



## **PRELIMINARY STATEMENT**

### **Fundamental freedoms respected in Kenya’s general elections, but procedural shortcomings demonstrate the need for improvements**

**Kenya, 11 August 2022**

*This preliminary statement of the EU election observation mission (EU EOM) is delivered before the completion of the entire electoral process. Critical stages remain, including tabulation of results and adjudication of petitions. The EU EOM is currently only in a position to comment on observation undertaken to date and will publish a final report later, including full analysis and recommendations for electoral reform. The EU EOM may also make additional statements on election-related matters as and when it considers it appropriate.*

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#### **Summary**

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Kenyan voters went to the polls on 9 August 2022 and cast their votes patiently in six levels of general elections. Fundamental rights were generally respected throughout the course of the campaign, but last-minute changes to the election process showed that some procedures still need to be improved. On election day, opening, voting, and counting generally took place in line with established procedures, but important security measures were at times disregarded in the counting procedures. The EU EOM notes that the tabulation process is still ongoing, and its observers remain deployed to follow the electoral processes through to their conclusion.

The lead-up to the elections was characterised by significantly less tension and conflict than in the past. Parties and candidates were able to campaign openly throughout the country to get their message out to voters and the fundamental freedom of assembly was respected. Although the presidential election campaign had the highest profile, the importance of gubernatorial races emphasised the growing significance of the constitutional devolution of power since 2013. As well, extensive conflict mitigation and resolution networks had been developed to handle possible disputes. This was helped by a new political discourse focusing on social-economic issues in the campaign, although ethno-regional divisions were still apparent. There was marked dissatisfaction, however, on the part of young voters.

One of the most prominent issues in these elections was the lack of proper campaign finance oversight, which polluted the campaign environment. It created an unlevel playing field, disadvantaging those with less access to funds, especially women. The widespread distribution of cash by candidates to voters during the campaign is contrary to commitments for democratic elections and has a corrupting influence. The thwarting by the parliament of the introduction of campaign finance regulations before the elections underscores the need for real political will and implementation.

While the preparatory stages of the elections were managed effectively and professionally by the IEBC, as election day approached, important uncertainties persisted that impacted election day procedures. These uncertainties resulted from the IEBC desire to be responsive to past criticism. Many of these decisions could have been considered sooner but were instead dealt with as they emerged. There was also uncertainty because of frequent litigation. The IEBC could have done more to communicate more clearly with stakeholders throughout the process to enhance public trust, although this improved in the last weeks.

Candidate registration resulted in 16,098 contestants for all 6 elections, giving voters a real choice. Only 1,962 women (12 per cent) stood, lower than expected given the efforts by many stakeholders to increase their participation. A small number of decisions was challenged, which were handled expeditiously. The IEBC, however, needed to wait for these decisions to finalise certain key processes, such as ballot printing. The legal framework provides a good basis for the conduct of democratic elections and there is generally a high level of public confidence in the judiciary. While initiatives to amend elements of electoral law,

including from the IEBC, were put forward repeatedly before the elections, they stalled in parliament. Only the Political Parties Act was significantly amended.

The use of technology in this election was a key point of debate throughout the electoral process, from its procurement to implementation. While the IEBC stressed that the paper-based results are the basis of the system and that the results of the tallying process could be reconstructed in the event of system failure, this was not properly and efficiently communicated to the wider public.

In a context of adequate legal protection for freedom of expression, the media covered the elections extensively in broadcast and print. Despite this free atmosphere, many media professionals continued to express concern about danger and threats to their profession in covering sensitive issues, especially around politics and corruption. The candidate debates, which were extensively covered by all media, were a missed opportunity at the presidential level when two of the four candidates dropped out.

From the EU EOM media monitoring, it was noted that coverage focused mainly on the presidential election, followed by the gubernatorial race. The state-owned broadcaster provided the electorate with broad information. One presidential candidate received more media attention across private TV channels, mainly due to the debate. Vernacular radio stations were segmented and showed bias, while newspapers offered more balanced reporting.

Social media were used extensively throughout the campaign. Disinformation was spread via online platforms, with elements of coordinated inauthentic behaviour found by the EU EOM's social media monitoring unit. Accounts under false identities were used to disseminate the reach of disinformation.

