



NGEC

National Gender and
Equality Commission

INVOLVEMENT AND PARTICIPATION OF SPECIAL INTEREST GROUPS (SIGS) IN THE 2022 GENERAL ELECTIONS IN KENYA



**Report on Monitoring of the Campaigns,
Administration and Logistics, Polling and
Post-Polling Activities**



INVOLVEMENT AND PARTICIPATION OF SPECIAL INTEREST GROUPS (SIGS) IN THE 2022 GENERAL ELECTIONS IN KENYA

**Report on Monitoring of the Campaigns,
Administration and Logistics, Polling and
Post-Polling Activities**

The National Gender and Equality Commission (NGEC), 2023



Published by
National Gender and Equality Commission

1st Floor, Solution Tech Place, 5
Longonot Road, Upper Hill, Nairobi
P.O BOX 27512-00506
Nairobi, Kenya
Landline: +254(020)3213100
Mobile: +254 (709)375100
Toll Free: 0800720187
SMS: 20459
info@ngeckenyak.org
www.ngeckenyak.org
Twitter: @NGECKENYA
www.facebook.com/NGECKKenya

Kisumu Office

Reinsurance Plaza, 3rd Floor, Wing B,
OgingaOdinga Street,
Kisumu Town.

Nakuru Office

Tamoh Plaza, 1st Floor, Kijabe Street,
Nakuru Town.

Garissa Office

KRA Route off Lamu Road, Province,
Garissa Town.

Malindi Office

Malindi Complex, off Lamu-Malindi Road,
Malindi Town.

Kitui Office

Nzambani Park, off Kitui Referral Hospital Road,
Kitui Town.

Isiolo Office

County Estate along Kiwanjani Road,
next to KRA Offices

©2022

Table of Contents

Foreword.....	v
Acknowledgement	vi
Executive Summary.....	vii
Recommendations.....	xii
Overall conduct of elections	xii
Elections campaign, logistics, polling and post polling	xiii
The structure of the report.	xiv
List of Abbreviations	xv

CHAPTER ONE

Introduction.....	16
1.1 Electoral Context in Kenya.....	16
1.2 Methodology of Monitoring and Observation.....	17
1.2.1 Engagement with External Actors	17
1.2.2 Recruitment and Training of Monitors and Field Work.....	17
1.2.4 Data Management, Analysis and Processing	18
1.3 Outline of the Report	18

CHAPTER TWO

Legal and Policy Frameworks	19
2.1 The Constitution of Kenya, 2010.....	19
2.2 National Policies and Legislation.....	20
2.2.1 The National Gender and Equality Commission Act, 2011.....	20
2.2.2 The Elections Act No 24 of 2011 and as amended in 2022	20
2.2.3 IEBC's Election (Party Primaries and Party Lists) Regulations 2017	20
2.2.4 Political Parties Act No. 11 of 2011 and amended in 2022	21
2.2.5 Code of Conduct for Political Parties, 2016 and revised in 2019	21
2.3 Gazetted Party and Independent Candidates for the 2022 General Elections.....	21

CHAPTER THREE

Campaign Monitoring	23
3.1 Identification.....	23
3.2 Campaign Monitoring	25
3.3 Campaign Messages	31
3.4 Campaign Funding.....	32
3.5 Violence and Malpractices: Instigators and Victims	36

CHAPTER FOUR

Administration and Logistics	40
4.1 Agency Preparedness on Various Domains.....	42
4.2.1 Readiness of transport services	42
4.2.2 Readiness of staffing levels	43
4.2.3 Availability of Security Officials and Security Services	43
4.2.4 Readiness with strategic materials	44
4.2.5 Measures to control people's movement around the stations/centres	44

CHAPTER FIVE

Poll Monitoring.....	47
5.1 Identification.....	47
5.2 Pre-Voting Preparedness.....	48
5.3 Status of the Polling Station	53
5.4 Voting Procedures	54
5.5 Support and Facilitation for Voters.....	56
5.6 Polling Station Closing Time	57
5.7 Violations of Selected Legal Provisions and Guidelines	59
Box 5.7: Summary of Bungoma County Murder Report	59

CHAPTER SIX

Post-Polling Activities	63
6.1 Counting/Tallying Processes	64
6.2 Post-Tallying Activities.....	68

CHAPTER SEVEN

Recommendations.....	71
Overall Conduct Of Elections.	71
Elections Campaign, Logistics, Polling and Post Polling	72

Foreword

The Constitution of Kenya, 2010 provides for principles of equality, freedom from discrimination and inclusion for all persons including guaranteeing the equal enjoyment of rights; civil, political, economic, social, cultural rights and group rights. Article 38 expressly provides for the right for every citizen to make political choices, the right to free, fair and regular elections, the right to vote by secret ballot in any election or referendum; and to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office. Despite these provisions, Special Interest Groups (SIGs) are likely to be disproportionately disenfranchised in the electoral process if deliberate actions are not taken to ensure their participation and inclusion in the electoral process.

To ensure protection of the rights and freedoms of SIGs, Section 8 (b) of the National Gender and Equality Commission Act No. 15 of 2011 mandates the Commission to: monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions; while 8 (d) obligates the Commission to coordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalized groups in national development and to advise the Government on all aspects thereof.

In line with these functions, and the Constitution of Kenya 2010, the Commission monitored the participation and engagement of SIGs in the 2022 general election including the pre-election, during and post-election processes. In preparation for the monitoring exercise, the Commission held extensive consultations with different groups including the Independent Electoral and Boundaries Commission (IEBC), Office of the Registrar of Political Parties (ORPP), Political Parties, the media, aspirants and candidates, election observers and other stakeholders dealing with issues of SIGs. The Commission sought to consolidate as many efforts and strategies aimed at enhancing the participation and inclusion of SIGs in the 2022 General Elections.

The monitoring exercise focused on the involvement and participation of SIGs including women, youth, Persons with Disabilities (PWDs), older members of society, and minority and marginalized persons as candidates, voters, electoral officials, agents and observers of elections. This report provides a summary of the key observations made, and recommendations for consideration in the design, management and execution of future electoral processes in Kenya. Some observations are anticipated to inform SIGs themselves on how to actively claim their civil rights, and through their networks participate more meaningfully and actively in future electoral processes.

The recommendations contained in the report will require key actors with the greatest responsibility in the management of elections to draw specific strategies for their implementation. I hope that the findings contained herein will go a long way to enhance the level of participation of SIGs in competitive elections.



Dr. Joyce M. Mutinda, PhD, EBS.

CHAIRPERSON

Acknowledgement

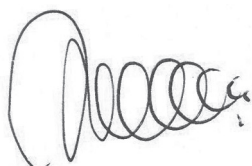
Firstly, I wish to recognize the Commissioners under the leadership of the Chairperson for their guidance in the 2022 elections monitoring exercise. I also thank all the National Gender and Equality Commission staff who doubled up as election monitors for their diligence in the execution of this activity amidst difficult circumstances.

Special thanks go to the Research, Monitoring and Evaluation Department team comprising of the late Fredrick Lumiti as the technical lead, Josephine Kagucia, and George Kimani, with the assistance of John Munene, and under the leadership of Paul Kuria, the Director of Programs and Research, and Winfred Wambua, the Assistant Director Programs. This team played a pivotal role throughout the process from the development and validation of monitoring tools, training of NGECE monitors in readiness for the monitoring exercise, planning, execution of the activity, and writing and validation of the report.

I also extend appreciation to Dr. Eric Nyanjom from the Technical University of Kenya for his contributions to the data analysis and drafting of this report.

I further register my utmost appreciation to the Government of Kenya for providing funding to support the activity. Additional funds were also provided by the Foreign, Commonwealth and Development Office (FCDO) of the UK Government through a grant to Tetra-Tech Company (USA), REINVENT program in Kenya, and also from UN Women. I thank you for this immense support.

Lastly, I thank the Independent Electoral and Boundaries Commission (IEBC) which granted the NGECE officials observer status besides providing the relevant information to the monitors upon request.



Betty Sungura, MBS
COMMISSION SECRETARY/CEO

Executive Summary

Background: Chapter Four of the Constitution of Kenya, 2010 contains an elaborate Bill of Rights with specific provisions on civil, social, economic and cultural rights that all people in Kenya including the most vulnerable population should enjoy. Article 27 emphasizes gender equality and freedom from discrimination, especially concerning Special Interest Groups (SIGs). Article 38 enumerates the political rights of every Kenyan including the right to make political choices, the right to free, fair and regular elections, and the right if elected, to hold office. These rights, the principle of gender equality, freedom from discrimination and inclusion are further elaborated through various legislations, policies, and regulations. Notwithstanding all these provisions, opportunities are often limited for special interest groups (SIG) to meaningfully participate in electoral processes.

The National Gender and Equality Commission (NGEC) is a Constitutional Commission established by the National Gender and Equality Act. No. 15 of 2011 under Article 59 (4) & (5) of the Constitution of Kenya, 2010. The Commission's mandate is to promote gender equality and freedom from discrimination for all people in Kenya with a focus on SIGs, which include: women, children, youth, persons with disabilities (PWDs), older members of society, minorities and marginalized groups. Section 8 (b) mandates the Commission to: monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions; while 8 (d) obligates the Commission to coordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalized groups in national development and to advise the Government on all aspects thereof.

It is in line with the aforementioned mandate that the Commission monitored the participation and engagement of SIGs in the 2022 general elections processes including voter registration, voter education, political campaigns, political party nomination processes, administration and logistics related to the polling, tallying and announcement of the results, and post polling activities. This report is limited to observations made during four electoral processes (campaigns, logistical preparedness of the electoral management bodies in the last two days to polling, polling, and counting, tallying and announcements). NGEC has published separate reports on all other electoral processes.

The overall goal of the monitoring activity was to determine how the SIGs were involved in the electoral processes. More specifically the activity sought to document the preparedness and involvement of SIGs as aspirants, candidates, voters, electoral officials, agents and observers of elections. Other aspects covered by the exercise included: Campaign financing of SIGs candidates; access to information about elections; accessibility of campaign and polling venues; incidences of Gender Based Violence particularly those directed to SIGs; electoral malpractices and how they affected SIGs' involvement in elections; and media coverage of SIGs during the campaigns period. Monitoring tools were developed for the different electoral phases.

Summary of findings: The Commission's campaign monitoring ran from May 29 to August 6 2022, covering 44 of Kenya's 47 counties, and involved 3000 observations.

i) Campaigns: Most of the campaigns observed were conducted in markets (29%), roadshows (28%) and public open grounds (27%). Such venues were conducive to SIGs either as aspirants, candidates, voters, or observers. More than one-half of these venues were described by monitors as fully accessible to PWDs and other persons with limited mobility. A few cam-

campaign sessions were conducted in private spaces including funerals, weddings, and religious institutions

Local languages were used in about one-third (37%) of the campaign sessions monitored. Campaign educational materials printed in large font sizes were observed in 30% of the campaign sessions monitored while sign language services were only recorded in 1% of the campaign observations. On one hand, this finding points to levels of exclusion in the conduct of campaigns for example to persons with hearing disabilities, and those who don't speak the local languages used in the campaign sessions.

One-half of the campaign sessions were organized by individual candidates while political parties organized about 28% of the campaign sessions. Youth candidates attended 42% of the total campaign rallies observed, 40% were attended by women candidates, and 7% by PWDs. This finding indicates the significant involvement of youth, women and PWDs candidates in the campaign processes. It was however evident that in nearly all campaign rallies where PWDs candidates were present, nearly all were women. In a few instances, children were observed attending campaign sessions.

In terms of media coverage, three-quarters of campaign rallies were covered by media and largely by social media. There were significant differentials in the media coverage of SIGs in the campaign rallies where more airtime was apportioned to men and occasionally to women who aligned themselves with male candidates. Only a few campaign rallies organized by SIG candidates were covered by mainstream television and radio media. One-third of campaign rallies delivered messages on development, 22% focused on peace-related messages, and 21% focused on voting processes and voter preparedness.

Most of the SIG candidates reported a lack of adequate finances and a lack of support from their political parties towards holding effective campaign meetings. Sixty percent of SIGs funded their campaigns with resources drawn from friends and relatives, 27% from political parties, and 7% from community organizations, loans and savings, and other sources. About one-half of the SIGs candidates indicated that the financial shortfall (unmet financial gaps) for their campaigns was high, while 22% stated the shortfall was moderate. The SIGs candidates, therefore, worked closely with financially able candidates to secure platforms where they could discuss their manifestos with the electorate.

Multiple campaign-related malpractices were observed. These include; bribery (disguised as transport reimbursement for campaign attendees), use of discriminatory statements, incitements, campaigning beyond the specified time (after 7 p.m.), and conduct of campaigns in non-designated venues and without following approved campaign schedules.

The campaigns however were generally peaceful. Cases of violence were largely common where security officials were absent. In a few instances where violence erupted and security officers were present, such incidences were largely dealt with. Most of the violence during campaigns was caused by overlapping time and venue of the campaign for different candidates. Youth (campaign attendees and candidates), were the highest instigators of violence. Most of this violence was exhibited in terms of assault, use of vulgar, insults and derogatory language,

2022 General Elections

Multiple campaign-related malpractices observed include bribery (disguised as transport reimbursement for campaign attendees), use of discriminatory statements, incitements, campaigning beyond the specified time (after 7 p.m.), and conduct of campaigns in non-designated venues and without following approved campaign schedules.

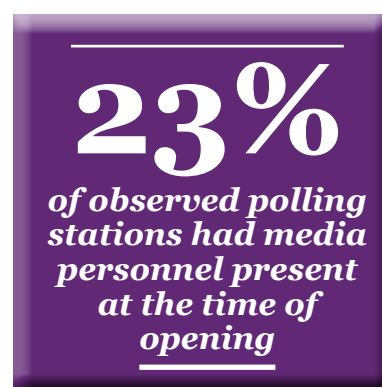
intimidation and defacing of campaign materials. Of all observations made, six reports of sexual harassment, 15 reports of physical violence, and 33 cases of psychological violence were recorded.

ii) Preparedness: administration and logistics. The NGECE monitored the extent to which agencies with the greatest responsibility of managing and implementing elections were prepared to deliver the 2022 general elections. Such agencies include IEBC and security agencies. Here an administration and logistics monitoring tool was applied. The assessment covered 42 sites including 39 counties and diaspora sites in Tanzania (2) and Uganda (1). The preparedness was measured in 6 domains namely; transport, staff, security, delivery of electoral strategic materials, and effective crowd management strategies before polling.

Three-quarters of the sites observed (polling stations, constituency and country polling headquarters), were well prepared in terms of transport, security services, electoral staff, and availability of strategic materials. Nine percent of such sites were not prepared at all. About 80% of the monitored sites had staff ready to undertake the polling exercise while 8% lacked enough staff. In one of the constituencies, clerks were undergoing their training for 12 hours for the polling. Seventy-nine percent of the monitored sites were well prepared in terms of security services/measures, while 11% of sites had not received details about personnel required to provide security during the polling.

Seventy percent of sites monitored were adequately prepared with strategic materials for elections that include the availability of tested Kenya Integrated Election Management System (KIEMS) kits, stamps, ballots, ballot boxes, polling booths, and voter registers. One-third of the monitored sites were missing either one or more of such strategic materials. Two-thirds of the sites were prepared to handle and manage crowds, 6% were lowly prepared, while 14% were not prepared at all. About three-quarters of the sites had IEBC educational and instructional materials placed very close to the polling stations. This included 'pasted on the wall', voter registers. Despite adequate preparedness in this domain, many voters complained of missing names on the register, and defacing of the registers, in other cases, registers were removed from one polling station and placed in the incorrect polling stations, printed register in very small and faint prints/fonts, while in others the registers were either pasted too high or too low (by height).

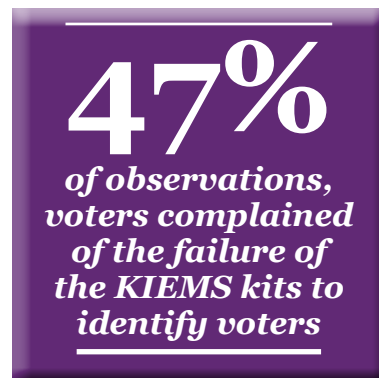
iii) Polling: Observations on polling were documented in six broad areas (pre-voting, status of polling stations, voting procedures, support and facilitation of voters, closing of polling stations, and adherence to legal requirements concerning polling). At the time of opening of the polling stations, only 23% of observed polling stations had media personnel present, 94% had all electoral officials present in which only 7% had an officer with a disability, 86% had security officers visibly present, 83% had party agents present, and 97% had stations well demarcated to control the movement of voters. Ninety-two percent had all election strategic materials present while 7% lacked one or more of the necessary elections materials at that time. Ninety-eight percent of observed polling stations allowed observers to access the polling stations while in 88% on sites, the presiding officer offered a briefing at commencing of voting.



Nearly all monitored polling stations (96%) had booths arranged to allow privacy during the casting of votes. About 20% of the monitored polling stations were inaccessible to Persons with Disabilities (PWD), and the elderly mainly due to lack of ramps, narrow staircases, narrow entrances, and the location of polling stations for example on hilly grounds. Monitors

observed malpractices during voting. In 13 incidences, candidates were observed conducting campaigns at the polling centres, while in 17 instances, campaign-related materials and posters were found within the polling centres. On voting procedures, 61% of the monitored polling stations confirmed to voters that the ballot boxes were empty in readiness for voting. In some polling stations complaints were recoded about delayed receipt of ballot boxes.

In 47% of observations, voters complained of the failure of the KIEMS kits to identify voters especially older persons whose biometric features specifically finger prints were worn out. In selected polling stations, candidates recorded suspicion that IEBC officials were tampering with the KIEMS kit and election results. In other cases, the names of eligible voters were not found. It is important to note that measured against all the voter identification problems, the KIEMS kit accounted for 90% of the lot. This led to delays in voting, caused long queues, and anxiety among voters and party agents. In a few instances, more than one person other than an aide was seen in the polling booths. Most of these persons were IEBC officials or party agents who invited themselves into the booths without reference to the voter.



The monitors recorded complaints received in about one-half (47%) of the polling stations observed. The most frequently mentioned complaint particularly by SIGs were; voters queuing in the wrong polling stations (27%), long queues (26%), voter names could not be found/traced (24%), and intimidation of the voters (2%). Among SIGs, youth (19%) constituted the highest proportion of persons who raised complaints compared to sick persons (7%), and lactating mothers (7%).

The monitors observed that older persons constituted the highest proportion of SIGs who sought help during polling. Others who sought help were PWDs. Monitors further observed that SIGs especially older persons were allowed to vote on a priority basis, provided with seats to rest before voting, and PWDs assisted to vote based on protocols and guidelines outlined by IEBC. Nearly no polling stations observed, offered sign language interpretation services.

Four-fifths of the polling stations closed at 5 p.m. while 48% closed after 5 p.m. but before or at 6 p.m. Monitors recorded that in 41% of the polling stations, there were voters in the queue at the time of closure. In a few cases (7 instances), those waiting in the queue were not allowed to vote meaning in a majority of polling stations all voters in the queue during the time of closure were allowed to vote. Overall 73% of the observations rated voting processes as satisfactory while 27% were not satisfied with the voting procedures.

During polling, some malpractices were documented. They include transportation of voters and payment of money to voters disguised as transport reimbursements, and undue influence of voters by candidates in the pretext of monitoring voter-flow at the polling stations. The occurrence of violence during polling and counting of votes was minimal and recorded in only 14 instances of all observations completed. Most of these cases of violence were instigated by youth voters, youthful party agents and youthful candidates. Few incidences of violence were directed at youth. Other victims of violence were presiding officers, security agencies and general voters. In a few instances, the disappearance of electoral officials was documented. Often the few cases of violence were exhibited in terms of physical assault, and use of vulgar language directed to women candidates and voters. Out of the 14 instances of violence, security officials responded and deflated violence in 11 instances.

iv) Post polling: Monitors rated the conduct of activities after the closure of the polling. Ninety-eight percent of the monitors noted that sealing of the ballot boxes was correctly done following the laid down guidelines. The NGECE monitors documented post-polling activities and covered such activities at the poll counting stations (16%), and constituency tallying centres (59%), one observation in the national tallying centre, and the rest of the observations (25%) in the county tallying centres.

Ninety-five percent of monitors rated the counting of votes as completed based on the laid down procedures. Monitors observed precautions taken during such activity. 26% of observations reported that IEBC officials were present throughout the main stores (of the poll materials awaiting to be counted or materials that remained unused after polling). Security officers were conspicuously present throughout the counting exercises in 27% of the observations made and disallowed entry to non-authorized persons into the counting stations in 24% of the observations. IEBC officials were observed briefing election observers and party agents about the need to maintain the security of the poll materials in 21% of the observations made.

In 36 instances, the monitors recorded incidences where accredited PWDs were denied entry into the tallying centres. Where such officers with disability were allowed to access the tallying centres, most of them faced inaccessibility-related challenges including a lack of ramps, narrow entrances to the counting halls, lack of adequate spaces to move around due to large stacks of election materials. Seventy percent of the monitors made observations where presiding or returning officers were committing accredited PWDs indicating that they shall be supported and facilitated to participate or witness the counting and tallying exercises. In 11 instances, monitors documented examples where IEBC officials denied accredited persons to examine one or more of the aspects of the official management of results that included examining the filing of electoral forms and records, and submission of results.

Ninety percent of monitors rated satisfactory the announcement of results. Where announcement of results was delayed, the main reason cited was that IEBC officers were waiting for results from some polling stations or constituencies, awaiting the presence of party agents, or due to disputes that included allegations that some unsealed ballot boxes had been stuffed with marked ballots. In 70% of the observations, the election results were transmitted electronically.

Ninety-seven percent of the monitors rated satisfactory the documentation of valid and invalid votes. More specifically, the existence of a definite procedure for dealing with disputed votes was present in 73% of the observations made. 95% of the critical parties involved in the elections were reported to agree and approve the procedure of dealing with disputed ballots. In 35 instances, candidates requested a recount of the counted votes or tallied results. 13 of these cases were lodged by female candidates while 11 were lodged by youth candidates. In all cases except 2, the requests were granted.

The NGECE monitors documented cases of 'rising tensions' within the communities, and the presence (or lack) of peace and conflict prevention programs initiated during and after. Such observations were made in 83 different areas. Such tensions and conflict were noted among party agents, communities, voters and among candidates. Tensions were fuelled by among reasons; suspicion that IEBC officials were tampering with KIEMS kits, suspicion about the theft of votes cast and manipulation of results in favour of particular candidates, and the alleged presence of vigilante groups watching over voters, especially from the opposition side of specific candidates. Tensions were manifested in the form of fear and anxiousness among SIG voters who in some cases were seen casting their votes hurriedly perhaps to leave for safer grounds. People who did not vote because of varying reasons reported fear of being watched over and monitored by vigilante groups who vowed to punish such people who never voted.

Party agents were also in fear of how their candidates would handle the results of the elections.

The occurrence of just a few incidences where tension was elevated is an indicator of voters' and candidates' resilience and tolerance after voting. In such areas, the monitors noted that a few actors were actively involved in managing tensions and anticipated elections-related conflicts. These activities were largely undertaken by political parties, security agencies, government agencies, individuals or volunteers, faith and community-based organizations, humanitarian agencies, and in a few cases private companies, and media.

Recommendations

Based on key observations made, NGEK makes the following recommendations organized by major thematic areas of observations and responsible agency.

Overall conduct of elections

1. The multiple gaps identified during the elections including the limitation of IEBC to adequately prepare for elections, monitor and enforce laws on electoral offences to curb numerous malpractices, is largely due to among other reasons, the lack of adequate financial resources. In a few instances, the finances were made available to IEBC too late into the electoral cycle. To this end, we recommend that in future elections the National Treasury and Parliament should provide IEBC promptly the necessary financial resources for them to adequately prepare and effectively conduct elections according to an approved Electoral Operational Plan (EOP).
2. The IEBC should include in its future election budget, the finances required to ensure electoral processes are inclusive and responsive to the critical needs of SIGs. For example, finances necessary for 'reasonable physical adjustments' of the polling stations and centres, that do not meet minimum universal design requirements such as faulty (or lack of) ramps, and narrow entrances.
3. All actors with the greatest responsibility in the preparation and conduct of elections including IEBC, political parties, individual candidates, the Office of Registrar of Political Parties, and security agencies should adhere to the timelines set for each of the activities contained in the EOP. Lack of adherence to the electoral timelines for activities leading to general elections has a direct effect on the meaningful participation of SIG candidates, observers and voters in the electoral processes. Often such vulnerable groups hardly receive information about any abrupt changes made to the electoral plan and therefore are excluded from participating in critical decisions and activities.
4. IEBC and other agencies involved in the enforcement of the law, such as the Office of the Director of Public Prosecutions (ODPP) should ensure that all candidates and voters adhere to the Election Offences Act. No. 37 of 2016, elections code of conduct (revised in 2019), Sexual Offences Act No 3 of 2006, to protect SIG candidates and voters from undue influence, all forms of electoral-related harm and violence, intimidation, electoral malpractices such as voter bribery, forced transportation and movement of voters, just to mention a few.
5. The Parliament to amend and align the Elections Act, 2011, with the Political Parties Act No 11 of 2011 as amended in 2022; enact a law to give effect to Articles 100, 27, and 81b of the Constitution of Kenya 2010. These laws have specific provisions protecting and promoting the rights of SIGs as candidates and voters in elections. They also go a long way in promoting electoral affirmative actions and programs directed to SIG candidates and voters

6. Over the years, the space for short-term and long –term monitoring of elections is expanding. The demand for the application of technology in election monitoring is also on the rise. In 2022, IEBC accredited more than 8000 monitors, the highest ever recorded in history. In this regard:
 - a. There is a need for the IEBC to develop a comprehensive framework for managing election monitors with a focus on ensuring equitable distribution of the monitors by electoral units. This will ensure comprehensiveness and equity in the monitoring of elections across all counties, constituencies, and wards.
 - b. Development partners and government should consider providing specific resources to accredited state agencies with the core mandate of monitoring elections , to comprehensively conduct monitoring of elections in all counties, constituencies, and wards. Such agencies include NGEC.

Elections campaign, logistics, polling and post polling

The monitoring report shows major limitations among SIG candidates and voters in their participation in the 2022 general elections campaigns. They were disadvantaged in terms of; exposure to electoral violence especially when other candidates fail to follow campaign schedules, the financial burden required for running campaigns, lack of diverse communication to reach persons with visual and hearing disabilities, inadequate media coverage of their campaigns, electoral malpractices that influence voter decisions often against those who are financially unstable, and inadequate support from their political parties, just to mention a few.

7. In future elections, the IEBC should enforce the Election Campaign Financing Act No 42 of 2013 as amended by the National Assembly on April 13 2022, and initiate as soon as is practically possible the public participation in the Elections Campaign Financing Regulations 2016 and Campaign Expenditure Limits to operationalise the Elections Campaign Financing Act, 2011 and subsequent amendments of 2021. These measures will ensure that the financing of electoral campaigns is transparent, known to all Kenyans, have public input, and that SIG candidates are protected from exploitative unwritten campaign finance requirements actions. Further, this will ensure all candidates are held to account for any excessive expenditures incurred in the elections. Such measures will deter campaign malpractices that are often applied to the disadvantage of SIGs candidates and voters.
8. The ORPP should work closely with the political parties, Political Parties Liaison Committee (PPLC), and individual candidates to proactively enforce the Political Party Code of Conduct revised in 2022 especially provisions of Part III (in its entirety), that among others compel political parties to (a) respect the right of all persons to participate in the political process including youth, minorities and marginalized groups; (b) respect and promote gender equity and equality, human rights and fundamental freedoms;
And (c) be tolerant and inclusive in all their political activities.
9. The ORPP should enforce section 25 (2) (a) and (b), and 26. (1) of the Political Parties Act that proscribes funding of political party from the fund if (a) more than two-thirds of its registered office bearers are of the same gender; (b) the party does not have, in its governing body, representation of special interest groups.

