



KENYA'S TENTH GENERAL ELECTION HELD ON 4TH MARCH, 2013

Monitoring and Observation of Election Process

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CORD	Coalition of Reforms and Democracy
CRPWD	Convention on the Rights of Persons with Disabilities
CBO	Community-based Organization
CSO	Civil Society Organization
DPP	Director of Public Prosecutions
GBV	Gender-based Violence
EU	European Union
ICCPR	International Convention on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Discrimination
ICT	Information Communication and Technology
IEBC	Independent Electoral and Boundaries Commission
IEC	Information, Education and Communication
KBC	Kenya Broadcasting Corporation
MoGCSD	Ministry Of Gender, Children and Social Development
NCIC	National Cohesion and Integration Commission
NGEC	National Gender and Equality Commission
OSIEA	Open Society Institute for East Africa
PEV	Post Election Violence
PTN	Peace Tree Network
PWD	Person with Disabilities
SIG	Special Interest Group
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Program

FOREWORD FROM THE CHAIRPERSON

The 2013 General Election in Kenya marked a milestone for being a complex election ever in recent times to have been conducted peacefully. It was a moment Kenyans seized to affirm their solemn declaration for a peaceful and democratic nation. The acceptance and ownership of election results by election losers was spectacular and a fortification of Kenya's political and democratic maturity. Indeed, Kenya joined other nations in Africa where power has changed hands seamlessly through the conduct of peaceful, democratic multiparty elections.

As detailed in this report, the National Gender and Equality Commission (NGEC) conducted an election observation programme to audit and assess the electoral process in fulfilling the twin principles of equality and freedom from all forms of discrimination. From the observation, NGEC concludes that the election was transparent and procedurally legitimate but with challenges that will obligate the IEBC, government and other actors to remedy so that the Special Interest Groups (SIG's) will enjoy constitutionally guaranteed rights like all other persons.

Further, it is incumbent upon the new National and County Government structures to secure and provide fertile grounds for strengthening the realisation of rights for Persons with Disabilities (PWD's), women, the elderly, youth, and minority and marginalized groups in Kenya. The newly elected President together and the forty-seven Governors need to institute pro-active measures to address vices such as corruption and tribalism that in the past have enhanced discrimination and unequal distribution of wealth. The gains realized in the just concluded election must be protected and nurtured to greater sustainability.

The Jubilee Government is therefore obligated to confront a series of important challenges. First, the government must put in place plans to bolster the synergies with political parties and other stakeholders to implement necessary changes in the marginalised areas. Secondly, democratic institutions must be strengthened, good governance principles re-invigorated and the rule of law-reinforced. Electoral laws ought to be secured from irresponsible and often unconstitutional ego-centric amendments. We hope the recommendations herein will go a long way in shaping future elections.

Winfred Osimbo Lichuma
Chairperson

ACKNOWLEDGEMENTS

NGEC wishes to thank all the individuals, organizations, and service partners that were involved in the compilation of this report for their commitment to seeing this assignment through in a timely and professional manner. We firstly thank the Commissioners under the leadership of the Chairperson for approving this project and suspending all other planned and approved activities to engage in monitoring and observing elections. Special thanks also go to the National Gender and Equality Commission staff for the planning and execution of this exercise within a very short time. We extend our appreciation to the Ministry of Gender and National Development through the Permanent Secretary for partnering with us in the data collection process. We cannot forget the data collectors we engaged in every county. Last but not least, we thank Mr Benard Obasi for finding time to undertake data entry and analysis. To all we say *Ahsante sana!*

We further register our utmost appreciation to the Government of Kenya for availing timely funding that immensely aided in the realization of the objectives of the observation mission. We also are greatly indebted to the Ministry of Gender, Children and Social Development staff, Community Based field monitors whose devotion to duty was commendable and without whom our task would have been difficult to accomplish.

NGEC is ultimately most grateful to UNDP, Ford Foundation and OSIEA who funded the observation undertaking and in the process provided technical assistance including facilitating the training for all NGECE observers and in the final analysis of data.

The Independent Electoral and Boundaries Commission which not only granted the NGECE official observer status but also provided all the relevant background materials for the observers is worthy of hail and appreciation. We thank IEBC for their cooperation and assistance throughout the NGECE observation mission.

We also wish to appreciate the individuals and communities with whom we worked in conducting the voter education, and in the campaign and election monitoring and observation.

Prof. Rose Odhiambo
Commission Secretary

EXECUTIVE SUMMARY

Kenya's Constitution 2010 which was promulgated on 27 August 2010 came against the backdrop of over 20 years of agitation for effective representation and participation of all persons in governance processes. The Constitution re-introduced several critical and positive changes in this regard. Among them, the Constitution identifies groups within Kenya's population and classified such as the 'Special Interest Groups' (SIGs) consisting of women, children, youth, persons with disabilities (PWDs), the elderly, minority and marginalized groups and communities. The 2013 general election was the first test of the country's commitment to full implementation of constitutional provisions on the political representation of SIGs. The National Gender and Equality Commission (NGEC) designed a project during the elections period to monitor compliance of the State with the constitutional provisions on the promotion and integration of the principles of equality and freedom from discrimination in the election process with a special focus on SIGs. The project is also in response to the overall mandate of NGEC as provided in its regulation of 2011.

The monitoring activities covered most components of the 2013 elections i.e; voter education, campaigns, polling and post-polling activities. The exercise was conducted between 23 February and 9 March with scaled-down observations to 30 March 2013. The activity covered 213 constituencies and 560 wards. During the elections polling, observations were limited to 291 polling stations. The following is a summary of the observations made.

I. Pre- Election Activities

Voter Education: While IEBC and other agencies designed voter education programs, their implementation was untimely. Voter education program targeting SIGs was inadequate. The educational materials and mode of delivery were not suitable to persons with visual and/or hearing impairments and future voter literacy programs have opportunities to prepare braille voter educational materials and utilize sign language interpreters to impart the skills. The voter educational materials were mainly in English and Kiswahili and needed to be domesticated in local languages for ease of comprehension. IEBC conducted a voter simulation exercise to familiarise the electorate with the voting process and was only successful in 45 per cent of the polling stations observed. To supplement the efforts of other stakeholders in voter education programs, NGEC implemented a high impact voter literacy program targeting SIGs in North and South Rift Valley, Eastern and Western regions.

Campaigns: NGEAC monitored the campaigns with a special focus on the involvement and facilitation of the SIGs as voters and candidates. The participation of SIGs in the campaign activities varied greatly within SIGs, with youth being most engaged, followed by women. For most of the large campaign events in which women participated, they were observed playing hospitality roles even though women empowerment issues formed a campaign theme in 75 per cent of the events observed. The minority and marginalized groups were generally less active in the campaign activities except in selected regions where such groups had organized a force to change the political leadership in the region by supporting a candidate from their community. One-half of the campaign venues observed were unfriendly to PWDs, and elderly persons. Key barriers to broad participation of SIGs included limited community support due to a perceived lack of political experience, perceptions about the capabilities of SIGs, and lack of adequate representation in the political alliances.

Though the campaign activities were generally peaceful several forms of campaign malpractices were observed or reported to the observers. Aspirants violated the campaign timelines. Voter bribery by candidates was also reported. In some areas, there were circulations of leaflets threatening some members of certain communities. Verbal abuse was rampant in most campaign events attended and observed. The incidences of campaign malpractices increased during the last two days to polling.

II. Election Administration

Generally, most of the polling stations were well demarcated and labelled in readiness for the polling. However, one-quarter of the stations observed were unfriendly to persons with visual impairments and/or physical disabilities due to their location or their structural arrangements. A majority of the polling stations (84 per cent) had the necessary polling materials ready at the time of opening the polling stations even though only 57 per cent of the stations opened on or before 0600hrs. Two in every five polling stations observed, faced difficulties in identifying voters due to names being misspelt in the register, or names missing from both the manual and electronic registers. The failure of the electronic voter identification technology further caused delays in polling activities, anxiety and confusion among the electorate and aspirants. In some regions, there were reported incidences of violence and tension and some general public and security forces lost life and property. Cases of bribery, planned violence, transportation of voters and hate speech were the most commonly reported types of malpractices reported to the observers during the polling day.

III. Post-Polling Observations

NGEC looked into the post-polling processes and procedures including precautions taken to ensure the security of ballot papers during counting, tallying and announcing of the results, and participation of SIGs in all these processes. At all levels, counting and tallying of votes started late in the night of 4 March and was a tedious and detail-oriented activity due to the number of ballots in the election. At the polling stations, the procedures of determination of the validity of contested votes were not always straightforward to party agents and IEBC officials. The failure of the electronic results transmission system from one level to another, on the second and subsequent days after polling, complicated the tallying exercise leading to serious cumulative delays in the announcement of results at county and national levels and anxiety and tension among the electorate and candidates. At the national tallying centre, the IEBC management and leadership played a critical role in assuring Kenyans of fair and free elections and commitment to ensuring elections results were announced promptly. These messages were replicated in the constituency and county tallying centres.

IV. Recommendations

Voter education: The voter educational program should be a continual process with enough budget allocations from the government. The IEBC and stakeholders need to take deliberate measures to adopt an inclusive approach for voter education that includes translating voter education materials into local languages and tailoring voter education tools to allow for the full engagement of SIGs such as PWDs and the elderly.

General preparations for elections or referenda: The IEBC and stakeholders should improve on general basic preparedness for elections including ensuring timely procurement and testing of systems and procedures. IEBC should continue to invest in the ultra-modern ICT election management process. The number of polling stations should also be increased to reduce congestion and ease the flow and control of voters. The election management staff should be prepared on mainstreaming issues of SIGs in the election process and work on identifying ways through which certain classes of SIGs such as the visually and hearing impaired and the physically disabled, can always be facilitated at every polling station to cast votes on a priority basis. Polling stations must also be fitted with basic amenities such as electricity, water and toilet facilities.

Dealing with electoral malpractices: A robust mechanism of monitoring compliance with electoral laws and guidelines should be institutionalized to deal effectively with electoral

malpractices as soon as they occur. The IEBC should also fully utilize its powers to take action against those who break the law.

Counting, tallying and the transmission of results: The IEBC needs to invest in a secure and robust approach to counting and tallying which will not result in significant delays, and in electronic equipment that will ensure timely transmission of the results whilst ensuring the integrity of the same. The process must remain open, transparent and traceable to all.

1.0 BACKGROUND

At its independence in 1963, the Republic of Kenya was a multi-party democracy, governed under a Constitution which recognised the need to safeguard minority and marginalized groups, and sought to ensure their political representation in Parliament. However by 1969, following several key constitutional amendments undertaken under the first post-independence government of Kenya, several changes took place which effectively did away with some of these safeguards. One of these changes included the removal of the second chamber of Parliament i.e. the Senate which was intended to ensure the protection of minority groups and regional interests. There was also a substantive reduction in the powers of Parliament relative to an increasingly strong, centralized Executive, as the changes also included the dissolution of the devolved structure of government. Kenya remained a *de facto* single-party state until 1982 when additional constitutional amendments turned the country into a *de jure* single-party state.

