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Assessing the Implementation of Electoral Reforms in Kenya under the Constitution of Kenya 2010

Paul Lutta

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Assessing the Implementation of Electoral Reforms in Kenya under the Constitution of Kenya, 2010

Paul Lutta

Kenya Institute for Public Policy
Research and Analysis

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Abstract

Electoral reforms aim to improve the responsiveness of electoral processes to strengthen the country's governance systems while meeting people's expectations. The primary aim of electoral reforms is to strengthen electoral processes by fostering enhanced equity, transparency, accuracy, integrity, and inclusiveness. This study analyzed the extent of the implementation of electoral reforms in Kenya in the context of the Constitution of Kenya, 2010, while focusing on the role of electoral management bodies, the legislature, the Judiciary, and political parties in attaining electoral reforms. The study adopted qualitative approaches in analyzing various documents including election reports, electoral laws, political party manifestos, policy documents, and post-election analysis reports, among other relevant documents. The study established that the constitution has strengthened electoral democracy by ensuring the election process and timelines are adhered to, increased political participation and representation more so the participation of independent candidates and election of women, youth, and persons with disabilities (PWDs), timely resolution of electoral dispute, and promotion of good governance. Regarding the sustainability of democracy in relation to the cost of elections, the Independent Electoral and Boundaries Commission (IEBC) can be credited for the timely conduct of elections as per the constitution and for conducting elections in a free and fair manner. Political parties have been instrumental in increasing political participation for women, youth, PWDs, and the marginalized through several interventions. However, the election of women remains low, thus constraining the attainment of the two-thirds gender rule. Although the National Parliament has passed electoral laws, there has been a delay in the passage of these laws, postponing the implementation of some laws, and retrogressive amendments of some of the electoral laws due to political interest. The Judiciary has been credited for preserving electoral laws, civil and political rights, and the timely handling of election-related disputes. However, the delay in passing electoral laws, the polarized political environment under which key electoral institutions work, the weak implementation of Chapter Six of the constitution, and the limited time for electoral dispute resolution are some of the challenges facing the implementation of electoral reforms. Therefore, there is a need for political parties to adhere to the nomination process and enforcement of electoral laws, including adherence to the two-thirds gender rule right from the nomination stage; strengthen the internal capacities of political parties, the Judiciary, and the Office of Registrar of Political Parties to promote fair and timely internal dispute resolution and extend the time for resolution of election disputes. It will also be important to strengthen the independence of institutions charged with the implementation of electoral reforms by enforcing existing legal instruments.

Abbreviations and Acronyms

CSO	Civil Society Organization
ECK	Electoral Commission of Kenya
KADU	Kenya Africa Democratic Union
GoK	Government of Kenya
KANU	Kenya Africa National Union
KBC	Kenya Broadcasting Corporation
NARC	National Rainbow Coalition
IPPG	Interparty Parliamentary Group
IIBC	Interim Independent Boundaries Commission
IIEC	Interim Independent Electoral Commission
NGEC	National Gender and Equality Commission
KNCHR	Kenya National Commission on Human Rights
ICT	Information Communication Technology
IEBC	Independent Electoral and Boundaries Commission

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1. Introduction

Electoral reforms are neither new in Kenya nor in the world. However, they are rare in established democracies (Dunleavy and Margetts, 1995; Lijphart, 1992) despite being largely part and parcel of the democratic processes. Electoral reforms emanate from an electoral process, political or electoral events aiming to correct anomalies, challenges, and gaps experienced during a past electoral process. Sometimes the reforms may be a result of conformity to the democratic developments across the globe, often originating internally or externally.

Electoral reforms constitute a wider range of issues, which may range from expansion of voting rights, redistribution of constituency boundaries and elimination of electoral anomalies, regulations of political broadcasting, reforms of legislative structures, registration, and voting, political parties financing by public resources and the independence of the electoral management bodies (Norris, 1995; 2012). The International Institute for Democracy and Electoral Assistance (2006) notes that the primary goal of electoral reforms is to improve the electoral process by fostering impartiality, inclusiveness, transparency, integrity, and accuracy. Celies et al. (2011) define electoral reforms as any change in rules (electoral) that leads to a change in the operation of the electoral system.

The overall objective of any electoral reform is to make an election free and fair, increase participation of underserved groups of people in society, reduce electoral violence, and improve the electorate system and the electoral process to deliver results acceptable to the electorate. On the other hand, Sartori (1968) notes that at any given moment, there is always someone or people interested in electoral reforms as the electoral system can be one of the most manipulative instruments of politics. The assumption behind electoral reforms is that those in power only strategically adopt or oppose electoral reforms to protect self-interest and power maximization (Benoit, 2004; Boix, 1999; Grofman, 1990).

Electoral reforms may be in the form of legal, administrative, and political. The legal aspect of electoral reforms may encompass the amendment of the Constitution and other electoral laws to enhance the credibility of the electoral process. The administrative aspects may involve new strategies, structures, procedures, policies, recruitment of electoral management staff, facilitating voting to all groups of people, and the use of technology in voter registration and voting. Political reforms may encompass issues related to transparency of the electoral process, political party funding, and legal frameworks.

Two schools of thought present different directions that electoral reforms should take. Lijphart (1994) and Katz (2007) argue that the electoral process should seek to create better means through which leaders are elected (Reynolds, 1999). The other school of thought is made up of those who believe reforms can be minor or major and serve to improve the electoral process (Jacobs and Leyenaar, 2011; International IDEA, 2006). Reynolds (1999) suggests that electoral reforms in diverse societies such as Kenya should be well understood by the electorate, reflect the opinion of the electorate, encourage conciliatory behaviour, enhance the accountability of the elected leaders, and facilitate the stability of the government.

Electoral reforms in Kenya date back to 1963 when Kenya first attained its independence. The Constitution at independence was clear in terms of provisions of separation of powers between the three arms of government: the National Assembly, which was bicameral, the upper House, and the Senate, which was a safeguard for regionalism or *Majimbo*. It provided for regional governments and the diffusion of power to other institutions, an impartial and independent Judiciary, an independent and political civil service, an extensive and expanded Bill of Rights and protection of minorities, multiparty elections, and an impartial and independent electoral commission (Muigai, 2001; Kimondo, 1996).

The Constitution has undergone various amendments that were designed to serve the country's socio-economic interests. These amendments altered the institutional structures and the content of the Constitution, created institutionalization and centralization of the presidency, and consolidated the rule of law and the institutional rule, and powers of the Legislature and the Judiciary (Muigai, 2001). The framework did not, however, emphasize the eminent significance of elections in Kenya's political landscape that characterizes the present Kenyan state.

This paper conceptualizes electoral reforms as deliberate attempts made by the government to correct identified weaknesses, irregularities, or illegalities in the electoral process, which includes a change in the electoral systems on the legal aspects of conduct of elections, and electoral dispute resolution. The administrative aspects of running an election and the political aspects of the reforms include the nomination of candidates for an election and adherence to the election code of conduct.

The promulgation of the Constitution of Kenya, 2010, laid the frameworks upon which future elections were to be conducted going forward. The 2013, 2017, and 2022 elections were conducted under this Constitution with a restructured electoral law,¹ an Independent Electoral and Boundaries Commission (IEBC),² and an independent Judiciary, Legislature, and other institutions. Though the 2013 elections were peaceful, they were not without shortcomings, making the election short of fully meeting the credibility required by the Constitution; for instance, the mass failure of technology in voter identification, insufficient time for voter registration due to the limited number of registration kits thus locking out close to three (3) million eligible voters from registration, late amendments to the Elections Act thus affecting nomination and vetting of candidates, refusal to allow party agents access tallying centres at the constituency, county, and national tallying centres thus rising issues of transparency.

In addition, the nullification of the 2017 presidential election by the Supreme Court of Kenya citing illegalities and irregularities, the introduction of new election laws amid the fresh presidential elections, divisions among the IEBC commissioners, and the failure of the opposition party to take part in the fresh presidential elections citing inability by the IEBC to conduct a free and fair election demonstrates the existence of gaps towards the attainment of an electoral democracy. .

¹ Article 81, Constitution of Kenya, 2010.

² The mandate of the Interim Independent Electoral Commission, the interim electoral management body that conducted the August 2010 referendum came to an end three months after the promulgation of the new Constitution as was provided under Articles 41 and 41A of Kenya's former Constitution.

This paper assesses the extent of implementation of electoral reforms in Kenya under the Constitution of Kenya, 2010. It analyzes the contribution of the Constitution of Kenya, 2010 to electoral reforms and highlights the achievements of the Independent Electoral and Boundaries Commission, the Judiciary, the Legislature, and highlights the constraints to the attainment of the electoral reforms and the political parties in the implementation of electoral reforms in Kenya.

2. Literature Review

2.1 History of Electoral Reforms in Kenya

2.1.1 Pre-1990 electoral reforms

Several attempts have been made since independence to reform the electoral system in response to the democratization process, and also to serve the needs and demands of the people to free and fair elections. Some of the reforms have been successful while others received mixed reactions from the population. This period was marked by amendments to the Constitution that saw the concentration of power with the executive between 1969 and 1982 when Kenya became a de facto one-party State following the collapse of the opposition heavily facilitated by the ruling party.

The first major reforms were the creation of a de facto single-party State (Makinda, 1996). This was achieved by allowing members of Kenya African Democratic Union (KADU) to resign from their parliamentary positions and join the ruling Kenya African Union (KANU) through organized mini elections in 1966 in the promise that they would be given Cabinet positions and enjoy other benefits of patronage that came with the ruling party (Gertzel, 1970).

Besides this, the Constitution underwent several amendments by the executive between 1965 and 1997. For instance, the second amendment to the Constitution was the deconstruction of regional governments by removing regional governments and abolishing the senate (Government of Kenya, 1964), removing the executive powers of regional assemblies, and converting them into province councils. By doing so it meant centralization of power by the presidency. The other amendment was the expansion of the president's powers, which included the power to abolish offices and appoint and terminate appointments in those offices. The expansion of the presidential powers had implications for the independence, impartiality, and political neutrality of the civil service at the time. The existence of an independent public service was key in the provision of public services and stability of the government and insulating public services from the political process (Ojwang, 1978).

Other additional amendments were changes in electoral laws by abolishing independent candidates, thus infringing on the political rights of individuals.³ Additionally, it gave the president power over parliament by allowing the president to nominate members to the house, with the potential of diluting any opposition (Mueller, 1966). Key amendments between 1979 and 1997 were the requirements for public servants interested in running for an electoral office to resign from public service six months before the elections.⁴ This amendment aimed to eliminate the abuse of office by people in public office who intended to

³ Section 78 and 80 of the Constitution of Kenya.

⁴ The Constitution of Kenya (Amendment) No. Act number 5 of 1979.

vie for a political office. Critics point out the creation of a de jure one-State party,⁵ which outlawed opposition parties and interfered with the Bill of Rights, thus giving the ruling party a monopoly over power (Kimondo, 1996). There was also the abolishment of the secret ballot in 1988 and replacing it with Mlolongo⁶ voting (Omukada, 2002). Critics argue that Mlolongo was conceptualized to identify voters who were against the ruling party or the party's preferred candidates and the dissenters were victimized (away, 2015).

The other amendments aimed at strengthening the judicial system. There was also a limit to the right to bail for penal code offenses punishable by death,⁷ this was considered an infringement on human rights and interference with the independence of the Judiciary and public service. The executive also took solely the role of expanding the parliamentary representation by creating new constituencies. This function under the law is reserved for the electoral commission, an independent constitutional body, which by law is not subject to the direction of any person or authority.

2.1.2 Post-1990 electoral reforms

The years between 1990 and 2002 were synonymous with the democratization process actively led by the civil society groups and donor agencies (Nasong'o, 2005). The first breakthrough in electoral reforms happened on 3rd December 1991, which saw the opening of the closed political space and the introduction of multiparty elections in Kenya (Ndegwa, 1996; Mutunga, 1999; Murunga and Nasong'o, 2007; Mutua, 2008). This was achieved by the repeal of Section 2 (A) of the Constitution, which had outlawed political pluralism, and was amended (Amendment Act No. 12 of 1991) to allow for the formation of opposition political parties, hence multiparty elections (Murunga and Nasong'o, 2007). Similarly, the Constitution was amended requiring the winning presidential candidate to get at least 25 per cent of the votes in five (5) out of the eight (8) provinces.

However, the repeal of Section 2 (A) was not enough to usher in competitive politics under a multiparty system, since a myriad of laws and strategies were still in place that prohibited the realization of competitive politics. For instance, there was still the existence of intimidation and restriction of activities of opposition political parties (Ndegwa, 1998), through detention (Slovo, 1992), political trial, torture (Kimathi and Butt, 2008), arbitrary arrests, and police brutality. One other major concern was that the elections were still administered by the provincial administration, which had been accused of being partisan, thus a feeling that elections were not free and fair.

5 The Constitution of Kenya Amendment Act (NO.) of 1982.

6 Mlolongo voting loosely translated as queue voting where voters were required to line behind their preferred candidate in an election. This system was intimidating to the voters and was also used to weed out the ruling party dissidents.

7 Robert Wasson. "Law and Development in the third World Ensuring Protection for the Rights of Criminal Offenders" in Yash Vyas et al. (ed) Law and Development in the Third World. pp.184-217.

The second wave of reforms took place in 1997, with support from various stakeholders (Barkan and Ng'ethe, 1998), political parties, and civil society (Murunga and Nasong'o, 2007; Mutunga, 1999; Cowen and Ngunyi, 1997) under the auspices of Inter Parties Parliamentary Group (IPPG) in support of minimal reforms to support the 1997 elections. The reforms focused on the restoration of civil liberties; freedom of association and freedom to access information. They included the abolition of the limiting laws that hindered the activities of the opposition political parties, such as the repeal of the Public Order Act, the Public Security Act, and the Chief's Authority Act. Other additional laws were the Presidential Elections Act and the abolition of permits among the political parties to conduct a public rally, and elections to be exclusively managed by the Electoral Commission without interference from the Provincial Commission. Similarly, political parties would also jointly nominate members of the Electoral Commission. The Kenya Broadcasting Corporation (KBC) Act was amended to ensure that KBC provides fair coverage to all political parties. The removal of the draconian laws was to help promote the activities of opposition political parties and level the playing field for competitive electoral politics for a free and fair election.

IPPG reforms were put to test in the 1997 and 2002 elections but on most occasions, they were not adhered to by the ruling government, for instance, the State broadcaster was accused of being biased in its broadcast, mostly failing to offer coverage to the opposition (Oyugi, 1997). There was still involvement of the Provincial Administration and civil servants in the elections, by campaigning for the ruling party (Oyugi, 1997). The opposition was also intimidated through violence instigated by the State to intimidate the opposition's supporters. For instance, violence was more common during the electioneering period in KANU strongholds to drive away perceived supporters of the opposition parties residing or working in those areas. For example, in the run-up to the 1992 and 1997 elections, communities associated with opposition parties in Rift Valley and some parts of the Coast became subject to harassment and intimidation by the state (Oyugi, 1997).

The coming to power by the NARC government in 2002 did not leverage the playing ground for the opposition in relation to the IPPG reforms. The status quo of the KANU regime was still maintained. The NARC government appointed commissioners to the Electoral Commission of Kenya (ECK) without consulting the opposition parties in the run-up to the 2007 elections and used civil servants in election campaigns (Oloo and Oyugi, 2002; Oyugi, 2003). The climax of the lack of better electoral reforms was the 2007 election, which fell short of the standards of free and fair elections resulting in post-election violence. One of the shortcomings for failure in the implementation of the 1992, 1997, and 2007 electoral reforms was the lack of a clear framework to guide the reforms as political parties were much more concerned with getting power.

After the 2007 post-election violence, the Independent Review Commission (IREC)⁸ led by Kriegler recommended a range of reforms, which included the disbandment of the Electoral Commission of Kenya (ECK) and replacement with the Interim Independent Electoral Commission (IIEC) and Interim Independent Boundaries Commission (IIBC) to spearhead the electoral reforms and provide recommendations to parliament. The Commission on Post-Election Violence (CIPEV) famously known as the Waki Commission investigated facts and circumstances leading to violence and the conduct of state security agencies in handling the violence and recommended comprehensive constitutional reforms to restore confidence and trust in the Judiciary.⁹

2.1.3 Electoral reforms under the Constitution of Kenya, 2010

The 2013, 2017, and 2022 elections were conducted under a new electoral system. The Constitution of Kenya, 2010, is comprehensive in terms of provisions related to the conduct of the electoral process and provides the principles that govern the elections,¹⁰ introduced the devolved system of governance¹¹ with increased elective positions, established the Independent Electoral and Boundaries Commission (IEBC),¹² a reformed Judiciary, a reformed legal and administrative environment to conduct elections, and the introduction of technology in the electoral process. Other additional reforms included participation in elections as an independent candidate, registration, and management of political parties by the Office of the Registrar of Political Parties, and stipulated timelines for the resolution of election-related disputes. These reforms were aimed at the achievement of free and fair elections.

Table 2.1: A summary historical analysis of electoral reforms in Kenya (1966-2010)

Year of electoral reform	Nature of electoral reform	Critique
1966	De jure one-party State	Changed the political system from multiparty to single party State thus an infringement on political rights
1974	Introduction of voting by secret ballot Reduction of voting age from 21 to 18 years	The secret voting improved the electoral process by increasing transparency and increased political participation

8 The Kriegler Commission, set up in March 2008 and comprising eight members, held an inquiry into the facts and incidents of the elections held in December 2007. The Commission then presented its conclusions in a report that was made public in September 2008; The Kriegler Report on the December 2007 Elections, Nairobi, 2008.

