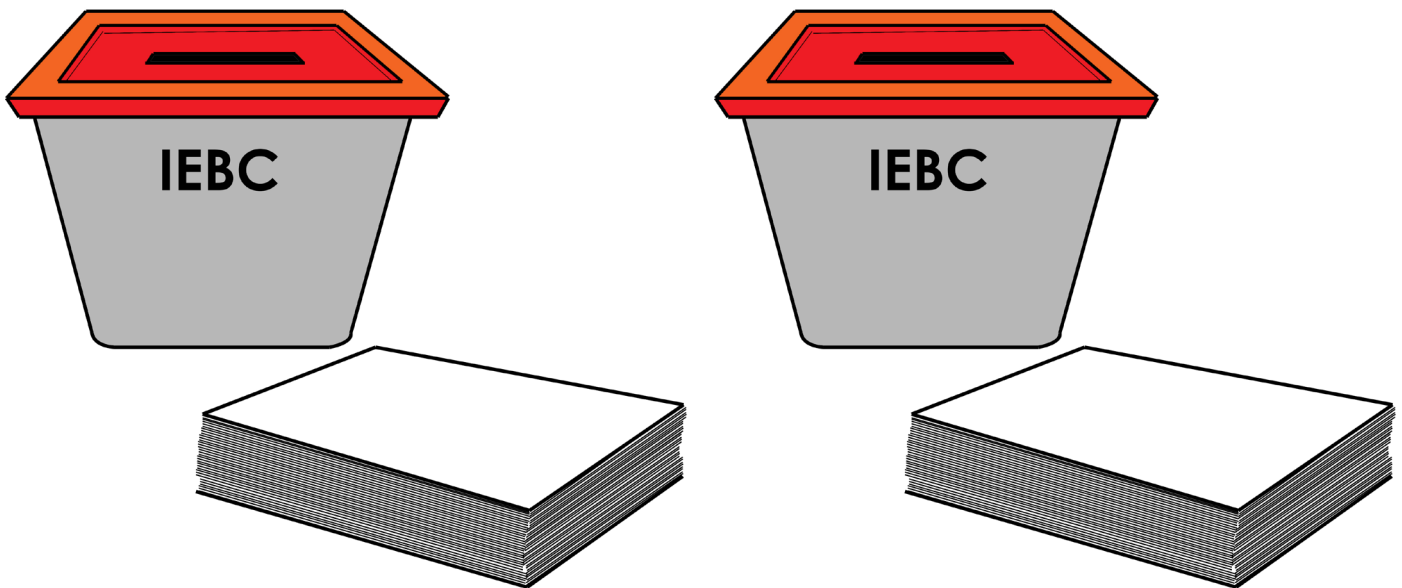


# Uraia

## STRATEGIC INSIGHTS RESEARCH REPORT ON ELECTORAL EXCELLENCE: THEMATIC RECOMMENDATIONS FOR PRE-2027 ELECTORAL REFORMS.

THEMATIC KNOWLEDGE PRODUCT  
AND RESEARCH BRIEF WITH  
POLICY RECOMMENDATIONS ON  
STRENGTHENING ROLE OF EMBS IN  
KENYA'S ELECTORAL PROCESS.



Naturing An Engaged, Empowered and Value-Based Citizenry



MINISTRY OF FOREIGN AFFAIRS  
OF DENMARK  
*Denmark in Kenya*



Foreign, Commonwealth  
& Development Office



ITALIAN AGENCY  
FOR DEVELOPMENT  
COOPERATION



**Irish Aid**  
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UNITED NATIONS  
HUMAN RIGHTS  
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## TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b> .....	<b>02</b>
<b>ACKNOWLEDGEMENTS</b> .....	<b>03</b>
1.0 INTRODUCTION & BACKGROUND .....	04
2.0 RESEARCH DESIGN AND METHODOLOGY.....	05
3.0 ROLE & PERFORMANCE OF INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION (IEBC) .....	06
4.0 ROLE & PERFORMANCE OF OFFICE OF THE REGISTRAR OF POLITICAL PARTIES (ORPP) .....	16
5.0 ROLE & PERFORMANCE OF POLITICAL PARTIES DISPUTE TRIBUNAL (PPDT) .	20
6.0 ROLE & PERFORMANCE OF POLITICAL PARTIES .....	23
7.0 RECOMMENDATIONS FOR IMPROVING EMB ROLES IN THE ELECTORAL PROCESS / CYCLE.....	27
8.0 REFERENCES .....	30

### LIST OF FIGURES

Figure I: IEBC performance rating in 2013, 2017 & 2022 general elections .....	06
Figure II: IEBC effectiveness in 2013, 2017 & 2022 general elections.....	07
Figure III: IEBC ratings on transparency in 2013, 2017 & 2022 general elections .....	14
Figure IV: ORPP effectiveness on its key roles .....	18
Figure V: Views on ORPP external or political influence .....	19
Figure VI: Views on PPDT's accountability .....	22

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## 1.0 INTRODUCTION & BACKGROUND

### 1.1 Introduction

The research aimed to collect data, generate evidence, advocate for reforms, and strengthen the capacity of election agencies, political parties, CSOs, and voters. The goal is to consolidate gains and improve electoral processes to better inform future elections.

### 1.2 Study Rationale

The study sought to document cumulative gains and progress achieved in the three previous elections, providing a foundation for Kenya's preparation for 2027 and future elections. The design edged on in-depth or comprehensive analysis of four themes – civic education, youth, EMBs & CSOs. Increasing civic awareness, improving capacity of EMBs, strengthening CSOs to expand Kenya's civic space and ensuring vibrant youth involvement in electoral processes will remain essential to increasing Kenya's democratic dividends, fostering inclusion and promoting national cohesion in the years to come. This component of the study is dedicated to enhancing the capacities of IEBC, ORPP, PPDT and political parties, with the primary objective of identifying the challenges facing these four institutions and proposing possible measures for their reinforcement. In the intricate landscape of electoral systems, the instrumental roles played by these Election Management Bodies (EMBs) collectively shape the foundational pillars of elections in Kenya. These entities facilitate the organization, regulation, and oversight of elections, while also fostering the vibrancy and accountability of political participation.

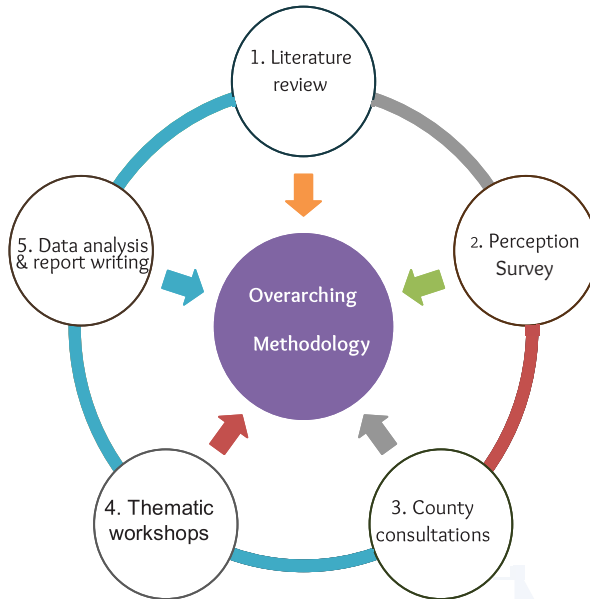
### 1.3 Study Focus

The study is dedicated to enhancing the capacities of IEBC, ORPP, PPDT & political parties. Its primary objective is to identify the challenges facing the four key institutions (IEBC, ORPP, PPDT & political parties themselves) and propose possible measures for their reinforcement. The study aimed to achieve this by critically examining various post-election evaluations, expert opinions, voter concerns and stakeholder perspectives conducted through county consultations. The ultimate goal was to offer actionable recommendations aimed at improving the effectiveness and functionality of these institutions within the electoral framework.