Kenya's new Constitution promulgated on 27th August 2010 came against the backdrop of over 20 years of agitation for effective representation and participation of all peoples in governance processes. The drive for a new Constitution was driven by a desire for equitable development processes and outcomes, based on recognition of the need to promote and protect the human rights of all Kenyans. The Constitution re-introduced several critical and positive changes in this regard. Key among these is the articulation of a set of national values and principles under Article 10 of the Constitution, which will inform governance. These include ***non-discrimination, social justice, human dignity, inclusiveness, equity, human rights, democracy, the participation of people and the protection of the marginalized***. The Constitution speaks to how these values and principles are to be translated by different arms of government into practices, and behaviours. Chapter four of the Constitution specifically lays out an elaborate Bill of Rights and provides for various political, civil, social, economic and cultural rights of Kenyans, based on key international and regional instruments the country has committed to. Further, the Constitution identifies specific groups

within the population i.e. ‘special interest groups’ (SIGs), namely: women, children, youth, persons with disabilities (PWDs), the elderly, minority and marginalized groups and communities. The Constitution sets specific obligations for different arms of the government, towards these groups¹.

The National Gender and Equality Commission (NGEC) was established under the Bill of Rights under Article 59(4) and (5) and Chapter 15 of the Constitution as the lead agency of the state in charge of promoting gender equality and freedom from discrimination of all Kenyans, but more so the identified SIGs, in line with Article 27 of the Constitution. As such, in the run-up to the March 4th, 2013 elections, NGEC had a critical role to play in promoting and safeguarding the political rights of all Kenyans and SIGs in particular as provided for in NGEC Act 2011 and line with its functions.

Functions of NGEC

- i. 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;
- ii. Act as the principal organ of the State in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children;
- iii. Co-ordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalised groups in national development and advise the Government on all aspects thereof;
- iv. Monitor, facilitate and advise on the development of affirmative action implementation policies as contemplated in the Constitution;
- v. Investigate on its initiative or the basis of complaints, any matter in respect of any violations of the principle of equality and freedom from discrimination and make recommendations for the improvement of the functioning of the institutions concerned;
- vi. Work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the Constitution and other written laws;
- vii. Co-ordinate and advise on public education programs for the creation of a culture of respect for the principles of equality and freedom from discrimination;
- viii. Conduct and co-ordinate research activities on matters relating to equality and freedom from discrimination as contemplated under Article 27 of the Constitution;
- ix. Receive and evaluate annual reports on progress made by public institutions and other sectors
on compliance with constitutional and statutory requirements on the implementation of the principles of equality and different affected interest groups and produce periodic reports for national, regional and international reporting on

¹These obligations are cross-cutting, but key provisions can be found in Chapters 4, 5, 7, 8, 9, 11, 12, 13 and 14.

progress in the realization of equality and freedom from discrimination for these interest groups;

- x. Perform such other functions as the Commission may consider necessary for the promotion of the principle of equality and freedom from discrimination; and
- xi. Perform such other functions as may be prescribed by the Constitution and any other written law.

The 2013 elections were seminal to the Commission for several reasons. These would be the first elections to be held under the Constitution which had re-introduced the second chamber of Parliament (the Senate), the second tier of government (the county governments), and changed the system of representation at the county levels by creating county assemblies. This significantly added to the complexity of the elections and any efforts to monitor the process. For Kenya, these elections also provided a historic opportunity to gauge commitment to promoting the rights of women, youth and PWDs, among others, to seek leadership positions within Parliament and county assemblies, and to head the national and county governments. It would also serve as a test for institutions such as political parties, security agencies, and civil society organizations (CSOs) who are supposed to safeguard the political rights of all and more so of SIGs. Key among these institutions was the Independent Electoral and Boundaries Commission (IEBC) established to conduct and supervise elections in Kenya². The IEBC is responsible for regulating the process through which political parties nominate candidates for elective and nominative positions, including those positions created to ensure representation by SIGs³. The 2013 elections also were the first since the disputed presidential elections of December 2007 and the post-election violence (PEV) that followed.

1.1 Design and Parameters of NGEC Election Monitoring and Observation

In line with its mandate, NGEC undertook to monitor and observe voter education, the campaigns, election and post-election activities. Its efforts were guided by the international and country's legal framework for the conduct of elections.

1.1.1 International Framework

Several international, regional and national legal instruments set out the rights of SIGs and the obligations of institutions engaged in the management of elections in Kenya. Table 1 provides a summary of the key international and regional instruments.

²Article 88 of the Constitution and section 4 of the IEBC Act, 2011 (Cap. 9).

³Article 90 of the Constitution and the Elections Act, 2011 (Cap. 24) at section 34-37.

Table 1: International and Regional Instruments

Declaration/Treaty/Convention	Date of Ratification	Key political rights
Universal Declaration on Human Rights (UDHR) (Adopted in 1948)	1990	<ul style="list-style-type: none"> • Everyone has the right to take part in the governance of his country directly or through freely chosen representatives • The will of the people shall be the basis of government authority, as expressed in periodic and genuine elections through universal suffrage, by secret vote or by equivalent free voting procedures
International Convention on the Elimination Of All Forms Of Discrimination (ICERD) (Adopted 1966, came into force in 1969)	2001	<ul style="list-style-type: none"> • Prohibition and elimination of racial discrimination in all its forms • Right to participate in voting and for election based on universal and equal suffrage
International Convention on Civil & Political Rights (ICCPR) (Adopted in 1966)	1972	<ul style="list-style-type: none"> • The right to vote • Right to be elected through universal and equal suffrage • Right to vote by secret ballot
Convention on Elimination Of All Forms Of Discrimination Against Women (CEDAW) (Adopted in 1979)	1984	<ul style="list-style-type: none"> • Appropriate measures to be taken to eliminate discrimination against women in political and public life and, in particular, to ensure that women enjoy, on equal terms with men, the guaranteed rights • Right to vote in all elections and public referenda • Right to be eligible for election to all publicly elected bodies • Right to hold public office and perform all public functions at all levels of government
Convention On The Rights Of Persons With Disabilities (CRPWD) (Adopted in 1973, came into force in 1976)	1979	<ul style="list-style-type: none"> • Parties to guarantee PWDs opportunity to enjoy full participation in political and public spheres directly or through freely chosen representatives, on an equal basis with others • PWDs have the right to stand for elections; • State parties to ensure access by PWDs of voting procedures; • State parties to further ensure secrecy of ballots and assistance to them in the voting process
African Charter on Human and People’s Rights (ACHPR) (Adopted in 1981)	1997	<ul style="list-style-type: none"> • Right to freely participate in the government of his or her country, either directly, or through freely chosen representatives under the Law.

1.1.2 The Legal Framework in Kenya

The foundational legal provisions in Kenya guiding the organization and management of the 2013 elections are articulated in the Constitution of Kenya, and elaborated on several key

legislations, including the IEBC Act 2011 (Cap. 9)⁴, the Political Parties Act 2011 (Cap.11), the Elections Act 2011 (Cap. 24), the Elections (General) Regulations 2012, the Elections (Voter Education) Regulations 2012, and the Elections (Registration of Voters) Regulations 2012.

1.1.2.1 The Constitution

Article 38 guarantees citizens the right to make political choices including the right to free and fair elections based on universal suffrage and the freedom of expression. Every Kenyan has the right, without unreasonable restrictions to be registered as a voter; and to vote by secret ballot. Also, every Kenyan has a right to be a candidate for public office, and, if elected, to hold office. This latter provision mirrors the provisions of Article 27.

On the principles of Kenya's electoral system, Article 81 states that the electoral system shall comply with: the political rights under Article 38; not more than two-thirds of the members of elective public bodies shall be of the same gender; fair representation of PWDs; universal suffrage and free and fair elections which are by secret ballot. Article 82(2)(c) further provides that legislation will be enacted to ensure the voting in every election: takes into account the special needs of PWDs (and persons with other special interests)⁵. Thirdly, the Constitution provides several ways to increase the representation of SIGs, through election or nomination. The framework is given in Articles 27 (8), 54(2), 55 (b) and 56 (a); and thresholds of Article 27(8) and 197(1)⁶. Articles 90, 97(1) (b)-(c), 98(1) (b)-(d) and 177(1) (b)-(c), and (2)-(3) provide certain measures designed to contribute to the realization of these thresholds via direct election or nomination.

1.1.2.2 Electoral Laws and Regulations

These are the Elections Act 2011 (Cap. 24), the Elections (Registration of Voters) Regulations 2012, the Elections (Voter Education) Regulations 2012, and the Elections (General) Regulations 2012. They actuate the above constitutional provisions on the campaign and

⁴ The IEBC Act 2011 must be read in conjunction with the Elections Act 2011 which is the IEBC's primary operational legislation.

⁵ See the Electoral Laws and Regulations below.

⁶ Article 27(8) sets a Two-thirds gender threshold, and Article 54(2) a Five per cent threshold for PWDs to be realized progressively. The Constitution states that Parliament shall enact legislation to promote the presentation of SIGs under Article 100. In Supreme Court Reference No. 2 of 2012, the Supreme Court of Kenya on 11th December 2012 ruled that the deadline for the enactment of the legislation concerning the Two-thirds gender rule is 27th August 2015. Article 177(1) (b) of the Constitution however provides a mechanism for the realization of the Two-thirds gender principle in county assemblies through the nomination of these additional members.

voting process and provide for the obligations of the IEBC and political parties among other stakeholders:

Voter registration: This is provided under section 5 of the Elections Act 2011 and the Elections (Registration of Voters) Regulations 2012. Regulation 8 provides the registration particulars that will be contained in the register of voters to assist in the management of elections and addressing the needs of the electorate. They include the date of birth, sex and disability (if any) of the voter;

Voter education: Section 40 of the Elections Act 2011 provides that the IEBC shall establish mechanisms for continuous voter education, and a voter education curriculum. These mechanisms are provided for under the Elections (Voter Education) Regulations 2012 and for the accreditation of CSOs to deliver voter education;

Conduct of campaigns: Advocating hatred or the incitement of violence based on a person's gender, ethnicity, race or any other ground of discrimination is considered an offence under section 68 of the Elections Act, 2011. Also, the Electoral Code of Conduct which all political parties are required to comply with, states that political parties will promote gender equality and the fair representation of SIGs⁷.

Administration of elections: Regulation 7(2) of the Elections (General) Regulations 2012 provides that in determining the number and location of polling stations, the IEBC shall have regard to geographical considerations, accessibility for persons with special needs, (including PWDs), population and any other factors affecting communication between places within the electoral region.