9 Report of the Commission of Inquiry on Post-Election Violence (2008) or the Waki Commission (named after Judge Phillip Waki who was the chair) provides details of the 2007/2008 post elections violence.

10 Article 81, Constitution of Kenya, 2010.

11 Chapter 11 of the Constitution of Kenya, 2010 establishes the devolved system of government and its structure.

12 The mandate of the Interim Independent Electoral Commission, the interim electoral management body that conducted the August 2010 referendum came to an end three months after the promulgation of the Constitution of Kenya, 2010 as was provided under Article 41 and 41A of the former Constitution.

1987	Introduction of queue voting those who scored more than 70 per cent of the vote would be declared the winner	Diminished the quality of the election process and intimidation of voters
1991-1992	Repeal of Section 2A of the Constitution to allow for a multiparty system Amended the Election Laws Act of 1992 endeavoured to provide for the enhancement of the powers of the Electoral Commission in the supervision of elections Removed the election campaign finances cap of Ksh 40,000 The Constitution was amended requiring the winning presidential candidate to get at least 25 per cent of the vote in five (5) out of the eight (8) provinces	Increased level of democracy by increasing political space, strengthening electoral democracy, and a regional vote support for the winning presidential candidate
1997	Inter Parties Parliamentary Group (IPPG) minimal reforms, abolishment of several laws that had an infringement on civil liberties, freedom of association, and freedom to access information Minimum constitutional reforms Membership of the electoral commission was increased from 11 to 21, which included input from opposition political parties which contributed 10 members from a list submitted to him by political parties in proportion to their parliamentary strength Nomination of 12 MPs to be appointed by the president from a list submitted by parliamentary parties in proportion to their relative strength The Constitution was amended to outlaw gender discrimination Statutory law reform Repeal of Chiefs Act, Public Orders Act, Kenya Broadcasting Act, to facilitate the opposition parties to run their activities without interference from the government Administrative reforms Take State out of party politics Fast-track registration of new political parties Release of remaining political detainees	IPPG reforms centred on increasing political rights and freedoms, and inclusivity in the management of the electoral process. One of the shortcomings of IPPG reforms was that the reforms were not centred on laws thus difficult to implement. The reforms were more of a gentleman's agreement. Increased electoral democracy through the promotion of a fair playing ground

2002	Provision for the counting of votes at the polling stations	Increased transparency of the electoral process
2005 Referendum	Increased representation of women and marginalized groups through the creation of special constituencies for women Independent candidates Filling of election petition to be undertaken	Though the referendum failed to go through, it provided for the increase of political representation for marginalized groups, increased participation, and speedy electoral justice
2010	Constitutional change and the creation of Independent electoral management body Introduced the use of technology in voter registration and transmission of results Timely resolution of election complaints Participation by independent candidates A presidential candidate must receive more than half of the total votes cast in an election to be declared president-elect (50% plus one vote) Equal representation of women, youth, and marginalized Public funding of political parties	Management of elections by an independent electoral body, improved management of elections through the introduction of technology, increased participation in the election through independent candidates, inclusivity in political representation, and improved resolution of electoral-related conflicts

Source: Author's compilations from various sources

2.1.4 Acceptance and consolidation of electoral reforms from independence to 2010

i. Multipartyism

The idea of multipartyism was to open political space and allow the electorate to identify themselves with political parties that stood for values, ideas, programmes, and policies that appealed to them. Initially, at independence, the country had a multiparty political system, but this was later turned into a single-party state by law by the ruling party through an amendment to Section 2A of the Constitution. Between 1992 and 2002, the regime still restricted the registration of political parties, despite the repeal of Section 2A of the Constitution to allow for multiparty, for example, the registration of the Safina Party led by Paul Muite and Richard Leakey was delayed for two years since its application in 1995 with no reason for the delay being given until 1997 when its registration was approved (Ndegwa, 1998).

ii. Civil liberties

The punitive laws that existed since independence were still present, for example, the Public Orders Act, which required political parties to obtain a license from the Provincial Administration – an appointee of the president – to hold any political meeting and that the administration would cancel the rallies at their will even if the licenses had been issued based on instructions from the top leadership of KANU. Political rallies and meet-the-people tours organized by the opposition, especially in ‘KANU zones’ would be cancelled, denied, or disrupted, even in areas where the opposition had a strong following, and security forces were under instructions to disrupt the rallies (Oyugi, 2003). To some extent, civil liberties were accepted towards the tail end of the reforms in the elections of 1997, 2002, and 2007.

iii. Administration of elections

Despite the electoral commission’s mandate to facilitate free and fair elections, the commission continued to rely on the Provincial Administration – which remained partisan – in managing elections. There were instances of harassment of the opposition by the government. For instance, prohibiting the opposition from campaigning in the ruling party’s strongholds, limiting identification documents to perceived supporters of the opposition to register as voters, and preventing opposition voters from accessing the polling stations. The removal of election expenditure allowed the ruling party to amass more campaign finances using its existing powers and connections to the advantage of the opposition in the unequal playing ground. The key success of the reforms was the counting of votes at the polling station, which minimized the issue of tampering with the votes.

iv. Free and fair election

Elections in Kenya have been characterized by gaps that had implications for free and fair elections save for the 2002 elections. The negative perception is a result of how previous elections were handled since the state was involved in running the elections. The Provincial Administration was involved in the administration of elections, this included transportation and counting of votes at different locations other than the polling station, thus questioning the transparency of the process. Additionally, there was also an accusation of perceived sponsored election violence that affected the outcome of the elections. This was experienced through violence that could have had implications on the voter turnout.

For instance, the run-up to the 1992 and 1997 elections witnessed election-related violence instigated by the state on perceived supporters of the opposition in the opposition’s strongholds (Oyugi, 1997; NEMU, 1993(a); Kiliku, 1992). The climax of gaps in the election process was the historical 2007/08 post-election violence in Kenya, which was triggered by elections-related dissatisfaction that led to the killing of 1,100 people, displacement of 650,000, and massive destruction of property reported (Republic of Kenya, 2008). The root cause of election violence in Kenya has been long-standing issues of land rights, uncredible elections, unresolved culture of election violence and impunity, and economic and social marginalization (OHCHR, 2008). The Constitution of Kenya, 2010 attempts to

resolve some of these long-standing issues by providing ways elections are to be conducted to achieve free and fair elections.

v. Electoral dispute resolution

For a long time, public trust in the Judiciary has continued to be affected by various factors such as delayed justice. The courts could take a long time to handle election-related complaints with some court rulings being provided a few months before the election. The Constitution of Kenya, 2010, attempts to promote the efficiency of the court system in handling election-related disputes and tends to move away from previous scenarios where election-related cases would take long to be resolved, thus delaying justice and infringing on the political rights of individuals.

Various milestones have been attained progressively towards the attainment of electoral reforms since Kenya's independence and before the promulgation of the Constitution of Kenya, 2010. Key among them is the opening of the political space, which has seen various political parties registered and compete in elections. There have also been increased civil liberties that have been used by civil societies and political parties to agitate for a democratic process through the adoption and implementation of electoral reforms. Additionally, there have been attempts to increase election credibility by promoting tallying of votes at the polling station. This notwithstanding, there is a perception that the country is yet to attain the achievement of a free and fair election. On the other hand, there is a perception of low public trust in the management of elections by IEBC, electoral violence still threatens to derail the election process due to potential issues related to free and fair elections, and minimal attempts to resolve electoral-related disputes.

vi. Policy review

Kenya has had several policies that attempt to promote political, economic, and social reforms in the country. For instance, the Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya recognized the need for political equality, social justice, human dignity, freedom from wants, and equal opportunities for all. Political equality implied that each member of society was equal to their political rights and that no individual or group was permitted to exert undue influence on the policies of the State. The State was to represent the interest of its citizens and was to do so impartially and without prejudice. The State should ensure equal enjoyment of opportunities for all its citizens, by eliminating, exploitation and discrimination, and ensuring the provision of social services. These rights diminished immediately after independence and were replaced by a centralized state that had the monopoly of power that existed to serve people's interests.

The Governance Justice Laws and Order Sector Policy (GJLOS), which was established in 2007 aimed at providing a stable environment for the achievement of the political, social, and economic development of the country by promoting good governance, accountability, and transparency in the management of public affairs, ensuring equal access to justice for all and respect for human rights, peace,

and tranquillity and deliver free, fair and credible elections. A key achievement of the GJLOS reforms was the passage of the Constitution of Kenya, which provides the foundation for the achievements of the GJLOS objectives. For instance, the Constitution provides for national values and principles of governance, public participation, equality for political, social, and economic development for both women and men, non-discrimination on gender, and respect for human rights. However, there exists a weak implementation of the Constitution and a weak culture of constitutionalism.

The political pillar under the Kenya Vision 2030 envisages a democratic political system that is issue-based, people-centred, result-oriented, and accountable to the public. The Vision is anchored on three pillars: economic, social, and political governance. It aims to transform Kenya into a newly industrializing middle-income country offering high quality life in a clean and safe environment. The Vision aims to transform the country's political governance system in the areas of rule of law; electoral and political processes; democracy and improved public service delivery; transparency and accountability; public administration reforms; security, and peace building among others. Key achievements include the promulgation of the Constitution of Kenya in 2010, devolution of power, and improved governance and rule of law through strengthening governance institutions for instance the Judiciary, and the public service. The above policies have attempted to provide a roadmap for the attainment of political, social, and economic development in the country. A key obstacle to the effective implementation of the policies has been the inadequate enforcement of the reforms such as the constitutional provisions on the two-thirds gender rule, coupled with a weak culture of constitutionalism in Kenya.

2.2 Contribution of the Constitution, IEBC, Political Parties, Legislature, and judiciary in the Attainment of Electoral Reforms

Table 2.2: Summary achievements of the Constitution, IEBC, Parliament, and Judiciary on electoral reforms

Nature of the electoral reform	Constitution	IEBC	Political parties	Legislature	Judiciary
Strengthening electoral democracy	<ul style="list-style-type: none"> Establishes the IEBC to supervise elections Establishes other institutions to support electoral democracy, for instance, the Judiciary, Office of Director of Public Prosecution (ODPP), Office of the Registrar of Political Parties (ORPP), and the National Gender and Equality Commission (NGEC) Establishes other legal frameworks to support elections, for instance, the Elections Act, Political Party Act, Leadership and Integrity Act Establishment of a Political Party Fund Provides the national values and principles of governance 	<ul style="list-style-type: none"> Delimitation of electoral boundaries (constituencies and wards) Supervising and conducting elections as per the Constitution and electoral frameworks Undertaking continuous voter registration Undertaking voter education Auditing the voter register Development of voter education manuals Facilitating observation, monitoring, and evaluation of elections and media accreditation 	<ul style="list-style-type: none"> Adherence to the Constitution and other electoral laws in relation to the conduct of elections Party membership recruitment Mobilization for political support Development of political party manifestos Development of political party constitutions 	<ul style="list-style-type: none"> Passage of laws related to elections in compliance with the Constitution, the fifth schedule, and other legal instruments 	<ul style="list-style-type: none"> Preservation of electoral laws (four electoral laws were ruled to be unconstitutional) Two-thirds gender rule, sections on Election Amendment Bill of 2017, Sections of Election Act, 2011 on the transmission of presidential elections

<p>Increased political participation and representation</p>	<ul style="list-style-type: none"> • Establishment of independent political parties • Establishment of devolved units of government with various positions for representation 	<ul style="list-style-type: none"> • Registration and clearance of candidates for an election • Continuous voter registration • Regulation of the process by which parties nominate candidates for election 	<ul style="list-style-type: none"> • Nomination of candidates for political positions • Free and fair nomination processes • Political membership recruitment through party internal structures and processes 	<p>Passage of laws related to election in compliance with the Constitution, the fifth schedule, and other legal instruments</p>	<p>The courts have provided rulings before on the two-thirds gender rule</p>
<p>Increased representation of women, youth, PWDs, and the marginalized</p>	<ul style="list-style-type: none"> • Implementation of the two-thirds gender representation to elective public bodies • Representation of special interest groups in the national assembly and senate through special nomination for Special Interest Groups (SIGs) (women, men and youth) • Establishment of institutions to support gender equality, for example, NGECC 	<ul style="list-style-type: none"> • The regulation of the process by which parties nominate candidates for elections (in observance of the two-thirds gender rule) • Waiver of nomination fees for Special Interest Groups (SIGs) 	<ul style="list-style-type: none"> • Free and fair party primaries • Waiver of nomination fees for Special Interest Groups (SIGs) • Two-thirds gender rule representation in the nomination process • Two-thirds gender representation in the National Assembly • Two-thirds gender representation in political party leadership 	<ul style="list-style-type: none"> • Parliament is to enact legislation to help the achievement of the two-thirds gender representation • Political parties under the Elections Act, 2011 are to help 	

Free and fair elections	<ul style="list-style-type: none"> Establishment of IEBC to support the attainment of a free and fair election The Constitution provides procedures for conducting elections (from voter registration tallying and announcing results) Establishes an independent Judiciary system which plays an important role in determining elections of persons to offices 	<ul style="list-style-type: none"> Voter registration Registration of candidates Conducting the elections Voter tallying Use of technology in conducting elections 	<ul style="list-style-type: none"> Free and fair party nomination processes Adherence with the electoral code of conduct and the Constitution 	The Constitution and election laws (The IEBC Act of 2011, Elections Act 2011, Finance Act, 2013) provide procedures for conducting free and fair elections	Determination of election winners (free and fair elections)
Electoral dispute resolution	<ul style="list-style-type: none"> Establishes an independent Judiciary for electoral dispute resolution Puts in place electoral justice timelines for dispute resolution Establishes legal frameworks for electoral dispute resolution 	Electoral dispute resolutions (arising from the registration of candidates for elections and party primaries)	Political party internal dispute resolution mechanism	The Political Parties Act of 2011 provides for an internal party dispute-resolution mechanism	Electoral dispute resolution
Strengthening of political parties	<ul style="list-style-type: none"> Provides guidelines for the composition and registration of political parties Establishes a political party fund Establishes other legal frameworks for the operation of political parties Establishes other institutions such as IEBC, ORPP, and the Judiciary to help in the implementation of activities of the political parties 	<ul style="list-style-type: none"> Code of conduct for political parties Development of political party nomination rules for candidates 	Two-thirds gender representation in political party leadership	Various laws have been passed to strengthen political parties, for example, Political Parties Act of 2012, and institutions to operationalize the Act -the ORPP	

<p>Promotion of good governance</p>	<p>Creates the national values and principles of governance Creates a code of conduct for public officers Participatory governance and decision making (public participation) Establishes Chapter Six of the Constitution on leadership and integrity Establish other institutions to support the attainment of good governance, for example, the Ethics and Anti-Corruption Commission (EACC) and the Kenya National of Human Rights Commission (KNHRC)</p>	<p>Implementation of Chapter Six on leadership and integrity by vetting of aspirants by IEBC on leadership and integrity Regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election</p>	<p>Gender representation in decision making in political parties Free and fair party primaries</p>	<p>Passage of various legislations such as the Leadership and Integrity Act of 2011 and the EACC Act of 2011 (were passed to strengthen Chapter Six of the Constitution apart from the two-thirds gender rule laws)</p>	<p>Preservation of civil liberties</p>
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Source: Author's compilation from various sources

2.3 Literature Review

2.3.1 Theoretical Framework

The behaviouralist or rational theories, and institutional or sociological theories may be used to explain electoral reforms in the Kenyan context. The rational theory of electoral reforms centres on the principles of optimization, motivation, and information seeking (Benoit, 2004; Shugart, 2008). According to rational theorists, politicians are rational actors, and they make decisions that maximize their interests; thus, they are likely to come up with electoral reforms that maximize their political parties or the politicians themselves to win most of the seats or to win an election. Thus, the political elite reformed the electoral process based on their strategic calculations of maximizing their interests (Benoit, 2004). Therefore, the reforms are likely to attend to issues that only concern political elites to serve their interest, rather than geared towards the achievement of an electoral process that is beneficial to all and different groups (Renwick, 2010; Benoit, 2004). Scholars also observe that rational choice has its shortcomings, which include the high degree of uncertainty about the outcomes of the reforms not favouring the elites (Colomer, 2005). Many reforms tend to take this approach since political parties tend to be the main key players in the reform process.

On the other hand, the institutional theory counters the arguments made by the rational choice and states that electoral reforms may be because of institutional dysfunctions; that is when existing institutions that are mandated to ensure a free and fair electoral process fail to give the acceptable results of a free and fair election process (Shugart, 2008). Reforms in Kenya tend to take this approach, the background of major electoral reforms in Kenya under the Constitution of Kenya is premised on the failure of the institutions to give a credible election resulting in post-elections violence.

Electoral reforms can also be explained through the lenses of the democratization influence, which has implications across the world more so in African countries in the past decades (Bowler and Farrell, 2009). The desire by countries to achieve international best practices in terms of democracy, and donor influence has led to electoral reform initiatives. Agitations for electoral reforms in Kenya in the 1990s by civil society groups and donor influence have been a result of the desire to promote the rebirth of liberal democracy.

2.3.2 Empirical Literature

Electoral reforms are not only initiated by political parties (Benoit, 2007; Bielasiak and Husley, 2013; Boix, 1999) but also by other actors such as institutions and constitutional courts (Norris, 2010). Recently, sitting presidents (Shugart and Taagepera, 2017) have also emerged as central actors in democracies, with presidential and semi-presidential systems more so as veto players since electoral rules are crucial to the exercise of authority in these systems. Voters, pressure groups, courts (Kartz, 2011), and citizen assemblies have previously necessitated electoral reforms (Banducci et al., 1999; Karp, 1999), and in the UK (Weir 2005,

Curtice, 2004). From the Kenyan perspective, civil society has been at the forefront of the agitation for electoral reforms, especially since the opening of multiparty elections in 1992 (Ndegwa, 1996; Mutunga, 1999; Murunga and Nasong'o, 2007; Mutua, 2008). Similarly, donor agencies (Barkan and Ng'ethe, 1998) have been synonymous with the democratization process in Kenya following their overwhelming support for the minimal reforms to support the 1997 elections.