In addition, enforce the provision that at least 30% of the fund shall be used for among other purposes; (a) promoting the representation in Parliament and the county as-

semblies of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities; (b) promoting active participation by individual citizens in political life; (c) covering the election expenses of the political party and the broadcasting of the policies of the political party.

When these laws are fully implemented, SIG candidates shall be cushioned against unnecessary uneven elections and political competitions.

10. Media houses should formulate gender-responsive communications strategies and associated guidelines for inclusive media reporting. Such measures will ensure issues about SIG voters and their priorities, as well as political manifestos, are accurately and comprehensively reported on. Vulnerable women, PWDs, youth and minority and marginalized candidates should enjoy adequate and fair coverage of their electoral ideas and activities just like their financially endowed counterparts.

Elections preparedness especially at the last mile namely, at polling stations, is a critical determinant of fair, credible and free elections. To this end:

11. IEBC should fully comply with the provisions of the 2016 Diversity Policy for Public Service and disability mainstreaming requirements contained in the National Disability Mainstreaming Strategy 2018-2022 and where practically possible customize them for application in elections. The initiative shall help IEBC step up the inclusion of PWDs and particularly consideration of PWDs during employment of electoral officials, and in the enhancement of accessibility for heterogeneous groups of PWDs to polling stations, polling, counting and tallying centres.
12. SIGs are most affected by violence and any security lapses that may occur during elections. All agencies involved in the delivery of security services including the National Police Service, should be facilitated to deploy promptly, necessary security personnel to IEBC during elections. Such facilitation includes the provision of transport. Further, such officers should be trained on how to handle and manage SIGs facing the greatest difficulty in voting and management of the general crowds to accord such persons preferential support.
13. Delays in the delivery of strategic materials for elections have a ripple effect on efficiency in the conduct of elections to SIGs and on the credibility of elections from the perspectives of the SIGs, general community, political contestants and elections observers. To this end, IEBC is to fully implement their electoral logistics and administration plans, and conduct regular surveillance on the same to ensure all strategic materials required in each of the polling stations are delivered on time and are accounted for. All forms of elections technology solutions adopted in future Kenya elections must be SIG centred, meaning the solutions are capable of resolving all limitations and challenges that SIGs and monitoring teams have reported and experienced in the past three cycles of elections.

The adopted ICT solution should be fully tested and proven beyond doubt of its ability to function under difficult contexts. Where the probability of failure is estimated, risk assessment and aversion measures including installation of alternative solutions should be made available at the lowest level of the administration of elections. In particular, the consistent or intermittent failure rates of KIEMS kits should be eliminated at all costs.

14. IEBC should set standards for a manual voter register designed for use at the lowest unit of the management and implementation of the elections (Polling Stations). At minimum IEBC should ensure that voter registers are printed in large fonts and an easy-to-read manner. Further, IEBC should work closely with the communities and managers of establishments that are gazetted as polling stations and polling centres to ensure voter registers are posted in the respective stations on time, and that they are protected from damage, or arbitrary removal.

15. State and non-state actors should increase their investment in the political and civic education of special interest groups including women, youth, PWDs, older persons, minorities and marginalized groups, to facilitate their understanding and claim their electoral rights. This includes upon fulfilling all the requirements, the right to vote and demand that elections-related technological solutions do not; a) disenfranchise them, b) limit their voting rights, c) diminish opportunities for meaningful participation in the entire electoral process.

The structure of the report.

This report is organized into seven chapters. The first chapter provides an introduction to elections in Kenya and the monitoring exercise. The second chapter summarises the well-known policy and legal frameworks governing elections in Kenya. Chapters three to six focus on the thematic areas of the monitoring activity, including Campaign Monitoring, Administration and Logistics, Poll Monitoring, and Post-Polling Monitoring. Chapter seven provides some recommendations.

List of Abbreviations

CMD	Centre for Multi-Party Democracy
COG	Council of Governors
COK	Constitution of Kenya, 2010
EOP	Electoral Operational Plan
ELOG	Elections Observation Group
FIDA	Federation of Women Lawyers
HRO	Human Rights Organization
IDR	Internal Dispute Resolution
IEBC	Independent Electoral and Boundaries Commission
ICT	Information, Communications and Technology
KANU	Kenya African National Union
KIEMS	Kenya Integrated Election Management System
MCAs	Members of County Assembly
MDAs	Ministries, Departments, and Agencies
MP	Member of Parliament
NCCK	National Council of Churches of Kenya
NCIC	National Cohesion and Integration Commission
NCIC	National Cohesion and Integration Commission
NGEC	National Gender and Equality Commission
NYS	National Youth Service
ODPP	The Office of the Director of Public Prosecutions
ORPP	Office of the Registrar of Political Parties
PPA	Political Parties Act
PPF	Political Parties Fund
PPLC	Political Parties Liaison Committee
PWDs	Persons with Disabilities
SIGs	Special Interest Groups
UDA	United Democratic Alliance

CHAPTER ONE

Introduction

Kenya is distinct in the African region for its history of regular general elections every five years since its independence in 1963. What has remained in doubt is the democratic quality of those elections. After several decades of repressive leadership during which elections took place, nonetheless, the promulgation of the arguably very progressive Constitution of Kenya (2010), provided a framework through which to deepen democracy.² Amongst other ways in which this deepening was provided for was through the devolution of governance to 47 elected, relatively autonomous County Governments, which must, however, consult with the custodian of national policy, the National Government. If Kenyan elections had always been competitive, the entry of County Government elections arguably added fuel to the fire.³ In turn, this has increased the need for electoral oversight by bodies such as the National Gender and Equality Commission (NGEC) to strive for the democratic ideal intended by Article 1 of the Constitution.

Article 10 of the Constitution of Kenya, 2010 implicitly defines NGEC's mandate in its National Values and Principles of Governance, which include 'democracy and participation of the people, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.' In turn, Article 232's public service values and principles invoke "involvement of the people in decision making... representation of Kenya's diverse communities (and) adequate and equal opportunities for... men and women; all ethnic groups; and persons with disabilities." Article 10(1) provides that these values and principles bind all persons "whenever any of them [...] Applies or interprets this Constitution, enacts, applies or interprets any law, or makes or implements any public policy decisions."

NGEC's mandate focuses on the Special Interest Groups (SIGs) of Part 3 of the Constitution's Bill of Rights, notably Articles 53's Children, 54's Persons with Disabilities (PWDs), 55's Youth, 56's Minorities and Marginalised Groups, and 57's Older Members of Society.⁴ To these are added concerns the circumstances of women addressed most notably for this report concerning elective and appointive offices. Concerning political contests, NGEC is interested in children being safe from the risks inherent therein, while also being interested in the participation of the eligible but likely marginalized SIGs. While citizens (wananchi) are a key stakeholder group in a general election, the exercise's management is the responsibility of a set of duty-bearing public institutions. This report presents the findings of an inquiry, through the lens of the Special Interest Groups (SIG), into how the rights-holding wananchi participated in, and the duty-bearing public institutions managed the August 8th 2022 general elections.

1.1 Electoral Context in Kenya

Article 1 of the Constitution of Kenya (2010), provides that sovereignty belongs to the people of Kenya and may be enjoyed directly, or indirectly through democratically elected representatives. Article 4 (2) declares Kenya a multi-party democratic State ruled under the National

²For the Constitution of Kenya (2010), and all Kenyan legislation, go to <http://www.kenyalaw.org/8181/exist/kenyalex/index.xql>

³For example, see Africa Centre for Strategic Studies (2022)

⁴ The individual SIG categories are presented as if they are mutually exclusive, yet this is NOT the case. For example, Some Children can also be PWDs and belong to Minorities and Marginalised Groups. And other than the clear distinction between Children and Older Members of Society, Women can simultaneously belong to all the other SIG categories.

Values and Principles of Governance of Article 10, and by extension, the Public Service Values and Principles of Article 232, as previously listed. Chapter Seven outlines the framework for the representation of the people, with Article 81's principles of the election system, including the freedom of citizens to exercise Article 38's political rights; limitation of either gender to a two-thirds share of an elective body; fair representation of persons with disabilities; universal suffrage; and free and fair elections⁵.

Operationalised through various pertinent legislation, Article 101 provides for a general election "on the second Tuesday in August in every fifth year⁶," during which a slate of six offices is voted for. Thus, Articles 138 and 148 respectively address the election of the President and the running-mate Deputy President. The elected members of Parliament are listed by Article 97 for the National Assembly⁷, and Article 98 for the Senate.⁸ Article 177 provides for the election of Members of County Assemblies while Article 180 provides for the election of the County Governor and running mate Deputy Governor. The monitoring and observation exercise did not stretch beyond the constituency-level announcement of results, but Article 105 mandates the High Court to hear and determine disputed elections within six months, while Article 140 mandates the Supreme Court to do the same for the presidential election within 21 days.

1.2 Methodology of Monitoring and Observation

The methodology of the study reported here involved a mixed methods approach to observing and monitoring the activities of various election stakeholders – rights holders and duty-bearers, including prospective and actual voters, electoral officials, candidates and their agents, security agents and the media. The approach started with a review of Kenya's electoral frameworks and previous monitoring and observation reports. This background material enabled the development of the data collection approach for the 2022 general election monitoring and observation.

Besides the review of the legal and historical literature, the development of the data collection tools involved consultations with diverse stakeholders, including the Independent Electoral and Boundaries Commission (IEBC), Office of the Registrar of Political Parties (ORPP), National Cohesion and Integration Commission (NCIC), and Kenya National Bureau of Statistics, amongst others.

1.2.1 Engagement with External Actors

To enhance its capacity to adequately monitor the elections, the Commission held various consultative meetings with other election observer groups that included the UN Women, and IEBC. Eventually, the activities covered in this booklet focus on:

1. Incidents of violence particularly those directed to SIGs, as well as other electoral malpractices as provided in the electoral laws
2. Financing of campaigns mounted by SIGs candidates
3. Involvement of SIG candidates and voters in the electoral processes
4. Accessibility of the venues and communication to SIGs where key electoral activities shall be taking place including campaign rallies, simulation stations, polling centres and stations

⁵This principle envisages: secret ballot; freedom from violence, intimidation, improper influence or corruption; independent arbiter; transparency; and impartial, neutral, efficient, accurate and accountable administration.

⁶ In operationalization, this fixed date has previously conflicted with

⁷ The members include 290 elected constituency members, 47 elected women county members, and 12 party nominees representing special interests (the youth, persons with disabilities, and workers).

⁸Senate includes 47 elected county members, 16 party-nominated women, and another four individuals representing special interests (the youth and persons with disabilities).

1.2.2 Recruitment and Training of Monitors and Field Work

The Commission commenced the monitoring of the 2022 general elections campaigns (which were scheduled to run between May 29 to August 6, 2022), on June 10th 2022. The Commission trained 104 monitors on the subject and provided them with the necessary data collection tools, primarily a structured questionnaire with minimal open-ended questions. Data collection was limited to regional areas where NGEK has offices namely; Kisumu, Nakuru, Malindi, Garissa, Isiolo, and Kitui. The second phase of the campaign monitoring commenced on 1st July 2022. Generally, the Commission monitored the (i) Campaigns, (ii) Polling, and (iii) Post-polling activities.



Commission and NGEK Staff pose for a photo after a successful training on Election Monitoring and Observation in Naivasha in July 2022

The monitoring largely focused on the participation and inclusion of SIGs in the various stages of the electoral process, as voters, agents, electoral officials, observers and/or candidates, and monitored the protection of the rights of children and other vulnerable groups during the election period. The Commission also monitored incidences of violence in general and gender-based violence specifically, as drivers of inequality and discrimination, which have implications on whether likely victims can enjoy their democratic and electoral rights.

1.2.4 Data Management, Analysis and Processing

The monitors had a brief to observe and file daily reports on activities taking place on the ground. The Commission also utilized open-source monitoring data on official websites, media reports and verified social media accounts. Monitoring tools were automated to enable data entry upon collection. Of the duly filled monitoring tools, some were submitted to the election monitoring coordinator directly daily, while other data from distant regions were delivered via courier services.

1.3 Outline of the Report

The first chapter of this report provides introductory information about elections and the monitoring exercise. The second chapter summarises the well-known policy and legal frameworks governing elections in Kenya. Articles 10 and 232 earlier cited, and the obligations for all public institutions on the Bill of Rights (should have) radically transformed Kenya's governance frameworks, including those on elections. Chapters three to six of this report focus on the thematic areas of the monitoring activity, including Campaign Monitoring, Administration and Logistics, Poll Monitoring, and Post-Polling Monitoring. Chapter seven provides some recommendations.

CHAPTER TWO

Legal and Policy Frameworks

This section briefly summarises aspects of the Constitution of Kenya that are proximate to the subject of this report. In consonance with Article 2 (6)'s commitment that "any treaty or convention ratified by Kenya shall form part of the law of Kenya", the following list highlights some of the policy and legal frameworks that are implicitly or explicitly pertinent to the management of elections in Kenya.

International:

- i. Universal Declaration of Human Rights
- ii. International Covenant on Civil and Political Rights
- iii. International Covenant on Economic Social and Cultural Rights
- iv. United Nations Convention on the Elimination of All Forms of Discrimination against Women
- v. United Nations Convention on the Rights of Persons with Disabilities
- vi. Sustainable Development Goals (#5 and #10)

Regional:

- i. The African Charter on Human and People's Rights
- ii. African Charter on the Youth
- iii. The African Charter on Democracy, Elections and Governance; and
- iv. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

The following sub-sections highlight some of the Kenyan frameworks.

2.1 The Constitution of Kenya, 2010

The relevant philosophical context of NGEK's mandate has been alluded to in the imperatives of the National Values and Principle of Governance, and the Public Service Values and Principles. Mention was also made of Chapter Four of the Constitution – Bill of Rights, with a special focus on the SIGs. For this study, the other areas of the Constitution with a policy angle include Chapter Six on Leadership and Integrity, Chapter Seven on Representation of the People, Chapter Eight on the Legislature, Chapter Nine on the Executive, Chapter 10 on the Judiciary, Chapter Eleven on Devolved Government, and Chapter Fifteen on Commissions and Independent Offices.

The Fourth Schedule is important because it provides a division of labour between the National Government and County Governments, responsibilities around which many of the campaign promises revolve. While this study did not explore it, Chapter Twelve on managing Public Finance is critical for the effective management of the overall exercise. The Fifth Schedule identifies the legal frameworks as of 2010, that needed attention by 2015, for the full implementation of the Constitution of Kenya, 2010 and provides a timeframe to the year 2015 by which time all policies, laws and strategies should have been aligned to the Constitution's imperative. A glaring failure in respect of NGEK's work is the continuing lack of a framework for realising the 'not more than two-thirds gender rule' requiring that no single gender should account for more than two-thirds of any public elective or appointive offices.

2.2 National Policies and Legislation

The pertinent national policies and legislation for NGEC's work concerning elections are numerous, growing out of the various chapters of the Constitution, as well as the products of the domestication of the international and regional frameworks. The National Gender and Equality Act, of 2011, and Independent Electoral and Boundaries Commission Act No. 9 of 2011 explicitly provide for the key mandate of the NGEC and IEBC in respect to matters of SIGs and elections respectively. Other laws, policies and guidelines include:

- i. Civil Procedure Act (cap 21)
- ii. Code of Conduct for Political Parties, 2016
- iii. Election (Party Primaries and Party Lists) Regulations 2017
- iv. Election Campaign Financing Act No. 42 of 2013
- v. Election Laws Amendment Act No. 36 of 2016
- vi. Election Offences Act No. 37 of 2016
- vii. Elections (General)(Amendment) Regulations, 2017
- viii. Elections (Party Primaries and Party Lists) Regulations, 2017
- ix. Elections (Technology) Regulations, 2017
- x. Elections (Voter Education) Regulations, 2017
- xi. Elections Act No. 24 of 2011
- xii. Elections Laws Amendment Act No. 1 of 2017
- xiii. Elections Party Primaries and Party (Lists) Regulations, 2017
- xiv. Guide To Political Parties Registration, Guide To Political Party Membership and Political Parties Manual
- xv. Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011)
- xvi. National Cohesion and Integration Act No. 12 of 2008
- xvii. The National Gender and Equality Commission Act, No. 15 of 2011
- xviii. Political Parties Act No.11 of 2011
- xix. Supreme Court Act (No. 7 of 2011)

2.2.1 The National Gender and Equality Commission Act, 2011

The NGEC was operationalised by the National Gender and Equality Act, No. 15 of 2011, which gave it the overall mandate of promoting gender equality and freedom from discrimination, as per Article 27 of the Constitution. Section 8 of the Act lists the Commission's functions to include: monitoring, facilitating and advising on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions; conducting audits on the status of SIGs; and preparing and submitting annual reports to Parliament on the status of the implementation of its obligations under this Act. These functions lay the ground for NGEC's participation in monitoring elections, the main concern being over the SIGs' effective inclusion, allowing them equal opportunity to vote, contest and/or be nominated as well as preside over, monitor and observe such polls.

2.2.2 The Elections Act No 24 of 2011 and as amended in 2022

Section 42 of the Elections Act compels IEBC to accredit institutions to observe the elections, resulting in independent reports on an election cycle. This is aimed at promoting supervision and oversight to ensure the credibility of the elections. Consequently, NGEC performs its oversight role through its National Elections Monitoring Exercise.

2.2.3 IEBC's Election (Party Primaries and Party Lists) Regulations 2017

The IEBC is the body mandated statutorily to manage the electoral process from the demarcation of constituency boundaries to voter education and ultimately conduct polling and announcement of outcomes. Before the August 8th, 2017 polling day, IEBC issued various regulations to streamline the free and fair conduct of the impending event, covering voter education, voter registration and verification of voter registers, conduct of party primaries and production of party lists as well as the use of technology⁹. In developing its election monitoring and observation tools, NGEK considered the Regulations in line with its role of facilitating and advising on the integration of the principles of equality and freedom from discrimination.

The Regulations mandate political parties to hold their primaries in an open, transparent, accountable, credible and peaceful way. While reiterating the definition of SIGs drawn from Section 2 of the Political Parties Act (PPA), however, the Regulations fall short of specifying the statutory mandates of the ORPP relating to SIGs, such as empowering the rejection of party lists that do not meet the gender balance rule. However, the Regulations provide checklists for the party nominations, including the need to establish the supervisory party Election Board which nominates officials to conduct the primaries. Parties are required to develop and publish respective codes of conduct and internal dispute resolution (IDR) mechanisms.

2.2.4 Political Parties Act No. 11 of 2011 and amended in 2022

The Political Parties Act (PPA) creates the Office of the Registrar of Political Parties (ORPP) and provides for the registration, regulation, monitoring, investigation and supervision of political parties as well as the administration of the Political Parties Fund¹⁰. Amendments to the PPA in 2016 focused on the rights of SIGs, based on the values and principles of Article 10 of the Constitution, as well as the election principles of Article 81. The PPA obliges political parties to ensure their SIG members' participation in management and at general levels and to maintain registers of active membership — including SIG members that reflect regional, gender and ethnic diversity. To this end, the Political Party Fund provides that 30 percent of respective party shares be used to promote SIGs in electoral contests; but the Fund also penalises parties for weak SIGs inclusion. Section 39 (1) of the PPA establishes the Political Parties Disputes Tribunal which handles issues within parties. To enhance party compliance over these concerns, ORPP has developed the Guide to Political Parties Registration, Guide to Political Party Membership and Political Parties Manual.

2.2.5 Code of Conduct for Political Parties, 2016 and revised in 2019

Enshrined in the PPA, the political parties' Code of Conduct reiterates their obligation to promote the constitutionally mandated participation and representation of SIGs by integrating affirmative action policies, plans and strategies. The Code requires parties to address issues that impede SIGs participation such as weak administrative transparency and accountability, weak finance base, bribery, disruption of meetings, incitement and violence.

⁹The Regulations are easily accessible at <http://kenyalaw.org/lex//sublegview.xhtml?subleg=No.%2024%20of%202011>. Section 54 (1) provides that a party list contains the names of all persons who would stand elected if the party were entitled to seats in the National Assembly, Senate or the County Assembly, as the case may be on the basis of proportional representation in accordance with Article 90 of the Constitution and sections 34, 35, 36 and 37 of the Act.

¹⁰The government finances the Fund, which is shared among parties with a parliamentary presence. For details, see Ongaro (2017).

¹¹See for example, Wrong (2011).

2.3 Gazetted Party and Independent Candidates for the 2022 General Elections

Elections are a hotly contested domain in Kenya. Part of the attraction probably lies in the perception – justified it seems, that the tenure of public office is an avenue to wealth¹¹: while public sector remuneration has been at best modest, the numbers are large of public officers who have used their offices for self-aggrandisement, and have many years later never been held to account. That the High Court in 2022 convicted two former managers of IEBC for misuse of their office over 10 years previously is an exception: many officers with similar cases over the same period continue to enjoy their clandestinely acquired wealth while remaining on the government payroll. Such allegations have been made about the highest echelons of government. For example, some presidential aspirants were screened about their sources of wealth and questioned about their moral decadence during candidate vetting and in public debates.

Such historical realities partially explain the arguably large numbers of candidates offering themselves for elected national offices, with Table 2.1 for instance showing that 19 individuals, including 11 independent candidates, were gazetted in 2022 as presidential aspirants. Kenyan party primaries have often been farcical, resulting in disgruntled politicians who decide to contest as independent candidates. The last column of the table shows that on average, eight people each will contest the 1,882 seats on offer across the six elected positions.

Table 2.1: Gazetted Party and Independent Candidates for the 2022 General Elections

Position contested	Party candidates	Independent candidates	Total candidates	Available seats	Ratio candidate/seat
President	8	11	19	1	19.0
Governor	183	63	246	47	5.2
Senator	263	86	349	47	7.4
County Woman Member of National Assembly	261	69	330	47	7.0
Member of National Assembly	1,473	605	2,078	290	7.2
Member of County Assembly	9,142	2,918	12,060	1,450	8.3
Grand totals	11,330	3,752	15,082	1,882	8.0

Source: <https://www.iebc.or.ke/uploads/resources/UUaCkoNJL.pdf>



NGEC Chairperson, Commissioner and CEO during a courtesy visit to the Independent Electoral and Boundaries Commission

CHAPTER THREE

Campaign Monitoring

This chapter reports on the National Gender and Equality Commission (NGEC) monitors' findings concerning election campaigns, and the financing of candidates' campaigns, notably of Special Interest Groups (SIG) candidates which include youth, women, Persons with Disabilities (PWDs), and minorities and marginalised groups.

3.1 Identification

The campaign monitoring activities ran between May 29th and August 6th 2022 and covered 44 of Kenya's 47 counties as listed in Table 3.1, the omitted counties being Kericho, Samburu and Tana River. The table also shows that the coverage was unequal across both the counties and across constituencies within the monitored counties. Part of the reason for such unequal coverage had to do with financial constraints, which often caused NGEC to rely on its field officers who would consequently cover the areas in which they regularly work. In instances, such NGEC staff were also registered voters in such places, meaning they could also vote in between fulfilling their monitoring role.

Table 3.1: Campaign Monitoring Coverage across Counties and Constituencies

Counties	Constituencies
Baringo (24)	Baringo Central (5); Baringo South (6); Eldama Ravine (11); Mogotio (3);
Bomet (3)	Bomet Central; Bomet East; Sotik
Bungoma (17)	Kabuchai (1); Kanduyi (10); Kimilili (1); Mt. Elgon (2); Tongaren (3)
Busia (3)	Budalangi (1); Nambale (1); Teso North (1)
Elgeyo-Marakwet (7)	Keiyo North (1); Marakwet East (5); Marakwet West (1);
Embu (63)	Manyatta (24); Mbeere North (3); Mbeere South (14); Mwea (2); Runyenjes (20)
Garissa (1)	Garissa Township (1)
Homa Bay (36)	Homa Bay Town (4); Kabondo Kasipul (12); Karachuonyo (5); Kasipul (7); Ndhiwa (4); Rangwe (2); Suba South (4)
Isiolo (34)	Isiolo North (28); Isiolo South (6)
Kajiado (33)	Kajiado Central (5); Kajiado East (15); Kajiado North (9); Kajiado South (1); Kajiado West (3)
Kakamega (36)	Ikolomani (8); Likuyani (8); Lugari (2); Lurambi (7); Lurambi Central (2); Malava (2); Shinyalu (6)
Kiambu (50)	Gatundu North (7); Gatundu South (7); Githunguri (2); Juja (11); Kabete (4); Kiam-baa (9); Kiambu (2) Kikuyu (2) Kinoo (1); Lari (8); Limuru (7); Ruiru (6); Thika (6)
Kilifi (42)	Ganze (4); K.aloleni (6); Kilifi North (8); Kilifi South (11); Magarini (3); Malindi (7); Sokoni (3)
Kirinyaga (15)	Gichugu (7); Kirinyaga Central (2); Mwea (2); Ndia (4)
Kisii (2)	South Mugirango (2)
Kisumu (94)	Kisumu central (34); Kisumu East (17); Kisumu North (1); Kisumu West (29); Mu-horoni (1); Nyakach (4); Nyando (6); West Kisumu (1)
Kitui (41)	Kitui Central (15); Kitui East (11); Kitui Rural (5); Kitui South (3); Kitui West (5)
Kwale (17)	Kinango (3); Lungalunga (3); Matuga (6); Msambweni (7)
Laikipia (3)	Laikipia East (3)
Lamu (18)	Lamu East (6); Lamu West (12)

Machakos (64)	Kangundo (8); Kathiani (6); Machakos Town (24); Masinga (2); Matungulu (5); Mavoko (8); Mwala (8); Mwala Constituency (1); Yatta (2)
Makueni (29)	Kaiti (11); Kibwezi (1); Kibwezi West (1); Kilome (4); Makueni (6); Mbooni (6)
Mandera (7)	Mandera East (2); Mandera North (5)
Marsabit (19)	Laisamis (2); Moyale (4); North Horr (4); Saku (9)
Meru (11)	North Immenti (3); Tigania East (6); Tigania West (2)
Migori (9)	Awendo (3); Kuria East (1); Suna East (2); Suna West (2); Uriri (1)
Mombasa (14)	Changamwe (2); Kisauni (5); Likoni (2); Mvita (2); Nyalí (3)
Murang'a (9)	Gatanga (1); Kandara (2); Kangema (5); Kiharu (1)
Nairobi (48)	Dagoretti North (4); Dagoretti South (2); Embakasi Central (1); Embakasi East (4); Embakasi North (2); Embakasi South (2); Embakasi West (3); Kamkunji (3); Kasarani (4); Kibra (3); Langata (3); Mathare (2); Roysambu (2); Ruaraka (3); Starehe (8); Westlands (2)
Nakuru (111)	Bahati (14); Gilgil (7); Kuresoi North (3); Lare (1); Mau Narok (1); Molo (5); Naivasha (2); Nakuru East (3); Nakuru Town East (22); Nakuru Town West (14); Njoro (12); Rongai (21); Subukia (6)
Nandi (7)	Emgwen (7)
Narok (11)	Emurua Dikirr (1); Kilgoris (1); Narok East (4); Narok North (1); Narok South (3); Narok West (1)
Nyamira (5)	Kitutu Masaba (2); West Mugirango (3)
Nyandarua (4)	Kinangop (4)
Nyeri (8)	Kieni (3); Nyeri Town (2); Othaya (2); Tetu
Siaya (17)	Alego Usonga (2); Bondo (5); Kisumu Central (1); Rarieda (8); Ugenya (1)
Taita Taveta (19)	Mwatate (4); Taveta (3); Voi (7); Wundanyi (5)
Tharaka-Nithi (17)	Chuka Igamba Ngombe (7); Maara (5); Mugwe (1); Tharaka (4)
Trans-Nzoia (5)	Kiminini (3); Kwanza (1); Saboti (1)
Turkana (9)	Loima (4); Turkana Central (5)
Uasin Gishu (8)	Ainabkoi (2); Kapseret (1); Kesses (2); Moiben (2); Soy (1)
Vihiga (9)	Hamisi (1); Sabatia (2); Vihiga (6)
Wajir (10)	Eldas (1); Wajir East (7); Wajir South (1); Wajir West
West Pokot (1)	Kapenguria (1)
Total observations=	1013

Figure 3.1 shows the distribution of responses in the presence of other campaign monitors and/or observers who augmented NGECC's work. Of the 1,098 responses made, NGECC monitors confirmed meeting with other monitors and observers in 25% of instances. In 26% of the instances, the NGECC monitors did not find other monitors or observers, while in 49% of instances, they could not tell if other monitors were present. The monitor and observer-accrediting authority, Independent Electoral and Boundaries Commission (IEBC), cannot ensure their even distribution across the country given the diverse interests and resources the applicants might have. However, all duly accredited monitors and observers should carry appropriate identification tags, amongst other reasons, for their safety in the often highly charged atmosphere of election campaigns. Yet, ironically, some monitors and observers feel more effective when they operate incognito. It is also possible that accreditation was delayed meaning applicants did not have their tags during the initial phases of campaigns.

