

**CHALLENGES AND OPPORTUNITIES THE ELECTORAL MANAGEMENT
BODY IN KENYA FACES IN MANAGING ELECTIONS TO ACHIEVE
ELECTORAL PEACE IN KENYA**

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ABSTRACT

Background: The goal of democratic processes is for voters to elect leaders of their choosing. An electoral system is designed to guarantee that the results reflect wishes of the majority population, giving elected leaders' credibility, and that the election results are not challenged in anyway.

Objective of the study: The purpose of this research was to assess the challenges and possibilities that Kenya's electoral management body (IEBC) faces in organizing and managing elections.

Methodology: This study was guided by Consociationalism theory, voting theory and rational choice theory. The researcher adopted a descriptive research design with qualitative and quantitative methods. The study was conducted between July 2022 and December 2022. The target population for this study was political parties, political analysts, members of the IEBC, and legislatures, and voters. The method of stratified random sampling was used by the researcher. The strata were determined by target population, and a random sample was drawn from each stratum. To gather data, the researcher utilized interview guide methods, which included items derived from the study objectives and research questions. The two primary methods that were used for data collection are: questionnaires and interviews. Voters were given questionnaires, while political experts, electoral experts, and IEBC officials were given interview guides. Descriptive statistics were applied for the data that was collected using the questionnaires.

Results and Findings: Results indicate that the IEBC faces a host of challenges in relation to organizing, conducting and managing elections to achieve electoral peace in Kenya. These can be categorized into operational, administrative and legal. Opportunities for IEBC include extant judicial decisions; benchmarking; experiential learning; and voter education.

Conclusion and Recommendations: Among other recommendations, the study suggests that the cure to the current divisive plurality electoral system is to explore other options such as proportional representation and mixed member representation models as they are more inclusive and result in fair representation.

Keywords: *Electoral System, First Past the Post principle, Plurality System*

1. INTRODUCTION

Elections is an activity undertaken by legal citizens of a sovereign democratic state to select leaders of their choice among the competing ones. Elections are meant to bring legitimate government to govern through transparent, fair and there after implement policy and programmes for benefit of all citizens; Democratic elections is meant to bring peace, tranquility and sustainable development. Good elections will result in acceptable outcome and this depends on the electoral system (Bogaards, 2014; Bratton, Vande walle & Nicholas 1997).

Kenya gained independence in 1963 under representative democracy with periodic elections. At independence in 1963, Kenya adopted the majoritarian electoral system, according to which the candidate with the majority of the votes wins the seat in the election that take place on the same day, time and place. It is also known as First Past the Post or the Winner Take All. Kenya inherited this electoral system from Britain reflecting the fact that the electoral systems can sometimes reflect the special political circumstances that attends to their crafting (Lindberg, 2006).

Kenya inherited electoral system from Britain, the colonial master and had little or no input on its structure, design (Chege, 2008) all elections held since 1963 have been under majoritarian system however, our electoral system under our democratic elections have not lived to expectations of democratic processes and outcome. Elections held since 1963 have always left sour note. This came to boiling point in 1992, 1997 and peaked in 2007 when violence erupted immediately elections outcome of presidential elections was announced. Citizens expressed dissatisfaction with the outcome which they believed was manipulated and did not reflect the will of the people. This violence exposed the systematic and structural flows in Kenya's electoral system; it revealed the nexus between electoral system and electoral violence (Chege, 2008). Electoral system is a double-edged sword, it can bring peace or it can lead to violence and division in the country (Gallagher & Mitchell, 2018).

An electoral system defines the rules by which the choices or preferences of voters are collected, tallied, aggregated, and collectively interpreted to obtain the results of an election. A country's electoral system is the method used to calculate the number of elected positions in government that individuals and parties are awarded after election (Herron, Pekkanen & Shugart, 2018). The reasons why any government or nation arrives at a particular election system are complex, influence by its unique history and beliefs (Mozaffar et al., 2003). Plurality, majority, and proportional representation are the three most popular electoral systems (Caraman, 2017). These electoral systems determine who has power as well as what policy decisions will be implemented in the future (Shugart, Taagepera, Herron & Pekkanen, 2018).

In the global perspective, most countries in Western Europe use proportional representation rules for the election of their parliament. The two major exceptions are Britain and France in which plurality and majority rules, respectively, dominate although both countries also use proportional representation systems for choosing their members of the European Parliament and in other second-rank elections (Sinnott, Farrell, 2017). A plurality electoral system is the norm in American jurisdictions, and is currently used for all national and state elections. However, in the United States; proportional representation voting has been used to elect elected representatives since the nineteenth century. It is used to elect the three members of the United States House of representatives, as well as many states and local legislatures; plurality is the most popular and well-known electoral form in use in the United States today (Duncan, 2017). Under the plurality system, an area is divided into a number of geographically defined voting districts, each represented by a single elected official. Voters cast a single vote for their district's representative, with the highest total vote-getter winning election, even if he or she has received less than half of the vote (Shugart, Taagepera, Herron & Pekkanen, 2018).

In the African regional context, South Africa's National electoral system represents one of the most permissive in the world, combining parliamentary standards, with an extreme form of proportional representation (Lockwood & Kronke 2018). These rules were selected to encourage broad representation of parties in the National Assembly. However, South Africa's party system and political structure on the other hand continues to consistently defies standards expectations, with a low effective number of seat-winning parties at the national level and dominance by a single party, the African National Congress (Mancebo, 2019). Provincial and municipal outcomes also confound simple institutional expectations (Gallagher & Mitchell, 2018). In spite of this highly proportional electoral system, South Africa has consistently experienced majoritarian outcomes. Nigeria adopts the majoritarian type of electoral system with first-past-the-post winning system. To implement this, Section 153(1) of the 1999 constitution of Nigeria established the Independent National Electoral Commission (INEC) as the country's Electoral Management Body (EMB) with the mandate to organize, undertake and supervise all elections. Other mandates of the INEC as stated in Third Schedule (Part 1) of the constitution ranges from registration and monitoring of political parties to registration of voters. However, in a majority of young democratic African countries, the election process is marred by incidents of violence, rigging, and other malpractices (Ashindorbe, 2018).

Locally, Kenya's electoral system is based on plurality/majoritarian or "First Past the Post", a type of electoral majoritarian electoral systems or plurality in which voters are presented with the names of the nominated candidates and votes by choosing one, and only candidate with the most votes not necessarily an absolute majority of the votes. When this system is used in Kenya to fill different position up for grabs: presidential, senatorial, gubernatorial, women representatives, Member of Parliament. Member of county assembly, the voters are provided with as many votes as there are seats to be filled and the highest polling candidates fill the positions regardless of percentage of the votes they achieve, the winning candidate is simply the person who wins the most votes. In theory, he or she could be elected by two votes, if the opponent candidate only secured a single vote: This system is also used in many commonwealth countries, mainly ex-colonies of UK like Canada, India, Nigeria and Zimbabwe.

Under the current constitution which was approved in 2010, it provides the modified two-round voting system for the presidential election (Gutierrez Romero, 2014). The winner is required to gain over 50% of the votes and at least 25% of the votes cast in each of more than half or 24 counties of the 47 counties to avoid a second round (KHRC, 2011). Bloodlettings, death, destruction, displacement, are synonymous with Kenya's Presidential and General elections (USAID 2010). Police have also been accused by the Kenya Human Rights organization and other NGOs of applying brutal force in the opposition party strongholds and the most affected areas have been the Kisumu, Homabay and Siaya counties (KHRC, 2011). In Nairobi, during and after every election process there is usually a heavy police presence in areas such as Kibera and Mathare (Mutugi, 2016).

It is my point that Kenya's majoritarian electoral system can exacerbate or moderate tensions, violence and conflict. At one stage, there is a conflict between candidates who pity the incumbent and opponents who places an emphasis on minority representation and those who advocate for single party government. On the other hand, if an electoral system is not seen as fair, and the political framework does not encourage the opposition to believe that they have a fair chance of winning the next election, losers may feel compelled to pursue power through intimidation, demonstrations, and other illegal means, including violent tactics (Barkan, 2008).