Different types of electoral reforms may be pursued by institutions based on the benefits the reforms will bring to the electoral system, for instance the move from Multi-Member District (MMD) to Single Member District (SMD) and PR electoral system by Japan (Bull and Newell, 1993), Italy's move from SMD to PR (Pasquino, 1993 and Donovan, 1995) and New Zealand change from Simple Plurality System to Mixed System (Vowles, 1995) was due to large political scandals, high levels of public dissatisfaction with politicians, poor accountability, and inefficiency in the existing political systems. In Japan, the new electoral system would mitigate corruption and money in politics.

Wamalwa and Muchemi (2017) observe that electoral reforms are a catalyst of good governance and that implementation of electoral reforms in Kenya remains low, thus derailing the attainment of good governance. Effective implementation of reforms requires commitment and political will on the part of the political elite in observance of electoral rules (Arowolo, 2013), timely participation of all stakeholders, adherence to the legal framework, and execution of their respective roles (Madina, 2018).

Many electoral reforms may exist to remove barriers to voting (Berinsky, 2005). Reforms that make voting easier increase interest in voting, and demographic representative of people of high socio-economic status, who comprise most non-voters in less developed countries, and reduce the costs of election. This may be achieved through easing the registration of voters and the use of convenient ways of voting, such as early voting and voting at any polling station (Hansen, 2001; Stein, 1998; Stein and Garcia-Momet, 1997). Voting by mail (Berinsky, Burns, and Traugoff, 2001; Karp and Banducci, 2000; Oliver, 1996), has been considered to increase voter turnout, especially in voters with higher incomes and education. Similarly, Internet voting (Alvarez and Hall, 2004) has proved to be effective in reducing the cost of elections and as a form of non-physical voting as having to travel to the polling station may prevent citizens from voting on election day due to occupational, medical, weather, or relocation reasons, among others.

Electoral reforms may exist to increase political participation, by increasing some political rights to citizens (Orr and Willams, 2009), especially for those whose voting rights have been infringed for a long time (Oloo, 2003; Kibara, 2003). In some instances, voter turnout for incarcerated individuals tends to be low (Burch, 2011) thus reforms also tend to protect groups that have traditionally been marginalized (mostly women) in political decision making (Geys and Sorensen, 2019).

Electoral reforms may also exist to control electoral and political corruption such as vote buying (Gonzales-Ocantos et al., 2012). This is termed as political clientelism, which is the exchange of individual-level rewards and material goods by political

patrons in exchange for electoral support by voters (Linos, 2013; Robinson and Verdier, 2013). Individuals who receive material incentives are more likely to vote than those who do not (Miguel and Yasemin, 2013). It undermines the political representation of poor voters (Stokes, 2007) and diminishes incentives for the government to be responsive to the needs of the poor (Khemani, 2012). Electoral corruption also manifests in the usage of public resources for campaigns. Unequal access to state-owned media by political parties amounts to discrimination and favouritism (Babeiya, 2011).

Electoral Management Bodies (EMB) are powerful motivators of electoral reforms (Botchway and Kwarteng, 2017) in ensuring democratic consolidation through undertaking electoral reforms. The trust people have in the electoral management bodies' management of elections is positively associated with voter turnout (Carreras and Irepoglu, 2014). In addition, their autonomy has a high impact on the credibility of the elections, and citizens are more likely to express confidence in the election when the Election Management Bodies are independent (Keer and Luhrmann, 2017). Their independence is crucial for electoral integrity (Ham and Garnett). Additionally, professionalism, integrity, transparency, and internal accountability contribute to making institutions more credible and effective. Similarly, political parties, vibrant media, political awareness, and the rule of law also play a significant role in strengthening the institutions (Azhar and Khan, 2017).

Election laws are crucial in producing reforms (Aziz's, 2013). They increase the representation of women in parliament – more women are usually elected in countries where electoral reforms propose proportional representation, for example in the Netherlands and Spain ((Pippa, 2006; Gonzales-Eiras and Sans, 2021); and increased political confidence in the political process, for example, in New Zealand (Lamare and Lamare, 2015). The change of electoral laws also allows the representation of small parties in the electoral process and increases the number of small parties in every election in the Algerian Parliament from 10 parties in the 1997 election to 35 parties in the 2017 elections (Mahgoub, 2020). On the other hand, a change of electoral laws may have a negative impact on reforms, for instance, the enactment of Nigeria's Electoral Act of 2006 did not go a long way toward producing free and fair elections as it had been envisioned (Alabi, 2006). The new laws fell short of shielding the elections from manipulation by the ruling party or the regime in power. The application of electoral biometric technology leads to a reduction in the probability of post-election violence as it increases the efficiency of election administration (Gelb and Diofasi, 2016). It has also been shown that it leads to increased voter in Ghana (Adams and Asante, 2019).

Literature has revealed that electoral reforms may help to address several issues among them: removing voting barriers, increasing political participation, and reducing election corruption such as vote buying. Notably, electoral management bodies are key to the provision of a credible election; trust in EMB results in a credible election outcome. Reforms that entail change in the electoral system are key to the attainment of higher representation of women, and the marginalized as well as the elimination of electoral corruption.

3. Methodology

3.1 Analytical Approaches

This paper adopts a qualitative approach, which stems from the fact that the qualitative design is suitable for descriptive and explanatory studies (Yin 1984 and Babbie 2004). This involved identifying and providing an analysis of key thematic areas targeted by electoral reforms, this involved identifying key areas of electoral reforms intended to be achieved by the constitution or implemented by institutions. The objectives of the reforms were also enumerated, and the key process involved in the attainment of a particular electoral reform, the processes are documented in various legislation acts and institutions laid down procedures. Additionally, the achievements of the reforms were highlighted, and the overall scores were allocated. A rating score was used to measure the level of the achievement of a particular key reform where a score of 0-25 per cent indicates that the intended reform was not achieved, 26-50 per cent show some levels of achievement, 51 -75 per cent indicate fairly achieved and above 76 per cent means that the reforms were achieved.

3.2 Source of Data

This study used data from a wider range of documents and reports, which includes the constitution, various election legislations, policy documents, election observation reports, post-election analysis reports by other government agencies, Kenya Gazette documents, and surveys. The inclusion criteria for the selection of documents that were analyzed was based on the availability of the documents. The context of the study, which the Kenya country studies conducted between 2008 to 2021, considers the changes brought about by electoral reforms.

A total of 45 documents were reviewed, which include the Constitution of Kenya, 2010 (1) political party constitutions (5), various legislations/Acts (12), Other legal documents (12), election observer reports (4), reports from various government institutions (5), policy documents (2), Gazette Notice (1), surveys (2), and empirical study (1). The documents reviewed were published by the government, non-governmental organizations, development partners, and civil society. Most of the documents reviewed were published by government institutions. Additionally, all the documents reviewed were published between 2008 and 2021. The data from these documents provide some highlights on election reforms and election developments in Kenya.

Table 3.1: Data and methodology

Variables	Article/document	Category	Data provided
1. Strengthening electoral democracy	<ul style="list-style-type: none"> The Constitution of Kenya, 2010 Other electoral laws (Political Parties Act, Election Related Act, IEBC Act, Election Campaign Financing Act), ORPP Political parties' constitutions and manifestos 	Legal documents	Legal frameworks on election management
2. Increased political participation and representation	<ul style="list-style-type: none"> Policy documents Vision 2030 Governance, Justice, Law and Order (GJLOS) Anti-Corruption Policy IEBC reports 	Government policy documents	Policy and legal frameworks
3. Increased representation of special interest groups (women, youth, and PWDs)	Kenya Gazette notices in the 2013 and 2017 general elections IEBC reports	Official government gazette	<ul style="list-style-type: none"> Data on special interest groups (women, youth, and PWDs) Legal frameworks on election management Affirmative action measures, Legal framework for equality in political representation List of party primaries candidates, results of party nomination, people elected and nominated to political offices

<p>4. Free and fair elections</p>	<ul style="list-style-type: none"> • Election observers' reports for the 2013 and 2017 elections • European Union observation Mission in Kenya reports, Election Observers Group, Carter Centre Reports, Kenya Human Rights Commission (KHRC), and African Centre for Open Governance (Africog) Judiciary and media • Centre for Multiparty Democracy 	<p>Election observers' reports from local regional and international observers</p>	<p>Information on the nature and conduct of Kenya's elections for 2013 and 2017</p>
<p>5. Electoral dispute resolution</p>	<ul style="list-style-type: none"> • Election-related Reports from other government institutions on Elections, KHRC, NGEC, IEBC, ORPP, IREC, and • Judicial Service Commission 	<p>Election observers' reports from local regional and international observers</p>	<p>Information on the nature and conduct of Kenya's elections for 2013 and 2017</p>
<p>6. Strengthening of political parties</p>	<p>Afrobarometer Round seven (7) survey in Kenya, Perception of Election Integrity (PEI)</p>	<p>Election observers report from local regional and international observers</p>	<p>Information on the nature and conduct of Kenya's elections for 2013 and 2017</p>
<p>7. Promotion of good governance</p>	<ul style="list-style-type: none"> • Election-related Reports from other government institutions on Elections, KHRC, NGEC, IEBC, ORPP, IREC, and • Judicial Service Commission 	<p>Election observers' reports from local regional and international observers</p>	<p>Information on the nature and conduct of Kenya's elections for 2013 and 2017</p>

Source: Author's conceptualization

4. Key Achievements in Electoral Reforms: The Role of the Constitution, IEBC, Political Parties, Legislature, and Judiciary

4.1 Strengthening Electoral Democracy

To support the strengthening of electoral democracy, the government created the IEBC (CoK, 2010).¹³ IEBC is responsible for the supervision of elections and referenda to any elective body established by the constitution at county and national government levels. It is also responsible for continuous registration of voters. The constitution provides for the enactment of various legislation to help in the management of elections, for instance the Elections Act of 2011, the Elections Offences Act, the Political Parties Act of 2011, the Election Finances Act, Election, and Technology Act. These Acts have provisions on how to undertake voter registrations, candidate registrations, and how to conduct party primaries among other things.

Additionally, the Constitution establishes the Judiciary under Article 159 of the Constitution as the custodian of justice in Kenya, the courts are to deliver justice in line with the Constitution and other laws. The Judiciary is expected to handle disputes in a just manner, to protect the rights and liberties of all, thereby facilitating the attainment of the ideals of the rule of law. The Constitution envisages well-governed political parties that promote political democracy and thus establishes the Office of the Registrar of Political Parties to register and manage the activities of political parties. Since its establishment, the ORPP has been able to streamline the activities of political parties, including the registration of independent political parties, and the administration of the political party's fund to support political parties' activities. Further, the Office of the Director of Public Prosecution supports the prosecution of election-related offenses, while the National Gender and Equality Commission promotes political participation for women, youth, persons with disabilities (PWDs), minorities, and marginalized groups.

The Constitution also provides for national values and principles of governance¹⁴ under Article 10, which bind all state organs, state officers, and public officers to observe when making public policies and decisions, and in the performance of their duties. The set of values such as integrity, transparency, accountability, good governance, rule of law, democracy, and participation of the people have been missing in the Kenyan electoral system. It is believed that adherence by institutions and individuals to the national values and principles of governance would strengthen electoral democracy in Kenya.

Further, the IEBC promotes and strengthens electoral democracy by conducting periodic elections as per the Constitution. Following the promulgation of the Constitution of Kenya in 2010, IEBC successfully created 80 new constituencies and 1,450 County Assembly Wards in 2012 and facilitated elections in the newly

¹³ Article 88(1) Constitution of Kenya, 2010.

¹⁴ Article 10 of the Constitution of Kenya on National Values and Principles of Governance.

created constituencies and wards. IEBC can also be credited for conducting the 2013, 2017 (including repeat 2017 presidential elections), and 2022 general elections as scheduled in the Constitution. The 2013 elections were conducted with increased public confidence in IEBC, with some of the electoral processes such as the voting and counting process being considered peaceful and well administered as per election observation reports. The civil societies were also active in scrutinizing the electoral process, lodging complaints, and even litigation. This could be attributed to the civil liberties enshrined in the Constitution of Kenya, 2010.

However, both the 2013 and 2017 elections were not short of challenges, including the failure of Electronic Voter Identification Devices (EVIDs) and the Electronic Transmission of Results System (ETRS), which led to the use of the manual register in some voting points.¹⁵ The application of technology to support elections did not work; there were failures of the electronic voter identification and electronic results transmission system, despite the huge amount of resources spent on the technology. Additionally, the 2017 presidential elections were nullified by the Supreme Court of Kenya, citing the failure of the IEBC to conduct the elections as per the Constitution. Voter turnout stood at 86 per cent in 2013 compared to 78 per cent in 2017, and 64.7 per cent in 2022. The higher voter registration and voter turnout in 2013 and 2017 could be due to the efforts made by IEBC, political parties, and civil society to mobilize voters and party supporters to register and turn out to vote in large numbers. There was a high registration of voters in 2022, but low turnout during voting, which could be attributed to the COVID-19 pandemic, insecurity, and hard economic circumstances, making people unable to travel to their respective polling stations – voters living in urban areas who did not make it to travel to rural areas to vote could have influenced the reduced voter turnout in the 2022 elections.

Table 4.1: Voter turnout during the 2013, 2017 and 2022 elections

Region	Registered voters	Voter turnout	Voter turnout (%)
2013	14,386,144	12,327,700	86.0%
2017	19,611,423	14,989,102	78.0%
2022	22,120,458	14,000,000	64.7%

Source: IEBC

The IEBC was also able to facilitate the observation, monitoring, and evaluation of elections. A total of 58,000 and 120,731 election observers were registered to participate in the electoral processes as long-term and short-term election observers in 2017 and 2022, respectively. These observers were drawn from both international and domestic organizations. Additionally, 4,000 media observers participated in the 2017 elections, with the number increasing to 5,978 in 2022. The Commission also developed a General Handbook for Observers to guide the monitoring and evaluation of the process. The handbook contains the code of conduct that guides election observers in Kenya. Further, the Commission offered to observe the general guidance and support in relation to the election.

¹⁵ The Carter Centre (2013), post-election statement on tabulation and announcement of final election results, Nairobi.

In 2022, IEBC put in place a Leadership and Integrity Vetting Committee (LIVC) during the general elections, unlike in previous elections. This was a way of strengthening democracy by implementing Chapter Six of the Constitution on leadership and integrity. The committee was tasked with vetting aspirants for the general election. In conjunction with the Ethics and Anti-Corruption Commission (EACC) and other relevant agencies, the LIVC submitted vetting details of 21,863 aspirants who intended to participate in the 2022 general election. Five aspirants were found non-compliant and were disqualified from participating in the election. Among the issues they were disqualified from were being impeached from office, failing to produce the required academic documents and those who were barred by the courts from holding public office. IEBC noted the weak structure of the implementation of Chapter Six of the Constitution.

The commission also conducted civic education to encourage participation in the electoral process, reaching over two (2) million individuals through mass media and road shows. However, the communication was majorly in English and Swahili, therefore, disadvantaging many Kenyans. The IEBC also accredited several Civil Society Organizations (CSOs), that also supported civic education. The education covered a range of topics from voting procedures to peaceful campaigns, and the importance of voting for good leaders. Additionally, civic education manuals were produced, and voter information was displayed at polling stations to enhance public understanding.

The Elections Act of 2016 mandates IEBC to undertake an audit of the voter register at least six months before the elections using a reputable audit firm. IEBC was able to undertake an audit of the register for the 2013, 2017, and 2022 elections. The voter register audit aimed to verify the accuracy of the register, recommended mechanisms for enhancing the accuracy of the register, and update the register. The audit report pointed out a few inaccuracies in the details of voters and provided possible administrative and legal recommendations. Additionally, IEBC developed nomination rules for political parties that ensured that political parties present lists of candidates for nomination.

Political parties have remained active in the recruitment of membership in political parties, over time, membership has been on an upward trend. During the 2022 elections, membership stood at 24, 005,714 comprising 15,363,657 males (64%), and 8,642,057 females (36%); this is in comparison to 11, 889,241 during the 2017 elections. The membership growth could be attributed to better management of political parties brought by the Constitution, the Political Parties Act of 2011, and the Office of the Registrar of Political Parties. These legal instruments have provided clear frameworks that guided registration, regulations, management, and operations leading to the improvement in the management of political parties thus attracting membership. Table 4.2 shows the membership distribution of major political parties in Kenya.

