



QUEERING THE BALLOT REPORT 2022

**INITIATIVE FOR EQUALITY
AND NON DISCRIMINATION**



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Executive Summary

This report takes a unique look into the Kenya’s 2022 elections from a queer perspective. In a country that still views the rights and safety of queer people as a “non-issue¹,” Queering The Ballot is a statement that queer Kenyans can no longer be ignored or wished away. Notably, in 2015, the High Court ruled in favour of the registration of an LGBTQ NGO². Justice Lenaola, while a judge of the High Court, affirmed that the NGO Board’s decision to reject the group’s registration violated Article 36 of Kenya’s Constitution, which states that **“Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.”** The High Court interpreted Article 27 on grounds of discrimination, which include sex, to include non-discrimination on the basis of sexual orientation. The Court of Appeal, in a majority decision of three judges, also upheld the decision. The judges further held that morality could not serve as a justification for limiting fundamental rights. Seven years later, and weeks to the launch of this report, the Supreme Court³, in a majority decision, affirmed the decision of the High Court, and allowed freedom of association for all without any discrimination on any grounds, including sexual orientation. This must have been the thinking of the Independent Electoral and Boundaries Commission (IEBC) when granting three organisations that work on upholding the rights of lesbians, bisexuals, and queer persons ‘observer status’ in the 2022 elections.

Much like the Supreme Court, the IEBC had several heated debates to come to what must have also been a difficult decision. However, the bottom line is: all Kenyans have the right to participate in democracy, which is indeed a human right, and we all have a duty in ensuring that elections are free, fair, and conducted (i) by secret ballot; (ii) free from violence; (iii) by an independent body; (iv) transparent and; (v) administered in an impartial, neutral, efficient, accurate and accountable manner. This report evaluates the experience of the first queer led elections observation group.

As citizens of this country, queer Kenyans have the right to fully participate in all civic processes, including the electoral process, which is a critical civic duty and form of expression. Electoral processes directly impact the lived realities of vulnerable and marginalized groups, such as the LGBTQ community. This is because elected leaders are responsible for the development of laws and policies regarding their rights, such as equality before the law, and non-discrimination, access to resources, as well as services tailor made for the community. Furthermore, elected leaders hold great influence on the attitudes of the general public, and could therefore make or break social and cultural changes that are vital to the advancement and protection of the rights of queer people in the country.

This report paints a contextual picture of the evolution and monumental milestones preceding the 2022 general elections. The political and legal framework sets the scene of what the political and legal atmosphere was leading up to said elections. It then takes a look at the entire electoral cycle for the 2022 elections, analysing data collected by 50 election observers focusing on three key regions: Nairobi, the Coast and Western-Nyanza. The data collected highlights the circumstances and incidences arising from the campaign and pre-election period, election day, and the post-election


¹ Aljazeera ‘Kenyatta: Gay rights is a non-issue for Kenya’ (Al Jazeera, 25 July 2015)
<<https://www.aljazeera.com/news/2015/7/25/kenyatta-gay-rights-is-a-non-issue-for-kenya>>

² EG v Non- Governmental Organizations Co-ordination Board & 4 others [2015] eKLR
<http://kenyalaw.org/caselaw/cases/view/108412/>

³ NGOs Co-ordination Board V EG & 4 Others; Katiba Institute (Amicus Curiae) (Petition 16 Of 2019) [2023] KESC 17 (KLR) (Constitutional And Human Rights) (24 February 2023) (Judgment) (with Dissent - MK Ibrahim & W Ouko, SCJJ)

period. Further to the data collected from observers, there is a presentation of data collected from four focus group discussions that seeks to understand what the realities of queer people were during this electoral cycle. These discussions provided a deeper insight into the attitudes, emotions, hopes, and fears of queer Kenyans before, during, and after the determination of the elections. They further highlighted what some of the opportunities for engagement with the new regime might be. The report concludes by sharing some of the lessons learnt from the first cycle of Queering The Ballot, and further outlines recommendations shared by the relevant stakeholders involved in the development of this report.

The development of this report seeks to make a strong and factual statement that queer people have a stake and place in the Kenyan electoral process; that as rightful citizens of this country, it is their civic right and duty to participate in the election of leaders who shape, influence and determine the lived realities of queer people in Kenya, and that the LGBTQ community is not, in fact, a non-issue in this country, but comprises real people with real voices who deserve legal recognition and protection.

 Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.”

Foreword

The Initiative for Equality and Non Discrimination (INEND) was established in 2015 in response to the need for new, expanded, and diversified organising on issues affecting sexual and gender minorities in Kenya. INEND specifically engages strategically and systematically with various actors in mainstream society, particularly those who were known perpetrators of violence and discrimination, as a means of reducing violations of the rights of sexual and gender minorities (SGM).

Since its establishment, INEND has consistently innovated new strategies for advocacy and engagement with various stakeholders, served as a catalyst for more cohesive LBQ organising, worked towards strengthening its capacity as an effective and accountable institution, and gained respect and acceptance from mainstream policy makers in Mombasa and other parts of Kenya. For the first country's 2022 general elections through the 'Queering The Ballot' project.

This project, as we will see in this report, was an audacious move by the Kenyan queer community to affirm their civic right and duty to be involved in the country's democratic processes. INEND seeks to put channels in place to have the queer community register to vote, have a clear understanding of the voting process, monitor the elections as accredited observers, hold forums on leadership and governance, participate in the actual voting process.

This report is an exciting one to indulge in, and it is a first step to seeing the community bravely take steps towards realising their rights as stipulated in our 2010 Kenyan Constitution.

Diana Gichengo.

INEND Board Chairperson

Acknowledgments

Queering The Ballot sought to engage with queer persons on matters voting. The organisation strategically chose to engage LBQ women and GNC persons as minorities within minorities to take part in the general elections. This was a call for them to register to vote, show up on the actual voting date, monitor and observe elections, and generally have conversations on leadership and governance.

Initiative for Equality and Non Discrimination (INEND) geared its efforts towards this project. However, all this would not have been possible without the support and help of our donors and partner organisations who were part of Queering the Ballot.

Our appreciation goes out to our donors who supported this work, including COC Nederland, Urgent Action Fund and UHAI-EASHRI.

We are grateful to the LBQ and GNC led organisations and the public sector transport sector within the Coast that were involved during the conceptualization of Queering the Ballot. Upinde Advocates for Inclusion (UAFI), Coast Women for Women (CWW), Rainbow Women of Kenya (RWOK), and Pwani Feminist Futures Alliance (PwaFFA) for your valuable input in this project.

We are highly indebted to the organisations that were part of the situation room: National Gay and Lesbian Human Rights Commission (NGLHRC), Empowered Ladies Initiative for Equality (ELITE LBQ), and Western Kenya LBQ Feminist Forum (WKLFF) for providing necessary information regarding the project in the different areas across the county, and also for their support in completing the project, including overseeing the 50 elections observers that were accredited under this project.

Special thanks also go to the team members at INEND including the board and the secretariat for their valuable input and running of this project through to its final cycle.

Esther Adhiambo.

Founder & Executive Director INEND

Abbreviations

BBI	Building Bridges Initiative
CBO	Community Based Organisation
CNN	Cable News Network
CREAW	Center for Rights Education and Awareness
CSO	Civil Society Organisation
CWW	Coast Women for Women
EAT	East African Time
ELITE LBQ	Empowered Ladies Initiative for Equality
ELOG	Election Observation Group
FGD	Focus Group Discussion
GNC	Gender Non-Conforming
ICCPR	International Covenant on Civil and Political Rights
INEND	Initiative for Equality and Non-Discrimination
IEBC	Independent Electoral and Boundaries Commission
LBQ	Lesbian, Bisexual and Queer
LGBTQ	Lesbian, Gay, Bisexual, Transgender and Queer
MCA	Member of County Assembly
NGLHRC	National Gay and Lesbian Human Rights Commission
ODM	Orange Democratic Movement
PHI	Public Health Innovations
QBESR	Queering the Ballot Elections Situation Room
QTB	Queering The Ballot
RWOK	Rainbow Women of Kenya
SOGIE	Sexual Orientation Gender Identity and Expression
UDHR	Universal Declaration on Human Rights
UDA	United Democratic Alliance
UN	United Nations
WKLFF	Western Kenya LBQ Feminist Forum

Introduction

Queering The Ballot (QTB) is a first-of-its-kind undertaking where the queer community collectively and meaningfully took part in the electoral process, and exercised their civic rights and duties. This was in response to the fact that in the past, but more so in the 2013 and 2017 general elections, Sexual Orientation and Gender Identity and Expression (SOGIE) has been sensationalised during campaign rallies, media interviews, in social media, and in general political rhetoric in a bid to appeal to conservative supporters and religious leaders as a strategy for election and re-election. Religious leaders, especially evangelical Christian groups, have furthered this sensationalism, and turned it into outright hate speech based on real or perceived SOGIE, claiming that sexual and gender minorities are cursed, responsible for national disasters, and that the “gay agenda” is a foreign western-led ideology being imported to Kenya to destabilise the African family unit and traditions. This has gone on for decades, and yet sexual and gender minorities are critical players in Kenyan elections, and society in general.

Over time, this has increasingly caused voter apathy within the queer community, further side-lining them from the engagement and exercise of their democratic rights and civic duties, which only further alienates the community, and makes them susceptible to discrimination and acts violence. Voter apathy by the community and other progressive voices increases the chances of conservative and bigoted leaders being elected and shaping policy affecting the community. A key illustration of this is in 2017, when queer persons in the Nyanza and Coast regions reported being targeted in electoral-related acts of violence and harassment. Additionally, LGBTQ allies tend to shy away from discussing or engaging with sexual and gender minorities during this period, further isolating and marginalising the queer community in Kenya.

This alienation of the queer community is a far cry from the spirit of the Kenyan Constitution⁴ and the international treaties that Kenya is party to. Articles 25 of the International Covenant on Civil and Political Rights⁵ and 21 of the Universal Declaration on Human Rights⁶ guarantee the equal right of **every person** to participate in public affairs and public service through direct participation, or through the election of representatives. However, these are not rights and duties that the queer community has actively and openly exercised or engaged in - until now.