## 2.0 RESEARCH DESIGN AND METHODOLOGY



### Summary of key techniques & processes



#### Notes

- ✓ Literature review: June – July 2023
- ✓ Perception Survey: August – September 2023
- ✓ County Consultations: July - November 2023
- ✓ National IDIs & KIs: Nov-Dec 2023
- ✓ Thematic Workshops: November 21<sup>st</sup> - 30<sup>th</sup> 2023
- ✓ Expert analysis, collation & drafting of the report & technical knowledge products: November - December 2023

Source: CERA 2023

## 3.0 ROLE AND PERFORMANCE OF INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION (IEBC)

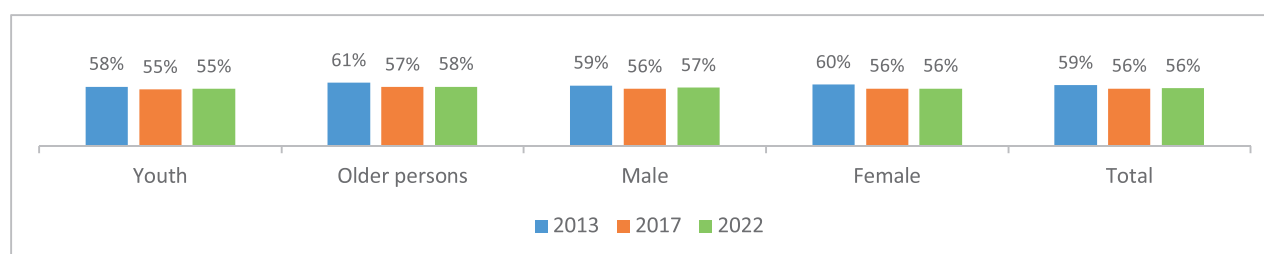
### 3.1 Introduction

In the intricate landscape of electoral systems, the instrumental roles played by Election Management Bodies (EMBs) - such as the Independent Electoral and Boundaries Commission (IEBC), Office of the Registrar of Political Parties (ORPP), Political Parties Disputes Tribunal (PPDT), and political parties themselves - collectively shape the foundational pillars of elections in Kenya. These entities facilitate the organization, regulation, and oversight of elections, while also fostering the vibrancy and accountability of political participation.

### 3.2 Public perception on IEBC's performance

According to CERA's perception survey (conducted between July and September 2023), low performance ratings on IEBC's performance on the three (3) previous elections is mainly informed by perceived manipulation of presidential results (19%), perception that there has never been a transparent election in Kenya (19%), court cases after elections (9%), inconsistency in vote counting (7%), rampant post-election violence (7%), IEBC officials were not reading from same script. On the contrary, those rated IEBC positively cited IEBC played its role well with transparency (18%) and citizens could see the election results in the media (6%).

**Figure I: IEBC performance rating on the 2013, 2017, and 2022 general elections.**



*Source: CERA perception survey 2023*

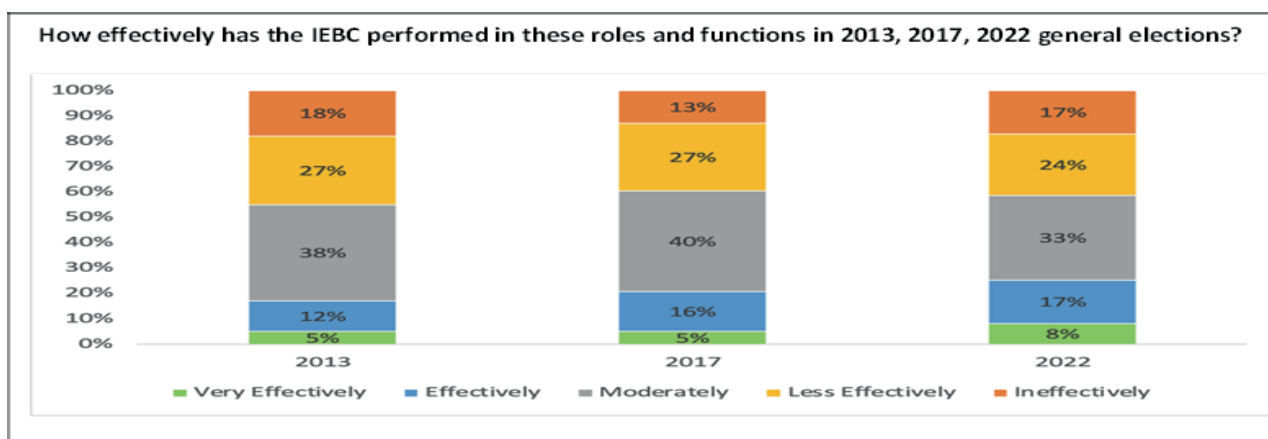
In terms of performance of IEBC on the 3 previous general elections, their performance in 2013 (59%) general elections was rated favorably in comparison to 2017 (56%) and 2022 (56%) elections.

Despite the IEBC's establishment to restore trust following the 2007 General Elections, a significant proportion still harbors reservations about the Commission's effectiveness.



When asked about the commission's performance in the last three General Elections, only 25% (17+8) believed it was effective in 2022 compared to the 41% (17+24) who perceived the Commission as ineffective. While these figures have been changing over time – with a slight increase in the proportion acknowledging the commission's effectiveness and a marginal decrease in those expressing dissatisfaction, the proportion of those that did not think the Commission effectively performed its functions in 2013 was 45% (18+27) and in 2022, this had gone down by 4 points to 41% (17+24) as shown below. However, data from the Afrobarometer Country Surveys seems to indicate a different reality where confidence level in the Commission is going down with every survey. In 2014, the proportion that expressed a lack of confidence in the Commission was 27%, this proportion had gone up to 30% by the last Afrobarometer Country Surveys in 2022. Conversely those that expressed confidence had gone down from 22% to 19%. Asked what the Commission should do to improve is effectiveness, the responses that received the highest score include, transparency and corruption, public awareness and scrutiny of commissioners when being vetted. Interestingly, Election Observers in subsequent elections have noted the lack of transparency in its communication both internally and with the public, so this observation is corroborated by the response of the perception survey.