Table 4.2: Membership distribution of major political parties in Kenya, 2017

Political party	Male (%)	Female (%)	Total
Jubilee Party (JP)	52	48	7,985,895
Orange Democratic Movement (ODM)	55	45	2,121,053
Wiper Democratic Movement–Kenya (WDM-K)	55	45	433,702
Forum for Restoration of Democracy-Kenya (FORD-K)	64	36	180,439
National Alliance Rainbow Coalition–Kenya (NARC-K)	57	43	120,283
Amani National Congress (ANC)	53	47	63,707
Third Way Alliance Kenya	66	34	36,164
Ukweli Party	62	38	28,788
Maendeleo Chap Party (MCCP)	54	46	62,485
Chama Cha Mashinani (CCM)	53	47	67,405
Kenya African National Union (KANU)	61	39	174,652
Party of National Unity (PNU)	55	45	112,268
Chama Mwangaza Daima	43	57	106,366
United Democratic Party (UDP)	50	50	49,108
Federal Party of Kenya	51	49	29,141
SAFINA	60	40	107,991
The National Vision Party	56	44	51,435
Chama Cha Uzalendo	54	46	46,545
Agano Party	52	48	51,972
Labour Party of Kenya (LPK)	53	47	59,842
			11,889,241

Source: Republic of Kenya, ORPP (July 2017), quoted in Ongaro (2017)

Political parties are required to have party constitutions/rules, which are the governing tool for the party as per the Political Parties Act, 2016. The Constitution provides the objects of the party, party organization, and adherence to the two-third gender rule. Political parties are also required to provide other documents such as political party election rules; party memberships, budgets, political party nomination rules and procedures; code of conduct for political parties, and party manifestos. These documents are meant to streamline the activities of political parties and strengthen democracy. Major political parties have shared their party constitutions and manifestos with the Office of the Registrar of Political Parties.

To keep up with the promotion and strengthening of democracy, the Parliament has passed various legislations that seek to support the electoral reforms thus strengthening the electoral democracy. These include the Electoral and Boundaries

Commission Act, 2011 (No. 9 of 2011), Elections Act, 2011, The Elections Act (Amended), 2016, the Political Parties Act, 2011, the Elections Campaign Financing Act, 2016, and The Leadership and Integrity Act, 2012. These laws support the electoral reforms by ensuring that the elections are conducted according to the provisions of the Constitution. Additionally, Parliament enacted legislations to establish institutions such as the Independent Ethics and Anti-Corruption Commission (EACC), the National Gender and Equality Act, 2011, and the Office of the Director of Public Prosecutions. These institutions play an important role in supporting electoral reforms by ensuring compliance with the Constitution and other election-related laws.

The Constitution bestows the Judiciary with an important role in determining elections of persons to electoral office including the Office of the President through mediating electoral disputes. The Judiciary has continued to remain active during the electoral process and played an oversight role in protecting the electoral laws and preserving the rule of law.

Additionally, in April 2018 the court ruled that some sections of the Election Amendment Bill, 2017 were unconstitutional. The amendments sought to change the management of election results, declaration of results, and annulment of election; addressed inefficiencies pointed out by the Supreme Court that formed the basis for the nullification of the August 8th presidential elections; sought to reduce the quorum for IEBC meetings and decisions from five to three, and allow the activities of the IEBC chairperson to be undertaken by the vice person in the absence of the chair, and allow any other members of the commission to undertake the activities of the commission in case of the absence of the chairperson and the vice chair.

From the discussion, the Constitution of Kenya, 2010, IEBC, political parties, Parliament, and the Judiciary have demonstrated their active participation in strengthening electoral democracy and protecting electoral reforms. However, one of the shortcomings of the Constitution is that it does not consider the sustainability of electoral democracy in terms of the cost related to election processes regarding the use of locally available voting materials and technology. The Constitution does not also provide a wider variety of voting methods to be used, thus disadvantaging many of the voters. This limits their participation in the elections thus affecting their political rights.

Box 4.1: Summary achievements on strengthening electoral democracy

The Constitution

Provides for procedures for conducting elections and other electoral process; provides for the enactment of other electoral laws such as the Elections Act of 2011, Elections Offences Act, Political Parties Act 2011, Elections Campaign Financing Act, Elections Technology; establishes key institutions that support electoral reforms such as the IEBC, Judiciary, and Office of the Registrar of Political Parties; other electoral laws.

IEBC

Timely undertaking of the electoral processes including, delimitation of electoral boundaries conducting civic education, accreditation of media and election observers, developing code of conduct for political party nominations, and vetting of aspirants.

Political parties

Mobilization for political support, membership recruitment, presenting candidates for elections, development of political party constitutions, manifestos, and nomination rules.

Judiciary

Dispute resolution, and interpretation of the laws.

Parliament

Passed laws to support elections, which include the Independent Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011), Elections Act 2011, The Elections Act (Amended) 2016, the Political Parties Act 2011, the Elections Campaign Financing Act 2016, The Leadership, and Integrity Act 2012, National Gender, and Equality Act (2011). Parliament also supported the establishment of key institutions to support reforms such as the EACC (to ensure compliance with Chapter Six of the Constitution on leadership and integrity), NGEC, ORPP, and ODPP.

4.2 Increased Political Participation and Representation

Political participation can be defined as the ability of citizens to take part in political activities and express support and vote for their preferred candidate, to compete for office, and to be informed about and influence public policy. The Constitution supports this by providing guidelines for the registration of voters and protects the political rights of citizens by ensuring that the conduct of elections is designed to facilitate, and does not deny, an eligible citizen the right to vote or stand for election. Article 82 (1)(e) of the Constitution also calls for ‘progressive registration of citizens residing outside Kenya, and the progressive realization of their right to vote’.

The Constitution also promotes increased participation and representation of women, youths, PWDs, and minorities, through the implementation of the provisions of Article 81(b) of the Constitution on the two-thirds gender rule. It also

provides for political representation through independent political parties thus widening the political space and giving citizens a chance to vote for or champion political ideologies outside the framework of the traditional political parties. Various independent political parties have been registered and participated in the 2013, 2017, and 2022 elections.

IEBC has promoted increased political participation and representation through continuous voter registration, clearance of political candidates for elections, and regulation of the process by which parties nominate candidates for elections. Further, IEBC adopted the use of technology in voter registration and voter identification, and electronic transmission of election results to enhance the credibility of the election during the 2013, 2017, and 2022 elections. To mobilize for mass voter registration, the IEBC utilized the mass media and collaborated with universities, and other higher institutions of learning to make it easy for eligible students to register as voters at their respective campuses. People living in the diaspora and inmates were also facilitated to register as voters. Thus, a total of 14.3 million voters were registered in 2013, representing 72 per cent of the targeted 18 million eligible voters. In 2017, a total of 19.6 voters were registered, achieving (82% of the targeted eligible voters), while in 2022, a total of 22 million voters were registered with 40 per cent of the registered voters being the youth.

Table 4.3: Number of registered voters for the 2013, 2017 and 2022 elections

Year	Gender	Registered voters	Percentage
2013	Female	7,246,307	49.00%
	Male	7,542,074	51.00%
2017	Female	9,142,275	46.60%
	Male	10,469,148	53.40%
2022	Female	10,862,267	49.11%
	Male	11,258,191	50.89%

Source: IEBC registered voter by gender 2013 and 2017 comparison

The political parties have actively participated in the electoral process by successfully presenting candidates to run for various political seats. During the 2013 elections, parties cleared about 12,000 candidates for elections (11,714 men and 775 women), in 2017, they cleared 11,253 men and 961 women, and in 2022, 16,000 candidates, who had expressed interest in various political seats were cleared. However, the nomination processes are characterized by technicalities and violence, which sometimes compromise the delivery of free and fair nominations. The Legislature has been instrumental in the passage of laws to support the conduct of elections in compliance with the Constitution, for instance, the Political Parties Act, 2011, Elections Act, 2011, and the Independent Electoral and Boundaries Commission Act, 2011, which has a bearing on the increased political representation. On the other hand, the Judiciary supported the Bill of

Rights by extending voter registration by an additional five days and stopping the requirements for independent candidates to obtain endorsement signatures from non-party members.

In summary, the Constitution provides for increased political participation and representation through the implementation of the two-thirds gender rule, and participation of independent candidates. On the other hand, the IEBC achieved increased participation through voter registration, clearance of candidates for participation, and delimitation of electoral boundaries for increased representation at the county and ward levels, while the political parties the Legislature, and the Judiciary have been active in the clearance of candidates for elections through party primaries, the passage of laws to support elections, and extension of voter registration and resolution of party nomination conflicts, respectively.

Box 4.2: Summary achievements on increasing political participation and representation

The Constitution

Provides for independent political parties to increase participation of independent candidates, and the elections of governors, senators, women representatives, and members of the County Assembly.

IEBC

Undertaking continuous voter registration and registration of candidates for elections.

Political parties

Nominating candidates to participate in the elections for various seats.

Judiciary

Dispute resolution, interpretation of the laws, and protection of political rights by electoral process.

Parliament

Passage of laws to support the conduct of elections in compliance with the Constitution.

4.3 Increased Representation of Women, Youth, Persons with Disabilities (PWDs), and the Marginalized

The Constitution has provisions and legal frameworks to support the increased representation of special interest groups including women, youth, PWDs and the marginalized in decision making to minimize political marginalization in Kenyan politics. It also sets aside 12 seats for nomination by political parties to the National Assembly according to the proportion of members of the National Assembly to represent special interest groups. There has been an upward increase in the number of women vying for elective positions, which has seen more SIG elected in electoral offices. The share of women elected and nominated increased from 1.18 per cent in 1969 to 11.92 per cent in 2022 (Table 4.4).

The Constitution also mandates the state to come up with affirmative action plans that seek to protect and advance the rights of women, youth, persons with disabilities, and minorities.¹⁶ Some of the affirmative action plans put in place include equal opportunities in representation in governance through appointments and equal employment opportunities in the public and private sectors. Additionally, various affirmative action funds are in place to support the socioeconomic empowerment of women, youth, and PWDs such as Access to Government Procurement Opportunities (AGPO), Women Enterprise Fund (WEF), and Youth Enterprise Development Fund (YEDF) to promote and increase participation of women youth and PWDs in decision making and representation. The Constitution also establishes the National Gender and Equality Commission (NGEC), which is mandated to promote and protect human rights and gender equality. NGEC also monitors, investigates, and reports any forms of violations of human rights and gender equality during elections and makes necessary actions required to address the situation.

Political parties are required to come up with ways that will lead to increased participation of women and the youth. This includes ensuring the top leadership of the party complies with the two-thirds gender rule, promotion, and respect for human rights, gender equality, and equity. IEBC, on the other hand, ensures that not more than two-thirds of the members of elective public bodies are of the same gender; it also ensures fair representation of people with disabilities and other persons or groups with special needs.¹⁷ This elaborate framework has progressively helped to achieve increased representation of special interest groups. Electing persons belonging to special interest groups to electoral positions can be achieved if political parties promote increased elections of SIGs through increased nomination of SIGs at party primaries. On the other hand, the Constitution also tends to fall short of alternatives to the electoral system from the current First-Past-the-Post (FPTP) or a change in the presidential system. Different electoral systems have the potential to support the elections of minorities and other marginalized groups.

Key achievements by the IEBC include the regulation and monitoring of the process by which parties nominate candidates for elections in observance of the two-thirds gender rule. For instance, during the 2022 elections, IEBC turned down various political parties that had not complied with the two-thirds gender rule, and the non-compliant political parties had to revise their nomination list before being cleared. Additionally, the IEBC supported increased participation of women, youth, and PWDs by training them on how to go about the electoral process to achieve better and inclusive governance. Further, IEBC waived the nomination fees for special interest groups to encourage increased participation.

IEBC with the support from development partners, also developed nomination rules of political parties that ensured that political parties present lists for candidates for nomination in an alternating manner where the list begins with a woman followed by a man and vice versa. It also trained county leadership of all political parties – among those who were trained were 3,604 males and 4,481

¹⁶ Article 27 (6) of the Constitution

¹⁷ Section 25 (b,c) of Independent and Electoral Boundaries Commission Act 2011

females and chairpersons, secretaries, treasurers, women, and PWDs. This was to ensure that party nomination rules were in line with the Constitution and Political Parties Act of 2011 on gender inclusivity. In addition, the commission reduced registration fees for youth and women to increase their participation. However, the commission reported that the participation of women and youth in the nomination process remained low, thus the need for political parties to intervene to increase the interest of women and youth to participate in elections.

Political parties support increased participation of SIGs (women, youths, and PWDs) through a fair nomination process. However, participation of SIGs in Kenyan politics has remained low since independence despite the presence of various constitutional and legal provisions that attempt to promote increased political participation and representation of women. The 2013, 2017, and 2022 elections were undertaken under the Constitution of Kenya, 2010, which seeks to promote the representation of marginalized groups under Article 100 and Article 27 on equality and freedom from discrimination based on ethnic or social origin, age, sex, disability, and religion among others.

Table 4.4: Women’s representation in parliament since independence

Parliament	Parliament	Total number of constituencies	Number of women elected	Available slots for nomination	Number of women nominated	% of Women elected and nominated
1st Parliament	1963-1969	158	0	12	0	0.00
2nd Parliament	1969-1974	158	1	12	1	1.18
3rd Parliament	1974-1979	158	4	12	2	3.53
4th Parliament	1979-1983	158	5	12	1	3.53
5th Parliament	1983-1988	158	2	12	1	1.76
6th Parliament	1988-1992	188	2	12	0	1.00
7th Parliament	1992-1997	188	6	12	1	3.50
8th Parliament	1997-2002	210	4	12	5	4.05
9th Parliament	2002-2007	210	10	12	8	8.11
10th Parliament	2007-2012	210	16	12	6	9.91
11th Parliament	2013-2017	290	16	12	5	6.95
12th Parliament	2017-2022	290	23	12	6	9.60
13th Parliament	2022-2027	290	30	12	6	11.92

Source: Author’s compilation from various sources

One of the key initiatives undertaken by parties to increase participation in SIGs is clear identification of SIGs and their structures in the party constitution. A closer look at political parties’ constitutions on the representation of SIGs reveals that

major political parties have a clear reference to SIGs compared to minor political parties as described by Section 3 of the Political Parties Act, 2016. Additionally, the parties had party leagues, (for example, women, youth, and disability leagues) in their party constitutions, though most of the political parties lacked structures that help the full participation of special interest groups due to limited resources. These structures support the growth and development of women in political leadership.

During the 2017 and 2022 elections, several political parties reduced or waived nomination fees to support the participation of SIGs (Table 4.5). The nomination fees for most of the political parties were Ksh 1 million for the position of president, Ksh 500,000 for the position of governor, Ksh 250,000 for the position of senator, Ksh 200,000 for the MP position, Ksh 200,000 for Woman Representative position and Ksh 50,000 for MCA position. However, SGIs paid either 75 per cent, 50 per cent, 25 per cent, or 20 per cent of the main fees or were exempted as shown in Table 4.5 for a few selected major political parties whose information was available.

Table 4.5: Nomination fees paid by SIGs for different political parties during the 2022 elections

	President			Governor			Senator			MP			Women Representative			MCA		
	Female	Youth	PWDs	Female	Youth	PWDs	Female	Youth	PWDs	Female	Youth	PWDs	Female	Youth	PWDs	Female	Youth	PWDs
Jubilee				50	25	0	50	20	0	50	25	0	50	50	0	50	30	0
UDA	50	50		50	50	0	50	50		50	50		50	50		50	50	
ODM	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50
Wiper Democratic Party							75						75					
Ford Kenya	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50
2013 elections																		
Jubilee	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50
ODM	No information available																	
Wiper Democratic Party	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75
Ford Kenya	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50
NARK-Kenya	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
Amani National Congress	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50
Third way Alliance Kenya	No information is available																	

Ukweli Party	Fees are standard across all positions, no special fees for SIG											
Maendeleo Chap Chap	No clear rules concerning fees paid by SIG											
Chama Cha Mashinani	No fees for SGI											
KANU	Only vulnerable groups pay half of the fees											
Party of National Unity	SIG receives discounted fees											
United Democratic Party								50	50	50	10	10
Federal Party of Kenya	No fees						50	50	50	50	50	
Safina	50	50	50	50	50	50	50	50	50	50	50	50

Source: Various sources

A clear definition of SIGs helps political parties to put in place structures and resources to support the participation of SIGs in electoral politics to achieve diverse representation as per the Constitution and Political Parties Act. However, critics argue that the reduction of fees is not adequate to ensure equality in political participation among the SIGs. This is because women, youths, and PWDS a myriad of problems including electoral violence, limited finances, chaotic and non-democratic party primaries, and expensive political campaigns that affect their performance. It will be fruitful if political parties provide a conducive environment for participation that is free from violence. Further, the First Past the Post (FPTP) system does not contribute to the election of many SIGs compared to the Mixed Member Proportional (MMP) Representation.

Two-thirds gender rule in party primaries

The Constitution provides for gender inclusiveness in decision making through the promotion of two thirds gender principle. Political parties are to play an important role in promoting the attainment of the two-thirds gender rule. Increased participation of women in electoral politics can be achieved by having a good number of women nominated during party primaries. However, it remains difficult to realize this because most of the political parties fail to meet the two-thirds gender rule in party nomination.

Although male candidates continue to dominate party primary nominations in all electoral seats, there has been an increase in political participation and representation of women. For instance, the number of women candidates who were cleared to vie for various political seats increased by 11 per cent from 1,300 female candidates in 2017 to 1,962 in 2022. The gubernatorial race attracted an increase of female candidates from nine (9) candidates in 2017 to 22 candidates in 2022, while the senatorial seat attracted 13 per cent of women of the total gazetted candidates. This increase can be attributed to various measures that have been put in by political parties to increase women’s participation key among them, issuing direct tickets to women, and the reduction of nomination fees. However, negotiated democracy among nomadic communities disenfranchise women participation.

Table 4.6: Political party primaries nominations in relation to the two-thirds gender rule in the 2017 and 2022 general elections

Elective positions	2017			2022		
	Men	Women	Youth	Men	Women	Youth
President	8	0	0	4	0	0
Deputy president	7	1	2	111	2	0
Governor	202	9	7	243	22	8

Senator	236	20	35	292	47	62
CWMNA	-	298	35	-	360	63
MNA	1761	131	260	1899	234	338
MCA	10,957	900	3,091	11,638	1,292	3,879

Source: IEBC

In 2022 there was an increase in elected SIGs as compared to the 2017 and 2013 general elections. This comprised the election of seven (7) women governors, three (3) senators, 30 Members of the National Assembly, and 115 members of county assemblies (Table 4.7). Currently, women hold 201 out of the 1,882 elective seats representing 10.6 per cent of elected leaders compared to 172 (9.1%) seats in 2017 and 145 (7.7%) seats in 2013. Despite these improvements over time, the composition of the Parliament still fails to meet the threshold of two-thirds gender rule.

