

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI
PRESIDENTIAL ELECTION PETITION NO. E005 OF 2022

BETWEEN

RAILA ODINGA.....1ST PETITIONER
MARTHA WANGARI KARUA.....2ND PETITIONER

AND

INDEPENDENT ELECTORAL &
BOUNDARIES COMMISSION1ST RESPONDENT
WANYONYI WAFULA CHEBUKATI.....2ND RESPONDENT -10
BOYA MOLU.....3RD RESPONDENT
PROF. ABDI YAKUB GULIYE.....4TH RESPONDENT
JULIANA WHONGE CHERERA.....5TH RESPONDENT
JUSTUS NYANG'AYA.....6TH RESPONDENT
FRANCIS WANDERI.....7TH RESPONDENT
IRENE MASIT.....8TH RESPONDENT
WILLIAM SAMOEI RUTO.....9TH RESPONDENT

2ND RESPONDENT'S REPLYING AFFIDAVIT

I, WANYONYI WAFULA CHEBUKATI, a resident of Nairobi County within the Republic of Kenya and of P.O. Box 45371-00100 Nairobi, do hereby make oath and solemnly state as follows: -20

1. THAT I am the Chairperson of the Independent Electoral and Boundaries Commission (the "1st Respondent" or "Commission"), appointed in accordance with Article 250(2) of the Constitution of Kenya, 2010 and Section 5 of the Independent Electoral and Boundaries Commission Act, 2011, ("the IEBC Act"). I am conversant with the matters deponed to herein hence authorized and competent to swear this affidavit.
2. THAT in my capacity as the Chairperson of the Commission, I was the Returning Officer for presidential election in the elections held on the 9th August 2022. (Annexed hereto and marked "WWC-1" is a copy of the Gazette Notice regarding my designation as the Returning Officer for the Presidential Election). -30

3. THAT I have read and understood the Petition dated 21st August, 2022 and filed in court on 22nd August, 2022 together with the Supporting Affidavits sworn by Raila Odinga, Martha Wangari Karua, Saitabao Kanchory, John Mark Githongo, Arnold Ochieng Oginga, Dr. Edgar Ouko Otumba, Bernard Adongo, Dr. Nyangasi Oduwo, Cellestine Anyango Opiyo, Susan Wambugu and the Further Affidavit of Benson Wesonga, Ezra Sunguti, Benjamin Agina, Nathan Githinji Mwangi, Prof. Walter Richard Mebane, Arnold Kakenyi Lenny Muteti and Martin E. Papa as well as the annexures thereto (together "**the Petition**").
4. THAT the Petition is opposed. I reiterate and adopt the contents of the Answer to the Petition presented alongside this Affidavit pursuant to Rule 11 of the Supreme Court (Presidential Election Petition) Rules, 2017. I wish to state as follows in addition to the responses outlined in the said Answer to Petition. - 10
5. THAT for proper context, this Affidavit is structured into seven key parts as follows:
 - a) Pre-poll preparations and issues arising.
 - b) The election day.
 - c) Transmission of results.
 - d) Procedures at the National Tallying Centre.
 - e) Declaration of results.
 - f) Responses to allegations arising from the declared results.
 - g) Responses to cross-cutting allegations contained in various Affidavits. - 20

PART 1: PRE-POLL PREPARATIONS AND ISSUES ARISING

6. THAT like many Elections Management Bodies (EMBs) across the world, the 1st Respondent adopts an "elections cycle" model and appreciates elections as a continuous process rather than isolated events. This means that the planning and preparation for an upcoming election starts and proceeds through a series of events after a concluded or previous election. In the cycle, one activity then leads to another until the cycle is complete and a new cycle begins.
7. THAT when the Commission embarked on preparations for the 2022 elections after the 2017 election cycle, we were acutely aware of the important responsibility bestowed upon us by the Constitution of Kenya to deliver free, fair and transparent elections which are administered in an impartial, neutral, efficient, accurate and accountable manner as per the dictates of Articles 81 (e) and 86 of the Constitution of Kenya, 2010. For my colleagues and I, our respective oaths of office were a - 30

constant reminder of our solemn duty to obey, respect and uphold the Constitution and laws of Kenya in our service to the nation and people of Kenya.

8. THAT the start of the 2022 election cycle availed an opportunity to reflect on a few issues and improvements to our processes so as to address concerns arising from previous elections. We particularly sought to establish both the status of the law and the impact of decisions and guidance of courts of law which were instructive on the manner in which the Commission's mandate was to be carried out. Key among these included:

- a) the decision of the Court of Appeal in Civil Appeal No. 105 of 2017, *Independent Electoral and Boundaries Commission (IEBC) v Maina Kiai & 5 others* ("Maina Kiai case") which set out guidelines for protection of voters' rights at the polling station level, transmission, tallying and declaration of presidential results; -10
- b) the decision of the Supreme Court in Supreme Court Election Petition No. 1 of 2017, *Raila Odinga vs Independent Electoral and Boundaries Commission, 2017 eKLR* ("Raila 2017 case") together with the clarification decision rendered by the Court in the matter which required the Commission to put in place certain measures to ensure that elections of such national significance would never again be annulled for breach of the law and regulations; and
- c) the decision in *National Super Alliance (NASA) v Independent Electoral and Boundaries Commission* in relation to the implementation of the complementary mechanism under section 44A of the Elections Act as read with Regulation 69 of the Elections (General) Regulations on identification. -20

9. THAT preparations for the 2022 General Elections involved a series of steps. In summary, the key aspects of the preparations included:

- a) dispute resolution in relation to the previous (2017) elections;
- b) post-election evaluation;
- c) implementation of recommendations from the post-election evaluation;
- d) legal and policy reforms;
- e) review of the Commission's Strategic Plan; -30
- f) development of an Elections Operations Plan;
- g) publication and submission of Annual Reports to Parliament and to H.E. the President.

- h) development of a Boundaries Review Operations Plan;
 - i) undertaking Continuous Registration of Voters;
 - j) undertaking the requisite procurements of strategic and non-strategic materials;
 - k) registering candidates for elections;
 - l) undertaking nominations and resolving dispute arising therefrom; and
 - m) lastly, conducting the elections on 9th August, 2022.
10. THAT in order to achieve the foregoing steps, the Commission undertook a number of initiatives including revamping its human resource capacity, developing and submitting the requisite budgets to the National Treasury and the National Assembly for funding of its programs, engaging key partners and stakeholders in the electoral process and generally building a resilient institution. — 10
11. THAT despite the fact that the Commission was hamstrung by a number of challenges, (including a budget freeze which lasted over three years, delays by the executive and Parliament in filling four (4) vacancies in the offices of Commissioners and a delay in the processing of necessary legal reforms), the Commission was largely successful in rolling out the pre-poll initiatives.
12. THAT by a Gazette Notice dated 1st September, 2021, H.E. President Uhuru Kenyatta appointed four (4) new Commissioners (Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi). (*Annexed hereto and marked "WWC- 2" is a copy of the said Gazette Notice*). — 20
13. THAT following appointment of the four Commissioners, the fully constituted Commission continued with the various ongoing initiatives and events as per the recommendations from the post-2017 election evaluation, the Commission's strategic plan and Elections Operations Plan.
14. THAT through the collective efforts of the Commissioners and the Commission's Secretariat, the Commission was able to organize and deliver the 2022 General Elections which have been lauded by election observers, monitors and other independent agencies. Some of the measures introduced to enhance transparency and accountability of the 2022 elections include: — 30
- a) The Commission ordered and printed an exact number of ballot papers as per the total registered voters in every polling station.

- b) The ballot papers for every polling station were bound into one booklet per elective position as opposed to multiple booklets rounded up to the nearest 50 as was the case in the previous elections.
- c) The result forms had enhanced security features including a distinct QR Code for each of the 46,229 polling stations.
- d) The Commission presided over law reform initiatives dubbed "Electoral Law Reform in Kenya: the IEBC Experience", "Electoral Law Reform in Kenya: the IEBC Experience" which were informed by the shortcomings of the 2017 General Elections as observed by the Supreme Court in *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others* [2017] eKLR. "The Electoral Law Reform in Kenya: the IEBC Experience" was further informed by the challenges that the Commission encountered during the Fresh Presidential Election and subsequent by-elections. -10
- e) The Commission developed a resilient and secure results transmission system which transmitted results as declared in every polling station directly to the tallying centre for presidential elections in line with the guidance of the Court of Appeal in the *Maina Kiai* case and the *Raila Odinga v IEBC* (2017) decisions. The transparency was enhanced by the fact that the online portal was publicly accessible and available at all times.
- f) The Commission streamlined multiple verification levels at all tallying centres. Accordingly, candidates, their agents, parties, independent observers and monitors as well as the media were able to verify the results at every level and conduct their own independent tallies straight from every polling station. -20
15. THAT a comprehensive description of the operations and activities undertaken in preparation for the 2022 General Elections is contained in the Affidavits of Marjan Hussein Marjan and Moses Ledama Sunkuli which I reiterate and adopt.
16. THAT pursuant to Section 38 of the Elections Act, the Commission published notice of the election in the Gazette Notice. *Annexed hereto and marked "WWC-3" is the relevant excerpt of the Gazette Notice relating to the presidential elections.* -30

17. THAT political party nominations were conducted and concluded in April, 2022, following which the Commission carried out the registration of candidates to vie for various elective positions pursuant to Article 88(4)(f) of the Constitution.
18. THAT the Commission then received party lists from political parties in line with Sections 34-37 of the Elections Act, 2011. The Commission ensured that party lists complied with Articles 90, 97(1)(c), 98(1)(b), (c) & (d), article 177(1)(b) & (c) of the Constitution.
19. THAT after registration of candidates, the Commission, pursuant to Article 88(4)(e) of the Constitution and Section 74 of the Elections Act, embarked on resolving pre-election disputes that arose pursuant to the said registration and verification of party lists. To this end, the commission formed and gazetted a dispute resolution committee (DRC), which was constituted into three panels. From 11th June, 2022 to 21 June, 2022, the DRC considered and settled over three hundred pre-election disputes. —10
20. THAT in order to effectively carry out the various aspects of its mandate, the Commission engaged close to 500,000 Kenyans as staff members and officials drawn from diverse backgrounds and engaged at polling station, constituency and county level.
21. THAT in order to ensure inclusivity, public participation and transparency of the processes, the Commission held numerous consultative meetings with key stakeholders at all levels to update them on the progress made at all fronts for the 9th August 2022 elections. —20
22. THAT I have seen the allegations in paragraph 9 of the Petition which wrongly seeks to depict me as a *'rogue public officer, who with willful, fraudulent and criminal intent set out to subvert the sovereign will of the people of Kenya and the constitutional order in the 09th August 2022 presidential election (sic)*. Both the depiction and allegations are false and proceed on erroneous premises as will be further illustrated in this Affidavit. In particular, I verily believe that:
 - a) The elections conducted by the Commission on the 9th of August, 2022 were free, fair and credible and met the standards set out by the Constitution in Articles 81 and 86 and Chapter 7 as a whole. The Petitioners have not particularized a single violation of any of the provisions in Chapter 7 of the Constitution. —30

- b) The text and tone of the Petition are not only misleading but also seek to mischaracterize the issues with a view to discrediting the Commission and wrongly evoking disaffection against the Commission and myself.
- c) The allegation in paragraph 10 regarding a purported '*premeditated unlawful criminal subversion of the integrity and constitutionality of the electoral process..*' by the Commission is untrue. Similarly, the assertion in the same paragraph regarding an alleged attempt to '*assist and secure a fraudulent result*' by the Commission is false. With the material provided in part 4 of this Affidavit, the Honourable Court will be in a position to make an objective inference as to which of the parties committed the cited wrongful acts. — 10
- d) The allegation regarding treason in paragraphs 11 and 12 of the Petition are misplaced and, in any event, none of the relevant elements have been specifically pleaded or particularized by the Petitioners.
- e) It is not true that I have at any point in time operated '*outside the law*', that my conduct '*has escalated to blatant and willful subversion of the Constitution*' or that I am involved in '*a criminal enterprise*' as alleged in paragraph 14 of the Petition.
- f) The allegations in paragraph 15 of the Petition to the effect that '*a clear pattern has emerged*' regarding purported '*inability to operate within a collegiate framework*' is false. The reference by the Petitioners to Article 138 of the Constitution also proceeds on an erroneous comparison of the mandate of the Commission vis-à-vis the distinct roles of the Chairperson of the Commission as a Returning Officer for presidential elections. — 20
- g) The election was administered in a transparent, impartial, neutral, efficient, accurate and accountable manner. Further, the Commission endeavored to deliver an election which is simple, accurate, verifiable and secure.
- h) The allegations concerning what the Petitioners refer to as '*acrimonious public disagreements*' with members of the Commission are not only misleading but also unfounded and diversionary.

PART 2: THE ELECTION DAY

000

08

23. The election was held on 9th August 2022, being the second Tuesday of August in the fifth year following the 2017 elections as envisaged under Article 136 (2) (a) of the Constitution of Kenya 2010. It was held across the 47 counties, in 290 constituencies as well as in the diaspora.
24. THAT all polling stations were supplied with the requisite strategic and non-strategic election materials ahead of polling. With the exception of a few challenges which were noted on the eve and on the morning of the elections date, voting commenced and proceeded seamlessly in all other areas. The few challenges experienced are addressed in detail in the Affidavits of Moses Sunkuli, Michael Ouma and the Returning Officers for Laikipia West and Malava Constituency. -10
25. THAT the manner in which technology was deployed on the election day and subsequently is addressed in the Affidavit of the Director, ICT, Mr. Michael Ouma which I reiterate and adopt.
26. THAT the election day operations including the identification of voters, logistics and questions relating to the various results are addressed in the Affidavit of Moses Sunkuli which I reiterate and adopt.
27. THAT the KIEMS technology deployed at the election transmitted updates on voter turnout periodically from the start of voting until close of the polling stations. I wish to clarify that contrary to the allegations made in the paragraphs 43 and 44 of the Petition, voter turnout announced at various points prior to declaration of results is calculated on the reporting polling stations as per the KIEMs kit and not on the total persons in the register as alleged. -20
28. THAT the Commission deployed KIEMS devices to all 46,229 polling stations. In just about 235 polling stations the devices malfunctioned and the Commission was unable to replace immediately. In those instances where the KIEMS failed, the printed register was used to identify voters.
29. THAT the number of voters authenticated through the KIEMS was 14,239,863 in 45,994 polling stations. In those 45,994 polling stations, the total number of registered voters is 22,005,541. -30

30. THAT I have seen the allegations in the Affidavits of Martha Karua, Edgar Ouko Otumba, Arnold Ochieng Odinga and Saitabao Kanchory. I note that the issue is also raised in the other Presidential Election Petitions also before Court where the various deponents proceed on the premise that I announced that voter turnout was 65.4%. Those allegations are based on a misapprehension and selective interpretation of my statement. While it is true that I initially mentioned that figure, I provided a clarification immediately after that, within the same press address indicating that the turnout at that point was 64.6%. At that point we had not yet received voter turnout data in respect of polling stations where the printed register was used or the election had been postponed to the next day, including Eldas Constituency in Wajir County. *Annexed hereto and marked "WWC-4" is a USB drive containing the audio-visual clarification together with the relevant Certificate of Electronic Evidence.* -10
31. THAT after the close of polling stations, the presidential votes cast at each polling station were counted and tabulated in Form 34A and the outcome of that tabulation was announced by the presiding officers at each of the polling stations.
32. THAT the results announced at each polling station (Forms 34A) were electronically transmitted to the national tallying centre and to the Constituency Returning Officer. The Returning Officer in turn collated the results from the various polling stations in the constituency in Form 34B and then announced the outcome of the collation. -20
33. THAT to further enhance transparency and verifiability, Forms 34A transmitted electronically to the National Tallying Centre from the polling stations were publicly displayed on the IEBC portal for public access and information through <https://forms.iebc.or.ke/#/>.
34. THAT there were security challenges in Eldas Constituency within Wajir County. When those challenges were brought to the Commission's attention, the Commission postponed the election to the next day.
35. THAT I am aware that section 55B of the Elections Act and Regulation 64A of the Elections (General) Regulations, 2012 allows the Commission to postpone an election in a constituency, county or ward for such period as it may consider necessary where:- -30
"there is reason to believe that a serious breach of peace is likely to occur it is impossible to conduct the elections as a result of a natural disaster or other

emergencies that there has been occurrence of an electoral malpractice of such a nature and gravity as to make it impossible for an election to proceed."

PART 3: TRANSMISSION OF PRESIDENTIAL ELECTION RESULTS

36. THAT the Presidential Election results were relayed and transmitted to the National Tallying Centre as outlined in the Election Result Path published by the Commission pursuant to Section 39 of the Elections Act 2011 and Regulation 87 of the Elections (General) Regulations 2012 (*Annexed hereto and marked "WWC-5" is a copy of the Kenya Gazette Notice on the result path*).

