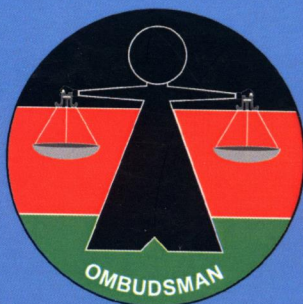


**THE COMMISSION ON ADMINISTRATIVE JUSTICE**  
*(Office of the Ombudsman)*

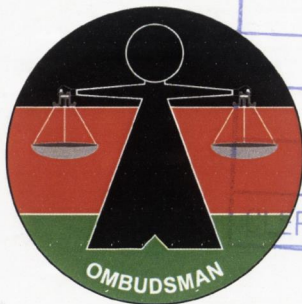


*Hata Mnyonge ana Haki*

**ENHANCING ADMINISTRATIVE JUSTICE & ACCESS  
TO INFORMATION DURING AN ELECTORAL PERIOD:  
*Ombudsman Elections Monitoring and Observation Report  
2022***



# THE COMMISSION ON ADMINISTRATIVE JUSTICE (Office of the Ombudsman)



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*Hata Mnyonge ana Haki*



## ENHANCING ADMINISTRATIVE JUSTICE & ACCESS TO INFORMATION DURING AN ELECTORAL PERIOD:

*Ombudsman Elections Monitoring and Observation Report  
2022*

## VISION

A society that upholds administrative justice and access to information.



## MISSION

To enforce administrative justice and access to information through complaints resolution and public education for efficient and effective service delivery.

## CORE VALUES



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## ACRONYMS AND ABBREVIATIONS

ACT	The Commission on Administrative Justice Act
AOMA	African Ombudsman and Mediators Association
ATI Act	Access to Information Act
BVR KIT	Biometric Voter Registration Kit
CAJ	Commission on Administrative Justice
COVID-19	Coronavirus Disease 2019
EACC	Ethics and Anti-Corruption Commission
ECVR	Enhanced Continuous Voter Registration
EOM	Election Observation Mission
GK	Government of Kenya.
IEBC	The Independent Electoral and Boundaries Commission
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communications Technology
IDs	Identity Cards
DCI	Directorate of Criminal Investigations
JKUAT	Jomo Kenyatta University of Agriculture and Technology
KIEMs KIT	Kenya Integrated Election Management System Kit
LTO	Long-term Observers
MCA	Member of County Assembly
MP	Member of Parliament
NCIC	National Cohesion and Integration Commission
ODPP	Office of the Director of Public Prosecutions
ORPP	Office of the Registrar of Political Parties
PCEA	Presbyterian Church of East Africa
PO	Presiding Officer
PSV	Public Service Vehicles
PWDs	Persons with Disabilities
QR Code	Quick Response Code
STO	Short-term Observers
PPLC	Political Parties Liaison Committee

## FOREWORD BY THE CHAIRPERSON

On behalf of the Commission on Administrative Justice, I am pleased to present the Commission on Administrative Justice Elections Monitoring and Report 2022.

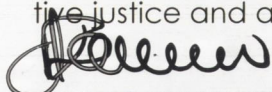
This report is an outcome of the Commission's electoral process observations objective as per the CAJ strategic Plan 2019-2023. Strategic theme (i), envisioned to strengthen public service systems, processes, procedures and practices during the National electoral process. It portrays the Commissions' accountability to the people of Kenya in line with the Constitution, the Commission on Administrative Justice Act (Chapter 102A of the Laws of Kenya), the Fair Administrative Action Act, 2015 and the Access to Information Act, (No 31 of 2016), interalia.

The Commission undertook the elections observation exercise between October 2021 to August 2022 in the context of promotion of national values and principles of governance in accordance with Articles 10 and 249(1) of the Constitution. During the period, October 2021 to August 2022, the Commission deployed 128 Long term (LTO) and Short term (STO) electoral process observers in 33 Counties who were accredited by the Independent Electoral & Boundaries Commission. Additionally, the Commission hosted the African Ombudsman & Mediators Association election mission for the poll day observation chaired by the Ombudsman of Malawi; Hon. Grace Malera.

I applaud the commitment espoused by the 128 Commission staff as observers under the insightful leadership of the Commissioners & the secretariat that has seen the mandate of the Commission firmly executed. This is evidenced by the real time release of the CAJ Election observation preliminary report, 48 hours post elections. The timeliness of the final report is testament to the Commission's strengthened capacity and robust strategic partnerships with other agencies and observers.

The above notwithstanding, during the observation period the Commission's scope of observation was limited in terms of geographical coverage by budgetary constraints. Nonetheless, I am happy to note that the Commission observed elections in more counties than it did in 2013 & 2017. The application of mixed methodologies and effective strategies notably, the deliberate shift in use of technology to capture data and subsequent analysis, evince the Commissions' outstanding performance.

I am confident that the Commission's observations and recommendations shall contribute greatly to the electoral reforms in realization of administrative justice and access to information for the people of Kenya.



**HON. FLORENCE KAJUJU, MBS**  
**CHAIRPERSON OF THE COMMISSION**

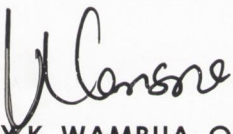
## ACKNOWLEDGEMENTS

The Commission wishes to express its gratitude to several stakeholders for their support in the monitoring and observation of the 2022 General Election. First and foremost, the Commission thanks the Commissioners for their guidance and support that made the exercise a success.

Special thanks also to the Election Monitoring Committee led by the Chairperson, Commissioner Washington Sati, the Team Leader, Dr. Mary Kimari, and the members Florence Mumbi, Osman Mohammed, Adan Mohammed, Jacob Malelu, Victor Ongaya, Edith Imunde, Peggy Ngaira, and Maryann Wanjiru.

To the stakeholders; the Independent Electoral and Boundaries Commission (IEBC), the National Cohesion and Integration Commission (NCIC), the European Centre for Electoral Support (ECES), the African Ombudsman and Mediators Association (AOMA), the National Police Service (NPS), and the Election Observer Group (ELOG), the commission expresses immense gratitude for the collaboration, synergy espoused, and complementarity throughout the exercise.

The release of this report demonstrates our efforts and contribution to the realisation of good governance in Kenya. The Commission has promoted and continues to support improved service delivery and enhanced access to information in the country.



**MERCY K. WAMBUA, OGW  
COMMISSION SECRETARY/CEO**

## EXECUTIVE SUMMARY

The Commission actively participated in the monitoring & observation of the 2022 general elections in Kenya. The primary focus of the Commission in the exercise was five-fold: monitoring of voter registration, monitoring of campaign (monitoring use of public resources in political activities, monitoring the involvement of holders of public offices in politics), verification of clearance of presidential candidates and observing the general management and conduct of the elections on 9th August 2022.

The observation and monitoring were informed by the centrality of elections in the advancement of good governance in appreciation of the critical role of monitoring and observation in ensuring the quality, credibility, transparency and fairness of the elections. Indeed, monitoring and observation of elections are essential pillars of electoral governance and play a critical role in building public confidence as well as providing valuable feedback for reforms of the electoral system thereby promoting good governance.

The participation of the Commission is anchored on its two-fold mandate under Articles 59(2) (h-k) and 249(1) of the Constitution as read together with the Commission on Administrative Justice Act (Chapter 102A of the Laws of Kenya) and the Access to Information Act, 2016. This is further complemented by the collective and general responsibilities of Chapter Fifteen institutions under Article 249(1) of the Constitution which are the protection of the sovereignty of Kenyans, securing the observance of the democratic values and principles, and promotion of constitutionalism.

In order to achieve its objectives, the Commission adopted several strategies and approaches; the monitoring of voter registration used stratified sampling in the mapping of the selected 8 regions and 17 counties. The data collection officers were trained and descriptive research design was adopted.

The Campaign monitoring monitors were deployed to 18 counties. Data collection and analysis was based on a tool that was specifically developed for the exercise.

The Commission in implementing its mandate under ATI undertook several election related activities. Among them, a partnership with the Vision 2030 Delivery Secretariat (VDS) where CAJ and VDS hosted joint forums to engage with Political Parties to guide on how to develop forward-looking manifestos that are aligned to the Vision 2030 Blueprint. These forums culminated in the development and launch of a model manifesto for Kenya Political Parties. Further, in partnership with civil society organisations ARTICLE 19 Eastern Africa and the Media Council of Kenya, the Commission held sensitization forums with election stakeholders and journalists respectively on the requirements of access to information during the electioneering period in line with the national and regional legal frameworks.

The Election Observation Mission was undertaken by the Commission through both long term and short-term observers. There was both a local observation team and a regional observation constitution of 126 observers. The observer team observed in 33 counties covering 700 polling stations across the country. The Commission used a peer reviewed online data collection and analysis tool alongside a physical backup.

## 1. Monitoring of Voter Registration

The Commission's voter registration exercise was conducted in two phases and spanned from 29th September 2021 to 6th February 2022. The main objective of the exercise was to identify any issues arising from service delivery during the voter registration. This exercise was, by and large, well conducted save for the few observed challenges during the rapid assessment period. The positive aspects included; 3 BVR kits in each ward, the 3-4-minute turnaround time per voter, mobile voter registration and the observation of COVID 19 prevention protocols during the registration exercise. The challenges observed were; inadequate voter education on requisite documents for registration which led to non-registration of many potential voters, inadequate appropriate facilities for open air registration centres and the inability of the BVR Kits to handle change of voting stations.

### Key Findings

#### PHASE I: October to November 2021

- In Nairobi County, all registration centres were situated in public areas; most of the centres were identifiable through the IEBC branded umbrellas, banners and in quite a few others, there was identification signage posted on nearby walls.
- However, in centres without umbrellas and banners, the clerks would sit under trees and consequently adjust their location throughout the day. More importantly, at these locations sometimes the BVR Kit sensor would stop sensing because of exposure to excess heat, thereby slowing down and interfering with the registration process.
- Most centres were well equipped with BVR kits, tables and chairs though some, but few, areas had short queues of citizens waiting to be registered.
- During the monitoring exercise the Commission found all two registration clerks present in most centres, apart from the Karen ward which had closed their stations by Friday 29th October 2021 at the two centres visited.

- In Kasarani Constituency, some centres were not accessible since we tried locating them in vain. The observers even tried liaising with the Area Chief concerning their locations but he was not also aware of their whereabouts.
- It's worth noting that some centres were not accessible for persons living with disabilities as most locations of the centres needed one to hop over a drainage and none had ramps.
- At some centre's special groups, for example, the elderly, persons with disability and women with pregnancies or with little children, were not given priority while queuing or registering to become new voters.
- Generally, voter registration centres were equipped with the BVR kits, laptop, and power source. However, in Kisumu County, it was noted that facilitation for transportation of BVR Kits from the storage centres to the registration centres was difficult and some remote areas did not have access to electricity and as such BVR Kits could not be charged.
- In many cases it was also noted that the monitors did not find an up-to-date BVR kit movement schedule in any of the wards visited that is accessible to the public. The clerks informed monitors that they had soft copies of the updated schedule on their phones. Some clerks printed these and posted them in public locations, but this was only observed in a few cases.
- Some registration venues in Westland's Constituency had a shortage of voter registration acknowledgement slips and lamination papers, consequently some voters refused to be registered if there was no proof of the same.

## PHASE II: January to February 2022

- Overall, all registration centres were accessible as they were situated in areas of high human traffic including roadsides, government establishments (Huduma centres, schools, chiefs' camps, social halls) churches, mosques, Prison, matatu stages, and market places.
- Majority of the centres had IEBC branded banners, umbrellas, posters and IEC materials. However, in other centres, they lacked IEBC branded umbrella and banners.
- The registration clerks were branded with IEBC reflector jackets and were proactive in conducting the registration exercise.

- In each registration centre, the clerks were provisioned with a table, chairs and voter registration equipment. The set-up for most of the centres looked similar with an umbrella at the clerk's stations, a table, at least two chairs for the clerks and the queuing voters. However, the makeshift centres did not have substantive shelter against adverse weather conditions for instance rain and scorching sun.
- The centres were operational 7 days a week, opening at 8am and closing at 5pm. It was also observed that in most centres, there was no security provided for the registration clerks, which puts their safety and that of the BRV kits at risk.
- Majority of the centres did not have long queues except for Huduma centres and the IEBC sub county offices where voter transfer exercise was conducted.
- Some registration centres were located at MCA offices which was deemed inappropriate by some members of public as the centre was associated with current MCA.
- All voter registration centres were equipped with the prerequisite equipment including the BVR kits, laptop, and power source. However, in some centre's kits were shared with a rotation schedule.
- The BVR Kit movement schedules were present in most centres but not updated. In majority of the centres, the kits were displayed and the clerks had it in soft copies. The BVR kit movement schedule was published in advance and shared with the registration clerks well in advance and were to be put up at the various centres.
- Some registration clerks pointed out that the BVR scanners were experiencing some down-time due to old-age hence slowing down the registration process.
- The clerks were facilitated with funds for transportation of the kits to and from the registration Centre by IEBC.
- Frequent power blackouts affected the registration process in centres without power back up.

## 2. Campaign Monitoring

The campaign monitoring was undertaken from June 2022 to early July 2022. It covered political campaigns activities in 18 counties. The exercise largely focused on use of public resources in election campaigns including but not limited to government vehicles, offices, or any other facility for campaigns. There was evident abuse of incumbency, participation of public officers in political activities, the use of government vehicles and the use of government social media platforms for political activities.

## 3. Election observation

The Commission, having been accredited by the IEBC, participated as an observer of the August 9, 2022 general electoral process. The Commission deployed both short- and long-term Election Observation Missions (EOM). The EOMs were composed of regional and local observers drawn from the AOMA and Commission staff respectively. The observer missions aimed to observe, assess and report on the electoral process in line with the applicable national, regional and international principles of democratic elections. The observation was undertaken in the context of promotion of national values and principles of governance as stipulated in the Constitution Article 10 and 249 (1).