**Figure II: IEBC effectiveness in 2013, 2017, and 2022 general elections.**



*Source: Afrobarometer survey 2022*

### 3.2 Assessment of IEBC Performance from County Consultations

Study participants acknowledged the IEBC's improved efficiency over the years in voter registration and management of election results including the announcement of results at the constituency level and use of the public portal in the transmission of the presidential election results in the 2022 elections. But pointed major gaps when it comes to civic awareness, voter education and integrity of voter register. Election materials were also received and dispatched to polling stations on time, with each polling station having a dedicated vehicle for transporting its election materials – a departure from past elections

where multiple polling stations shared a vehicle. The establishment of the Election Security Arrangement Project (ESAP), which brought together election and security stakeholders for joint training on the electoral process, enhanced security provision in the 2022 elections. There was also a cascaded mode of training for election officials in the 2022 elections. Regular meetings with candidates seeking elective positions including the pre-candidate registration meetings and post-candidate registration meetings were instrumental, resulting in fewer election petitions lodged in most Counties e.g. Makueni. The Candidate Registration Management System (CRMS) enabled candidates to preview their ballot paper and modify their photos. However, the delayed announcement of the presidential election results by the IEBC generated anxiety among Kenyans, denting its reputation and casting doubt on the credibility of the presidential election results. Furthermore, most constituencies faced the highest noted failure of the Kenya Integrated Election Management System (KIEMS) kits used to verify voter's registration and identification in the country. The delay by the Returning Officers to authorize use of the manual voter register led to many voters getting frustrated and leaving the polling stations after a long wait without voting hence being disenfranchised. Some voters would also be told their names were in another polling station quite removed from where they registered. Polling stations with many streams with 500+ voters per stream were noted to have long queues throughout the Election Day. The elderly, sick and physically challenged did not vote as transport was not provided for them on Election Day.



### 3.3 Legal frameworks governing elections in Kenya

The Elections Act 2011 has been described by observers as the Principal Act that consolidated various other legislations as recommended in the Kriegler report. However, the Elections Act was, though hailed as progressive in the conduct of elections (ELOG 2013) it was amended so many times as to undermine its efficacy. The EU observer mission noted that the amendments had the effect of increased party hopping by aspirants who were dissatisfied with their party nominations. The amendments were also being done very close to the elections with one effect being that the IEBC and relevant stakeholders could not carry out candidate vetting procedures envisioned in the Chapter six of the Constitution. Various electoral laws also conferred overlapping mandates to more than one electoral institution. For example, the IEBC, the ORPP and the PPDT all seemed to have a similar mandate relating to dispute resolution. Parliament failed to pass other laws necessary such as the Election Campaign Financing Act or a law to actualize the 'not more than two-thirds gender principle ahead of the 2017 General Elections. In an attempt to address court rulings and recommendations from previous elections, the IEBC presented amendments for Parliament's approval. However, these were being introduced well out of the timeframe they should have been undertaken and so were not implemented. Parliament also accused the IEBC of not involving the public in the proposed amendments, through public participation. To address gaps and challenges related to the legal framework, the Commission launched the Electoral Law Reforms Taskforce in 2018, which was mandated to interrogate all electoral laws and identify gaps, challenges, inconsistencies, and ambiguities in the existing legal framework and generate proposals for review. It drafted and submitted five bills to Parliament, which unfortunately were never brought to light and are still pending before Parliament for consideration. Moreover, to strengthen the electoral statutory framework, the Commission developed various amendments to the existing election Regulations which were submitted to the National Assembly for consideration. Consequently, Parliament enacted the amendments to the Political Parties (Amendment) Bill, 2021 on 5<sup>th</sup> January 2022 (IEBC's post-election evaluation report 2022).

### 3.4 Weak enforcement of electoral laws by EMBS

In 2013, the issue of enforcing electoral laws did not much present itself, even though it was observed that ORPP was less than keen to hold political parties accountable for their mischief. This lack of enthusiasm was aided by the ambiguities of the Political Parties Act 2011. In 2017 there however, was a marked observance of aspirants, candidates and political parties, committing electoral offences without any sanctions. It seems that the IEBC was reluctant to enforce the law, especially the Elections Offences Act and the Electoral Code of Conduct. Observers noted that the Commission did not proactively investigate violations but only considered these when complaints were received. Furthermore,

overlap in jurisdiction created ambiguity on which institution was responsible to enforce the law. For example, voter bribery – which was rampant – is an electoral offence, and would come under the purview of the IEBC, it is also a criminal offence falling under the jurisdiction of the ODPP, but it is also an economic crime coming under the jurisdiction of the EACC, but there is no clarity in the law as to which body should lead in enforcing the law on this offence/crime. On its part, the Commission noted attempts to weaken the Commission by undermining its processes and how it executed its mandate noting how, for example, attempts by the Commission to hold individuals who had committed electoral offences accountable were thwarted by arguing lack of jurisdiction. Further, it noted that other law enforcement agencies rarely pursued electoral offences, and a previous mandate to hold offenders to account had been withdrawn from the Commission. So, for example, the Commission could not prosecute an individual accused of voter bribery, even though it is an electoral offence, but on the other hand, the Office of the Director of Public Prosecutions (ODPP) rarely pursued these cases, rendering the Election Offences Law, 'ineffective' (IEBC Post Election Evaluation Report 2022).

### **3.5 Unregulated campaign financing & uncontrolled campaign period**

Efforts to regulate election campaign financing have been thwarted in every election. In 2013, the National Assembly only passed the Election Campaign Financing Act (ECFA) 2013 *after* the General Elections. In 2017, again, the National Assembly failed to approve the requisite regulations and amended the law so that it would come into force immediately after the 2017 elections. In 2021, The National Assembly's Committee on Delegated Legislation argued that the proposed regulations lacked sufficient public participation, the spending caps proposed by IEBC had not been approved by Parliament on top of the regulations being time-barred. As a result, the 2022 elections were conducted without any regulatory oversight relating to Election Campaign Financing (Mzalendo Trust 2022). Looking at the role of IEBC in election campaigns, IREC report noted that prolonged campaign periods undermined compliance with the Electoral Code of Conduct and thus recommended for a defined campaign period as IEBC was not assertive in compelling compliance with the Code of Conduct. The Election Observation Group (ELOG) in its 2022 observation report notes that one of the persistent issues that has remained since the 2007 elections has been regulating of the campaign period.

### **3.6 IEBC's underperformance in voter education and vetting/ registration of candidates**

Voter education in 2013 commenced one month before the elections. According to ELOG's election monitoring report of 2013, delays in IEBC's internal processes led to this delay. Further the IEBC only provided voter education materials in English and Kiswahili with no provision for mother tongue which would have been beneficial for

the large number of voters who could not engage with English and Kiswahili materials, especially given the complexity of the elections and the fact that this was the first time Kenyans were voting for six positions. In addition to the late commencement of voter education, the IEBC only conducted mock elections for one week to vote. While the observation was that IEBC did not conduct comprehensive voter education across the country in 2017, and there was significantly reduced voter education for the fresh presidential elections. In 2022, voter education again started late and IEBC staff on the ground were constrained by limited logistical support inhibiting them from accessing remote areas with voter education. The late start of voter education was attributed to late disbursement of funds to the Commission by the Treasury (EU observer mission report 2022). The Commission appointed the Leadership and Integrity Vetting Committee to be tasked with vetting of aspirants for the 2022 General Election. In 2017 IEBC did not submit for vetting aspirants to the EACC, it submitted for vetting details of 21,863 aspirants who intended to participate on the 9th of August 2022 General Election in Compliance with Chapter 6 of the Constitution. Though EACC did not confirm vetting all the candidates presented, from this exercise five aspirants were found to be non-compliant and were disqualified from participating in the election.