On assistance to voters, Regulation 62(1) (f) and 72 of the Elections (General) Regulations 2012 provide for assisted voting i.e. Upon the application of a voter, who because of a disability or inability to read or write, is unable to vote in the manner prescribed in the Regulations. Where a person who applies for assistance, is not accompanied by a person who is qualified to assist him or her, the presiding officer shall assist such a voter, in the presence of the agents. The regulation further states that the presiding officer may make any necessary and respectful inquiries, to establish that the voter and the person the voter has chosen to assist him or her, satisfies the provisions of this regulation.

⁷Second Schedule of the Elections Act 2011.

1.2. The Elections Monitoring and Observation Process

1.2.1 Objectives

The objectives of the election monitoring and observation exercise were:

- ✓ To observe the participation of SIGs in the electoral process;
- ✓ To observe the extent of the integration of principles of gender equality and freedom from discrimination in the electoral processes;
- ✓ To observe the extent to which the election process adhered to constitutional and other legal provisions (as they relate to Kenyans generally and SIGs in particular)and,
- ✓ To conduct targeted voter education on request from the IEBC.

The project was therefore designed to facilitate the monitoring of voter education efforts and campaign observation of the polling activity, monitoring of the post-election activities including receiving and handling complaints at all stages of the election process. In addition, the project was designed to deliver voter literacy in selected areas of Kenya thought of having low voter education levels.

1.2.1 Collaborations

The project was undertaken in partnership with the Ministry of Gender, Children and Social Development (MoGCSD): The Ministry supported in the delivery of voter education and conduct of campaign monitoring, observation of polling and monitoring of post-polling observations. This partnership was informed by two factors: (i) existing synergies in the mandates of the two institutions, and (ii) the MoGCSD's presence in all the 47 counties. The national broadcasting agency (Kenya Broadcasting Corporation, KBC) was contracted to implement a voter education program. IEBC provided NGEC with necessary voter education information education and communication (IEC) materials and ensured NGEC observers were accredited.

The Open Society Institute for Eastern Africa (OSIEA), and United Nations Development Program (UNDP, Kenya Country Program), and the Ford Foundation provided financial support for the activity. While OSIEA provided funding to support data management, processing and analysis, UNDP, and Ford Foundation supported the design, training and implementation of monitoring and observation activities. UNDP provided further support in the printing and launch of the final report.

1.2.2. Methods

The NGEC combined several techniques for the collection of data during election monitoring and observation.

- ✓ Short-term unobtrusive observation techniques: Observers and monitors were assigned sites to make longitudinal observations where they spend a minimum of 9 hours making and recording occurrences. Other observers were assigned multiple sites to make observations from by spending a minimum of 3.5 hours recording occurrences. The two-fold approach was intended to generate rigorous data on the conduct of the elections, as well as provide an in-depth and general overview of the conduct of election activities, within a particular geographical area;
- ✓ Use of checklists: For voter education and campaign monitoring, election and post-election observation the monitors were provided with simple checklists to record occurrences;
- ✓ Semi-structured discussions with community members, IEBC officials, and any other agent or persons present or involved in the site of the targeted site
- ✓ Complaints handling forms. The forms were used to document the nature and type of alleged complaints, redress sought and actions taken

Various data collection tools were designed for use to gather data for each component of the election process.

Voter Education and Campaign Monitoring Tool: The tool had two components. The first was designed to evaluate the categories of providers of voter education; the content of voter education and the appropriateness of delivery of the voter education to SIGs. The second component was designed to monitor the nature of the campaigns, in terms of levels of engagement and involvement of SIGs as voters and aspirants. The tool also looked at campaign practices in line with the identified electoral offences;

Election Observation Tool: This tool was designed to assess the polling day preparations and processes in line with the Electoral laws and regulations, with emphasis on evaluating measures put in place to facilitate SIGs such as mothers with small children, expectant women, PWDs, elderly persons, illiterate persons to cast votes on priority basis and in the most convenient manner.

Post-election Observation Tool: The tool was designed to also assess post-polling preparations activities and processes and their adherence to the Electoral laws and regulations.

Screening and Complaints Forms: In line with the NGEC's mandate to undertake investigations based on complaints received, the observers were provided with tools to capture, and compile data on any actionable violations, source of violations and where possible, State actions are taken, The tool was intended to document violations such as sexual gender-based violence, physical planned violence, cases of electoral malpractices such as bribery, hate speech and harassments, and forceful movement and displacement of persons.

Daily Reporting Tool: To summarize daily activities and capture general observations, and interviews.

1.2.3. Accreditation

In line with section 42 of the Elections Act 2011 and Regulation 94 of the Elections (General) Regulations 2012, accreditation to be domestic observers was obtained from the IEBC⁸.

1.2.4. Training of Domestic Observers

The NGEC team of domestic observers was trained on 13th and 14th February 2013 in Nairobi. Three consultants with experience and professional training on election observations conducted the training. In total, 191 persons attended the training distributed as follows: 80 females and 111 males. Of these 9 trainees represented PWDs (2 females and 7 males.).

The training covered the following topics:

- (i) The mandate and functions of the NGEC and its target groups;
- (ii) The affirmative action measures introduced to facilitate the political rights of SIGs;
- (iii) The legislative framework governing election administration in Kenya including the laws, rules and regulations governing the electoral process; and the laws, rules and regulations governing the nomination process;
- (iv) Election offences;

⁸A total of 173 persons (i.e. 100 males and 73 females) comprising of staff from the NGEC, the MoGCSD and independent observers received accreditation.

- (v) The meaning and importance of election observation and the guidelines;
- (vi) Code of conduct for Elections observers;
- (vii) Data collection tools, processes, ethical considerations, and reporting.
- (viii) Field logistics and management

The domestic observers were also provided with information on reporting procedures, guidelines, timelines and security measures. The training concluded with the trainees making a public '*Oath of Confidentiality*'. County-level and regional teams were then constituted and the reporting lines provided.

1.2.5 Timelines

The monitoring of voter education and campaign monitoring was undertaken between 23rd February and 2nd March 2013. NGECE offered voter education on 26th and 27th February in Western, Eastern, North and South Rift Valley regions. Election and post-election observations were conducted between 4th and 9th March 2013. Limited observation of post-election events continued to 30th March 2013.

1.2.6. Data Analysis and Report Compilation

Qualitative and quantitative data analysis methods were employed. Quantitative methods were limited to survey-type data while qualitative theme content data reduction analysis methods were used to manage and analyze narratives, scripts of the semi-structured interviews and the complaints screening and recording forms.

A consultant was competitively recruited to undertake the quantitative analysis of the data collected through the voter education and campaign monitoring tools, the election and post-election observation tools. Quantitative data were managed using CS Pro Version 5.0.1. All open-ended questions were coded using a post-generated inventory of responses and values keyed in. The data file was cleaned by checking the validity of missing values and out of range values. Descriptive analyses were conducted and results were presented in tables, charts and figures.

NGECE staff took the lead in the synthesis of the daily reports and other qualitative data collection in the project. NGECE Legal and Investigations department reviewed the Screening and Complaints forms and prepared distributions of complaints by source, and by type. The qualitative and quantitative data were triangulated and results were presented in a preliminary summary report launched on 10 April 2013 and in this mode detailed report.

1.2.7 Coverage of Activities by County

In total, 2010 observations episodes were made of voter education and campaign activities over a period of 7 days between 23rd February and 2nd March 2013. The activity including observation of the voter simulation held by IEBC on 24th February 2013 covered a total of 213 constituencies and 560 wards. That means 38 per cent of the wards were covered and 60 per cent of these observations took place in rural settings. During the elections, observations were limited to 291 polling stations distributed among 130 constituencies. Of the observations made during the polling day, 4 per cent were on mobile polling stations.

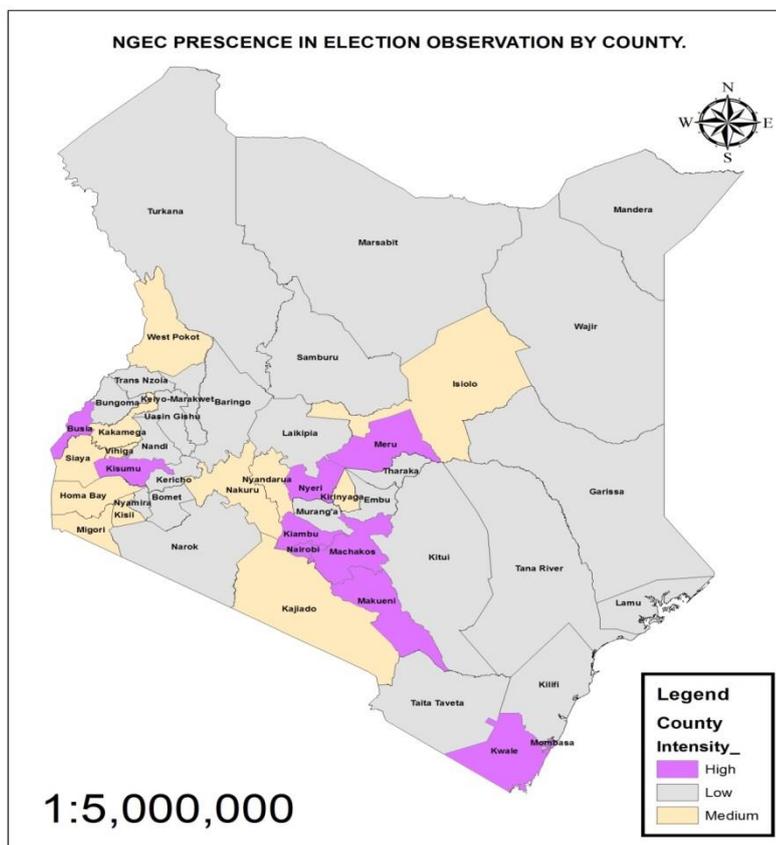
Table 2 provides the electoral units (counties, constituencies, wards and polling stations) that were covered during the election observation i.e. the threshold of coverage.

Table 2: Intensity of coverage of observation

Observation area	Number
Counties	45
Constituencies	126
Wards	189
Polling Stations	291

Figure 1 shows the concentration and distribution of monitors assigned in each of the counties.

Figure 1: Map highlighting the distribution of NGEC observers



While NGEC observers were posted in all 47 counties, 48 per cent of the counties received moderate (4-6 observers per county) to high (7 or more observers per county). The rest of the counties had low coverage (presence of 1-3 observers per county)

1.3 Limitations of the Report

Firstly, the observations within this report are limited mainly to the specific period the observations were made and

therefore cannot be used to draw conclusions of occurrences happening before or after the stated period. This report there does not cover developments, beyond the conclusion of the tallying of the presidential results post-election, such as nominations processes. Secondly, the observations were therefore limited to areas where NGEC was present. Results were not generalized to beyond areas and situations observed.