## Conclusion

The Commission noted that generally, the elections management preparations by the IEBC were satisfactory. The omissions and or commissions observed, (clearly enumerated under the key findings section) was deemed not to be fatal to the electoral process in its entirety, in consideration of the constitutional principles, provisions of the Commission on Administrative Justice Act, the Fair Administrative Action Act and the Access to Information Act.

In view of the foregoing, the Commission made several recommendations to be considered during the electoral reform process with the appreciation that the process should be in consonance with the state legal and socio-political developments.

# CONTEXTUAL BACKGROUND

A large, modern conference room with a curved wooden table. Numerous people in business attire are seated around the table, engaged in a meeting. In the foreground, a woman with dark hair in a white jacket is seated in a black leather office chair, viewed from behind. The room features large windows with blinds and recessed ceiling lights. A white printer and a blue water bottle are on the table in the foreground.

### CONTEXTUAL BACKGROUND

#### 1.1 INTRODUCTION.

The Commission is a Constitutional Commission established under Article 59(4), Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011. The Commission under Section 8 of the Act, has a mandate to inter alia, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government, a quasi-judicial mandate to deal with maladministration through conciliation, mediation and negotiation where appropriate.

The Commission is also mandated to provide advisory opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures. Further, the Commission is mandated to enforce and oversee the implementation of the Access to Information Act, 2016. In addition, this mandate is complemented by the aforesaid collective and general roles of Chapter Fifteen institutions under Article 249(1) of the Constitution.

In the context of elections, the Commission is empowered to improve public administration in Kenya through investigation of any conduct in state affairs or any act or omission in public administration in any sphere of Government that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice.<sup>1</sup> This includes investigation of instances of alleged abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unresponsive official conduct and misbehaviour in public administration. Consequently, the Commission is required to ensure the observance of the democratic values and principles, which are primarily found under Article 10(2) of the Constitution, and include democracy, participation of the people, good governance, transparency, accountability and integrity.

Pursuant to our mandate, CAJ undertook various activities relating to the election between October 2021 and August 2022. These activities included the publication of the CAJ guide during the election period 2022, issuance of electoral processes advisories, observation of voter registration, presidential aspirant verification process, campaign monitoring, and general election observation.

Prior to the discharge of this national obligation, the Commission executed a Memorandum of Understanding with the IEBC, to enhance and strengthen both parties' institutional capacities in promoting the principles of democracy and good governance, through which the IEBC accredited CAJ to observe the 9th August 2022 General Election.

The activities were guided by the core overall objective of ensuring among other things; public service delivery was uninterrupted, use/misuse of public resources in political activities was monitored and redressed, the right to access information was enjoyed and the credibility and integrity of the electoral process was safeguarded.

## 1.2 BACKGROUND

Elections give citizens a means to hold their leaders accountable by voting. They are a mechanism to peacefully resolve the transfer of political power. Elections are also central to making democracy deliver a better quality of life by linking voters' interests to those in government and allowing citizens to elect representatives who reflect their will. Genuine elections contribute to longer-term development goals, laying the foundation for responsive governance.

Citizens have a fundamental right to take part in government and the conduct of public affairs of their countries. They have a right to vote and to be elected in periodic elections, without discrimination. The will of the people is expressed through their ballots, which provides the basis of authority for democratic government. These concepts are enshrined in Article 21 of the Universal Declaration of Human Rights (Universal Declaration), Article 25 of the International Covenant on Civil and Political Rights (ICCPR) and other international human rights instruments. They are central to the principle that elections belong to the people and are key features of any genuine democracy.

Further, The Principles of Fair Administration Action are set out in Article 47 of the Constitution and the same are given effect by Fair Administrative Action Act, 2015. Section 4 of the Fair Administrative Action Act provides for actions to be taken expeditiously, efficiently and lawfully. CAJ, while conducting the Presidential aspirants' clearance exercise, was keen to ensure that the provisions of Section 4 of the FAA were complied with.

Article 38(3) of the Constitution and Section 3 of the Elections Act provides that, "every adult citizen has the right, without unreasonable restrictions; to be registered as a voter, to vote by secret ballot in any election or referendum and to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office." The Commission as the champion of Administrative Justice in its functions under Section 8, is the foundation of good governance and ensures that public bodies and those who exercise public functions make the right decisions, monitor how these decisions affect the people, and outline the mechanisms of redress.

The Constitution establishes the IEBC as the mandated election management body in Kenya responsible for conducting or supervising referenda and elections to any elective body or office established by the Constitution. Therefore, IEBC is obligated to undertake voter education, settle electoral disputes arising from nominations, proactively disclose information, register voters, and oversee voting, tallying, and declaration of results with a view to ensuring electoral democracy. The Commission in enhancing administrative justice continues to safeguard the public interest by carrying out its oversight role on the electoral management body's service delivery processes, systems, and procedures during the election.

The Commission in furtherance of the principles of good governance, specifically effective service delivery, undertook two rapid assessments of the voter registration exercise that was held between October and February 2022. The exercise aimed to investigate any conduct in state affairs or any act or omission on the IEBC during the voter registration processes. It further sought to ensure dissemination of relevant information in line with Article 35 of the Constitution and provisions of the ATI Act.

Section 14 of the Election Offences Act, 2016 and Section 8 CAJ Act prohibit the use of public resources in campaigns. The Commission in contributing to free and fair elections deployed officers to monitor the campaigns with the objective of enhancing accountability in the public service. This monitoring exercise focused on the misuse of public resources specifically on advertising, the launch of projects, and the use of government equipment and facilities in advancing personal/political gains.

The Commission has endeavoured to observe elections every general election; in the 2013 election cycle, Commissioners and staff were accredited by the IEBC to observe the elections on 4th March 2013 in various parts of the country. The Commission monitored misuse of state resources, observed the elections, and conducted post-election monitoring exercises. In the pre-election period, the Commission monitored the use/misuse of Government of Kenya (GK) vehicles and found that at least 15 vehicles assigned to various ministries and departments were spotted at various campaign rallies across the country.

The Commission also undertook campaign monitoring based on the ethos that Government resources belong to the people and should not be used for personal gain or to create an undue advantage by aspirants. The findings revealed improper conduct and abuse of office by public officials and institutions during the pre and post-election period. In the post-election monitoring exercise, it was noted that several government agencies utilized funds to publish congratulatory messages to the president and deputy president-elect. The exercise sought to establish the amounts of state resources used by public institutions to publish these messages in the print media.

Following the findings, the Commission made recommendations to relevant government bodies for action including audits of state resources, legal & policy framework reform, and prosecution of offenders, following an observation of misuse.

In 2017 the Commission deployed election observers for the 8th August general election in 22 counties. The observation and monitoring employed multifaceted approaches that included desk reviews, field monitoring of campaign rallies, and spot checks on public offices. The objectives of the observation and monitoring were to propose strategic interventions to address instances of likely violations of the law and guide the standards of service delivery during the electioneering period. As a result of the monitoring and observation; inquiries and investigations of violations of the law were undertaken and the findings were shared with the Director of Public Prosecutions (DPP) for consideration.

The Commission also issued 2 advisory opinions on the use of public resources and participation of public officers in political activities, and treatment of employees by the county governments after the elections. The exercise revealed large-scale use of public resources and involvement of appointed public offices in political activities. In particular, it revealed a disturbing trend of abuse of the incumbency where political aspirants holding public offices took advantage of their positions, and the legal and enforcement gaps to use public resources in their campaigns.

*The main findings of the exercise are highlighted below:*

- Government facilities were used by different aspirants across the country to support their campaigns. Government vehicles were the most used facility and were spotted in many campaign rallies organised by the aspirants from the main political parties,
- There were cases of possible use of public funds in advertisement in the media,
- There were legal deficiencies in addressing abuse of the incumbency during the campaign period by aspirants who were holders of public offices. Specifically, the gaps were identified in blurred distinction between state and party functions, the responsibilities and powers of the incumbent during the campaign period in relation to government development projects and programmes, use of government premises, and control of the incumbents' subordinates during campaign period,
- A significant number of holders of appointive public offices at the national and county levels participated in partisan political activities contrary to the Constitution, the Election Offences Act, the Leadership and Integrity Act and the Public Officer Ethics Act,
- Whereas there was a significant improvement in the management of elections in comparison with the 2013 general elections in the context of preparations and use of technology in voting, there were a number of short term inception challenges experienced in election management,

- In comparison with 2013, few public bodies placed congratulatory messages in the media to the President-elect and the Deputy President-elect following their re-election in October 2017 and
- The enforcement of the electoral law was weak and many possible violations went unaddressed even in instances where reports of such violations were forwarded to the relevant bodies. In the first place, there was no information on the investigation of the alleged violations, and where such information was proved, the investigations took eternity.

Similar to 2013 and 2017; during the 2022 general election, the Commission deployed long and short-term election observers in appreciation of the role of election observation in electoral governance. The election observation focused on the oversight role of CAJ in enhancing effective and efficient service delivery.

In addition, the Commission in partnership with the African Ombudsman and Mediators Association (AOMA) also deployed regional observers drawn from the region. The regional observer mission was charged with the responsibility of observing, assessing, and reporting on the electoral process in line with accepted national, regional, and international practices. The regional observer mission had ombuds from Malawi, Angola, Benin, Tanzania and the AOMA Secretariat.

This report details the objectives, methodology, scope, observations, and recommendations of the Commission's 2022 four-fold election processes observation and monitoring. More so, it also includes the highlights of the findings by the AOMA election observer mission.

### 1.3 OBJECTIVES

The overall objectives of the monitoring and observation processes was to:

- ⦿ Promote accountability within the public service in reference to service delivery and access to information,
- ⦿ Protect the integrity of the electoral process with a view to promoting constitutionalism, democratic values, and adherence to the rule of law.

**The specific objectives include;**

#### 1. *Voter registration:*

- ⦿ Uphold democratic values and safeguard public interest by checking on IEBC's voter registration process, systems and procedures involved in service delivery;
- ⦿ Identify service delivery issues arising from the voter registration exercise; and
- ⦿ Evaluate the conduct of the voter registration exercise.
- ⦿ Assess the level of proactive disclosure by IEBC.

#### 2. *Campaign Monitoring:*

- ⦿ Monitor abuse of public office and improper conduct by State and Public Officials;
- ⦿ Ensure compliance with the law relating to the use of public resources; and
- ⦿ Determine involvement of public officers in political activities and conditioning public services on pledges of votes for certain parties or candidates.

#### 3. *Election observation.*

The overall objective of the commission observers' mission was to observe the opening, voting, closing and tallying of the election in line provisions of the law. The specific objectives of each component included;

The specific objectives of each component included;

### Opening

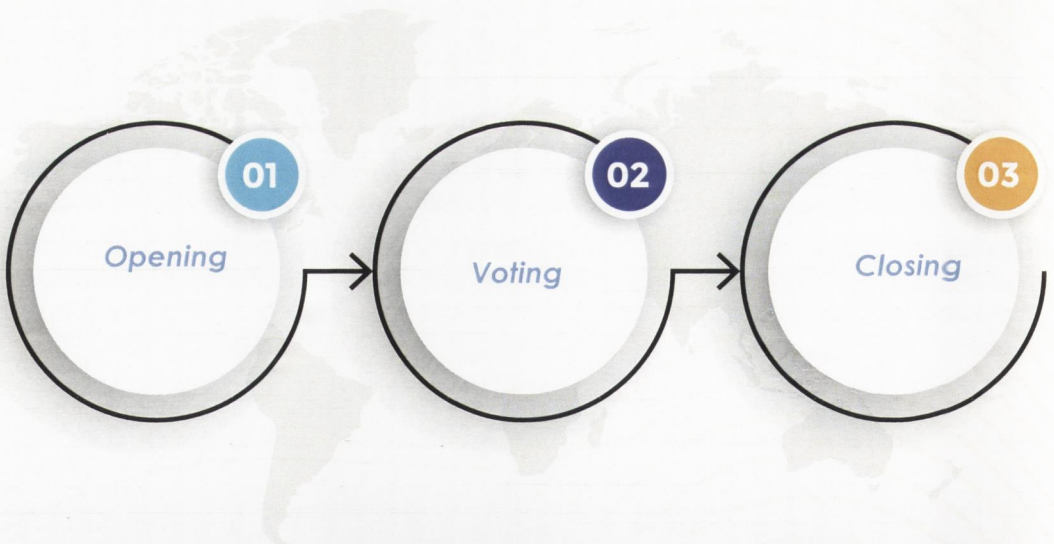
- ① Verify the timelines set by the electoral body IEBC, are adhered to;
- ② Assess the availability and functionality of election materials in the polling stations;
- ③ Assess the preparedness of the IEBC officials and understanding of the electoral process;

### Voting

- ④ Determine whether the IEBC officials comply with the Electoral laws and Code of Conduct;
- ⑤ Assess the credibility of the voting process; and
- ⑥ Assess the accessibility of the polling station to PWDs and the elderly.

### Closing

- ⑦ Observe the transparency of the counting and transmission of results;
- ⑧ Observe the credibility of results being transmitted; and
- ⑨ Assess the accessibility of party agents/observers to the counting process.



