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Elections in Kenya

2017 General Elections

Frequently Asked Questions

Africa

International Foundation for Electoral Systems

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Frequently Asked Questions

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Disclosure:

These FAQs reflect decisions made by the Kenyan elections authorities as of August 1, 2017, to the best of our knowledge. This document does not represent any IFES policy or technical recommendations.

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Acronym list

Acronym	Name / Title
AMISOM	African Union Mission in Somalia
AU	African Union
BVR	Biometric Voter Registration
CEO	Chief Electoral Officer
CMP	Conflict Management Panel
CORD	Coalition for Reform and Democracy
CSO	Civil Society Organization
CRMS	Candidate registration system
EDR	Electoral Dispute Resolution
ELOG	Kenyan Electoral Observation Group
EMB	Electoral Management Body
EOP	Elections Operations Plan
EU	European Union
EVI	Biometric voter identification
FPTP	First-Past-The-Post
ICT	Information and Communications Technology
ID	Identification
IEBC	Independent Electoral and Boundaries Commission
IFES	International Foundation for Electoral Systems
IREC	Independent Review Commission
KEAP	Kenya Electoral Assistance Program
KEWOPA	Kenya Women Parliamentary Association
KIEMS	Kenya Integrated Elections Management Systems
LTO	Long-Term Observer
M&E	Monitoring and Evaluation
MOU	Memorandum of Understanding
MVR	Mass Voter Registration
ORPP	Office of the Registrar of Political Parties
ODPP	Office of the Director of Public Prosecutions
PPDT	Political Party Disputes Tribunal
RTS	Results Transmission and Presentation (RTS)
SMS	Short Message Service
USAID	United States Agency for International Development

Why are the August 8 elections in Kenya so important?

On August 8, voters will elect the president (and a running mate), county governors (and running mates), members of the Senate, representatives of the National Assembly (including women county representatives to the National Assembly), and members of county assemblies. The election will be the country's fifth set of elections since the end of the one-party state in 1991, and the second set of elections under the 2010 Constitution of Kenya. Three of the previous four elections were marred by violence, including the 2007-2008 election when over 1,000 people were killed and 650,000 displaced.

In recent history, elections in Kenya have ignited popular unrest among disparate populations over what observers say are deep-seated historical disputes over land, as well as the related problem of the politicization of ethnic differences. At least 10 ethnic groups comprise Kenya's native population. Currently, various ethnic groups remain embroiled in long-standing disputes over land. Such disputes are ripe for politicization, particularly ahead of elections, raising concerns of an outbreak of violence during the electioneering period. The specter of election-related violence has prompted several members of both the national and international community to call for safeguards to be put in place to prevent political violence ahead of elections. A free, fair, and peaceful election can shift perceptions about the country's embattled democratic institutions, and continue to forge national unity.

What geopolitical role does Kenya play in East Africa?

Kenya plays an important role in the cultural, economic and political life of the region. The country is strategically located on the East African coastline and serves as the main business hub for the East African community. Kenya facilitates trade, investment and transportation throughout the region via its massive seaport of Mombasa. Moreover, Nairobi is host to many international organizations such as the United Nations and others who are continuously setting up headquarters to oversee their operations in Africa.

Additionally, Kenya continues to play an important role in maintaining regional peace and security as exemplified by their contribution of troops to the African Union Mission in Somalia (AMISOM), which is mandated to support stabilization and peace building efforts, as political processes take root. Together with Ethiopia, Uganda and other troop and police contributing countries, the AMISOM peacekeepers are mandated to reduce the threat of al-Shabab and support peace operations in the country.

What is the structure of the Government of Kenya?

The 2010 constitution established the structure of the Kenyan government into the following branches: the legislature, the executive, the judiciary and the devolved government. According to the Kenyan embassy, their roles are as follow:

- Legislature:
 - This arm consists of the upper house (Senate) and the lower house (National Assembly). The National Assembly has 290 members elected from constituencies, 47 women each elected from the counties and 12 members nominated by parliamentary political parties according to their strength in the National Assembly (Article 90) to represent special

interests. The other member of the National Assembly, in *ex officio* capacity, is the speaker.

- The Senate has 47 members each elected from a county, 16 women members nominated by political parties, two members (a man and a woman) representing the youth, two members (a man and a woman) representing people with disabilities, and the speaker, who is an *ex officio* member.
- Executive:
 - The executive branch consists of the president, the deputy president and the cabinet. The president is the head of state and government, commander-in-chief of the Kenya Defense Forces and the chairperson of the National Security Council.
- Judiciary:
 - The judiciary is divided into Superior Courts and Subordinate Courts. The Superior Courts are: the Supreme Court, the Court of Appeal, and the High Court. The Supreme Court is the highest court in Kenya. The Subordinate Courts are: the Magistrates Courts, the Kadhi Courts, the Courts Martial and the Tribunals.
- Devolved Government:
 - The devolved government divides the country into 47 counties. Each county has an assembly, governor, and senator elected directly by the people and a county assembly elected with representatives from wards within the county. This reform, along with increasing judicial and legislative oversight, has decreased the power and influence of the presidency.¹

What elections will take place on August 8?

On August 8, voters will cast their ballots in six races for 1) the president and vice president, 2) county governors and vice-county governors, 3) members of the Senate, 4) representatives of the National Assembly, 5) women county representatives to the National Assembly, and 6) ward county representatives.

The presidential candidates are comprised of incumbent President Uhuru Kenyatta, main opposition leader Raila Odinga, Cyrus Jirongo of the United Democratic Party, Ekuru Aukot of Thirdway Alliance, Mohamed Abduba Dida of Alliance for Real Change, and Michael Wainaina, Japhet Kaluyu, and Joseph Nyagah, all of whom are running as independent candidates.

A total of 11,857 candidates will run for county ward representatives and 1,893 candidates will run for the National Assembly. A total of 256 candidates will run for the senate while 299 women will run for the 47-county woman representative posts. Finally, 210 candidates will run for various gubernatorial posts across the country.

What institution has the mandate to carry out elections?

According to its website, the Independent Electoral and Boundaries Commission's (IEBC) mandate is to

¹ Embassy of the Republic of Kenya to Oman (2017). Government Structure. Retrieved from <http://kenyaembassymuscat.com/government-structure.html>.

“conduct or supervise referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an act of Parliament.”² In particular, the IEBC is responsible for the following:

- Continuous registration of citizens as voters and revision of the voter’s roll;
- Delimitation of constituencies and wards;
- Regulation of political parties’ processes
- Settlement of electoral disputes;
- Registration of candidates for elections;
- Civic and voter education;
- Facilitation of the observation, monitoring and evaluation of elections;
- Regulation of money spent by a candidate or party in respect of any election;
- Development of a code of conduct for candidates and parties; and
- Monitoring of compliance with legislation on nomination of candidates by parties.

What is the structure of the Independent Electoral and Boundaries Commission?

The Independent Electoral and Boundaries Commission (IEBC) consists of a chairperson, vice chairperson, five commissioners, and a professional secretariat that manages the day-to-day tasks of the commission.³ The chairperson and commissioners are appointed by the president and confirmed by Parliament to serve a single six- year term and are not eligible for re-appointment.