In the aftermath of the 2007 elections, Kenya experienced its worst civil unrest since its independence in 1963. The country erupted into two months of violent conflict whereby it is estimated that 1,000 thousand people were killed, and hundreds of thousands displaced from their homes (Drummond, 2015). A majority of the people were simply unhappy with the outcome of the elections, which saw the incumbent president at that time, Mwai Kibaki retaining power despite clear indications that he had lost the elections to Raila Odinga of the Orange Democratic Party (De smedt, 2009).

Majoritarianism electoral systems tend to aggravate tension and conflict in Kenya. This may not be the intended consequence. As was seen in 1992, 1997 and 2007, 2013 and 2017. It widens Division in Kenya during electioneering. This goes to divide citizens into do or die protagonist. The electoral choice is to be decided not on policies or programme but on personalities, choice of sparkle contrast, either good or evil. The outcome is a zero-sum game. In Kenya parlance: we shall win, form governments; we will be in government and they will be defeated; they will lose in the election and they will be out of government. This campaign and mobilization strategies and tactics exacerbate political tensions and foster a mindset that one party must win by any means necessary, which stokes the embers of electoral violence in Kenya. Kenya has had continual elections since 1963, but all these elections have been marred by post-election violence since 1963. Since independence in 1963, Kenya's has held elections continuously since after every five years where majority of the election have been marred by violence during or post-election (International Peace Institute, 2012).

In 5 of the 6 elections since the restoration of the multiparty system in late 1991, the presidential elections have been disputed and caused conflict and violence for instance in 1992, 1997, 2007, 2013 and 2017 (Birch. & Muchlinski, 2017). Between December 2007 and February 2008 was the worst, when about 1,200 people died as a result of post-election violence and more than 300,000 people were displaced from their home after the announcement of presidential election

results and were afraid to return home (KNHR, 2018). The worst incident was where 200 internally displaced persons took refuge in a church and on the extreme side burned down the church and killed 35 people. Violence was again recorded in the election years 2013 and 2017. The pattern has been consistent where people die and many are wounded and displaced (Adhiambo, 2017). As a result, this study will look at Kenya's electoral system since independence, focusing on the link between it and electoral violence in Kenya since 1963; Its majoritarian mechanism of winner take all which makes elections a high stake process in a country with many nationalities and the polarizing political campaigns where elites seek to exclude the losers from the country's main stream democratic process and the government formed after election. Because of high stakes, no side want to lose the elections: Each side resort to violence as a strategic tactic in the election to ensure that they are not completely outdone. This contributes significantly to post-election violence witnessed in Kenya since 1963 (Mozaffar, Scarriet & Galaich, 2003). In addition, inspite of various reforms and changes in Kenya's electoral systems, post electoral violence has persisted hence the reason why we are carrying out this research. Against this backdrop, the study sought to investigate the essence of Kenya's electoral system.

2. LITERATURE REVIEW

2.1 Electoral Body Challenges in Management of Elections in Kenya

Election management is defined by IDEA (2006) as the processes that are essential to the proper conduct of elections. These invariably include voter registration, voter education, authentication of nominations of election participants, polling conduct, vote counting, and vote tabulation. Most processes revolve around the election's management body. Kenya's equivalent of EMBS is the independent Electoral and Boundaries Commission (IEBC). The electoral body is established by the Kenya constitution. Kenya's 2010 Constitution article 88(1), the Constitution spell out the duties of the IEBC; it is responsible for conducting or supervising referenda and elections; They coordinate the conduct of elections according to the prescribed laws and regulations. Because they are in charge of maintaining and operationalizing the elections administration system, the commission has the most responsibility for ensuring the transparency and legitimacy of the electoral process. The commission will undoubtedly face significant influences to its operations both internally and externally. It should protect its independence as well as preserve the transparency, efficiency, and precision of the electoral process, all of which are critical aspects and the bedrock of any credible elections.

The responsibilities of the IEBC, as the needed qualifications for such as activities, are specified in both the Kenyan constitution of 2010 and the IEBC statute. The IEBC was founded to administer and oversee elections in Kenya. Its duties also include constant enrollment of citizens as voters, the delineation of constituencies and wards, the regulatory oversight of the method by which parties designate candidates for elections, the resolution of electoral disputes, even those related to nominations, voter education, and the guidance of observations, surveillance, and performance reviews.

EMBs have the potential to respond to election conflict and post-election violence as they are tasked with administering, coordination, supervising and managing the electoral process for choosing representatives who shall govern the country through a popular and legitimate mandate, given that elections are a vehicle for the distribution of power (Mozzafar, *et al.*, 2003). EMBs are always in the eye of the storm and subject to close scrutiny. Any perception of bias, partisanship or lack of integrity in the administration of elections holds the potential for election disputes, conflict and electoral violence. Effective electoral governance therefore requires the impartiality, independence, efficiency, professionalism and transparency of the EMB to avoid mutual suspicion and mistrust among political actors (Lindberg, 2006).

The relatively small body of literature on EMBs emphasis the importance of Independent EMBs in bestowing legitimacy and credibility on the electoral processes particularly in Kenya, one of the new democracies. (Birch, 2009). The argument holds that in semi-authoritarian regimes, where democratic institutions coexist with illiberal practices giving incumbents a significant advantage vis-à-vis their opponents, legally autonomous EMBs help insulate electoral governance from government manipulation and play a potentially important role in levelling the playing field. (Lopez-Pontor, UNDP, 2009).

Challenging elections are an important component of democratic administration (Dahl, 1971; Adan, 1991). Free and fair elections thus confer legitimacy and “a right to rule” to the regime in power, and help sustain the underlying process of democratization (Lindberg, 2006).

Despite their appeal, the empirical record of electoral politics in bestowing legitimacy, and accountability onto Africa’s electoral regimes is highly mixed. Even though supposedly democratic institutions (including such competitive elections) sometimes coexist with intolerant and even despotic characteristic, the electoral balance of power is frequently stacked in favor of the holder (Mozzafar, 2003). In semi-authoritarian regimes, where opposition parties are likely to be distrustful and fear government manipulation of the electoral process, partisan oversight and multi-party deliberations might dissipate suspicion and create mutual confidence in the electoral process (Mensah, 2014)

In competitive authoritarian regimes, the fairness of electoral competition may be compromised for example by restraints placed on opposition parties’ ability to campaign, flawed voter registration, ballot stuffing, and the misuse of state resources in governing party’s campaign (Schedler, 2002 & Diamond, 2002). Partisan oversight and multiparty deliberations and inclusive and collaborative electoral governance in electoral management body; allowing political parties to jointly negotiate electoral issues, facilitative consensus –building and creating informal structures of mutual restraints that shapes the incentives structure of major stakeholders in favor of nonviolent strategies is one way of dissipating suspicion and creating mutual confidence in the electoral process especially in new democracies like Kenya where opposition parties are distrustful and fear government manipulation of the electoral process. If indeed the opposition is given substantial influence over electoral governance, they are less likely to question the management and results of elections in an extra-legal means, so ending a retaliatory trend in which the government frequently employs oppressive response (Hoglund & Jarstad, 2010).

Flawed electoral processes have led to opposition parties across Africa to dispute electoral outcomes. The elections in Kenya in 2007; Ivory Coast in 2010; and Djibouti in 2013 are a few examples where the announcement of electoral results has triggered extra-legal protest by opposition parties over alleged electoral manipulation. Kenya has witnessed worst electoral violence in 1992, 1997, 2007 and 2017. In all these cases there was clear nexus between electoral commission and the electoral violence (Kakuba, 2016; & Mensah, 2014). IEBC conduct contributed to a severe political crisis in which the opposition challenged the voting results through extra legal means following the lack of influencer over the electoral commission governance and administration (Materu, 2014).

