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Carter Center Election Expert Mission to Kenya 2022

Final Report

International Election Observation: Kenya 2022

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Abbreviations

AfCHPR	African Union Charter on the Principles Governing Democratic Elections in Africa
AfCHPR-PW	African Charter on Human and Peoples' Rights on the Rights of Women in Africa
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CRPD	Convention on the Rights of Persons with Disabilities
DoP	Declaration of Principles
ECVR	Enhanced Continuous Voter Registration
EEM	Election Expert Mission
ICCPR	International Covenant on Civil and Political Rights
IEBC	Independent Electoral and Boundaries Commission
IT	Information Technology
KIEMS	Kenya Integrated Elections Management System
ORPP	Office of the Registrar of Political Parties
PPARB	Public Procurement Administrative Review
RLA	Risk Limiting Audit
RTS	Results Transmission System
SMS	Short Message Service (text message)
UN	United Nations

Introduction: Scrutinizing Technologies in the 2022 Kenyan Presidential Election

At the invitation of the Independent Electoral and Boundaries Commission (IEBC) of Kenya, The Carter Center deployed to Nairobi a small election expert mission that commenced work on Aug. 1, 2022. The mission, which focused primarily on the role of technology in the Aug. 9 presidential election, built upon several months of prior engagement and assessment by The Carter Center, including a pre-election assessment team deployed to Kenya during June and July. Given its limited scope, the mission did not conduct a formal assessment of the voting, counting, and tabulation processes, nor did it provide an assessment of the electoral process as a whole. The final results of the election were that William Ruto received 7,176,141 votes (50.49%) and Raila Odinga received 6,942,930 votes (48.85%), with a turnout of 64.77%. Ruto was accordingly declared the fifth president of Kenya.

The mission concluded that the use of technology, particularly a public portal to display results submitted at polling station level, largely increased public confidence in the process. However, the mission noted that greater preparedness is needed to consolidate these gains well in advance of the 2027 elections, particularly in public communications around election technologies, and that the introduction of digital signatures and risk-limiting audits to improve the verifiability of results transmission and verification should be given serious consideration.

The main focus of the expert mission was to assess the role of election technology in the process, including regarding biometric voter registration, voter verification, candidate registration, IEBC personnel recruitment, election observer registration, voter education provider registration, results transmission, and the appeals process. The mission focused closely on communications regarding how technology was utilized, the functionality of key technologies, and the degree to which they enable or enhance transparency. The mission conducted the analysis based on international obligations and standards regarding the role of technology in elections, the Kenyan Constitution and domestic legislation, and on recognized best practices. The mission spoke with more than 200 interlocutors in Nairobi, Mombasa, Nakuru, Eldoret, Kisumu, Nyeri and elsewhere.

The mission was composed of four analysts led by Ben Graham Jones, advisor to The Carter Center. The mission collaborated with Privacy International, a nonprofit organization that defends the right to privacy across the world, to incorporate an analysis of issues around data protection. The mission was supported by Kenyan operational staff including a logistician. The expert mission met with a wide range of stakeholders, including representatives from the government, the judiciary, the IEBC, political parties, civil society organizations, independent analysts, national observer groups, journalists, international observation missions, and others in the international community.

The Carter Center conducts its election observation work in accordance with the 2005 *Declaration of Principles for International Election Observation* and welcomes the close cooperation between signatory organizations over the course of this election, including the African Union, the Commonwealth, the European Union, the International Republican Institute, the National Democratic Institute, and the Westminster Foundation for Democracy.

Following the election, The Carter Center monitored post-electoral processes and legal challenges with a special focus on the role of election technology. The Center continued to

benefit from the expert input of Privacy International. Key findings of the mission will contribute to the Carter Center's handbook, *Safeguarding Election Technologies,* which is intended to serve as a resource to facilitate effective scrutiny of technology in democratic processes across the globe.

Executive Summary

- *IEBC communications on the role of technology in the elections.* Technology played an important role at every stage of the election process. Crucially, greater preparedness around communications would have bolstered overall public confidence in the technologies used. For most of the process, several factors impeded the IEBC's overall ability to communicate how technology was used in the election. These included the Kenyatta administration's delay in nominating replacement IEBC members, parliament's failure to approve funding in a timely manner, the late onset of preparations, the lack of an IEBC commissioner with a background in information technology, and legal challenges that changed key processes at late stages. These issues should be addressed before future elections, given that public trust in, and the effectiveness of, election technologies depend to a significant degree on the clarity and timeliness with which they are communicated.

  Despite these challenges, the IEBC showed responsiveness to Kenyans' concerns by improving its communications around election technologies in the final weeks before election day, including by establishing a call center equipped to respond to queries about technology, launching an online portal to display digitally transmitted polling station results forms, disseminating explanatory content online, and responding to queries on election technologies at press briefings. Kenya's legal framework concerning access to information conforms with international standards.

- *Late procedural changes in polling administration.* Procedural changes implemented long after most voter education and training efforts had ended caused confusion about election day processes. For example, to prevent votes from being cast fraudulently in the name of voters who had not in fact voted, the IEBC had instructed polling stations and informed the public that paper copies of the voter register would be used to identify voters only in the event of the total failure of the biometric machines. However, on Aug. 4, just five days before the election, the High Court ruled that the paper voter register should instead be distributed and used in all polling stations. This was then reversed the day before the election, when the Court of Appeal suspended the High Court's judgment.

- *Biometric voter registry.* The biometric voter register underwent major changes after the 2017 vote, including its transfer into a database provided by a new vendor. The IEBC conducted a comprehensive program of voter verification, during which numerous interlocutors reported learning their registrations had been moved to other parts of Kenya without their consent through this process. The register was later updated and reviewed by an external auditor; consequently, 246,465 deceased voters, 481,711 duplicate records, and 226,143 voters registered with IDs and passport numbers that did not belong to them were identified and, to a significant extent, removed.[1] The register is subject to the newly adopted Data Protection Act of 2019, which creates a foundational protection mechanism for individuals to exercise their right to privacy. Several cybersecurity vulnerabilities[2] were identified, but no evidence

[1] KPMG Advisory Services Limited. Independent audit of the register of voters for the Independent Electoral and Boundaries Commission (IBEC). KPMG, June 16, 2022, https://www.iebc.or.ke/uploads/resources/0CpUTC8Q5a.pdf.

[2] See KPMG report dated June 16, 2022, which reports on password settings that were inconsistent with IEBC policies, accounts belonging to ungazetted users, and excessive rights granted to database users.

emerged to indicate that any vulnerability was successfully exploited to affect the election outcome or diminished the overall integrity of the process.

- *Results transmission and verification.* The transmission of official, legally binding election results is based on the physical transport and tabulation of the polling station 34A results forms. In parallel, for the purpose of results verification, the IEBC uses an electronic system referred to as the "results transmission system." Results on the physical forms were checked against electronic scans of results forms at constituency and national tallying centers. Scans were also posted to a searchable online portal. This system was an important measure aimed at improving the transparency and verifiability of the election process and was positively received by civil society organizations in Kenya and the wider region. Less than 24 hours after polls closed, scans of 97.71% polling station results forms had already been posted on the public portal. Following verification of submissions with the physical copies, William Ruto was announced as the winner of the election, a declaration subsequently upheld by the Supreme Court of Kenya. Ruto received 7,176,141 votes (50.49%) and Raila Odinga received 6,942,930 votes (48.85%), with a turnout of 64.77%.

- *Testing of election systems*. Two pre-election simulations of the electronic transmission system were conducted on June 9 and July 19, 2022, involving a limited number of polling stations. The results were mixed and were insufficient to bolster public confidence, even though issues that occurred during the simulations were acted upon effectively prior to election day. During the actual transmission of election results images, however, there was a constant flow of incoming results forms, which were published on the IEBC online results portal. Other systems, including the voter educator and observer registration portal, would have benefited from a greater effort to undertake well-publicized testing following stakeholder consultation.

- *Intimidation of IEBC officials.* Several incidents of violence, including against officials serving the democratic process, tainted the election. One presiding officer in Wajir was shot on election day. Separately, during tabulation, some individuals disrupted proceedings at the National Tallying Center; IEBC officials were injured during a physical altercation. The National Cohesion and Integration Commission identified hate speech during the campaign from both major political forces. On occasion, language that raised tensions was directed at IEBC officials. After election day, prominent political figures from the campaign of Raila Odinga, including the candidate, directed personal attacks at the IEBC chairperson, which inflamed tensions.[3] On Aug. 26, IEBC staff marched through Nairobi carrying the message "Returning officers' lives matter."

  At least one IEBC official, the returning officer for Embakasi East, Daniel Musyoka, died because of violence. Musyoka disappeared on Aug. 11, two days after the vote. The IEBC has indicated that Musyoka was abducted and tortured. The Carter Center calls on the authorities to ensure that the perpetrators of all acts of election violence are held accountable for their actions.

[3] On Aug. 16, Odinga called the IEBC chairperson a "dictator" and "threat"; Azimio la Umoja Chief Agent Saitabao Ole Kanchory termed the official a "scumbag" on Aug. 24. These proclamations were broadcast online to thousands of viewers.

- *Election technology in the appeals process*. For the first time, Kenya implemented an e-filing system to allow for petitions to be submitted electronically. This was a positive step which can be further improved by ensuring key documents are readily visible through the portal. Members of the judiciary received extensive training on election technology in advance of the vote. On Aug. 22, presidential candidate Raila Odinga and his Azimio La Umoja coalition filed a petition with the Supreme Court challenging the results. The petition made various allegations, with the alleged manipulation of technology in the process a central component of the claims made. The court rejected the petition on all counts, primarily owing to a lack of evidence, upholding Ruto's victory.

Background to Election Technology in the Aug. 9 Vote

On Aug. 9, 2022, Kenyans went to the polls to elect candidates at presidential, parliamentary, senatorial, gubernatorial, and county assembly levels. These were Kenya's seventh national multiparty elections and the third under the country's 2010 constitution. The Constitution of Kenya provides that in the event no presidential candidate receives more than 50% of the vote, a runoff must take place within 30 days; should an election be annulled, the constitution allows 60 days for the conduct of a new poll.[4]

Kenya is a regional leader in the use of technology. Biometric identification technologies, in particular fingerprint scanners, are a common way of authenticating people in the public and private sector. Mobile phone coverage is pervasive, though not nationwide. Electronic banking is commonplace and includes the M-pesa system, which was developed in Kenya in 2007, is now used by millions of people across Africa, and has served as a model for mobile payment systems in other countries around the world.

The 2007 report of the Independent Review Commission (IREC), also called the Kriegler Commission, written in the aftermath of the electoral violence of that year that claimed more than 1,000 lives, recommended that the use of technologies in elections could strengthen public confidence in the election outcome. Technologies were used accordingly in the elections in both 2013 and in 2017. In the 2017 election, the Supreme Court annulled the vote, citing irregularities in the results transmission and tallying process by the IEBC. The ruling required that the elections be re-run, a process that was boycotted by a major candidate.[5]

In the 2022 election, technology was used for IEBC recruitment, biometric voter registration, voter verification, candidate registration, observer registration, voter education provider registration, results transmission, result communication through a public portal, and the appeals process. Much of the technology used in 2017, including a majority of the voter identification machines, remained in use in 2022.[6]

Following the conclusion of the results transmission and verification process on Aug. 15, IEBC Chairperson Wafula Chebukati announced the results of the vote: William Ruto – 7,176,141

[4] Constitution of Kenya 2010, Article 138.
[5] 2017 also saw the tragic murder of IEBC IT manager Chris Msando. The Center was saddened to learn that another IEBC official lost his life in the 2022 process and extends its condolences to the family and friends of IEBC official Daniel Musyoka. Mr. Musyoka had not been seen since Aug. 11, and was confirmed to have been killed in an IEBC statement on Aug. 17.
[6] See KPMG report dated June 16, 2022.

votes; Raila Odinga – 6,942,930 votes; George Wajackoyah – 61,969 votes; and David Mwaure – 31,987 votes. Chebukati declared Ruto the winner. This declaration was accepted by three of the four candidates. On Aug. 22, Azimio La Umoja, Odinga's alliance, filed an appeal challenging the results with the Supreme Court of Kenya. On Sept. 5, the court unanimously rejected this appeal, confirming Ruto's victory.

Legal Framework around Election Technologies

Kenya has ratified the main international human rights provisions relevant to elections, each of which has implications for the use and deployment of election technologies.[7] Kenya has also ratified regional instruments relevant to the implementation of election technologies.[8] Under the constitution, conventions and covenants signed and ratified are incorporated into the laws of Kenya, creating a comprehensive framework for human rights protections within the state rooted in international standards.[9]

These overarching safeguards are supplemented by a comprehensive legal and regulatory framework for the conduct of democratic elections. This is provided by the Election Law of 2011, amended in 2017; the Independent Electoral and Boundaries Commission Act of 2011; the Political Parties Act of 2011; the Public Order Act, last amended in 2014; the 2016 Election Offenses Act replacing Part VI of the Elections Act of 2011; the Elections Campaign Financing Act, 2013; and the Leadership and Integrity Act, 2012.

The full range of political and participatory rights are protected in the constitution, including freedoms of thought, expression, the media, access to information, association, and assembly.[10] Specific political rights, including the right to join a party, the right to vote through universal suffrage, and the right to participate in free and fair elections through secret ballot both as a voter and as a representative, are also protected.[11] These legal provisions conform with international best practice as established under the ICCPR.[12]

Technology forms an integral part of the legal framework for elections in Kenya. The Election Law mandates the use of technology in relation to biometric voter registration, electronic voter identification, and the electronic transmission of results.[13] Furthermore, the courts have instituted an online petition submission system.

The constitution sets out clear standards to which election processes must conform. The IEBC is obliged to ensure that procurement is completely transparent and that appropriate tests for

[7] These include the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
[8] These include the African Charter on Human and Peoples' Rights (AfCHPR), the African Union Charter on the Principles Governing Democratic Elections in Africa (AU CPGDEA), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (AfCHPR-PW).
[9] Constitution of Kenya Article 2(6).
[10] Constitution of Kenya Articles 32 through 37.
[11] Constitution of Kenya Article 38.
[12] Articles 19 and 25.
[13] Election Law 2011, Article 44.

the verification and deployment of technology must take place at least 60 days before a general election and procurement must take place at least 120 days before the general election.

The election itself must be "administered in an impartial, neutral, efficient, accurate and accountable manner."[14] The law establishes a very clear evidentiary threshold for the use of technology in the process: It must be simple, accurate, verifiable, secure, accountable, and transparent.[15] The Supreme Court has said these provisions uphold the principles of the constitution, and it was on the basis of these clauses that the court disqualified the presidential election in 2017.[16] These evidentiary standards are reinforced in the Election Law provisions on the identification of voters and the transmission of election results.[17] The provisions are expanded in the Elections (Technology) Regulations of 2017, which cover acquisition, testing, audits, information security and data storage, access to software, source codes, recovery and continuity plans, as well as capacity building and the creation of an election technology advisory committee. Article 26 empowers the IEBC to suspend or terminate technology if the reliability of the system cannot be assured and sets out the process of suspension in clear terms. If suspension takes place on polling day, the commission is empowered to extend the hours of polling to address the interruption.

The constitution outlines detailed provisions and timelines for the announcement of results and challenge mechanisms through electoral petitions, at the High Court level for parliamentary elections and the Supreme Court for presidential elections.[18] The powers of the Independent Electoral Boundary Commission are clearly set out and include the settlement of electoral disputes for everything other than challenges to the declaration of results, which are addressed in the aforementioned courts.[19] All of the systems of challenge and appeal within the constitution have clear timelines. In the case of challenges to the results, while the High Court has six months to hear and determine a petition relating to the parliamentary election, the Supreme Court is restricted to 14 days, during which a petition relating to the results of the presidential election is heard and determined.

In its preparations for election day, the IEBC decided that polling stations would primarily use the digital voter register contained in the Kenya Integrated Election Management System (KIEMS). KIEMS is an electronic system used for voter registration, verification, and transmission of a digital copy of the results sheet from the polling station.

On Aug. 4, the High Court ruled in favor of a petition requesting that the hard copy of the voter register take precedence, finding that technology could fail while the manual register cannot.[20] However, on Aug. 8 the Court of Appeal suspended the High Court decision pending hearing. As a result, the original procedures were reinstated with the manual register supplied under seal and only used if both the KIEMS kits and the backup kits failed.

[14] Constitution of Kenya Article 81.
[15] Constitution of Kenya Article 82 and 86.
[16] Presidential Petition No. 1 of 2017, Odinga & Musyoka v. IEBC et al. 1 September 2017.
[17] Election Law 2011, Article 44.
[18] Constitution of Kenya Article 87, Article 105, & Article 140.
[19] Constitution of Kenya Article 88.
[20] High Court Petition No. E306 of 2022.

Procurement of Election Technologies

The procurement of election technologies in Kenya is subject to the 2017 Elections (Technology) Regulations Article 4 and National Ethics and Anti-Corruption Policy 2018, which sets out the requirements for procurement of technology. This overarching framework is largely aligned with international standards, which require IEBC procurement to adhere to principles of transparency, efficiency, public participation, and the capacity for legal recourse. The IEBC also is bound by the Public Procurement and Asset Disposal Act 2015, which expressly allows for aspects of the tender process to remain confidential.

Nonetheless, civil society leaders told the Carter Center mission that greater transparency around the implementation of IEBC tender processes could raise confidence in the institution. The IEBC used technology to fill some of its 300,000 positions by creating a recruitment portal.

Having previously contracted French company OT Morpho, the IEBC opened a tender, and Smartmatic won the bid to provide the technology solutions mandated in the law: biometric voter registration, electronic voter identification, and electronic transmission of results. The process was challenged at the Public Procurement Administrative Review Board (PPARB) over an alleged lack of consultation and transparency. The High Court quashed the decisions on a point of procedure,[21] a decision later confirmed by the Court of Appeal, with the Smartmatic contract being reinstated in its original form.[22]

Kenyan media outlets and national sources reported a conflict that then emerged between the IEBC and OT Morpho, now titled IDEMIA. On the basis that final payments were outstanding, IDEMIA withheld the Kenyan biometric voter data and refused to allow the transfer of that data to Smartmatic.[23,24] In effect, IDEMIA laid claim to the voter roll and all the information contained therein. The issue was resolved outside of the courts, but it indicates a gray area in relation to the ownership of data produced by electronic information gathering systems.

The KIEMS software for the 2022 election was developed and provided by Smartmatic. Separate from the results verification system, a new online system was used at the constituency and national tallying centers to create constituency-level results tallying forms (Form 34B, example in Appendix) and national-level results tallying forms (Form 34C, example in Appendix). This system was developed by the same vendor and was deployed in 2022 for the first time.

During court proceedings, the Supreme Court granted the Odinga camp's petitioners' request to scrutinize parts of the system used. Claims were made that the vendor refused scrutiny of

[21] Misc C.A Judicial Review No. E134 of 2021.
[22] Risk Africa Innovatis Limited v Smartmatic International Holdings B.V.A & 3 others (Civil Appeal (Application) E008 of 2022) [2022] KECA 427 (KLR) (4 March 2022) (Ruling).
[23] Karim Anjarwalla and Abdulmalik Sugow. "Smartmatic: The Election Company and their Role in the Upcoming Elections." *The Elephant.* August 3, 2022. https://www.theelephant.info/features/2022/08/03/smartmatic-the-election-company-and-their-role-in-the-upcoming-elections/.
[24] Wangeci Thuo. "Squabble over Sh800 million debt could prevent IEBC register." *The Informer.* February 16, 2022. https://theinformer.co.ke/squabble-over-sh800-million-debt-could-prevent-iebc-register/.

the system to protect its proprietary software. However, the court indicated that it was fully satisfied with the level of scrutiny facilitated, rejecting the petitioners' claims that the IEBC had refused to "open the server." The IEBC also indicated that facilitating parts of the petitioners' requests risked rendering the servers unusable for subsequent elections.

Voter Registration

The Kenyan government announced the adoption of biometric voter registration (BVR) and authentication in the 2011 Elections Act, pursuant to the recommendation to move to a new registration system made by the Kriegler Commission. The intention was that a BVR system would ensure a "one person, one vote" system and avoid accusations of irregularities at the ballot box.[25]

As per Part II of the Elections Act, the IEBC conducted two rounds of voter registration.[26] The first round of voter registration took place from Oct. 4 through Nov. 5, 2021. While the IEBC's goal was to register 6 million new voters, at the conclusion of this exercise, the number was around 1.5 million. After the release of more funding from the Treasury, the IEBC conducted a second round of "enhanced" voter registration from Jan. 17 to Feb. 6, 2022.[27] While a third round of voter registration was not formally announced, the process of "continuous voter registration" concluded on May 4, 2022.[28]

Overall, the IEBC registered 22,120,463 voters, just over 2.5 million more than in 2017. Citizens could verify their registration between May 4 and June 2, 2022, by visiting the original registration center, visiting the local IEBC constituency office, or by SMS.[29]

In addition, individuals could visit an online portal (https://verify.iebc.or.ke) and enter their ID number. A message "voter found" with voter registration details would be returned if there was a match of:

- ID/ Passport number
- Primary or secondary name
- Birth date
- Gender
- Polling station code or name
- County
- Constituency
- Ward

Voters could also send an SMS to 70000 with ID or passport number. If voters found their registration details to be inaccurate, voters could correct them by visiting any IEBC

[25] Lucy Purdon, "A Very Secret Ballot", SUR 27 (2018), accessed Sept. 1, 2022, https://sur.conectas.org/en/a-very-secret-ballot/.
[26] Independent Electoral and Boundaries Commission. (June 8, 2022). Certification and publication of the Register of Voters [press release]. https://www.iebc.or.ke/uploads/resources/cWyBL8fhHH.pdf.
[27] Diaspora voters could only vote in the presidential election, if registered to vote before the Feb. 6 deadline.
[28] Independent Electoral and Boundaries Commission. (June 8, 2022). Certification and publication of the Register of Voters [press release]. https://www.iebc.or.ke/uploads/resources/cWyBL8fhHH.pdf.
[29] Independent Electoral and Boundaries Commission. (May 5, 2022). Update on General Election Preparedness [press release]. https://www.iebc.or.ke/uploads/resources/LH1cyJ3jh9.pdf.

constituency office before a June 2 deadline. Concerns were expressed as to the limited publicity of the consultation process around voter verification, as well as the relatively short window provided for it. Those factors may have reduced participation in the verification process.

