

**VOTER INFORMATION NETWORK AND EDUCATION – AFRICA
(VINE –AFRICA)**



2022 GENERAL ELECTION OBSERVATION REPORT

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EXECUTIVE SUMMARY

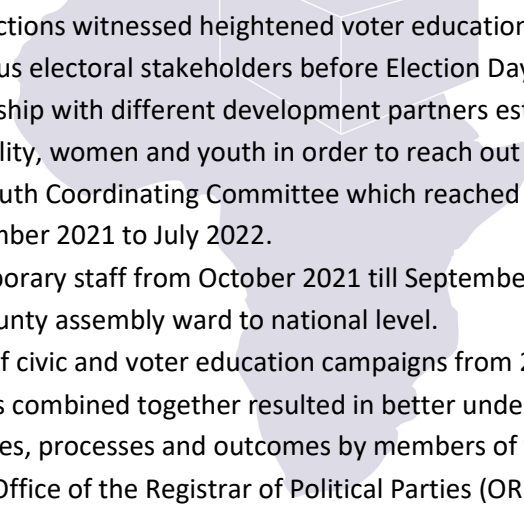
Voter Information Network and Education- Africa (VINE-AFRICA) is a non-profit making and nonpartisan civil society organization registered in Kenya with focus on good governance . We work around strengthening public participation, inclusion and oversight by way of civic education, monitoring of governance processes as well as advocacy.

VINE – AFRICA was accredited in March 2021 as a long term election observation group for the last general elections held on 9/8/2022 . During this period, we observed various electoral activities in the election cycle covering pre-election, election and post election period.

We deployed a total of 100 individuals for the entire period with 10 as long term observers and 90 as election day observers.

During the period, we observed the following electoral activities:

1. VOTER EDUCATION :

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- The last general elections witnessed heightened voter education and awareness campaigns carried out by various electoral stakeholders before Election Day.
 - IEBC also in partnership with different development partners established various inclusion groups under disability, women and youth in order to reach out to all categories of voters.
 - Specifically, IEBC Youth Coordinating Committee which reached out to youths across the country from December 2021 to July 2022.
 - IEBC deployed temporary staff from October 2021 till September 2022 to aid in voter education at all levels from county assembly ward to national level.
 - NCIC also did a lot of civic and voter education campaigns from 2020 till July 2022.
 - All the above efforts combined together resulted in better understanding of electoral information, activities, processes and outcomes by members of the public.
 - Alongside this, the Office of the Registrar of Political Parties (ORPP) also organized a series of trainings to political parties' officials across the country all of which constitute the spread and sharing of knowledge vital for the electoral process.

In our overall assessment there was remarkable indication from members of the public that there is substantial ignorance and misinformation as regards the electoral processes.

Despite having good voter education materials the IEBC made available these material very late in the electoral cycle. This hampers the absorption of the information contained in such materials.

2. VOTER REGISTRATION :

- As a routine IEBC conducts continuous registration of voters at its 290 constituency offices spread across the country. It emerged that very few members of the public are aware of this.

- IEBC conducted two Enhanced Continuous Voter Registration exercises in October 2021 (ECVRI) and another one in January –February 2022 (ECVRII) in readiness for the August general elections. This exercise involved bringing the voter registration services to the nearest polling centre in all the county assembly wards for a specified period. The registration officers working along with voter mobilizers deployed by IEBC made the effort to visit the secondary schools that were accessible to capture new voters that were still in school.
- Evaluation of the registration exercises revealed a serious lack of interest in the registration of young people as voters judging by the 2019 census numbers. It emerged that the young people are not able to register as voters because the office of the registrar of persons had not been able to issue them with national identity cards which is a mandatory requirement for one to register as a voter.
- The targeted numbers were not reached but it was evident that there was low interest in registration by new voters.
- During this period very many voters who had shifted to new locations since the current register was created in December 2012 were denied opportunity to transfer their voting details because of lack of lease agreements, chief's letters, water meters bills, electricity bills, head teacher's letters to prove that they are residents in the new localities. Finally mandatory requirement of traveling long distances to constituency coordinator's offices in order to change polling centres disenfranchised these voters from exercising their democratic rights thus leading to low voter turnout witnessed in the last general election.

