 2013 and 2017 presidential elections.

For the just concluded August polls, ELOG deployed a PVT mission in 1,000 sampled polling stations across the 290 constituencies who observed and reported on the setup,

opening and counting processes and also recorded the official results from the polling stations. The findings on the quality of the E-Day processes that includes setup, opening, voting, counting and closing of polling stations were released on 9th August and 10th August, 2022 respectively.

ELOG has since completed its PVT projections and established the votes garnered by each of the presidential candidates within a statistically valid margin of error. Since ELOG's PVT observation methodology was based on a representative sample and thus not in every station in the country, it provides statistically valid estimates of the results within which the final official results should fall. Since it is the constitutional mandate of the IEBC to announce the official results of the presidential election, we will share our findings immediately after the Commission announces the presidential result. ELOG PVT will therefore offer Kenyans an alternative validation option of the official results once announced by IEBC

Therefore, at this juncture, what we can share is that that there is no evidence that the turnout has been manipulated. The IEBC has announced the turnout as 65.4%. ELOG's PVT turnout estimate is 65.1% +/-0.7%. We have also meticulously reviewed all scanned images of the 34B results forms available on the IEBC web portal. While some images are incomplete, they show a similar trend to our PVT estimates.

Conclusion

ELOG calls upon all Kenyans to remain calm as the country awaits the official declaration of the presidential results. As the tallying exercise continues, we urge the IEBC to continue being inclusive, transparent, and accountable to the people and the stakeholders involved. They should continue to give designated party representatives and observers unfettered access to the national tallying center. We also remind them to be mindful of the national anxiety and the remaining timelines.

God bless Kenya.

Signed by

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Chairperson, Elections Observation Group (ELOG)

Elections Observation Group

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E. PRESS STATEMENT ON ELOG'S PVT RESULTS VERIFICATION (16TH AUGUST 2022)

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ELOG'S STATEMENT ON THE OFFICIAL 2022 PRESIDENTIAL RESULTS

FOR IMMEDIATE RELEASE

NAIROBI, Tuesday 16th August, 2022. The Elections Observation Group (ELOG) today released its statement on the official 2022 presidential results for the 9th August 2022 General Election.

1. INTRODUCTION

The Elections Observation Group (ELOG) is a permanent national platform composed of civil society and faith-based organizations, committed to promoting citizen participation in the electoral processes, through non-partisan and impartial domestic observation and objective reporting of elections. This is the fourth statement on Election Day findings from ELOG and focuses on overall PVT findings, including an assessment of the results announced by the IEBC. The first statement that covered the setup and opening of polling stations was released on August 9 and the second statement on the voting and counting process was released on August 10. ELOG notes that all statements are preliminary in nature and a final and more comprehensive statement will be issued in due course.

ELOG closely monitored the pre-election environment processes since January 2022. This entailed deploying one long-term observer in each of the 290 constituencies, 40 media monitors, and 46 electoral violence monitors, to observe and report on the pre-election environment. For Election Day, ELOG deployed over 5,000 observers across all 47 counties and 290 constituencies. Of these, 1,000 Parallel Vote Tabulation (PVT) observers were carefully recruited, specially trained and deployed to a nationally representative random sample of polling stations.

PVT is an advanced Election Day observation methodology, which allows ELOG to confidently comment on the Election Day and tabulation processes. ELOG's PVT, thus, provides an independent assessment of the presidential election results as announced by the IEBC.

PVT involves deploying highly trained observers to assess the conduct of the opening, voting and counting processes as well as to assess the official vote count. PVT observers observe all the processes in sampled polling stations and, finally, record the official figures as announced by the presiding officers at those stations. The official votes count from the representative random sample of polling stations are then subjected to rigorous integrity and quality checks and analyzed to draw projections. PVTs are conducted by nonpartisan citizen observers that do not have any stake in the outcome, and they rely on statistics to ensure that the data collected is not geographically or demographically skewed.

ELOG successfully conducted a PVT for the 2010 referendum on the Constitution as well as for the 2013 and 2017 General Elections. PVT has been successfully applied in other African countries such as Nigeria (2011, 2015 and 2019), Ghana (2008, 2012, 2016 and 2020), Malawi (2009, 2014 and 2019) and Zambia (2008, 2012, 2015, 2016 and 2021). In most instances, PVT

helped reduce tensions in the tallying process by providing a rapid independent assessment of the opening of polls, voting and counting processes as well as results.

2. EXECUTIVE SUMMARY

ELOG has been observing the entire electoral process through a comprehensive long term observation (LTOs), media monitoring for hate speech and electoral violence monitoring. On the Election Day ELOG deployed a Parallel Vote Tabulation (PVT) project to assess the electoral process from setup and opening, voting, counting and the official results. The PVT observers were part of 5,000 observers that ELOG deployed in all the 290 constituencies in the country.

Based on its PVT and informed by its long-term and thematic observation, ELOG notes that, despite ongoing challenges and clear areas for reform, the 2022 General Elections registered improvements from the 2017 process and culminated in an enhanced open and secured results management process.

Voting on Election Day was relatively calm and organized with some marked improvements in voting operations and use of results technology. However, administrative and external problems persisted, such as the postponement of some elections on or just before Election Day, the inconsistent presence of voting materials such as the manual register, isolated incidents of violence, and the initial obstruction of observers.

ELOG notes that the results transmission system worked much better than expected from the IEBC's two simulations with over 99% of scanned images of the 34A and 34B posted on the IEBC's web public portal. However, we are extremely concerned about the chaos that broke out at the National Tallying Center at Bomas, as well as the split within the IEBC leading to some commissioners to quit from the tallying process and issue their own statements prior to the announcement of the presidential results. ELOG calls on all Kenyans to remain calm and maintain peace under the circumstances. We further call on candidates to resolve disputes over election results, including results for the presidential election, peacefully through legal channels.

Based on its findings, ELOG notes a significant drop in voter turnout compared to 77.7% in 2017 elections. Through the PVT, ELOG can confirm that both the turnout rate and the official results announced by the IEBC are consistent with its PVT projections.

3. THE CONTEXT

The 2022 General Elections are the third to be held under the new constitution. The pre-election period was shaped by changes in the legal framework and regulations, new political alliances, and administrative improvements and lingering challenges.

a) **Legal framework and reforms** - While there were notable updates to the legal framework in the pre-election period, many reforms stalled in the legislature and some gaps still remain. For instance, like in previous elections in 2013 and 2017, ELOG notes with concern lack of implementation of the Election Campaign Finance Act 2013 which leads to an unfair campaign platform for all candidates and inadequate transparency in the political process. However, successful changes to the Political Parties Act supported more peaceful party nomination processes and primaries, though our findings indicated that many party members were unaware of the changes and the subsequent party nomination processes. In addition, frequent - and in some cases - last-minute litigation

contributed to uncertainty throughout the pre-election period. For instance, the use of a manual register as an alternative and backup system to the KIEMS kit for voter identification was legally debated very late in the process creating potential confusion for voters, observers and polling officials.