37. That the Commission, vide Gazette Notice No. 9540 Vol. CXXIV – No. 155 dated 8th August, 2022, outlined result pathway from the polling station to the national tallying as follows:- - 10

The Presidential Returning Officer (Commission Chairperson):

- (i) *Receives Form 34As and 34B from the Constituency Returning Officer.*
- (ii) *Verifies;*
 - (a) *the electronically transmitted Form 34As against the delivered Form 34As.*
 - (b) *Collated result in Form 34B received from the Constituency Returning Officer against Form 34As from all the polling stations in the Constituency.*
- (iii) *Records errors/variances discovered in Form 34B and generate an Error Collation Report.* - 20
- (iv) *Completes the handing over/ taking over section of Form 34B with the Constituency Returning Officer.*
- (v) *Announces the received results from each Constituency.*
- (vi) *Tallies and completes Form 34C.*
- (vii) *Verifies the collated results in Form 34C against each polling station result Form 34As.*

- (viii) Prints the Election Result Form 34C.
- (ix) Announces the results for each of the Presidential candidate for each county.
- (x) Fills his name, signs, dates and stamps the Form 34C.
- (xi) Invites the chief agents to append their signatures in Form 34C.
- (xii) Determines that the candidate has achieved the Constitutional threshold of;
 - (a) More than half of all votes cast in the election; and
 - (b) At least 25 percent of the votes cast in each of more than half of the Counties.
- (xiii) Publicly declares the President Elect Results of the declaration Form 34C.
- (xiv) Presents a copy of the Election Result Form 34C to the chief agents. -10
- (xv) Declares the result of the Election using Form 34C.
- (xvi) Fills and issues a Certificate to the President Elect prescribed in Form 34D.

38. THAT I reiterate and adopt the contents of the Affidavits of Michael Ouma (the Commission's Director, ICT) and Moses Sunkuli (Ag. Director, Voter Registration and Election Operations) which provide further details in relation to the results and the Results Transmission System.

PART 4: PROCEDURES AND EVENTS AT THE NATIONAL TALLYING CENTRE

Identification, Procurement and Designation of the Tallying Centre for Presidential Elections

39. THAT I am aware that, following a procurement process, the Secretariat of the Commission identified Bomas of Kenya as a suitable facility for use as the tallying centre for the presidential elections. Consequently, by official gazette notice, I designated Bomas of Kenya as the tallying centre. *Annexed hereto and marked "WWC-6" is a copy of the Gazette Notice.* -20
40. THAT I am also aware that the Secretariat, through the responsible Commission Committee, presented a paper to the Commission which set out the manner of undertaking verification of the presidential elections and the layout of the tallying centre. The Commission considered the proposal and approved the same. (*Annexed*

hereto and marked "WWC-7" is an extract of the plenary minutes which approved the plan and "WWC-8" is a copy of the tallying centre layout.)

- 41. THAT Bomas of Kenya was duly gazetted as the tallying centre for the presidential elections pursuant to the provisions of Regulation 84 of the Elections (General) Regulations 2012.

Measures to ensure enhanced Transparency

- 42. THAT the layout of the tallying centre for the presidential election was designed and positioned in an open space at the centre of the auditorium at the Bomas of Kenya. All verification steps were done in open, in the presence of agents for the presidential candidates and under the supervision of the Chief Agents of the presidential candidates. All accredited observers had unfettered access to the verification area and media houses were free to run live coverage of the verification exercise. -10
- 43. THAT the transparency with which the processes of tallying and declaration of results was undertaken is also captured in the reports of independent election observers.
- 44. THAT the Commission and its officers and agents complied with the provisions of Regulation 83 and 85 of the Elections (General) Regulations, 2012 in relation to tallying and announcement of results. No tangible evidence to the contrary has been tendered by the Petitioners to prove non-compliance. -20
- 45. THAT for proper management of roles at the tallying centre of the presidential elections, I had designated in writing specified roles to each of the Commissioners and other Commission staff. (Annexed hereto and marked "WWC-9" is a bundle containing the said communications).

Verification and Tallying of Results

- 46. THAT I am aware that the verification and tallying process commenced on Thursday, 11th August, 2022 which resulted in my announcing the results in respect of Webuye East Constituency as the first verified result. The objective of verification was to allow agents of presidential candidates to compare the result on Form 34A as transmitted on the portal vis-à-vis the original form 34A physically delivered by -30

the Constituency Returning Officer. Following that announcement, the tallying and verification of results from the other constituencies proceeded albeit rather slowly.

47. THAT the slow process was occasioned by the Petitioners' agents who, instead of carrying out a verification were undertaking forensic examination of each and every single security feature. The Petitioners' agents also demanded to take copies of the results which delayed the process even further. I verily believe that the demands and delays were part of the Petitioners' Agents dilatory tactics to delay completion of the verification process and eventually impede declaration of results within the prescribed seven (7) day timeline.
48. THAT when it became apparent that the verification work-flow was extremely slow, it was necessary to consider how to enhance efficiency so as to release the returning officers, most of whom had been waiting on queue within the auditorium for over 48 hours. -10
49. THAT in order to hasten the verification process and address the plight of the Returning Officers, the Commission, in consultation and concurrence with Chief Agents of presidential candidates decided to streamline the process of verification. Following an announcement that I made, the number of verification tables was increased to seven to expedite the verification process.
50. THAT the increase in the number of verification tables enhanced the processing speeds for a while, until it became apparent that there were deliberate attempts by the Petitioners' agents to delay the process for, what was to later turn out to be mischievous and ulterior motives. -20
51. THAT in particular, the Petitioners agents led by Mr. Saitabao Kanchory, on several occasions hindered the verification process by engaging in theatrics within the verification area, most of which was clearly captured on camera and aired by some of the media houses. In a number of instances, tallying had stalled completely.
52. THAT with the prevailing time constraints and delays caused by the Petitioners' agents, it became necessary to further streamline the work-flow. This was achieved by allowing the Constituency Returning Officers who had been waiting on the queue for over 48 hours to present their results to the Chairperson and subsequently submit the results to the verification tables for perusal and confirmation by the agents of the presidential candidates. The verification tables were also progressively increased to 15. The streamlining of the work-flow hastened the results verification -30

process which was eventually completed early morning on 15th August, 2022 with full participation of agents of the participating presidential candidates and parties, and in consultation and agreement of the Chief Agents for all presidential candidates.

Intimidation, Profiling, Abduction and Harassment of Staff

53. THAT throughout the period leading up to the elections when the Commission and various service providers were engaged in preparations for the elections, various staff members and service providers were subjected to intimidation, profiling and harassment. Some of the instances include:

a) Staff of the Commission had been profiled by the Chief Agent of the Azimio la Umoja- Kenya Kwanza Coalition Party, Saitabao Kanchory on the basis of ethnicity. This was expressed in public rallies and eventually by way of written correspondence to the Commission. The letter issued by the said Saitabao Kanchory is exhibited as annexure "SK-4" to the Affidavit of Saitabao Kanchory. The Commission's response thereto has not been exhibited. *For completeness, a copy of the Commission's reply is annexed hereto and marked "WWC-10"* - 10

b) The effect of the profiling of commission staff in (a) above is that a number of the Returning Officers were threatened by some of the candidates and their supporters while in their stations of work. - 20

c) Officials of Smartmatic Inc., a company contracted by the Commission to provide ICT equipment and support were arrested and detained at the Anti-Terror Police Unit (ATPU). This was despite the clarification to the police by the Commission that they were in the country legally to offer technical support to the Commission. The officials were eventually released without any charges. Shortly thereafter the Chief Executive Officer of that company was threatened and had to quickly leave the country fearing for his life. I verily believe that the intention of intimidating the provider of the technology was to incapacitate the Commission as it carried out the tallying.

54. THAT in the course of tallying of results, the Commission received information on targeted intimidation, profiling and abduction of its officers and service providers while in the course of duty. By way of example, I wish to highlight a few: - 30

- a) On 11th August, 2022, the Returning Officer, Embakasi East Constituency who was one of the Commission's master trainers disappeared. He was last sighted at the Constituency Tallying Centre. He was later reported dead and his body found over 200 kilometres away, in Loitoktok.
- b) On 12th August, 2022 the office of the acting Director, Voter Registration and Electoral Operations, Mr. Moses Sunkuli was broken into by persons. The breaking in was done despite the fact that a police station was hardly 10 metres away and there were over 150 police officers deployed within Bomas of Kenya.
- c) In the course of tallying some of the Commission staff who were assisting with populating form 34C were profiled and openly threatened. In the auditorium, there were chants of the names "Sunkuli", "Balang", and "Abdi" by the Petitioners' agents and their supporters. It is no coincidence that Mr. Gideon Balang was subsequently abducted. -10
- d) Commission staff, who were assisting me in printing the verified results and the IT staff who were uploading data at the National Tallying Centre were threatened with arrest. The interference and threats were so much to the extent that some of the staff members sought refuge in my office to avoid rowdy persons who had invaded the tallying centre and seemed to enjoy the protection of the police. -20
- e) On 13th August, 2022, Mr. Benjamin Kimwei, a Commission employee was arrested at the tallying centre and was detained at the Anti-Terrorism Police Unit incommunicado for a period of over 5 days without any lawful basis. Attempts to prosecute him were thwarted by the Director of Public Prosecution for non-disclosure of an offence. His affidavit has been filed separately.
- f) On 14th August, 2022 Mr. Gideon Balang was abducted at the gates of Bomas of Kenya in the Commission's official car and driven to unknown place and kept in detention for over 9 hours. The abductors threatened to kill him unless he disclosed certain information pertaining to the electoral process. His affidavit has been filed separately. -30
- g) A service provider, Mr. Japhet Dibo who was working on part time basis at the Commission's call centre went missing after attending to a Commission

assignment within Bomas of Kenya. The Commission is aware that the matter was investigated under Kilimani Police Station vide in OB/39/19/8/2022 and he was later released.

- h) The operations manager of MFI Technologies, Mr. Mitul Shah and his colleague were beaten up by goons at the national tallying centre while servicing photocopying and scanning machines. The extent of force meted upon them could only have been designed to ensure stoppage of printing and scanning services and thereby impede the verification and tallying processes.
- i) A Constituency Returning Officer by the name Lydia Chepkemei was harassed by goons who found her in her car having arrived to deliver results forms at the national tallying centre. It took intervention of officials and police to get her to safety. -10
- j) On the night of 14th August, 2022, electricity supply was disconnected at the Bomas of Kenya which hosted the tallying centre for the presidential election. As a result, all tallying centre operations had to rely on back-up generators overnight. I verily believe that this was an act of sabotage.

Attempts to subvert the will of the People

- 55. THAT throughout the conduct of the electoral processes, the Commission was mindful of the fact that it was entrusted with the carrying out of a solemn duty. A duty to facilitate the exercise of the sovereign power which rests with the people of Kenya as per the dictates of Article 1 of the Constitution of Kenya, 2010. -20
- 56. THAT it is my earnest belief that the Commission conducted a free and fair election and that the Commission lived up to the expectation in Article 81 (e) which requires it to remain independent and that the election was conducted in the most transparent, impartial, neutral, efficient, accurate and accountable manner.
- 57. THAT on 13th August, 2022, while the verification process was ongoing, I was informed by Commission staff that Hon. Raphael Tuju and Governor Charity Ngilu were seeking audience with me and that they had been within the Bomas of Kenya premises for several hours. When I enquired what they had come to do, they appeared to be discrediting the verification process and accused us of not consulting -30

17

with the chief agents before taking the decision to fast track the process. We informed her that we had established protocol for raising grievances through their chief presidential agent but she persisted in accusing us of behaving in a dictatorial manner. Hon. Tuju attempted to have a private conversation with me but was not successful.

58. THAT at about 3am on the morning of 15th August, 2022, I was visited by Hon. Raphael Tuju, Senator Amos Wako and Advocate Kyalo Mbobu. They indicated that they had made several attempts to see me to discuss the tallying and results. I told them that I could only meet them in the presence of all Commissioners.
59. THAT shortly after, all the Commissioners joined us and Senator Wako was the first to speak. His message was that the Commission should not operate in a vacuum and that it must consider the link between the election results to be declared and stability of the country which he described to be the bigger picture. He proceeded to indicate that in his tenure as Attorney General he was the election supervisor and would moderate results guided by the need to achieve law and stability. -10
60. THAT Hon. Raphael Tuju spoke after Senator Wako. He indicated that it was necessary for the results to be '*moderated in favour of baba*' and that any contrary declaration of results would '*plunge the country into chaos*'. As an alternative, he suggested that in the event that it was not possible to declare '*baba*' as the President-Elect, then the Commission should force a run-off. For this, he indicated that should his request be granted it would be adequately rewarded. -20
61. THAT Mr. Kyalo Mbobu did not make any remarks at the meeting.
62. THAT having heard the sentiments of Hon. Tuju and Senator Wako, I invited the Commissioners to comment. Commissioners Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi agreed with the remarks of both Senator Wako and Hon. Tuju. On the other hand, Commissioner Prof. Abdi Guliye took the view that they did not even know the result by then and that the issue could not fall for discussion, a view that was shared by Commissioner Molu and the CEO. On my part, I took the firm view that I will respect the will of the people and announce the results as per the final tally from all the polling stations. As regards the incentive, I was categorical that I am adequately remunerated and do not want anything from anyone. Prof. Guliye and Commissioner Molu supported this view. The team left after about an hour. -30

- 18
18
63. THAT on the same morning, at about 10am I was informed by Commissioner Prof. Guliye that a team from the National Security Advisory Committee ("NSAC") had arrived at the tallying centre and wanted to meet me. I later learnt that they had arrived and gone to the office of the Deputy Inspector General of Police, Mr. Noor Gabow who in turn relayed the message to Commissioner Prof. Guliye.
64. THAT the arrival of the NSAC delegation was preceded by a call from the Head of Public Service informing me that he had sent a team that would like to discuss 'assumption of office'.
65. I was still engaged in my duties as Returning Officer and was unable to meet them immediately due to ongoing engagements that had to be completed within the limited time available. I indicated that I would only be able to meet them alongside the other Commissioners at 2pm when a commission meeting had been scheduled. -10
66. THAT shortly after 2pm, the Commissioners and I had a meeting to be briefed on the final results by the Commission Secretary/ CEO and alternate leader of the tallying centre. The briefing was to be done before my declaration in accordance with Article 138(10) of the Constitution. Since the NSAC delegation had already been ushered in, we proceeded to listen to their message first.
67. THAT the meeting with the NSAC delegation started with a round of introductions. The delegation was led by Mr. Kennedy Kihara (Principal Administrative Secretary at the Office of the President). The other participants were Mr. Kennedy Ogeto (Solicitor General); Mr. Hillary Mutyambai (Inspector General of Police); and Lieutenant General Francis Omondi Ogolla (Vice Chief of Defence Forces). -20
68. THAT after introductions, Mr. Kennedy Kihara reiterated that the team was visiting on behalf of the entire NSAC and that the composition of the members in attendance had been deliberately chosen considering the magnitude of the message to be passed to us.
69. THAT after drawing our attention to their level and rank, Mr. Kennedy Kihara proceeded to relay the message. The message was that if I declared the final election results with Hon. William Samoei Ruto as the President-Elect, 'the country is going to burn' (sic). He proceeded to indicate that skirmishes between the Kikuyu and Luo communities had already started 'in several slums including Kibera and Mathare' on the basis of alleged 'betrayal by the Kikuyus'. -30

70. THAT Mr. Kihara proceeded to caution that if we proceeded with declaration of the results with Hon. Ruto as the President-Elect and chaos erupts, *'then the blood of the dead Kenyans'* will be on our hands, and that the seven of us (Commissioners) will be held responsible.
71. THAT the second part of the message from the NSAC delegation was that if we cannot announce Hon. Raila Amolo Odinga as the outright winner, then we must ensure that there is a run-off.
72. THAT only Mr. Kennedy Kihara spoke at the meeting and as he concluded his remarks, he indicated that they wanted from us a message that they could take back to the National Security Advisory Committee. -10
73. THAT after Mr. Kihara concluded his remarks, I invited my colleagues, the Commissioners to share their views. Commissioners Nyang'aya, Masit, Wanderi and Vice Chairperson Cherera were first to comment and said that the message warrants serious consideration and that they supported adoption of the communication by the NSAC *'before taking a decision as to the results to be announced'*.
74. THAT after the remarks of the first four Commissioners, Commissioner Prof. Guliye weighed in and his view was that the Commission has a constitutional mandate and that in declaring the results it will be guided by the same constitution and applicable law. He nonetheless indicated that we had heard them. Commissioner Molu expressed the position that he will support the declaration of verified results by the Returning Officer of the presidential election. -20
75. THAT I spoke last and my position was that we took an oath of office which required fidelity to the Constitution, and that we had nonetheless received the message. The NSAC delegation left shortly after, at about 3pm.

Commission briefing on final results

76. THAT after the NSAC team had left, the Commission Secretary/Chief Executive Officer who was also the alternate team leader of the tallying centre, Marjan Hussein Marjan walked into the boardroom. The purpose of the meeting was to receive final tally of the results of the presidential election before I could proceed to declare.
77. THAT copies of the results were handed to all Commissioners. A debate ensued. Four Commissioners (Vice Chair Juliana Cherera and Commissioners Justus -30

Nyang'aya, Irene Masit and Francis Wanderi) protested and insisted that the results should be changed in the light of the NSAC delegation's communication.

