Statement of the Second Joint IRI/NDI Pre-Election Assessment Mission to Kenya

July 1, 2022

I. Introduction

From June 27 to July 1, 2022, the International Republican Institute (IRI) and the National Democratic Institute (NDI) jointly conducted a pre-election assessment mission (PEAM) as part of the overall observation of Kenya's 2022 elections. The mission comprised His Excellency Dr. Goodluck Jonathan, former President of Nigeria; Babra Bhebe-Dube, Executive Director of the Election Resource Centre of Zimbabwe; Lionel C. Johnson, NDI board member and former U.S. diplomat; Julia Brothers, NDI Senior Advisor for Elections; and Gregory Kearns, IRI Regional Director for Africa.

This is the second of two pre-election missions designed to assess the current political environment as well as the electoral preparations in advance of the August 2022 general elections; provide independent, impartial findings and practical recommendations before election day to improve the process; and demonstrate international support for credible elections in Kenya. The first PEAM, led by Hon. Jean Mensa, Chairperson of the Ghana Election Commission, took place from May 16 to 20, 2022 and offered 26 priority recommendations to key stakeholders to enhance confidence in the electoral process ahead of the August polls. This second PEAM reviewed changes in the electoral environment since the first delegation, the status of recommendations previously offered by NDI and IRI, and issues that could still be addressed between now and election day to promote an inclusive, transparent, and peaceful process.

The delegation conducted its activities in accordance with the *Declaration of Principles for International Election Observation*, which was launched in 2005 at the United Nations; in adherence to regional standards such as the *African Charter on Democracy, Elections and Governance*, which was promulgated by the African Union in 2007; and in compliance with the laws of the Republic of Kenya. All activities were conducted on a strictly nonpartisan basis and without interfering in the election process. The delegation met with a wide array of election stakeholders, including: the Independent Electoral and Boundaries Commission (IEBC), Office

of the Registrar of Political Parties (ORPP), National Cohesion and Integration Commission (NCIC), political parties, civil society, business associations, media representatives, religious leaders, the judiciary, and government actors. The delegation expresses its appreciation to everyone with whom it met for sharing insights from which the mission benefited greatly.

IRI and NDI are nonpartisan, nongovernmental, nonprofit organizations that support and strengthen democratic institutions and practices worldwide. The Institutes have collectively observed more than 200 elections in more than 50 countries over the past 30 years. To complement the objectives of the PEAMs, NDI and IRI have also deployed long-term thematic analysts based in Nairobi starting May 2022 to provide in-depth and ongoing analysis to the broader mission, and plan to deploy a joint international delegation to observe the August 9 elections in Kenya.

II. Summary

The 2022 polls will be Kenya's third elections since the adoption of a new constitution in 2010. The current political context reflects a realignment of alliances among major political parties, demonstrating the dynamic nature of the Kenyan electoral landscape. While the current campaign has seen coalitions rely more on ideologies and personalities in their political discourse, ethnically-driven identity politics continue to be an important determinant of voter behavior. More than twenty parties – including Raila Odinga's Orange Democratic Movement (ODM) and President Uhuru Kenyatta's Jubilee Party – have joined forces under the Azimio la Umoja (One Kenya Coalition) banner. This new alliance pits the outgoing President Kenyatta against his closest ally in the 2013 and 2017 elections, current Deputy President William Ruto, whose United Democratic Alliance (UDA) party has formed its own coalition, the Kenya Kwanza Alliance.

The August 9, 2022 elections will be a pivotal moment in the country's democratic trajectory. Electoral, political, and civic actors and institutions in the country remain resilient, despite over a decade of fraught elections, and the electoral process continues to adapt and evolve from past challenges. Nonetheless, the current climate is marked by public mistrust and collective anxiety surrounding the conduct of the elections and the acceptance of its outcomes. The first joint IRI/NDI PEAM in May found that "Kenyans have the potential to break the pattern of disputed elections and prevent election-related violence in 2022. However, this will require concerted efforts not only by the IEBC, the constitutionally mandated body to conduct elections, but equally by all political parties, security services, civil society, the media, faith-based organizations and others. All stakeholders, especially political parties, must work together to promote tolerance, peaceful elections, and respect for historically marginalized groups – including rejecting violence against women in elections."

The delegation found that important improvements have been made since the previous PEAM in May. Some challenges nonetheless remain insufficiently addressed, such as low levels of voter education; gaps in public awareness about election administration procedures; and instances of disinformation, hate speech, and online violence against women. New issues have also emerged, including concerns about the security and timeliness of the transmission of results and

uncertainty around the physical paper voter roll at polling stations on election day. There is still time before election day to enhance the process, but continued diligence will be required of all stakeholders to ensure that the elections are conducted – and perceived – as transparent and credible.