⁴ Article 38 (1),(2), and (3) Constitution of Kenya <https://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms/204-38-political-rights>

⁵ International Covenant on Civil and Political Rights <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights#:~:text=Article%2026,-All%20persons%20are&text=In%20this%20respect%2C%20the%20law,property%2C%20birth%20or%20other%20status>

⁶ The Universal Declaration on Human Rights <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

Legal Framework and Context of the 2022 General Elections

The 2022 elections were held against the backdrop of a seemingly independent and bold judiciary, with the Supreme Court nullifying the 2017 presidential elections⁷, and the Supreme Court hearing the appeal on the freedom of association for LGBTQ-led and serving organisations in Kenya⁸, both of these becoming landmark decisions. Aside from the nullification of the presidential elections by the Supreme Court, lower courts also participated in the nullification of elections.

At the time of the 2022 election, 398 petitions had been filed challenging various electoral results in lower courts⁹. 174 of these were challenged by Governors and County Assembly members. 125 were challenged by Members of Parliament, Senators, and Women's Representatives. In addition, 98 were specifically challenged by Members of Parliament. As with previous elections, the 2017 polls were accompanied by a comprehensive audit and public discussion. The elections were further held following the court's directive that the next election should adhere to the two-thirds gender principle, which states that not more than two-thirds of the members of elective and appointive public bodies shall be of the same gender. As a result, the IEBC took measures on 10th November 2021 to declare all political party lists non-compliant with the two-thirds gender principle and subsequently in violation of the court's directive¹⁰, another bold and seemingly independent move leading up to the elections.

The 2022 elections were guided and anchored in the Constitution of Kenya 2010, the Elections Act 2011, the Political Parties Act 2011, the IEBC Act, and the Election Offences Act 2016. It was further characterized by active monitoring of the incitement to violence, violence itself, electoral sexual and gender-based violence (SGBV), hate speech, misinformation, disinformation, and public order management during the elections. In this regard, the elections were scrutinized by the National Cohesion and Integration Commission Act, which helped to monitor for hate speech and incitement, and the Data Protection Act which guided how data is managed, and how it categorizes sexual identity and sexual orientation as sensitive personal information that requires more safeguards. The National Police Service, in response to various reports from the 2017 election on electoral violence including police violence and electoral SGBV, invested in building the capacities of its officers on how to enforce public order management during the electioneering period.

The elections were also shaped by various judicial decisions, in particular:

1. *The Maina Kiai case*¹¹ on election results where the court held that the results as announced at the polling stations are final.
2. *The Raila Odinga*¹² Supreme Court decision where the court established the rule for the counting, tallying and transmission of results to be undertaken to give the highest effect to Article 81 of the Constitution on fair, transparent, verifiable elections.
3. *The two-third gender rule case*¹³ by CREAW.
4. Following the declaration by IEBC that it will not use the manual register, NGO Kenya Human Rights Commission successfully petitioned the courts to allow for its use should other means of voter identification fail¹⁴.

⁷ Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR <http://kenyalaw.org/caselaw/cases/view/140478/>

⁸ NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR) <http://kenyalaw.org/caselaw/cases/view/252450/>

⁹ <https://www.businessdailyafrica.com/bd/news/128-election-petitions-filed-challenge-various-seats-3949842>

¹⁰ <https://www.iebc.or.ke/uploads/resources/b2U0EkwWj7.pdf>

Politically, the 2022 elections were held following a fallout within the Jubilee government, a fallout attributed to both the “handshake” and the BBI, where the president was working with the leader of opposition under the *Azimio la Umoja* coalition, while the deputy president was leading the *Kenya Kwanza* coalition. Notably, in the 2022 general elections, the incumbent president publicly endorsed the leader of the opposition to succeed him, while not supporting his deputy president and former running-mate, who stood with him in the 2013 and 2017 elections.

Furthermore, the 2022 elections were organized based upon two distinctly different ideologies of economic and power change. The *Kenya Kwanza* “hustler versus dynasty” mantra invited hope for a new power to take the helm of public authority from the perceived political dynasties, by promising a place where all trades and people could thrive. In contrast, *Azimio la Umoja* advocated unifying Kenyans across political and ethnic divides, and tackling corruption as a means of economic recovery. Ethnicity remained the most crucial mobilisation factor, although class and age were also significant. As a result, *Azimio la Umoja* remained popular primarily in Nyanza, Ukambani, and Northern Kenya. *Azimio* was still the dominant party in the coastal and western regions. However, *Kenya Kwanza* made significant inroads. The coast, Maa and Nairobi counties were considered swing areas. However, Mt Kenya and the Rift Valley largely remained *Kenya Kwanza* strongholds. The 2022 elections saw a return of religious mobilisation, with the *Kenya Kwanza* coalition emphasising that they are reliant on God through and through. This saw them mobilise the church, and more so, the evangelicals.

There was also outright intermeddling by the government of the day, with the Kenyan Foreign Affairs Ministry reportedly sending a confidential memo in July 2021 to international Civil Society Organisations (CSOs) and foreign missions in Kenya that have in the past supported civic education. The memo instructed the organisations and missions to not devote any resources to civic education and civic advocacy without government approval, either directly or through local CSOs. The resultant effect of this in the 2022 general elections was that CSO participation in voter education and election observation was greatly hindered¹⁵.

 The 2022 elections were organized based upon two distinctly different ideologies of economic and power change.

¹¹ Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR <http://kenyalaw.org/caselaw/cases/view/137601/>

¹² Odinga & another v Independent Electoral and Boundaries Commission & 2 others <http://kenyalaw.org/caselaw/cases/view/140716/>

¹³ Centre for Rights Education and Awareness & 2 others v Speaker the National Assembly & 6 others [2017] eKLR <http://kenyalaw.org/caselaw/cases/view/133439/>

¹⁴ Kenya Human Rights Commission & 6 others v Independent Electoral and Boundaries Commission & 2 others; Communication Authority of Kenya & 3 others (Interested Party) (Petition E306 of 2022) [2022] KEHC 10579 (KLR) (Constitutional and Judicial Review) <http://kenyalaw.org/caselaw/cases/view/236467/>

¹⁵ Civicus ‘ Kenya: ‘The denial of resources for civic education has been a massive blow for civil society’ (Civicus, 9 May 2022) <https://www.civicus.org/index.php/media-resources/news/interviews/5778-kenya-the-denial-of-resources-for-civic-education-has-been-a-massive-blow-for-civil-society>

Kenya's electoral management body, the Independent Electoral and Boundaries Commission (IEBC), operated with limited human resources, particularly at the top. The IEBC initially had three commissioners, but later added four more in 2021. Due to the presence of the Parliamentary Service Commission (PSC) on the selection panel, the courts found that the appointment of the four IEBC commissioners was illegal. Despite this, the judge declined to annul their appointment, as it would jeopardize preparations for the next election¹⁶, and would further be contrary to the provisions on composition as seen in the IEBC Act¹⁷. It was only after their appointment that a substantive Executive Director was appointed, and key director positions filled. The IEBC appointments, so close to the elections, were perceived by the public as political in nature. This affected the perception and confidence of the public in the independence of the IEBC.

This, evidently, impacted the preparedness of the IEBC for the general elections, in the areas of voter education, voter registration, and voter verification, which are critical pre-election procedures that guarantee free and fair elections. It will further be evidenced in this report that the lack of quorum within the IEBC, coupled with the memo curtailing the supplementary support that IEBC receives from foreign missions and CSOs to carry out some of these obligatory processes, greatly impacted the delivery of civic and voter education to the public.

IEBC developed technology that would improve the registration, verification, and transmission of the election results. Unfortunately, in comparison with previous elections, there was a reduction in the amount of money invested by the IEBC and other state and non-state actors in voter education. The low voter registration rate and the reduced voter turnout in the elections are believed to have been the consequence of this. Several reports indicate that the youth, particularly, turned their backs on the electoral process¹⁸. The increased use and reliance on the manual register during the conduction of these elections was witnessed by QTB observers in areas such as Madaraka, Imara Daima, and Langata. The manual register was used for ordinary citizens who turned up to vote, but more especially for elderly citizens, citizens living with disabilities, and citizens whose fingerprints seemed to have worn off; assumedly as an occupational hazard. It is worth exploring what some of the reasons for the increased reliance on the manual register were, and whether this would have been averted had the IEBC been better equipped and prepared for the elections.

 IEBC developed technology that would improve the registration, verification, and transmission of the election results.

¹⁶ Court locks parliament out of IEBC commissioners' selection process <https://www.standardmedia.co.ke/national/article/2001431469/court-locks-parliament-out-of-iebc-commissioners-selection-process>

¹⁷ Section 5 of the Independent Electoral and Boundaries Commission Act of 2011 <https://www.iebc.or.ke/uploads/resources/8Z5fmROhVD.pdf>

¹⁸ Kenya Post-Election Review Roundtable Report - <https://www.kofiannanfoundation.org/supporting-democracy-and-elections-with-integrity/report-kenya-2022-post-election-review/>

The Queering the Ballot Initiative

Set-Up

QTB was initiated by the Initiative for Equality and Non Discrimination (INEND) in response to the need for the queer community to engage in the electoral process actively and visibly. Having engaged in influencing policy on key issues such as health and gender mainstreaming with great success at the Coast, and making notable inroads in engaging with access to justice and protection from violence and discrimination for the LGBTIQ community in Kenya, INEND felt it was important to start the process of engaging Lesbian Bisexual and Queer (LBQ) women and Gender Non-Conforming (GNC) persons in the observation of elections from a queer feminist lens.

The initial conceptualisation of QTB was Coast region-specific, as it is the primary focus of INEND’s work. To meaningfully engage and expand the reach of LBQ and GNC persons in the Coastal region, INEND partnered with Coast Women for Women (CWW), Rainbow Women of Kenya (RWOK), and Pwani Feminist Forum, all LBQ/GNC-led and focused organisations based in the region. Further to these institutional partnerships, INEND also partnered with the *matatu* and *boda boda* associations, with whom they have had a long-standing relationship. Each of these organisations were requested to nominate two representatives to take part in a series of capacity-building meetings aimed at establishing an election monitoring committee that would support INEND’s objective of having LBQ women and GNC persons actively engage and observe the 2022 general elections at the Coast.

Having seen the novelty of the work they had ventured into, INEND reached out to like-minded organisations who have and work on similar objectives. They therefore approached the National Gay and Lesbian Human Rights Commission (NGLHRC), Empowered Ladies Initiative for Equality (ELITE LBQ) and Western Kenya LBQ Feminist Forum (WKLFF), all queer-led and focused organisations in Nairobi and Western Nyanza regions, in a bid to replicate the work they had begun in the Coast region.