1.4 Structure of the Report

The report is structured as follows:

- Chapter Two: Pre-election Activities:** Provides findings of the voter education and campaign activities monitored. It also looks briefly at the voter education activities undertaken by NGECE
- Chapter Three: Election Observations:** Presents the observations of the NGECE on the electoral administration process of the 4 March 2013
- Chapter Four: Post-polling Observations:** Provides the post-election observations including observations of vote counting and tallying
- Chapter Five: Conclusions and Recommendations**

2.0 CHAPTER TWO: PRE-ELECTION ACTIVITIES

This chapter looks at the key findings from the monitoring of voter education including the voter simulation exercise and the findings from the campaign activities. The section also covers the voter education delivered by NGEC.

2.1 Voter Education Monitoring

The following observations are categorised between findings from general voter education efforts over the period observed and findings from the Voter Simulation exercises that IEBC conducted on 24th February 2013.

2.1.1. Voter Education

In line with Section 40 of the Elections Act 2011 and the Elections (Voter Education) Regulations 2012, the IEBC conducted continuous voter education directly and in collaboration with partners, using a curriculum developed by the IEBC. IEC materials including fliers, pamphlets and posters were observed in open, public venues where voters would easily interact with them. Media houses, few public agencies and private institutions used the IEBC materials to deliver voter literacy to Kenyans. Elections voter education materials were observed in 33 per cent of the sites or venues visited (Figure 3).

Figure 3: Distribution of literacy materials in areas visited

The messages contained in the voter literacy materials varied greatly. The most common message observed was on voting processes with intention of enabling the electorate to understand how to cast vote on Election Day. Such messages included instructions on how to mark the ballot papers (38 per cent) and the portrait of ballot papers (28 per cent) as shown in Figure 4.

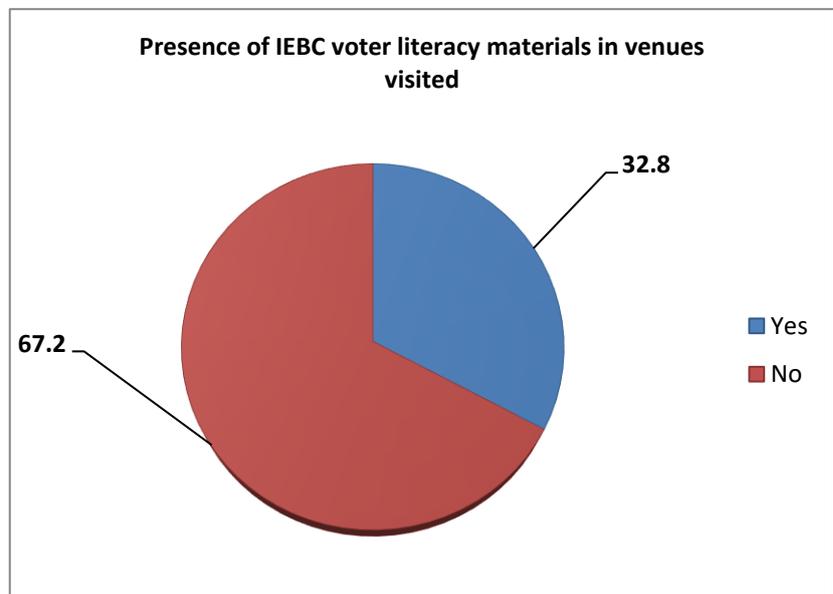
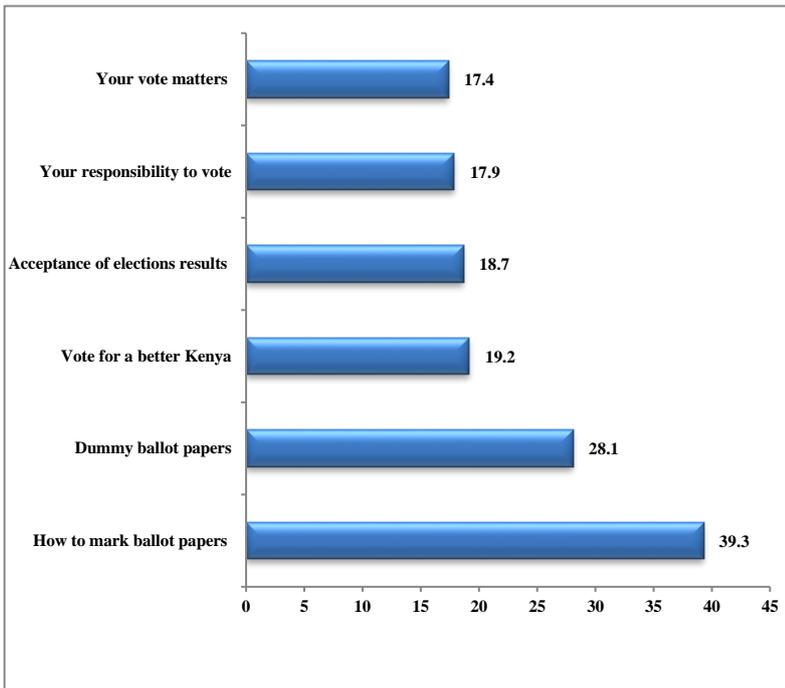


Figure 4: Messaging on voter education literacy materials



2.1.1.1. Involvement of Stakeholders in Voter Education

Government institutions, religious institutions, Community Based Organisations (CBOs), local CSOs were observed engaging in the delivery of voter education programmes. Most of the agencies specified that they had a core and secondary target audience for their program and therefore adopted varying techniques to

reach the audience. Monitors observed the use of household door-to-door methods while a majority of institutions utilized local community assemblies such as Chiefs’barazas, women and youth meetings. The National Cohesion and Integration Commission (NCIC) created platforms through which it rallied voters to come out and vote peacefully.



Photo courtesy NGECC: CSO offering voter education in Vihiga County

Political parties were also observed providing voter education through their campaign platforms.

Most common messages in the political campaigns

- ✓ Land issues
- ✓ Historical injustices
- ✓ Development agenda
- ✓ Voting and vote process
- ✓ Tribal identity
- ✓ Call for peace

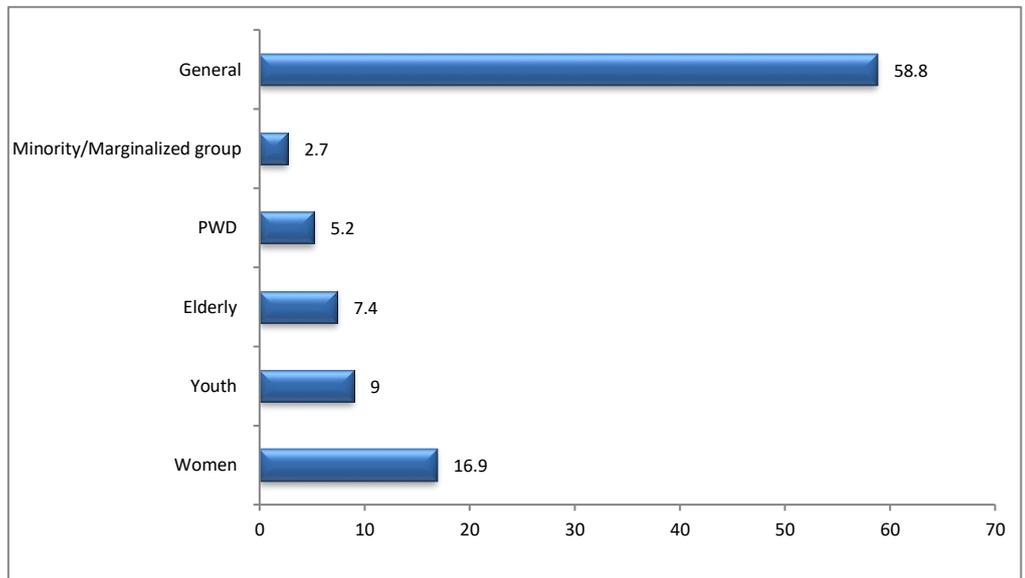
Frequency of mention of subject in decreasing order



In all voter education sessions attended and observed, 40 per cent of the voter education programs targeted SIGs. Specifically, 17 per cent of the programs targeted women and only 2 per cent targeted persons from minority and marginalized groups and communities as shown in Figure 5

Figure 5: Coverage of SIGs in the voter education programmes

The participation of the media in voter education was also noted in nearly all counties visited and reported significantly high among communities interviewed in the North Rift Valley and Western regions where both



regional and national television and radio stations were reported explaining the election procedures as well as encouraging the electorate to vote.

2.1.1.2. Observed Challenges in Delivery of Voter Education

Despite efforts to deliver high-quality voter education, the educational programs were faced with a few challenges:

Language: In Garissa and Samburu counties most of the voter literacy IEC materials available were in English. Most of the targeted community audiences expressed their concerns with understanding their content. Community-based resource persons and the implementing agencies of the educational program however made efforts to translate the materials into the local language. Future voter educational programs should provide IEC materials in the most commonly spoken and understood language of the targeted communities, especially in the non-cosmopolitan regions.

SIGs targeted voter education: It was also noted that the voter education materials and the mode of their delivery were not suitable to persons with visually and/or hearing impairments. At no time were voter educators observed using Braille materials or sign language interpreters to deliver voter literacy to the public. This had implications on the participation of certain categories of PWDs in voter education programs. On the contrary, youth were seen to be more engaged in voter education programs as compared to other categories of SIGs. Youth were involved in facilitating voter education sessions and discussions, distribution and placement of educational materials, and translating the voter education messages into local languages, as well as providing illustrations to demystify elections. Women, on the other hand, were also largely involved in the delivery of education

programs including mobilizing the community members for the program, distributing IEC materials, and on some occasions facilitating sessions and discussions of the programs.



Photo courtesy NGEK: Participation of PWDs in voter education in Kakamega County

2.1.2. Voter Simulation Exercise

The voter simulation exercise was one way adopted by the IEBC to familiarise the electorate with the voting process given the complexity of the 2013 elections. The activity was also meant to test the competencies of clerks on all aspects of voting including voter flow management and control and their abilities to handling complicated scenarios

This exercise took place on 24th February 2013 in at least one polling station per ward in all parts of the country. Before the exercise, IEBC had sensitized the public about the simulation through multiple channels including print and electronic media, Short Message Systems, public administration channels, and community-based outreaches. The simulation activity provided NGEK with an opportunity to observe the participation of SIGs in the simulation activity and assess the preparedness of the IEBC and all other players involved in the elections process in ensuring full participation of the SIGs in the voting activity. It allowed NGEK to identify any challenges different categories of SIGs may encounter with the process, and to seek ways of addressing these challenges in collaboration with the IEBC, the security forces and other stakeholders.