b) **Voter registration** - ELOG notes that the Commission failed to meet its target of registered voters. IEBC had targeted to register 6.0 million voters through the enhanced continuous voter registration exercise but only managed to register slightly above 2.5 million voters. ELOG recommends that the Commission and the National Registration Bureau should consider harmonizing the voter register with the civil registry. This practice has been effective in a number of countries, such as South Africa, considering that civil registries contain detailed information on all citizens. The harmonization will help the Commission run a simplified registration exercise at a significantly reduced cost.

c) **Election management and communications** - ELOG noted that the IEBC improved its engagement and communication with different government agencies such as the National Police Service, the office of the Director of Public Prosecutions and Political Parties. ELOG also noted that the IEBC increased its public outreach closer to election day to provide periodic updates on the preparations and processes. On the transmission of results, ELOG commended IEBC's effort of conducting two public simulations for the electronic transmission of results from the polling stations. ELOG noted that the simulation had its own successes and challenges. However, IEBC did not conduct a sufficient test in areas where it was scheduled to deploy satellite technology.

a. In addition, gubernatorial elections in Mombasa and Kakamega, four national assembly elections and two county assembly elections were postponed just hours before or on the election day on account of ballot paper errors, a major setback that the IEBC will need to be held accountable for lack of conducting thorough due diligence. Delayed elections are an additional public expense and can suppress participation and turnout in the respective areas.

d) **Open data and access to information**- Insufficient access to key election information in the pre-election period created challenges to transparency and the ability of stakeholders to mobilize in a timely manner. The final audited voters' list was not made available for assessment to the public or civil society, nor was the full audit report by KPMG. In addition, access to the gazetted polling stations list came very late compared to previous elections, and details on the polling standard operating procedures were not easily available, which led to a lack of clarity for voters, observers and stakeholders leading up to election day. However, ELOG commends the IEBC for its quick uploading of form 34As to its online portal, and allowing for bulk downloads of the images, which helped to enhance transparency around the results management process.

e) **Observer rights and security** - The safety and security of observers remains a serious concern as ELOG received several reports of attacks on observers in the pre-election period, during the election day and immediately after election day. Election observation by civic groups is enshrined in the Elections Act 2011 of Kenya, section 42 and in international standards such as the *Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations*. Violence and intimidation against observers is a human rights violation and can have a negative effect for other civic actors and electoral stakeholders. Additionally, as in previous elections,

the accreditation process suffered from logistical errors, printing failures, and delayed issuance creating serious barriers for election observers to organize and deploy.

f) **Voter education** - As noted in our pre-election statement, whilst there was slight improvement in the last 1 month to election day, there was a generally low level of voter education during the entire election cycle. The ELOG LTO reports consistently indicated that voter education was not comprehensively undertaken in all the constituencies in the country. Deployment mapping reports showed scant voter education provision in fringe areas such as the northern counties. Disaggregated data shows that education targeting women, people living with disabilities (PWDs) and youth was improved from 2017, however, voter education targeting PWDs declined.

g) **Political party nominations and campaigns** - ELOG noted that many candidates were disqualified for not meeting registration standards and procedures. Meanwhile, a lack of enforcement of chapter 6 of the Constitution allowed some candidates with integrity issues, such as corruption charges, to run for election. That said, our observation of the campaign process was indicative of a much calmer environment despite isolated incidences of hate speech, intimidation and violence, particularly during the party primaries. Of particular concern to ELOG was the targeting of the women aspirants for abuse consistently throughout the reporting period. In addition, ELOG received reports of the misuse of state resources and noted that disinformation, particularly via social media platforms, was rampant throughout the campaign.

4. ELECTION DAY KEY FINDINGS

a) Setup and Opening

The major findings of the exercise were as follows;

- ELOG observers were properly permitted to observe in 97.2% of polling stations. Those initially not permitted to observe were most often asked for a signed Oath of Secrecy which is not a requirement for accredited observers. Through the intervention from the ELOG secretariat and the field supervisors, all were ultimately allowed to observe.
- 94.3% of the polling stations nationwide opened by 7:00am. Of the remaining stations, most opened between 7:00 am and 8:00 am, with some opening past 8:00 am. This is an improvement from 2017 when 53.5% of the polling stations opened on time.
- 99.6% of polling stations had the Kenya Integrated Elections Management System (KIEMS) present. This is an improvement from 2017. Recall that in 2017, the Electronic Poll Book was present in 99.3% of stations during the opening and setup process.

b) Voting

Our findings noted that the voting process generally went smoothly across the country with isolated incidences reported as indicated below:

- In 6.3% of the stations, the Kenya Integrated Elections Management System (KIEMS) failed to function properly. This is an improvement from 2017 when electronic poll books malfunctioned in 7.6% of stations.
- There was a queue at 5:00pm in 76.8% of polling stations. Of those stations with a queue at 5:00pm, 96.6% were properly permitted to vote.

c) Closing and Counting

On the closing and counting process, our findings indicated as follows:

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

5. ELOG 2022 PVT RESULTS AND TURNOUT

ELOG wishes to note and remind all Kenyans that the IEBC is constitutionally mandated to announce and declare the *final official* results of the elections.

ELOG received, verified and analyzed observation reports from 99% of its PVT observers from 990 polling stations. These observers arrived at their assigned polling stations at 5:30 am and remained there throughout voting and counting until the results for the presidential election for the polling station were announced and posted. PVT observers reported the official results as announced by the presiding officers for sampled polling stations via coded text messages using their mobile phones.

Because they rely on scientific statistics, PVT findings have a margin of error (MoE). The margin of error for the ELOG's PVT results can be thought of as a range within which the true results should fall. The margin of error is *not* a measurement of quality but rather how precise the estimate is.

a) Election Results

ELOG's PVT estimates are consistent with IEBC's official results for the 2022 presidential election. In light of our assessment of the Election Day processes and given that IEBC figures fall within the projected ranges, the PVT projections, therefore, corroborates the official results.

Below are the ranges projected by the ELOG PVT for each of the candidates. These ranges are determined by the PVT estimates and the margins of error.

Comparison of Official IEBC Results with ELOG PVT Projections

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

Source ELOG 2022 Kenya Presidential Elections

b) Turnout

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

c) Rejected

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

6. RECOMMENDATIONS

Having observed the electoral process over a period of time, it is clear that we have made strides toward credible elections, the country still has a lot of work to do. Some of the issues that need to be addressed to improve the integrity of our elections include:

1. The quick resolution of election-related court cases ahead of Election Day, particularly those that directly impact election day procedures and processes.
2. Ensuring the transparency in the integrity and maintenance of the Voter Register, including providing full access to the KPMG audit report and clear status updates on the uptake of recommendations from the report. In addition, working with stakeholders to independently audit the register will help improve the integrity of the register.
3. Provision of consistent civic and voter education (as provided by the Constitution) to ensure that voters are well informed of their rights and responsibilities.
4. Punishing electoral offenses and ensuring enforcement of code of conduct for political parties or candidates.
5. Ensuring consistent openness, transparency, inclusive participation and timely access to information by the IEBC and the other agencies concerned with election management.
6. Ensuring that all polling stations are physically accessible to PWDs and the elderly.
7. Fidelity to the constitutional 2/3 gender threshold.
8. Ensuring the implementation and enforcement of the campaign finance regulation and timely electoral legal reforms to avoid giving an undue advantage to the incumbents.
9. Ensuring that the results transmission process is clear and understandable to all stakeholders and that the commission shares with citizens and other stakeholders the final elections results in a granular and machine readable format.