Voters exercised their right to vote in a generally peaceful manner throughout election day. The process was calm, albeit prolonged, due to last-minute procedural changes. Polling stations (PS) visited by EU EOM observers opened late in most cases, due mostly to staff unpreparedness and equipment issues, and the overall conduct of opening was evaluated negatively in a relatively high number of cases. During voting, the biometric voter identification at times caused problems, creating queues. Overall, EU EOM observers assessed the voting positively in most cases. During closing, some PS did not follow certain security measures. No official complaints, however, were lodged at PS visited at closing. Tabulation is ongoing; however, some observers reported being kept at a distance from the process, reducing transparency.

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*The European Union Election Observation Mission (EU EOM) has been present in the Kenya since 27 June 2022 following an invitation from the Kenyan authorities. The Mission is led by Chief Observer, Ivan Štefanec, Member of the European Parliament (MEP, Slovakia). In total, the EU EOM deployed 182 observers from 30 EU Member States, and Canada, Norway, and Switzerland across the country to assess the whole electoral process against international obligations and commitments for democratic elections as well as the laws of Kenya. Over the course of the mission, the EU EOM met over 2,562 interlocutors from state authorities and independent agencies, members of the judiciary, political parties and candidates, civil society organisations (CSOs), representatives of the media.*

*A delegation of the European Parliament, headed by Evin Incir, MEP from Sweden, also joined the mission and fully endorses this Statement. On election day, observers conducted more than 750 observations in 39 of the 47 counties of Kenya to observe the voting, counting, and tabulation of votes.*

*This preliminary statement is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, in particular, the tabulation of results, and the handling of possible post-election day complaints and appeals.*

*The EU EOM remains in country to observe post-election developments and will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process.*

*The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005.*

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## Preliminary Findings

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### Background

On 9 August 2022, Kenya held its third general elections under the 2010 Constitution, voting in six different elections. The presidential race uses the majoritarian system (over 50 per cent), with at least 25 per cent of votes in 24 of the 47 counties. The five other elections are first-past-the-post: elections for 47 county governors, 290 National Assembly (NA) members, 47 women in the NA, 47 senators, and 1,450 county assembly members (MCA). Additionally, members representing women, persons with disabilities (PwD), youth, workers, and minorities are nominated by parties proportional to their vote share in parliament and in the county assemblies.

There was a public falling out between President Kenyatta and his Deputy Ruto that led to tensions within the political class but did not translate into pronounced ethno-regional tensions. The cross-ethnic nature of both alliances, Odinga's *Azimio la Umoja* with 23 parties under its umbrella and Ruto's *Kenya Kwanza* with 12 parties, mediated against strong tensions and escalations.

Elective positions at the county level have become of more interest to voters as they realise that development does not depend entirely on the presidency; this reduces tensions. The strong and complex government peace and security architecture, anchored in the 2010 Constitution and developed against the backdrop of past post-election violence, is supplemented by multi-level, non-state peace initiatives. This has established a strong peace narrative that helps bridge divides.

Despite a relatively high regard for the judiciary, the respect for rule of law by the executive and legislature is not always consistent. This is demonstrated by a lack of will to enact court rulings on the two-thirds gender rule of the constitution. It is also highlighted by the lack of implementation of the Public Benefits Organisations Act, 2013, which leaves CSOs vulnerable to arbitrary state interventions.

The backdrop to the general elections was marked by a deepening economic downturn, increased social vulnerability, and rising poverty levels for many citizens. This led to drastically soaring prices for fuel, staple food items, and agricultural products in the wake of the COVID-19 pandemic and the Russian invasion of Ukraine.

### Legal Framework

The legal framework provides a good basis for the conduct of democratic elections. Kenya is a state party to most regional and international legal instruments, which establish commitments to rule of law and democratic elections. While the Constitution provides for direct incorporation of these international obligations into domestic law, gaps remain between these instruments and their execution and enforcement. Nonetheless, the legal framework is in overall harmony with regional and international commitments.

The Constitution of 2010 is a transformative instrument which establishes extensive political participation rights. Affirmative action provisions promote women, PwD, youth, and minorities in elected office through various measures. However, successive parliaments have failed to introduce legislation required to implement these provisions, leaving this affirmative action largely unfulfilled.