The stakes for the upcoming elections are high. The country's history of contested elections, in tandem with an intensifying campaign and the public's lack of confidence in institutions, may predispose candidates to challenge the results. It is paramount that political contestants act in good faith and for election processes to be well-understood, transparent, and verifiable. These polls are an important test of all stakeholders to reflect the will of Kenyan voters who wish to move beyond disputed outcomes, embrace long-term reforms, and support the peaceful democratic transfer of power.

III.   Notable Progress to Date

The NDI/IRI delegation recognizes some positive developments initiated by electoral stakeholders – some of which followed the recommendations of the IRI/NDI May 2022 pre-election statement – that are contributing to an enhanced electoral environment:

Progress in Election Administration – The delegation noted forward momentum in election day preparations and developments, including securing sufficient funds to administer the August election, the holding of a public simulation of its results transmission system months in advance of election day, and an external audit of the voter roll with highlights of the findings available to the public in a timely manner. Many interlocutors noted the IEBC's prioritization of key stakeholder engagement and coordination, such as the IEBC's partnership with the National Police Service (NPS) to train police officers on the management of election security ahead of the August polls. In addition, the IEBC's periodic consultations with the judiciary may increase opportunities to build consensus around legal interpretations of both current law and legal precedent to minimize ambiguity and openings for litigation.

Increased Media Engagement and Access – Ongoing discussions and a memorandum of understanding (MOU) between the IEBC and major media houses and associations demonstrate genuine efforts to increase transparency and reinforce the role of the media as a key watchdog in the electoral process. This is further reflected in the IEBC's support for journalist trainings on key aspects of the electoral process. As a result of these developments and the IEBC's openly stated support for parallel tallying, media interlocutors expressed their intent to report polling station level results live or in near real-time on election day.

Political Outreach to Women – In addition to the significant nomination of female running mates for three out of the four presidential candidates, many interlocutors anticipate a higher total number of women candidates across down ballot races compared to previous elections. Women's political participation and inclusion have become predominant campaign issues for Azimio and Kenya Kwanza during campaign rallies, exemplified by the release of the Kwanza coalition's recent Women's Charter and Azimio's addition of a gender inclusion strategy to its manifesto.

Though achievement of the Constitution's two-thirds gender rule[1] remains elusive, there is increased pressure on the major political parties to articulate their gender inclusion strategies, particularly to advance women candidates for elected office.

Greater Interagency Coordination – Many interlocutors reported increased coordination between and among various government agencies, independent commissions, and civic actors as they draw upon lessons learned from the previous election. The IEBC, as an example, indicated having coordination sessions with the Communication Authority, judiciary, security agencies, and other organs (such as the ORPP, the NCIC, the Office of the Directorate of Public Prosecutions, and the media).

Advances in the Peace and Security Environment – Peace and security actors have noted marked improvements in the security environment from previous elections. Lower levels of recorded violence in the campaign period and a reduction of noted hot spots may be attributed to robust conflict mitigation efforts and improvements in the political party primary process. The National Police have engaged civil society more constructively than in previous elections, including to inform gender-sensitive trainings, and have also worked with the IEBC to clarify roles and responsibilities on election day. Numerous peace pledges, facilitated by civic and religious groups, have been signed by candidates and parties, and the NCIC noted a campaign to bring together the leading presidential candidates in a high-profile event to denounce violence. The campaign itself has been relatively peaceful, although isolated incidents of violence and a noted rise in non-elections-related gang activity highlight the importance of continued mitigation efforts around election day, especially for localized violence. In addition, and for the first time, election sexual and gender-based violence monitoring efforts are being implemented by stakeholders.

Responsive Court Processes – The judiciary continues to enjoy the trust of the people and is working proactively to enhance its capacity to address election-related violations and disputes, such as by building in-house expertise to better understand and scrutinize electoral technologies. The courts are well aware of the critical role they play in the electoral process and continue to make preparations to effectively and efficiently adjudicate cases, even in the face of abundant and high-profile election disputes.