Voter simulation in Kisii county



Photo courtesy NGEK: Voter simulation activity in Kisii County

The voter simulation was successful in 45 per cent of the polling stations observed. In most polling stations, the following aspects were well implemented: the demarcation of polling stations; opening and closing times; the presence of security personnel; and proper and logical arrangement of ballot boxes.

In other cases observed, the simulation exercise fully or partially failed. Most of the components of the simulation exercise that received little attention or was not well implemented included:

The limited number of polling stations where the exercise was conducted: The fact that only one polling station was designated per ward for the exercise made it difficult for the public living far away from the polling station to fully participate in the exercise. The activity therefore only benefited persons living closest to the designated polling stations. The distance factor affected most women who were either expectant, those with small children or juggling household responsibilities and therefore were unable to walk long distances to participate in the activity. The elderly, sick and PWDs faced similar constraints.

Time: In some stations, the exercise took a long time to complete per voter due to inadequate preparedness of the officials implementing the activity. Unexplained delays are a concern for voters who worry about the length of time the actual voting will take.

Inadequate assistance for PWDs: The exercise was designed with able audiences in mind. . The sign language interpreters were not available in all observed sites though there was the

need for them in certain instances. There were also no brailled ballot materials for visually impaired persons. However, individuals with disabilities were allowed to be accompanied by an assistant or aide to offer interpretation services, physical support among other necessary services.

Accessibility of polling sites: Some polling centres were situated in or designed in such a way that they were unfriendly to PWDs, the elderly and expectant women. Some stations were only accessed through staircases; make shift stair cases, while others were generally located in hilly places.



Photo courtesy NGEC: An example of a polling station inaccessible to persons with a physical disability

Inadequate dummy ballot papers: In some polling stations, the dummy ballot papers run out while voters were still waiting for an opportunity to participate in the exercise. Such participants would have benefited from a group demonstration of the voting exercise. Election officials however assured those who missed the opportunity while on the queue that such incidence will not occur on the day of the election.

Equipment failure: In many polling stations, the Anti-fraud fingerprint-based voter-identification technology failed. Some of the computers could not start mainly due to low battery charge levels. The electronic transmission of the voter tally results was not successful in most stations. The IEBC officials were not well prepared to troubleshoot whenever such

problems arose or promptly use alternative systems which caused unexplained delays among the public.

2.1.3 NGEC High Impact Voter Education

In line with the NGEC's mandate to promote the principles of gender equality and freedom from discrimination, and in response to the IEBC's appeal to government agencies and CSOs to draw synergies to effectively scale up to levels of voter education, the Commission designed a high impact voter education programme. Some of the observations made during the early stages of campaign activities and voter simulation were used to refine the objectives of the education programs to the following:

- i. To increase the coverage and intensity of voter education with a special focus on SIGs;
- ii. To appeal to the electorate for equal treatment of aspirants who are women, PWDs, youth and/or members of marginalized or minority groups and communities;
- iii. To appeal to the electorate to accord priority during polling to the sick, the elderly, expectant women, women with young children; and,
- iv. To appeal to all Kenyans to maintain peace before, during and after the elections.

In collaboration with KBC, NGEC designed a powerful edutainment voter education program delivered through high impact road show caravans equipped with music, educational materials, and celebrities and with live transmission of messages to the entire nation through 16 mediums and short waves and high-frequency radio signals. The events coverage was also aired during prime time news broadcasts. The program reprinted IEBC educational materials, recruited sign language interpreters to deliver key messages and distributed a few braille elections educational materials.

The voter education exercise was undertaken in the North and South Rift Valley (Nakuru, Eldoret, Baringo, Kajiado, Kitengela) Eastern region (Athi river, Machakos, Wote), and Western regions (Kakamega, Busia, Bungoma, Mumias).



Photo courtesy NGEC: flagging off high impact voter education caravan by NGEC in Kajiado

2.3 Campaign Monitoring Exercise

The official campaign period runs for 21 days from 11 February to 2 March 2013, in line with the Electoral Code of Conduct in the Elections Act 2011. The Act outlines a code of conduct for political parties and their officials to ensure free and fair campaigns which are aligned to the constitutional values and principles. NGEC monitored critical aspects of the 2013 general elections campaigns with a special focus on the involvement and facilitation of the SIGs as voters and aspirants, accessibility of campaign venues by SIGs, and campaign violations and malpractices and their effects on the participation of SIGs in the campaign process. The facilitation, engagement and participation of the SIGs in the campaign process have a strong bearing on the levels and quantity of their representation in national and county governments. While it's evident that the campaigns begun way before the official gazette period, they were characterized by a wide call for peaceful, transparent and credible elections. The campaigners expressed confidence in IEBC's abilities and remained vigorous and ambitious throughout the period.

Campaign strategies: Aspirants adopted various campaign strategies including the use of multi-media platforms and social media. Two-thirds of the campaign's activities observed were conducted in open public spaces such as market places, shopping centres, public fields and

along service roads for trading areas. The large public rallies were mainly confined to campaigns led by presidential candidates, governors and senators. Other aspirants including PWDs and many women opted for scale-scale campaign interventions that included door to door activities small group meetings perhaps an indication of a lack of enough funds to pull together large scale campaign events. Many aspirants and their supporters distributed placards, t-shirts, caps, flags, scuffs, and other attractive below-the-line promotional materials inscribed with their campaign messages. While many men aspirants were observed running campaigns by themselves, several women aspirants reported feeling safe conducting their campaign activities in partnership or collaboration with male aspirants from their party as long as both were vying for different positions an indication of women feeling insecure or not fully confident to manage their campaigns. It was also evident that much media attention was given to large campaign rallies attracting gubernatorial, senatorial and national assembly aspirants as compared to rallies organized to popularize the agenda of the women representatives and county assembly aspirants

Participation of SIGs aspirants in the campaign activities: The participation of SIGs in the campaign activities varied greatly by category of the group. The youth were the most engaged category in the campaign activities perhaps because they were favoured by choice of venue, time of campaign activities, and design of the campaign. For example, youth were more active in caravan road shows with music and where aspirants were offering gifts such as hats, party flags, vuvuzelas among others. Youth were more mobile compared to other groups and can travel long distances to support their candidate. Youth were attracted to campaign events where they were actively engaged including when their resources and possessions were hired for the event. For example, when hired to offer chase motor cade to aspirants, offer security, or given a chance to talk to the public about their aspirations, and expectations for the party or candidate they are supporting In 85 per cent of the observed campaign activities, youthful aspirants were allowed to address the public.

For most of the large campaign events where women participated, they were observed offering playing hospitality roles including offering entertainment and ushering in guests even though women empowerment issues were a campaign theme in 75 per cent of the events observed. In such large campaign events, women aspirants were given chances to interact with the voters. Women formed a sizeable number of attendants of the campaign rallies. In most of the observations made in regions where minority and marginalized groups and communities reside there were mixed results on the involvement and engagement of the minority and marginalized groups. In regions with small numbers of minority groups such as Kwale, they

passively participated in the campaign activities and reported occasionally being intimidated. In a campaign rally held in Lunga Lunga, migrant communities were warned to support and vote for the indigenous communities. In regions where the minority groups had schemed to support their candidate and remove the majority community from the leadership, hatred, fear and instances of violence were reported. In Marsabit County, for example, tensions were reported when a tribal conglomeration bringing together the Rendille, Gabbra, Garre, and Burji (REGABU) conspired to isolate the Borana community by capturing all the county elective seats. This elicited hard emotions among members of the Borana community.

The observers noted key barriers to broad participation of SIGs including limited community support due to perceived lack of political experience and partly because of perceptions about the capabilities of SIGs. SIGs had limited finances to fund crowd-pulling campaigns. Aspirants with disabilities were constrained to move around and meet with their supporters and had to constantly depend on the group of personal aides to help with movement from one place to another. Women aspirants faced unique challenges as well. In Trans-Nzoia and Kilifi counties reported that women aspirants received threats at the onset of the campaign period. Most threats were suspected of coming from the rival aspirants or community members opposed to women playing a public role indicating the need for civic education to shun negative attitudes towards women in leadership. Some women aspirants for example in Kamakwa and Mukaro wards in Nyeri County had their campaign materials destroyed or defaced.

Friendliness of campaigns to SIGs: From the campaign events observed, there was an average of 4 PWDs in attendance. One-half of the campaign venues were also unfriendly to PWDs and the elderly and in a few instances, the campaign environment was also unfriendly to PWDs, women, and the elderly, especially when rival campaign groups clashed.

Campaign violations and malpractices: The monitoring exercise reveals that campaign activities were generally peaceful. IEBC had put stringent measures against campaign malpractices including constituting an Electoral Code of Conduct Enforcement and Compliance Committee and certainly, most of the campaign events observed adhered to much of the provisions in these regulations. However, several forms of campaign malpractices were observed or reported to the observers. Such malpractices were initiated and perpetuated by voters and aspirants. Politicians and their emissaries moved from house to house, giving tokens to citizens. In all counties and constituencies visited, political parties had submitted a campaign calendar however, only 37 per cent of the campaign events took place at the scheduled venues or time

In a few cases, aspirants also violated the designated campaign timelines such as conducting campaigns beyond 6 p.m. Campaign events were also extended into the night under the disguise of the private meeting among friends of a given aspirant. Some aspirants were also observed campaigning in religious places. In Migori County, for instance, an aspirant was observed campaigning in a church at Muhuru. Some aspirants were also observed campaigning at funerals in the same area.

Voter bribery by aspirants was also observed and reported. The electorate was seen to be complicit in this behaviour. Some voters publicly announced that they would not vote for someone who had not given them money. In Webuye West constituency, for example, new terminology for voter bribery was adopted and openly used “*washing of constituents’ feet*”. In some communities politicians and their emissaries moved from house to house, giving tokens to citizens. In other cases, the public received favours, money and goods with the purpose to sway their voting decisions. For example, donations made to churches in the form of offerings and foodstuff to the needy much of which is difficult to classify as bribery.

Other violations included fighting between supporters of rival aspirants for example in Migori County. Violence, mainly physical violence occurred in 5 per cent of the observations made. The circulation of threatening leaflets was also reported in Uriri and Naivasha constituencies and Kiambu County. Such leaflets carried negative messages against an aspirant or a community. Verbal abuse was rampant in most campaign events observed. Candidates or voters were heard making negative remarks and delivering hate messages masked in metaphors and idioms. For example, in Makueni a county male candidate made derogatory remarks about their female rivals, which could be qualified as verbal abuse.

Incidences of campaign malpractices increased during the last two days to polling activities. However, it is important to note that throughout the campaign period there were few reported cases of the campaign or election-related GBV.