## 1.4 METHODOLOGY

- ✓ The Commission applied both a qualitative and quantitative research design methodology. A stratified simple sampling technique was used in mapping out the sample strata from devolution regional economic blocs. Counties were randomly selected from the regions based on the Commission's regional footprint in the country, and staff's county of origin. Whereas extensive desktop review was carried out, physical field trips was employed. CAJ deployed its own staff as observers, who were trained prior to undertaking the exercises. Three main process specific data collection tools were developed in this regard. There were various activities among which four were Key, namely:
- ✓ Generating the Commission on Administrative justice Guide during the election period,
- ✓ Legal framework review of the electoral laws
- ✓ Issuance of advisories in line with the CAJ Act, Fair Administrative Act and ATI Act,
- ✓ Observing voter registration, pre-poll preparedness, voting process, counting, tallying leading to the announcement of poll results by IEBC as highlighted below.

### 1.4.1 Voter Registration Observation

The voter registration exercise target sample size was seventeen counties translating to 36% County representation. The sampling units were the voter registration stations at the ward level. BVR kit movement schedules posted in conspicuous places provided information on the planned registration areas.

The observation adopted a descriptive research design where data was collected using structured interviews and direct observation. Secondary data including press releases from IEBC were utilized to assess effectiveness of the process

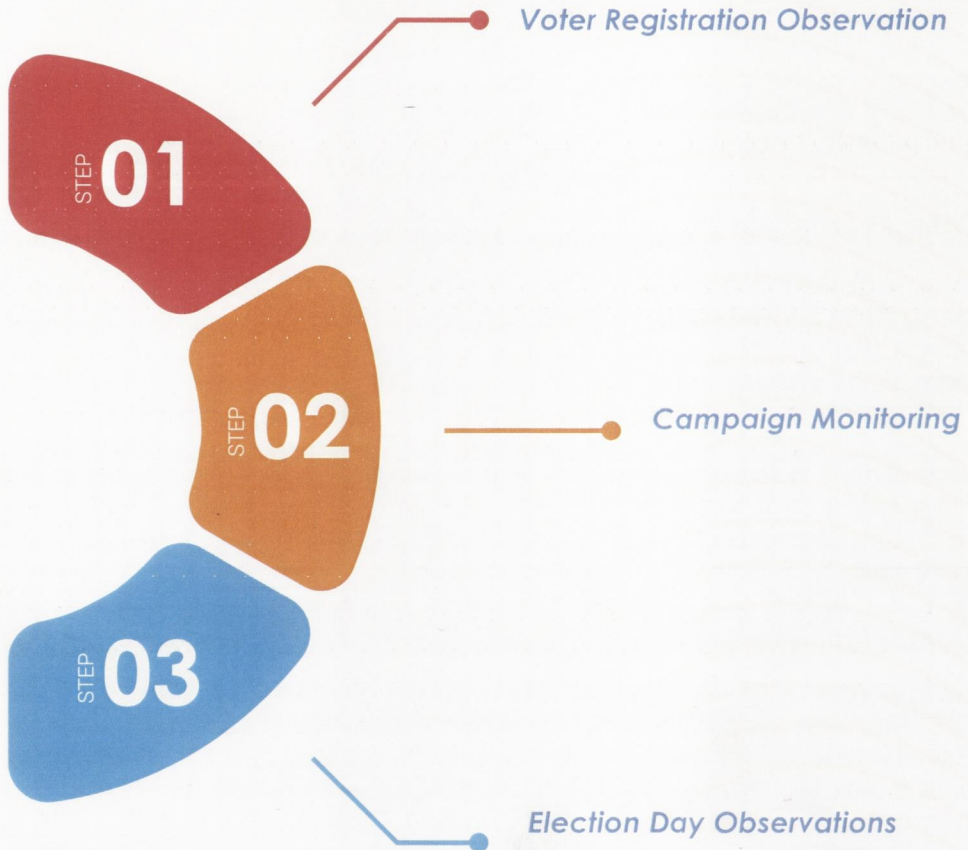
### 1.4.2 Campaign Monitoring

The sample size used to observe the campaign activities was eighteen counties. Monitors worked in teams of two's in every location to research and identify when and where campaigns were scheduled to take place. Data was collected through direct observation, and unstructured interviews with members of the public.

### 1.4.3 Election Day Observations

The sample target and size during the 8th August 2022 Elections observation, was 33 Counties translating to 70%. This is the highest sample size observed by the Commission since inception of this program in 2013. The observations were conducted at the officially gazetted constituency polling and tallying centres.

The Commission used a mixed approach by employing both quantitative and qualitative data collection techniques. Automated data collection tools were utilized which captured the opening; voting; and closing and tallying processes. Observers also documented event occurrences using photographs and descriptive reports.



## 1.5 LEGAL FRAMEWORK

The Commission, under Section 2 of the Commission on Administrative Act, 2011, has mandate over any action relating to matters of administration not limited to but includes a decision made or an act carried out in the public service. In line with this, the Commission has an oversight authority on public administrative matters and as a result, observed the 2022 General Elections.

### *Article 38 of the Constitution*

The right to vote is recognized by most world democracies as a fundamental right that enables citizens to influence decision-making within government. Many democracies have put in place systems to ensure that this right is fully realized and enjoyed by its qualifying citizens

Article 38 of the Constitution of Kenya, provides for political rights which include the right to vote. Article 38(3) of the Constitution provides that every adult citizen has the right, without unreasonable restrictions to be registered as a voter; to vote by secret ballot in any election or referendum; and to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.

It was observed that the polling staff and other essential service staff including the security personnel, who were required to work away from the areas where they are registered voters, did not exercise their right to vote. The Commission notes that these voters are disenfranchised on the basis of discharging a public duty and therefore, recommends that IEBC should employ a rights-based voting approach that provides its polling staff, the security officers and others to exercise their right to vote. It should be noted that these registered voters are not factored during the analysis of the percentage of voters that voted.

### *Chapter 6 of the Constitution*

The Leadership and Integrity Act operationalizes Chapter Six of the Constitution on Leadership and Integrity. This chapter on Integrity requires State officers to be guided in their day-to-day conduct by principles of leadership and integrity.

It is against this background that the law requires that the prospective candidates be cleared by the mandated body i.e. the Independent Electoral and Boundaries commission supported by other players, such as Ethics and Anti-corruption Commission (EACC). The IEBC should enforce the requirement that candidates submit a statutory declaration evidencing moral and ethical requirements under the Leadership and Integrity Act and Chapter (6) of the Constitution.

It is against this background that the law requires that the prospective candidates to be cleared by the mandated body, the Independent Electoral and Boundaries Commission supported by other players, such as Ethics and Anti-corruption Commission (EACC). The IEBC required the candidates to submit a statutory declaration evidencing moral and ethical requirements under the Leadership and Integrity Act and Chapter (6) of the Constitution.

As a statutory requirement, the EACC identified 241 individuals that they considered to have fallen short of the moral and ethical standards for the 2022 election to public office and forwarded the same to IEBC. However, it was noted that the list was forwarded while the clearance process was underway and as matter of course certificates had already been issued. The disconnect between the commission which gave rise to an enforcement gap needs to be addressed.

The Commission draws attention to the IEBC's role as not only limited to ensuring a credible, free and fair election but also extends to making sure only persons of impeccable character are allowed to contest in elections; the candidates who abide by the Constitution and Leadership and Integrity Act 2012.

### *The Election Act*

Under Section 44 of the Act, there is established an integrated electronic electoral system that enables biometric voter registration, electronic voter identification and electronic transmission of results. The Independent Electoral and Boundaries Commission (IEBC), is required under the Act to develop a policy on the progressive use of technology in the electoral process and ensure the technology is simple, accurate, verifiable, secure, accountable and transparent. The challenges faced at the 2022 General Elections, put to question the simplicity and verifiability of electronic system.

The IEBC, in an open and transparent manner, is required to; procure and put in place technology necessary for the conduct of a general election at least one hundred and twenty days before and test, verify and deploy such technology at least sixty days before a general election. The functionality of some of the KIEMS KITS used in the elections was wanting as some of the KIEMS KITS broke down. An example of Mung'ang'a Primary and Buminin Primary Schools in Mumias East Constituency, the KIEMS Kit failed and the IEBC Officials were forced to revert to the use of the manual voters' register, begging the question whether a test run was done 60 days prior to the General Elections.

The IEBC is also required under the Elections Act, Section 44(5) to work in consultation with the relevant agencies, institutions and stakeholders, when making regulations, for the better carrying into effect, the use of an integrated electronic electoral system in elections. With the challenges faced in the General Elections, a review of these regulations would be ideal.

## *The Election Campaign Financing Act*

The Election Campaign Financing Act, 2013 seeks to regulate contributions, donations and expenditure by political parties during election campaigns. However, the Act remains suspended to date. The Commission observed parliament reject the spending limits published by IEBC for lack of approval in line with Section 29 of the Election Campaign Finance Act.

The Election Campaign Financing Regulations ought to be passed to pave implementation of the Act in line with Sec 5 that provides that rules must be submitted to parliament for approval at least 12 months before the General Election.

Election Offences Act Section 14 of the Act, prohibits use of public resources in political campaigns. The Act equally prohibits advertisement of achievements by political parties or candidates in their campaigns. Generally, there was no significant use/misuse of public resources in the 18 counties covered, however the Commission was able to document a few cases. Similarly, there were instances where vehicles belonging to public schools were used to ferry people to campaign rallies.

The Commission in addressing misuse of resources recommends strict adherence to the electoral laws. Notably under Section 14 of the Election Offences Act.

During the exercise the Commission observed cases whereby aspirants who were holders of public offices launched and commissioned different projects during their campaigns. The observations were made in Kisumu, Narok and Kajiado. We recommend that IEBC comes up with practical timelines within which political leaders cannot launch projects especially during the election period.

Section 15 of the Election Offences Act prohibits Participation of Appointed Public Officers in Political Activities. Whereas the law prohibits holders of appointive public positions from engaging in partisan political activities, the Commission documented cases of public offices participating in the political campaigns. We draw IEBC attention to their duty of fully implementing the provisions of this section.

## *The Access to Information Act, 2016*

Information is fundamental during the electoral processes and in enabling informed decision. Article 35 of the Constitution of Kenya guarantees the right to access public information. In an effort to ensure proper implementation of Article 35 of constitution, Parliament enacted the Access to Information Act, 2016. The Act provides for the role of the Commission on Administrative Justice as the oversight and enforcement agency.

The right to information framework is not only an anti-corruption tool as has variously been made to appear but a critical enabling law in terms of enhancing public participation in governance and democratization process including enabling citizens to make decisions affecting their lives. Public bodies are required to disclose information to members of the public because they hold information not for themselves but as custodians of the public good and thus everyone has a right to access this information, subject only to clearly outlined limitations under section 6 of the Access to Information Act.

The Commission observed that majority of the citizens knew very little about the political parties and the entire electoral process. Discussion with the voters revealed that the IEBC did not conduct an effective advocacy program to sensitize the public on the exercise. We therefore call for access to information to be mainstreamed in our electoral processes alongside other civic education initiatives that elevate elections from mere periodic rituals to processes that have an impact in Kenyan lives.

# FINDINGS



## CHAPTER TWO

### FINDINGS

#### 2.1 VOTER REGISTRATION OBSERVATION EXERCISE

In 2012, IEBC adopted the biometric voter registration system for the purposes of curbing irregularities such as rigging, vote manipulation and improving voter registration efficiency. The biometric system was designed to capture name, identity number, gender, fingerprints and facial features. But despite the implementation of this process, IEBC still experiences challenges. The challenges experienced in the past include delays in acquisition and distribution of the voter registration kits; malfunctioning of the kits and inaccurate data capture.

Between 4th October 2021 to 2nd November 2021, IEBC rolled out a voter registration exercise aimed at registering 4.5 million new eligible voters within the month-long exercise, ahead of the 2022 general elections. The target was arrived at on the basis of information obtained from the 2019 Kenya Population and Housing Census report, and was disaggregated to each county, constituency and ward.

The poll agency was forced to extend the voter registration exercise following orders issued by the High Court of Kenya in Eldoret. The orders had been obtained by one Patrick Cherono. IEBC indicated that it had insufficient funds to carry on with continuous voter registration, which prompted the government to allocate additional Ksh1.2 billion out of the Kshs 4 billion requested for the extension of the exercise.

IEBC conducted the second and final phase of Enhanced Continuous Voter Registration phase II (#ECVR 2022) from 19th January 2022 to 6th February 2022 in all one thousand four hundred and fifty (1,450) county assembly wards countrywide.

##### *2.1.1 Scope of assessment*

CAJ's assessments were based on actual conduct of the voter registration exercise by IEBC. Thus, phase I voter registration monitoring exercise was conducted between 29th October 2021 and 1st November 2021 in five sampled counties of Nairobi, Mombasa, Kisumu, Eldoret, and Isiolo.

Phase II of the voter registration monitoring exercise was conducted between 3rd February 2022 and 4th February 2022 in 15 sampled counties being Nairobi, Kiambu, Kwale, Kisumu, Uasin Gishu, Samburu, Meru, Machakos, Nandi, Elgeiyo Marakwet, Siaya, Kajiado, Vihiga, Makueni and Isiolo.

## 2.1.2 Key findings

### i. Registration Centres

#### Phase I

- ⤴ The voter registration process was fairly fast and efficient in most centres.
- ⤴ The centres were easily identifiable through the IEBC branded banners, umbrellas, and or identification signage posted on nearby walls.
- ⤴ Some centres were not easily accessible either due to their remoteness or lack of an up-to-date BVR Kit movement schedule to enhance awareness of the registration centres.
- ⤴ In some centres IEBC personnel present could not provide accurate information to those seeking transfer to new voting stations.
- ⤴ There were difficulties in charging the BVR Kits due to lack of power source in some locations.
- ⤴ A large percentage of youths seeking to register as voters lacked identity cards and have experienced challenges in acquiring the same, leading to non-registration.
- ⤴ There were inadequate hand washing points and sanitizers for adherence to COVID-19 Protocols



*Commissioners during a meeting with IEBC Chairperson Mr Wafula Chebukati and Commissioners to present a report on the monitoring of the Phase 1 and 2 of the voter registration exercise.*

## Phase II

- ⤴ Overall, all registration centres were accessible as they were situated in areas of high human traffic including roadsides, government establishments (Huduma centres, schools, chiefs' camps, social halls) churches, mosques, Prison, matatu stages, and market places.
- ⤴ Majority of the centres had IEBC branded banners, umbrellas, posters and IEC materials. However, in other centres, they lacked IEBC branded umbrella and banners.
- ⤴ The registration clerks were branded with IEBC reflector jackets and were proactive in conducting the registration exercise.