78. THAT Commissioners Masit and Wanderi were of the view that the results should be pushed towards a re-run, which in their view would be a 'win-win' situation. Commissioner Prof. Guliye questioned how that would be done, to which Vice Chair Cherera suggested that the margin is not too big and could be manipulated by moving 233,211 votes from Hon. Ruto to the rejected ballots category. From my observation of the position taken by Commissioners Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi, it appeared that they had a pre-arranged consensus towards altering the results. Commissioners Prof. Guliye and Molu insisted that the Commission should act strictly in accordance with the Constitution and the law. -10
79. THAT having heard the views of all the Commissioners, I maintained that I would not sit and discuss subversion of the will of the people, and that I will announce and declare the final results in accordance with the verified tallies as verified and tallied by the Commission.
80. THAT I reminded all my colleagues that we all took individual oaths of office to protect the Constitution and should not usurp the sovereign will of the people. At that point I rose and informed my colleagues that we should proceed to present the results to the agents of the presidential candidates before declaring the final results. -20
81. THAT I walked out of the meeting room accompanied by Commissioner Prof. Guliye, Commissioner Molu and the Chief Executive Officer, Mr. Marjan. We made our way towards the auditorium where Prof. Guliye was scheduled to take his turn and announce the verified results of the remaining 27 constituencies before I could make the final declaration. The results of those remaining constituencies had already been verified in the presence of agents of the candidates and had been included in the final tally in Form 34C that I was to declare.
82. THAT before proceeding to declare the results, I invited the chief agents of each of the presidential candidates to confirm and sign the results as collated into Form 34C. Three out of four of the Chief Agents signed. On his part, Mr. Saitabou Kanchory -30 who was the Chief Agent of the Azimio la Umoja-One Kenya candidate asked for a day to verify the results against forms 34A. I did not think that this was a *bona fide* request particularly since the verification had been done with his full participation

over the preceding five days and he was only seeking a duplicative process to impede or delay declaration of the results.

83. THAT after refusing to sign Form 34C, Mr. Saitabou Kanchory stormed out and went towards the tallying floor.
84. THAT in a rather surprising turn of events, while proceeding towards the podium, we encountered a crowd which made it difficult to access and settle at the podium. After we sat at the dais, we were surrounded by Hon. James Orengo, Hon. Otiende Amolo, Governor Anyang Nyong'o, Hon. Ledama Ole Kina, Hon. Gladys Wanga, Mr. Paul Mwangi and Mr. Saitabou Kanchory among others. With the prevailing chaos at the podium after the named persons stormed the podium, Prof. Guliye was unable to announce the remaining 27 constituency results and I was similarly unable to declare the final results. Our security was overrun and we had to scamper for safety. -10
85. THAT in the ensuing melee, the many police officers in uniform inside the auditorium were slow in containing the situation. It was only much later that they were able to restore order.
86. THAT seeing the events of the day, -being that there were deliberate efforts by the above-mentioned individuals to subvert the will of the people; four of my Commissioners (Vice Chair Cherera and Commissioners Nyang'aya, Wanderi and Masit) had fled the tallying centre; and the remaining two Commissioners (Commissioner Prof. Guliye and Commissioner Molu) together with the Chief Executive Officer injured, I was apprehensive that there would be no other opportunity to declare results and the country would slide into crisis if the results were not declared within the constitutional timelines. The fact that there was one day left was hardly reassuring considering the events of the day and the safety of Commission staff and service providers. *Annexed hereto and marked "WWC-11" are copies of the Incident Report under OB No. 29/15/08/2022 together with my statement as recorded by the police for further investigations.* -20
87. THAT for the avoidance of doubt:
- a) a person who obstructs or hinders any election officer, candidate or agent in the execution of their lawful duties commits an offence under section 13 (i) of the Elections Offences Act; -30

- b) any attempt to establish a government otherwise than in compliance with the Constitution is unlawful under Article 3(2) of the Constitution;
- c) a member or employee of the Commission who knowingly subverts the process of free and fair elections obstructs the Commission in the discharge of its functions or otherwise interferes with the functions of the Commission commits an offence and is liable, upon conviction, to a term of imprisonment not exceeding three years or to a fine of not more than one million shillings or to both. Such a person would, upon conviction, not be eligible to hold public office for a period of ten years following conviction.

88. THAT I verily believe that the Honourable Court has power to direct that an order be transmitted to the Director of Public Prosecutions to direct an investigation to be carried out by any such state agency as he considers appropriate and based on the outcome of such investigations commence prosecution under section 87 of the Elections Act. -10
89. THAT contrary to the Petitioners allegation that I committed acts bordering on treason, it is clear from the preceding paragraphs that it was in fact the Petitioners through their agents and the above-named individuals who were responsible for the anarchy and the attempt to subvert the will of the people through attempted, albeit unsuccessful, alteration of election results.

PART 5: DECLARATION OF RESULTS -20

90. THAT despite the threats, pressure and intimidation I remained faithful to the oath of office and performed my Constitutional duty to declare the results as per the verified tally of results from the polling station. In doing so, I also reaffirmed the independence of the Commission in line with the express provisions of Articles 81(e), 86, 88 and 249 of the Constitution of Kenya.
91. THAT the results that I declared on 15th August 2022 were based on a tally of verified results at every polling station as recorded in the various Forms 34A.
92. THAT after a rigorous verification process the Commission then filled a Form 34 C with results for each polling station, and sub-totals for counties as per regulation 87 of the Elections (General) Regulations, 2012 and in the schedule of Elections (General) Regulations, 2012. -30

93. THAT I declared the final results of the presidential election as contained in Form 34C, an excerpt of which was as follows:

Aggregate Results					
No	Name of Candidate	Valid Votes in Figures	Valid Votes in Words	Percentage of Votes Cast	Number of counties the candidates has attained at least 25% of Total Valid Votes Cast
1	Odinga Raila	6,942,930	Six million nine hundred and fourty two thousand nine hundred and thirty	48.85%	34
2	Ruto William Samoei	7,176,141	Seven million one hundred and seventy six, thousand one hundred and fourty one	50.49%	39
3	Waihiga David Mwaure	31,987	Thirty one, thousand nine hundred and eighty seven	0.23%	0
4	Wajackoyah George Luchiri	61,969	Sixty one, thousand nine hundred and sixty nine	0.44%	0
Total valid votes		14,213,137			

94. THAT for purposes of computation of the Constitutional threshold, I was guided by Article 138 (4) of the Constitution which provides: -30

- (4) A candidate shall be declared elected as President if the candidate receives –
 (a) more than half of all the votes cast in the election; and
 (b) at least twenty-five per cent of the votes cast in each of more than half of the counties.

95. THAT I have seen various computations alleging that the declared candidate did not attain 50%+1 threshold to enable him to be declared as having won in that election. I wish to state that those allegations are unfounded. The 9th Respondent garnered 7,176,141 votes against valid votes cast which was 14,213,137. It is clear that the 9th Respondent met the requisite threshold and was lawfully declared president-elect.
96. THAT following the declaration of the results, I issued Form 34D, that is Certificate of the President-Elect of the Republic of Kenya pursuant to Article 138(10) as read with Regulation 87(3)(f).
97. THAT I subsequently caused the publication of a Notice in the Kenya Gazette confirming the results declared. -10
98. THAT the conduct of that election has been lauded across the world for its transparency. I am aware that observers and other independent agencies who conducted their own monitoring, review and tallies of the elections have affirmed that the election was free and fair.

PART 6: RESPONSES TO OTHER ALLEGATIONS

Allegations of voter suppression and alleged variances

99. THAT I have seen allegations in paragraphs 103 to 106 of the Petition to the effect that the Commission '*cancelled*' gubernatorial elections for Mombasa and Kakamega counties '*for ulterior motives*'. I also note that the Petitioners have alleged in paragraph 104 of the Petition that I '*arbitrarily postponed and staggered the election of governor for the populous counties of Kakamega and Mombasa...with the knowledge, connivance and collusion*' of the Commission. Those allegations are not true. -20
100. THAT the postponement of the two gubernatorial elections was occasioned by an error on the part of the printer of ballot papers which resulted in a mix-up of the photographs of candidates in the ballot papers delivered for the two gubernatorial elections. The printer of the ballot papers owned up to the mistake and confirmed that they would provide reprints at no extra cost.
101. THAT prior to the printing of the ballot papers, the Commission had reviewed and approved the correct ballot proofs for the two counties alongside all other positions -30

and areas. *Annexed hereto and marked "WWC-12" are extracts of the approved ballot proofs.*

102. THAT in addition, the Commission had made diligent efforts and Vice Chairperson Juliana together with Commissioner Wanderi had travelled to Greece to oversee the exercise alongside other stakeholders. Any errors in printing were therefore genuine mistakes of the printer which are regrettable.
103. THAT despite spirited efforts to have the printer replace the ballot papers urgently, it was not possible to complete all logistics in time for the elections. In the circumstances, the Commission was constrained to postpone the gubernatorial elections in Kakamega and Mombasa pursuant to section 55B of the Elections Act and Regulation 64A of the Elections (General) Regulations, 2012 which allows the Commission to postpone an election in a constituency, county or ward where it is impossible for an election to proceed. The postponement of the elections was for a limited period and have been slated for 29th August, 2022. It is not true that that the postponement of the election was done for ulterior motive, and neither is it plausible that it would have affected the voter turnout for the other elective positions. I reiterate and adopt the detailed analysis on this issue as contained in the Affidavit sworn by Moses Sunkuli. -10
104. THAT I have also seen the allegation in paragraph 107 of the Petition that there was a '*deliberate failure of KIEMS kits within Kakamega and Makuani Counties, partly as a voter suppression strategy*'. That allegation is not true. I confirm that the Commission had trained election staff on how to utilize the alternative modes of KIEMS identification and where the KIEMS kits completely failed with no possibility of replacement, the voters were identified using the printed register and allowed to vote. Any time lost as a result of KIEMS challenges was also compensated by commensurate time extension. -20
105. THAT I am aware that despite challenges with a few KIEMS devices in Kakamega, the issue was resolved and the KIEMS devices resumed functionality and ultimately transmitted results.
106. THAT as regards the allegations on variances between votes cast for various positions, I reiterate and adopt the countrywide tabulation as contained in the Affidavit of Moses Sunkuli. -30

Allegations in relation to statements made by four commissioners (Juliana Cherera, Francis Wanderi, Justus Nyang'aya and Irene Masit).

107. THAT I have seen allegations in paragraphs 40 (xi) of the Petition and various Affidavits in support of the Petition to the effect that I acted 'in isolation', 'in contravention with Article 138 of the Constitution' and that the tallying and verification 'was a nullity'.

108. THAT as an officer of this Honourable Court, I am aware that Article 138 of the Constitution has been interpreted by courts of competent jurisdiction including in the famous *Maina Kiai* case where the Court of Appeal stated:

'...Article 138 deals with events at the polling stations where votes are counted, tallied, verified and declared. We hold further that reference to the Appellant [IEBC] in Sub Article (3)(c) [of Article 138] is not to be construed to mean the chairperson but rather, the returning officers who are mandated, after counting the votes in the polling stations, to tally and verify the count and declare the result. The appellant, as opposed to its chairperson, upon receipt of prescribed forms containing tabulated results for election of President electronically transmitted to it from the near 40,000 polling stations, is required to tally and "verify" the results received at the national tallying centre, without interfering with the figures and details of the outcome of the vote as received from the constituency tallying centre. At the very tail end of this process, in Article 138(10) the chairperson then declares the result of the presidential election, and delivers a written notification of the result to the Chief Justice and to the incumbent President. That is how circumscribed and narrow the role of the chairperson of the appellant is.

109. THAT I verily believe that the intention of the Constitution as interpreted by the Court appeal in the *Maina Kiai* case was to clearly delineate responsibilities of different polling officials including myself.

110. THAT I am also aware that Regulation 87(3) of the Election (General) Regulations obligates the Chairperson of the Commission, upon receipt of Forms 34A from the Constituency Returning Officers to:

- "
- a) verify the results against forms 34A and 34B received from the Constituency Returning Officer;
 - b) tally and complete form 34C."

111. THAT as already indicated, I had allocated various Commissioners and members of the Commission's Secretariat specific duties at the national tallying centre in writing. The verification and tallying was therefore undertaken in collaboration by both the Commissioners and the Secretariat, but the responsibility to finally declare the result was reposed in my office.
112. THAT it is therefore clear that I performed my duties within the narrowly circumscribed parameters of my duties as delineated by the Constitution and law. It is not true that I acted '*in isolation*' or '*in contravention with Article 138 of the Constitution*'. I therefore verily believe that the Petitioners' allegation that the tallying and verification '*was a nullity*' is based on a misapprehension of the law. — 10
113. THAT I have seen the allegations in paragraphs 115 to 127 of the Petition and the corresponding portions of the Petitioners' Affidavits. It is not true that I have committed any breaches of the law or ethical infractions applicable to a state officer as alleged or at all. Quite to the contrary, it is the Petitioners, their agents and supporters that brazenly committed grave offences in the full glare of the whole world. I reiterate my depositions in paragraphs 56 to 76 above.
114. THAT throughout the electoral cycle, I discharged my mandate in full compliance with the Constitution, electoral laws and the applicable regulations. Specifically, I:
- a) oversaw the conduct of the election in a free and fair manner as required by Article 81(e) of the Constitution; — 20
 - b) declared the result of the Presidential Election as set-out in Form 34C and delivered a written notification of the result to the Chief Justice and the incumbent president within seven (7) days as stipulated in Article 138 (10) of the Constitution;
 - c) in exercising my constitutional and statutory responsibilities I was not influenced by anyone at all; and
 - d) Maintained high levels of professionalism as required by the Constitution and Rule 4 of the Code of Members and Employees of the Commission.
115. THAT the presidential election was conducted in accordance with the Constitution and the Elections Act and all other relevant statutes and a valid declaration of the outcome of the presidential election made. — 30

3. **MURUGU RIGORO & CO. ADVOCATES**
YAYA COURT, SUITE NO 2
OFF CHANIA AVENUE, GROUND FLOOR
BEHIND YAYA CENTRE, NEXT TO GRACE HOUSE
P.O. BOX 13715 - 00100
NAIROBI
EMAIL: info@murugurigorolaw.co.ke
murugurigoroadv@yahoo.com

4. **GARANE & SOMANE ADVOCATES**
PITMAN HOUSE 1ST FLOOR
JAKAYA KIKWETE ROAD
P O BOX 2617 - 00100
NAIROBI
info@garaneadvocates.com
mahat@garaneadvocates.com

-10

COPIES TO BE SERVED ON
PAUL MWANGI & COMPANY ADVOCATES
VISION PLAZA
3RD FLOOR, ROOM 16
MOMBASA ROAD
P.O. BOX 55903-00200
NAIROBI
PMLAWCHAMBERS12@GMAIL.COM

-20

This is the exhibit marked WVC-1
referred to in the annexed affidavit of
Wafila Wanyonyi Chebukati
sworn before me on the 26th
declared day of August 2022 at Nairobi
C.O.M.
COMMISSIONER FOR OATHS



THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXXIV—No. 79

NAIROBI, 28th April, 2022

Price Sh. 60

GAZETTE NOTICE No. 4954

THE CONSTITUTION OF KENYA

THE ELECTIONS ACT

(No. 24 of 2011)

**THE ELECTIONS (REGISTRATION OF VOTERS)
REGULATIONS, 2012**

SUSPENSION OF CONTINUOUS VOTER REGISTRATION

IN EXERCISE of the powers conferred by Articles 83 and 88 (4) of the Constitution of Kenya, sections 5 and 8 (1), (2) (a) and (b) of the Elections Act, 2011, Regulations 13, 14 and 15 of the Elections (Registration of Voters) Regulations, 2012, the Independent Electoral and Boundaries Commission gives notice that the application for new registration and change in registration of voters in Kenya and for Kenyan citizens living outside the country shall be suspended from the 4th May, 2022 to 13th March, 2023. The Commission notifies the public that this suspension is to enable availability of the register of voters to the public for purposes of verification of biometric data and particulars of registered voters in accordance with sections 6A of the Elections Act, 2011.

Dated the 27th April, 2022.

W.W. CHEBUKATI,
Chairperson, Independent Electoral and Boundaries Commission.

GAZETTE NOTICE No. 4955

THE CONSTITUTION OF KENYA

THE ELECTIONS ACT

(No. 24 of 2011)

**THE ELECTIONS (REGISTRATION OF VOTERS)
REGULATIONS, 2012**

AVAILABILITY OF THE REGISTER OF VOTERS FOR VERIFICATION

IN EXERCISE of the powers conferred by Article 88 (4) (b) of the Constitution of Kenya, sections 4, 6A, 11 and 12 of the Elections Act, 2011 and Regulations 27A and 27B the Election (Registration of Voters) Regulations, 2012, of the Independent Electoral and Boundaries Commission gives notice that the new Preliminary Register of Voters has been completed and is available for verification

for a period of thirty (30) days from the 4th May, 2022 to 2nd June, 2022.