### **3.7 Issues around voter register and voter registration**

On voter registration, a total of 22,120,458 voters were registered for 2022 GE, an increase of 2,510,033 from 2017. Further 8,811,691 youths were registered forming 40 Percent of all registered voters. In addition, 10,862,268 women were registered which was 49.11% of all registered voters. In the 2017 General Election, women accounted for 46% of the 19,600,000 registered voters. The new number of registered voters represents a 12.79% increase from 2017. On the Election Day, there was however low voter turnout of 64.77%, - the lowest in Kenya's multi-party history - which was a drop from the 78% attained in 2017 General Election. This was attributed to the effects of Covid-19, economic constraints, insecurity, drought, fear of election related violence that forced some of the voters to leave their area of polling, polarized political environment and voluntary nature of participating in the electoral processes (IEBC 2022 Post-Election Evaluation Report). Following the 2022 General Elections, the Election Observation Group (ELOG) noted that one of the unresolved electoral issues since the 2013 elections was that of the questionable integrity of the voter register (ELOG 2022). Election observation reports noted that the commencement of voter registration in 2013 was delayed by three months due to procurement disputes in the purchase of Biometric Voter Registration (BVR) equipment. The audit of the voter registers in 2017 alluded to the possibility of the number of registered voters being lower than was contained in the voter register on account of approximately 1 million deceased people still included in the register. Further according to the KPMG audit, some voters were registered without their biometric data potentially disenfranchising these voters from their right to vote. Many potential voters

who could not access identification cards were barred from registering as voters and therefore disenfranchised. An audit of the voter registers in 2022 raised the significant issue of security vulnerabilities in the BVR system including weak access control to the system that rendered it susceptible to unauthorized access (Carter Center report 2022). In addition to all this, ELOG noted in its observation report that the IEBC failed to make the findings of the audit report public.



### 3.8 Election management and administration

Concerns that had been noted in the 2007 elections – and indeed in elections prior – relating to the administration of elections have continued to manifest in the post 2010 Constitutional dispensation. The IEBC in an attempt to ensure transparency and efficiency invested heavily in technology for voter registration and identification, but in subsequent elections, the issue of technology seems to have served to further erode confidence on IEBC's process. Two main questions have remained unanswered; - *Why is technology not working for us only in respect of presidential vote? Why would a foreigner refuse to open servers for an independent republic like Kenya?* The IEBC has been consistently accused of not engaging the public sufficiently in its decision-making processes (as in the case of developing campaign spending caps section 2.3). The poor communication is both internal (to its staff) and external (to the public), according to the Carter Center Election Observation Mission. In the 2013 elections, IEBC did not have sufficient time to train polling

staff on the EVID equipment due to late procurement, leading to some polling staff not using the EVID equipment owing to incomplete training. In the 2017 elections, observers noted that the weakest aspect of training was related to tabulation and results transmission process and many concerns emerged during the tabulation and transmission process, according to the Carter Center observers. The voter tabulation and transmission has also been dogged by controversy in the last three General elections. In 2017 elections, again because of the late implementation of electoral reforms, this affected the Commission's adoption and use of technology. In 2022, results transmission on election night worked well, however IEBC had challenges to communicate how it had implemented the Kenya Integrated Electoral Management System (KIEMS). Furthermore, the mandatory audit of the election technology was undertaken weeks before the election. The Commission further failed to disclose the findings of this audit, not only barring any potential to make improvements for the future but further denting public confidence in the commission and its operations. Our participants in this study, challenged the Commission's procurement processes, noting opacity in these processes and citing numerous scandals linked to the Commission concerning the procurement of equipment and materials. In response, the Commission pointed out that the late receipt of funds from the treasury hampered its ability to undertake its processes effectively. The treasury tended to release large amounts of money late in the day, expecting these to all be spent in the electioneering period.

### **3.9 Implementation of post-election recommendations**

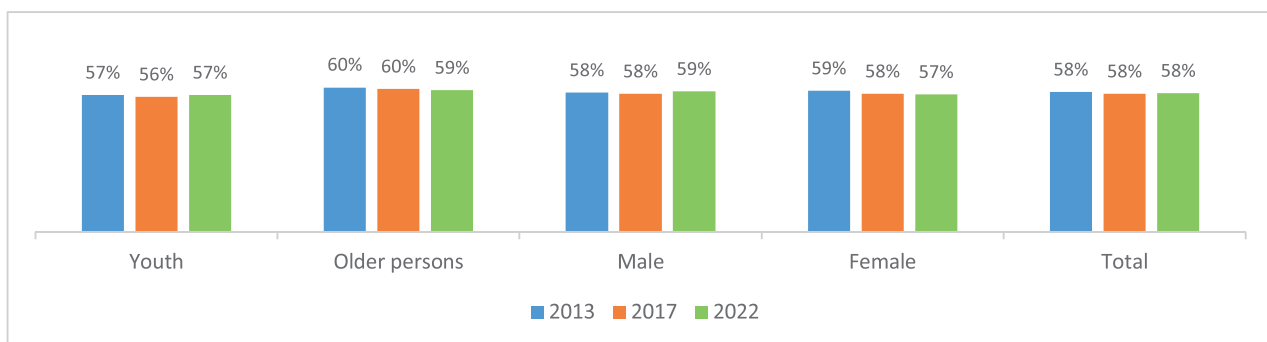
In the past three General Elections under the new Constitution, Election Observers have made recommendations on how the elections can be improved. They have also tracked the implementation of these recommendations, and the findings of the tracking have been rather grim. The Election Observation Group (ELOG) in 2017 noted that many of the issues that negatively impacted on that election emanated from the failure to implement recommendations from the IREC report on the 2007 elections. The EU Observation Mission on the other hand noted that of the twenty-two recommendations made following the 2013 elections, only two had been fully implemented. The ELOG in 2022 noted eight areas where recommendations have not been implemented and these are; (a) Inadequate voter education; (b) Campaign period regulation; (c) Late attendance to electoral reforms; (d) Questionable integrity of the voter register; (e) Use of technology in electoral processes; (f) Problems with the corporate governance of IEBC; (g) Lack of regulation of campaign and political financing; and (h) Non-achievement of the two-thirds gender rule and inclusion of women and PWDs. Interestingly most of the challenges noted here constitute the bulk of challenges facing the IEBC in relation to delivering free, fair, transparent and credible elections. Relating to the partial or lack of implementation of Election Observation Recommendations, the Commission noted that its internal challenges could not be entirely divorced from external challenges. The fact that the

Commission relied on other stakeholders to implement some of the recommendations meant that the Commission was limited in what it could realistically do. Of significant importance is both how much money and when it was received and the effect it had on processes such as voter education and procurement. Additionally, the Commission relies on Parliament to pass laws - and in a timely fashion - to execute its mandate.