In each registration centre, the clerks were provisioned with a table, chairs and voter registration equipment. The set-up for most of the centres looked similar with an umbrella at the clerk's stations, a table, at least two chairs for the clerks and the queuing voters. However, the makeshift centres did not have substantive shelter against adverse weather conditions for instance rain and scorching sun.

- ⤴ The centres were operational 7 days a week, opening at 8am and closing at 5pm. It was also observed that in most centres, there was no security provided for the registration clerks, which puts their safety and that of the BRV kits at risk.
- ⤴ Majority of the centres did not have long queues except for Huduma centres and the IEBC sub county offices where voter transfer exercise was conducted.
- ⤴ Some registration centres were located at MCA offices which was deemed inappropriate by some members of public as the centre was associated with current MCA.



*Commission Vice Chairperson, Mr. Washington Sati during a voter registration monitoring exercise.*

## **ii. Voter Registration Equipment**

### **Phase I**

- ⬆ Generally, voter registration centres were equipped with the BVR kits, laptop, and power source. However, in Kisumu County, it was noted that facilitation for transportation of BVR Kits from the storage centres to the registration centres was difficult and some remote areas did not have access to electricity and as such BVR Kits could not be charged.
- ⬆ In many cases it was also noted that the monitors did not find an up-to-date BVR kit movement schedule in any of the wards visited that is accessible to the public. The clerks informed monitors that they had soft copies of the updated schedule on their phones. Some clerks printed these and posted them in public locations, but this was only observed in a few cases.
- ⬆ Some registration venues in Westland's Constituency had a shortage of voter registration acknowledgement slips and lamination papers, consequently some voters refused to be registered if there was no proof of the same.



*Commission Chairperson, Hon. Florence Kajuju during a voter registration monitoring exercise in Wundanyi.*

## **Phase II**

- ⤴ All voter registration centres were equipped with the prerequisite equipment including the BVR kits, laptop, and power source. However, in some centre's kits were shared with a rotation schedule.
- ⤴ The BVR Kit movement schedules were present in most centres but not updated. In majority of the centres, the kits were displayed and the clerks had it in soft copies. The BVR kit movement schedule was published in advance and shared with the registration clerks well in advance and were to be put up at the various centres.
- ⤴ Some registration clerks pointed out that the BVR scanners were experiencing some down-time due to old-age hence slowing down the registration process.
- ⤴ The clerks were facilitated with funds for transportation of the kits to and from the registration Centre by IEBC.
- ⤴ Frequent power blackouts affected the registration process in centres without power back up.

### *iii. Awareness and knowledge on the registration process (in line with Access to Information Act, 2016)*

The right of access to information is a global fundamental human right hinged on the requirement that everyone has the right to seek, receive and impart information. In Kenya, the right of access to information is provided under Article 35 of the Constitution.

The IEBC designated voter education officers to conduct voter education which played a key role in informing members of the public of the registration exercise.

However, most members of the public visiting the registration centres did not have the necessary information on services offered and requisite documents for one to be registered as a voter or transfer of polling centres. Majority of persons who were denied registration lacked official prerequisite identification documents. These individuals presented copies of their identification cards, Huduma number cards, waiting cards or even the military IDS which led to them being denied registration.

Those requiring transfer of polling centres were referred to constituency offices and advised to provide with proof of residence from their area chiefs, and in the event the same was not provided, they were not allowed to transfer. However, this information was not proactively provided at the beginning of the exercise. Moreover, the need to have to go to the constituency office and provide extra documentation led to several people opting not to register as the process had become "complicated".

Lack of information on the requisite documents was attributable to the few voter educators per ward bearing in mind some wards were too vast and two voter educators were not enough to cover the reach all residents of the wards. It was noted that creation and sensitization was mainly done by the local chief and the village elders in some areas.

Discussion with the voters revealed that the IEBC did not conduct an effective advocacy program to sensitize the public on the exercise. Majority of citizens' queueing for the exercise reported to have been informed through various platforms including the radios, television, social media, political aspirants traversing their residences with loudspeakers, IEBC posters and through the IEBC officers.

The lack of sufficient information also led to some voters unknowingly seeking to be registered again, failing to provide correct documentation and even some foreigners assuming they could apply for National Identity cards during the exercise.

#### **iv. Adherence To Covid 19 Protocols**

Covid-19 protocols were partially adhered to in most centres. Majority of the centres had hand sanitizers and social distance was observed during queuing in most of the centres. All the clerks in all the centres had their masks but some of the voters queuing did not put on their masks. However, there were no temperature/thermal guns to check the temperature of clients, contrary to IEBC Guidelines on Voter Registration during the Covid-19 Pandemic.

COVID 19 protocols could however were not observed at the Eastleigh Huduma Centre due to the large and overwhelming numbers of citizens that milled around the registration clerks. This is because the Huduma Centre was a national registration centre which allowed registration for voters in any part of the country.

#### **2.1.3 Conclusion**

The 2021 IEBC voter registration exercise was, by and large, well conducted save for the few challenges observed. Some of the challenges reported : IEBC distributed about three BVR Kits in each ward in an attempt to meet their set target; however, many were denied the opportunity to register primarily due to lack of proper identification documents and awareness of the kit's movements from one centre to another.

The registration exercise was swiftly and efficiently conducted with each person taking an average of 3 – 5 minutes to register. Isolated cases of delays in setting-up the desks and registration start times were observed. IEBC lacked adequate infrastructure suitable for out-door services being offered to enhance the citizens' experience. There were no proper shades for the registration clerks nor seats for expectant women and persons living with disability.

Moreover, the mobile centres were not able to deal with other service issues such as open registration and change of voting station. Low turn-out was a blessing in disguise for the IEBC when considering adherence to Covid-19 protocols especially with regard to social distancing. There was no queue management in situations where a handful of people would arrive at a centre at the same time thereby increasing the risk of spreading the virus. Hand sanitizers were inadequate and the BVR kits were not sanitized after each use.

Generally, there was low adherence to the laid down Covid-19 protocols by the Ministry of Health.



## 2.2 ELECTION CAMPAIGN MONITORING

### 2.2.1 Introduction

It is instructive to note that, like any other country, elections play an important role in promoting good governance in Kenya. Use of public resources or participation of public officers in partisan political activities has the potential of subverting democracy and service delivery as well as impugning the integrity and credibility of the electoral process. Such instances would amount to abuse of power, improper and unlawful conduct, and misbehaviour in public administration within the meaning of Article 59(2) (h-k) of the Constitution and section 8 of the Commission on Administrative Justice Act for which the Commission is empowered to act.

Pursuant to the foregoing, the Commission formulated a strategy for monitoring the 2022 general elections aimed at contributing to the enhancement of accountability in the public service and promoting the credibility and integrity of the electoral process. Misuse and misallocation of state resources during political campaigns is the focus of the monitoring activity i.e.

- ⬆ Advertising (using public funds);
- ⬆ Launch of public projects as campaign strategy; and
- ⬆ Use of government equipment/machines during the campaign i.e. use of state vehicles and any other fixed assets of the state
- ⬆ Deploying public officers to campaign trails stalling public service delivery etc.

Specifically, the monitoring exercise sought to achieve the following:

- ⬆ Monitor the use of public resources in political activities;
- ⬆ Enhance the observance of leadership and integrity standards under the Constitution, the Leadership and Integrity Act, and the Public Officer Ethics Act;
- ⬆ Empower the public to report incidences of abuse of power and abuse of public resources during the electioneering process; and
- ⬆ Recommend appropriate interventions for improvement of electoral governance and the rule of law.

It is instructive to note that this was the third time that the Commission undertook this exercise, having conducted similar exercise in 2013 and 2017 when the Commission implemented a comprehensive programme to monitor and observe the general elections of that year.

## 2.2.2 Scope

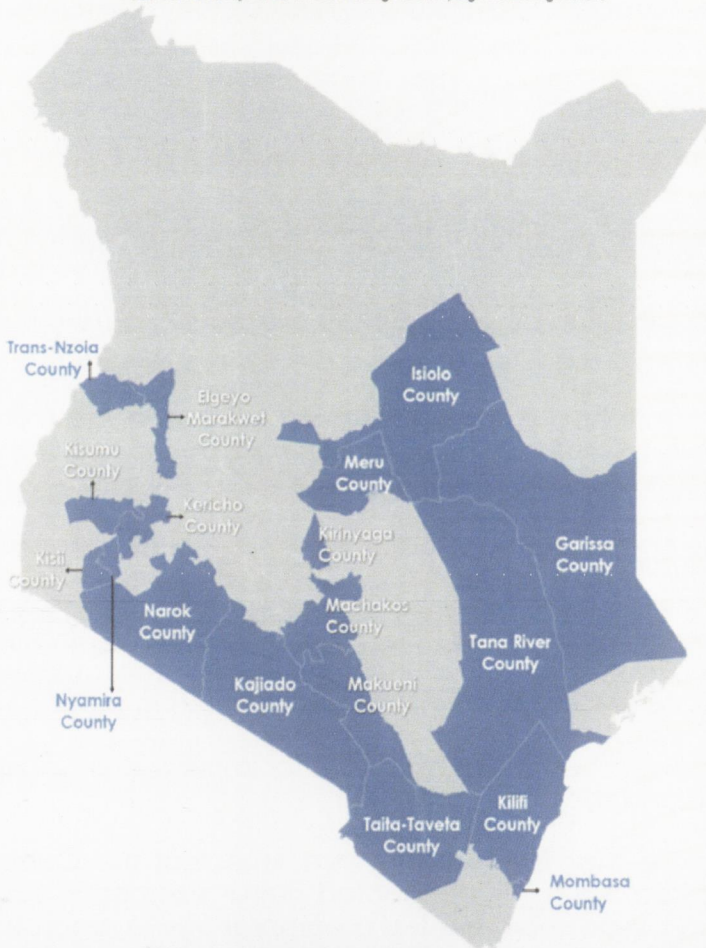
The election campaign monitoring was undertaken from June 2022 to early July 2022. It covered political campaigns activities from 18 counties. The exercise largely focused on use of public resources in election campaigns. This included but not limited to government vehicles, offices, or any other facility for campaigns;

The Commission deployed monitors in 18 counties in the last week of June 2022 and the first week of July 2022 during the campaigns. The counties included: Elgeyo-Marakwet, Garissa, Isiolo, Kajiado, Kericho, Kilifi, Kirinyaga, Kisii, Kisumu, Machakos, Meru, Mombasa, Narok, Nyamira, Taita Taveta, Tana River Trans Nzoia and Makueni. The Commission developed a tool to guide the monitors in the field exercise.

## 2.2.3 Key Findings

The Commission conducted physical monitoring of the political campaigns in 18 out of the 47 counties.

Counties Visited by the Commission During the Campaign Monitoring exercise



Counties that the Commission carried out Campaign Monitoring exercise

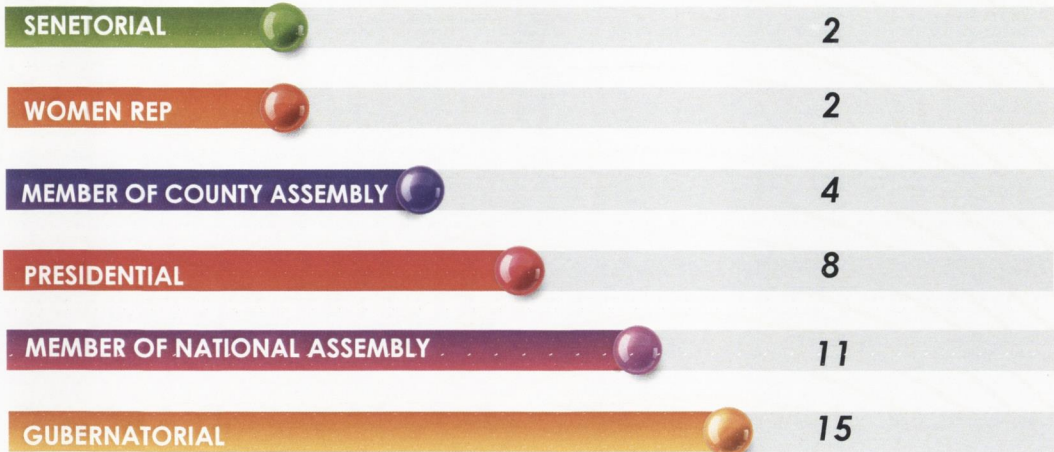
## Counties Covered within the Country

NATURE OF CAMPAIGN	COUNTY	CONSTITUENCY	WARD	VENUE OF THE EVENT
Senatorial	Elgeiyo Marakwet	Marakwet East	Kapyego	Tebe Playground
Gubernatorial	Garissa	Lagdera	Modogashe	Dertu Market
Member of National Assembly	Garissa	Dadaab	Dertu	Soko Ngombe
Women Rep	Garissa	Township	Waberi	Residence of Family Elders
Gubernatorial	Garissa	Township	Waberi	Madina Playground
Women Rep	Garissa	Township	Galbet Ward	Moti Grounds
Presidential	Isiolo	Isiolo North	Wabera	Moti Grounds
Presidential	Isiolo	Isiolo North	Wabera	The Whole Ward
Member of National Assembly	Isiolo	Isiolo North	Ngare Mara	No Specific Venue
Member of National Assembly	Isiolo	Isiolo North	Bula Pesa And Burat Wards	We Traversed The Wards
Member of National Assembly	Kajiado	Kajiado North	Nkaimurunya	Kware
Gubernatorial	Kajiado	Kajiado South	Kimana	Kimana Market
Gubernatorial	Makueni	Kaiti	Ukia	Mukuyuni
Member of National Assembly	Makuei	Kilome	Kasikeu	Kasikeu Market
Gubernatorial	Kajiado	Kajiado South	Kimana	Kimana Livestock Market
Member Of County Assembly	Kajiado	Kajiado North	Ngong	Bondenii
Gubernatorial	Kericho	Bureti, Belgut And Sigowet Soin	Kapkisiara and Others	Agc Kapkisiara, Taplotin, Kiptere, Corner, Mindililwet, Cheborgei, Litein, Ngoina Road and Roret
Senatorial	Kilifi	Kilifi South	Shimo La Tewa-Mtwapa-Junju-Chasimba-Kilifi Town	Pwani University, Kilifi
Gubernatorial	Kirinyaga	Mwea	Karaini-Inoi	Mahiga-Ini
Gubernatorial	Kirinyaga	Mwea	Kathigiriri	Kirogo Grounds
Presidential	Kirinyaga	Mwea	Tebere	Wang'Uru Stadium
Presidential	Kisii	Kitutu Chache South	Kiogo	Kiogo Sda Church
Gubernatorial	Kisii	Kitutu Chache	Central	Nyabururu Parish