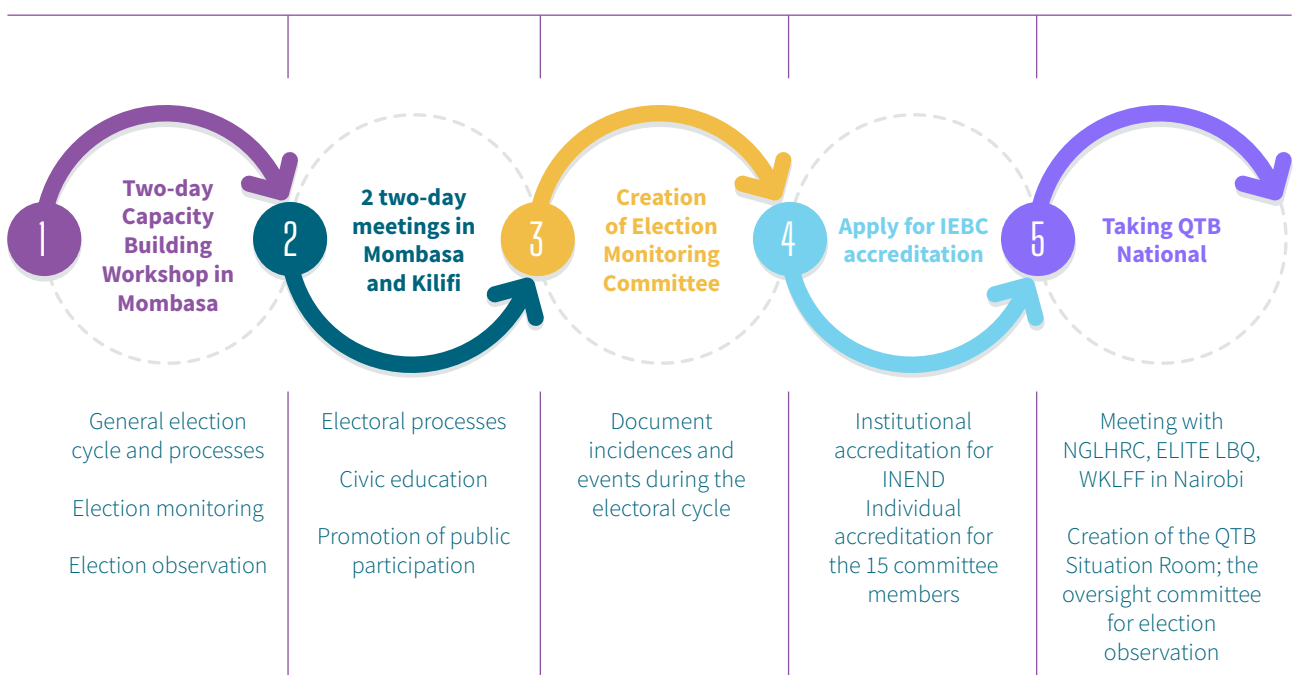


Figure 1: Initial Creation of QTB

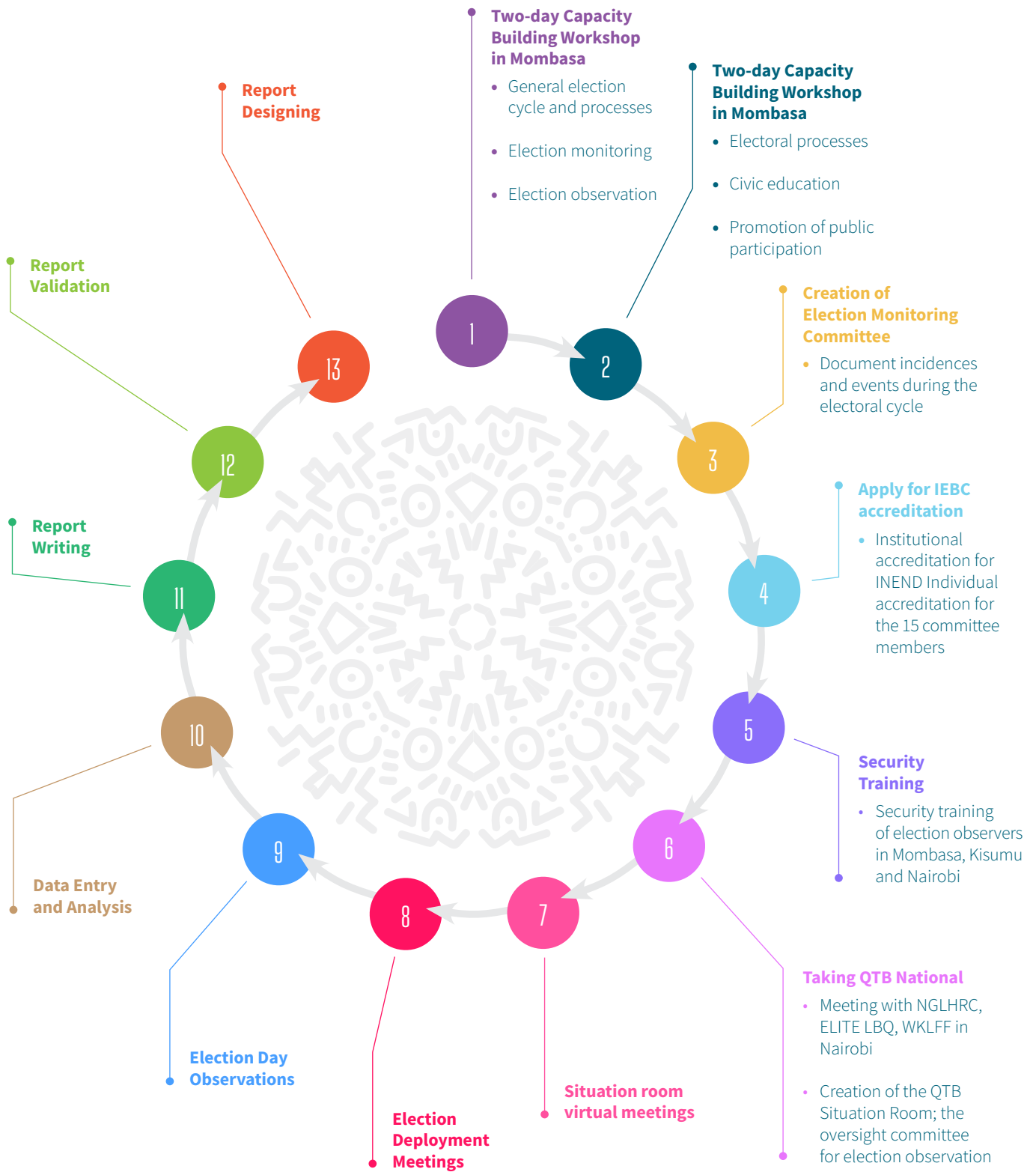


Figure 2: Full Cycle of QTB

Queering the Ballot Elections Situation Room

The first meeting was held in Nairobi, and with buy-in from the three organisations, the election monitoring situation room, which later became the QTB Election Situation Room (QBESR), was created. An MOU to guide the workings of the initiative was developed, and provided the roadmap for the implementation of the initiative, as well as outlining the workings and role of each partner organisation¹⁹ as listed below:

The Coordinating Committee

This formed the highest policy and decision-making body for the QBESR platform, and comprised four members. The office bearers of the Coordinating Committee were the leaders of the four organisations i.e. NGLHRC, INEND, WKLFF and ELITE. The Coordinating Committee met as prescribed in the MOU for the purposes of the August 2022 elections. There were to be a minimum of three meetings proposed in the run up to the elections; however, only two of these meetings were convened. Unscheduled meetings could be convened to respond to emerging issues as they arose. The Coordinating Committee was independent of the Secretariat, but its members would participate actively in high level and policy nature activities pertaining to the electoral processes in Nairobi, Mombasa, Kilifi, Kisumu, and Busia. The main role of the Coordinating Committee was to provide oversight on policy, political, financial, monitoring/observation, and security matters. They would also solicit for funding for all the QBESR activities. The steering committee was to only be remunerated when they participated in QBESR activities.

The Secretariat

The QBESR Secretariat was hosted by INEND and constituted two (2) members/staff seconded by the host organisation. The two staff members were the Programme Coordinator and Finance Coordinator.

The Programme Coordinator was responsible for:

- i. The overall coordination of the legal, communication, and monitoring/observation elements of the QBESR.
- ii. The liaison between the Coordinating Committee and the technical staff of the QBESR.
- iii. The receipt and compilation of the data/information received from the election observation coordinators.
- iv. Working with the external consultant(s) to develop the final report for the QBESR.

The Finance Coordinator was responsible for:

- i. The payment of any QBESR related activities.
- ii. The procurement of services and products related to the running of the QBESR and its activities.