The Register of Voters may be verified at the registration centers published in a Special Issue of the Kenya Gazette Notice No. 10442 carried in Vol. CXXIII—No. 203, on 1st October, 2021 and Gazette Notices No. 194, 195 and 196 carried in Vol. CXXIV—No. 7 and published on the 14th January, 2022.

How to make a claim:

A person who duly applied to be registered and his or her name or biometric data has not been captured correctly in the register of voters may make a claim to the Registration Officer within the period prescribed for verification.

The claim must be made in the Prescribed Form.

Dated the 28th April, 2022.

W.W. CHEBUKATI,
Chairperson, Independent Electoral and Boundaries Commission.

GAZETTE NOTICE No. 4956

THE CONSTITUTION OF KENYA

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (GENERAL) REGULATIONS, 2012

**APPOINTMENT OF THE PRESIDENTIAL RETURNING OFFICER FOR THE
GENERAL ELECTION SCHEDULED TO BE HELD ON 9TH AUGUST, 2022**

IN EXERCISE of the powers conferred by Articles 88 (4), 137, 138 (10) of the Constitution of Kenya, section 4 of the Independent Electoral and Boundaries Commission Act, 2011, sections 38 and 39 (1D) of the Elections Act, 2011 and Regulations 83 (1) (i) and (2) of the Elections (General) Regulations, 2012, the Independent Electoral and Boundaries Commission appoints the Chairperson of the Independent Electoral and Boundaries Commission named in the third column of the Schedule as the Returning Officer for the Presidential Election scheduled to be held on 9th August, 2022.

-10

-20

-30

SCHEDULE

Designation	Name
Presidential Returning Officer	Wanyonyi Wafula Chebukati

Dated the 28th April, 2022.

W.W. CHEBUKATI,
Chairperson, Independent Electoral and Boundaries Commission.

GAZETTE NOTICE No. 4957

THE CONSTITUTION OF KENYA
THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION ACT

(No. 9 of 2011)

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (GENERAL) REGULATIONS, 2012
PRESIDENTIAL ELECTION

CORRIGENDA

IN Gazette Notice No. 430 of 2022, Vol. CXXIV–No. 14, published on the 20th January, 2022, *delete* and *insert* as specified hereinbelow:

1. Page 199; Paragraph (f)

Delete: Political parties intending to present a Presidential Candidate through direct nominations or party primaries shall submit the name of the person nominated to contest in the election to the Commission on or before the Thursday, 28th April, 2022.

Insert: Political parties intending to present a Presidential and Deputy Presidential candidates through party primaries or direct nominations shall submit the names of the Presidential and Deputy Presidential candidates in the prescribed format to the Commission on or before Monday, 16th May, 2022.

Dated the 27th April, 2022.

W.W. CHEBUKATI,
Chairperson, Independent Electoral and Boundaries Commission.

GAZETTE NOTICE No. 4958

THE CONSTITUTION OF KENYA
THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION ACT

(No. 9 of 2011)

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (GENERAL) REGULATIONS, 2012
PRESIDENTIAL ELECTION

ADDENDUM

IN Gazette Notice No. 430 of 2022, Vol. CXXIV–No. 14, published on the 20th January, 2022, *insert* as specified hereinbelow:

2. Page 199; immediately after Paragraph (h)

Insert: Candidates intending to participate in this election as independent candidates shall submit their names and that of their Deputies in the prescribed format to the Commission on or before Monday, 16th May, 2022.

Dated the 27th April, 2022.

W.W. CHEBUKATI,
Chairperson, Independent Electoral and Boundaries Commission.

GAZETTE NOTICE No. 4959

THE CONSTITUTION OF KENYA
THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION ACT

(No. 9 of 2011)

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (GENERAL) REGULATIONS, 2012
ELECTIONS FOR COUNTY GOVERNORS

CORRIGENDA

IN Gazette Notice No. 434 of 2022, Vol. CXXIV–No. 14, published on the 20th January, 2022, *delete* and *replace* as specified herein below:

1. Page 202; Paragraph (f)

Delete: Political parties intending to present candidates through direct nominations or party primaries shall submit the names of the persons nominated to contest in the election to the Commission on or before the Thursday, 28th April, 2022.

Insert: Political parties intending to present candidates through direct nominations or party primaries shall submit to the Commission the names of the County Governors and Deputy County Governors selected to contest in the election in the prescribed format on or before Monday, 16th May, 2022.

Dated the 27th April, 2022.

W.W. CHEBUKATI,
Chairperson, Independent Electoral and Boundaries Commission.

GAZETTE NOTICE No. 4960

THE CONSTITUTION OF KENYA
THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION ACT

(No. 9 of 2011)

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (GENERAL) REGULATIONS, 2012
ELECTIONS FOR COUNTY GOVERNORS

ADDENDUM

IN Gazette Notice No. 434 of 2022, Vol. CXXIV–No. 14, published on the 20th January, 2022, *delete* and *replace* as specified herein below:

1. Page 202; immediately after Paragraph (h)

Insert: Candidates intending to participate in this election as independent candidates shall submit to the Commission their names and that of their Deputies in the prescribed format on or before Monday, 16th May, 2022.

Dated the 27th April, 2022.

W.W. CHEBUKATI,
Chairperson, Independent Electoral and Boundaries Commission.

GAZETTE NOTICE No. 4961

THE CONSTITUTION OF KENYA
INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION ACT, 2011

(No. 9 of 2011)

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTION (GENERAL) REGULATIONS, 2012

31

- 10

- 20

- 30

- 30

- 40

This is the exhibit marked WWC-2
referred to in the annexed affidavit of
Worfula Wanyonyi Chebulcati
sworn before me on the 26th
declared day of August 2021 at Nairobi
City
COMMISSIONER FOR OATHS



THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXXIII—No. 182

NAIROBI, 1st September, 2021

Price Sh. 60

GAZETTE NOTICE No. 9082

THE CONSTITUTION OF KENYA

THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION ACT

(No. 9 of 2011)

APPOINTMENT

IN EXERCISE of the powers conferred by Article 250 (2) of the Constitution as read with section 5 (2) of the Independent Electoral and Boundaries Commission Act, 2011 and Paragraph 4 of the First Schedule to the Act, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, appoint—

Juliana Whonge Cherera (Ms.),
Francis Mathenge Wanderi,
Irene Cherop Masit (Ms.),
Justus Abonyo Nyang'aya,

to be members of the Independent Electoral and Boundaries Commission, for a period of six (6) years.

Dated the 1st September, 2021.

UHURU KENYATTA,
President.

GAZETTE NOTICE No. 9083

THE CONSTITUTION OF KENYA

THE TEACHERS SERVICE COMMISSION ACT

(No. 20 of 2012)

APPOINTMENT

IN EXERCISE of the powers conferred by Article 250 (2) of the Constitution as read with section 8 (10) of the Teachers Service Commission Act, 2012, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, appoint—

Nicodemus Ojuma Anyang (Dr.),
Christine K. Kahindi (Ms.),
Sharon Jelagat Kisire (Ms.),
Anneta G. Wafukho (Ms.),
Salesa Adano Abudo,

to be members of the Teachers Service Commission, for a period of six (6) years.

Dated the 1st September, 2021.

UHURU KENYATTA,
President.

— 10

— 20

This is the exhibit marked WWC-3
 referred to in the annexed affidavit of
Wafila Wanyoni (Chebular)
 declaration
 sworn before me on the 26th
 declared day of August 2022 at Namb.
C.O.M.
COMMISSIONER FOR OATHS



THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXXIV—No. 14

NAIROBI, 20th January, 2022

Price Sh. 60

GAZETTE NOTICE NO. 430

THE CONSTITUTION OF KENYA

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (GENERAL) REGULATIONS, 2012

(L.N. 128/2012 and L.N. 72/2017)

PRESIDENTIAL ELECTION

IN EXERCISE of powers conferred by Articles 88 (4), 136, 137 and 148 of the Constitution of Kenya, sections 2, 14, 15, 20, 22, 23, 26, 28, 29, 30, 31, 32, 33, 38, 39, 43 and 74 of the Elections Act, 2011 and Regulations 11(1), 12(1), Parts III, IV and Regulation 98 and of the Election (General) Regulations, 2012 the Independent Electoral and Boundaries Commission gives notice that:

- (a) An election of the President of the Republic of Kenya shall be held on Tuesday, 9th August, 2022.
- (b) political Parties shall submit the Party Membership lists to the Commission on or before Saturday, 9th April, 2022.
- (c) political parties intending to present a candidate in the Presidential election shall submit the names of persons contesting in the party primaries, the date and venues of the primaries on or before Saturday, 9th April, 2022 being 21 days before the nomination day.
- (d) The Commission shall publish, in the Gazette the names of the persons contesting in a party primary and the date of the party primary within seven (7) days of receipt of the names of the candidates.
- (e) A political party intending to present a Presidential candidate in this election shall conduct its primaries and resolve intra-party disputes on or before Friday, 22nd April, 2022.
- (f) A political party intending to present a Presidential candidate through direct nominations or party primaries shall submit the name of the person nominated to contest in the election to the Commission on or before Thursday, 28th April, 2022.
- (g) Candidates intending to participate in the election as independent candidates shall not be members of any registered political party by Monday, 2nd May, 2022 being at least 3 months before the General Election.

- (h) Candidates intending to participate in this election as independent candidates shall submit their names and symbols that they intend to use during the election to the Commission on or before Monday, 2nd May, 2022.
- (i) The Commission shall publish in the Gazette, the names and symbols of persons intending to contest in the election as independent candidates at least fourteen (14) days before the nomination day being on or before Friday, 13th May, 2022.
- (j) A public officer who intends to contest in the General Election shall resign from public office within six (6) months before the date of Election being on or before Wednesday, 9th February, 2022.
- (k) Candidates intending to participate in the Presidential election shall deliver to the Commission a list bearing the names, respective signatures, identity cards or passport numbers of at least 2000 voters registered in each of a majority of the counties on or before Monday, 23rd May, 2022.
- (l) The days for the nomination of political party candidates and Independent candidates for the Presidential Election shall be between Sunday, 29th May, 2022 and Monday, 6th June, 2022. The nomination papers shall be delivered by the candidates, to the Chairperson of the Independent Electoral and Boundaries Commission between the hours of eight O'clock in the morning and one O'clock in the afternoon and between the hours of two O'clock and four O'clock in the afternoon at a place designated by the Commission.
- (m) Disputes relating to or arising from nominations shall be determined within ten (10) days of the lodging of the dispute with the Commission. The lodging of the dispute shall not be later than Thursday, 9th June, 2022.
- (n) The campaign period for purposes of the 9th August, 2022 General Election shall commence on Sunday, 29th May, 2022 and cease on Saturday, 6th August, 2022 being 48 hours before the General Election Day.
- (o) The Campaign time shall run from 7.00 a.m. to 6.00 p.m. during the campaign period.
- (p) political parties and candidates shall appoint and submit to the Commission the names of the National and Constituency Chief Election Agents to the Commission on or before Monday, 25th July, 2022.

-10

-20

-30

-40

- (q) If the election is contested, the poll will take place on Tuesday, 9th August, 2022.

NOTES:

1. The attention of candidates and persons submitting nomination papers is drawn to the provisions of Part III, IV and IX of the Election (General) Regulations, Section 13(2) and the First Schedule to the Leadership and Integrity Act, 2012 and Chapter Six of the Constitution of Kenya.
2. Every political party and every person who participates in the election shall subscribe to and observe the Electoral Code of Conduct set out in the Second Schedule to the Election Act, 2011.
3. A person guilty of an election offence will be liable to the penalties imposed by the Election Offences Act, 2016 (No.37 of 2016), the disqualifications imposed thereof and the Constitution of Kenya.
4. The attention of candidates is drawn to the provisions of Section 26 of the Elections Act, 2011.
5. The attention of political party candidates and independent candidates is drawn to Section 29 of the Elections Act, 2011 and Regulation 15 of the Election (General) Regulations, 2012.
6. The attention of political Parties, Candidates and every person who participates in the election is drawn to section 2 of the Elections Act, 2011 on the Campaign Period.
7. The candidates are drawn to Regulation 16, 17 and 18 of the Election (General) Regulations, 2012.

Dated the 19th January, 2022.

W.W. CHEBUKATI,

Chairperson, Independent Electoral and Boundaries Commission.

GAZETTE NOTICE NO. 431

THE CONSTITUTION OF KENYA

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (GENERAL) REGULATIONS, 2012

(L.N. 128/2012 and L.N. 72/2017)

ELECTION FOR MEMBERS OF THE NATIONAL ASSEMBLY

IN EXERCISE of powers conferred by Articles 88 (4), 97 (1) (a), 99, 101 of the Constitution of Kenya, sections 2,16, 20, 24, 26, 28, 29, 30, 31, 32,33, 35, 38, 39, 43 and 74 of the Elections Act, 2011 and Regulation 11(4), 12(1) and Parts III and V and Regulation 98 of the Election (General) Regulations, the Independent Electoral and Boundaries Commission gives notice that:

- (a) An election is to be held on Tuesday, 9th August, 2022 for Members of the National Assembly for each of the constituencies set out in the First Schedule hereunder;
- (b) political Parties shall submit the Party Membership lists to the Commission on or before Saturday, 9th April, 2022.
- (c) political parties intending to present candidates in the election shall submit the names of persons contesting in the party primaries, the date and venues of the primaries on or before Saturday, 9th April, 2022, being 21 days before the nomination day.
- (d) The Commission shall publish, in the Gazette the names of the persons contesting in a party primary and the date of the party primary within seven (7) days of receipt of the names of the candidates.
- (e) A political party intending to present candidates in this election shall conduct its primaries and resolve intra-party disputes on or before Friday, 22nd April, 2022.
- (f) A political party intending to present candidates through direct nominations or party primaries shall submit the names of the persons nominated to contest in the election to the Commission on or before Thursday, 28th April, 2022.

- (g) Candidates intending to participate in the election as independent candidates shall not be members of any registered political party by Monday, 2nd May, 2022 being at least 3 months before the General Election. **34**

- (h) Candidates intending to participate in this election as independent candidates shall submit their names and symbols that they intend to use during the election to the Commission on or before Monday, 2nd May, 2022.

- (i) The Commission shall publish in the Gazette, the names and symbols of persons intending to contest in the election as independent candidates at least fourteen (14) days before the nomination day being on or before Friday, 13th May, 2022. **~ 10**

- (j) A public officer who intends to contest in the General Election shall resign from public office within six (6) months before the date of Election being on or before Wednesday, 9th February, 2022.

- (k) The days for the nomination of political party candidates and Independent candidates for the National Assembly Elections shall be between Sunday, 29th May, 2022 and Tuesday, 31st May, 2022. The nomination papers shall be delivered by candidates to the respective Returning Officers between the hours of eight O'clock in the morning and one O'clock in the afternoon and between the hours of two O'clock and four O'clock in the afternoon at the place designated by the Commission. **~ 20**

- (l) Disputes relating to or arising from nominations shall be determined within ten (10) days of the lodging of the dispute with the Commission. The lodging of the dispute shall not be later than Thursday, 9th June, 2022. **~ 40**

- (m) political parties intending to participate in the General Election shall submit to the Commission their Party Lists on or before Saturday, 25th June, 2022.

- (n) The campaign period for purposes of the Tuesday, 9th August, 2022 General Election shall commence being Sunday, 29th May, 2022 and cease on Saturday, 6th August, 2022 being 48 hours before the General Election Day.

- (o) The Campaign time shall run from 7.00 a.m. to 6.00 p.m. during the campaign period. **~ 50**

- (p) political parties and candidates shall appoint and submit to the Commission the names of the one (1) Constituency Tallying Centre Agent and Polling Station agents to the Commission on or before Monday, 25th June, 2022.

- (q) If the elections are contested, the poll will take place on the Tuesday, 9th August, 2022.

NOTES:

1. The attention of candidates and persons subscribing nomination papers is drawn to the provisions of Part III, V and IX of the Election (General) Regulations, section 13(2) and the First Schedule to the Leadership and Integrity Act No. 19 of 2012 and Chapter Six of the Constitution of Kenya. **~ 60**

2. Every political party and every person who participates in the election shall subscribe to and observe the Electoral Code of Conduct set out in the Second Schedule to the Election Act, 2011.

3. A person guilty of an election offence will be liable to the penalties imposed by the Election Offences Act, 2016 (No.37 of 2016), the disqualifications imposed thereof and the Constitution of Kenya. **~ 70**

4. The attention of candidates is drawn to the provisions of Section 26 of the Elections Act, 2011.

5. The attention of political party candidates and independent candidates is drawn to Section 29 of the Elections Act, 2011 and Regulation 15 of the Election (General) Regulations, 2012.

6. The attention of political Parties, Candidates and every person who participates in the election is drawn to section 2 of the Elections Act, 2011 on the Campaign Period.

Dated the 19th January, 2022. **~ 80**

W.W. CHEBUKATI,

Chairperson, Independent Electoral and Boundaries Commission.