Schedler, (2002) observes that from the moment where a person or party running for elections already has a hand in the administration of the EMB either directly or indirectly, it becomes evident that this can lead to mistrust for the EMB and consequently electoral violence. The focus on formal independence may, however, offer a too narrow view of the influence of EMBs capacity for facilitating elections that are deemed credible by all parties. (Mensah, 2014). Furthermore, this factor cannot account for the variation over time in the occurrence of electoral violence. Fairly clean elections administered by seemingly independent EMBs have produced results that were heavily contested in some countries, while deeply flawed polling has been accepted in others (Elklit & Reynolds, 2002). The peacefulness of the electoral process arguably depends not only on the autonomy and independence characterizing the process, but also on how disputes are managed and solved between the government, opposition and the EMB.

The techniques and methods used in voter registration as well as the technology deployed for this purpose of the actual elections may also be a source of electoral violence and is a major challenge facing electoral management bodies not only in Kenya but also across Africa. Recent elections in Africa from 2011 to 2017 have demonstrated this hypothesis extensively holding it true. In the Angola 2012 parliamentary elections, the MPLA and its leader Eduardo Dosantos were accused of controlling the Electoral Commission (CNE) and thereby engineering the elections to create the desired results for the regime. It was one of the factors of the country's post-election conflict that same year. Høglund (2009) posits that what happened in Angola was case of qualified shameless rigging and electoral fraud perpetrated by CENI and was key factor that triggered post-election violence. Same trend was observed in DR. Congo. Høglund (2009) observed "given the nature and degree of electoral fraud... the election debacle was not the result of technical and accidental factors but was the product of a systematic and state sponsored design to rig the elections in favour of the incumbent president and members of parliament from his political camp. In order to quell popular protest against stolen elections the incumbent used illegitimate and excessive violence aimed at terrorizing the people and forcing actual and potential protestors into submission."

In the Ghana 2012 presidential polls, attacks on political figures, breakdown of BVR and electronic transmission of results technology and perceived collaboration between the Electoral Commission (EC) and the ruling NDP led to the NPP rejecting the elections results. At its December 11, 2012 press conference, the NPP said "it is obvious from the preponderance of evidence available to us, some of which was made available to the commissioner prior to this

evenings declaration (during the mediation process) that the ruling National Democratic Congress, led by president John Mahama, conspired with certain officials of the Electoral Commission (EC) in constituencies across the country to falsify the election results in favor of the president of the republic thereby disregarding the mandate of the people of Ghana. (Van Gyampo, 2009). Despite the fact the swearing in –ceremony took place, there was still protests and violence, as journalists from various television and radio stations were claimed to have been attacked by NPP supporters and thugs just after the outcomes finally announced (Van Gyampo, 2009).

In Guinea-Conakry, the main cause of political protest and violence in the 28 September 2013 election was the threat by the Guinean opposition coalition to withdraw from the electoral process on 24th February, which was followed by an appeal to citizens to stage nationwide protests (Reuters, 29 December, 2015). The decision was provoked first by mistrust for the election commission. The national election commission's approval of South African Firm Waymark InfoTech in compiling a new list of registered voters for the elections was unacceptable to the opposition. The opposition argued that the firm is "open to voting fraud" as it was chosen by the ruling party and has a history of discrepancies in not only just Guinea but also in other African elections. In September 2012, thousands of Guineans marched in Conakry in protest of Waymark InfoTech only to be dispersed by police with teargas (Blais, 2015). The case of Liberia in 2011 presidential elections also shows a situation in which distrust for electoral management and perceived rigging made Tubman to call for a boycott of the presidential run off.

2.2 Theoretical Framework

The study used was grounded on the Rational Choice Theory, which originated during the late 18th century with the work of Cesare Beccaria. Since then, the theory has been expanded upon and extended to include other perspectives, such as deterrence, violence and routine activity theory. Rational Choice Theory implies that every individual has a rationale side, which is capable of making consistent choices (Downs 1957). At the heart of the theory, it is presumed that actors are rationale and make choices that will maximize their utility.

The theory stipulates that, a majority of voters, especially in young democratic states do not have strong connections with the existing political parties in their countries (Blais *et al.*, 2015). They are often unaligned, and as a result, politicians regard this as "up for grabs". Supporters must decide to choose for a specific candidate based on specific judgments (Blais *et al.*, 2015). Their voting behavior is determined by the following factors: a party's track record, their election manifesto, key party players and the party leaders. Their decisions seem to be pegged on the notion who will benefit them and their families even if it is at the expense of the other groups (especially if they are different ethnic or religious groups in a country).

The existing issues matter differently to people at different times and in different elections. For instance, while the elderly may feel that the pension issue is an important factor; young parents may be looking at issues such as education and child health care. Therefore, politicians will come up with different manifestos or ideologies that they feel will attract a certain group of people and therefore help them win an election (Blais *et al.*, 2015). For an issue to be considered

salient by the electorate it must fulfill the following conditions. The voters need to be aware of this issue. It is also imperative for the voters to have an opinion of the existing issue. Another condition is that the voters need to be able to detect a difference between parties on the issue and finally, they need to be able to convert their preference to action by voting for a party whose views on a particular issue is similar to theirs (Blais *et al.*, 2015).

It is also necessary for voters to have an opinion on the current subject. Another requirement is that voters be able to turn their desire into action by voting for a party whose views on a particular subject are comparable to their own (Blais *et al.*, 2015). According to Downs (1957), this hypothesis may be useful in solving post election violence. A political party's platform is what could turn people off. The elderly would also receive education on the reasons to elect someone rather than using tribal division or ethnicity for election. This theory is important in a country like Kenya where politicians use propaganda in order to be able to win over the other. They can term a certain community as being bad rather than stating the things they feel would have benefited the country.

Blais *et al* (2015), notes that this theory might not be applicable in a young nation like Kenya. There is no sufficient voter education that enlightens the mass on the importance of electing a visionary leader. The electoral system is all about the people from our community (Blais *et al*, 2015). Even the most educated Kenyans are tribal. They cannot educate the elderly on the importance of being united as a country and voting in peace. The rational choice theory is in effect, an economic model applied to facilitate better governance and progression. According to this theory, voting is seen as a way in which a voter can maximize the impact of the vote in order to fulfill his or her own self-interest.

This theory suggest that voters are discerning little consumers: they choose the party offering range of policy products they think are the best. The decision is also often based on the past record of the party and the qualities of the party leader. Anthony Downs (1957) is a theorist of rational choice. He characterizes parties as vote maximizers, attempting to identify major voter preferences and then tailoring their programs to the electorate and the people interests.

Critics (for example (PIPPA NORRIS (2014) suggest that theorists such as Downs have ignored group influence (including class, family, ethnicity and religion). They also suggest that evidence is there to assume that many voters have already made up their mind on their voting intentions before the parties publicize their policies. Also, as parties cannot possibly cater for everyone, the policies may be geared towards what is in the interest of society in general, not specific voters. The theory also supposes that voters take the time to investigate what is on offer and then come to a rational decision based on the facts.

In conclusion, the theory might be of great importance if voter education is carried out in order to prevent post-election violence. However, if rationale choice is applied in Kenya with the current political division without proper civic education, then it would not help in one way or another as most people would continue divisive theories in practice politics full of negative ethnicity and regionalism.

3. RESEARCH METHODOLOGY

In this study, the study used a descriptive research design. This entails conducting different activities such as exploration, analysis and description of phenomena from unexplained presumptions to achieve maximum intuitive presentations. Saunders (2009) explains that in a descriptive research design, it documents a specific study phenomenon in its real situation without the need to worry that the researcher will interfere and therefore influence the results of a specific study as the one that is being conducted in this study. A mixed method approach was used. This explanatory model is considered effective for this research as it helped the researcher to collect and analyze a detailed and comprehensive data. This is crucial in terms of assessing the research objectives and helps in answering the research questions that have been formulated. On the other hand, qualitative approach promotes better understanding and explanation for this study. It is important to note that the quantitative and qualitative approach can also be used in the validation of the results.