25%
of the observations
made, NGECC
monitors confirmed
meeting with other
monitors and
observers

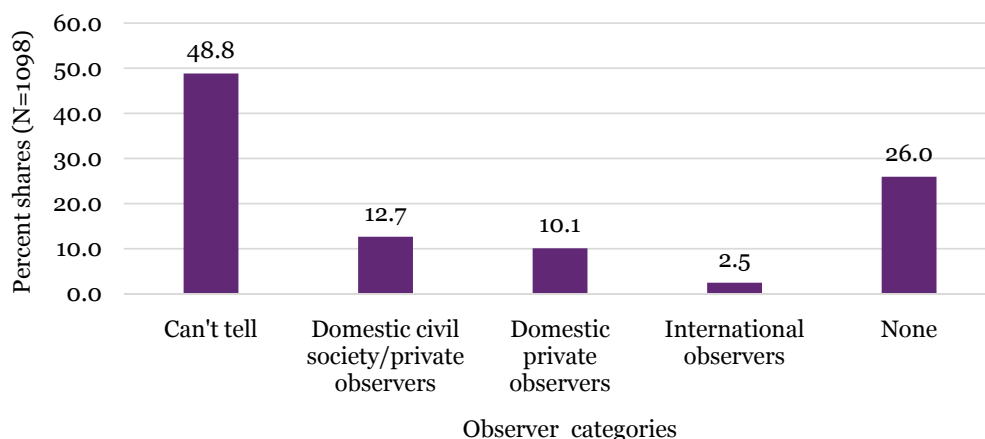


Figure 3.1: Distribution of other Campaign Monitors and Observers

3.2 Campaign Monitoring

The NGECE monitors and observers reported a wide variety of campaign venues, as shown in Figure 3.2, with their distribution possibly reflecting the relative popularity of the various venue types. Kenya's population is predominantly rural-based and therefore widely scattered, which makes the weekly or bi-weekly market day an ideal site for political candidates to reach out at minimal cost to maximum voter numbers. Alternatively, candidates might prefer to host a campaign meeting at a public open ground where to hopefully catch the undivided attention of their audiences. However, various NGECE monitors noted that the road shows have become an increasingly popular, more cost-effective approach to campaigning as the limited time the candidate spends with prospective voters means fewer hand-outs in cash and/or kind as one's message is conveyed. As one NGECE monitor noted:

"Many people want to be paid to attend political rallies. The only strategy that seems to be working well is door-to-door though it is time-consuming. (Therefore) the campaign strategy for the MP changed from meetings to roadshows where the candidate is not necessarily present"¹³

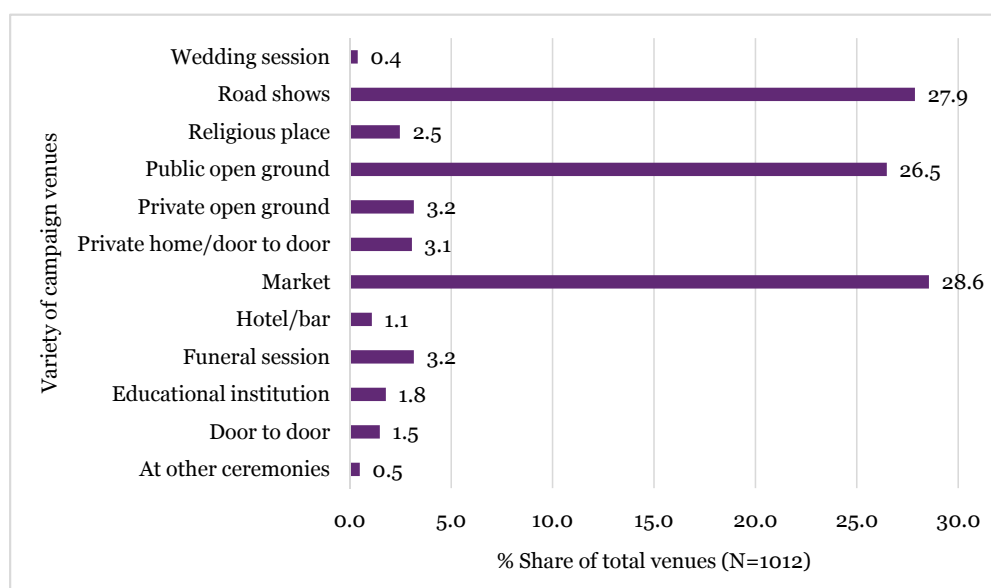


Figure 3.2: Type of Campaign Venue

¹³ NGECE Official, Likuyani Constituency, Kakamega County.

The data also show that candidates campaigned at private ceremonies, such as religious places (2.5%) and funerals (3.2%). In the 2022 campaign that was touted at the presidential level as a contest between the ‘faithful’ and the ‘non-believers’, such venues should have been more popular, except that they demand financial generosity from the candidate. As one NGECE monitor noted:

“This was a funeral session, 4 candidates were present, 1 vying for the MP position (Woman), 3 vying for the MCA position (2 youths). 3 were SIG candidates (Woman and 2 Youths), all candidates were given 5 minutes to sell their agenda.”¹⁴

About 5% of the national population consists of PWDs, and of course, very large shares of the population belong to the ‘Special Interest Groups’ (SIGs) which are the focus of much of NGECE’s mandate. Consequently, NGECE monitors evaluated the campaign rally venues for SIG accessibility, and Figure 3.3 shows that 54% of the venues were friendly to all, with a small 4% of the venues being declared ‘Not friendly’.

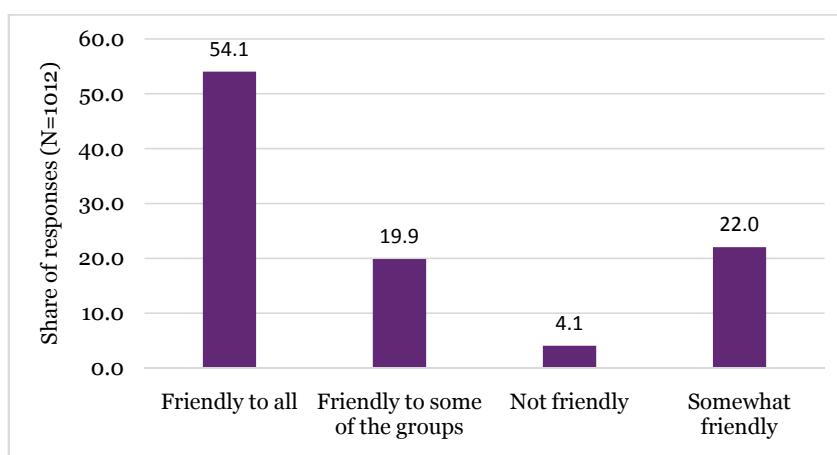


Figure 3.3: Friendliness of Campaign Rally Venues to Candidates and Voters, including SIGs

Due to the cosmopolitan nature of some of the constituencies across the country, especially the urban ones, it is imperative for effective communication that special arrangements are made to facilitate the differences among target audiences. The NGECE is especially interested in SIGs in the audience who face diverse limitations in a campaign context. Figure 3.4 shows that the most widely used communication facilitation was the use of local languages reported in 37% of instances, this relatively large share suggesting that most Kenyan peoples remain in their places of ethnic ancestry. While 30% of the monitor reports noted communication materials in large fonts, the presence of small fonts in the materials was one of the major complaints across campaign venues. One-quarter of the observations reported materials translated into Kiswahili and local languages. Only 1% of observations reported the use of sign language and/or braille facilities in the campaigns. This small frequency suggests that rally organisers paid inadequate attention to PWDs in the audience.

¹⁴NGECE Official, Kaiti Constituency, Makueni County

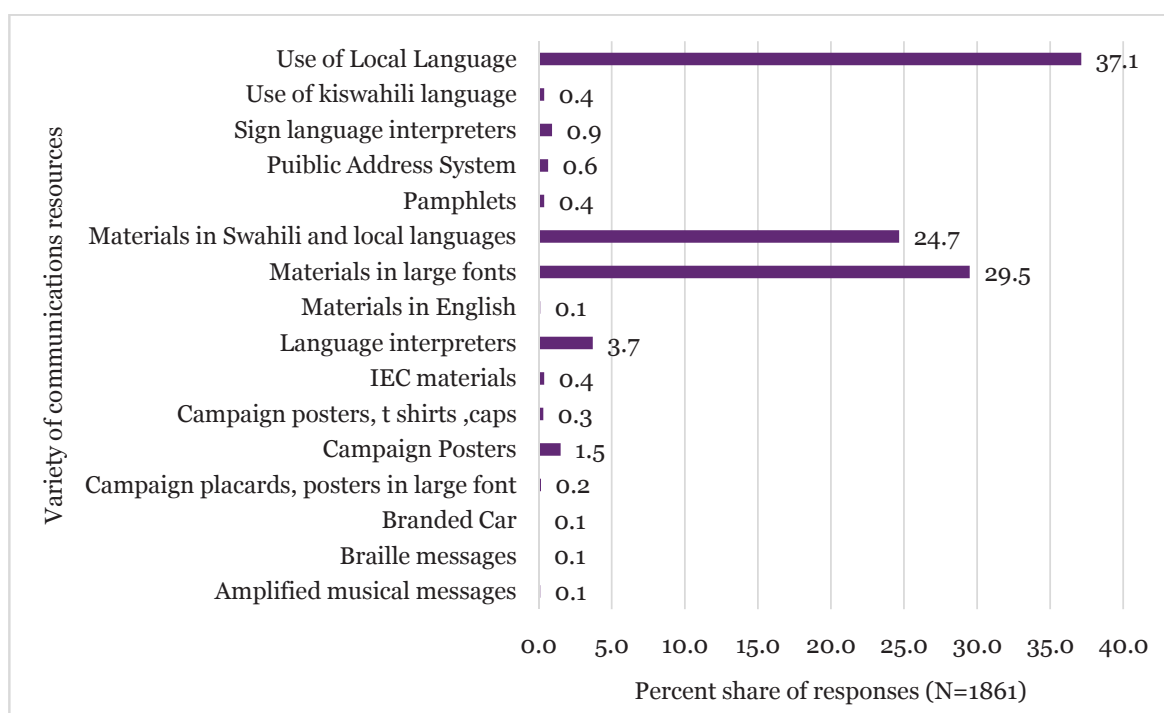


Figure 3.4: Reported Presence of Communications Resources in Campaign Rallies

Political Party Activities

Under other circumstances, the existence of political parties and party primaries suggests the prominence of political parties, which make concerted efforts to sell their respective agenda to prospective voters. However, the independence-era party, the Kenya African National Union (KANU), has been waning functionally since it lost the presidency in 2002. The new parties for presidential candidates never quite seem to sink their roots, undermining the continuity of party agenda, meaning that most Kenyan political parties have been ephemeral vehicles for a specific election¹⁵. Indeed, as one NGECE monitor established:

“Building the campaign’s messaging around individual skills and expertise as opposed to the Political party which is unpopular in the locality.”¹⁶

It is therefore unsurprising that the data in Figure 3.5 points to the fact that 52% of campaign rallies being organized by individual candidates (Candidate – 7.2%; Candidates – 44.6%), rather than by political parties. Indeed, (stand-alone) political parties were reported to have organized about 28% of the rallies monitored, with coalitions organizing 16% of them. These realities are partially reflected in the campaign financing picture discussed hereafter. In any case, 2022 saw the Registrar of Political Parties in the process of streamlining the management of sustainable political parties.

52%
of campaign rallies
were organized
by individual
candidates as
opposed to by
political parties

¹⁵ In his 2007 re-election bid, former President Kibaki abandoned his 2002 NARC party for PNU. Former President Kenyatta also abandoned the 2013 TNA for Jubilee in 2017, and his 10-year deputy Ruto has acceded to power on an entirely new UDA party.

¹⁶ NGECE Official, Bondo Constituency, Siaya County.

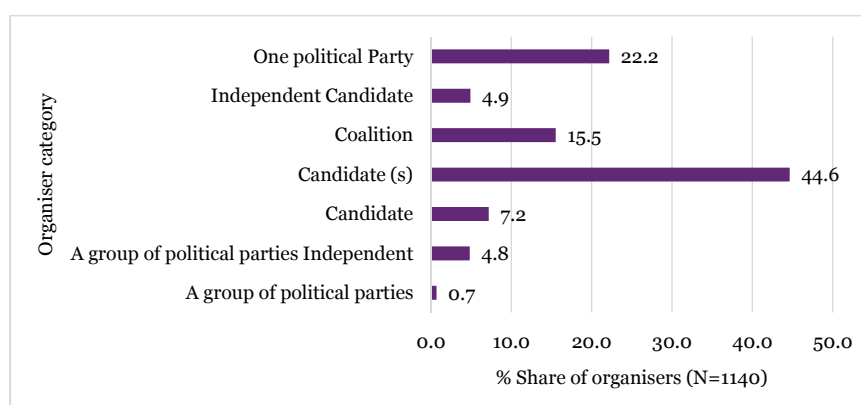


Figure 3.5: Distribution of Monitoring Activities by Organiser/s of the Campaign Rally

The campaign context during Kenya's five-yearly general elections is quite fluid given that balloting is conducted on the same day for a slate of six seats as reflected in Figure 3.6. At the lowest level of contestation is the ward for the position of Members of County Assembly (MCA). Candidates in this category are invariably younger and have fewer campaign resources, and might in some instances be funded to lock out the vote for candidates vying for the more senior seats. An NGEC monitor reports that:

“The two youths vying for MCAs were struggling, they had received some funds from well-wishers, family and friends although too low to fund their campaign. They relied on organized forums and door-to-door to sell their agenda to the citizens. The two were independent candidates.”¹⁷

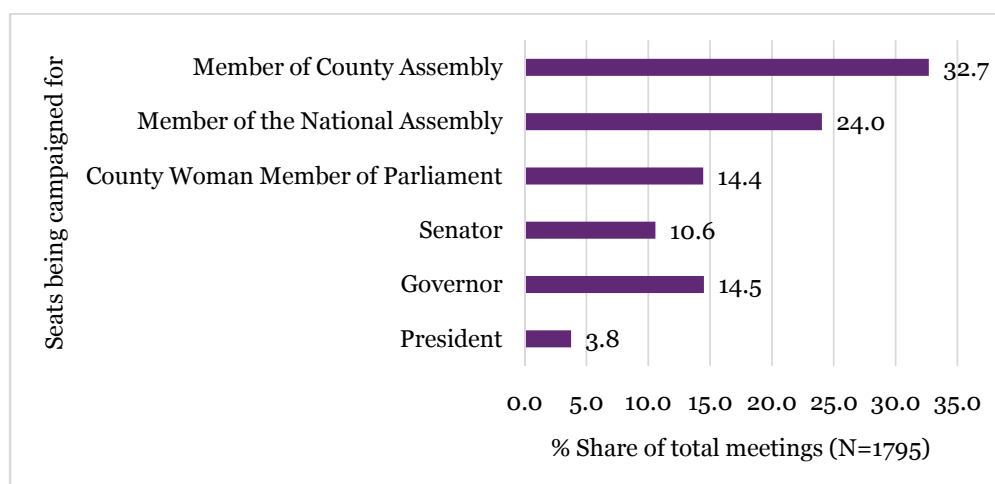


Figure 3.6: Monitoring of Campaign Rallies by Type of Political Seat

Conversely, the presidential campaign is the apex of the electoral system, a high-stakes environment that is often under the intense scrutiny of domestic and international interests, including the media. As Figure 3.6 shows, the rate of monitor and observer coverage of the six seats contested diminished up the political tree with one-third focus on MCAs – 33%, compared to a modest 4% focus on the presidential contest. While there are even 47 seats contested for

¹⁷NGEC official, Kairi Constituency, Makueni County.

the County Woman Member of the National Assembly, Senator and Governor positions, the lower observer or monitor coverage of the Senate campaigns is consistent with the perceived seat's lower political profile. However, one NGECE monitor reported an interesting approach to the campaign rallies:

“This was a hybrid campaign rally by the Kenya Kwanza Coalition on a UDA party ticket. The Presidential candidate and his running mate led the campaigns flanked by other UDA candidates for Gubernatorial, Senate, Member of Parliament, County Woman Member of the National Assembly and Member of the County Assembly. Other candidates allied to Kenya Kwanza Coalition vying with friendly parties were allowed to campaign and address the public at the same event. There was a remarkable sense of civility and tolerance by all candidates and their supporters since they listened to all without interrupting. A good practice that should be emulated across the board.”¹⁸

Under NGECE's statutory mandate on the equality of all Kenyans, it monitored the presence of SIGs among the electoral candidates. Of the 1,427 reports made, youth and women candidates were respectively present in 42% and 40% of the campaign rallies observed, as shown in Figure 3.7. While the youth also includes women, the reported 40% women share of candidates was heartening since it is above the constitutional two-thirds threshold of gender participation in elective positions. That lactating/expectant mothers accounted for 2.6% of the candidates is itself quite remarkable – but also disturbing as they were reportedly among the people fighting for campaign materials, notably headscarves. Additionally, the 7% PWDs share reported is also encouraging since this share is above the 5% PWDs share of the country's population.

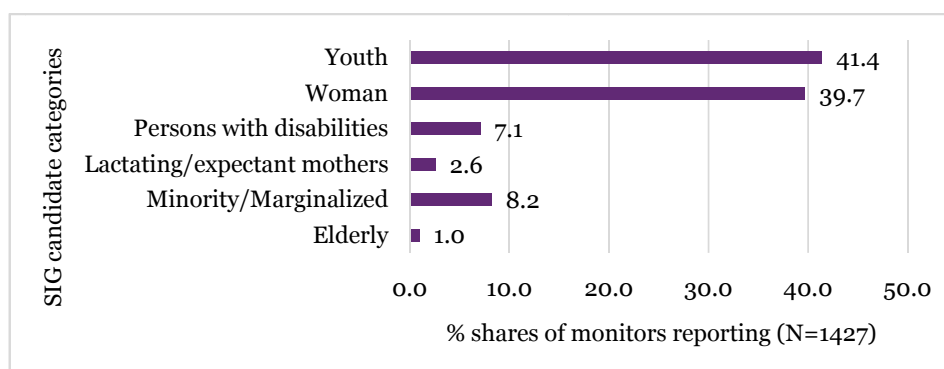


Figure 3.7: Reported SIG Shares of the Campaign Candidates

Kenya has seen various historical biases against the SIGs, based notably on gender, and against PWDs and minorities and marginalized groups. However, 66.3% of the observations noted a generally positive attitude towards SIGs during the campaign rallies, as shown in Figure 3.8. While 20% of the observations rated the general perceptions as 'difficult to gauge', only 1.1% of the observations declared a negative attitude towards SIG participants.

¹⁸ NGECE official, Tetu Constituency, Nyeri County.

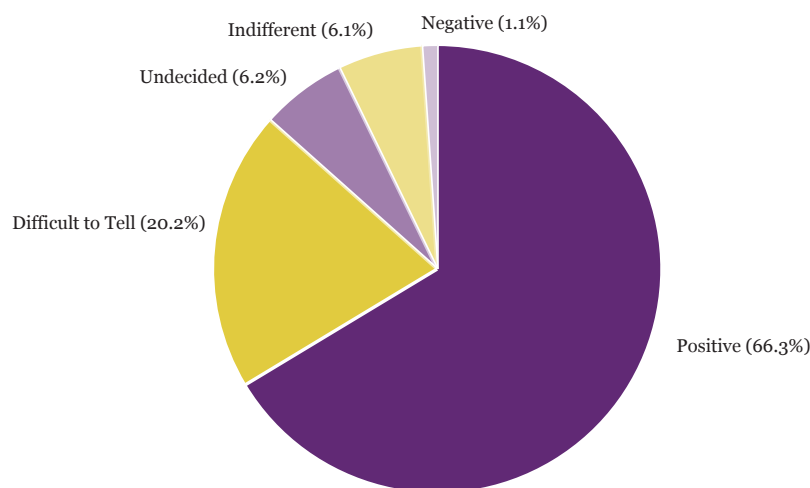


Figure 3.8: General Perception of Campaign Attendants towards SIG Candidates

Besides the mere SIG shares of candidates, NGECE was also interested in the extent to which candidates and/or campaigners specifically reached out to the SIGs during the campaign event. Of the 2,907 observations made, 30% of rallies deliberately reached out to the youth, and 29% reached out to women, as shown in Figure 3.9. Twenty percent of the campaign rallies targeted older persons, 12.3% targeted PWDs, and 6.7% targeted minority and marginalised groups.

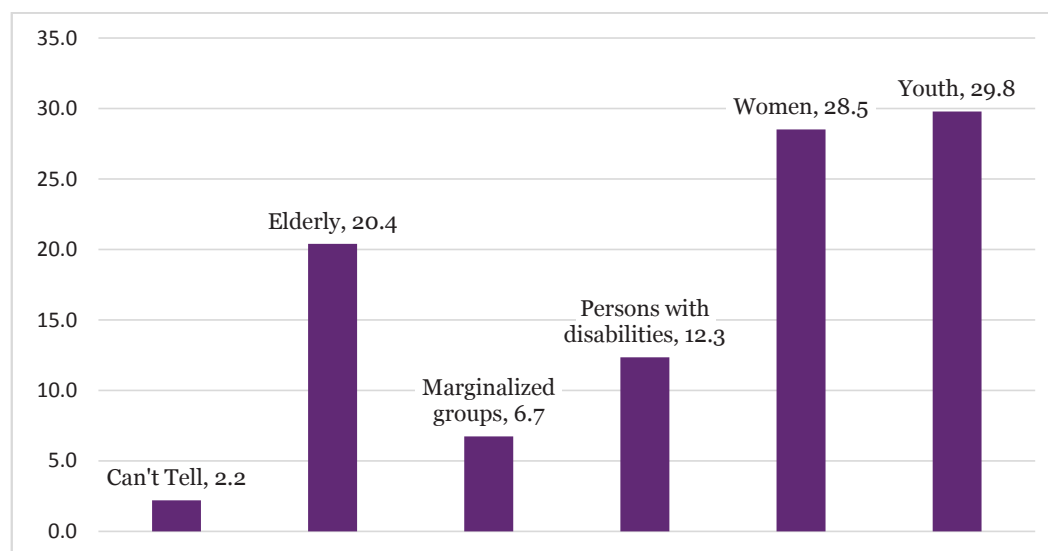


Figure 3.9: Perceived candidate and campaigner outreach specifically to SIGs

According to the NGECE monitors, various elements of the media were present during the campaign rallies, as reflected in Figure 3.10. Of the 1,651 observation reports made on the media, social media accounted for a dominant 37%, followed by radio with 21%, and television and print media with just about 10% each. The dominance of social media was specifically important because of its accessibility to the youth as a SIG category of candidates and voters. It is also likely more affordable for candidates to invest in compared to other media options. Since the media is critical for transparency and accountability, it is disturbing that 18% of the campaign observations did not report any media at campaign rallies.

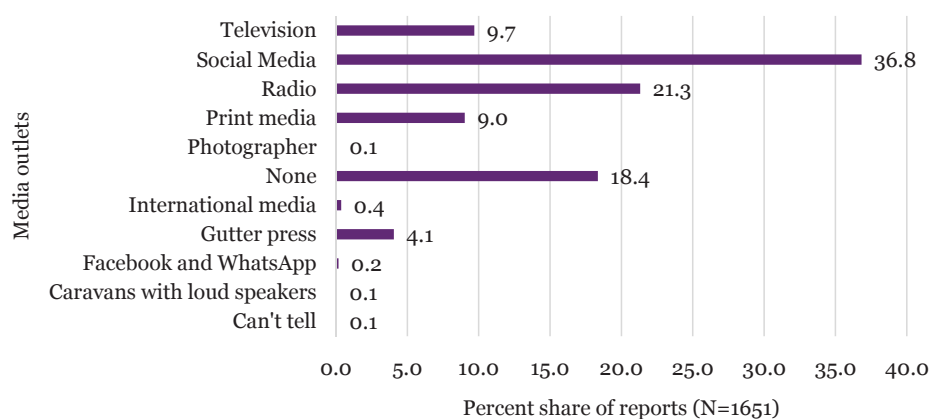


Figure 3.10: Media presence at campaign rallies

NGEC was also specifically interested in the attention the media gave to the SIGs participating in the campaign process. Figure 3.11 shows that 26% of observations made did not report media attention to the SIGs, which is unfortunate because the media is an important cog in the endeavour to integrate SIGs into society by emphasising their capacity to participate in regular society activities. However, for at least 40% of the rallies observed, media attention to SIGs was rated very high or high.

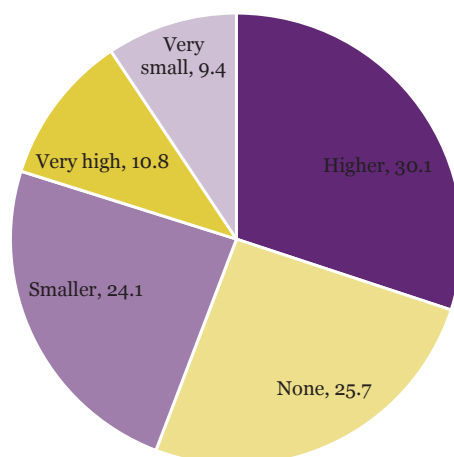


Figure 3.11: Perceived extent of media attention towards SIGs

3.3 Campaign Messages

Leading candidates in the 2022 general elections repeatedly termed the elections a contest of (development) ideas and not merely of personalities. Consequently, it is instructive that 918 of the 2,802 observations made, i.e., 33%, focused on development messages, as reflected in Figure 3.12. Kenyan elections often carry a high risk of violence; so, it is notable that 604 messages – i.e., 22%, repeated the call for peaceful elections. A similar 600 messages augmented IEBC initiatives educating the voters on the voting process and voter preparedness. Only 341 reports focused on opponents as individuals or political parties. While maligning the opposition is undemocratic, this could well be a necessary evil to market a candidate's superior values.¹⁹ The very low incidence of messages on rejecting electoral outcomes probably reflects the successful deterrence of unlawful rejection of IEBC outcomes. There was low coverage in all messages assessed, of international matters, such as the burgeoning national debt.