Table 4.7: Number of elected men and women in previous elections

Period	2013		2017		2022	
Position	Elected		Elected		Elected	
	Men	Women	Men	Women	Men	Women
President	1	0	1	0	1	0
Deputy president	1	0	1	0	1	0
Senator	47	0	44	3	44	3
MNA		16	267	23	260	30
CWMNA	-	47	-	47	-	47
Governor	47	0	44	3	40	7
Deputy governor	38	9	40	7	39	8
MCA	1366	84	1354	96	1335	115
Total	1500	156	1731	179	1720	210

Source: IEBC

Despite the provisions, the elections have not fully produced a sizeable number of women to match the two-thirds gender principle as required by the Constitution. Key remarkable improvements over time include the election of Governors from none in 2013 to three (6.3%) in 2017, and seven (14.9%) in 2022 (Figure 4.1). Also, the number of female deputy governors increased from none in 2013 to seven in 2017 and eight in 2022. There was one (1) youth elected to the Governor position in 2017 (IEBC, 2020) and two (2) in 2022.

Additionally, in the Senate, the number of women elected also increased from none in 2013 to three (6.4%) in 2017 and remained the same (6.4%) in 2022. With respect to the youth, six (12.7%) senators were elected in 2013 and dropped to three (6.4%) in 2022.

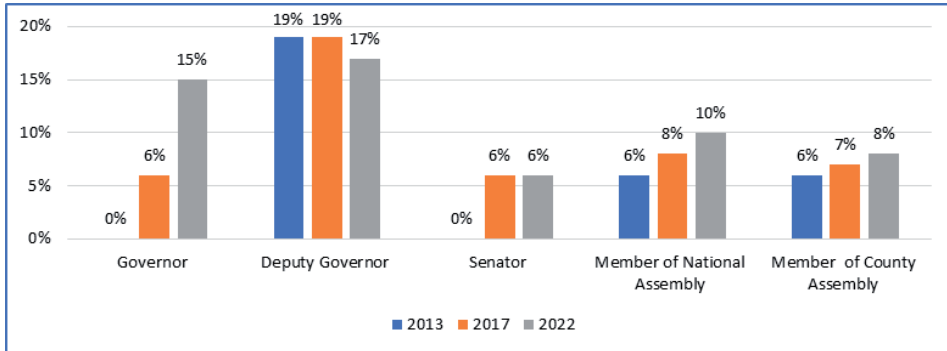
The number of youthful MPs also drastically reduced from 17 (5.8%) in 2017 to 3 (1%) in 2022 (NGEC, 2022). The representation of PWDs also reduced from six (6) in 2017 to two (2) in 2022. However, there was no comparative data available for 2013 as well as overall data on the number of PWDs contestants for 2013, 2017, and 2022; hence, it was not possible to establish the number of PWDs who were elected out of all PWD contestants. In the County Assemblies, women representation increased from 82 (5.7%) in 2013, to 97 (6.7%) in 2017, and to 100 (6.9%) in 2022. With respect to youth representation in the County Assemblies, data was not available for 2013. In 2017, there were 287 (19.7%) youths out of 1,450 elected as MCAs, of whom 274 (95.5%) were males and 13 (4.5%) were females (IEBC, 2020). However, in 2022, there was a drastic reduction as only 10 (0.7%) youths were elected as MCAs (NGEC, 2022). With respect to PWDs, there were no available data for 2017. However, in 2013, 10 PWDs were elected to the County Assemblies, all of whom were males (NGEC, 2016), this number reduced drastically to two (2) in 2022.

Table 4.8: Election of SIGs during the 2022 elections

Position	General		Youths (35 years and below)		PWDs	
	Men	Women	Men	Women	Men	Women
President	1	----	-	-	-	-
Deputy president	1	-	-	-	-	-
Governor	40 (85.1%)	7 (14.9%)	2 (4.2%)	-	-	-
Deputy governor	39 (83.0%)	8 (17.1%)	-	-	-	-
Senator	44 (93.6%)	3 (17.0%)	3 (6.3%)	-	-	-
CWMNA	N/A	47 (100%)	N/A	1 (2.0%)	-	-
MP	261 (90%)	29 (10%)	3	-	2	-
MCA	1350	100	10	-	2	-
Total						

Source: various sources

Figure 4.1: Percentage change in representation of women during the last three elections



Source: Various sources

Political parties are also required to abide by the democratic principle of good governance and free and fair elections within the parties as per Article 88. The primaries should live up to the commitments of the realization of the two-thirds gender rule. Although Section 9 of the Election Offences Act of 2016 prohibits voter bribery and any form of inducement, several electoral malpractices were reported during party primaries for 2013, 2017, and 2022. The 2013 party primaries were perceived to be marred with technicalities with voting failing to take place in several constituencies. In areas where voting took place, vote counting did not end on time, there were also allegations of fraud, rigging, and manipulation of results. Major political parties opted to hold the primaries close to the deadline and, therefore, there was little time to address party electoral disputes.

The Parliament has been able to pass various laws that seek to increase the participation of women, youth, persons with disabilities, and the marginalized in line with the Constitution. These include the Political Parties Act 2011, the Elections Act, 2011, the Independent Electoral and Boundaries Commission Act 2011, the National Gender and Equality Commission Act, 2011, and the County Government Act, 2012. The Political Parties Act 2011 established the political parties fund to support the activities of political parties whereby 30 per cent of the fund should be used to support increased representation of women in Parliament. The Elections Act 2011 also enforces the implementation of the two-thirds gender rule among political parties regarding the nomination of candidates for special seats in the National Assembly and the Senate.

The key role played by the Judiciary to achieve increased participation of the SIGs includes the enforcement of the adoption of the two-thirds gender rule through various petitions presented to the courts. The courts had previously offered advisory opinions on the attainment of the two-thirds gender rule.

Box 4.3: Summary achievements on increased representation of women, youth, persons with disabilities (PWDs), and the marginalized

The Constitution

The Constitution supports the attainment of two-thirds gender rule, for instance, 12 nomination seats in the National Assembly are reserved for women, county women representative; It also provides for the enactment of other electoral laws to support increased participation of women.

IEBC

Developed political party nomination rules in relation to the two-thirds gender rule and the enforcement of the nomination rules for political parties, which should conform with the two-thirds rule; waiver of nomination fees for SIGs to increase their participation.

Political parties

Reference of SIGs in political party constitutions and provision of party structures that facilitates; participation of women in politics; waiver of nomination fees for SIGs.

Judiciary

Enforcement of the adoption of the two-thirds gender rule, the court had previously offered advisory opinions on the attainment of the two-thirds gender rule and gave orders compelling the Parliament to enact legislations within sixty days.

Parliament

Established structures to operationalization the political party fund
Established other institutions to support the participation of women in politics, for example, ORPP, NGEC Political Parties Act, 2011, National Gender, and Equality Act, 2011; supported the establishment of key institutions to support reforms such as the EACC to ensure compliance with Chapter Six on leadership and integrity, NGEC, ORPP, ODPP

4.4 Free and Fair Elections

The Constitution attempts to strengthen Kenya's electoral democracy through the achievement of free and fair elections. It also sets out the general principles of the electoral system to help achieve free and fair elections whereby the elections are by secret ballot, free from violence, intimidation, improper influence or corruption, conducted by an independent body, transparent, and administered in an impartial, neutral, efficient, accurate and accountable manner. The Constitution also requires that the method of voting utilized is simple, accurate, verifiable, secure, accountable, and transparent. All these are to ensure that we achieve a free and fair election. The Constitution also establishes an independent judicial system, which plays an important role in determining elections of persons to electoral office including the office of the president through mediating electoral disputes. The Judiciary, through the Supreme Court, resolves disputes arising from presidential elections. The petitions seeking to challenge the president-elect should be filed at the Supreme Court within seven (7) days after the declaration of election results and to be heard and determined by the Supreme Court within 14

days. Thus, the Constitution attempts to make the electoral justice system efficient and promote the attainment of individual political rights.

The Legislature's contributions towards free and fair elections include the passage of various legislations to support the attainment of free and fair elections and the promotion of democracy. These legislations include the Independent Electoral and Boundaries Commission Act 2011, which establishes IEBC. Apart from supervising elections, the commission also ensures that votes are counted, tabulated and the results announced promptly by the presiding officers at each polling station and that the results from the polling stations are openly and accurately collated and promptly announced by the returning officers. It also safeguards electoral materials to eliminate electoral malpractices. This is to achieve the constitutional threshold on the integrity of elections to minimize disputes arising from the electoral process.

There is also the Election Act 2011, which establishes the Electoral Code of Conduct that guides the behaviour and conduct of political parties and candidates during the electoral process. This ensures compliance with electoral laws and helps to stop or minimize electoral violence when the elections are free and fair. The Political Parties Act 2011 also provides how parties should conduct nominations to achieve free and fair party primaries. For instance, parties are expected to respect, uphold, and promote democratic practices through free, fair, and credible political party nominations. Other additional laws include the Elections (Technology) Regulations 2017, which guides the use of technology in the elections; for efficiency in managing the elections to achieve a credible election.

Further, the Elections (Voter Registration) Regulations, 2017 provides for continuous registration of voters; Elections (General) Regulations, 2017 provides for the procedures to be followed in the conduct of general elections, which includes the appointment of poll officials, the nomination of candidates by political parties for various seats, submission of party membership lists, campaign period, voting procedures, counting, tallying and declaration of results as well as procedures for repeat presidential elections. Elections (Voter Education) Regulations, 2017 provides for rules and regulations on the conduct of voter education including appointment and accreditation of voter educators and procedures for conducting voter education. There is also the Elections (Party Primaries and Party Lists) Regulations, 2017, which provides for procedures for conducting party primaries including preparation of party lists by political parties, preparation of party nomination rules and procedures, and nomination code of conduct. The nomination rules ensure compliance with the two-third gender rule and are enforced by IEBC. The Rules of Procedure on the Settlement of Disputes, 2012, establish guidelines for resolving electoral disputes related to candidate nominations, voter registration, and violations of the electoral code of conduct. Additionally, the Elections (Parliamentary and County Elections) Petitions Rules, 2013, and the Supreme Court (Presidential Election) Petition Rules, 2017, provide further regulations governing election-related petitions. In addition, the Elections Campaign Financing Act, 2013, provides for the regulation, management, expenditure, and accountability of election campaign funds during election and referendum campaigns to provide a level playing field for all the political parties.

IEBC is responsible for the regulation and administration of campaign financing. The Act is intended to promote good governance and a sustainable democratic political system. However, the implementation of the Act was suspended. Thus, this presents an unlevel playing field, leading to political parties with more resources tending to do better in elections. Apart from establishing the IEBC to manage elections, the Legislature has also established the Office of the Registrar of Political Parties, the National Police Service, and the Office of the Director of Public Prosecutions. These institutions play an important role in supporting the attainment of free and fair elections.

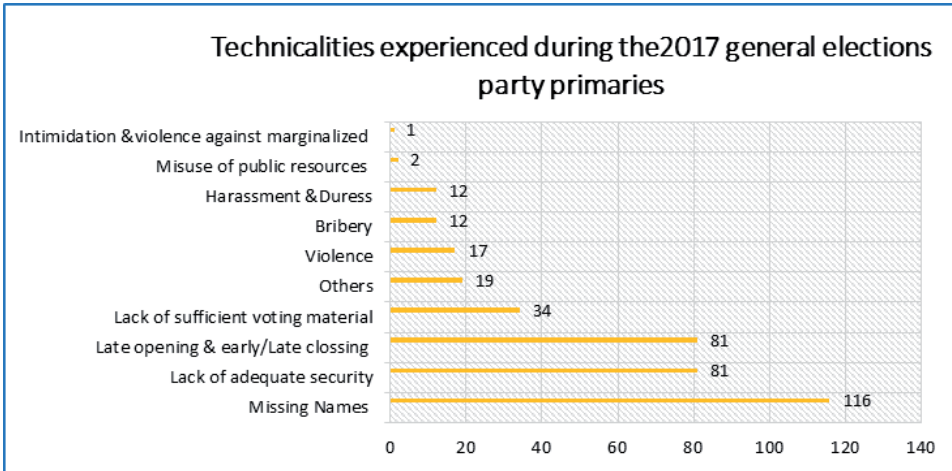
Some of the key achievements by IEBC include conducting the 2013 and 2022 elections which were considered free and fair following the Supreme Court of Kenya ruling that dismissed the presidential petition as filed by the opposition party. However, the 2017 presidential election was nullified by the Supreme Court of Kenya citing election-related irregularities and ordering a fresh presidential election. The nullification of the presidential elections in 2017 by the Supreme Court of Kenya points out IEBC's failure to provide a credible election as provided by the Constitution. The 2013 and 2017 elections were not short of challenges including disruptions of the electronic voter identification devices (EVIDs) and the electronic transmission of results system (ETRS) thus resulting in the use of the manual register that had no control against multiple voting.¹⁸

Political parties are key actors in the electoral process, and they play a significant role in achieving free and fair elections. They support the attainment of free and fair elections by adhering to the Constitution, the electoral laws, and the electoral code of conduct, and by conducting free and fair party nominations. Political parties are also required to abide by the democratic principle of good governance and conduct regular free and fair elections within the parties as per Article 88. Party primaries are required to adhere to the commitments of the realization of the two-thirds gender rule. Although Section 9 of the Election Offences Act of 2016 prohibits voter bribery and any form of inducement, several electoral malpractices were reported during party primaries for 2013, 2017, and 2022. The 2013 party primaries were disrupted by technicalities with voting failing to take place in several constituencies. In areas where voting took place, vote counting did not end on time, there were also allegations of fraud, rigging, and manipulation of results. Major political parties opted to hold the primaries close to the deadline and, therefore, there was little time to address party electoral disputes.

Major technicalities experienced in the 2017 primaries include missing names, lack of adequate security, and late opening/ early closing of polling stations. These malpractices hinder the active participation of the electorate in the affairs of the political party activities and the promotion of internal democracy in political parties (Figure 4.2).

¹⁸ The Carter Centre (2013), Post-election statement on tabulation and announcement of final election results, Nairobi.

Figure 4.2: Technicalities arising from party primaries during the elections 2017



Source: KNCHR 2017

The 2022 party primaries were undertaken under better regulations, unlike the 2013 and 2017 elections. However, incidents of inducements and undue influence were recorded in Nairobi (27%), Nakuru (18%), and Kakamega (9%) during the 2022 party primaries. In terms of inducements by political parties, UDA recorded the most inducements at 72.7 per cent, Amani National Congress (9.1%) Pamoja Africa Alliance (9.1%), and Wiper Democratic Party (9.1%). Other insufficient voting materials, missing names, late opening of polling stations, misuse of public resources, and electoral misinformation.

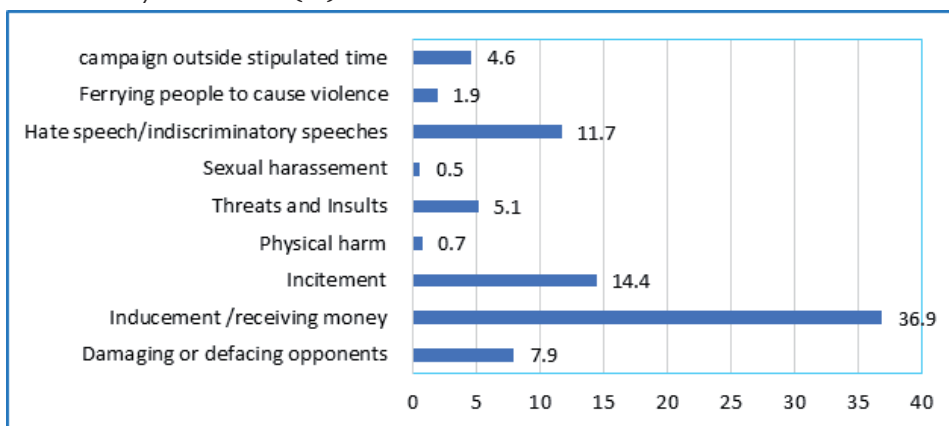
KNHRC also documented the issue of drought famine, and insecurity in various parts of the country including Lamu, Garissa, Marsabit, Baringo, Elgeyo Marakwet, Mandera, Nakuru, Turkana, and West Pokot counties because of bandits, and al-Shabaab. These led to displacement and involuntary movement of people out of the affected areas thus affecting many number people who could have participated in the nomination process either as voters or aspirants. Additionally, for the 2022 elections, major political parties (90%) unlike in 2013 and 2017 opted to do indirect nomination as opposed to universal suffrage, though there were low levels of compliance with the provisions of Section 38G of the Political Parties Act, 2011. Also, in some instances, the results from the primaries had to be changed after party internal negotiations, and direct tickets were issued to other candidates for various reasons thus a clear indication of non-adherence to the Constitution and Political Parties Act.

Election malpractices faced by SIGs during party primaries

SIGs also experienced some electoral malpractices during political party primaries, the key notable ones were during political rallies where SIGs faced a myriad of electoral malpractices, such as voter bribery (36.9%) and incitement (14.4%). Figure 4.3 shows some of the technicalities experienced by SIGs during

party primaries. Anomalies such as missing names in 116 cases, lack of adequate security, late opening/closure of polling stations, and insufficient voting materials were common in party primaries, which might have affected the transparency of the process.