IV. Emerging Issues and Ongoing Challenges

Technical Challenges in the Transmission of Results – The delegation notes consensus among political, civic, and governmental stakeholders on concerns around the security and timeliness of the transmission of results. In early June the IEBC organized a public simulation of the electronic results transmission system that was concluded after approximately 2.5 hours, with less than half of the results received. The transmission test reflects unresolved challenges from the 2017 elections, notably the slow uploading of scanned polling station result protocols – form 34A – to the IEBC's centralized portal, which resulted in confusion and distrust in the process. Moreover, 1,111 polling centers are estimated to lack 3G coverage, and although the IEBC has purportedly acquired a sufficient number of satellite modems to cover those centers, those systems have not

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[1] The Kenyan constitution stipulates that not more than two-thirds of the members of any elective public body shall be of the same gender.

all been fully tested in the field. This has raised significant concerns about the ability of the IEBC to deliver timely information to voters during the critical immediate post-election period and could contribute to misunderstandings around transmission lag times that are ultimately technical in nature. The electronic results transmission process will be accompanied by a paper trail of the physical copies of the 34As, which will serve as a crucial backup to the electronic system. Citizens and stakeholders should have recourse to these paper records for the purposes of audits, recounts, or verification of the digitized results in the case of disputes.

Verifiability and Open Election Results Data – In a step backward from previous elections, the IEBC does not intend to make polling station level results publicly available in any other format beyond the scanned images of completed 34A forms. This decision will present a challenge for individual citizens to use for public verification, as downloading or scraping of the scans, or manually inputting results data from image files is incredibly time-intensive and effectively impossible to aggregate big data sets. Limitations to timely, machine-readable, in-bulk results data could limit the public's ability to fact-check results-related misinformation and disinformation, particularly in the face of party or media parallel tallies, and contribute to a lack of overall transparency.

Importance of IEBC Communications to Promote Public Confidence – The delegation notes a significant gap in public awareness of election administration procedures due to insufficient communication by the IEBC. Political and civil society stakeholders lack a thorough understanding of the IEBC's intended process for collecting, transmitting, tallying, and safeguarding votes on election day. This opacity regarding procedures has further eroded fragile public trust in electoral institutions and the IEBC's capabilities. Crucially, the general public lacks a shared understanding of the process by which election results will be finalized and communicated. The IEBC has not yet provided public messaging regarding the anticipated timeline and rolling nature of results transmission, which may leave the election environment vulnerable to proliferation of misinformation and conflicting accounts of false results.

Voter Registry – The IEBC recently announced that it would not provide an accompanying hard copy of the register of voters at polling stations alongside the biometric kit, resulting in concerns from some stakeholders and a subsequent court petition alleging a violation of the legal framework. The decision to remove the paper list entirely could exacerbate existing concerns, particularly in the absence of public consultation, and present limited contingencies if the electronic register fails.

Voter Education – Many interlocutors have noted the delayed start in voter education activities by the IEBC, which also impacted civil society's ability to begin these activities. Voter education tactics have overlooked main avenues where young people receive and share information, such as social media platforms.

Election-related Disinformation, Hate Speech, and Online Violence Against Women – The delegation notes continued concerns over instances of disinformation, misinformation, and hate speech which disrupt the flow of accurate election-related information to citizens and can also contribute to discord among the electorate. Concerns remain regarding the IEBC, other electoral stakeholders and social media platforms' preparedness to counter misleading or false claims made about the counting, transmission, or finalization of election results. These concerns extend to hate speech as well, which often targets politically active women. Interlocutors noted that

several women candidates including Martha Karua, Azimio's candidate for Deputy President, have been harassed online or have suffered from verbal abuse and other acts of psychological violence. According to key stakeholders, the inherently opaque nature of malign online activities creates noted challenges for investigation, oversight, and accountability.

Participation of Youth and People with Disabilities – The delegation notes low levels of voter registration among youth, including a decline from the last elections, and consistent exclusion of both youth and people with disabilities (PWDs) from political party leadership and nomination practices. They reported exclusion from competitive party platforms as a result of internal party nomination processes, whereby candidates are selected through prolonged negotiations. Widespread apathy was reported among youth - attributed to barriers in obtaining ID cards and disenchantment with the political establishment. PWDs are also significantly underrepresented as elected office holders and candidates and have little representation in political parties' governing bodies, including national executive committees. Several stakeholders noted that the IEBC's voter education efforts may have been insufficient, particularly in reaching youth, PWDs, and other special interest and marginalized groups.

Candidate Certification – The Ethics and Anti-Corruption Commission (EACC) flagged 241 aspirants with integrity issues, such as allegations of corruption or abuse of office, to the IEBC, recommending that it take these concerns into consideration before clearing their candidacies. The IEBC responded that most of the identified aspirants would not be disqualified citing constitutional provisions for the presumption of innocence until proven guilty, among others. The IEBC and EACC have continued to disagree over their mandate and responsibility concerning the clearance of candidates with integrity issues. In addition, stakeholders have expressed frustration and are concerned that candidates with integrity issues will be elected as a result.