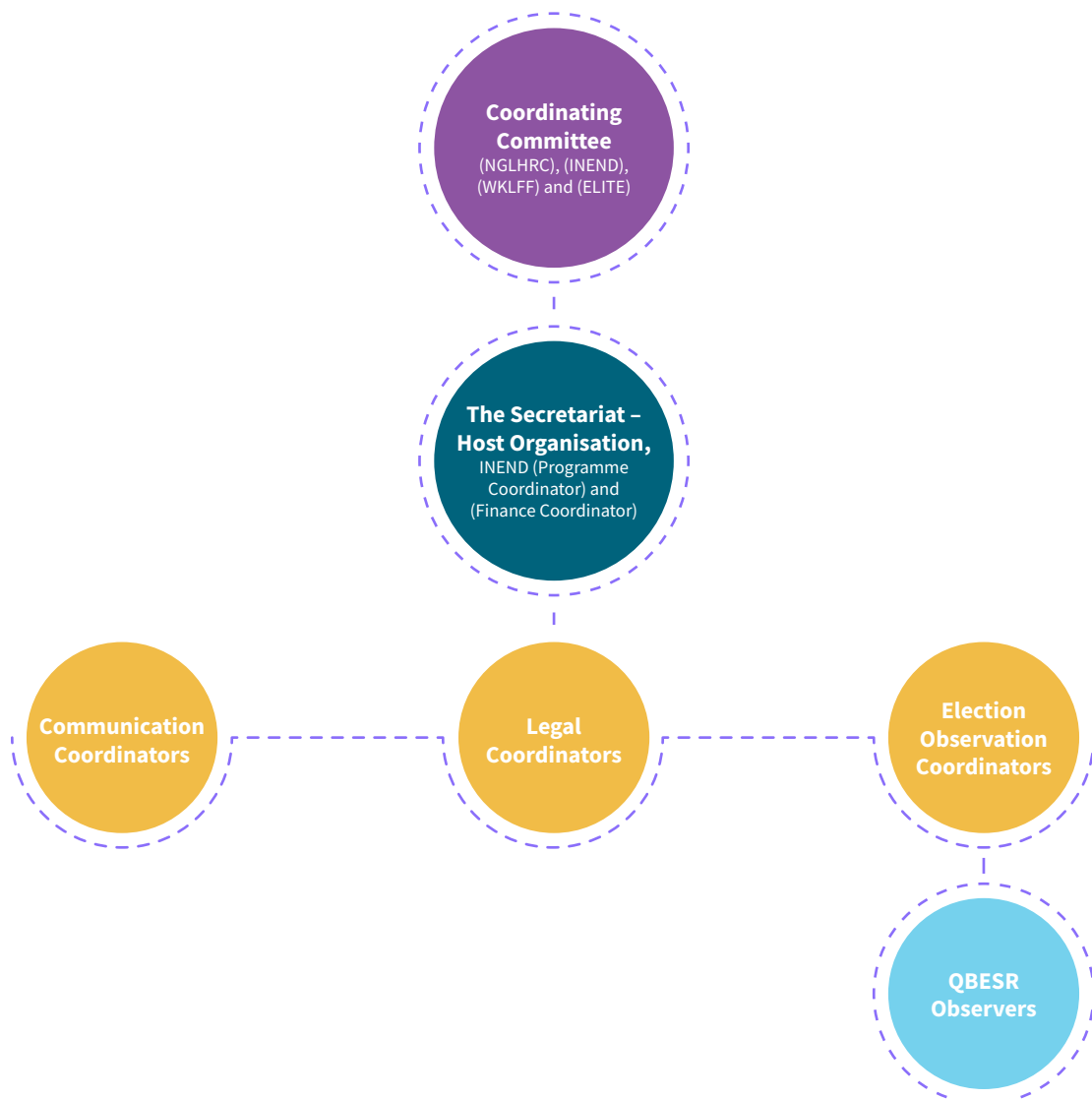
¹⁹ Memorandum of Understanding between INEND and NGLHRC, ELITE, and WKLFF. Annexed.

The Technical Team

The QBESR Technical Team was constituted of the following staff members seconded by the four partners:

1. **Communication Coordinator(s):** The Communication Coordinators were tasked with the role of ensuring efficient communication in the situation room. This was the team that was also tasked with social media engagement, which included voter education, and QTB-related voting processes.
2. **Election Observation Coordinator(s):** The three Election Observation Coordinators were in charge of the election observers within their region. Their role further included the verification of all the tools used by the observers' team.
3. **Legal Coordinator:** The Legal Coordinator was in charge of responding to and rendering any legal issues and services arising and required due to the election process. The coordinator was also tasked with offering legal advice where needed during the electioneering process.

Pictorial Structure



From the inception meeting held in Nairobi, the situation room realized the following interventions:

a. Mapping of observers

The meeting resolved to set up a team of 50 QTB election observers drawn from the Coast, Nairobi, Western, and Nyanza regions. Each organisation would be responsible for recruiting observers, and would be responsible for supervising the recruited observers. Further to the supervision, each organisation would oversee the applications for accreditation for the organisation and observers. NGLHRC initially recruited 15 observers, but had one observer withdraw before the elections. ELITE LBQ recruited 10 observers, and WKLFF brought on 10 observers.

b. Mapping regions and strategic intentions in the areas that would be observed.


WKLFF would observe Kisumu County and its environs; ELITE would observe Busia County and its environs; NGLHRC would observe Nairobi County and its environs, and INEND, which included the Coastal organisations that had partnered with INEND, would observe the Mombasa, Kwale, and Kilifi counties.

c. Resource mobilisation; technical, financial, and human.

The partner organisations would provide technical and human resources through their staff members and partners. Data4Change, a non-profit organisation that supports people and organisations all over the world to harness the power of data to forge real change and lasting impact, was brought on board by INEND, and would offer technical support in analysing the data received from the observers. All costs would be undertaken by INEND and as a result, the project would be within INEND's organisational manuals and systems.

d. Nature of partnership among the organisations and the roles each organisation would play.

There was consensus that each partner organisation would handle their organisation's and observers' security. To this end, all observers underwent security training activities facilitated by the partner organisations. The objectives of these training sessions were personal and institutional safety, as QTB was uncharted territory in an already antagonising environment for queer people in Kenya. NGLHRC would handle the legal aspects of QTB, and any legal issues arising from the observation of the elections. NGLHRC, WKLFF and INEND would jointly manage QTB's communications. This would entail the publicising of QTB, the messages shared across the organisations and media platforms, and all mainstream media engagements. Research and documentation/liaison would also be handled by INEND. Lastly, INEND would handle the finance and budget elements of the initiative.

 Each organisation would be responsible for recruiting observers, and would be responsible for supervising the recruited observers.

Objectives

Having set up the QBESR and allocated the partner organisations their respective roles, the objectives that the initiative sought to achieve were set out as follows:



Creating a platform for the immediate sharing of information and recommendations among key partners in the LGBTQ community and GNC persons, and other CSOs engaged.



Election observation/monitoring.



Providing credible, real-time analysis of the 2022 general electoral process with a focus on the participation of the LBQ women and GNC persons in the electioneering period.



Provide rapid response to violence affecting SGMs in the electoral process, including voter education, campaigns, election day, and post-election processes.



Create a platform for engaging with state and non-state actors.

This report aims to elaborate the findings of the exercise, capturing the experiences, perceptions, and reactions of the queer community, and further creating a roadmap and starting point of where and how members of the community can actively engage in Kenya's political and electoral space. It is essential that the queer community actively engages with the process as its results, and the elected policymakers, directly impact the lives and experiences of queer people in Kenya.

Roll-out

Having set up the structure and shared the roles among the participating organisations, it was time to activate QTB. The first objective was to apply for both institutional and individual observer accreditation from the IEBC. INEND and its observers had already applied for accreditation, and by the time the QBESR committee meeting was taking place, the accreditation had been granted and their badges were ready for collection. The partner organisations put in their applications and those of their respective observers in June 2022. Upon application for accreditation, all organisations, save for WKLFF, were accredited. As a result of the denial of accreditation, the observers under the supervision of WKLFF were absorbed by NGLHRC for purposes of accreditation alone. NGLHRC, because of the then ongoing litigation around their registration, was accredited as the Legal Arch Youth group. This is also a testament to how the queer movement has adapted to the muzzled civic space for the queer community.

Once the accreditation had been dispensed with, the observers were taken through a capacity building exercise to familiarize themselves with the toolkits that they would use to observe the elections. At an institutional level, the observers were also taken through safety and security training sessions to ensure that they were kept safe during QTB. Further to this, the organisations involved developed security protocols and deployment plans that they would rely on during the active observation period²⁰. In the week leading up to the elections, observers were assigned their respective deployment areas and received the toolkits that would guide their data collection/observation. The observers also received a stipend, to facilitate their movement from one polling station to another within their assigned constituencies.

On the day of the elections, every observer, knowing their assigned constituencies, reported to the polling stations by 6 am EAT, which is the set opening time for polling stations across the country²¹. There were roving teams from the participating organisations that were available in case any observer(s) needed support or extraction. NGLHRC, as the legal arm of QTB, was on standby for legal support in case any observers were arrested or required any other form of legal support. In the course of the day, the observers participated in the election day processes, such as verifying the serial numbers on the election materials, witnessing where voters required assistance, and whistleblowing where they saw any anomalies with how the process was being conducted. Some observers participated in the vote counting and tallying, and verified the form 34s (the presidential results) signed by the respective returning officers.

Upon conclusion of the election day observation, the observers were then required to submit their tools to their relevant supervising organisations, which would then be shared to INEND for analysis by Data4Change. The data would then contribute to the development of this report, and create a baseline for future QTB initiatives in the coming elections.

²⁰ Annexed.

²¹ <https://www.iebc.or.ke/uploads/resources/lo6hJbK9M1.pdf>

Methodology

This report is anchored in three sources of data. The primary source of data was the election observation tools that were used by the observers to collect data and record their observations and any incidences witnessed during the pre-election, election day, and post-election period. These were further supplemented with real-time updates shared on the messaging application Signal. However, there were significant gaps in this data source owing to improper filling of the toolkits, and lack of collation of the information received via Signal.

In order to respond to the limitations of the primary source of data, a secondary source of data was explored through the convening of four focus group discussions in Nairobi, Kisumu, and Mombasa. The FGDs brought together QTB observers to further elaborate some of the key observations witnessed, and any key incidences observed during that time. These were further supplemented by an online survey that was administered to the greater queer community outside of QTB. The secondary data also sought to forecast any opportunities for engagement with the government of the day, as well as identify potential allies within the county and national governments.

The sources of data are further elaborated below:

1. Election observation toolkits

There were four election observation toolkits²² used by the QTB election observers to collect data from this electoral cycle. The tools were populated by 55 observers across 7 regions²³. Outlined below is a breakdown of the data the forms sought to collect:

- a. Nature and delivery of voter and civic education leading up to the polls.
- b. The incidents and occurrences taking place during the campaign/pre-polling period.
- c. The nature and delivery of the election day.

2. The post-election period - Focus Group Discussions (FGDs)

Four focus group discussions were conducted in the QTB focus regions; Nairobi, Mombasa, and Western and Nyanza. Each FGD had 10-15 participants who served either as QTB election observers or served in the QTB Situation Room committee. The FGDs were guided by a pre-set questionnaire intended to capture and deduce the experiences of the observers throughout the entire QTB cycle, and capture the lived experiences of queer people during election season; data that would otherwise not have been captured by the observation toolkits. It is essential to note that for most of the FGD participants, this was their first time participating in a general election, further affirming the assumptions that led to the conceptualisation of QTB and encouraging the participation of the queer community in the electioneering process. The findings of the FGDs are discussed further in this report.