As with other parts of the election process, voter verification was subject to delays from announced deadlines, which weakened public confidence. The verified register was not gazetted on June 2. On June 8, the IEBC reported that it would happen by June 20. The verified voter register was finally gazetted on 21st June.[30]

The voter verification activity indicated a trend of "abnormal" voter transfers between the 2017 general election and May 2022.[31] Several of the mission's interlocutors reported that voters had discovered that they had been transferred to a different polling station, often outside their ward, without their knowledge or consent.

The Elections Act of 2011 states that only a registered voter can transfer their own registration to a different electoral area.[32] The IEBC later announced that three IEBC officials had been arrested for involvement in illegal transfer of voters.[33] On July 7, the chair of the IEBC announced that those officials were suspended and referred to the director of public prosecutions.[34]

The IEBC announced that as had occurred prior to the 2017 elections, there would be an audit of the voter register before it was finalized and gazetted. The IEBC contracted KPMG to conduct the audit, the findings of which the IEBC acted upon. The audit identified 246,465 deceased voters, 481,711 duplicate records, 226,143 voters registered with IDs that did not belong to them, and 169,026 other invalid records.[35] The audit raised questions about vulnerabilities in the biometric voter register that should be addressed over the coming electoral cycle.[36]

On Aug. 4, the courts ruled that the printed register needed to be distributed to every polling station, with each registered voter to be crossed out from the manual register upon voting. This decision was controversial, owing to the concerns about potential misuse of the manual register to enable fraudulent votes on behalf of voters who did not turn out.[37] The court decision contradicted the IEBC's earlier decision to rely solely on the biometric voter register stored on the KIEMS devices for the identification of voters. The decision was suspended on appeal to the Court of Appeal, and the original order was reinstated on Aug. 8.

[30] Gazette Notice No. 7290 Certifying that the Revision of the Register of Voters has been Completed for Purposes of the 9th August, 2022 General Election. https://www.iebc.or.ke/uploads/resources/L7k6ob1bau.pdf.
[31] Independent Electoral and Boundaries Commission. (2022, June 8). Certification and publication of the Register of Voters [press release]. https://www.iebc.or.ke/uploads/resources/cWyBL8fhHH.pdf.
[32] Article 7, Elections Act of 2011.
[33] Independent Electoral and Boundaries Commission. (June 82022). Certification and Publication of the Register of Voters [press release]. https://www.iebc.or.ke/uploads/resources/cWyBL8fhHH.pdf.
[34] Nation. (July 7, 2022). Chebukati on illegal transfer of voters [Video]. YouTube. https://www.youtube.com/watch?v=hMdoJimxpd0 (at 5 minutes 40 seconds).
[35] See KPMG audit report: Independent Audit of the Registers of Voters, Final Audit Report, 16 June 16, 2022.
[36] KPMG report dated June 16, 2022, identified password settings that were inconsistent with IEBC policies, accounts belonging to ungazetted users, and excessive rights granted to database users.
[37] See also National Crime Research Centre of Kenya, "Election Crimes and Offences" (2016) p. 25.

The current voter registration process does not support continuous updates to the biometric voter register. Before each election, the IEBC uses the register of the previous election as a starting point and organizes voter registration and voter verification events. Ongoing updates to the biometric voter register, for example, because of death or other reasons, are not supported. An external auditor was contracted to clean the register months before the election by removing duplicate records, the records of recently deceased people, and other inconsistencies. A continuous process would ensure a register that is continually up to date, closing down opportunities for allegations of inconsistencies.

In the future, an automatic voter registration service could be developed to ensure that the voter register is kept up to date. It also could consolidate different databases including those from the National Population Registry, the National Passport Registry, the Register of Deaths, the National Population Data maintained by the Kenya National Bureau of Statistics, and other statistics on Kenyans in the diaspora.

In July 2022, the IEBC announced that the voter register would be "available to stakeholders for a minimal fee."[38] The legal basis for this distribution, as well as the extent to which the voter register was to be modified, if at all, to limit the disclosure of data around some categories of personal information, including sensitive biometric data, or indeed whether the IEBC acted on this stated intention, was unclear. Under the Data Protection Act, any personal data in the register must be processed in line with data protection legislation. As highlighted by the Office of the Data Protection Commissioner, [39] processing personal data for inclusion on the register is done on the lawful basis that it is necessary to perform a public task. Uncertainty around this issue underscored the need for increased transparency and effective public communications around data protection issues.

Candidate Registration

The right to stand for election is codified in international standards.[40] Kenya used an online candidate nomination and ballot design tool in the 2022 election for the first time, which simplified the process and facilitated adherence to those standards. [41] Citizens must be registered in IEBC's voter register to be eligible to endorse candidates, and they can only endorse at most one candidate for each race. This makes personal data protection issues fundamentally important to the candidate registration process.

The Elections Act explicitly regulates the conduct of candidate nomination and political primary competitions. Political parties must submit the names of nominated candidates at least 60 days before the election. Where primary competitions are held, the names of those

[38] Recommendation 13 of the Carter Center's report on the 2017 election recommended the IEBC "strengthen public outreach capacity and transparency in decision-making." The African Union's 2017 report identified concerns over a "weak communication strategy." Recommendation 10 of the EU's 2017 report recommended the IEBC "strengthen transparency, communication and public outreach."
[39] Office of the Data Protection Commissioner. (Aug. 1, 2021). Guidance Note on Processing Personal Data for Electoral Purposes [public report]. https://www.odpc.go.ke/download/guidance-notes-for-electoral-purposes/#
[40] ICCPR Article 25.
[41] 16,100 candidates were registered using the online nomination system, including four presidential candidates, 266 gubernatorial candidates, 341 candidates for senator, 360 candidates for woman members of National Assembly, 2,132 candidates for members of National Assembly, and 12,997 candidates for MCA.

competing and the date of the competition must be submitted to the IEBC at least 21 days before nomination day as designated by the IEBC.[42] The IEBC in turn publishes the list of candidates who will contest the primary within seven days. Only party members can vote in the primaries, and presidential candidates must include signatures from 2,000 voters with their applications.[43]

The endorsement of candidates was an important part of the candidate selection process. While political parties record their own members, the Office of the Registrar of Political Parties (ORPP) is the custodian of both the register of political parties and their members. It is a state office established under Article 260 of the Constitution of Kenya, 2010, and the Political Parties Act, 2011. The Political Parties Act requires the registrar to maintain an accurate register of political parties and ensure that no person is a member of more than one political party.[44] The mandate of the office, among others, is to regulate the formation, registration, and funding of political parties in accordance with the constitution and rule of law.[45]

The Office of the Registrar of Political Parties has embraced the use of technology to process political parties' data and records in an effort to reduce impersonation and ensure that individuals are either registering themselves or being registered with full knowledge and consent.

In 2018, the Office of the Registrar of Political Parties developed the Integrated Political Party Management System (IPPMS), a database of political party members. The Office of the Registrar of Political Parties upgraded the IPPMS in 2021, enabling voters to check their own details and membership of political parties. This could be done either through Kenya's eCitizen platform (an online "gateway to access government services") or by accessing an online portal (ippms.or.ke). Voters could also send their national ID number via SMS to 509#. That service enabled voters to check which political party they were members of and to resign political party membership and join another.

A test of the upgraded system in June 2021 resulted in many Kenyans' discovering they were registered as members of political parties without their knowledge and possibly without their consent. This is not a new issue in Kenya; a previous portal to access party membership details in 2017 led to similar findings and outcry in the media.[46] The difference in 2022 is that the Data Protection Act is now in place, which enables more remedial action than was possible in 2017. Kenyans took to social media in response to this incident. The data protection commissioner tweeted that she had received over 200 complaints from aggrieved individuals and said she had met with the Office of the Registrar of Political Parties to ensure that the complainants were deregistered.[47]

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[42] Elections Act 2011, Article 31.
[43] Constitution of Kenya 2010, Article 137.
[44] Section 34, Political Parties Act 2011.
[45] Office of the Registrar of Political Parties. *ORPP*. https://www.orpp.or.ke/index.php. Accessed Jan. 31, 2023.
[46] James Wamathai. "Registered as a political party member without your consent? Here's how to deregister." *Hapa Kenya*. March 5, 2017. https://hapakenya.com/2017/03/05/registered-as-a-political-party-member-without-your-consent-heres-how-to-deregister/.
[47] Office of the Data Protection Commissioner. (June 25, 2021). Statement on Alleged use of Personal Data in Registration to Political Parties without Consent [press release]. https://twitter.com/ODPC_KE/status/1408353948239597570.

The Office of the Registrar of Political Parties used bulk SMS to obtain consent from individuals before registering them to a political party. If individuals returned an objection message, they were not added as a member. If individuals did not respond within three days, they were not added. It is noteworthy that a 2021 amendment to the Political Parties Act passed into law on Jan. 27, 2022, states it is an offense for political parties to enlist members without consent [Section 24 1A]. This prohibition aligns with international best practice in personal data protection.

Information about meetings or negotiations relating to the alleged data violations was too often not relayed to local civil society organizations and voters, which aroused suspicion. Civil society organizations raised concerns that there seemed to be no investigation of what happened, no determination of who was responsible, and that there was no enforcement action taken nor penalties imposed. To address these issues in the future, political parties should apply data protection safeguards to the personal information they collect and process.

Political parties brought forward court cases against and for the nominations of various candidates, citing allegations of cybersecurity vulnerabilities of the online platform, inconsistently applied rules for voter identification, and other concerns. This in turn created delays in the official publication of the final candidate list and consequent delays in printing ballot papers. The IEBC's decision to print ballot papers ahead of the official confirmation of candidates on the ballot highlighted systemic problems in the candidate registration process.

IEBC Communications on Election Technologies

The constitution guarantees all citizens the right to access the information necessary to participate in the political process, in accordance with international standards.[48] IEBC communications went some way toward guaranteeing this right over the final weeks of the election but could have done more at earlier stages of the process. In a context of growing concerns around misinformation, the IEBC entered the electoral cycle with a need to immediately initiate preparations for communicating clearly and strategically around election technologies, which was a central recommendation by election observers in prior elections.[49]

Interlocutors regularly raised concerns with the Carter Center expert mission that political forces obstructed the IEBC's capacity to deliver strategic communications on election technology. The Kenyatta administration's delay in nominating replacement IEBC members ensured the institution lacked a fully staffed commission until March 2022. This was compounded by delays in parliament approving funding for the IEBC, which made strategic planning difficult.

Political actors leveled attacks against the IEBC throughout the process and were often accused of doing so to seek material for potential post-electoral appeals. The IEBC noted in an open

[48] Constitution of Kenya 2010, art. 35; Universal Declaration of Human Rights, Article 19.
[49] Recommendation 13 of the Carter Center's report on the 2017 election recommended the IEBC "strengthen public outreach capacity and transparency in decision-making." The African Union's 2017 report identified concerns over a "weak communication strategy." Recommendation 10 of the EU's 2017 report recommended the IEBC "strengthen transparency, communication and public outreach."

letter that political interference "plagues our electoral management."[50] This created challenges to building an effective communications operation.

In addition to these political challenges, internal issues prevented the IEBC from communicating key information. At no point did the IEBC benefit from a commissioner with a background in technology.

Several local offices reported that the IEBC failed to provide a provisional calendar extending more than a week beyond election day. Regional IEBC officers were often unaware of or had inaccurate information about key elements of the process, including the date of a rerun of the results transmission system test, the nature of the satellite backup for polling stations lacking data connectivity, and dates of the expected arrival of critical equipment. In addition, the IEBC failed to use the opportunity of the public broadcast of results transmission simulations to secure public confidence in the process.

Despite these internal failures, the IEBC made commendable efforts over the final weeks of the campaign to communicate the role of election technologies. The setup of a media monitoring unit six days before election day also helped improve communications and counter disinformation around election technologies.[51] The IEBC sent text messages to 22.2 million phone numbers explaining how to contact toll-free helplines. Operational from Aug. 1, the IEBC helplines responded to over 49,000 queries, reinforcing Kenyans' constitutional right of access to information. Call handlers were trained on issues relating to technology, including the KIEMS kits. Earlier rollout of these initiatives would have raised awareness of the significance, procurement, and functioning of technologies throughout the process.

Civil society organizations deemed the IEBC's creation of a results portal a step forward for transparency.[52] Some 99.5% of the results forms were posted in the first four days following the vote, though Kenyans had to wait longer for the verification and tabulation of the legally binding physical copies. Early delivery of a communications strategy would have helped to manage popular expectations on the length of time it would take to tabulate official results.

Voter Education on Election Technologies

Voter education can bolster participation in the political process, a right all Kenyans enjoy in line with international standards subscribed to by the Kenyan Republic.[53] The IEBC is constitutionally mandated to conduct voter education.[54] The IEBC depends on parliament and donors to finance voter education and on the judicial process to resolve disputes about required content. Legal decisions often changed the process only after voter education materials had been delivered. These dependencies compounded challenges rooted in the late onset of preparations by the IEBC, with consequent impacts on adherence to Kenya's constitutional and international obligations around access to information.

[50] An Open Letter to the People of Kenya. IEBC. Nov. 18, 2020.
[51] As of the evening of election day, the unit had conducted sentiment analysis on 28,872 tweets.
[52] Angaza Movement Statement on the 2022 General Elections, Aug. 10.
[53] ICCPR, Article 25.
[54] Constitution of Kenya, Article 88 (4) (g).

The IEBC was responsible for accrediting election observers and voter educators.[55] For the first time, the IEBC set up an online portal to facilitate these tasks.[56] This was an important step in modernizing IEBC processes and delivering more effectively on the institution's legal mandate. However, technical glitches and the late provision of accreditation badges presented a mixed image of IEBC preparedness to organizations whose trust it was important for the IEBC to secure.[57]

The years prior to the 2022 election required significant voter education around technology due to popular concerns regarding the role of technology in 2017 and the central role of technologies in procurement, voter registration and voter verification processes. Civil society organizations interviewed by the Carter Center mission typically reported having seen no voter education at all on the role of technology and estimated that half of their own total funding for voter education 2017-22 came in the final six months of the process.[58] The IEBC delivered voter education, including on election technologies, but these efforts were too often concentrated toward the final weeks of the election.[59]

The capacity of the IEBC and civil society groups to effectively inform voters was also impeded by changes to the election process that were made long after they could be effectively communicated, including regarding use of the paper register. This was facilitated by political parties' diverse objections that should have been resolved months earlier.

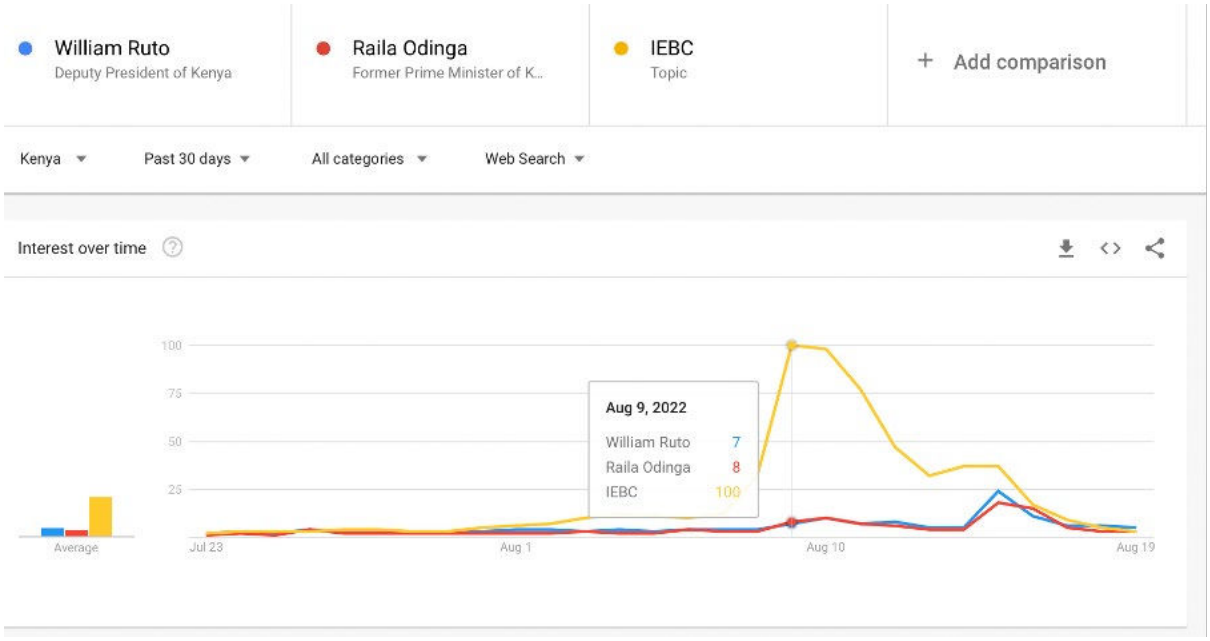
The Carter Center's expert team noted several IEBC actions that improved its provision of voter education around election technologies over the final weeks of the election. For example, the IEBC set up a WhatsApp voter education chatbot that offered key information on technologies such as a list of polling stations without data connectivity, video-based voter education, and explainers on key parts of the process. IEBC commissioners, including Chairperson Wafula Chebukati, were also proactive in providing information about election technologies in press briefings during the late stages of the process.

Digital Communications and Social Media Content around Election Technologies

International standards stipulate that all rights offline, including the right of access to information, are similarly guaranteed online.[60] Kenya is one of Africa's most digitally connected countries, rendering online communications integral to effectively guaranteeing this right. The IEBC operated social accounts on Facebook, Twitter, YouTube, Instagram, and

[55] Elections Act 2011 Articles 42 and 40.
[56] Elections Act 2011, Article 42.
[57] For example, Muslims for Human Rights reported that the system had not worked for them when they submitted details in March 2022. They later had to resubmit the same information.
[58] Estimate provided by umbrella organization of CSOs and verified with a separate voter education provider.
[59] On July 12, the IEBC launched 14 trucks to conduct voter education in Nairobi, Kisumu, Nakuru, Mombasa, and towns along 13 regional roads across the nation. Also in July, the IEBC circulated effective infographics explaining how the results transmission process would work.
[60] UN General Assembly Resolution 68/167, Dec. 18, 2013.

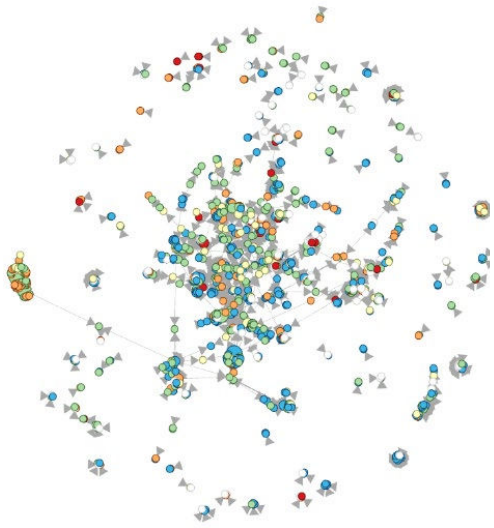
WhatsApp and disseminated fact-based information about election technologies through these platforms, particularly over the weeks surrounding the election.[61]



Over the two weeks surrounding election day, Kenyan internet users consistently sought out more information about the IEBC than about the candidates. This underscores the need for the IEBC to ensure that when Kenyans do so, they are presented with clear, fact-based information. Source: Google Trends

The IEBC's increased use of social media elevated Kenyans' access to information over the electoral period. The IEBC increased its Facebook followers by as much in the 20 days surrounding the vote as over the previous five years combined.[62] However, the IEBC could have done more to spread fact-based information on election technologies at earlier stages of the election. Misinformation about technology, including claims that had first circulated in 2017, emerged throughout the process, including during voter registration and verification. Misinformation related to election technologies was reported by AFP Fact Check and Democracy in Africa during results transmission.[63] The sharing of messages about the election process by automated accounts underscored a level of risk around how information spreads in Kenya, and the need to bolster fact-based messages.

[61] Carter Center analysis using Crowdtangle showed that the IEBC posted an average of 21 times a week on Facebook in the month leading up to the election, compared with an average of 10 times a week over the course of the preceding year.
[62] The IEBC's official Facebook page had 347,313 followers on Aug 20, 2022, an increase of 65,373 from July 30, 2022. The IEBC had 281,740 followers on July 30, 2022, an increase of 60,313 from Aug 30, 2017.
[63] Democracy in Africa, Aug. 12, "Fact Checking Claims of Rigging in Kenya's 2022 Presidential Election"; AFP, Aug. 12, "Fake Election Results Flood Social Media in Kenya."