Protection is provided for the exercise of political rights, including the right to vote and to stand for election, as well as the freedoms of association, assembly, and expression. The rights to vote and to stand are subject to limitations, with restrictions in place, which are *prima facie* against international commitments. Varying across the six elections, these include restrictions based on intellectual capacity, adjudged bankruptcy, absence of a degree and failing to satisfy overly rigorous citizenship and residency requirements.

The Elections (Amendment) Bill, 2022, and a subsequent set of five draft Elections Regulations, 2022, which would have brought clarity to many important procedural aspects of the elections, were not enacted by parliament, despite the urging of the IEBC. Parliament also impeded the approval of campaign finance regulations, leaving spending unregulated. The enactment of the Data Protection Act, 2019, and the Political Parties (Amendment) Act, 2022, represented some positive measures of law reform, with the latter having contributed to more peaceful political party nomination processes.

Public access to legal texts is good, as is access to legal remedy. Legislation and court decisions are accessible online, while the COVID-19 pandemic expedited the move of litigation online, with cases being filed electronically and hearings being conducted virtually. Rules of standing to protect constitutional rights are open, allowing frequent vindication of political rights.

### **Electoral Administration**

While the preparatory stages of the elections were managed effectively and professionally by the Independent Electoral and Boundaries Commission (IEBC), as election day approached, important uncertainties persisted that impacted upon election day procedures. These uncertainties resulted from the IEBC desire to be responsive to past criticism. Many of these decisions could have been considered sooner but were instead dealt with as they emerged. There was also uncertainty because of frequent litigation. The IEBC could have done more to communicate more clearly with stakeholders throughout the process to enhance public trust, although this improved in the last weeks.

The decentralised recruitment of polling station members was conducted transparently and competitively. The system of rotation of county and constituency returning officers before elections is perceived by electoral stakeholders as ensuring impartiality of the election administration at lower levels, while the permanence of their position leads to sufficient experience levels. The IEBC demonstrated competence in the delivery of trainings.

Nevertheless, the late dispersal of funds for voter education delayed the start of activities and negatively impacted upon the capacity of IEBC staff on the ground, who had limited logistical support. Despite efforts by the IEBC, CSOs and religious leaders, all EU EOM interlocutors considered that voter education was insufficient. Most EU EOM interlocutors however acknowledged that the IEBC made concerted efforts to promote the inclusion of marginalised groups, including by creating coordination committees to discuss their concerns and take concrete actions. Voter education materials were also produced in Braille, demonstrating inclusivity.

Due to the centralised system of information flow, county and constituency officers met by the EU EOM generally received consistent, regular, and timely information regarding electoral preparations, and smooth cooperation with the IEBC was noted at the central level by county and constituency officers. The IEBC tended to be more reactive rather than proactive in its communication with external stakeholders, at times only releasing crucial information on sensitive matters after problems had occurred. Stakeholders' perception of constituency and county officials' information-sharing, however, was positive overall.

In its interpretation of a 2017 appellate court decision and with the aim of mitigating perceived misuse of the printed voter register, the IEBC decided to have printed voter registers in security envelopes and to use them only in case of total failure of the Kenya Integrated Election Management System (KIEMS). This decision created controversy among electoral stakeholders and was also challenged in court, resulting in a 4 August High Court judgment ordering IEBC to reintroduce the use of the printed register for election day, only to be stayed by the appellate court on the eve of elections, thus obliging the IEBC to change the instructions to its polling staff once again. Aiming to prevent electoral fraud, the IEBC also introduced additional safeguards for voter identification. Despite this, the use of KIEMS for voter identification and

results transmission remained a point of concern for most EU EOM interlocutors, although the IEBC reiterated its full confidence in the effective functioning of the system.

The EU EOM notes that the IEBC has taken certain steps, guided by the 2017 Supreme Court ruling, to modify the transmission of polling station presidential election results, which remains paper based, and required only scanned form (34A) images to be transmitted instead of sending them together with manual KIEMS results entries. This decision, together with the paper trail, was viewed by the EU EOM as an integrity strengthening measure. The EU EOM notes that moving away from direct data entry into the KIEMS at polling station level contributes to the verifiability and transparency of the process. In compliance with the regulations, the IEBC also took steps to address the lack of 3G/4G connectivity in 1,272 polling stations (PS) across the country via the use of satellite modems for the transmission of results.