3. A general post-election community survey

Having conducted the FGDs with the QTB observers and committee members, there was need to collect data from the general queer community that was not part of QTB. This data was collected by way of a 12-question online survey that received responses from 80 members from the queer community. The questionnaire was circulated by utilising INEND's social media platforms²⁴.

²² Election Campaigns Form, Election Day Form, Incident Form, and Voter Education Form

²³ Busia, Coast, Coast-Kilifi, Kisumu, Kwale, Mombasa and Nairobi

²⁴ INEND's Twitter page and various Whatsapp groups set up by and with the LGBTQ+ community and allies.

Findings

Prior to QTB, in 2021, INEND conducted a 10-week fellowship program to build capacity to strengthen programming by improving data systems and structures, and use new insights from all the data collected to inform and influence behaviours and policy change.

This capacity building process was conducted by Data4Change. Through this rapport, and an understanding of having the data that would speak to the highlights of QTB, Data4Change helped analyse the data tools and translate them to information that was understandable.

Find out more about Data4Change on <https://www.data4chan.ge>

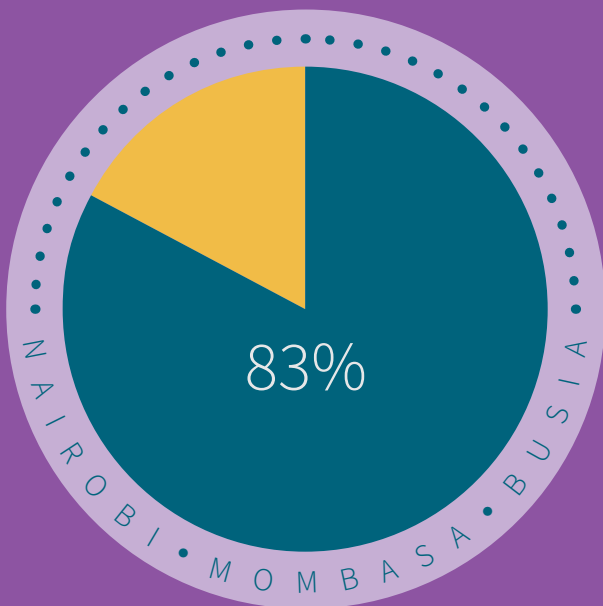
²⁵ A temporary contractual engagement with IEBC to offer them support during the election day of and the tallying of the elections.

Electoral Process

1. Civic and Voter Education

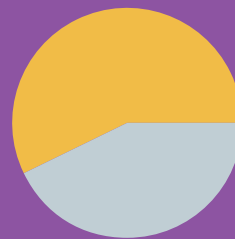


55 Polling Stations



The polling stations received some form of civic education

57% Received civic education during or after voter registration



43% Received civic education prior to voter registration

The data received from the observers' toolkits was in reference to 55 polling stations. The polling stations were reflective of the areas QTB was focused on: Nairobi, Mombasa, and Busia. From the 55 polling stations, data shows that voters in 83% of the polling stations received some form of civic education. 43% of the 83% received this civic education prior to voter registration. It is therefore assumed that the remaining 57% of the voters received the education during or after voter registration. However, the impact of the voter education received prior to voter registration is not conclusively documented. Further, this data was collected by the observers after the conclusion of voter registration, as this was the period in which QTB was rolled out.

IEBC accounted for 50% of the civic education received in these polling stations, with other actors such as CSOs and faith-based organisations accounting for 80% and 73% respectively. Upon further breakdown, the data shows that in counties such as Mombasa and Busia, 100% of the voters in the 44 polling stations received voter education. 25% of the 100% received voter education prior to voter registration. Therefore, the assumption from this data is that the remaining 75% of the voters received voter education during or after voter registration. In these counties, IEBC accounted for 67% of voter education in these polling stations. Other actors who provided voter education in the observed polling stations were CSOs and faith-based organisations, accounting for 81% and 86%, respectively.

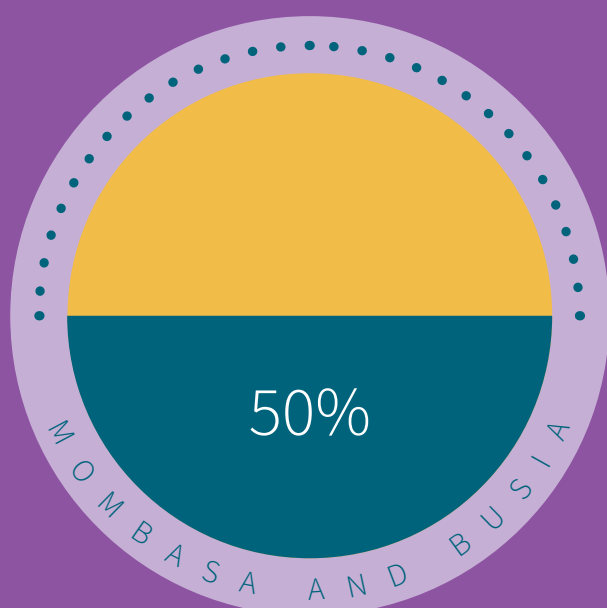
INEND engaged an elections expert to take the observers through a civic education capacity building session to equip them with the relevant information to enable them to engage in and observe the 2022 elections meaningfully. This capacity building exercise was appreciated across the three regions of focus, as this was their first time engaging with the elections, for a majority of the observers.

The observers in Nairobi indicated that the voter/civic education provided to them in preparation for observing the elections was very helpful, and instilled a lot of confidence, which was highly appreciated for the first timers.

Whereas most of the observers were interacting with the process for the first time through QTB, there was one observer who had previously engaged with the electoral process in the capacity of an election clerk²⁵. This provides an indication that the opportunities to participate exist, and the community requires capacitation to have access to take up spaces within the electoral process infrastructure.

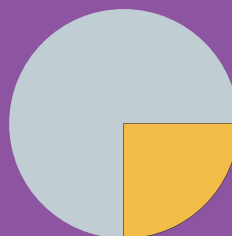


44 Polling Stations



IEBC accounted for 50% of the civic education received in these polling stations

75% Received voter education **during or after voter registration**



25% Received voter education **prior to voter registration**

Focusing on the queer community and allies, INEND held in-person leadership and governance conversations as part of an ongoing program called the Coffee Forum in Mombasa. A key agenda item for these forums was the identification of potential political allies and queer candidates that the community should support in the elections. The Coffee Forum steadily took shape and prompted Mombasa LBQGNC persons to attend political debates and manifesto launches convened by vying leaders within the county. The political debates and manifesto launches were well-attended by both the queer community and the general public.

Closer to the election day, in June and July, INEND conducted a virtual webinar and a Twitter chat, then administered a subsequent survey, all aimed at identifying voter culture within the queer community. The feedback received from the survey was then shared across INEND's social media pages as messaging for the upcoming elections.

²⁵ A temporary contractual engagement with IEBC to offer them support during the election day of and the tallying of the elections.

2. Pre-Election Period

The QTB observers reported engaging with political candidates formally through political consultations, town hall meetings, debates, and political rallies. They also had informal consultations through direct engagements with allies.



Western/Nyanza

In Kisumu, the MCA meetings were pivotal, as most of the MCAs seeking re-election had worked closely with Western LBQ organisations in health-related advocacy for the LGBTQ community. The Women's Representative debate was particularly significant because it had an open debate that saw some candidates castigate the LGBTQ community, while others called for respect for all and tolerance of differing views. The candidates supporting respect and tolerance pledged to ensure non-discrimination if elected.

In Busia, there was limited data from the pre-election period owing to QTB's commencement period. Nonetheless, the observers noted an increase in cases of gender-based violence, both in person and on social media, and instances of voter buying within the queer community, which they attributed to the lack of proper civic education for queer people in the region. However, there was a gap in specific and verified data on these particular incidences in that region, owing to the unavailability of observation tool kits at the time.

In Nairobi, there was data from the incident reports referencing an incident that occurred in Dandora Phase 3 and 4, where women, girls and masculine-presenting women received threats from rowdy youth on the basis of their perceived SOGIE. The rowdy youth believed that their targeted victims were supporting presidential candidate George Wajackoyah of the Roots Party because they believed that he would allow them to "practice" homosexuality. This was attributed to the implied liberal and unorthodox stance of the presidential candidate, who had further promised to legalise the use of Marijuana²⁶. Some of these women and girls were nearly stripped naked by the rowdy youth. It was most alarming that this kind of targeted violence took place during the day.

Nairobi



²⁶ A wild-card candidate in Kenya is sparking an African debate about weed
<https://www.washingtonpost.com/world/2022/08/03/kenya-election-george-wajackoyah-marijuana/>

Coast



The data from Mombasa showed that the observers robustly engaged in monitoring the campaigns. There was an organized session with aspirants and sex workers, who are key and long-standing partners of INEND. They actively engaged the gubernatorial candidates, including the current elected Governor of Mombasa. The Sonko gubernatorial ticket was considered homophobic for making hateful comments targeted at the queer community on his social media platforms²⁷. The Mombasa team also noted ethnically driven hate speech, acts of voter buying, and bribery, receiving this information as a result of the team's previous linkages with public transport boda boda and matatu leaders. This partnership was incredibly beneficial, as it granted QTB access to rooms, conversations, and information that they otherwise would not have been privy to. This is attributed to the vital role that boda boda operators, in particular, play in the campaign period. The matatu operators, on the other hand, were essential when it came to understanding the sentiments and attitudes of the common mwananchi and the day-to-day realities of Kenyans who are their primary client base.

3. Election Day

The accreditation process for QTB was integral to the successful implementation of the initiative. This is because to participate as an election observer, with full rights and access to the election day and vote counting processes, they must be duly accredited by the IEBC and issued with identification badges. All 50 proposed observers and three of the participating organisations (with the exception of WKLFF) were duly accredited by the IEBC. Unfortunately, the IEBC did not present the reason(s) for denying WKLFF's application, and as a result of the tight deadlines and the fast-approaching elections, QTB did not follow up with the IEBC.

Nonetheless, it is an incredible milestone that the partner organisations and proposed observers were accredited, as they applied for accreditation as themselves; queer-led and queer-serving organisations. This indicated that the IEBC is aware of the 2015 court ruling²⁸ that overturned a decision by the NGO Board to deny registration to NGLHRC, an LGBTQ-led and serving organisation, on the basis of its objective to serve the queer community.