The secretariat is composed of the chief electoral officer, two deputy commission secretaries, nine directors, 17 managers, 17 regional election coordinators and 290 constituency election coordinators.⁴

The nine directorates of the IEBC include:

- Voter Education and Partnerships
- Voter Registration and Electoral Operations
- Information and Communications technology
- Finance and Procurement
- Audit Risk and Compliance
- Human Resources and Administration
- Legal and Public Affairs
- Research and Development
- Registrar of Political Parties

² Independent Electoral and Boundaries Commission (2017). Mandate. Retrieved from <https://www.iebc.or.ke/iebc/?mandate>.

³ Independent Electoral and Boundaries Commission (2017). IEBC Commissioners. Retrieved from <https://www.iebc.or.ke/iebc/?commissioners>.

⁴ Independent Electoral and Boundaries Commission (2017). IEBC Secretariat. Retrieved from <https://www.iebc.or.ke/iebc/?secretariat>.

How was the Independent Electoral and Boundaries Commission chosen?

The Independent Electoral and Boundaries Commission (IEBC) commissioners were sworn in on January 20, 2017. The selection process for the current IEBC commissioners was different from previous selection processes as it took place so close to the election.

A nine-member selection panel was established to facilitate the selection process after the August 2016 voluntary resignation of the previous IEBC commissioners due to on-going protests related to their perceived lack of impartiality. The positions were officially declared vacant by President Uhuru Kenyatta on October 6, 2016.⁵ The panel was led by Bernadette Musundi and made up of religious and community leaders.⁶⁷ The role of the selection panel was to review the qualifications of the nominated commissioners and to make suggestions to the president on the appointment of the IEBC commissioners and chairperson.

To qualify as a commissioner one must have had a college degree, a completed IEBC application, a curriculum vitae and recommendations. The position of chairperson must have had the equivalent qualifications of a judge on the Supreme Court and have a law degree or is a legal advocate. The chairperson must also have a high moral character, integrity, and impartiality as required by chapter six of the 2010 constitution.⁸ There were 748 applications received for the open IEBC positions.⁹

The steps of the selection for commissioners was as follows:

- Advertisement of positions across various forms of media;
- Publish list of all applicants and qualifications for public comment;
- Publish list of short-listed candidates;
- Conduct interviews with short-listed candidates;
- Forward nine names of commissioner nominees to president for review;
- Official nomination of six commissioners by President Kenyatta;
- New IEBC commissioners and chairperson approved by Parliament; and
- New IEBC commissioners and chairperson sworn in.

According to Kenyan law, President Uhuru Kenyatta has final authority to approve the IEBC chairperson

⁵ Kalekye, M. (2016, October 6). Uhuru Declares IEBC Commissioners Positions Vacant. *KCB News*. Retrieved from <http://www.kbc.co.ke/county-news/uhuru-declares-iebc-commissioners-positions-vacant/>.

⁶ Staff Writer (2017, January 3). Confusion: IEBC Selection Panel meets, it Emerges Statehouse Pushed for nominations of Person with Dark Past. *Star News*. Retrieved from <https://www.kenya-today.com/politics/confusion-iebc-selection-panel-meets-emerges-statehouse-pushed-nominations-persons-dark-past>.

⁷ Press Statement (2016, October 11). Press Statement on the Appointment of the Selection Panel for the IEBC Commissioners. *Office of the President*. Retrieved from <http://www.president.go.ke/2016/10/11/press-statement-on-appointment-of-the-selection-panel-for-the-independent-electoral-and-boundaries-commission-iebc-commissioners/>.

⁸ The Government of Kenya. (2010). *The Constitution of Kenya*. 2010. Chapter Six.

⁹ Masau, N. (2016, November 19). Quest for IEBC position attracts record number of PhD Holders. *Standard Media*. Retrieved from <https://www.standardmedia.co.ke/article/2000223923/quest-for-iebc-positions-attracts-record-number-of-phd-holders>.

and the commissioners, who are then ultimately confirmed by Parliament before taking office.¹⁰

What challenges has the Independent Electoral and Boundaries Commission faced in organizing these elections?

The first challenge that the Independent Electoral and Boundaries Commission (IEBC) has faced is the relative inexperience of the commissioners in facilitating elections. The current commissioners have only been in their posts since January 19, 2017 – seven months prior to the August 8 general elections – giving them a very limited amount of time to work through any issues that arise in the lead up the election. This is despite the suggestion following the 2007-2008 crisis by the Independent Review Commission that commissioners be in office at least two years prior to any election.¹¹

Summer 2016 saw months of ongoing protests during which Kenyan citizens questioned the impartiality of the commissioners and their ability to facilitate the 2017 general election. In June 2016, a joint parliamentary committee comprising of members of Kenya's National Assembly and Senate was formed to determine the path forward for the commissioners. The committee was disbanded upon the August 3, 2016 announcement that the commissioners would voluntarily leave office for the sake of a political settlement.¹² The passage of the 2016 Election Laws (Amendment) allowed for the commissioners to voluntarily resign their posts, which had not previously been specifically outlined under previous election laws.

During the selection and nomination process there were claims of favoritism and general mishandling of the selection process. According to Kenyan law, President Uhuru Kenyatta has final authority on the nomination of the IEBC chairperson.¹³ He ultimately chose Wafalu Chebukati as chairperson of the IEBC. This was a somewhat controversial choice as Chebukati had scored slightly lower on the measure of qualifications by the selection panel than a fellow candidate. There was some speculation about favoritism as Chebukati comes from the same region as the IEBC Chief Executive Ezra Chiloba. Ultimately, Chebukati was sworn in on January 19, 2017 along with the fellow commissioners identified.

A second challenge faced by the IEBC is the changing electoral processes in the country after recent updates to the Election Law of 2011. For example, an April 2017 ruling of the High Court of Kenya states that election results are considered final at the constituency level rather than when tallied at the national level as in previous elections. The 2017 general election is the first to be held since the passage of the 2016 Election Laws (Amendment). As such, there is no precedent for how any updated rules and regulations embedded in these legal documents apply to the upcoming election.

¹⁰ Chelagat, J. (2016, December 29). Uhuru nominates Chebukati as IEBC Chair. *Citizen Digital*. Retrieved from <https://citizentv.co.ke/news/uhuru-nominates-chebukati-as-iebc-chair-153373/>.

¹¹ Mutiga M (2017, March 3). Kenya: Avoiding Another Electoral Crisis. *International Crisis Group*. Retrieved from <https://www.crisisgroup.org/africa/horn-africa/kenya/kenya-avoiding-another-electoral-crisis>.

¹² Oluoch, F. (2016, August 3). Kenya's Polling body officials to exit office ahead of election. *The East African*. Retrieved from <http://www.theeastafrican.co.ke/news/Kenya-s-polling-body-officials-to-exit-office/2558-3328976-14qp4mpz/index.html>.

¹³ Chelagat J. (2016, December 29). Uhuru nominates Chebukati as IEBC Chair. *Citizen Digital*. Retrieved from <https://citizentv.co.ke/news/uhuru-nominates-chebukati-as-iebc-chair-153373/>.

A third challenge faced by the IEBC is the confusion caused by the delay in procurement of ballot paper and the Kenya Integrated Elections Management System (KIEMS). These delays caused uncertainty in the Kenya populous regarding the IEBC's ability to successfully fulfill their mandate for the 2017 general election.

For more information on the High Court ruling see: "[When are the results final?](#)"

For more information on procurement see: "[What challenges has the IEBC faced regarding procurement of election materials?](#)"

Will voters use any form of electronic voting?

No. Voters will cast their vote using paper ballots just as they did in previous elections. Once the voter has marked their ballot, they will then put them into ballot boxes. However, if electronic voting is used in future elections, the electoral law does provide that an electronic version of the ballot paper or its equivalent should be used.