### **Election Technology**

The elections used an integrated electronic system with biometric voter registration, electronic voter identification and electronic transmission of results. The IEBC conducted several public procurement processes, including for the supply of the KIEMS system and its network, and its auditing, as required by law and regulation. However, the evaluation of the KIEMS procurement processes was not made public, undermining transparency.

The implementation of the new KIEMS system suffered because of deficient planning and lack of coordination between institutions. Late contract awards, difficulties in re-using the legacy KIEMS kits and the old voter registration database, as well as continually changing requirements, due to legal uncertainties, raised stakeholder concerns about the readiness of the system. Although the IEBC did conduct two results transmissions simulations, they were small in scale and limited in scope, not fully eliminating doubts on the efficiency and reliability of the system. The arrest of vendor employees and the way the issue was managed may also have undermined public trust.

The scope of the election technology audit covered both the acceptance of the KIEMS system, and the security and suitability of the IEBC data centres to receive and process the election results. As well, a lack of public information on the findings of the system audit and improvements implemented following them minimised its contribution to improving confidence in the election technology. Although audits are rarely made public in full, for understandable security reasons, the need for some level of information to stakeholders is necessary to build public confidence.

### **Voter Registration**

The IEBC held an enhanced, two-phase voter registration drive, targeting 6 million new voters. Although not reaching its target, 74.82 per cent of citizens holding national identity cards are included in the final voter register. The gap in registration was attributed mostly to youth apathy, as well as to insufficient IEBC sensitisation prior to the exercise, caused by limited funding. EU EOM interlocutors did not raise serious concerns either on the inclusivity of the process or the quality of the voter register. Nevertheless, politically motivated transfers of voters were mentioned to EU observers in some areas, while the IEBC itself conducted an investigation on the illegal transfer of voters in two counties. Although the general findings of a KPMG audit were released by IEBC on 20 June, the actual report was made public only a week prior to the elections, which negatively impacted upon the transparency of the process, even though the IEBC purported to have addressed shortcomings.

Voters could check their registration data by SMS, but since this entailed a fee of 10 KES, it was not widely used. A link on the IEBC's website that also allowed voters to check their registration information was unfortunately not accessible to people without Internet. However, voters were afforded a 30-day period for onsite verification. The final register of voters gazetted on 21 June 2022 totalled 22,120,458. Women accounted for 49.12 per cent and PwD for 18.94 per cent.

### **Registration of Candidates and Political Parties**

The EU EOM assessed the candidate registration process as offering a broad political choice. The IEBC approved 83 of the 89 registered parties to participate in the elections. With six different electoral contests, 16,098 candidates (including 1,962 women, as reported by IEBC) were registered at all levels. Political party registration is highly regulated and is managed by the Office of the Registrar of Political Parties.

The Constitution affords every citizen the right to stand for election, while legislation provides for the registration of both political party and independent candidates. Persons of “unsound mind” are disqualified, at odds with the Convention on the Rights of Persons with Disabilities.

The IEBC made significant efforts to implement the two-thirds gender rule in party list registration, with 98 per cent party compliance. Its implementation, however, was suspended by a 13 June High Court decision on the grounds, *inter alia*, of a purported inadequacy in public participation. The IEBC also insisted on ensuring that the political party lists complied with the rules on representation of special interest groups.

### **Campaign Environment**

EU EOM observers saw that contestants were able to campaign openly throughout the country to get their messages out to voters and that the fundamental freedom of assembly was respected. The cross-ethnic composition of the two broad alliances served to lower inter-ethnic tensions throughout the campaign. No incidents of excessive use of force by the police were reported. Almost no cases of ‘derogatory’ language were observed by the EU EOM in campaign events. Several interlocutors highlighted the intimidating climate against women candidates in many places. Also, there was marked dissatisfaction of young voters.

The elections were characterised by both candidates enjoying elements of incumbency and of opposition. The *Kenya Kwanza* candidate, William Ruto, was incumbent as deputy president. The *Azimio la Umoja* candidate, Raila Odinga, was endorsed by President Kenyatta. At the same time, Ruto had lost some executive privileges through his falling out with the president, and Odinga has been in opposition for many decades. George Wajackoyah (Roots Party) and David Waihiga (*Agano* Party) also competed.