### 3.10 Perceptions on independence, transparency and effectiveness of IEBC

The appointment of commissioners continues to be highly politicized. Since the establishment of the Commission, there has been the perception that 'whoever owns' the Commissioners can secure an election. As a result, disputes between political parties - those in power and those in opposition - have persisted to ensure that individuals who are sympathetic or aligned to their interests are appointed to the Commission. Participants noted that even in the current process of appointing new commissioners, there have been attempts to influence the selection panel setup. Linked to the issue of appointment of commissioners, participants also noted a problem in the consistency of commissioners. Commissioners left before their terms have expired, under questionable circumstances and have often not been replaced. Besides the appointment concerns, the EU Observer Mission noted that the IEBC has been inhibited in its ability to execute its functions by its reliance on Parliament and the Treasury for its funds. Parliament has consistently approved IEBC's funds late in the day and not in sufficient quantities. Treasury too has often been late in releasing the funds to the IEBC so that activities related to its mandate in general and to the execution of the General Elections are hampered. While it is supposed to receive funding from the exchequer for its operations, the resources tend to be withheld until 'the last minute', making it difficult for the Commission to undertake its operations promptly. Related to independence, are the twin questions of transparency & effectiveness of IEBC. From CERA's perception survey, the following pictures were painted.

**Figure III: Ratings on level of transparency of IEBC in 2013, 2017, and 2022 general elections.**



Source: CERA perception survey 2023



Regarding level of transparency of IEBC in the three previous elections namely 2013, 2017 and 2022, there doesn't seem to be any improvement on this aspect over the different election cycles, though older people think IEBC has been more transparent than young people. In terms of effectiveness of election management, IEBC is rated slightly above average (at 54% in 2013, 53% in 2017 & 54% in 2022) on this aspect across the last three previous elections under the new constitution. Older persons and men think of IEBC as more effective at 56% and 54% respectively, while younger people and women rate them slightly lower at 52 and 53 percentage points.

### **3.11 Stakeholder engagement and public communications**

Apart from obscurity in how the Commission conducted its processes, participants also noted that the Commission's interactions with other stakeholders were wanting, especially with political parties. Political parties' representatives confirmed very little interaction between parties and the Commission outside of the electioneering period, and even when interaction happened, it tended to be of an 'adversarial' nature. Participants also noted that the Commission tended to be poor in its communications and involvement with the public, citing, as an example, lack of public participation in setting campaign financing limits. However, IEBC on its part feels they have been able to adequately engage with its key stakeholders in the delivery of its mandate. These stakeholders had varying interests and areas of focus around the electoral cycle. On this IEBC got an overall rating of 57% on effectiveness of its engagement with other stakeholders in electoral process, with older people giving their approval compared to young people (CERA's perception survey 2023).

## 4.0 ROLE & PERFORMANCE OF OFFICE OF THE REGISTRAR OF POLITICAL PARTIES (ORPP)

### 4.1 ORPP's Performance overview

ORPP prepared 2022 General Elections Action Plan to guide and prioritize numerous activities to regulate, monitor, investigate and supervise political parties in preparation for elections. According to ORPP 2022 post-election evaluation report, there were two notable achievements: - (i) upgrading the Integrated Political Parties Management System (IPPMS) which on-boarded three (3) services, namely - membership registration to a political party of choice, resignation from political parties and checking of political parties' membership status on the eCitizen platform; and (ii) enactment of the Political Parties (Amendment) Act, 2022 and the Political Parties (Membership) Regulations, 2021. Before 2022 general elections, ORPP certified membership registers for 84 political parties; certified membership status & symbols of 6944 independent candidates; and trained 1735 county and national political party chief agents (ORPP 2022 Post Election Report). In the process ORPP faced various challenges, key among them: late amendment to the PPA, which adversely impacted on planning and implementation of activities as well as legal issues emanating from coalitions and coalition political parties, including the signing of the agreements and exit clauses. Other challenges included the seven (7) day period set by the Act to certify the political parties' membership registers, which proved impractical, and the high number of candidates vying as independent candidates emanating from party nominations. In addition, the late recruitment of constituency and county monitors meant that ORPP missed adequate monitoring of key electoral activities.

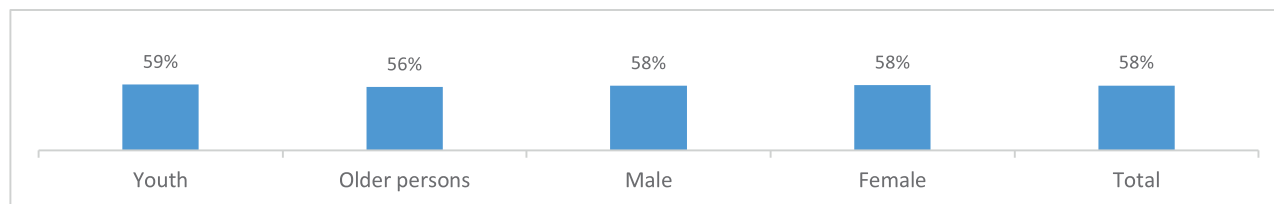
At the same time, training of party agents was limited to the chief agents due to budgetary constraints. ORPP experiences budgetary constraints which have led to operational inefficiencies. It was also noted that ORPP increased its satellite offices from 8 in 2022 to 12 in 2023 across the country but should continue with its sensitization workshops where they interact with political parties and CSOs. Fast-tracking legal reforms to take care of gaps identified through 2022 post-election evaluation exercise is yet another significant priority. It is gratifying to note that ORPP has really embraced technology which is a plus leading to digitization of most ORPP functions on eCitizen like membership verification using short codes. Initially people could fake party membership, but now it is impossible. These reforms have served to respond to and address the previous accusations that ORPP had failed in playing its role in confirming membership to political parties and in cleaning the political party membership register. Before many Kenyans complained of finding themselves in parties, they did not register in whereas others said that they were not members of any political party but found that they had been registered as members of parties they did not know much about. This was an affront to the privacy of personal data, but this has since been addressed.



## 4.2 Perceptions on ORPP's engagement, integrity & effectiveness

Concerning stakeholder engagement, participants on one hand, noted that the ORPP's relations with political parties had improved considerably and that it was often available to communicate and provide training or other support as needed. However, participants also noted various challenges that the Registrar needs to address. For example, they noted that the same challenges that face the IEBC concerning integrity and transparency also plague ORPP and PPDT. When it came to holding political parties to account, the ORPP was faulted for being lenient on certain parties, especially if they were perceived to hold power. Respondents argued that there has been lack of courage in dealing with difficult issues affecting parties and often opting for the status quo. Political parties on their part perceive ORPP's efforts to streamline party processes as being too restrictive, citing measures put in place by the ORPP to verify party membership as too cumbersome. As with the IEBC, there was a perception that other EMBS were not as independent and tended to be beholden to the incumbent government. From CERA's perception survey, ORPP was rated at 58% in terms of efficacy of its operations and there was no significant variance on this aspect across the different segments of respondents, as shown in figure IX below.

**Figure IV: Effectiveness of ORPP on its key roles and functions**



*Source: CERA perception survey 2023*

### **4.3 Weak enforcement of electoral laws e.g. Political Parties Act**

Perhaps the biggest challenge leveled against the ORPP is its inability (or unwillingness) to enforce implementation of the requirements of the Political Parties Act, to compel political parties to comply with legal and constitutional requirements in the conduct of party affairs. In the 2013 General Elections, the Registrar's office was noted as widely neglecting the enforcement of the Political Parties Act, to hold political parties to account on their conduct, both the ORPP and the IEBC were accused of being lenient on political parties and politicians who violated the law (Carter Center 2013). Further during the 2017 & 2022 General Elections, it was noted that the ORPP did not enforce the legal provisions for inclusive political participation.

