



DEFENDERS  
COALITION

# Dusk to Dawn?

Our HRDs Story on Kenya's 2022 Electoral-  
Processes and Outcomes

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# Foreword

## from the Executive Director

Elections provide a critical opportunity for citizens to advance democratic governance and encourage citizen participation by electing leaders who advance their aspirations. For elections to be meaningful, citizens should have the ability to enjoy their right to free speech, association and peacefully assemble to articulate their needs or express their displeasure with the governance process without being targeted for reprisals.

In the run up to the just concluded 2022 elections between June and August 2022, the Defenders Coalition – Kenya (DC-KE) deployed one hundred and five monitors (105) with the support from the Embassy of Norway in Kenya and Office of the High Commission for Human Rights (OHCHR) to twenty-nine (29) counties in Kenya to monitor and document human rights violations during the election period.

Further to the above, similar deployments were affected by our partners including the Kenya National Commission on Human Rights (KNCHR), other civil society organizations (CSOs) and relevant UN agencies to respond to documented violations, advocate for legal and institutional reforms of critical state bodies like the police, judiciary, and the electoral management body (IEBC).

This was informed by the Kenya experience with electoral environment. Past Kenyan elections since 1992 have been marred by violence targeting ethnic and political groups that have been perceived to have different political opinions. Key perpetrators have consistently been the police seeking to protect the government in power seeking re-election or support for its preferred candidates, which therefore unleash violence on the opposing groups and at community, criminal gangs or hired goons attack individuals perceived not to support their preferred candidates.

The monitors were equipped with skills and tools to monitor, document and report on human rights violations that escalates at various stages of the election cycle including campaign period that are unfortunately marked by ethnic mobilization, hate speech, incitements, and smear campaigns; political party primaries that are marked by cut-throat competition that include voter bribery, transfer of voters and violence and election day where there are violent attempts to stop protagonists from voting through violent displacements.

The monitors managed to document critical information that was widely shared with our partners to help timely intervention to mitigate escalation of tensions, seek justice and intervention by relevant state actors. We are proud that unlike past election the coordination, information sharing and rapid intervention by state and non-state actors resulted in an enviable outcome of largely peaceful election and the ultimate change of government in line with the constitution.

Nevertheless, the election project brought to the fore critical lessons and shall inform ours and our partner's work. These are captured in our recommendations section that include advancement of ICT is election monitoring through use of phone-based monitoring and reporting application tool called Mtetezi (defender), which ensured safety of monitors and timely recording and reporting of incidents. The information collected has been critical basis for engagement with relevant actors to improve the practice and legal environment for the administration of peaceful and credible election.

Similarly, the number of documented cases of human rights violations especially targeting women is of great concern. There must be concerted effort to enhance the promotion and protection of human rights all the time but more so during election period.



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## List of Abbreviations and Acronyms

COVID-19	Corona Virus Disease
CSOs	Civil Society Organizations
DC-KE	Defenders' Coalition - Kenya
FGM	Female Genital Mutilation
GBV	Gender-Based Violence
HRBA	Human Rights-Based Approaches
HRDs	Human Right Defenders
IEBC	Independent Electoral and Boundaries Commission
IMLU	Independent Medical Legal Unit
IPOA	Independent Policing Oversight Authority
JSC	Judicial Service Commission
KHRC	Kenya Human Rights Commission
KIEMS	Kenya Integrated Electoral Management Systems
KNCHR	Kenya National Commission of Human Rights
LGBTI-Q	Lesbian, Gay, Bi-Sexual, Transgendered, Intersex – Queer
ODPP	Office of the Director of Public Prosecutions
OHCHR	Office of the High Commissioner for Human Rights
ORPP	Office of the Register of the Political Parties
SOGIE	Sexual Orientation, Gender Identity and Expression
SGBV	Sexual and Gender-Based Violence
UN	United Nations
WHRD	Woman Human Right Defender

# Acknowledgements

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We sincerely thank Kamau Ngugi, the Executive Director, for his strategic leadership and guidance throughout the election project. Further, we sincerely acknowledge and appreciate the role played by the entire team at Defenders Coalition for providing technical input in the conceptualization of the project and their invaluable comments for the final production of this publication.

The Defenders Coalition also acknowledges the unwavering support of our Board of Trustees and development partners who are the Office of the High Commissioner for Human Rights (OHCHR), Embassy of Germany in Kenya, Embassy of Norway in Kenya, and Embassy of Switzerland in Kenya for whom we are grateful. We thank them for making the publication of this report possible. Finally, we extend special thanks to Tom Kagwe, J.P. for his technical support, research and writing the report.

*"... support civil society that are involved in conflict early warning systems and response so that they map areas that could explode and coordinate such response."*



# Executive Summary

This Report, *Dusk to Dawn? Our HRDs Story on Kenya's 2022 Electoral Processes and Outcomes* is a summary of the Human Rights Defenders' (HRDs) monitoring exercise that was carried in one (1) year between August 2021 and August 2022. Its title is informed by the English saying that it is 'darkest before dawn'. This saying means that prior day break it is the darkest, and of course that translates to that before something good happens one must go through serious problems. That has been Kenya's history with elections since 1992.

President (Dr. William Ruto) the eventual winner of 2022 presidential elections has been part of the government that has been in power for the past 09 years. He served as the Deputy President under President Kenyatta between 2013-2022. Under that government Kenyan people suffered a lot socially, economically and also politically. Now the question that bothers Kenyans is whether with Ruto's presidency, Kenya will change for the better; in other words, will Kenyan people fortunes change so that we get out of the dusk that we have been going through culminating in COVID-19, to a new dawn of hope and optimism? Only time will tell. In the meantime, HRDs have a lot of work to hold the 'new' government to account for all the pledges they made during the campaigns.

Human Rights Defenders (HRDs) as used in this report, is a term derived from the UN Declaration of HRDs, of 1998, which identifies HRDs as individuals or groups who act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms through peaceful means.<sup>13</sup> Thus, States are obligated to recognize the value and important contribution of HRDs to peace, sustainable development and human rights and to respect HRDs on a non-discriminatory basis, protect them against any arbitrary action as a consequence of the legitimate exercise of the rights referred to in the Declaration.