2.4 Pre-Polling Day

In most areas, a generally calm atmosphere was observed on the 3rd of March 2013 visited. However, on the eve of Election Day, violence broke in selected parts of the county such as in Kilifi, at Chumani polling station, Wajir and Garissa. In Kilifi, administration police officers were killed, and the property was destroyed or lost, resulting in high levels of tension.

3.0 CHAPTER THREE: ELECTION ADMINISTRATION PROCESSES

In making observations about the conduct of polling, NGEC focused on the location and general organization of the polling centres, the logistical operations, and procedures followed in ensuring a smooth and credible voting process. NGEC made observations on the responsiveness of the IEBC officials, and security agents to the voting needs of SIGs and the roles of aspirants and voters in ensuring free and fair elections. Further, the observation looked at the participation of other stakeholders and the occurrence and prevalence of electoral offences on the polling day. Observations were made in 291 polling stations on March 4, 2013, and key findings are presented in the sections that follow.

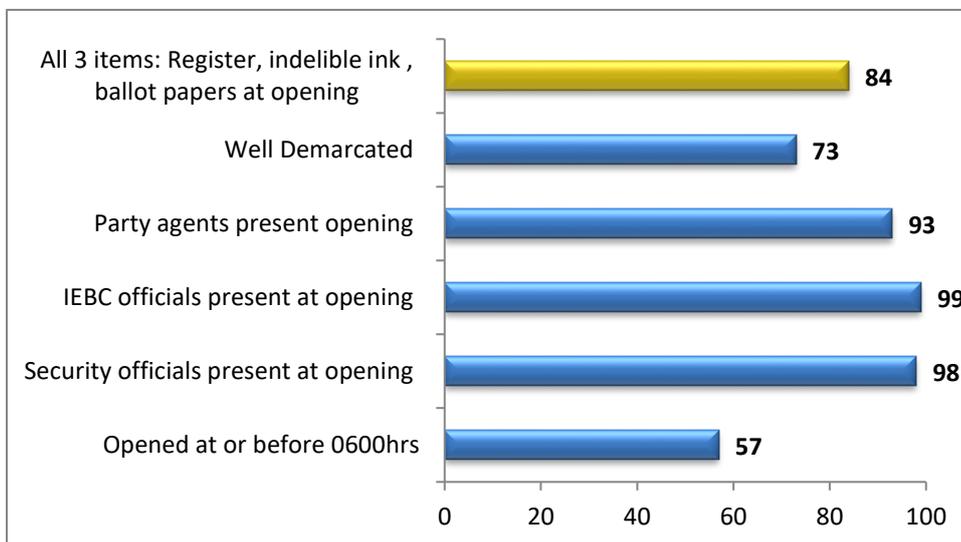
3.1. Management of Polling Day Logistics and Procedures

Accessibility of the polling stations: Generally, most of the polling stations were accessible to the public and had ample space to accommodate voters. The stations were well identified, marked and designated for the general public to recognize them from upon arrival. The stations were located in ‘neutral’ public places such as religious and school facilities, social

halls and other public facilities. One-quarter of the stations observed were designed or located in places unfriendly to persons with visual or physical disabilities. Some polling stations were located in poorly designed and cramped buildings which made it difficult for persons on wheelchairs or using crutches to gain entry to or move within the polling stations. Urban areas and specifically Nairobi County had the highest number of inaccessible polling stations mainly because of their location in storied or raised grounds. Other inaccessible polling stations were found in Kajiado, Kakamega and Makueni counties and were characterized by narrow and/or makeshift staircases, narrow makeshift foot bridges and narrow entrances, making access an issue.

Pre-voting preparedness: Observations were made on the opening times of the polling stations and the availability of essential materials to facilitate voting. In addition, the observers looked at the layout of the polling stations to see whether it was conducive to the needs of SIGs. The majority of polling stations i.e. 57 per cent of the observed stations, opened at or before 6 a.m. as required under the Elections (General) Regulations 2012. On the availability of voting materials at the time of opening, 84 per cent of all observed polling stations had the necessary materials ready at the time of opening the station. Figure 6 provides the distributions of key parameters assessing the readiness of the polling stations for voting activities

Figure 6. Readiness of the polling stations



Delays in opening the stations were mainly occasioned by logistical challenges such as delay in delivery of essential voting materials, lack of transport, and the failure of the electronic machines to

start. Such delays though occasioned by varying factors were reported in every county but most prevalent in the following stations: Kawangware Primary School in Nairobi, Senya Primary School in Migori, and Muya Primary School in Kiambu county. In Homa Bay county, IEBC officials in one polling station had to borrow ballot papers from the neighbouring polling station to complete the voting process, while in Syokimau in

Machakos county, IEBC officials had to work in the open air due to the non-delivery of a tent, thereby exposing voting materials to adverse weather conditions.

In nearly all polling stations visited (96 per cent) the IEBC officials publicly displayed the ballot boxes, opened each of the boxes at a time and sealed each ballot box in presence of party agents and observers before embarking on the casting of votes.

Identification of voters: Though most polling stations had the necessary and critical materials to kick off voting activities, almost 40 per cent of the stations faced difficulties with identification and verification of voters and in almost all stations observed, the electronic voter registers failed at least once during the course of the day. In some of the stations, the IEBC officials promptly resorted to using the manual voter registers to complete the process while in other stations. Two in every five polling stations faced difficulties identifying voters due to: names being misspelt in the register, or names missing from both the manual and electronic registers. Such problems on voter identification were observed in Madaraka Primary School in Nairobi, Central Primary School in Uasin Gishu, Ongata Education Complex in Kajiado, and Khadija Primary School and Ziwa la Ng'ombe Primary School in Mombasa, among other stations. Delays in the identification of voters and in resolving these situations caused some of the potential voters to walk away without casting their vote.

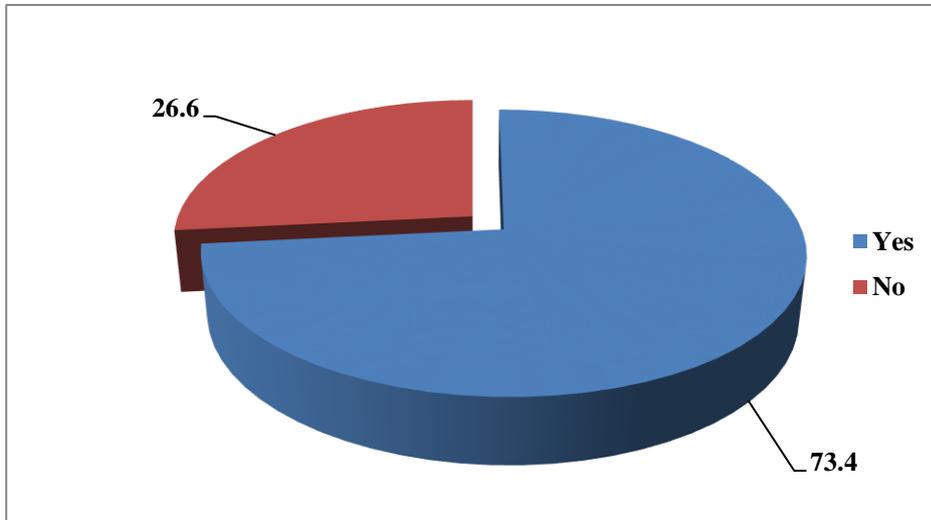
Security: There was a reasonable presence of security personnel in all the polling stations observed. Security officers were observed engaging in organizing and directing voters and when called upon arrested suspected perpetrators of crime and violence. In isolated cases, there were reported incidences of violence and tension. Incidences of violence and insults were highest in overcrowded polling stations, due to the likelihood of occurrence of commotion and unrest as voters pushed and shoved to vote. In some cases, the security personnel and IEBC officials became overwhelmed and reinforcements were brought in the form of anti-riot police to contain the situation. In Kajiado County, for example, rowdy crowds caused a commotion and forced the police to lob tear gas, which resulted in the further commotion and a stampede. The security officers however took action and arrested the rowdy individuals.

Another incident was observed next to a polling station in Garissa County, where there was a grenade attack on the eve of Election Day. The attack coincided with a power blackout which delayed the operations at the polling station for almost one hour. There were no casualties and additional security personnel were deployed to reinforce security in the area.

Management of polling stations and voter issues: Presiding officers have the responsibility of keeping order in the polling stations under Section 63(1) of the Elections

(General) Regulations 2012. In 73 per cent of the polling centres, presiding officers provided constant briefings to voters, agents and observers (Figure7).

Figure 7: Percentage of polling stations where presiding officer provided regular briefings to party agents and observers



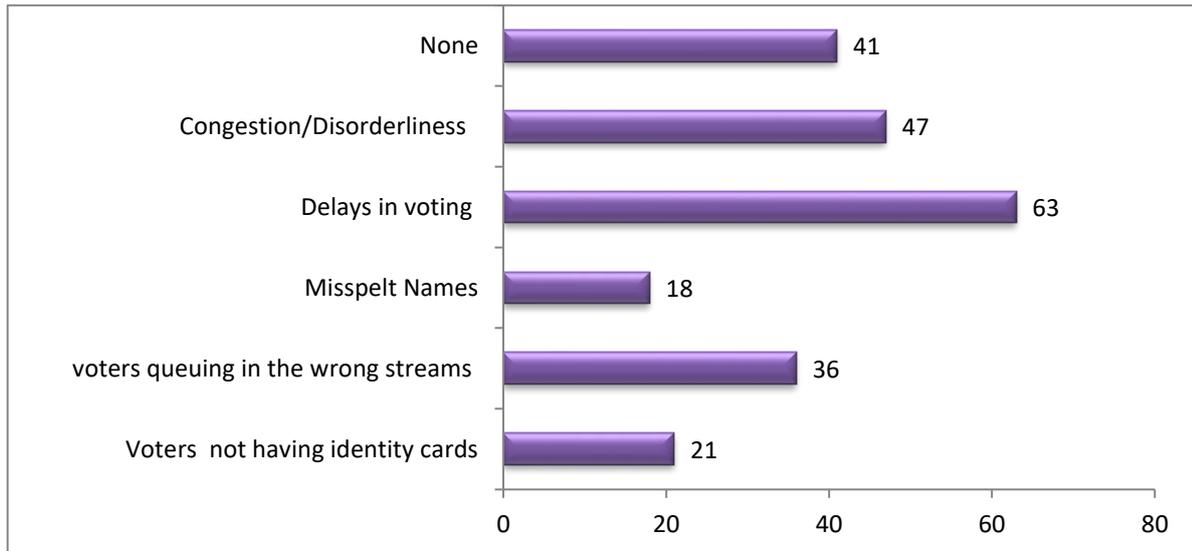
The inadequate preparedness of the IEBC officials or the polling stations, the dysfunctional electronic voter identification, the low levels of voter education, and high levels of anxiety among voters contributed significantly to the development of long voter queues in the polling stations during the first five hours of the polling. Some voters were observed to be confused about the number of ballot papers they were required to mark and spend much time on the polling booths arranging or reviewing their decisions. The casting of six ballot boxes in a single general election is a complex activity and many voters were less prepared to manage such.



