

ELECTION RISKS MANAGEMENT

A STUDY OF KENYA'S ELECTIONS

ELECTORAL HUB RESEARCH PAPER 1/2021









ELECTION RISKS MANAGEMENT: A STUDY OF KENYA'S ELECTIONS



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About the Electoral Hub

The Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), is a multidisciplinary strategic think-tank which seeks to provide solutions to improve the credibility and integrity of the electoral process. It is conceptualized to complement the roles and activities of the different institutions, stakeholders and drivers of the electoral process and governance. The Electoral Hub's aim is to strengthen electoral governance and accountability in Nigeria through the provision of data and critical analysis supporting the credibility and integrity of the electoral process. We believe that the integrity of the electoral process is crucial in improving the electoral governance architecture and democracy in Nigeria. We also believe in contextual analysis for solutions rooted in the principles of justice and equity

Our core values are knowledge-exchange, inclusion, justice, equity, transparency and accountability.

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ACRONYMS

BBI Bridge Building Initiative

CORD Coalition for Reforms and Democracy

CPI Corruption Perceptions Index

DARC Directorate for Audit, Risk and Compliance

ECK Electoral Commission of Kenya

EMB Electoral Management Body

ERC Electoral Reform Committee

ERM Election Risk Management

ERM Tool Electoral Risk Management Tool

GIS Geographical Information System

ICCES Inter-Agency Consultative Committee on Election Security

IEBC Independent Electoral and Boundary Commission

INEC Independent National Electoral Commission

International IDEA International Institute for Democracy and Electoral Assistance

KANU Kenya African National Union

ODM Orange Democratic Movement

PEE Post-Election Evaluation

PWDs Persons With Disabilities

SSA Security Sector Agencies

USAID United States Agency for International Development

EXECUTIVE SUMMARY

Electoral management bodies (EMBs) are saddled with responsibility of directing some of the most complex operations undertaken by democratic societies – elections. Regardless of the maturity of democratic traditions and the strength of political institutions in a country, the administration of elections is always a challenging mission paved with risks. In this light, election risk management (ERM) seeks to identify and analyze these electoral risks in a bid to develop measures to mitigate them.

International IDEA's Election Risk Management Tool (ERM Tool) is designed to enhance users' capacities to understand risk factors, analyze risk data, and take action to prevent and mitigate election-related violence. The ERM Tool is integrated into a software application that provides three interactive modules (learn-analyze-act) which can be used in combination or as stand-alone resources.²

In Kenya, electoral risks are high due to factors such as corruption, overwhelming powers of the President, and ethnic politics. This was evident during the 2007 elections which left thousands of people killed and even more displaced.³ In October 2011, Kenya's EMB, the Independent Electoral and Boundaries Commission (IEBC), partnered with International IDEA to implement the ERM Tool and prevent a repeat of the 2007 election violence. The ERM Tool was used in the 2013 and 2017 Kenyan elections. It helped to prevent violence in 2013, and also to reduce the scale of violence in 2017.

Following the 2017 election, the IEBC has taken further steps to enhance its risk management capacity, including the following:

¹ International IDEA, "Risk Management in Elections," Policy Paper No. 14, November 2016. Available at https://www.idea.int/sites/default/files/publications/risk-management-in-elections.pdf

² Ibid.

https://www.hrw.org/report/2013/02/07/high-stakes/political-violence-and-2013-elections-kenya; https://sgbvjusticekenya.files.wordpress.com/2014/05/pev-kenya_conflict_2007.pdf

- development of a Risk Management Framework for an enterprise-wide risk management strategy.⁴
- development of a Risk Register, Compliance Register, and other supporting documents and policies.⁵
- training of Commission staff in July 2019 on the use of the risk management tool with support from International IDEA.⁶
- meeting with officials from the Independent Electoral Commission of Botswana to benchmark on various electoral areas especially electoral risk management.⁷
- development of the Bridge Building Initiative (BBI) to improve governance and to meet expectations of Kenyans.⁸

Based on the experiences of Kenya, we offer two sets of recommendations for Nigeria. The first set of recommendations relate to Nigeria's implementation of the ERM Tool. The second set of recommendations cover what Nigeria can do to mitigate risks ahead of the 2023 elections.

Our recommendations on the implementation of the ERM Tool are:

- in order to fully implement its Risk Management Framework, the Independent National Electoral Commission (INEC) should develop the full range of resources and tools for an effective ERM implementation.
- INEC should publish ERM resources on its website, which can be used to train staff, guide the activities of other electoral practitioners, promote further research, and

⁴ Enterprise Wide Electoral Risk Management Training", July 2019. Available at https://www.idea.int/news-media/events/enterprise-wide-electoral-risk-management-training

⁵ Ibid.

⁶ Ibid.

⁷ https://twitter.com/IEBCKenya/status/1230126411991715842

^{8 &}quot;Building Bridges to a United Kenya: from a nation of blood ties to a nation of ideals," Report of the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report. Available at https://e4abc214-6079-4128-bc62 d6e0d196f772.filesusr.com/ugd/00daf8 bedbb584077f4a9586a25c60e4ebd68a.pdf

- show to the public the steps that are being taken to identify and mitigate electoral risks.
- INEC should create a repository of data and information on electoral risk in the form of an electronic database which should be uploaded on the Commission's website.
- INEC should develop a monitoring and evaluation framework for its risk management mechanism to ensure that challenges faced in the implementation of the ERM Framework are identified and addressed periodically, while lessons can be learned which will be used to inform the implementation of ERM in the next electoral cycle.
- INEC should organize training sessions among its staff to improve their awareness of risk management and how to implement it.
- INEC should organize meetings with EMB officials from other countries that currently implement the ERM Tool, to enable them to learn from other similar contexts and exchange best practices in ERM implementation.

Our recommendations on risk mitigation ahead of 2023 are:

- the amended Electoral Act 2021 should be passed urgently to avoid last-minute changes to the electoral law. As well as enable INEC and other election stakeholders quick implantation, internalization and implementation
- the remaining INEC Commissioners should be appointed quickly, in order to allow them effectively prepare for the 2023 elections.
- INEC should increase its level of consultation and coordination with relevant stakeholders on election risks mitigation.
- INEC should strengthen its election security management system and improve its ability to develop strategic plans for providing security before, during and after elections.
- an Electoral Offences Commission should be set up to investigate and prosecute electoral offenders.

- in the near future, technology should be integrated into the voting process of Nigeria.

10 WAYS TO MANAGE AND MITIGATE ELECTION RISKS FOR 2023

- 1. Electoral Act: The Amended Electoral Act 2021 should be passed urgently to avoid last-minute changes to the electoral law and quick implementation and internalisation by INEC and other electoral stakeholders
- 2. Appointment: INEC Commissioners should be appointed quickly to allow them prepare for 2023 elections.
- 3. Comprehensive Security Management System: INEC should design a security management system and develop strategic plans for providing security before, during and after elections.
- 4. Development and Publication of Election Risks Resources: INEC should develop the full range of resources and tools for an effective ERM implementation and publish same on its website.
- 5. Repository of Electoral Risks Resources: INEC should create a repository of data and information on electoral risk in the form of an electronic database which should be uploaded on its website.
- 6. Consultation, Coordination and Sensitisation: INEC should increase level of consultation and coordination with relevant stakeholders on election risks mitigation. This should include official/unofficial; elite/public; urban/rural, etc.
- 7. Electoral Offences Commission: This should be set up as soon as possible to investigate and prosecute electoral offenders.
- 8. Technology: This should be integrated into the voting process of Nigeria.
- 9. In -depth Training: INEC should organize training sessions for its staff to improve their awareness of risk management and how to implement it.
- 10. Knowledge Sharing and Exchange: INEC should organize meetings with other EMBs currently implementing the ERM Tool, to enable learning from other similar contexts and exchange best practices in ERM implementation.

If these recommendations are followed, Nigeria will be better able to implement the ERM Tool and prevent electoral risks, thereby improving the integrity and credibility of its forthcoming general elections in 2023.

INTRODUCTION

Elections, which are held to transfer governing rights, constitute one of the many defining and practical instruments of democracy that allow citizens the right to wield their human, civilian and constitutional rights. Elections are the cornerstone of democracy and are based on the democratic principles of transparency, integrity and credibility. To ensure the integrity and credibility of the electoral process, elections must be conducted in line with international standards and agreements. Elections that are compromised by any kind of electoral malpractices deny the citizens the right to elect their representatives and to hold their elected representatives to account.

Electoral management bodies (EMBs) are saddled with responsibility of directing some of the most complex operations undertaken by democratic societies – elections. Regardless of the maturity of democratic traditions and the strength of political institutions in a country, the administration of elections is always a challenging mission paved with risks. Such of such risks are electoral fraud, violence and other malpractices, which present tangible, yet distinct, threats to the election process. Ultimately, the prevalence of electoral risks continue to undermine both the electoral process and democracy.