Since the introduction of multiparty in the early 1990s, elections held in Kenya, elections are highly contested and elicit mixed feelings and anxiety. Further, there have been periods where elections are marked by violence especially in 1992 and 1997, with the 'climax' being in 2007/08 when Kenya was in the cusp of a precipice. This has invited actions to monitor and respond to these factors. This has seen a huge investment by government, UN Bodies and CSOs to prioritize activities that enhance and promote peace, electoral justice, and respect for human rights.

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<sup>13</sup> *The Declaration on Human Rights Defenders, adopted by the General Assembly in its resolution 53/144, is based on and incorporates human rights enshrined in legally-binding international instruments. <https://www.ohchr.org/en/civic-space/declaration-human-rights-defenders>, accessed Tuesday, October 12, 2022.*

From August 2021 to August 2022, the Defenders' Coalition recruited a total number of 212 monitors who are essentially HRDs by training and practice to monitor human rights violations during the said period. In three (3) periods, the Defenders Coalition facilitated these HRDs to undertake monitoring in different batches: first, between August and December 2021, there were 75 monitors;<sup>14</sup> second, from December 2021 to January 2022, there were 32 monitors;<sup>15</sup> and finally, between June and August 2022, there were 105 monitors. This Report is thus a comprehensive compilation of what transpired in Kenya, from the views and perception of Kenyan HRDs based on Human Rights-Based Approaches (HRBA).

This Report is a consolidation of various reports by Defenders Coalition which includes among others, the Report that is titled Status of Human Rights Defenders at the Blink of 2022 Elections; this covers the period from August 2021 to July 2022. Other reports are situational reports, which are basically summing up what HRDs monitors perceived throughout the that cover various months towards the August Election, particularly the months of June, July, and August 2022 when Defenders Coalition has 105 monitors<sup>16</sup> on the ground for those three (3) months.

## FINDINGS

Overall, the HRDs monitored, documented, and reported various forms of violations during the project period August 2021-September 2022. These abuses ranged from, threats on the right to life, of not the HRDs but also the general populace including forceful and politically motivated disappearances. Indeed, 259 people were killed by police in differing circumstances and 35 disappeared in police custody. Second, and connected to the above are many cases of police brutality. Police violently dispersed up peaceful protests and assemblies especially by HRDs and in some instances caused death as a result of use of lethal force.

Further, during this monitoring period, the Defenders Coalition monitors also documented 42 cases of Sexual and Gender-Based Violence (SGBV). Some of these cases related to Female Genital Mutilation (FGM); forced early marriages of under-age girls; spousal domestic violence and rape being on the rise, particularly in Wajir, Siaya, Marsabit, Tana River, Baringo, Tharaka Nithi and West Pokot Counties leading the pack. It should be noted that most of these Counties have constant and overt conflict and hence there is correlation between SGBV cases and conflict.

*14 With support from the UNOHCHR the DC-KE recruited 84 monitors and deployed them in: Baringo, Bomet, Bungoma, Busia, Elgeyo Marakwet, Embu, Garissa, Homa Bay, Isiolo, Kajiado, Kakamega, Kericho, Kiambu, Kilifi, Kirinyaga, Kisii, Kwale, Kisumu, Lamu, Laikipia, Machakos, Makeni, Mandera, Marsabit, Migori, Meru, Mombasa, Murang'a, Nairobi, Nakuru, Nandi, Narok, Nyamira, Nyeri, Samburu, Siaya, Taita Taveta, Tana River, Tharaka Nithi, Trans Nzoia, Turkana, Uasin Gishu, Vihiga, Wajir, and West Pokot county*

*15 Defenders Coalition, with support from the UNHCR recruited 32 monitors from across the country (Laikipia 3, Kilifi 2, Nairobi 6, Mombasa 2, Kisumu 4, Marsabit 4, Vihiga 2, Uasin Gishu 2, Nakuru 5) who used Mtezezi Application (digital application) to monitor the situation of human rights in the country. The Mtezezi Application was developed to give consideration to the key human rights principles and standards.*

*16 With support from OHCHR and Norwegian Embassy, the DC-KE identified, trained and deployed 105 HRD monitors from among the diverse HRDs membership and networks that included women, men, persons with disabilities and gender minorities to 29 Counties in Kenya.*

The Defenders Coalition documented throughout the year, constant persecution of HRDs, where their operating environment is shrinking, and perpetrators act with impunity. HRDs continue facing intimidation, criminalization, harassment, stigmatization, and vilification and their work was negatively profiled by State and non-State actors. More concerning is that the perpetrators engage in smear campaigns, de-registration of HRDs organizations, and threats of staff of organizations including Defenders Coalition that was a victim of these attacks.

Of special or mention is the intolerance and attacks on HRDs working for the rights of sexual minorities and women human rights. During the project period, two (2) were founded murdered in Nairobi and Nyeri counties whilst many others SOGIE HRDs have been physically or sexually attacked or arbitrarily arrested or harassed in their homes by unknown persons, especially for Women HRDs (WHRDs), in the period under review.

Since this Report is about monitoring elections by HRDs, one could argue with all the above, the work of HRDs has been rather complicated insofar as their mandate of fighting for the protection, promotion, and fulfillment of human rights in accordance with the three (3) international, continental and national obligations.

## **OTHER CONCERNS**

Part of the problems as stated above plus the issue of early smear campaigns and use of misinformation and political intolerance, makes HRDs of defending of human rights becomes next to impossible. Indeed, violence and insecurity that has plagued many Counties makes HRDs vulnerable to do their work. So are attacks on media houses and journalists not to mention forced evictions and displacement and re-emergence of criminal gangs in the period under review, such as the notorious 'Confirm Gang' in Nakuru County which caused untold suffering to the residents.