10. Maintaining simplicity and transparency of the Election Day processes as well accuracy and verifiability of the results management and transmission processes.
11. Ensuring the safety and security of voters, observers and other stakeholders throughout the electoral process.
12. Reducing the cost of elections in order not to over-burden tax payers.

CONCLUSION

ELOG will issue a final and comprehensive report on the 2022 elections within 60 days of the declaration of the final election results. The report will provide a more in-depth analysis of the 2022 electoral environment as well as provide far reaching recommendations on needed reform areas ahead of the next election cycle.

We commend all Kenyans for participating in these elections as voters, officials, candidates and observers. Following the announcement of results, we urge that political actors act in good faith, promote peace among their supporters, and seek any redress for grievances through the courts of law.

God Bless Kenya.

Thank You

Signed by

Anne W. Ireri,

Chairperson, Elections Observation Group (ELOG)

Elections Observation Group

For media inquiries, please contact, Salome Muiriru on info@elog.or.ke

Learn more about www.elog.or.ke or on social media on Facebook at facebook.com/ElectionObseravationGroupKenya or on Twitter @elogkenya.

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Table 1:0: Distribution of ALL Polling Units by Counties and ELOG's PVT Sample for the August 9, 2022, Presidential Election

County Code	County Name	ALL PS	% All PS	All PS RV	% All PS RV	Sample PS	% Sample PS	Sample PS RV	% Sample PS RV	Difference PS	Difference RV
1	MOMBASA	1,041	2.3%	641,913	2.9%	22	2.2%	13,418	2.8%	0.1%	0.1%
2	KWALE	742	1.6%	328,253	1.5%	16	1.6%	7,490	1.6%	0.0%	-0.1%
3	KILIFI	1,140	2.5%	588,602	2.7%	24	2.4%	12,318	2.6%	0.1%	0.1%
4	TANA RIVER	367	0.8%	141,096	0.6%	9	0.9%	3,318	0.7%	-0.1%	-0.1%
5	LAMU	191	0.4%	81,453	0.4%	4	0.4%	1,558	0.3%	0.0%	0.0%
6	TAITA TAVETA	394	0.9%	181,827	0.8%	10	1.0%	4,295	0.9%	-0.1%	-0.1%
7	GARISSA	558	1.2%	201,473	0.9%	10	1.0%	3,724	0.8%	0.2%	0.1%
8	WAJIR	609	1.3%	207,758	0.9%	14	1.4%	4,138	0.9%	-0.1%	0.1%
9	MANDERA	553	1.2%	217,030	1.0%	12	1.2%	4,639	1.0%	0.0%	0.0%
10	MARSABIT	446	1.0%	166,912	0.8%	10	1.0%	3,573	0.7%	0.0%	0.0%

Table 1:0: Distribution of ALL Polling Units by Counties and ELOG's PVT Sample for the August 9, 2022, Presidential Election

County Code	County Name	ALL PS	% All PS	All PS RV	% All PS RV	Sample PS	% Sample PS	Sample PS RV	% Sample PS RV	Difference PS	Difference RV
11	ISIOLO	218	0.5%	89,504	0.4%	4	0.4%	1,620	0.3%	0.1%	0.1%
12	MERU	1,639	3.5%	772,139	3.5%	37	3.7%	17,174	3.6%	-0.2%	-0.1%
13	THARAKA - NITHI	665	1.4%	231,932	1.0%	14	1.4%	5,134	1.1%	0.0%	0.0%
14	EMBU	747	1.6%	334,302	1.5%	15	1.5%	6,926	1.4%	0.1%	0.1%
15	KITUI	1,578	3.4%	532,758	2.4%	34	3.4%	11,798	2.5%	0.0%	-0.1%
16	MACHAKOS	1,472	3.2%	687,565	3.1%	32	3.2%	14,858	3.1%	0.0%	0.0%
17	MAKUENI	1,129	2.4%	479,401	2.2%	25	2.5%	10,525	2.2%	-0.1%	0.0%
18	NYANDARUA	727	1.6%	361,165	1.6%	16	1.6%	8,285	1.7%	0.0%	-0.1%
19	NYERI	962	2.1%	481,632	2.2%	20	2.0%	10,310	2.2%	0.1%	0.0%
20	KIRINYAGA	697	1.5%	376,001	1.7%	15	1.5%	7,792	1.6%	0.0%	0.1%
21	MURANG'A	1,186	2.6%	620,929	2.8%	27	2.7%	14,039	2.9%	-0.1%	-0.1%
22	KIAMBU	2,113	4.6%	1,275,008	5.8%	44	4.4%	26,985	5.6%	0.2%	0.1%

Table 1:0: Distribution of ALL Polling Units by Counties and ELOG's PVT Sample for the August 9, 2022, Presidential Election											
County Code	County Name	ALL PS	% All PS	All PS RV	% All PS RV	Sample PS	% Sample PS	Sample PS RV	% Sample PS RV	Difference PS	Difference RV
23	TURKANA	785	1.7%	238,528	1.1%	17	1.7%	5,095	1.1%	0.0%	0.0%
24	WEST POKOT	857	1.9%	220,026	1.0%	18	1.8%	4,585	1.0%	0.1%	0.0%
25	SAMBURU	333	0.7%	100,014	0.5%	7	0.7%	2,100	0.4%	0.0%	0.0%
26	TRANS NZOIA	757	1.6%	398,981	1.8%	18	1.8%	9,273	1.9%	-0.2%	-0.1%
27	UASIN GISHU	958	2.1%	506,138	2.3%	21	2.1%	10,997	2.3%	0.0%	0.0%
28	ELGEYO/MARAKWET	554	1.2%	213,884	1.0%	11	1.1%	4,043	0.8%	0.1%	0.1%
29	NANDI	927	2.0%	406,288	1.8%	21	2.1%	9,379	2.0%	-0.1%	-0.1%
30	BARINGO	1,029	2.2%	281,053	1.3%	21	2.1%	5,648	1.2%	0.1%	0.1%
31	LAIKIPIA	561	1.2%	263,012	1.2%	12	1.2%	5,574	1.2%	0.0%	0.0%
32	NAKURU	2,050	4.4%	1,054,856	4.8%	45	4.5%	23,549	4.9%	-0.1%	-0.2%
33	NAROK	883	1.9%	398,784	1.8%	19	1.9%	8,703	1.8%	0.0%	0.0%