The geographical areas of study that the researcher focused on are: Nairobi, Kisumu, Uasin Gishu, Nakuru and Mombasa Counties. The reason as to why Nairobi and Kisumu counties have been selected is because after every election, there have been pockets of violence in various parts of these two counties. The researcher hoped to determine why these regions are very vulnerable to violence. The other regions are some of the main towns in the country and the researcher would like to get the opinions of people in these regions in terms of how they feel about the electoral system and what needs to be changed. The researcher also traveled to two marginalized areas- Marsabit and Baringo counties. The researcher wants to understand the challenges that these regions experience during the voting process, how they feel about the current electoral system and what they feel needs to be changed to make the process of electing their leaders easier.

The study investigated the rate of Kenya's electoral system in post election unrest. Citizens of the country who are eligible to vote, politicians, members of IEBC, political experts/journalists (both electronic and print media) and security agents were among those targeted. For the citizens of the country who are eligible to vote, willing participants were provided with questionnaires that contained relevant questions. For politicians, members of the IEBC and political analysts they were subjected to a one-on-one interview process with the researcher for data collection process.

The study focused on the five counties that have been disproportionately affected by post-election unrest, as well as two others that have been damaged by inadequacies in the electoral administration body's ability to conduct free elections in Kenya. Getting information from the all counties would help in analyzing the views of each county and how they feel about the electoral system. This is because some counties might have produced a leader but the leader never won, prompting them to fight. While counties where their favorite candidate won would feel the elections were free and fair. This helped in giving an overview of why the people from this region always fight one another during and after elections

The study covered persons above 18years. This is because the voting age in Kenya is from 18 years. They would be able to give their views on what causes them to fight during elections. It also helps in making sure that the information gotten is from people with sane mind. The sex

was both male and female. There is no gender biasness because the participants of the research were both male and female voters. The sample size was equal. The study would not have a specific ethnic group, it would focus on all ethnic groups as a way of ensuring that the data gotten is authentic. The number of people taken from all ethnic groups was equal.

A judgmental or purposive sampling strategy was employed for the participants were exposed to interactive review procedure. The reason as to why this method was deemed to be appropriate for these research participants is that they were selected based on the judgment of the researcher. The research participants that were considered for this research are the ones that possess the right experience, and knowledge that is required by the researcher. On the other hand, for the respondents who were required to fill the questionnaire, a random sampling technique was used. It is an ideal method for selection purposes as it provides all the citizens that meet the criteria that set an equal chance to be selected to participate in the study.

In this research study, the researchers felt that for the qualitative methodology, an appropriate sample size is 450 participants (50 politicians, 60 political analysts, 40 IEBC officials and 300 voters). The expected 450 participants are considered an ideal size for this interview process to allow the researcher to organize an effective schedule. The expected population of the Politicians (MPs and County Governors), Political Analyst, I.E.B.C officials and Voters is more than 10,000. The study purposely sampled 50 politicians, 60 political analysts, 40 IEBC officials and 300 voters. This cut across in the selected counties which include Nairobi, Kisumu, Eldoret, Nakuru and Mombasa counties.

Table 1: Sample Size

Category	Sample Size
Politicians (MPs and County Governors)	50
Political Analyst	60
I.E.B.C officials	40
Voters	300
Total	450

Source: (Researcher, 2019)

The 450 participants were considered an ideal size for this interview process to allow the researcher to organize an effective schedule. Politicians, political analysts and IEBC officials are people who have busy schedules and therefore by selecting a bigger number, the researcher may not find appropriate time to interview all of them. In addition, 450 participants allow the researcher a sense of flexibility in case some of the participants fail to meet up with him for the interview process (Qu & Dumay, 2011). On the other hand, for quantitative methodology, the researcher used the following formula to determine the ideal sample size:

$$No = Z^2 * Q^2 / e^2$$

$$No = Z^2$$

No =sample size

Z=value of Z in a normal distribution curve; E=level of precision; Q²=variance of an attribute in the population; 2=1.64; Q²=9.65; e=1; 1.64*9.65/1²=250.46=250 (as it involves people)

The two primary methods that were used for data collection are: questionnaires and interviews. Questionnaires were subjected to the voters while the interview guides were administered to the Politicians (MPs and County Governors), Political Analyst, and I.E.B.C officials. It means that the researcher only took into consideration primary sources of data. The rationale for this was that the researcher is interested in actual information that the study participants offered, either through the questionnaire that was given to them due to the constraints of Covid -19 or through the zoom interview processes that he performed. In this research, information that was used in the literature review was retrieved from journals, newspapers, published electronic sources and videos.

A pilot study was conducted to pretest the research instrument. To this end, the researcher used 10% of the sample size as justified using Kothari (2013). Therefore, the study used 5 members of parliament, 6 Political Analyst, 4 I.E.B.C officials and 30 voters who were randomly selected. It was intended to find, especially for the interview questions (which are different for politicians, political experts and IEBC officials) if the way they are structured could have offend the respondents. The pilot was conducted in Kiambu County. This then helped to modify the interview questions and questionnaire based on the feedback that provided by the data collection team. The reliability of a research instrument was determined by whether or not it can be used in future studies for similar purposes to get similar results. A Cronbach internal consistency scoring of 0.7 was used as a cut mark to determine the internal scales of the questionnaire and interview questions.

Data analysis is defined as the process that researchers use in order to bring about order, structure and meaning to the information that they have managed to collect in research. The data was collected using questionnaires and interviews. Descriptive statistics was applied for the data that is collected using the questionnaires. The researcher examined the data using frequencies, mean, and standard deviation. The results are presented using tables.

4. RESULTS

The study sought to determine the challenges and opportunities the electoral management body in Kenya faces in relation to organizing, conducting and managing elections to achieve electoral peace in Kenya. To this end, this chapter delves into an in-depth analysis of pertinent findings as obtained from the administration of both questionnaires and key informant interviews. Both descriptive and thematic content analyses are conducted in this regard. The chapter is structured into two main sections, covering the challenges and opportunities.

4.1 Challenges

Respondents were asked to indicate the nature of challenges the IEBC faces in organizing, conducting and managing elections in Kenya. It was revealed in this regard that the IEBC faces a host of challenges of varied nature including operational, administrative and legal. Among the main operational challenges faced include excessive public scrutiny in the procurement of voting materials; failure of deployed technologies from the point of registration of voters to voting and transmission of results; and funding. Administrative challenges on the other hand include political interests in the recruitment of commissioners; discord among the commissioners; intimidation and harassment of officials particular presiding and returning

officers which has in some instances led to murder of key officials. Legal challenges faced include limited timeframes within which to gather sufficient evidence to respond to presidential petitions and/or comply with court orders.