In this light, election risk management (ERM) seeks to identify and analyze these electoral risks in a bid to develop measures to mitigate them. This paper examines election risk management practices in Kenya in line with International IDEA's Electoral Risk Management Tool (ERM Tool) and seeks to answer the following questions:

⁹ Lukong Stella Shulika et al, "Monetary Clout And Electoral Politics In Kenya: The 1992 to 2013 Presidential Elections in Focus. Available at https://www.eisa.org/pdf/JAE13.2Shulika.pdf

¹⁰ International IDEA, "Risk Management in Elections," Policy Paper No. 14, November 2016. Available at https://www.idea.int/sites/default/files/publications/risk-management-in-elections.pdf

¹¹ Graham Hopwood and Nangula Shejavali, "Upholding Electoral Integrity: A Guide to Mitigating Risk Throughout the Electoral Cycle". Available at https://ippr.org.na/wp-content/uploads/2016/08/Upholding%20Electoral%20Integrity%20web_0.pdf
¹² Ibid.

- When was the ERM Tool introduced in Kenya's electoral process?
- How has the ERM Tool been implemented during the Kenya elections?
- What are the steps taken by the EMB in Kenya to enhance its risk management capacity ahead of the 2022 general elections?
- What lessons can Nigeria learn from Kenya's experience?

Ultimately, given the threat that electoral risks pose to elections, ERM is necessary for the integrity and credibility of the electoral process of any country. It is therefore hoped that Nigeria will learn from the experiences of Kenya in order to improve the success of its forthcoming general elections in 2023.

METHODOLOGY

The aim of this research is to understand how Kenya has implemented the ERM Tool since its establishment. In seeking to answer a "how" question such as this, a case study approach is desirable because it helps to explain social phenomena. 13 Other factors that make a case study approach suitable for this research are: (a) it does not require control over behavioural events; and (b) it focuses on contemporary events (given that the ERM Tool was first implemented in Kenya in 2013).¹⁴

According to Porta, "a case study is a research strategy based on the in-depth empirical investigation of one, or a small number, of phenomena in order to explore the configuration of each case, and to elucidate features of a larger class of (similar) phenomena, by developing and evaluating theoretical explanations". ¹⁵ In order to undertake an in-depth empirical investigation of ERM in Kenya, we conducted desk research, reviewing comprehensively the literature on ERM and its use in Kenya. The materials reviewed included:

- reports and statements from the electoral management body of Kenya the Independent Electoral and Boundary Commission (IEBC);
- the Constitution and other laws of Kenya;
- reports from electoral support bodies like International IDEA and EISA;
- reports from electoral observers like the European Union Election Observation Mission;
- reports from donors like USAID; and

¹³ Robert K Yin (2018), Case Study Research and Applications: Design and Methods (Sixth Edition), Sage **Publications**

¹⁴ Ibid

¹⁵ Donatella della Porta (2008), "Case studies and process tracing: theories and practice" in Donatella della Porta and Michael Keating (eds), Approaches and Methodologies in the Social Sciences: A Pluralist Perspective, Cambridge University Press, page 226

academic papers from researchers.

This methodology enabled us to understand the political background of Kenya, its electoral systems and processes, and the context in which the ERM Tool has been implemented since its establishment in the country. In the context of this research, the case study approach is used as an epistemic strategy to formulate, establish, and generalize causal hypotheses. Having gained a deeper understanding of ERM implementation in Kenya, we developed theroretical explanations of the impact of ERM on Kenya's elections, and the likely factors that contributed to its successes and failures.

Importantly, we are also concerned with the use of causal findings generated in case studies to inform policy making in the social realm.¹⁷ Having gained a theoretical understanding of the faactors that contributed to Kenya's successes and failures in ERM implementation, we provide tailored recommendations on how Nigeria can better implement the ERM Tool and mitigate electoral risks ahead of 2023. This is aimed at informing policymaking on elections in Nigeria, particularly on the part of INEC and the National Assembly.

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¹⁶ Attilia Ruzzene (2014), Using Case Studies in the Social Sciences: Methods, Inferences, Purposes, Ridderprint BV

¹⁷ Ibid

OVERVIEW OF THE INTERNATIONAL IDEA ERM TOOL

Electoral risk management is a systematic effort undertaken to improve knowledge about and situational awareness of both internal and external risks to electoral processes, in order to initiate timely preventive and mitigating action.

International IDEA's Election Risk Management Tool (ERM Tool) is designed to enhance users' capacities to understand risk factors, analyze risk data, and take action to prevent and mitigate election-related violence. The ERM Tool is primarily intended for institutions that share responsibility for organizing credible and peaceful elections, namely Electoral Management Bodies and Security Sector Agencies (SSA). The ERM Tool is integrated into a software application that provides three interactive modules (learn–analyze–act) which can be used in combination or as stand-alone resources. 19

The tool consists of three modules:

- Knowledge base: guides on electoral risk factors (internal and external)
- Analytical instruments: based on geographical information system (GIS) analysis
- Action points: the prevention and mitigation guide

The three modules are integrated into a single software application in order to promote a 'learn–analyse–take action' approach. Since the ERM Tool was launched globally in October 2013, the software license has been granted to over 140 organizations from more than 60 countries.²⁰

Risk Management Systems

¹⁸ "An Overview of the Electoral Risk Management Tool (ERM Tool)." Available at https://aceproject.org/ero-en/misc/overview-of-the-electoral-risk-management-tool

²⁰ Available at International IDEA, https://www.idea.int/data-tools/tools/electoral-risk-management-tool

The common denominators in most risk-management systems are (a) risk identification, (b) risk measurement, (c) reporting and (d) decision-making. These four elements also constitute the building blocks of International IDEA's ERM Tool which is the only instrument specifically developed to assist with the management of electoral risks.²¹

Step 1: Risk Identification

Risk identification entails systematic consideration of the possible scenarios that could have a negative impact on achieving organizational goals. Electoral risks can materialize due to the presence of underlying risk factors which must be identified.²²

Step 2: Risk Measurement and analysis

Risk measurement relates to data collection and analysis. In elections, risk measurement requires the creation of an operational plan for data collection and analysis throughout the entire electoral cycle.²³

Step 3: Reporting

Reporting is related to informing managers about the issues that require their attention and action. The ERM Tool methodology promotes creation and dissemination of risk alerts as a way of enhancing the effective reporting about electoral risks within an EMB. The value of effective risk alerts is in conveying complex information related to electoral risks in a simple and timely manner.²⁴

²¹ International IDEA," Risk Management in Elections", Policy Paper, November 2016. Available at https://www.idea.int/data-tools/tools/electoral-risk-management-tool

²² Ibid.

²³ Ibid.

²⁴ Ibid.

Step 4: Decision making

Decision making relates to the discussions, consultations and coordination through which concrete actions are identified and initiated. The aim is to act promptly and to focus attention and resources on critical areas.²⁵.

Classification of Election Risk

According to International IDEA risks related to the electoral process are classified into internal and external risks.

Internal Factors	External Factors
Contested electoral legal framework	Socio-economic conditions
Poor electoral planning and management	Social and political exclusions
Poor training and education	Changing power dynamics
Inadequate electoral dispute resolution	Gender-based discrimination and violence
Troubled voter and party registration	Presence of non-state armed actors
Heated electoral campaign	Presence of organized crime
Problematic voting operations	Grievances relating to genocide, crimes
Contested election results	against humanity and war crimes
	Human rights violations
	Unethical media conduct
	Environmental hazards

Table 1: Classification of Electoral Risk

²⁵ Ibid.

The ERM tool provides a three-layered approach to the prevention and mitigation of election-related violence to include²⁶:

- Improved electoral management and justice,
 - Improved electoral security and
 - Improved infrastructure for peace.

This approach to the prevention and mitigation of election related violence is applicable to all phases of the electoral process. International IDEA identifies 8 phases of the electoral process. The phases are²⁷:

- 1) the legal and institutional electoral framework;
- 2) planning and preparation for the implementation of electoral activities;
- 3) training and education;
- 4) registration of voters, political parties and election observers;
- 5) electoral campaigning;
- 6) voting operations;
- 7) election results announcement; and
- 8) the post-electoral phase.

In 2014 International IDEA conducted a survey of 87 countries to find out whether the EMBs in these countries had institutionalized procedures and tools for risk management, as well as which procedures and tools were being used, and whether there was a risk-management practice or a tool that was not formally institutionalized but contributed to managing electoral risks. ²⁸ The survey found that 18 countries including Kenya and Nigeria had some kind of formal risk management processes in place.²⁹

²⁶ Ibid.

²⁷ Ibid.