This is the exhibit marked WWC-5 referred to in the annexed affidavit of declaration of Wafila Wanyonyi Chebukati sworn before me on the 26th August declared day of August 2022 at Nairobi C.O.M
COMMISSIONER FOR OATHS



THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXXIV—No. 155

NAIROBI, 8th August, 2022

Price Sh. 60

GAZETTE NOTICE No. 9538

THE CONSTITUTION OF KENYA

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTIONS (GENERAL) REGULATIONS, 2012

(L.N. 2012 and L.N. 2017)

TALLYING CENTRES FOR THE 9TH AUGUST, 2022 GENERAL ELECTION

In Gazette Notice No. 7993 of 2022, Vol. CXXIV – No. 128 published on 1st July, 2022, *delete* and *insert* as specified herein below:

In the First Schedule

Delete; PRESIDENTIAL TALLYING CENTRE

Insert; NATIONAL TALLYING CENTRE

In the Third Schedule

Page 3951; Row 2; Column 5

Delete; KMTC Port Reitz Campus, Mombasa

Insert; St Mary's Catholic Church Community Centre Hall

Page 3951; Row 6; Column 5

Delete; Mtongwe Primary School

Insert; Young Women's Christian Association of Kenya (YWCA)

Page 3952; Row 33; Column 5

Delete; Lafey Boys Secondary School

Insert; Lafey Primary School

Page 3953; Row 15; Column 5

Delete; Teachers Advisory Centre

Insert; Mukurweini Technical Training Institute

Page 3953; Row 51; Column 5

Delete; Baragoi Boys Secondary School

Insert; Baragoi Primary School

Page 3955; Row 30; Column 5

Delete; Uriri High School

Insert; St. Pius Uriri Boys High School.

In Gazette Notice No. 8785 of 2022, Vol. CXXIV – No. 128 published on 26th July, 2022, *delete* and *insert* as specified herein below: -10

Page 5670; Rows 37, 38 and 39;

Delete; St. Teresa's Primary High School

Insert; St. Teresa's Girls Primary School

Dated 5th August, 2022.

W. W. CHEBUKATI,
Chairperson,
Independent Electoral and Boundaries Commission.

GAZETTE NOTICE No. 9539 -20

THE CONSTITUTION OF KENYA

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT

(No. 9 of 2011)

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTION (GENERAL) REGULATIONS, 2012

(L.N. 2012 and L.N. 2017)

APPOINTMENT OF SECOND DEPUTY CONSTITUENCY RETURNING OFFICERS FOR THE GENERAL ELECTION SCHEDULED TO BE HELD ON 9TH AUGUST, 2022 -30

CORRIGENDA

In Gazette Notice No. 8790 of 2022, Vol. CXXIV – No. 144 published on 26th July, 2022, *delete* and *insert* as specified herein below:

SECOND DEPUTY RETURNING OFFICERS

Page 5675; Column 5; Row; 23

Delete; John Papul Mburu

Insert; John Paul Mburu

Page 5677; Column 5; Row; 38

Delete; Amos Ogeto Mungei

Insert; Onduko Gilbert Atunga

Page 5677; Column 5; Row; 39

Delete; Onduko Gilbert Atunga

Insert; Amos Ogeto Mungei

In Gazette Notice No. 4961 of 2022, Vol. CXXIV – No. 79 published on 28th April, 2022, *delete* and *insert* as specified herein below:

DEPUTY CONSTITUENCY RETURNING OFFICERS

Page 2381; Column-5; Row-5;

Delete; Curtis Mawira Njeru

Insert; Jacob Mwenda Mugambi

Dated 5th August, 2022.

W. W. CHEBUKATI,
Chairperson,
Independent Electoral and Boundaries Commission.

GAZETTE NOTICE NO. 9540

THE CONSTITUTION OF KENYA

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT

(No. 9 of 2011)

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTION (GENERAL) REGULATIONS, 2012

(L.N 2012 and L.N. 2017)

ELECTION RESULT PATH, COMPLIMENTARY MECHANISM FOR RESULT TRANSMISSION AND VOTING TIME FOR KENYAN VOTERS RESIDING OUTSIDE THE COUNTRY FOR THE GENERAL ELECTION SCHEDULED TO BE HELD ON 9TH AUGUST, 2022.

IN EXERCISE of the powers conferred by Articles 88 (4) of the Constitution of Kenya, section 4 of the Independent Electoral and Boundaries Commission Act, 2011, sections 38 and 39 of the Elections Act, 2011 and Regulations 79, 83, 87(1) (b), 3 and 98 (1) and (2) of the Elections (General) Regulations, 2012, the Independent Electoral and Boundaries Commission makes the following directives on the conduct of the 9th August, 2022 General Election exercise provided in the First, Second and Third Schedules herein below:

FIRST SCHEDULE

ELECTION RESULTS PATH

Where the constitutional threshold is achieved the Chairperson of the Commission announces results from each County, declares the results of the Presidential election and delivers a written notification of the result to the Chief Justice and to the incumbent President within seven (7) days of the declaration.

Where the constitutional threshold is not achieved a fresh election shall be held within thirty (30) days after the previous election and in that fresh election the only candidates shall be;

- (a) The candidate, or the candidates who received the greatest number of votes and
- (b) The candidate, or the candidates, who received the second greatest number of votes.

RESULT PATH AT THE NATIONAL TALLYING CENTER

The Presidential Returning Officer (Commission Chairperson):

1. Receives Form 34As and 34B from the Constituency Returning Officer.

2. Verifies;

(i) the electronically transmitted Form 34As against the delivered Form 34As.

(ii) Collated result in Form 34B received from the Constituency Returning Officer against Form 34As from all the polling stations in the Constituency.

3. Records errors/variances discovered in Form 34B and generate an Error Collation Report.

4. Completes the handing over/ taking over section of Form 34B with the Constituency Returning Officer.

5. Announces the received results from each Constituency.

6. Tallies and completes Form 34C.

7. Verifies the collated results in Form 34C against each polling station result Form 34As.

8. Prints the Election Result Form 34C.

9. Announces the results for each of the Presidential candidate for each county.

10. Fills his name, signs, dates and stamps the Form 34C.

11. Invites the chief agents to append their signatures in Form 34C.

12. Determines that the candidate has achieved the Constitutional threshold of;

(i) More than half of all votes cast in the election; and

(ii) At least 25 percent of the votes cast in each of more than half of the Counties.

13. Publicly declares the President Elect Results of the declaration Form 34C.

14. Presents a copy of the Election Result Form 34C to the chief agents.

15. Declares the result of the Election using Form 34C.

16. Fills and issues a Certificate to the President Elect prescribed in Form 34D.

RESULT PATH AT THE CONSTITUENCY TALLYING CENTER

The Constituency Returning Officer:

1. Receives all original Forms 34As election results physically delivered from all polling stations in the Constituency.

2. Disregards the results of the count of a polling station where the total valid votes exceed the number of registered voters in that polling station.

3. Disregards the results of the count of a polling station where the total votes exceed the total number of voters who turned out to vote in that polling station.

4. Announces the results of the original Form 34As from each polling station.

5. Collates by recording election results from all original Forms 34As of the Presidential Election as received from each polling station in the Constituency to Form 34B.

6. Verifies the collated results in Form 34B against each polling station result Form 34As.

7. Invites the Tallying Centre agents to verify and confirm the results in Form 34B and to append their signatures.

8. Fills in Name, Identification Card Number, Sign, date and Stamp the Form 34B.

9. Scans Form 34B and uploads to the public portal.

10. Makes copies of Form 34B available to the Tallying center agents.

11. Scans all received Form 34As and collated Form 34B.

36

-10

-20

-30

-40

-50

12. Stores scanned Form 34As and collated Form 34B in the provided Commission archival tool.

13. Physically delivers the original Form 34As and 34B to the Presidential Returning Officer at the National Tallying Center.

ELECTION RESULT PATH AT A POLLING STATION

The Presiding Officer:

1. Counts votes and tabulates the election result in Form 34A.
2. Enters in Form 34A valid votes cast in favour of each candidate.
3. Enters in Form 34A the polling station counts
4. Enters in Form 34A the decision on disputed votes (if any).
5. Signs, dates and stamps the original and carbonated copies of Form 34A with the provided Presiding Officer's Stamp.
6. Allows the Deputy Presiding Officer to sign and date Form 34A.
7. Requests the candidates or agents present to append their signatures on Form 34A.
8. Indicates reasons by candidate or agent for refusal to sign (if any).
9. Duly fills Presiding Officer's comments.
10. Duly signs off the form after his/her comments
11. Announces the results as recorded in Form 34A.
12. Clicks the Result Transmission System (RTS) icon in the KIEMS Kit.
13. Puts in the Presiding Officer's Password.
14. Confirms on the KIEMS Kit whether:
 - (a) the Deputy Presiding Officer has duly signed the Form 34A;
 - (b) the Presiding Officer has signed the Form 34A; and
 - (c) the Form 34A has been stamped.
15. Captures a clear and focused image of the original Form 34A using the KIEMS Kit.

16. Verifies the image for clarity or legibility.
17. Displays to the Agents present the image captured.
18. Transmits the results using the KIEMS Kit.

19. Waits for the confirmation status "Pending> Sending> Submitted."

If there is no network at the polling station;

20. Waits for the confirmation status "Pending> Sending..."
21. Switches off the KIEMS Kit and only switches it on once at the Constituency Tallying Centre for transmission to be "...submitted".
22. Fills in the Polling Station Diary with all relevant details.
23. Confirms correctness of Polling Station Diary regarding ballot counts for all elections.
24. Packages result Forms and related materials for transportation to the Constituency Tallying Centre.
25. Physically delivers the ORIGINAL Form 34A, ballot box, and other election results related forms, materials and equipment to the Constituency Returning Officer.

SECOND SCHEDULE

Complementary Mechanism for Result Transmission System

1. In case the results transmission fails at the polling station, the Presiding Officer will be required to proceed to the Constituency Tallying Centre and transmit from the Constituency Tallying Centre.
2. Where the KIEMS Kit fails completely:
 - (i) The Presiding Officer shall inform the Constituency Returning Officer of the failure of the Kit and asks for replacement or repair of the KIEMS Kit.

- (ii) In the event that the KIEMS kit cannot be repaired or replaced, the Presiding Officer shall document the incident in the Polling Station Diary which shall be signed by the agents.
- (iii) The PO then proceeds to deliver the hard copy Form 34A and Polling Station Diary to the Constituency Returning Officer.
- (iv) The Commission shall publicize, through electronic or print media of national circulation, or any other accessible medium, to the public of the failure of transmission from that polling station.

THIRD SCHEDULE

VOTING TIME FOR KENYAN VOTERS RESIDING OUTSIDE THE COUNTRY

Pursuant to the *High Court Decision in Constitutional Petition No. E089 of 2022* and in exercise of the powers conferred by Articles 82 (1) (e), 83 and 88 (4) of the Constitution of Kenya, section 4 of the Independent Electoral and Boundaries Commission Act, 2011 and Regulations 39 of the Elections (Registration of Voters) Regulations, 2012 and Regulation 66 of the Elections (General) Regulations 2012, the Independent Electoral and Boundaries Commission notifies the public that the following directives shall apply in respect to time for voting for registered Kenyan voters living outside the country;

1. That voting shall be between 6.00 O'Clock in the morning and end at 5.00 O'Clock in the afternoon; and
2. That voting day shall be 9th August, 2022 local time in the respective country.

Dated the 5th August, 2022.

W. W. CHEBUKATI,
Chairperson,
Independent Electoral and Boundaries Commission.

GAZETTE NOTICE No. 9541

THE CONSTITUTION OF KENYA
THE ELECTIONS ACT
(No. 24 of 2011)

THE ELECTIONS (GENERAL) REGULATIONS, 2012

SUSPENSION OF ELECTIONS

IN EXERCISE of the powers conferred by Article 88 (4) to the Constitution of Kenya, section 55B (1) (b) of the Elections Act, 2011 and Regulation 64A (1) (b) of the Elections (General) Regulations, 2012, the Independent Electoral and Boundaries Commission suspends the elections stated in the sixth column of the Schedule for the elective positions scheduled to be held on 9th August, 2022, General Election and shall communicate vide a Gazette Notice when the said elections will be conducted.

SCHEDULE

County Code	County Name	Constituency Code	Constituency	Elective Position
001	Mombasa	-	All	County Governor
037	Kakamega	-	All	County Governor
015	Kitui	071	Kitui Rural	Member of National Assembly
024	West Pokot	131	Kacheliba	Member of National Assembly
024	West Pokot	132	Pokot South	Member of National Assembly

Dated the 8th August, 2022.

W. W. CHEBUKATI,
Chairperson,
Independent Electoral and Boundaries Commission.

37

-10

-20

-30

-40

-50

This is the exhibit marked WWC-6
referred to in the annexed affidavit of
Wabula Wanyingi Chebukati declaration
sworn before me on the 26th
declared day of August 2022 at NAIROBI
E.O.M
COMMISSIONER FOR OATHS



THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXXIV—No. 128

NAIROBI, 1st July, 2022

Price Sh. 60

GAZETTE NOTICE NO. 7992

THE CONSTITUTION OF KENYA

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT

(No. 9 of 2011)

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTION (REGISTRATION OF VOTERS) REGULATIONS, 2012

APPOINTMENT OF COUNTY AND CONSTITUENCY RETURNING OFFICERS FOR THE GENERAL ELECTION SCHEDULED TO BE HELD ON 9th AUGUST, 2022

Corrigenda

In Gazette Notice No. 4961 of 2022, Vol. CXXIV – No. 79 published on 28th April, 2022, *add* as specified herein below:

FIFTH SCHEDULE

DEPUTY COUNTY RETURNING OFFICERS

County Code	County Name	Name of Deputy County Returning Officer
1	Mombasa	Andrew Katana Thoya
2	Tana River	Isaiah Galugalu Maneno
3	Kilifi	Mohamed Salim Mohamed
4	Lamu	Mohamed Mahmud Ali
5	Taita Taveta	Lucas Mwangaghe Mwangala
6	Garissa	Maryan Ali Omar
7	Wajir	Zamzam Aden Mohamed
8	Mandera	Nasir Rashid Maalim
9	Marsabit	Joseph Abdub Qalla
10	Isiolo	Samuel Eric Koome
11	Meru	Munene Zacharia Njoroge
12	Tharaka Nithi	Lacton Munene Mugambi
13	Embu	Nelly Gichohi Wanjiru
14	Kitui	Alice Muindi Muthui
15	Machakos	Nathan Muthoka Musyoka
16	Kwale	Saiti Sabina Nyongesa
17	Makueni	Samuel Muendo
18	Nyandarua	Mary Nyambura Gitau
19	Nyeri	Samuel Kamwenji Muriuki
20	Kirinyaga	Priscilla Wanjiku Muriuki
21	Murang'a	Elias Kamau Kiama
22	Kiambu	Kelvin Munene Mugambi
23	Turkana	Josphat Esekon Lomojong

-10

-20

-30

-40

County Code	County Name	Name of Deputy County Returning Officer
24	West Pokot	Charles Loluk Titong'oluk
25	Samburu	Stephen Angelo Anoiya
26	Trans-Nzoia	Esther Chelangat
27	Uasin Gishu	Philemon Kiprop Rotich
28	Elgeyo Marakwet	Joyce Kimweno Jepkosgei
29	Nandi	Caroline Cheboss
30	Baringo	Maxwel Kipruto Barno
31	Laikipia	Cecilia Kombo
32	Nakuru	Claris Nafula Nambwaya
33	Narok	Nickson Tokore Ngojine
34	Kajiado	Tom Parsaoti
35	Kericho	Koech Kipyegon Charles
36	Bomet	Kiprono Sawe
37	Kakamega	Hesborn Ocholi
38	Vihiga	Ijami Alvin
39	Bungoma	Sammy Monoo Kapchanga
40	Busia	Nicholas Bwire Osinya
41	Siaya	Okubasu Jackton Makutsa
42	Kisumu	Immaculate Atieno Ogolla
43	Migori	Rose Awuor Bungu
44	Kisii	Tom Mokua Kabage
45	Homabay	Duncan Ouma Amayo
46	Nyamira	Momanyi Theophunus Nyakundi
47	Nairobi	Eston Lugairi

39

-10

-20

Add in the Third Schedule as prescribed herein below;

DEPUTY CONSTITUENCY RETURNING OFFICERS

County Code	County Name	Constituency Code	Constituency Name	Name of Deputy Constituency Returning Officer
1	Mombasa	6	Mvita	Brenda Akinyi Agunga
2	Kwale	8	LungaLunga	Michael Ganzala Chiponda
4	Tana River	20	Bura	Abdinasir Ibrahim Nur
3	Kilifi	15	Ganze	Yamu Muhaji Kale
6	Taita Taveta	24	Wundanyi	Julie Mkamburi Koleta
10	Marsabit	46	North Horr	Ibrae Jaldo
11	Isiolo	49	Isiolo North	Boru Dika Bilala
12	Meru	56	North Imenti	Kimathi Erick Mutembe
13	Tharaka - Nithi	62	Tharaka	Moris Njue Mwenda
23	Turkana	124	Turkana West	Lowan John Lokopu
25	Samburu	135	Samburu East	Philip Sateri Lesepe
26	Trans Nzoia	137	Endebess	Griffin Wafula Macheso
29	Nandi	153	Nandi Hills	Veronica Gombe Abeno
32	Nakuru	173	Rongai	Tallay Jepkogei Rop
32	Nakuru	172	Subukia	Stephen Muiga Maina
33	Narok	179	Narok North	Magdaline Sointa Kenga
34	Kajiado	186	Kajiado West	Gideon Limeyian
34	Kajiado	187	Kajiado South	Ndun'gu Margaret Wanjiru
36	Bomet	195	Chepalungu	Gideon Langat
37	Kakamega	202	Lurambi	Ayub Mukara Ambuke
37	Kakamega	205	Mumias East	Jamal Juma Nasser
40	Busia	225	Teso North	Abraham Ekabose Opili
41	Siaya	233	Ugunja	Helekiah Obura Owino
41	Siaya	235	Gem	David Omondi Ochieng
43	Homa Bay	246	Kabondo Kasipul	Benson Nyamweno Momanyi
43	Homa Bay	247	Karachuonyo	Edward Ochola Apiyo
43	Homa Bay	249	Homa Bay Town	Rodgers Otieno
44	Migori	259	Kuria West	Nyangi Mbogai Evans

-30

-40

-50

Dated the 30th June, 2022.

