Transition to Subnational Democracy
Kenya's 2017 Presidential and Gubernatorial Elections

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Abstract
Perceptions of the legitimacy of the 2017 subnational elections in Kenya have been bound-up with perceptions of the presidential race, which was nullified by the Supreme Court, casting doubt on the results of subnational elections held on the same day. I conduct a nationally representative survey on the way citizens voted on election day, akin to an exit-poll of Kenya's 2017 elections, and find that the survey responses match with the electoral commission's announcement of results. I additionally overview all court cases disputing the 2017 gubernatorial results and again find no reason to reject the electoral commission's pronouncement of results. Based on the evidence provided I argue that the Supreme Court nullification of the presidential vote does not cast doubt on the accuracy of the gubernatorial vote. The findings point to a strong and robust democratization underway at the subnational level in Kenya.

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Introduction

Subnational democracy has gained in significance in recent years due to citizen interest and greater willingness among states to decentralise decision-making. As Arjan H. Schakel and Valentyna Romanova state, 'the territorial scope and importance of regional elections have increased considerably over the past four decades yet most scholarship remains focused on national elections' (2018, 233). Part of the reason for this is that the verification of subnational elections nevertheless rests on national-level electoral agencies and courts, which means the legitimacy of subnational democracy depends, ultimately, on national institutions. The present article discusses whether subnational elections can still be valid and a force for democratization in a context of nullified national-level results by examining the 2017 Kenyan elections. The central research aim is to establish whether the results of the 2017 gubernatorial elections in Kenya accurately represent the will of the people and can be trusted when analysing the country's subnational democratic trends, despite the fact that the presidential elections, held on the very same day, were found to be invalid by Kenya's Supreme Court in the judgment of *Raila Amolo Odinga & Another v IEBC & 2 Others* (2017). The Supreme Court's judgment casts doubt on the validity of the gubernatorial elections by extension, and there has not been academic evaluation thus far on whether those results are nevertheless trustworthy and can reliably be used to describe voter opinion at the subnational level. The Supreme Court decision about the presidential race led to a fresh presidential election on 30 October 2017, but none of the gubernatorial elections were re-run. The question of their accuracy is important because Kenya's 2010

Constitution precisely sought to strengthen democracy through extensive devolution provisions, so the question of local election validity lies at the centre of the project to re-build Kenyan democracy following the 2007/8 post-election violence. Analysts have been tracking the importance of the shift to 47 county governments for the democratic transition that it promises (Burbidge 2019; Elfversson and Sjögren 2020; Gadjanova 2019; Waddilove 2019), and yet without the confidence of being able to say that these county-level elections have, in the main, led to results representative of voters' preferences. In the below, I contribute to the discussion by analysing:

1. changing voting behaviour in Kenya's counties in the 2017 elections;
2. all court cases disputing the results of individual gubernatorial elections;
3. whether the Supreme Court's nullification of the presidential race should cast doubt on the accuracy of the subnational election results; and
4. what these findings mean for Kenya's transition to subnational democracy under the 2010 Constitution.

In the course of providing answers to these points the article submits evidence that the official presidential election results of 8 August 2017 were accurate, and therefore not a reason to question the accuracy of the subnational elections held on the same day. Evidence on this point is submitted in the form of a nationally representative survey on the way citizens voted, and a statistical test of the goodness-of-fit between the answers of survey respondents and the data on the election results provided by the Independent Electoral and Boundaries Commission (IEBC).

The article is divided into five parts. In the first, I describe for those new to Kenyan politics the core features of devolution under the 2010 constitution and explain how devolution fits within the vertical state structure. The second section situates the article within the valuable work already carried out on Kenya's 2017 elections. Third, I outline the broader political context under which regional elections were held in 2017—particularly important given the way in which all levels of representation are elected at the same time. Fourth, I analyse the political changes that were brought about at the subnational level, particularly as compared to the results of the 2013 elections. In general, there was a substantial decline in the strength of the opposition among regional elites. The fifth section submits evidence to verify the 2017 results. I present nationwide analysis on the numerous court cases that challenged the gubernatorial results, highlighting the strange discrepancy in the way the Supreme Court nullified the presidential results while the High Courts, Court of Appeal and Supreme Court ultimately dismissed all challenges to the gubernatorial results. In part in response to this discrepancy, I conduct a verification of the 2017 election results by means of comparing the official tally of the presidential race with a nationally representative survey of citizens about the way they voted, surveyed a few months after election day. Using a chi-square goodness-of-fit test between the official election results and the national survey results, I find strong evidence against the argument that the election was rigged. The analysis lends credibility to the August 2017 elections as representative of the will of the Kenyan people. This is not an argument against the Supreme Court's findings, however, as the Court was explicit in stating that irregularities required a re-run even if the irregularities were not evidentially sufficient to have changed what would otherwise have been the outcome. For debate on the changes that occurred at the subnational level in 2017, the article's verification of IEBC results adds weight to the suggestion that official regional elites are emerging as a significant force for the country's transition to subnational democracy under the 2010 Constitution.

Government and elections in Kenya, national and local

In a radical break with a highly centralised system of government, in 2010 the Kenyan people promulgated a new constitution with extensive devolution. The 2010 Constitution created 47 county governments equal to each other in levels of autonomy and decision-making responsibilities, covering the entire country. The national government continues, but with curtailed functions and reduced executive scope. The 2010

Constitution further separated the presidency from parliament, increased parliamentary scrutiny of executive appointments, and strengthened the judiciary as an independent institution with greater importance for reviewing compliance with the constitution and upholding human rights.

Prior to the 2010 Constitution, Kenya was administratively split into districts and provinces: these were units with little democratic participation and with responsibilities determined centrally, mostly in the form of statutory legislation (see Davey 1971; Akivaga, Kulundu-Bitonye, and Opi 1985; Smoke 1993; Southall and Wood 1996; Burbidge 2013). Following 2010, the provincial level was eliminated and the districts converted into counties, with the counties entrenched in the constitution both in terms of being separate spheres of governance and in terms of holding distinct responsibilities. The fourth schedule of the constitution details county governments' 14 functions, which include agriculture, health care, water and sanitation, county roads, and community participation in government. What is not specified is presumed under the purview of national government, giving the national level enduring significance in terms of being able to define its own objectives. According to the constitution, county and national governments are described as 'distinct and inter-dependent'; they 'shall conduct their mutual relations on the basis of consultation and cooperation' (Constitution of Kenya 2010, art. 6.2). To facilitate this relationship, the Senate acts as a second legislative chamber at the national level with special interest in county governance. Senators debate and vote on national legislation that relates to counties or devolved government functions, and play the ultimate role in decisions on whether a county governor is impeached. There has, of course, been ambiguity and contestation surrounding the way in which county governments relate to the national government. This has come particularly from the continuation of national ministries in areas that have been devolved, such as the Ministry of Health, as well as the maintenance of a Ministry of Devolution and Planning,[1] which seeks to coordinate and implement devolution as an arm of the national executive. County-level politicians have called for greater funds to be transferred to devolved governments (Cheeseman, Lynch, and Willis 2016) and for a greater say in local security provision (Burbidge 2017a). According to the constitution, at least 15 percent of national revenue must be transferred to the counties, a provision which has so far been adhered to; in addition, counties keep all locally-generated revenue via fees and payments for county services, as well as land rates. Nevertheless, given the amount of government responsibilities transferred to the counties, the financial support is often felt insufficient.

There are two significant transformations devolution makes to Kenya's institutional configuration. The first is the splitting of the civil service into distinct entities for each county (creating, in effect, 48 civil services in total). This feature has been little commented on but is, I believe, one of the most significant changes brought about by devolution in Kenya. Each county government hosts a county public service board that is self-governing in terms of human resource management. It makes recommendations for the appointment of county chief officers directly to the county governor. The human resources set-up means each county civil service may, over time, develop separately and out-of-sync from the country's other civil service units, including the national civil service managed by the public service commission. The drafters of the constitution wanted to avoid a co-opting of devolved governments through what has come to be understood as Kenya's former 'bureaucratic-executive state'—a state that grew out of one-party rule and asserted its dominance through bureaucratic centralism (Branch and Cheeseman 2006). But the 2010 Constitution goes so far in the opposite direction that it ultimately breaks with some foundational principles of the civil service tradition: the idea of internal meritocratic appointments for purposes of centralised administrative coordination. The splitting of the civil service by county in Kenya means there can no longer be centre-led transfers of county civil servants, nor the internal promotion of county-level civil servants to the national civil service. On the other hand, it helps ensure the decentralised administrative structure will endure in the face of any opposition from the centre.