Table 1:0: Distribution of ALL Polling Units by Counties and ELOG's PVT Sample for the August 9, 2022, Presidential Election											
County Code	County Name	ALL PS	% All PS	All PS RV	% All PS RV	Sample PS	% Sample PS	Sample PS RV	% Sample PS RV	Difference PS	Difference RV
34	KAJIADO	890	1.9%	463,273	2.1%	19	1.9%	9,787	2.0%	0.0%	0.0%
35	KERICHO	922	2.0%	428,067	1.9%	21	2.1%	9,627	2.0%	-0.1%	-0.1%
36	BOMET	853	1.8%	376,985	1.7%	17	1.7%	7,996	1.7%	0.1%	0.0%
37	KAKAMEGA	1,682	3.6%	844,551	3.8%	37	3.7%	18,503	3.9%	-0.1%	-0.1%
38	VIHIGA	627	1.4%	310,043	1.4%	14	1.4%	6,312	1.3%	0.0%	0.1%
39	BUNGOMA	1,377	3.0%	646,598	2.9%	30	3.0%	14,824	3.1%	0.0%	-0.2%
40	BUSIA	856	1.9%	416,756	1.9%	19	1.9%	9,026	1.9%	0.0%	0.0%
41	SIAYA	1,035	2.2%	533,595	2.4%	22	2.2%	11,734	2.5%	0.0%	0.0%
42	KISUMU	1,165	2.5%	606,754	2.7%	25	2.5%	12,778	2.7%	0.0%	0.1%
43	HOMA BAY	1,227	2.7%	551,071	2.5%	26	2.6%	11,747	2.5%	0.1%	0.0%
44	MIGORI	1,014	2.2%	469,019	2.1%	22	2.2%	10,090	2.1%	0.0%	0.0%
45	KISII	1,298	2.8%	637,010	2.9%	28	2.8%	13,419	2.8%	0.0%	0.1%

Table 1:0: Distribution of ALL Polling Units by Counties and ELOG's PVT Sample for the August 9, 2022, Presidential Election											
County Code	**County Name**	**ALL PS**	**% All PS**	**All PS RV**	**% All PS RV**	**Sample PS**	**% Sample PS**	**Sample PS RV**	**% Sample PS RV**	**Difference PS**	**Difference RV**
46	NYAMIRA	643	1.4%	323,283	1.5%	14	1.4%	7,112	1.5%	0.0%	0.0%
47	NAIROBI CITY	3,643	7.9%	2,415,310	10.9%	78	7.8%	51,979	10.9%	0.1%	0.1%
48	DIASPORA	27	0.1%	10,443	0.0%	2	0.2%	513	0.1%	-0.1%	-0.1%
49	PRISONS	106	0.2%	7,483	0.0%	2	0.2%	38	0.0%	0.0%	0.0%
TOTAL		**46,233**	**100.0%**	**22,120,458**	**100.0%**	**1,000**	**100.0%**	**478,345**	**100.0%**		

F. PRESS STATEMENT ON THE EIGHT ELECTIONS HELD ON THE 29TH OF AUGUST 2022

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ELOG PRESS STATEMENT ON THE ONGOING EIGHT ELECTIONS HELD ON THE 29TH AUGUST 2022

FOR IMMEDIATE RELEASE

NAIROBI, Monday 29th August 2022. The Elections Observation Group (ELOG) released its preliminary report on the eight ongoing elections held by the Independent Electoral and Boundaries Commission (IEBC).

INTRODUCTION

ELOG has deployed 124 observers to observe the on-going elections in Mombasa and Kakamega counties and four constituencies: Pokot South, Kitui Rural, Rongai, and Kacheliba. ELOG has 90 stationary observers (5 per constituency) and a team of 22 constituency supervisors to observe the Election Day processes from opening of polling stations, closing, counting and declaration of results at the designated polling stations. In addition, the 22 Constituency Supervisors will observe the tallying of results at the constituency levels.

UPDATE

ELOG can authoritatively state that the majority of the polling stations opened on time at 6.00 am and as of 3:00 pm Monday, August 29, 2022, voting in all polling stations was underway with no significant incidents observed. However, ELOG has noted with concern a relatively low voter turnout at all polling stations.

In Kakamega, ELOG records a 17 percent voter turnout as of 3:00 pm.

In Mombasa, ELOG records a (20 -30) percent voter turnout as of 3:00 pm.

ELOG has observed a relatively peaceful atmosphere during the polling process. ELOG will continue observing the elections throughout the day and will release further findings on the voting process, the closing of the polls, the counting process and declaration of results.

CONCLUSION

ELOG calls upon all Kenyans in the 8 electoral areas where the IEBC is conducting the elections to turn out to vote and remain calm as they await the official declaration of the

results. ELOG further urges the IEBC to ensure inclusiveness, transparency and accountability during this exercise.

Signed by

Anne W. Ireri,

Chairperson, Elections Observation Group (ELOG)

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Learn more about www.elog.or.ke or on social media on Facebook at facebook.com/ElectionObseravationGroupKenya or on Twitter @elogkenya.

G. PRESS STATEMENT ON SUPREME COURT'S RULING OF THE PRESIDENTIAL PETITIONS (16TH AUGUST 2022

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FOR IMMEDIATE RELEASE

NAIROBI, Tuesday 6th September, 2022. The Elections Observation Group (ELOG) today released a statement on the judgment issued by the Supreme Court of Kenya (SCOK) on the 2022 Presidential Petitions that challenged the election of His Excellency, Hon Dr. William Ruto as the President-Elect.

INTRODUCTION

Apart from observing the General Elections that was held on 9th August 2022, ELOG was also accredited by the SCOK to observe the hearing and determination of the Presidential Election Petitions. Having observed the processes and the proceedings of the apex court, we wish to state as follows:

1. **THE JUDGMENT BY SCOK ON THE CONSOLIDATED PRESIDENTIAL ELECTION PETITIONS**

ELOG wishes to laud the Supreme Court for the patient, rigorous, transparent and professional manner with which it heard and determined these petitions. The hearing process was robust and inclusive, and allowed the parties, including those that were admitted as *Amicus Curia*, to argue and present their respective cases without any hindrance. ELOG lauds the Supreme Court for maintaining fidelity to the Constitution by hearing and determining the Presidential Election Petitions within the 14 days' timeline prescribed by the Constitution.

Furthermore, ELOG lauds and welcomes the Judgment and verdict of the Supreme Court, which effectively ends the 2022 electoral cycle and brings to finality the outcome of the 2022 Presidential Election. Having consistently and closely observed the 2022 electoral processes and shared its observations and findings timeously and consistently, it is ELOG's view that the Supreme Court judgment and verdict upheld the rule of law and constitutionalism in Kenya and asserted the place of the Kenya Constitution 2010, as a beacon of democratic transformation in Kenya.

The Constitution of Kenya 2010 establishes the Supreme Court as the legal platform and final arbiter in providing relief and remedy to any party that feels aggrieved by the results and outcome of the Presidential Election. The Supreme Court lived to this expectation

and provided a judgment and verdict that settled the presidential election dispute and upheld the sovereign will of the people of Kenya.

The Supreme Court Judgment vindicated ELOG's observation and findings on the Presidential Election that was held on 9th August 2022. Therefore, it gives ELOG great pride to reiterate the significance of PVT election observation methodology, which enables citizen observers to deploy scientific and statistically based approaches to election observation missions, with precision and based on a minute margin of error, to speak to the results and outcome of an electoral process.

Through the Supreme Court judgment and verdict, ELOG emphatically reiterates that the results and outcome of the 9th August 2022 Presidential Election (as were announced by the IEBC) were consistent with its PVT findings and projections.