Between August 2021 and September 2022, because marked heightened electoral and political tensions, a lot of transgressions were recorded by the monitors who were evenly distributed across the country, particularly in what the National Cohesion and Integration Commission (NCIC) described as hotspot areas in its report, Report on Conflict Mapping, that was released in June 2022. The Defenders Coalitions deployed HRDs to monitor in the six (6) high risk Counties of Nairobi, Uasin Gishu, Mombasa, Kisumu, Nakuru and Kericho.<sup>17</sup>

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*17 For the full Report, see [https://cohesion.or.ke/images/docs/downloads/hotspot\\_mapping\\_ncic.pdf](https://cohesion.or.ke/images/docs/downloads/hotspot_mapping_ncic.pdf) accessed, Friday 14, October 2022.*

## CONCLUSIONS AND RECOMMENDATIONS

At end this Report, the Defenders Coalition makes several conclusions and recommendations internally relevant and to other stakeholders in that order. first, and internally, the Defenders Coalition has invested and revamped the Mtetezi Application (App) during this monitoring period, but it will further re-programme it to ensure it works throughout. Not all monitors in the review period accessed the App and hence there is need to reconfigure the same, as it has when it works, proved to be very vital in safely monitoring, documenting, and reporting on human rights violations across the Republic.

Second, the Defenders Coalition has trained over 300 HRDs on monitoring, documenting, and reporting. However, not all monitors filed comprehensive reports to the Secretariat. Thus, the Defenders Coalition will invest in the HURIDOCS system and see the extent to which these materials could be distributed to the HRDs across the country, so that they may make reference to these international materials to improve their role in monitoring, documenting and reporting.

Third, the Supreme Court made a raft of recommendations about the role of the IEBC and the reforms it much needs. The judgment is available for perusal by HRDs to step up advocacy around the much-needed changes to the IEBC since some Commissioners exiting the institution. Further to the above, the Defenders Coalition strongly recommends a through audit of the structures and systems of the IEBC to rectify some of the gross failures cited in this Report. One of them that stood out is the refusal of HRDs to access polling stations, yet they had their letters of accreditation and IEBC badges!

Fourth, some civil society members were closely engaged with or perceived to be aligned to either of the two political outfits: Azimio la Umoja or Kenya Kwanza. Noting this there is need for a closed-door meeting to interrogate the role of civil society in an election, and their contribution to objective discourse that ensures electoral integrity and respect for human rights. This introspection is very important to plan on the next electoral cycle and what would be our role in the envisaged reforms of IEBC and other stakeholders.

Further, we challenge the media houses and the owners to prioritize journalists' safety when covering partisan elections and fully enforce the code of conduct for practice of journalism and ethics as per the Media Act (2013). Public and private media houses also need to interrogate the need for fair coverage of candidates, especially the presidential contenders, but also manage hate speeches, fear mongering and despondency etc. during the electoral period.

As for the security agencies, in their various formations, they should ensure that all their officers are taken through the electoral code of conduct since some of them were accused and presented before courts for gross violations of the electoral process. On the other hand, the brutality and arbitrary arrest on unarmed persons during demonstrations, particularly HRDs, must be addressed to ensure proper training and respect for human rights in public order management. Connected to

this, these agencies should conclude all the investigations underway where HRDs especially WHRDs have suffered under the hands of rogue officers or unknown persons. We encourage IPOA to continuously investigate and hold these officers to account.

To the development partners, we reiterate recommendations of the July 2022: that they should set aside support for civil society that are involved in conflict early warning systems and response so that they map areas that could explode and coordinate such response. The NCIC Report came in handy to provide civil society with what to look out for during monitoring.

Finally, all stakeholders in the electoral processes and outcomes, whether they are monitors or observers should consider their conduct in times of coordinating their own safety and/or response that is effective and efficient. Through this support the stakeholders will be able to avert potential conflict from conflagrating further.

With the above, and many more in the body of this Report, the Defenders Coalition will continue contributing towards the work of HRDs by making the environment safe and also that their stand of defending human rights does not cause them harm or harm to those they represent as they undertake their mandate.

**PART**  
**01**

**Pre-Election  
Monitoring  
Findings**

# Introduction

## About the Defenders' Coalition

The Defenders Coalition is a national membership organization established in 2007 and registered under Kenyan law as a Trust to champion the safety, security, and wellbeing of human rights defenders (HRDs). The Defenders Coalition works primarily for the protection of HRDs in Kenya. Among others, the Coalition strengthens capacities of HRDs to work more effectively, besides advocating for favorable legal, policy and institutional environments to reduce their vulnerability to the risk of persecution and or harm.

The membership of the Defenders Coalition includes Kenyan human rights organizations and individual HRDs. Defenders Coalition is on its part a member of various networks regionally and globally. These include among others Defend Defenders, formerly, the East and Horn of Africa Human Rights Defenders Network, World in Action, and CIVICUS – the World Alliance for Citizen Participation. Further, the Defenders Coalition has observer status with the African Commission for Human and Peoples Rights (ACHPR). Regionally, the Defenders Coalition has strategic partnerships with a broad array of civil society initiatives, movements, and actors.<sup>13</sup>

Defenders Coalition envisions a just society founded on human rights by championing for the safety, security, and well-being of Human Rights Defenders. The Defenders Coalition believes that every individual is entitled to the rights and personal liberties, security, and social justice and that HRDs play a frontline role of advancing the realization of these rights and freedoms as guaranteed by the Constitution of Kenya 2010.

## Political Context

Kenya has made significant progress in institutionalizing democracy over the past two decades as this is reflected in a few successful multiparty elections since 1992 amid increasing uncertainty around the potential political and security risks that manifested during the 2022 general election. Recognizing that democratic elections form the basis for legitimate government, the Defenders Coalition supports the electoral process in Kenya through deployment of election monitors across the country to enhance the transparency and credibility of elections as well as encourage voter participation.

Elections are embedded in a recurrent election cycle. The electoral cycle is generally regarded as running from the moment an election is held to the moment the next election is held. The underlying idea is that elections are not isolated events but processes that expand well before and well after election day.

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See <https://defenderscoalition.org/about-us/>, accessed Wednesday, October 12, 2022

Kenyans have the right to participate in government and public affairs through the casting of votes or by being elected through free, fair, and credible elections held periodically every five years. Fundamental to any political system that operates a democracy is the choosing of political leaders through elections and citizens popular participation. Kenyans living in Kenya and diaspora exercised their democratic right to vote on 9th August 2022 after a five-year cycle and the third general election since the promulgation of a new constitution in 2010. This marks the end of the second and final term of the Jubilee Alliance party government under President Uhuru Kenyatta.