The second transformation devolution makes to Kenya's institutional configuration is the democratization of local government, which takes two forms: legislative and executive. In terms of the legislative, each of the 47 counties hosts a county assembly in charge of passing the county budget and

[1] In January 2018, the name of the ministry was changed to 'Ministry of Devolution and ASALs [Arid and Semi-Arid Lands]'.

county-level legislation. The county assembly is made up of Members of County Assembly (MCAs), who represent wards within the county on a first-past-the-post basis, and each assembly is supplemented with additional representatives for gender, youth, community minorities and persons with disabilities, in proportion to party vote share. The county-level executive branch is led by a popularly elected governor, who vies for office with a running-mate who assumes the position of deputy governor. The governor appoints up to 10 county executive committee members to form county-level ministries in charge of delivering devolved functions.

Because devolved functions were made into law through constitutional provisions and the implementation of those provisions through national legislation, there has been a challenge in establishing a clear legislative agenda for individual county assemblies—especially in terms of identifying a particular domain for county by-laws. A significant proportion of county assembly debate has instead tended to centre on the budget (and its connected 5-year County Integrated Development Plan [CIDP]) as well as governor impeachments—assessing whether a governor's conduct complies with the constitution's chapter six provisions on 'leadership and integrity', applicable to all state officers. These two areas are very much under the purview of county assemblies but were not envisioned as exhaustive of their roles. The work agenda of the MCA is still very much open and evolving, therefore. Governors have, in contrast, become the prominent public face of devolution, both in the media and in terms of the provision of public services locally. The vote for one's governor therefore forms the epicentre of local democracy, and delivers most directly on the 2010 Constitution's promise to move Kenya away from a winner-takes-all national executive through the presidency. Due to constraints of space, the below analysis of the 2017 elections focuses on the election of governors rather than MCAs in discussing subnational democracy.

On the same day every five years, the Kenyan people are scheduled to vote for six different representatives: President, Member of Parliament (MP), Women Representative (who sits as an MP in the National Assembly), Senator, Governor and MCA. The vibrancy of these elections put the Kenyan state squarely in the political science category of "competitive authoritarianism", because while the incumbent regime enjoys significant advantage through the deployment of security services and the direction of state resources, big changes do occur via the ballot box. The fact that all positions are voted for on the same day further means there is a great deal of overlap and mixture in the campaigns for candidates, parties and coalitions.

Some positions are, of course, better understood than others by the general public. To test relative awareness of each of the positions voted on, I conducted a nationally representative survey of 2,225 citizens in December 2018 asking respondents to name from memory the positions they vote for during the election (results displayed in figure 1). (All survey questions presented in this article were asked in English, Kiswahili or Somali according to what was preferred by the respondent.) Interestingly, the two positions most easily identified were the president and the governor, even though governors had, at the time of the survey, only been in existence for eight years, as compared to, for example, MPs, who have been around since before independence in 1963. The result helps show the great importance placed on the relatively new position of governor by ordinary citizens. Figure 2 displays the results of then asking citizens how much they trust each of the positions voted for to do their job well. The question avoided any focus on individual politicians and instead asked about types of representation, though it must be accepted that the reputations of office and office-holder are often hard to distinguish. Respondents again placed the presidency and governor at the top, viewing them as the two most trustworthy in carrying out their functions. These results give confidence to the above description of the perceived importance of the governorship in Kenyan politics in general and for devolution in particular. The present article therefore focuses on the gubernatorial in analysing regional political changes in Kenya's 2017 elections, though there is a great need for additional research on county assembly elections.

Figure 1 'When Kenyans go to vote during elections which positions do they vote for?' (N = 2,225)

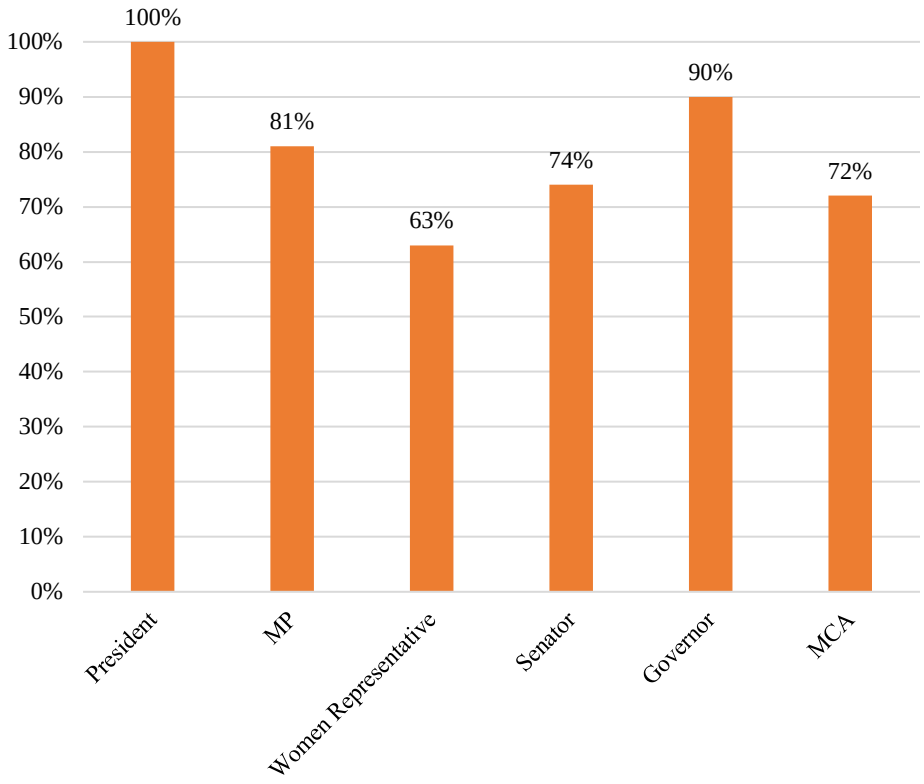
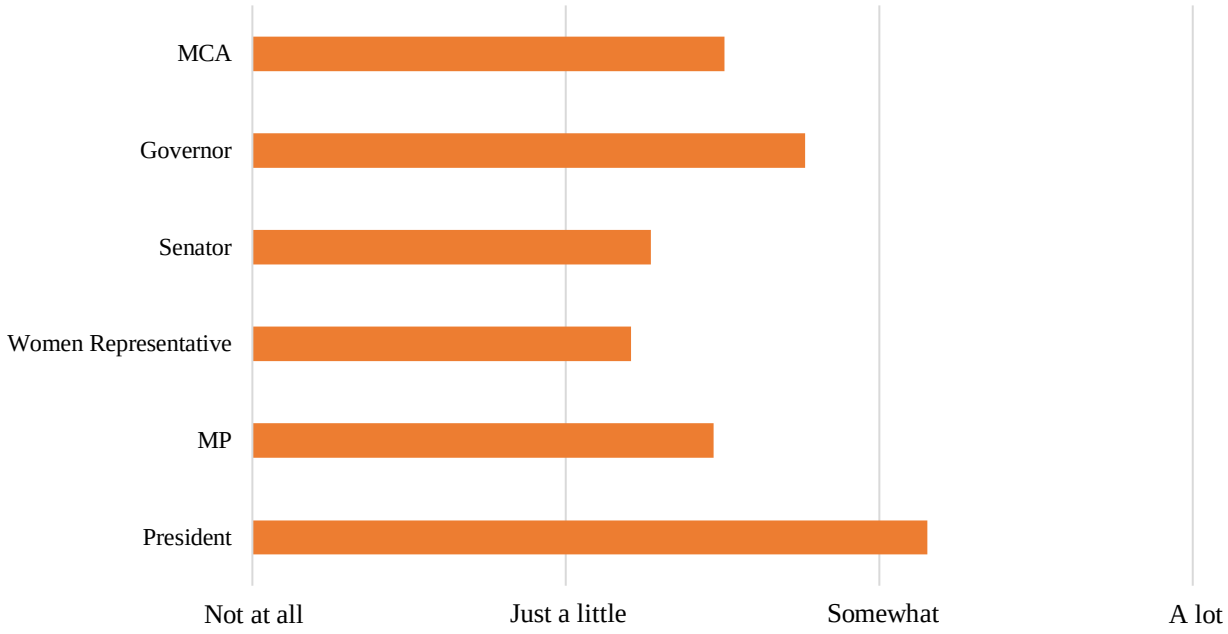


Figure 2 'How much do you trust each of the following political positions to do their job well?' (N = 2,225)[2]