Election technologies are often targets of misinformation, which is sometimes spread on bot-like accounts. Twitter accounts showing high levels of bot-like characteristics (in red and orange) shared election-related tweets during the process. The Carter Center used a machine-learning algorithm trained on data sets of automated accounts to map accounts that mentioned "IEBC" in a 24-hour period Aug. 22-23.[64] *The sharing of election content by likely automated accounts shows the need for a strong IEBC online communications operation.*

Meta's fact-checking partnerships with three members of the International Fact-Checking Network active in Kenya — Africa Check, Pesa Check, and AFP — helped to reduce the visibility of disinformation identified by partners during the election. The Access to Information Law 2016 was used by one fact-checker to verify claims. However, popular awareness on how to make freedom of information requests is limited, constraining the degree to which citizens exercised their right to access information,[65] including in ways that could have clarified uncertainties about election technologies.

While misinformation is a serious challenge in Kenya, the country's criminalization of the spread of false information[66] is at odds with international standards[67] and risks stifling freedom of expression.[68] Positively, social networks rolled out important initiatives to combat misinformation in advance of the vote. For example, Meta rejected 36,000 ads targeted at Kenya in the six months before April 2022 for not undertaking account verification, established a center to specifically target election-related misinformation, and deleted over 79,000 items of content for violating policies on hate speech and incitement to violence.[69]

Nevertheless, prominent individuals used allegations about results transmission to spread content that created tensions; this included highly inflammatory content from senior officials

[64] For methodology, see Chengcheng Shao, Pik-Mai Hui, Lei Wang, Xinwen Jiang, Alessandro Flammini, Filippo Menczer, Giovanni Luca Ciampaglia (2018). Anatomy of an online misinformation network. PLOS ONE, e0196087; Chengcheng Shao, Giovanni Luca Ciampaglia, Onur Varol, Kaicheng Yang, Alessandro Flammini, and Filippo Menczer (2018). The spread of low-credibility content by social bots. Nature Communications, 9:4787; Chengcheng Shao, Giovanni Luca Ciampaglia, Alessandro Flammini, and Filippo Menczer (2016). Hoaxy: A Platform for Tracking Online Misinformation. In Proceedings of the 25th International Conference Companion on World Wide Web (WWW '16 Companion), pp. 745-750.

[65] As guaranteed by ICCPR, Article 19.

[66] Computer Misuse and Cybercrimes Act No.5 of 2018 Article 22.

[67] A/HRC/47/L.22 July 7, 2021. This is the fifth such resolution, starting with A/HRC/20/8 July 5, 2012.

[68] A/HRC/47/L.22 July 7, 2021. OPT 1; Joint Declaration on Freedom of Expression and the Internet, 2021.

[69] Mercy Ndegwa, Director of Public Policy East & Horn of Africa. (July 20, 2022). How Meta is Preparing for Kenya's 2022 General Election [press release]. https://about.fb.com/news/2022/07/how-metas-preparing-for-kenyas-2022-general-election/.

in the Raila Odinga camp which directly targeted Wafula Chebukati.[70] Tweets that spread such content, as well as imposter accounts that spread misinformation about election technologies, were taken down belatedly or not at all.[71] Despite these challenges, the additional functionalities of the Meta ad library and the role of partnerships between Meta and local fact-checkers were positive steps, as was the proactive role of Kenyan civil society organizations and journalists in holding social platforms to account.

The Carter Center commends the Kenyan authorities' clear statements ruling out any internet shutdown in the leadup to the election. The lack of a shutdown drew a stark contrast with a concerning regional trend and demonstrated Kenyan institutions' commitment to safeguard the right to freedom of expression online.

Election Technologies and the Media

The Kenyan media had considerable though underutilized potential to communicate election technologies to the public consistent with their responsibility to broadcast accurate and unbiased messaging around the election.[72] In general, most interlocutors with whom the Carter Center expert mission met expressed confidence in the competence of traditional media, including in the increasing professionalization of vernacular radio relied upon by many rural Kenyans. The Kenya Editors' Guild, the United Nations Development Program and the IEBC played an important role in facilitating this professionalization in the leadup to the election, delivering trainings to more than 650 journalists during 2022.

Nevertheless, the lack of political consensus over aspects of the election system, late changes to the process, and the IEBC's lagging preparedness all impeded the media's ability to clearly educate the public on the role of technology in the election. Commendably, the IEBC consulted reporters in a timely manner over the design of the accreditation portal, though many only received their accreditation badges the week of the vote. Kenyan journalists told the Carter Center mission that they hope to assess the implementation of election observers' recommendations over the coming years.

Over the weeks immediately preceding the election, the IEBC renewed efforts to engage the media. This improved access to information. Daily press conferences were held from Aug. 1 and were sometimes used to provide explanations and updates on election technology. In addition, a media center providing computers, refreshments, and office space was set up at the National Tallying Center, helping reporters broadcast and scrutinize IEBC messaging.

[70] On Sept. 2, Azimio la Umoja's Chief Agent Saitabao Kanchory tweeted a photo of a 34A form, stating, "The blood trail & smoking gun fresh on the hands of (Chebukati and Ruto)." Within an hour, tweets in response included "the hand full of blood shall pay. @WChebukati."
[71] For example, the mission identified a network of inauthentic pages purporting to be IEBC Vice Commissioner Juliana Cherera. Created immediately following the four commissioners' rejection of results, some of these pages produced misinformation about technology in the process. These included the Facebook blog "Juliana Cherera IEBC" and the pages "Juliana Cherera – IEBC," "Juliana Cherera IEBC," "Juliana cherera IEBC," "Juliana Cherera IEBC vice chairperson," and "Juliana Cherera Vice chairperson IEBC." Each of these accounts was created between Aug. 15, the date Cherera led the four commissioners in rejecting the results, and Aug. 19, and most spread similar narratives, sometimes using identical language.
[72] Elections Act 2011 Article 108; Electoral Code of Conduct, Section 14

The Carter Center encourages media houses and other Kenyans to consider organizing an annual review of the status of implementation of the recommendations from the major domestic citizen observation groups as well as the key international observer organizations.

Election Day

Election day was preceded by a relatively calm and measured campaign. On Aug. 5, The Carter Center joined with six other international election missions to call for a continuation of the calm pre-electoral environment.[73] Aside from several isolated incidents, a peaceful atmosphere continued through the election, which took place on Aug. 9. Owing to its limited size and scope, the Center's expert mission did not conduct a comprehensive assessment of election day proceedings. However, the mission did analyze several issues related to the use of election technology around the election process.

Nationwide, the IEBC reported that KIEMS kits failures necessitated resort to the manual register in 238 polling stations (of more than 46,000 in total) on election day.[74] Of these, 84 were caused by a faulty removable memory card that stores the relevant parts of the voter register and other configuration and log files; the remaining 154 were due to logistical problems. By Aug. 12, more than 99% of all 34A forms had been received by the public portal.[75] Reports by larger election observation missions identified some problems with the KIEMS kits on election day, such as delays in identifying fingerprints, but found that most challenges could be addressed by backup measures built into the KIEMS system, such as via alphanumeric lookup and facial scanning with comparison against the national ID card.[76]

Trust Assumptions in the Election Process

The voting and result transmission processes were conducted on paper, as described below. The role of a parallel electronic results verification process meant that tampering with either the physical or the electronic results forms would be noted with high probability.

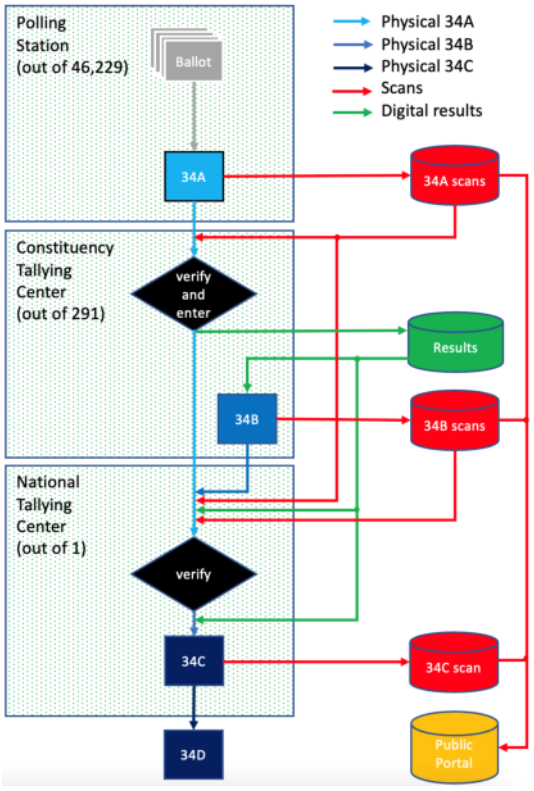
Baseline safeguards were therefore in place to ensure that the results transmission process was protected against tampering by IEBC officials, political parties, activists, criminals, or even nation states. However, while the use of paper ballots cast into ballot boxes provides some guarantees regarding vote privacy, the fact that all paper ballots were individually numbered may be exploited by an adversary who also has access to the voter register and the order in which voters were crossed off the electronic electoral roll. Improving the safeguarding of the process moving forward will require a detailed security analysis to risk-assess the threats to the election process.

[73] European Union Election Observation Mission Kenya 2022. (Aug. 8, 2022). Joint pre-election statement on the 9 August 2022 elections in Kenya [press release]. https://www.eeas.europa.eu/eom-kenya-2022/joint-pre-election-statement-9-august-2022-elections-kenya_en?s=410199.
[74] IEBC Status Update on Polling Day — Aug. 9, 2022; IEBC Status Update on General Election 2022 – Aug. 11, 2022.
[75] As reported on forms.iebc.or.ke.
[76] EU EOM Preliminary Statement, and NDI Preliminary Statement of Initial Findings Aug. 11. The fingerprint delay also was directly observed by Carter Center mission analysts on limited visits to a small number of polling stations on election day.

As part of its analysis, the Carter Center Election Expert Mission identified several trust assumptions that serve as a necessary precondition for the electoral process to produce accurate results. Trust in the presiding officers and agents who staff a polling station is a key component of this. Without such trust, neither the biometric register nor the results transmission protects against the transmission of erroneous results resulting from hypothetical voter coercion or bribery. The existence of this assumption does not mean that such actions were undertaken, but that the system allows for such transgressions if the trust is violated. Some interlocutors noted that this trust assumption does not necessarily hold since agents might be coerced or bribed to collude in party strongholds, thereby neglecting their responsibility to scrutinize.

Results Transmission and Verification

Results were transmitted on the paper copies of the results forms; however, these were verified through the sending of digital copies of the results forms, which were not the legally binding forms. The results verification process was therefore facilitated by this electronic system, which was called the "Results Transmission System." The name of this process generated confusion as interlocutors were sometimes under the impression that the digital images constituted the basis for compiling the official results. The results transmission process served to receive, store, and share digital versions of completed and signed results forms, which were submitted electronically and displayed on an online portal.[77] The aim of the process was to permit detection of any mismatch between the physical and digital forms. The online portal contributed significantly to the transparency of the verification process, though the system relies on the reliability of party representatives.



[77] See forms.iebc.co.ke.

Flowchart of the transmission and verification processes. Credit: Carsten Schuermann

According to the Elections Act, the determination and declaration of results is the sole responsibility of the IEBC.[78] While the KIEMS kits send digital copies (scans, depicted in the flowchart in red) of the results forms to the National Tallying Center for the purpose of preliminary verification, the official results rely on paper-based systems centered on the polling station results.

Votes were cast on paper ballots. The results from each of the 46,229 stations were recorded on paper 34A forms. Subject to the approval of party agents, these results were tabulated at the 290 constituency tallying centers on paper 34B forms (with one additional paper 34B form included for results from the diaspora vote).[79] These results were verified against the digital images at the national level then added to produce a single paper 34C form for the overall national results.

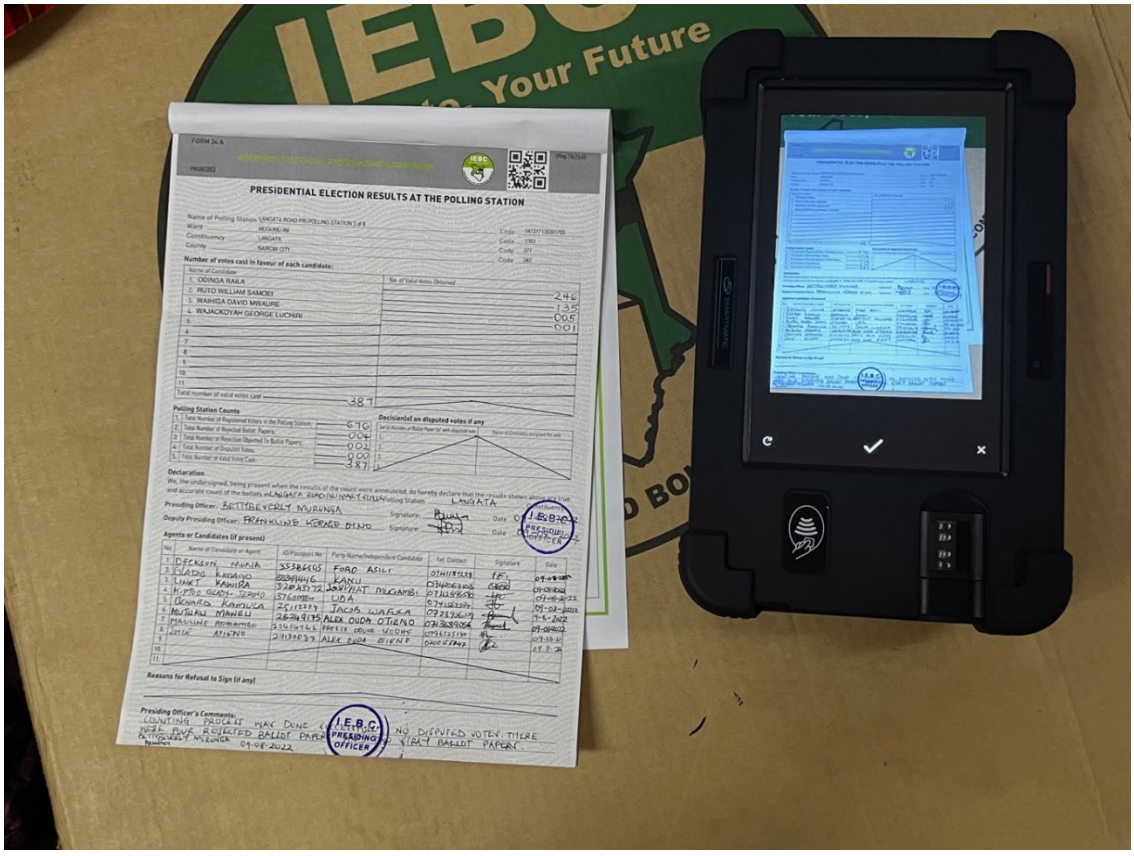


Counting of ballots in a polling station on Aug. 9, 2022

[78] Elections Act 2011, Article 39.
[79] The guidance provided was unclear on the course of action in instances where party agents refused to sign off.



In the results verification process, the presiding officer takes an image of the 34A form and transmits it to an IEBC server for verification at the constituency and national tallying centers.



The paper 34A form and the digital image (scan) of the form. The paper 34A form is depicted in the flowchart above in light blue, the scan in red. The scan is stored in the 34A scan database.

The process worked as follows: 34A result forms from each polling station were sent to the constituency tally center, where IEBC officials then verified that the physical 34A forms matched with their scans stored in the 34A scan database (in red in the flowchart above). Next, the results were recorded in a consolidated results database (in green in the flowchart above) using an online portal, which was used to generate consolidated constituency-level results on a 34B form. Party agents present at the constituency tallying center could observe the entire process.

The single 34C form, which summarizes the official overall results, was created at the national tallying center. The 34C form is derived directly from the 290 verified constituency results forms (plus one diaspora results form) in the results database (green in the flowchart above) and signed by the chairman of the IEBC and agents. The final 34C form should be delivered to the chief justice and the incumbent president within seven days after election day.

Once the 34C is scanned and uploaded to the 34C scan database, the results information from each polling station can be verified on the portal. The online portal providing public access to the scanned version of the polling station results forms went live several days before the election.

The IEBC results database at the constituency tallying center, separate from the database of digital images of the forms, used custom-made results recording software provided by the vendor, Smartmatic, and was a key part of the system to verify overall results. However, as the subsequent Supreme Court proceedings demonstrated, the log files produced by the results recording software were not cryptographically secured or authenticated, contrary to international best practice.

Since only the 34A polling station-level results forms are legally binding,[80] corrective measures to update the records in the IEBC database could be executed whenever necessary. The system's integrity thus depends on the reliability of the presiding officers responsible for overseeing polling station processes and the party agents responsible for scrutinizing it.

[80] See Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR interpreting both constitutional and Elections Act provisions.



Election workers carry out the process of verifying the 34A physical forms against their scans and subsequent entering of the results into the results database.



The verification tables at the National Tallying Center. The table to the left of the stage is actively in use to verify the results of one constituency. The table on the right of the stage will be used to check that entries in the results database match the physical 34A forms.

The Center's team reported that the IEBC provided clear explanations in its daily media briefings for why some forms arrived later than anticipated. To ensure that tabulation and results verification processes were completed within the constitutionally mandated timeframe, the IEBC increased the number of tabulation tables on Aug. 14. This proved an effective measure that helped ensure the constitutional deadline was readily met.

Carter Center Election Expert Mission members were able to observe parts of the results verification process at the national tallying center. While the Center's observation of the process was not comprehensive, the mission found that in the periods observed the process proceeded in a manner that was consistent with the law. IEBC staff and party agents at the verification tables compared the physical 34A forms against the scanned 34A forms, and the physical 34A against the collated result in Form 34B received from the Constituency Returning.



Results verification process ongoing at the National Tallying Center, Bomas of Kenya.

In addition, the Center's expert mission found that the system made it possible for party agents and observers to verify that the original paper copies at the National Tallying Center matched those scanned in polling stations and provided access to the public to the final results via the portal. The Center's team also noted that the citizen observer organization ELOG (Elections

Observation Group) concluded that the "quick uploading of form 34As to its online portal... helped to enhance transparency around the results management process."[81]

While the Center's mission found that Kenya's election results system provided for expansive transparency measures, the mission also noted that international best practice recommends that election technologies be subjected to rigorous third-party reviews.[82] The Center's team noted that prior to election day, no documents had been made public that described design documents, source code reviews, test coverage reports, reports of penetration tests, reviews of the implementation of cryptographic methods, or load testing reviews of the results verification system. Nor could the Carter Center expert team locate any documentation used for the results recording software that was used to create the 34C form at the national tallying center.

The Center's mission observed that the IEBC could be strengthened by implementing security principles, such as defense-in-depth and least privilege, which align with international best practice.[83] Using these principles would make it easier for the IEBC to protect itself against insider and disinformation attacks and would make it easier for the IEBC to defend its processes in the court of law.

Good cybersecurity practice requires a rigorous description of threats, risks, and mitigation measures and precise requirements for how the results transmission system should function. It should also specify the expected security, verifiability, and accountability properties, consist of a design that can be readily communicated, and be subject to careful review at every stage. Such measures maximize the likelihood that the results transmission system works as expected while minimizing the likelihood that cyberattacks will succeed.

While no evidence was presented during the subsequent Supreme Court proceeding to indicate that cyberattacks were executed to affect the presidential election outcome, the Center's mission notes that there are ways the IEBC results transmission system can better safeguard confidentiality, integrity, and availability for future elections. These include measures to reduce the risk that IEBC employees or contractors could misuse access rights to IEBC databases and privileged information, e.g., to modify information or prevent the system from working properly. Such threats include supply-chain attacks, whereby malicious code is introduced into an application by security updates through third-party components. An open-source software release of the results transmission system could enhance transparency, while modern digital signature schemes and other cryptographic methods could protect the authenticity of log files, software, results forms, and other IEBC documents. Such measures could also be considered for voter and candidate registration systems.

An additional means of strengthening the results verification process in line with international best practice would be to use supplemental verification methods, such as post-election audits to inspect paper ballots in ballot boxes to confirm the accuracy of the preliminary election

[81] Elections Observation Group. (2022, August 17). ELOG's Statement on the Official 2022 Presidential Results [press release]. https://elog.or.ke/elogs-statement-on-the-official-2022-presidential-results/.
[82] OSCE (ODIHR): Handbook for the Observation of New Voting Technologies, p. 41.
[83] See *Framework for Improving Critical Infrastructure Cybersecurity*, Version 1.1, National Institute of Standards and Technology April 16, 2018. Using these principles also would it make is possible for the IEBC to seek certification under different ISO standards.

result.[84] When executed correctly, post-election audits of the physical ballot papers can identify with high probability any overall discrepancy between announced results and ballots cast.[85]

One important class of post-election audits are referred to as risk-limiting audits (RLAs), which use established statistical techniques to draw a random sample of ballots for inspection, with sample size dependent on the desired confidence level and on how close the final results are. RLAs are only effective if the paper ballots are securely stored, and a robust chain-of-custody system is maintained to ensure that ballots cannot be tampered with between the time of the election and the audit. A risk-limiting audit for the Aug. 9, 2022, election would have required drawing and inspecting a sample of roughly 900 ballots to be 99.9% certain that the result announced was correct. As recommended by The Carter Center in 2017, the adoption of such audits could help increase public confidence in the result.[86]

The processes for transmission and verification of results could be further enhanced by implementing digital signatures to protect information published on the online portal against disinformation attacks. Like a signature with pen on paper, there are digital signatures that can be used to establish the authenticity of a digital document, e.g., scans of 34A, 34B, or 34C forms. If agents were present and digitally signed the 34A forms at the constituency or national tallying centers, agents could check the physical form against the digital form and its digital interpretation and then digitally sign it. This could speed up the results verification process at the constituency and national centers and reduce the risk of malicious or accidental changes in the results database, including any changes made after verification. Similarly, the portal could be further strengthened by offering digital versions of the results forms, for example, in the form of Excel files or the more sharable .csv file format.