Figure 4.3: Malpractices faced by SIGs during political party primaries in the 2017 elections (%)



Source: NGEC (2017)

Box 4.4: Summary achievements on free and fair elections

The Constitution

Provides procedures for conducting elections and other electoral processes, and for the enactment of other electoral laws to support a credible election; establishes key institutions that support reforms such as the IEBC, the Judiciary, and the Office of the Registrar of Political Parties.

IEBC

Undertaking the electoral processes, Conducting the general elections, developing a code of conduct for political party nominations, and vetting aspirants.

Political parties

Adherence to the Constitution, the electoral laws, and the electoral code of conduct and conducting a free and fair party nomination process.

Judiciary

Timely resolution of electoral-related disputes key among them is the nullification of the 2017 presidential elections.

Parliament

Passed various laws to support elections, including the Electoral and Boundaries Commission Act, 2011 (No. 9 of 2011), Elections Act, 2011, The Elections Act (Amended) 2016, the Political Parties Act, 2011, the Elections Campaign Finance Act 2016, The Leadership, and Integrity Act, 2012, National Gender, and Equality Act, 2011, and supported the establishment of key institutions to support reforms such as the EACC to ensure compliance with Chapter Six on leadership and integrity, NGEC, ORPP, and ODPP.

4.5 Electoral Dispute Resolution

The Constitution, the Elections Act, 2011, Political Parties Act, 2011) the Independent Electoral and Boundaries Commission Act, 2011, and the County Government Act, 2012 provide a legal framework for electoral dispute resolution. They spell out various kinds of disputes that can be handled by the electoral laws and vests jurisdiction to the institutions that play roles in dispute resolution. This tends to move away from earlier periods when election cases used to take longer for resolution. The Constitution states that electoral disputes other than those of presidential elections should be filed within 28 days after the election.

One of the major electoral reforms brought by the Constitution is the speedy resolution of election-related disputes. The Constitution introduced timelines for hearing and determining election petition cases, Article 140 binds the Supreme Court to hear and determine a presidential election case within 14 days from the time of filing a petition. Article 105, on the other hand, binds the High Court to determine parliamentary election disputes within six months while Magistrates courts should rule over the election for members of the county assembly within six months after the 28-day window period of filing the case after the elections. The Elections Act 2011 also indicates that election appeals petitions should be heard and determined within six months. Thus, the Constitution tends to improve the efficiency of the courts in handling election-related cases.

The Constitution bestows the Judiciary with the important role in determining elections of persons to electoral office including the office of the president through mediating electoral disputes. It also seeks to alter Kenya's political culture and obligates the judges to interpret and enforce its provision in a manner that promotes democratic and accountable governance.¹⁹ It establishes the Supreme Court, Court of Appeal, High Court, and other courts. The Supreme Court determines disputes arising from presidential elections with the appellate jurisdiction to hear and determine appeals from the Court of Appeal; and any other court or tribunal as prescribed by national legislation.

The Elections Act 2011 mandates IEBC to solve electoral disputes arising from the party primaries within seven days after the primaries. The Political Parties Act, 2011 provides for mechanisms for dispute resolution within parties. A total of 576 electoral disputes for various political seats were filed and resolved within the stipulated timelines during the 2013, 2017, and 2022 elections. However, various concerns have been raised about the need to decentralize various bodies responsible for electoral dispute resolution throughout the country to increase access to electoral justice. One of the shortcomings of the presidential election petitions is that they have limited timelines, which affect grieved parties for adequate preparation and submission of evidence for effective delivery of justice.

The Judiciary has remained active in the interpretation, and preservation of the electoral laws and electoral dispute resolution. For instance, towards the August 8th 2017, elections, IEBC had declared that it had the sole responsibility of modification and verification of presidential results and that the constituency was not the primary point of declaring the presidential result. The courts ruled this

¹⁹ See Article 10, 20(4), 159, and 259 of the Constitution of Kenya 2010.

to be unconstitutional saying that results declared by the returning officers at the polling stations should be final and not altered by the IEBC.

The conduct of elections by IEBC has seen several election petitions registered in the courts. The 2017 elections registered a total number of 299 election petitions being the highest in comparison to 188 election petition cases filed in 2013 and in 2022. The petitions were handled within the Constitution’s stipulated timelines. The drop in the numbers could also be an indication that the elections were conducted in adherence to the law. Many of the petitions in 2017 were dismissed, which could also be an indication that the elections were conducted credibly. On the other hand, the Supreme Court of Kenya nullified the August 8th, 2017, presidential election citing that the election was not conducted within the constitutional provisions and ordering IEBC for a fresh presidential election²⁰ within the provisions of the Constitution and other laws.²¹ The courts also supported in handling the party primaries petitions that were appealed by the Political Party Dispute Tribunal.²²

The Judiciary also handled other election-related cases on tenders for the supply, delivery, installation, testing, commissioning, support, and maintenance of the Kenya Integrated Elections Management System (KIEMS) and hardware equipment, accessories; and the supply and delivery of ballot papers, voter register, statutory election result declaration forms to be used at the polling stations; election and referendum result declaration forms to be used at the constituencies, counties, and national tallying Centre, audit of the voter register and extension of voter registration period among others.

Table 4.5: Number of election petition cases filed for the 2013 general elections

	Position	Election Petitions		
		2013	2017	2022
1	President	1	3	9
2	Governor	24	35	12
3	Senator	13	15	2
4	Member of National Assembly	70	98	28
5	Women representative	9	12	4
6	County Assembly Representative	67	139	78
7	Speaker of County	5	N/A	N/A
8	Party list	N/A	N/A	89
	Total	188	399	222

Source: IEBC

20 Raila Amolo Odinga and another vs Independent Electoral and Boundaries Commission Chairman (IEBC) and another, Election Petition 1 of 2017, [2017] eKLR.

21 This is a constitutional requirement provided for in Article 143 of the Constitution.

22 One hundred Political Parties Dispute Tribunal decisions were appealed to the High Court. Of these, 10 were further appealed to the Court of Appeal and one to the Supreme Court.

One shortcoming arising from election petitions is the rigid time frame of 14 days, which according to IEBC may not be adequate to achieve substantive justice for all parties. Since the parties including the commission need to prepare adequately in terms of the collection of evidence required. Additionally, the Judiciary is subjected to criticisms from the public and the political elites following presidential election petitions, which undermines judicial independence and authority.

To support electoral dispute resolutions, the commission also constituted a Dispute Resolution Committee (DRC) comprising five members to handle disputes arising from party list nomination and registration of candidates for the 2017 and 2022 elections. The committee was able to hear and determine 350 cases in 2017 and 324 cases in 2022 disputes arising from party primaries. This was conducted within the framework of the electoral laws. However, there are two conflicting timelines between the Elections Act and the Political Parties Act when parties are expected to conduct primaries.

The political parties established the Political Party Dispute Tribunal (PPDT), which hears and determines disputes arising from the political party nomination process. During the 2022 elections, the PPDT received a total of 188 disputes – a reduction from the 2017 elections – which were heard and determined within one month. During the elections, PPDT decentralized its services across seven (7) regions in the country and its membership had also gone up by 25 members with an addition of 18 ad hoc members. The PPDT leveraged technology by using the e-filing system, which ensured the efficiency of the delivery of justice by the tribunal enhancing access to justice. The low number of cases filed at PPDT can be attributed to the appreciation of the political party IDRM.

Box 4.5: Summary achievements on electoral dispute resolution

The Constitution

Provides guidelines for timely electoral dispute resolution; establishes the Judiciary with the important role of determining elections of persons to electoral office including the office of the president through mediating electoral disputes.

IEBC

Constituted a Dispute Resolution Committee (DRC) comprising five members to handle disputes arising from party list nomination and registration of candidates for the 2017 and 2022 elections.

Political parties

Established the Political Party Dispute Tribunal (PPDT), which hears and determines disputes arising from the political party nomination process.

Judiciary

Timely resolution of electoral-related disputes and interpretation of the Constitution and other elections-related laws.

Parliament

Passage of various laws, which includes the Elections Act 2011 – it mandates IEBC to solve electoral disputes arising from the party primaries within seven days after the primaries – and the Political Parties Act, 2011 provides mechanisms for dispute resolution within parties.

4.6 Strengthening of Political Parties

Political parties are considered an important vehicle through which individuals ascend to power, they exist to capture and maintain power and to ascertain ideology. The Constitution captures the importance of political parties in promoting democracy and good governance through the promotion of internal party democracies, the promotion of civil rights and freedoms, adherence to gender equality and equity, and the principles of the Constitution. This tends to break away from the long-held political parties' culture of political mobilization based on ethnic background and lack of internal democracies resulting in a lack of free and fair party primaries.

The Constitution intends to streamline the activities of political parties²³ by providing guidelines on the composition and registration of political parties that include inclusive membership,²⁴ and parties not being allowed to engage in criminal activities.²⁵ Political parties are to abide by the democratic principles of good governance; promote and practice democracy through regular, fair, and free elections within the party²⁶ and respect the right of all persons to participate in the political process, including minorities and marginalized groups,²⁷ uphold the values of the Constitution,²⁸ adhere to the code of conduct for political parties,²⁹ and use public resources to advance the interest of its candidates in elections.³⁰

One of the mechanisms used by IEBC to support the strengthening of political parties was putting in place an Electoral Code of Conduct Enforcement Committee for the 2013 and 2017 elections. The Committee was to handle complaints arising from breaches of the electoral code of conduct among political parties and aspirants. It was able to hear and determine 71 cases concerning disputes arising from breach of the electoral code of conduct on campaign violence, plagiarism, destruction of opponent campaign materials, and use of other party symbols. The IEBC working with ODPP also managed to arrest and open charges for poll officials in breach of official duties among them preventing IEBC officers from performing their duties.

Parliament, on the other hand, passed several laws to strengthen political parties, key among them, the Political Parties Act 2011, which provides guidelines for the registration, regulation, and funding of political parties. The Act has provisions that seek to promote gender equality in terms of registration whereby parties are supposed to conform to two-thirds gender rule³¹ and in the conduct of their activities, parties should respect and promote gender equity and equality, human rights, and fundamental freedoms. The Act also establishes the Political Parties Fund (PPF),³² which is a public fund given to political parties to support their

23 Article 91 Constitution of Kenya, 2010.

24 Article 91 (2) a Constitution of Kenya, 2010.

25 Article 91 (2) b Constitution of Kenya, 2010.

26 Article 91 (d) Constitution of Kenya, 2010.

27 Article 91 (e) Constitution of Kenya, 2010.

28 Article 91 (f) Constitution of Kenya, 2010.

29 Article 91 (h) Constitution of Kenya, 2010.

30 Article 91 (2) Constitution of Kenya, 2010.

31 Elections Act (2011) Section 7 (2)d.

32 Elections Act (2011) Section 23.

activities. One of the criteria for parties to receive the funds is that the parties should have not more than two-thirds of their registered office bearers from the same gender. The Act further directs that 30 per cent of the fund should be channelled to activities that seek the promotion of representation of women and other marginalized groups.³³ This seeks to reinforce women's inclusion in participation, leadership, and decision making at the political party level and national level as well as gender inclusivity in the running of political parties.

The Political Party Act, 2011 also establishes the political party code of conduct to the candidate's supporters and party officials to minimize violence. There is also an established Electoral Code of Conduct under the Elections Act, 2011 that binds all political parties' candidates and party agents. The Act seeks to ensure that parties uphold democratic processes in their activities, respect the rights of persons, and uphold the Constitution.³⁴ The Electoral Code of Conduct also seeks to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance in which political activity may take place without fear, coercion, intimidation, or reprisals.³⁵ The Office of the Register of Political Parties (ORPP) and IEBC have been bestowed by the Constitution to enforce the implementation of political party activities, to ensure they conform with the Constitution and other laws to promote democracy.

The Electoral Offences Act, 2016 describes the general electoral offenses and prescribes penalties to be meted out to the offenders, this includes disqualification, imprisonment, and prosecution of persons who interfere with the electoral process. The Act grants prosecution powers to the Office of the Director of Public Prosecution to investigate and prosecute election offenders within one year of the date of the election to which the offense relates. Prosecution powers were initially vested in the IEBC in the lead-up to the 2013 elections. However, this was amended through the Elections Offences Act, 2016 granting the prosecution powers to the ODPP.

Parties play an important role in helping to strengthen electoral democracy by supporting the implementation of electoral rules and nominating only persons with high integrity to run for elections and disciplining their members who breach peace and stability during the election period. Political parties also promote increased gender representation in decision making in political parties as one way of strengthening political parties. The Political Parties Act, 2011 also seeks to promote inclusivity in decision making, as parties ensure that no more than two-thirds of its registered office bearers are from the same gender. Participation

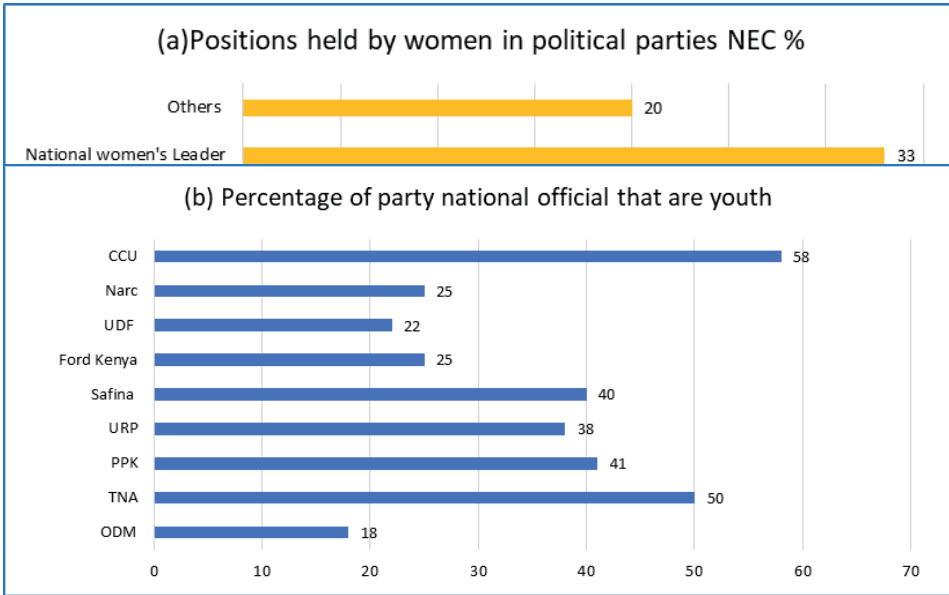
³³ Elections Act (2011) Section 26 (1)a.

³⁴ Section 8 of Political Parties Act (2011).

³⁵ Article 110 of Elections Act (2011).

of women in decision making at the top leadership helps champion policies that increase the participation of women in electoral politics.

Figure 4.4 Decision making in Kenya political parties (%)



Source: CMPD (2017), Percentage of party national officials that are youth political parties

Despite these developments, decision making in political parties is still male-dominated, with women occupying lower positions such as deputies and women league leaders in political parties' national executive council. Lower party positions for women offer them limited visibility and minimal influence in decision making at national, local, and international levels. Additionally, parties are yet to support the achievement of two-thirds gender rule through party nomination to increase the election of women to electoral positions, however, primaries are considered undemocratic, characterized by favouritism, and violence – not free and fair. Failure to implement electoral rules weakens democracy.

Box 4.6: Summary achievements on strengthening political parties

The Constitution

Provides guidelines on registration of political parties and management of political parties; establishes other institutions to manage activities of political parties.

IEBC

Enforcement of the Electoral Code of Conduct and ensures adherence to other electoral laws; implementation of political party activities, to ensure they conform with the Constitution and other laws to promote democracy.

Political parties

Support in the implementation of electoral laws.

Judiciary

Timely resolution of electoral conflicts, the commission also constituted a Dispute Resolution Committee (DRC) comprising five members to handle disputes arising from party list nomination and registration; there is also a Political Party Dispute Tribunal (PPDT), which hears and determines disputes arising from political party nomination process. The tribunal has supported political parties in resolving some of the electoral disputes.

Parliament

The Legislature has passed the Political Parties Act, 2011 which provides guidelines for the registration, regulation, and funding of political parties and has also established ORPP to manage the activities of political parties.

4.7 Promotion of Good Governance

Good governance remains a key cornerstone for democracy. The Constitution seeks to promote good governance by providing the national values and principles of governance³⁶ under Article 10. Good governance can be achieved if institutions and individuals observe national values such as integrity, transparency and accountability, rule of law, and democracy.

Further, the Constitution provides a set of professional standards, ethics, and conduct required by public servants under the values and principles of public service.³⁷ In the performance of their duties public servants and state institutions should uphold the highest standards of professional ethics; be responsive, prompt, effective, and impartial, ensure equitable provision of services; be accountable for administrative acts; provide timely and accurate information and use public resources efficiently. This shields public servants from being under the influence of or coerced by any individual or other state organs to decide in their favour of someone. Critics of previous election violence have blamed it on individuals and institutions who failed to adhere to respect the rules of law and institutions thus influencing the outcome of the elections, mostly making impartial decisions.

Chapter Six of the Constitution on leadership and integrity has remained the cornerstone of good governance that aims to ensure that individuals charged with the responsibilities of managing public affairs and resources are of suitable

³⁶ Article 10 of the Constitution of Kenya on National Values and Principles of Governance.

³⁷ Article 232 (1) of the Constitution of Kenya on values and principles of public service.

character and moral uprightness, by emphasizing the need for selfless service based solely on public interest, demonstrated by honesty and declaration of any perceived conflict of interest, objectivity and impartiality in decision making. Chapter Six of the Constitution is reinforced by the Leadership and Integrity Act 2012, and the Ethics and Anti-Corruption Act 2011 and ensure the promotion of accountability by state officers.