The campaigns centred around socio-economic issues, with traditional ethno-regional appeals running as undercurrents. Ruto ran his campaign as a contest between old entrenched political dynasties and himself with his running mate, Rigathi Gachagua, as self-made politicians, rising as ‘hustlers’ to national leadership. Odinga emphasised his and his running mate’s credentials (Martha Karua) in their struggle for a multi-party system, their fight against corruption, and his previous experience as prime minister. Odinga’s campaign was somewhat constrained by his alliance with President Kenyatta, being unable to distance himself from state policies. Both candidates emphasised economics, but Ruto emphasised a ‘bottom-up’ approach.

Candidates campaigned through a variety of methods. Presidential rallies throughout the country were usually large scale, attracting large crowds. Often, after one presidential candidate visited a region, the other followed within a day or two. Both main presidential candidates were often accompanied by their alliance’s local candidates, seeking endorsement. This, at times, created stiff competition and internal tensions amongst coalition parties arose in several places.

The importance of the gubernatorial races in these elections emphasised the significance of the constitutional devolution of power since 2013, showing an increasing political maturity. Almost half of the governor seats were open, as incumbents concluded their second and final terms. The MCA elections also attracted high interest amongst voters. Whereas gubernatorial candidates also conducted some large-scale rallies, campaigns for other races were smaller (election caravans, door-to-door, town hall meetings).

The widespread payment of cash from a multiplicity of candidates to voters during the campaign is counter to democratic elections and has a corrupting influence. With a marked and continued absence of campaign finance regulations, candidates spent large sums of money in direct handouts to organisers, supporters, and event attendees. This was observed by the EU EOM in 21 cases and reported by many interlocutors at both national and county levels.

Campaign regulation violations and misuse of incumbency were noted by EU EOM observers in several cases and corroborated by media reports. EU EOM observers received some reports of Principal and Chief Administrative Secretaries as well as Chiefs and Assistant Chiefs organising support for the *Azimio* presidential candidate locally, thereby contravening the legally required political neutrality for public officers. EU EOM observers also witnessed the misuse of state resources, including vehicles and facilities, by campaigning officials and, in one case, the use of a public function for campaign purpose for *Azimio* candidates. One day after the official campaign's end, President Kenyatta gave a TV/radio interview in Kikuyu, appealing to Mt. Kenya region voters to unite, making clear that they should vote for Odinga.

Allegations of corruption against Ruto and Gachagua by the *Azimio* campaign and counter allegations of 'state capture' through Kenyatta, Odinga and their trustees put forward by the *Kenya Kwanza* team dominated the last weeks of the campaign. Gachagua, with two corruption indictments against him, was ordered by the High Court at the end of July 2022 to surrender 200 million Kenyan *shillings*, which he had failed to account for. The last campaign weeks also saw an increasingly bitter and personal exchange between Ruto and Kenyatta over their fallout that markedly heightened tensions between the two camps.

## Media

The legal framework provides an adequate basis for the freedom of expression. However, many credible journalists across the country reported to the EU EOM that they continue to practice self-censorship and to be intimidated when covering political and corruption issues. Media practitioners raised concerns about their safety when covering some campaign rallies.

Overall, the media reported extensively on elections, with the focus on the presidential race, giving voters an adequate level of information on which to base their choices. Media outlets allocated special programmes and sections to elections, and electronic media organised debates at the gubernatorial, women's representatives, national assembly, and senatorial levels.

While a vibrant media landscape exists, only a few major media houses with political and business ties control most influential media groups. Election coverage guidelines were published that stipulate impartiality and balance as key principles. However, certain media owners publicly supported the *Azimio* camp, which might have contributed to the alleged bias of the journalists on their staff.

The withdrawal of two candidates from the presidential debate made it less representative. Given the 2+2 format initially envisaged, the two remaining candidates, Ruto and Waihiga, responded to questions separately, rather than in debate. But it did give citizens the opportunity to evaluate some candidates' performance and fact-checking was done by organisers and media on candidates' statements. During Ruto's presentation, power cuts were noted in various parts of the country, as corroborated by EU EOM observers. The national power company officially apologised on its website, but many interlocutors thought it was politically motivated.