IEBC Officials

QTB observed 115 polling stations during the 2022 elections. Mombasa County had 50% of the polling stations observed. On election day, one of the key highlights was the gender representation of IEBC officials. Among the 115 polling stations observed, 54% of IEBC officials were women. Furthermore, 70% of election observers present on election day were women.

²⁷ Governor Sonko calls Babu Owino 'homosexual' 'dog' <https://www.facebook.com/TheStarKenya/videos/1653204634724763/>

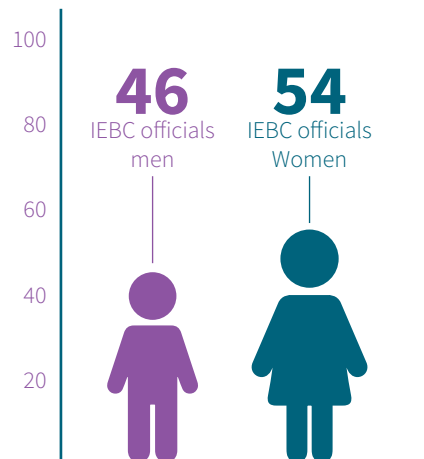
²⁸ EG v Non- Governmental Organizations Co-ordination Board & 4 others [2015] eKLR <http://kenyalaw.org/caselaw/cases/view/108412/>

Overall, the observers reported that voting day was largely peaceful and orderly, with regular updates from the presiding officers on the voter turnout. They also reported seamless vote counting and transmission in most of the polling stations.

IEBC officials' use of the manual register to identify voters was an issue of concern, more so in Mombasa where some people were allowed to vote after being identified using the manual voter register, while others were disallowed. Observers reported that there were no set criteria observed,



115 Polling Stations



despite the KHRC judgement before the general election that directed the IEBC to use the manual register as a backup²⁹. However, in one polling station, it was noted that most of those allowed to vote using the manual register were persons living with disabilities (PWDs).

QTB observers report that IEBC officials were quite supportive, and even enlisted their support in resolving disputes, as well as calling on other observers to emulate the way in which QTB observers carried out their duties. A queer IEBC clerk was present in Kondele, which gave the queer community a sense of safety. This official representation was very affirming for the community of queer persons and allies who voted, clearly excited to see the QTB observers in polling stations. This validated the observers and gave queer and allied voters a sense of security.

However, QTB observers expressed concern about their engagement with some IEBC officials, reporting that some IEBC officials were overtly profiling QTB observers on the basis of their perceived SOGIE at some polling stations. A QTB observer was physically assaulted by IEBC officials and some voters at the Kawangware polling station in Nairobi, and denied access to the polling stations for reasons believed to be related to homophobia.

The observers further noted that the IEBC officials were overwhelmed and tired by the end of the election day. In Kisauni Constituency's Utangi Primary polling station, for instance, the polling officer counted the votes alone, and then sealed the results to wrap up the process and go home. The officer has since been prosecuted under the Election Offences Act.

²⁹ Kenya Human Rights Commission & 6 others v Independent Electoral and Boundaries Commission & 2 others; Communication Authority Of Kenya & 3 others (Interested Party) (Petition E306 of 2022) [2022] KEHC 10579 (KLR) (Constitutional and Judicial Review) <http://kenyalaw.org/caselaw/cases/view/236467/>

Political Parties/Alliances

In 84% of the polling stations observed, political party agents were mostly from the UDA party. 81% of the polling stations observed had ODM agents present. 10% of the polling stations observed had Kenya Kwanza coalition representation. Probably the most involved people in the elections were the party agents who, in some cases, were loudly aggrieved, especially when disputes arose over the use of the manual register or during the vote-count. Also, observers were able to verify that form 34B (for the presidential results) in the polling stations they were in during the closing procedures matched those on the IEBC website.

There were several incidences of voter bribery observed in Mombasa and Kisumu. In Mombasa, the incident lasted quite a while, and voting was stopped for some time. A QTB observer who witnessed the incident was almost denied entry into the polling station as this was going on. However, he was ably assisted by the OCPD present at the polling station.

Police Presence

On election day, there was minimal but noticeable police presence in polling stations and very public places. Most of the police officers observed were not in uniform. This proved to be helpful in gathering information and resolving tensions, voter bribery, and other election-related offences efficiently and discreetly without disrupting the ongoing elections. According to QTB, this strategy helped reduce violent incidents.

Police officials assisted QTB observers in accessing polling stations, especially during opening and closing. Observers confirmed that they received support and protection from police officers in Nairobi and Mombasa when there were altercations at polling stations.

Key Incidences

- Following a printing error on the ballot papers, Mombasa Gubernatorial elections were postponed³⁰.
- In Kisumu, there were instances of voter intimidation and bribery reported where the agents of the parties checked and tried to influence who the voters voted for. Agents would crowd and intimidate elderly voters whenever they needed assistance voting. In such instances, no updates were provided regarding the actions taken by IEBC officials.
- The observers noted instances of agent-to-agent intimidation in Kisumu, where UDA party agents abstained from signing forms for fear of being identified as UDA agents in the predominately ODM and Azimio regions.
- In Obunga Ward in Kisumu, the murder of a queer person occurred. The incident was initially reported as a homophobic attack, but later confirmed as a dispute over political differences gone sour.

³⁰ Mombasa, Kakamega governor races suspended
<https://www.standardmedia.co.ke/national/article/2001452751/mombasa-kakamega-governor-races-suspended>

- In Nyalenda, also in Kisumu, there were instances of vote tampering where an observer noticed wrongful classification of votes as spoilt due to negligence or indifference by parties.
- In the Mbii polling station, Vihiga Constituency, the clerk in Stream Two was reportedly hostile, particularly towards the party agents.
- In Busia, Teso South, an IEBC official instructed security officials not to open the gates, forcing voters and observers to wait from 5 am to 6:30 am, 30 minutes after the official 6.00 am voting time. There were reports of profiling by IEBC officials regarding who was present in the area. In addition, the IEBC officials did not allow observers and agents to participate in the setting up and verifying voting material serial numbers.
- At the Polytechnic polling station in Kisumu Central Constituency, Stream Four, the IEBC official was alleged to be profiling and hindering agents and observers from coming in; multiple Azimio agents were denied access. In addition, the official is reported to have assisted voters without witnesses and would only allow Kenya Kwanza agents to witness. This was raised as a concern, and he was taken aside by the QTB observer, UN observer, and Azimio observer, who had noticed the same problem. This was resolved after a conversation.
- At the ATC polling station (Room 4) and St. Joseph polling station (Room 2) in Busia, the IEBC agents refused to allow observers to participate, which caused problems at the polling station. They also added a new booth that did not meet secret ballot standards.
- In Busia County, at Matayos Social Hall polling station, MCA candidate Halima Hussein was still campaigning at the polls. The police handled the situation by asking her to vacate the premises.
- In Kakamega, there was an incident where the IEBC agent wrongly tore the sheet and invited the observer to witness that the sheet had been appropriately disposed of. In this constituency, the observer assisted the officials in counting votes.
- The party mobilisers of one of the candidates physically abused a woman. The Presiding Officer assisted her to seek medical assistance.
- At Garden's Park Kakamega County, there were concerns that the Polling Officer was partisan and influenced voters to vote for specific candidates. Again, there was pictorial evidence to support this. For example, an aspirant physically assaulted a woman, and the police did not intervene until the crowd caused a commotion.
- In Vihiga Constituency, there were accusations of voter bribery that caused commotion and required police intervention. Voters and agents assaulted a woman suspected of voter bribery.

Aside from the incidents mentioned above, observers in Kisumu noted that there were no overtly homophobic, biphobic, or transphobic attacks on election day. Nevertheless, observers took precautionary measures, such as walking to and from polling stations instead of taking boda bodas (in Kisumu), which posed a security and safety risk. IEBC officials and the police intervened swiftly to ensure an uneventful election.

4. Post-Election Period

Reactions

Overall, the election results were received with satisfaction and dissatisfaction in equal measure. Kisumu respondents, through an FGD, explained that they were heartbroken by the declared loss of Raila Odinga, who was the region's preferred candidate. Mombasa, Nairobi, and some parts of Kisumu had a balanced reaction to the election results, with equal numbers who expressed satisfaction and dissatisfaction with the result. This can largely be attributed to the political analysis provided at the beginning of this report, where the political climate was balanced owing to the distribution of political strongholds and swing counties.

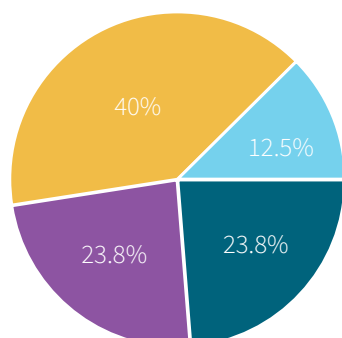
Kisumu faced two significant incidences of violence on the queer community. In the first instance, a queer person died as a result of a brawl over political differences on the outcome of the elections of the MCA in Railways Ward. The queer person was stabbed to death. This caused fear and anxiety in the community as it was initially suspected to be a homophobic attack. However, it was later established that it was a politically motivated incident that unfortunately resulted in the death of a queer resident. Additionally, one of the QTB observers in Kisumu who comes from a family of religious leaders was threatened with lynching after the circulation of distorted information alleging that their father, a religious leader in Kisumu, was President Ruto's ally and mobiliser. This resulted in their needing to go into hiding for safety and security. The incident was reported to QTB, but they had limited ability to respond. In Migori, it was reported that queer people fled from their homes, fearing for their lives. In Nairobi's Dandora area, a QTB observer reported an attack by members of the public on a person perceived to be queer. The members of public alleged that the queer community voted for the Roots party candidate because he would allow "everything" in the country, including homosexuality.

Through a post-election online poll, 40% of the queer community believe that the lives of queer persons will get worse under the current leadership at county and national level. 23.8% believe that the elected leaders will work to improve the policy environment and access to education and security for LGBTQ persons. The high number of opinions expressing the likelihood of a deterioration of the human rights protection space stems from the increasingly religious state that has emerged after the swearing of the Kenya Kwanza-led government.



What is your opinion on the elected representative to the national government?