Scholarship on devolution and the 2017 Kenyan elections thus far

There is a small but growing literature on Kenya's devolution 'experiment' (Burbidge 2019). Michelle D'Arcy and Agnes Cornell (2016) write on how devolution has expanded the number of 'winners' in Kenya's political system, though they find that problems of corruption have persisted if not increased alongside the greater reliance on county governments for public service delivery (see also Onyango 2017; Cannon and Ali 2018). Nic Cheeseman, Gabrielle Lynch and Justin Willis highlight the competition between national and county politicians during devolution's early years of implementation, and note that '[t]he combination of vigilant governors, constitutional protections and public popularity suggests that devolution in Kenya is here to stay' (2016, 31). Kurtis Lockhart (2018) demonstrates the rebalancing of centre-periphery relations that has come about through devolution by means of a study of road-building in Kenya, showing that devolution has so far helped mitigate the prior tendency of the state to make infrastructural upgrades to core regions of presidential support only, something that was present most especially in the one-party era (Burgess et al. 2013). Ngala Chome (2015) finds evidence for an evolving centre-periphery relationship through devolution whereby the national government seeks to diminish the role of governors by framing them in depoliticised ways, akin to administrative implementers of national development strategies. Notwithstanding, Chome finds that governors do play an intensely political role in opening-up decision-making and giving access to state resources to residents, which works to contradict the national elite narrative and yet, in the same breath, commits governors to some incompatible expectations. Emma Elfversson and Anders Sjögren (2020) track the internal politics of two politically important counties, Nakuru and Uasin Gishu, over a period covering the 2013 and 2017 elections. They

[2] For purposes of calculating average responses, the following numerical scale was used: 'not at all' = 0; 'just a little' = 0.33; 'somewhat' = 0.67; 'a lot' = 1. 'Don't know' was selected a total of 479 times for the six questions and is excluded from analysis.

observe that subnational elections in these two counties have been largely peaceful, despite the two being hotspots for violence previously. While the normal explanation for this has been the national-level coalition that was formed between political leaders of the Kalenjin and Kikuyu ethnic communities that dominate the two areas, Elfversson and Sjögren show that there is important local nuance to the story. Inter-ethnic relations were, over this period, more stable and peaceful in Nakuru than in Uasin Gishu because of the willingness of Nakuru elites to bring power-sharing into the gubernatorial race by organising a Kikuyu governor candidate and a Kalenjin deputy governor candidate in 2017. The opposite was the case in Uasin Gishu, leading to tense inter-ethnic relations. The authors remark:

> …intimidating and polarising political rhetoric was common. Governor Mandago, a Nandi [sub-group of the Kalenjin], was increasingly accused by leaders of other communities of pursuing an exclusivist line in political positions, government employment, and resource allocation […]. The governor created local networks of loyalty around distinct narratives of rightful ethnic ownership for the Nandi. He was deemed to have chosen this strategy because of being a political outsider; in the 2013 gubernatorial race he defeated [Deputy President] William Ruto's preferred candidate. This cut both ways: he had poorer connections to the Kalenjin national political leadership, but he was also more difficult for them to control (Elfversson and Sjögren 2020, 55-6).

Studies such as these show the importance of detailed county-level analysis that is cognisant of, and yet not reducible to, the evolving centre-periphery relationship in Kenyan politics. In explaining the new political trends brought about by devolution, however, these studies rely on election data that needs to be more accurately certified. The present article seeks to offer a helping hand for analysis going forward by verifying the 2017 results and then commenting on what they mean for the reshaping of Kenyan politics through devolution.

The 2017 Kenyan elections

The same split between voters and candidates formed the basis to the 2017 Kenyan elections as had occurred in the 2013 elections. Broadly speaking, this took the form of an alliance between President Uhuru Kenyatta and Deputy President William Ruto against a coalition of groups led by leader of the Orange Democratic Movement (ODM), Raila Odinga. A key difference, however, was that in 2013 Kenyatta was leader of The National Alliance (TNA) and Ruto leader of the United Republican Party (URP), which together formed a coalition involving a number of other additional parties. For the 2017 elections these parties were instead forced by Kenyatta to amalgamate into a single party ahead of the elections, or else be unable to join the government once it was formed. The single party was called the Jubilee Party (JP), and engineered a more coherent and centrally organised campaign than is traditional for Kenya's often disparate presidential coalitions. The vote base to JP remained very similar to that of Kenyatta and Ruto in 2013. As Michael Chege explains, 'Kenyatta's Jubilee Party drew its core support primarily from the Kikuyu and Kalenjin ethnic groups, while Odinga's National Super Alliance (NASA) was backed by Luo, Luhya, Kamba, and Mijikenda' (2018, 158). NASA was a coalition highly similar to the Coalition for Reforms and Democracy (CORD) formed for the 2013 elections by 13 different parties and led by ODM. In 2017, NASA was made up of four parties: Amani National Congress (ANC), Forum for Restoration of Democracy-Kenya (FORD-KENYA), ODM and Wiper Democratic Movement-Kenya (WDM-K). For a full list of competing parties and coalition formations for the 2013 and 2017 elections, see appendices A and B respectively.

National-level coalitions focused primarily on winning the presidency, with mixed results for the effectiveness of campaigning for devolved positions. Elena Gadjanova writes on the fine balancing that was needed when presidential candidates endorsed local gubernatorial candidates (2019, 276-7). While endorsement often acted as a boost to gubernatorial candidates' chances, it also held the potential of escalating local divisions if the centre got too involved in local politics without sufficient understanding of context, particularly local clan relations amid questions of what counts as fair inclusion locally. Popular

county leaders often helped boost support for presidential candidates also (2019, 283). The party structure in any given democratic system is supposed to work towards such coordination by providing local input in the process of building a national profile. In Kenya, however, a long history of fragmentary parties following disabuse of the Kenya African National Union's (KANU's) dominance in the decades following re-introduction of multipartyism in 1992 has made these centre-periphery connections more difficult to sustain. While political representation in Kenya is highly formalised, the alliances and deal-making between elites are not.

The race between the two main factions of the 2017 elections was closely tied throughout the campaign period, as evidenced in the frequent opinion polling of citizen attitudes (Campbell 2017). Further adding tension, the ability of the IEBC to carry out its work effectively was put in serious doubt. From over a year before election day, the opposition led a campaign criticising IEBC commissioners for being biased, corrupt and unable to carry out their duties. Despite some new commissioners being put in place in January 2017, problems and scrutiny grew over the electoral register, the printing of ballot papers, and the plans for combined use of digital and paper technologies for vote counting (Cheeseman et al. 2019). On 29 July 2017, a mere 10 days before the election, the IT manager of the IEBC, Chris Msando, was tortured and murdered (BBC News 2017b). The perpetrator was never identified, and strangely the police did not release any photos of the killer despite them being available through highway speed cameras (Onsarigo and Michira 2018). There is no definite evidence on whether or in what way the killing is connected to the election results, though the development certainly cast doubt over proceedings and vindicated opposition concerns over the ability of the IEBC to deliver a free and fair election under such pressures.

The results of the 8 August 2017 presidential contest were announced by the IEBC as Kenyatta winning 54.27 percent of votes and Odinga winning 44.74 percent. On this basis, Kenyatta would have assumed office had it not been for a petition by Odinga to the Supreme Court arguing that the vote counting had been electronically manipulated, producing discrepancies between the paper and electronic tallying. For its part, the IEBC failed to produce for the court large swathes of paper documentation detailing the results, and produced other examples with glaring errors. These shortcomings led the Supreme Court to declare the election 'invalid, null and void' (Freytas-Tamura 2017), and order fresh elections within 60 days (Burbidge 2017b). It is important to note that the original petition from the opposition accused both the IEBC of failing to deliver on its responsibilities and Kenyatta as having rigged the election. The Supreme Court only found in favour of the former charge, which meant they identified no grounds for excluding Kenyatta from the fresh elections. Another particularity of the judgment is highly relevant. In its 2013 judgment—which had found the 2013 elections to have been validly held—the court had made clear its reasoning required both evidence of discrepancies and evidence that any such discrepancies were significant enough to have swayed what would otherwise have been the outcome. In contrast, the 2017 judgment took the view that evidence of discrepancies was enough (Kanyinga and Odote 2019, 244-5). This nuance is extremely important for evaluating, comparatively, the validity of the other five votes on the ballot paper: it shows that the court did not find definite evidence that the election results would have been substantially different had the IEBC conducted its work more appropriately, leaving open the possibility that despite irregularities the results of the 8 August polls may be reflective of the will of the people. Because the court petition was only made against the declared results of the presidential race, only the presidential was re-run in the reorganised election of 30 October 2017, leaving the results of the other positions to stand as declared by the IEBC in August. When Odinga boycotted the October re-run, Kenyatta was declared winner with 98 percent of the vote, with a turnout of under 39 percent (BBC News 2017a). As Michael Chege quipped, '[t]he Supreme Court's surgery worked, but the patient died' (2018, 161).