W. W. CHEBUKATI,
Chairperson, Independent Electoral and Boundaries Commission.

GAZETTE NOTICE NO. 7993

THE CONSTITUTION OF KENYA

THE ELECTIONS ACT

(No. 24 of 2011)

THE ELECTION (GENERAL) REGULATIONS, 2012

(L.N. 2012 and L.N. 2017)

TALLYING CENTRES FOR THE 9th AUGUST, 2022 GENERAL ELECTION

IN EXERCISE of the powers conferred by Article, 88 (4) of the Constitution of Kenya, and Regulations 84 and 85 of the Elections (General) Regulations, 2012, the Independent Electoral and Boundaries Commission gives notice to the public that the places listed in the Second, Third and Fifth Columns of the First, Second and Third Schedules respectively, shall be the Tallying Centers for the General Election scheduled to be held on 9th August, 2022 for the various elective positions.

40

FIRST SCHEDULE – PRESIDENTIAL TALLYING CENTRE

NAME OF TALLYING CENTRE	Bomas of Kenya
-------------------------	----------------

SECOND SCHEDULE- COUNTY TALLYING CENTRES

Code	County Name	Tallying Centre Name
01	Mombasa County	Bandari Maritime Academy
02	Kwale County	Kenya School Of Government Matuga
03	Kilifi County	Pwani University
04	Tana River County	Mau Mau Secondary School
05	Lamu County	Lamu Fort Hall
06	Taita Taveta	Taita Taveta University Hall
07	Garissa County	Garissa University
08	Wajir County	Kenya Red Cross Hall
09	Mandera County	Mandera Mediation Centre(Mmc)
10	Marsabit County	Catholic Social Hall, Marsabit Town
11	Isiolo County	Isiolo Boys Secondary School
12	Meru County	Meru School Multipurpose Hall
13	Tharaka-Nithi	Kathwana Social Hall
14	Embu County	Kangaru Girls School
15	Kitui County	Kitui Multipurpose Hall
16	Machakos County	Machakos Academy
17	Makueni County	Wote Technical Training Institute
18	Nyandarua County	Olkalou Catholic Parish Hall
19	Nyeri County	Nyeri Primary School
20	Kirinyaga County	Catholic Parish Kerugoya
21	Muranga County	Technology Primary School
22	Kiambu	Kiambu High School
23	Turkana County	Turkana University College
24	West Pokot County	Mottello Hall
25	Samburu County	Joseph Allamno Pastoral Centre Maralal
26	Transzoia County	Kitale School Girls' High School
27	Uasin Gishu	Eldoret Polytechnic
28	Elgeyo Marakwet	Iebc County Hall
29	Nandi County	Kapsabet Boys High School
30	Baringo County	Kenya School of Government, Kabarnet
31	Laikipia County	Nanyuki High School
32	Nakuru County	Nakuru Boys High School
33	Narok County	Maasai Mara University
34	Kajiado County	Masaai Technical Training Institute (Hospitality Hall)
35	Kericho County	Kericho Teachers Training College
36	Bomet County	St. Giuseppina Bakhita Technical Institute Bomet
37	Kakamega County	Kakamega High School
38	Vihiga County	Chavakali High School
39	Bungoma County	Mabanga Farmers Training College
40	Busia	Agricultural Training Centre (Atc)
41	Siaya County	IEBC County Hall
42	Kisumu County	Tom Mboya Labour College
43	Homabay County	Tom Mboya University College - Homabay
44	Migori County	Migori TTC
45	Kisii County	Kisii National Polytechnic
46	Nyamira County	Kebirigo Boys High School
47	Nairobi County	Moi International Sports Centre Kasarani

THIRD SCHEDULE – CONSTITUENCY TALLYING CENTRES

County Code	County Name	Const. Code	Constituency Name	Name of Tallying Center
01	Mombasa	001	Changamwe	Kmtc Port Reitz Campus, Mombasa
01	Mombasa	002	Jomvu	Mikindani Primary School
01	Mombasa	003	Kisauni	Shanzu Teachers Training College
01	Mombasa	004	Nyali	National Industrial Training Authority (NITA)
01	Mombasa	005	Likoni	Mtongwe Primary School
01	Mombasa	006	Mvita	Sheikh Nassor Kibwana Hall, Allidina Visram High School.
02	Kwale	007	Msambweni	Babla Diani Secondary School
02	Kwale	008	Lunga Lunga	Lunga Lunga Secondary School
02	Kwale	009	Matuga	Kenya School of Government Matuga
02	Kwale	010	Kinango	Kinango Secondary School
03	Kilifi	011	Kilifi North	Pwani University
03	Kilifi	012	Kilifi South	Kp Senior Secondary School



REF: No. IEBC/ CO/CORR/GEN/VOL. I (11)

Vice Chairperson Juliana Cherera
Commissioner Boya Molu

This is the exhibit marked WVC-9
referred to in the annexed affidavit of
Wahiba Wanyonyi Chebukati 22nd July, 2022
sworn before me on the 26th
declared day of August 2022 at Nairobi
(P.O.M)
COMMISSIONER FOR OATHS

RE: APPOINTMENT TO THE MEDIA AND CALL CENTRE MANAGEMENT TEAM AT THE
PRESIDENTIAL TALLYING CENTRE – BOMAS OF KENYA

Reference is made to the above-stated subject matter.

Pursuant to Section 39 of the Elections Act and Regulations 83 and 84 (1) and 2(a) the Commission has designated Bomas of Kenya as the Presidential Election Tallying Centre for the 9th August 2022 General Election.

Consequently, You are hereby appointed as the media and incident reporting team of the Presidential Election Tallying Centre as follows; - 10


Vice Chairperson Juliana Cherera - Team Leader
Commissioner Boya Molu - Alternate Team Leader

The Terms of Reference of your appointment are:

1. Provide liaison between the Presidential Returning Officer (PRO) and the National Communication Centre.
2. Preparing periodic briefs for the PRO to address the media.
3. Briefing the PRO on electoral activities across the country.

A copy of letter of appointment of the team is attached herein for your information, record and further necessary action.

The Appointment takes effect immediately. - 20


W. W. CHEBUKATI
CHAIRMAN



REF: No. IEBC/ CO/CORR/GEN/VOL. I (11)

22nd July, 2022

Commissioner Francis Wanderi
Commissioner Irene Masit

RE: APPOINTMENT TO THE LOGISTICS, WELFARE AND SECURITY TEAM AT THE PRESIDENTIAL TALLYING CENTRE – BOMAS OF KENYA

Reference is made to the above-stated subject matter.

Pursuant to Section 39 of the Elections Act and Regulations 83 and 84 (1) and 2(a) the Commission has designated Bomas of Kenya as the Presidential Election Tallying Centre for the 9th August 2022 General Election.

Consequently, you are hereby appointed to oversight, provide policy direction and strategy formulation to the Welfare and Security team of the Presidential Election Tallying Centre as follows; - 10

Commissioner Francis Wanderi - Team Leader
Commissioner Irene Masit - Alternate Team Leader

The Terms of Reference for the team are to manage;

1. The security of the Tallying Center and installations
2. The Tallying Centre's logistics, planning and organization
3. Security of members of the Commission, staff, VIPs and other visitors
4. Transport for commission staff
5. Any other duty assigned.

A copy of letter of appointment of the team is attached herein for your information, record and further necessary action - 20

The Appointment takes effect immediately.


W. W. CHEBUKATI
CHAIRMAN



REF: No. IEBC/ CO/CORR/GEN/VOL. I (11)

22nd July, 2022

Commissioner Justus Nyang'aya

RE: APPOINTMENT TO THE DIGNITARIES AND PROTOCOL TEAM AT THE PRESIDENTIAL TALLYING CENTRE – BOMAS OF KENYA

Reference is made to the above-stated subject matter.

Pursuant to Section 39 of the Elections Act and Regulations 83 and 84 (1) and 2(a) the Commission has designated Bomas of Kenya as the Presidential Election Tallying Centre for the 9th August 2022 General Election.

Consequently, you are hereby appointed as Team Leader of the Dignitaries and Protocol Management Team at the Presidential Election Tallying Centre.

The Terms of Reference of your appointment are:

1. Providing support services to the Commission.
2. Managing protocol of dignitaries and VIPs.
3. Managing access to Presidential Tallying Centre for accredited media, observers and agents.
4. Any other role as may be allocated.

- 10

A copy of letter of appointment of the team is attached herein for your information, record and further necessary action.

The Appointment takes effect immediately.

- 20

A handwritten signature in black ink, appearing to read 'W. W. Chebukati', is written over a horizontal line.

W. W. CHEBUKATI
CHAIRMAN



REF: No. IEBC/ CO/CORR/GEN/VOL. I (11)

22nd July, 2022

Commissioner Prof. Abdi Guliye
Mr. Marjan Hussein Marjan

RE: **APPOINTMENT TO THE RESULTS MANAGEMENT TEAM AT THE PRESIDENTIAL TALLYING CENTRE – BOMAS OF KENYA**

Reference is made to the above-stated subject matter.

Pursuant to Section 39 of the Elections Act and Regulations 83 and 84 (1) and 2(a) the Commission has designated Bomas of Kenya as the Presidential Election Tallying Centre for the 9th August 2022 General Election.

Consequently, You are hereby appointed to manage the Presidential Election Results Path as follows;

Commissioner Prof. Abdi Guliye	- Team Leader
Mr. Marjan Hussein Marjan	- Alternate Team Leader

-10

The broad Terms of Reference of the Team are:

1. Undertaking quality Assurance of results forms received from the Presidential Returning Officer desk.
2. Tallying and processing of election results.
3. Assist the Presidential Returning in managing a record of the election results.

Copies of letters of appointment of the team are attached herein for your information, record and further necessary action.

The Appointment takes effect immediately.

- 20

W. W. CHEBUKATI
CHAIRMAN

This is the exhibit marked WWC-10
referred to in the annexed affidavit of
Wafila Wanyonyi Chebukati
sworn before me on the 26th
declared August 2022 at Nairobi
day of 19th
COMMISSIONER FOR OATHS



RESPONSE TO CONCERNS BY AZIMIO LA UMOJA ONE KENYA COALITION PARTY REGARDING THE GENERAL ELECTION

1. Electronic Transmission of Results

ISSUE

- Has the commission developed constitutionally compliant protocols for the results transmission path from the polling station to the National tallying centre?
- When will the commission share the said protocols with stakeholders?
- What measures has the commission put in place to ensure that the provisions of Section 39(1C) of the Elections Act, regarding electronic transmission of results and the publishing of polling result forms on an online public portal, are complied with?

RESPONSE

Section 39(1C) of the Elections Act provides:

For purposes of a presidential election the Commission shall-

- (a) *electronically transmit, in the prescribed form, the tabulated results of the election of the President from a polling station to the constituency tallying centre and to the national tallying centre;*
- (b) *tally and verify results received at the national tallying centre; and*
- (c) *publish the polling results forms on an online portal maintained by the Commission.*

Pursuant to Section 39(1C) and Regulation 82(1) of the Elections (General) Regulations the Commission has developed a Results Management Framework that provides, among others, the results transmission path for election results from the polling station to the constituency and national tallying centres. The presiding officer, after announcing the presidential results at the polling station, shall electronically transmit to the constituency tallying centre, and the national tallying centre the duly filled prescribed form of election results (form 34A) via a secure network. The image

of the forms will then be shared with the public and stakeholders via Public Web Portal and Application Programming Interface (API) respectively.

46

2. The Register of Voters

ISSUE

- **What is the status of the supply, delivery, installation, upgrade, testing and simulation of servers of the Biometric Voter**

RESPONSE

The Commission enrolled voters using biometric voter registration system that ended on 4th of May 2022 and is in the final stages of compiling the register of voters using the existing infrastructure.

- 10

ISSUE

- **Stakeholders are given to understand that the commission does not intend to have hard copies of the voters register at the polling stations. What administrative arrangements has the commission put in place to ensure that all eligible citizens exercise their constitutional the right to vote in the event of technology problems and that ineligible individuals do not vote?**

RESPONSE

The Commission made a decision not to use the printed Register of voters based on the findings of the Post-Election Evaluation Report for the 2017 General Election and Fresh Presidential Elections. It was established that the use of the printed Register of voters provided an avenue for misuse during the voting process.

In an attempt to ensure that such misuse does not occur and to enhance the credibility of the voting process, the Commission decided to bar the use of printed register to ensure that all voters are strictly identified electronically using their captured biometric data and to eliminate the possibility of identification of voters using the printed register.

Each KIEMS kit will be loaded with a digital Register of Voters and a QR code will be used to access the voters for the respective polling station for purposes of electronic voter identification. Where voters cannot be identified electronically using their biometric then their biographical information (alphanumeric data) as indicated in their identification documents will be used to ascertaining their identity and clear them.

The KIEMS kits have been enabled to work in an offline and standalone mode during identification at the polling station. In addition, Commission will deploy back-up kits in each ward to replace any kit that will malfunction.

47

3. Integrity of the Register of voters

ISSUE

- **What is the status of the voter registration exercise on a county by county and constituency by constituency basis?**

RESPONSE

The Commission commenced continuous voter registration on 13th October 2018 and as at 31st August 2021 a total of 180,938 had been registered as voters. - 10
Thereafter, the Commission conducted Enhanced Continuous Voter Registration (ECVR) in two phases as summarized in the annexed Table 1: Summary of Voter Registration

ISSUE

- **Did the Commission take measures to ensure the register is in compliance with Section 31 of the Data Protection Act, 2019?**

RESPONSE

The Constitution of Kenya under Article 31 provides for the right to privacy as a fundamental right. To give effect to this Constitutional right, Parliament enacted the Data Protection Act, 2019 pursuant to which the Commission has endeavored to put in place the necessary frameworks for compliance not only to the Act but also Section 25(l) and 27(6) of IEBC Act, 2011 on ensuring the management of personal data in accordance with principles of personal data protection. In compliance, the Commission conducted Data Protection Impact Assessment (DPIA) and deposited the same with the Office of the Data Protection Commissioner (ODPC) in-line with Section 31 of the Data Protection Act 2019. Further, third parties like KPMG who have been processing our data carried out their own DPIA, filed the same with the ODPC and copied the Commission in compliance with Act. - 20

-30

ISSUE

- There are numerous reports around the country by voters who cannot find their data in the register. What is the cause of such a large number of complaints and what is the commission doing to address this concerns well before the election date? 48

RESPONSE

The Commission deployed KIEMs kits for purposes of conducting the verification of biometric data of voters in all the County Assembly Wards from the 4th of May to 2nd June 2022. In addition, the Commission provided a short message service (sms) platform and public web portal for voters to verify their registration details in accordance with the law. During the course of the exercise the Commission received different queries relating to particulars of voter registration including change of polling stations and transfers. The Commission is taking corrective action, that include recommendations of KPMG, and will be concluded before the publication of the Register of voters. The cases are not as numerous as alleged. - 10

msw

ISSUE

- Will the Commission have a compliant voters register by August? Can the commission address concerns regarding the integrity of the voters register in a transparent manner including the following issues;

RESPONSE

The Commission contracted KPMG on 7th April 2022 to conduct an audit of the Register of Voters, while the continuous voter registration activity was ongoing. The continuous registration of voters ended on 4th May 2022, and thereafter verification of the register commenced for a period of 30 days ending 2nd June 2022. The KPMG audit commenced with understanding of the processes and internal controls around registration and preparation of the register while awaiting completion of the Register of Voters. - 20

The Commission received a preliminary audit report with useful information, including 246,465 deceased voters, 481,711 duplicate records and 226,143 voters - 30

registered with IDs that don't validly belong to them, 164,269 registered with voter records with invalid identification documents (IDs and Passports) that have to be addressed prior to certification and publishing of the register. **49**

The Commission will address the recommendations of the audit findings on the Register, prior to certification and publication on or before 20th June 2022.