2. BUILDING A NATION: PROMOTING TOLERANCE, UNITY AND HARMONY

ELOG thanks Kenyans who waited patiently for the Supreme Court judgment. Although it will take time for some Kenyans to move on, we look forward to a healed Nation where Kenyans can live freely as a united and cohesive people irrespective of their political persuasions.

Further, ELOG calls for sobriety and calls upon the political class to promote a culture of tolerance, unity and harmony. The electioneering period is now over and leaders and all Kenyans should accept to work together for the realization of an effective government and opposition. This will play a significant role in ensuring the prosperity of the Kenyan nation and people.

CONCLUSION

Guided by the electoral cycle approach, ELOG will continue observing the electoral processes going forward and share valuable findings and recommendations with Kenyans and electoral duty bearers. As indicated earlier, ELOG will be releasing a final comprehensive election observation report, which will make elaborate recommendations aimed at improving and reforming the electoral processes and infrastructure in Kenya. In particular, ELOG's recommendations will focus on re-calibration of the IEBC in order to rebuild public trust and confidence in the institution as well as strengthen it as a functional corporate entity and truly independent Commission, as contemplated by the Constitution of Kenya 2010 and in line with the Supreme Court Judgment and verdict. We will also continue to focus on other aspects of the electoral process that will improve the electoral environment and infrastructure as we move towards the next elections in 2027.

APPENDIX 2: ELOG 2017 KEY FINDINGS

1. THE LEGAL FRAMEWORK

- Uncertainties, inconsistencies, and lack of clarity in the application of the electoral legal framework, despite its comprehensiveness
- Inadequate testing of the efficacy of technology in the electoral process
- Introduction of controversial amendments close to the fresh presidential elections
- The lack of implementation and enforcement of laws such as the Elections Offences At and the Electoral Code of Conduct
- High Court suspension of the implementation of the Campaign Financing Law
- Failure to realize Article 88 of the constitution due to the failure to enforce resource equity
- Non-adherence to the 2/3 gender principle

2. CONDUCT OF ELECTORAL MANAGEMENT BODY - IEBC

- Under siege from numerous court cases which resulted in mistrust by the electorate
- Murder of the ICT Manager Chris Msando a week before the elections
- Disbandment of the Elections Technology Advisory Committee (ETAC) two weeks before the elections
- Processes affected by the Supreme Court's nullification of the 8th August Presidential Election results
- Inadequate inclusion of stakeholders in decision-making for the fresh presidential elections
- Internal disagreements within the commission
- The chairperson's public admission of the lack of technical preparedness of the commission
- Inadequate legal council
- Improvement in technical preparations for the Fresh Presidential Elections

3. VOTER REGISTRATION

- IEBC conducted continuous voter registration and the mass voter registration
- Registration process met the set standards
- Promotion of awareness during the mass voter registration by politicians, political parties, and interested groups
- The IEBC updated the public by releasing statistics on voter registration every week within the three weeks of mass voter registration
- Concerns relating to how the transfer of voters to different polling stations was carried out
- Numerous cases of double registration
- ELOG established errors, inconsistencies, and inaccuracies in the voter register even after KPMG's audit
- In the run-up to the fresh presidential elections, IEBC publicly shared the register one day before the elections.

4. VOTER/CIVIC EDUCATION

- IEBC recruited and deployed at least 2,900 voter educators at the ward level
- Voter education peaked around the voter verification process and close to the elections
- Special Interest Groups were not comprehensively targeted with PWDs receiving the least attention
- The Commission used live television adverts to mobilize citizens to register and to explain the voting process

5. POLITICAL PARTIES' ACTIVITIES AND ELECTIONS CAMPAIGNS

- Official start of campaign announced by IEBC in May 2017
- Party Primaries were to be conducted by April 26th and submission of candidate lists by May 10th 2017
- Large number of independent candidates initially aligned to political parties
- Candidates campaigned freely across the country
- Political intolerance through political zoning in the party and ethnic strongholds
- ELOG observed Voter bribery, inducement, intimidation, coercion, and violence which constituted electoral offenses
- Campaign period for fresh presidential elections commenced on 6th October and ended on 15th October 2017
- On 10th October NASA publicly announced its withdrawal from the fresh Presidential Elections
- Divisive campaign platform characterized by speech, suspicion, violence, and undermining of constitutional bodies

6. PARTICIPATION OF SPECIAL INTEREST GROUPS (SIGS)

- Inaccessibility of campaign venues by PWDs
- Increase in cases of violence targeting SIGs
- SIG candidates were elected and nominated to the National and County Assemblies
- The IEBC designated diaspora voter registration centers
- Prisoners were registered as voters and voted for the president in the general elections
- Lack of targeted voter education for prisoners
- Lack of segregated data for prisoners registered as voters

APPENDIX 2: ELOG 2017 RECOMMENDATIONS

1. RECOMMENDATIONS ON ELECTORAL PROCESSES

a. Independent Review of the 2017 Electoral Process

- Undertake an immediate comprehensive and independent audit of IEBC's management and conduct of the election. The audit should address the legal, institutional, and operational processes.
- Evaluate the role of critical actors such as security personnel, political parties, and the media

b. The employment of an electronic system in Elections

- IEBC should ensure accountability and transparency especially electronic management of elections and transmission of results
- Publicly explain and track complementary mechanisms to be deployed
- Enhance public trust and confidence by demystifying the KIEMS system. Encourage open public scrutiny, testing, and assurances of their functionality
- IEBC should map and allocate network operators beforehand based on practical and logical conclusions
- IEBC should allow access, inspection, and audit of the entire IT system and infrastructure by stakeholders
- IEBC should keep a log of individuals authorized to operate the system and adopt a secure file server system with a secure IP address

c. Dealing with advantages of Incumbency

- IEBC should review the existing legislative, administrative, and policy frameworks that allow political contestants to take advantage of incumbency during the electioneering period

d. Electoral Legal Reforms and Amendment to Electoral Laws

- Efforts should be put in place to ensure the operationalization and implementation of the Election Campaigning Financing Act (2013)
- Parliament to ensure that laws that guarantee the 2/3 gender threshold are in place
- Electoral laws should not be amended within 6 months of an election

e. Clear Framework for Electoral Reforms

- The IEBC should develop a clear strategy for initiating, managing, and implementing post-2017 electoral cycle reforms

f. Clarity on the Electoral Complaints and Dispute Resolution Processes

- The IEBC, the Judiciary, the Political Parties Dispute Tribunal (PPDT) and other stakeholders should review and clearly establish procedures for submitting electoral complaints, lodging electoral disputes, and the jurisdiction of the relevant adjudicating bodies