Gubernatorial changes in the 2017 elections

The bitter fight for the presidency in no way reduced the importance and competitiveness of the gubernatorial races in the 47 counties. The 2017 elections were the second ever for governors in Kenya, so interestingly they were the first to evaluate incumbent governor performance. In general, the preceding five

years had demonstrated the importance of the governor position under the 2010 Constitution as compared with, for example, MPs and senators. High-profile politicians from across the country entered into the 2017 gubernatorial race (Mutahi and Ruteere 2019, 254), raising its significance further in the eyes of voters. Table 1 details the 2017 gubernatorial results in each county, describing the vote share for each party or coalition. The results for the 2013 gubernatorial race can be found in appendix C, again described according to vote share for party or coalition. The two results provide the data for map 1, which illustrates the shift in party gubernatorial representation between 2013 and 2017.

Table 1 Kenya's 8 August 2017 gubernatorial vote count, by party/coalition and county (Richard 2018, 682-6)

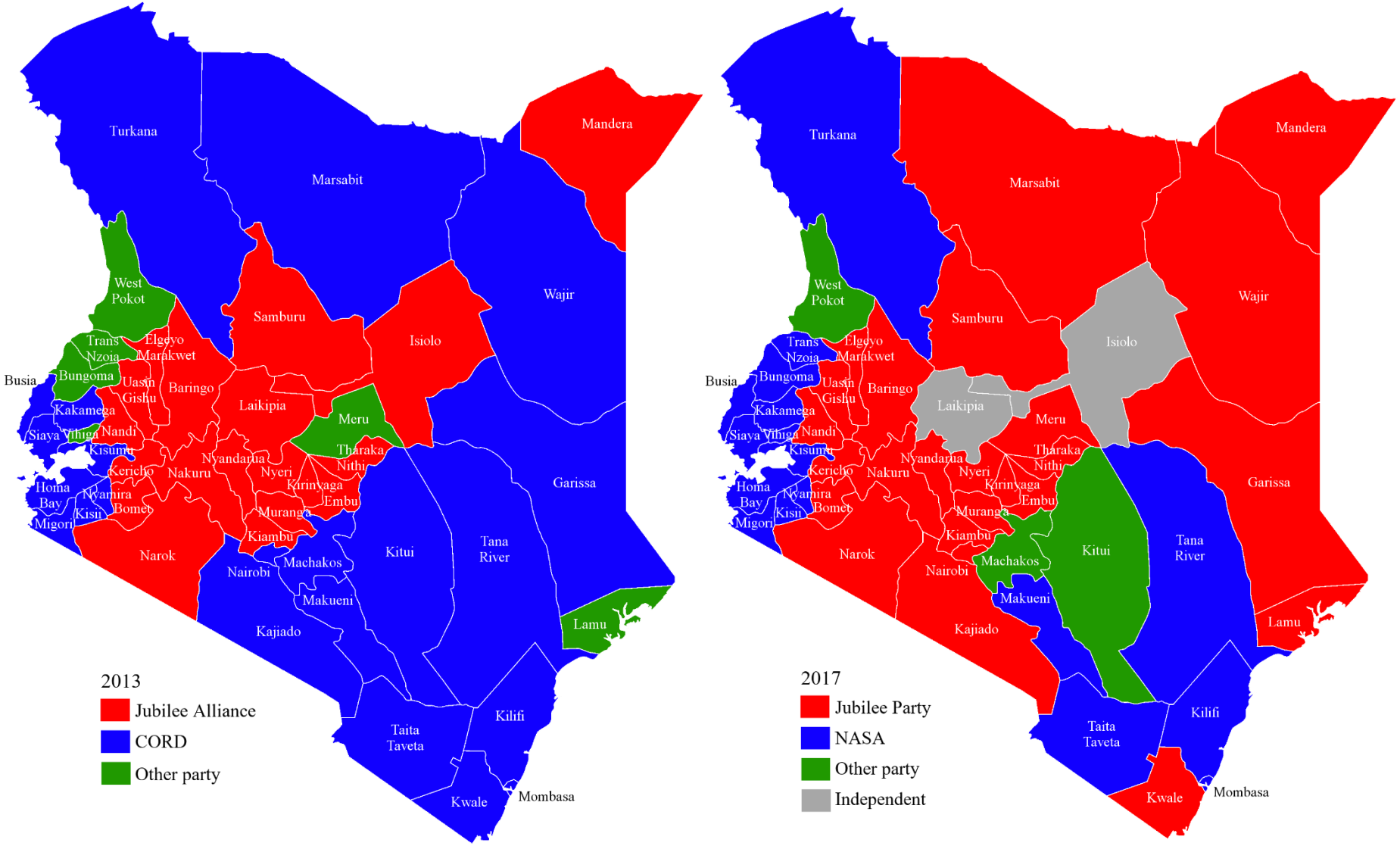
County	JP	NASA	Other parties or coalitions	Independent	Winning party or coalition	Total votes
Baringo	137,908 (72.70%)	-	51,792 (27.30%)	-	JP	189,700
Bomet	176,712 (67.19%)	-	86,282 (32.81%)	-	JP	262,994
Bungoma	180,847 (43.09%)	236,254 (56.29%)	-	2,586 (0.62%)	NASA	419,687
Busia	7,597 (2.76%)	138,911 (50.46%)	3,620 (1.31%)	125,165 (45.47%)	NASA	275,293
Elgeyo Marakwet	87,169 (59.76%)	970 (0.66%)	888 (0.61%)	56,845 (38.97%)	JP	145,872
Embu	97,602 (38.94%)	-	150,698 (60.12%)	2,355 (0.94%)	JP	250,655
Garissa	59,871 (51.26%)	56,258 (48.17%)	663 (0.57%)	-	JP	116,792
Homa Bay	1,279 (0.32%)	210,759 (52.45%)	-	189,763 (47.23%)	NASA	401,801
Isiolo	13,635 (25.24%)	1,081 (2.00%)	16,635 (30.79%)	22,669 (41.96%)	Ind	54,020
Kajiado	174,982 (53.76%)	146,634 (45.05%)	3,892 (1.20%)	-	JP	325,508
Kakamega	14,459 (2.62%)	534,489 (96.71%)	3,696 (0.67%)	-	NASA	552,644
Kericho	288,325 (95.27%)	-	14,329 (4.73%)	-	JP	302,654
Kiambu	768,086 (78.16%)	-	210,740 (21.45%)	3,825 (0.39%)	JP	982,651
Kilifi	56,614 (17.35%)	221,656 (67.93%)	44,664 (13.69%)	3,375 (1.03%)	NASA	326,309
Kirinyaga	161,681 (54.05%)	-	122,966 (41.11%)	14,469 (4.84%)	JP	299,116
Kisii	110,934 (27.64%)	224,205 (55.86%)	62,981 (15.69%)	3,235 (0.81%)	NASA	401,355
Kisumu	2,081 (0.48%)	275,268 (63.19%)	654 (0.15%)	157,613 (36.18%)	NASA	435,616
Kitui	-	74,697 (20.79%)	170,031 (47.33%)	114,527 (31.88%)	NARC	359,255
Kwale	119,914 (64.97%)	58,654 (31.78%)	-	6,456 (3.50%)	JP	184,574
Laikipia	98,349 (49.50%)	-	-	100,342 (50.50%)	Ind	198,691
Lamu	22,969 (46.57%)	25,990 (52.69%)	365 (0.74%)	-	JP*	49,324
Machakos	6,547 (1.39%)	209,233 (44.54%)	249,954 (53.21%)	3,995 (0.85%)	MCCP	469,729