## Counties Covered within the Country

NATURE OF CAMPAIGN	COUNTY	CONSTITUENCY	WARD	VENUE OF THE EVENT
Presidential	Kisumu	Kisumu Central	Milimani Market Ward	Road Rally
Gubernatorial	Kisumu	Muhoroni Constituency	Chemlili And Nyang'Oma Ward	Chemlili Factory ,Masogo In Muhoroni Subcounty
Gubernatorial	Machakos	Kathiani	Mitamboni	Kisooni
Gubernatorial	Machakos	Mwala	Masii	Market
Member Of National Assembly	Makueni	Kibwezi West	Emali	kalamba
Member Of National Assembly	Makueni	Kaiti	Mukuyuni	matiliku
Member of National Assembly	Meru	Imenti North	Municipality	Traversed The Ward
Gubernatorial	Meru	Tigania West	Kianjai	Kianjai Town
Member of National Assembly	Meru	Buuri	Timau	Timau
Presidential	Mombasa	Mvita	Tononoka	Tononoka Stadium
Member of National Assembly	Mombasa	Mvita	Mvita	Fort Jesus Grounds
Gubernatorial	Narok	Narok North	Nkareta	Naisoya
Presidential	Nyamira	North Mugirango	Nyamaiya	Nyamaiya Grounds
Presidential	Nyamira	Kitutu Masaba	Rigoma	Rigoma Do'S Grounds
Gubernatorial	Taita Taveta	Voi	Marungu	Marungu Open Market Ground
Gubernatorial	Taita Taveta	Wundanyi	Werugha	Werugha Multi-Purpose Social Hall
Member of County Assembly	Taita Taveta	Voi	Mbololo	Mwakiki Seed Farm/M-wakiki Social Hall/ Mwakiki Chief'S Office/ Taita Taveta Water and Sewerage Company Mwakiki Office
Member of County Assembly	Tana River	Bura Constituency	Madogo	Madogo Market
Member of County Assembly	Tana River	Garsen	Garsen North	Public Baraza
Member of National Assembly	Trans Nzoia	Kiminini	Waitaluk	Mabonde Dispensary
Member of National Assembly	Trans Nzoia	Kiminini	Waitaluk	Mabondenii

## Analysis of the Nature of Campaigns



### *i. Misuse of Public Resources*

Election Offences Act, 2016 (section 14) prohibits use of public resources in political campaigns. The Act equally prohibits advertisement of achievements by political parties or candidates in their campaigns. Generally, there was no significant use/misuse of public resources in the 18 counties covered, however the Commission was able to document a few cases.

### *ii. Abuse of the Incumbency*

During the exercise the Commission observed cases whereby aspirants who were holders of political public offices took advantage of their incumbency to launch and commission different projects during their campaigns. The observations were made in Kisumu, Narok and Kajiado.

### *iii. Participation of Appointed Public Officers in Political Activities*

Whereas the law prohibits holders of appointive public positions from engaging in partisan political activities, the Commission documented cases of public offices participating in political campaigns.

### *iv. Use of Government Vehicles*

The Commission monitored and documented the use of government vehicles in political campaigns at both levels of government. Similarly, there were instances where vehicles belonging to public schools were used to ferry people to campaign rallies. The Table below lists the details of the vehicles spotted in various rallies during the exercise



*County Government Vehicle at Governor's campaign rally in Masogo in Muhoroni Sub-County*

REGISTRATION NUMBER	LOCATION
GKB 408F	Tononoka Grounds Mombasa
GKB 407J	Tononoka Grounds Mombasa
KAW 726Z	Masogo in Kisumu County
KCA 478F	Masogo in Kisumu County
42 CG 022A	Masogo in Kisumu County

#### **v. Use of official Social Media Platforms**

The Commission noted the use of official social media platforms for political campaigns in the last general elections. This presents a new area of possible abuse by incumbents in future elections and should, therefore, be addressed. Notably use of the Narok County Government facebook page with 25,000 followers as a campaign platform.

## 2.2.4 Conclusions

- a) The Commission experienced difficulty in identifying the ongoing campaign events in the country hence not being able to cover many of them or where likely misuse of resources would be happening or launching of government projects would be taking place. We recommend strict adherence to the Election Laws, particularly Section 14 of the Election Offences Act.
- b) It was impossible to get any schedules for the various candidates as only the presidential candidates had personnel on the ground prior to their arrival mobilizing supporters which mostly happened hours before the arrival of the candidates. The rest of the candidates conducted their campaigns in an ad hoc manner. The commission recommends that presidential campaigns deposit their schedules of campaigns with IEBC.
- c) Difficulties in ascertaining whether persons in many of the campaign trails were public officers/state officers in active service. We recommend that EACC and ODPP enforces the Election Laws strictly.
- d) The access to information element was not brought out clearly in the monitoring tool hence the inability to capture information. IEBC should ensure that they proactively disclose information as per the Access to Information Act.
- e) The Director of Public Prosecutions to Act against public officers responsible for vehicles spotted in campaign rallies tabulated in this report for contravening the Public Officer Ethics Act, 2003, Anti-Corruption and Economic Crimes Act 2003 and the Elections Act of 2011.

## 2.3 ELECTION OBSERVATION

### 2.3.1 Introduction

The Commission is empowered to improve public administration in Kenya through investigation of any conduct in state affairs or any act or omission in public administration in any sphere of Government that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice. This includes investigation of instances of alleged abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unresponsive official conduct and misbehaviour in public administration. In addition, this mandate is complemented by the aforesaid collective and general roles of Chapter Fifteen institutions under Article 249(1) of the Constitution.



### 2.3.3 Key Findings

- 1. Preparedness**

The Commission noted that preparations by the IEBC for the election was satisfactory
- 2. Truncated Printed Voter Register**

In most of the polling centres the truncated printed register of voters had been pinned at the polling centres on 8th August 2022.
- 3. Voting Process**

The voting process in the 2022 general election was an improvement from that of 2017. Whereas there were challenges experienced in some polling stations, the process was largely orderly, peaceful, transparent, efficient and smooth.
- 4. Ballot Boxes**

The polling stations that were visited by our observers had all ballot boxes for the six elective posts save for Kakamega and Mombasa Counties where the gubernatorial ballot boxes were not provided following the postponement of the election. Similarly, Rongai Constituency in Nakuru County the voting material for the Member of Parliament had also not been provided.
- 5. Verification of Voter Details**

Whereas the IEBC properly displayed the truncated printed voter register, and urged Kenyans to verify their voter registration details through short messaging service code and the Commission's dashboard iverify, many voters were still unable to identify their names and their polling stations in the register. This pointed out lack of awareness and access to information among the voters.
- 6. Voter Identification**

In 78% of polling stations observed, KIEMS Kit functioned optimally. However, in 22% of the areas observed, some Kits could not identify the biometrics of the voters, while others totally failed resulting in the use of manual registers.
- 7. Ballot Boxes Color Code**

It was noted that a significant number of voters could not identify and differentiate the colours of the ballot papers and boxes. The colour for the presidential (white) and Member of County Assembly (beige) were confusing to the voters.
- 8. Training of IEBC Officials**

In the majority of polling stations observed, the officials demonstrated knowledge and understanding of the election process and their roles therein.
- 9. Special Needs/Assistance Voters**

In 97% of the polling stations observed, the voters with special needs were assisted by the IEBC officials and prioritized to vote. Those in this category included; the elderly, illiterate, persons with disabilities, expectant and nursing mothers.
- 10. Observers and Agents**

In all the polling stations observed, all agents and observers present were permitted to observe the counting of the ballots and were free to ask questions for clarity purposes

## 11. **Transmission of Votes**

- ⤴ In 97% of the polling stations observed, the Presiding Officers promptly transmitted the results starting with the presidential results using KIEMS kit, save for some polling stations.
- ⤴ In 93% of the polling stations it was observed that each statutory Form 34A to 39A was scanned, agents & observers allowed to take photos of the same and copies where necessary.

## 12. **Result reconciliation**

In the majority of the polling stations observed, there were no discrepancies between the results transmitted and those announced by the PO. However, one observer in Kilifi County indicated the counting of ballots was not fair due to lack of uniformity noted during counting of Presidential votes i.e. the PO counted 2 ballots as REJECTED votes (S/Nos PRO1131403 & PRO1131421) supposedly because they did not contain a (TICK) or (X). She declined saying any other mark amounts to invalid vote.

## 2.4 PREPAREDNESS OF THE ELECTION

- ⤴ The Commission noted that preparations by the IEBC for the election was satisfactory.
- ⤴ In most of the polling centres the truncated printed register of voters had been pinned at the polling centres on 8th August 2022.
- ⤴ In Mlolongo Primary School within Mavoko Constituency which had a total of forty polling stations, making it the polling centre with the highest number of polling stations, was adequately prepared for the exercise. The truncated printed register of voters was properly displayed and the voters were allowed access to verify their details. Additionally, it was observed that IEBC tents were being set up and polling clerks were reporting for duty.
- ⤴ In Kajjado East Isinya Constituency, at the Moi Girls Polling Centre, the observer was apprised by the Returning Officer on the level of preparedness. It was observed that all pertinent election materials were on site and the clerks and security personnel were being briefed for deployment.
- ⤴ In Nyeri National Polytechnic which housed the Nyeri County Tallying Centre, was a beehive of activity. The distribution of election materials such as the KIEMS Kit, sealed ballot papers, ballot boxes, validation forms, power banks, polling station diaries, assigning of security personnel and air time facilitation was being done by the Constituency Returning Officer to Presiding Officers for Ruringu, Rware, Gatitu/Muruguru, Kigango/Mathari and Kamakwa Mukaro Wards.



*Truncated register displayed at Mlolongo Polling Centre*

In HomaBay Town Constituency, in HomaBay County which was considered a hotspot area due to gubernatorial contest (ref NCIC), the Vice Chairperson of the Commission, Mr. Washington Sati had a meeting with the County Returning Officer on matters of election day preparedness; security, distribution of election materials, training of election officials and the conduct of IEBC Officials who were arrested for alleged election malpractice.



*CAJ Observer mission delegation with the Nyeri Returning Officer.*

## 2.5 COMMENCEMENT OF VOTING

- ⤴ It was observed that the voting process in the 2022 General Election was an improvement from that of 2017. Whereas there were challenges experienced in some polling stations, the process was largely orderly, peaceful, transparent, efficient and smooth.
- ⤴ **Opening of Polling Stations:** It was observed that 69% of the polling stations opened at the stipulated time which was 6:00 a.m. However, 31% of the polling stations witnessed delays in opening occasioned by logistical challenges such as late arrival of election materials, glitches of KIEMS kits, verification of political parties and candidates agents' documentation and last-minute preparations. In Kaloleni Primary School Makadara Constituency for instance, the delay in the commencement of voting was occasioned by a broken presidential ballot box. The presiding officer had to request for a replacement in order to begin the process.
- ⤴ **Delayed Opening of Polling Stations:** There were some incidences of delayed opening of the polling station at Bumini Secondary Polling Centre and Munga'ang'a Primary Polling Stations in Kakamega County Mumias East Constituency. They were opened at around 2:00 p.m due to the failure of the KIEMS Kit. In Bumini Secondary School they reverted back to use of the manual voter register. However, late opening was compensated by late closure to compensate for the time lost.
- ⤴ **Poor Lighting:** Some polling stations experienced lighting challenges. This was observed at the Freehold Primary School and Midas Polling Centre in Nakuru, Ongata Rongai Open air Market and Matungulu West in Machakos County.
- ⤴ **Accessibility of Polling Stations:** It was observed that 94% of the polling stations were accessible to voters including those with reduced mobility. However, in some polling stations at JKUAT Westlands Campus Centre, the layout posed a serious challenge for persons with disabilities and nursing mothers.
- ⤴ **Ballot Boxes:** The polling stations that were visited by our observers had all ballot boxes for the six elective posts save for Kakamega and Mombasa Counties where the gubernatorial ballot boxes were not provided following the postponement of the election. Similarly, Rongai Constituency in Nakuru County the voting material for the Member of Parliament had also not been provided.
- ⤴ **Missing Candidates in Ballot Papers:** It was observed that in Nyaki West Ward Imenti North Constituency in Meru County, an MCA aspirant, Hillary Mugambi was missing on the ballot paper, despite alleging to have been cleared by the IEBC.