Upon probing to find out the type of operational challenges, it was established that the commission grapples with insufficient funds which undermines effective delivery on its constitutional mandate. The study established that financing of the Commission is provided for in Part III of the IEBC Act. The Act anticipates a single line Treasury Account hosting the IEBC Fund. Despite the Commission having published the Regulations to govern the operationalization of the Fund Account, the Fund has not been operationalized to date. It was also found that although the Constitution obligates Parliament to provide adequate funding to each Commission in Article 249 (3), the practice has not been easy. The Commission is currently funded through Governance, Justice, Law and Order Sector (GJLOS) which includes other related arms of government. This leaves them on both dependence on the Executive and the Legislature who may, for political reasons deliberately delay or cut funding. A respondent observed that:

“The Independent Electoral and Boundaries Commission Fund Regulations, 2012 provide the Commission with legitimate means of administering monies accruable to the Commission for purposes of elections. The lack of operationalization of this Fund impedes the Commission from effectively carrying out its mandate. The actualization of this Fund is imperative for operational integrity and efficiency of the Commission”

[Q11 Political Analyst 4, Nairobi]

Another respondent added that:

“The independent Electoral and Boundary Commission’s funding is from the government. The treasury allocates funds to the commission for its operations and these forces the independent Electoral and Boundary Commission to depend on budgetary allocation and leaves it in a dilemma in case an issue arises as to a runoff”

[Q11 Politician 2, Nairobi]

A respondent further observed that:

“Generally, Kenya has an Electoral Management Body (EMB) that is, by design and in law, intended to be free of undue influence from the executive and other electoral actors. Therefore, the absence of secure and guaranteed funding for IEBC is of particular concern: financial and logistical dependence on the Executive and the Legislature undermines effective completion of critical electoral activities in Kenya”

[Q11 IEBC Official 2, Nairobi]

The study also probed on the procurement challenges that the IEBC faces in organizing, conducting and managing elections in Kenya, which was among the bases of the petition at Supreme Court that led to the nullification of the presidential results. It was found that among the key challenges the IEBC faces is controversy in their procurement of election materials. For example, in 2013 and 2017 the commission was beset by scandals over the tendering

processes of sensitive election materials and technologies. This was a key item in the 2013 petition in which the IEBC was accused of violating the Constitution and the Public Procurement and Disposal Act (cap 412C, Laws of Kenya), by awarding the tender to an unqualified bidder who then supplied devices that did not work properly, or simply failed, on election day.

The acquisition of technology and the supply of ballot papers were the keystone contracts, comprising about 30 percent of the cost of the 2017 election. French company Safran Identity and Security (SIS) delivered the KIEMS technology while Al Ghurair of Dubai supplied ballot papers. The engagement of these two contractors was considered illegal and was consequently wrought with litigation. Against this backdrop, the Government directive in Circular Number 8 of 2018 dated 20th August 2018 directed that all matters concerning the procurement of ICT for all government agencies is to be consolidated under the Ministry of Information, Communication and Technology. According to key informants from the IEBC, this interferes with the functional and operational functions of the Commission. A respondent observed that:

“In my opinion, the acquisition of goods and services from M/S Safran Identity & Security was done at unjustifiably high price, and therefore, in the circumstances, we are unable to confirm whether value for money was realized.”

[Q12 Political Analyst 8, Nairobi]

Another opined that:

“The commission’s position was manifest all through in the defense of the two companies as they did not provide room for alternatives. Anybody would question why IEBC was bent on awarding the contracts to the two.”

[Q12 Politician 7, Nairobi]

Contrasting the foregoing, a respondent argued that:

“All procurements by the IEBC are done within the confines of the Public Procurement and Asset Disposal Act of 2015. In this case, we did competitive bidding and I believe the technically qualified bidders were awarded the tenders”

[Q12 IEBC Official 1, Nairobi]

The study also probed to find out the technological challenges that the IEBC faces in organizing, conducting and managing elections in Kenya, which were also among the bases for the nullification of the 2017 presidential results. It was discovered that the main technological challenges include the massive failure of the biometric voter registration (BVR) system and the Kenya Integrated Election Management System (KIEMS) kits in the 2013 and 2017 general elections.

There was however marked difference in the 2022 elections in terms of technological failure, as only 200 of the KIEMS kits failed out of the 46,229 polling stations across the country. Additionally, there were very few network challenges as opposed to 2017. In the 2022 elections, it was found from key informants interviews with IEBC officials that the commission

had acquired satellite modems for areas with no 3G network to enable the transmission of results electronically. A total of 1,111 polling stations did not however have a 3G or 4G network and IEBC had to deploy satellite modems to facilitate the electronic transmission of results. A respondent observed that:

“There is a serious technological challenge at the IEBC. The commission turned to new technologies including BVR and KIEMS kits. In both 2013 and 2017 however, the biometric system failed. This was due to the inability of laptops and fingerprint scanners to work properly or receive power at many polling stations”

[Q13 Political Analyst 6, Nairobi]

This was echoed by another respondent who averred that:

“The election management system is probably the most controversial and consequential aspect of the commission’s reliance on technology. It was designed to improve the transmission of results from polling stations to the commission’s headquarters”

[Q13 Politician 19, Nairobi]

“Many kits failed in 2013 and 2017. In 2022 however only 200 of the KIEMS kits failed out of the total of the 46,229 polling stations across the country which is a marked improvement”

[Q13 IEBC Official 1, Nairobi]

The study further sought to find out the legal challenges that the IEBC faces in organizing, conducting and managing elections in Kenya. Expectedly, the main legal challenges that the IEBC faces including response to rigging claims in presidential petitions. Just like in 2013 and 2017, the 2022 general election raised disputes over the tallying and verification of the presidential results. Mr. Chebukati had on August 15 declared the former Deputy President, Dr William Ruto of the Kenya Kwanza coalition, the winner with 50.49 percent against his competitor Mr. Odinga, who garnered 48.8 percent. Mr. Chebukati announced that Dr Ruto had garnered 7,176,141 votes against Mr. Odinga’s 6,942,930. Mr. Odinga however challenged the declaration at the Supreme Court, basing his petition on among other grounds that IEBC Chairman Wafula Chebukati compiled the final presidential results—Form 34C—unilaterally without involving other commissioners for verification.

The commission was particularly found to decry the limited time provided by law to gather sufficient evidence to respond to presidential petitions and/or comply with court orders. The study discovered that in Presidential petition, the time frame provided for lodging petitions, filing responses, hearing and determination is only 14 days, which according to respondents is rigid. This was found to cut across the complainants and by the Court itself, as acknowledged in the 2013 presidential petition ruling by Justice Emeritus Willy Mutunga. A respondent observed that:

“The short period within which the Commission is required to comply with Court orders requiring it to furnish election materials is manifestly unjust”

[Q14 Political Analyst 9, Nairobi]

“The 14-day window is practically limited at the presidential level, for the IEBC to even collate and supply election materials and results to Court. And not just for the IEBC, but for complainants and the Court itself”

[Q14 Politician 10, Nairobi]

“The fourteen-day period is not adequate to ensure substantive justice to all parties; and neither did it provide sufficient time for the Commission to prepare adequately for representation and to gather evidence country wide, draw and file the necessary pleadings in its defense”

[Q14 IEBC Official 2, Nairobi]

The study also probed to find out the administrative challenges that the IEBC faces in organizing, conducting and managing elections in Kenya. Key among these include printing errors and coordination of staff on the material day of voting. For example, it was only discovered on the day of the 2013 general elections that ballots in four wards were misprinted. The number of staff employed by the IEBC to administer voting procedures in large polling stations was also not adequate. As a result of this staff shortage, late counting procedures were required. In 2022 for instance, the gubernatorial elections for Kakamega and Mombasa counties were postponed because the ballot papers had errors, including wrong pictures for the candidates and details.

Also, while most polling stations opened on time, there were a few which opened late for various reasons including late setting up of the station, late arrival of polling materials or polling officials. Some Forms 34A did not have signatures of agents and others had the figures altered from the turnout in the KIEMS kit. However, these challenges were less widespread compared to 2017. Further, conducting elections in areas such as eastern and north eastern and other areas around the coastal region have proven to be a challenge to the independent electoral and boundary commission due to the poor roads to those roads and insecurity in the region and as a result inflicting fear among the officials and intimidating voters who may not turn out as required so that they could vote for the leaders of their choice.