Makueni	13,164 (3.96%)	291,535 (87.76%)	27,507 (8.28%)	-	NASA	332,206
Mandera	72,985 (53.67%)	-	63,003 (46.33%)	-	JP	135,988
Marsabit	56,142 (50.72%)	346 (0.31%)	54,197 (48.97%)	-	JP	110,685
Meru	281,737 (52.02%)	2,114 (0.39%)	249,980 (46.16%)	7,716 (1.42%)	JP	541,547
Migori	3,484 (1.08%)	202,780 (63.11%)	-	115,073 (35.81%)	NASA	321,337
Mombasa	69,429 (20.37%)	265,153 (77.79%)	6,279 (1.84%)	-	NASA	340,861
Murang'a	349,727 (69.01%)	-	157,077 (30.99%)	-	JP	506,804
Nairobi	869,050 (53.51%)	695,770 (42.84%)	4,632 (0.29%)	54,604 (3.36%)	JP	1,624,056
Nakuru	633,732 (84.50%)	-	80,843 (10.78%)	35,385 (4.72%)	JP	749,960
Nandi	245,764 (91.24%)	-	5,445 (2.02%)	18,162 (6.74%)	JP	269,371
Narok	147,161 (52.23%)	40,748 (14.46%)	93,830 (33.30%)	-	JP	281,739
Nyamira	58,936 (28.84%)	69,138 (33.83%)	46,910 (22.96%)	29,364 (14.37%)	NASA	204,348
Nyandarua	228,143 (79.33%)	-	11,743 (4.08%)	47,684 (16.58%)	JP	287,570
Nyeri	285,503 (72.72%)	-	19,571 (4.98%)	87,545 (22.30%)	JP	392,619
Samburu	40,467 (63.30%)	3,258 (5.10%)	20,204 (31.60%)	-	JP	63,929
Siaya	1,232 (0.33%)	196,186 (51.81%)	-	181,237 (47.86%)	NASA	378,655
Taita Taveta	22,725 (20.27%)	63,714 (56.84%)	793 (0.71%)	24,871 (22.19%)	NASA	112,103
Tana River	24,194 (27.68%)	47,737 (54.61%)	15,485 (17.71%)	-	NASA	87,416
Tharaka Nithi	120,625 (69.25%)	656 (0.38%)	50,814 (29.17%)	2,101 (1.21%)	JP	174,196
Trans Nzoia	92,477 (37.52%)	145,422 (59.01%)	2,659 (1.08%)	5,892 (2.39%)	NASA	246,450
Turkana	55,520 (42.15%)	76,202 (57.85%)	-	-	NASA	131,722
Uasin Gishu	195,300 (57.22%)	-	-	146,030 (42.78%)	JP	341,330
Vihiga	-	116,821 (58.13%)	67,866 (33.77%)	16,289 (8.10%)	NASA	200,976
Wajir	49,401 (41.43%)	36,598 (30.69%)	33,242 (27.88%)	-	JP	119,241
West Pokot	63,833 (42.31%)	-	87,029 (57.69%)	-	KANU	150,862
Total	**6,568,292**	**4,669,237**	**2,293,959**	**1,579,173**		**15,110,211**

	(43.47%)	**(30.90%)**	**(15.18%)**	**(10.45%)**		

* The total vote for NASA is higher than JP but the NASA vote was split between three candidates, leading JP to win the governorship.

Map 1 2013 and 2017 gubernatorial results, by party (data from IEBC 2013; Richard 2018)



As is clear from map 1, there was a significant shift in support towards Jubilee in 2017. Previously, the 2013 elections exhibited a peculiar feature in that CORD won the single largest share of governorships but lost the presidential race. In 2013, CORD won 22 of the 47 seats, compared to Jubilee's 19. In 2017, however, Jubilee won a total of 25 seats (an absolute majority), as compared to NASA's 17. What changed? As map 1 indicates, the main shifts came in seats in Kenya's north-east and coastal regions, four of which shifted from NASA to Jubilee. Hannah Waddilove (2019, 341) provides explanation:

> Jubilee's campaign benefited from [presidential] incumbency such that future patronage connected with the presidency was openly promised to county candidates if Kenyatta were to be re-elected. Apart from promising more resources for devolution, NASA's messaging was far less explicit on the specific patronage rewards that would come from Odinga winning the presidency.

Prior to the 2017 election, academic analysis noted the way in which northern governors were well-practiced in deal-making with central political elites, shifting coalitional allegiance based on what would likely ensure the north not be forgotten in Kenya's economic development plans (Carrier and Kochore 2014). In terms of coastal politics, Michelle D'Arcy and Marina Nistotskaya (2019, 295) provide robust evidence for the way in which Kenyatta used the issuing of title deeds as a political resource for generating voter support through the 'Three Million Title' drive. The coastal region of Kenya has traditionally been supportive of the opposition, but in 2017 Jubilee made significant inroads which contributed to these gubernatorial shifts. Lamu County is a case in point. In 2013, Jubilee had lost marginally to United Democratic Forum Party candidate Issa Timamy. During the electoral term 2013-17, the Kenyatta administration humiliated Timamy by accusing him of instigating terrorism and placing him on trial, though charges were subsequently dropped (Burbidge 2019, 170). The administration then pursued the land titling campaign with alacrity—an issue of deep importance to Lamu residents. Finally, in the 2017 elections, Jubilee presented a single candidate as part of the newly consolidated Jubilee Party. Timamy ran again, but as *one of three* NASA affiliated gubernatorial candidates, splitting the vote. In party terms, Timamy ran as a member of the ANC, against both a WDM-K candidate and an ODM candidate, all of whom were part of the NASA coalition. The net effect was that Timamy lost re-election to the Jubilee candidate by 549 votes.

The same splintering of the opposition was found elsewhere for the gubernatorial race. Gadjanova (2019, 280-1) comments that in Homa Bay, part of the opposition heartlands,

> Governor Cyprian Awiti had been 'waiting and panting for Raila to come and endorse him' throughout the campaign and was hugely disappointed when Odinga urged voters to 'put all our energy in securing the presidential seat and stop focusing on trivial seats down here' and that 'Magwanga [an independent candidate] is also on my team'.

Placing priority on the presidential race meant the opposition tended to not focus on county politics at the local level, even though that was where the 2010 Constitution had sought to rework the country's social contract. Michael Chege (2018, 165) remarks, 'The opposition's heart was not in county administration, but in the struggle for the presidency. Intellectuals who leaned in favor of NASA spoke of using the highest office to effect wholesale change "in the status quo."' Compounding matters further, NASA affiliated parties fielded gubernatorial candidates in only 32 of the 47 counties, compared to Jubilee's candidacy in 45 of the counties, giving more of a sense of a national profile to Jubilee's gubernatorial campaign.

Accuracy of the 8 August 2017 election results

Analysis of subnational democracy in Kenya thus far has made the sweeping assumption that the 2017 election results are an accurate reflection of the way citizens voted. Such an assumption is, as mentioned, unsafe to make in a context where the Supreme Court required fresh elections for the presidential race held on the same day, due to irregularities in the IEBC's tallying process. In addressing this dilemma, the first

port of call is to assess the court cases regarding the election petitions of the gubernatorial races. While court cases on electoral disputes are not definitive for determining the accuracy of results—especially due to the way in which judges were placed under such intense political pressure—they are important initial reviews of electoral validity. Table 2 provides a summary of all gubernatorial electoral petitions. In part due to the successful electoral petition at the presidential level, there was great interest across the country in contesting gubernatorial results in the courts. To some degree this was anticipated by the judiciary, making the processing of the flurry of cases more manageable. As far back as the run-up to the 2013 elections the judiciary set up the Judicial Working Committee on Election Preparations (JWCEP) to determine election related disputes. Its usefulness led the judiciary to make JWCEP a permanent committee in August 2015, re-named the Judicial Committee on Elections (JCE) (Judiciary of Kenya, 2019). In total, 35 court petitions were made on the 2017 gubernatorial elections, challenging the outcome in 31 of the 47 counties (Kenya Law, 2019). In significant contrast to the judgment in the presidential election petition, no gubernatorial election results were overturned, despite nine of them reaching the Supreme Court. In table 2's summary, details are given of the stage of appeal each petition was ultimately brought to. The outcomes of petitions are categorised according to the success of the overall claim on the validity of the gubernatorial election and whether fresh elections would be required.

Table 2 Governor election petitions in response to the 8 August 2017 elections[3]

County	Election court	High Court outcome	Court of Appeal outcome	Supreme Court outcome
Bomet	Kericho High Court	Petition dismissed		
Busia	Busia High Court	Petition dismissed	Appeal dismissed	
Embu	Embu High Court	Petition allowed	Appeal allowed	Court of Appeal judgment upheld
Garissa	Garissa High Court	Petition dismissed	Appeal allowed	Court of Appeal judgment overruled
Homa Bay	Homa Bay High Court	Petition allowed	Appeal dismissed	Court of Appeal judgment overruled
Kajiado	Kajiado High Court	Petition dismissed		
Kirinyaga	Kerugoya High Court	Petition dismissed	Appeal dismissed	
Kilifi	Malindi High Court	Petition dismissed		
Kisii (2)	Kisii High Court	Petition dismissed	Appeal dismissed	
Kisumu	Kisumu High Court	Petition dismissed		
Kitui	Kitui High Court	Petition dismissed	Appeal dismissed	
Kwale	Mombasa High Court	Petition dismissed	Appeal dismissed	Court of Appeal judgment upheld
Laikipia	Nanyuki High Court	Petition dismissed	Appeal dismissed	Court of Appeal judgment upheld

[3] For helpful further review of the cases, see Thuo 2019.