ISSUE

- **Can the commission make public the results of its investigations regarding the irregular transfer of voters?**
- **How many voters were affected by the said unlawful transfers?**
- **Which polling centers are affected by the said irregular transfers?**
- **Has the commission established when the said transfers were made and who was responsible for the irregularity?**

- 10

RESPONSE

MLR During the verification of biometric data of voters, there were few cases where voters' registration details were not in the register of electoral areas they had applied for registration. The Commission has not only taken corrective measures to address the few reported cases but is also conducting a review of all recent transfers with a view of identifying and reversing all cases that could have been effected without the requisite documentations. The conclusion of this process will enhance the credibility of the Register of voters. - 20

ISSUE

- **Has the issue of dead voters in the register been resolved? What is the number of dead voters on the register and how does the commission intend to transparently resolve the issue well before the general election date?**

RESPONSE

The Commission in its inter-agency collaboration with Civil Registry services receives periodic data on deceased persons and upon verification, deactivation of the deceased - 30

voters' particulars is effected. In addition, the Commission received a preliminary audit report that includes a finding of 246,465 deceased voters. The Commission commenced deactivation of details of the deceased voters before certification and publication of the Register of voters.

50

ISSUE

- **There have been reports that the number of voters in some counties has suspiciously grown by up to one million voters without rational explanation or correlation to population data. Can the commission provide assurance that it will thoroughly and transparently investigate the said reports and take corrective measures if the said reports are confirmed?**

- 10

RESPONSE

my The Commission is neither aware of an increase of voters in any county by a million nor received any report to that effect, save for this memorandum. The Commission categorically states that it commenced continuous voter registration (CVR) 13th October 2018 and by 31st August 2021 only 180,938 voters had been enrolled. In the subsequent enhanced continuous voter registration (ECVR) exercise that was conducted in two phases, a total of 2,550,939 new voters were registered. The Commission is not aware of any other figures and welcomes any report that will aid identifying any suspicious increase in voter registration.

4. Audit of the Register of Voters

- 20

ISSUE

- **Is the Preliminary report by the audit firm ready? If so, what are the preliminary findings?**
- **When is the draft final Report of audit of register of voters expected?**

RESPONSE

The Commission received a preliminary audit report with useful information, including 246,465 deceased voters, 481,711 duplicate records and 226,143 voters

registered with IDs that don't validly belong to them, 164,269 registered with voter records with invalid identification documents (IDs and Passports) that have to be addressed prior to certification and publishing of the register. 51

The Commission is scheduled to receive the final audit report on 16th June 2022 and thereafter engage stakeholders on the final register of voters on 17th June 2022.

5. Proposal to amend the Elections (General) Regulations

ISSUE

The Commission has made several proposals, presently before the delegated legislation committee of Parliament, to amend the subsidiary regulations in the Elections Act that on the face of it seem to undermine the constitutional requirement for transparent and credible management of the results transmission protocols. Such amendments include: - 10

- A proposal to amend regulation 82 (2) of the Elections (General) Regulations to read that if transmission fails at a polling station the presiding officer will move to the nearest polling station that has a good network and transmit the result and if there is still no network, the presiding officer will proceed to the constituency tallying centre and transmit the results from there. m/c

RESPONSE

Electronic transmission of election results outside designated polling stations not covered by 3G network was an issue raised in the first Supreme Court Presidential Election Petition of 2017. It is on that basis that the Commission proposed amendments to the Elections (General) Regulations that were presented to the Committee of the National Assembly on Delegated Legislation. However, the Committee rejected this proposal. The Commission will thus deploy satellite modems for purposes of electronic results transmission in areas without 3G network depending on availability of budget. - 20

ISSUE

- **Has the commission mapped the number of polling stations where network might be insufficient to transmit data?**

52

RESPONSE

The Commission engaged the Communication Authority of Kenya (CA) to undertake quality of service (QoS) of the GSM network in the country for purposes of identifying polling centres that may not be covered by 3G/4G network. The CA has since availed a report, based on desktop review instead of QoS, to the Commission to the effect that 1,111 polling centres do not have 3G/4G network. The Commission will publish all polling stations without 3G/4G network on finalization of the register of voters.

-10

ISSUE

- **Is the commission collaborating with mobile network operators to remedy the issue?**

RESPONSE

m/br
The Commission is engaging the mobile network operators (MNOs) to establish which MNO has strong 3G/4G signals for purposes of determining which service provider will provide primary and secondary sim cards for transmission of results. However, the responsibility of providing information on 3G/4G network coverage remains with the Communication Authority of Kenya.

ISSUE

- **Are there alternative solutions to the problem including the use of satellite phones procured by the commission in the past?**

RESPONSE

The Commission, depending on the availability of budget and extent of inadequate network coverage, will deploy satellite modems to mitigate against this challenge.

-20

ISSUE

- **A proposal to amend Regulation 83A of the Elections (General) Regulations to give a Presiding Officer power to open a ballot box that has been sealed to remove wrongly put materials at the constituency tallying Centre.**

53

RESPONSE

The proposed amendment was informed by a few incidences observed in previous elections where a presiding officer inadvertently locks election results and KIEMS kit or secure election material in the ballot box where chaos erupt in a polling station. The proposed amendment is not novel since in 2017 (owing to lacuna in the law) the Commission gazetted procedures for opening of a ballot box at the constituency tallying centre to retrieve materials wrongly locked in the ballot box vide Gazette Notice no. 9978 carried in vol. CXIX-No. 150 published on 12th October 2017.

-10

6. Recruitment of Returning Officers

ISSUE

- **The Commission has submitted a proposal to amend the Elections (General) Regulations to give itself exclusive mandate to appoint election officials including constituency returning officers, county returning officers, presiding officers and their deputies without sharing their details with political parties and independent candidates as presently required by Regulations 3, 4 and 5 of the Elections (General) Regulations, 2012.**
- **The current regulations are in tandem with the transparency and public participation requirements of Article 10 of the Constitution of Kenya and the attempt to remove this transparency mechanism should be abandoned.**

RESPONSE

The proposed amendments do not seek to do away with the requirement of inviting political parties and candidates make representations on appointment of poll officials. The Commission as required by Regulations 3, 4 and 5 of the Elections (General)

-20

Regulations, 2012 informs political parties and independent candidates by sharing a list of the proposed officials to enable those with representations to do so. 54

Prior to the promulgation of the Constitution of Kenya 2010, the then electoral management body used to recruit temporary poll officials as returning officers. However, since the establishment of IEBC, the Commission has transparently and competitively recruited 47 County Elections Managers (CEMs) and 290 Senior Elections Officers on permanent and pensionable basis who serve as County Returning Officers and Constituency Returning Officers respectively.

It is therefore the view of the Commission that sharing names of returning officers with political parties and candidates is unnecessary since they are already employees of the Commission. - 10

7. Printing of ballot papers

ISSUE

my/che
The Contract was awarded to a Greek company, Inform Lykos (Hellas) S.A. The said company has been linked to last-minute postponement of elections in Nigeria in February 2019 and reportedly intends to sub-contract printing of ballot papers and other electoral materials to other printers. The company reportedly did the same in the postponed Nigerian elections.

- **What measures has the commission put in place to ensure there are no lapses, both logistical and security, in the general election?**

RESPONSE

Contrary to the allegation that Inform Lykos (Hellas) S.A occasioned postponement of elections in Nigeria, the Company rescued the situation after the initially contracted company failed to deliver materials as scheduled. - 20

Prior to award of contract to the firm, the Commission conducted due diligence and established that the company has capacity to undertake printing of ballot papers, and that the firm will deliver on its contractual obligations without sub-contracting.

ISSUE

55

- **What steps is the commission taking to involve stakeholders in securing the integrity of the supply and delivery of ballot papers, register of voters, statutory election result declaration forms and election result declaration forms?**

RESPONSE

The Commission will at an opportune time and subject to availability of funds invite stakeholders to check on the integrity of the supply and delivery of ballot papers, register of voters and statutory election result declaration forms.

To ensure that the printing and delivery of the ballot papers is secure, Inform Lykos shall be responsible for printing and delivery of ballot papers to the Commission's warehouse through a system that will track movement of the materials. In addition, the security features on the ballot papers will ensure that only those issued by the Commission are used during the election. -10

8. Contracting of Smartmatic B.V. Holdings.

ISSUES

- **The contract with Smartmatic indicates that IEBC has outsourced its key electoral roles to the vendor. This includes delegating preparation of the following documents, which should be the sole preserve of the commission, to the supplier:**
 - 1) Biometric Voter Registration Requirement Document**
 - 2) Electronic Voter Registration and Identification Requirement Document**
 - 3) Result Transmission Requirement Document**
 - 4) Biometric Tablet and accessories requirement Document**
 - 5) Project Management plan**
 - 6) IEBC Data Centre Infrastructure Gap Analysis Report**
- **Has the commission given consideration to the compliance implications of such outsourcing?**

-20

RESPONSE

56

The Commission has not outsourced any of the above mentioned items. The Commission developed technical specifications of the required electoral technology prior to procurement of the same. The requirements informed development of tender documents any successful bidder had to meet as part of the procurement process.

The contract between the Commission and successful bidder (Smartmatic) does not contain any clause that assigns any of the above listed role or function to the firm.

ISSUE

- **What is the status of data migration from the Morpho (Idemia) system to Smartmatic?**
- **Further, has IEBC hired the manpower required to calibrate the 52,000 kits required to manage the election in August?**
- **When does IEBC expect the calibration exercise to be complete?**

- 10

RESPONSE

The Commission successfully undertook data migration from Idemia (Morpho) platform to Smartmatic and is currently working on the Register of voters in a new environment.

The Commission has also prepared a purpose built ICT production and processing facility for preparation of the KIEMS kits to be used during the election, and System installation of software is ongoing. As soon as the Register of voters is ready, the Commission shall deploy adequate ICT personnel to complete the process and duplicate the SD cards with register of voters for insertion of the same into the KIEMS kits.

- 20

The Commission has put in place technology risk mitigation measures to ensure business continuity such as contingency/backup KIEMS kits, High availability and fail-over mechanisms for the Data Center Infrastructure, Disaster recovery sites.

9. Technology issues

57

ISSUE

- In late April 2022, IEBC announced that it would add approximately 10000 polling stations to bring the total number of polling stations in the August 2022 election to 52,481.

RESPONSE

The Commission undertook a consultative process with relevant stakeholders in identifying the need for additional registration centres and polling stations and as informed by the population projections. The Commission made estimates and projections on the increase of polling stations based on the target voter registration target of 6 million additional voters.

However, the final number of polling stations will be determined once the Register of voters is ready and bearing in mind that the number of voters in any given polling station is capped at 700 as provided in section 38A of the Elections Act. - 10

ISSUE

- Each polling station must have a BVR tablet which has data exclusive to its polling station and is geo-fenced.

RESPONSE

Each polling station will have a KIEMS kit loaded with digital Register of voters. On the voting day, prior to opening of the polling station, the register shall be locked to the specific polling station via a QR code specific to that polling station.

ISSUE

- Each tablet in turn requires two (2) SIM cards. Hence, 104,962 SIM cards will be required for the 2022 election. Significant manpower is required for the exercise of configuring over 50,000 tablets including inserting over 100,000 SIM cards. - 20

- Further, once the verification and auditing exercise of the Voters register is concluded in early June 2022, the data must be entered into the 50,000 tablets. It took the commission over 10 days to configure the 5000 kits they are using for the ongoing register of voter's verification exercise that commenced in May 2022. At this rate, it would take over 100 days to configure 50,000 kits which must then be distributed to each polling center before the election date. Prior to being distributed, each kit must have its battery fully charged to mitigate against power failure or disruption. What measures has the commission put in place to ensure that the kits are fit for purpose on Election Day?

- 10

- Has the commission set up the production site data Centre and disaster recovery site infrastructure?

RESPONSE

m/c
The Commission has prepared a production facility and hired staff for purposes of installing application software, the digital register and insertion of SIM cards. The installation of the application software is done wirelessly without human intervention. SD cards populated with the Register of Voters, shall be inserted into the KIEMS kits. Upon completion of the foregoing activities, the kits will be packaged and delivered to the Constituencies in time for the General elections. The Commission will engage temporary ICT clerks to undertake installation of application software, the digital register and insertion of SIM cards as well testing all the kits ahead of distribution.

- 20

ISSUE

- When does the commission intend to carry out timely end-to end testing of election technology?

When does the commission intend to issue a public notice specifying the date, time and place of the testing and invite stakeholders to attend the end-to-end testing of election technology?

- 30

RESPONSE

59

The Commission carried out simulation of technology on 9th June 2022 where representatives of political parties, agents of Presidential candidates, observers, media and other stakeholders were present.

The Commission received useful feedback from stakeholders on the simulation exercise.

ISSUE

- **Has the commission conducted the annual audit of the election technology to—**
 - guarantee data integrity;**
 - ensure that the technology functions effectively as specified; and**
 - ensure that the internal controls of the technology are effective.**

RESPONSE

Due to budgetary constraints the Commission was unable to conduct audit of technology in the past but with the current budget the Commission has engaged a firm that is conducting the audit of technology. Recommendations arising from the audit will be addressed by the Commission.

- 10

10. Stakeholder Engagement

ISSUE

- **What measures or steps has the commission taken to address the systemic inadequacies identified by the Supreme Court in 2017?**

RESPONSE

The systemic issues referred to by the Supreme court were captured in the Commission's Post Election Evaluation (PEE) Report that informed interventions of the Commission including:

i. Legal Reforms

The Commission reviewed of electoral laws and developed draft amendments to the Elections Act and Regulations. The Commission developed proposals for review of the

- 20

said laws and after a series of consultative meetings with JLAC, reduced the same into draft bills presented before the Senate and National Assembly namely:

60

- a. Draft Referendum Bill, 2020 submitted to the National Assembly and the Senate on 18th May 2020 and 24th June 2021 respectively
- b. Draft Election Campaign Financing (Amendment) Bill, 2020 submitted to the National Assembly and the Senate on 21st August 2020 and 24th June 2021 respectively.
- c. Draft IEBC Amendment Bill 2020 on provisions for Boundary Delimitation submitted to the National Assembly and the Senate on 20th May 2020 and 24th June 2021 respectively.

Further, the Commission made proposals that were submitted to the Justice and Legal Affairs Committee of Parliament (JLAC) and developed into the Elections (Amendment) Bill, (National Assembly Bill No. 3 of 2022): Kenya Gazette Supplement No.12 (National Assembly Bills No.3) to amend the Elections Act, 2011. The said Amendments are before the National Assembly.

Moreover, the Commission prepared and submitted a report titled "*Electoral Law Reform in Kenya: The IEBC Experience*" to both houses of Parliament on 19th October 2020. The Report details a comparative analysis of electoral systems similar to Kenya and gives an understanding of the basic threshold that electoral systems must meet. The report further details areas for review of our electoral legal framework and recommends laws that should be enactment to regulate conduct of Elections.

ii. Institutional Reforms

To improve internal processes and procedures the Commission reviewed, and developed where lacking, Policy and procedure manuals for all directorates of the Commission to address systemic challenges identified in the PEE report.

iii. Enhanced Collaboration and engagement with Stakeholders

The Commission continuously engages stakeholders and in its activities throughout the electoral cycle for feedback to improve its processes. The engagement is geared towards improving the election infrastructure and environment.

ISSUE

- **Section 26 of the IEBC Act requires the Commission to observe the principle of public participation and the requirement for consultation with stakeholders. What plan has the commission put in place to ensure stakeholders are fully engaged in all material decisions and processes of the election?**

RESPONSE

The Commission has overtime developed an invaluable network of partners and stakeholders in election management. Some of the engagements included the following:

- Dialogues with Political Parties and the Office of the Registrar of Political Parties under the Political Parties Liaison Platform established under Section 38 of the Political Parties Act and paragraph 9 of the Second Schedule to the IEBC Act.
- Engagement meetings civil society organization including faith based organization, Persons Living With Disabilities, Youth organization, Special Interest Groups, development partners.
- Media engagement through the Media Sector Working group
- Relevant Government including Office of the Director of Public Prosecution, Judicial Committee on Elections, National Police Service, Commission of University Education, Communication Authority of Kenya.
- Continuous Press Releases.
- Publications in the Kenya Gazette and Newspapers
- Dialogue forums with key stakeholders under an established Collaboration Framework.
- County Forums on the electoral dispensation including electoral law review.

The commission is committed to continuously engage stakeholders in order to address election matters and related emerging issues.

62

ISSUE

What is the status of compliance with the statutory timelines set out in the revised Elections Operations Plan (EOP) released by the commission on 17th January 2022?

RESPONSE

The Commission is on course in the implementation of the election timelines as provided in the Election Operation Plan as shown in the annexed table 2: Election timelines.