What technology will be used during the 2017 general elections?

The utilization of technology in the 2017 Kenya electoral processes is guided by Section 44 of the Elections Act of 2011 (as amended in 2016 and 2017). Pursuant to Section 44 (1) of the act, the Independent Electoral and Boundaries Commission (IEBC) acquired "an integrated electronic electoral system" referred to as the Kenya Integrated Elections Management System (KIEMS). KIEMS is designed to integrate the existing biometric voter registration (BVR); the biometric voter identification (EVI); the electronic results transmission (RTS); and the candidate registration systems (CRMS). Three sub-systems (CRMS, EVI and RTS) were part of the 2017 procurement, while the BVR system is what the IEBC used during the 2013 electoral process. The bio-data information of all the registered voters will be loaded onto the integrated system, with biometric details of specific voters restricted to polling stations in which they are registered.

For the 2017 elections, the IEBC has acquired 45,000 KIEMS tablets that will be distributed to each of the 40,883 polling stations. The IEBC also stated that it has contracted IBM, Oracle and Dell to help it protect its systems during the election.¹⁴

How does Kenya Integrated Elections Management System work?

The Independent Electoral and Boundaries Commission (IEBC) 2017 Election Operations Plan and the 2017 Elections Results Management Framework are the guiding framework for the design and implementation of the Kenya Integrated Elections Management System (KIEMS). As noted, KIEMS is comprised of four major integrated sub-systems, which get activated during specific electoral phases.

¹⁴ Lang'at, P. (2017, July 25). IEBC drafts technology firms to help secure August 8 vote. *Daily Nation*. Retrieved from: <http://www.nation.co.ke/news/politics/IEBC-drafts-technology-firms-to-help-secure-August-8-vote/1064-4030506-14w9lcz/index.html>.

For example, the biometric voter identification (EVI) system of KIEMS is designed to operate in two phases (i.e., verification and identification). The verification mode supports the process of biometric details verification by voters during the voter roll verification and inspection period. During this phase, an IEBC official searches the voter record using the national ID or passport number or using names. Once a record is found within the polling center, a finger-print verification is performed against the biometrics in the system for the identified record. However, if a record is not found during the initial search (within a polling center), a wider alpha numeric search is done against rest of the polling centers and if a record is found, the voter is redirected to the right polling center for biometric verification. For this election, the voter verification period ran from May 10 to June 9, 2017.

The identification mode of the EVI will be used for the authentication of voters at a polling station on Election Day. This will be done by searching for the voter record using the finger print. Any of the 10 fingers can be placed on the KIEMS device to search, however the procedure recommends searching using the middle, ring or index finger. Once there is a match with a record within the polling station, the record is retrieved and the voter is authorized to vote. If the finger print search fails, a search is made using the national ID or passport number to retrieve a record. Once a record is found using the ID search, a one-on-one biometric match is performed. The EVI mode also provides for a wider alpha numeric search on the entire database to direct a voter to the right polling station if the record is not within the current polling station. During the authentication process on Election Day, the EVI will, at regular intervals (of about 80 minutes), transmit statistics to the central system.

The Results Transmission and Presentation Systems (RTS) component of KIEMS is comprised of a module to capture and transmit election results from the various polling stations, for the six contested positions of president, National Assembly representative, senator, governor, women county representative and county assembly ward. The results for the presidential election will be transmitted together with an image of the polling station tally sheet. For the other five elections, the transmission of the image of the tally sheet shall be optional. Additionally, the RTS has software that supports the tallying of results and displays them at the 290 constituencies and 47 county tally centers, as well as the national tally center. The system also includes features for validation of the results.

As was the case in the 2013 elections, the IEBC will utilize the RTS to enable voters watch live streams of the results on screens set up at the national tally center at the Bomas of Kenya and on national television. While the IEBC only declares winners on the hard copy tally, RTS gives quick trends on election results. The IEBC has put in place plans to boost telecoms signals in areas where the signals are weak to facilitate results transmission. To this effect, the IEBC has announced its partnership with three mobile phone service providers to expand their networks and to acquire satellite coverage in rural areas.¹⁵

¹⁵ Mosoki, G. (2017, July 18) IEBC uses satellite in areas with poor coverage. *The Standard*. Retrieved from <https://www.standardmedia.co.ke/article/2001248121/iebc-to-use-satellite-in-areas-with-poor-network>

What major challenges has the Independent Electoral and Boundaries Commission encountered regarding procurements of electoral materials?

The Independent Electoral and Boundaries Commission (IEBC) has faced a number of legal challenges on procurements, particularly related to ballot papers and the Kenya Integrated Elections Management System (KIEMS).

In October 2016, the IEBC awarded a 2.5 billion shilling (approximately USD 24 million) contract to produce ballot papers, declaration forms, and result declaration forms to Al Ghurair Printing & Publishing, a Dubai-based firm. The IEBC technical evaluation committee determined that Al Ghurair is the only firm qualified to deliver the tender. However, the South African-based Paarl Media, another bidder, cited irregularities in the procurement process. After reviewing the case, the Public Procurement Administrative Review Board (PPARB) dismissed Paarl Media's application. The Coalition for Reforms and Democracy – now the National Super Alliance (NASA) – enjoined the case, which moved to the High Court to appeal the verdict. In February 2017, a High Court judge canceled the contract on the grounds that the tendering process did not follow new election regulations. The IEBC then filed a notice of appeal against the judge's decision; however, on February 23, the IEBC rescinded its intention to appeal and instead comply with the order and re-advertise the tender.

The IEBC then initiated a restricted tender, which the PPARB then nullified in May following a complaint from Rosecate Promotions and Suppliers. In June, IEBC Procurement Director Aura Lawy was also relieved of his duties, following the PPARB ruling. The IEBC awarded the contract to Al Ghurair again through a single-source contract, a decision which NASA appealed. In its filing, NASA argued that Al Ghurair has links to Jubilee Party officials and that the IEBC did not follow the public procurement procedures. On Friday, July 7, the High Court nullified the contract for printing presidential ballot papers, ruling that the IEBC's tendering process was not sufficiently transparent. The High Court has ordered the IEBC to re-advertise the tender, just 30 days before the election. NASA continues to claim that President Uhuru Kenyatta has ties with Al Ghurair owners and that the firm will print excess ballot papers to manipulate the outcome of the election in favor of President Kenyatta.

On July 20, 2017, the Court of Appeals in Kenya ruled that Al Ghurair can move forward with printing the presidential ballot papers, reversing the decision of the High Court. The judges on the Court of Appeals ruled that the High Court erred by not considering electoral timelines set under the constitution.¹⁶ Even with these challenges in place, the first batch of presidential ballot papers arrived in country July 31, 2017. The ballot packages for 190 constituencies left Al Ghurair printing firm in Dubai for Kenya on Sunday, July 30, 2017. This process was witnessed by IEBC officials, representatives of presidential candidates, stakeholders and journalists. Al Ghurair has printed 20,818,000 ballots for the presidential

¹⁶ Agutu, N. (2017, July 20). Victory for IEBC as court rules Al Ghurair to print ballot papers, *The Star*, Retrieved from http://www.the-star.co.ke/news/2017/07/20/victory-for-iebc-as-courts-rules-al-ghurair-to-print-ballot-papers_c1600866.

race in total – the second and final batches are expected to arrive by August 2.¹⁷¹⁸

In December 2016, the IEBC advertised a tender for the KIEMS, which closed on February 2, 2017. Appearing before the PPARB, three bidders (Kenya-based Dittel Ltd., Kenya-based Africa Infrastructure Development Company, and South Africa-based BigRadap) called for the tender to be nullified and re-advertised. The companies claimed that the IEBC worked with the French firm Safran Morpho to develop the tender document. On February 28, the IEBC then canceled the tender to mitigate risks that could impact the electoral process. Then on March 9, the PPARB ruled that the IEBC should award the tender to Gemalto SA, a French firm. However, the IEBC terminated the tender, stating that the bid was above the budget provision. The IEBC then awarded a single-source contract to Safran Identity and Security; IEBC Chairperson Wafula Chebukati said that Safran was chosen because it would deliver the KIEMS by May 10, in time for the voter verification exercise. Safran Identity & Security will remain available to provide maintenance backup throughout the electoral process, ranging from the voter's registration using Morpho Tablet devices to the polling day itself.¹⁹ To date, all 45,000 KIEMS devices have been successfully delivered for use in the election.