Lamu	Malindi High Court	Petition dismissed	Appeal dismissed*	Court of Appeal judgment upheld
Machakos	Machakos High Court	Petition dismissed	Appeal allowed	Court of Appeal judgment overruled
Mandera	Milimani High Court	Petition dismissed		
Marsabit	Milimani High Court	Petition dismissed		
Meru	Meru High Court	Petition withdrawn		
Migori	Kisii High Court	Petition dismissed	Appeal dismissed	
Mombasa	Mombasa High Court	Petition dismissed		
Nairobi	Milimani High Court	Petition withdrawn		
Narok	Narok High Court	Petition withdrawn		
Nyamira	Nyamira High Court	Petition dismissed	Appeal dismissed	Court of Appeal judgment upheld
Samburu	Nanyuki High Court	Petition dismissed	Appeal dismissed	
Siaya	Siaya High Court	Petition dismissed		
Taita Taveta (2)	Voi High Court	Petition dismissed		
Tana River (2)	Garsen High Court	Petition dismissed		
Trans Nzoia	Kitale High Court	Petition dismissed		
Turkana	Lodwar High Court	Petition dismissed		
Wajir (2)	Milimani High Court	Petition allowed	Appeal dismissed	Court of Appeal judgment overruled
Vihiga	Kakamega High Court	Petition dismissed		

* In this case the Court of Appeal found that the election was held appropriately, and therefore dismissed the appeal. Nevertheless, the court agreed with the appellant on the sharing of costs, which makes it a mixed verdict. For purposes of determining the validity of the election, however, the Court of Appeal clearly found against those seeking a fresh election, which is why it is described as 'appeal dismissed' here.

These findings of the courts on the gubernatorial election petitions go some way, therefore, in defending the view that the elections were free and fair, and that the results reflect the will of the Kenyan people. As courts usually deal with very specific claims, however, and are sometimes subject to political pressure, extra analysis is required. Indeed, the difficulty in reconciling the gubernatorial court petitions with the presidential court petition remains. To help answer this lingering concern, I surveyed citizens in a nationally-representative manner about the way they voted in the 8 August 2017 election. The survey was conducted seven months after the election, in March 2018. The aim of the survey was to compensate—if only partially—for the lack of an exit-poll at the time of the election. In the disputed 2007 elections, for

example, an exit-poll was felt by experts to greatly enhance the ability to verify results, though at that time the exit-poll's results were unfortunately withheld. Nevertheless, they have since been understood to have contradicted the electoral commission's narrative that the incumbent, Mwai Kibaki, was fairly re-elected, and so helped evidence concerns at the time with the official tally (Cheeseman 2008; Wolf 2020). While all polling has drawbacks, the general advantage is that one can ask which way the respondent voted (a factual question), rather than the future way a respondent is likely to vote, as is done in opinion polls ahead of election day. One fear in carrying out exit-polls in countries that are not fully democratic is that respondents who voted for the winner may feel confident in saying so but those who voted for an alternative may worry about the ramifications of giving that information. One indicator of such a shortcoming is if there is low willingness to answer the question. In this survey, after first asking if the respondent was a registered voter and, second, whether they voted on 8 August, a mere 3.04 percent of respondents chose not to state how they voted. This helps give confidence in the willingness of respondents to answer.

Table 3 displays the official results of the 2017 presidential race according to the IEBC, broken-down by county. Appendix D further details the proportion of valid votes for each county and the country as a whole according to the official IEBC data. These official results can be contrasted with the survey results, which are displayed in table 4. The survey was conducted with the assistance of IPSOS Kenya, an established polling agency, generating a nationally representative sample in line with Kenya's 2009 census demographics. The total number of survey respondents who were both registered voters and had voted on 8 August 2017 was 2,312. In addition, I conducted booster surveys in six individual counties in order to provide representative data for those counties alongside the nation as a whole, also displayed in table 4. The aim of the booster counties was to provide additional county-level comparative data on the differences between the way citizens said they voted and the official IEBC results. The booster counties were chosen to represent parts of the country of different political affiliations and of different majority ethnic groups. In terms of the 2017 presidential campaign, Kiambu and Uasin Gishu were understood to be dominated by those supportive of the incumbent regime, while Kisumu was understood to be dominated by opposition supporters. Nairobi, Isiolo and Machakos were areas generally understood to be contested between the two coalitions. The survey results support these understandings, except for Isiolo where respondents describe themselves as having voted overwhelmingly for Kenyatta.

Table 3 Kenya's 8 August 2017 presidential election results, by county (IEBC 2017)

County	John Ekuru Longoggy Aukot (TAK)	Mohamed Abduba Dida (ARK)	Shakhalaga Khwa Jirongo (UDP)	Japheth Kavinga Kaluyu (Ind)	Uhuru Kenyatta (JP)	Michael Wainaina Mwaura (Ind)	Joseph Wiliam Nthiga Nyagah (Ind)	Raila Odinga (NASA)
Baringo	347 (0.18%)	189 (0.10%)	79 (0.04%)	262 (0.14%)	161,423 (84.78%)	114 (0.06%)	249 (0.13%)	27,748 (14.57%)
Bomet	670 (0.25%)	323 (0.12%)	269 (0.10%)	217 (0.08%)	229,599 (87.04%)	173 (0.07%)	704 (0.27%)	31,822 (12.06%)
Bungoma	1,739 (0.42%)	728 (0.17%)	1,107 (0.26%)	825 (0.20%)	126,475 (30.21%)	884 (0.21%)	2,068 (0.49%)	284,786 (68.03%)
Busia	388 (0.14%)	190 (0.07%)	244 (0.09%)	195 (0.07%)	34,239 (12.42%)	237 (0.09%)	847 (0.31%)	239,296 (86.82%)
Elgeyo Marakwet	225 (0.15%)	130 (0.09%)	86 (0.06%)	105 (0.07%)	138,634 (94.63%)	78 (0.05%)	147 (0.10%)	7,102 (4.85%)
Embu	486 (0.19%)	258 (0.10%)	221 (0.09%)	243 (0.10%)	231,350 (92.10%)	580 (0.23%)	495 (0.20%)	17,549 (6.99%)
Garissa	77	3,337	105	117	54,783	31	430	54,356