- ⤴ **Verification of Voters:** Whereas the IEBC properly displayed the truncated printed voter register, and urged Kenyans to verify their voter registration details through short messaging service code and the Commission's dashboard iverify, many voters were still unable to identify their names and their polling stations in the register. This pointed out lack of awareness and access to information among the voters. This created crowding at the names display area, confusion at the polling centre, frustrations and others leaving without voting.
- ⤴ **Polling Booths:** In most polling stations, there were only two polling booths. However, in Mungabira Primary Polling station number two, there was only one polling booth which slowed down the voting process. In all the polling stations at Upper Hill Secondary School, there was only one polling booth per station forcing voters to mark their ballot papers on tables that were closely arranged, which compromising the secrecy of the vote.



*Voting ongoing at Tulwap Primary School Polling Centre*

### 2.5.1 Functionality of the Kenya Integrated Elections Management System (KIEMS) kit

- ⤴ In 78% of polling stations observed, KIEMS Kit functioned optimally. However, in 22% of the areas observed, some Kits could not identify the biometrics of the voters, while others totally failed resulting in the use of manual registers.
- ⤴ In Onyerore Primary School in South East Nyakach Ward Nyakach Constituency in Kisumu County, the KIEMS Kit failed for more than one hour.
- ⤴ In Mung'ang'a Primary and Buminin Primary Schools in Mumias East Constituency, the KIEMS Kit failed and the IEBC Officials were forced to revert to the use of the manual voters register.

- ⤴ In PCEA Mama Ngina Kenyatta Primary polling station number seven, in Kikuyu Constituency, the KIEMS kit failed to identify the biometrics of an elderly voter. However, the Presiding Officer resorted to manual registers.
- ⤴ In Enego Primary School in Aldai Constituency in Nandi County, the opening and the voting proceeded uninterrupted until 7:30 a.m. when the KIEMS Kit hung for a forty-minute period until 8:30 a.m., when the situation was remedied.
- ⤴ In Mosque Road Polling Station in North Imenti Meru County, the KIEMS kit failed to identify several voters' biometrics hence, the Presiding Officer had to fill in voter validation forms which were also not enough.
- ⤴ In Lukamanda, Esilanke, Lower Matasia Primary School, Uvunye Primary School, GK Prison Primary School, Kiserian and Asumbi Primary School the KIEMS kit could not identify the voter's biometrics. The Presiding Officers however approved them to vote after taking their portrait photo and filling the voter validation form.
- ⤴ In some polling stations, the KIEMS kit failed and the ICT team had to be called to rectify the situation with some being replaced.



*Voting ongoing at GK Prison Primary School Kitengela*

## 2.5.2 Election Materials

- ⬆ It was noted that a significant number of voters could not identify and differentiate the colours of the ballot papers and boxes. The colour for the presidential (white) and Member of County Assembly (beige) were confusing to the voters.
- ⬆ In polling station number two in Membley Police Post in Ruiru Constituency, an anomaly was noted 20 minutes into voting where the ballot boxes for Senate and Woman representative positions were wrongly labelled. The labels showing the correct office had to be placed on top of the ingrained label to rectify the issue.



*IEBC official takes a voter's photo at St. Marys Primary School, Machakos*

## 2.5.3 Conduct of IEBC officials

- ⬆ In the majority of polling stations observed, the officials demonstrated knowledge and understanding of the election process and their roles therein.
- ⬆ Majority of the Presiding officers appreciated the role of election observers. However, in some polling stations, the Presiding Officers were uncomfortable with the presence of the observers and did not avail the polling station diaries for the observers to sign in and out. In Abori Primary School in Taveta Constituency for example, the presiding officer hardly communicated with the agents.

- ⤴ It was observed that most of the IEBC officials had the technical know-how in operating the KIEMS kit.
- ⤴ In 96% of the polling stations observed, the observers and the agents were allowed to observe without any undue restrictions, subject to production of their identification documents.
- ⤴ Generally, in Kiambu County, the presiding officers barred observers from gaining access to the polling stations based on the requirement that they did not possess signed oath of secrecy, code of conduct and appointment letters, despite having the IEBC accredited observer badges.
- ⤴ In 97% of the polling stations observed, the voters with special needs were assisted by the IEBC officials and prioritized to vote. Those in this category included; the elderly, illiterate, persons with disabilities, expectant and nursing mothers.



*A voter with special needs being assisted by IEBC clerks at Machakos Recreational Park*



*An elderly voter being assisted by a polling clerk at Uhuru Gardens Primary School polling station*

#### 2.5.4 Complaints handling

- It was observed that complaints were registered in 16% of the polling stations observed. Majority of complaints were occasioned by failure of KIEMS kit to identify voters' biometrics, long queues due to late opening of some polling stations, voter details missing in both the kit and manual register, voters having challenges in locating their polling stations, and agents being kept away due to limited space in the polling stations. All the concerns were however well addressed by the Presiding officers and their deputies.

### 2.3.9 Closing, Counting, Tallying and transmission of Votes

The Constituencies represented in the closing and vote counting exercise by the observers were;

Machakos Town; Karachuonyo ; Kisumu Central ; Narok North ; Kikuyu ; Rongai ;Garseni ; Mavoko ;Jomvu; Embakasi West; Laikipia West; Aldai ; Githunguri; Saku ; Likoni; Matungulu ; Nyeri Town ; Kuresoi North; Makadara; Alego Usonga; Voi; Kajiado North ;Runyenjes ; Kilome ; Kapseret; Kisumu ; Muhoroni ; Kapseret; Nakuru Town West; Kigumo; Nyeri Town; Njoro ; Juja; Kabete ; Mumias East; Sabatia; North Imenti; Kajiado East; Dagoretti North; Isiolo North; Kajiado East ;Kisumu Central; Rangwe; Kilifi South ; Kilgoris; Eldama Ravine ; Taveta; Kitutu Chache South; Subukia; Kiminini ; Rarieda; Ruiru ; Marakwet East ; Matuga; Kapseret; Kiambu; Githunguri ; Wajir East



Sealing of ballot boxes at Machakos University after polling station closure.

## 2.6 CLOSING OF POLLING



It was observed that the IEBC had proactively disclosed information on official closing time of all voting stations to be 5:00 p.m.

- 33% of the polling stations observed, closed at 5:00pm. This was due to extensions of equivalent time that was lost from the official opening time, 6:00 a.m., and to allow the voters on the queue to vote.
- 36% of polling stations observed, voters turned up after the IEBC stipulated closing time. However, the voters that were on the queue at the time were allowed to vote.
- In all the polling stations observed, immediately after closure, the Presiding Officer proceeded to seal the ballot box aperture in the presence of party agents and observers and recorded the serial numbers in the Polling Station Diary.



*Sealed ballot aperture with a serial code.*

### 2.6.1 Counting & Tallying of Votes

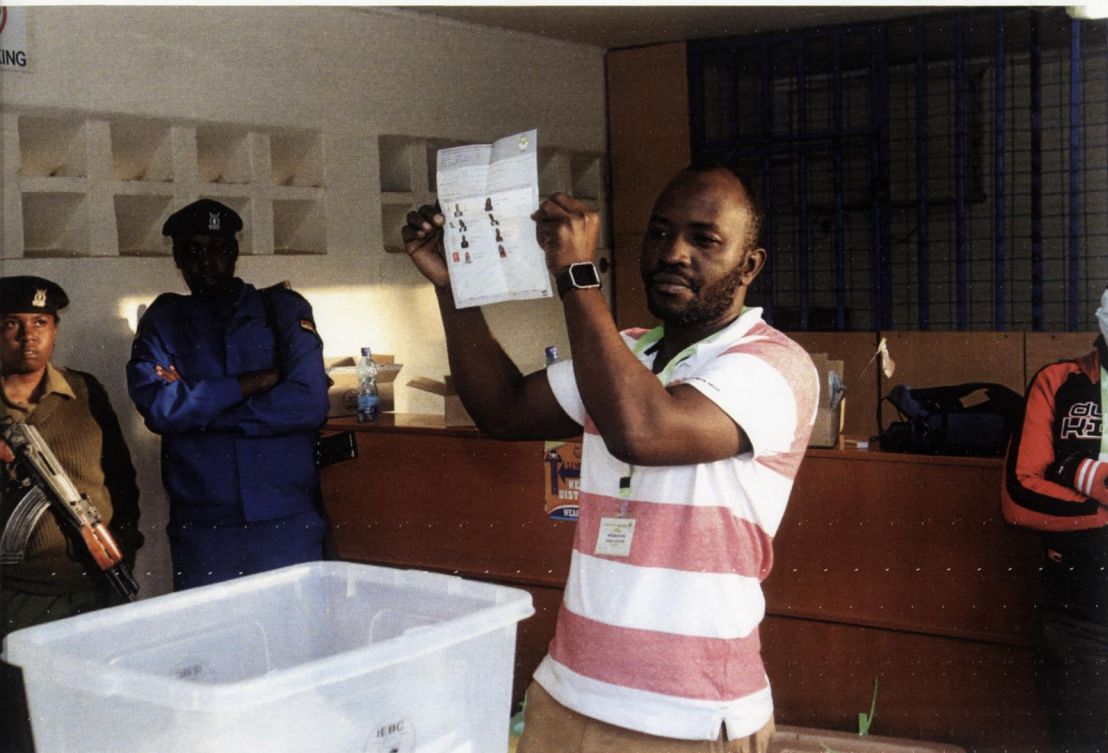
The announcement of closure of a polling station by the PO kick-started the counting process which began with a re-organization of the polling station to a counting set-up and recording of the seals of the ballot box for each elective position by the PO in the presence of party agents and observers prior to counting.

- ⤴ In all the polling stations observed, all agents and observers present were permitted to observe the counting of the ballots and were free to ask questions for clarity purposes.
- ⤴ Prior to counting, it was observed that the PO educated agents and observers on how to identify the difference between valid, spoilt, disputed, stray and rejected and objected to votes.
- ⤴ In most polling stations when counting of ballots began the security officers manning the polling stations were vigilant and inspected every bag carried by anyone other than those seated in the counting set-up.
- ⤴ Counting of ballots was conducted in fairly-lit rooms/tents and in areas without electricity a gas lantern was used as an alternative.



*Vote counting at night illuminated by lantern.*

- ⤴ It was noted that the PO loudly announced every ballot paper the respective candidate in whose favour the vote had been cast and prominently displayed the ballot paper to agents and observers in order to ascertain the vote.
- ⤴ It was observed that the counting process was slow which is attributable to fatigue of IEBC Officials.

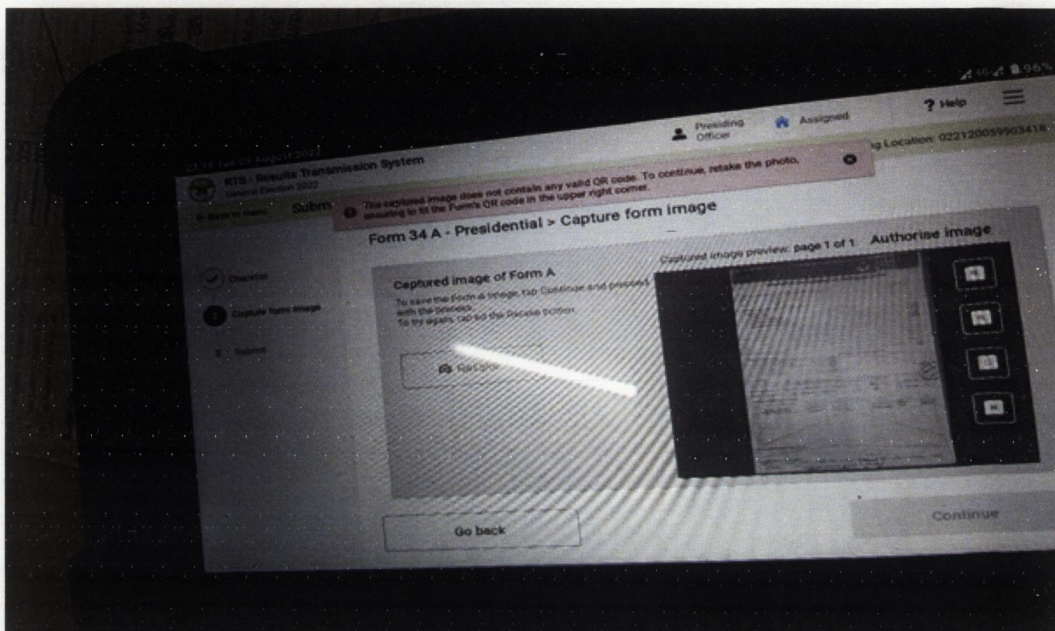


*A Presiding Officer displays a ballot paper during vote counting at a polling station*

- Immediately after the counting process, the Presiding Officer collated the results and filled in the necessary statutory forms and party agents present in the counting room appended their signatures.
- In 95% of the polling stations there was no serious incident that was witnessed in or around the polling station, save for one incident where there was some interference by some candidates during the tallying process but was effectively handled by security.
- At Alara Korayo in Kochia Ward, Rangwe Constituency, in Homa Bay County the agents of one gubernatorial candidate tried to eject agent of the main opponent. However, the security personnel present intervened. At the same polling centre, the agents and CAJ observers were harassed by the goons resulting to confiscation of observer's phone alleging that she was recording videos of the incident.
- As a result, the counting of votes proceeded in the absence of the candidates' agents and observers.