Defenders Coalition believes that elections are the building blocks to democracy and human rights; and to ensure that the votes of Kenyans reflect their true wishes in the general elections, Defenders Coalition deployed monitors across Kenya to monitor and document the electoral process through the lens of human rights.

Defenders Coalition monitors are impartial and through the monitoring process they provided both qualitative and quantitative assessment of the electoral process as they fully recognize that the IEBC has the legal mandate to conduct and announce official results of Kenyan elections.

The HRDs continued to monitor human rights violations and report through a phone-based application monitoring tool called Mtetezi that was developed to consider the key human rights principles and standards. The Defenders Coalition Secretariat relied on the information shared by monitors and utilized the findings of the monitoring exercise to guide on further actions particularly on investigations, rapid response missions, issuance of advisories and reports with key findings and recommendations.

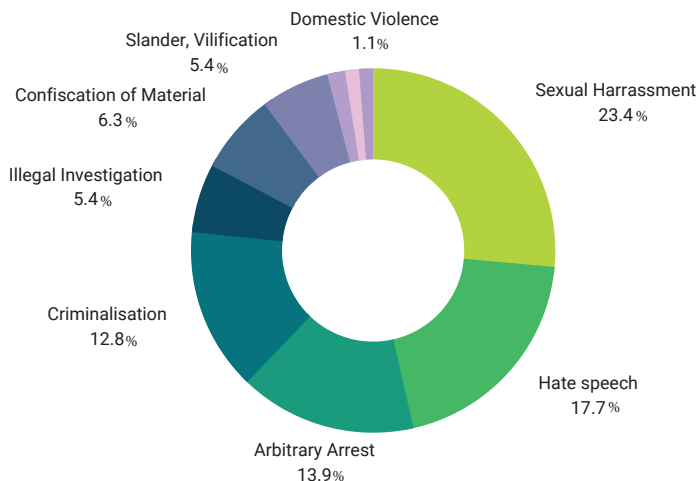
## Pre-Election Findings

The political environment in the months preceding the August election was intimidating and tense as politicians traversed the country campaigning. Campaigns were marred by violence, hate speech and incitements targeting ethnic, rival political groups that are perceived to have different political opinions as well as HRDs.

Key perpetrators consistently were criminal gangs or hired goons who attack individuals perceived to not support their preferred candidates. Unhealthy competition created through social media led to online bullying, smear campaigns, disinformation and misinformation influenced by handouts given to bloggers by political aspirants in the campaigns. The bloggers were using WhatsApp, Twitter, and Facebook, which have millions of users to propagate their political propaganda in favor of who pays them more. Figure 1 below demonstrates the political environment.



Figure 1: Overall Threats, Violence and Tension



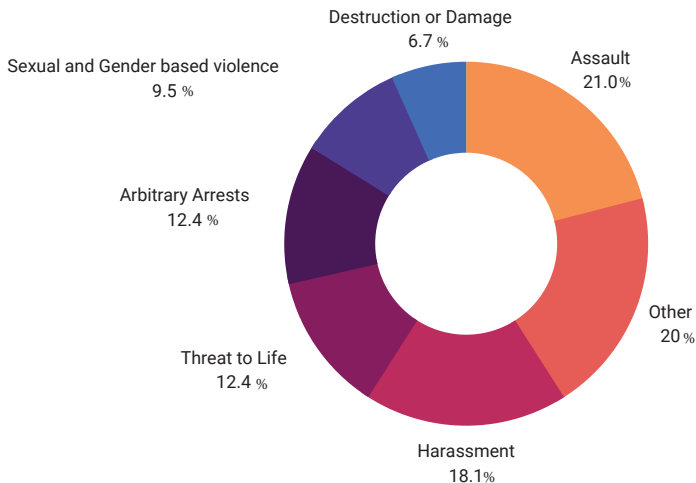
Most of the counties recorded political intolerance, threats, arbitrary arrests, sexual harassment, hate speech and assault as modus operandi. Political intolerance was occasioned by threats and intimidation to opposing groups. Most notably, the factions of tangatanga and kieleweke were caught at loggerheads on several instances. Politicians were inciting and profiling communities believed to be supporters of their rivals thus creating tensions within some regions in the country. There's continued existence of political tension along ethnic borders including in the borders of Kericho, Nandi and Luo communities that border Kisumu County. This was attributed to increased mobilization along ethnic lines.

Further, there were reemergence of criminal gangs such as Mauki, Mungiki, Gaza and Confirm Gang, which were also causing panic in Nakuru, Nairobi and Kajiado Counties. In Mombasa County, these gangs include: Geta, Wakali Wao, Congo by Force, Bad Squad, 88 Batallion, Young Turks, Wajukuu wa Bibi, Akili za Usiku, Buffalo, Born to Kill, Gater Family, Kapenguria Six, Chafua za Down, Piyo Piyo and Waiyo. In Nyeri, Kirinyaga and Murang'a Counties, prevalent gangs include Mungiki, Gwata Ndai and Kenya Kenda. These gangs have caused mayhem and untold suffering in all these Counties, particularly for women.

Beyond the gangs, many cases were reported on sexual harassment and early marriages in regions where patriarchy is a norm, and women's rights violated. These conflicts have resulted in further conflicts of land whereby land was used as a tool to trigger conflict in two different communities which translated to an ethnic-related conflict. Reports indicated that cattle rustling, and clan-based clashes are the leading causes of tension among communities in some Counties. Baringo, Laikipia, Samburu, Isiolo, Marsabit and West Pokot led in instances of cattle rustling.

In December 2021 for instance, that month recorded an increase in the rise of militia and political goons who were being hired/used to threaten, disrupt and intimidate opposing political figures and their supporters. HRDs were also profiled, assaulted, arrested and their life threatened in line of duty.<sup>8</sup>

Figure 2: Violations Against HRDs



Beyond the above, in Counties of Mombasa, Murang’a, Migori, Tharaka Nithi, and Nakuru just to mention a few, HRDs, were intimidated threatened and could not access polling and counting halls, and any attempt to record on phone any violation of the electoral code was thwarted either police or election officials. Their documents were being confiscated as well as being harassed not to record. This trend is not new as the reports from the monitors since August recorded even during campaigns, political party nominations, and all meetings they attended to monitor.