	(0.07%)	(2.95%)	(0.09%)	(0.10%)	(48.38%)	(0.03%)	(0.38%)	(48.00%)
Homa Bay	94	58	23	20	1,960	39	453	400,351
	(0.02%)	(0.01%)	(0.01%)	(0.00%)	(0.49%)	(0.01%)	(0.11%)	(99.34%)
Isiolo	182	7,911	36	31	26,746	25	250	18,931
	(0.34%)	(14.62%)	(0.07%)	(0.06%)	(49.43%)	(0.05%)	(0.46%)	(34.98%)
Kajiado	264	168	63	78	186,481	89	727	138,405
	(0.08%)	(0.05%)	(0.02%)	(0.02%)	(57.15%)	(0.03%)	(0.22%)	(42.42%)
Kakamega	1,579	602	1,246	636	63,399	461	2,297	483,157
	(0.29%)	(0.11%)	(0.23%)	(0.11%)	(11.46%)	(0.08%)	(0.42%)	(87.31%)
Kericho	585	295	216	203	272,974	131	363	19,448
	(0.20%)	(0.10%)	(0.07%)	(0.07%)	(92.78%)	(0.04%)	(0.12%)	(6.61%)
Kiambu	761	344	154	1,028	912,588	320	767	69,190
	(0.08%)	(0.03%)	(0.02%)	(0.10%)	(92.63%)	(0.03%)	(0.08%)	(7.02%)
Kilifi	995	555	415	555	49,575	393	1,164	274,179
	(0.30%)	(0.17%)	(0.13%)	(0.17%)	(15.12%)	(0.12%)	(0.36%)	(83.63%)
Kirinyaga	329	130	103	197	297,652	127	198	3,120
	(0.11%)	(0.04%)	(0.03%)	(0.07%)	(98.61%)	(0.04%)	(0.07%)	(1.03%)
Kisii	1,442	631	667	913	174,213	825	1,819	223,155
	(0.36%)	(0.16%)	(0.17%)	(0.23%)	(43.16%)	(0.20%)	(0.45%)	(55.28%)
Kisumu	184	140	69	90	7,411	39	1,007	369,963
	(0.05%)	(0.04%)	(0.02%)	(0.02%)	(1.96%)	(0.01%)	(0.27%)	(97.64%)
Kitui	2,184	693	889	980	64,652	725	2,144	287,293
	(0.61%)	(0.19%)	(0.25%)	(0.27%)	(17.98%)	(0.20%)	(0.60%)	(79.90%)
Kwale	424	375	254	348	43,694	319	1,225	138,565
	(0.23%)	(0.20%)	(0.14%)	(0.19%)	(23.59%)	(0.17%)	(0.66%)	(74.82%)
Laikipia	331	142	85	84	177,772	90	304	20,694
	(0.17%)	(0.07%)	(0.04%)	(0.04%)	(89.11%)	(0.05%)	(0.15%)	(10.37%)
Lamu	114	338	61	69	23,905	41	265	24,421
	(0.23%)	(0.69%)	(0.12%)	(0.14%)	(48.57%)	(0.08%)	(0.54%)	(49.62%)
Machakos	1,219	602	669	817	82,629	605	3,106	380,018
	(0.26%)	(0.13%)	(0.14%)	(0.17%)	(17.59%)	(0.13%)	(0.66%)	(80.91%)
Makueni	793	408	403	355	27,388	255	1,733	301,126
	(0.24%)	(0.12%)	(0.12%)	(0.11%)	(8.24%)	(0.08%)	(0.52%)	(90.57%)
Mandera	86	4,574	46	57	112,456	213	265	17,984
	(0.06%)	(3.37%)	(0.03%)	(0.04%)	(82.88%)	(0.16%)	(0.20%)	(13.25%)
Marsabit	353	1,270	50	77	92,696	63	327	16,003
	(0.32%)	(1.15%)	(0.05%)	(0.07%)	(83.63%)	(0.06%)	(0.30%)	(14.44%)
Meru	1,180	645	498	773	482,580	751	1,298	55,602
	(0.22%)	(0.12%)	(0.09%)	(0.14%)	(88.82%)	(0.14%)	(0.24%)	(10.23%)
Migori	283	148	151	126	46,112	158	1,122	274,161
	(0.09%)	(0.05%)	(0.05%)	(0.04%)	(14.31%)	(0.05%)	(0.35%)	(85.07%)
Mombasa	430	1,464	150	334	99,190	689	1,271	238,809
	(0.13%)	(0.43%)	(0.04%)	(0.10%)	(28.97%)	(0.20%)	(0.37%)	(69.76%)
Murang’a	492	210	144	226	498,248	206	358	9,122
	(0.10%)	(0.04%)	(0.03%)	(0.04%)	(97.89%)	(0.04%)	(0.07%)	(1.79%)
Nairobi	1,944	2,490	321	1,354	791,291	715	2,953	828,826
	(0.12%)	(0.15%)	(0.02%)	(0.08%)	(48.55%)	(0.04%)	(0.18%)	(50.85%)
Nakuru	835	423	216	885	639,297	299	1,593	110,857
	(0.11%)	(0.06%)	(0.03%)	(0.12%)	(84.74%)	(0.04%)	(0.21%)	(14.69%)
Nandi	420	263	226	243	235,243	155	497	33,848
	(0.16%)	(0.10%)	(0.08%)	(0.09%)	(86.84%)	(0.06%)	(0.18%)	(12.49%)

Narok	344 (0.12%)	146 (0.05%)	117 (0.04%)	427 (0.15%)	149,376 (52.98%)	301 (0.11%)	1,890 (0.67%)	129,360 (45.88%)
Nyamira	765 (0.37%)	294 (0.14%)	430 (0.21%)	286 (0.14%)	106,508 (52.00%)	340 (0.17%)	983 (0.48%)	95,227 (46.49%)
Nyandarua	152 (0.05%)	88 (0.03%)	66 (0.02%)	120 (0.04%)	286,593 (98.99%)	96 (0.03%)	113 (0.04%)	2,286 (0.79%)
Nyeri	479 (0.12%)	226 (0.06%)	148 (0.04%)	581 (0.15%)	389,410 (98.35%)	157 (0.04%)	200 (0.05%)	4,735 (1.20%)
Samburu	251 (0.39%)	33 (0.05%)	25 (0.04%)	74 (0.12%)	31,746 (49.64%)	19 (0.03%)	189 (0.30%)	31,615 (49.44%)
Siaya	146 (0.04%)	54 (0.01%)	34 (0.01%)	61 (0.02%)	2,494 (0.66%)	46 (0.01%)	533 (0.14%)	375,712 (99.11%)
Taita Taveta	353 (0.31%)	158 (0.14%)	177 (0.16%)	169 (0.15%)	31,127 (27.62%)	120 (0.11%)	589 (0.52%)	79,990 (70.99%)
Tana River	130 (0.15%)	958 (1.10%)	82 (0.09%)	236 (0.27%)	40,115 (46.15%)	65 (0.07%)	267 (0.31%)	45,067 (51.85%)
Tharaka Nithi	361 (0.21%)	208 (0.12%)	221 (0.13%)	340 (0.19%)	162,529 (93.15%)	130 (0.07%)	332 (0.19%)	10,355 (5.93%)
Trans Nzoia	736 (0.30%)	288 (0.12%)	312 (0.13%)	333 (0.13%)	110,489 (44.60%)	225 (0.09%)	1,031 (0.42%)	134,312 (54.22%)
Turkana	695 (0.43%)	149 (0.09%)	132 (0.08%)	166 (0.10%)	62,611 (38.91%)	146 (0.09%)	677 (0.42%)	96,336 (59.87%)
Uasin Gishu	456 (0.13%)	315 (0.09%)	110 (0.03%)	570 (0.17%)	265,704 (77.79%)	1,060 (0.31%)	982 (0.29%)	72,378 (21.19%)
Vihiga	553 (0.28%)	337 (0.17%)	418 (0.21%)	264 (0.13%)	18,275 (9.12%)	226 (0.11%)	1,179 (0.59%)	179,140 (89.39%)
Wajir	159 (0.13%)	4,686 (3.95%)	73 (0.06%)	143 (0.12%)	60,508 (50.98%)	393 (0.33%)	364 (0.31%)	52,362 (44.12%)
West Pokot	288 (0.19%)	114 (0.08%)	94 (0.06%)	269 (0.18%)	97,620 (64.61%)	99 (0.07%)	482 (0.32%)	52,120 (34.50%)
(Diaspora)	8 (0.28%)	5 (0.18%)	0 (0.00%)	0 (0.00%)	1,504 (52.88%)	4 (0.14%)	2 (0.07%)	1,321 (46.45%)
Total	**27,311 (0.18%)**	**38,093 (0.25%)**	**11,705 (0.08%)**	**16,482 (0.11%)**	**8,203,290 (54.27%)**	**13,257 (0.09%)**	**42,259 (0.28%)**	**6,762,224 (44.74%)**

NB: The totals for Kenyatta and Odinga are written by the IEBC (as here) ever so slightly differently to what the totals are if one were to sum the county and diaspora votes. This is an inconsistency within the IEBC data.

Table 4 Survey results on the way citizens voted in the 8 August 2017 presidential election (conducted March 2018)