The study found that discord among the commissioners poses a challenge in IEBC's organization, conduct and management of elections in Kenya. This was particularly displayed during the declaration of the 2022 presidential election results, when four out of the seven IEBC commissioners walked of the event at Bomas of Kenya and distanced themselves from the results as declared by the chair, Mr. Wafula Chebukati. The four commissioners alleged that Mr. Chebukati did not involve the other members of the commission in the tail end of the tallying and verification process. A respondent observed that:

“The split between the ‘old’ and ‘new guard’ at IEBC presented an image of a dysfunctional commission, which in my view further hurt the commissions credibility to conduct elections”

[Q14 Political Analyst 9, Nairobi]

Another concurred adding that:

“The protest by the Cherera-led faction of the IEBC commission paints a picture of a serious administrative challenge at IEBC”

[Q14 Politician 10, Nairobi]

Another however argued in contrast”

“There is no such thing as dysfunction in IEBC. The commission transcends individuals. To think that we are dysfunctional is to miss the whole point”

[Q14 IEBC Official 2, Nairobi]

Another administrative challenge that the IEBC faces in organizing, conducting and managing elections in Kenya is in staffing. The study found that during the 2017 general elections, the Commission was grappling with the issue of vacancies following resignations of commissioners. The President is required to cause the appointment process for new members in accordance with the timelines in the IEBC Act. However, this was not yet done two years since the vacancies arose. The study also found that while the commission has operational and functional independence from the Executive, it lacks autonomy in determining the budget and staffing. According to key informants, the requirement for IEBC to negotiate its budget with the political executive and/or central budgetary agencies in government runs the risk of underfunding and interference in internal decision-making. A respondent observed that:

“Some measure of autonomy in determining the budget and staffing of a commission or agency is often seen as a critical factor in achieving independence. The requirement for an EMB to negotiate its budget with the political executive and/or central budgetary agencies in government runs the risk of underfunding and interference in internal decision-making”

[Q14 IEBC Official 2, Nairobi]

The study also found that a key administrative challenge the IEBC faces in organizing, conducting and managing elections in Kenya is the security of its staff. In 2017, Chris Msando the election official in charge of computerized voting system was found dead just days before the 8 August elections. In 2022, the Embakasi East Returning Officer Daniel Musyoka’s tortured body was recovered in Kajiado after he was reported missing by IEBC Chairperson Wafula Chebukati just days after the general elections. It is owing to the seriousness of this that IEBC Returning Officers in the 2022 General Election file a petition at the Office of the Director of Public Prosecutions (ODPP) demanding protection. IEBC Chairperson Chebukati was also forced to postpone several by-elections in various regions that had been affected by printing errors raising concerns that the commission’s staff were being threatened, profiled and intimidated. Further, Chebukati reported that the IEBC’S personnel were attacked by an organized group of goons while preparing responses for the Presidential election petitions. In a tweet, the IEBC reported that:

“Today, Monday, 22nd August 2022 at around 8:30pm an organized group of goons wielding crude weapons attempted to attack IEBC personnel preparing responses to Presidential election petitions at a premise within Nairobi. However, they were repulsed by Security”

[IEBC on Twitter, 22nd August 2022]

A key informant reiterated that:

“Our returning officers have been decrying intimidation and threats before, during and after the election”

[Q15 IEBC Official 1, Nairobi]

It is deduced from the study findings that the IEBC faces a number of challenges in relation to organizing, conducting and managing elections to achieve electoral peace in Kenya. These can be broadly categorized into three, which is operational, administrative and legal. As a notable operational challenge, the commission is found to grapple with insufficient funds, which undermines its effective delivery on its constitutional mandate. Lack of adequate funding is particularly found to derail crucial activities including the procurement of key technologies and recruitment of staff which scuttle preparations for general elections.

The finding is in concurrence with a report by Mutai (2022) that the treasury rejected IEBC's election budget of Sh49.9 billion but allocated Sh43.9 billion out of which Sh42.57 would go towards the commission for direct poll expenses. Ndungu (2021) also argues in agreement that a decision by the government to limit the influence of foreign funding on Kenyan elections affected preparations for the August 9th general elections with the IEBC facing a consequential cash crunch. Similarly, Lang'at (2020) reports that with a deficit of Sh14.5 billion, the electoral agency, and other players in the electoral process, is reeling from the effects of the government decision to stop direct financing of electoral systems in the country. IEBC had anticipated that the government would give it an additional Sh7 billion with the deficit of the Sh7.5 billion being raised from donor funding.

It is also inferred from the findings that procurement of election materials presents a key operational challenge in the IEBC's efforts to organize, conduct, and manage elections to achieve electoral peace in Kenya. This was particularly the case in the controversial tendering processes of sensitive election materials and technologies in the run up to the 2013 and 2017 general elections. This tainted the IEBC's image and its ability to deliver credible and transparent general elections.

The finding is in agreement with Ng'etich (2022) who report that late and rushed tendering, tender cancellations as well as corruption compounded the woes of the electoral agency which saw the country hold one of the most expensive elections in Africa estimated at Sh54.1 billion in 2017. Similarly, Kahongeh (2018) argues that in the 2017 general election, the massive failure of Kiems kits supplied by French firm OT Morpho put to question the integrity of the exercise. Kisia (2022) adds in agreement that procurement of electoral materials was the subject of heated debate in the build-up to the protracted election.

It is also implied from the findings that technological challenges also inhibit the IEBC in its efforts to organize, conduct and manage elections to achieve electoral peace in Kenya. Key challenges in this regard include the massive failure of the biometric voter registration (BVR) system and the Kenya Integrated Election Management System (KIEMS) kits in the 2013 and 2017 general elections. The same were significant items in the 2013 and 2017 presidential election petitions. The same was however largely resolved in the 2022 general elections, which observers deemed successful with respect to the deployment of technology.

The finding is in tandem with Chiba (2022) who argues that different security challenges were presented by electronic voter verification and tallying technologies compared to manual verification systems. For instance, in the 2017 general elections, there had been allegations by the National Supper Alliance presidential candidate, honorable, Raila Amollo Odinga, that the IEBC's electronic transmission of results system had been hacked into and false results inserted, thereby contradicting the actual results announced at the polling station. This follows the decision of the court that declared the results announced at the polling station as final. Furthermore, in *Raila Odinga v. The Independent Electoral and Boundaries Commission and 3 Others* Supreme Court Petition Number 5 of 2013 as consolidated with Petitions 3 of 2013 and 4 of 2013, the IEBC was accused of massive electoral fraud and malpractice that apparently resulted in the technological failure which had a bearing on the electoral results.

The study findings are further of the implication that the IEBC faces notable legal challenges in organizing, conducting and managing elections in Kenya. Key among the legal challenges include response to claims of irregularities and rigging in presidential election petitions. In 2013, for instance the IEBC was accused of among others, conduction an election that was complex and with many shortfalls, contrary to the constitutional requirement that it be a simple, accurate, verifiable, secure, accountable and transparent system. In 2017, the commission was accused of among others, lack of transparency and tampering with the tallying process by use of an algorithm with a predetermined outcome. In 2022 IEBC was accused of illegally announcing Dr. William Ruto without a consensus among the commissioners.

The finding agrees with Maina (2013) who report that the 2013 petition sought to invalidate the results of the election based on the fact that there were numerous irregularities in voter registration, electronic voter identification and tallying. It was filed by the Africa Centre for Open Governance (AfriCOG) who sought to invalidate the results of the Presidential election, alleging that massive electoral fraud and malpractices occurred that helped Uhuru Kenyatta to win. It was filed by Raila Odinga. The findings also agree with Freytas-Tamura (2017) who report that the 2017 petition alleged that the presidential election was not conducted in accordance with the relevant principles of the Constitution; that the said Presidential Election was compromised by certain illegalities and irregularities; and that, consequently, the said General Election lacked integrity, and ought to be invalidated. The findings are further in agreement with Wangui (2022) who report that the 2022 petition alleged that the election was marred by irregularities such as manipulation of figures and that the said result declared by the IEBC chairman is fraudulent, thus further invalid and null and void because William Ruto did not meet or attain the constitutional threshold of 50 per cent plus one of all the votes cast in the election.

It is also implied from the study findings that the IEBC faces administrative challenges in organizing, conducting and managing elections in Kenya. Key among these include errors in the voter register; misprinting of ballot papers, case in point the 2013 general elections in which ballots in four wards were misprinted and in 2022 when gubernatorial elections for Kakamega and Mombasa had to be postponed due to printing errors; and logistical issues such as late setting up of the station and late arrival of polling materials or polling officials. Staffing was also identified as a key administrative challenge. In the 2017 general elections for instance, the

Commission was grappling with the issue of vacancies following resignations of commissioners.