Overall, the public portal system offered Kenyans the opportunity to participate in meaningful verification of the counting and tabulation processes, which could have been better exploited if digital signatures had been deployed and had the communications around the system been more strategic and long-term in nature.

Technology and the Electoral Dispute Resolution

The complaints submission system adopted by the IEBC was a hybrid system with online and offline components. Forms addressing four activities were made available online: (1) the Party List Dispute Resolution Complaint Form; (2) the Registration/Nomination Dispute Resolution Complaint Form; (3) the Leadership and Integrity Vetting Complaint Form; and (4) the Electoral Code of Conduct Enforcement Complaint Form. Under the IEBC guidelines, any person affected by an election activity could file a complaint. While the complaint forms were available online, they had to filed physically at the IEBC head office, county offices, constituency offices and in polling stations on election day.[87] The IEBC reported that 1,616 forms were downloaded during the election.[88]

[84] See VVSG 2.0. https://www.nist.gov/itl/voting/vvsg-introduction.
[85] See Voluntary Voting System Guidelines 2.0, Feb. 29, 2020.
[86] Final Report of The Carter Center Election Observation Mission to Kenya 2017, pp.110-1.
[87] IEBC Electoral Dispute Resolution Booklet 2022 FAQ.
[88] https://www.iebc.or.ke/resources/?Complaint_Forms.

Challenges to the final announcement of the results take the form of electoral petitions to be filed at the Supreme Court within seven days of the final announcement of the results.[89] Unlike the complaint forms, above, electoral petitions challenging the results can be submitted electronically. The petitions case management system is accessed by the public through an online portal that is hosted within the broader virtual courts system that was initiated in July 2020 in response to the Covid-19 pandemic.[90] The portal opened on Aug. 18, 2022. The portal allows applicants to upload submissions and documentation and to pay relevant fees. Hearings can also take place online, though the Supreme Court hearings were held in person and televised.

Because every Kenyan presidential election since 2007 has been rejected by the losing candidate, it was widely assumed that the losing candidate in 2022 would challenge or reject the results, calling the integrity of the process into question. While it was therefore not surprising that post-election challenges emerged, the initial source of the challenges — reflecting divisions within the IEBC itself — had not been widely anticipated.

On Aug. 15, immediately prior to the announcement of the final presidential election results by IEBC Chairperson Wafula Chebukati, four IEBC commissioners left the tally center and conducted a brief press conference denouncing what they termed the "opaque nature" of parts of the tabulation process. They claimed that in refusing to endorse the results, the announcement was rendered illegal. Chebukati rebutted this claim, citing a 2021 Supreme Court judgment.[91] The commissioners, who had themselves participated in approving constituency tally forms over the preceding days, gave a more detailed statement on Aug. 16. In that statement and in court they alleged an anomaly in the announced result percentages and claimed an absence of consultation in the verification process. Chebukati rejected the allegations.[92]

The Supreme Court ruled that the quorum of the IEBC was legally three people under Article 250(1) of the constitution.[93]

Presidential Election Results Petition

On Aug. 22, presidential candidate Raila Odinga and the One Kenya Coalition Party filed a petition at the Supreme Court challenging the results.[94] While technology was at the heart of the petitioners' claims, they made a diverse range of allegations, including: that the announcement of the results in the absence of four IEBC commissioners was illegal; that there was an "elaborate and fraudulent premeditated scheme to interfere with and undermine and

[89] Constitution of Kenya Article 138.
[90] The facility was developed in response to a ruling of the High Court in a case that confirmed that the constitutional right of all Kenyan citizens to access justice mechanisms was breached by Covid measures. See: Law Society of Kenya v Hillary Mutyambai Inspector General National Police Service & 4 others; Kenya National Commission on Human Rights & 3 others (Interested Parties) [2020] eKLR 16 April 2020.
[91] Nov 2021 the Supreme Court heard Petition No. 12 of 2021 (consolidated with Petitions 11 & 13 of 2021 – Building Bridges Initiative.
[92] Independent Electoral and Boundaries Commission. (2022, August 17). Staff Murder, Profiling and Misleading Reports on Presidential Election [Press Release]. https://www.iebc.or.ke/uploads/resources/qWGJXy8s9t.pdf.
[93] Para. 338, p.146
[94] Supreme Court Petition E005 of 2022.

defeat the integrity, credibility and security of the Presidential election";[95] that the election results should be invalidated because of the purported "fraudulent intent" of the IEBC chairperson; and that IEBC decisions were subject to inadequate consultation. They requested that a forensic audit of the results be conducted; that access to the logs of all servers and technical equipment be granted; that spoiled and rejected ballots be scrutinized; and that various plaintiffs appear before the Supreme Court.

The standard of evidence that election technology needs to adhere to in Kenyan law is high. Any technology used must be secure, verifiable, and transparent, leaving the system with a low bar for allegations of unconstitutionality should it fail to reach any of these standards, even when there isn't sufficient evidence to demonstrate that problems have impacted the final results. Indeed, in its election observation mission report on the 2017 elections, The Carter Center recommended that a future legal amendment might be needed to clarify that election results should only be annulled when irregularities are shown to be of sufficient magnitude to affect the outcome. [96] While no such amendment was passed in the intervening years, as noted below, the Supreme Court of Kenya explicitly addressed this issue in its judgment of Odinga's 2022 electoral petition.

On Sept. 5, 2022, the Supreme Court delivered its judgment rejecting the petition on all counts. The subsequently published court judgment found that "the technology deployed by IEBC did not fail the standard of article 86(a) of the Constitution on integrity, verifiability, security and transparency."[97] In relation to the evidence presented in support of the allegations, the court found that no credible evidence was presented to prove that anyone tampered with the Result Transmission System (RTS)[98]; Forms 34A[99]; or the Public Portal.[100] Likewise, no compelling evidence was provided to support allegations of ballot box stuffing.[101]

In relation to the evidence presented, the Court found that logs presented as evidence were either from the 2017 presidential election or were outright forgeries.[102] Further, the court found that "there were no significant differences captured between the Forms 34A uploaded on the public portal and the physical Forms 34A delivered to Bomas (National Tallying Center) that would have affected the overall outcome of the presidential election."[103] The chief justice noted that "the affidavit evidence presented by the petitioners, while containing sensational information, was not credible,"[104] adding that "affidavits filed in court must deal only with facts."

[95] Pages 13-16. An independent investigation, subsequently supported by the Supreme Court's own inquiries, did not support claims by candidate Raila Odinga's team that forms published on the portal differed from those sent from the polling stations. See: https://www.bbc.com/news/62724762.
[96] The Carter Center: Final Report Kenya 2017 General and Presidential Elections, p.57.
[97] Odinga & 16 Others V Ruto & 10 Others; Law Society Of Kenya & 4 Others (Amicus Curiae) (Presidential Election Petition E005, E001, E002, E003, E004, E007 & E008 of 2022 (Consolidated)) [2022] KESC 54 (KLR) (Election Petitions) (5 September 2022) (Judgment), Point 2.
[98] Point 3.
[99] Point 4.
[100] Point 6.
[101] Point 19.
[102] Point 8.
[103] Points 9 & 10.
[104] Point 11.

The court also identified a need to reaffirm minimum standards in the presentation of evidence, noting: "We must remind counsel who appear before this court or indeed before any other court or tribunal of the provisions of sections 113 and 114 of the Penal Code, that swearing to falsehoods is a criminal offense and (2) that it is an offense to present misleading or fabricated evidence in any judicial proceeding. Such conduct amounted to interference with the proper administration of justice."[105]

Addressing the dissenting IEBC commissioners, the court noted: "Apart from their eleventh-hour denunciation of the verification and tallying process, and their averments regarding the conduct of the chairperson, the four Commissioners had not placed before the court, any information or document showing that the elections were either compromised or that the result would have substantially differed from that declared by the chairperson of IEBC. They had not explained why they participated in a verification process when they knew that it was opaque up until the last minute." The court did note that inadequate communications by the IEBC had been an obstacle during the process.[106] Concluding, the court found that "illegalities and irregularities were not of such magnitude as to affect the final result of the presidential election."[107]

Raila Odinga's team responded to the decision by criticizing the Supreme Court and its judges. The head of Odinga's legal team, James Orengo, said "courts make political decisions," while Odinga's official statement, released shortly after the ruling, said they "respect the opinion of the court" but found the decision "incredible" and accused the judges of using "exaggerated language." Running mate Martha Karua tweeted that she respected the ruling but that this "is not same as conceding." These statements helped ensure that Kenya remained peaceful after the ruling.

The Center's mission notes that Kenya's judicial system enjoys a high degree of confidence from a majority of the population.[108] Judges assigned to the petitions process are well equipped for their roles, having received comprehensive training in international standards and electoral investigation techniques, and are knowledgeable about technical electoral process issues. Overall, the Center's mission found that the courts and dispute resolution process system acted in accordance with national laws and consistently with regional and international standards. [109]

Case Management & Virtual Courts System

As noted above, the Supreme Court online system for petitions sits within a broader national court application and case management system. Through the central portal, applicants can

[105] Point 12.
[106] Point 24.
[107] Point 28.
[108] Afrobarometer. (2020, August 19). Kenyans trust the justice system but decry unequal treatment under the law, including impunity for officials who commit crimes [News Release]. https://www.afrobarometer.org/articles/kenyans-trust-justice-system-decry-unequal-treatment-under-law-including-impunity-officials/.
[109] Including International Covenant on Civil and Political Rights (ICCPR), United Nations Convention against Corruption, U.N. Convention on the Rights of Persons with Disabilities, ACHPR: Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, UN (CCPR): General Comment No. 34: Freedoms of Opinion and Expression (Article 19), ACHPR: Model Law on Access to Information for Africa.

apply directly to relevant courts at all levels. In all cases, a central case database is maintained, tracking the application through the system.

In March 2020, the Practice Directions on Electronic Case Management were adopted into law.[110] Applying to all courts, the Practice Directions guide the integration of technology in judicial proceedings and provide for electronic: filing and service of court documents; case search; diary creation; case tracking; payment; signature; exchange of documents, including pleadings and statements; and registration and digital recording of proceedings. To this end, a range of services and technologies were adopted, including e-filing; e-service of documents; digital display devices; real-time transcript devices; video and audio conferencing; digital import devices; and computers in the court. Personal devices can be used by court users, and hearings are conducted using videoconferencing software such as Skype, Teams, and Zoom.

Once a user is registered, a new case can be created by submitting the required information and documentation. Once payment is made on the portal, a unique case number is generated that can then be used to track the case. All subsequent documents are filed under that case number. The case number also allows access to hearings where necessary.

Non-electronic filing can be allowed but under restricted circumstances, where it is not possible to access any form of electronic media, or the accused is in custody, is facing criminal charges, or is a juvenile. While individuals can use the e-filing system, the presumption is that legal representatives will primarily access it, reducing issues of accessibility.

The application system is clear and easily accessible, and detailed instructions are provided. ICT departments are maintained in every court, and while erratic power supply and internet instability can affect the process, the use of readily available communications systems has reduced problems with accessibility. The program was praised at the 78th U.N. General Assembly and conforms to international standards, including the right to an effective remedy, equality before the law, and transparency in legal proceedings.[111]

While commending key aspects of the online portal for filing election challenges, the Carter Center's expert mission noted that the system's transparency could increase by readily displaying key documents submitted as part of presidential appeals, including petitions and affidavits. This would help fact checkers and journalists verify claims made about the legal process.

Background to Data Protection in the Presidential Election

Throughout the assessment process, The Carter Center collaborated with and was supported by input from Privacy International. Experts from Privacy International provided key input during virtual sessions during initial phases of the project and joined an assessment team visit to Nairobi July 4-10, 2022. This collaboration facilitated taking a deeper look at issues connected

[110] Gazette Notice No. 2357 The Constitution of Kenya, The Judicature Act (Cap. 8) The Civil Procedure Act (Cap. 21)—Practice Directions on Electronic Case Management, March 4, 2020.
[111] Address by the President of the Republic of Estonia Kersti Kaljulaid at the 76th United Nations General Assembly 22.09.2021 U.N., ICCPR, articles 2(3), 14 & 26; U.N. Economic and Social Council; U.N. document E/CN.4/2000/62, para. VIII.12.a; African Union, African Charter on Democracy, Elections and Governance, articles 2(2), 3(2) & 17(2).

to technologies being used in the Kenyan elections, with a particular focus on the implementation of the Data Protection Act.

Online political campaigning, voter registration, voter authentication, voting, and results transmission all involve the collection of at least some personal data. These technologies rely on collecting, storing, and analyzing personal information to operate. They bring both benefits to the electoral process and raise novel issues and challenges for all electoral stakeholders on how to protect personal data from exploitation.[112]

This is particularly relevant in Kenya's electoral context. Internet penetration and mobile subscriptions are among the highest in Africa, and digital technology features heavily in the electoral cycle. The stakes are high in Kenya in regard to protecting personal data, especially in the shadow of ethnic tensions that violently erupted in 2007 and given the sensitivity of data related to ethnicity or "tribe."

Each election in Kenya has seen an escalation of the use of technology and a correspondingly heightened risk of data exploitation. In 2007, the role of bulk SMS was singled out as spreading hate speech and incitement to violence;[113] in 2013, hate speech moved to Facebook amid a tense election where the vote tallying/tabulation system broke down.[114] The 2017 election, while largely peaceful, was marred by a range of questions, including: the involvement of Cambridge Analytica;[115] suspicions about who had access to the biometric voter register; unsolicited text messages from political candidates to voters; and voters' being registered as members of political parties without consent.[116,117] The 2017 election was annulled by the Supreme Court following an electoral petition by Raila Odinga in a decision related in part to the issues related to election technology. The court ordered that the election be rerun, but Odinga boycotted.

In this climate, the adoption of the Data Protection Act in 2019 was a positive development in attempts to restore trust in democratic processes in 2022. For the first time in an election cycle, the people of Kenya enjoyed specific protections around their personal data.

International Obligations Around Privacy and Data Protection

[112] See also Privacy International, *Technology, data and elections: A checklist on the election cycle* (2019) https://www.privacyinternational.org/sites/default/files/2020-03/Technology%20data%20and%20elections%20checklist%20English%202.12.19.pdf.
[113] Institute for Human Rights and Business. (November 2013). Corporate Responses to Hate Speech in the 2013 Kenyan Presidential Elections — Case Study: Safaricom [white paper]. https://www.ihrb.org/pdf/DD-Safaricom-Case-Study.pdf.
[114] See above.
[115] Privacy International. (March 27, 2018). Further questions on Cambridge Analytica's involvement in the 2017 Kenyan Elections and Privacy International's investigations [long read]. https://privacyinternational.org/long-read/1708/further-questions-cambridge-analyticas-involvement-2017-kenyan-elections-and-privacy.
[116] Lucy Purdon, "A Very Secret Ballot," SUR 27 (2018), accessed Sept. 1, 2022, https://sur.conectas.org/en/a-very-secret-ballot/.
[117] Dr. Robert Muthuri, Francis Monyango, Wanjiku Karanja. "Biometric Technology, Elections, and Privacy: Investigating Privacy Implications of Biometric Voter Registration in Kenya's 2017 Election Process." Centre for Intellectual Property and Information Technology Law (CIPIT), Strathmore University. https://cipit.strathmore.edu/wp-content/uploads/2020/05/CIPIT-Elections-and-Biometrics-Report.pdf.

The right to privacy — enshrined in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) — is a fundamental human right to which Kenya has acceded. The right to privacy is also an enabling right, permitting the enjoyment of other human rights, most notably, in the context of elections and political campaigning, the right to freedom of expression (Article 19 of ICCPR) and the right to political participation (Article 25 of ICCPR). The right to privacy enables individuals to form opinions, including political opinions, without undue interference.

The right to privacy Is multiface"ed, 'nd a fundamental aspect of it is the protection of individuals' personal data. As early as 1988, the U.N. Human Rights Committee, the treaty body charged with monitoring implementation of the ICCPR, recognized the need for data protection laws to safeguard the fundamental right to privacy.[118] More recently, the U.N. High Commissioner for Human Rights reports on the right to privacy in the digital age have outlined some of the pressing challenges and safeguards needed to protect personal data, including "the growing global consensus on minimum standards that should govern the processing of personal data by States, business enterprises and other private actors."[119]

While universally recognized data protection standards are still emerging, regional and international bodies have created internationally agreed-upon codes, practices, decisions, recommendations, and policy instruments. The U.N. has recognized international instruments and guidelines reflecting these standards.[120] Other regional frameworks also exist, including the 2014 African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention), which Kenya has not subscribed to.

Data protection works through key principles that give individuals rights over their data. [121] According to the U.N., "[I]t is recognized that certain rights need to be afforded to the persons whose data is being processed. At a minimum, the persons affected have a right to know that personal data has been retained and processed, to have access to the data stored, to rectify data that is inaccurate or outdated and to delete or rectify data unlawfully or unnecessarily stored."[122]

Each year since 2013, the U.N. General Assembly and the U.N. Human Rights Council have adopted resolutions on the right to privacy in the digital age, outlining the obligations of states and the responsibilities of business enterprises in respecting and protecting the right

[118] The U.N. Human Rights Committee General Comment noted: "The gathering and holding of personal information [...] whether by public authorities or private individuals or bodies, must be regulated by law." Search ICCPR General Comment No.16: Article 17 (Right to Privacy) 1988.
[119] For example, according to the U.N. Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, "the right to privacy" includes "the ability of individuals to determine who holds information about them and how ... that information [is] used." U.N. Doc. A/HRC/23/40, para 22, 17 April 2013. See also U.N. High Commissioner for Human Rights report on the right to privacy in the digital age, U.N.Doc. A/HRC/39/29 3 August 2018 and A/HRC/48/31 15 September 2021.
[120] See Report of the United Nations High Commissioner for Human Rights, Right to Privacy in the Digital Age, A/HRC/39/29 (2018) p9, para 29. These include the guidelines for the regulation of computerized personal data files (General Assembly resolution 45/95 and E/CN.4/1990/72).
[121] For more information on international principles of data protection, see Privacy International, *The Keys to Data Protection: A Guide for Policy Engagement on Data Protection (2018)* https://privacyinternational.org/sites/default/files/2018-09/Data%20Protection%20COMPLETE.pdf.
[122] U.N. Doc. A/HRC/23/40, para 22, 17.

to privacy, including the protection of personal data. The resolutions were all adopted by consensus of all U.N. member states, including Kenya.[123]

Legal Framework around Privacy and Data Protection

Article 2 of the constitution states that Kenya's international obligations are part of Kenyan domestic law.[124] This includes the international conventions with privacy implications to which Kenya is party; the Universal Declaration of Human Rights (UDHR) (signed); and the International Covenant on Civil and Political Rights (ICCPR) (ratified). Furthermore, Article 31 of the constitution specifically protects the right to privacy.[125] This creates a robust overarching framework around the right to privacy even prior to the passing of the Data Protection Act.

The 2022 election took place under an unprecedented Kenyan legal framework around data protection. The Data Protection Act came into force on Nov. 25, 2019, marking the adoption of a foundational protection mechanism for individuals to exercise their right to privacy. The Data Protection Act imposed new legal obligations on political parties and public authorities involved in the election process, including the IEBC, to protect personal data processed during key moments of the election cycle, including during the campaign and in the voter register (including biometric data).

As noted above, legal obligations to protect personal data emerged as important issues in several parts of the electoral context, including: (1) Kenyans' being registered as members of political parties without their knowledge or consent; (2) an audit of the voter register that uncovered "abnormal" transfers of voters to different polling stations; and (3) questions arising around the proclaimed sale of the voter register for a "fee," as had been announced by the IEBC in July 2022.

While the Data Protection Act largely reflects international data protection principles of lawfulness, fairness, transparency, purpose limitation, data minimization, and accuracy, among others, the key test moving forward remains application and enforcement, responsibilities that fall to the newly established Office of the Data Protection Commissioner (ODPC) to uphold.

The Data Protection Act requires data controllers to process data with due observance of the principles (Article 25). Further, it requires entities processing data to undertake a data protection impact assessment where a processing operation is likely to result in high risk to the rights and freedoms of a data subject, by virtue of its nature, scope, context, and purposes (Article 31(1)). Finally, the act empowers individuals to exercise rights of information, access, objection, rectification, and erasure (Article 26).

The provisions of the Data Protection Act gain special relevance because the act does not make an exemption for political parties' mandatory registration as a data controller for the activity of

[123] United Nations Human Rights Office of the High Commissioner. OHCHR and Privacy in the Digital Age [International Standards]. https://www.ohchr.org/en/privacy-in-the-digital-age/international-standards.
[124] Article 31 (5) and (6), Constitution of Kenya.
[125] It states: "Every person has the right to privacy, which includes the right not to have — (a) their person, home or property searched; (b) their possessions seized; (c) information relating to their family or private affairs unnecessarily required or revealed; or (d) the privacy of their communications infringed."

"canvassing political support among the electorate"[126] and limits data processing activities with regard to "sensitive personal data."[127] This is a positive step that extends Kenyans' enjoyment of data protections through to the political arena.