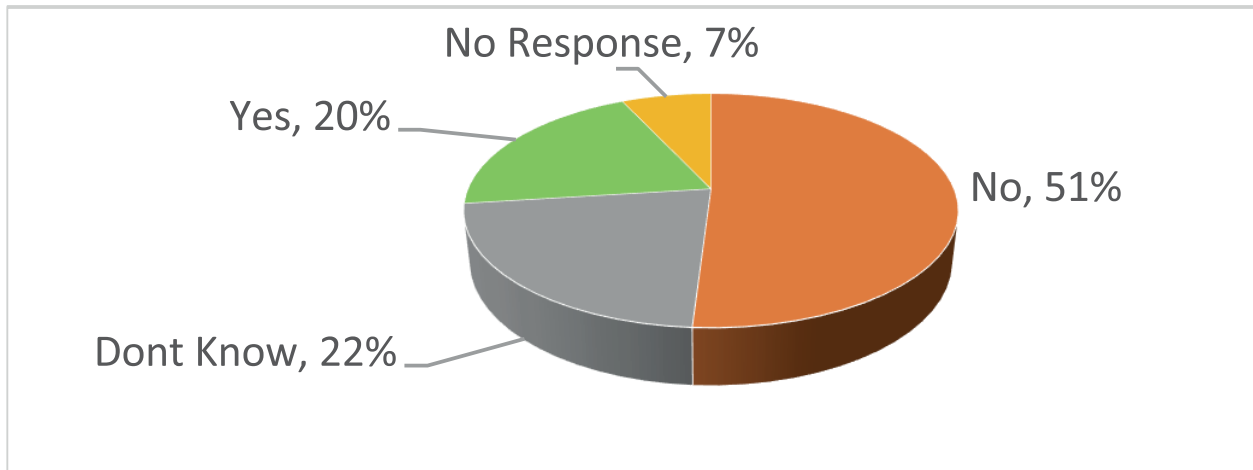
### **4.4 Administration of political parties' fund**

Outside of the election activities, the Registrar has the responsibility to administer the political parties' funds and ensure that political parties use the funds to, among other things, promote the representation of marginalized groups in Parliament. According to a study by the Centre for Multi-Party Democracy (CMD) in 2017, none of the political parties that were recipients of the political parties' fund used any of the resources to promote the participation of marginalized groups at any level (community, county or parliament). This was according to an audit conducted by the Office of the Auditor General (OAG). The study also noted that of the substantial amount retained at the Registrar's office very little was used towards programmes related to political parties.

### **4.5 ORPP's external or political influence**

As shown below, only 2 out of 5 respondents mentioned that ORPP is impartial, free from external influence and political interference during CERA perception survey conducted between July and September 2023.

**Figure V: Views whether ORPP is free from external influence and political interference.**



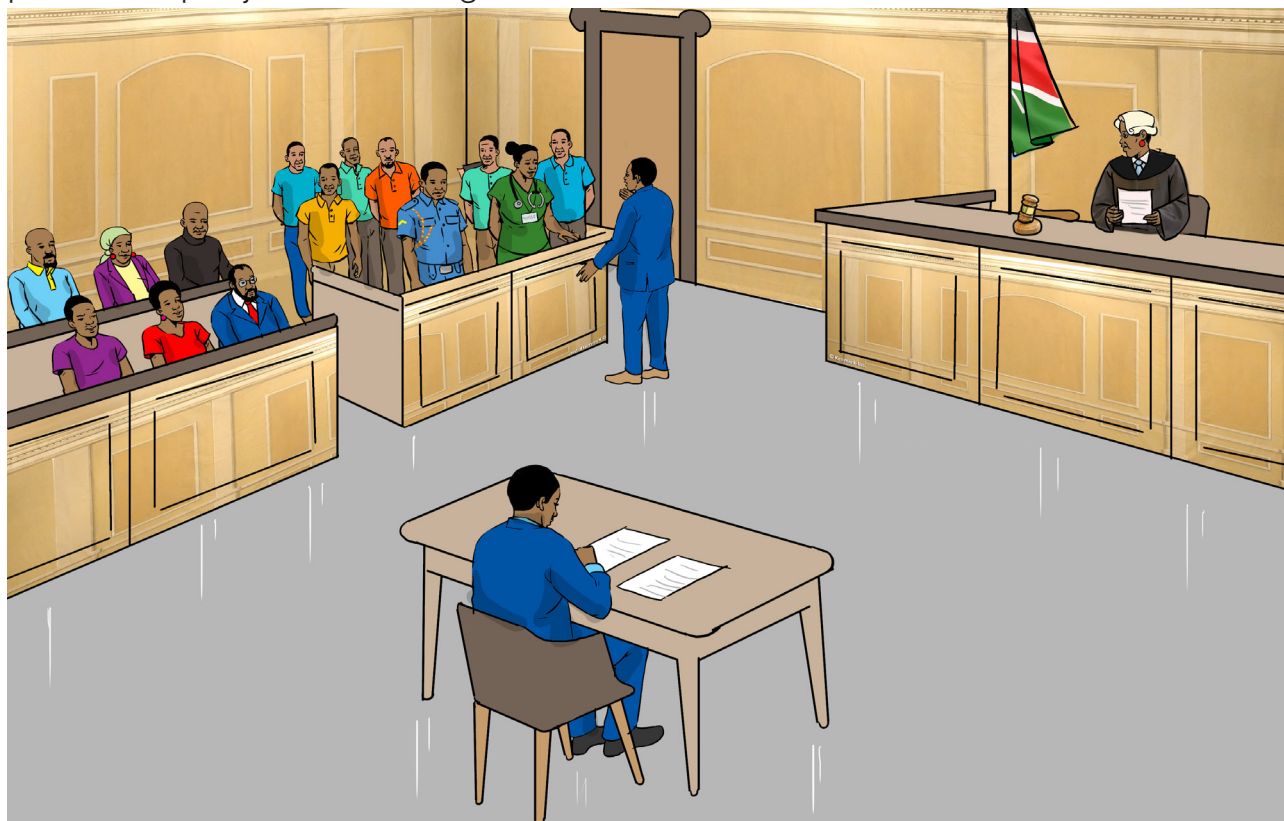
**Source: CERA perception survey 2023**

And when perception survey respondents were asked to recommend measures which can help free ORPP from external influence and political interference the following 4 topped the list as follows; - should be left alone to do their work (25%), work with clarity & transparency (22%), secure adequate funding (12%) and seek more autonomy & powers over parties (9%).