²⁸ International IDEA, "Risk Management in Elections," Policy Paper No. 14, November 2016. Available at https://www.idea.int/sites/default/files/publications/risk-management-in-elections.pdf

²⁹ Ibid

POLITICAL BACKGROUND OF KENYA

Kenya is located in East Africa bordering the Indian Ocean in the south east with an area of 580,000 km², and a population of 48,417,000 million people.³⁰ The British Empire established the East Africa Protectorate in 1895, from 1920 known as the Kenya Colony. Kenya gained internal self-rule from the British colonial rule on 1st June 1963 when the country was allowed to form its first internal self-government with Mzee Jomo Kenyatta as the first President. On 12th December 1963, Kenya attained full independence when Britain's Union flag was replaced by the Kenyan black, red and green flag. Exactly one year later, Kenya became a Republic on 12th December 1964.³¹

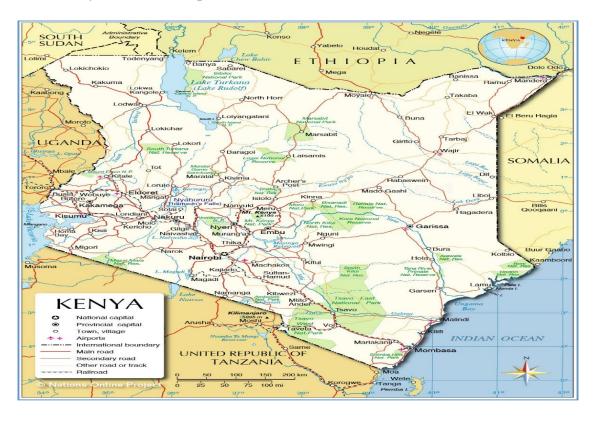


Figure 1: Map of Kenya. Source: Nations Online³²

³⁰ Available at https://www.nationsonline.org/oneworld/kenya.htm

The Government and the Political System". Available at http://www.kenyarep-ip.com/kenya/government_e.html

³² https://www.nationsonline.org/maps/kenya_map.jpg

The first election in Kenya was held in May 1963 in which Kenya African National Union (KANU) won the majority and picked Mzee Jomo Kenyatta as its leader, subsequently becoming Kenya's first President. Kenyatta served as Kenya's founding father and first President of Kenya until October 1978.³³ Since the return of multi-party democracy in 1991, the presidency has only been held by representatives of the Kikuyu and Kalenjin communities.

Citizens vote directly for the president in one nationwide constituency for a five-year term. The winning candidate must receive 50 percent plus one of the votes cast nationally (absolute majority) and at least 25 percent of the votes cast in 24 of the 47 counties. If no candidate achieves this majority in the first round, the Constitution states that a runoff must be held "within 30 days after the previous election" between the two leading candidates.³⁴ National Assembly members, Senators, County Governors and Deputy County Governors are elected under the first-past-the-post system. This means that a candidate only needs to have the highest number of votes (simple majority or plurality) to win.

There are also provisions to promote the representation of marginalized groups. A proportion of the members of the National Assembly and Senate are nominated by parties to represent special interests such as women, youth, persons with disabilities (PWDs) and workers. These candidates are elected on the basis of proportional party lists. Similarly, County Assemblies consist of special seat members in order to ensure that no more than two-thirds of the members of the Assembly are of the same gender. Party proportional lists are also used to ensure that PWDs and youth are represented within Assemblies. In this way, the electoral system of Kenya promotes inclusion and representation in its legislative bodies.

Independent candidacy is also allowed in Kenya, provided that the candidate is supported by the required number of registered voters. For presidential and senatorial elections, the

³³ "The Government and the Political System", op. cit.

³⁴ 2010 Constitution of Kenya, Article 138(5)

candidate must be supported by at least 2,000 voters.³⁵ For elections to the National Assembly, the candidate must be supported by at least 1,000 voters.³⁶ For elections to the County Assembly, the candidate must be supported by at least 500 voters in the ward concerned.³⁷

Like many African countries, Kenya is faced with the problem of deep-seated corruption among politicians. The country currently ranks at 124 out of 180 on Transparency International's Corruption Perceptions Index (CPI).³⁸ Although there have been some improvements, as Kenya has moved up on the CPI from 137 in 2019³⁹ and 139 in 2015,⁴⁰ the current ranking is still poor. The high level of corruption in Kenya is not limited to the politicians. Other sectors such as the judiciary and the police also face high levels of corruption. For example, 75% of Kenyans believe that most or all police officers are corrupt, and one in three Kenyans view the judiciary as corrupt.⁴¹ The existence of corruption among these institutions which are supposed to enforce the law makes the likelihood of electoral violence high, and therefore poses risks to the electoral process.

Another issue that promotes risk in Kenya's political system is the overwhelming powers of the Office of the President. The 2010 Constitution of Kenya states that the President exercises the executive authority of the Republic as the Head of State and Government, the Commander-in-Chief of the Kenya Defence Forces, and the chairperson of the National Security Council.⁴² Given these wide powers, the Constitution subjects the President to

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³⁵ Ibid, Article 137(1)(c)(d), Article 99(1)(c)(ii)

³⁶ Ibid, Article 99(1)(c)(i)

³⁷ Ibid, Article 193(c)(ii)

³⁸ https://www.transparency.org/en/cpi/2020/index/ken

³⁹ https://www.transparency.org/en/cpi/2019/index/ken

⁴⁰ https://www.transparency.org/en/cpi/2015/index/ken

⁴¹ https://www.ganintegrity.com/portal/country-profiles/kenya/

⁴² 2010 Constitution of Kenya, Article 131(1)

some checks and balances by setting up institutions such as a bicameral legislature, an independent judiciary, constitutional commissions, and devolved governments.⁴³

However, in reality the President typically exercises overwhelming powers, even over these institutions. For example, following the Supreme Court's cancellation of the first round of elections in 2017 (discussed later in this paper), the President publicly lashed out at the judiciary, using subtle threats such as "we shall revisit this thing" and "we clearly have a problem". This is an example that illustrates how powerful the Office of the President is in Kenya, as Presidents wield considerable influence over other institutions, including those who are theoretically supposed to check their powers. This poses electoral risks, as it suggests that the President can use their powers to influence electoral outcomes.

A final issue worth considering is ethnicity, which is the one of the most important factors affecting political affiliations and voting patterns in Kenya. Ethnic politics in Kenya dates back to the colonial period, with politicians "whipping up ethnic sentiment by appealing to stereotypes in a bid either to wrest power or to maintain it".⁴⁵ With seven main ethnic groups (Kikuyu, Luhya, Luo, Kalenjin, Kamba, Gusii, and Meru) and other minor ones,⁴⁶ ethnic factionalism plays a major part during Kenyan elections. For example, during the 2007 elections, the three major presidential candidates drew support from their ethnic strongholds.⁴⁷ This ethnic politics poses electoral risks, and politicians make the situation worse by inciting their supporters to violence. This occurred in 2007 and again in 2017,

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⁴³ Ben Sihanya, *The Presidency and Public Authority in Kenya's new Constitutional Order*, Constitution Working Paper No. 2. Available at: http://sidint.net/docs/WP2.pdf

⁴⁴ John Githongo, "Kenya and Corruption: The Temporary End of Truth", *The Elephant* (30 January 2020). Available at: https://www.theelephant.info/op-eds/2020/01/30/kenya-and-corruption-the-temporary-end-of-truth/

⁴⁵ Shilaho Westen Kwatemba (2008), "Ethnicity and Political Pluralism in Kenya", *Journal of African Elections*, Vol 7, No 2. Available at: https://www.eisa.org/pdf/JAE7.2Kwatemba.pdf

Mwenda Ntarangwi, "Kenya", *Encyclopaedia Britannica* Available at: https://www.britannica.com/place/Kenya/People

⁴⁷ Shilaho Westen Kwatemba, op. cit.

where the post-election period saw violent inter-ethnic clashes among supporters of rival candidates.

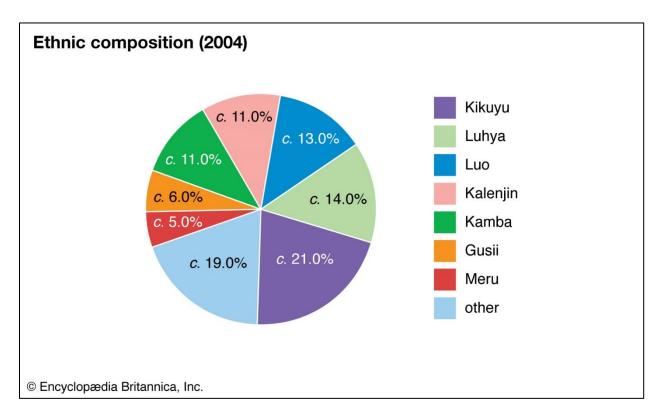


Figure 2: Ethnic Composition of Kenya. Source: Encylopaedia Britannica⁴⁸

The combination of corruption, overwhelming powers of the President, and ethnic politics pose serious electoral risks, and have contributed to the high level of post-election violence in Kenya, as discussed in the following sections of this paper.

⁴⁸ Mwenda Ntarangwi, op. cit.

KENYA'S ELECTORAL MANAGEMENT BODY

The Electoral Management Body (EMB) responsible for conducting or supervising elections into any elective office in Kenya is the Independent Electoral and Boundaries Commission (IEBC). It is established under article 88 (1) of the Constitution of Kenya.⁴⁹ The Constitution provides that the Commission is responsible for conducting or supervising referenda and elections to any elective body or office established under the Constitution and any other elections as prescribed by an Act of Parliament.⁵⁰ In the performance of its functions, the Commission is subject only to the Constitution and the law and hence not subject to the direction or control by any person or authority. This ensures its independence. In carrying out its functions, the Commission is also required to observe the principle of public participation and the requirement for consultation with stakeholders.⁵¹

The Commission is made up of Commissioners headed by a Chairperson and a secretariat headed by a Chief Executive Officer who is also the Secretary to the Commission. The Commission consists of 6 members appointed in accordance with Article 250 (4) of the Kenyan Constitution.⁵² The Commissioners are appointed by the President of Kenya and confirmed by the Kenyan Parliament. The term of office of the members of the Commission is a single term of six (6) years. The current Chairperson of the Commission is Mr Wafula Chebukati, while the Commission Secretary/Chief Executive Officer of the Secretariat is Mr Marjan Hussein Marjan.