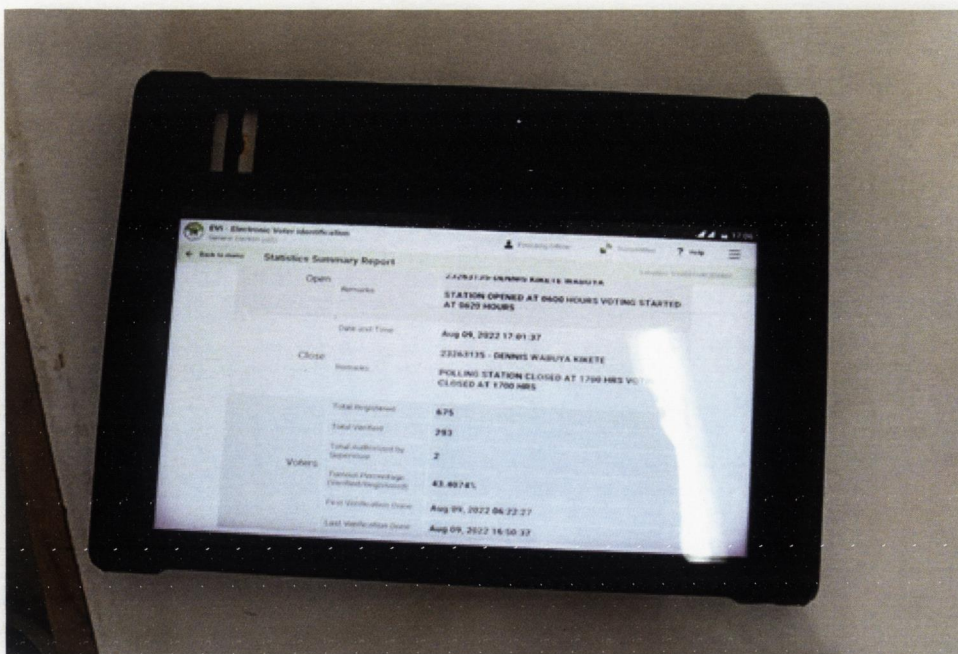
## 2.6.2 Transmission of Election Results

- ⤴ In 97% of the polling stations observed, the Presiding Officers promptly transmitted the results starting with the presidential results using KIEMS kit, save for some polling stations. For example, in Valley Learning Centre in Kisumu County, the KIEMS kit failed to transmit at that particular time, and the P.O. advised the agents that the Kit had to be moved to the main tallying centre, Kisumu National Polytechnic, to utilize the high internet connectivity for the transmission of the results.
- ⤴ In Kikuyu Township Primary School in Kikuyu Constituency, it was observed that the PO experienced challenges in submitting Form 34A due to the failure of the KIEMs kit to recognize the QR Code leading to delay in transmission of the results.



### *KIEMs kit fails to recognize the QR Code on a ballot paper*

- ⤴ In 93% of the polling stations it was observed that each statutory Form 34A to 39A was scanned, agents & observers allowed to take photos of the same and copies where necessary. (Annexure ii)
- ⤴ In the majority of the polling stations observed, there were no discrepancies between the results transmitted and those announced by the PO. However, one observer in Kilifi County indicated the counting of ballots was not fair due to discrepancies noted during counting of Presidential votes i.e. the PO counted 2 ballots as REJECTED votes (S/Nos PRO1131403 & PRO1131421) supposedly because they did not contain a (TICK) or (X). She declined saying any other mark amounts to invalid vote.



*KIEMs Kit displayed for verification of voter turnout by agents and observers polling station*

### 2.6.3 National Tallying Centre

- ⬆ The Commission was present at the NTC - Bomas of Kenya. It was observed that security measures were heightened evidenced by the stringent identification steps of the IEBC National accredited agents and observers. The center was full to capacity and the IEBC Commissioners periodically announced results from different tallying centers.
- ⬆ It was observed that IEBC implemented a result transmission system that was used to transmit provisional results electronically to the observation centers. The integration of technology into the electoral process recorded real time transmission of the presidential elections results. The results were displayed on the various big screens set up at the center and or on National televisions. It was also noted that one could access the numbers from the IEBC site ([link: forms.iebc.or.ke/#/](https://forms.iebc.or.ke/#/)), and download key documents such as form 3 4 B .

- ⤴ The Commission commended the management of the public portal that promoted an unprecedented level of transparency.
- ⤴ However, Prior to the IEBC Chairperson declaring the presidential elections, the Commission observed a division among the IEBC Commissioners. The division was evidently displayed where the Chairperson and two Commissioners out of seven readied to declare the presidential results at Bomas, and the remaining four Commissioners led by the Vice Chairperson impetuously made a press statement at a different location aired on the local TV stations negating the final tallying & verification process. Further, the four distanced themselves from the final presidential results that were yet to be declared. While the Chairperson declared the winner with 50.4%(7,176,141) against the second closest second contender with 48.8%(6,942,930), the Four commissioners disowned the results claiming that they were opaque and had not been agreed on by all Commissioners.
- ⤴ Tensions and anxiety heightened, notably the Azimio party agent refused to sign the required form which gave rise to skirmishes and subsequently violent outbursts by a few agents within the center. The security detail managed to quell the insecurity incident efficiently and effectively notwithstanding that some IEBC officers had been bruised in the process. Post the incident, the Chairperson declared the presidential results within the statutory timeliness.

## 2.7 OTHER RELEVANT OBSERVATIONS

### 2.7.1 Media

- ⤴ The Commission observed that the media had an extensive geographical coverage in all parts of Kenya; a precursor that enhances the citizens' right to access information. It was observed that the presence of agents and observers(media house staff) at tallying centers and the unfettered access to the public portal, aided parallel tallying processes by different bodies media included. The lack of uniformity while tallying results from different geographical areas by the different media stations amounted to transmission of varying results causing uneasiness among the voters. This was proactively managed by having IEBC as the preferred source of the results information while halting the result stream by the Media houses.
- ⤴ In addition, it was also observed that the level of mis-information and disinformation was high and especially on the social media platforms that gave rise to confusion and anxiety due to over reliance of the unverified data.

## 2.7.2 Election Observers

### *i. Observers in general*

The Commission posits that in all polling stations observed, agents and observers were present. Further, it was observed that the number of Agents overall, were more than observers in all centres. The agents represented various political candidates, though in some centres only one agent among 12 agents represented a presidential candidate. Some of the observers that had a parallel vote tabulation corroborated the IEBC official results.

### *ii. AOMA Observer Mission*

The Commission hosted a team of election observers from the African Ombudsman and Mediators Association (AOMA) from 7th to 15th August 2022. AOMA is an umbrella body for ombudsman institutions in Africa, established with a mandate to support the contribution of ombudsman institutions in the promotion of good governance, rule of law and human rights. Pursuant to this mandate, AOMA deployed four teams of observers to the Kenya General Election of 2022.

The AOMA Election Observer Mission was charged with the responsibility of observing, assessing and reporting on the electoral process in line with regional and international principles for democratic elections and the national legal framework governing elections in Kenya. The Mission was led by Hon. Grace Malera, Ombudsman of the Republic of Malawi, and comprised the Ombudspersons from Angola, Benin and Tanzania, together with their accompanying delegations. It is noted that the mission's conclusions generally affirm the Commissions and other observers' observations.



**CONCLUSIONS AND  
RECOMMENDATIONS**

### CONCLUSIONS AND RECOMMENDATIONS

#### 3.1 CONCLUSION

The Commission appreciates the measures employed by IEBC in areas of preparations and managing the electoral process, in line with the parameters of Administrative Justice outlined in the Commission on Administrative Justice Act and the principles of proactive disclosure of information prescribed under the Access to Information Act.

However, cognizant of the fact that the core value of election observation lies in the recommendations offered in observer reports, the Commission hopes that this report shall serve as the basis for electoral process reforms which shall strengthen democracy in the long-term.

#### 3.2 RECOMMENDATION

##### 3.2.1 Recommendation to IEBC

On account of the observations/findings, the Commission recommends as hereunder:

##### *i. Review and or Amend the election laws.*

With reference to Sec 44 of the Elections Act that allows the Commission deploy such technologies as may be necessary when the circumstances arise, the need to have process-oriented regulations calls for the review the Elections Technology Regulations 2017;

Amendment of the Election Offences Act to:

- Enhance the IEBC mandate in implementing Sec 14 and 15 of the Act
- Oblige the ODPP to provide IEBC with information on the status of pending or prosecuted election cases to enable IEBC to enforce the electoral code of conduct and other provisions of the Elections Act; reference to Sec 87 of the Election Act on the removal of persons convicted of electoral offences from the register of voters; among others

Amendment of the Elections General regulations, 2012 to provide a requirement that all prospective candidates secure clearance from the respective agencies prior to presenting their names for electoral registration, including an amendment of the prescribed form to encompass the recommended parameters; among others

## **ii. Right to vote**

Establish inclusive systems to allow the disenfranchised citizens discharging essential services to vote.

## **iii. Civic Education:**

Maintain a continuous voter education program to enhance informed polling processes inversely necessitating prioritization of voter education funds. Set up effective structures to ensure uniform and timely directions to the polling staff.

## **iv. Ballot Boxes distinction**

The Ballot Boxes lids and ballot papers should have distinct bold colors that are easily differentiated.

## **v. BVR kit movement schedule**

The BVR kit movement schedule should be informed by the traffic of voters and should be accessible to the general public.

## **vi. Identification of IEBC officials**

The clerks conducting the registration processes should have some form of identification i.e., name tags etc.

## **vii. Staff Facilitation**

IEBC staff should be adequately facilitated to undertake the voter registration.

## **viii. Truncated Voter Register**

The use and display of the truncated register is commendable however, consider enlarging the font and provide different readable forms that can be accessible to persons with disability.

## **ix. Accessibility of Polling Stations**

Consider making the polling stations more accessible i.e. incorporate measures to enhance accessibility in polling stations where the center has stations on different storeys accessible by stairs only.

## **x. Quality Assurance**

Enhance the quality assurance controls on election materials to curb apparent errors like in the case of the Mombasa and Kakamega gubernatorial ballot boxes.

## **xi. KIEMS Kits**

Practical Contingent Measures

To counter the delays occasioned by the faulty and failing KIEMS kits, IEBC should acquire additional kits and ensure periodic software maintenance.

### **3.2.2 Recommendation to the IEBC, ODPP & DCI**

#### **i. Enforcement of Electoral Laws**

Strict adherence to the electoral laws. Notably under Section 14 of the Election Offences Act.

**ii. Proactive action against public officers** responsible for violations of the Election Offences Act of 2011, Public Officer Ethics Act, 2003, Anti Corruption and Economic Crimes Act 2003 and the Elections Act of 2011

### **3.2.3 Recommendation to Political Parties and PPLC**

**i. Political parties** to recruit and train more agents in future.

#### **ii. Party Agent Brief**

Conduct a rigorous briefing of party agents to ensure they understand their role and follow the rules at the polling centres.

### **3.2.4 Recommendation to the IEBC & Media Council**

#### **i. Result Dissemination**

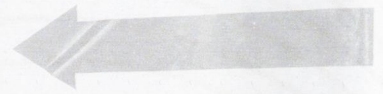
Develop a structured framework for disseminating information(results) to effectively manage expectations during the election period.

SHSS SR1

# ANNEXTURES

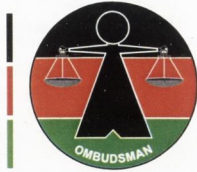
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION  
YOUR VOTE. YOUR FUTURE

**POLLING STATION**



# ANNEXURE I

## Polling Day Observation Tool: Opening



**THE COMMISSION ON  
ADMINISTRATIVE JUSTICE**  
(Office of the Ombudsman)  
*Hata Mnyonge ana Haki*

2022 GENERAL ELECTIONS

CAJ POLLING DAY- OBSERVATION SCHEDULE

OBSERVERS NAME \_\_\_\_\_

OBSERVER NUMBER \_\_\_\_\_

COUNTY \_\_\_\_\_

CONSTITUENCY \_\_\_\_\_

WARD \_\_\_\_\_

POLLING CENTRE \_\_\_\_\_

POLLING STATION \_\_\_\_\_

DATE

\_\_\_\_ / \_\_\_\_ / 2022



D9: Were you able to observe the opening without any restrictions?

Yes [ ], No [ ]

D10. Was any formal complaint lodged during the opening?

Yes [ ], No [ ]

D11 If yes, how was the Complaint handled?.....

.....

D12 The overall conduct of the opening was? ΔGood

ΔFair ΔBad

Additional Comments/Remarks

I confirm that the information recorded in this questionnaire is true to the best of my knowledge, information and belief.

Name of the Observer: .....

Observer No.....

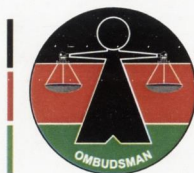
Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

## ANNEXURE II

### Polling Day Observation Tool: Voting

Questionnaire No.....



**THE COMMISSION ON  
ADMINISTRATIVE JUSTICE**  
(Office of the Ombudsman)  
*Hata Mnyonge ana Haki*

### **2022 GENERAL ELECTIONS CAJ POLLING DAY- OBSERVATION SCHEDULE**

**OBSERVERS NAME** \_\_\_\_\_

**COUNTY** \_\_\_\_\_

**CONSTITUENCY** \_\_\_\_\_

**WARD** \_\_\_\_\_

**POLLING STATION** \_\_\_\_\_

**POLLING Center** \_\_\_\_\_

**DATE** \_\_\_\_\_ / \_\_\_\_\_ /2022

#### A. POLLING STATION LAYOUT AND MATERIALS

A1. Please give your observations on the polling station accessibility and layout.....  
.....