V. New and Continued Recommendations

With just five weeks remaining before the August polls, interventions to improve the electoral process should be strategic and timely. The delegation believes that with political will and through coordinated efforts by all stakeholders, many of the above-mentioned challenges can be addressed in the time allotted to enhance citizen confidence and participation in elections. In the spirit of international cooperation, IRI/NDI's initial assessment report in May identified 26 recommendations to support the upcoming elections. Some of those recommendations have since been addressed by the relevant actors in clear steps to improve the process. Some initial recommendations may no longer be achievable in the limited window leading up to election day, but should nonetheless be considered for long-term reform. However, there are several continued recommendations that remain highly relevant during this critical period and should be reiterated, as well as new ones offered by the delegation to address new and emerging issues.

Building Confidence in Election Results:

- The IEBC should consider conducting a full, countrywide load test[2] of the entire results management system to garner an accurate estimate of how long the process will take, address any unexpected challenges, and avoid surprises on election night.
- The IEBC results portal should follow open data principles for polling station-level results to make them available to the public in a timely, analyzable, and bulk format.
- The IEBC should prioritize public communications related to the results transmission process, including specifics of the chain of command and redundancies built into the process to safeguard its integrity, and to manage expectations of the parties, the media and public regarding how and when results information will be available.
- Citizen observers should seek to independently verify election results to deter manipulation of the tabulation process.
- Political parties, candidates and media that may report voting results after polls close should act responsibly when conducting real-time reporting, verify information and refrain from drawing premature conclusions based on unrepresentative data.

Election Integrity Backups and Fail Safes:

- The courts should provide a timely resolution of the current debate on the use of the paper voter list alongside the electronic register.
- Political parties, watchdogs and other stakeholders should increase awareness of the election day paper trail and available mechanisms – such as audits or recounts – to build trust in the results in case of a failure in the results transmission technology.

Information Environment:

- The IEBC should prioritize strategic and regular communications with the media and the public, including provision of clear, responsive and timely information regarding all aspects of the electoral process.
- The IEBC should invest in social media monitoring and strategic communications to better anticipate and proactively counter misleading or false narratives regarding the electoral process and in particular to counter misinformation or misunderstandings regarding the transmission and finalization of results.
- Political actors and stakeholders should refrain from unfounded or misleading claims regarding the electoral process, and should hold accountable those party members who spread false information that could destabilize the election environment.
- Technology platforms should bolster efforts to promote a healthy information environment ahead of, on, and immediately after election day. This includes not just strategies to counter hate speech, but also to mitigate violence against women candidates online and to deter election-related disinformation, especially at vulnerable times such as the counting, transmission and announcement of election results.

Campaign:

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[2] A load test is a performance test for software systems to see how they operate under expected usage conditions. Sometimes called a "stress test", this would mean conducting a results transmission simulation for all 46,000 polling stations at roughly the same time, to mimic the conditions of election night.

- Political parties and candidates should demonstrate commitment to ensuring peace before, during, and after elections by publicly endorsing and adhering to the electoral code of conduct, and other peace pledges.
- Political party leaders should commit publicly to promote an election free of violence before, during, and after the election.

Inclusion:

- All key stakeholders – political parties, IEBC, civil society, media, and the security sector – must put in place urgent measures to remove obstacles that hinder the full participation of women, young people, people with disabilities and other marginalized groups.
- The IEBC should provide accommodations to facilitate voting by people with disabilities and other limitations, including locating polling places at ground level, permitting such voters priority placement in long lines, and providing accessible voting materials.

Voter Education and Pollwatching:

- Voter education efforts should be accelerated throughout the country with a focus on election day procedures and the immediate post-election process, and specific outreach to women, youth, and persons with disabilities.
- The IEBC should develop a simple graphic depiction of the voting process to be posted on key media in order to educate voters and set expectations.
- Political parties should deploy trained representatives to polling stations and ensure they adhere to the IEBC's code of conduct.

International Community:

- The international community should continue to support the Kenyan electoral process, and the capacity of nongovernmental and governmental organizations. International organizations should also continue to coordinate their various observer efforts while amplifying the voices of Kenyans working to meet the challenges for credible and peaceful elections on August 9.

VI. Conclusion

The delegation again extends thanks to the many Kenyans who generously gave their time to inform its efforts and for the warm welcome that the delegation received. The delegation hopes that the observations and recommendations presented in this statement are strongly considered in the remaining weeks ahead of the August 9 polls. IRI and NDI will continue to monitor the electoral process and plan to organize an international election observation mission during the election itself and look forward to engaging with stakeholders at that time.