At the same time, the act does provide a legal basis for political parties to process sensitive data in limited circumstances. Section 45 of the act enables associations with a political aim to process sensitive data, but only when: (1) this is done in the course of their legitimate activities; (2) appropriate safeguards are in place; (3) the processing relates solely to members of the body or to persons who have regular contact with it in connection with its purposes; and (4) the personal data is not disclosed outside that body without the consent of the data subject. Arguably, at least some data processing activities carried out by political parties in relation to its members will fall within this exception. However, it is noteworthy that the exception does not extend to the onward transmission of sensitive data without the data subject's consent, in contravention to international best practice.

Kenya's provisions for only limited exceptions for political parties' use of private data sets it apart from several jurisdictions that have opted to create wide exceptions for political parties' processing of data.[128] The enactment and entry into force of the Data Protection Act mean that, unlike in the 2017 election, political parties and the electoral management body had legal obligations during the 2022 election to protect the personal data processed during the election cycle, for example during political campaigning and in the voter register (including biometric data).

While the Data Protection Act came into force in November 2019, there is an indication that some of its provisions may operate retroactively. In a landmark judgment handed down on Oct. 14, 2021, the High Court of Kenya found that the provision contained in the Data Protection Act concerning data protection impact assessments (DPIA) was of retrospective effect and proceeded to quash the roll-out of the new national ID scheme, Huduma Namba, and compel the government to conduct a DPIA.[129]

The relevance of the Data Protection Act in the electoral context has already been the subject of public scrutiny. The year prior to the election, over 200 complaints were made to the Office of the Data Protection Commissioner by individuals who learned their signatures had been registered as members of political parties without their knowledge or consent. These complaints were acted on in consultation with the Office of the Registrar of Political Parties and led to safeguards, including additional consent mechanisms' being built into the portal for

[126] Office of the Data Protection Commissioner. (No Date). Registration of Data Controllers and Processors [Frequently Asked Questions]. https://www.odpc.go.ke/register-data-controllers/.
[127] Defined by the act as "data revealing the natural person's race, health status, ethnic social origin, conscience, belief, genetic data, biometric data, property details, marital status, family details including names of the person's children, parents, spouse or spouses, sex or the sexual orientation of the data subject."
[128] See U.K. Data Protection Act, Schedule 1, Paragraph 22, which makes an exception for political parties to process sensitive data relating to individuals' political opinions. See also similar provisions in Spain's Organic Law 5/1985 on the General Electoral Regimen, Article 58 bis; and Romania's Law No. 190/2018 Implementing the General Data Protection Regulation (Regulation (EU) 2016/679), Article 9.
[129] High Court of Kenya, Katiba Institute and Yash Pal Ghai v Joe Mucheru CS ICT Ministry and 2 Others, Judicial Review Application No. E1138 of 2020. See also Privacy International's analysis: Privacy International, Data Protection Impact Assessments and ID systems: the 2021 Kenyan ruling on Huduma Namba, January 2022, available at: https://privacyinternational.org/news-analysis/4778/data-protection-impact-assessments-and-id-systems-2021-kenyan-ruling-huduma.

endorsing candidates. The corresponding amendment to the Political Parties Act, passed into law on Jan. 27, 2022, made it illegal for parties to enlist members without consent, thus creating a complementary avenue to hold political parties accountable for data misuse.

Other data protection questions have subsequently arisen. In July 2022, the IEBC announced that the voter register would be "available to stakeholders for a minimal fee."[130] The legal basis for this distribution remains unclear, as does the extent to which the voter register was to be modified, if at all, to limit the disclosure.

The Carter Center expert mission welcomes the work by Kenya's lawmakers to specify the right to privacy in legislation, already enshrined in the constitution and consistent with international obligations under the ICCPR. In addition, the mission notes that Kenya has not yet signed or ratified the African Convention on Cyber Security and Protecting Personal Data[131] and recommends doing so to further strengthen the overarching framework around data protection.

Office of the Data Protection Commissioner

The regulator established by the Data Protection Act is the Office of the Data Protection Commissioner (ODPC). The role of the commissioner is to uphold and enforce data protection legislation of the country, investigate complaints submitted by data subjects, and audit the processes of data controllers and processors to ensure compliance.[132]

The Office of the Data Protection Commissioner, which was established as a regulatory body in 2020, has already shown promising signs of upholding the provisions of the Data Protection Act. Data Commissioner Immaculate Kassait was appointed on Nov. 16, 2020, to serve a single, non-renewable term of six years.

In April 2021, shortly after her appointment and following public/stakeholder consultations, the commissioner published data protection regulations (Registration of Data Controllers and Data Processors).[133] The regulations complement the act and strengthen some weaknesses by clarifying what is required in order to comply with the principles outlined in Section 25 of the act, providing guidance on how to establish a "real risk of harm" following a data breach, and providing examples of situations where a data protection impact assessment will be required.

In November 2021, the Office of the Data Protection Commissioner published its Guidance Note for Electoral Purposes.[134] Overall, the guidance note reiterates content already contained within the Kenyan Data Protection Act. Importantly, however, the guidance note explicitly covers data processing activities carried out by "all stakeholders in the electoral process." For

[130] Independent Electoral and Boundaries Commission. (2022, July 11-12). Chairman's Keynote Address During the National Election Conference 2022 [public statement]. https://www.iebc.or.ke/uploads/resources/6KLXraSE7u.pdf.
[131] African Union Convention on Cyber Security and Personal Data Protection (2014) https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection.
[132] Article 8, Data Protection Act.
[133] Office of the Data Protection Commissioner. (No Date). Data Protection (General) Regulation, 2021. https://www.odpc.go.ke/regulations/data-protection-general-regulations-2021/.
[134] Office of the Data Protection Commissioner. (2021, August 11). Guidance Notes for Electoral Purposes. https://www.odpc.go.ke/download/guidance-notes-for-electoral-purposes/.

example, the guidance note covers data processing related to the voter register and processing by the government of political party members' data. (By law, political parties must provide their member lists to the government.) Further, the guidance note highlights that data subjects may object to the processing of some data categories contained in the voter roll, for example their email and/or telephone number, but not against their name or ID.

The Data Protection Regulations published in 2021 came into force on July 14, 2022, requiring data controllers and processors to register with the Office of the Data Protection Commissioner subject to certain criteria, including turnover, number of employees, and purposes of processing. Data controllers and processors processing data for the purpose of canvassing political support among the electorate are required to register with the Office of the Data Protection Commissioner. Upon registration, data processors and controllers must include a description of the categories of personal data processed. The regulations empower the ODPC to cancel a registration certificate noncompliance with the act. This is another positive step toward transparency and accountability regarding how private and public bodies handle Kenyans' personal data.[135]

While Kenya's regulatory efforts are an encouraging step in the right direction, some of the foundational features of the Office of the Data Protection Commissioner warrant further examination and scrutiny. For example, the commissioner is appointed by the president and the ODPC has been established in the act as a state office rather than an independent body, and is required to consult with the Cabinet secretary regarding decisions on its operations.[136] The manner of appointment of the commissioner and the executive nature of the oversight of the ODPC raise questions regarding the degree to which the OPDC has the necessary institutional and financial independence to execute its mandate effectively under the new law.

The Carter Center expert mission found that while interlocutors were often aware of the Data Protection Act and the obligations on data controllers and the rights of data subjects, there was some frustration from data subjects, particularly about the perceived lack of public communication from the ODPC. Interlocutors indicated to the Carter Center mission that while the OPDC was conducting conversations and responding to issues, these engagements were mostly taking place behind the scenes. This led to an overall impression that the OPDC's reaction to issues of concern was muted. More frequent public engagement would have enabled the office to heighten its credibility and inspire public trust.

In addition, the narrow opportunities for public participation in consultations, for example very short deadlines for submissions, fueled distrust in the OPDC and in turn the legislation itself. While the OPDC has been active in communicating with data controllers, the way decisions have been made has not been communicated widely enough to the Kenyan people. It is unclear in some situations, such as the registering of voters to political parties without their consent, whether the steps taken by the OPDC were explained to the individual complainants. Improved communications in this regard would facilitate greater public confidence that their right to

[135] Afriwise "Data Protection Registration Law Comes into Force on 14 July 2022." https://insights.afriwise.com/blog/data-protection-registration-law-comes-into-force-on-14-july-2022 https://www.odpc.go.ke/register-data-controllers/.

[136] Establishment of the Office and Appointment (sections 5 & 6). https://privacyinternational.org/sites/default/files/2020-02/Analysis%20of%20Kenya%20Data%20Protection%20Act%2C%202019_Jan2020.pdf.

effective remedy is upheld across future electoral processes, in which personal data is likely to only play an increasing role.

The complaints made regarding the registering of voters to political parties without their consent happened not long after the ODPC was configured. The action taken by the OPDC was positive, though not widely communicated, and some interlocutors suggested that it was insufficiently strong. It is unclear why there was no accountability or more pressure on public and private bodies. Overall, the key to implementation of the Data Protection Act lies in its effective enforcement.

Election Technologies and Participatory Rights

International standards stipulate that persons with disabilities are entitled to access information required for them to exercise their rights.[137] Interlocutors reported that the IEBC's consultation about voter education with groups representing persons with disabilities took place too late to fully accommodate their diverse needs. Leading disability rights figures reported to the Carter Center expert mission that they were first contacted regarding the issue in early July. Voter education on election technologies for minority language groups was lacking, putting these already disadvantaged groups at higher risk of disenfranchisement and disinformation. Civil society organizations partly filled these gaps,[138] though their ability to scrutinize election technologies on election day was impeded by fears around spending time in polling stations given the history of violence in Kenyan elections.

Positively, the IEBC facilitated the rollout of an app, assistALL, to help voters with disabilities. Available on the Google Play Store, the app includes a helpline for the hearing impaired, a database of sign language interpreters, subtitled video content, and targeted voter education. Questions about the reliability of statistical estimates of the portion of the population with disabilities impede effective intervention to increase the participation of persons with disabilities.[139]

Recommendations

The Carter Center welcomes early progress by the IEBC, which has already partially implemented the mission's sole priority recommendation. This recommendation, marked 1 in the table below, was published in the mission's preliminary report on Sept. 8, 2022 and was initiated by the IEBC with the Sept. 15 launch of the review.

To the IEBC

1. The IEBC should swiftly launch its review of the successes and challenges of this election. The findings of this review should inform a strategic plan for the preparation for and conduct of elections in 2027 that incorporates planning around election technologies.[140]

[137] U.N. Convention on the Rights of Persons with Disabilities, Article 21.
[138] For example, Uraia conducted voter education covering a wide breadth of the process including aspects involving technology specifically for blind people.
[139] For example, the National Bureau of Statistics claimed 2.2% of Kenyans live with a disability, the ADPK Nairobi disability advocacy group claimed to The Carter Center that 8.6% of Kenyans live with a disability, while the IEBC itself recently put the figure as high as 7.7%.
[140] "Each time elections are scheduled, the dates set out in the calendar for each phase of the process must allow adequate time for effective campaigning and public information efforts, for voters to inform themselves, and for the necessary administrative, legal, training and logistic arrangements to be made." U.N. (Center for Human Rights): Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 75; "A member or employee of the Commission shall ... discharge all their duties in a professional, timely and efficient manner" — Independent Electoral and Boundaries Commission Act 2011, 4 (c).

2. The IEBC should consider collaborating with other Kenyan governmental organizations to deploy an automatic voter registration service that ensures that the voter register is kept continually up to date. This system could consolidate different databases, including those from the National Population Registry, the National Passport Registry, the Register of Deaths, the National Population Data maintained by the Kenya National Bureau of Statistics, and Statistics on Kenyans in the diaspora from the Ministry of Foreign Affairs.[141]

3. The IEBC should profile a typical attacker against the election and use this analysis as input for a careful security analysis of the entire electoral process.[142]

4. Consider ways to remove the untenable trust assumption that renders the integrity of the system dependent on party agents.[143]

5. The IEBC could consider conducting a study designed to assess whether the conditions for introducing risk-limiting audits into the Kenyan elections are in place. If this study finds that risk-limiting audits are likely to increase confidence in the process, the IEBC should consider commencing a dialogue regarding necessary changes to the legal framework with parties, civil society organization, and other electoral stakeholders.[144]

6. Consider developing rigorous requirements, design documents, and security rationales for the results recording software, which is central to the production of the 34C form.[145]

7. Consider conducting rigorous system reviews of all election technologies used in the process in due time to fix any shortcomings and communicate these fixes to the public well in advance of the polls.[146]

8. Consider publishing 34A, 34B, and 34C results forms also as digital data on the online portal as they are created. These can then be cross-referenced by citizens with the digital images in one location.[147]

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[141] IPU: Declaration on Criteria for Free and Fair Elections, para. 4(1) "States should: Establish an effective, impartial and non-discriminatory procedure for the registration of voters; Establish clear criteria for the registration of voters, such as age, citizenship and residence, and ensure that such provisions are applies without distinction of any kind."'

[142] Norwegian Helsinki Committee: Election Observation: An Introduction to the Methodology and Organization, para. E.3 "The system must be sufficiently secured against fraud".

[143] Norwegian Helsinki Committee: Election Observation: An Introduction to the Methodology and Organization, para. E.3 "The system must be sufficiently secured against fraud".

[144] OSCE (ODIHR): Guidelines for Reviewing a Legal Framework for Elections, First Edition, p. 28: "Provision must be in place in the legal framework so that independent verification of the accuracy and soundness of hardware and software used for counting ballots can occur."

[145] Norwegian Helsinki Committee: Election Observation: An Introduction to the Methodology and Organization, para. E.3: "The system must be sufficiently secured against fraud".

[146] International best practice; OSCE (ODIHR): Handbook for the Observation of New Voting Technologies, p. 41 "The technology itself should be thoroughly tested prior to election day, but testing should also be conducted on the interaction of voters, election officials and observers with the technology."

[147] UNHRC: General Principles on Protecting Civic Space and the Right to Access Resources, p. 1 "states should create and maintain…(an) enabling environment in which CSOs can operate free from hindrance."

9. The IEBC should adopt defined security principles in its organization to render its operations less vulnerable to cyberattacks or disinformation campaigns.[148]

10. Increase provision of voter education around voter verification.[149]

11. Increase the number of verification tables at the National Tallying Centre from the first day of the verification process.[150]

12. Official tabulation of paper-based polling center results is the legal basis of Kenya's electoral outcomes. The IEBC uses a simultaneous process known as the "results transmission system" that compares results on the physical forms against digital scans. Citizens can access these results and scans via a searchable online portal. Together, this system improved the election's transparency and verifiability. The Carter Center commends the IEBC's efforts to provide candidates, news organizations, civil society groups, and individual voters with complete and expedient access to polling center data to verify polling station data independently.

    In addition to this transparency, scanned images and other digital data[151] should also be reliable[152]and accessible,[153] which leads us to make two general recommendations:

    a. The IEBC should conduct a cost-benefit analysis on whether to adopt digital signatures to authenticate digital information. Using digital signatures means digitally signing all information intended for public and internal use—e.g., scans and spreadsheets—to ensure the digital information's authenticity. Digital signatures allow others to verify the data's authenticity, improving election transparency. We recommend that the IEBC adopt technological mechanisms (e.g., digital signatures) to authenticate all forms of digital data to the extent permitted by funding and training constraints.
    b. We recommend the IEBC consider users' technological capabilities when determining how to provide access to authenticated digital data. Currently, an online portal provides read-only access to raw images and spreadsheets. APIs (Application Programming Interfaces), such as those that the IEBC intended to introduce for the 2022 elections but eventually chose not to, could offer advanced users access to digital data in a manner that is more convenient for analysis. While data delivered via the current method may be laborious to analyze, we consider the low technological barrier to data accessibility a highly desirable attribute. We recommend the IEBC maximize accessibility

[148] For international best practice see Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1, National Institute of Standards and Technology, April 16, 2018.
[149] U.N. Committee on Human Rights, General Comment 25, The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, para. 11: "Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 [of the ICCPR] rights by an informed community."
[150] International IDEA: International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections, p. 79: "The legal framework should provide for such timely publication of results."
[151] Digital data includes but is not limited to scanned images, results forms, log files, and Excel and CSV files.
[152] Norwegian Helsinki Committee: Election Observation: An Introduction to the Methodology and Organization, para. E.3: "The system must be sufficiently secured against fraud."
[153] The Carter Center Election Obligations and Standards Handbook; NDI: Promoting Legal Frameworks for Democratic Elections: An NDI Guide for Developing Election Laws and Law Commentaries, pp. 50-51: "The legal framework should ensure, among other things, that: ...Transparency mechanisms allow effective monitoring by electoral contestants, domestic nonpartisan election monitors, news media and international election observers, which includes verifying transmission of results by any medium."

when determining how to share authenticated digital data—e.g., online portals and APIs are not mutually exclusive options, and the IEBC could provide digital data access through both paths.

To Lawmakers

13. Establish a funding mechanism for the IEBC that ensures the institution can operate strategically across the entire election cycle, including around election technologies. This funding mechanism should allocate funds across the entire election cycle based upon expenditure on previous elections, with adjustments for inflation and population growth.[154]

14. The Public Procurement and Asset Disposal Act 2015 should be amended so that no aspects of the tender process are confidential.[155]

15. It should be made clear in law and in relevant guidelines that personal data from the electoral register which has been made accessible is still subject to, and protected, by data protection law, including for onward processing.[156]

16. Media houses should consider organizing an annual review of the status of implementation of the recommendations filed by major domestic observation groups and Declaration of Principles election observation groups. This may be undertaken on a "traffic light" system of green, amber, and red to hold institutions accountable for their actions.[157]

17. Repeal Sections 22 and 23 of the Computer Misuse and Cybercrimes Act, which are contrary to Kenya's international obligations around freedom of expression.

To Civil Society Organizations

18. Commission training and expertise to improve capacity to scrutinize election technologies in line with international standards for democratic elections. This should include training on the diverse technologies currently in use beyond Kenya so that civil society is equipped to scrutinize future procurement and rollout of technology.[158]

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[154] International IDEA: International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections, p. 38. "For any EMB to be credible and effective, sufficient and timely funds must be made available to it...."

[155] EISA and Electoral Commission Forum of SADC Countries: Principles for Election Management, Monitoring, and Observation in the SADC Region, p. 25: "Election materials should be procured in a transparent manner."

[156] United Nations, Right to Privacy in the Digital Age, A/HRC/39/29 (2018). "At a minimum, the persons affected have a right to know that personal data has been retained and processed, to have access to the data stored, to rectify data that is inaccurate or outdated and to delete or rectify data unlawfully or unnecessarily stored."

[157] ICCPR Article 19: "2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

[158] CoE (Venice Commission): Code of Good Practice in Electoral Matters, II.3.1.68 (exp. report): "Only transparency ... will ensure proper administration of the election process, from the pre-election period to the end of the processing of results."

To President William Ruto

19. As part of the nominations process for IEBC commissioners, propose a candidate with expertise in information technologies.[159]

To The Judiciary

20. The e-filing system for petitions should be retained, reviewed, and strengthened.[160]

To Political Parties

21. Political parties and candidates should apply data protection safeguards to the personal information they collect and process.

    These safeguards should include the adoption and publication of data protection policies, undertaking data protection audits, proactively providing information about individuals whose data they hold about which data is held and how it is used, ensuring that they have a legal basis for each use of personal data, ensuring that third parties collaborated with for advertising purposes also comply with data protection requirements.[161]

The Office of the Data Protection Commissioner (ODPC)

22. The ODPC should improve trust and transparency with the Kenyan people as the office is further established by effectively communicating decisions to the public and more openly challenge public and private actors, for example drilling down into the lawful basis for collecting this data.[162]

23. The Office of the Data Protection Commissioner could consider building on the guidance or codes of practice on data and elections, for example, by clarifying who should have access to the voter register and why. The guidance issued by the Office of the Data Protection Commissioner during the electoral cycle is a positive step. The

[159] AU: African Charter on Values and Principles of Public Service and Administration, Art. 9.1: "Public service agents shall demonstrate professionalism … in the performance of their duties."
[160] See Practice Directions on Electronic Case Management 2020. Also, ICCPR 19: "2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."
[161] Kenya's Data Protection Act (2019); Council of Europe, Convention 108 Committee, Guidelines on the Protection of Individuals with regard to the Processing of
Personal Data by and for Political Campaigns (2021); U.N. Committee on Human Rights, General Comment 25, "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service, para. 19: "Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind."
[162] Kenya Data Protection Act, Section 30 (lawful processing) Section 45 (processing sensitive personal data); United Nations, Right to Privacy in the Digital Age, A/HRC/39/29 (2018): "At a minimum, the persons affected have a right to know that personal data has been retained and processed, to have access to the data stored, to rectify data that is inaccurate or outdated and to delete or rectify data unlawfully or unnecessarily stored."

issuance of guidance is an important process to help data controllers interpret data protection legislation.[163]

Full standard references can be found in the Carter Center's Election Observation Standards database, which compiles more than 300 sources of public international law.

[163] United Nations, Right to Privacy in the Digital Age, A/HRC/39/29 (2018): "At a minimum, the persons affected have a right to know that personal data has been retained and processed."