80 responses



- They will improve the policy environment and access to education and security the LGBTQ+ persons
- Nothing will change
- The situation risks getting worse
- I don't know

Coping with the Election Results

The election results are described as having caused a lot of fear and anxiety within the queer community in Kenya. This was directly evidenced by the feedback received from the FGDs as well as the online survey conducted, and further supplemented from the social media reactions from the queer community in Kenya. This is largely attributed to the actively publicized religious/evangelical and conservative views of the President and Deputy President, particularly on their stance on the LGBTQ community in Kenya. These views and sentiments are documented in various mainstream media interviews with both local and international media houses, such as CNN.

Soon after the general elections, President Ruto said to CNN's Christiane Amanpour: ***"I am very clear that we respect everybody and what they believe in, but we also have what we believe in and we expect to be respected for what we believe in."*** He added, ***"We do not want to create a mountain out of a molehill... When it becomes a big issue for the people of Kenya, the people of Kenya will make a choice."***

Following the announcement of the presidential election results, queer persons in Kenya took to social media, sharing news items of the president speaking on LGBTQ, and expressing their fears and concerns. In response to the growing anxiety within the queer community, the QTB communications team embarked on a campaign dubbed #KnowYourRights, with an aim to inform the community that there still exists legal protections and rights guaranteed in the Constitution and other legal instruments, despite the government of the day. Further to this campaign, INEND, in partnership with Public Health Innovations (PHI), convened a post-election debrief session in Nairobi. The session brought together known active community leaders, independent and affiliated with organisations, and members of the queer community from across the country. The session was aimed at providing an opportunity to convene and share their concerns and fears, as well as develop strategies to respond to the new challenges that present themselves with the incoming government. Additionally, they were able to share and strategize on who among the local leaders they believe is or can be an ally, and the ways to meaningfully engage with them. The meeting was facilitated by the former Commissioner of Kenya National Commission on Human Rights (KNCHR) and former Special Rapporteur of the African Commission on Human and People's Rights, Lawrence Murugu Mute.

Some of the outcomes and action items that came out of the session included the proposal to closely monitor the court process; and a proposed formation of a parliamentary watch system, owing to the active queries on LGBTQ organisations' funding and the restrictions on forming CBOs. The rest of the report and outcomes from the meeting are annexed to this report, as they provided key action items that would also be relevant to the future of QTB.

Further to this convening, some of the participants from the FGDs in Nairobi, Mombasa and Kisumu/Busia expressed that the FGD sessions created an opportunity for them to debrief and share their experience with other people who had shared experiences and lived realities from the election observation. The general consensus from the FGDs was that there is a lot of fear and scepticism around the regime of the day, for reasons outlined in the political context of this report. Nonetheless, there are a few regions and areas that have been identified as possible areas of collaboration, partnership and even allyship with the county governments.

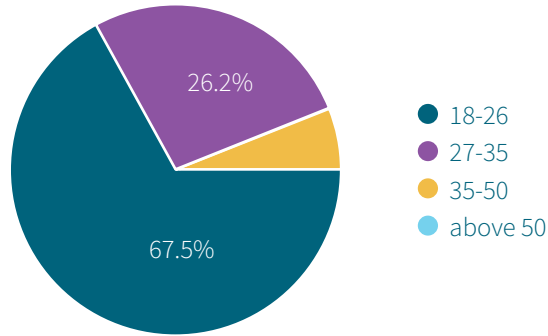
Six months later, and with the Supreme Court decision on the registration of NGLHRC, we have seen wide expression of dissatisfaction by religious leaders to limit, if not kill, the human rights space, and protection for LGBTQ persons in Kenya as expressed through various press statements.

Post-election Survey Findings



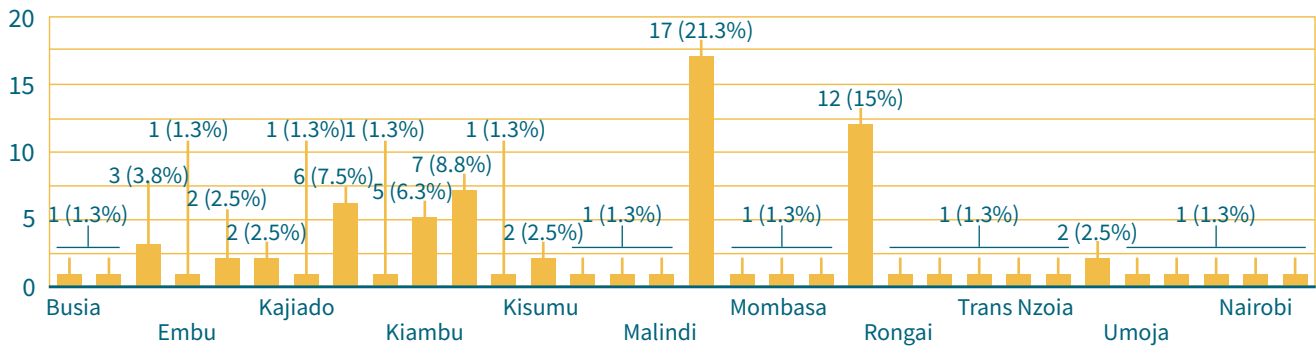
How old are you?

80 responses



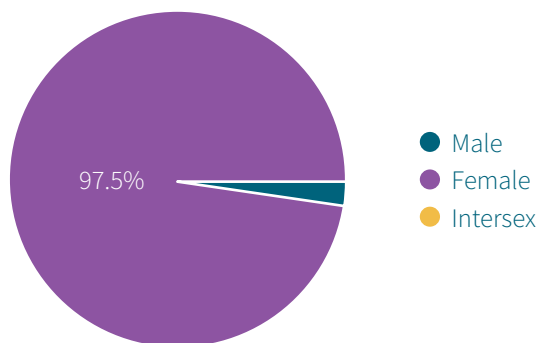
What is your county of residence?

80 responses



What sex were you assigned at birth?

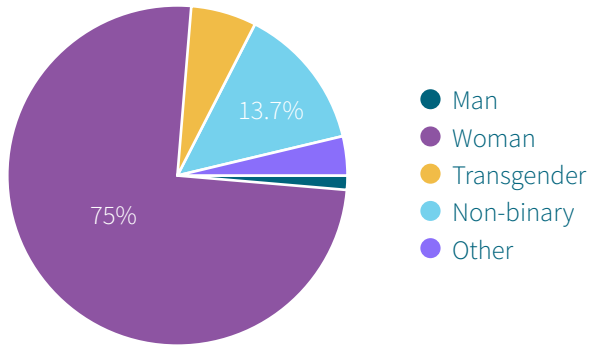
80 responses





What is your gender identity?

80 responses

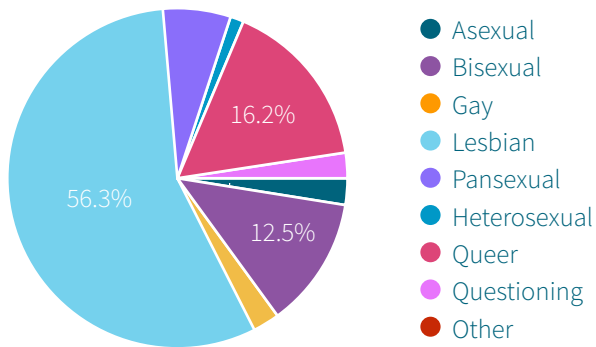


- Man
- Woman
- Transgender
- Non-binary
- Other



What is your sexual orientation?

80 responses

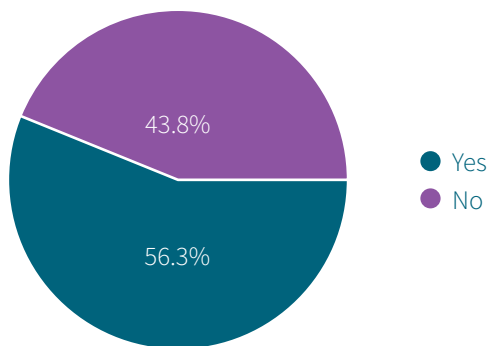


- Asexual
- Bisexual
- Gay
- Lesbian
- Pansexual
- Heterosexual
- Queer
- Questioning
- Other



Did you participate in the 2022 elections?

80 responses

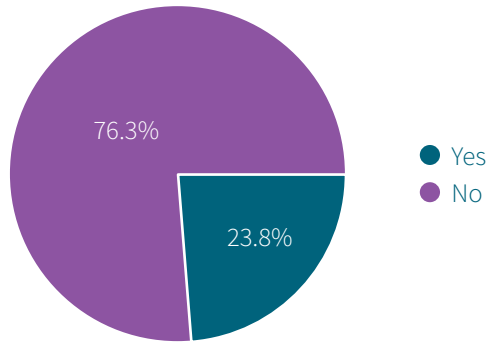


- Yes
- No



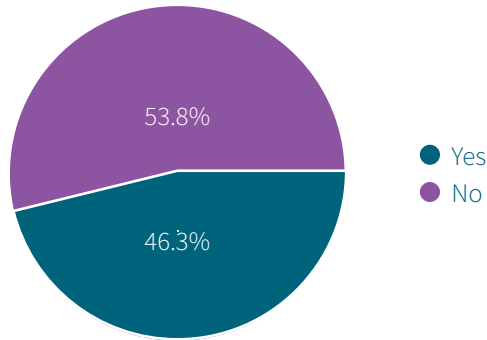
Do you know of any queer person who was a candidate in the 2022 election?

80 responses



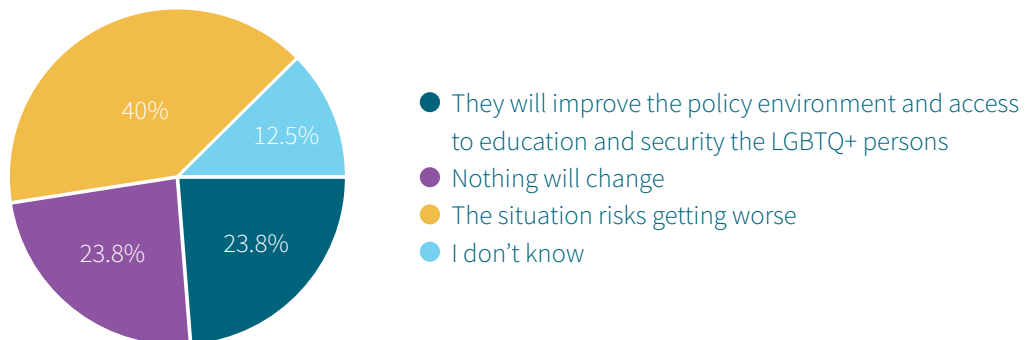
Did you know about queering the ballot?