**W.W. CHEBUKATI
CHAIRMAN**

- 10

Table 1: Summary of Voter Registration

SNO.	COUNTY NAME	ECVR I&II		CVR (POST ECVR)		TOTAL	
		Enrolment	Transfers	Enrolment	Transfers	Enrolment	Transfers
1	MOMBASA	73,840	20,814	6,469	13,009	80,309	33,823
2	KWALE	39,741	14,416	2,893	1,997	42,634	16,413
3	KILIFI	74,563	8,325	3,548	5,747	78,111	14,072
4	TANARIVER	19,334	9,357	1,301	2,242	20,635	11,599
5	LAMU	9,381	3,904	0	0	9,381	3,904
6	TAITA TAVETA	23,518	6,484	2,118	3,086	25,636	9,570
7	GARISSA	44,085	35,080	2,156	6,433	46,241	41,513
8	WAJIR	33,564	26,331	2,400	5,859	35,964	32,190
9	MANDERA	35,456	39,413	4,754	10,915	40,210	50,328
10	MARSABIT	23,156	11,967	1,408	2,296	24,564	14,263
11	ISIOLO	10,805	5,675	762	4,056	11,567	9,731
12	MERU	78,378	17,303	3,336	3,513	81,714	20,816
13	THARAKA-NITHI	21,464	6,365	931	1,508	22,395	7,873
14	EMBU	28,159	5,781	2,292	1,999	30,451	7,780
15	KITUI	57,755	18,718	4,179	4,097	61,934	22,815
16	MACHAKOS	69,989	25,017	5,303	6,883	75,292	31,900
17	MAKUENI	51,183	9,052	4,557	2,786	55,740	11,838
18	NYANDARUA	26,723	14,280	1,502	1,277	28,225	15,557
19	NYERI	35,097	12,395	258	252	35,355	12,647
20	KIRINYAGA	28,744	3,230	1,705	6,725	30,449	9,955
21	MURANGA	41,290	12,064	3,096	5,931	44,386	17,995
22	KIAMBU	112,389	39,918	7,548	10,520	119,937	50,438
23	TURKANA	50,148	7,560	2,514	10,003	52,662	17,563
24	WEST POKOT	34,342	4,129	2,808	4,659	37,150	8,788
25	SAMBURU	15,294	3,038	779	435	16,073	3,473
26	TRANS NZOIA	56,119	17,230	3,808	6,379	59,927	23,609
27	UASIN GISHU	80,938	8,908	4,050	4,752	84,988	13,660
28	ELGEYO-MARAKWET	30,688	3,083	1,489	1,104	32,177	4,187
29	NANDI	56,849	10,690	3,448	1,710	60,297	12,400
30	BARINGO	39,719	10,518	3,640	2,547	43,359	13,065
31	LAIKIPIA	19,355	4,587	1,144	2,622	20,499	7,209
32	NAKURU	100,749	37,788	10,754	19,658	111,503	57,446
33	NAROK	55,888	7,587	3,776	9,604	59,664	17,191
34	KAJIADO	52,353	18,950	5,017	3,879	57,370	22,829
35	KERICHO	53,620	11,197	2,621	4,365	56,241	15,562

63

- 10

- 20

- 30

Table 1: Summary of Voter Registration

SNO.	COUNTY NAME	ECVR I&II		CVR (POST ECVR)		TOTAL	
		Enrolment	Transfers	Enrolment	Transfers	Enrolment	Transfers
36	BOMET	48,387	12,395	3,063	2,121	51,450	14,516
37	KAKAMEGA	97,403	34,080	8,138	8,046	105,541	42,126
38	VIHIGA	32,346	11,473	2,771	2,414	35,117	13,887
39	BUNGOMA	84,383	24,737	6,188	3,792	90,571	28,529
40	BUSIA	55,521	14,860	5,035	2,241	60,556	17,101
41	SIAYA	60,103	24,618	13,713	4,270	73,816	28,888
42	KISUMU	77,661	15,233	10,455	12,971	88,116	28,204
43	HOMABAY	60,233	24,505	9,806	3,191	70,039	27,696
44	MIGORI	66,321	21,995	3,125	1,846	69,446	23,841
45	KISII	92,023	25,665	2,695	7,379	94,718	33,044
46	NYAMIRA	37,536	19,501	1,244	1,422	38,780	20,923
47	NAIROBI CITY	254,346	97,004	17,962	28,683	272,308	125,687
	TOTAL	2,550,939	817,220	192,559	251,224	2,743,498	1,068,444

64

-10

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



Ref: IEBC/CO/CORR/GEN/VOL.I (29)

July 14, 2022

Mr. Paul Mwangi
 Chief Legal Advisor
 Azimio La Umoja
 One Kenya Coalition Party
NAIROBI

Mr. Saitabao Kanchory
 National Chief Agent
 Azimio La Umoja
 One Kenya Coalition Party
NAIROBI

**RE: GENERAL ELECTIONS 2022**

Reference is made to the following:-

1. Letter dated 27th June, 2022 by Mr. Paul Mwangi, Chief Legal Advisor, Raila Odinga Presidential Campaign
2. Letter dated 30th June, 2022 by Mr. Saitabao Kanchory, National Chief Agent, Azimio La Umoja One Kenya Coalition Party
3. Letter dated 1st July, 2022 by Saitabao Kanchory, National Chief Agent, Azimio La Umoja One Kenya Coalition Party.

The said letters raised various interrelated issues regarding the preparation and conduct of the upcoming 9th August, 2022 General Elections and the Commission proceeds to respond as follows:-

ISSUE

mlh Purpose and Use/Application of the Printed Register of Voters - What The Laws Says

6. The Commission wish to reproduce the memo dated 27th July, 2017 wholesale as hereunder: -

"INTERNAL MEMO"

FROM : Commission Secretary/CEO
TO : County Election Managers
 Constituency Returning Officer
 Deputy Returning Officers
 County ICT Officers

REF: IEBC/VREO/2/149

DATE: 27th July, 2017

RE: POSSIBLE VOTER VERIFICATION SCENARIOS AND ACTION TO BE TAKEN BY PRESIDING OFFICERS AT THE POLLING STATION

Reference is made to the above subject matter.

The Commission wishes to share the attached scenarios that Presiding Officers, Deputy Presiding Officers and Polling Clerks may encounter while operating KIEMS during verification of voters on Polling Day.

Biometric Verification.

Presiding Officers must ensure that Voters are identified by biometrics upon production of identification document used during Registration. Biometric verification is the primary mode of identifying voters.

Complementary Mechanism

Where a voter cannot be identified using biometrics, then the Presiding [officer] shall use a complementary mechanism of alphanumeric search in the presence of agents and the voter shall fill form 32A before being issued with six ballot papers.

Use of Printed Register of Voters

The Presiding Officer will resort to the use of printed Register of Voters after approval from the Commission upon confirmation that KIEMS kits has completely failed and that there is no possibility of repair or replacement.

All the possible scenarios and recommended action must be brought to the attention of all of POs, DPOs and Clerks during the cascaded training with immediate effect.

(Signed)

 **EZRA CHILOBA**

13. Regarding Gazette notice 4961 of 28th April, 2022, the Commission would like to state that it had not deployed Returning Officers to the following constituencies as at the date of publication of the said Gazette Notice.

Table 1: Returning Officers Vacant Positions

S/NO	NAME OF CONSTITUENCY	GAZZETTED
1	Malindi	These were later gazetted by way of corrigenda.
2	Garsen	
3	Isiolo South	
4	Samburu North	
5	Samburu East	
6	Saboti	
7	Narok North	
8	Bomet	
9	Navakholo	
10	Teso North	
11	Nambale	
12	Bondo	
13	Webuye East	
14	Kasipul Kabondo	
15	Karachuonyo	
16	Rangwe	
17	Awendo	
18	Bomachoge Chache	
19	West Mugirango	
20	Kibra	
21	Kamkunji	

14. The delay in the gazetting Returning Officers (ROs) for the listed constituencies was occasioned by arrangements to deploy suitable Deputy Returning Officers (DROs) from within the Commission to fill the vacant positions that arose out of staff exit and promotion.

ISSUE**Accountability and Transparency on the Commission's Level of Preparedness to Conduct General Elections****COMMISSION'S RESPONSE***i. Certified Copy of the Register of Voters*

21. The certified copy of the Register of Voters is available subject to access to information and data protection laws, and upon payments of prescribed fees to the Commission.

ii. List of Names of Polling Stations

22. The list of the of names of the 46,233 polling stations is available in soft form and also in our website link:

[https://www.iebc.or.ke/registration/?Statistics of Voter 2022](https://www.iebc.or.ke/registration/?Statistics%20of%20Voter%202022)

- iii.* Information on polling centres/stations GPS coordinates and 1,111 polling centres without 3G/4G network that will use satellite modems will be available once the team comprising of Commission staff and that of Survey of Kenya physically verify the GPS coordinates of all the polling centres.

iv. Ballot Papers

23. The Commission contracted ballot paper printing work to Inform Lykos (Hellas) S.A. in Greece. The tender require the printer to print, package and deliver to the Commission's central warehouse in Industrial Area, Nairobi ballot papers and results forms for the six (6) elective positions. The issue of design and security features in both ballot papers and the results forms can be physically verified on site during the factory visit planned for 15th and 16th July 2022.

The Commission on 8th July 2022 communicated to stakeholders, including the Presidential candidates, on the visit after consultation with the printer.

24. The Commission has organized for adequate armed security to protect the ballot papers at the warehouse and to escort them while on transit to respective county and constituency warehouses and to the polling stations.

v. KIEMS Kits

25. The Commission has a total of 46 233 polling stations and each would require KIEMS Kits for identification of voters as well as results transmission. The Commission has an inventory of 55 590 KIEMS kits in usable condition out of which 46 233 will be at the polling stations and 9357 on stand-by for backup.

viii. Request for Information regarding Measures taken against the Commission's staff involved in the illegal Transfer of Voters

32. The Commission investigated the allegations of illegal transfer of voters and upon receipt of the preliminary investigation report five staff members suspected of involvement in the irregular transfers were suspended to pave way for further investigations. The preliminary investigation report has been shared with the Office of the Director of Public Prosecutions for further investigation and prosecution.
33. It should also be noted that the Commission had taken steps to reverse the illegal transfer.

The Commission acknowledges the support from all players in the electoral space and remain open to engagement and consultation. Together we can give Kenyans, free, fair, and credible elections.

In the meantime, for purposes of consistency and to avoid duplicity in communication, the Commission advises the party to communicate through one contact person.



W.W. CHEBUKATI
CHAIRMAN

OB EXTRACT.

This is the exhibit marked WWC-11 referred to in the annexed affidavit of

Wafu Wanyonyi Chebukati declaration

sworn before me on the 26th day of August 2022 at Nairobi

COMMISSIONER FOR OATHS

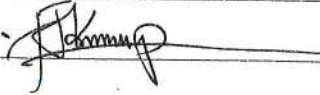
OB NO. 29/15/08/2022

AT 2000 HRS

AT LANGATA POLICE STATION

INCIDENT REPORT: Today the 15th day of August, 2022 at around ~~1700~~ 1715 hrs in Uhuru Hall, Bomas of Kenya Auditorium which had capacity of 2000 persons mainly members of public, IEBC officials, observers, diplomats as well as Azimio and Kenya Kwanza elected leaders and supporters who were gathered to witness the declaration of presidential results, when the following Azimio-10 Agents; Ledama Odinga, Sartabao Ole Kaudhuri and Gladys Wangari among others jumped over the barriers and entered into the auditorium stage where the IEBC Chairman Mr. Wafu Chebukati was preparing to announce the presidential results. The above agents advanced menacingly toward the IEBC Chairman and Commissioners with an intention of grabbing documents which were in possession of the IEBC Chairman in order to disrupt the process. During the commotion, several people were injured among them; IEBC CEO Margen Hussein Margen sustained an injury on the head, Prof Abdi Yaqub Gulye sustained injury on both legs. Chairs and tables were also damaged and value to follow. Police officers intervened and order was restored. The function proceeded to the end without any other incident ending at 1830 hrs. Signed *[Signature]*

were in attendance ① Prof. George Washington
② Maurice Watkins and ③ Dr. William Lawrence
Ruto was declared President-Elect. During
the event, over two thousand people were in
attendance. The event started at about 1630 hrs
and ended at about 1830 hrs.

Signed: 

This is the exhibit marked WWC-11(b)
referred to in the annexed affidavit of
Wafula Wanyuj Chebukati
sworn before me on the 26th
declared day of August 2022 at NAIROBI
C.O.M
COMMISSIONER FOR OATHS

ID NO 2078119

WAFULA CHEBUKATI

IEBC ANNIVERSARY TOWERS

P. O. BOX

TEL NO: 0723510235

72

**STATEMENT RECORDED ON 24TH AUGUST 2022 AT 1700HRS AT
PANAFRIC HOTEL NAIROBI**

STATES AS FOLLOWS

I am the above-named Kenyan and currently chairman IEBC. For the purposes of the just concluded elections I was the returning officer for presidential election. The tallying centre for presidential election was at Bomas and thus I was the overall in-charge in conjunction with other commissioners, staff of IEBC and stakeholders. - 10

In regard to the incident of 15th August 2022, I wish to state that the commission informed the stakeholders to come for the 1500hrs announcement of presidential results. This followed a 6day verification of presidential results from 291 returning officers (290 from constituency and 1 from diaspora). The exercise was public and televised. The stakeholders informed included agents of presidential candidates, families of the candidates, members of the diplomatic community, observers among others. Before we proceeded to the auditorium, as a commission we had a meeting in which all the 6 commissioners, CEO and myself were present and the agenda was presentation of final results.

All went well until about 1700hrs when I walked into the auditorium in company Prof Guliye, Boya Molu and Marjan Hussein- CEO of the commission. I recall 4 commissioners namely Juliana Cherera, Justus Nyagaya, Irene Masit and Francis Wanderi refused to accompany me to the auditorium since I had refused to heed to their demands of changing the results to create a run-off for the two leading candidates. - 20

Upon entering the auditorium and taking my position, a group known to me and who included Orenge, Otiende Amollo, Saitabao Ole Kanchoi approached where I was and became noisy uttering that I could not announce the results. Within a few minutes, I saw a stampede surging from my behind which then prompted my security detail to whisk me away from the chaotic scene. I wish to further state that as I looked behind at the surging crowd, I saw a someone holding a gun at holster position and was part of the crowd. I could however not recall his face. - 30

Wafula Wanyuj Chebukati

My security detail managed to whisk me away behind the banners and back to the holding room. At the holding room, I was joined by Boyu Molu and Marjan almost the same time but Prof Guliye had not arrived and when I inquired he came over and joined us. At the holding room I realized I had sustained an injury on my left foot. I also saw Marjan injured at the back of his head whereas Prof Guliye had swollen legs and bleeding at the tibia.

73

I wish to state that before presidential results are announced, as a commission we summon all the chief agents for the presidential elections to append their signatures on the form 34c. The agent for Kenya Kwanza, Agano and Roots party signed the form 34c with exception of Azimio agent namely Saitabao Kanchory. Saitabao declined to sign citing that he needed more time to go through 459 pages of form 34c before he could sign. Since all the agents were part of the whole process and 3 out of 4 had agreed with the results and signed, as the returning officer I had a constitutional duty to proceed and declare the results for refusal by an agent to sign declaration does not invalidate the declaration.

-10

Signed by Wafula Chebukati 

ROC: Ci V. Kokeno 

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
 COUNTY: MOMBASA
 CONSTITUENCY: MOMBASA
 WARD: MOMBASA
 POLLING STATION: MOMBASA



GV001

74

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
 COUNTY: MOMBASA
 CONSTITUENCY: MOMBASA
 WARD: MOMBASA
 POLLING STATION: MOMBASA



GV001

This is the exhibit marked
 referred to in the annexed affidavit of
 Wafika Wanyonyi
 sworn before me on the
 day of August 2021 at Nairobi

INSTRUCTIONS TO VOTER:

1. Mark the paper by placing a mark against the name of the party / candidate and the symbol of the party you wish to elect.
2. Place a mark against only one candidate.
3. Do not place any other mark whatsoever on the paper.
4. Do not place your mark on the centre, from left to right, so as to conceal your vote. Then put the ballot into the ballot box.

MAAGIZO KWA MPIGA KURA:

1. Nika alama kwenye nafasi ilolengwa kwa jina la chama / mgombeaji au picha ya chama ungependa kuchagua.
2. Nika alama kwenye nafasi moja tu.
3. Usiweke alama yoyote nyingine kwenye karatasi ya kura.
4. Kurija karatasi kutokaji kutoka kushoto kwenda kulia ili kuficha kura yako halafu tumbukiza kwenye sanduku.

VOTER'S MARK/LAMA YA KURA: Tick / Cross x Thumbprint or any mark.

COMMISSIONER FOR SALES

Party/Candidate Symbol	Governor Candidate Photo and Name	Deputy Governor Photo and Name	Voter's Mark/Alama ya kura
VDP	HEZRON AWITI BOLLO	BETHLINE KADZO JEMBE	
UDA	HASSAN OMAR HASSAN	SELINA JAMES MAITHA	
PAA	WILLIAM KAZUNGU KINGI	AMIN ALI JAMA	
IND	DANIEL MUNGA KITSAO	ABDALLA HEMED MWARUWA	
UPIA	SHAFII MWAGANDA MAKAZI	SALIM OMAR NZARO	
ODM	ABDULLSWAMAD SHERIFF NASSIR	FRANCIS THOYA FOLENI	
USAWA	SAID ABDALLA OMARI	FATMA ABDUL WALUGEMBE	

- 10

- 20