VERIFICATION OF VOTERS REGISTER

As a legal requirement, IEBC is required to avail the voter register to the public to verify their details as captured in the register. During the period in which this process was conducted for the 2022 general elections, our team encountered two voters in Ngando Ward, Dagoretti South constituency in Nairobi county who were transferred to Kajicho and Machakos counties respectively without their consent. The voter verification clerks escalated their cases to constituency office and they were asked to report their matter to be addressed.

This happened across the country and was confirmed by audit of the register whose report was never made public and the Chairman vowed to punish those found culpable.

3. MEDIA :

- The media coverage of electoral activities was ideal and no negative reporting was witnessed during the campaign periods and the few instances were taken up by both Media Council of Kenya and NCIC as soon as such instances were flagged .
- The Media Council of Kenya alongside other partners organized the Presidential and Deputy presidential debates as one of the ways to give members of the public a chance to assess the candidates' suitability. Some media houses especially the vernacular one escalated this and also organized debates for the aspiring governors and even Members of parliament. This is a

practice that entrenches informed decision making and it is gaining popularity in our country enabling voters to make informed choices.

- On the election day, Media Council of Kenya deployed monitors that were moving from polling station to polling station and finally to various tallying centres across the country.
- All the leading media houses took the initiative to relay the presidential vote tally from the IEBC results portal but unfortunately discontinued the process towards the tail end leading to anxiety in the country.

4. **ELECTION MATERIAL :**

- Procurement of elections materials was done early enough for preparations and where bidders were dissatisfied with the procurement processes, they filed objections with Public Procurement Board and Judiciary in time.
- As compared to the 2013 and 2017 general elections, there was no single active case active in courts of law at election time relating to procurement.
- Gubernatorial elections in two counties; Kakamega and Mombasa as well as six other electoral areas were postponed to 29th August 2022 due to printing errors on the ballot papers. This in some way affected the turnout negatively in the rescheduled election date.

5. **SECURITY :**

- Security during the campaign and election period improved in 2022 general elections across board .
- There were no major incidents of election related insecurity cases witnessed in this year's election.
- International Justice Mission (IJM) gave National Police Service technical support on election security and these led to distinct categorization between election offences and crimes.

6. **POLITICAL PRIMARIES :**

- According to the records held at the Office of the Registrar of Political Parties there were a total of 85 registered political parties as at 31st May 2022.
- All political parties are required by law to deposit their internal party nomination rules with ORPP prior to carrying out their primaries.
- Majority of parties did not carry out direct voting for their flag bearers but relied on their internal rules to issue tickets for various candidate vying for different seats.
- One political party (Orange Democratic Movement) rolled out the use of electronic register in the areas it conducted primaries and it registered remarkable success.
- Most Political parties were not able to complete their primaries and selection process in time thereby requesting more time from ORPP and IEBC thus squeezing the electoral timelines as drawn by IEBC in their strategic plan.

7. POLITICAL PARTIES DISPUTES TRIBUNAL :

- Party members who were dissatisfied by the nomination process of their parties filed disputes with PPDT.
- Majority of the disputes were finalized at PPDT while others found their way to High Court.
- A number of disputes were not concluded in good time ahead of the elections. This almost occasioned postponement of elections in some electoral areas but an intervention by the Chief Justice ordering all 2022 general election disputes in the courts of law pertaining to political party primaries or nominations to be completed in two weeks gave the IEBC reprieve.

8. REGISTRATION OF CANDIDATES :

IEBC began official registration of candidates from the presidential candidates down to the member of county assemblies from the national tallying centre. County tallying centres for Governors, Senators and County Woman Representatives and finally to constituency tallying centres for registration of members of national assembly and members of County Assemblies candidates to usher in official campaigns.

9. ELECTION CAMPAIGNS :

- Election campaigns started immediately after 2017 general elections and thus IEBC was not able to enforce provisions of the Elections Act on election campaigns.
- From the year 2020 any person living in Kenya would think that the country was in election year.
- It is important to note that the official election campaign period starts with the kicking off of election calendar in the party primaries, but this was not the case.
- Campaigns were mostly carried out within the law and those who breached electoral code of conduct faced the IEBC Dispute Resolution Committee and IEBC Code of Conduct Enforcement Committee depending on the complaint.
- IEBC Dispute Resolution Committee made prompt decisions on cases before it in a timely and efficient hearings unlike the length of time taken by the courts to hear and settle disputes arising out of the same.
- As has become a norm, the 2022 general elections witnessed an electoral cycle laden with a lot of fake news.