- The dispute resolution procedures should be undertaken within reasonable timelines

g. Transparent and Predictable Processes

- IEBC in consultations with stakeholders should develop a clear electoral calendar for the next cycle

h. Cost of Elections and Financial Audit

- IEBC should undertake a detailed, transparent, and accountable financial audit for the 2017 elections
- IEBC should take measures to review the cost drivers for future elections to be cost-effective and affordable
- IEBC to provide a detailed, transparent, and accountable financial audit and report for the 2017 elections

i. Electoral Campaigns

- Political actors should adhere to the code of conduct and in cases of breach, action to be taken by the relevant bodies such as the IEBC, ORPP, DPP, and NCIC
- Political Parties should declare a clear election agenda and policy proposal to the electorate.
- Media, Civil Societies, and other stakeholders should condemn adverse campaigning

j. Party Financing

- The Registrar of Political Parties should convene all stakeholders to review the regime on party financing to ensure equal treatment of parties

k. Stakeholder Engagement and Public Outreach

- IEBC should adopt a proactive consultative approach that ensures all stakeholders in the electoral process are adequately involved and regularly consulted
- The setup of public platforms for dialogue and consensus
- IEBC should cultivate an open-door policy
- IEBC should adopt a continuous engagement policy and approach

l. Voters Registration

- IEBC should develop data validation mechanisms to eliminate errors in the register
- IEBC to initiate a public campaign for voters to inspect their details in the register
- The National Registration Bureau and IBC should explore ways of integrating the civil and voter registration
- The IEBC should collaborate with the Registrar of Births and Deaths to get timely data of the deceased and update the register

m. Training and Education

- IEBC should invest in continuous capacity improvement and training of commissioners, and permanent and local staff on internationally recognized curriculum

n. Recruitment of Election Personnel

- IEBC should invest in the timely recruitment of election personnel based on compliance of the laws and regulations

o. Voter/Civic Education

- Improve planning and roll-out of voter education programs and activities

p. Focus on Special Interest Groups ((SIGs)

- The parliament should enact affirmative action legislation to facilitate inclusive elections as envisioned in the constitution
- In reference to PWDs, the 2013 recommendations are applicable

2. RECOMMENDATIONS TO ELECTORAL ACTORS

a. IEBC- Leadership and Authority of the IEBC

- Political parties should respect the authority and leadership of IEBC
- The IEBC chairperson should always demonstrate leadership and authority to wisely steer the commission to independent, accountable, and transparent processes

b. Judiciary – A Just Dispute Arbitration and Resolution Process

- The judiciary should enhance citizens' and stakeholders' confidence in its work

c. Security Agents – Creating a Conducive Environment for Credible Elections

- Adequate security should be provided to ensure voters and other stakeholders are protected during elections.
- Security agents should remain independent, neutral, and impartial in the discharge of their duties

d. Political Parties – Support for Credible Processes

- Political parties should open up their processes to public scrutiny
- Party members should desist from violence and other malpractices during the primaries
- Parties to institute disciplinary mechanisms to deter malpractices

e. Media - Adherence to the Code of Conduct

- The media should safeguard its independence and impartiality in elections coverage and reporting
- The media should not allow politicians to use their platforms to spread fear, ethnic hatred, and despondency during an electoral period
- The media should foster transparency through a wide coverage of electoral processes

f. Civil Society – Sustained Vigilance and Support to Electoral Processes

- Should be neutral actors and hold public authorities accountable
- Should strengthen alliances among the different groups

g. Independent Institutions – Fidelity to Constitutional mandate

- Should maintain fidelity to the constitution and other relevant laws in discharging their mandate

3. GENERAL RECOMMENDATIONS

a. National Dialogue – Political Problems require political solutions

- National dialogue should be convened to address the social, political, and economic issues affecting the country and the socio-political effects of the 2017 elections

b. Dealing with the scars of the violence

- The Office of the Director of Public Prosecution should investigate the incidences of assault and killing of civilians in the run-up to, during, and after the Fresh Presidential elections

c. Respect for Independent Institutions

- Political actors should respect the independent institutions and where aggrieved, follow the due process to address the raised concerns

d. Taking action on Electoral Offences

- The EBC, the Office of the Director of Public Prosecution and other enforcement agencies to respond to incidences on electoral offences

FOOTNOTES

FOOTNOTES

1 Article 4 of the Constitution of Kenya 2010 establishes the Republic of Kenya as a multi-party democratic state while Article 38 entrenches political rights of citizens, including the right to free, fair, and regular elections based on universal suffrage and the free expression of the will of the electors…under Article 38 (2). Article 81 prescribes the general principles for the electoral system in Kenya, which includes free and fair elections…under Article 81 (e). Further , Article 136 (2) prescribes the periodicity of elections," being the second Tuesday in August, in every fifth year…" when read together and evaluated, the operational import of these constitutional provisions creates the foundation of an electoral regime in Kenya.

2 Larry Diamond, Developing Democracy: Toward Consolidation, Baltimore, John Hopkins University Press, 1999, p.10. Available at: https://www.researchgate.net/publication/273071614_Developing_Democracy_Toward_Consolidation; Larry Diamond, Is the Third Wave of Democratization Over? An Empirical Assessment", Working Paper No. 236, March 1997. Available at:https://kellogg.nd.edu/sites/default/files/old_files/documents/236.pdf

3 ELOG is a long-term, permanent, and national forum or network which comprises of Civil Society Organizations (CSOs) be they Non-Governmental Organizations (NGOs) and Faith-based Organizations (FBOs). ELOG's mandate is to strengthen democracy in Kenya and the African Region through promoting inclusive, transparent, and accountable electoral processes. The Vision of ELOG is "towards credible, peaceful, free and fair electoral processes in Kenya and the African region". The Mission, which was changed during the Strategic Planning Retreat, in May 2018, is: "to provide a platform for monitoring and observing electoral processes." See Elections Observation Group Strategic Plan 2019 – 2023.

4 Lindberg, Staffan I, The Surprising Significance of African Elections, Journal of Democracy Volume 17, Number 1 January 2006, National Endowment for Democracy and The Johns Hopkins University Press, p. 139 at p. 150. Available at:https://www.researchgate.net/publication/228160194_The_Surprising_Significance_of_African_Elections; https://www.journalofdemocracy.org/articles/the-surprising-significance-of-african-elections/

5 Lindberg, Staffan I, Democracy and Elections in Africa, Baltimore: Johns Hopkins University Press. Available at: https://www.researchgate.net/publication/248674617_Democracy_and_Elections_in_Africa_by_Staffan_I_Lindberg_Baltimore

6 Rustow, Dankwart. 1970. "Transitions to Democracy: Toward a Dynamic Model." Comparative Politics 2: 337-363. Available at: https://moodle.swarthmore.edu/pluginfile.php/100501/mod_resource/content/0/Democracy/Rustow_Transitions_Toward_Dynamic_Model.pdf

7 Lindberg, Staffan I, Democratization by Elections in Africa Revisited, Paper presented at American Political Association's 103rd Annual Meeting, August 30 – September 2, 2007, p. 5.Available at: https://www.academia.edu/402710/Democratization_by_Elections_In_Africa_Revisited; https://www.researchgate.net/publication/228423054_Democratization_by_Elections_in_Africa_Revisited

8 https://gndem.org/declaration-of-global-principles/ ; https://www.ndi.org/DoP

9 ELOG is made up of the following members: Center for Governance and Development (CGD); Constitution and Reform Education Consortium (CRECO); Catholic Justice and Peace Department (CJPD); Ecumenical Center for Justice and Peace (ECJP); Federation of Women Lawyers of Kenya (FIDA - K); Institute for Education in Democracy (IED); National Council of Churches of Kenya (NCCK); Supreme Council of Kenya Muslims (SUPKEM); United Disabled Persons of Kenya (UDPK) and Youth Agenda (YA). ELOG has incorporated the following additional thematic members: Badili Africa; Code 4 Kenya; Center for Minority Rights Development (CEMIRIDE); Kimbilio Trust; Transform Empower for Action Initiative (TEAM); Emerging Leaders Foundation (ELF); Siasa Place and Legal Resources Foundation (LRF)