The EU EOM media monitoring found that the state-owned broadcaster allocated free airtime to political parties and candidates during the campaign, although no criteria for slots' allocation was established. Private TV channels provided more airtime to *Kenya Kwanza* candidate Ruto, mainly due to the debate.

Radio remains the most widespread source of information for most voters. Vernacular radio stations showed preference to one or other major camp in terms of coverage. This was most notable on *Ramogi FM*, the Luo community radio, which promoted *Azimio's* presidential candidate in terms of time, and *Kass FM*, the Kalenjin community radio, with a significantly allocation of time and positive tone for the *Kenya Kwanza's* candidate. Newspapers offered a more balanced coverage.

The gubernatorial race was the second most covered election. TV and print outlets allocated most of the coverage to both UDA and Jubilee's candidates, while on radio stations monitored by the EU EOM, ODM's candidates prevailed.

The number of TV ads from both presidential front runners tripled during the last week of the campaign, while more frequent television paid airtime through the campaign came from UDA's candidates. Political ads across radio stations and newspapers featured more of *Azimio's* coalition.

### **Social Media**

Parties and candidates used online platforms to campaign, setting up websites, employing bloggers and influencers, as well as digital campaign managers to manage their accounts. TikTok emerged as one of the most popular social media apps for sharing campaign content online.

CSOs made a real effort to monitor social media to counter disinformation and raise awareness of misuse of online platforms by malicious actors to disseminate 'hate speech', in the period leading up to the elections. Meta, Twitter and TikTok announced tailor-made measures to help ensure a safer digital space and provide voter information during the electoral process. Despite that, all platforms were largely misused to amplify the reach of disinformation operations, using multiple tactics to fuel information disorder through manipulation campaigns and personal attacks, targeting the IEBC, the judiciary, media, and politicians. Women candidates were also victims of harassment on social networks.

TikTok's delayed response to violations of its policies on hateful behaviour and harmful misinformation enabled the spread of inciteful rhetoric about the election on the platform through threats of ethnic violence targeting members of certain communities. The EU EOM identified several pieces of manipulated content containing disinformation, inciteful language, manipulated media and digital forgeries that were widely viewed. Content evoking Kenya's violent electoral past for political gain was also observed.

The EU EOM identified dozens of social network profiles associated with the presidential candidates on Facebook, Twitter, Instagram, TikTok and YouTube, with multiple cases of use of identical or slightly manipulated profile pictures. Among these, more than 200 accounts were created since 1 June. During the EU EOM's observation, many were suspended, taken down, or changed their name into non-election-related subjects. These developments support the widespread allegations of users being paid to spread campaign messages through online accounts under false identities to disseminate or amplify narratives in these elections. Despite contravening the platforms' community standards, many such accounts remained active until election day.

A Council for Responsible Social Media brought together representatives from civil society and eminent individuals a few days before the elections. It demanded better accountability from big tech companies in Kenya. It also encouraged the authorities to develop and publicly sign a self-regulatory Code of Practice on Disinformation, in line with international good practice.

### **Citizen and International Observation**

The main citizen election observation organisation, the Elections Observation Group (ELOG) deployed 290 long-term observers countrywide, while for election day they had some 5,108 short-term observers on the ground and conducted a parallel vote tabulation (PVT) for the presidential race. The Kenya Conference of

Catholic Bishops also deployed some 1,800 observers on election day, while the Youth Empowerment and Development organisation deployed around 3,000 observers. Other institutions, such as the Kenya National Commission on Human Rights, deployed monitors nationwide to follow election-related human rights issues, while the Independent Medico-Legal Unit monitored the situation since March with 86 observers.

Several international observer missions were deployed for these elections. These included the African Union together with the Common Market for Eastern and Southern Africa (COMESA), the Commonwealth Secretariat, the East African Community (EAC), the Electoral Institute for Sustainable Democracy in Africa (EISA), the Intergovernmental Authority on Development (IGAD), and the National Democratic Institute (NDI) / International Republican Institute (IRI) joint mission. The Carter Center and the Westminster Foundation for Democracy (WFD) deployed expert missions, focusing on specific issues. The EU EOM closely coordinated with all of them under the auspices of the Declaration of Principles framework.

### **Voting, Counting and Tabulation**

Voters exercised their democratic right to vote in a generally peaceful manner throughout election day. The process was calm, albeit prolonged, with dedicated polling stations staff who had to cope with last-minute changes in important procedural rules due to an appellate court order.