In some instances, HRDs were however successful. In Migori for instance, a monitor recorded voter bribery and use of a public vehicle to campaign, which was reported to the police and the suspects arrested. This evidence is with the Defenders Coalition.

Further, politicians took advantage of the current socio-economic state of the country and legitimized hiring of thugs especially the youth to disrupt rival political rallies. This witnessed violence, injuries and destruction of property during political gatherings.

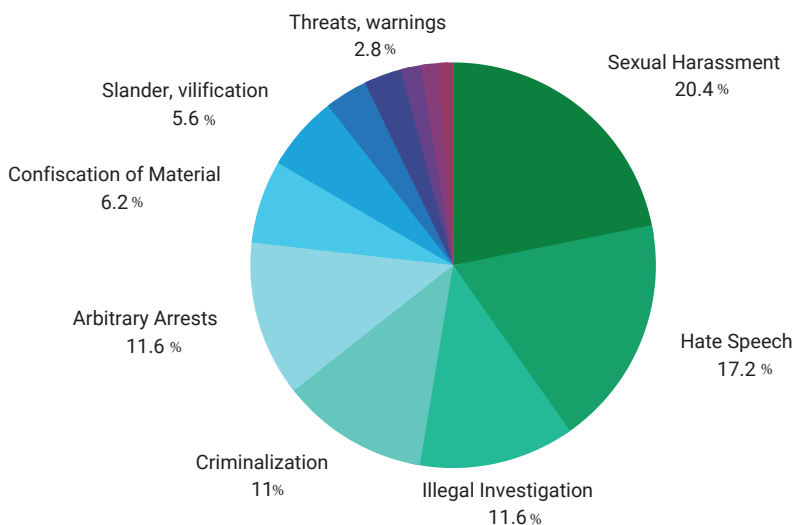
*8 For instance, Elizabeth Ekaru, a renowned woman human right defender was murdered by her neighbor. She was known for advocating for land rights and women’s rights. The perpetrator was arrested and the case is still ongoing in court. See statement by the DC-KE, Enough is Enough: Stop Killing Women Human Rights Defenders, Nairobi, 5 January 2022. Visit: <https://defenderscoalition.org/enough-is-enough-stop-killing-women-human-rights-defenders/>, accessed Tuesday, October 12, 2022*

Existing socio-economic challenges, including poverty, criminality and youth unemployment, have been further exacerbated by vulnerabilities created by the current COVID-19 pandemic. As a result, while political tensions are peaking due to 2022 elections, more and more Kenyans, especially the youth are lured into criminal gangs/groups due to socio-economic shocks.

The role of violent and coercive groups has become so widespread in Kenya that they even determine the cost and provision of urban services. Some of the criminals are fully involved in politics, providing security and mobilization services to politicians seeking elective seats. The criminal gangs kidnap, attack, steal, kill and disrupt political gatherings and campaigns.

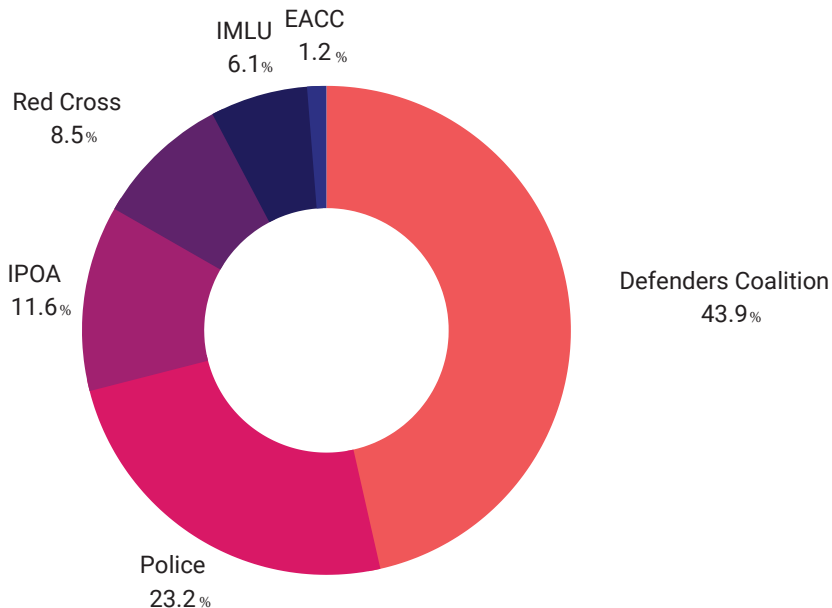
Women and Women HRDs every election year often face stigmatization by virtue of their sex or the gender- or sexuality-based rights they advocate. As a result of this, WHRDs often find themselves and their work subjected to stigmatization by both State and non-State actors. A common accusation directed at those working on women rights, gender issues and LGBTI rights, is the assertion that these defenders are somehow advocating or attempting to import foreign or Western values which contradict national or regional culture not to mention religiosity. This electoral period was marked by the same as documented by HRDs monitors. With specific to WHRDs, women aspirants and candidates, Figure 2 below what generally women went through at the hands of goons or rivals (how were men or women):

Figure 3: WHRDs, Women Aspirants and Candidates



Those violated reported these violations. Most mainstream organizations that advocate for human rights were the port of call where many of the violations were reported to, including the Defenders Coalition which received about half of the complaints (43 percent), followed by police (23 percent) and finally the IPOA (17 percent) Figure 4 below summarizes.