The Constitution also provides for public participation³⁸ in decision making, one of the fundamental principles of democracy where citizens have a say in decision making of issues affecting their society. Public participation legitimizes government programmes; provides new, diverse, and innovative ideas and actions; improves citizen-government relations;³⁹ promotes good governance and fosters accountability and transparency. Parliament is supposed to facilitate public participation in making legislation, budget making,⁴⁰ participation in Parliament oversight activities such as in the appointment and removal of state offices.⁴¹ Citizen participation may be through petitions, submission of memorandum, and public forums. Citizen participation in decision making in electoral governance presents a good opportunity for the adoption and implementation of electoral reforms.

The Constitution also establishes independent commissions and offices such as the IEBC, Judicial Service Commission, National Police Service, and the Office of the Auditor General; whose mandate is to ensure the sovereignty of the people and ensure that state organs observe the Constitution and values and principles of democracy. The implementation of Chapter Six of the Constitution on leadership and integrity is weak due to several factors including weak enforcement structures. The lack of clear interpretation of Chapter Six by the Judiciary and the lack of clear appropriate disciplinary actions for elected leaders who contravene Chapter Six are considered as major setbacks. Additionally, the county governments through the Members of the County Assembly and the Senate have also stepped up the campaign for good governance as shown by various impeachment processes in exercises of their mandate.

To support good governance, IEBC is mandated to ensure only people who meet the educational and ethical requirements are cleared to contest the elections as prescribed by Chapter Six of the Constitution on leadership and integrity. During the 2017 and 2022 elections IEBC in conjunction with other public entities put in place mechanisms, to vet aspirants to ensure compliance with leadership and integrity and enforcement of political parties to adhere to the two-thirds gender rule. The committee in conjunction with the Ethics and Anti-Corruption Commission and other relevant agencies submitted vetting details of 21,863

38 Articles 10, 118, 124, 201, 221, and 232 of the Constitution of Kenya, 2010.

39 Institute of Economic Affairs, Review of Status of Public Participation, and County Information Dissemination Frameworks, 2015.

40 Articles 201, 221, and 232

41 Article 251 of the Constitution of Kenya

aspirants who intended to participate in the 2022 general election. Five aspirants were found non-compliant and were disqualified from participating in the election. Among the issues cited for the disqualification were impeachment from the office, failure to produce the required academic documents, and being barred by the courts from holding public office. Similarly, various political parties and aspirants who did not comply with the provisions were rejected.

The Legislature commits to strengthening the electoral democracy and promotion of good governance by putting in place an electoral framework to manage the conduct of elections, manage affairs of the political parties, elections financing, and putting together various institutions to support good governance. Key among the achievements are the restoration of electoral democracy through the administration of elections by an independent body, improved voter registration, utilization of technology in election management, increased political participation, timely electoral dispute resolution, and financial support to political parties. Despite this, there are still gaps in the realization of free and fair elections following the nullification of the 2017 presidential elections by the Supreme Court. Key achievements undertaken by the Judiciary to support the attainment of good governance was through the preservation of electoral laws, for instance on several occasions the courts ruled out amendments of some of the electoral laws and termed them as unconstitutional. The courts have also protected and preserved rights and freedoms for individuals and civil society organizations. Also, there has been a timely resolution of election-related disputes.

Box 4.7: Summary achievements in the promotion of good governance

The Constitution

Article 10 and Chapter Six of the Constitution on the national values and principles of governance supports the attainment of good governance; the independent offices (IEBC, Judicial Service Commission, National Police Service, and ODPP), which are established by the Constitution support the management of elections; the Constitution also documents procedures for conducting elections and other electoral process.

IEBC

Developing a code of conduct for political party nominations and vetting of aspirants; enforcement of electoral laws by the political parties.

Political Parties

Adherence to electoral laws.

Judiciary

Preservation of election laws, the Judiciary has made various rulings in relation to elections that have helped in promoting good governance.

Parliament

Passed various laws to support elections; supported the establishment of key institutions such as the EACC to ensure compliance with Chapter Six on leadership and integrity.

5. Emerging Issues in the Implementation of Electoral Reforms in Kenya

i. Inadequate Preparedness by IEBC

During the 2013 and 2017 elections, some gaps were identified in the electoral process, which included an insufficient number of biometric voter registration kits (BVR), uneven distribution of biometric voter registration kits across the country with some regions experiencing shortages of the kits while others had more than enough resulting into shorter time for voter registration. This was due to the late procurement of the BVR kits. This resulted in lower registration of voters with IEBC only managing to register 14.3 million voters against the 18 million target. The application of technology to support election did not work as intended, there were failures of the electronic voter identification and electronic results transmission system. The entire ICT infrastructure that IEBC had mounted to aid in conducting the elections failed. The electronic voter identification devices (EVIDs) and the electronic transmission of results system (ETRS) also failed which meant the use of the manual register that had no control against multiple voting. The failure of the technology highlights the IEBC's poor management of public resources.

There were widespread minimal discrepancies in the official results with differences in the number of tallied votes cast for presidential and other electoral positions, indicating that voters did not vote for other electoral positions. Additionally, party agents and election observers were not given access to constituency, county, and national tallying centres. Internal divisions within the IEBC were common raising key concerns thus affecting public confidence in the preparedness of IEBC to deliver a credible election. For instance, during the repeat presidential election on October 26th, 2017, one of the commissioners resigned alleging that IEBC had become a party to the electoral and political crisis and was divided along partisan lines. The commissioner's sentiments were supported by the IEBC chair thus calling for the reorganization of his team to deliver a credible election. The nullification of the 2017 presidential elections points out the inefficiency of the commission in producing a credible election.

ii. Elections costs and sustainability of electoral democracy

Conducting an election is costly with large amounts of money spent on election preparations. The Constitution does not provide for the use of locally available voting materials and elections technology to minimize the use of imported materials and technology, which makes the elections costly and impacts the sustainability of electoral democracy in the long run. Further, other voting methods may be explored to provide a wider range of voting opportunities and allow voters to exercise their political rights thus helping sustain democracy.

iii. Delayed disbursement of funds

Delayed disbursement of funds hinders the timely implementation of key electoral activities. Timely disbursement of funds throughout the electoral cycle operationalizes the IEBC fund.

iv. Weak internal political parties' democracy

Political parties play an important role in helping achieve increased participation of women, youths, and PWDs in electoral politics. However, there exist weak internal party democracies with chaotic nomination processes that are characterized by technicalities, favouritism, and violence, which sometimes lead to failure to deliver a free and fair nomination. Additionally, women still hold lower positions in party leadership, which offers them limited opportunities for party decision making.

v. Limited time for electoral dispute resolutions

IEBC is mandated to ensure that party primaries are free, fair, and peaceful and settle disputes arising from party primaries. However, most the party primaries are held closer to election dates thus leaving little time for the IEBC Dispute Tribunal to resolve disputes arising from the nominations. During the 2013 elections, various candidates complained of not being given ample time for their disputes to be heard, and as a result some sought to move to the courts. Additionally, following the 2013, 2017, and 2022 election petitions, various parties and the IEBC were of the view that the 14 days-time frame of filing and hearing the presidential election petition was not adequate for substantive justice to all parties including sufficient time for IEBC to prepare adequately for representation.

vi. Polarized political environment

The IEBC tends to operate in a volatile and polarized political environment, which is evident from the persistent verbal attacks on the Commission personnel, threats of rejection of election results by the political elites, and disappearance, and death of IEBC staff. This undermines the performance of IEBC leading to low levels of public trust on the part of IEBC in delivering credible elections. For instance, during the 2017 repeated presidential elections, new laws were introduced by the ruling party to guide the fresh presidential elections while the opposition party called for reforms in the IEBC dubbed 'irreducible minimums'⁴² before participation in the repeat presidential elections. The reforms included the replacement and prosecution of IEBC staff responsible for the nullified August 8th elections, and sourcing a new firm to print ballot papers. Preparations for the fresh presidential election such as training of poll officials were also disrupted in some parts of the opposition's stronghold, which interfered with the preparation process, thus

⁴² ODMs irreducible minimums <https://www.odm.co.ke/component/content/article/111-breaking-news/365-nasa-position-paper-before-the-fresh-elections?Itemid=437>, Accessed on 13/05/2020.

hindering the delivery of a credible election leading to the cancellation of voting in 25 constituencies out of the total 290.

vii. Intimidation of the Judiciary and civil society

The Judiciary was subjected to high levels of intimidation and harsh criticism from the Executive and politicians before the August 2017 election and during the election petition in September 2017. The criticism against the Chief Justice questioned the independence of the Judiciary following the High Court ballot paper decision. In his response, the Chief Justice stated that “the Judiciary will continue making its determinations based on the Constitution, the law, and evidence before it.”⁴³ Harsh criticism and negative comments from the ruling party were also levied on the Judiciary following the Supreme Court’s 1st September 2017 annulment of the presidential election. There were also deliberate attempts initiated by some politicians to remove some judges from the Judicial Service Commission for accusations of being held captive by Civil Society Organizations.⁴⁴ The politicians questioned the independence of the Judiciary saying it had been “fixed by the opposition”.⁴⁵ Demonstrations were made and petitions filed against judges⁴⁶ after the ruling on the election petition accusing the courts of being held captive by some non-governmental organizations and CSOs.

Another way of intimidation to the Judiciary was the defying of court orders. The Legislature has also been accused of disregarding court decisions compelling the Parliament to enact legislation to support the achievement of the two-thirds gender rule, which has yet to be enforced. IEBC was also on the spot for refusing to open their ICT servers despite being ordered by the courts concerning the 2017 presidential election petition, which undermines the rule of law.

Without a clear legal basis, the state made attempts to deregister the Kenya Human Rights Commission (KHRC) and African Centre for Open Governance (Africog) just before the deadlines for lodging presidential petitions in the 2017 elections. This may be interpreted as a caution to civil societies not to lodge election petitions. Intimidation of CSOs goes against the government’s commitment to the creation of a conducive environment for civil society, and the government being criticized for failure in the implementation of the Public Benefit Organization Act 2013.

43 Press release, Chief Justice, 9 July 2017.

44 See N. Agutu, JSC Receives Petitions against Maraga, Mwilu, and Lenaola’ Available at: https://www.the-star.co.ke/news/2017/09/19/jsc-receives-petitions-against-maraga-mwilu-and-lenaola_c1638405 (Accessed on 15 September 2019).

45 President Kenyatta, in Kiswahili and English, 2 September 2017, in a State House address to governors, senators, members of the National Assembly, and members of county assemblies elected on a Jubilee Party ticket.

46 A Jubilee politician filed a petition to JSC to have three judges who were part of the presidential petition ruling removed from the judiciary they included Chief Justice David Maraga, Deputy Chief Justice Philomena Mwilu, and Justice Isaac Lenaola.

viii. Weak implementation of Chapter Six of the Constitution on leadership and integrity

IEBC is mandated to ensure that only persons who meet the educational, moral, and ethical requirements are registered and cleared to contest as candidates in elections - the candidates should meet the requirements provided in Chapter Six of the Constitution on leadership and integrity. During the 2013 elections, EACC presented a list of 116 candidates with integrity issues for various positions to IEBC, but IEBC cleared the candidates, allowing them to vie. Different interpretations were given by the High Court saying that the integrity question only applied to the appointed officials and not to those seeking elective positions. Further, the rulings pointed out that it was upon IEBC to determine the suitability of the candidates and not the High Court.⁴⁷ However, in the 2022 elections, IEBC put in place a Leadership and Integrity Vetting Committee tasked with vetting aspirants for the general election. Five aspirants were found non-compliant due to their education qualifications and earlier removal from office over impeachment. Inconsistency in the clearance of candidates with suspected integrity issues also brings out the ineffectiveness in the enforcement of Chapter Six of the Constitution on leadership and integrity.

ix. Late passage of electoral laws

Among the key issues raised include late passage of the electoral laws, postponement of the implementation of some laws, and passage of unconstitutional laws, which affect the electoral process. For instance, the September 2016 amendments to the Elections Act, on the use of technology in the elections, and the January 2017 amendments on the use of complementary methods in case of failure of technology could be interpenetrated as an interference to the electoral process due to limited time in the incorporation of the laws in the electoral process.

Although the Election Campaign Financing Act was passed in 2016, the legislators postponed its implementation to be effective in future elections. Lack of disclosure of the election campaign finances undermines the credibility of the election thus giving advantage to wealthier candidates. Also, the Parliament has been criticized for failure to fulfil its constitutional obligations by failing to pass the two-thirds gender rule despite several attempts by stakeholders, and court rulings compelling it to do so.⁴⁸ This undermines the Constitution and the rights of women's participation in decision making. In addition to that, the Parliament has been accused of the passage of unconstitutional laws, which are retrogressive to reforms made in the election system, for example, reducing the quorum for IEBC meetings and decisions from five to three; introducing amendments to the Elections Act, 2011 that would lift the requirement of transmitting presidential election results electronically in the prescribed form from the polling station to the tallying centres; and adding a requirement that results also be physically delivered to the constituency and national tally centres.

⁴⁷ Michael Wachira Nderitu and three Others v Mary Wambui Munene Aka Mary Wambui and Four Others [2013] eKL.

⁴⁸ The Constitution stipulates that not more than two-thirds of the members of any appointive or elective body should be of the same gender. Kenya Constitution, Article 81(b).

Parliament has also been criticized for making laws during the election process. For instance, the October 26th, 2017, repeated presidential elections, the Parliament made controversial changes to the electoral laws (Election Laws (Amendment) Bill, 2017, and the Election Offences (Amendment) Bill, 2017) before the re-run. The proposed changes were criticized for attempting to interfere with the preparation of the presidential re-run. The laws were interpreted to favour the ruling party and diminish the independence of the IEBC, some of the changes would undermine the transparency of the electoral process and heighten the political temperatures. The proposed changes had not incorporated the views of the stakeholders and the political parties contrary to the international best practice of electoral law reforms.

x. Election-related malpractices

There still exists election-related violence that threatens the conduct of elections. Various institutions, which include NGEC, KNHRC, and IEBC have recorded various election-related malpractices before and after the polling process during the 2013, 2017, and 2022 elections. They include cases of voter bribery, planned violence, harassment, and intimidation (including IEBC staff), hate speech, misuse of public resources, non-adherence to campaign schedules, and use of criminal gangs. These violent acts are potential triggers for violence and threaten the electoral process.

xi. Weak implementation of the two-third gender rule

There still exists a weak implementation of the two-thirds gender rule, and the Parliament has been faulted for its failure to pass laws for the implementation of this rule. Weak implementation of Chapter Six of the Constitution and weak internal party democracy also undermine electoral reforms.

6. Conclusions and Policy Recommendations

6.1 Conclusion

The Constitution continues to live up to its promise of reforming the electoral system, this is seen in its interventions towards strengthening electoral democracy, increased participation and representation of women, youth, and PWDs, inclusive governance, and timely resolution of electoral disputes. Similarly, the electoral commission, political parties, the Legislature, and the Judiciary have also demonstrated their keen interest in protecting and expanding electoral reforms through implementation as demonstrated in the 2013, 2017, and 2022 elections and as envisioned by the Constitution and other related laws. Key successes include timely conducting of elections by IEBC, adherence to election processes, and timely electoral dispute resolution, preservation of electoral laws and civil liberties by the Judiciary. Further, the Legislature supported the passage of electoral laws, while political parties have been key in increasing political participation and representation through mobilization for support – although they failed in internal party democracy and gender inclusivity in running and management of political parties as well as the attainment of two-thirds gender rule.

Despite the highlighted achievement, the nullification of the 2017 presidential elections by the Supreme Court, the failure of Parliament to enact laws to implement the two-thirds gender rule, postponement of the implementation of the Elections Campaign Financing Act, 2013 and weak implementation of Chapter Six of the Constitution demonstrate that there is still more to be done to realize electoral reforms and that what has been accomplished in terms of reforms is still vulnerable to manipulation. However, the upholding of the 2013 and 2022 presidential election results reveals that achieving free and fair elections remains a significant concern. This emphasizes the need for improved management of election processes by electoral bodies to address concerns and minimize perceptions that elections are not free and fair from various parties.

6.2 Policy Recommendations

- (i) There is a need for adequate preparedness by IEBC, especially on processes regarding voter registrations and conducting elections. To help with timely preparation, electoral laws may be amended to allow voting for different political positions to be undertaken on different days, and also allow the earlier undertaking of other electoral processes. This may give sufficient time for IEBC to administer elections and adequate deployment of the required technology. Earlier participation of the citizens in some of the electoral process activities such as voter registration should be encouraged to reduce late-hour participation thus constraining the IEBC capacity. Political parties are key election stakeholders and thus may also be encouraged to undertake their party primaries on time to give IEBC sufficient time for election planning.