⁴⁹ Article 88(1), Constitution of Kenya

⁵⁰ Article 88 (4), Ibid.

⁵¹ Article 88 (5), Ibid.

⁵² Section 5, The Independent Electoral and Boundaries Commission (IEBC) Act 2011. Available at http://www.parliament.go.ke/sites/default/files/2019-

^{05/}Independent%20Electoral%20and%20Boundaries%20Commission%20%28Amendment%29%28No.2 %29%20Bill%2C%202019.pdf

Functions of the Commission

The Commission exercises its powers and perform its functions in accordance with the Constitution and national legislations. The functions of the Commission as stipulated under the IEBC Act, 2011, Elections Act, 2011, and the Election Campaign Financing Act, 2013 include:

- The continuous registration of voters and revision of the voter's roll;
- The delimitation of constituencies and wards;
- The regulation of political parties' processes;
- The settlement of electoral disputes;
- The registration of candidates for elections;
- Voter education;
- The facilitation of the observation, monitoring and evaluation of elections;
- The regulation of money spent by a candidate or party in respect of any election;
- The development of a code of conduct for candidates and parties;
- The monitoring of compliance with legislation on nomination of candidates by parties.

ELECTION RISK MANAGEMENT IN KENYA

Introduction of International IDEA ERM Tool

In October 2011 the IEBC and International IDEA initiated a joint project that aimed to build the capacity of the IEBC to prevent and mitigate election-related violence through improved and more conflict-sensitive decision-making, and enhanced collaboration between the IEBC and other relevant stakeholders in Kenya.

The Independent Electoral and Boundaries Commission (IEBC) risk identification and management portfolio is currently housed within the Directorate for Audit, Risk and Compliance (DARC). The DARC advises the IEBC on risk areas and oversees the development and implementation of risk management, operational, financial and information systems. The DARC also ensures compliance with regulatory and operational requirements.⁵³ The DARC was established under the broad powers given to the IEBC to establish the directorates deemed necessary to implement its mandate. The DARC was established primarily in response to a governmental circular issued in 2009 instructing all government institutions to set up risk and compliance departments.

The institutionalization of a risk management system in the IEBC's operations was a strategic priority included in the IEBC seven-year strategic plan (2011). The IEBC started the process of institutionalizing the use of the ERM Tool within the commission (IEBC) in January 2015 as part of the DARC. The decision to institutionalize the project was partly based on an internal and external evaluation. Today, the risk management component of the DARC is tasked with continual monitoring of the security, technical, operational and legal risks, and advising on mitigation measures in collaboration with external stakeholders ahead of the general elections in country.⁵⁴

⁵³ Ibid.

⁵⁴ Ibid.

Implementation of Election Risk Management Tool in Kenya

To institutionalize the International IDEA Election Risk Management tools in Kenya, the IEBC developed a seven-year strategic plan in 2011. The strategic plan contained measures and steps put in place to institutionalize ERM tools in Kenya. These steps are as follows⁵⁵:

- Develop a policy framework on risk management;
- Improve and build IEBC's capacity in risk management;
- Develop mechanisms for identifying, assessing and mitigating risk;
- Establish an effective internal audit unit; and
- Institutionalize a culture of performance management in operations.

Since the introduction of the International IDEA ERM tool in the country in 2011, the tool was first implemented ahead of the 2013 general elections to mitigate and prevent election risks. The IEBC in implementing the tool developed the following strategies:

- Conducted risk assessments of the electoral environment prior to the 2013 general elections and by-elections;
- Conducted electoral risk mapping to identify electoral-violence hotspots;
- Developed an internal audit plan and charter;
- Implemented periodic audit reviews;
- Established a risk register; and
- Embarked on a gender awareness training for managers, regional coordinators, constituency elections coordinators, risk champions and security officers.

⁵⁵ International IDEA, "Risks Management in Elections," Policy paper, November, 2016. Available at https://www.idea.int/publications/catalogue/risk-management-elections

ERM IN THE CONTEXT OF THE 2013 GENERAL ELECTIONS

Overview of the 2013 General Elections

Ethnicity plays a central role in the divisions within Kenyan society, and it also determines how power is distributed by the elites.⁵⁶ The 2013 elections took place against the background of a political party system polarized along ethnic lines. This was a residue of the inter-ethnic clashes and violence that occurred after the 2007 elections. There are conflicting reports about the extent of damage during that election. One report states that the 2007 elections left up to 1,300 people dead and more than 650,000 displaced.⁵⁷ Another report states that about 1,500 people were killed, 3,000 women were raped, and 300,000 people were internally displaced.⁵⁸ While there is dispute over the exact figures, it is clear that the destruction was on a massive level. The crisis from the outcome of the 2007 elections which had a devastating impact on the country fueled the clamour for systematic reforms including the disbandment of the Electoral Commission of Kenya (ECK) in 2008.⁵⁹

On 4 March 2013, Kenyans voted in the fifth multi-party elections since the restoration of multi-party democracy in the country in 1991. The election was conducted under a new legal framework, defined by a new Constitution (adopted by Kenyans through a national referendum in August 2010) and under the management of the new electoral management body, the Independent Electoral and Boundaries Commission (IEBC).⁶⁰

⁵⁶ Wendy MacClinchy (2018), "What Works in UN Resident Coordinator-led Conflict Prevention: Lessons from the Field: Kenya 2008-17," United Nations University Centre for Policy Research, June 2018. Available at https://i.unu.edu/media/cpr.unu.edu/attachment/2852/RC-Project-Kenya.pdf

⁵⁷ https://www.hrw.org/report/2013/02/07/high-stakes/political-violence-and-2013-elections-kenya

⁵⁸ Mara J Roberts (2009), Conflict Analysis of the 2007 Post-election Violence in Kenya. Available at: https://sgbvjusticekenya.files.wordpress.com/2014/05/pev-kenya_conflict_2007.pdf

⁵⁹ Wendy MacClinchy (2018), op. cit.

⁶⁰ Collette Schulz-Herzenberg et al, "The 2013 general elections in Kenya the integrity of the electoral process", Policy Brief 74, Institute for Security Studies, February 15. Available at https://www.files.ethz.ch/isn/188907/PolBrief74.pdf

The 2013 general elections in Kenya were described as the most complex process in the history of elections in the country. Elections were conducted into all the elective positions, with voters casting ballots in six simultaneous elections for candidates at the national and local levels, including: President, Senate, National Assembly, representatives of women/youth/disabled persons, County Governors, and County Assemblies.

The position for President was vied for by eight candidates representing different political parties, but the race was dominated by two candidates, Raila Odinga of Coalition for Reforms and Democracy (CORD) and Uhuru Kenyatta of Jubilee Coalition.⁶¹ The election witnessed a high voter turnout of 85.9%.⁶²

Election Result

The results of the election were not released until some days after the election. The IEBC declared Uhuru Kenyatta as the winner of the elections with a total vote cast of 6,173,422 votes which is 50.07% of the votes cast, while Ralia Odinga had 5,340,546 votes (43.31%).⁶³ Kenyatta won the presidential election with 50.1% of the votes in the first round in fulfillment of the constitutional requirement to be elected President.⁶⁴

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⁶¹ "The March 2013 Elections in Kenya and the Responsibility to Protect," Policy Brief. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/The%20March%202013%20Elections%20in%20Kenya%20and%20the%20Responsibility%20to%20Protect.pdf

⁶² https://www.eisa.org/wep/ken2013results.htm

Available at https://www.cairn-int.info/article-E_AFCO_247_0073--the-4-march-2013-general-elections-in-ke.htm#

⁶⁴ Ibid

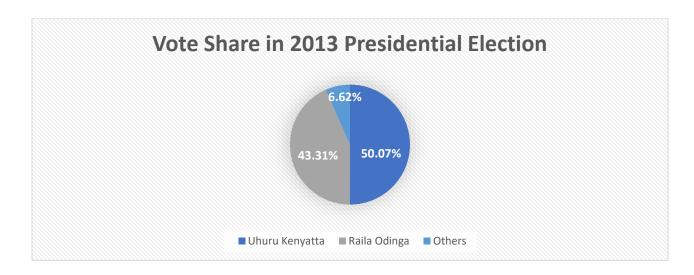


Figure 3: Kenya's 2013 Presidential Election Result

Internal risks

The IEBC ahead of the 2013 election identified the following factors as triggers for election-related violence⁶⁵:

- a. ethnic and religious conflicts
- b. corruption
- c. poverty and high youth unemployment
- d. lack of trust of EMBs
- e. heated party campaign
- f. inadequate planning
- g. inadequate voter education and training for election officials.
- h. risks associated with voter registration figures ahead of the campaign and voting operations phase
- i. hate speech
- j. delimitation of boundaries and land disputes