## 5.0 ROLE & PERFORMANCE OF POLITICAL PARTIES DISPUTE TRIBUNAL (PPDT)

### 5.1 Mandate and jurisdiction

By dictate of Article 87 of the 2010 Constitution, statutory and regulatory framework for resolution of disputes relating to political parties is spelt out in the Political Parties Act, 2011 (PPA) which is the principal legislation in relation to the establishment, regulation and funding of political parties. Institutionally, it provides for the establishment of the Office of the Registrar of Political Parties (ORPP) and the PPDT. The PPA outlines the mandatory requirements for the establishment of political parties and standards for continuous governance. The PPA also governs the establishment of coalitions and sets requirements for mergers of political parties. Jurisdiction of the PPDT Prior to the 2016 amendments to the PPA, the PPDT had jurisdiction to adjudicate over the following types of disputes: (a) disputes between members of a political party; (b) disputes between a member of a political party and a political party; (c) disputes between political parties; (d) disputes between an independent candidate and a political party; (e) disputes between coalition partners; and, (f) appeals from decisions of the Registrar under the PPA. Following the amendments to the election laws in 2016, Section 40(1) of the Political Parties Act was revised by including sub-section (fa) which gave PPDT the jurisdiction to hear and determine disputes arising from party primaries. Participants noted that the tribunal is the recourse candidates have after suffering injustice perpetrated by political parties and party leaders during nominations.



## 5.2 Overview of performance and challenges

Participants (mainly from political parties and civil society) raised concerns and challenged how the Political Parties Disputes Tribunal often handled cases, arguing that there wasn't sufficient care or attention to detail given to disputes brought to them by aggrieved parties. Participants noted that in some instances, the High Court had overturned the decisions of the PPDT to support the argument that the PPDT handled disputes poorly. On its part, the PPDT noted that some of the challenges it faced were a result of a legal environment that was not conducive, for example in some cases, changes to laws were made so late in the day, which did not allow them to make adequate arrangements before handling disputes. Further, the nomination timelines tended to be so short requiring lengthy, thus presenting challenges to the Tribunal to hear and determine all the disputes in a timely manner. The Tribunal also noted that political parties own Internal Dispute Resolution Mechanisms (IDRM) (where they existed), in some cases, were inadequate and detached from local realities, and this, therefore, meant that aggrieved parties resorted to seeking redress from the PPDT, suggesting that if the IDR mechanisms were adequate, there might be no need for individuals or parties to seek redress with PPDT, which might, in turn, reduce the cases that the Tribunal handles. When it comes to perceptions on effectiveness of PPDT, the survey looked at the efficacy of operations of the tribunal on which, the institution scored 56%, meaning there are still aspects of operations that need improvements despite mid-level performance which we can consider as above average. The general populace has low confidence with PPDT in terms of its overall functioning. On this attribute PPDT scored 41% from CERA's perception survey (CERA 2023).

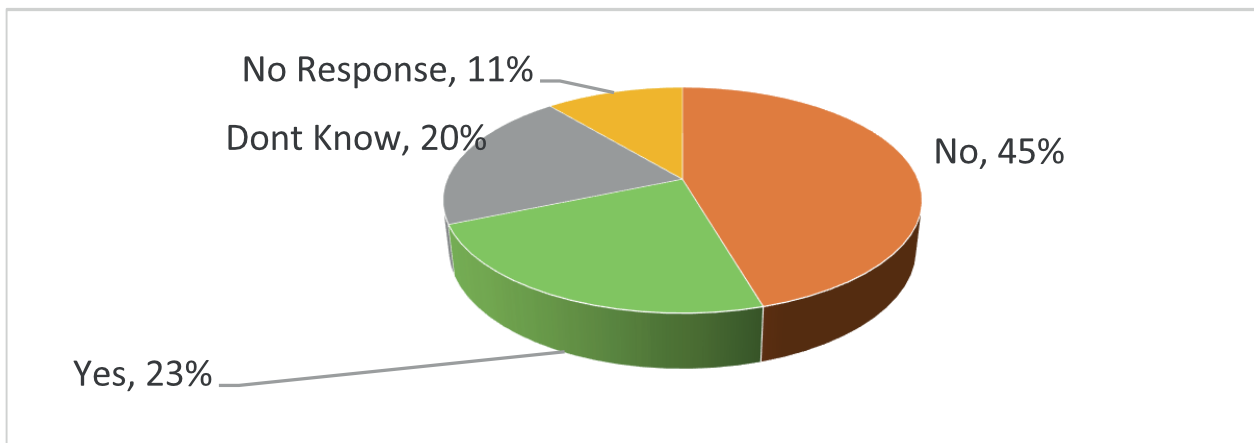
## 5.3 Jurisdictional overlaps between PPDT & IEBC

As confirmed above, the Elections Act is the primary legislation governing elections in Kenya. It provides for the main elements of an electoral cycle, including registration of voters; nomination of candidates; election operations; polling operations; results management; integration of ICT; referendums; resolution of election disputes; and election and referendum petitions. The powers vested in the IEBC by Article 88(4)(e) of the 2010 Constitution and the jurisdiction of the PPDT under the PPA give rise to possible overlap and lack of clarity over responsibilities in the handling of disputes arising from party primaries and party list nominations. In March 2017, IEBC and PPDT entered into a Memorandum of Understanding (MOU) for purposes of providing clear institutional alignment and guidance regarding how their concurrent jurisdiction would be exercised. PPDT's post-2017 case digest reflects on existing legal and administrative framework designed to create harmony between PPDT and IEBC. It also reflects on reform issues that may be undertaken for purposes of further streamlining this overlap in jurisdiction between these two EMBS in the electoral process.

## 5.4 Views on PPDT's transparency, accountability & independence

Level of PPDT transparency was rated at 38% overall. The recent media reports on its recent decisions on members of parliament accused by their parties of having defected prior to and after the 2022 general elections could have impacted on level of public confidence on its operations and level of transparency.

**Figure VI: Belief that office of Political Parties Dispute Tribunal is sufficiently accountable to the public and stakeholders.**



A whole 45% don't believe PPDT is accountable to the public and stakeholders, while only 23% do. On the other hand, 20% said they don't know, while 11% didn't respond. We sought public perception on whether the Political Parties Dispute Tribunal is free from external influence and political interference. There seems to be some common perception that the Political Parties Dispute Tribunal does not operate independently as envisioned in its formation. 55% of the respondents mentioned that they don't agree that PPDT is free from external influence and political interference in comparison to only 17% who feel it operates independently. 11% didn't respond to this question while 18% said they don't know much about PPDT.



## 6.0 ROLE AND PERFORMANCE OF POLITICAL PARTIES

### 6.1 Introduction

Political parties were criticized for their narrow focus on elections and lack of sustained engagement beyond election periods. The absence of strong party structures, especially at the local level, was noted, impacting their ability to contribute meaningfully to their memberships and local communities. Participants urged parties to prioritize long-term planning, support loyalists or those liked by members over preferred candidates, and address nomination challenges to enhance internal democracy. This essentially means parties will have to reconsider their nomination processes to focus on merit-based selections rather than preferential treatment. They will have to establish clear criteria for candidate nominations to ensure that individuals with proven competence and commitment to party ideologies and public service are chosen.

### 6.2 Lack of internal democracy in political parties

Participants noted that most political parties are organized on regional or ethnic basis, further undermining any attempt to organize based on ideology, and even though political parties are public institutions, there is an unspoken understanding that they belong to 'individuals', i.e., those who establish, lead and/or fund the parties. Because of manipulation of nominations by election boards and in some cases party leaders or owing to the fact that political interests supersede party ideologies (assuming they exist in reality), when an individual fails to secure a nomination ticket, they quit the party for another one or vie as an independent candidate. Participants also noted that political parties have shown lack of internal party democracy and have used violence to intimidate rivals. These direct tickets or stage-managing nominations in favor of particular candidates, demoralized party members contributing by and large to voter apathy in the general elections.