The finding is in concurrence with Kiplang'at (2022) who report that the 2013 KPMG audit which identified more than 2.9 million inaccuracies in the register, primarily involving inconsistencies in names, gender, and dates of birth rather than information in the national identification and passport data. In addition, the audit found slightly more than 450,000 instances of either duplicate identification or passport data in the register or data for people on the register who were not found in the National Registration Bureau or Directorate of Immigration, respectively. According to KPMG, many of these discrepancies could have been caused by clerical errors when inputting data. The IEBC addressed some findings from the audit and verification exercises when it finalized the official voter register, correcting some inaccuracies. The IEBC expunged a total of 88,602 deceased people from the register and deleted 93,548 duplicate entries.

4.2 Opportunities

The study further sought to establish the opportunities available to the electoral management body in Kenya towards credibly organizing, conducting and managing elections to achieve electoral peace in Kenya. It was established that among the most promising opportunities is the extant judicial decisions from previous presidential election petitions. The importance of judicial decisions from previous presidential election petitions was particularly highlighted in the 2022 general elections, where IEBC was seen to adhere to the Supreme Court rulings on the nullified 2017 presidential elections.

In the 2017 elections for instance, the Supreme Court found that IEBC was not transparent and did not employ the electronic transmission methods as required by the law. As such, there was a cloud of darkness between polling stations and numbers relayed to the tallying center in Nairobi. Borrowing from an earlier appellate case, the court upheld that the vote count declared at the polling stations was final and can only be changed on the petition by an aggrieved party in court. To address this, the IEBC did in the 2022 presidential elections display more than 46,000 Forms 34A, which tabulate results from each polling station, on a public portal. The electoral body also managed to get most of the Kenya Integrated Electoral Management System (KIEMS) kits working except in 1,111 polling stations where voters were identified manually. A respondent offered that:

As we saw in this year's elections (2022), the IEBC seems to have taken in stride the 2017 rulings by the apex court. If you remember in 2017, one of the bases upon which Chief Justice Emeritus Maraga nullified the presidential elections, was massive irregularities in the Form 34As. Now to cure that, the IEBC this year decided that all Form 34As would be uploaded on a public portal for transparency straight from the polling station. So, in this case, the 2017 ruling was really an opportunity for IEBC to correct its wrongs”

[Q16 Political Analyst 5, Nairobi]

This was supported by a respondent who observed that:

“The IEBC has clearly used the past Supreme court decisions to improve their conduct in this year’s (2022) general elections. The opposition complained in 2017 that the IEBC had refused to open the server. This year results were all real-time in the public portal”

[Q16 Politician 7, Nairobi]

Another informant further concurred arguing that:

“I think a key opportunity available to us especially this year, was the benefit of past judicial decisions and case law. A good example is the Maina Kiai ruling that results as announced in the polling station are final. So whatever the public saw in the public portal was the final results from the 46000 plus polling stations. This actually made our work easier and more transparent”

[Q16 IEBC Official 2, Nairobi]

A related opportunity established in the study is the Supreme Court of Kenya. Established by the Constitution of Kenya, 2010, the Supreme Court of Kenya has now become a key cog in the ever-growing demand to improve the electoral laws in the country. The apex court is mandated by the Constitution to settle disputes related to presidential elections. Following the 2013 presidential elections in which His Excellency Uhuru Kenyatta emerged the winner with 50.07 percent against Mr. Raila Odinga’s 43.31 percent, the court issued a report saying that it found irregularities during the partial recounting of votes in five out of 22 polling stations. However, it said they were not enough to change the final tally.

The court, led by then Chief Justice Dr Willy Mutunga, also disallowed some of the evidence presented by Mr. Odinga’s team on the grounds that they submitted it after the deadline. In 2017, the presidential election petition also set several precedents, which the IEBC quite successfully attempted to rectify in the 2022 presidential elections. The Supreme Court nullified the elections, citing non-compliance to the constitution in how the electoral agency conducted the polls. This fundamentally informed the IEBC’s conduct in the 2022 elections variously expounded in the preceding sections of this report. It was observed by a key informant, that:

“The Supreme has immensely helped in improving the conduct of the IEBC. From the 2013 petition to the 2022 petition. And I think for me the highlight of this all would be the 2017 petition in particular. Admittedly, the 2022 elections were the most transparent by far and this owes to the 2017 Supreme Court findings”

[Q17 Political Analyst 1, Nairobi]

This was concurred with by a key informant who intimated that:

“We owe a lot of the improvement we observed in the 2022 IEBC to the Supreme Court. And even beyond the IEBC, the Supreme Court has also contributed to the post-election peace so to speak. It has acted as an outlet for aggrieved parties who hitherto would take to the streets and cause violence in the name of contesting the results”

[Q17 Politician 11, Nairobi]

Similar sentiments were shared by a respondent who averred that:

“Admittedly, yes. I think particularly in this year’s elections, we were heavily guided by the 2017 rulings by the Supreme Court. So that has also been an opportunity for us”

[Q17 IEBC Official 1, Nairobi]

The study further established that another opportunity available to the electoral management body in Kenya towards credibly organizing, conducting and managing elections to achieve electoral peace in Kenya is independent election observation. By independently observing and publishing a timely report, the IEBC is able to identify and capitalize on its strengths; and strengthen their weaknesses. Compared to the 2013 and 2017 general elections, another key difference in the 2022 elections was that various observer missions released their preliminary report before the results were announced. In the previous Kenyan elections, observers were criticized for releasing their reports too late, sometimes a year after the elections. In 2022, observer missions from Africa; the East African Community (EAC), AU-COMESSA and the Inter-Governmental Authority on Development (IGAD) Election Observer Mission, all released their preliminary reports jointly on August 11, just two days after the elections.

The EAC Election Observation Mission said that they were satisfied by the manner in which the voting exercise was conducted. The Head of Mission, former Tanzanian president Jakaya Kikwete, lauded the IEBC for the improvements made in regards to transparency, preparations, and management. The Mission particularly commended the IEBC on the successful use of technology in voter registration, voter identification and transmission of results. According to Mr. Kikwete, the IEBC had improved efficiency, and increased transparency of the election process. Approval by independent election observation gives confidence to the public and the international community that the elections were objectively and credibly conducted. This instills confidence among a majority of Kenyans on the IEBC and lessens the likelihood of violence. A respondent observed that:

“The observer mission is a good opportunity for IEBC to take note of their strengths and weaknesses, identify areas for possible improvement and what aspects of their operations to maintain”

[Q18 Political Analyst 2, Nairobi]

Another respondent reiterated that:

“The IEBC can use independent electoral observation reports as objective critiques to their conduct. They are mostly unbiased and likely to help their IEBC improve on their inadequacies in the next electioneering period”

[Q18 Politician 9, Nairobi]

This was supported by a respondent who intimated that:

“We use the recommendations by independent electoral observation missions to inform our operations and the fact that this year’s report was largely positive is a vote of confidence from the international community”

[Q18 IEBC Official 2, Nairobi]

The study deduces from the foregoing findings that there are a number of opportunities available to IEBC towards credibly organizing, conducting and managing elections to achieve electoral peace in Kenya. Key among these include the existing judicial decisions from

previous presidential election petitions. This particularly came to play in the 2022 general elections, where the IEBC seemingly adhered to the recommendations from the judicial findings that led to the nullification of the presidential results in 2017. These included the transparent transmission of results from the polling stations to the national tallying centre and the finality of results at the polling stations.