⁶⁵ The 2013 Kenyan General ELECTIONS through the perspective of International IDEA's Electoral Risk Management Tool, March 2013. Available at https://www.odi.org/sites/odi.org.uk/files/odi-assets/events-presentations/1427.pdf

Measures for Mitigation and Prevention of Risks using the ERM Tool

Following the outbreak of election-related violence in Kenya during the 2007 general elections which led to the death and internal displacement of numerous people, the IEBC took a number of steps to strengthen its capacity to prevent and mitigate electoral violence ahead of and during the general elections in March 2013. The measures put in place are as follows:

- The IEBC in collaboration with International IDEA organized a two-day workshop with IEBC staff, the Kenyan police and intelligence agencies, national human rights and reconciliation commissions, and academics. The workshop was focused on mapping electoral risks in different counties ahead of the general elections.⁶⁶
- The Commission conducted a national public opinion survey to measure citizens' views with regards to triggers of election-related violence. The survey was used as a guide to generate a baseline risk analysis to identify risk factors which needed to be monitored and analyzed throughout the different electoral phases.⁶⁷
- A baseline survey was used to identify 14 risk factors or triggers of election-related violence, identify areas that may be prone to electoral violence, design prevention and mitigation strategies, and customize the risk assessment tool peculiar to the Kenyan situation.⁶⁸

⁶⁶ The Prevention and Mitigation of Election-related Violence: An Action Guide. Available at https://www.idea.int/sites/default/files/publications/the-prevention-and-mitigation-of-election-related-violence.pdf

⁶⁷ Ibid.

⁶⁸ Monitoring And Prevention Of Election Related Violence: Kenyan Experience, available at https://cesko.ge/res/old/other/26/26795.pdf

- The Commission used the ERM Tool to identify incidents that pose high risks and to ascertain the level of these risks. These incidents were categorized into election-related incidents and non-election-related incidents.⁶⁹
- The IEBC used the ERM Tool at the National Election Centre during the election and created risk maps focused on election-related incidents and early warning alerts were generated ahead of the elections and shared with decision makers within the IEBC and other relevant stakeholders.⁷⁰
- The IEBC collaborated with the UWIANO Platform for Peace (a consortium of state and non-state organizations engaged in peace-building and conflict resolution during the election period).⁷¹ The UWIANO through its extensive network of grass roots monitoring, provided the Commission with real time conflict and electoral data.⁷²
- The IEBC in accordance with the provisions of the Election Act, 2011 established an Investigation and Prosecution Department in 2012 to prosecute election offences.⁷³

The image below illustrates the application of ERM Tools in electoral risks mapping ahead of the 2013 general election in Kenya.

⁶⁹ Ibid.

⁷⁰ Erik Asplund, The Independent Electoral Boundaries Commission tests IDEA's Electoral Risk Management Tool for Kenya's election, March 2013. Available at http://ideadev.insomnation.com/news-media/news/independent-electoral-boundaries-commission-tests-ideas-electoral-risk-management

⁷¹ Ibid.

⁷² Ibid.

⁷³ "The Prevention and Mitigation of Election-related Violence" An Action Guide. Available at https://www.idea.int/sites/default/files/publications/the-prevention-and-mitigation-of-election-related-violence.pdf

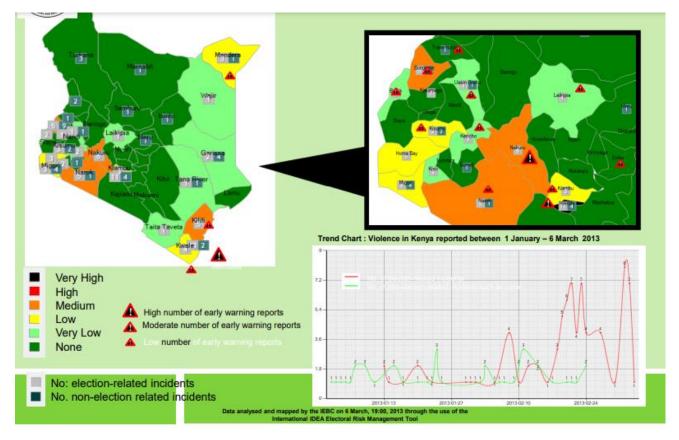


Figure 4: Electoral risk mapping ahead of the 2013 general elections⁷⁴

Impact on the Elections

The ERM strategy seemed to have been successful, as observers noted that the 2013 elections were conducted in a "free and peaceful atmosphere". The institutional reforms including the efforts of the IEBC helped to build trust in the process, which led to a decline in electoral violence. This shows how having an ERM framework can help to mitigate risks and lead to a successful election.

⁷⁴ Monitoring and Prevention Of Election Related Violence: Kenyan Experience, available at https://cesko.ge/res/old/other/26/26795.pdf

⁷⁵ https://issafrica.org/iss-today/how-kenya-delivered-its-peaceful-general-elections

ERM IN THE CONTEXT OF THE 2017 GENERAL ELECTIONS

Overview of the 2017 Elections

The 2017 general elections were the sixth consecutive elections since the multi-party system was introduced in 1991, and the second under the 2010 Constitution. Kenya has a history of pronounced ethno-political divisions, disputed presidential election results and election-related violence. Kenya's 2017 general electoral process was marred by incidents of unrest and violence throughout the extended electoral period which resulted in the cancellation of the first elections held in August. For example, Human Rights Watch reports protests, unlawful killings and beatings by police officers. At least 12 people were killed and over 100 badly injured. Following the decision of the Supreme court to cancel the first election, the IEBC conducted another one.

In the 2017 general election, 41 political parties out of 68 registered political parties in Kenya, fielded candidates for various elective positions. The presidential position was contested by a total of 8 candidates including the incumbent president. However, the presidential elections were dominated by two candidates: incumbent President Uhuru Kenyatta of Jubilee Party and Raila Odinga, representing Orange Democratic Movement (ODM)⁷⁹.

August 8 Election

On August 8, 2017, just over 15 million Kenyans went to the polls to choose the country's next County and National Assembly Members, Senators, Governors, and President. The

⁷⁶ European Union Election Observation Mission, "Final Report Republic of Kenya General Elections 2017", January 2018. Available at https://www.europarl.europa.eu/cmsdata/212568/Kenya-general-elections_2017_EU-EOM-report.pdf

⁷⁷ https://www.hrw.org/news/2017/08/27/kenya-post-election-killings-abuse

⁷⁸ Ibid

⁷⁹ "IEBC Data Report for the 2017 General Elections", available at https://s3-eu-west-1.amazonaws.com/s3.sourceafrica.net/documents/119942/IEBC-Data-Report-of-2017-Elections-April-2020.pdf

IEBC declared incumbent President Uhuru Kenyatta the winner with 54.17% of votes cast, but the outcome of the election generated controversy which formed the basis for the opposition's challenge in the Supreme Court. The rejection of the outcome of the election by the opposition alleging falsification of result fueled the protests which took place across the country, many of which turned violent and resulted in numerous casualties.⁸⁰

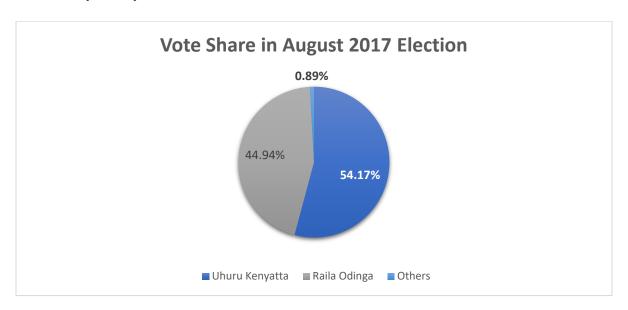


Figure 5: Kenya's August 2017 Presidential Election Result⁸¹





Violent protests in Kenya following the August 8 Election. Source: BBC⁸² and CNN⁸³

^{80 &}quot;Assessment of USAID Support for Kenya's 2017 Elections," available at https://pdf.usaid.gov/pdf_docs/PA00TCXK.pdf

https://www.genderinkenya.org/wp-content/uploads/2017/09/Analysis-of-2017-Kenyas-General-Election.pdf

⁸² https://www.bbc.com/news/world-africa-40872778

⁸³ https://edition.cnn.com/2017/08/12/africa/kenya-elections-protests/index.html

Supreme Court Decision

On September 1, the Supreme Court annulled the results of August 8 elections, finding that the tabulation procedures failed to fulfill the constitutional requirement that all elections be "simple, secure, transparent and verifiable".⁸⁴ It called for the election to be rerun in "fresh" polls within 60 days.⁸⁵ The court's historic decision to overturn a presidential race was highly unusual. IEBC complying with decision of the Court and in accordance with Article 138 of the Constitution of Kenya fixed October 26 as the date for the elections.⁸⁶

October 26 Election

There was a disturbing escalation of tension, hostility and national uncertainty during the second campaign period before the 26 October fresh presidential election. Days leading to the election, the candidate of the main opposition party withdrew from the elections.⁸⁷

Immediately after the October election there was further violence and reports of excessive police actions resulting in injuries and deaths. The government's clampdown on public assembly restricted people's rights and further fueled frustrations, resulting in running street battles lasting over 10 hours around Nairobi which resulted in deaths and injuries.⁸⁸

⁸⁴ https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/kenya-statement-supreme-court-ruling-100417.pdf

⁸⁵ Ibid

⁸⁶ "Assessment of USAID Support for Kenya's 2017 Elections," op. cit.