10 ELECTION OBSERVERS :

- In March 2022 IEBC introduced a new online accreditation management system from the previous manual application method.
- The new system faced a lot of technical hitches and sending observers' details and obtaining accreditation badges was almost futile.
- This led to late issuance of accreditation badges and in some cases dispatching the issued badges across the country was not possible. Our organization among others were denied

accreditation badges to the national tallying centre and it reached a point of being referred from one officer to another.

- Accessing polling stations and tallying centres by the accredited observers was not easy despite having accreditation badges because some presiding officers and police officers demanded appointment letters and oath of secrecy before. Our team was denied entry into Homa Bay and Kakamega counties tallying centres and several polling stations.
- Unlike 2017 general elections when the Partnerships office provided observers with list of contacts of County and Constituency returning officers across the country for ease of communications in order to address such incidents, this year that was not the case.
- It was therefore not possible to raise some issues for immediate action by the relevant returning officers.

10. RESULT TRANSMISSION TEST RUNS :

- IEBC conducted two results transmission test runs before election day on how presidential election results shall be transmitted from the polling station to constituency and national tallying centres.
- During the test runs, the commission said that the portal shall be opened to the media, public and everyone interested to see the election results from each polling station to prove its transparency in the process.
- However, Commissioner Prof. Guliye who was moderating the session brushed off many concerns and questions raised by participants during the open question and answer sessions.

ELECTION DAY.

We deployed 90 election observers on election day covering a total of 319 polling stations in 23 counties.

On the eve of election, all constituency returning officers prepared for the dispatch of election materials and personnel to man all the polling stations.

It was during preparation for dispatch of election materials that it was discovered that there was problem of printing of ballot papers which led to postponement of election in 8 electoral areas thus Mombasa and Kakamega Gubernatorial elections, four constituencies and two member of county assemblies seats.

Ballot papers for Nandi Hills county assembly seat also got lost between the returning officer's constituency tallying centre and one polling centre. This led to arrest of the police officers who were on duty and the postponement of election for that seat in the entire county assembly ward.

In Dagoretti North and Westlands constituencies both in Nairobi county witnessed late opening of polling stations because of late dispatch of election materials, missing election officials and late arrival of police officers.

OPENING OF POLLING STATIONS :

Majority of polling stations observed by our team witnessed opening at 6 am which is the time provided for presiding officers to declare polling open.

Some polling stations were opened late due to various reasons

BIOMETRIC IDENTIFICATION:

Our observers had hectic time getting KIEMS kit serial numbers from presiding officers and out of the total 319 polling stations we observed, only 217 presiding officers gave us serial numbers of their kits while the rest declined that they are under instructions not to disclose such information to any person except IEBC officials.

Identification of voters went on smoothly in most polling stations but some polling stations experienced serious hiccups leading to some voters being turned away and not being allowed to vote.

Biometric identification of elderly voters particularly proved cumbersome and specifically at Got Kochungo primary school polling centre in Arujo Ward in Homa Bay Town constituency where seven elderly voters were turned away; thus disenfranchised because they could not be identified by the KIEMS kit after the presiding officer used all alternative and complimentary methods.

In Emwatsi primary school polling centre in Emuhaya constituency, West Bunyore Ward, in Vihiga County KIEMS kit failed to function completely for the duration of time our observer was in the centre for one and half hours from 1440 till 1601 hours when our observer checked out of the polling centre. During this time the presiding officer Mr. Brian Moyasi was helpless as all he could do was to make several calls to the returning officer who kept on promising that IT officer was on the way to address the problem.

VOTING :

Voting went on well in all the polling stations we visited without any disruption or any curious incidence.

In Mathare constituency, St. Theresa's Girls Secondary polling centre, polling station 8 we witnessed a case of polling agents marking ballot papers for assisted voters in the presence of presiding officer. They were also taking photos spoilt ballot papers before being kept by the Presiding Officer.

PRISON :

Our team visited Kiambu GK prison in Kiambu constituency within Kiambu county .