¹⁹The issues/personalities debate notwithstanding, emphasising opposition shortcomings is sometimes the strongest way of marketing the self to electors as a viable alternative.

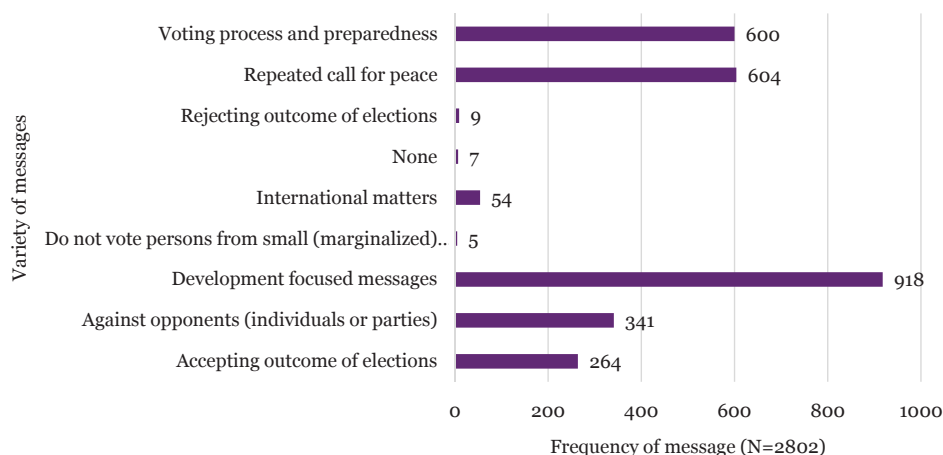


Figure 3.12: Key messages to the campaign, rally participants,

3.4 Campaign Funding

A critical gatekeeper in Kenyan politics is the ability to fund the often very expensive campaign process. This is a special concern over SIG participation since they are often not the financial backbone of the context in which they live and might wish to contest an election. High unemployment rates and modest informal sector incomes for many Kenyans typically impede the access of the youth, PWDs and women to various livelihood opportunities. The latter are especially disadvantaged by poor access to financial markets, since for instance, they do not typically have collaterals with which to access credit. The competitiveness of elections also means that many prospective and actual candidates do not belong to the few mainstream parliamentary political parties that benefit from the State funding²⁰, therefore contesting on weak parties with little or no resource base or contesting as self-reliant independent candidates.

Nonetheless, NGECE sought to capture the context of SIGs concerning the funding of campaigns with Figure 3.13 summarising the profile of 1,235 observations. Of these, 387 reports (40%) covered youth candidates while 385 reports – 40%, covered women candidates. But the difficulty of negotiating the money trail led an NGECE monitor to note somewhat in exasperation that

“The candidates were unwilling to discuss their campaign budgets and funding²¹.”

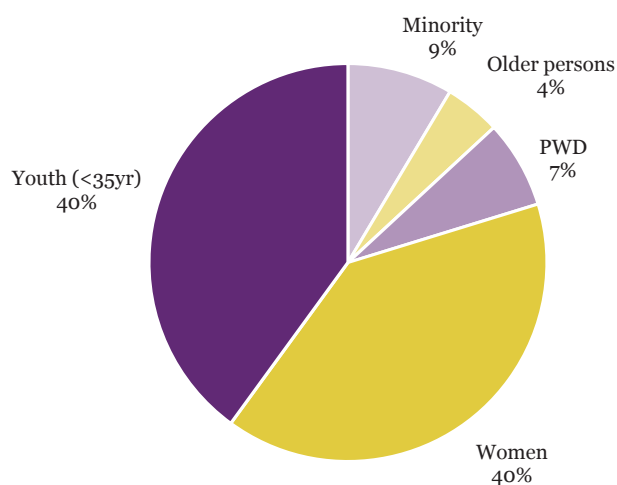


Figure 3.13: Distribution of SIGs engaged for the funding review (N = 968)

²⁰As previously discussed, the Political Parties Fund only caters for political parties in Parliament.

²¹NGECE Official, Kitui West Constituency, Kitui County.

Among the 1,139 SIGs reported on presenting themselves as candidates, Figure 3.14 presents their distribution across the six seats. Thirty-eight percent of the SIG candidates assessed on the financing of campaigns vied for the Member of County Assembly, a position typically targeted by youthful politicians. Twenty-one percent of the SIG candidates assessed vied for Member of the National Assembly, while 18% vied for the County Woman Member of National Assembly seat. None of the 25 SIGs that had originally declared an interest in the President seat at the campaign phase made it to the ballot paper. The following monitor's report might explain a bias against the women SIG category:

“Women are not seen to be of any benefit to sponsors of the campaign as once they are elected, they have nothing to offer back financially or in terms of political positions.”²²

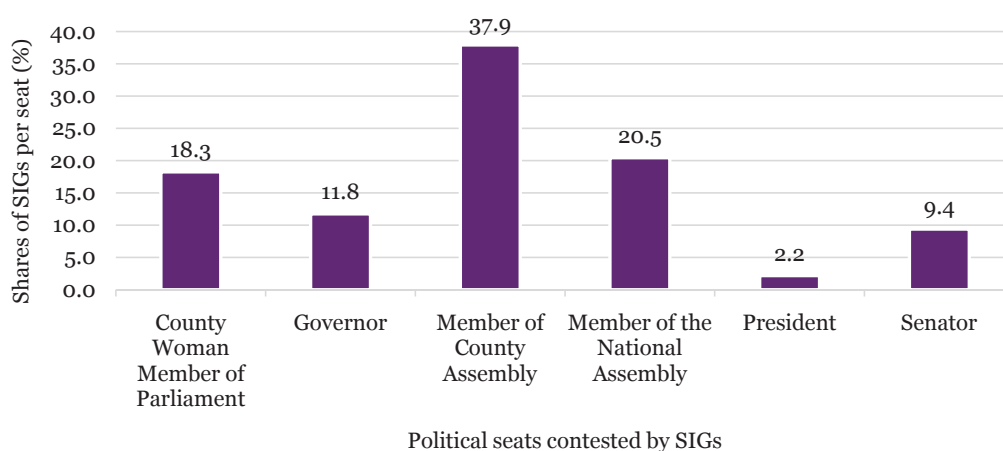


Figure 3.14: SIG Candidates by Political Seat Participating in the Campaign Financing Review

An NGECE monitor noted that:

“The candidates including their campaign managers were elusive when they were asked about their finances. The majority cut off the discussion citing time factors and the fear of legality regarding campaign financing.”²³

Figure 3.15 summarises the sources – not amounts – of funding that NGECE monitors were able to determine among 518 SIG candidates interviewed. The bottom line is that exclusive political party funding covered the campaign financing of a mere 6.4% of the SIG candidates who participated in the assessment. The various categories of self-financing applied to 11% of SIG candidates. A dominant 68% were funded by either ‘Friends or Relatives’ (46%), or that former category plus ‘Political party/parties’ (23%). However ‘Friends or Relatives’ also co-funded with ‘Community Based Organization’ alone (3.7%), or with ‘Political party/parties’ (4.1%). The frequencies of funding from a mix of other sources, including ‘UN Agency’ alone or in combination with others such as ‘Local Governmental Organization’ and ‘Another Country’, accounted for 5.8% of sources.

46%
of the SIG
candidates whose
campaign was
funded by ‘Friends
or Relatives’

²²NGECE monitor, Lurambi Central, Kakamega.

²³NGECE monitor, Manyatta constituency, Embu County.

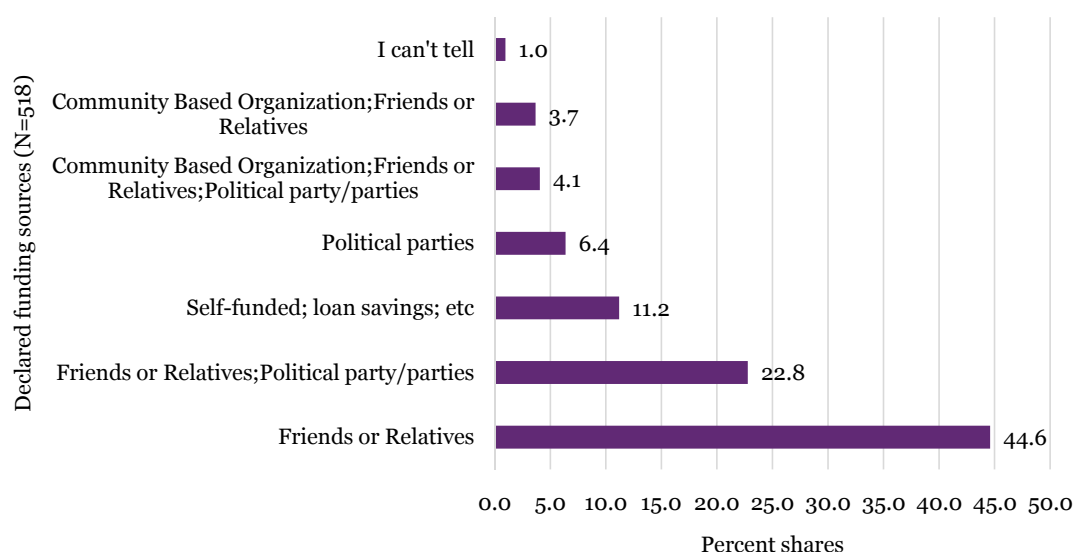


Figure 3.15: Reported Sources of Campaign Funding

To get a better picture of the overall reported sources of funding, Figure 3.16 presents the relative frequencies of each source mentioned in disregard for whether it was a stand-alone source, or in combination with other sources. Thus, 'Friends or relatives' accounted for 60% of the aggregate 671 sources mentioned, compared to 27% for 'Political party/parties'. This approach suggests that the frequency of sourcing exclusively from personal resources – personal savings; bank loans; etc. – was small, i.e., less than 1%. As earlier noted, these are categories of funding, not amounts of funds.

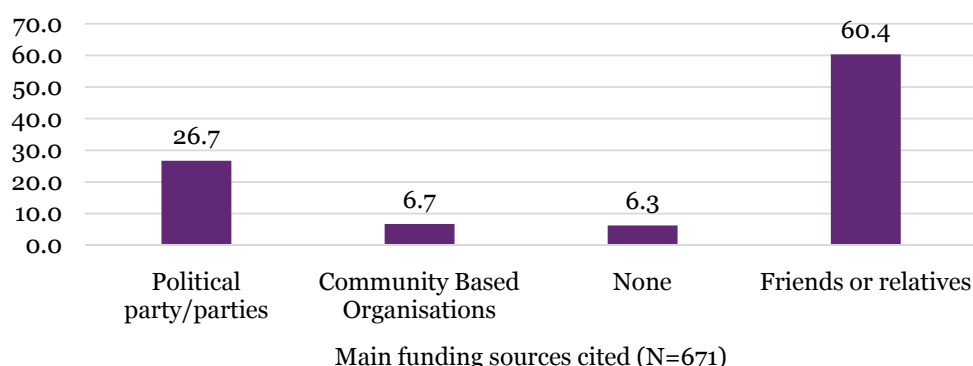


Figure 3.16: Frequencies of Reported Funding Sources

NGEC monitors engaged the SIGs on the extent to which their funding needs were already covered by the time of the observations. As expected, the circumstances could be quite different: a Kitui parliamentary candidate was 'satisfied' with the level of funding from the party, friends and relatives; but two MCA candidates "were struggling" despite help from friends, family and relatives.²⁴ However, Figure 3.17 shows that 58% of the 496 SIGs responding declared they had no underfunding problems. Of those who specified their funding shortfall expressed in monetary terms, only 3.4% had shortfalls between Kshs 10million and the maximum amount cited, Kshs 35million. The share of those with shortfalls just below Kshs 1million was 18%. However, 3% of those with funding shortfalls, 15 individuals, expressed their shortfall in material terms, listing the activities still requiring funding. One individual reportedly declared the whole campaign to be unfunded, but it is impossible to determine the extent of such underfunding as the pertinent quantities and qualities are unknown.

²⁴ NGEC monitor, Kaiti Constituency, Makueni County.

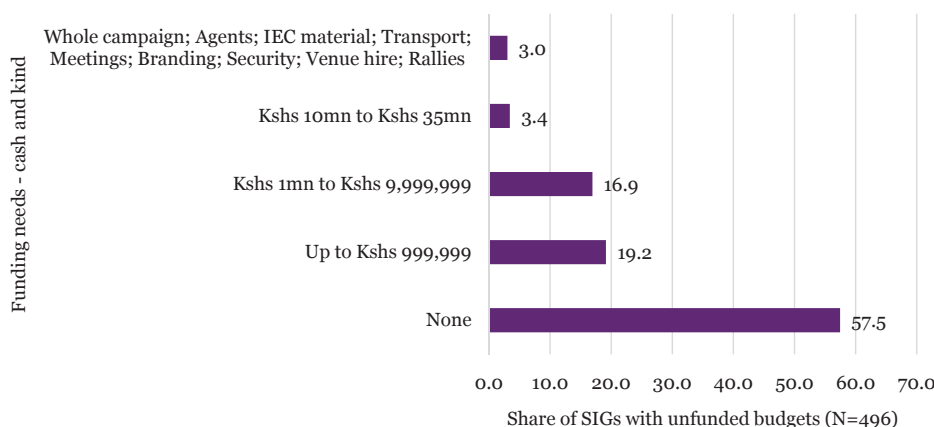


Figure 3.17: Distribution of Reported Levels of Underfunding

Asked to estimate the extent of their underfunding, 443 SIGs responded, which suggests that some of these had declined to respond to the previous question on underfunded budgets and/or activities. Indeed, those who declined to respond to the previous inquiry must include 17% of the 443 SIGs in Figure 3.18 who declared they were unable to estimate their underfunding.

The distribution of responses in Figure 3.18 also complicates the understanding of the distribution of resource needs in Figure 3.17 and underscores the fact that the 'Very High', 'High', and 'Low' categories do not mean the same to all the SIGs interviewed. Focusing only on Figure 3.18's SIGs who expressed their shortfalls in money terms, the highest cost group of Kshs 10 million to Kshs 35million accounts for a mere 8.7% of the needful, yet Figure 3.18's 'High' and 'Very high' categories account for 48% of those assessing their need. The less than Kshs 1million need group of Figure 3.18, which amounts to 49% of those who declared their need in money terms compared poorly with Figure 3.18's aggregate 'Low' and 'Very low' share of a mere 13%. These numbers suggest that prospective candidates may not be good at budgeting. For instance, it would have been interesting to see the funding status of the candidate reported to be, thus:

“personally carrying the PA system and moving around (meetings).”²⁵

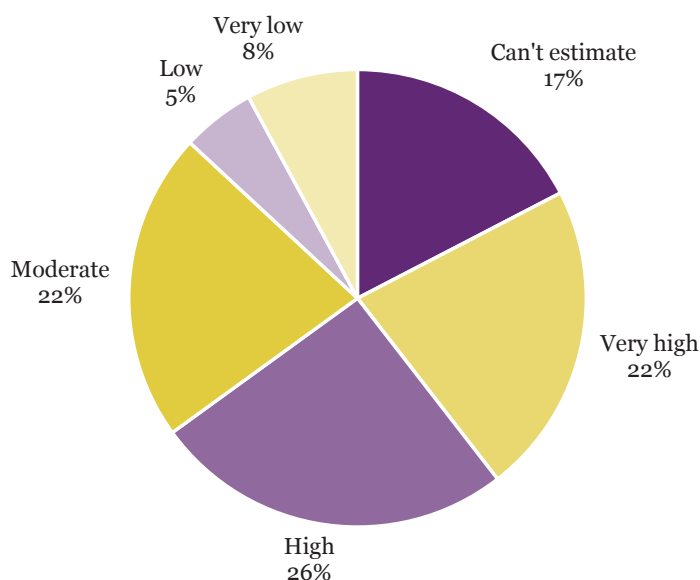


Figure 3.18: SIGs rating of the extent of their underfunding

²⁵NGEC monitor, Kaiti Constituency, Makueni County.

3.5 Violence and Malpractices: Instigators and Victims

Even if their frequency is diminishing, electoral offences are a common feature of Kenya elections, which is why it was necessary to enforce the Electoral Offences Act of 2011, amongst several other deterrent policies and legal frameworks. Indeed, an enduring landmark in the Kenyan electoral landscape is the 2007/2008 post-election violence that cost about 1,200 lives, and displaced about 600,000 people, amidst a lot of other damage to lives, livelihoods and property.²⁶ Electoral violence – or indeed, the mere prospect of it, deters many Kenyans from enjoying their right to delegate their sovereignty to democratically elected representatives, as provided by Article 1 (b) of the Constitution. An NGECE monitor describes how a seemingly innocuous, non-electoral issue rally timing can trigger violence:

“The violence was caused by the allocation of different times for different candidates who were supposed to use the venue from 10:00 am to 12:30 pm and the other candidate was supposed to use the venue from 13:30 to 15:30 but the first candidate arrived at noon and started the meeting. As the campaign rally progressed, the other candidate who was supposed to use the venue from 13:30 arrived at 14:06 and the rally was disrupted by the youths but the police intervened and dispersed people from the venue.”²⁷

The prospect of violence and electoral malpractices makes important the presence of security at campaign meetings and eventually at polling stations and tallying centres during the election. In light of the potential insecurity risks that SIGs and other stakeholders might face during campaigns, NGECE was particularly interested in security arrangements. To that end, Figure 3.19 shows that of the 2,012 campaign observations made, only 53% of them were security officers in or near a campaign venue. That is 47% of the observations, no presence of security officials was reported undermines the deterrent value that arises from merely seeing a security officer on site.

Nonetheless, only in a mere 2.6% of the campaign episodes did monitors witness violence. Of the 1,034 observations made where violence was reported, six reports were of sexual harassment. Of the 26 monitors who commented on the security response to the violence, security officers reacted in only 42% of instances or 10-odd cases. Some observers felt that the failure to react to profanities – vulgar language and insults – is because such have become commonplace in Kenyan society.

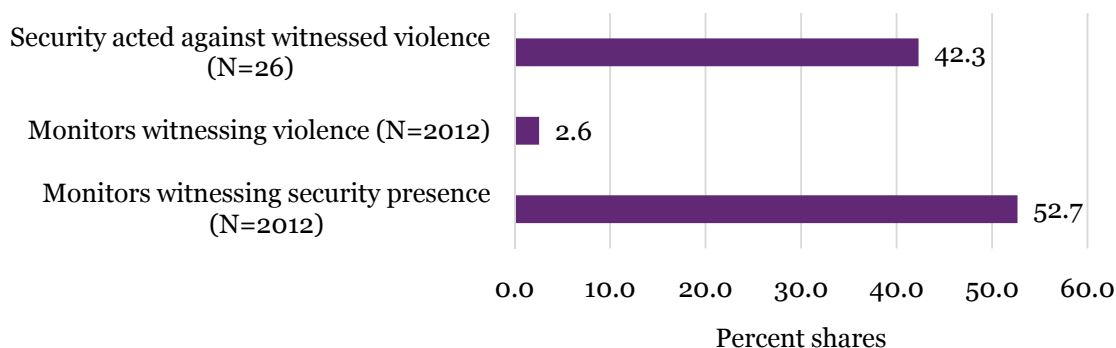


Figure 3.19: Security presence and action against reported campaign rally violence

²⁶See Republic of Kenya (2008a, 2008b)

²⁷NGECE Monitor, Tharaka Constituency, Tharaka-Nithi County.

Among the SIGs attending the campaign rallies, the different categories instigated violence as reflected in Figure 3.20. However, this listing does not consider the non-SIGs who are arguably more likely to instigate violence. Of the 43 reports of SIG-instigated violence, the youth campaign attendees were responsible for 15 instances compared to youth candidates' five instances; and women campaign attendees accounted for six instances compared to women candidates' four instances. While PWDs attendees and minority attendees also perpetrated violence, in a few incidences, monitors observed that security actors were the instigators of violence.

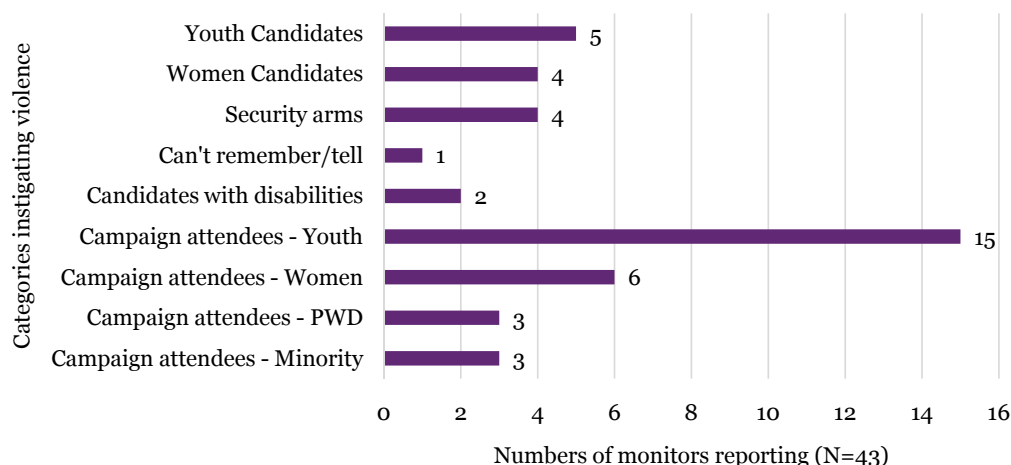


Figure 3.20: Instigators of campaign rally violence

The focus on the physical presence of security officers at campaign rallies seemed to overlook an important aspect of violence, which is significant for whether people participate in the constitutional delegation of their sovereignty. Figure 3.21 highlights the relative importance of psychological compared to physical violence: While there were 15 reported physical violence cases, at least 33 of the 52 reported violence cases were instances of psychological violence. The survey did not explore the professional backgrounds of the security presence at the rallies, and it is therefore not clear whether they had the professional skills to handle psychological trauma. Indeed, Figure 3.20 reports a few instances where security officers perpetrated violence.

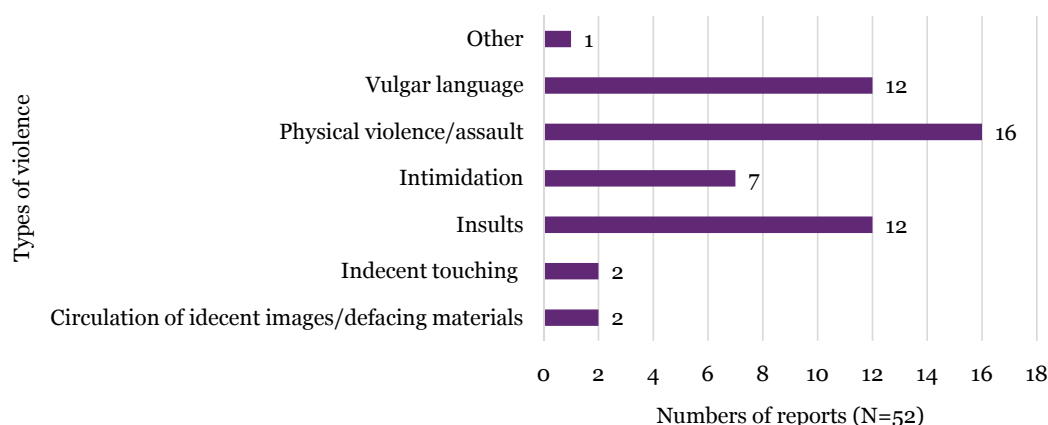


Figure 3.21: Types of violence reported at campaign rallies

Given the instigator evidence of Figure 3.20, the data of Figure 3.22 suggests 'clustered' violence among the SIG categories, of youth on youth and women on women violence: just as the youth-led in perpetrating violence, so too have they led in being victims. The survey also established that children got sucked into campaign rally activities, for instance when such rallies were held near their schools, or the fanfare around the campaigns attracted them out of schools and become veritable victims of psychological violence.



Figure 3.22: Victims of violence witnessed at campaign rallies

The involvement of children in the campaigns is illegal but is also morally wrong, yet they easily become victims of psychological, and possibly physical violence. For one, children under 18 are not voters, meaning there is nothing substantive that candidates are marketing to them even if such participation enhances civic education. Secondly, some electoral campaigns take place during the working week when children should be in school, and dangling the typical campaign rally benefits in cash or kind, likely lures children from their studies. The co-option of children is even worse when they are not in school, such as when they are called upon to dance as part of the entertainment.

The NGECC monitors were also interested in any other campaign malpractices that might have occurred during the rallies. Figure 3.23 shows that 744 of the 1,103 observation reports, i.e. 67.5%, indicated no malpractices during the campaign events. However, 13.4% of the observation reports noted incidents of bribery while 4.7% reported hate and inflammatory speeches. While some of the low-frequency incidents are characteristic of the Kenyan campaign landscape, such as ferrying people, and damaging campaign materials, they were likely not witnessed since they could have happened before, or on the periphery of, the campaign meeting venue.

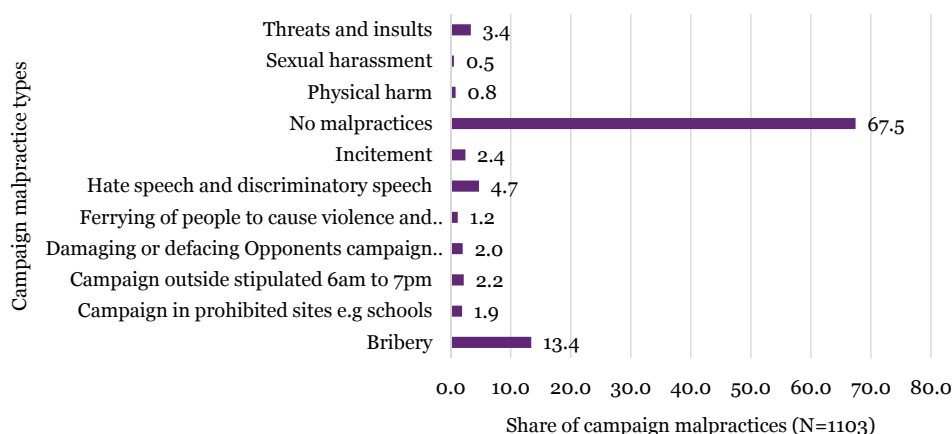


Figure 3.23: Campaign malpractices witnessed at the campaign venue

Of the 366 observations made on the question of whether malpractices were reported to authorities, 333 observations reported that it was not possible to confirm to whom such reports were made. However, the majority of the observations that indicated knowing where reports were made mentioned the police with 13 reports, and seven reports each for IEBC and Peace Committees, as shown in Figure 3.24. While a significant number of malpractices involved bribery, reports were not made to the Ethics and Anti-Corruption Commission.