Status of 2017 Recommendations Pertaining to Election Technology

2017 recommendation	Status of implementation in context of election technology
Extend the deadline to resolve electoral challenges to presidential results. Parliament should consider extending the deadline for the Supreme Court to resolve challenges to the results of a presidential election from the current 14 days to a minimum of 30 days. This would allow for a thorough consideration of all issues and sufficient time to implement a recount if the court deems it necessary.	Not implemented: The law has not changed to reflect this recommendation.
Amend the election law provisions regarding criteria for annulling elections. Another amendment might be necessary to clarify that election results should only be annulled when irregularities are shown to be of sufficient magnitude to affect the outcome.	Not implemented: The law has not changed to reflect this recommendation.
Streamline electoral timelines. All electoral timelines, including those related to party primaries and submission of party lists to the Office of the Registrar of Political Parties, as well as voter registry audits and voter registration, should be reviewed and amended to avoid the overlapping deadlines that impacted the 2017 primaries, delayed mandate nomination, and limited voter registration.	Not implemented. The results of the audit were only published in the final weeks of the process.
Implement independent electronic and paper-based results paths, with cross-checks. To avoid the concerns raised during both the Aug. 8 and Oct. 26 elections regarding the transparency and accuracy of the tabulation process, the IEBC should implement two independent results paths, one electronic and another paper-based. At strategic points in the process, it is essential to enable stakeholders and independent observers to compare the intermediate results of the electronic results path with the paper-based results path, to provide increased transparency and accountability in the tabulation process.	Implemented.
Implement all KPMG audit recommendations and conduct an audit of the voter register prior to the 2022 election. Deficiencies in the voter register identified in the KPMG audit should be addressed, and all remaining recommendations should be implemented as required by the Kenya Electoral Act. An audit of the voter register should be conducted at least one year before the 2022 elections to allow sufficient time to correct any deficiencies that are identified and to allow sufficient time for voter registry verification.	Partially implemented. The audit and resulting corrections were conducted belatedly.
Strengthen public outreach capacity and transparency in decision making. In order to enhance transparency for future elections, the IEBC should strengthen its public outreach capacity and provide prompt information on its decision making. The commission should operate openly, hold public meetings, and publish and disseminate meeting minutes to inform the public of its decisions and votes. All key decisions, including dispute resolution, should be made public.	Not implemented. Significant challenges remain around preparation and implementation of measures facilitating transparency and public outreach.
Strengthen and sufficiently fund voter education programs. A review of the voter education program should be conducted to identify areas for improvement for the next election. Education efforts should start well in advance of the election and be consistent across the country.	Not implemented: serious inadequacies were identified in the implementation of voter education around election technology.

Standardize training programs for staff/prioritize training in electoral calendar. Training for IEBC staff should be standardized and conducted in sufficient time to allow for complementary training and capacity-building programs, as needed, to ensure full and common understanding of electoral regulations and procedures. Staff should be recruited earlier in the electoral calendar to allow time for a comprehensive training program.	Partially implemented: while voter education content was developed, this was not implemented to allow sufficient time for capacity-building, particularly in light of significant late-stage changes in the conduct of election day processes.
Implement a postelection statistical audit for presidential results. For the final verification of the digital election results, the IEBC should implement a postelection statistical audit to reinforce the accuracy of the electoral results and to bolster the transparency and accountability of the process.	Not implemented: the law has not changed to reflect this recommendation.

Appendix A: Results of the 2022 presidential election

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

DECLARATION OF RESULTS FOR THE ELECTION OF PRESIDENT OF THE REPUBLIC OF KENYA AT THE NATIONAL TALLYING CENTRE

NAME OF NATIONAL TALLYING CENTRE: BOMAS OF KENYA

NO.	County Name	REGISTERED VOTERS	ODINGA RAILA	RUTO WILLIAM SAMOEI	WAIHIGA DAVID MWAURE	WAJACKOYAH GEORGE LUCHIRI	TOTAL VALID VOTES	REJECTED BALLOTS
001	MOMBASA COUNTY TOTAL	642,362	161,015	113,700	482	2,104	277,301	3,812
	MOMBASA COUNTY PERCENTAGE		58.07%	41.00%	0.17%	0.76%		
002	KWALE COUNTY TOTAL	328,316	125,541	51,918	413	1,137	179,009	1,359
	KWALE COUNTY PERCENTAGE		70.13%	29.00%	0.23%	0.64%		
003	KILIFI COUNTY TOTAL	588,842	204,536	77,331	1,067	2,552	285,496	3,191
	KILIFI COUNTY PERCENTAGE		71.64%	27.09%	0.37%	0.89%		
004	TANA RIVER COUNTY TOTAL	141,110	51,390	41,505	198	412	93,505	1,068
	TANA RIVER COUNTY PERCENTAGE		54.96%	44.39%	0.21%	0.44%		
005	LAMU COUNTY TOTAL	81,468	26,160	22,876	186	848	50,070	887
	LAMU COUNTY PERCENTAGE		52.25%	45.69%	0.37%	1.69%		
006	TAITA TAVETA COUNTY TOTAL	182,126	81,271	29,148	249	826	111,494	999
	TAITA TAVETA COUNTY PERCENTAGE		72.89%	26.14%	0.22%	0.74%		
007	GARISSA COUNTY TOTAL	201,513	81,376	28,111	77	396	109,960	590
	GARISSA COUNTY PERCENTAGE		74.01%	25.56%	0.07%	0.36%		
008	WAJIR COUNTY TOTAL	207,767	83,486	49,062	217	626	133,391	1,014
	WAJIR COUNTY PERCENTAGE		62.59%	36.78%	0.16%	0.47%		
009	MANDERA COUNTY TOTAL	217,034	106,279	28,351	259	676	135,565	846
	MANDERA COUNTY PERCENTAGE		78.40%	20.91%	0.19%	0.50%		
010	MARSABIT COUNTY TOTAL	166,944	55,675	58,782	144	303	114,904	481
	MARSABIT COUNTY PERCENTAGE		48.45%	51.16%	0.13%	0.26%		
011	ISIOLO COUNTY TOTAL	89,535	26,449	32,302	52	175	58,978	536
	ISIOLO COUNTY PERCENTAGE		44.85%	54.77%	0.09%	0.30%		
012	MERU COUNTY TOTAL	772,573	103,679	398,946	1,053	2,798	506,476	4,809
	MERU COUNTY PERCENTAGE		20.47%	78.77%	0.21%	0.55%		
013	THARAKA - NITHI COUNTY TOTAL	231,966	15,062	145,081	461	974	161,578	980
	THARAKA - NITHI COUNTY PERCENTAGE		9.32%	89.79%	0.29%	0.60%		
014	EMBU COUNTY TOTAL	334,684	31,209	187,981	523	1,335	221,048	1,899
	EMBU COUNTY PERCENTAGE		14.12%	85.04%	0.24%	0.60%		
015	KITUI COUNTY TOTAL	532,833	235,402	89,419	1,412	2,840	329,073	3,324
	KITUI COUNTY PERCENTAGE		71.53%	27.17%	0.43%	0.86%		
016	MACHAKOS COUNTY TOTAL	687,691	304,809	101,456	1,070	2,903	410,238	3,759
	MACHAKOS COUNTY PERCENTAGE		74.30%	24.73%	0.26%	0.71%		
017	MAKUENI COUNTY TOTAL	479,516	229,213	59,195	575	1,836	290,819	1,908
	MAKUENI COUNTY PERCENTAGE		78.82%	20.35%	0.20%	0.63%		
018	NYANDARUA COUNTY TOTAL	361,217	49,228	189,519	821	1,048	240,616	1,622
	NYANDARUA COUNTY PERCENTAGE		20.46%	78.76%	0.34%	0.44%		
019	NYERI COUNTY TOTAL	482,000	52,052	272,507	982	1,339	326,880	2,271
	NYERI COUNTY PERCENTAGE		15.92%	83.37%	0.30%	0.41%		
020	KIRINYAGA COUNTY TOTAL	376,137	37,909	220,984	640	1,367	260,900	1,823
	KIRINYAGA COUNTY PERCENTAGE		14.53%	84.70%	0.25%	0.52%		
021	MURANG'A COUNTY TOTAL	621,027	73,526	343,349	1,530	1,938	420,343	2,554
	MURANG'A COUNTY PERCENTAGE		17.49%	81.68%	0.36%	0.46%		

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NO.	County Name	REGISTERED VOTERS	ODINGA RAILA	RUTO WILLIAM SAMOEI	WAIHIGA DAVID MWAURE	WAJACKOYAH GEORGE LUCHIRI	TOTAL VALID VOTES	REJECTED BALLOTS
022	KIAMBU COUNTY TOTAL	1,275,168	210,580	606,429	3,805	4,377	825,191	5,635
	KIAMBU COUNTY PERCENTAGE		25.52%	73.49%	0.46%	0.53%		
023	TURKANA COUNTY TOTAL	238,554	96,117	46,696	274	445	143,532	1,099
	TURKANA COUNTY PERCENTAGE		66.97%	32.53%	0.19%	0.31%		
024	WEST POKOT COUNTY TOTAL	220,042	63,092	109,944	194	375	173,705	1,258
	WEST POKOT COUNTY PERCENTAGE		36.32%	63.29%	0.11%	0.22%		
025	SAMBURU COUNTY TOTAL	100,052	41,737	28,329	62	220	70,348	340
	SAMBURU COUNTY PERCENTAGE		59.33%	40.27%	0.09%	0.31%		
026	TRANS NZOIA COUNTY TOTAL	399,230	132,440	116,776	414	883	250,513	2,470
	TRANS NZOIA COUNTY PERCENTAGE		52.87%	46.61%	0.17%	0.35%		
027	UASIN GISHU COUNTY TOTAL	506,317	76,009	272,868	392	594	349,863	2,083
	UASIN GISHU COUNTY PERCENTAGE		21.73%	77.99%	0.11%	0.17%		
028	ELGEYO/MARAKWET COUNTY TOTA	213,904	4,893	160,033	122	176	165,224	1,537
	ELGEYO/MARAKWET COUNTY PERCENTAGE		2.96%	96.86%	0.07%	0.11%		
029	NANDI COUNTY TOTAL	406,393	26,034	280,813	281	447	307,575	1,492
	NANDI COUNTY PERCENTAGE		8.46%	91.30%	0.09%	0.15%		
030	BARINGO COUNTY TOTAL	281,107	41,227	175,170	220	474	217,091	1,014
	BARINGO COUNTY PERCENTAGE		18.99%	80.69%	0.10%	0.22%		
031	LAIKIPIA COUNTY TOTAL	263,273	48,908	119,142	432	602	169,084	1,336
	LAIKIPIA COUNTY PERCENTAGE		28.93%	70.46%	0.26%	0.36%		
032	NAKURU COUNTY TOTAL	1,055,515	226,052	455,864	1,819	2,435	686,170	5,503
	NAKURU COUNTY PERCENTAGE		32.94%	66.44%	0.27%	0.35%		
033	NAROK COUNTY TOTAL	398,852	159,455	148,310	228	439	308,432	1,597
	NAROK COUNTY PERCENTAGE		51.70%	48.09%	0.07%	0.14%		
034	KAJIADO COUNTY TOTAL	463,389	158,556	148,449	686	933	308,624	1,647
	KAJIADO COUNTY PERCENTAGE		51.38%	48.10%	0.22%	0.30%		
035	KERICHO COUNTY TOTAL	428,126	15,053	318,861	207	395	334,516	1,821
	KERICHO COUNTY PERCENTAGE		4.50%	95.32%	0.06%	0.12%		
036	BOMET COUNTY TOTAL	377,023	13,383	285,428	234	561	299,606	1,545
	BOMET COUNTY PERCENTAGE		4.47%	95.27%	0.08%	0.19%		
037	KAKAMEGA COUNTY TOTAL	844,709	357,857	141,166	1,237	3,459	503,719	5,562
	KAKAMEGA COUNTY PERCENTAGE		71.04%	28.02%	0.25%	0.69%		
038	VIHIGA COUNTY TOTAL	310,063	114,714	67,633	515	1,471	184,333	2,115
	VIHIGA COUNTY PERCENTAGE		62.23%	36.69%	0.28%	0.80%		
039	BUNGOMA COUNTY TOTAL	646,612	145,280	255,906	1,581	2,384	405,151	5,516
	BUNGOMA COUNTY PERCENTAGE		35.86%	63.16%	0.39%	0.59%		
040	BUSIA COUNTY TOTAL	416,818	226,042	48,801	473	1,414	276,730	2,889
	BUSIA COUNTY PERCENTAGE		81.68%	17.63%	0.17%	0.51%		
041	SIAYA COUNTY TOTAL	533,602	371,092	4,320	208	734	376,354	1,894
	SIAYA COUNTY PERCENTAGE		98.60%	1.15%	0.06%	0.20%		
042	KISUMU COUNTY TOTAL	607,496	419,997	10,011	253	744	431,005	2,572
	KISUMU COUNTY PERCENTAGE		97.45%	2.32%	0.06%	0.17%		
043	HOMA BAY COUNTY TOTAL	551,111	399,784	3,497	122	709	404,112	2,045
	HOMA BAY COUNTY PERCENTAGE		98.93%	0.87%	0.03%	0.18%		
044	MIGORI COUNTY TOTAL	469,053	294,136	52,525	297	815	347,773	1,611
	MIGORI COUNTY PERCENTAGE		84.58%	15.10%	0.09%	0.23%		
045	KISII COUNTY TOTAL	637,111	265,078	135,326	754	1,678	402,836	4,391
	KISII COUNTY PERCENTAGE		65.80%	33.59%	0.19%	0.42%		
046	NYAMIRA COUNTY TOTAL	323,283	129,025	78,356	345	925	208,651	1,997
	NYAMIRA COUNTY PERCENTAGE		61.84%	37.55%	0.17%	0.44%		

NO.	County Name	REGISTERED VOTERS	ODINGA RAILA	RUTO WILLIAM SAMOEI	WAIHIGA DAVID MWAURE	WAJACKOYAH GEORGE LUCHIRI	TOTAL VALID VOTES	REJECTED BALLOTS
047	NAIROBI CITY COUNTY TOTAL	2,416,551	767,395	561,775	4,390	5,807	1,339,367	12,869
	NAIROBI CITY COUNTY PERCENTAGE		57.30%	41.94%	0.33%	0.43%		
	DIASPORA COUNTY TOTAL	10,443	3,727	2,190	31	40	5,988	44
	DIASPORA COUNTY PERCENTAGE		62.24%	36.57%	0.52%	0.67%		
	NATIONAL TOTAL	22,120,458	6,942,930	7,176,141	31,987	61,969	14,213,137	113,614
	NATIONAL PERCENTAGE		48.85%	50.49%	0.23%	0.44%		

Aggregate Results

No	Name of Candidate	Valid Votes in Figures	Valid Votes in Words	Percentage of Votes Cast	Number of counties the candidates has attained at least 25% of Total Valid Votes Cast
1	ODINGA RAILA	6,942,930	SIX MILLION NINE HUNDRED AND FOURTY TWO THOUSAND NINE HUNDRED AND THIRTY	48.85%	34
2	RUTO WILLIAM SAMOEI	7,176,141	SEVEN MILLION ONE HUNDRED AND SEVENTY SIX THOUSAND ONE HUNDRED AND FOURTY ONE	50.49%	39
3	WAIHIGA DAVID MWAURE	31,987	THIRTY ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN	0.23%	0
4	WAJACKOYAH GEORGE LUCHIRI	61,969	SIXTY ONE THOUSAND NINE HUNDRED AND SIXTY NINE	0.44%	0

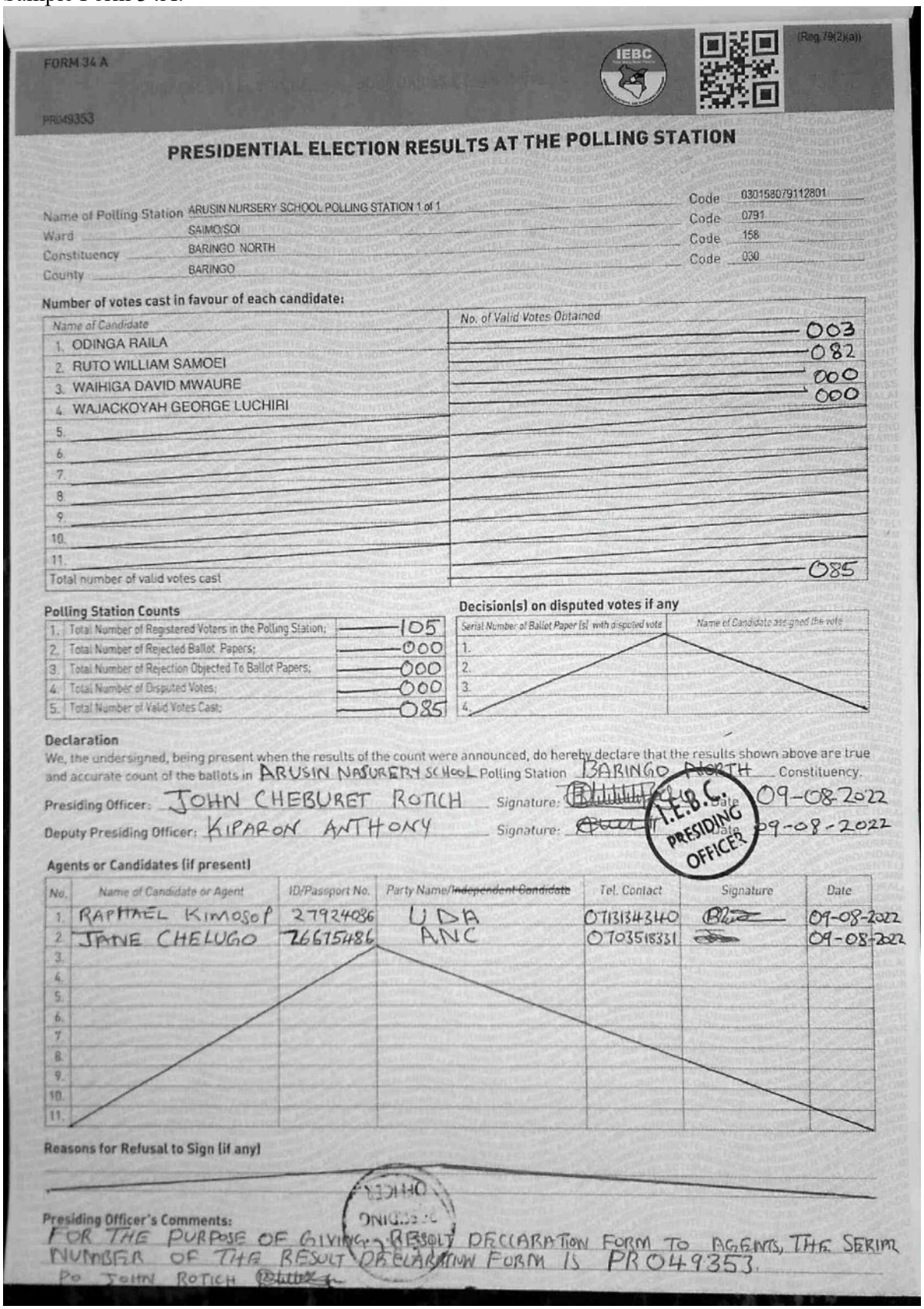
Commission Chairperson: **W. W. CHEBUKATI**

Signature: 

Date: **15TH AUGUST, 2022**

Appendix B: Sample results forms

Sample Form 34A:



FORM 34 A (Reg. 79(2)(a))

PR049353

PRESIDENTIAL ELECTION RESULTS AT THE POLLING STATION

Name of Polling Station: ARUSIN NURSERY SCHOOL POLLING STATION 1 of 1 — Code: 030158079112801
Ward: SAIMO/SOI — Code: 0791
Constituency: BARINGO NORTH — Code: 158
County: BARINGO — Code: 030

Number of votes cast in favour of each candidate:

Name of Candidate	No. of Valid Votes Obtained
1. ODINGA RAILA	003
2. RUTO WILLIAM SAMOEI	082
3. WAIHIGA DAVID MWAURE	000
4. WAJACKOYAH GEORGE LUCHIRI	000
5.	
6.	
7.	
8.	
9.	
10.	
11.	
Total number of valid votes cast	085

Polling Station Counts

1.	Total Number of Registered Voters in the Polling Station;	105
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;	085

Decision(s) on disputed votes if any

Serial Number of Ballot Paper [s] with 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 ARUSIN NASURERY SCHOOL Polling Station BARINGO NORTH Constituency.