A2. Do Polling Booths provide adequate secrecy/privacy? Yes [ ], No [ ]

A3. Is voter identification transparent? Yes [ ], No [ ]

**B. ELECTION MATERIALS**

B1. Check and tick if the following strategic materials are provided at the Polling Station

- 6 Ballot Boxes     Presidential,  Governor,  Senator,  Member of Parliament,  Women Rep,  MCA
  - 6 sealed envelopes (one for each type of ballot)  Presidential,  Governor,  Senator,  Member of Parliament,  Women Rep,  MCA
- Security seals
- BVR Kit
- Security Rivets
- IEBC embossers
- Rubber Stamps
- Polling Booths
- Official Voter Register
- Indelible ink

**H. SERIOUS INCIDENT REPORT**

H1. Did you witness or hear of any serious incident in or around the Polling Station? Yes , No

H2. If Yes, briefly explain what happened and the parties involved.....

.....

H3 Any additional comments that you may have regarding the elections.....

.....  
.....  
.....

I confirm that the information recorded in this questionnaire is true to the best of my knowledge, information and belief.

Name of the Observer: .....

Monitor NO:.....

Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

ANNEXURE iii

Polling Day Observation Tool: Closing

Questionnaire No.....



**THE COMMISSION ON  
ADMINISTRATIVE JUSTICE**  
(Office of the Ombudsman)  
*Hata Mnyonge ana Haki*

**2022 GENERAL ELECTIONS**  
**CAJ POLLING DAY- OBSERVATION SCHEDULE**

**OBSERVERS NAME.** \_\_\_\_\_

**COUNTY** \_\_\_\_\_

**CONSTITUENCY** \_\_\_\_\_

**WARD** \_\_\_\_\_

**POLLING STATION** \_\_\_\_\_

**POLLING Center** \_\_\_\_\_

**DATE** \_\_\_\_\_ / \_\_\_\_\_ /2022

## A. POLLING STATION LAYOUT AND MATERIALS

A1. Please give your observations on the polling station accessibility and layout.....  
.....

A2. Do Polling Booths provide adequate secrecy/privacy? Yes [ ], No [ ]

A3. Is voter identification transparent? Yes [ ], No [ ]

## B. ELECTION MATERIALS

B1. Check and tick if the following strategic materials are provided at the Polling Station

- 6 Ballot Boxes [ ] Presidential, [ ] Governor, [ ] Senator, [ ] Member of Parliament, [ ] Women Rep, [ ] MCA
- 6 sealed envelopes (one for each type of ballot) [ ] Presidential, [ ] Governor, [ ] Senator, [ ] Member of Parliament, [ ] Women Rep, [ ] MCA
- Security seals [ ]
- BVR Kit [ ]
- Security Rivets [ ]
- IEBC embossers [ ]
- Rubber Stamps [ ]
- Polling Booths [ ]
- Official Voter Register [ ]
- Indelible ink [ ]

## D. CLOSING PROCEDURES

The polling station should close at 5:00 pm where polling started on time.

D2. What time did the polling station close? ..... p.m.

D3. Did any voter turn up after the closing time? Yes [ ], No [ ]

D4. Were voters who came after closing allowed to vote? Yes [ ], No [ ]

D5. Were the ballot boxes sealed soon after the voting ended? Yes [ ], No [ ]

D6. Was the sealing exercise transparent, that is, in the presence of party agents and observers? Yes [ ], No [ ]

## E. COUNTING

E1. Were all party agents and observers permitted to observe the Counting of the ballots?

- Yes [ ], No [ ]
- E2. Were the number of voters and the used, unused, and spoiled ballots tallied and announced to the observers/party agents? Yes [ ], No [ ]
- E3. State whether the counting of ballots was free, fair and transparent? Yes [ ], No [ ]  
 Explain.....
- E4. Were all the ballots sealed in the boxes? Yes [ ], No [ ]

**F. TRANSMISSION OF RESULTS**

- F1. Was the transmission done promptly after counting? Yes [ ], No [ ]
- F2. Were the results transmitted in the presence of the agents and observers? Yes [ ], No [ ]
- F3. Were the agents issued with copies?(i.e. allowed to take photos etc)
- F3. Were the KIEMS machines used for the transmission of results? Yes [ ], No [ ]
- F4. Were there any discrepancies between the results transmitted and those announced by the Presiding Officer? Yes [ ], No [ ]

**H. SERIOUS INCIDENT REPORT**

- H1. Did you witness or hear of any serious incident in or around the Polling Station? Yes [ ], No [ ]
- H2. If Yes, briefly explain what happened and the parties involved.....
- .....
- .....
- H.3 Any additional comments that you may have regarding the elections.....
- .....
- .....
- .....

I confirm that the information recorded in this questionnaire is true to the best of my knowledge, information and belief.

Name of the Observer: .....

Monitor NO:.....

Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

FORM 34 A

PR082401



09/08/2022

### PRESIDENTIAL ELECTION RESULTS AT THE POLLING STATION

Name of Polling Station: ATHI RIVER PRISON POLLING STATION 1 of 1 Code: 049292145108001  
 Ward: PRISONS Code: 1451  
 Constituency: PRISONS Code: 292  
 County: PRISONS Code: 049

#### Number of votes cast in favour of each candidate:

Name of Candidate	No. of Valid Votes Obtained
1. ODINGA RAILA	030
2. RUTO WILLIAM SAMOEI	010
3. WAIHIGA DAVID MWAURE	000
4. WAKOYAH GEORGE LUCHIRI	000
5.	
6.	
7.	
8.	
9.	
10.	
11.	
Total number of valid votes cast	040

#### Polling Station Counts

1. Total Number of Registered Voters in the Polling Station:	070
2. Total Number of Rejected Ballot Papers:	000
3. Total Number of Rejection Objected To Ballot Papers:	000
4. Total Number of Disputed Votes:	000
5. Total Number of Valid Votes Cast:	040

#### Decision(s) on disputed votes if any

Serial Number of Ballot Paper (w/ disputed vote)	Name of Candidate assigned the vote
1.	
2.	
3.	
4.	

#### Declaration

We, the undersigned, being present when the results of the count were announced, do hereby declare that the results shown above are true and accurate count of the ballots in ATHI RIVER PRISON Polling Station PRISONS Constituency.

Presiding Officer: MAUREEN CHEPKORIR Signature: [Signature] Date: 09-08-2022  
 Deputy Presiding Officer: SIMON TUMAINA Signature: [Signature] Date: 09-08-2022

#### Agents or Candidates (if present)

No.	Name of Candidate or Agent	ID/Passport No.	Party Name/Independent Candidate	To Contact	Signature	Date
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						



#### Reasons for Refusal to Sign (if any)

Presiding Officer's Comments: THE VOTING EXERCISE WENT ON WELL POLLING STATION OPENED AT 0830HRS GIVEN IT IS A PRISON.



# ANNEXTURE V

## Form 34A

**FORM 34A**  
PRES-640

**PRESIDENTIAL ELECTION RESULTS AT THE POLLING STATION**

Name of Polling Station: MEMBELEY POLICE POST POLLING STATION-118 Code: 0021140000004  
 Ward: 000000000 Code: 0000  
 Constituency: 00000 Code: 100  
 County: 00000 Code: 00

Number of votes cast in favour of each candidate:

Name of Candidate	No. of Valid Votes Obtained
1. <u>OLINDA NABA</u>	
2. <u>RUTO WILLIAM SAMOEI</u>	<u>168</u>
3. <u>WABOIA DAVID MWAURE</u>	<u>254</u>
4. <u>WASACKYAH GEORGE LUCHIRI</u>	<u>004</u>
5.	<u>005</u>
6.	
7.	
8.	
9.	
10.	
11.	
Total Number of valid votes cast	

**Polling Station Counts**

1. Total Number of Registered Voters in the Polling Station	<u>668</u>
2. Total Number of Rejected Ballot Papers	<u>011</u>
3. Total Number of Revision Observed To Ballot Papers	<u>000</u>
4. Total Number of Disputed Votes	<u>000</u>
5. Total Number of Valid Votes Cast	<u>431</u>

**Decision(s) on disputed votes if any**

Serial Number of Ballot Paper (if any)	Name of Candidate assigned the vote
1.	
2.	
3.	
4.	

**Declaration**  
 We, the undersigned, being present when the results of the count were announced, do hereby declare that the results shown above are true and accurate count of the ballots in MEMBELEY POLICE POST Polling Station RUIAU

Presiding Officer: RICHARD OGALO ABIRA Signature: [Signature] Date: 09-08-2022  
 Deputy Presiding Officer: SHARON KINYA MUTHURI Signature: [Signature] Date: 09-08-2022

**Agents or Candidates (if present)**

No.	Name of Candidate or Agent	ID/Passport No.	Party Name/Independent Candidate	Tel. Contact	Signature	Date
1.	<u>JUMA WABOIA MUMBI</u>	<u>28003933</u>	<u>UDA</u>	<u>073220735</u>	<u>[Signature]</u>	<u>9-8-2022</u>
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						

**Reasons for Refusal to Sign (if any)**

Presiding Officer's Comments: THE ELECTION WAS SMOOTH

**I.E.B.C. PRESIDING OFFICER**  
RICHARD OGALO ABIRA  
 ID: 25334424  
 09-08-2022

2.3. RECORDS OF VOTERS ON THE QUEUE AFTER VOTING PERIOD  
 Voters still in the queue after voting period: 054

2.4. RECORDS OF VOTERS VALIDATED BY PRESIDING OFFICER IN KIEMS  
 Total number of voters validated by the supervisor (PO): 000

2.5. RECORDS OF VOTERS IDENTIFIED BY THE PRINTED REGISTER OF VOTERS WHERE KIEMS TECHNOLOGY HAS TOTALLY FAILED  
 Total number of voters identified: 000

2.6 RECORDS OF SEALS USED TO SEAL THE APERTURE AFTER POLLING  
 Accurately indicate serial numbers of seals used to close the aperture(s) immediately after polling

Type of Election	Ballot Box Serial Number	Serial number of aperture seal
Presidential	284882	1EBC1503696
Member of National Assembly	109125	1EBC1503698
Member of County Assembly	496064	1EBC1503692
Governor	080819	1EBC1503689
Senate	320868	1EBC1503691
Country Woman Member to the National Assembly	477767	1EBC1503690
Referendum	N/A	N/A

2.6. CERTIFICATE OF CLOSURE OF POLLING STATION AND POLLING BEFORE COUNTING.

I, 1EBC1503690 (Name of Presiding Officer) certify that at 11:00 hours Polling Station closed at 13:00 hours and polling ended at 13:00 hours on the polling day.

PO's Signature: [Signature] Date: 07-08-2022

(PO's stamp)


3.1 AGENTS' AFFIRMATION  
 We, the undersigned hereby confirm that we participated and witnessed the count of the polling by the Presiding Officer.

Name of Agent	PP/ID No.	Political Party/ Independent Candidate name	Signature
DARIO UGUA	7051836-0	Independent	[Signature]
PETER SHAKA	2025032	UDA	[Signature]
BOAL W. MURI	3062180	UDA	[Signature]
GEORGE KIMU	2121153	CUZEXI	[Signature]
LESLIE KIMANI	2442282	UDA	[Signature]
ELIWA K. MURU	2004482	UDA	[Signature]

# ANNEXTURE VII

## KIEMS Supervisor Validation Form

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION**



### KIEMS SUPERVISOR VALIDATION FORM

County: MACHAKOS County Code: 016

Constituency: MAVOKO Constituency Code: 080

County Assembly Ward: MLOLONAO/SYOKIMEN CAW Code: 0397

Polling Center: MLOLONAO PRIMARY Polling Center Code: 040

Polling Station: MLOLONAO PRIMARY Polling Station Code: 034

This is to confirm that the voter whose particulars are indicated below was identified alphanumerically by search in the electronic voter identification device and was validated using the supervisor mode in respect of the above Polling Station.

**Particulars of Voter:**

Surname:	<u>NTHENGE</u>
Other Names:	<u>DAVID</u>
Gender:	<u>MALE</u>
ID/Passport No.	<u>23276387</u>
Voters Thumbprint	

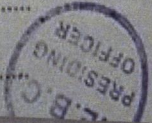
**Witnesses**

No.	Name of Candidate or Agent	ID/Passport No.	Party Name / Independent Candidate	Tel. Contact	Signature	Date
1.	<u>MAUREEN ATENO</u>	<u>22242136</u>	<u>CAJ OBSERVER</u>	<u>0720768261</u>	<u>AA</u>	<u>9/8/22</u>
2.						
3.						
4.						

NAME OF PRESIDING OFFICER: ERIC KANKY HAVIS

ID NUMBER: 24611212

Stamp:



## EMS Statistics Summary Report

The screenshot shows a mobile application interface for 'EVI - Electronic Voter Identification' during the 'General Election 2022'. The user is logged in as 'Presiding Officer'. The report title is 'Statistics Summary Report' for a 'Statistics' entry. The status is 'CLOSED'. The location information includes County (032 NAKURU), Constituency (172 SUBUKIA), County Assembly Ward (0857 SUBUKIA), Polling Centre (005 N.C.P.B DEPOT), and Polling Station (02). The station was opened on Aug 09, 2022 at 06:02:28. Remarks include '26394438-KIPYEGON JELAGAT VERONICAH' and 'POLING STATION OPENED AT 0600 HRS'. The report was generated on Aug 09, 2022 at 17:03:43.

Status	<b>CLOSED</b>	
Location Information	County	<b>032 NAKURU</b>
	Constituency	<b>172 SUBUKIA</b>
	County Assembly Ward	<b>0857 SUBUKIA</b>
	Polling Centre	<b>005 N.C.P.B DEPOT</b>
	Polling Station	<b>02</b>
Open	Date and Time	<b>Aug 09, 2022 06:02:28</b>
	Remarks	<b>26394438-KIPYEGON JELAGAT VERONICAH POLING STATION OPENED AT 0600 HRS</b>
	Date and Time	<b>Aug 09, 2022, 17:03:43</b>