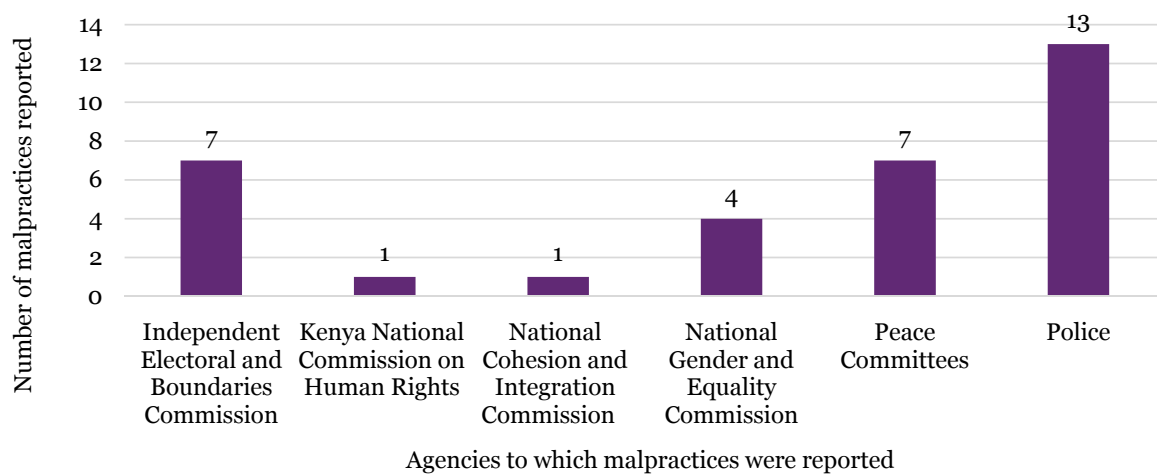


Figure 3.24: Agencies to which malpractices were reported

CHAPTER FOUR

Administration and Logistics

The Administration and Logistics exercise covered 42 sites, including 39 counties, and a Diaspora site each for Tanzania (2) and Uganda (1), as listed in Table 4.1. The objective of the Administration and Logistics monitoring exercise was to establish the level of preparedness of the agencies managing the elections. The monitoring exercise omitted eight counties entirely, namely Garissa, Kisii, Mandera, Narok, Samburu, Tana River, Vihiga and Wajir. The numbers of constituencies covered per county also varied widely, with Busia, Laikipia and Lamu getting a single constituency visit each, while Homa Bay, Kiambu, Machakos and Nakuru each got nearly 10 constituency visits. Additionally, there were wide variations in the numbers of visits per constituency within counties: Kisauni got eight visits compared to single visits for the other three Mombasa constituencies visited.

Table 4.1: Distribution of Administration and Logistics visits to counties and constituencies

County/Sites	Constituencies
Baringo	Eldama Ravine; Mogotio
Bomet	Bomet Central [2]; Sotik [3]; Konoin; Bomet East; Chepalungu
Bungoma	Kanduyi [5]; Tongaren; Sirisia
Busia	Butula
Diaspora-Tanzania	Tanzania [2]; Diaspora (291)
Diaspora-Uganda	Uganda
Elgeyo-Marakwet	Keiyo South; Marakwet East
Embu	Runyenjes [3]; Mbeere North [2]; Mbeere North; Manyatta
Homa Bay	Karachuonyo [4]; Rangwe [3]; Homa Bay town [2]; Kasipul [4]; Suba South; Kabondo Kasipul [6]; Karachuonyo
Isiolo	Isiolo South; Isiolo North [5]; Isiolo
Kajiado	Kajiado West; Kajiado North [10]; Kajiado Central; Kajiado East;
Kakamega	Lurambi [6]; Lurambi Central [4]; Likuyani; Lugari; Shinyalu; Ikolomani [2]
Kericho	Kipkelion East; Kipkelion West; Ainamoi [2]
Kiambu	Juja [2]; Thika Town [4]; Thika; Gatundu South [2]; Kenya; Githunguri; Lari [4]; Ruiru [3]; Limuru [2]; Gatundu North [5]; Ruiru [2];
Kilifi	Magarini; Kilifi North; Kilifi South
Kirinyaga	Mwea [2]; Gichugu [2]
Kisumu	Kisumu East; Nyando; Nyakach
Kitui	Mwingi West [2]; Kitui Rural [4]; Kitui Central [3]; Kitui West; Kitui South; Kitui East;
Kwale	Lungalunga; Kinango; Matuga [2]; Msambweni
Laikipia	Laikipia East [2];
Lamu	Lamu West [2]

Machakos	Yatta [2]; Masinga[3]; Kangundo [2]; Mwala [6]; Machakos Town [4]; Mavoko [2]; Kathiani [2]; Kangundo; Matungulu [4];
Makueni	Makueni; Kaiti; Kilome [2]
Marsabit	Saku; North Horr [3]
Meru	South Imenti; Central Imenti; Igembe South; Tigania East; Imenti North [3]
Migori	Nyatike [2]; Suna East; Suna; Awendo [2]; Rongo
Mombasa	Kisauni [8]; Nyali; Mvita; Kenya
Murang'a	Gatanga [7]; Kangema
Nairobi	Starehe [3]; Kasarani; Roysambu; Embakasi West; Embakasi East; Dagoretti North
Nakuru	Bahati [3]; Nakuru Town West [6]; Nakuru Town East [4]; Naivasha [2]; Kuresoi North; Rongai [6]; Subukia
Nandi	Emgwen [3]; Chesumei
Nyamira	North Mugirango [3] Not Applicable
Nyandarua	Kinangop
Nyeri	Nyeri Town; Tetu; Kieni; Othaya
Siaya	Rarieda [4]; Bondo [2]; Gem
Taita Taveta	Voi
Tharaka-Nithi	Maara [2]; Igambangombe [2]
Trans-Nzoia	Kimini; Tongaren; Cheranganyi
Turkana	Turkana South
Uasin-Gishu	Kapseret [2]; Ainabkoi [2]; Soy [2]
West Pokot	Kapenguria; Kacheliba; Pokot South [5]

Besides the limitations imposed by financial and time resources and the countrywide distribution of regular NGEK staff, these variations were also due to the intense logistical requirements for assessing the administrative and logistical preparedness of key election agencies at the constituency and county levels. While county-level preparedness is mainly determined at constituency and county headquarters (upstream preparedness), the last mile of preparedness – downstream preparedness is assessed at the polling centre and polling stations levels. Typically, different sites would have been at different levels of preparedness at various points ahead of the election; but the expectation would be that all sites are at 100% preparedness before the opening of the polling stations.

Of the 287 monitoring reports or observations made, 212 of them 74% – lasted under 2 hours, as shown in Figure 4.1. Some 82 (28.6%) of the observations lasted less than one hour (which is typically lower than the standard set, while 10% of the observations lasted three or more hours which is beyond the recommended exposure time unless such observations are broken down into episodes and different dimensions of observations.

74%
of election
observations
made lasted
under 2 hours

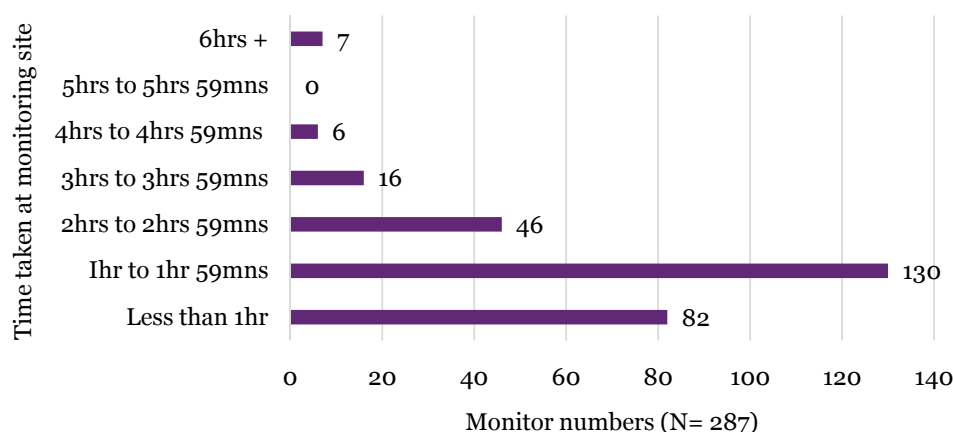


Figure 4.1: Time spent at the monitoring site

4.1 Agency Preparedness on Various Domains

The Administration and Logistics exercise reviewed the levels of site preparedness on five domains elaborated on here, including (i) Transport services, (ii) Staffing levels, (iii) Security officials, (iv) Strategic materials, and (v) Control of people movement. Overall, some stations were declared, “Set to go!”²⁹, and “All necessary arrangements were made on time.”³⁰ However, for others, “Names of dead appearing (in the register)”,^{31,32}, and “There were no voting materials at the centre.”³³

Also:

“The IEBC expressed a lack of understanding of the use of assist Apps for persons with hearing impairment. They also expressed a lack of PWDs officials as they did not apply.”³⁴

Further:

“The prison’s polling station was well prepared but IEBC had not hanged any voting information to educate the voters on how to vote etc. There were no IEBC Officials at the polling station reason being they had gone to collect IEBC materials from the Bungoma High School polling centre. The manual register was well displayed.”³⁵

4.2.1 Readiness of Transport Services

On transport services, Figure 4.2 shows that 36% of the sites were very well prepared while 40% were well prepared. However, some 24% of the sites were not adequately prepared. IEBC cannot provide independent transport services across the vast domain in which polling occurs. Besides mobilising vehicles from other government Ministries, Departments, and Agencies (MDAs), it often also hires transport from schools and private vehicle owners. The latter two options are fraught with risk since it might not be possible to fully ascertain the exact mechanical conditions of the vehicles hired.

²⁹ NGE Monitor, Masinga Constituency, Machakos County.

³⁰ NGE Monitor, Homa Bay Town Constituency, Homa Bay County.

³¹ NGE Monitor, Rangwe Constituency, Homa Bay County.

³² NGE Monitor, Kabondo Kasipul Constituency, Homa Bay County.

³³ NGE Monitor, Kajiado North Constituency, Kajiado County.

³⁴ NGE Monitor, Kipkelion West Constituency, Kericho County.

³⁵ NGE Monitor, Kadunyi Constituency, Bungoma County.

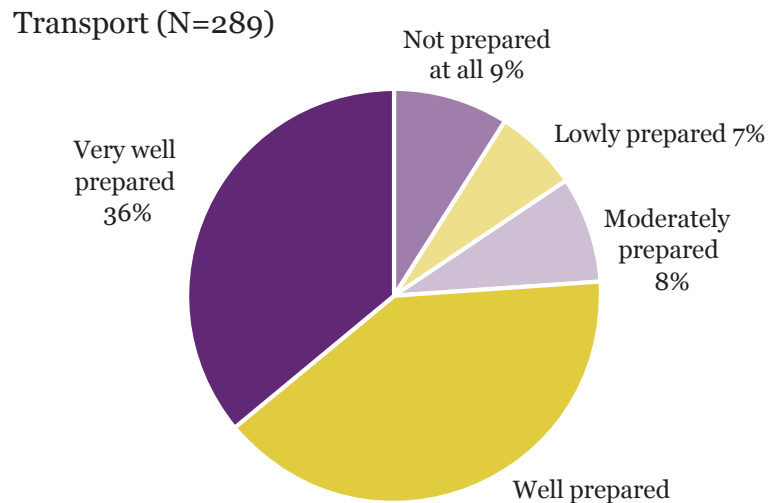


Figure 4.2: Transport preparedness

4.2.2 Readiness of Staffing Levels

While 79% of the monitors reported sites being ‘Well prepared’ or ‘Very well prepared’ on staffing, 21% of the sites had some staffing problems, as summarised in Figure 4.3. In one constituency, the training of staff was still going on.³⁶

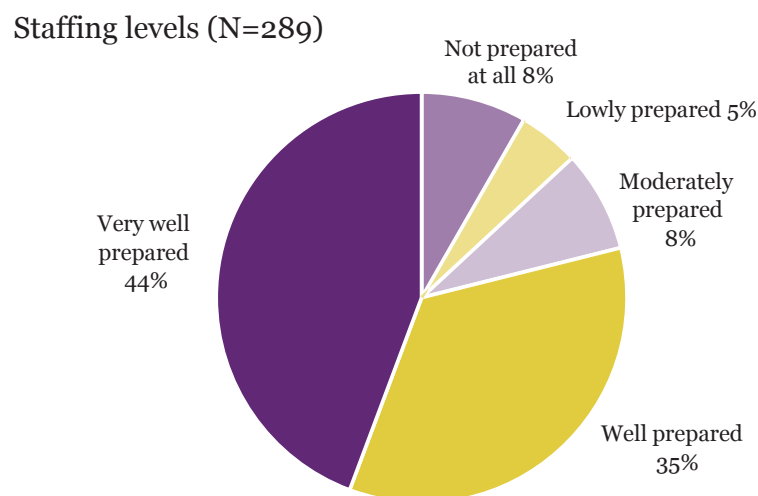


Figure 4.3: Preparedness of staffing levels

4.2.3 Availability of Security Officials and Security Services

Security is critical to the polling context because of the threat of electoral violence on voters, candidates and officials, as well as the threats posed to electoral materials, such as ballots and equipment. Therefore, it is quite disturbing that nearly 21% of the monitors reported unpreparedness on security matters, as shown in Figure 4.4, with 11% not prepared at all.³⁷ Kenya’s uniformed cadres – Police; National Youth Service; Prisons; Kenya Wildlife Services; Forest Warders; etc. – are sufficiently professional to work anywhere in the country, and such unpreparedness could be explained by logistical bottlenecks. However, IEBC had ensured that 46% of the sites were ‘Very well prepared’, which hints at the need for, and the possibility of, redistributing personnel.

³⁶ NGEC Monitor, Yatta Constituency, Machakos County.

³⁷ NGEC Monitors reported the absence of (adequate) security officers at Tongaren, Gitanga and Runyenjes constituencies in Trans Nzoia, Muranga and Embu Counties respectively.

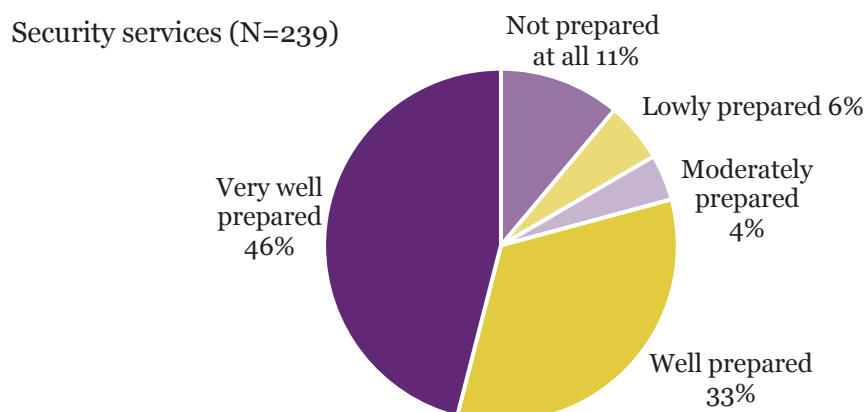


Figure 4.4: Security Preparedness

4.2.4 Readiness with Strategic Materials

Strategic materials for elections include polling booths, ballot papers, Kenya Integrated Election Management System (KIEMS) kits, ballot boxes and return forms. These are one fundamental basis of an election, the other being the voters. Voters typically reside around the designated polling station; however, strategic materials have to be transported from IEBC warehouses to the various polling stations, some of which lie in hard-to-reach places. This is why effective transport resources are critical for the conduct of an election. Here again, Figure 4.5 shows that while 70% of the polling stations were ready with the key materials and equipment, 30% were missing one or more of the strategic materials.

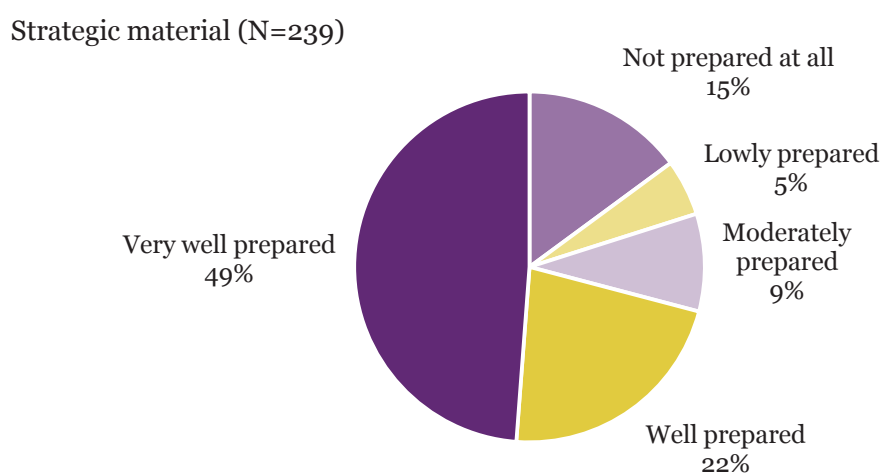


Figure 4.5: Readiness with strategic materials

4.2.5 Measures to control people's movement around the stations/centres

NGEC is especially interested in crowd control measures since its SIGs are typically vulnerable members of the population who ought to be encouraged to exploit their democratic right to vote if assured the process is not physically and/or psychologically stressful. Consequently, a finding shown in Figure 4.6, that 36% of the sites had weak preparation for crowd control was disenchanting.

Crowd control (N=239)

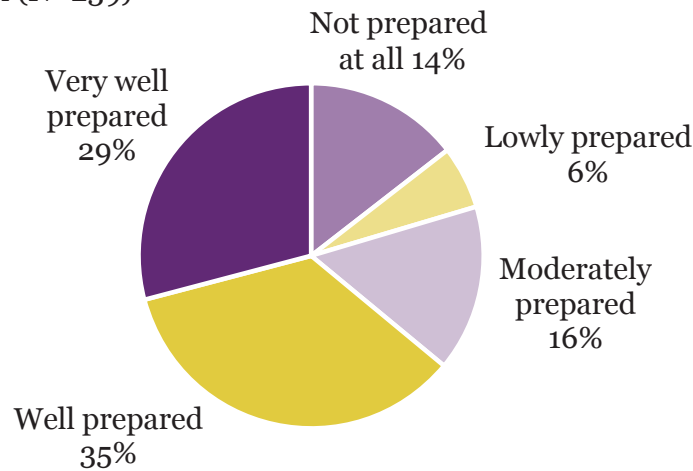


Figure 4.6: Measures for crowd control

The observers were asked to report on the availability of various critical elements of a functional electoral process. Figure 4.7 shows that 73% of the observations found IEBC instructions and educational material in the vicinity of the election logistics station/centre. Seventy-two percent of the observations made found that signage materials and voter registers were placed strategically at the entrance of polling stations. In the centres where this had not been done satisfactorily, some observers noted problems with the alteration and ordering of the names in the register,³⁸ some lists had been defaced, others re-located to a different space from where they were originally pasted, and some appeared to have been rained on.³⁹

On whether the prospective voters and other members of the local communities could read and interpret the register, 72% of the observations affirmed this reality, but others noted that some registers were placed either too high or too low for the members of the public, especially the older citizens, a related complaint being the rather small font size used in printing the registers.⁴⁰ NGECE monitors reported that they met with other monitors and observers on site whose activity timetables coincided.

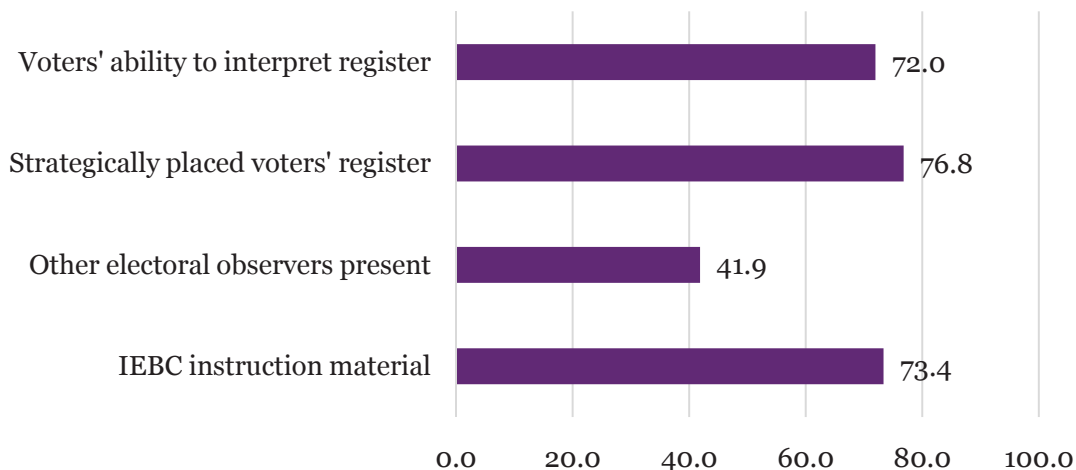


Figure 4.7: Observations concerning various aspects of election preparedness

³⁸ NGECE Monitors in Kajiado North and Tongaren constituencies in Kajiado and Bungoma counties respectively.

³⁹ NGECE Monitors found related complaints in Kasipul Kabondo and Gatanga constituencies in Homa Bay and Muraga Counties respectively.

⁴⁰ NGECE Monitors in Gatanga and Tongaren Constituencies in Murang'a and Trans Nzoia Counties respectively.

Notwithstanding the commendable IEBC performances concerning the specific indicators of preparedness, NGEAC monitors were forthcoming with comments on the broader status of preparedness for the impending balloting, whose frequencies are summarized in Figure 4.8.

The monitors noted that IEBC was in some sites behind schedule in certain respects. For example, in some sites, the training of clerks was going on a day to the polling. At other sites, security officers were absent, perhaps due to delayed transport. There were instances where the register was simply not ready, as opposed to those concerns with its quality, with bona fide voters' names missing, and in some cases, contained the names of registered voters who had died.

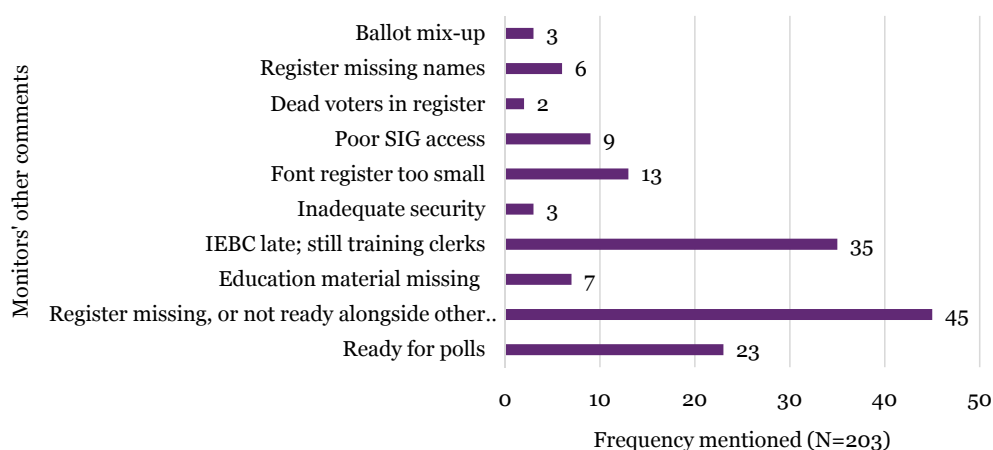


Figure 4.8: Monitors' comments on election preparedness

CHAPTER FIVE

Poll Monitoring

This chapter has six broad sub-sections covering the pre-voting, status of polling stations, voting procedures, support and facilitation of voters, closing of polling stations, and violations of legal provisions for elections.

5.1 Identification

NGEC's monitoring of polling day activities covered 41 counties and the Diaspora in Tanzania (2 sites) and Uganda (1 site). Due to financial constraints, Garissa, Kericho, Kisii, Tana River, Samburu and Wajir were not covered in this exercise. As was the case with the monitoring of Administration and Logistics, the numbers of constituencies covered per county varied greatly, with Baringo, Busia and Kwale for instance having a single constituency monitored, while Kakamega and Nakuru had eight, and Machakos had nine. Additionally, the number of visits per constituency also varied greatly: while most constituencies had a single visit or two, Kasipul Kabondo in Homa Bay had 10, Mwala in Machakos had 11, and Rongai in Nakuru had 20. This skewed distribution of monitors has previously been explained in terms of resource constraints; but equally significant was NGE's desire to allow its officers to exercise their voting rights by posting them closest to where they registered as voters. In regards to Rongai Constituency in Nakuru, the Parliamentary elections were held at a later date, which saw the Commission making more observations in addition to the ones that had been made during the general election (9th August 2022).

Table 5.1: Distribution of Poll Monitoring Activities

	County	Constituencies
1	Baringo	Eldama Ravine [3]
2	Bomet	Sotik [2]; Chepalungu [2]; Bomet Central
3	Bungoma	Kanduyi [7]; Mt Elgon [2]; Tongaren [2]; Webuye East [2]; Webuye West;
4	Busia	Bunyala
5	Diaspora-Tanzania	Kenya Consulate Arusha; Dar es Salaam)
6	Diaspora-Uganda	Diaspora
7	Elgeyo-Marakwet	Marakwet East
8	Embu	Runyenjes [5]; Manyatta [6]; Mbeere South [5]; Mbeere North [4]
9	Homa Bay	Homabay Town [5]; Kasipul [2]; Kabondo Kasipul [10]; Suba South [3]; Karachuonyo [5];
10	Isiolo	Isiolo North [18]
11	Kajiado	Kajiado North [7]; Kajiado West [3]; Kajiado East [4]; Kajiado Central [2]
12	Kakamega	Lurambi [6]; Kakamega; Likuyani [2]; Ikolomani [2]; Lurambi Central [4]; Shinyalu [2]; Navokholo; Malava
13	Kiambu	Lari [8]; Limuru [2]; Kikuyu [2]; Kabete [2]; Githunguri [3]; Ruiru [12]
14	Kilifi	Kilifi North [3]; Malindi [2]; Kaloleni

15	Kirinyaga	Mwea[3]; Kirinyaga Central [2];
16	Kisumu	Kisumu Central; Kisumu East
17	Kitui	Mwingi West [2]; Mwingi West; Kitui Central; Kitui Rural [11]
18	Kwale	Matuga
19	Laikipia	Laikipia North [3]; Laikipia West
20	Lamu	Lamu West [4]
21	Machakos	Masinga [4]; Mwala [11]; Kangundo [3]; Machakos Town [3]; Mavoko[3]; Kathiani [2]; Mwala [4]; Matungulu [4]
22	Makueni	Kaiti [4]; Kibwezi West [2]; Kilome [3]; Makueni [2]; Mbooni [3];
23	Mandera	Mandera North [3]
24	Marsabit	North Horr [7]; Saku [2]
25	Meru	Buuri [3]; Igembe Central; Igembe South [2]; Imenti North [7]; Tigania East; Tigania West
26	Migori	Awendo [2]; Suna East; Suna West
27	Mombasa	Changamwe [2]; Changamwe; Jomvu; Kisauni [6]; Likoni; Mvita; Nyali [4];
28	Murang'a	Gatanga [6]
29	Nairobi	Dagoretti North [2]; Embakasi East; Embakasi South [2]; Embakasi West [2]; Roysambu [3]; Starehe [4]
30	Nakuru	Bahati [2]; Gilgil; Kuresoi North; Naivasha; Nakuru Town East [4]; Nakuru Town West [4]; Rongai [22]; Subukia;
31	Nandi	Emgwen [4]
32	Narok	Emurua Dikirr [3]; Kilgoris [2];
33	Nyamira	West Mugirango
34	Nyandarua	Olkalao
35	Nyeri	Othaya[3]; Tetu; Mathira [2]; Nyeri Town [2]
36	Siaya	81; Bondo; Alego Usonga [2]
37	Taita-Taveta	Mwatate [2]; Taveta; Voi [6]
38	Tharaka-Nithi	Chuka - Igambangombe [3]; Maara; Tharaka;
39	Trans Nzoia	Kwanza; Kiminini; Cheranganyi
40	Turkana	Turkana South [3]
41	Uasin Gishu	Kapseret [5]; Soy
42	Vihiga	Sabatia [2]; Vihiga
43	West Pokot	Kapenguria [2]; Pokot South [3]; Kacheliba [2]

5.2 Pre-Voting Preparedness

Figure 5.1 summarises the times observations were made by the NGECC monitors. About one quarter (24%) of the observations made, monitors arrived by 6.00am, while 18% of the observations were made between 3.00pm and 6.00pm. The data and information on pre-voting preparedness are therefore limited to these cases.