Presiding Officer: JOHN CHEBURET ROTICH Signature: [redacted] Date: 09-08-2022

Deputy Presiding Officer: KIPARON ANTHONY Signature: [redacted] Date: 09-08-2022

I.E.B.C. PRESIDING OFFICER

Agents or Candidates (if present)

No.	Name of Candidate or Agent	ID/Passport No.	Party Name/~~Independent Candidate~~	Tel. Contact	Signature	Date
1.	RAPHAEL KIMOSOP	27924086	UDA	0713134340	[redacted]	09-08-2022
2.	JANE CHELUGO	26675486	ANC	0703518331	[redacted]	09-08-2022
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						

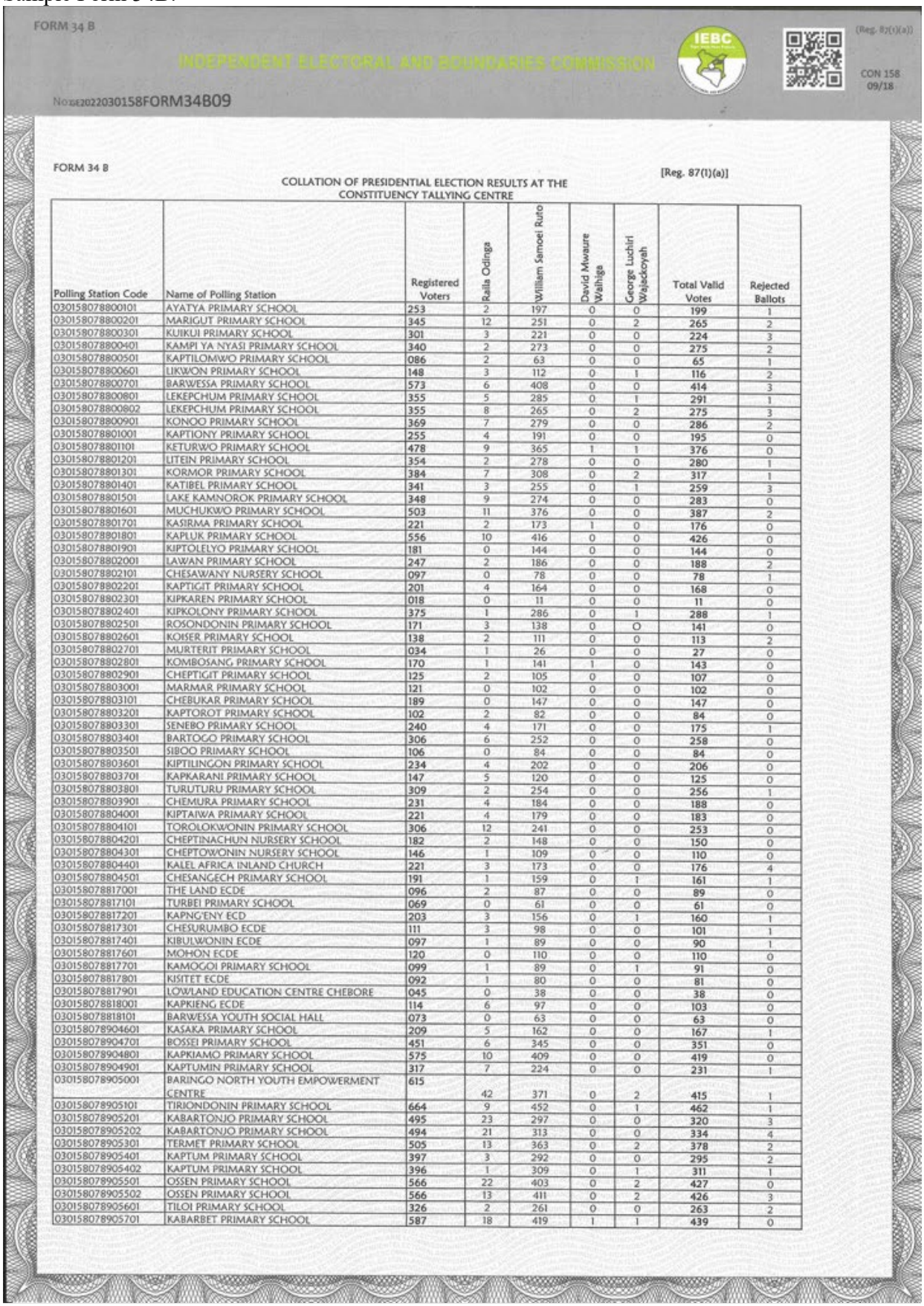
Reasons for Refusal to Sign (if any)

Presiding Officer's Comments:

FOR THE PURPOSE OF GIVING RESULT DECLARATION FORM TO AGENTS, THE SERIAL NUMBER OF THE RESULT DECLARATION FORM IS PR049353.

PO JOHN ROTICH [redacted]

Sample Form 34B:



FORM 34 B

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

(Reg. 87(1)(a))

CON 158
09/18

No:GE2022030158FORM34B09

FORM 34 B

[Reg. 87(1)(a)]

COLLATION OF PRESIDENTIAL ELECTION RESULTS AT THE CONSTITUENCY TALLYING CENTRE

Polling Station Code	Name of Polling Station	Registered Voters	Raila Odinga	William Samoei Ruto	David Mwaure Waithiga	George Luchiri Wajackoyah	Total Valid Votes	Rejected Ballots
030158078800101	AYATYA PRIMARY SCHOOL	253	2	197	0	0	199	1
030158078800201	MARIGUT PRIMARY SCHOOL	345	12	251	0	2	265	2
030158078800301	KUIKUI PRIMARY SCHOOL	301	3	221	0	0	224	3
030158078800401	KAMPI YA NYASI PRIMARY SCHOOL	340	2	273	0	0	275	2
030158078800501	KAPTILOMWO PRIMARY SCHOOL	086	2	63	0	0	65	1
030158078800601	LIKWON PRIMARY SCHOOL	148	3	112	0	1	116	2
030158078800701	BARWESSA PRIMARY SCHOOL	573	6	408	0	0	414	3
030158078800801	LEKEPCHUM PRIMARY SCHOOL	355	5	285	0	1	291	1
030158078800802	LEKEPCHUM PRIMARY SCHOOL	355	8	265	0	2	275	3
030158078800901	KONOO PRIMARY SCHOOL	369	7	279	0	0	286	2
030158078801001	KAPTIONY PRIMARY SCHOOL	255	4	191	0	0	195	0
030158078801101	KETURWO PRIMARY SCHOOL	478	9	365	1	1	376	0
030158078801201	LITEIN PRIMARY SCHOOL	354	2	278	0	0	280	1
030158078801301	KORMOR PRIMARY SCHOOL	384	7	308	0	2	317	1
030158078801401	KATIBEL PRIMARY SCHOOL	341	3	255	0	1	259	3
030158078801501	LAKE KAMNOROK PRIMARY SCHOOL	348	9	274	0	0	283	0
030158078801601	MUCHUKWO PRIMARY SCHOOL	503	11	376	0	0	387	2
030158078801701	KASIRMA PRIMARY SCHOOL	221	2	173	1	0	176	0
030158078801801	KAPLUK PRIMARY SCHOOL	556	10	416	0	0	426	0
030158078801901	KIPTOLELYO PRIMARY SCHOOL	181	0	144	0	0	144	0
030158078802001	LAWAN PRIMARY SCHOOL	247	2	186	0	0	188	2
030158078802101	CHESAWANY NURSERY SCHOOL	097	0	78	0	0	78	1
030158078802201	KAPTIGIT PRIMARY SCHOOL	201	4	164	0	0	168	0
030158078802301	KIPKAREN PRIMARY SCHOOL	018	0	11	0	0	11	0
030158078802401	KIPKOLONY PRIMARY SCHOOL	375	1	286	0	1	288	1
030158078802501	ROSONDONIN PRIMARY SCHOOL	171	3	138	0	0	141	0
030158078802601	KOISER PRIMARY SCHOOL	138	2	111	0	0	113	2
030158078802701	MURTERIT PRIMARY SCHOOL	034	1	26	0	0	27	0
030158078802801	KOMBOSANG PRIMARY SCHOOL	170	1	141	1	0	143	0
030158078802901	CHEPTIGIT PRIMARY SCHOOL	125	2	105	0	0	107	0
030158078803001	MARMAR PRIMARY SCHOOL	121	0	102	0	0	102	0
030158078803101	CHEBUKAR PRIMARY SCHOOL	189	0	147	0	0	147	0
030158078803201	KAPTOROT PRIMARY SCHOOL	102	2	82	0	0	84	0
030158078803301	SENEBO PRIMARY SCHOOL	240	4	171	0	0	175	1
030158078803401	BARTOGO PRIMARY SCHOOL	306	6	252	0	0	258	0
030158078803501	SIBOO PRIMARY SCHOOL	106	0	84	0	0	84	0
030158078803601	KIPTILINGON PRIMARY SCHOOL	234	4	202	0	0	206	0
030158078803701	KAPKARANI PRIMARY SCHOOL	147	5	120	0	0	125	0
030158078803801	TURUTURU PRIMARY SCHOOL	309	2	254	0	0	256	1
030158078803901	CHEMURA PRIMARY SCHOOL	231	4	184	0	0	188	0
030158078804001	KIPTAIWA PRIMARY SCHOOL	221	4	179	0	0	183	0
030158078804101	TOROLOKWONIN PRIMARY SCHOOL	306	12	241	0	0	253	0
030158078804201	CHEPTINACHUN NURSERY SCHOOL	182	2	148	0	0	150	0
030158078804301	CHEPTOWONIN NURSERY SCHOOL	146	1	109	0	0	110	0
030158078804401	KALEL AFRICA INLAND CHURCH	221	3	173	0	0	176	4
030158078804501	CHESANGECH PRIMARY SCHOOL	191	1	159	0	1	161	1
030158078817001	THE LAND ECDE	096	2	87	0	0	89	0
030158078817101	TURBEI PRIMARY SCHOOL	069	0	61	0	0	61	0
030158078817201	KAPNG'ENY ECD	203	3	156	0	1	160	1
030158078817301	CHESURUMBO ECDE	111	3	98	0	0	101	1
030158078817401	KIBULWONIN ECDE	097	1	89	0	0	90	1
030158078817601	MOHON ECDE	120	0	110	0	0	110	0
030158078817701	KAMOGOI PRIMARY SCHOOL	099	1	89	0	1	91	0
030158078817801	KISITET ECDE	092	1	80	0	0	81	0
030158078817901	LOWLAND EDUCATION CENTRE CHEBORE	045	0	38	0	0	38	0
030158078818001	KAPKIENG ECDE	114	6	97	0	0	103	0
030158078818101	BARWESSA YOUTH SOCIAL HALL	073	0	63	0	0	63	0
030158078904601	KASAKA PRIMARY SCHOOL	209	5	162	0	0	167	1
030158078904701	BOSSEI PRIMARY SCHOOL	451	6	345	0	0	351	0
030158078904801	KAPKIAMO PRIMARY SCHOOL	575	10	409	0	0	419	0
030158078904901	KAPTUMIN PRIMARY SCHOOL	317	7	224	0	0	231	1
030158078905001	BARINGO NORTH YOUTH EMPOWERMENT CENTRE	615	42	371	0	2	415	1
030158078905101	TIRIONDONIN PRIMARY SCHOOL	664	9	452	0	1	462	1
030158078905201	KABARTONJO PRIMARY SCHOOL	495	23	297	0	0	320	3
030158078905202	KABARTONJO PRIMARY SCHOOL	494	21	313	0	0	334	4
030158078905301	TERMET PRIMARY SCHOOL	505	13	363	0	2	378	2
030158078905401	KAPTUM PRIMARY SCHOOL	397	3	292	0	0	295	2
030158078905402	KAPTUM PRIMARY SCHOOL	396	1	309	0	1	311	1
030158078905501	OSSEN PRIMARY SCHOOL	566	22	403	0	2	427	0
030158078905502	OSSEN PRIMARY SCHOOL	566	13	411	0	2	426	3
030158078905601	TILOI PRIMARY SCHOOL	326	2	261	0	0	263	2
030158078905701	KABARBET PRIMARY SCHOOL	587	18	419	1	1	439	0

FORM 34 B

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

(Reg. 87(1)(a))

CON 158
14/18

No:62022030158FORM34B14

Agents or Candidates (If present)

No	Name of Candidate or Agent	ID/Passport No.	Party Name/Independent Candidate	Tel. Contact	Signature	Date
1	AENGWO DAVDI LUKA	14564359	UDA	0723203574		10/8/22
2						
3						
4						

Name of the Constituency Returning Officer: HARUN NJUGUNA

ID Number: 21859709

Signature:

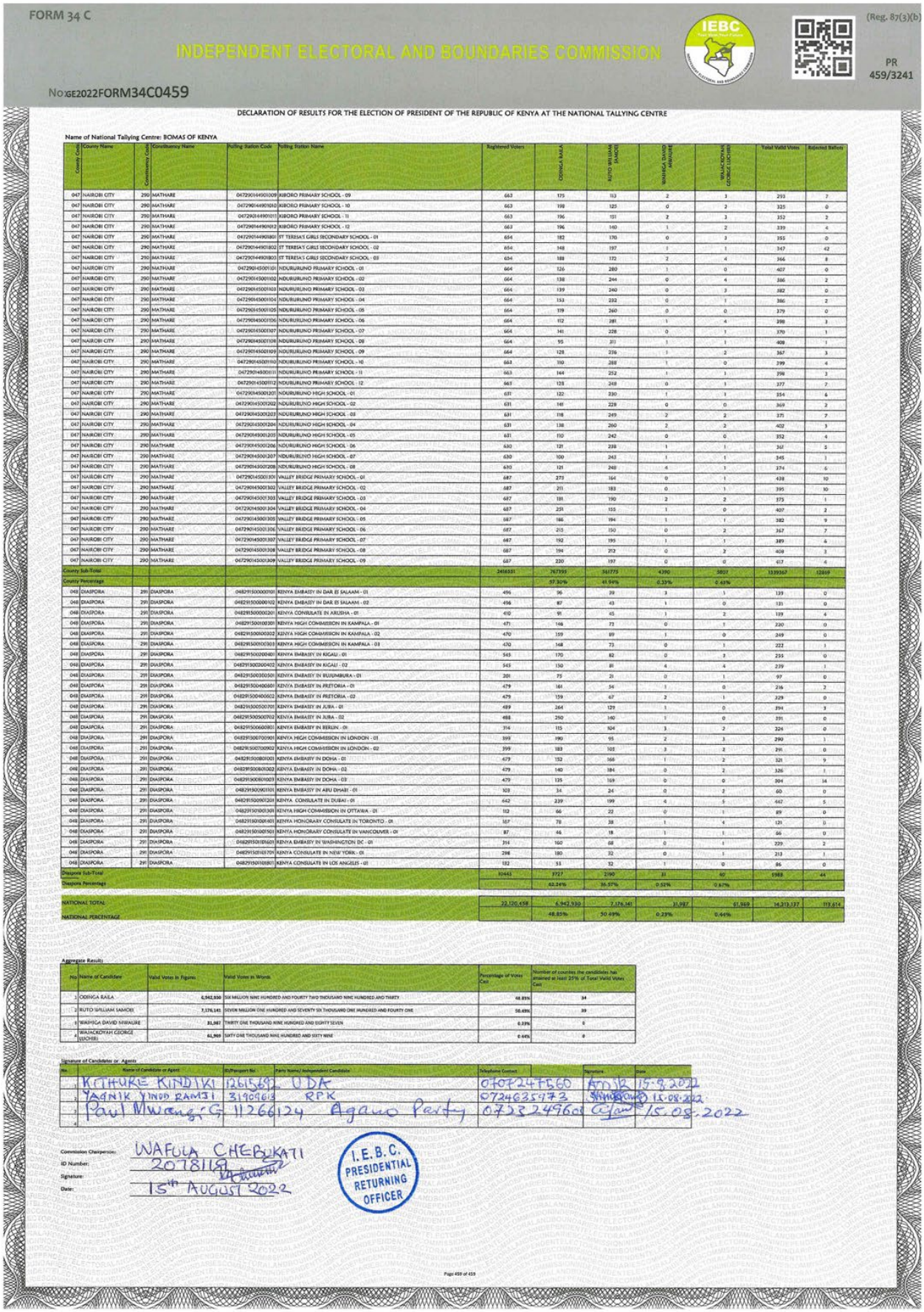
I.E.B.C. RETURNING OFFICER

Date: 10-08-2022

Handing Over - Taking Over at the National Presidential Tallying Centre

HANDING OVER	TAKING OVER
Number of **FORM 34 A** submitted:	Number of **FORM 34 A** received:
Name of the Constituency Returning Officer:	Commission Chairperson:
ID Number:	ID Number:
Signature:	Signature:
Date:	Date:
Time:	Time:

Sample Form 34C:



FORM 34 C

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

(Reg. 87(3)(b)

PR 459/3241

No:GE2022FORM34C0459

DECLARATION OF RESULTS FOR THE ELECTION OF PRESIDENT OF THE REPUBLIC OF KENYA AT THE NATIONAL TALLYING CENTRE

Name of National Tallying Centre: BOMAS OF KENYA

County Code	County Name	Constituency Code	Constituency Name	Polling Station Code	Polling Station Name	Registered Voters	ODINGA RAILA	RUTO WILLIAM SAMOEI	WAIHIGA DAVID MWAURE	WAJACKOYAH GEORGE LUCHIRI	Total Valid Votes	Rejected Ballots
047	NAIROBI CITY	290	MATHARE	04729014490100	KIBORO PRIMARY SCHOOL - 09	663	175	113	2	3	293	7
047	NAIROBI CITY	290	MATHARE	04729014490101	KIBORO PRIMARY SCHOOL - 10	663	198	125	0	2	325	0
047	NAIROBI CITY	290	MATHARE	04729014490101	KIBORO PRIMARY SCHOOL - 11	663	196	151	2	3	352	2
047	NAIROBI CITY	290	MATHARE	04729014490101	KIBORO PRIMARY SCHOOL - 12	663	196	140	1	2	339	4
047	NAIROBI CITY	290	MATHARE	04729014490180	ST TERESIA'S GIRLS SECONDARY SCHOOL - 01	654	182	170	0	3	355	0
047	NAIROBI CITY	290	MATHARE	04729014490180	ST TERESIA'S GIRLS SECONDARY SCHOOL - 02	654	148	197	1	1	347	42
047	NAIROBI CITY	290	MATHARE	04729014490180	ST TERESIA'S GIRLS SECONDARY SCHOOL - 03	654	188	172	2	4	366	8
047	NAIROBI CITY	290	MATHARE	04729014500100	NDURURUNO PRIMARY SCHOOL - 01	664	126	280	1	0	407	0
047	NAIROBI CITY	290	MATHARE	04729014500100	NDURURUNO PRIMARY SCHOOL - 02	664	138	244	0	4	386	2
047	NAIROBI CITY	290	MATHARE	04729014500100	NDURURUNO PRIMARY SCHOOL - 03	664	139	240	0	3	382	0
047	NAIROBI CITY	290	MATHARE	04729014500100	NDURURUNO PRIMARY SCHOOL - 04	664	153	232	0	1	386	2
047	NAIROBI CITY	290	MATHARE	04729014500100	NDURURUNO PRIMARY SCHOOL - 05	664	119	260	0	0	379	0
047	NAIROBI CITY	290	MATHARE	04729014500100	NDURURUNO PRIMARY SCHOOL - 06	664	112	281	1	4	398	3
047	NAIROBI CITY	290	MATHARE	04729014500100	NDURURUNO PRIMARY SCHOOL - 07	664	141	228	0	1	370	1
047	NAIROBI CITY	290	MATHARE	04729014500100	NDURURUNO PRIMARY SCHOOL - 08	664	95	311	1	1	408	1
047	NAIROBI CITY	290	MATHARE	04729014500100	NDURURUNO PRIMARY SCHOOL - 09	664	128	236	1	2	367	3
047	NAIROBI CITY	290	MATHARE	04729014500101	NDURURUNO PRIMARY SCHOOL - 10	663	110	288	1	0	399	4
047	NAIROBI CITY	290	MATHARE	04729014500101	NDURURUNO PRIMARY SCHOOL - 11	663	144	252	1	1	398	3
047	NAIROBI CITY	290	MATHARE	04729014500101	NDURURUNO PRIMARY SCHOOL - 12	663	128	248	0	1	377	7
047	NAIROBI CITY	290	MATHARE	04729014500120	NDURURUNO HIGH SCHOOL - 01	631	122	230	1	1	354	6
047	NAIROBI CITY	290	MATHARE	04729014500120	NDURURUNO HIGH SCHOOL - 02	631	141	228	0	0	369	2
047	NAIROBI CITY	290	MATHARE	04729014500120	NDURURUNO HIGH SCHOOL - 03	631	118	249	2	2	371	7
047	NAIROBI CITY	290	MATHARE	04729014500120	NDURURUNO HIGH SCHOOL - 04	631	138	260	2	2	402	3
047	NAIROBI CITY	290	MATHARE	04729014500120	NDURURUNO HIGH SCHOOL - 05	631	110	242	0	0	352	4
047	NAIROBI CITY	290	MATHARE	04729014500120	NDURURUNO HIGH SCHOOL - 06	630	121	238	1	1	361	5
047	NAIROBI CITY	290	MATHARE	04729014500120	NDURURUNO HIGH SCHOOL - 07	630	100	243	1	1	345	1
047	NAIROBI CITY	290	MATHARE	04729014500120	NDURURUNO HIGH SCHOOL - 08	630	121	248	4	1	374	6
047	NAIROBI CITY	290	MATHARE	04729014500130	VALLEY BRIDGE PRIMARY SCHOOL - 01	687	273	164	0	1	438	10
047	NAIROBI CITY	290	MATHARE	04729014500130	VALLEY BRIDGE PRIMARY SCHOOL - 02	687	211	183	0	1	395	10
047	NAIROBI CITY	290	MATHARE	04729014500130	VALLEY BRIDGE PRIMARY SCHOOL - 03	687	181	190	2	2	375	1
047	NAIROBI CITY	290	MATHARE	04729014500130	VALLEY BRIDGE PRIMARY SCHOOL - 04	687	251	155	1	0	407	2
047	NAIROBI CITY	290	MATHARE	04729014500130	VALLEY BRIDGE PRIMARY SCHOOL - 05	687	186	194	1	1	382	9
047	NAIROBI CITY	290	MATHARE	04729014500130	VALLEY BRIDGE PRIMARY SCHOOL - 06	687	215	150	0	2	367	7
047	NAIROBI CITY	290	MATHARE	04729014500130	VALLEY BRIDGE PRIMARY SCHOOL - 07	687	192	195	1	1	389	6
047	NAIROBI CITY	290	MATHARE	04729014500130	VALLEY BRIDGE PRIMARY SCHOOL - 08	687	194	212	0	2	408	3
047	NAIROBI CITY	290	MATHARE	04729014500130	VALLEY BRIDGE PRIMARY SCHOOL - 09	687	220	197	0	0	417	4
County Sub-Total						2416531	767395	741775	4390	5807	1339367	12869
County Percentage							57.30%	55.39%	0.33%	0.43%		
048	DIASPORA	291	DIASPORA	04829150000101	KENYA EMBASSY IN DAR ES SALAAM - 01	496	96	39	3	1	139	0
048	DIASPORA	291	DIASPORA	04829150000102	KENYA EMBASSY IN DAR ES SALAAM - 02	498	87	43	1	0	131	0
048	DIASPORA	291	DIASPORA	04829150000201	KENYA CONSULATE IN ARUSHA - 01	410	91	45	1	2	139	4
048	DIASPORA	291	DIASPORA	04829150000301	KENYA HIGH COMMISSION IN KAMPALA - 01	471	146	73	0	1	220	0
048	DIASPORA	291	DIASPORA	04829150000302	KENYA HIGH COMMISSION IN KAMPALA - 02	470	159	89	1	0	249	0
048	DIASPORA	291	DIASPORA	04829150000303	KENYA HIGH COMMISSION IN KAMPALA - 03	470	148	73	0	1	222	1
048	DIASPORA	291	DIASPORA	04829150200401	KENYA EMBASSY IN KIGALI - 01	545	170	82	0	3	255	0
048	DIASPORA	291	DIASPORA	04829150200402	KENYA EMBASSY IN KIGALI - 02	543	150	81	4	4	239	1
048	DIASPORA	291	DIASPORA	04829150030501	KENYA EMBASSY IN BUJUMBURA - 01	201	75	21	0	1	97	0
048	DIASPORA	291	DIASPORA	04829150040601	KENYA EMBASSY IN PRETORIA - 01	479	161	54	1	0	216	2
048	DIASPORA	291	DIASPORA	04829150040602	KENYA EMBASSY IN PRETORIA - 02	479	159	67	2	1	229	0
048	DIASPORA	291	DIASPORA	04829150050701	KENYA EMBASSY IN JUBA - 01	489	264	129	1	0	394	3
048	DIASPORA	291	DIASPORA	04829150050702	KENYA EMBASSY IN JUBA - 02	488	250	140	1	0	391	0
048	DIASPORA	291	DIASPORA	04829150060801	KENYA EMBASSY IN BERLIN - 01	314	115	104	3	2	224	0
048	DIASPORA	291	DIASPORA	04829150070901	KENYA HIGH COMMISSION IN LONDON - 01	393	190	95	2	3	290	1
048	DIASPORA	291	DIASPORA	04829150070902	KENYA HIGH COMMISSION IN LONDON - 02	399	183	103	3	2	291	0
048	DIASPORA	291	DIASPORA	04829150080101	KENYA EMBASSY IN DOHA - 01	479	152	166	1	2	321	9
048	DIASPORA	291	DIASPORA	04829150080102	KENYA EMBASSY IN DOHA - 02	479	140	184	0	2	326	1
048	DIASPORA	291	DIASPORA	04829150080103	KENYA EMBASSY IN DOHA - 03	479	135	169	0	0	304	14
048	DIASPORA	291	DIASPORA	04829150090101	KENYA EMBASSY IN ABU DHABI - 01	103	34	24	0	2	60	0
048	DIASPORA	291	DIASPORA	04829150090201	KENYA CONSULATE IN DUBAI - 01	642	239	199	4	5	447	5
048	DIASPORA	291	DIASPORA	04829150100301	KENYA HIGH COMMISSION IN OTTAWA - 01	112	66	22	0	1	89	0
048	DIASPORA	291	DIASPORA	04829150100401	KENYA HONORARY CONSULATE IN TORONTO - 01	167	78	38	1	4	121	0
048	DIASPORA	291	DIASPORA	04829150100501	KENYA HONORARY CONSULATE IN VANCOUVER - 01	87	46	18	1	1	66	0
048	DIASPORA	291	DIASPORA	04829150101601	KENYA EMBASSY IN WASHINGTON DC - 01	314	160	68	0	1	229	2
048	DIASPORA	291	DIASPORA	04829150101701	KENYA CONSULATE IN NEW YORK - 01	298	180	32	0	1	213	1
048	DIASPORA	291	DIASPORA	04829150101801	KENYA CONSULATE IN LOS ANGELES - 01	132	53	32	1	0	86	0
Diaspora Sub-Total						10443	3727	2190	31	40	5988	44
Diaspora Percentage							62.24%	36.57%	0.52%	0.67%		
NATIONAL TOTAL						22,120,458	6,942,930	7,176,141	31,987	61,969	14,213,127	113,614
NATIONAL PERCENTAGE							48.85%	50.49%	0.23%	0.44%		