Polling stations (PS) visited by EU EOM observers opened late in 28 out of 33 cases, due mostly to the unpreparedness of staff and KIEMS kits not functioning; in only 5 of those PS visited the delay was over 60 minutes. Party agents were present in all PS visited. The overall conduct of opening was evaluated as “bad” or “very bad” in 4 out of 33 PS visited, a relatively high number.

During voting, the biometric voter identification was problematic in 29 out of 430 PS visited, with KIEMS not being able to immediately verify fingerprints and having to verify alpha-numerically. This led to the slow processing of voters and long queues. Positively, polling staff followed procedures in 135 of 151 PS where this issue was observed. Inconsistent application of the rules on the use of the printed voter register was noted in a small number of PS visited; an appellate court ruling issued on the eve of voting had stayed a previous decision of the IEBC to only use them in case of complete KIEMS failure.

Checking of voters’ fingers for ink was not conducted in 110 out of the 430 of PS visited, which constitutes an important procedural violation. The layout of 88 out of 430 PS visited was not suitable for PwD. Procedures related to assisted voting were not followed in 60 of the 144 of the PS where assisted voting was observed, while inking the assistants’ finger was not conducted in 62 of these PS.

Secrecy of the vote was not fully protected in 184 of the 430 PS observed, due to PS layout. Overcrowding was noted in 74 out of 430 PS visited, mostly due to many party agents, who were present in 429 out of 430 of PS visited. Citizen observers were present in 189 of the 430 polling stations visited. Overall, the EU observers assessed the conduct of voting as “good” or “very good” in 399 of the 430 PS observed.

More than half of PS observed at closing did not close on time, mostly due to late opening and voters still waiting in line to vote. Required integrity checks during ballot reconciliation, such as not counting unused ballots, were not followed in 9 out of 40 PS visited for counting. Ballots were also not packed in tamperproof envelopes in 10 out of the cases. These integrity measures are in place for the important reasons of preventing possible tampering. Counting was conducted in a transparent manner, albeit slowly, and not always according to the rules. Nevertheless, no official complaints were lodged at PS visited. Results forms for the presidential race were not immediately displayed in half the PS observed, reducing transparency.

By 10 August, EU EOM teams had conducted 192 observations across 124 Constituency Tallying Centres (CTC). In 13 cases, there were unauthorised people inside the CTC, interfering in the work of CTC staff in 4 cases. In 151 observations, all security envelopes arrived intact. EU observers, however, noted not being

able to observe the process in 11 cases because of the distance from the tables. In 7 of 192 observations, no party agents were present. The tabulation process is still ongoing.

### **Electoral Dispute Resolution**

The legal framework provides for access to effective legal remedy. Pre-election disputes were dealt with expeditiously by the IEBC, the Political Parties Disputes Tribunal (PPDT) and the judiciary. Despite this, the absence of a deadline for appeals to the courts resulted in cases continuing throughout the electoral cycle, creating uncertainty for IEBC preparations, jeopardising the timely conduct of elections.

Electoral dispute resolution is highly regulated, with well-elaborated procedures in place, which have functioned efficiently thus far. Aspirant candidates lodged 199 disputes against parties on nomination, which were determined by the PPDT. Cases were processed within a month, as required by law, enabled by an additional 18 *ad hoc* tribunal members. The PPDT was very accessible, with decentralisation to seven locations nationally, and electronic filing and hearing of cases. Disputes relating to candidate registration were managed by the IEBC Dispute Resolution Committee (DRC). For this process, 325 cases were brought to the committee, all of which were heard and determined within the applicable 10-day time limit. Forty-two of these decisions were appealed to the High Court.

There is generally a high level of public confidence in the judiciary. There was a concerted and successful effort by the courts to process electoral disputes expeditiously. Due to open rules of standing, constitutional petitions challenging the lawfulness of IEBC decisions on several aspects of election procedures continued before the courts until election day. The subjects ranged from administration, including the times of diaspora voting, to potential violations of the law in the anticipated failure of provision of the manual voter register in polling stations.

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An electronic version of this Preliminary Statement is available on the mission website [www.eomkenya2022.eu](http://www.eomkenya2022.eu).

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