Monitors' arrival at station (N=400)

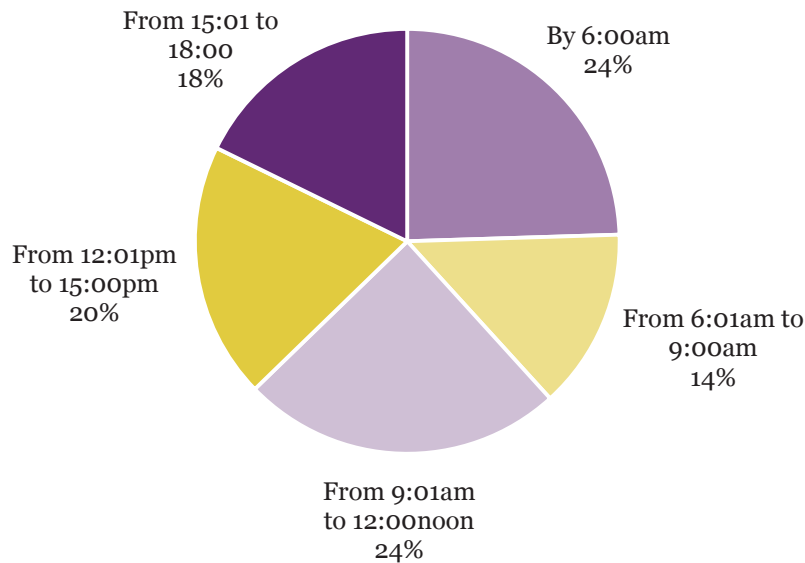


Figure 5.1: Monitors' arrival times at respective stations

Part (a) of Figure 5.2 shows that with only 123 monitors reporting, 64% of the stations were ready for balloting by the official 6.00am opening time. However, some of the delays in opening arose for instance, from the fact that IEBC engages non-IEBC institutions to provide space for the polling stations, such as schools and social amenities. Such arrangements are sometimes poorly coordinated. However, in other late opening instances, IEBC delays were to blame. One monitor noted that:

“In Embu County, the delay in one of the observed centres was occasioned by the late arrival of IEBC officials, compounded by a lack of coordination between the school management and the IEBC election officials. In Iriari polling centre, in the same County, the delay was caused by a broken presidential ballot the box which had to be replaced.”⁴¹

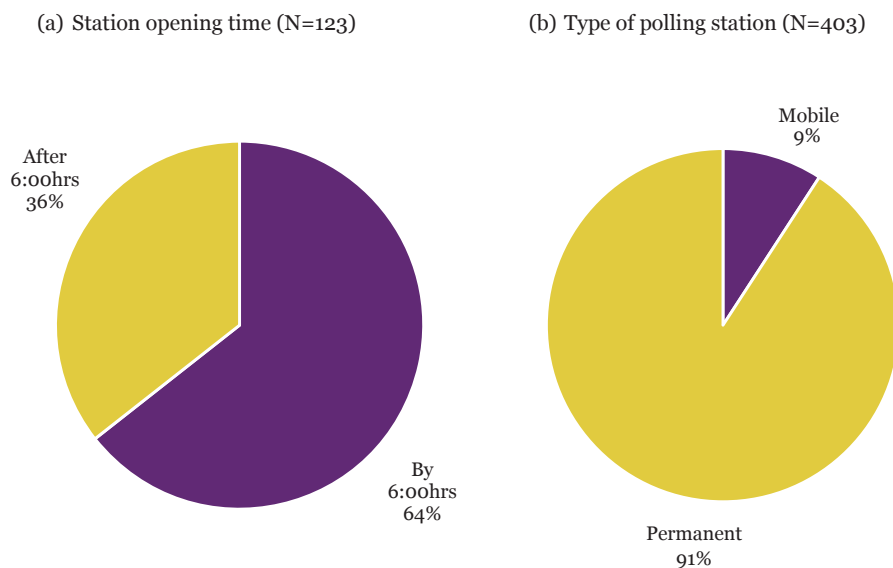


Figure 5.2: Station opening and types

⁴¹ NGEC Monitor, Embu County.

Part (b) of the figure shows that nearly nine in every 10 polling stations was a permanent one in the sense of being in a permanent building, as opposed to being a mobile polling station.⁴² Meanwhile, more than two-thirds of Kenya is agro-ecologically either arid or semi-arid, leading to pastoralist—often nomadic, livelihoods. Consequently, the near-exclusive dependence on permanent/fixed poll stations might continue the disenfranchisement of the nomadic pastoralists of northern Kenya.

The timely presence of adequate security officials is important for the electoral process for the security of voters and non-voters in the vicinity. Security is also important for the safety of election agents and election materials. Commenting on the status of security at the opening of the polls, 88% of the NGECE monitors reported adequate readiness as seen in Figure 5.3. The rest of the monitors either were unable to tell the security status or felt the security was focused exclusively on the centre and not the surrounding community.

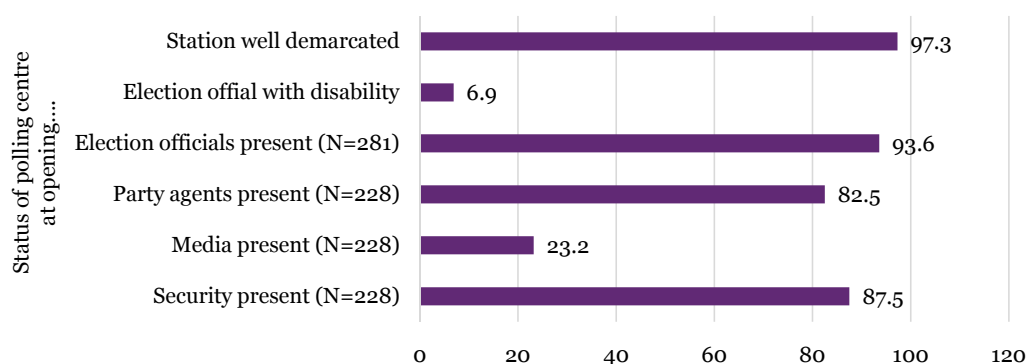


Figure 5.3: Status at the opening of the polling station

The media is another critical institution for the effective conduct of democratic elections enabling transparency through the free flow of information before, during and after balloting. Yet only 23% of the NGECE monitors saw the media at balloting, as captured in Figure 5.3. While an important part of the electronic media is government-owned, this does not operate at IEBC's behest and is indeed statutorily required to conduct itself professionally, giving fair coverage to all parties in the election. However, private ownership dominates the Kenyan media.

The presence of party agents is a further factor in ensuring the legitimacy of elections as they can reduce the temptation by other candidates, and indeed IEBC election managers, to act in favour of preferred candidates, and therefore to the detriment of other candidates. A majority at 82.5% of the NGECE monitors reported agents being present at opening time, as seen in Figure 5.3. Some 17% of the 228 observers responding to this inquiry declared they could not tell if agents had been there at opening time, and one single observer declared that no agents had been there at that time.

Figure 5.3 also shows that 93.6% of electoral officials were present at the opening of the station. The chart also shows that 7% of the monitors reported seeing electoral officials who were persons with disabilities (PWDs), the share being marginally higher than the 5% benchmark the Constitution prescribes for the inclusion of PWDs. Monitors reported instances where IEBC officials were either late or absent when needed at the stations.

Finally, the NGECE observers evaluated demarcations at the polling centres, with 97.3% of them adjudging these to be well done. Good demarcation is important since it enables the ef-

⁴²As previously mentioned, IEBC merely temporarily occupies most of the premises in which it locates polling stations, such as in schools and social halls; so it is the building that is permanent rather than the polling station.

ficient flow of voters, monitors, observers, agents, media and all other actors involved in polling. Good demarcation emphasises transparency, accountability, orderliness and organisation skills all necessary in polling.

In 403 observations, details about the presence of various enablers of the electoral process were gathered for ballot boxes and ballot papers, the numbers reporting seeing them were 401 and 402 respectively, as reflected in Figure 5.4. The numbers reporting seeing the KIEMS kit and polling booths were also near-universal at 402 and 400 respectively. While 398 reported seeing indelible ink, the returns for brailled materials (15) and sign language interpreters (29) were much lower; yet these small numbers must be viewed against the 5% incidence of PWDs in the national population. From an efficiency perspective, IEBC could consider grouping such specialist services to avoid partial availability.

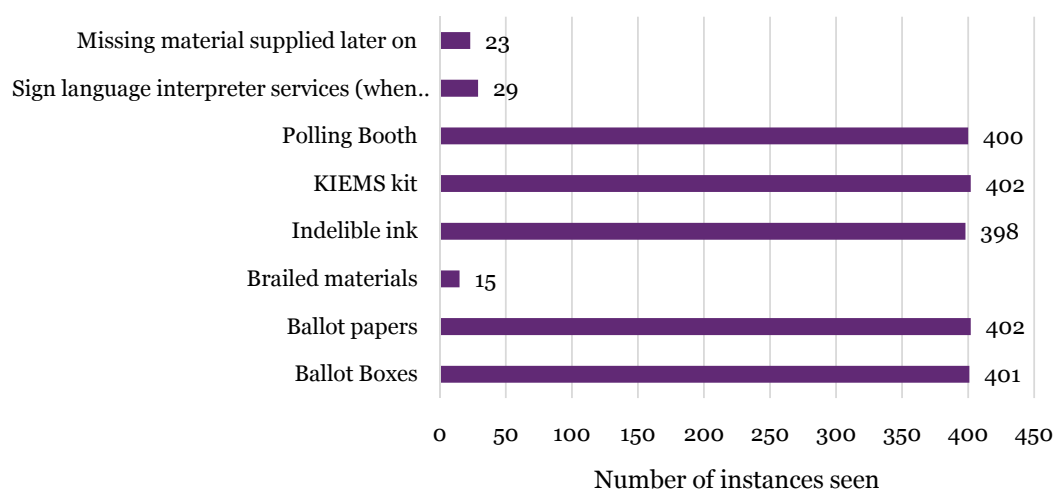


Figure 5.4: Observed presence of selected electoral materials

Where stations were missing certain electoral materials, NGEC monitors were asked to determine whether such materials were delivered later in the day. Table 5.2 shows that late deliveries for all the materials missing at the early morning evaluation occurred in only 3 of the 301 instances applicable, while 92% of the monitors reported no late deliveries. Since monitors moved from one polling station to another, it is possible such missing materials could have been delivered after the monitors' departure. However, this study did not explore how polling stations coped with the partial or total lack of critical polling materials. Since all the materials designated for a polling station had a specific purpose, it is fair to conclude that their partial or full absence undermined the transparent management of the polling exercise.

Table 5.2: Whether missing electoral materials were delivered later

Whether missing materials are delivered later	Numbers	Percentage shares
No	278	92.4
Yes all	3	1.0
Yes some	20	6.6
Totals	301	100.0

Only 1.7% of NGECE monitors witnessed unauthorized persons in the polling stations, as reflected in Figure 5.5. This low infringement rate would suggest either that civic education on citizen (wananchi) conduct in and around polling stations was successful, or that the security system and station demarcations were effective in regulating movement into and around polling stations.

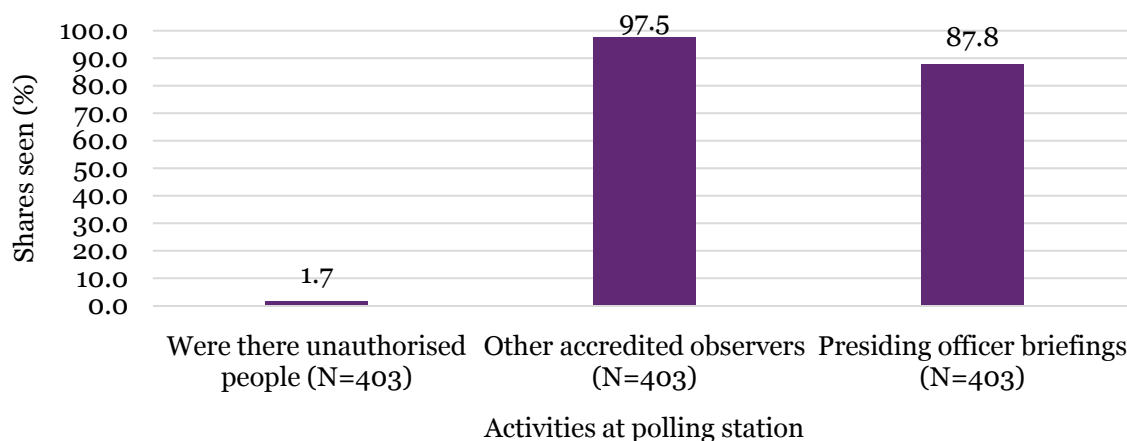


Figure 5.5: Activities around polling stations

On access for other accredited monitors and observers to polling stations, 90% of the NGECE monitors reported that all such monitors and observers were allowed access; but 7.4% of the monitors said that only some of their colleagues were allowed access. Figure 5.5, therefore, reflects a total of 97% allowed access to stations. Finally, the figure also shows that 88% of the observers acknowledged that presiding officers provided frequent briefings on the proceedings.

Table 5.3 provides an analysis of the other observers and monitors other than NGECE's that were present during the polling exercise. International observers accounted for a modest 8% of total observers. That such a large share of the other observers and monitors were Kenyan is evidence of the premium that Kenyan electoral stakeholders place on free and fair elections, especially against the backdrop of the 2007 post-election violence, and the disputed 2017 presidential elections.⁴³

About 5% of the domestic observers represented statutory bodies, including the Ethics and Anti-Corruption Commission, Directorate of Public Prosecution, Independent Police Oversight Authority, Office of Registrar of Political Parties, and Kenya National Commission on Human Rights. Other agencies represented included Centre for Multi-Party Democracy (CMD), and Elections Observation Group (ELOG)-Kenya, just to mention a few.

Table 5.3: Other Monitors/Observers present during the polling exercise

Observer/Monitor Category	Frequency	Percent shares
International observers	31	8.1
Domestic Private Sector Observers	230	60.4
Media	5	1.3
Domestic Non-Government Observers: ELOG; Muhuri; Evangelical Churches of Kenya; FIDA-Kenya; NCKK; CMD; Civil society	18	4.7
Domestic Public Sector Observers: EAC; ODPP; IPOA; KNCHR	18	4.7
Party Agents	8	2.1
Others		0.0
None	71	18.6
Total	381	100.0

⁴³In 2017, a successful petition against the re-election of the out-going President, led to the nullification of the result and a re-run of the election.

5.3 Status of the Polling Station

As previously noted, IEBC has no independent properties in which to host polling stations and invariably relies on being hosted by existing institutions, notably schools and community centres. In turn, the layout and/or design of schools depends largely on the means and preferences of the hosting community or the guidelines provided by the Ministry of Education. As Figure 5.6 reflects, a majority 96% of the respondents found the polling stations to be sufficiently spacious to accommodate the movement of voters within the polling stations. A large majority of 96% of the monitors also adjudged the booths to be arranged in a manner that allowed privacy when voters were engaged in marking their ballot papers.

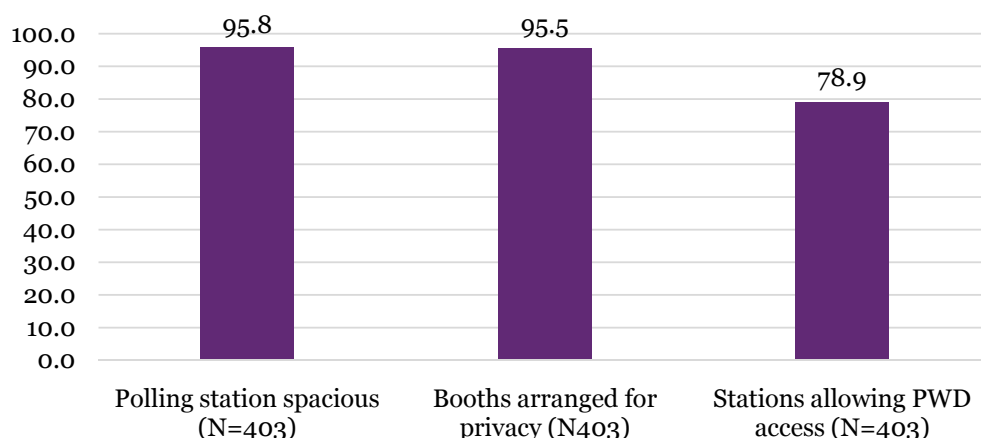


Figure 5.6: Polling station spaciousness and accessibility for all including SIGs

However, a more modest 79% found the stations to be easily accessible to PWDs. The measurement of access largely considered persons with physical disability, such as those in wheelchairs, or those on crutches and other walking devices. As had been noted earlier, the polling stations had little or no preparation for persons with visual or audio impairments, for whom such centres were largely inaccessible, or could not afford both freedom of movement and privacy in casting their ballots. One effect of the absence of consideration for such prospective voters is to sacrifice or compromise their constitutional right to secret balloting.

The foregoing concerns also apply to older persons who typically have infirmities that diminish their mobility and to pregnant and lactating mothers. Some pregnant and lactating mothers bring children into polling stations in the hope of getting preferential voting treatment, an act which exposes children to the risks inherent in the tensions surrounding elections. For all these SIGs access is also compounded by overcrowding at some stations that led to long hours in queues with no seating facilities, and complicated access to essential services, such as drinking water and toilets.

Concerning physical access, the monitors' main reported concern was the lack of ramps, as Figure 5.7 shows, accounting for 18 mentions of the 40 responses. However, the monitors also mentioned problematic architecture, such as the location of polling stations on raised spaces, and user-unfriendly landscapes around the polling centres. In Kisumu, a polling station was located in the middle of a roundabout at a major road junction. In Rongai in Nakuru, a polling station was located on the junction of a major highway busy with traffic. Of the 40-odd monitors responding to this question, only two mention the challenge for the visually impaired.

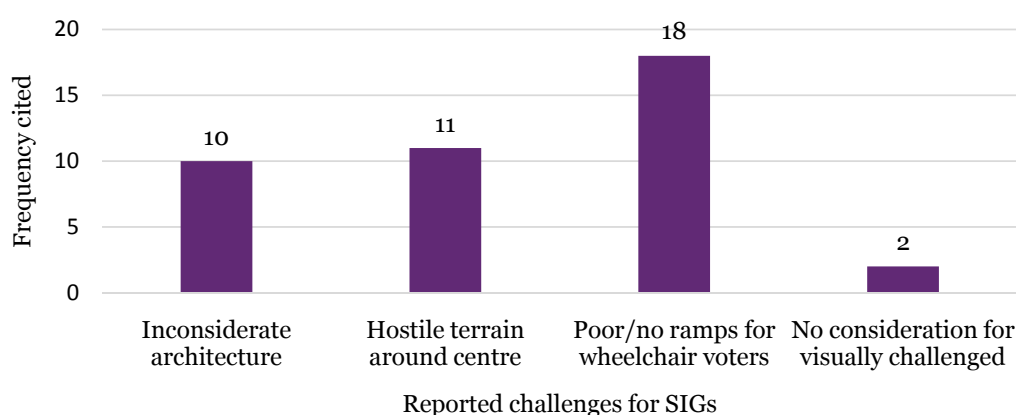


Figure 5.7: Challenges faced by SIGs in accessing polling stations

Monitors were asked if they had witnessed any intimidation of voters, and there were only eight affirmative observations out of 377, as reflected in Figure 5.8. Among the intimidation incidents, the monitors cited included a voter harassing a Presiding Officer to open the polling station earlier than designated by IEBC, elderly voters receiving divided attention from IEBC officials during the KIEMS identification process (through the use of fingerprints), voter bribery and coercion in stations, and overzealous IEBC officials helping voters to mark their ballot papers without the voters requesting assistance. Again, these low levels of adverse incidents suggest effective voter education or effective security deterrence.

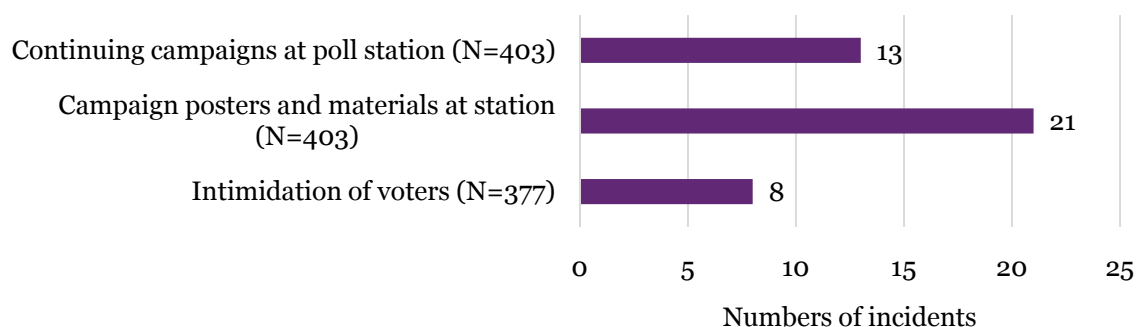


Figure 5.8: Assessment of general conduct within the polling vicinity

The campaign environment is often overflowing with publicity material – branded tee shirts and caps, posters and other paraphernalia. However, the law bars the display of such material in and around the vicinity of a polling station. Of the 403 observations made and commented on this aspect on the polling day, only 21 reported violations of the general conduct at the polling stations, as seen in Figure 5.8.

Asked whether there was any form of campaign going on at the polling station, 13 observations affirmed such.

5.4 Voting Procedures

One of the main approaches to vote rigging is ballot stuffing into ballot boxes which can occur at any stage of the polling exercise, before, during or after balloting is undertaken. Consequently, the agents at a polling station must confirm that the ballot boxes are indeed empty before polling begins. To that effect, Figure 5.9 shows that 61% of the 254 observations made confirmed that the boxes were indeed empty before they were sealed in readiness for balloting.

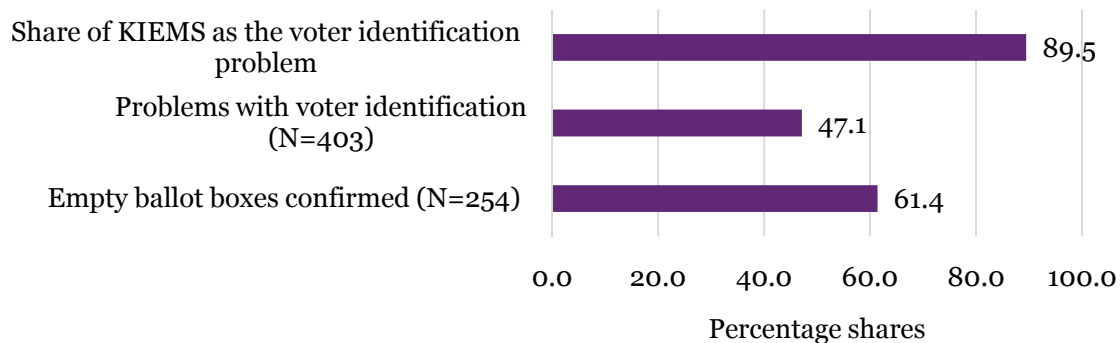


Figure 5.9: Status of polling materials at stations

Figure 5.10 confirms the problem of voter identification raised in Figure 5.9, especially when the KIEMS kit was applied to older citizens. This problem was cited in 47% of the observations, concerning Kit's failure, lack of voter verification, failed fingerprint recognition, especially among likely manual workers and the elderly population, and failed facial recognition. Measured against all the voter identification problems, the KIEMS kit accounted for 90% of the lot.

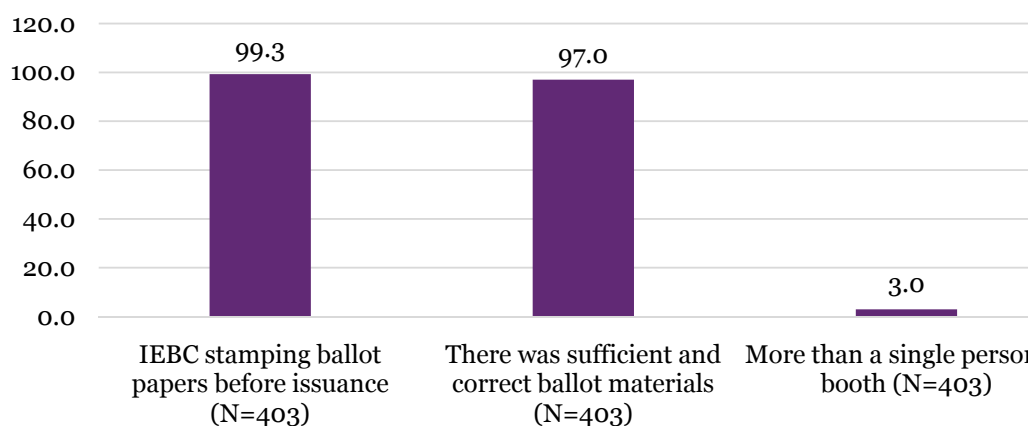


Figure 5.10: An assortment of polling centre activities

A vibrant underground printing industry is alleged to exist in Nairobi's 'River Road' area, dealing in a wide variety of materials whose production is otherwise protected by government statutory frameworks, such as currency, land title deeds, and examination scripts and certificates. That such 'entrepreneurs' could print election ballot papers is not far-fetched. Ballot papers are therefore printed outside the country under IEBC's supervision, and the Commission must rubber stamp them to confirm their genuineness at respective polling stations ahead of issuance to voters, to limit the risk of counterfeits entering the polling system.

NGEC monitors confirmed the rubber-stamping in 99.3% of 400 instances observed, as reflected in Figure 5.10; but there is no information on what happened with the 0.7% share whose stamping the monitors did not witness. Of the 403 observations made on the sufficiency and correctness of ballot papers, 97% were affirmative. Here again, it is unclear what happened in the 12 instances where ballot papers were insufficient or wrong, especially since, as with missing critical materials, the monitors had no way of knowing what happened after they departed from the polling station.

In Kacheliba, Kitui Central and Rongai where ballot papers were missing entirely, the exercise was postponed; and problems over ballot papers also caused the postponement of the gubernatorial elections of Kakamega and Mombasa, as well as the postponement of National Member of Parliament elections and Member of the County Assembly as IEBC adjudged necessary.

Twelve observations recorded the presence of more than one person other than an aide or helper, in the polling booths. When asked about challenges in the polling station, monitors had cited instances of overzealous IEBC officials who entered the booths to ‘help’ voters who had not requested such assistance. However, there were about eight instances of genuine help for blind and illiterate elders. A confusing aspect of all this was that in such instances, party agents would insist on monitoring alongside party agents, and in other instances, there would be many agents insisting on overseeing the assistance given to those needing it. When such assistance was provided in a small booth, then there was intimidating overcrowding, the monitors noted.

5.5 Support and Facilitation for Voters

One role of a Presiding Officer at a polling station is to moderate activities therein, as the supervisor of the elections at the polling station. The Presiding Officer is responsible for among other things, resolving any issues arising so that the voting experience is satisfactory. Some 47% of the observations reported 212 complaints. Figure 5.11 lists the issues about which complaints were raised. The most frequent one – 27% of all complaints were voters finding themselves in the wrong polling station. This experience might be consistent with complaints aired over some new polling stations that IEBC had gazetted but not adequately publicised. This situation related to a complaint that voters could not be verified at expected stations. However, this complaint also arose at ‘old’ polling stations that had been used in previous elections. Voters also complained of excessively long queues, which resulted in delayed voting.