What are areas of concern regarding potential electoral violence?

An Independent Electoral and Boundaries Commission (IEBC) 2016 electoral risk mapping exercise identified 17 counties as “hot spots” for potential electoral violence: Tana River, Lamu, Kwale, Garissa, Wajir, Mandera, Marsabit and Isiolo, Meru, Narok, Nakuru, Baringo, Nandi, Kisumu, Siaya, Homa Bay, and Migori.

Drivers of potentially violent conflict in Kenya include:

- Perceptions of historical injustices and marginalization;
- Unequal distribution of resources among various regions of Kenya;
- Unresolved land questions;
- Legacy of centralized governance and a near imperial presidency;
- Impact of regional instability;
- Ethnic balkanization;
- Shifting patterns of political alliances and coalition building;
- Unfulfilled promises around poverty reduction, youth employment, etc.;
- Weak and distrusted electoral institutions; and
- Urbanization and social exclusion.

¹⁷ Mosoku, G. (2017, July 30). Huge step as presidential ballot papers arrive, *Standard Digital*, Retrieved from: <https://www.standardmedia.co.ke/article/2001249690/huge-step-as-presidential-ballot-papers-arrive-today>.

¹⁸ Staff Writer (2017, July 31) IEBC receives first batch of presidential ballot papers *The Star*. Retrieved from http://www.the-star.co.ke/news/2017/07/31/iebc-receives-first-batch-of-presidential-ballot-papers_c1607949.

¹⁹ Staff Writer (2017, June 2). 10,800 More elections Kits Arrive in the country. *Upesi News*. Retrieved from <http://upesinews.co.ke/2017/06/02/10000-more-elections-kits-arrive-in-the-country/>.

Devolution of governance in Kenya has also resulted in increased intensity of competition and conflict in races to become governor and members of county assemblies, which has in turn broadened the potential arenas for violence. Contentious primary elections saw a range of assaults, kidnappings, and at least one election-related death during the political primary process.²⁰ Violent non-state actors such as the militant organization al-Shabab also present a serious threat to public safety – on July 8, 2017, al-Shabab terrorists killed nine Kenyan civilians in Lamu county, in violence not explicitly linked to the elections.²¹ The U.S. Agency for International Development supports rapid response mechanisms through the “Kenya Electoral Assistance Program” (KEAP) and other programs that facilitate local conflict mitigation efforts to preempt or de-escalate electoral violence where possible.

Who is eligible to vote in this election?

Kenyan citizens registered before the March 7, 2017 deadline are eligible to vote in the August 8 elections. As established by Article 83 of Kenya’s constitution, “A person qualifies for registration as a voter at elections or referenda if the person: (a) is an adult citizen⁷; (b) is not declared to be of unsound mind; and (c) has not been convicted of an election offence during the preceding five years.”⁸

According to the Independent Electoral and Boundaries Commission (IEBC), eligible voters must register to vote at designated registration centers. Once registered, voters will be issued a registration acknowledgement slip bearing the voter’s details. The IEBC can also reject the voter registration applications of certain categories of people. These categories include:

- Citizens younger than the age of 18;
- Citizens not in possession of their original national identification card or a valid Kenyan passport;
- Citizens who have filed for bankruptcy, who are otherwise known as “un-discharged bankrupt”;
- Citizens who have been found guilty by an election court, or reported to be guilty, of any election offense during the preceding five years; and
- Citizens who have been declared of an unsound mind by a competent court.

Citizens are only allowed to register to vote once; citizens having been convicted of registering to vote more than once may be liable for a fine not exceeding 100,000 Kenyan shillings, or imprisonment for a term not exceeding one year, or both. They will also be barred from participating in the immediate election and the subsequent election as well.

Who is eligible to run as a candidate in this election?

There are several electoral races during the upcoming election. Candidates will vie for the following six positions:

²⁰ Staff Writer (2017, April 25). Death, Chaos as ODM pools off in some centres. *Daily Nation*. Retrieved from <http://www.nation.co.ke/news/politics/Death--chaos-as-ODM-polls-off-in-some-centres/1064-3902556-sp4s7p/index.html>.

²¹ Staff Writer, (2017, July 8). Nine Kenyans beheaded by Somali al-Shabaab terrorists. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2017/jul/08/nine-kenyans-beheaded-by-somali-al-shabaab-terrorists>.

- President (and running mate)
- Member of National Assembly
- Governor (and running mates)
- Senator
- County woman member of National Assembly
- County assembly ward member

Candidates aspiring to run for any of the positions listed above must meet a number of requirements outlined for each position in order to be considered eligible. Some of these requirements overlap with one another while others are unique to a specific position. Additionally, some candidates may run as independent candidates or as nominees of party lists. These two types of candidacies also have eligibility requirements. According to the Independent Electoral and Boundaries Commission, the eligibility requirements include, but are not limited to, the following:

- 1) President (and running mate):
 - a. Must be a Kenyan citizen by birth
 - b. Is qualified to stand for election as a member of Parliament
 - c. Is nominated by a political party or is an independent candidate
 - d. Is a holder of a degree from a university recognized in Kenya
 - e. Must not be a public officer or acting in any state of public office capacity other than the following:
 - i. President
 - ii. Deputy president
 - iii. Member of Parliament
- 2) Governors (and running mates)
 - a. Must have been a Kenyan citizen for at least 10 years
 - b. Must be eligible for election as a member of the county assembly
 - c. Must not be a public officer or acting in any state of public office other than a member of the county assembly
 - d. Must not owe allegiance to a foreign state
 - e. Must be a registered voter
- 3) Senate
 - a. Must have been a Kenyan citizen for at least 10 years before the election
 - b. Is nominated by a political party or is an independent candidate
 - c. Must not be a public officer or acting in any state of public office other than a member of Parliament
- 4) National Assembly (including women county representatives to the National Assembly)
 - a. Must have been a Kenyan citizen for at least 10 years before the election
 - b. Must not hold allegiance to a foreign state
 - c. Must not be a public officer or acting in any state of public office other than as a member of Parliament
 - d. Is nominated by a political party or is an independent candidate

5) Ward County Assembly Election

- a. Must have been a Kenyan citizen for at least 10 years before the election
- b. Is nominated by a political party or is an independent candidate
- c. Must not be a public officer or acting in any state of public office other than a member of the county assembly

Do candidates need to be affiliated with a political party in order to run for office?