⁸⁷ Ibid.

⁸⁸ Ibid.



Violence in Kenya following the October 26 Election. Source: The New York Times⁸⁹

Several civil society organizations challenged the conduct and results of the October 26 election in court on a variety of grounds. The Supreme Court dismissed the petitions on November 20, finding them without merit. President Kenyatta was inaugurated on Tuesday, November 28 for a second and final term as President ⁹⁰.

The opposition, having failed in the appeals to the Supreme Court, refused to acknowledge the legitimacy of the election and continued a series of protests, boycotts, and calls for succession. These actions culminated in a mock swearing-in of Odinga as the "People's President" on January 30, 2018. The increased protests led the government to temporarily shut down media outlets, including leading television news programs that broadcasted the event. The country grew increasingly politically and ethnically polarized, and the mood tense, as the opposition's resistance continued into March 2018.⁹¹

⁸⁹ https://www.nytimes.com/2017/10/28/world/africa/kenya-election-uhuru-kenyatta-raila-odinga.html

⁹⁰ Kenya 2017 General and Presidential Elections, Final Report. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/kenya-2017-final-election-report_0.pdf

^{91 &}quot;Assessment of USAID Support for Kenya's 2017 Elections", op. cit.



Odinga at mock swearing-in ceremony. Source: VOA News⁹²

Election Result

The result tallying process was said to be more improved and transparent, and the extensive use of electronic transmission and display of results further enhanced transparency. On 30 October, the IEBC declared the presidential results and a turnout of 7,653,930 voters, which was announced to be 42.36% of voters in the parts of the country where voting took place, and 38.84% of all registered voters. ⁹³ This was a sharp reduction from the 77.48% turnout in the August elections. ⁹⁴ President Kenyatta (the incumbent) was declared the winner with 98.26% of the votes. ⁹⁵

⁹² https://www.voanews.com/archive/kenya-opposition-leader-takes-oath-mock-inauguration

⁹³ European Union Election Observation Mission, "Final Report Republic of Kenya General Elections 2017", January 2018. Available at https://www.europarl.europa.eu/cmsdata/212568/Kenya-general-elections 2017 EU-EOM-report.pdf

⁹⁴ Ibid

⁹⁵ https://www.africanews.com/2017/10/30/uhuru-kenyatta-wins-repeat-elections-by-9826-of-votes//

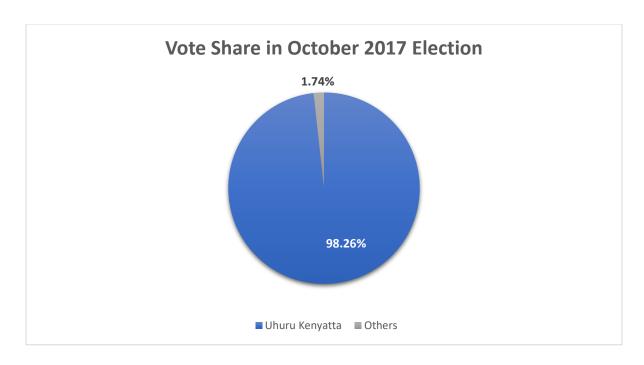


Figure 6: Kenya's October 2017 Presidential Election Result

Internal Risks

Despite immense peace work conducted in recent years, the upcoming 2017 elections showed signs of intense competition that could result into election-related violence. The following were identified as risk factors:⁹⁶

- last-minute changes to electoral laws
- deep-seated mistrust between key political groups
- unresolved and emerging boundary disputes
- hate speech and incitement by politicians/supporters, and refusal to accept results by the aspirants
- ethnic and religious conflicts

⁹⁶ International Institute for Democracy and Electoral Assistance, Annual Results Report, 2016. Available at https://www.idea.int/sites/default/files/reference_docs/annual-results-report-2016_interactive.pdf; Humanitarian Pillar Contingency Plan Kenya 2017 General election, June 2017. available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/draft_humanitarian_pillar_contingency_plan_june_2017_education.pdf

- incitement and calling for mass action
- perceived rigging of votes
- disruption of counting of votes, and releasing wrong results

Measures for Mitigation and Prevention of Risks using the ERM Tool

The appointment of electoral commissioners few months to the election and last-minute changes to the electoral laws placed the Commission under immense pressure to conduct credible elections within a limited timeframe. Despite the short timeframe, the Independent Electoral Boundary Commission implemented a range of procedures and instruments which were put in place to improve situational awareness of risks to electoral processes, as well as to take preventive and mitigating actions.⁹⁷

- The Commission developed its Strategic Plan with the sole aim of improving and institutionalizing sustainable electoral processes in the country. 98
- The IEBC using the ERM Tool carried out an electoral risk mapping exercise. The Commission identified 17 counties as "hot spots" for potential electoral violence: Tana River, Lamu, Kwale, Garissa, Wajir, Mandera, Marsabit and Isiolo, Meru, Narok, Nakuru, Baringo, Nandi, Kisumu, Siaya, Homa Bay, and Migori. 99
- The IEBC developed a baseline for electoral risks with an initial prevention and mitigation action plan that enabled it to elaborate a comprehensive operational plan for data collection and analysis.¹⁰⁰

⁹⁷ Ibid.

⁹⁸ Ibid.

^{99&}quot; Elections in Kenya 2017 General Elections :Frequently Asked Questions." Available at https://www.ifes.org/sites/default/files/2017_ifes_kenya_general_elections_faqs.pdf

¹⁰⁰ International Institute for Democracy and Electoral Assistance, Annual Results Report, 2016. Available at https://www.idea.int/sites/default/files/reference_docs/annual-results-report-2016_interactive.pdf

- A three-day workshop on electoral risk management organized in partnership with International IDEA was held in October in Nairobi, Kenya. Staff from the IEBC's Risk and Compliance Department, particularly those appointed as risk champions, were trained on the use of International IDEA's ERM Tool and to determine how it could best serve to map out and mitigate electoral risks in the 2017 general election in Kenya.¹⁰¹
- The ERM Tool was used in coordinating risk assessment and mitigation activities in the 47 counties throughout the country. 102

The image below illustrates the application of ERM Tools in electoral risks mapping ahead of the 2017 general election in Kenya.

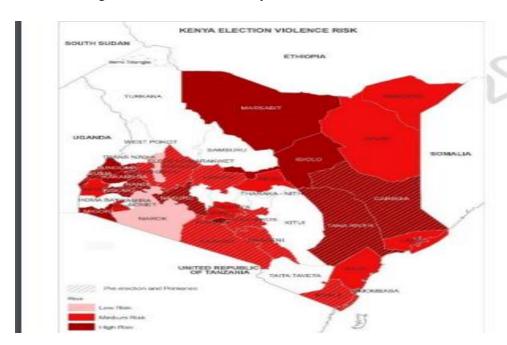


Figure 7: Electoral risk mapping ahead of the 2017 general elections. Source: Kenya Humanitarian Partners¹⁰³

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³"Humanitarian Pillar Contingency Plan Kenya 2017 General election." Available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/draft-humanitarian pillar contingency plan june 2017 education.pdf

Impact on the Elections

Unlike in 2013, there was a return to electoral violence during the 2017 elections. This can be attributed to the fact that the underlying tensions in 2013 were not fully addressed. For example, although the Investigation and Prosecution Department was set up in 2012 to as part of the risk mitigation strategy, following the 2013 elections "there was a lack of follow through on accountability for past electoral violence". ¹⁰⁴

Despite this, the risk mitigation strategy developed with the ERM Tool helped to reduce the scale of violence in 2017, as many of the conflict risks had been anticipated and mitigation measures were put in place. ¹⁰⁵ It is estimated that around 50 people were killed during the elections, and this figure is likely to have been much higher if there was no ERM mechanism in place. ¹⁰⁶

¹⁰⁴ Wendy MacClinchy (2018), op. cit.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

IEBC APPROACH IN ENHANCING RISK MANAGEMENT CAPACITY FOR KENYA'S 2022 GENERAL ELECTIONS

The 2017 General elections were marred with irregularities, violence and incidents of unrest which exposed the deep tribal and ethnic rifts that have long characterized the political sphere in the country. The outcome of the election was described by election observers as a major setback in Kenya's democratic development.¹⁰⁷

Following the outcome of the 2017 general elections, the IEBC along with stakeholders and partners undertook a review that was used to prepare a Post-Election Evaluation (PEE) report, which analyzed the strengths and weaknesses of the elections. The report gave the following recommendations: ¹⁰⁸

- Legal reforms and amendments of electoral laws should be carried out at least two years to an election. This is particularly important for legislation that affect the use of technology in elections, which should be passed at least 2-3 years to an election so as to allow sufficient time for implementation and adoption.
- Electoral Commissioners should be appointed to be in office for the entire electoral cycle, or at least two years to the election date.
- The IEBC should continuously audit its electoral technologies independently, as well as enhance the capacity of its ICT staff.
- There is need for training of all IEBC staff on risk management.