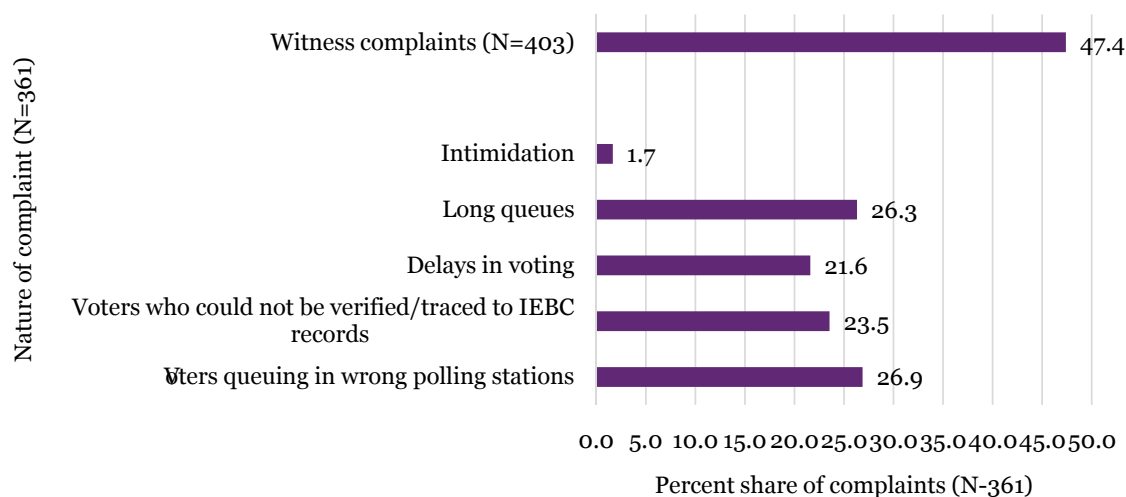


Figure 5.11: Issues complained of surrounding the general elections

Of the 432 observations registering complaints by source, expectant/lactating mothers accounted for 7.4% of the instances, with other women constituting the largest complaining group at 18.8%, as shown in Figure 5.12. Complaints from youth were recorded in 18.5% of the total instances, party agents (11.1%), Presiding Officers (1.4%) and IEBC officials (3.2%). The complaints from sick persons (6.9%) and PWDs (5.1%) were consistent with the complaints of long queues and delays in voting. Thus, while the SIGs were well represented among the complainants, it is strange that older persons were not among them.

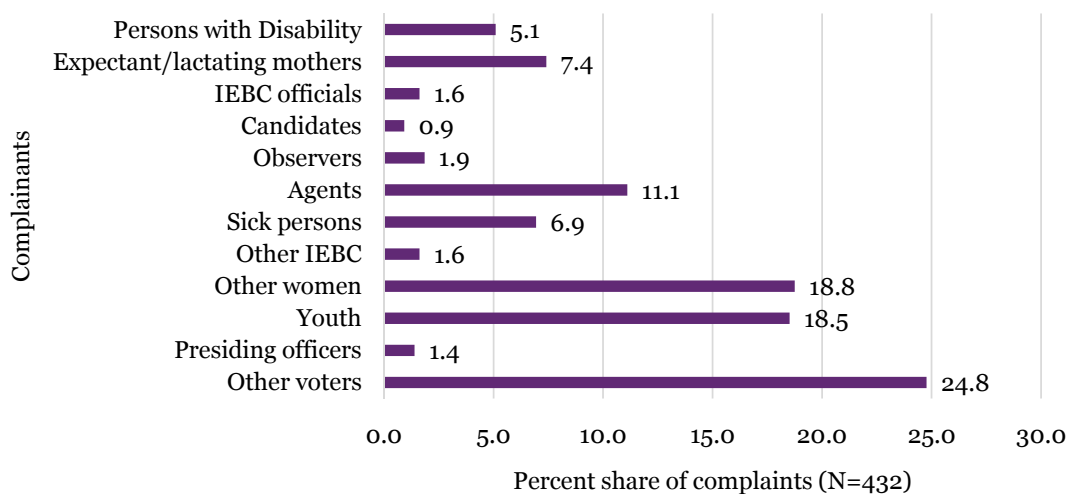


Figure 5.12: Categories of people presenting complaints

The absence of the elderly from the list of complainants as stated earlier is curious since of the 342 observations of any SIGs asking for help from the election officials, the elderly constituted the largest group, distributed alongside the other SIG categories also seeking help, as shown in Figure 5.13. Further, the monitors noted that all but one of the requests were granted. The SIGs were allowed to vote as a priority, despite complaints from some people who had been in the queue for long periods. Indeed, in some rural areas, the queues were dominated by elderly persons, complicating any priority voting. However, secrecy throughout the voting process was only observed in 376 of the total 403 instances.

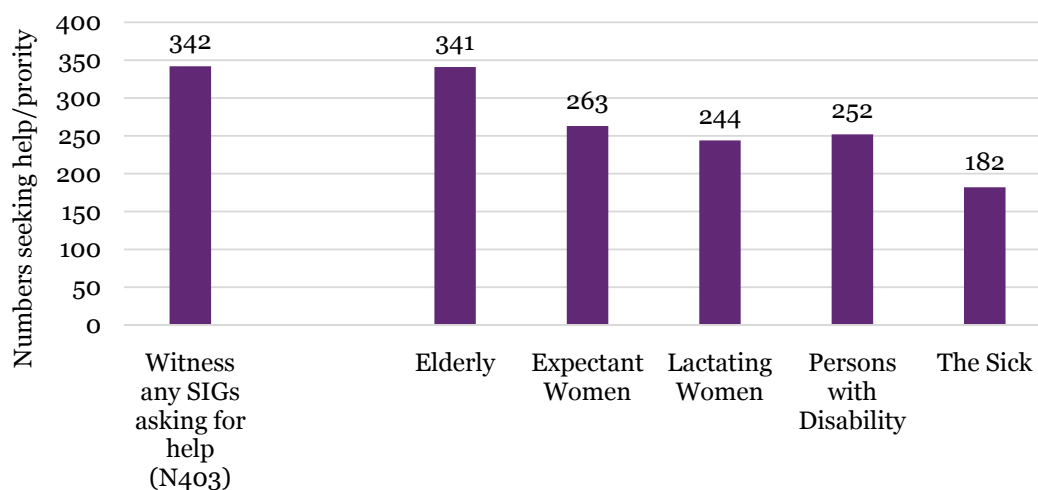


Figure 5.13: SIG groups witnessed asking for assistance

5.6 Polling Station Closing Time

Some 124 observation reports offered information on the time of closing the polling station. Figure 5.14 shows that 40% of the polling stations had closed by 17:00hrs, and another 48% closed between 17:01hrs and 18:00hrs. At closing time, 41% of the monitors indicated there were still people in the queues: while seven monitors reported that such people in the queue were not allowed to vote, 52 monitors stated the voters in the queue were allowed to vote.

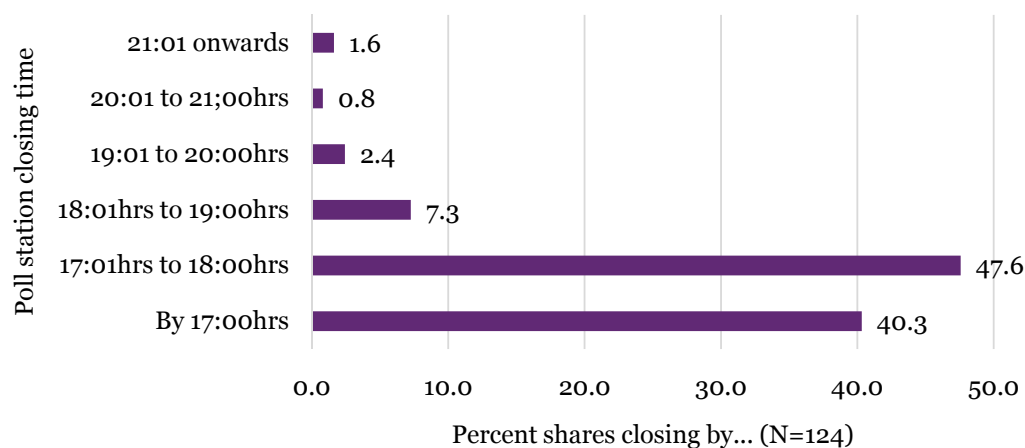


Figure 5.14: Polling stations closing times

The monitors were asked to rate the overall performance of the electoral procedures on a scale of 1 to 4 and scored as shown in Figure 5.15. Of the 180 observation reports, 93 of them, i.e. 52% gave an average score of 4 out of 5, while 51 observation reports gave an average score of 5. For the observation reports, the overall performance was very good.

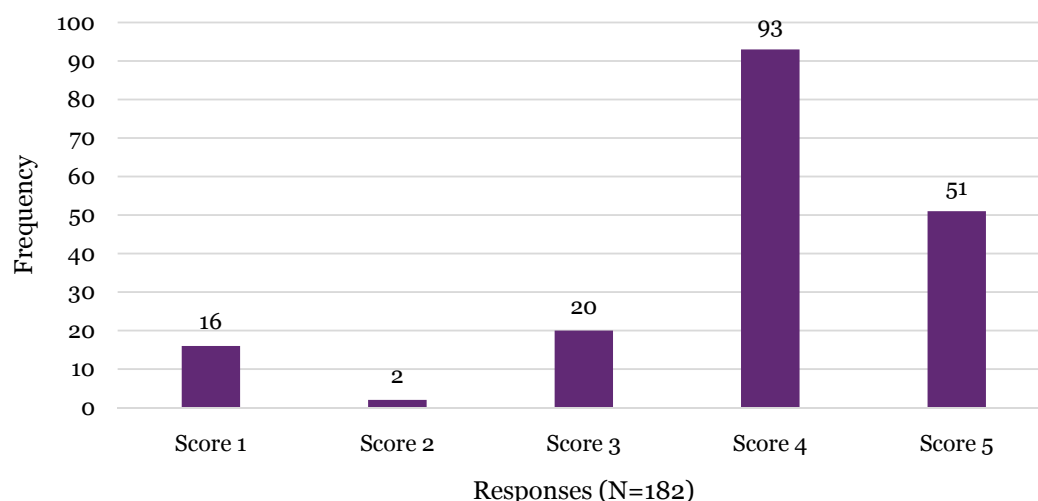


Figure 5.15: Monitors' overall evaluation of the polling exercise

Note: scoring as follows: 1=not done at all; 2= poorly done; 3=somewhat well done; and 4= well done

Besides the overall evaluation of the polling exercise reflected in Figure 5.15, the monitors were asked to evaluate the component of the exercise on the same scale running from 1 to 4. There were wide variations in the monitor numbers reporting on given activities, from 364 observations for 'voting' to a mere 86 observations for 'Sealing boxes' presumably after balloting. Interestingly, none of the monitors adjudged any of the tasks 'Poorly done'. The summaries are reflected in Table 5.4, with about 91% of the 86 observations made adjudging the sealing of boxes to be 'Well done', while 1.2% of them declared the task 'Not done at all'.

Significantly, observations were least satisfied with the management of voting, with an approval rating of 65% compared to rates above 90% for the other four activities. With a growing rate of 'Not done at all' down the activity pipeline, it seems that managers became lax once the polling had been done.

Table 5.4: Monitors' evaluation of the management of polling activities

Dimension	Well done	Somewhat well done	Not done at all
Sealing boxes (N=86)	90.7	8.1	1.2
Voting (N=364)	64.8	7.7	1.0
Counting (N=135)	94.8	4.4	5.2
Documenting valid and invalid votes (N=132)	97.0	6.8	3.0
Announcing results (N=130)	90.4	4.6	6.2

5.7 Violations of Selected Legal Provisions and Guidelines

Probably one of the most significant singular acts of violence documented during the 2022 election cycle was the alleged shooting to death by an outgoing parliamentarian of his opponent's driver, the extract from the police station Occurrence Book summarized in Box 5.7. Media reports of the well-publicised incident indicated that immediately after the incident, the suspect reportedly fled to a neighbouring country, but soon returned and acquired an anticipatory bail barring his arrest. The alleged shooter eventually won re-election to Parliament where he remains an active member.

Box 5.7: Summary of Bungoma County Murder Report

“BUNGOMA COUNTY, SUB-COUNTY KIMILILI, KIMILILI POLICE STATION.

SUB: SHOOTING/MURDER INCIDENT REPORT.

OB 32/09/08/2022 at 1900hrs refers.

It was reported by Mr Brian Khaemba a DAP-K MP aspirant for Kimilili Constituency that today at around 1800hrs he had gone to Chebukwabi polling station to witness the counting of the vote and upon entering the said polling station, he met Hon. Didmus Barasa the incumbent MP for Kimilili constituency. After about three minutes, Mr. Brian Khaemba decided to leave the station and headed to his car Reg. No. KCR 050J where Hon. Didmus Barasa followed him in the company of four men and ordered them not to allow him (Mr. Brian Khaemba) to leave the place but Mr Khaemba's driver Joshua Nasokho defied the order and ignited the vehicle. Hon. Didmus Barasa withdrew a pistol and aimed at Mr Khaemba's aide namely Brian Olunga and shot him on the forehead where he profusely bled. He was rushed to Kimilili Sub-County Hospital where he succumbed while undergoing treatment. The scene was visited by the police accompanied by Scenes of Crime Personnel from Bungoma County, where the scene was processed and documented. The body lying at the said Hospital pending removal to Delight Funeral Home.

Case PAKA.

SCCIO Kimilili dealing”

Of the 403 observations on witnessing any violence, only 3%, (14 reports) replied in the affirmative, as presented in Figure 5.16. One might be tempted to conclude that civic education on peaceful elections was taking a foothold, along with the deterrent effect of the 2010-2016 Hague process.⁴⁴ However, it is important to note that the NGEC monitors were operating in the vicinity of the relative security-sanitised polling station. Consequently, they would therefore be unaware of any violence in the community, such as at the local marketplace.

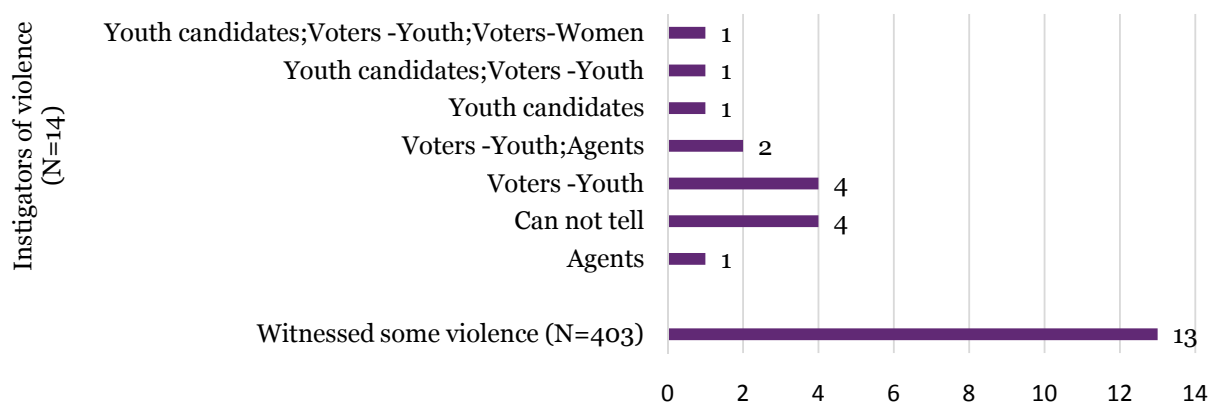


Figure 5.16: Status of violence during polling

Asked who instigated the violence, four monitors conceded they could not tell, as seen in Figure 5.16. The monitors pointed to the youth as the dominant instigators of the violence, exclusively or in conjunction with other election stakeholders.

While four monitors could not tell who was targeted by the violence, it would appear that most of it targeted the youth, as seen in Table 5.5. Again, the constraint persists of the unseen incidents that monitors cannot comment on.

Table 5.5: Victims of the polling station violence

Violence target	Mentions
A candidate's supporters allegedly bribing voters	1
Voter	1
General violent demonstration	2
No Target	4
Presiding officer	1
Women	3
Persons with disability	1
Youth	4

Of the 11 monitors responding to the type of violence witnessed, physical violence was the dominant type, followed by vulgarities, as summarized in Figure 5.17. The real picture of violence types is compromised by the requirement that the monitors must have observed it. Therefore, for instance, the data overlooked a domestic fight where a wife voted against the husband's will, or vice versa.

⁴⁴Six prominent Kenyans were indicted at The Hague for complicity in the violence in the wake of the mismanaged 2007 presidential elections. The cases have since been terminated for varied reasons.

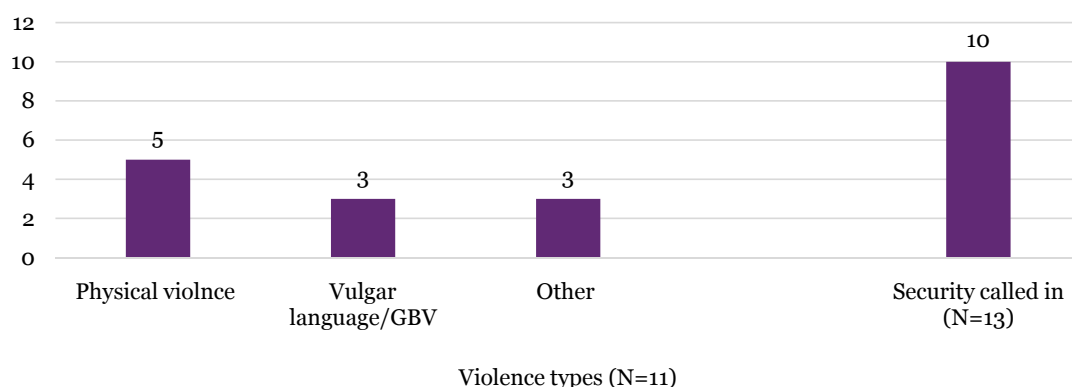


Figure 5.17: Types of violence and responses

The monitors reported that the security officials were called in to handle 10 of the 13 violent incidents noted. Table 5.6 summarises the monitors' information on how the security officers responded to the violence reports. Four instances led to arrests but with divergent actions thereafter.

Table 5.6: Security Response to violence instances

Incidents	Numbers
Arresting the perpetrators	2
Arresting the perpetrators; Enhanced security back-up from officers not previously at the polling centre.	1
Arresting the perpetrators; Reported to the IEBC	2
Groups were scattered; no arrests were witnessed	1
Pending and no action taken	2
As reported to the IEBC; there was a scuffle just outside the station with the alleged supporters being whisked off	1
Stopping the youths from being rowdy and dispersing them	1
Some violence was reported after MP for Nakuru East visited the polling centre	1
Total	11

The NGEC monitors were asked to list electoral malpractices observed on the ground. The data collection instrument provided likely electoral malpractices, as listed in Figure 5.18. Of the 315 observations made, 271 of the instances – 86% did not involve any malpractices. Meanwhile, 20 observations recorded voter bribery; but from the rest of the list of 12 potential electoral malpractices, only transportation of voters (6 observations) and campaigning on polling day (5 observations) were notable.

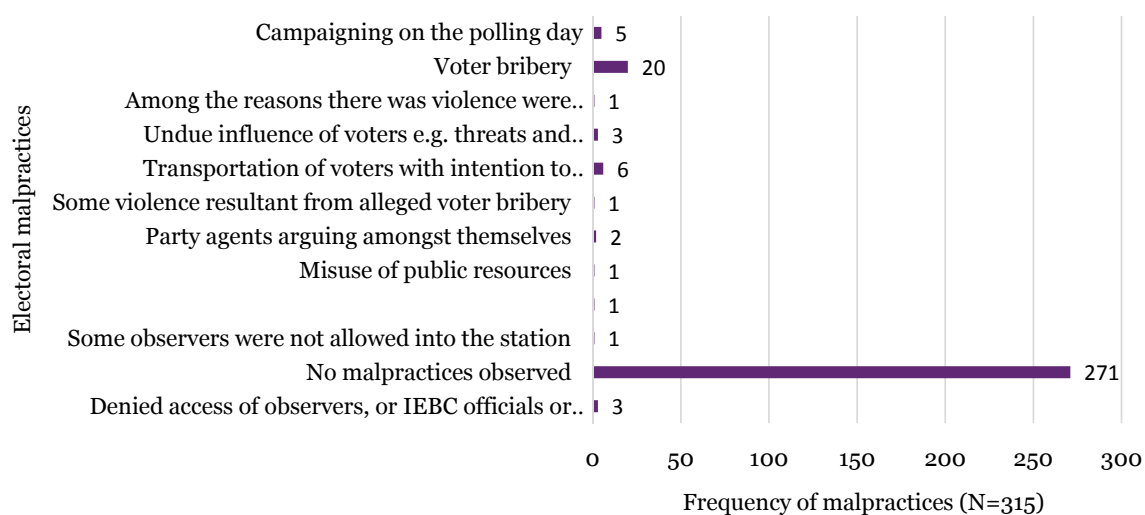


Figure 5.18: Electoral malpractices observed by monitors

CHAPTER SIX

Post-Polling Activities

The post-polling observation covered the 37 counties listed in Table 6.1, meaning it excluded Kilifi, Tana River, Garissa, Wajir, Nyeri, Narok, Samburu, Vihiga, Busia, and Kisii. As before, the types and number of observation sites per county differed greatly. Other qualitative information indicates that one monitor made observations at the national tallying centre in Nairobi.

Table 6.1: Distribution of post-poll monitoring by county and observation sites

County Code	Observation sites [Frequencies]
1	Constituency tallying centre [6]; County tallying centre [3]
2	Constituency tallying centre [2]; County tallying centre [2]
5	Constituency tallying centre; County tallying centre
6	Polling /counting centre [3]; Constituency tallying centre [2]
9	Constituency tallying centre
10	Polling /counting centre [2]; Constituency tallying centre [2]; County tallying centre [3]
11	Polling /counting centre; Constituency tallying centre [3]; County tallying centre [2]
12	Constituency tallying centre [6]; County tallying centre [2]; Polling /counting centre [2]
13	Constituency tallying centre; County tallying centre
14	Polling /counting centre; Constituency tallying centre [6]
15	Constituency tallying centre [2]; County tallying centre
16	Constituency tallying centre [11]; Polling /counting centre [2]; County tallying centre [3];
17	Constituency tallying centre [5]; County tallying centre
18	Constituency tallying centre
20	Polling /counting centre [2]; Constituency tallying centre [4]; County tallying centre 2;
21	Polling /counting centre; Constituency tallying centre [4]; County tallying centre
22	Constituency tallying centre [6]; Polling /counting centre; County tallying centre [2]
23	Constituency tallying centre; County tallying centre
24	Constituency tallying centre [3]; County tallying centre
26	Polling /counting centre
27	County tallying centre [2]; Constituency tallying centre [2]
28	Constituency tallying centre [3]; County tallying centre
29	Polling /counting centre; Constituency tallying centre
30	County tallying centre; Constituency tallying centre [2]
31	Constituency tallying centre [2]; County tallying centre
32	Polling /counting centre [6]; Constituency tallying centre [10]; Polling /counting centre [5]; County tallying centre [6]
34	Constituency tallying centre [3]; Polling /counting centre; County tallying centre
35	Constituency tallying centre; County tallying centre

36	Polling /counting centre; Constituency tallying centre [3]; County tallying centre
37	Polling /counting centre [2]; Constituency tallying centre [5]; County tallying centre [4]
39	Polling /counting centre; Constituency tallying centre [2]
41	Constituency tallying centre [3]; County tallying centre
42	Polling /counting centre; Constituency tallying centre [3]; County tallying centre
43	Constituency tallying centre [8]; County tallying centre [2]
44	Constituency tallying centre [2]; County tallying centre
46	Constituency tallying centre [2]
47	Constituency tallying centre [4]; Polling /counting centre [3]; County tallying centre
48	Polling /counting centre
49	Polling /counting centre; Constituency tallying centre
159	Constituency tallying centre
175	Polling /counting centre
045	County tallying centre; Polling /counting centre [2]

The observation sites of Table 6.1 are summarised in Figure 6.1, showing that 59% of the observations were made at the constituency tallying centres, while polling/counting centres accounted for 16% of the total observations. The constituency tallying centre was covered because, after the polling, the bulk of the results and the post-polling materials were transferred to these centres. It is important to note that counting at the polling centres might reflect the late closure of stations, or logistical challenges of getting to the constituency level.

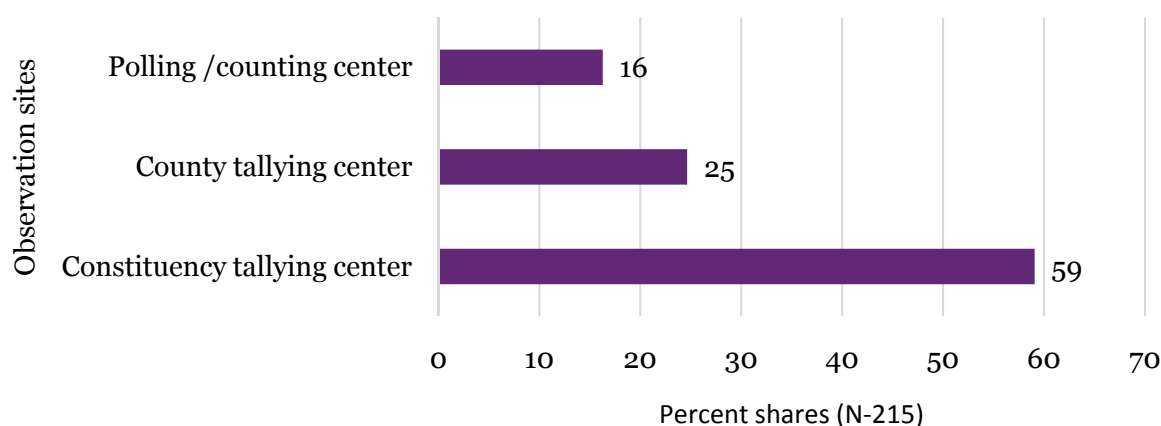


Figure 6.1: Distribution of observation/monitoring sites

6.1 Counting/Tallying Processes

Ballot material is perpetually at risk of being mismanaged, including vanishing entirely, which could render a whole election null and void. Consequently, the security of balloting material must be paramount in the minds of election stakeholders. It is therefore imperative that at the end of the balloting phase of an election, managers institute measures to secure all materials against any form of tampering.

As shown in Table 6.2, the security approach most noted by monitors was the deployment of armed staff with the 215 instances accounting for 27% of all measures noted. Conversely, observers only noted 168 instances of 'briefing agents and observers to consider security materials', amounting to 21% of all reports.

Table 6.2: Precautions to secure electoral materials

Precaution taken	Frequen- cy	Percent share
IEBC remained present throughout/ and in stores of materials	211	26.3
Security from armed staff present at all times	215	26.8
Unauthorized persons disallowed entry to materials	199	24.8
Agents and observers were briefed to consider the se- curity of materials	168	20.9
Other	10	1.2
Totals	803	100.0

The monitors also listed another 10 measures to secure the electoral material, each with a single mention, including:

- i. A lot of senior security agents were present;
- ii. Ample lighting systems;
- iii. The door to the counting station closed and security personnel secured it. Similarly, the public was kept away outside the school compound's gate. The silence was also maintained during the entire counting process and no unnecessary phone calls especially from the agents;
- iv. Heavy security officers deployed including NYS Officers;
- v. Media presence was observed too;
- vi. Security checks at the entry of the tallying centre;
- vii. Security from the gate, within the compound and inside the tallying centre;
- viii. Strict Control of the flow of people; and
- ix. The County Commissioner and Members of the County Security Committee were present at the tallying centre.