The finding concurs with the Olewe (2022) who avers that the presidential election petitions in Kenya and the findings thereof have been crucial in shaping and strengthening the conduct of elections in Kenya. Heinzekehr and Gallagher (2022) add that the efficiency in the results transmission observed in 2022 was not a fluke but a consequence of the 2013 and 2017 petitions alleging massive fraud, including the failure of the electoral commission to transmit all results electronically as required by law, to reduce the risk of them being tampered with. Wangui (2022) argues in agreement with the study findings, that the Supreme Court has applied both the quantitative and qualitative tests in determining election petitions at different times which strengthened the electoral process in the country.

The findings are also of the implication that the establishment of the Supreme Court of Kenya by the Constitution of Kenya, 2010 is an opportunity available to IEBC towards credibly organizing, conducting and managing elections to achieve electoral peace in Kenya. The Supreme Court particularly presents a legal mechanism through which aggrieved parties in a presidential election can dispute the elections outcome by filing an election petition. This is a significant cure to the post-election violence consistently experienced in the election cycles preceding the promulgation of the new Constitution. This owed to a lack of proper conflict resolution mechanisms that resulted in the losing side resorting to violence.

The finding is in tandem with Oluoch (2022) who opines that the Supreme Court of Kenya is about 11 years old. But the apex court has now become a key cog in the ever-growing demand to improve the electoral laws in the country. The finding also agrees with Kiplagat and Wasuna (2022) who argue that the observed transparency in the 2022 general elections was a result of the IEBC attempting to abide by the stern warning from the Supreme court, that whenever called upon to adjudicate on a similar dispute, the court would reach the same decision if the anomalies remain the same, irrespective of who the aspirants may be. Consistently, fidelity to the constitution is a non-wavering commitment this court makes.

It is also implied from the findings that another independent election observation also presents an opportunity to IEBC towards credibly organizing, conducting and managing elections to achieve electoral peace in Kenya. By independently observing and publishing a timely report, the IEBC is able to identify and capitalize on its strengths; and strengthen their weaknesses. Approval by independent election observation gives confidence to the general public and the international community that the elections were objectively and credibly conducted. This instils confidence among a majority of Kenyans on the IEBC and lessens the likelihood of violence.

The finding agrees with Khaduli (2022) who argues that election observation is a valuable tool for improving the quality of elections. Observers help build public confidence in the honesty of electoral processes. Observation can help promote and protect the civil and political rights of participants in elections. Kimeu (2022) also agrees that election observation can lead to the

correction of errors or weak practices, even while an election process is still under way. It can deter manipulation and fraud, or expose such problems if they do occur. When observers can issue positive reports, it builds trust in the democratic process and enhances the legitimacy of the governments that emerge from elections. The findings further agree with Oleewe (2022) that election observation by domestic groups encourages civic involvement in the political process. Following elections, reports and recommendations by observer groups can lead to changes and improvements in national law and practice.

5. CONCLUSION AND RECOMMENDATIONS

It is deduced from the study findings that the IEBC faces a number of challenges in relation to organizing, conducting and managing elections to achieve electoral peace in Kenya. These can be broadly categorized into three that is operational, administrative and legal. As a notable operational challenge, the commission is found to grapple with insufficient funds which undermines its effective delivery on its constitutional mandate. Lack of adequate funding is particularly found to derail crucial activities including the procurement of key technologies and recruitment of staff which scuttle preparations for general elections. It is also inferred from the findings that procurement of election materials presents a key operational challenge in the IEBC's efforts to organize, conduct, and manage elections to achieve electoral peace in Kenya. This was particularly the case in the controversial tendering processes of sensitive election materials and technologies in the run up to the 2013 and 2017 general elections.

It is also implied from the findings that technological challenges also inhibit the IEBC in its efforts to organize, conduct and manage elections to achieve electoral peace in Kenya. Key challenges in this regard include the massive failure of the biometric voter registration (BVR) system and the Kenya Integrated Election Management System (KIEMS) kits in the 2013 and 2017 general elections. The same were significant items in the 2013 and 2017 presidential election petitions. The same was however largely resolved in the 2022 general elections, which observers deemed successful with respect to the deployment of technology.

The study findings are further of the implication that the IEBC faces notable legal challenges in organizing, conducting and managing elections in Kenya. Key among the legal challenges include response to claims of irregularities and rigging in presidential election petitions. In 2013 for instance the IEBC was accused of among others, conducting an election that was complex and with many shortfalls, contrary to the constitutional requirement that it be a simple, accurate, verifiable, secure, accountable and transparent system. In 2017, the commission was accused of among others, lack of transparency and tampering with the tallying process by use of an algorithm with a predetermined outcome. In 2022, IEBC was accused of illegally announcing Dr. William Ruto without a consensus among the commissioners.

It is also implied from the study findings that the IEBC faces administrative challenges in organizing, conducting and managing elections in Kenya. Key among these include errors in the voter register; misprinting of ballot papers, case in point the 2013 general elections in which ballots in four wards were misprinted and in 2022 when gubernatorial elections for Kakamega and Mombasa had to be postponed due to printing errors; and logistical issues such as late setting up of the station and late arrival of polling materials or polling officials.

The study deduces from the foregoing findings that there are a number of opportunities available to IEBC towards credibly organizing, conducting and managing elections to achieve electoral peace in Kenya. Key among these include the existing judicial decisions from previous presidential election petitions. This particularly came to play in the 2022 general elections, where the IEBC seemingly adhered to the recommendations from the judicial findings that led to the nullification of the presidential results in 2017. These included the transparent transmission of results from the polling stations to the national tallying center and the finality of results at the polling stations.

It is also concluded that the establishment of the Supreme Court of Kenya by the Constitution of Kenya, 2010 is an opportunity available to IEBC towards credibly organizing, conducting and managing elections to achieve electoral peace in Kenya. The Supreme Court particularly presents a legal mechanism through which aggrieved parties in a presidential election can dispute the elections outcome by filing an election petition. This is a significant cure to the post-election violence consistently experienced in the election cycles preceding the promulgation of the new Constitution. This owed to a lack of proper conflict resolution mechanisms that resulted in the losing side resorting to violence.

It is also concluded from the findings that another independent election observation also presents an opportunity to IEBC towards credibly organizing, conducting and managing elections to achieve electoral peace in Kenya. By independently observing and publishing a timely report, the IEBC is able to identify and capitalize on its strengths; and strengthen their weaknesses. Approval by independent election observation gives confidence to the public and the international community that the elections were objectively and credibly conducted. This instils confidence among a majority of Kenyans on the IEBC and lessens the likelihood of violence

It is further deduced from the findings that voter education presents an opportunity to IEBC towards credibly organizing, conducting and managing elections to achieve electoral peace in Kenya. This will particularly cure the apparent lack of civic education among the voters on the voting process, incitement by politicians and their role in addressing post-election violence. The IEBC has considerably tapped into this opportunity by the development of the Voter Education Curriculum. It covers among other items, election offences in which the public is ideally sensitized on various election offences and their penalties; causes of election offences; and ways of preventing election offences.

To address the funding challenges at IEBC, the study recommends an amendment to the Constitution in similar terms to Article 173, creating an IEBC Fund to ensure that the appropriation to the Commission is assured and adequate for the proper conduct of electoral processes. The IEBC is, by design and in law, intended to be free of undue influence from the executive and other electoral actors. To ensure the electoral management body has operational independence from government, it is key that the Fund is operationalized as proposed.

There is also need for IEBC to separate the presidential, parliamentary and county elections. This will ensure a reduction in the volume of votes to be counted by the electoral commission.

This will ensure efficiency since there will be a reduction in the volume of workload and it will also reduce on the costs experienced during the voting process.

To attain the independence of the IEBC, it ought to be clearly stipulated that the commission shall not be subjected to directions of any other person or authority and protect the commissioners from dismissal except for inability or misbehavior. It is also important that during the appointment of electoral commissioners, a more representative method of appointment should be employed. In addition, proper guidelines on the requisite qualifications for members of the commission must be clearly set out to ensure integrity of the commissioners. The role of the commissioners in tallying, verification and declaration of presidential results should also be clarified in order to avoid the dysfunction observed during the announcement of the 2022 presidential results.

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