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KENYA AFTER THE 2022 GENERAL ELECTION – A POLITICAL ECONOMY ANALYSIS

**Kenya Electoral Conflicts Mitigation and Civic/Voter
Education Support (ECCES) Program**



Act Change Transform
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ABBREVIATIONS

Act!	Act Change Transform
AG	Attorney-General
BBI	Building Bridges Initiative
CAJ	Commission on Administrative Justice
CDF	Constituency Development Fund
CEO	Chief Elections Officer
COVID	Coronavirus Disease
CSO	civil society organization
DDP	Deepening Democracy Program
EACC	Ethics and Anti-corruption Commission
ECCES	Electoral Conflicts Mitigation and Civic/Voter Education Support
ECK	Electoral Commission of Kenya
EMB	Election Management Body
FORD	Forum for the Restoration of Democracy
GDP	Gross Domestic Product
ICC	International Criminal Court
ICT	information and communications technology
IEBC	Independent Electoral and Boundaries Commission
IGAPP	Inclusive Governance, Accountability, Performance and Participation
IIEC	Interim Independent Electoral Commission
IRI	International Republican Institute
JSC	Judicial Service Commission
KAM	Kenya Association of Manufacturers
KANU	Kenya African National Union
KEA	Kenya and East Africa
KEPSA	Kenya Private Sector Alliance
KFS	Kenya Forests Service

KII	key informant interviews
KNCHR	Kenya National Commission on Human Rights
KWS	Kenya Wildlife Service
MCA	Member of the County Assembly
MSME	Micro, Small, and Medium Enterprise
NARC	National Rainbow Coalition
NCIC	National Cohesion and Integration Commission
NGEC	National Gender and Equality Commission
NGO	non-governmental organization
NYBA	National Youth Bunge Association
NYS	National Youth Service
ODPP	Office of the Director of Public Prosecutions
ORPP	Office of the Registrar of Political Parties
PEA	political economy analysis
PNU	Party of National Unity
PWD	person with a disability
TSP	telecommunications service provider
UDA	United Democratic Alliance
URP	United Republican Party
USAID	United States Agency for International Development
USF	Universal Service Fund

EXECUTIVE SUMMARY

Following the August 2022 General Election, Act! commissioned an updated post-election PEA to inform programming in the 2023 - 2027 election cycle. The study took into consideration the post-election politics and power plays and how they had affected the different groups/communities and individuals, regarding peace and cohesion as well as what they portend for the 2027 General Election.

The insights from the 2022 General Election point to the following findings:

1. Although elite capture of IEBC has been shaken, it is too early to state whether it has been fully transcended. Through a series of technical fixes, IEBC steadily improved its ability to conduct elections over several electoral cycles and successfully resisted political pressure in the 2022 General Election. Despite affirmation of the presidential election results by the Supreme Court, governance challenges in IEBC and questions around results processing will linger in the next electoral cycle. The appointment of the next set of IEBC commissioners will be a key determinant of the extent to which the country can progress to a truly independent EMB.
2. There are lingering concerns about the Executive capture of the judiciary. Although the judiciary is no longer seen to be under siege as it was after the 2017 General Election, the judiciary is perceived by some to be too “cosy” with the Executive and some pundits argue that the 2022 presidential election decision lowered the standard for electoral integrity through the Supreme Court’s insistence on proof that there was both malfeasance and that the malfeasance affected the results.
3. There were significant improvements in results processing and sharing of results information with the public. However, there were some challenges with ensuring accessibility for ease of downloading, reducing transmission errors, and keeping the results on the portal for a reasonable period after the conclusion of the electoral cycle. If these are dealt with in the 2023 – 2027 electoral cycle, the country may finally transcend doubts and contestation over election results.
4. Kenya’s progress towards inclusive politics continues but needs to be accelerated. Although there was a slight improvement in the gender composition of the National Assembly, from 21% to 23%, it seems that nothing short of legislative intervention will ensure that the National Assembly meets the gender representation threshold in the Constitution. With the Senate improving marginally from 31% to 34%, some backsliding in the next election(s) is likely given the deep-seated factors standing in the way of women’s representation in positions of leadership and decision-making. Young people’s participation in elections, and representation in politics, rose marginally from 3,430 candidates in 2017 (23.6%) to 4,350 in 2022 (27.1%) which seems to have resulted in a marginal increase in their representation from 16.6% in 2017 to 17.6% in 2022.

However, data on PWDs shows that their representation has marginally reduced in absolute numbers.