Thirty-six of the 315 observations reported any problems with access to the counting/tallying centre for accredited persons with disabilities (PWDs). The challenges and/or barriers for PWD access are summarised in Table 6.3, the most prevalent one being the absence of a ramp or stairs (59% of the reports), followed by available ramps being too steep (18%). As previously noted, IEBC has no real estate and cannot therefore custom-build polling stations and counting centres.

Table 6.3: Obstructions and challenge over access for PWDs

Obstruction/challenge	Frequen- cy	Percent share
No ramp/stairs	13	59.1
Ramp steep	4	18.2
Obstructing ballot boxes	1	4.5
Ongoing construction/drainage	1	4.5
Muddy, rough, slippery terrain	3	13.6
Totals	22	100.0

Nearly 70% of all monitors reported that Presiding or Returning Officers announced their plans to ensure that accredited PWDs – hearing or visual impairments would participate in counting, tallying and verification. Notwithstanding the shortfalls in physical access reflected

in Table 6.3. The monitors confirmed that security officers had been in ample supply around the polling centres. However, the monitors reported that some 11 accredited persons were denied permission to examine various aspects of the official management of results, as reflected in Figure 6.2. Nine accredited persons were denied access to the processes of filing the mandatory electoral forms/records, and seven accredited persons each were not allowed to examine the sealing of boxes and submission of results.

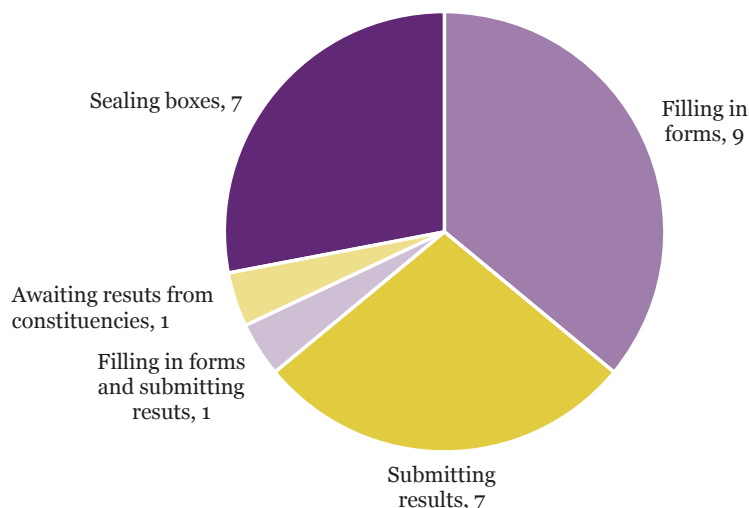


Figure 6.2: Activities for which accredited persons were denied access

The law requires Presiding and/or Returning Officers to announce results promptly on their availability. However, there were delays in announcing results in 19 observations of the 25 instances reported by the monitors, a rate of 9% as shown in Figure 6.3. The cause of the delay in six instances was that results were still pending from the constituencies, while in another five instances, the officer was awaiting the presence of candidates or their agents. In one instance, gubernatorial candidates rejected unsealed boxes. The monitors reported that only six of the 215 results they covered were not announced publicly; yet only 149 of the observations made, a 70% share, were transmitted electronically. While the monitors reported that results were not transmitted electronically in 16 instances, they could not tell whether the results in another 51 instances were electronically transmitted.

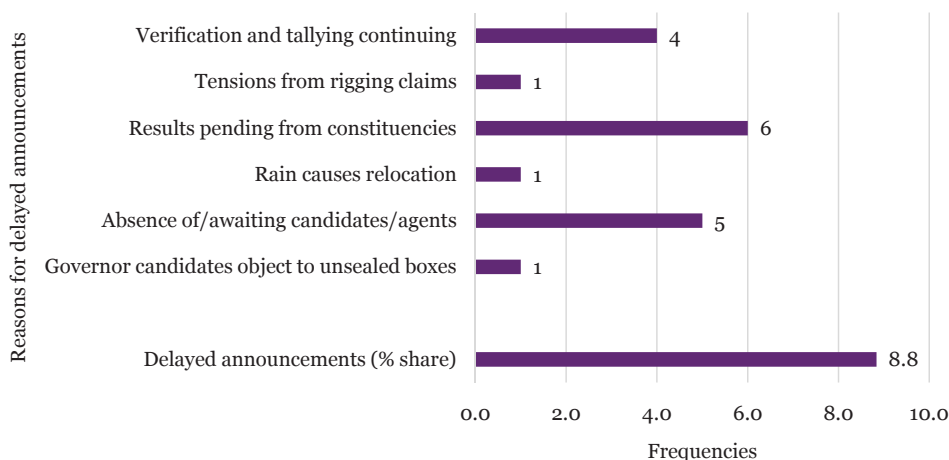


Figure 6.3: The reasons for the delayed announcement of results

The Elections Act No 24 of 2011 read together with subsequent amendments of 2016 and 2021 allows dissatisfied candidates to request a recount, which the Presiding/Returning Of-

ficer has the discretion to decide on. Figure 6.4 summarises the distribution among interested parties of the 35 requests for recounts. The SIGs were well represented among the individuals requesting recounts, numbering 32 specifically, dominated by female candidates (n=13) and the youth (n=11), alongside other SIG categories. This categorization does not consider overlapping characteristics: for example, a candidate agent could be a youth who is a female, and/or minority, and/or PWD or a minority candidate could be female, and/or youth, and/or PWD. However, of the requests made, two were rejected; and the monitors did not report on the outcome of the other two requests.



Commissioner Thomas Koyier at the National Tallying centre-Bomas of Kenya

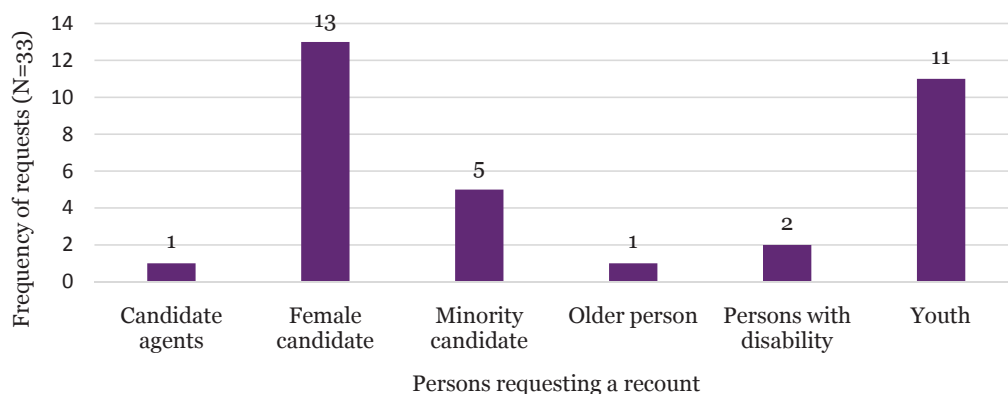


Figure 6.4: Election stakeholders requesting a recount of the ballots

About 73% of the monitors reported there is a procedure for dealing with disputed ballots, with about 24% saying they could not tell if such a procedure existed, as seen in Figure 6.5. Where such a procedure existed, 95% of the monitors reported its approval among all the interested parties. When the overall count was declared, eight percent of the monitors reported disputations, with 63% reporting that such disputes were amicably resolved. Of the 215 observational reports filled by the monitors, 98%, i.e. 210 observations, confirmed that the ballot boxes carrying the electoral materials from the polling station or tallying centre as applicable, were properly sealed and not tampered with.

73%
of the monitors
reported there
was a procedure
for dealing with
disputed ballots

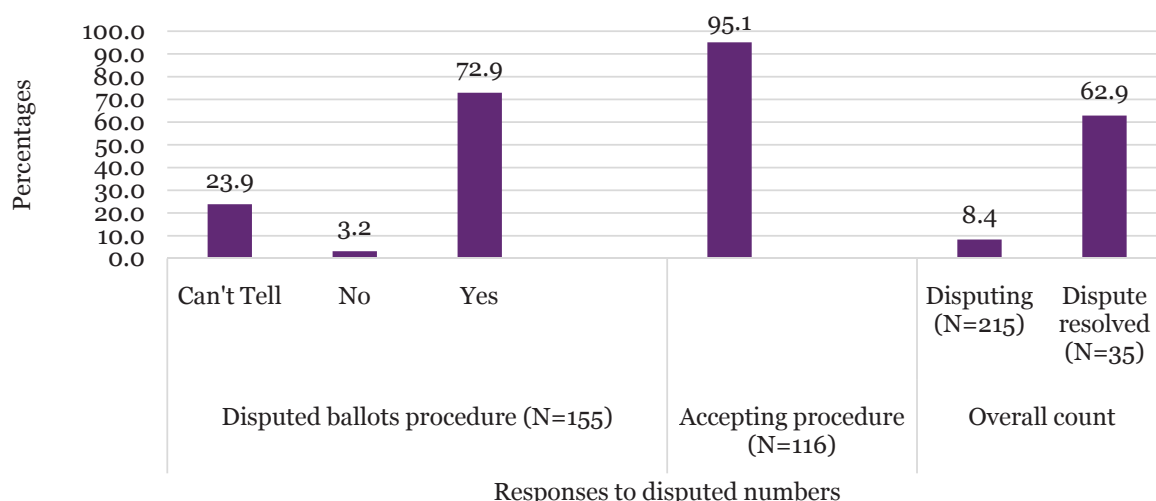


Figure 6.5: The Management of disputed ballots and vote count

6.2 Post-Tallying Activities

The NGECE instructed its monitors to look out for tensions and conflicts in the field. A summary of the findings from 83 observation reports is reflected in Figure 6.6. The dominant type is conflict among agents (n=27). Of the five conflict categories inquired into, the lowest frequencies of 11 each were those among candidates and voters.

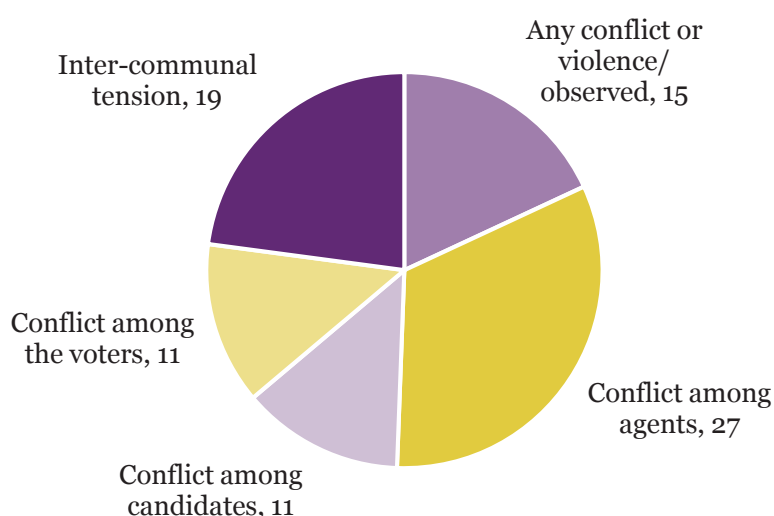


Figure 6.6: Conflicts observed

Under ‘Any conflict or violence/observed’, the overriding feature of the many conflicts and/or violence observed was the consistent ability of security officers to contain the situations. The gubernatorial candidates in several instances were quite aggressive, with a woman candidate ordering her supporters to disrupt counting, while elsewhere, candidates engaged physically even as their supporters also clashed.

In another instance, an outgoing Member of Parliament gave instructions to a Returning Officer whose subservience caused tensions at the tallying centre, resulting in security officers evicting all persons, including NGECE observers. Meanwhile, suspicions of tampering with the KIEMS kits resulted in an hours-long stand-off eventually resolved through the intervention of gubernatorial candidates and security officers. Delayed ballot boxes and delayed results generated tensions, resulting in disturbances and the destruction of property and a road blocked by burning tyres, eventually contained by the security officers

On ‘conflict among agents’, there were instances where candidates complained of unfair treatment by IEBC officials, and over the lack of transparency in the use of the KIEMS kits. The latter issue led to a stand-off which was eventually resolved in collaboration with the gubernatorial candidates. Some agents also complained of vote theft in stations, the delayed arrival of ballot boxes, and subsequently, over some of the boxes’ contents. Complaints also arose over the Returning Officers’ delays in updating agents on the tallying progress, and over announcing results. Disputes over the results arose in instances with allegations of voter bribery even at polling stations, and election rigging such as through ballot stuffing.

For ‘Conflict among candidates’, the alleged tampering of KIEMS kits led to a stand-off that halted procedures. However, the gubernatorial candidates and other stakeholders were able to resolve the thorny issues, allowing electoral processes to continue. However, the outstanding incident of the 2022 general election for Bungoma people was likely the alleged shooting of a personal assistant to a parliamentary candidate by an outgoing parliamentarian who was trying to retain his seat: see Box 4.1.

On ‘conflict among voters’, the dominant issues were bribery of voters at polling stations, and the management of voter queues. The other causes of conflicts were similar to those already mentioned for conflicts among voters and agents. Such included suspicion of tampering with the KIEMS kits, and an outgoing MP seemingly interfering with the Returning Officer.

Finally, on ‘Inter-communal tensions’, some monitors reported ethnic outsiders voting in a hurry to leave their counties of residence for their counties of origin where they would feel safer in an electoral atmosphere that was ethnically polarised. Ethnic tensions festered. Indeed, there was a suggestion that vigilantes would isolate and punish those who failed to vote. Tensions arose from allegations of vote-rigging and tallying delays, and there was further concern that the rights of illiterate voters who had been assisted at the polling booth might have been violated. However, candidates intervened to diffuse the situation, even though two gubernatorial contestants had exchanged blows.

Kenyan elections are characterized by verbal exchanges straddling a wide spectrum from good-natured cultural banter to extreme profanities that easily degenerate into a physical confrontation. While a large majority of monitors did not hear any discriminatory and/or derogatory remarks, 19 observational records of the 215 records reported doing so, as shown in Figure 6.6. The remarks primarily targeted Government institutions and security organs, with an equal number of seven citing remarks targeted at political parties. These low tallies of adverse remarks again underscore the location of monitors and observers in ‘sanitized’, good conduct contexts.

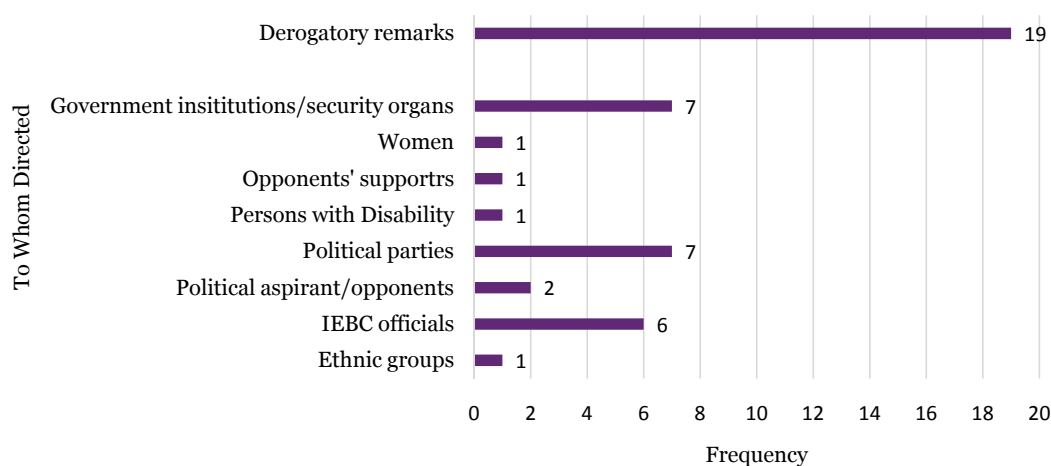


Figure 6.7: Discriminatory and/or derogatory statements made by candidates or voters

The IEBC officials also received their share of the remarks. The remarks directed at IEBC alleged that it had been compromised along with the police, and was rigging the elections in favour of desired candidates.⁴⁵ IEBC was also alleged to be delaying the tallying to favour particular candidates.⁴⁶ A senatorial candidate demanded the halting of the tallying, accusing IEBC of being compromised. Two other candidates accused the IEBC officials of nepotism. Meanwhile, other disgruntled elements declared that all politicians are corrupt for stealing the public resources under their care.⁴⁷

One candidate dismissed a PWD Member of County Assembly (MCA)-elect for playing the sympathy card rather than campaigning on substantive development issues. Another MCA demanded the rejection of a winner whom he declared to be a foreigner.

Asked if these matters were reported to the police, 12 observational reports out of the 24 records ‘could not tell’ if reports were made. While two observers acknowledged reports made to the police, 10 said no reports had been made to the police.

Finally, the survey explored the monitors’ evidence on individuals or organisations that coordinated the post-poll activities. As shown in Figure 6.7, the dominant coordinators were the Political parties (n=38) and Security agencies (n=37). Some 25 observations reported that other government agencies were coordinating post-polling activities, while media coordination was mentioned once.

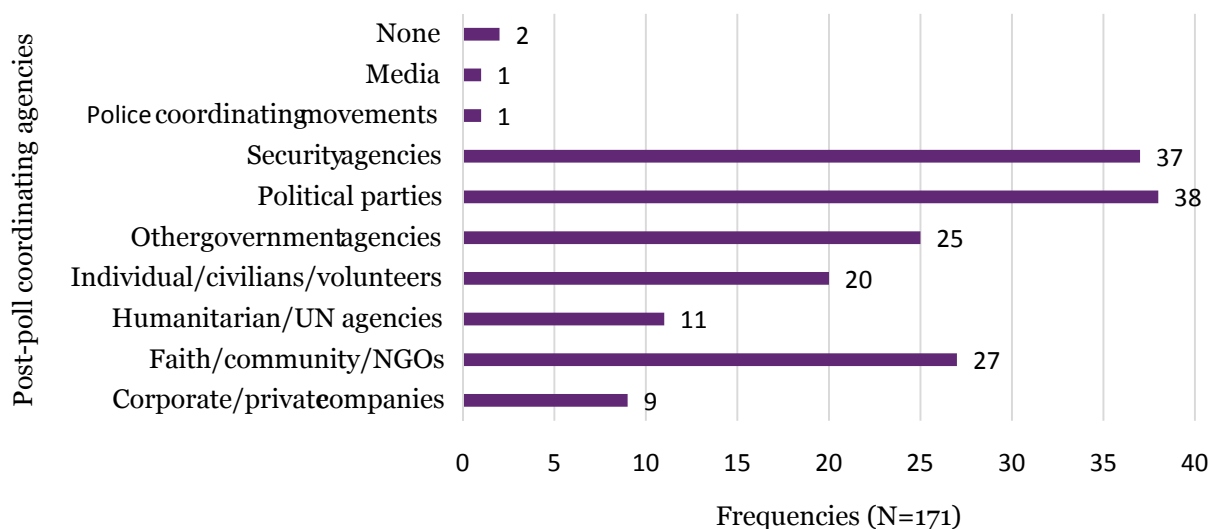


Figure 6.8: Organisations and officials coordinating post-election activities

⁴⁵NGEC Monitor, Kenya School of Government, Matuga, Kwale County.

⁴⁶NGEC Monitor, Morowe Adzone Primary, Lamu County

⁴⁷NGEC Monitor, Mpo Secondary school, County Code 175.

CHAPTER SEVEN

Recommendations

Based on key observations made, NGECC makes the following recommendations organized by major thematic areas of observations and responsible agency.

Overall Conduct Of Elections.

1. The multiple gaps identified during the elections including the limitation of IEBC to adequately prepare for elections, monitor and enforce laws on electoral offences to curb numerous malpractices, is largely due to among other reasons, the lack of adequate financial resources. In a few instances, the finances were made available to IEBC too late into the electoral cycle. To this end, we recommend that in future elections the National Treasury and Parliament should provide IEBC promptly the necessary financial resources for them to adequately prepare and effectively conduct elections according to an approved Electoral Operational Plan (EOP).
2. The IEBC should include in its future election budget, the finances required to ensure electoral processes are inclusive and responsive to the critical needs of SIGs. For example, finances necessary for 'reasonable physical adjustments' of the polling stations and centres, that do not meet minimum universal design requirements such as faulty (or lack of) ramps, and narrow entrances.
3. All actors with the greatest responsibility in the preparation and conduct of elections including IEBC, political parties, individual candidates, the Office of Registrar of Political Parties, and security agencies should adhere to the timelines set for each of the activities contained in the EOP. Lack of adherence to the electoral timelines for activities leading to general elections has a direct effect on the meaningful participation of SIG candidates, observers and voters in the electoral processes. Often such vulnerable groups hardly receive information about any abrupt changes made to the electoral plan and therefore are excluded from participating in critical decisions and activities.
4. IEBC and other agencies involved in the enforcement of the law, such as the Office of the Director of Public Prosecutions (ODPP) should ensure that all candidates and voters adhere to the Election Offences Act. No. 37 of 2016, elections code of conduct (revised in 2019), Sexual Offences Act No 3 of 2006, to protect SIG candidates and voters from undue influence, all forms of electoral-related harm and violence, intimidation, electoral malpractices such as voter bribery, forced transportation and movement of voters, just to mention a few.

The monitoring activity recorded a total of six incidences of sexual harassment, 15 reports of physical violence, and 33 cases of psychological violence. While these numbers seem small their net impact is high and it is possible that many incidences of violence did happen but were unreported or not documented. All persons irrespective of gender, age, residence, or of any other background characteristics must at all times be protected from harm and facilitated to access justice.

5. The Parliament to amend and align the Elections Act, 2011, with the Political Parties Act No. 11 of 2011 as amended in 2022; enact law to give effect to Articles 100, 27, and 81b of the Constitution of Kenya 2010. These laws have specific provisions protecting and promoting the rights of SIGs as candidates and voters in elections. They also go a long way in promoting electoral affirmative actions and programs directed to SIG candidates and voters.
6. Over the years, the space for short-term and long-term monitoring of elections is expanding. The demand for the application of technology in election monitoring is also on the rise. In 2022, IEBC accredited more than 8000 monitors, the highest ever recorded in history. In this regard:
 - a. There is a need for the IEBC to develop a comprehensive framework for managing election monitors with a focus on ensuring equitable distribution of the monitors by electoral units. This will ensure comprehensiveness and equity in the monitoring of elections across all counties, constituencies, and wards.
 - b. Development partners and government should consider providing specific resources to accredited state agencies with the core mandate of monitoring elections⁴⁸, to comprehensively conduct monitoring of elections in all counties, constituencies, and wards. Such agencies include NGECC.

Elections Campaign, Logistics, Polling and Post Polling

The monitoring report shows major limitations among SIG candidates and voters in their participation in the 2022 general elections campaigns. They were disadvantaged in terms of; exposure to electoral violence especially when other candidates fail to follow campaign schedules, the financial burden required for running campaigns, lack of diverse communication to reach persons with visual and hearing disabilities, inadequate media coverage of their campaigns, electoral malpractices that influence voter decisions often against those who are financially unstable, and inadequate support from their political parties, just to mention a few.

7. In future elections, the IEBC should enforce the Election Campaign Financing) Act No 42 of 2013, as amended by the National Assembly on April 13 2022, and initiate as soon as is practically possible the public participation in the Elections Campaign Financing Regulations 2016 and Campaign Expenditure Limits to operationalise the Elections Campaign Financing Act, 2011 and subsequent amendments of 2021. These measures will ensure that the financing of electoral campaigns is transparent, known to all Kenyans, have public input, and that SIG candidates are protected from exploitative unwritten campaign finance requirements actions. Further, this will ensure all candidates are held to account for any excessive expenditures incurred in the elections. Such measures will deter campaign malpractices that are often applied to the disadvantage of SIGs candidates and voters.
8. The ORPP should work closely with the political parties, Political Parties Liaison Committee (PPLC), and individual candidates to proactively enforce the Political Party Code of Conduct revised in 2022 especially provisions of Part III (in its entirety), that among others compel political parties to (a) respect the right of all persons to participate in the political process including youth, minorities and marginalized groups; (b) respect and promote gender equity and equality, human rights and fundamental freedoms; And (c) be tolerant and inclusive in all their political activities.
9. The ORPP should enforce section 25 (2) (a) and (b), and 26. (1) of the Political Parties Act, that proscribes funding of political party from the fund if (a) more than two-thirds of its registered office bearers are of the same gender; (b) the party does not have, in its governing body, representation of special interest groups.

⁴⁸Such mandates are founded in the institutional constitute acts

In addition, enforce the provision that at least 30% of the fund shall be used for among other purposes; (a) promoting the representation in Parliament and the county assemblies of women, persons with disabilities, youth, ethnic and other minorities and marginalised communities; (b) promoting active participation by individual citizens in political life; (c) covering the election expenses of the political party and the broadcasting of the policies of the political party. When these laws are fully implemented, SIG candidates shall be cushioned against unnecessary uneven elections and political competitions.


10. Media houses should formulate gender-responsive communications strategies and associated guidelines for inclusive media reporting. Such measures will ensure issues about SIG voters and their priorities, as well as political manifestos, are accurately and comprehensively reported on. Vulnerable women, PWDs, youth and minority and marginalized candidates should enjoy adequate and fair coverage of their electoral ideas and activities just like their financially endowed counterparts.

Elections preparedness especially at the last mile namely, at polling stations, is a critical determinant of fair, credible and free elections. To this end:

11. IEBC should fully comply with the provisions of the 2016 Diversity Policy for Public Service, and disability mainstreaming requirements contained in the National Disability Mainstreaming Strategy 2018-2022 and where practically possible customize them for application in elections. The initiative shall help IEBC step up the inclusion of PWDs and particularly consideration of PWDs during employment of electoral officials, and in the enhancement of accessibility for heterogeneous groups of PWDs to polling stations, polling, counting and tallying centres.
12. SIGs are most affected by violence and any security lapses that may occur during elections. All agencies involved in the delivery of security services including the National Police Service, should be facilitated to deploy promptly, necessary security personnel to IEBC during elections. Such facilitation includes the provision of transport. Further, such officers should be trained on how to handle and manage SIGs facing the greatest difficulty in voting and management of the general crowds to accord such persons preferential support.
13. Delays in the delivery of strategic materials for elections have a ripple effect on efficiency in the conduct of elections to SIGs and on the credibility of elections from the perspectives of the SIGs, general community, political contestants and elections observers. To this end, IEBC is to fully implement their electoral logistics and administration plans, and conduct regular surveillance on the same to ensure all strategic materials required in each of the polling stations are delivered on time and are accounted for. All forms of elections technology solutions adopted in future Kenya elections must be SIG centred, meaning the solutions are capable of resolving all limitations and challenges that SIGs and monitoring teams have reported and experienced in the past three cycles of elections.

The adopted ICT solution should be fully tested and proven beyond doubt of its ability to function under difficult contexts. Where the probability of failure is estimated, risk assessment and aversion measures including installation of alternative solutions should be made available at the lowest level of the administration of elections. In particular, the consistent or intermittent failure rates of KIEMS kits should be eliminated at all costs.

14. IEBC should set standards for a manual voter register designed for use at the lowest unit of the management and implementation of the elections (Polling Stations). At minimum IEBC should ensure that voter registers are printed in large fonts and an easy-to-read manner. Further, IEBC should work closely with the communities and managers of establishments that are gazetted as polling stations and polling centres to ensure voter registers are posted in the respective stations on time, and that they are protected from damage, or arbitrary removal.

- 
15. State and non-state actors should increase their investment in the political and civic education of special interest groups including women, youth, PWDs, older persons, minorities and marginalized groups, to facilitate their understanding and claim their electoral rights. This includes upon fulfilling all the requirements, the right to vote and demand that elections-related technological solutions do not; a) disenfranchise them, b) limit their voting rights, c) diminish opportunities for meaningful participation in the entire electoral process.



Commission, Technical Staff and Consultants pose for a photo during the technical writing of the 2022 General Election Observation Report