10 The BBI was started on March 9th, 2018, after President Uhuru Kenyatta and his closest rival in the 2017 presidential election, Raila Odinga, decided to publicly shake hands and unite the country. The two thereafter jointly formed a team of individuals who held public participation fora across the 47 counties in Kenya to collect views on what changes Kenyans desired to see from the 9 agenda items that were identified as follows: How to end ethnic division; Inclusivity; How to solve polarizing elections; Safety and security; How to deal with corruption; How to deals with lack of national ethos; Responsibility and rights; Shared prosperity; Enhancing devolution. The BBI team collected recommendations from 7,000 Kenyans and compiled them into the BBI Report. The first BBI report was publicly launched on Wednesday, 27th November 2019 at the Bomas of Kenya by President Uhuru Kenyatta and Hon. Raila Odinga while the Second report was released on 21st October 2021 in Kisii County. The BBI Report pdf and summary (Building Bridges Initiative, Kenya), is available at:https://kenyayote.com/bbi-report-pdf-and-summary-building-bridges-initiative-kenya/

11 ELOG envisioned regional observation platforms in 2019 as a framework for establishing an effective regional structure to devolve parts of the observation process through regional task forces made up of the regional offices/networks of the current ELOG members and other like-minded local organizations involved in electoral governance issues. ELOG launched and used 10 Regional Observation Platforms in the 2022 elections, covering all the 47 Counties, namely Rift Valley (Upper and Central), Nyanza, Western, Metropolitan (Nairobi and neighboring counties), Coastal,

Eastern (upper Eastern and Central Eastern), and Central.

12 ELOG PVT Methodology involved deploying highly trained observers to 1,000 randomly sampled polling stations across the 290 Constituencies in the country, to collect and rapidly transmit data for purposes of assessing the conduct of the opening, voting, and counting processes as well as for assessing the official vote count. PVT observers observe all the processes in designated sampled polling stations and, finally, record the official results as announced by Presiding Officers at those polling stations. The official votes count from the representative sampled polling stations are then subjected to rigorous integrity and quality checks and analyzed to draw projections. PVTs are conducted by non-partisan citizen observers that do not have any stake in the election's outcome, and they rely on statistics to ensure that data collected is not geographically or demographically skewed.

13 "Hotspots" were identified on the basis of Hot Zones Mapping and Early Warning by the Kenya National Cohesion and Integration Commission (NCIC). The NCIC Report identified 23 counties as possible hotspots for violence before, during and after the August 2022 elections. The regions included Kisumu, Uasin Gishu, Nakuru, Mombasa, Nairobi, Migori, Kericho, Isiolo, Lamu, Bungoma, Kakamega, Vihiga, Trans Nzoia, Marsabit, Kiambu, Nyamira, Homa Bay, Nandi, Bomet, Murang'a, Kirinyaga, Garissa and Siaya.See National Cohesion and Integration Commission Kenya Report "Towards a Violence-Free 2022 Election: Conflict Hotspot Mapping for Kenya". Available at https://cohesion.or.ke/index.php/media-center/latest-news/411-ncic-conducts-external-validation-of-conflict-hotspot-mapping-report

14 In operational terms, at least 2 stationary General Observers were deployed to observe and report on E-Day processes and results in each of the 1,450 electoral areas in the 290 Constituencies. This accounted for 2,900 out of 3,050 stationary General Observers. The remaining 150 stationary General Observers were distributed proportionately to electoral areas based on other considerations such as population of a given electoral area as well as those electoral areas considered as "hotspots".

15 The collected official results Forms 34A and 34B and Forms 37a and 37B were posted at ELOG's Central Depository Unit on the VSE portal available at www.elog.org

16 See, "Why-peace-remains-elusive-as-kenya-prepares-for-the-2022-general-elections" by Emmy Auma and Ivan Campbell, Saferworld, available at: https://www.saferworld.org.uk/long-reads/why-peace-remains-elusive-as-kenya-prepares-for-the-2022-general-elections

17 See, "The 2022 Kenyan General elections: An Analysis of New and Enduring Violence Risk Factors" by The Sentinel Project, Mar 29, 2021, available at:https://thesentinelproject.org/2021/03/29/the-2022-kenyan-general-election-an-analysis-of-new-and-enduring-violence-risk-factors/

18 See, Joel Otieno, Kenya's Elections 2022: Managing the Risk of Violence, The Horn Institute for Strategic Studies, October 25, 2021, available at https://horninstitute.org/kenyas-2022-elections-managing-the-risk-of-violence/#:~:text=Kenya%E2%80%99s%202022%20Elections%3A%20Managing%20the%20Risk%20of%20Violence

19 Kenya elections 2022: Why the ethnic factor may be losing its power, BBC News, 20 July 2022, available at: https://www.bbc.com/news/world-africa-62215613

20 Hustler in Kenyan politics means a hard worker of humble beginnings who's determined to make it in life

21 See, "Why-peace-remains-elusive-as-kenya-prepares-for-the-2022-general-elections" by Emmy Auma and Ivan Campbell, Saferworld, available at: https://www.saferworld.org.uk/long-reads/why-peace-remains-elusive-as-kenya-prepares-for-the-2022-general-elections

22 Ibid, "Why-peace-remains-elusive-as-kenya-prepares-for-the-2022-general-elections" by Emmy Auma and Ivan Campbell, Saferworld, available at: https://www.saferworld.org.uk/long-reads/why-peace-remains-elusive-as-kenya-prepares-for-the-2022-general-elections

23 The Sentinel Project:https://thesentinelproject.org/2021/03/29/the-2022-kenyan-general-election-an-analysis-of-new-and-enduring-violence-risk-factors/

24 The Kenya National Cohesion and Integration Commission (NCIC) undertook Hot Zones Mapping and Early Warning and identified 23 counties as possible hotspots for violence before, during and after the August 2022 elections. The regions included Kisumu, Uasin Gishu, Nakuru, Mombasa, Nairobi, Migori, Kericho, Isiolo, Lamu, Bungoma, Kakamega, Vihiga, Trans Nzoia, Marsabit, Kiambu, Nyamira, Homa Bay, Nandi, Bomet, Murang'a, Kirinyaga, Garissa and Siaya. See National Cohesion and Integration Commission Kenya Report "Towards a Violence-Free 2022 Election: Conflict Hotspot Mapping for Kenya", available at https://cohesion.or.ke/index.php/media-center/latest-news/411-ncic-conducts-external-validation-of-conflict-hotspot-mapping-report

25 Kenyan Presidential Candidates Pledge to Uphold Peace in Polls, by Colleen Goko, Bloomberg, African Edition, July 10, 2022, available at: https://www.bloomberg.com/news/articles/2022-07-10/kenyan-presidential-candidates-pledge-to-uphold-peace-in-polls?leadSource=uverify%20wall See also: https://www.standardmedia.co.ke/business/index.php/national/article/2001452697/clerics-urge-leaders-kenyans-to-shun-violence-accept-poll-results