During our visit the observation team took one and a half hours without any voter casting their vote as all the inmates had all voted by 7 o'clock in the morning.

Only two voters came from outside the correctional facility in order to vote in the presidential election.

At the time we left the polling station at 2 o'clock in the afternoon only 17 % of the voters had cast their ballots.

Election conducted at the prison facility was for presidential election only under code 049 which represents county 49.

BALLOT PAPER RECONCILIATION:

In Ronald Ngala primary school polling centre, polling station 3 at the close of polling the KIEMS kit statistics had 349 voters while used ballot papers counter foils had 342 ballot papers issued without any spoiled ballot papers.

The Presiding officer and the political party agents had to agree that the voters who had cast their votes were 342 in the used counterfoils and not 349 as reflected in the KIEMS kit.

COUNTING:

Counting in all the polling stations our team observed did not witness anything unusual and all the political party agents reached harmonious decisions with presiding officers.

This led to agreements on valid and invalid votes as quickly as possible in order to hasten the counting process of all seats.

TRANSMISSION:

We specifically limited our observation of transmission of election results of presidential election.

The presiding officers filled in the presidential results declaration forms 34A in the presence of all party agents, media and observers in the counting room and thereafter everybody took photos with their smartphones.

The presiding officers finally transmitted the scanned copy of the completed form 34A for presidential election results declaration. As opposed to the 2017 general elections, this year did not encounter any hitches countrywide. This ensured timely availability of presidential elections results to the public on the IEBC results portal.

From the polling stations captured by our agents, we tracked all the results transmitted from the polling stations in the public results portal according to the test runs we did and all results matched what our observers witnessed in the polling stations and presidential declaration results forms 34As.

At the close of voting each and every KIEMS kit from all the polling stations transmitted returns showing voter turnout from across the country. It emerged that in some polling stations there was lack of network coverage and hence about 86000 voters were not captured in the KIEMS kit voter turnout according to IEBC.

PRESIDENTIAL ELECTION RESULTS ANNOUNCEMENT:

On Monday morning of 15th August 2022 IEBC gave a press notice and invitation to declaration of results at 3 o'clock .

As preparations to declare the presidential results at national tallying centre in Bomas of Kenya were going on for the scheduled time, shortly before that a group of four commissioners led by vice chairperson called a press conference at Serena Hotel where they said that they are not party to the results set to be announced at Bomas of Kenya.

Shortly thereafter, chairperson announced the results and declared Dr. William Samoei Ruto, UDA candidate president elect with Raila Amollo Odinga, Azimio One Kenya Coalition candidate runner up.

SUPREME COURT :

The court process provides a crucial component of understanding the electoral process in terms of dispute resolution and making of determinations on legal matters around elections. After presidential declaration of results, 9 petitions were filed in the Supreme court for determination on the validity of the presidential election held on 9/8/2022.

The runner up and Azimio la Umoja One Kenya Coalition presidential candidate Raila Odinga sued IEBC and the winner for nullification of the presidential results.

In the suit; IEBC commissioners who said the tallying of results was different filed affidavits from the main IEBC suit supporting the nullification of results.

The Supreme Court findings upheld the validity of results as declared by IEBC chairman Mr. Wafula Wanyonyi Chebukati thus paving the way for swearing in of president elect as the 5th president of the republic of Kenya.

The main observation from the court ruling was that all the commissioners are equal and the chairman does not enjoy any special powers as national returning officer except to chair commission meetings . Also that the petitioners failed to show any credible evidence vote tampering as alleged by them. There were also no plenary meeting resolutions to support gazetting of the chairperson as the national returning officer. The 2022 general elections did not centre much on non compliance to legal statutes as was the case in 2017 general elections meaning the commission made every effort to comply to all the necessary legal requirements around elections.

LEGAL FRAME WORK FOR CONDUCTING ELECTIONS GENERAL ELECTIONS

Legal frame work for conducting general elections in Kenya is established under Article 101 (1) on the election of parliament and it states “ A general election of members of Parliament shall be held on the second Tuesday in August in every fifth year.

All other subsequent elections in Articles 136 (2)(a) ,177(1)(a) and 180(1) are held on the same day as a general election of members of Parliament being on the second Tuesday in August in every fifth year.