¹⁰⁷" Kenya 2017 General and Presidential Elections Final Report", available at https://reliefweb.int/sites/reliefweb.int/files/resources/kenya-2017-final-election-report 0.pdf

¹⁰⁸ IEBC, The Post Election Evaluation Report for the August 8 2017 General Election and October 26 2017 Fresh Presidential Election. Available at: https://www.iebc.or.ke/uploads/resources/V9UUoGqVBK.pdf

- There should be an effective monitoring and evaluation framework for risk management.

The recommendations in the PEE Report guided the Commission to take further steps to enhance its capacity in risk management. These steps are as follows:

- The Commission has developed a Risk Management Framework for an enterprisewide risk management strategy specifically designed to comply with the directive and requirements of the Kenyan government as well as incorporate election-specific risks into a comprehensive framework.¹⁰⁹
- In order to implement its Risk Management Framework, the IEBC has also developed the following documents and tools¹¹⁰:
 - Risk Management Policy;
 - Compliance Policy;
 - o Risk Maturity Report;
 - Risk Register;
 - o Compliance Register;
 - o Risk Management Policy Statement; and
 - Risk and Compliance Standard Operating Procedure.
- To ensure the full implementation of the ERM Tool and to ensure an in-depth understanding of the principles, objectives and components of the framework, the Commission in July 2019 trained its staff with support from International IDEA on the use of the risk management tool ahead of the coming electoral cycle in 2022.¹¹¹ Among the trainees were also 'risk champions' who are responsible for identifying,

Enterprise Wide Electoral Risk Management Training", July 2019. Available at https://www.idea.int/news-media/events/enterprise-wide-electoral-risk-management-training

110 Ibid.

¹¹¹ Ibid.

assessing, and mitigating risks. This training is in response to the fact that, as identified in the PEE report, there was a low level of awareness of risk management among Commission staff in 2017.





Training of IEBC Staff on ERM. Source: IEBC¹¹²

To promote learning and exchange of knowledge, in 2020 the IEBC met with officials from the Independent Electoral Commission of Botswana to benchmark on various electoral areas especially electoral risk management. 113





https://twitter.com/IEBCKenya/status/1151400961027510272
 https://twitter.com/IEBCKenya/status/1230126411991715842

- The IEBC also introduced Bridge Building Initiative (BBI) to improve governance and to meet expectations of the Kenyans. BBI is focused on three thematic areas, namely: constitutional, legislative, policy and administrative reforms. Constitutional reform proposals focused on unity and strengthening the Rule of Law. It sought to resolve issues of divisive elections through:
 - Enhancing transparency and fairness of representation in the electoral system.
 - Reform the management structure of the Independent Elections and Boundaries Commission (IEBC).
 - Compliance with the universal principles of fair representation and equality to vote by the IEBC.
 - Enhancing transparency and fairness in the delineation of constituency and ward boundaries by the IEBC.

In preparation for its upcoming 2023 elections, Nigeria can learn from the IEBC's proactiveness in mitigating anticipated risks ahead of the 2022 Kenyan elections, as well as the recommendations made in the PEE Report. The rest of this paper will focus on the political background of Nigeria, as well as tailored recommendations for Nigeria's risk mitigation and implementation of the ERM Tool.

¹¹⁴ https://twitter.com/IEBCKenya/status/1230126411991715842

^{115 &}quot;Building Bridges to a United Kenya: from a nation of blood ties to a nation of ideals," Report of the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report. Available

at https://e4abc214-6079-4128-bc62
d6e0d196f772.filesusr.com/ugd/00daf8 bedbb584077f4a9586a25c60e4ebd68a.pdf

POLITICAL BACKGROUND OF NIGERIA

Nigeria is located in West Africa and is bounded to the north by Niger, to the east by Chad and Cameroon, to the south by the Gulf of Guinea, and to the west by Benin Republic. With an estimated population of over 200 million, ¹¹⁶ Nigeria is the most populous country in Africa and the seventh most populous country in the world. Nigeria gained independence from the British on 1st October 1960, almost 100 years after Lagos was annexed in 1861. On 1st October 1963, Nigeria became a republic.

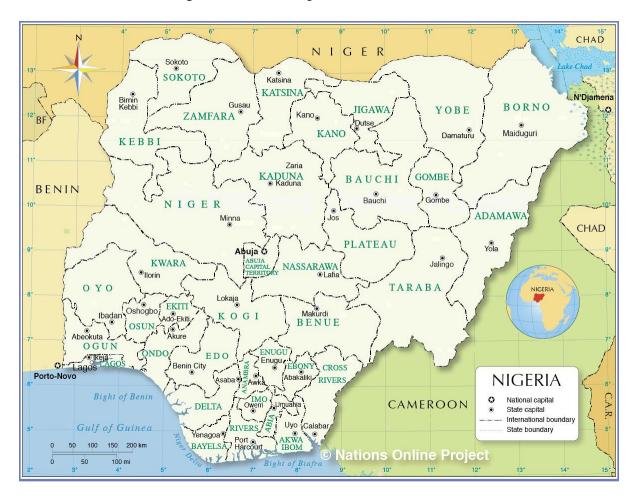


Figure 8: Map of Nigeria. Source: Nations Online 117

¹¹⁶ https://www.worldometers.info/world-population/nigeria-population/

https://www.nationsonline.org/oneworld/map/nigeria-administrative-map.htm

The operation of democracy in independent Nigeria was shortlived, as a military coup occurred in 1966, triggering a series of further coups until the final one in 1993. This meant that until the final return to democracy in 1999, Nigeria oscillated between democratic governments and military governments.

For presidential elections in Nigeria, the winning candidate must receive a simple majority (or plurality) of votes, and at least 25 percent of the votes cast in at least two-thirds of the states. For governorship elections, the winning candidate must receive an absolute majority (50% + 1) of votes and at least 25 percent of the votes cast in at least two-thirds of the local government areas in the state. For legislative and local council elections, the winning candidate needs only receive a plurality of votes. Candidates need to run on the platform of a political party, as independent candidacy is not currently allowed in Nigeria.

Like Kenya, Nigeria is faced with the pressing problem of corruption. Nigeria currently ranks as low as 149 out of 180 on Transparency International's Corruption Perceptions Index (CPI). This represents a decline from its position at 146 in 2019 and 144 the year before that. This indicates that in recent years, the problem of corruption has worsened in Nigeria. In addition to politicians, the judiciary and the police also face high levels of corruption, as nearly half of Nigerians perceive the judicial system to be corrupt and almost all Nigerians believe the police is corrupt, making it the most corrupt institution in Nigeria. The existence of corruption among these institutions which are supposed to enforce the law also makes the likelihood of electoral violence high, and therefore poses risks to the electoral process.

Another issue that promotes risk in Nigeria's political system is ethnicity. Nigeria is an ethnically diverse country, with as many as 250 ethnic groups. ¹²¹ Similar to the ethnic politics in Kenya, political affiliations and voting patterns in Nigeria are largely influenced

¹¹⁸ https://www.transparency.org/en/cpi/2020/index/nga

¹¹⁹ https://www.transparency.org/en/cpi/2019/index/nga; https://www.transparency.org/en/cpi/2018/index/nga

¹²⁰ https://www.ganintegrity.com/portal/country-profiles/nigeria

https://www.britannica.com/place/Nigeria

by ethnicity. Ethnic politics in Nigeria dates back to the colonial period, "when these ethnic groups were used as a pedestal for the distribution of socio-political goods". Ethnic politics continued in Nigeria post-colonialism, through "the employment and manipulation of ethnic loyalties by politicians in order to boost their chance of winning at the polls". This level of ethnic politics poses electoral risks, and has contributed to electoral violence in Nigerian elections. For example, SMB Intelligence reports that over 600 people were killed during the 2019 election cycle in Nigeria, and this is reflective of the deaths that also occurred during Kenya's 2017 elections.

In order to address these electoral risks and reduce the likelihood of electoral violence, suggestions have been made regarding the establishment of an Electoral Offences Commission to investigate and prosecute electoral offenders, the introduction of electronic voting to reduce the likelihood of electoral malpractices, and the enactment of a new Electoral Act to update the legal framework guiding elections. These suggestions will be discussed in more detail in the next section.

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¹²² Toyin Cotties Adetiba (2019), "Dynamics of Ethnic Politics in Nigeria: An Impediment to its Political System", Journal of Economics and Behavioural Studies, Vol 11, No 2, page 138

¹²³ Ibid, page 141

¹²⁴ https://www.hrw.org/news/2019/06/10/nigeria-widespread-violence-ushers-presidents-new-term

RECOMMENDATIONS FOR NIGERIA

The Independent National Electoral Commission (INEC), which is the main EMB responsible for general elections in Nigeria, started to develop an ERM framework ahead of the 2015 elections. In December 2013, International IDEA and the African Union partnered with INEC to deploy International IDEA's ERM Tool in the country. In 2014, INEC established an ERM unit to analyze electoral risks, and this unit works with other institutions such as the Inter-Agency Consultative Committee on Election Security (ICCES), which consists of INEC and other ministries, departments, and agencies involved in election security.