Figure 4: Organizations where Violations were Reported



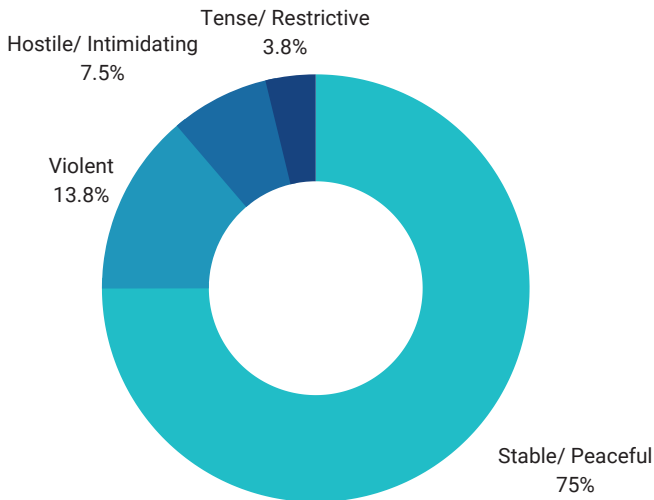
**PART**  
**02**

**During-Election  
Monitoring  
Findings**

Elections in Kenya are highly contested during every five years and are often characterized by violence and chaos. On August 9th 2022, thousands of Kenyans peacefully lined up to vote in a highly contested election to elect their president, senators, governors, members of parliament (MPs), women representatives and members of county assemblies (MCAs). Out of 22,120,458 registered voters according to IEBC, 14,213,027 registered voters participated in the August 9th general elections.

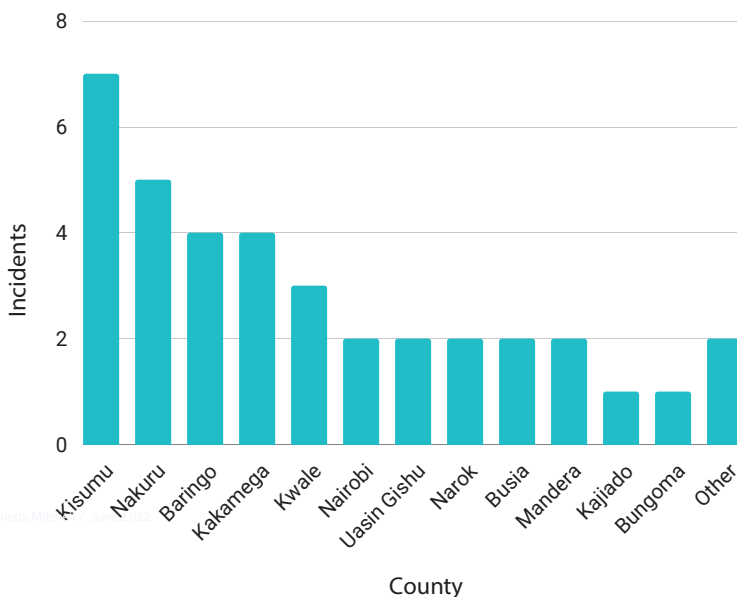
On election day, the Defenders Coalition noted that the electoral environment in most counties was peaceful with some counties being tense and violent. There was sporadic chaos and violence witnessed at polling stations, constituency tallying centers, county tallying centers and national tallying center. This chaos/violence escalated due to delayed announcement of results, denial of access for monitors and observers, failures of Kenya Integrated Elections Management System (KIEMS) kits, voter bribery allegations, late openings of polling stations, misconduct of IEBC officials as well as fights from rival supporters of political aspirants. Figure 5 below summarizes the environment.

Figure 5: Largely Peaceful, but with Tension



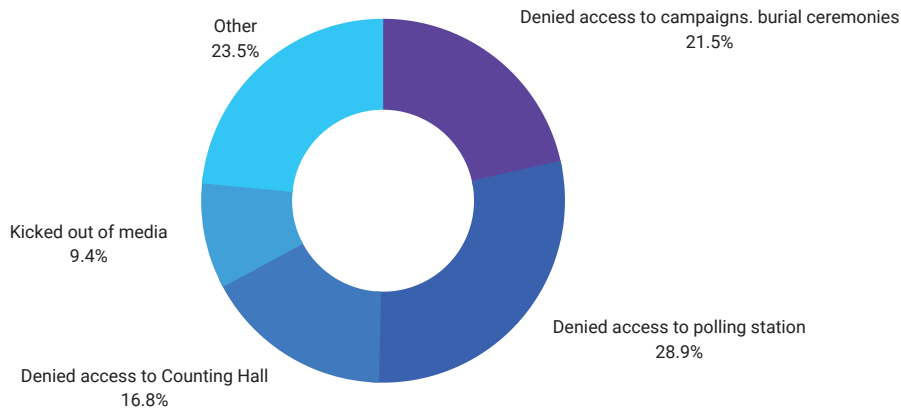
Defenders Coalition noted from the information shared by monitors is that monitors and observers across the country were denied entry to the polling stations and tallying centers. Security officers managing security in the polling stations and tallying centers and the presiding officers denied them access citing that they should produce accredited letters from the electoral body and oath of secrecy despite the monitors and observers having accredited badges from the IEBC. Figure 6 below demonstrates 12 Counties where HRDs were denied access not to mention others, Kisumu leading the pack, followed by Nakuru, Baringo and Kakamega not mention other counties.

Figure 6: IEBC Denial of HRDs Access



Beyond denial, the Independent Electoral and Boundaries Commission (IEBC) had been ordered by the High Court to use the manual voters’ register during the August 9th General Election. Justice Mugure Thande in his ruling while reversing the decision of the electoral body to scrap manual registers further dismissed a letter that IEBC wrote to Azimio la Umoja, saying they will only use KIEMs kits to identify voters. The Justice stated: “the court has found that the impugned decision of the Commission to abandon the printed register violates the clear provisions of the Constitution which provides that where an electronic voter identification device fails then such voter would be identified using a printed register.”

Figure 7: Other Challenges Cited



Technology was proposed as a way of bolstering transparency around polls and reducing the delay in announcing results. The 2013 and 2017 elections saw results electronically and biometrics used to register voters and identify them. Despite previous instances, the use of electoral technology remains a source of worry for the voters, civil society organizations and monitors/observers.