Article 85 of the constitution states, “Any person is eligible to stand as an independent candidate for election if the person: (a) is not a member of a registered political party and has not been a member for at least three months immediately before the date of the election; and (b) satisfies the requirements of being an eligible candidate for election to the presidency, National Assembly, Senate or county assembly.”

Below are more specific details on the qualifications for running as an independent candidate:

- A clearance certificate from the Office of the Registrar of Political Parties certifying that the person was not a member of any political party for the last three months before the elections (i.e., as of May 7, 2017);
- A soft and a hard copy of a list of at least 2,000 supporters for president, 500 supporters for governor, 2,000 supporters for Senate, 1,000 supporters for National Assembly (including woman county representatives), and 1,000 supporters for ward county assembly, submitted to the Independent Electoral and Boundaries Commission (IEBC);
- A symbol the candidate intends to use during the election, which has been approved by the IEBC 21 days before nomination day; and
- Establish and maintain a functioning office in the respective electoral area where the candidate is contesting, which must be available for inspection by the IEBC at least 45 days before the elections.

Prior to the August 8 general election, the cut-off date for registering as an independent candidate was May 8.

The number of independent candidates has increased dramatically in Kenya leading up to the 2017 general elections in comparison to the 2013 election. This is due to the September passage of the 2016 Election Laws (Amendment) which made “party hopping” – the change of party by a political aspirant if they did not win a nomination in their own party – more difficult. The new election law mandates that aspirants must choose their parties at least 90 days prior to the election when parties will submit candidate lists to the IEBC.

The Office of the Registrar of Political Parties cleared approximately 4,950 independent candidates out of

the total 15,082 candidates.²²

What type of electoral system will be used to select the president, Parliament and other offices?

The 2010 constitution introduced significant reform into the country's electoral system. For the presidency, a candidate will be elected if he or she receives more than half of the votes cast in the election, and at least 25 percent of the votes cast in 24 of the 47 counties. This qualified majority system was introduced to ensure that the winning candidate retains support across a number of different regions and groups. If no candidate is elected in the first election, a run-off election between the top two candidates will be held no later than 30 days after the previous election. In the run-off, the candidate who receives the most votes will be declared the winner.²³

For seats in the National Assembly, there are a total of 350 parliamentarians who are elected in various ways. The new system created 290 parliamentarians who are directly elected by constituents in single-member districts under a first-past-the-post (FPTP) system. In addition to the 290 parliamentarians, there are 47 directly-elected women representing each county in single-member constituencies under a FPTP system. There are 12 reserved seats for special interest groups.

National Assembly
290 Parliamentarians
47 Women's Seats
12 Special Interest
1 Speaker (<i>ex officio</i>)
350 Members

These seats will be nominated proportionally by a political party list system, which will allocate seats to parties in proportion to their number of directly won seats in the FPTP system described above. This allocation is, in principle, meant to give historically underrepresented groups (such as people with disabilities, youth, etc.) a voice in the political system.

In the Senate, there are 47 directly elected members, one from each county, elected under a FPTP

system. Sixteen seats will be set aside for women who will be nominated by a party list system and then allocated seats by the proportion of elected members in the Senate. There will also be two youth seats (one man and one woman) set aside to represent youth interest and two members (one man and one woman) representing persons with disabilities.²⁴

Senate
47 Senators
16 Women's Seats
2 Youth Seats
2 Disability Representatives
1 Speaker (<i>ex officio</i>)
68 Members

As an additional note, in both the Senate and National Assembly, the members of each body will elect a speaker who is not currently a member. This *ex-officio* position will bring the total number of members to 68 in the Senate and 350 in the National Assembly.

²² Wakaya J. (2017, May 09). Close to 5000 Independents clears by RPP. *Capital FM*. Retrieved from <http://allafrica.com/stories/201705100355.html>.

²³ The Government of Kenya. (2010). The Constitution of Kenya, 2010. Chapter 9, Article 137.

²⁴ The Government of Kenya. (2010). The Constitution of Kenya, 2010. Chapter 7, Article 85.

Who are the main political contenders for the presidency?

The presidential candidates are comprised of incumbent President Uhuru Kenyatta of Jubilee, main opposition leader Raila Odinga running under the coalition of the National Super Alliance (NASA),²⁵ Cyrus Jirongo of the United Democratic Party, Ekuru Aukot of Thirdway Alliance, Mohamed Abduba Dida of Alliance for Real Change, and Michael Wainaina, Japhet Kaluyu, and Joseph Nyagah, all of whom are running as independent candidates.

President Kenyatta and opposition leader Raila Odinga are widely expected to secure a majority of votes for the presidential race.

How was voter registration conducted? How many people were registered?

In order to register, a valid passport or national ID card was required. Registration was conducted with biometric voter registration kits, which captured each voter's fingers, facial features, gender and photo in conjunction with his or her national ID card or passport. Note you should use the same identification document with which you previously registered to vote, even if that vote as since expired.

Leading up to the August 8, 2017 general elections, the Independent Electoral and Boundaries Commission (IEBC) planned to register a total of eight million new eligible voters through continuous registration, including two phases of mass voter registration (MVR). Phase I and Phase II of the MVR were then scheduled to be conducted in early 2016 and 2017 respectively.²⁶

The initial phase of the MVR was conducted from February 15 to March 15, 2016. The IEBC managed to register only 1,428,056 voters during this period, falling short of its target of four million new voters. The second phase of the voter registration period, which was to last 30 days, was extended by the High Court for an additional five days and ran from January 16 to February 21, 2017, taking place in nearly 25,000 registration centers across Kenya.

Overall, 3,782,089 applications for new registration were received by the Independent Electoral and Boundaries Commission during the two MVR drives, representing 62 percent of the target number

As of July 10, the IEBC website lists a total of 19,611,423 registered voters.²⁷ Detailed statistics and verification information is available online at www.iebc.or.ke.

How was the voter register compiled?

The Independent Electoral and Boundaries Commission (IEBC) compiled all the data received from the field, then transferred it to the central database at their headquarters in Nairobi for further processing.

²⁵ NASA was created in January 2017 and is a compilation of ODM, FORD- Kenya, WIPER PARTY, KANU, NARC, and other constituent political parties in Kenya.

²⁶ Report (2016 January). Kenya Elections Operations Plan 2015 to 2017. *ACT Project*. Retrieved from <http://aceproject.org/en/regions/africa/KE/kenya-election-operations-plan-2015-2017/view>.

²⁷ Independent Electoral and Boundaries Commission (2017). 2017 Register. Retrieved from <https://www.iebc.or.ke/iebcreports/>.

This entailed matching of all the records received to ensure that there are no duplicates in the registration.

Following the matching of records at headquarters, a preliminary register was created after a period of about 40 days and then sent to registration officers in the field for verification. Once the IEBC received feedback from the field officers, they prepared the draft register that was subject to verification by the public starting May 10, 2017.²⁸ The IEBC then amended, certified and published the final register of voters as per the law in readiness for the elections.

Was an audit conducted on the 2017 voter roll?

On March 31, 2017, the Independent Electoral and Boundaries Commission (IEBC) contracted KPMG Kenya to conduct a 90-day audit of the voter roll in accordance with Sections 8(A) of the 2011 Elections Act.²⁹ The briefing stated the audit was carried out in relation to mistrust and mischief attributed to the IEBC, the register of voters, and political parties. The release of the audit showcased several critical issues in the register of voters.