26 See,https://www.theguardian.com/world/2018/jan/30/kenyas-opposition-to-swear-in-raila-odinga-as-peoples-president; https://www.aljazeera.com/news/2018/1/30/raila-odinga-sworn-in-as-kenyas-peoples-president; https://www.bbc.com/news/world-africa-42870292

27 See, Rasna Warah, "Is the BBI a Trojan Horse Disguised as a Guardian Angel?", The Elephant, 20/11/2020, available at: https://www.theelephant.info/op-eds/2020/11/20/is-the-bbi-a-trojan-horse-disguised-as-a-guardian-angel/

28 The BBI was started on March 9th, 2018, after President Uhuru Kenyatta and his closest rival in the 2017 presidential election, Raila Odinga, decided to publicly shake hands and unite the country. The two thereafter jointly formed a team of individuals who held public participation forums across the 47 counties in Kenya to collect views on what changes Kenyans desired to see from the 9 agenda items that were identified as follows: How to end ethnic division; Inclusivity; How to solve polarizing elections; Safety and security; How to deal with corruption; How to deals with lack of national ethos; Responsibility and rights; Shared prosperity; Enhancing devolution. The BBI team collected recommendations from 7,000 Kenyans and compiled them into the BBI Report. The first BBI report was publicly launched on Wednesday, 27th November 2019 at the Bomas of Kenya by President Uhuru Kenyatta and Raila Odinga while the Second report was released on 21st October 2021 in Kisii County. The BBI Report pdf and summary (Building Bridges Initiative, Kenya), is available at:https://kenyayote.com/bbi-report-pdf-and-summary-building-bridges-initiative-kenya/

29 See, "Kenyatta and Odinga's pact has led to a new elite alliance. Why it won't last" by Prof. Karuti Kanyinga, The Conversation, published on 23 June 2020 and updated on 24 June 2020, available at:https://theconversation.com/kenyatta-and-odingas-pact-has-led-to-a-new-elite-alliance-why-it-wont-last-141207.
According to Prof. Karuti Kanyinga, the BBI proposals were meant to align elite interests to ensure cohesion. They appeared focused on ensuring that the largest ethnic communities got some presence in the national executive. The losers would also get a post and be active in parliament. The proposals included: Proposed amendments to the constitution to expand the national executive by including the post of prime minister among others.
A proposal to establish the position of the L eader of the O fficial O pposition which would be occupied by the runner-up of the presidential election. The O pposition L eader would be an ex-officio member of parliament.
A review of the electoral system to promote equalization of representation and equality of citizenship through proportional representation.

30 For the High Court verdict on the BBI, see "Kenya's BBI blocked in scathing court verdict for President Kenyatta" by Ferdinand Omondi, BBC News, 14 May 202, available at:https://www.bbc.com/news/world-africa-57094387 ; Also, analysis by John Makum Mbaki, "Is the BBI Ruling a Sign of Judicial Independence in Kenya", available at:https://www.brookings.edu/blog/africa-in-focus/2021/08/19/is-the-bbi-ruling-a-sign-of-judicial-independence-in-kenya/
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31 See, "Ruto and Tangatanga brigade savour sweet anti-BBI victory", by James Mbaka, The Star, 14 May 2021. Available at:https://www.the-star.co.ke/news/2021-05-14-ruto-and-tangatanga-brigade-savour-sweet-anti-bbi-victory/

32 See, "Why-peace-remains-elusive-as-kenya-prepares-for-the-2022-general-elections" by Emmy Auma and Ivan Campbell, Saferworld, available at: https://www.saferworld.org.uk/long-reads/why-peace-remains-elusive-as-kenya-prepares-for-the-2022-general-elections

33 Pivotal Elections in Africa: The Specter of Politics as Usual in Kenya's 2022 Election", Saskia Brechenmacher and NanjiraSambuli, Carnegie Endowment for International Peace, July 2022, pp 2-4, available at: https://carnegieendowment.org/2022/07/27/specter-of-politics-as-usual-in-kenya-s-2022-election-pub-87578

34 The two were indicted by the International Criminal Court for crimes against humanity and serious abuse of human rights following the 2007 post-elections violence in Kenya in which many Kenyans lost their lives. However, they were eventually acquitted by the Court on account of lack of evidence.
35 See, Kenya's 2022 Election: High Stakes, Crisis Group Africa Briefing N°182 Nairobi/Brussels, 9 June 2022, pg. 8, available at: https://www.crisisgroup.org/africa/horn-africa/kenya/kenyas-2022-election-high-stakes

36 "The Rebels Within: The Politics of Kieleweke and Tanga Tanga in Central Kenya", by Dauti Kahura, The Elephant, October 17, 2019. Available at https://www.theelephant.info/features/2019/10/17/the-rebels-within-the-politics-of-kieleweke-and-tanga-tanga-in-central-kenya/ .The narrative of the Tanga Tanga movement became very pronounced across the country to the effect that there was even an attempt to register the Tanga Tanga Movement as a party, which however failed. See, "Why Ruto's Tanga Tanga Movement can't be registered as a party", by Moses Odhiambo, The Star,18 September 2020, available at:https://www.the-star.co.ke/news/2020-09-18-why-rutos-tangatanga-movement-cant-be-registered-as-a-party/

37 Pivotal Elections in Africa: The Specter of Politics as Usual in Kenya's 2022 Election", Saskia Brechenmacher and NanjiraSambuli, Carnegie Endowment for International Peace, July 2022, pg. 9, available at: https://carnegieendowment.org/2022/07/27/specter-of-politics-as-usual-in-kenya-s-2022-election-pub-87578

38 See, Denis Kadima and Felix Owuor, "Kenya's Decade of Experiments With Political Party Alliances and Coalitions," Electoral Institute for Sustainable Democracy in Africa, 2014, available at: https://www.eisa.org/pdf/JAE13.1Kadima2. pdf

39 See,"DP Ruto's six big gambles in the march to State House", by Onyango Konyango, Daily Nation, Monday January 10, 2022, available at:https://nation.africa/kenya/news/politics/dp-william-ruto-six-gambles-in-vote-race-3677082

40 See, "Intelligence services caution Odinga ahead of Central Kenya tour", Africa Intelligence, The Continent's Daily, Issue dated 19/05/2022, available at:https://www.africaintelligence.com/eastern-africa-and-the-horn/2022/05/19/intelligence-services-caution-odinga-ahead-of-central-kenya-tour,109785798-art

41 See, "Pivotal Elections in Africa: The Specter of Politics as Usual in Kenya's 2022 Election", Saskia Brechenmacher and NanjiraSambuli, Carnegie Endowment for International Peace, July 2022, pg. 9, available at: https://carnegieendowment.org/2022/07/27/specter-of-politics-as-usual-in-kenya-s-2022-election-pub-87578

42 Otieno Otieno, Raila launches fifth bid for top job with Uhuru backing. The EastAfrican. Saturday December 11, 2021, available at https://www.theeastafrican.co.ke/tea/news/east-africa/raila-launches-fifth-bid-for-top-job-with-uhuru-backing-3648976

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