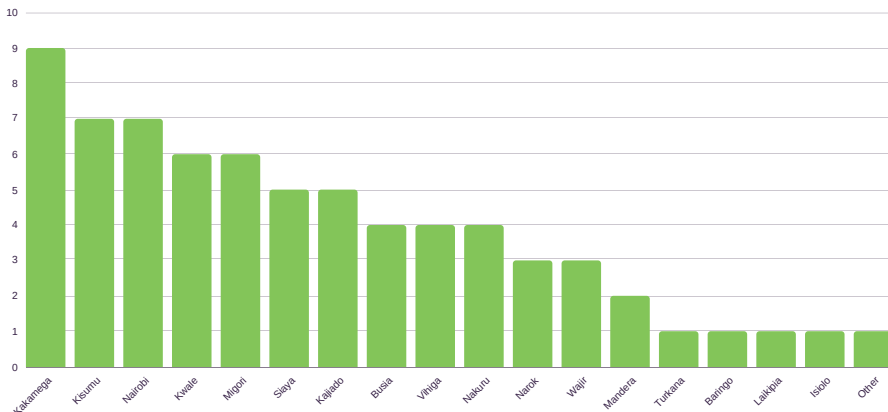
Despite the High Court order, the Defenders Coalition noted that the IEBC used the KIEMs kit to identify voters on election day which eventually failed in some parts of the country. On election day, the KIEMs kit were unable to identify all voters across the country, especially the elderly persons. According to the IEBC, only 200 kits had been reported to have malfunctioned by the time the IEBC provided an update at around 1PM on Tuesday, August 9th 2022.

Beyond the August 9th processes, there were still violent incidences between the Election Day and August 15th that were reported by mainstream media and the HRDs monitors. From Nairobi, to Nakuru, to Migori, to Mombasa and to Kisumu. Most of the violence was by rowdy youth who were clashing based on which side they support, or where the election officials or police were caught with ferrying marked ballot papers and electoral materials. The latter happened in Kilgoris in Narok County, while in Starehe in Nairobi County where a presiding officer was caught with unmarked ballot papers, and police arrested them.<sup>13</sup> Voter bribery was another election offense.

<sup>9</sup> See the story of John Maina and an IBEC Clerk in court for violating the law. <https://nation.africa/kenya/counties/nyeri/iebc-clerk-charged-with-issuing-excess-ballot-papers-to-a-voter-3924930>, accessed Thursday, October 13, 2022



Figure 8: Incidences of Violence by County



From the Figure 8 above, it is visible that Kakamega led with 9 incidences; Kisumu 7; with the rest which followed having between 6 and 4 incidences. Those ‘northern’ Counties of Baringo, Turkana, Laikipia and Isiolo recorded 1 incident each.

HRDs, including the media and IEBC officials, were also attacked and/or intimidated by agents of candidates, candidates themselves, rowdy youth, the police, and such characters. Of particular concern to the Defenders Coalition is the attack on the IEBC Commissioners at the National Tallying Centre on Monday, August 15th 2022.<sup>13</sup> In Wajir and Nairobi Counties, IEBC faced the wrath of angry and loosing candidates which were really informed by political intolerance, ethnic animosity, and just lack of acceptance of the electoral results.<sup>14</sup>

In conclusion to these sections, the pre-election and during-election periods the Based on the summary of cases noted, the following issues were recurrent from the counties/country in the months of between August 2021 to August 2022, these seven (7) were recorded:

1. Violations of media freedom
2. Political intolerance and intimidation
3. SGBV/GBV cases (violations on women, indigenous communities and sexual minorities)
4. Hate speech and incitements
5. Violations against HRDs, journalists and monitors

<sup>13</sup> See media report on the Bomas Fiasco. Visit: <https://www.the-star.co.ke/news/2022-08-16-inside-bomas-drama-that-nearly-disrupted-ruto-declaration/>, accessed Friday, October 14, 2022

<sup>14</sup> See the story of Mohammed Kanyare, who attack in Wajir County led to his hospitalization and amputation of his leg. <https://nairobi.news.nation.africa/iebc-boss-claims-goons-wielding-crude-weapons-attacked-them-at-city-hotel/>, accessed Friday, October 14, 2022

## 6. General insecurity and erroneous public order management

### 7. Rise of militia and organized groups

Finally, despite the above, the Defenders Coalition believes that the 2022 Election were a significant step in the consolidation of democracy and stability of the country. On August 9, 2022, Kenyans turned out in significant numbers to exercise their franchise in a peaceful manner. Defenders Coalition recognized the role played by state actors particularly the National Police Service in safeguarding Kenyans during the electoral process.

CSOs played an important role in observing all aspects of the election process, releasing reports of their findings inclusive of recommendations for improvement of the electoral system. This Report plus the others released by the Defenders Coalition in the last one (1) year, is geared towards that end. Other CSOs and faith-based groups played a key role in promoting peace and mitigating conflict despite a significant number of them having been denied access to the polling stations and tallying centers across the country.

The media played a significant role in civic and voter education, fact-checking, covering political candidates' activities, peace messaging, and providing information to the public during the elections. Defenders Coalition noted misuse of social media platforms as catalysts for misinformation and disinformation during elections to undermine state and non-state actors who were key stakeholders in the electoral process.

However, many polling stations observed by the Defenders Coalition did not open and/or close on time. In some cases, the opening was delayed by more than two hours. Some of the reasons for the delay include problems with the Kenyan Integrated Elections Management Systems (KIEMS) kit, the late arrival of polling staff and materials, and poor preparations of the polling stations.<sup>15</sup> That is why this Report highly and strongly recommends an audit of the IEBC's systems and structures.

Further, the Defenders Coalition recommends that State authorities should give clear instruction to the security forces that journalists have a right to monitor and report on demos and should not be obstructed in any way. There is need for the IEBC, State and non-State actors to engage early so that both election observation and monitoring is adequately planned for through sensitization and awareness of the respective roles training programs to enable effective participation.

Indeed, unhampered monitoring of the election process is essential to deter the electoral management body against electoral malpractices and contribute to accountability. This involves early accreditation of monitors and observers and clear communications to election officials on the importance of having monitors as key stakeholders in the electoral process. Further, in the future, the

<sup>15</sup> For the stories of the failed Kits and the locations, Visit: <https://www.citizen.digital/news/iebc-only-200-kiems-kits-are-reported-to-have-failed-n303700> and <https://nation.africa/kenya/news/politics/delays-at-polling-centres>

*as-kiems-kits-malfunction-3909300, accessed October 15, 2022*

Media Council of Kenya should develop best practices on relaying election related information/results by media houses to avoid creating tension as well as considering the environment they are working in.