The audit revealed that 2.9 million of the 19.4 million records in the roll contained inaccuracies, including inconsistencies in gender and date of birth.³⁰ In addition, the audit found 264,242 duplications or double registrations of voters and a further 171,476 that had been registered using invalid identity cards. KPMG also identified 17,523 voters whose details could not be found in the data on passports provided by the Directorate of Immigration; 98 were confirmed to be diplomatic passports. Finally, the audit found 92,277 deceased persons whose IDs and names matched within the register of voters, a list the IEBC stated would be immediately removed from the register. The IEBC did expunge names of 88,602 stating that KPMG then narrowed this figure to 3,765. As of July 14, 2017, the IEBC has announced that it had acquired new infrastructure to remove deceased persons from the voter roll. Details on this system have yet to be provided.³¹

Following the release of the audit, IEBC Chairperson Wafula Chebukati spoke of using the Kenya Integrated Elections Management Systems (KIEMS) technology for voter identification. The IEBC deployed 10,000 KIEMS kits to be used in identifying voters and transmitting results during the elections. Methods which the IEBC believes, along with the recommendations from KPMG, will ensure accuracy for the August general elections.

²⁸ Independent Electoral and Boundaries Commission (2017). Press release: Mass Voter Registration and Election Preparedness. Retrieved from https://ukweliparty.org/docs/IEBC_Nominations_Timeline.pdf.

²⁹ KPMG (2017). Press Release. <https://home.kpmg.com/content/dam/kpmg/ke/pdf/rc/ita/audit-of-the-register-of-voters-media-release-13-april-2017.pdf>.

³⁰ Media Release (2017, June 09). Report on the Audit of the Register of Voters. IEBC. Retrieved from <https://www.iebc.or.ke/iebcreports/index.php/download/report/>.

³¹ Staff Writer, (2017, July 14). IEBC acquires new technology to eliminate 'dead voters.' *Citizen Digital*. Retrieved from <https://citizentv.co.ke/news/iebc-acquires-new-technology-to-eliminate-dead-voters-170539/>.

Can a voter who is not registered still cast a ballot?

No. There is no provision for casting ballots by individuals who are not registered. Under Article 3 of the 2011 Elections Act, a citizen shall exercise the right to vote only if the citizen is registered in the principal register of voters.³²

Were voters issued a voter card during registration?

No, voters only receive a voter registration acknowledgement slip that confirm the voter's details upon registering. However, according to the Independent Electoral and Boundaries Commission, voters will not be required to produce the slip to cast a ballot in the August 8 general elections. The voter must still bring either their national ID or passport – whatever identification they used to register – to the polling station to vote.

Was the voter roll provided for public scrutiny?

The Independent Electoral and Boundaries Commission (IEBC) opened the voter verification by use of the Kenya Integrated Election Management System (KIEMS) from May 11 through June 9, 2017 in the country and from May 15-30 for the Kenyan diaspora in five countries (Burundi, Rwanda, South Africa, Tanzania and Uganda). Kenyans were able to confirm their registration details by texting an ID card or passport number to the SMS short code "70000." Kenyans were also able to verify information by visiting their respective registration centers and the IEBC website. The name of the voter, county, constituency, ward and center in which he or she is registered were displayed on all available platforms. In the event that the details were wrong, voters were asked to visit IEBC offices in the constituency. The IEBC was expected to address issues of deceased voters, incorrect data capture and any missing details, or any other concerns that the audit may find and then prepare the final register.³³

Will members of the diaspora vote in this election?

The Independent Electoral and Boundaries Commission (IEBC) requires that there must be at least 3,000 Kenyan citizens in a particular country for a polling station to be established. Eligible Kenyan members of the diaspora will only vote for the president. Although, they will also take part in any referendum, however, they will not vote for members of county assemblies, National Assembly representatives, senators, governors or woman representatives. For the 2017 elections, the IEBC conducted voter registration in Burundi, Tanzania, Uganda, South Africa and Rwanda.³⁴

Will prisoners be able to cast a ballot?

Yes. Registered prisoners will be able to participate in the August 8 general elections. In accordance with

³² The Elections Act No. 24 of 2011 (revised 2012 edition), Article 3.

³³ Ndonga, Simon, (2017, May 10). Verification of Voter Register Starts Thursday to June 9. *Capital News*. Retrieved from <http://www.capitalfm.co.ke/news/2017/05/verification-voter-register-starts-thursday-june-9/>.

³⁴ Independent Electoral and Boundaries Commission (2017). 2017 Register. Retrieved from <https://www.iebc.or.ke/iebcreports/>.

the law, the Independent Electoral and Boundaries Commission conducted voter registration in 118 prisons nationwide to allow eligible prisoners to exercise their right to vote.³⁵ A prisoner who is registered as a voter will only vote for a presidential candidate of his or her choice. Eligible prisoners must be a Kenyan citizen, 18 years of age and above, and have an original Kenyan identification card or valid passport.

How many polling stations will there be? How did the Independent Electoral and Boundaries Commission delimit constituency boundaries and determine the placement of the polling centers?

The constitution stipulates under Article 88 that the Independent Electoral and Boundaries Commission (IEBC) must delimit boundaries in such a way as to ensure that, as nearly as possible, a similar number of Kenyans reside in each of the 290 constituencies.

In doing so, the constitution allows the IEBC to take into consideration geographical features and urban centers; communities with historical, economic and cultural ties; and communication. After undertaking a massive, nationwide delimitation exercise, the IEBC submitted the new constituency boundaries to Parliament in early 2012. After the High Court's review, all of the 290 constituency boundaries delimited by the IEBC were kept unchanged and the process by which the boundaries were created was declared transparent and in line with the rules governing the IEBC.²⁵ Boundary delimitation was not substantively revised for the 2017 electoral cycle.

As of June 30, 2017, the voter register and list of polling stations have not been formally published in the official gazette, and so the number of polling stations for the election is not yet final. However, the 2017 amended Elections (General) Regulations have placed a cap of 700 voters per polling station. Plans listed on the IEBC website cite a total of more than 40,800 polling stations nationwide.³⁶

What efforts have been made to ensure the physical safety of Kenyans who want to vote?

According to reports, an estimated 150,000 police officers will receive training in election laws to identify fraud and provide general security. The officers are part of 180,000 personnel expected to be deployed during the election. The Independent Electoral and Boundaries Commission will join a handful of other institutions, including the police, to train a total of 383 national trainers, who will then be responsible for training the 180,000 personnel. Other official bodies, including the Kenya Prisons Service, Kenya Wildlife Service, and the National Youth Service, will be enlisted to boost security.³⁷

³⁵ Mati M. (2017, March 01). Let's Have That Prison Vote Talk. *The Star*. Retrieved from http://www.the-star.co.ke/news/2017/03/01/lets-have-that-prison-vote-talk_c1515471.

³⁶ Independent Electoral and Boundaries Commission (2017). 2017 Register. Retrieved from <https://www.iebc.or.ke/iebcreports/>.

³⁷ Ombati, C. (2017, May 09). 180,000 police officers to be trained ahead of August election. Retrieved July 10, 2017, from <https://www.standardmedia.co.ke/article/2001239156/180-000-police-officers-to-be-trained-ahead-of-august-election>.

What percentage of the Kenyan population has some form of disability and what provisions have been made to make this election accessible?