Photo courtesy of NGECC: Long queues at a polling station

Very few polling stations had erected help desks to handle and manage issues raised by the voters and observers. A collection of voter complaints at help desks and semi-structured interviews revealed that the majority of the complaints (63 per cent) were about the delay in voting, followed by congestion and disorderliness in the polling stations (47 per cent) as shown in Figure 8.

Figure 8: Common complaints during the polling.



The

management of polling stations was a challenge for small stations and those located in areas not well served with infrastructure and social amenities such as toilet facilities. The sick, the elderly, PWDs, and women were most affected. Efforts were made by electoral officials and security agents to identify and facilitate the voting of SIGs on a priority basis. However, not many of the public and the SIGs appeared to be aware of this arrangement. SIGs were also not always easily noticeable due to the numbers of voters and the long queues. In Uasin Gishu County, one elderly woman collapsed and eventually died while on the queue.

In 80 per cent of the observations, SIGs received assistance from the presiding officer to vote, in line with the provisions of Regulation 72 of the Elections (General) Regulations, 2012. According to Regulation 72(5)(a) of the same regulations, the persons assisting are required to make a declaration of secrecy before the presiding officer (before or after providing such assistance). In some cases, assistance for SIGs undermined the secrecy of the voting process. Some assisted voters were compelled to pronounce the names of their preferred candidates and they were heard by other voters. This was observed in the Kiminini Primary School polling

station, where a SIG person could be heard announcing his preferred candidate. SIGs did not appear to have information on the arrangements for assisted voting.



IEBC had the responsibility of organizing the polling station in a manner that would allow secrete voting. In 74 per cent of the observed polling stations, the polling booths were arranged in a manner to facilitate secrecy. However, several issues hindered the full secrecy of voting. In some highly congested polling stations, booths were placed

too close to each and

Photo courtesy of NGECC: A visually impaired PWD being aided to a polling station

sacrificed secrecy. Poor lighting in the rooms also made it difficult for the voters to distinguish between ballot papers based on colours and was forced to tilt their ballot papers when marking them and unknowingly exposed their markings to other voters on the queue. The elderly and PWDs also had difficulties using the ‘high table’ polling booths and were forced to mark their ballot papers in non-designated places and often expose their choices to other voters.

Closure of polling stations: In 58 per cent of the observations, the polling stations closed by 5 p.m. in line with regulations 66(1) of the Elections (General) Regulations 2012. Extension of closing time is provided for under Regulation 66(2) of the Elections (General) Regulations, 2012 owing to delays in opening the polling stations or interruptions in the voting process. In polling stations where voters



were on the queue during the official closure time of the

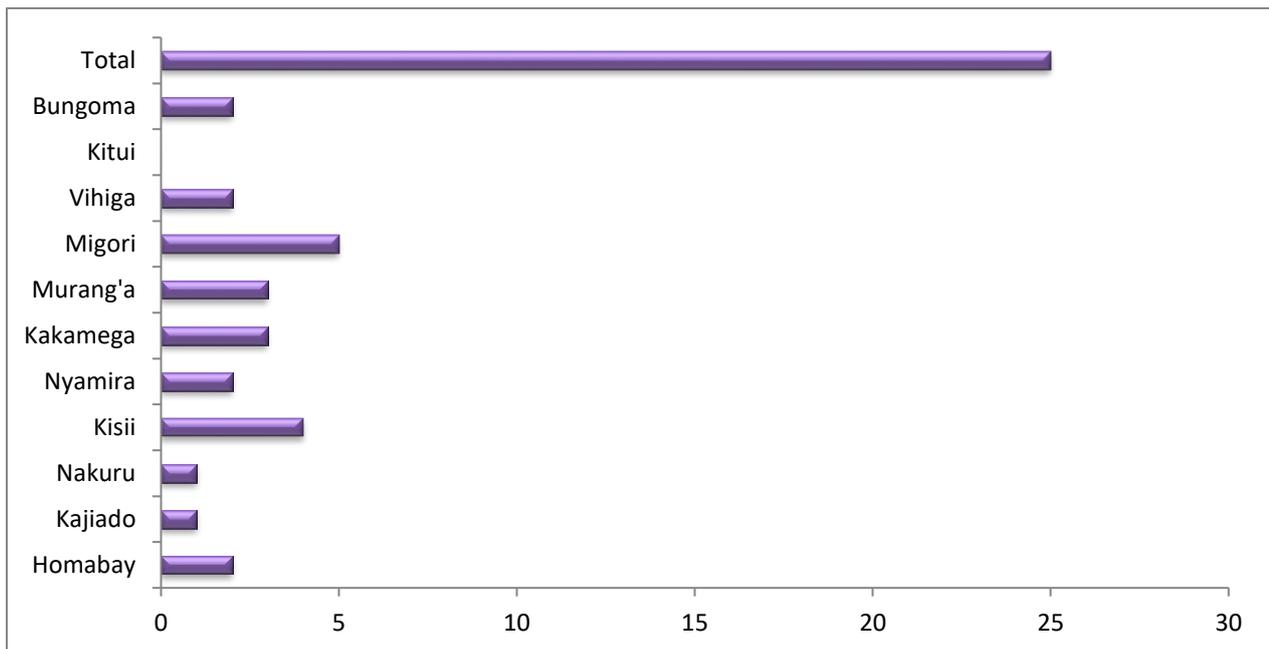
**Photo courtesy of NGEC: is secrecy granted
in voting**

station, all were allowed to vote except in four polling stations where some voters were not allowed to vote at all and in another four stations where all voters on the queue were denied voting on suspicion that such voters had deliberately delayed voting with intention of causing crime in the polling stations.

3.1. Electoral malpractices on the polling day

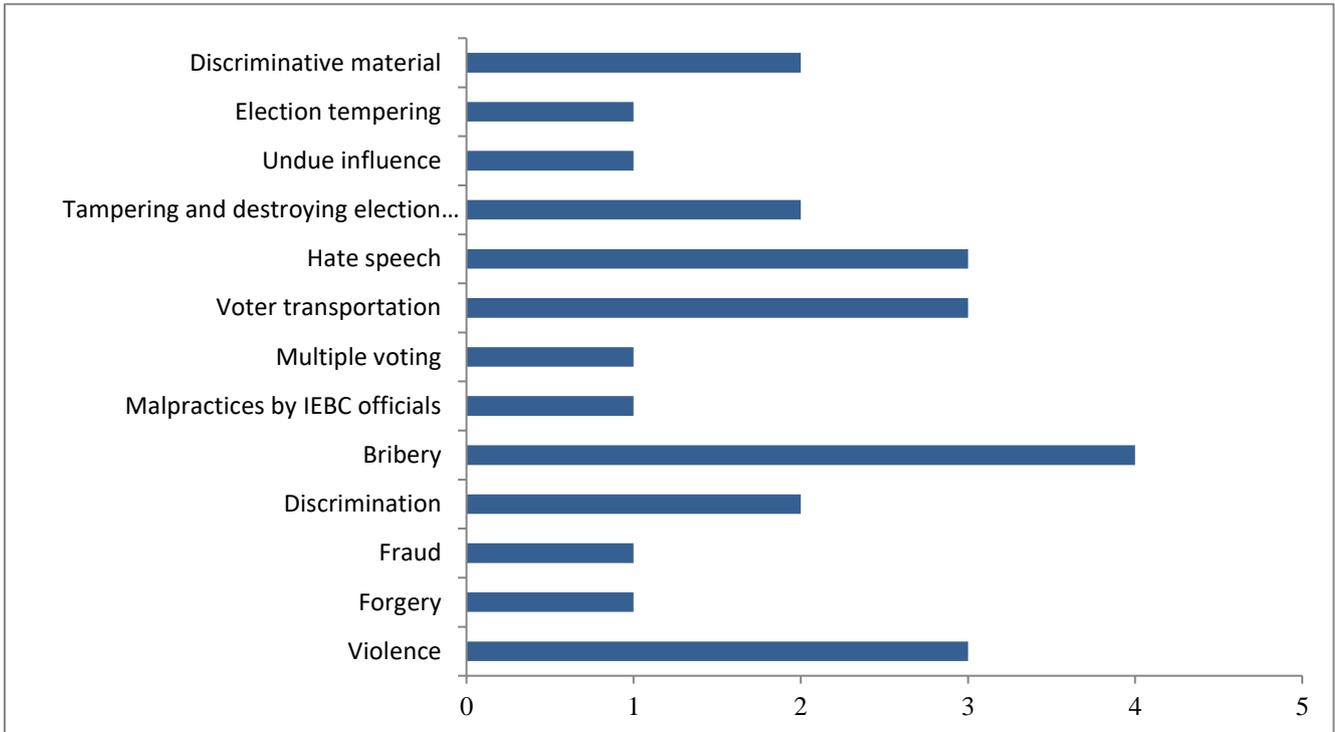
NGEC election observers and monitors were trained on screening, documentation and referral of reported cases of election malpractices. The activity was limited to only reported cases or observed occurrences of the malpractices. Figure 9 provides a summary of the alleged election malpractices by the counties in which they were reported.

Figure 9: Summary of Incidences of Reported Election Malpractices in Select Counties



The highest reported incidence of election malpractices occurred in Migori and Kisii counties. The same source of data is analyzed by type or nature of the violations and is presented in Figure 10

Figure 10: Types of Electoral Malpractices Reported To NGECC



Cases of bribery, violence, transportation of voters and hate speech were the most commonly reported types of malpractices reported to the commission.

4.0 CHAPTER FOUR: POST-POLLING OBSERVATIONS

This chapter looks at the post-polling processes and procedures including precautions taken to ensure the security of ballot papers during counting (at the polling stations), tallying (constituency, county and national tallying centres) and in announcing the results; participation by accredited persons in the process; and participation by SIGs.

4.1 Counting and Tallying Procedures

Under Regulation 76 (1) (a) and (b) of the Elections (General) Regulations 2012, each ballot box shall be opened and its contents emptied onto the counting table or any other facility provided for the purpose. It further stipulates that the presiding officer shall in the presence of candidate(s) or agents count the votes received by each candidate and record the total number of votes cast in favour of each candidate. Several measures were taken to ensure the efficacy of the process: the presence of security officers, party agents and observers; controlled entry into the polling station and tallying centres; consensus on sorting and counting procedures; the recording of used, unused, spoiled and rejected ballot papers among others. Sitting arrangements during counting and tallying was designed to ensure transparency and accountability during the process. NGEK and other observers were allowed to participate in the counting and tallying processes in 181 counting and tallying centres including at the national tallying centre located at the Bomas of Kenya.