5. The mainstream media reached a turning point in its electoral role, but failed to take full advantage of it. Rather than see the public interest, the media was driven by the profit motive and opted for separate tallying and transmission of the results. The partisanship of some media players also soured the image of the mainstream media and complicated its relationship with the new regime.
6. Although the results of the presidential election were contested, the overall result was peaceful. Tensions around continued contestations still persist, but there is hope that they will be dealt with in a recent rapprochement between the President and Odinga – depending on how the expected bipartisan consultations on reform will go.
7. Despite its diminishing clout since 2003, Kenya’s civil society is still active and a key factor in the country’s democratic struggles. The private sector’s growth in influence continues apace. With their influence on the current administration, they can be a force for good behind the scenes if they keep in mind their strategic business interests.
8. Despite claims to the contrary, the pre-2027 politics are anything but free of ethnic undertones and the ethnicization of the country’s politics persists. However, there is hope that other factors (e.g. economic performance) will continue rising in stature.
9. The cohesion of Kenya’s elite (seen in pre-election and post-election formal and informal bargains) remains strong. If this continues, contestations (no matter how rancorous) will continue, but will not reach the level where they can be a real threat to state stability.
10. In the current state of play, the country totters between the worst-case (Collapse) scenario, in which elite pacts increase in influence and institutions fail to deliver, and the Crossroads scenario, in which elite pacts continue to grow in influence but institutions deliver. The direction in which it will move depends very much on how role players will engage to keep moving the country along its incremental reform path and to prevent significant backsliding.

Overall, the study makes the following conclusions (with the attendant implications noted under each conclusion):

1. While there is evidence to show that formal decision making on candidacy and other factors has a direct and lasting effect on behavior, it seems to have little effect in the domain of electoral offences. Information on successful prosecutions does not match the scale of illicit conduct, thereby incentivizing such behavior. Despite the years of investment in civic and voter education, stakeholders still feel that more needs to be done. As far as the participation of the youth in elections is concerned, there is evidence that program investments did not successfully alleviate apathy and lead to heightened levels of participation in the 2022 General Election. The implications of this for ECCES and similar programs are as follows:
 - It is important to focus accountability initiatives on tracking the performance of formal institutions (e.g. ODPP) in the discharge of their mandates. This should be done using formal reports from those institutions, through parliamentary committees that engage with them, social audits and other means.
 - There is need for an in-depth study on factors surrounding the participation of the youth in political processes. It is important to challenge much of the knowledge that has been the basis for recent investments and re-design programs to improve youth participation.
 - To deepen the results of occasional investments like ECCES, it is now time for the country to have a national conversation on how to sustain civic and voter education in Kenya. The country should explore ways of integrating education on citizen participation in democratic processes in the formal educational system, with other extra-curricular investments supplementing it.

2. Sustained investments to influence the behavior of various election stakeholders have paid off. This can be seen in IEBC's incremental technical fixes improving election credibility, improved transparency in results processing, as well as less divisive (and violent) political party primaries. ECCES and similar programs should take note of the following implications:
 - Efforts should be made to sustain the momentum of institutional reform that has enabled Kenya to get to its current level of improvement in its electoral institutions. For IEBC, it will be necessary to think through its remaining weak areas and make these the fulcrum of the next batch of investments. For other players, using lessons from IEBC support to improve their capacities is also a possibility.
 - Although Kenya's elections still have shortcomings, they have improved over time. A key aspect of that improvement has been the steady improvement of the institutional architecture of elections. Before 2027, more efforts should be made to strengthen IEBC's corporate governance, technical, and strategic communication capabilities as well as other institutions that play important roles in elections (e.g. the Judiciary).
 - Although investments in political party programming are complex, careful thought should be given to balancing these with investments in other

stakeholders. Experience has shown that marginal improvements in the political behavior and capacity of political parties can also improve electoral and other governance outcomes.

- Taking advantage of the electoral cycle approach, many of these investments should be made early in the electoral cycle, so that there is opportunity for new ways of working to take a firm hold long before the critical stages in that cycle. Since appetite for electoral reforms tends to wane in the period immediately after the elections, engagement on electoral reforms should be sustained through the identification and opportunistic utilization of entry points. For example, the recent truce between the President and the opposition has opened a reform window that civil society can take advantage of to ensure reforms are about moving the country forward rather than mere horse-trading by politicians.
3. Despite what sometimes looks like shrinking civic space and other factors militating against civic participation, Kenya still has a vibrant civil society involved in a wide range of accountability initiatives that have sustained its democratic progress. Going forward, the implications for ECCES and similar programs are as follows:
- Efforts should be made to invest in CSOs at the county level. This is not only good for building civil society capacity at the local level but also consistent with Kenya's new architecture of governance with devolved institutions.
 - Coordination and collaboration across civil society organizations improves efficiency and effectiveness in governance improvements while strengthening the broader community of actors.
 - Working with civil society at a broader level to forge a common governance agenda(s) will also increase civil society voice for various interventions (e.g. peace building, election observation and civic education).
 - It is still possible, if the media focuses on the national interest, to have a coordinated tabulation of election results in the 2027 General Election. CSOs should re-engage KMSWG and other like-minded stakeholders to pursue this path to improved transparency and oversight on the results processing by IEBC.

The full version of this report is available on request.