It is estimated that 3.5 million Kenyans live with a form of disability.³⁸ In this election, voters who are illiterate or disabled can receive assistance when casting their vote. As defined by Article 260 of the constitution, the term “disability” includes “any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day-to-day activities.”³⁹

If a person is not able to vote in the manner prescribed by the election regulation for reasons such as disability or illiteracy, he or she may be assisted by a person of their own choosing, unless the person chosen is a candidate or polling agent. The person chosen by the voter is not required to be qualified to vote, but must meet the requirement of being at least 18 years of age. If the voter is not accompanied by a person who is qualified to assist them, the presiding officer will assist the voter in the presence of polling agents. All persons who assist a voter must make a declaration of secrecy before the presiding officer; are subject to a penalty for breaching the declaration of secrecy; and are limited to assisting a single voter in the election.

How does a polling station official determine whether a voter is entitled to assistance?

The presiding officer may make a respectful inquiry in order to establish that the voter and the person of assistance he or she has chosen satisfy the requirements of assisted voting. If the request for assistance is granted, the presiding officer will record that the voter was assisted and the reason for the assistance in the polling station register.⁴⁰

What issues have women faced in trying to ensure their inclusion in the political process?

Kenya’s 2010 constitution introduces the principle that two-thirds of the members of an elective or appointive body in Kenya shall be of the same gender. Known as the two-thirds gender rule, this principle has been slow in its implementation. In March 2013, only 91 women were elected for the 1,450 county assembly wards; only 16 were elected to Parliament’s 290 seats. Only six women participated as gubernatorial candidates, and none were elected.

One of the barriers to women’s political participation as candidates lies with political party leadership, which is predominantly male. Political parties tend to support male candidates. Women also face obstacles in financing their campaigns. If women are able to raise sufficient resources to vie as candidates, many often face violence and intimidation during the electoral cycle, including sexual

³⁸ Kenya Disability Newsletter. (November 2009). Retrieved from http://www.africacampaign.info/uploads/media/kenya_disability_newsletter2nd_issue.pdf.

³⁹ The Government of Kenya. (2010). The Constitution of Kenya, 2010. Chapter 17, Article 260.

⁴⁰ The Government of Kenya. (2012). The Election (General) Regulations, 2012. Article 72, Clauses 3 & 6.

harassment and harassment on social media. Male candidates also tend to get more media coverage.

How many poll workers are employed by the Independent Electoral and Boundaries Commission?

The Independent Electoral and Boundaries Commission (IEBC) has sought to recruit 359,958 officials to manage the August 8 general elections. According to a notice from the IEBC, officials will get a minimum contract of nine days and a maximum of 30 days depending on the capacity they will be serving in. Positions available include 262,665 polling clerks, 91,032 presiding and deputy presiding officers, and 5,054 support electoral trainers.

What are the steps for voting?

The first step entails a polling station clerk checking to ensure that voters have brought the identification documents they used to register and then directing the individual to their polling area. The second step requires the voter identification clerk to verify the voter's registration status using either the Kenya Integrated Elections Management System (KIEMS), or a hard copy of the voter list. Once the voter is cleared and in the correct polling station, the voter will be issued six individual ballot papers. A voter will then mark their ballot papers and place his or her votes into the ballot boxes, which correspond to the six different races. The voter will then dip their left small finger into indelible ink and leave the polling area.⁴¹

Who will monitor the general elections?

The August 8 elections will be monitored by both domestic and international observation missions. These monitors will help ensure a credible, transparent and fair voting process.

The Elections Observation Group (ELOG) will lead the domestic monitoring effort. ELOG is a group of Kenyan civil society organizations that have joined together to coordinate their observation efforts. On the domestic front, political parties will likely have polling station agents throughout the country.

Internationally, there will be a number of groups observing the election process. The Carter Center will help monitor the elections, including the arrival of approximately 50 observers in country during the week before the election.⁴² In addition, there will be a European Union Election Observation Mission (EU EOM) that will consist of approximately 30 long-term observers who will be deployed throughout the country. A core team of 10 election experts arrived in Kenya on June 13 and has since met with officials from the Independent Electoral and Boundaries Commission, the Inspector General of Police, the

⁴¹ International Electoral and Boundaries Commission (Accessed 2017, July 13). How to Vote. Retrieved from <https://www.iebc.or.ke/election/?how>.

⁴² Carter Center (2017, July 11). Carter Center Prepares to Observe High-Stakes Kenyan Election. Retrieved from <https://www.cartercenter.org/news/features/p/elections/kenya-063017.html>.

Registrar of Political Parties and political party leaders.⁴³ While on June 27, the EU EOM deployed observers to 13 locations around the country, who will be operating in 15 teams of two to observe all aspects of the electoral process.⁴⁴ The election will receive an additional appearance from Commonwealth, who will send a 15-member delegation to be among the observers accredited by the IEBC.⁴⁵ The National Democratic Institute is also deploying 37 individuals to monitor the election.

Additionally, the African Union (AU) will be monitoring Kenya's elections in two phases. In the first phase the AU deployed 14 long-term observers on July 3 – these will remain on the ground until August 26 to ensure that the monitoring mission conducts comprehensive observation and analysis of all relevant aspects of the electoral process. The second phase of the monitoring mission starts on July 28 with the deployment of 60 short-term observers who will remain in Kenya until August 15.⁴⁶

What time do polling stations open and close on August 8?

Polling stations will open for voting at 6:00 a.m. and close at 5:00 p.m. Voters who are in line by 5:00 p.m. will be allowed to vote. Additionally, the Independent Electoral and Boundaries Commission may extend voting hours for polling stations that do not open on time. Those in queue at the time of the poll closing time will be able to cast their votes. Those who arrive after the close time of the polling station will not be eligible to vote.

How will election disputes be adjudicated?

Electoral dispute resolution (EDR) is diffused across a range of institutions and processes in Kenya. Depending on the type of issue, different institutions have a role to play in this process, including the Independent Electoral and Boundaries Commission (IEBC), Political Parties Disputes tribunal (PPDT), the Office of the Director of Public Prosecutions (ODPP) and the Judiciary.

The judiciary, through the chief justice, has announced the appointment of election court officers (comprising of judges and court officials) who have specifically been appointed to hear election petitions and petitions against election results throughout the election cycle. The law requires that the judiciary shall hear and determine those matters speedily and in no longer than six months. Registered voters, political parties, candidates or their authorized representative, and any persons aggrieved by an electoral activity also have the right to file complaints about violations of the Electoral Code of Conduct and other

⁴³ Press Release (2017, June 08). EU deploys Election Observation Mission to Kenya. *European Union External Action*. Retrieved from https://eeas.europa.eu/headquarters/headquarters-homepage_en/27832/EU%20deploys%20Election%20Observation%20Mission%20to%20Kenya.

⁴⁴ Staff Writer (2017, June 27). EU EOM long-term observers deployed to the field. *European Union External Action*. Retrieved from: https://eeas.europa.eu/election-observation-missions/eom-kenya-2017/28889/eu-eom-long-term-observers-deployed-field_en.

⁴⁵ Kimanthi, K, (2017, July 30). Commonwealth joins list of August 8 election observers. *Daily Nation*. Retrieved from: <http://www.nation.co.ke/news/Commonwealth-joins-list-of-August-8-election-observers/1056-4038722-wv3aki/index.html>.

⁴⁶ Press Release (2017, July 05). The African Union deploys long term observers for the General Elections in the Republic of Kenya. *African Union*. Retrieved from <https://www.au.int/web/en/pressreleases/20170705/african-union-deploys-long-term-observers-general-elections-republic-kenya>.

electoral violations directly with the IEBC.