### 6.3 Political parties in voter education and voter mobilization

The main job of political parties is to try to win votes and their educational efforts should not be devoted to general 'civics', but rather to train members and party activists for campaign-related tasks: how to address public meetings, how to conduct door to door campaigns, how to present party policies, how to mark ballots correctly in their favor, how to mobilize their members/supporters to turn out to vote for party candidates etc. In other words, the parties are inherently involved in partisan training / political mobilization, whereas civic and voter education typically focuses on non-partisan matters such as virtues of voting, election procedures, qualities of a good leader etc. And it is common for parties conducting voter education to concentrate on educating voters in those aspects of electioneering that could secure them more votes. For instance, they may encourage their potential supporters to register and to ensure they are correctly entered on the voters list; or, where there is a complicated ballot, or illiteracy, parties may train their supporters in the mechanics of filling out their ballots (i.e. vote for the bull symbol, or vote for numbers 3 and 6, etc.). Participants noted that most political parties lack resources to conduct political education and create civic awareness among their members. Additionally, infrequent meetings with members and inadequate support for branch offices limit the development of strong grassroots leadership within parties.

## 6.4 Challenges relating to political party nominations

Since political parties are only viewed as vehicles for winning elections, party nominations become highly contested events. Unfortunately, political party nominations in the new constitutional dispensation have been characterized by chaos and violence, except for the 2022 elections, when indirect nomination methods were introduced through an amendment of the Political Parties Act. Participants noted that while these reduced the cases of violence, they were shrouded in opacity and manipulation and served to disenfranchise marginalized aspirants (women, youth and PWDs).

*“Many of the aspirants especially women, youth and PWDs had been coerced to cede their aspirations even when it was evident that they were more popular with the masses” (Constituency Consultative Forum in Kapsaret, Uasin Gishu County). So, there were mixed perceptions that indirect nomination methods allowed for greater consensus building, but if anything, this was not the case.*

The Independent Review Commission and other subsequent post-election review reports noted the malpractices during political party nominations and made a number of recommendations to improve the integrity of the nomination processes. However, even with these recommendations, nominations since 2013 have been dogged with inconsistencies and continued malpractices. EU, Carter Center and ELOG observation reports note that nominations were rife with 'fraud, rigging and bias' across the three previous elections, calling into question their integrity. In all this, the IEBC adopted a laissez-faire approach arguing that it was not directly involved with party nominations or responsible for their outcomes. In the EU EOM report of 2013, the IEBC is criticized for clearing candidate's contrary to the rules and past the laid deadline.

## 6.5 Political parties and resolution of internal electoral disputes

To promote democracy during and after party primaries, political parties in Kenya have internal dispute-resolution mechanisms in compliance with the requirements of the law. However, political parties lack the requisite capacities to resolve internal party disputes. For instance, the disputes emanating from party primaries have impacted negatively on the performance of parties either in the disputed positions or other electoral positions parties' contest. Similarly, the disputes weaken the parties especially when complainants defect to other parties. Since primaries are held in high regard, especially in party strongholds, they are prone to disputes inherent in any electoral process. In many instances the outcome of party primaries in such regions where given parties hold great sway may reflect the actual results of the general elections.

## 6.6 Inadequate Funding of Political Parties

Another significant challenge raised by participants was the inadequate funds received by political parties from the Political Parties Fund (PPF). Since the establishment of the fund, the minimum amount designated to go to political parties has not been met and the available funds continue to reduce year in year out to an extent that by 2023/24 FY the cut-back was by a whopping 60%, according to ODM Secretary General (January 2024).

## **7.0 RECOMMENDATIONS FOR IMPROVING EMB ROLES IN THE ELECTORAL PROCESS**

### **7.1 RECOMMENDATIONS FOR IEBC**

- a) Strengthen local structures, demystify Bomas and empower other agencies to tally results
- b) Pre-test KIEMS Kits early enough and facilitate advance voter verification
- c) Employ youth and reduce number of voters per polling station
- d) Proactively engage with Parliament to fast-track law reforms and necessary amendments to election legislations
- e) Enforcement of electoral laws by EMBs (led by IEBC) is critical throughout the electoral cycle
- f) There is need for strong regulation of campaign financing & control of campaign period
- g) IEBC must enhance voter education and vetting of candidates
- h) IEBC must address issues around voter register and voter registration
- i) IEBC must improve its role in election management & administration
- j) Fast track implementation of post-election recommendations
- k) Increase stakeholder engagement in readiness for 2027
- l) Need to stagger future general elections into two phases and increase staff at polling center
- m) There is need to address views & perceptions on independence of IEBC
- n) Lobby for appointment of new IEBC commissioners and share with them findings of this study on arrival

- o) Regular & consistent civil society advocacy for electoral reforms & technical support to IEBC are required
- p) IEBC should entrench and support constituency structures so that signed results from polling stations as consolidated at the constituency level are final.
- q) IEBC should have standard operating procedures to guide immediate use of manual voter register in case KIEMS Kits fail.
- r) IEBC should provide digital and mobile telephone platforms for voters to check and confirm their registration details including their polling stations well in advance of queuing.
- s) IEBC should consider unemployed youth for election officials' opportunities and not prioritize salaried teachers.
- t) IEBC should reduce the number of voters per polling stream to 400 and plan to take care of elderly voters, the sick, and PWDs.
- u) The need for clear communication on the processes involved in managing elections, from voter registration to result transmission, is crucial for building public trust.

## **7.2 RECOMMENDATIONS FOR ORPP**

- a) Continue with reforms to strengthen and institutionalize political parties
- b) ORPP must work on early enough and address the 5 main challenges faced during the 2022 general elections (contained in ORPP 2022 post-election evaluation)
- c) Instill discipline and accountability in all political parties to reassure integrity & effectiveness
- d) Enforcement of electoral laws e.g. Political Parties Act
- e) Law reforms to address overlaps, party registers and nomination rules/timelines
- f) Improve administration of political parties' fund

### **7.3 RECOMMENDATIONS FOR PPDT**

- a) PPDT should improve its reputation through increased awareness and effectiveness through reforms
- b) Champion review of relevant laws to improve legal environment, enhance nomination timelines and strengthen political parties' internal dispute resolution mechanisms
- c) Address any outstanding gray areas or jurisdictional overlaps between PPDT & IEBC
- d) Decentralization of PPDT during pressure points or peak times should help improve access to justice for aggrieved candidates/parties.
- e) A strategic, consistent and structured capacity development plan for members of the tribunal and staff is necessary & critical.

### **7.4 RECOMMENDATIONS FOR POLITICAL PARTIES**

- a) Improve accountability of politicians and political parties
- b) Need to detribalize and institutionalize all political parties
- c) Political parties should increase their voter education and voter mobilization drives
- d) Political parties must streamline and improve their nomination rules, systems, procedures and processes
- e) Political parties should strengthen their internal dispute resolution mechanisms
- f) Need to lobby Parliament to increase funding for political parties
- g) Political parties should be compelled to strengthen grassroots leadership and engage members regularly
- h) Make political parties special purpose vehicles for women, youth and PWDs

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