- (ii) Support ORPP, ODPP, PPDT, and the Judiciary in strengthening internal capacity to assist political parties, especially on Internal Party Dispute Resolution Mechanisms (IPDRM) to promote timely and fair adjudication of disputes. Further, IPDRM may be decentralized from party headquarters to constituencies to ease the accessibility and fast-track the dispute resolution process. Additionally, increase the number of Political Party Dispute Tribunals to broaden access and fast-track the dispute resolution period.
- (iii) Parliament can amend the laws to extend the time for resolution of the presidential election petition from the 14-day timeframe of filing and hearing of the petition. This is to give more time for parties to gather more evidence for adequate presentation.
- (iv) Parliament to adhere to the timely passage of election-related laws and for the passage of laws that conform with the Constitution for the smooth running of the election processes.
- (v) Political parties to strictly adhere to the nomination process and enforcement of electoral laws regarding the two-thirds gender rule, by monitoring the indirect nomination method to ensure compliance with the law and tenets of free, fair, and credible elections. This is to help increase the election of women, youth, and PWDs. Additionally, IEBC and the Legislature can explore a change of electoral system from the First Past the Post (FPTP) to Mixed Member Proportional Representation, or other related methods that are considered to increase the election of SIGs.
- (vi) IEBC and the Legislature can explore the adoption of other forms of voting such as early voting, online voting, and mail voting, which may be considered to help reduce electoral-related malpractices such as voter bribery, and election violence. However, this requires a high level of trust in the technology and the people manning the technology.
- (vii) Various law enforcement agencies including the police and the ODPP take urgent action on political parties and their supporters who breach the rule of law during political parties' campaigns, the nominations processes, and those who disrupt the voting process.
- (viii) The political parties are to be encouraged to eliminate any disruptions in the electoral process. This includes eliminating intimidation and attacks on IEBC and the Judiciary as it undermines their independence and lowers public trust in these institutions thus affecting their performance. Parties and other stakeholders should help maintain a non-volatile political environment by working with other election stakeholders to help achieve free and fair elections.
- (ix) IEBC, Ministry of Information Communication and Digital Economy can explore the option of using locally available election-related materials and technology for the sustainability of electoral democracy. This will ensure the availability of sufficient election-related technology and reduction of the cost of acquiring the technology. This may include working with other

advanced local and foreign companies for technology transfers.

- (x) Parliament, IEBC, the Judiciary, EACC, and political parties should strengthen the implementation of Chapter Six of the Constitution on leadership and integrity. Political parties can help to achieve this by clearing candidates who comply with the Leadership and Integrity Act. EACC, ORPP, and the Judiciary to fast-track integrity-related investigations to facilitate the clearance of candidates by IEBC.
- (xi) ORPP to strengthen internal party democracy to help promote the achievement of the two-thirds gender rule in party primaries. This may include enforcement of electoral laws and incentivizing political parties who nominate women, youths, and PWDs to vie for political positions in the elections. Additionally, increase women's top party leadership positions to offer them visibility in party decision making.
- (xii) IEBC to ensure more collaborations and engagements with relevant election-related stakeholders including political parties, civil society organizations, faith-based organizations, government institutions, and development partners to support the promotion of democracy and free and fair elections.

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Appendices

Appendix 1: Implementation of electoral reforms by the Independent Electoral and Boundaries Commission (IEBC)

Nature of the electoral reforms	Objectives of the reforms	Process	Achievements	Score %
Conducting a credible election by IEBC	To achieve free and fair elections (by secret ballot, free from violence, intimidation, improper influence, or corruption, conducted, by an independent body, transparent; and administered in an impartial, neutral, efficient, accurate, and accountable manner)	Timely undertaking of the electoral process from voter registration, registration of candidates, voting, and tabulation of results as provided by IEBC Act 2011 and Elections Act 2011	Presidential election of 2013 was challenged in court, but the court upheld the elections. The 2017 election was challenged in court citing irregularities in the conduct of the election by the Supreme Court, which did not conform with the Constitution	75% 25%
	Continuous voter registration	Registration of voters and diaspora voters	A total of 14 million (72%) voters and 19 million (82%) voters were registered for 2013 and 2017 elections, respectfully. For the 2022 elections, a total of 22 million voters were registered to vote with 40 per cent of the registered voters representing the youth.	100%

	Regular revision of the voters' register	Inspection of voters' register, audit of the voter register	Audit of the voters' register was undertaken	100%
	Delimitation of constituencies and wards	The Constitution provides procedures and the process of delimitation of constituencies.	IEBC created 80 new constituencies and 1,450 county Assembly Wards in 2012. and facilitated elections in the new created constituencies and wards	100%
	The regulation of the process by which parties nominate candidates for elections	In relation to the Elections Act 2011, constitution, and nomination rules	Published procedures nomination rules and ensured adherence to the rules	100%
	The settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes after the declaration of election results	The dispute shall be determined within ten days of the lodging of the dispute with the Commission or determined before the date of the nomination or election	IEBC determined 71 cases concerning disputes arising from breach of electoral code of conduct on campaign violence	100%
	The registration of candidates for election	Registration of candidates for elections Nomination of independent candidates Electoral dispute resolutions (arising from registration of candidates for elections)	A total of 14,523 and 12,776 candidates were registered to vie for different political seats in 2017 and 2013 elections, respectfully after meeting the constitutional and the Elections Act requirements.	100%

	Voter education	Development of voter education manuals	IEBC Was able to undertake voter education through various media platform and developed voter education materials	100%
	Facilitation of the observation, monitoring and evaluation of elections	Accreditation and briefing of observers, agents, media, and security	Accreditation procedures and code of conduct for accredited persons developed	100%
	Regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election		Attempted to regulate the amount of money to be spend by political parties in 2017 but the Parliament suspended the implementation of Political Parties Financing Act.	100%
	Development of a code of conduct for candidates and parties contesting elections	Code of conduct monitoring and compliance, monitoring compliance in the use of public resources	A code of conduct for political parties was developed and shared with political parties	100%
	Monitoring of compliance with the legislation required by Article 82 (1) (b) relating to nomination of candidates by parties	Undertaken in accordance with various legislations	Undertaken	100%

Source: Author's compilation from various sources

Appendix 2: Implementation of electoral reforms by political parties

Variables	Reforms	Process	Achievements	Scores %
Increased political participation and representation	Promotion of political rights through increased political participation (through independent political parties) The Political Parties Act established Political Parties Funds to support activities of political parties	Political recruitment through the party internal structures and processes as per the party constitution	Total membership of registered political parties stood at 24, 005, 714 in 2022 and 11,889, 241 in 2017	100%
Representation of special interest groups (SGIs) in political parties	Increased political representation Nomination of candidates for political positions	Conducting party primaries and nomination of candidates to run for electoral seats as per Article 4 of Elections Act 2011 in relation to party primaries and nomination rules	Political parties successfully presented candidates to run for various political seats, however, in some instances they were marred with violence terming them not free and fair and not adhering to the nomination rules Candidates cleared by political parties for election in 2022 were 16, 105; 11,253 men and 961 women in 2017 and 11, 714 Men and 775 women in 2013	70 per cent

	Two-thirds gender rule in electoral seats in party primaries	Nomination to represent special interest groups at the National Assembly and Senate as per Articles 97(1)(c), 98(1)(b), (c) and 177(1)(c) and (c) of the Constitution	Political parties failed to meet two-thirds gender rule in nomination of candidates in the national assembly	25%
	Percentage of gender representation in the National Assembly	As per the election process which involves being nominated and voted for	<p>2022 30 (10.3%) Women 260 (89.7%) Men</p> <p>2017 23 (7.9) % women 267 (92.1) % men</p> <p>2013 16 (5.5) % women 274 (94.5% men</p> <p>Failed to achieve the two-thirds gender rule</p>	25%
	The Constitution intends to strengthen political parties through good governance, and inclusive decision making in political parties	Adherence to the Constitution, electoral laws through promotion of civil rights and freedoms, adherence to gender equality and equity, and free and fair party primaries as per the Elections Act 2011 and Political Parties Act 2011	Only 17 per cent of women held positions as party leaders/chair while only 20 per cent of women held positions as party secretary generals Party primaries are often characterized by violence and favouritism	60%
Gender representation in decision making in political parties	Political parties			

Source: Author's compilation from various sources

Appendix 3: Implementation of electoral reforms by the Legislature

Variables	Reforms	Process	Achievement	Score %
Passage of laws related to election in compliance with the Constitution, the fifth schedule and other legal instruments	<p>Legislation on elections (Article 82 (1) of the Constitution on:</p> <ul style="list-style-type: none"> • Delimitation by the Independent Electoral and Boundaries Commission of electoral units for election of members of the National Assembly and county assemblies • The nomination of candidates • The continuous registration of citizens as voters • The conduct of elections and referenda and the regulation and efficient supervision of elections and referenda, including the nomination of candidates for elections; and • The progressive registration of citizens residing outside Kenya, and the progressive realization of their right to vote <p>Electoral disputes (Article 87(1)) Independent Electoral and Boundaries Commission (Article 88 of the Constitution) Legislation on political parties (Article 92),</p>	<p>The process involves:</p> <ul style="list-style-type: none"> • Origination of the bill by a member, • Introduction of the bill in the house • Publication of the bill • 1st reading of the bill, which includes holding public hearings • 2nd reading of the bill • Committee stage • Report stage • Final reading • President assent 	<p>Enacted the Elections Act 2011, Political Parties Act 2011, The Independent Electoral and Boundaries Commission Act 2011, Elections Campaign Financing Act 2016, Kenya National Commission on Human Rights Act 2011, National Gender and Equality Commission Act 2011</p> <p>Established the Independent Electoral and Boundaries Commission (IEBC), Office of the Registrar of Political Parties</p>	100%

	Promotion of representation of marginalized groups (Article 100 of the Constitution)		Not achieved	24%
	Two-Third Gender rule as per Article 27 (8) of the Constitution Postponement of the implementation of Elections Campaign Financing Act of 2013		Not achieved	24%
	Public service Values and principles of public service (Article 232)		Public Service Code of Conduct and Ethics Act 2016	100%
	Legislations on Bill of rights Freedom of the media (Article 34) Kenya National Human Rights and Equality Commission (Article 59)		Enacted Media Council Act 2013 Kenya National Commission on Human Rights Act 2011, National Gender and Equality Commission Act, 2011, Commission on Administrative Justice Act 2011 Established Kenya National Commission on Human Rights (KNCHR), National Gender and Equality Commission (NGEC), Media Council	100%

Source: Author's compilation from various sources

Appendix 4: Implementation of electoral reforms by the Judiciary

Variables	Reforms	Process	Achievements	Score %
Preservation of electoral laws	Preservation of electoral laws (four electoral laws were ruled to be unconstitutional) Two-thirds gender rule, sections on Election Amendment Bill of 2017, sections of Election Act 2011, on transmission of presidential elections, IEBC Act of 2011 on the chairperson of the commission	The process for civil litigation in Kenya involves: <ul style="list-style-type: none"> • Getting a demand letter-prospective plaintiff to the prospective defendant, warning him of the impending litigation • Case filling • Serve a copy to the defendant (12 months) • Show intention to defend the suit (within the sermon time) • Defendant file defence (14 days after entering appearance) • Defendant should then serve the filed defence (within 14 days of filing) • Plaintiff can then respond to the counterclaim, and serve the response on all parties to the suit (within 15 days of the counterclaim) • Closure of the pleadings (14 days after filling and serving the reply to counterclaim if any) • Pre-trial procedures (within 10 days after closure of procedures) • Case conference (within 30 days after the closure of leadings) • Trial conference (within 30 days before the hearing date of the suit) • Hearing dates (depends on the court schedule) • Final submissions from plaintiff, defendant and witness (depends on the court schedule) • Court gives judgment (within 60 days of concluding trial) 	Several sections of the Election Laws Amendment Bill 2017 were declared unconstitutional by the High Court Four electoral laws were ruled to be unconstitutional Two-thirds gender rule, sections on Election Amendment Bill of 2017, sections of Election Act 2011, on transmission of presidential elections	100 %

<p>Electoral Dispute resolutions</p>	<p>The Constitution provides for timely resolution of presidential elections where the petition is to be filed within seven days after the announcement of the election and determined within 14 days after filing Political party nomination disputes to be resolved within one month</p>	<p>The presidential election petition process includes the following:</p> <ul style="list-style-type: none"> • Petitions are filed within seven days after the results • Respondent is served (two days) • Response to the position is filed and served (within four days) • Rejoinder filed and served (within one day) • Interlocutory applications filled & served (within 1 day) • Pre-trial conference, 3rd party (friends of the court) applications filed and served (within one day) • Hearing and determination of petitions • Rendering the verdict (within 14 days after petition filing) <p>This is in addition to the Supreme Court (Presidential Election Petitions) Rules, 2017</p>	<p>The process was undertaken fully The 2013, 2017, and 2022 election petitions were filed and determined within the Constitution's set timelines Party nominations were resolved within the stipulated timelines</p>	<p>100%</p>
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	<p>Parliamentary and county election petitions</p> <p>The Constitution provides for the resolution for the petition within six months after the election results</p>	<p>Parliamentary and county petitions process include the following in addition to the Elections (Parliamentary and County Elections) Petition Rules, 2017:</p> <ul style="list-style-type: none"> • Constituted a bench • File petition • Acknowledge receipt of a petition • Serve the petition to the respondent within seven days • Response to the petition served within five days from the day of service • Deposit of security for costs (within 10 days of the filing of a petition) • Pre-trial conference and interlocutory applications (within seven days of receipt of the last response to a petition) • Consolidation of petitions • Time and place for hearing 	<p>Election petitions were handled</p> <p>In 2022, 133 election petitions were filed including nine presidential petitions; while 388 election petitions were filed in 2017 and, 188 in 2013</p>	100%
Preservation of civil liberties		The process for civil litigation in Kenya	<p>One KNCHR</p> <p>AfriCOG, MUHURI, Ni Sisi LTD, Kura Yangu Sauti Yangu</p> <p>Extension of voter registration days</p>	100%

Source: Author's compilation from various source

Appendix 5: Contribution of the Constitution of Kenya to electoral reforms

Nature of the electoral reforms	Objectives of the reforms	Process	Achievements	Scores %
Promotion of electoral democracy	<p>To promote electoral democracy by establishing a democratic electoral system that provides for:</p> <ul style="list-style-type: none"> • Freedom of citizens to exercise their political rights under Article 38 • two-thirds gender rule • Fair representation of persons with disabilities • Universal suffrage based on the aspiration for fair representation and equality of vote • Free and fair elections which are by secret ballot, free from violence, intimidation, improper influence, or corruption, conducted by an independent body, transparent, and administered in an impartial, neutral, efficient, accurate, and accountable manner 	<p>To achieve a democratic electoral system, the electoral process and timelines should be undertaken in accordance with laws and procedures, which include voter registration by IEBC (continuous), registration of candidates for elections, civic education, accreditation of observers and media, conducting the elections by secret ballot by and independent body, tallying and announcing of election results at polling station</p> <p>The Elections Act 2011 and IEBC Act 2011 provide procedures for undertaking particular election process activities</p>	<p>The elections were held and conducted within the timelines</p> <p>Presidential election of 2013 was challenged in court, but the court upheld the elections</p> <p>The election of 2017 was challenged in court citing irregularities by the conduct of the election which did not conform with the Constitution</p>	<p>100%</p> <p>75%</p> <p>25%</p>

<p>Increased political participation and representation</p>	<p>To increase political participation through political party registration</p>	<p>Registration of independent candidates by ORP in accordance with Articles 91 and 92 of the Constitution on political parties where an applicant organizes first meeting of founding members: produces name and internal constitution, submits name search, the registrar approves name, the applicant submits provisional registration docs, registrar examines documents in 30 days. Applicant receives provisional registration upon payment of the required fee. Registration within 180 days to register to apply for registration once they have been provisionally registered. Registrar publishes notice in the Gazette inviting objections (seven days after application) Registrar issues a certificate of full registration (within 30 days after application)</p>	<p>By March 2022, close to 87 political parties had been registered and participated in elections</p>	<p>100%</p>
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	Political participation as an independent candidate through the registration of independent political party	The process of registration by independent candidates by ORPP requires submission of required documents which include party name, symbol, endorsement signatures and payment of fees	In 2022 elections, a total of 4,691 independent candidates were cleared to vie for various seats compared to 4,648 candidates in 2017 and 3,752 candidates in 2013	100%
	Provision of devolution through creation of devolved units thus making people part and parcel of the governance process through participatory decision making	The Constitution created 47 devolved units and provides for the election of county governor, senator, and member of county assembly	47 county governments, senate county women representatives were created providing election positions for governors, senators, women representatives	100%
Two-thirds gender representation to elective public bodies	Not more than two-thirds of the members of elective public bodies shall be of the same gender	Parliament is to enact legislations to help achieve the two-thirds gender rule representation. Additionally, political parties under the Elections Act 2011 are to help the achievement of two-thirds gender representation by presenting most women in party primaries nomination	Parliament was to come up with legislations to help in the achievement of the two-thirds gender representation	Not achieved

Increased representation of women, youth, and PWDs , and the marginalized	To promote political equality in representation through the two-thirds gender rule in electoral seats and leadership in political parties	Political parties' primaries nomination to consider the two-thirds gender rule for the seats at the National Assembly and Senate as per Articles 97(1)(c), 98(1)(b), (c), and 177(1)(c) and (c) of the Constitution.	Political parties made attempts to meet the two-thirds gender rule in the nomination of candidates in primaries in the 2017 and 2022 elections Some attempts were also achieved in relation to the election of women, youth, PWDs and the marginalized in the election	100% 50%
Universal suffrage based on the aspiration for fair representation and equality of vote	Universal suffrage based on the aspiration for fair representation and equality of vote (right to vote)	The Constitution and other legislations (IEBC Act 2011, Elections Act 2011) provide for the registration as a voter and to vie for a political seat	IEBC was able to achieve its targeted voter registrations	100%
Free and fair elections	The Constitution promises the achievement of Free and fair elections that are: by secret ballot, free from violence, intimidation, improper influence, or corruption, conducted by an independent body, transparent, and administered in an impartial, neutral, efficient, accurate, and accountable manner	The Constitution and election laws (The IEBC Act 2011, Elections Act 2011, Elections Campaigns Financing Act, 2013) provide procedures for conducting free and fair elections	The 2017 elections were nullified by the Supreme Court over election irregularities	2013 elections - 100% 2017 elections - not achieved 2022 elections - 100%

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