Following the election declaration and also the Supreme Court verdict, HRDs, monitors and observers maintained a high degree of situational awareness and avoided demonstrations due to risks of post-polls violence that we feared could have occurred. CSOs intensified peace meetings in the hotspot areas to help avert conflicts and violence. In this post-election period, the Election Offenses Act should be reconfigured, which should clearly stipulate electoral offenses such as on violence and the sentences thereon should be fully implemented against persons who violated the elections laws. This applies to the post-election monitoring, which we now turn to.

**PART**  
**03**

**Post-Election  
Monitoring  
Findings**

In this period past the August election, the Defenders Coalition demobilized the 105 HRDs it had recruited in May by mid-September and hence no monitoring is happening as this Report is being concluded.<sup>13</sup> From the final reports filed for the month of August, they still depict that the environment for the HRDs work still remains largely the same.

In the period under review, particularly in July, August and September 2022, the Defenders Coalition strengthened and has continued to strengthen partnerships with other human rights partner organizations including Kenya National Commission on Human Rights (KNCHR), Kenya Human Rights Commission (KHRC), Angaza Movement, Election Observers Group (ELOG) and Independent Medical and Legal Unit (IMLU), and Katiba Institute on election preparedness, monitoring and documentation.<sup>14</sup>

This investment facilitated information sharing, strengthened and coordinated multiple intervention strategies, particularly before and after the Supreme Court verdict, in addressing challenges facing monitors and HRDs, deployed monitors on thematic areas and rapid response approaches as Kenya winds up 2022 general elections.

Even after the election, stakeholders have ramped up efforts to expand fundamental freedoms and transparency. Information sharing is designed to identify malpractices and raise the quality of political contests, electoral participation and an enabling safe working environment for HRDs so that they meet the human rights standards and principles as well as rapid response.

Noting what this Report contains in Part I and II, there is need for the Defenders Coalition to monitor the ongoing moving forward. This Report strongly recommends that the Secretariat fundraises and recruits some scores of monitors (perhaps 60) to undertake monitoring between November and December 2022, ending in January 2023 to monitor how this 'new' government is settling down and track its progress up for 90 days between November 01, 2022 and January 31, 2023.

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<sup>13</sup> The 105 were identified, trained and deployed HRD monitors from among the diverse HRDs membership and networks that included women, men, persons with disabilities and gender minorities to 29 Counties in Kenya. The Contracts of Service started on Wednesday June 01, 2022 up to Wednesday, August 31, 2022. However, upon negotiation, this was extended to mid-September

<sup>14</sup> To demonstrate these partnerships, in the month of June 2022, Defenders Coalition referred the following cases:

- *Naivasha Case: Defenders Coalition referred to Katiba Institute the public interest litigation part of the Naivasha case whereby the community-based organization was deregistered on false allegations of the CBO being a gang group.*
- *Defenders Coalition also referred a case to Kenya National Commission on Human Rights whereby a victim was physically attacked and nursed injuries from someone known to him on 20th May 2022 at a club in Kajiado town.*

# Recommendations and Conclusion

## Recommendations

From the above sections of this Report, which already contain substantive findings and recommendations therein, this Report summarizes the general broad recommendations, as follows:

1. That the Office of the Director of Public Prosecutions (ODPP) must exercise its powers and order timely investigations into alleged electoral offenses committed throughout the electoral process and outcomes and prosecute the offenders as provided by law.
2. That IPOA concludes investigations into the police that violated all manner of stakeholders of the electoral processes and outcomes with a view of holding them accountable for the brutality meted out on unarmed HRDs and general populace.
3. The IEBC Commissioners cease any activity such as boundary delimitation and concentrate of auditing all the systems and structures that led to the failure of some KEIMS kits and other processes
4. That the Office of the Register of Political Parties (ORPP) should investigate and ensure that they reign in political parties that did not comply with nomination procedures, especially those alleged to have been involved in election malpractices or those alleged to have been involved in violence, and what is going in the 13th Parliament.
5. The Judicial Service Commission (JSC) must undertake investigations on the perceived negative public perceptions including corruption and lack of professionalism on part of the Supreme Court.
6. The security agencies should ensure that the cases reported promptly after they occurred are thoroughly investigated and those found culpable are prosecuted to the full extent of the law.
7. Further to the above, for purposes of WHRDs and women, the gender desks in police stations should be equipped with staff who will be able to respond to gender-based cases or violations in a timely manner.
8. The media Council of Kenya (MCK) should audit coverage and provide a full report on whether there was balanced media coverage for all candidates and political parties during public events
9. The new County Governments, Assemblies and County security teams must coordinate effectively in developing and supporting County-specific measures that address localized conflicts and violence at the county level.
10. Non-State actors and CSOs should invest in collaboration and partnership building across geographic spaces such as County level to avoid duplication, unhealthy competition and enhance information exchange as we plan the next electoral cycle

## Conclusion

More than once, the Defenders Coalition noted that the majority of Kenyans were ready albeit tension and all manner of violations that were preceding that election so as to exercise their democratic rights. State actors including the IEBC, National Police Service, IPOA and Judiciary expressed their preparedness objectively working together to deliver a peaceful, free, fair and credible election on the August 9th, 2022.

However, despite the above assurances from the State actors and institutions, Defenders Coalition was equally deeply concerned about the numerous violations that are escalating like political intolerance, insecurity, incitements against political opponents, ethnic politics, violations on women and sexual minorities, organized criminal gangs and violations on HRDs, monitors and journalists being the most prevalent.

This Report, and many more that are available with the Defenders' Coalition has ably and unequivocally demonstrated what transpired to HRDs and the general populace; it is time to fight for justice post-facto. The above recommendations are purposeful to State institutions to act to end the injustice that many went through. It is time to act; not promise. We shall be watching and holding to account all the above institutions led by the Office of the Presidency! Let it be known we shall not relent but advocate for rights and justice.



# Dusk to Dawn?

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