Aggregate Results

No.	Name of Candidate	Valid Votes in Figures	Valid Votes in Words	Percentage of Votes Cast	Number of counties the candidates has attained at least 25% of Total Valid Votes Cast
1	ODINGA RAILA	6,942,930	SIX MILLION NINE HUNDRED AND FOURTY TWO THOUSAND NINE HUNDRED AND THIRTY	48.85%	34
2	RUTO WILLIAM SAMOEI	7,176,141	SEVEN MILLION ONE HUNDRED AND SEVENTY SIX THOUSAND ONE HUNDRED AND FOURTY ONE	50.49%	39
3	WAIHIGA DAVID MWAURE	31,987	THIRTY ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN	0.23%	0
4	WAJACKOYAH GEORGE LUCHIRI	61,969	SIXTY ONE THOUSAND NINE HUNDRED AND SIXTY NINE	0.44%	0

Signature of Candidate or Agents

No.	Name of Candidate or Agent	ID/Passport No	Party Name/ Independent Candidate	Telephone Contact	Signature	Date
1	KITHUKE KINDIKI	12615692	UDA	0707247560		15.8.2022
2	YAGNIK VINOD RAMJI	31909613	RPK	0724635973		15.08.2022
3	Paul Mwangi G	11266124	Agano Party	0733249600		15.08.2022
4						

Commission Chairperson: WAFULA CHEBUKATI

ID Number: 20781189

Signature:

Date: 15th AUGUST 2022

I.E.B.C. PRESIDENTIAL RETURNING OFFICER

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Appendix C: Joint pre-election statement on the 9 August elections in Kenya

Joint pre-election statement on the 9 August 2022 elections in Kenya

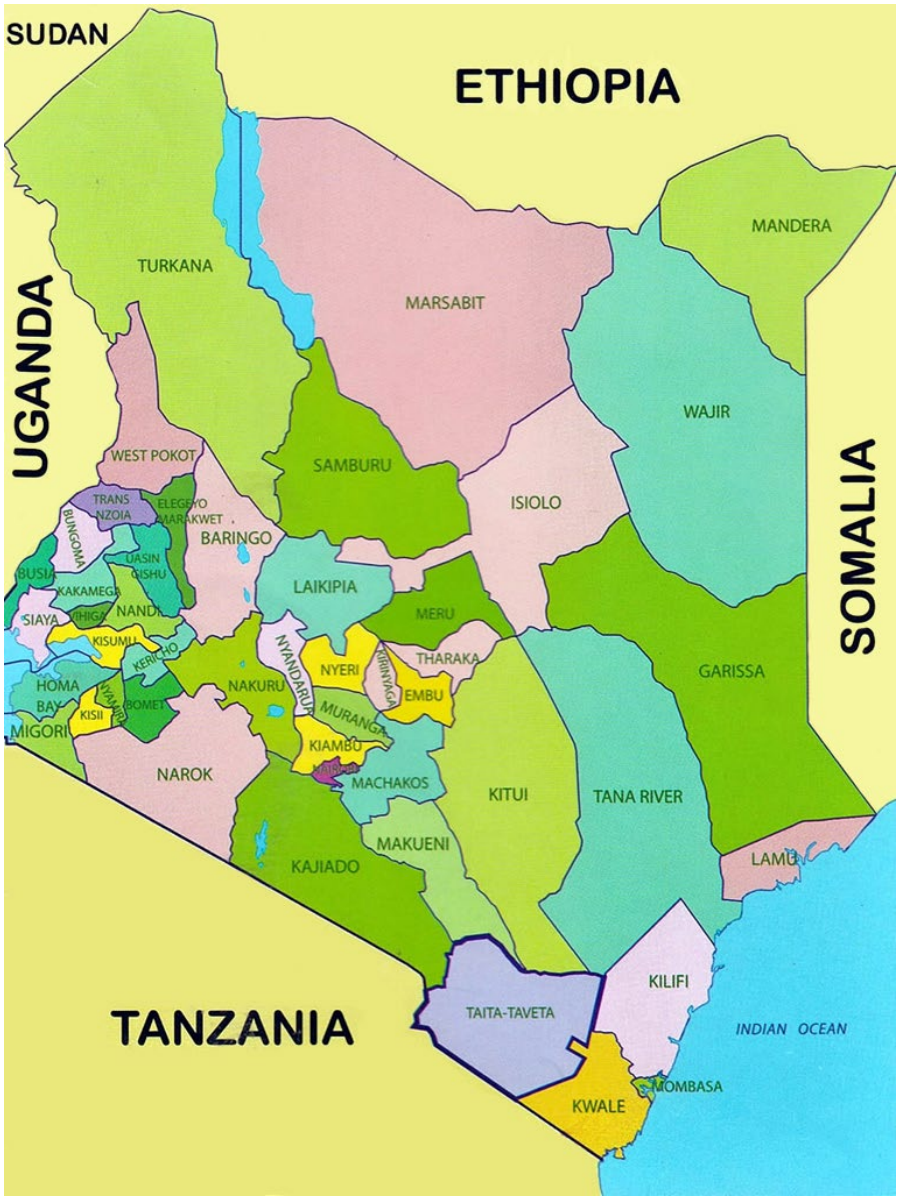
We, the Heads of the international election observation and expert missions in Kenya, have been following preparations for the 9 August 2022 general elections by all stakeholders in Kenya, including the campaign activities of political parties, party coalitions, and candidates. We call on the leadership of all political parties and their supporters, as well as civil society, faith-based organisations, and all other stakeholders, to ensure a continuation of the calm and peaceful atmosphere during the remaining phases of the electoral process.

We also call on all those with a specific mandate to the 9 August elections to conduct their responsibilities with the utmost diligence and transparency; as well as compliance with the legal framework of Kenya and the country's international obligations and commitments for democratic elections. Lastly, we urge all stakeholders and citizens to pursue any grievances that may occur peacefully and through the established legal channels.

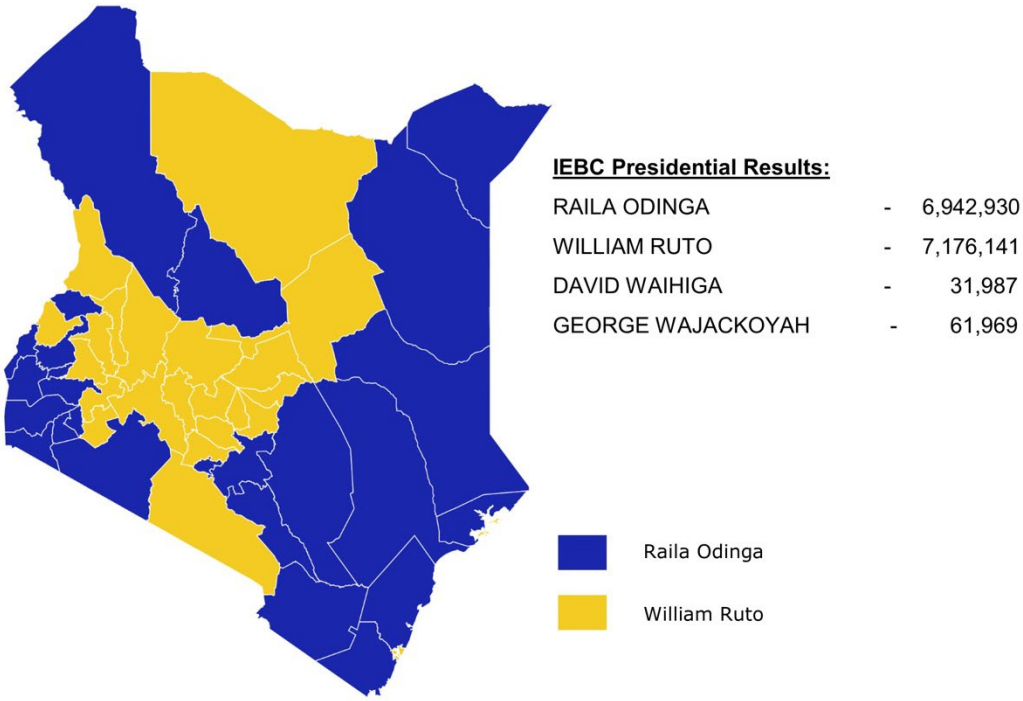
As we continue observing the electoral preparations across the country, we stand in solidarity with the people of Kenya in their desire for peaceful and credible elections.

1. Joint AU-COMESA Election Observation Mission – His Excellency Dr. Ernest Bai Koroma, Former President of Sierra Leone.
2. Carter Center Election Expert Mission – Ben Graham Jones, Team Leader.
3. Commonwealth Observer Group – His Excellency Bruce Golding, Former Prime Minister of Jamaica.
4. EISA Election Observation Mission – His Excellency Goodluck Ebele Jonathan, Former President of Nigeria
5. EU Election Observation Mission – Honourable Ivan Stefanec, Member of the European Parliament.
6. IGAD Election Observation Mission – His Excellency Dr. Mulatu Teshome, Former President of Ethiopia.
7. IRI/NDI Election Observation Mission – His Excellency Joaquim Chissano, Former President of Mozambique.

Appendix D: Geographic and political maps of Kenya



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Source: Rodolfo Matias

Appendix E: Timeline of election technology in the Kenyan presidential election

Date	Description
5 May 2021	IEBC publishes Tender No. IEBC/OIT/001/21/2020/2021 for supply, delivery, installation, testing, commissioning, support, and maintenance of the Kenya Integrated Elections Management System (KIEMS).
4 October 2021	IEBC launches Enhanced Continuous Voter Registration (ECVR) for one month up to 2 November 2021, targeting 6 million new voter registrations. The commission distributed 7,720 biometric voter registration kits countrywide, down to the county ward level.
1 November 2021	Enhanced Continuous Voter Registration extended by court order. The High Court sitting at Eldoret issued orders prohibiting the commission from "closing the national voter registration exercise slated for closure on 2nd November 2021." As a result of the registration extension, 1,519,294 new voters were registered out of a target of 6 million new voters.
2 November 2022	End of IEBC Enhanced Continuous Voter Registration exercise countrywide. A total of 1,413,444 new voters were enrolled.
6 November 2021	IEBC resumed continuous voter registration using biometric voter registration kits at the IEBC constituency offices. This was in line with the legal provisions under Article 88(4)(a) and (b) of the Constitution of Kenya, 2010.
16 November 2021	Deadline for political parties to submit nomination rules.
17 January 2022	Start of 21 days of second and final phase of the Enhanced Continuous Voter Registration (ECVR).
21 January 2022	Voter registration commences for Kenyans living in the diaspora in line with Article 82(1) (e) Constitution of Kenya, 2010. Diaspora voters were eligible to vote only in the presidential election and not in other contests of the general election. IEBC deployment of biometric voter registration kits in diaspora.
25 November 2021	Tender No. IEBC/OT/21/011/2021-2012 Supply and delivery of branded security seals for three (3) year framework contract.
25 November 2021	Tender No. IEBC/OT/21/012/2021-2012 Supply and delivery of branded ballot boxes for three-year framework contract.

20 January 2022	Publication of notice of general election 2022 – Kenya Gazette Vol. CXXIV-No. 14 of 20th January 2022.
6 February 2022	End of 21 days Enhanced Continuous Voter Registration.
4 February 2022	IEBC issues response and clarification on KIEMS kits delivery tender.
26 March 2022	Deadline for submission of party membership lists to ORPP.
2 April 2022	Deadline for ORPP to verify membership lists, where names on party list are consistent to registration, certify the members list.
9 April 2022	Deadline for submitting party member lists to IEBC.
9 April 2022	Deadline for submission of a coalition agreement to ORPP for registration of coalition political party.
22 April 2022	Party primaries held through secret ballot.
2 May 2022	Deadline for independent candidates to submit a clearance certificate from ORPP confirming they are not members of any registered political party.
4 May 2022	Start of 30 days voter verification period, during which voters could check their details at registration centers and IEBC constituency offices countrywide.
6 May 2022	Start of voter verification services using SMS line 70000, and online service verify.iebc.or.ke .
8 May 2022	Deadline for submitting coalition agreements to ORPP for a pre-election coalition.
23 May 2022	Presidential candidates to return their applications for candidature.
29 May 2022	Start of official campaign period for the presidential election.
2 June 2022	End of 30 days' verification of registration details at registration centers and IEBC constituency offices countrywide.
10 June 2022	Deployment of the Carter Center pre-election assessment team to Kenya.
11 June 2022	Submission of party lists to ORPP.
9 June 2022	Testing and simulation of the IEBC results transmission system. Only 1,200 out of 2,900 polling stations successfully transmitted data, constituting a 59% failure rate.
19 July 2022	Return of the Carter Center PEAM deployment to Kenya.
19 July 2022	Second Testing and simulation of the IEBC results transmission system.

2 August 2022	Deployment of the Carter Center election expert mission (EEM) to Kenya.
6 August 2022	Official end of campaign period.
9 August 2022	KIEMS kit used for presidential election voting in 45,991 polling stations. 238 polling stations used manual registers for voting.
9 August 2022	As of noon, IEBC reported that 6,567,869 Kenyans had turned out to vote. This equated to 30.65% of the 22,120,458 registered voters.
9 August 2022	As at 4 p.m., IEBC reported that 12,065,803 Kenyans had turned up to vote. This equated to 56.17% of registered voters excluding those who voted using the manual registers.
9 August 2022	Start of KIEMS kits transmission of Form 34A to IEBC at Bomas of Kenya National Tally Center. Start of tabulation of presidential election results.
10 August 2022	97.4% of Form 34As had been transmitted into the IEBC server. Results tabulation. This involved verification of transmitted Form 34A images against the original Form 34A; verification of constituency Form 34B against their respective original Form 34As; and collation of the Form 34c.
11 August 2022	99.82% of Form 34As transmitted to IEBC server. Tabulation process ongoing.
12 August 2022	Results tabulation.
13 August 2022	Results tabulation.
14 August 2022	Results tabulation.
15 August 2022	IEBC Chair Wafula Chebukati announces presidential election results.
15 August 2022	Four IEBC commissioners reject announced presidential election results. These were Vice-Chairperson Juliana Cherera, and Commissioners Irene Masit, Francis Wanderi, and Justus Nyang'aya.
22 August 2022	Nine petitions filed at the Supreme Court in relation to the Kenya presidential election held on 9 August 2022, including one by Raila Odinga's coalition, Azimio la Umoja.
24 August 2022	IEBC filed responses to the presidential petitions.
26 August 2022	Kenya Kwanza filed their responses to the presidential petitions. Azimio files responses to the petitions filed by Moses Kuria, Reuben Kigame, and Youth Advocacy Africa. In the case of Moses

	Kuria, Azimio filed an objection stating the case was not a presidential petition.
27 August 2022	Deadline for filing responses related to the presidential petition by various respondents.
29 August 2022	Voting conducted in Mombasa and Kakamega counties; Kacheliba, Pokot South, Kitui Rural and Rongai constituencies, and Kwa Njenga and Nyaki county assembly wards. Results transmission done using KIEMS kits to county tallying centers.
30 August 2022	Supreme Court Pre-Trial Conference for presidential petition.
31 August 2022	Hearing of presidential petition.
31 August 2022	IEBC grants access to its servers to parties in court following Supreme Court order.
1 September 2022	Hearing of presidential petition.
2 September 2022	Hearing of presidential petition.
5 September 2022	Supreme Court of Kenya upholds election of Hon. William Ruto as president in the 9 August 2022 general election.
8 September 2022	The Carter Center releases preliminary report calling for swift initiation of the IEBC post-election evaluation.
13 September 2022	President William Ruto inaugurated as fifth president of Kenya.
15 September 2022	IEBC launches internal post-election evaluation.

The Carter Center at a Glance

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, the Center has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. Please visit www.cartercenter.org to learn more about The Carter Center.



Privacy International at a Glance

Privacy International (PI) is a U.K.-registered charity that promotes privacy as a human right throughout the world. PI is committed to fighting for the right to privacy for everyone, everywhere. Privacy is a fundamental right, increasingly essential to freedom. To ensure universal respect for the right to privacy, PI advocates for strong privacy protections and surveillance safeguards in law and technology.

Democratic engagement is increasingly mediated by digital technology, from campaigning to election results transmission. These technologies rely on collecting, storing, and analyzing personal information to operate. They raise novel issues and challenges for all electoral stakeholders on how to protect our data from exploitation.

In this context, election observers are increasingly called upon to consider the role of personal data and the digital technologies that are used by all main actors in democratic elections. This is not an easy task.

As part of PI's work on Data and Elections, PI supports international, regional, and local election observer missions to consider the role of personal data and the digital technologies that are used by all main actors in democratic elections.

In 2019, PI published "Technology, data and elections: A 'checklist' on the election cycle" to assist election observers update their working practices to ensure that personal data and digital technology are used to support, rather than undermine, participation in the democratic process and the conduct of free and fair elections.