Nigeria can learn a lot of lessons from Kenya's experience, given that the context of Nigeria's elections is similar to that of Kenya. As discussed in the previous section, both countries have witnessed high levels of electoral violence, and this is in contrast to the relative peace in the immediately preceding elections (i.e. the 2015 elections in Nigeria and the 2013 elections in Kenya).

Indeed, many of the internal risks recognized during Kenya's risk analysis are also applicable in Nigeria. These include: ethnic and religious conflicts, corruption, poverty, perceived rigging of votes, and lack of trust of EMBs. In its implementation of ERM ahead of the 2023 elections, Nigeria therefore has a lot to learn from the successes and failures of Kenya. Based on the discussions in this paper, we offer two sets of recommendations for Nigeria. The first set of recommendations relate to Nigeria's implementation of the ERM Tool. The second set of recommendations cover what Nigeria can do to mitigate risks ahead of the 2023 elections.

 $^{{\}color{blue}^{125}}\,\underline{https://www.idea.int/news-media/news/mapping-electoral-risk-nigeria}$

¹²⁶ International IDEA, "Risk Management in Elections," Policy Paper No. 14, November 2016. Available at https://www.idea.int/sites/default/files/publications/risk-management-in-elections.pdf

Recommendations on Implementation of the ERM Tool

1. Development of ERM Resources

In order to fully implement its Risk Management Framework, INEC should develop the full range of resources and tools for an effective ERM implementation. These include: Election Risk Management Policy, Election Risk Compliance Policy, Election Risk Maturity Report, Election Risk Register, Election Risk Compliance Register; Risk Management Policy Statement, and Risk and Compliance Standard Operating Procedure. Similarly, INEC should develop a standardized methodology for accessing and predicting electoral risks in line with global best practices for election risk management.

2. Publication of ERM Resources on INEC Website

Although INEC has developed an ERM Framework with supporting documents using the ERM Tool, these resources are not easily available online. INEC currently has an ERM page on its website, but the page is not being utilized. It has a message stating that "The following Electoral Risk Management documents are available for download from the Commission". However, there are no documents available. This is similar to the case in Kenya, as the Risk Register, Compliance Register, and other documents and policies developed to implement the ERM Framework are not available on the IEBC website. It is important for EMBs to upload ERM resources on their websites, as these can be used to train staff, guide the activities of other electoral practitioners, promote further research, and also show to the public the steps that are being taken to identify and mitigate electoral risks. INEC should therefore endeavor to make its ERM Framework and other supporting documents available on its website.

¹²⁷ https://inecnigeria.org/resources/electoral-risk-management/

3. Establishment of an ERM Repository

Following on from the previous point, INEC should create a repository of data and information on electoral risk in the form of an electronic database which should be uploaded on the Commission's website. This information should be uploaded in formats that are accessible and easy to understand by the diverse electoral stakeholders and the public.

4. Development of a Monitoring and Evaluation Framework

It is also important for INEC to develop a monitoring and evaluation framework for its risk management mechanism, as recommended in Kenya's PEE report. Ongoing monitoring will ensure that challenges faced in the implementation of the ERM Framework are identified and addressed periodically, while a full evaluation of the end of an electoral cycle will ensure that lessons are learned about what works and what does not work. These lessons can then be used to inform the implementation of ERM in the next electoral cycle.

5. Training of INEC Staff

INEC should organize training sessions among its staff to improve their awareness of risk management and how to implement it. Using the example of Kenya, INEC can designate 'risk champions' who will be primarily responsible for identifying, assessing and mitigating risks. This training session can be carried out in collaboration with electoral support bodies such as International IDEA.

6. Meetings with EMB Officials from Other Countries

Just like the IEBC in Kenya, INEC can organize meetings with EMB officials from other countries that currently implement the ERM Tool. This will enable them to learn from other similar contexts, and exchange best practices in ERM implementation. Examples of countries that would be a good fit for this purpose are Kenya and Botswana.

Recommendations on Risk Mitigation Ahead of the 2023 Elections

1. Early Passing of the Electoral Act

Nigeria is in the process of passing a new law which aims to repeal the Electoral Act No 6 of 2010 (as amended) and enact a new Electoral Act 2021. The new law needs to be passed urgently, because it affects other things such as civic and voter education, training of electoral staff, and in general the framework within which the elections will be conducted. It is therefore important to pass the Act as soon as possible, in order to avoid last-minute changes to the electoral law, as happened in Kenya which passed the Election Offences Act only one year before the 2017 elections.

2. Early Appointment of Electoral Commissioners

The Independent National Electoral Commission of Nigeria consists of a Chairperson and twelve National Commissioners. However, six of these Commissioners have not yet been appointed. This is reminiscent of Kenya's position prior to the 2017 elections. As discussed earlier in this paper, the last-minute appointment of electoral commissioners as well as changes to the electoral laws put a lot of pressure on the Commission, which affected their ability to conduct the elections efficiently. It is therefore expedient for Nigeria to appoint the remaining Commissioners quickly, in order to allow them effectively prepare for the 2023 elections.

Indeed, both early passing of the Electoral Act and early appointment of electoral commissioners can help to prevent logistical risks that lead to postponement of elections. This is particularly key for Nigeria, which has had elections postponed three times in a row (in 2011, in 2015, and in 2019). The postponement of elections not only causes national embarrassment, but also weakens trust in the process, which could in turn heighten tensions and lead to electoral violence.

3. Consultation, Coordination and Sensitization

Ahead of the 2023 general elections, INEC should increase its level of consultation and coordination with relevant stakeholders on election risks mitigation such as: CSOs, traditional rulers, security personnel, etc. in identifying possible triggers for election related violence at different stages of the electoral cycle and to devise appropriate measures to prevent it.

INEC should also develop an effective sensitization strategy and implementation plan on engaging stakeholders, voters and the public. This should include sensitization programs using both physical and digital platforms aimed at educating members of the public on triggers of election related violence and the role they can play to ensure peaceful and credible elections.

4. Strengthening of the Election Security Management System

INEC ahead of the 2023 election should strengthen its election security management system and improve its ability to develop strategic plans for providing security before, during and after elections. In particular, amber and red zones timelines aimed at mitigating risks should be created during this period. This would ensure that risks are identified at an early stage, and security personnel are adequately prepared to handle them.

5. Establishment of the Electoral Offences Commission

As far back as 2008, the Justice Uwais-led Electoral Reform Committee (ERC) recommended the creation of an Electoral Offences Commission to investigate and prosecute electoral offenders. ¹²⁸ This Commission would serve a deterrent effect on others and help to reduce electoral violence in the long term. However, it is important that beyond the setting up of the Commission the electoral offenders are actually prosecuted. Otherwise, it would have no effect just like the Investigation and Prosecution Department which was set up in Kenya in 2012 but failed to hold electoral offenders accountable.

¹²⁸ Report of the Electoral Reform Committee, Vol 1, Dec 2008. Available at: https://nairametrics.com/wp-content/uploads/2012/01/Uwais-Report-on-Electoral-Reform.pdf

6. Use of Technology

Integrating the use of technology into the electoral process would be helpful in increasing transparency and reducing rigging and electoral fraud. Just as Kenya is introducing technology to improve the results transmission process ahead of 2022, Nigeria has also successfully implemented electronic transmission of results through the results viewing portal in the Edo and Ondo governorship elections. Extending the use of technology to the voting process is expected to similarly improve the transparency and credibility of the process. The draft Electoral Bill 2021 gives INEC the impetus to implement electronic voting, and it is hoped that the Commission will do this in the near future to increase trust in the process and also reduce electoral violence.



The integrity and credibility of the electoral process are essential requirements for holding genuine democratic elections and are necessary for the effective administration and management of elections that adhere to national and international standards. Elections are complex and characterized by several uncertainties which makes it difficult to predict the outcome.

In Kenya, most elections since the reintroduction of multiparty politics in 1992 have resulted in serious violence and numerous casualties with the exception of the 2002 elections. Despite the immense efforts by the IEBC to prevent and mitigate election-related violence, the outcome of the 2017 elections can be described as a setback to the gains that were made in the 2013 elections. The subsequent steps taken by the Commission to enhance its risk management capacity ahead of the 2022 general elections is commendable and a step in the right direction to ensure peaceful and credible elections in the country.

Based on the experiences of Kenya, we recommend that in its implementation of the ERM Tool, INEC should develop the full range of ERM resources, publish ERM resources on its website, establish an ERM repository, develop a monitoring and evaluation framework for its risk management mechanism, organize training sessions on ERM among its staff, and organize meetings with EMB officials from other countries that currently implement the ERM Tool.

In terms of risk mitigation ahead of 2023, we recommend that in the short term, Nigeria should pass the Electoral Act 2021 and appoint the remaining INEC Commissioners. INEC should also consult with stakeholders on election risks mitigation and strengthen its election security risk management system. In the medium to long term, Nigeria can mitigate electoral risks by establishing an Electoral Offences Commission and extending the use of technology to the voting process. If these recommendations are followed, Nigeria

will be better able to implement the ERM Tool and prevent electoral risks, thereby improving the integrity and credibility of its forthcoming general elections in 2023.



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