The observation results indicate that at the polling stations counting of votes started late in the evening for most of the stations and lasted for an average of 8 to 12 hours after polling depending on the voter turnout. In some stations with a high number of registered voters and with turnout rates of more than 85 per cent, the process lasted over 13 hours. The process of counting was time-consuming and detailed and was complicated by the number of ballot papers. Due to the length of time taken in counting and tallying, IEBC staff, security personnel and observers suffered fatigue, sometimes demanding healthy breaks that could last a minimum of 45 minutes. The electronic transmission of results from one level to another also broke down along the process. The telephone transmission of results from polling stations to higher levels worked well in only 41 per cent of the observations made.

Most counting and tallying centres did not have a permanent reliable source of lighting and as the evening progressed, the process of counting and tallying slowed down significantly. The process of determination of the validity of contested votes was not straightforward. There appeared to be no standard guidelines by which to determine the legitimacy of such ballots and most IEBC officials used general principles sometimes not easy to apply in complicated cases

and with an impatient group of aspirants and voters. The validity of such votes was undertaken by consensus with the involvement of presiding officers, agents and observers.

These factors led to serious cumulative delays in the announcement of results at county and national levels and led to anxiety and tension among the electorate and aspirants. Such delays are potential triggers for violence and could have contributed to alleged cases of unsealed ballot boxes, boxes whose seals were tampered with and incidences of lost cast votes. The IEBC management and leadership were observed playing a critical role in assuring Kenyans of fair and free elections and commitment to ensure elections results were announced promptly, consistently as results streamed in and that the process was open to public scrutiny. Such messages delivered through press conferences and advertisements and echoed at the same breadth by aspirants, religious and community leaders contained the nation to patiently wait for the final announcement of results.

4.2. National Tallying

Regulation 87 of the Elections (General) Regulations 2012 contains some of the key provisions on the communication of the tallied results at different levels. They also provide the relevant documentation and the roles of different electoral officials. The regulation also provides for the mode of transmission, which is specified as electronic. The results that are communicated to the IEBC at the national tallying centre are treated as ‘provisional’ at the time they are electronically transmitted.

The National Tallying Centre for the March 2013 elections was located at the Bomas of Kenya in Nairobi. Here, IEBC officials received and verified the results that were transmitted by returning officers at the constituencies. The aggregate verified tally was then posted via live stream onto a screen, from the IEBC servers, for observers, the media and the general public.

Due to the failure in the electronic transmission system, there was a delay in the transmission of the results from the constituencies, and the IEBC was unable to announce the provisional results, 48 hours after voting stopped⁹. The IEBC resorted to the manual compilation of the results, following a physical verification of the same. The final results were announced on the afternoon of Saturday, March 9, 2013, within the legal timelines. The chairperson of the IEBC announced that based on a voter turnout of 86 per cent, the winning presidential candidate was Honorable Uhuru Kenyatta who garnered a total of 6, 173, 433 votes.

⁹The failure of the electronic transmission system also affected the transmission of results from the polling stations to the tallying centres at the constituency and county levels.

The observation of the tallying process maintained a count of the members of the special interest groups who won various elective posts. The results are summarized in Table 6.

Table 6: The number of women, youth, PWD, persons from minority or marginalized groups elected for various positions in the 2013 elections

Category of SIGs	Elective Positions				
	Governor	Senator	Member of National Assembly	Woman County Representative	Member of County Assembly
Women	0	0	16	47	88
Youth	1	11	25	10	394
PWDs	0	1	3	0	3
Minority and marginalized groups	0	0	5	0	0

5.0 CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1. Conclusions

For Kenyans, the 2013 elections constituted a test of the country's political maturity, coming in the background of the PEV of the 2007 elections. For the IEBC, the agency charged with managing the conduct of the elections and for ensuring free, fair and peaceful elections, the complexities of delivering on the aspirations of the Constitution, constituted a significant challenge. Based upon the observations made by the NGEK observers in 291 polling stations, and considering the multiple challenges in the design and execution of the 2013 general election, including a squeezed calendar of events, and a limited budget IEBC managed to deliver the first-ever complex elections in recent times. The complexity of the 2013 elections beginning with the interference of critical timelines of the election calendar including political party nominations and delays in the procurement of essential works, goods and services for the Commission. This report noted some major omissions and electoral malpractices in every component of the election process which the IEBC and other actors will need to respond to.

Based on the observations it was clear that the voter education was inadequate, especially in targeting SIGs. Special interest groups faced challenges in explaining their constitutional rights as candidates. Also, voters exhibited ignorance in the candidature and support of the SIGs aspirants. It was also clear that efforts could be made to better facilitate Kenyans during elections, especially the elderly, women, and PWDs. The choice to use poorly designed, cramped facilities which lacked basic amenities presented a challenge for voters. Persons with visual and hearing impairments were least facilitated in all stages of voter education due to a lack of braille voter literacy materials and a lack of sign language interpreters. It was also apparent that inadequate preparations were made for the use of electronic equipment for voter identification and the transmission of results. While the use of ICT is encouraged and is the height of innovation, the hardware, software, processes and procedures need testing beforehand to ensure efficacy and realize value for investment. Election officials were not prepared for the various scenarios that arose in the field and lacked reference materials to consult in case of complex scenarios.

Certain electoral malpractices also continue to be a challenge and difficult to address. Voter bribery, campaigning beyond the legal time frame and the use of violence and hate speech during campaigns are the most complex malpractices to prove beyond doubts. Security

remains a critical factor to ensuring the delivery of democratic elections in Kenya and future elections must address drivers for insecurity including tribalism existence of organized gangs, use of force to seek leadership position, and excessive use of force by the security agencies. As the first-ever election recognizing political representation of SIGs in national and county governments, the SIGs aspirants performed well in the 2013 elections despite many challenges they faced as aspirants and voters.

5.2 Recommendations

The following are some recommendations to assist the IEBC and other stakeholders, in the execution of future elections and referenda. NGEC proposes to work closely with IEBC to develop a strategy for the mainstreaming principles of gender equality and freedom from discrimination in all components of the electoral process.

Voter education: NGEC recognises that the IEBC was faced with challenges in terms of time and financial constraints towards the delivery of a comprehensive and integrated voter education program. The government should make available adequate funding in timely manner funds for continuous voter education.

The IEBC and other stakeholders need to take deliberate measures to adopt an inclusive approach to voter education that include though is not limited to translating voter education materials into local languages. Voter educators also need to take measures to tailor voter education tools to allow for the engagement of specific SIGs such as youth, women and PWDs. Adaptation of voter materials and techniques for use by PWDs can be undertaken through collaboration with institutions that work with PWDs. The timely rollout of civic and voter education programs is a critical prerequisite to credible elections.

General preparations for elections or referenda: The IEBC should improve on general basic preparedness for elections. Political party elections and nominations should happen well in the timeline of the elections. Following voter registration, voter registers should be made available to the informed public for inspection well before elections, to avoid the challenge of missing or misspelt names. On the voting day, there should be only one register. IEBC should continue to invest in the ultra-modern ICT election management process. Efforts should also be made, however, to ensure that all electronic systems and equipment to be used for voter identification, voting and the transmission of results are tested in advance and that users are well trained to use and conduct minor troubleshooting. Voters should also be made aware of what to expect when ICT systems and applications are used to implement elections to

adequately manage their expectations. The election process should be guided by clear timeframes preferably those provided in the 2011 election Act.

The number of designated polling stations should also be increased, to reduce congestion in certain polling stations, match with demand and population growth and increase the efficiency of elections and reduce time spent in queues. Polling booths should also be designed to allow for persons with different abilities to be able to vote in comfort and secrecy. In line with this, IEBC staff should take induction courses on handling different classes of SIGs, and work on identifying ways through which certain classes of SIGs such as the visually and hearing impaired and the physically disabled, can always be facilitated at every polling station. This includes ensuring that brail voter education materials and the services of sign language interpreters are always available. Polling stations should also be selected based on their suitability for the most challenged SIGs. Polling stations must also be fitted with basic amenities such as electricity, water and toilet facilities. Efforts must also be made to ensure that there are help desks in every polling station, manned by persons who are adequately trained to deal with different scenarios that may arise. Addressing these challenges will go a long way to improving the experience and efficiency of the voting process.

Dealing with electoral malpractices: A robust mechanism of monitoring compliance with electoral laws and guidelines should be institutionalized to deal effectively with electoral malpractices as soon as they occur. The IEBC must seek to strengthen collaborations with the police, the office of the Director of Public Prosecutions, the National Cohesion and Integration Commission, the NGEC and other key government institutions, and CSOs, in dealing more effectively with electoral malpractices. The IEBC should also fully utilize its powers to take action against those who break the law.

Counting and tallying and the transmission of results: Delays in the counting of votes, and the tallying of votes at different levels, as a function of equipment failure, resulted in anxiety and tension within the electorate and the country as a whole. The IEBC needs to invest in a secure and robust approach to counting and tallying which will not result in significant delays, and in electronic equipment that will ensure the timely transmission of the results whilst ensuring the integrity of the same. An effective mechanism of sharing with the public the progress of election results particularly presidential should be institutionalized to reduce anxiety among the electorate

Greater participation of SIG in the election process: The election management staff should be prepared on mainstreaming issues of SIGs in the election process and work on

identifying ways through which certain classes of SIGs such as the visually and hearing impaired and the physically disabled, can always be facilitated at every polling station to cast votes on a priority basis. Polling stations must also be fitted with basic amenities such as electricity, water and toilet facilities. Such efforts will go a long way to increasing the participation of SIGs in the electoral process. As county future elections should avoid violence and intimidation and must be conducted with efficiency. Such factors will motivate SIGs¹⁰ to participate in the electoral process as either aspirants or voters.

Data from secondary sources indicate that the number of SIGs who presented their candidature for elective posts in the 2013 general elections is small compared to the number of available seats allocated to this group through constitutional provisions. To encourage active and meaningful involvement of SIGs in the political process, there is an opportunity to amend the political parties Act to peg the financing of political parties on the inclusion of SIGs. There is also a need to intensify both civic and voter education of the rights of the special interest groups. Such investment will reduce direct state expenditure for mandatory nominative seats. For example, in 2013, the government will spend a minimum of 550 million Kenya shillings per year to meet the salaries of members of the county assembly to be nominated to fulfil Article 177 (1) (b) of the Constitution. In the 2013 elections, the IEBC is expected to nominate about 620 women in the county assemblies. In future elections, IEBC should also develop a systematic procedure for supervising the nomination of special seats in political parties.

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