The procedure at presidential election is provided for in Article 138 (3) (a),(b) and (c). The procedure states that “ In a presidential election all persons registered as voters for the purposes of parliamentary election elections are entitled to vote; the poll shall be taken by secret ballot on the day on the day specified in Article 101(1) at the time, in places and in the manner prescribed under an Act of Parliament and after counting the votes in the polling stations, the Independent Electoral and Boundaries Commission shall tally and verify the count and declare the result. “

A presidential candidate shall be declared winner in accordance to Article 138 (4) (a) and (b). The procedure for declaration states that “ A candidate shall be declared elected as President if the candidate receives more than half of all the votes cast in the election and at least twenty five per cent of the votes cast in each of more than half of the counties.

FINDINGS:

1. There was improved voter education voter education on the election procedures and this was witnessed in the reduced insecurity during electioneering period.
2. The two enhanced continuous voter registration exercises conducted didn't meet the intended target of six million voters.
3. Many voters were denied opportunity to transfer to voting centres nearest to their new residences because of either travelling long distances to constituency election coordinator's offices or lack of proof of residence.
4. Some voters were transferred from their voting centres without their knowledge .
5. There were fewer court cases relating to procurement of election materials because of early preparations.
6. Identification of voters failed completely in some polling stations without presiding officers deploying complimentary identification mechanisms.
7. There was discrepancy in the KIEMS kit voter turn out and actual voter turn out in one of the polling stations captured by our team.
8. This was the most transparent election results transmission system from the polling station to the national tallying centre.
9. Creation of 49 counties in Kenya outside First Schedule (Article 6(1)) for purposes of conducting elections and conducting presidential election only in 2 such 'counties ' is unconstitutional ,null and void without conducting a general election of Members of Parliament in accordance with Article 101(1) on the second Tuesday in August in every fifth year as read together with Article 6(3).
10. Supreme Court of Kenya has illegally amended Article 138(4)(a) of the constitution by separating invalid votes from valid votes hence altering the meaning “ more than half of all the votes cast in the election ”.
11. Elections Act 2011 failed to provide for conduct of presidential elections in accordance with Article 138(4)(b) by having County Returning Officers who file returns for the percentage score of votes from each county indicating the mandatory 25% score of votes from at least half of the counties for the winner of presidential elections.
12. Creation of 2 counties for purpose of conducting presidential election only changes the number of counties implied in Article 138(4)(b) used in declaration of winner of election.

13. Substantial number of voters did not take part in the 2022 general elections because they didn't have resources to facilitate transfer their details to new polling centres because of bureaucratic requirements.
14. Presiding officers obstructed observers from doing their work including taking photographs.

CONCLUSION:

The presidential election results declared on 15th August 2022 following the election held on 9th August 2022 met the threshold of free, fair, credible, transparent elections and reflected the true will of the voters at the polling stations as announced by the respective presiding officers.

RECOMMENDATIONS:

1. IEBC must enhance voter education in the entire electoral cycle and not only towards when the country is approaching a general election. The voter education should emphasize on presidential election results transmission and management system.
2. Supreme Court should on its own initiative review the meaning of Article 4(a) of the constitution and rescind 2013 ruling or in the absence of that IEBC must hold a national conference on meaning of more than half of all the votes cast.
3. Supreme Court should differentiate between giving opinion and arbitrating election dispute in court. Any opinion given by the court if any to aid in conducting of free, fair, transparent and credible election should be given two years before an election according to the suggestion of Kriegler Committee but giving an opinion during an election dispute is an admission that the election was not done according to the laid down legal framework and this amounts changing of goal post after declaration of results.
4. IEBC should create rules and regulations to facilitate transfer of voters at the polling centre without forcing voters to transfer travel to constituency headquarters to effect such transfers.
5. Parliament must legislate legal framework for conducting all six elections in accordance with the First Schedule within prisons and outside the country. Any election conducted on the second Tuesday of August in every fifth year without conducting general election of members of Parliament inside Kenya or outside is not envisaged in the constitution.
6. Parliament should create rules and regulations appointing County Returning Officers to file presidential election returns from each county implied in Article 138 (4)(b).
7. IEBC must have proper and uniform mechanism of identification of voters in case of failure of KIEMS kit.