Disputes between candidates and between or within parties and coalitions are to be resolved by the PPDT⁴⁷ – a process that primarily occurred during the party primary period. However, any aggrieved party is required to utilize internal party dispute resolution channels before launching their dispute with the PPDT. Criminal allegations are handled by the court system, and parties with electoral dispute may also choose to pursue alternative dispute resolution methods arbitrated by community or religious leaders.

Each type of dispute has its own filing rules, timeline and dispute resolution process. The complexity of Kenya's EDR system may prove challenging for voters, and lead to conflict regarding the proper venue for resolving various disputes. More information about the legal framework for electoral dispute resolution is available on the [IEBC website](#).

How, when, and where will the results be counted and transmitted?

The Independent Electoral and Boundaries Commission (IEBC) has procured the Kenya Integrated Electoral Management System (KIEMS) to ensure the smooth transmission of results from the polling station level up through the constituency (sub-county), county, and national level tallying centers. KIEMS ensures voter identification and results transmission is integrated with the existing voter registration database.

The KIEMS system transmits the list of voters identified every three hours to the IEBC's main servers to avoid accusations of ballot stuffing. The presiding officer also records and transmits the number of ballot papers issued at regular intervals throughout the day, which should eventually tally, in addition to filling the polling station diary.

Once voting is complete, poll clerks are allowed one 15-minute break before counting is mandated to begin. Once the presiding officer declares the polling center closed it becomes a counting station.

Counting occurs in the following order for the six races: presidential, governor, senator, assembly member, member of Parliament, and women's representative.

Once the results are counted, the appropriate forms are filled out in the presence of party agents who also sign the forms alongside the poll officers to ensure their validity. Transmission only begins after the ballots for each election are packaged in their respective tamper-proof envelopes. The results are expected to be transmitted via text message and as an image of the tallying forms.⁴⁸

⁴⁷ Memorandum of Understanding Between the PPDT and IEBC (2017, March 28). Retrieved from <http://www.ppdtd.judiciary.go.ke/wp-content/uploads/2017/04/PPDT-IEBC-MOU-28-March-2017.pdf>.

⁴⁸ Mutavi, L, (2017, July 4). Kenya: IEBC – Elections Will be Credible. *Daily Nation*. Retrieved from: <http://allafrica.com/stories/201707050270.html>.

After results are counted and the presiding officer and agents have signed the respective forms, the presiding officer will announce the results, paste them at the door of the polling station and then transmit them electronically and in hard copy to the constituency level tallying center.

The numerical tally is entered into KIEMS in the presence of party agents. The IEBC will only announce the final presidential election results after receiving vote tallies from all the 290 constituencies countrywide and collating them, according to the IEBC Chief Executive Officer Ezra Chiloba, who also said the commissioners will announce periodic results from each constituency, as has been the procedure in past polls. Chiloba, however, clarified that the IEBC will relay live results from constituencies as received in real time.⁴⁹

At the constituency tally centers, the returning officer transfers information contained in the polling station forms on to the constituency level tallying form and after verification by party agents, the form is electronically transmitted to the National Tally Center. The national returning officer – IEBC Chairperson Wafula Chebukati – announces the results at the national level. Due to a recent court ruling, the results are considered final at the constituency level. The role of the national returning officer is to add the constituency level results and declare the presidential results.

The member of Parliament and the member of county assembly winners will be declared at the constituency level while the county governor, senator, and women's representative will be declared at the county level.⁵⁰

When are the results final?

The results of the election are final once announced by returning officers at the constituency level. In April 2017, the High Court of Kenya ruled that the results of the 2017 general elections are final after announcement at the constituency level.⁵¹ The judgement of the court ruled that Section 39(2) and (3) of the 2011 Election Act are contrary to Article 86 of the Constitution.

The 2011 Election Act Section 39 states that⁵² :

“(2) Before determining and declaring the final results of an election ... the Commission may announce the provisional results of an election and;

(3) The Commission shall announce the provisional and final results in the order in which the tallying of

⁴⁹ Otani, Mac, (2017, July 25). IEBC to only announce final presidential results. *Citizen Digital*.

Retrieved from: <https://citizentv.co.ke/news/iebc-to-only-announce-final-presidential-results-171437/>.

⁵⁰ Ndubi, E. (2017, July 12). #Ballot2017: What you should know about voting, counting, and results transmission *Citizen Digital*. Retrieved from: <https://citizentv.co.ke/news/ballot2017-what-you-should-know-about-voting-counting-results-transmission-170294/>.

⁵¹ Kakah, M. (2017 April 7). Kenya: Court Rules Presidential Results Declared At Constituency Final. *Daily Nation*. Retrieved from <http://allafrica.com/stories/201704070614.html>.

⁵² The Elections Act No. 24 of 2011 (revised 2012 edition). Section 39.

the results is completed.”

Article 86 of the Constitution of Kenya states⁵³:

“At every election, the Independent Electoral and Boundaries Commission shall ensure that—

- a) whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent;*
- b) the votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station;*
- c) the results from the polling stations are openly and accurately collated and promptly announced by the returning officer; and*
- d) appropriate structures and mechanisms to eliminate electoral malpractice are put in place, including the safekeeping of election materials.*

It is the judgement of the Court that the section of the Elections Act that gave the IEBC the mandate to vary presidential election results submitted by returning officers at the constituency levels is unconstitutional as it reduced transparency and accountability by adding steps to the vote tabulation process.”

In May 2017 the Independent Electoral and Boundaries Commission (IEBC) appealed the judgement stating that the court failed to properly distinguish between the announcement of poll results by the various levels of returning officers and the legally mandated declaration of the presidential election results by the chairman of the IEBC as the presidential returning officer.⁵⁴ Despite this appeal, a June 23, 2017 High Court ruling confirmed the April judgement that election results are final at a constituency level after announcement by the local constituency returning officers rather than when announced nationally by the IEBC chair at the national tallying centers as in previous elections. This includes the results tallied for the presidential election. There are 290 constituency electoral coordinators that are responsible for announcing the results at this level. In his affirmation of the April 2017 decision. Appeals Court Judge William Ouko stated that implying the IEBC chair was the only individual capable of announcing final results “would introduce opaqueness and arbitrariness to the electoral process.”⁵⁵

As of July 10, 2017, it has not been announced how this ruling will impact how the results are counted and transmitted on Election Day.

⁵³ The Government of Kenya (2010). *The Constitution of Kenya*, 2010. Article 86.

⁵⁴ Kakah, M. (2017, May 02). IEBC appeals court ruling on constituency tallies. *Daily Nation*. Retrieved from <http://www.nation.co.ke/news/politics/IEBC-appeals-court-ruling-on-constituency-tallies/1064-3911010-3jskw5z/index.html>.

⁵⁵ Malalo, H. and G Obulutsa. (2017, June 23). Kenyan court says presidential results from constituencies to be final. *Reuters*. Retrieved from <http://www.reuters.com/article/uk-kenya-election-idUKKBN19E1KH>.

Resources

- [Constitution of Kenya, 2010](#)
- [IFES Event – Kenya Elections: Building a Peaceful, Credible Political Process](#)
- [IFES Event – The Kenya Diaspora Workshop: Considerations for Out-of-Country Voting](#)
- [IFES Event – Empowering Women in Kenya: A Conversation with Advocate Maimuna Mwidau](#)
- [IFES Kenya](#)
- Independent Electoral and Boundaries Commission
 - [Website](#)
 - [Facebook](#)
 - [Twitter](#)
 - [YouTube](#)
- [International Crisis Group: Kenya’s 2013 Election](#)