80 responses



What is your opinion on the elected representatives to the national government?

80 responses





What are the priority areas for the LGBTQ+ community for the next 5 years?

80 responses



Anchor work and innovations for QTBI

In Vihiga Constituency, the queer community has been engaging with elected leaders through SRHR trainings, where they are able to directly interact with elected leaders. They project that this relationship is likely to continue, even with the change of guard at the national level.

In Busia Constituency, the LBQ community has been working with the police and the health department, anchoring the discussions in gender mainstreaming, and using the relevant policies and international treaties that speak on inclusion and non-discrimination.

In Mombasa, there has been consistent engagement with the County Government of Mombasa, and some of those engaged by the queer community have been re-elected. This engagement is set to continue and possibly grow in the coming cycle. Working with the County Department of Youth, Gender, Sports & Cultural Affairs is also projected to continue, as they have had a good-standing relationship.

Partnerships and Collaborations

Internal Partnerships

QTB partnered with the feminist and women led organisation across the four regions. QTB also partnered with other broader queer organisations. These partnerships aided with strengthening the queer organisations. For instance, NGLHRC remained responsible for legal and security support should the situation escalate to a level requiring this type of protection. INEND shared their partnerships with allies with a wide reach in society and expansive information and dissemination system, such as the aforementioned transport industry actors. WKLFF brought on board their engagement with the county governments, and offered great lessons on meaningful engagement of candidates and elected representatives. ELITE LBQ came in handy with their engagement of security and health actors. All organisations displayed a deep understanding of the political and security environment they were in, and this enabled QTB to cover its bases when it came to stakeholder and multi-sectoral engagements, which are essential when undertaking election observation, particularly for the first time, and in the Kenyan context as queer people.

External Partnerships

QTB partnered closely with allies who offered insights into how to strengthen the initiative, and availed their institutions to offer solidarity and protection support. In particular, QTB enjoyed a commitment from the National Coalition for Human Rights Defenders - Kenya for protection support. They also offered training and technical support to QTB. Amnesty International Kenya availed their monitoring support for incidences of hate speech or violence, committed to helping with de-escalation and rescue where needed, and additional training on safety and security. URAIA contributed their solidarity, and linkages with other elections observers groups in the country, including ELOG. The support came later on in the project, and was not fully activated. However, these are partnerships that will be explored and maximized moving forward.

Moments

It is worth noting that advocating for LGBTQ+ rights in Kenya is still challenging due to societal attitudes, legal restrictions, and potential backlash. However, the efforts made by LBQ activists and organizations during the 2022 election periods contributed to raising awareness and promoting the importance of inclusivity within the electoral process.

Sara Mbae,
Executive Director
ELITE-Busia

The project showed us there is still work to be done and that early preparations is key. We would like to see queers also vie for political positions and lead from the fore front.

Peter,
Bodaboda Operator

The QTB initiative provided a valuable opportunity for queer individuals in Kenya to participate in the voting process and have their voices heard. Despite the challenges faced by the community, their participation had a significant impact in terms of empowerment, visibility and community building. By addressing these challenges and implementing the recommended improvements, Kenya can move closer to a more inclusive and equitable democratic system that embraces the participation of all citizens, irrespective of their sexual orientation or gender identity. The QTB initiative serves as an important step towards achieving greater representation and acceptance for the queer community in Kenya's political landscape.

Gerald - Rwok

Limitations

Being the initial attempt at queering the ballot, implementation was a steep learning curve. The steering committee was structuring the process as they went along with the success of each stage, then initiating the next. Therefore, there are some gaps and limitations that emerged from this:

1. Limited funding to roll out QTB at a scale similar to other local and international observer teams was a limitation. As such, QTB had to keep the numbers small in order to aptly support and facilitate their observers. A resultant effect and further limitation to this was that the areas they could adequately cover and observe were equally limited.
2. Limited time was another hurdle. QTB only had a few months to roll out the initiative vis a vis years of preparation for other observer delegations. This meant that they had to crash course their observers, most of whom had never engaged in the electoral process, in order for them to be prepared.
3. A resulting limitation of time constraints is significant data gaps, owing to improperly filled toolkits, with some of the data proving difficult to analyse. Moreover, there were data collection gaps seen in the missed opportunity to collate data received from supplementary sources, such as Signal.

Lessons Learnt

After daring to get into the murky waters of democratic processes, QTB drew in-depth lessons from the processes including:

1. The need for QTB to engage in the electoral process earlier, and probably at least 24 months before, the general elections. This would allow the opportunity to engage with the voter registration and verification process in a robust way. QTB also believes that early engagement would allow for conscionable civic education that would result in increased participation of queer people as voters, observers, party agents, elections officials and even as candidates.
2. Branding of QTB observers should take due cognizance of the political context. The QTB merchandise had colours that resembled Azimio; in future such a formation will adopt politically neutral colours. Additionally, the observers requested that future branding should have covert messaging, as opposed to outright rainbow and queer messaging which draws attention, and could risk the safety and security of the observers.
3. There is strength in having a blend of observers comprising queer persons and queer allies. QTB deployed this model at the Coast, and it was helpful and highly effective in information gathering, safety and security responses. It also consolidated the ongoing partnership between INEND, queer persons and transport industry leaders. QTB will seek to deploy a blended model of monitoring elections and other political processes.
4. The continued challenge of the freedom of gays, lesbians, and bisexuals to associate and be registered affected QTB processes. Western LBQ was denied accreditation. NGLHRC had to accredit people as Legal Arch Youth group due to the yet to be concluded case of registration as an NGO.
5. There must be a plan for reserve resources, particularly in the accreditation of additional observers, to cover unforeseeable circumstances, such as drop out observers.
6. Mechanisms must be developed for post-implementation reporting and data collection.

Recommendations

With only three months of planning, the achievements and strides made by QTB are undeniable. Nonetheless, from the FGDs conducted with the observers, and feedback received from stakeholders, the following recommendations are suggested:

QTB Situation Room

1. Create defined structure and communication infrastructure that will ensure proper and meaningful partnership and communication, so that there is ownership of the initiative among all partners.
2. Engage in the electoral process earlier - at least 24 months to the general elections to allow longer and more efficient engagement with voter registration and verification processes.
3. QTB was a learning process undertaken with caution. Planning for the next engagement was premised on success of the earlier stage i.e. the civic education was undertaken for the pre-election period and after its success, planning for the election day was activated. After the polls closed, then the planning and execution of the post-election phase kickstarted. It would help to plan for the entire exercise and design a QTB that prepares for all scenarios in the election cycle.
4. Because of the far reach of the QTB organisations, the next phase should be implemented entirely on digital tools that allow for transmission of information of reports in real time, and allow for instant response and preparation of timely reports for each phase.
5. Participating organisations should consider mainstreaming or integrating QTB into their institutional programming. This would allow for ease in fundraising for the next cycle, thus creating a sustainable funding pool that would allow engagement and participation in the entire electoral cycle.
6. Assess each partner's capacities, and distribute the roles according to capacities and strengths. Equal distribution of roles has to come with significant project contributions for accountability.
7. All QTB partners should devise programmes that enable them to remain active and vigilant within the democratic space. For instance, they need to be involved in the county and national planning and legislative issues. In Mombasa in particular, it was noted that the economic, social, and political issues could be channeled through allies, who actively engage with the county integrated planning process, as well as budget advocacy.
8. Adopt a blended system of observers and leadership comprising queer persons and queer allies. QTB deployed this model at the Coast and it was helpful and highly effective in information gathering, and safety and security responses.
9. Convene debrief sessions for the observers soon after the election process has been concluded. This will create an opportunity for the observers to receive psychosocial support, and share their experiences and realities of the electoral process from a queer perspective.

1. The IEBC should ensure it is properly constituted 24 months prior to the scheduled polls. This will allow for proper workforce planning to ensure that sufficient awareness creation on voter education, voter registration, and voter verification is set up and rolled out. This will also ensure that the public is well-equipped and prepared for the polls, and will further result in the smooth running of the elections, as they will have sufficient time to troubleshoot.
2. The executive should abstain from interfering and intermeddling with the IEBC, as this casts doubt on the legitimacy of the election and electoral process. The IEBC should conduct its affairs independently, as stipulated in the Constitution.
3. Civil society should play a checks and balances role in ensuring the independence of the IEBC, and, where need be, call upon the judiciary to reinforce the legal obligations and safeguards that ensure the independence of the IEBC.

Conclusion

QTB has set an undeniable precedent in the civic and political participation of the queer community in Kenya. The Supreme Court's pronouncement that freedom of association cannot be withheld or granted selectively based on sexual orientation and gender identity will hopefully transcend beyond the formation of queer-led and focused CSOs and CBOs, and tap into the formation of political parties, as well as drive political conversations and agendas focused on the protection of queer Kenyans. It may sound like a far-fetched dream, but so did the registration of a queer-led and serving organisation, and the lawful accreditation of queer election observers. QTB has shown how much the queer movement can achieve if we all work together and drive a common goal. It was not without its challenges, but those can and have been turned into lessons. The initiative can build on these lessons, and improve the systems and infrastructure that can keep QTB moving and growing.

Annexures

For further information with regard to the annexures*, kindly write to info@inend.org

Queering The Ballot

The project was widely covered on various platforms across the region:

1. Our Executive Director Esther Adhiambo discusses how the Kenya Presidential Elections are going and the status of queer people in the country, as well as being the country's first LGBTQ-TI+ group to be granted observer status - <https://omny.fm/shows/the-breakfast-show-702/queering-the-ballot>
2. Electioneering Period and the LGBTQI+ Vote in Kenya - <https://africanlegalstudies.blog/2022/08/05/electioneering-period-and-the-lgbtqi-vote-in-kenya/>
3. Kuchu Times-Uganda - <https://www.kuchutimes.com/2022/08/queering-the-ballot-in-kenya/>
4. Kenya Election Watch: Queer groups were approved to observe elections by the electoral body - <https://thisisafrica.me/politics-and-society/kenya-election-watch-queer-groups-were-approved-to-observe-elections-by-electoral-body/>
5. Queer people seek inclusion in the electoral process - <https://nation.africa/kenya/life-and-style/queer-people-seek-inclusion-in-electoral-process-3907038>



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