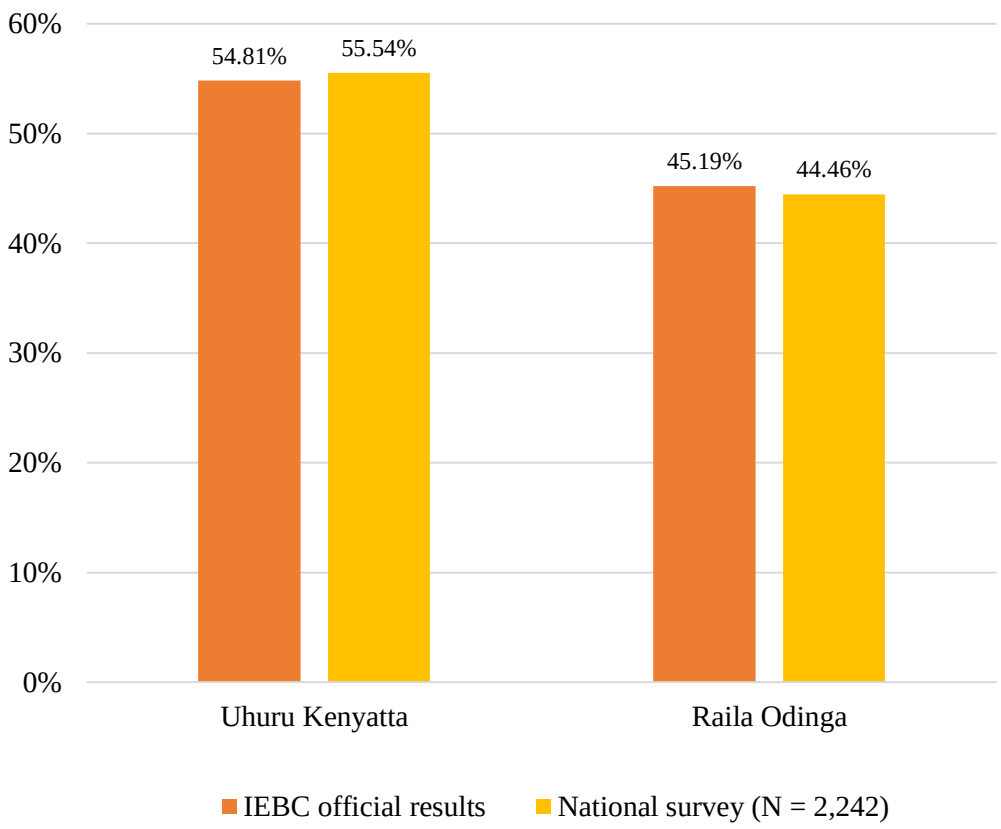
	John Ekuru Longoggy Aukot (TAK)	Mohamed Abduba Dida (ARK)	Shakhalaga Khwa Jirongo (UDP)	Japheth Kavinga Kaluyu (Ind)	Uhuru Kenyatta (JP)	Michael Wainaina Mwaura (Ind)	Joseph Wiliam Nthiga Nyagah (Ind)	Raila Odinga (NASA)	*NR / RTA / None*	*N*
National	**1 (0.06%)**	**9 (0.41%)**	**0 (0.00%)**	**1 (0.03%)**	**1,239 (53.57%)**	**0 (0.00%)**	**0 (0.00%)**	**992 (42.89%)**	**70 (3.04%)**	**2,312**
Nairobi	0 (0.00%)	1 (0.55%)	0 (0.00%)	0 (0.00%)	63 (34.62%)	0 (0.00%)	0 (0.00%)	114 (62.64%)	4 (2.20%)	182
Kiambu	0 (0.00%)	0 (0.00%)	0 (0.00%)	0 (0.00%)	166 (89.73%)	0 (0.00%)	0 (0.00%)	13 (7.03%)	6 (3.24%)	185
Isiolo	0 (0.00%)	1 (0.58%)	0 (0.00%)	0 (0.00%)	150 (86.71%)	0 (0.00%)	0 (0.00%)	21 (12.14%)	1 (0.58%)	173
Machakos	0 (0.00%)	1 (0.61%)	0 (0.00%)	0 (0.00%)	66 (40.00%)	0 (0.00%)	0 (0.00%)	92 (55.76%)	6 (3.64%)	165
Kisumu	0 (0.00%)	0 (0.00%)	0 (0.00%)	0 (0.00%)	6 (3.45%)	0 (0.00%)	0 (0.00%)	161 (92.53%)	7 (4.02%)	174
Uasin Gishu	1 (0.63%)	0 (0.00%)	0 (0.00%)	0 (0.00%)	115 (72.78%)	0 (0.00%)	0 (0.00%)	35 (22.15%)	7 (4.43%)	158

The proportion of votes for the respective candidates according to the IEBC and the national survey are strikingly similar (see figure 3). In addition, the six counties with boosted survey respondents provide the same county-level presidential winners as described in the IEBC data. These results therefore give initial grounds for trusting the IEBC data to be reflective of the will of the Kenyan people. Having said this, it is important to conduct more detailed statistical analysis to see whether the survey results match the kind of distribution provided by the IEBC results. In other words, it is not enough to simply compare percentages: one must also ask whether the distribution of results from the IEBC are in keeping with the sort of distribution that appears in the way respondents said they voted. To achieve this, I conduct a chi-square goodness-of-fit test to evaluate the fit between the two sets of data on the way citizens voted. The chi-square goodness-of-fit test takes the following assessment for the likelihood that the two sets of data are indistinguishable:

$$\chi^2 = \sum \frac{(O - E)^2}{E}$$

where *O* are, in this case, the observed voter choices according to the nationally representative survey, and *E* are the expected results if one were to assume the IEBC announcement to be true. For purposes of the chi-square goodness-of-fit test (where a minimum of five responses is required per response category for the national survey), I exclude from analysis candidates not part of the two-horse race, due to the paltry numbers who said they voted for them. The statistical test of the IEBC announced results is only, therefore, whether the IEBC's statement on the proportions of Kenyan citizens who voted for Uhuru Kenyatta and for Raila Odinga is accurate and in line with the national survey results.

Figure 3 Comparison between national survey results and IEBC results on how citizens voted in the 8 August 2017 presidential election between the two main candidates only



For purposes of the chi-square goodness-of-fit test, the null hypothesis is that the IEBC official results are in keeping with what one would expect from the findings of the national survey. The alternative hypothesis is simply that the null hypothesis is false: the IEBC results are swayed too heavily towards either Kenyatta or Odinga to say that they could be in keeping with what was found in the national survey. For purposes of the chi-square goodness-of-fit test, one does not need to hypothesise in which direction the discrepancy occurs. Any type of discrepancy counts against the null hypothesis. The national survey results and the IEBC announced results generate, respectively, the observed and expected frequencies in the earlier described equation, with one degree of freedom. Appendix E describes the expected frequencies generated from the IEBC data for purposes of conducting the test. The chi-square value describes the level of difference between the survey results and the IEBC results and is used to generate a probability that the sort of distribution found in the IEBC data could come about, given the way people said they voted. In this method, a p-value that is lower than the conventional threshold of 0.05 would prove that the IEBC data was out of sync with the survey results. A p-value higher than 0.05 is evidence that the two datasets fit and the null hypothesis should not be rejected.

For the 2017 presidential elections, what are the results? A comparison of the IEBC data and the survey findings yields a chi-square of 0.47. With one degree of freedom this generates a p-value of 0.49. That is strong evidence that the alternative hypothesis should be rejected—that the IEBC data and the national survey data do not fit. In sum, the statistical analysis indicates that the officially stipulated election results can be trusted as likely representative of the way citizens voted. This is due to the IEBC results' closeness to the survey results and the chi-square goodness-of-fit test that suggests their similarity is unlikely to be the product of chance.

Conclusion

The article has sought to address head-on the difficulty with assuming the subnational gubernatorial elections in Kenya in 2017 were free, fair and accurately described by the IEBC, due to the fact that the presidential election held on the same day was nullified by the Supreme Court. The central aim of the research has been to act as a helping hand for analysis going forward on democratization at the subnational level in Kenya. In sum, the following pieces of evidence encourage one to trust the IEBC announced results to be reflective of the will of the Kenyan people. The first is that the Supreme Court withheld from making the argument that the presidential race showed evidence of irregularities substantial enough to have changed the outcome. Second, the court petitions brought against gubernatorial results in 31 of the 47 counties ultimately yielded no judgments invalidating IEBC results at the county level. Third, survey data offered here of boosted samples in six counties provides evidence that the same majorities appear among respondents at the local level as was described by the IEBC. Fourth, a nationally representative survey about the way citizens voted in the presidential election yields proportions extremely close to those described in the IEBC data, suggesting the Supreme Court was right not to rest their nullification on grounds of substantial rigging having changed what the outcome would have otherwise been. Reinforcing this view, the two sources—the national survey and the IEBC results—are close in distribution according to a chi-square goodness-of-fit test. These pieces of evidence help assuage fears over a lack of validity for the subnational election results in Kenya in 2017, and support an understanding of these elections as indicative of the country's ongoing democratization.

Taking the officially announced subnational results seriously, therefore, it is clear that the political opposition has suffered a set-back in its presence and influence among regional elites. Interestingly, this means that the 2010 Constitution and, in particular, devolution has made it less likely rather than more likely that a strong opposition will emerge. The 2017 election results point to an emerging class of regional elites that are establishing social contracts with electorates independently of the presidential campaign. Overall, county-level elites are successfully establishing a strong and robust democratic presence in Kenya, encouraging the country's transition to subnational democracy under the 2010 Constitution.

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Appendix A

2013 party abbreviations and coalition groupings

Party	Abbreviation	Coalition
Agano Party	AP	
Alliance for Real Change	ARC	
Alliance Party of Kenya	APK	
Chama cha Mwananchi	CCM	CORD
Chama cha Uzalendo	CCU	CORD
Conservative Party	CP	
Democratic Party of Kenya	DPK	
Farmers Party	FP	
Federal Party of Kenya	FPK	CORD
Forum for Restoration of Democracy-Asili	FORD-ASILI	
Forum for Restoration of Democracy-Kenya	FORD-KENYA	
Forum for Restoration of Democracy-People	FORD-P	
Grand National Union	GNU	JUBILEE
Kenya African Democratic Union-Asili	KADU-ASILI	CORD
Kenya African National Union	KANU	AMANI
Kenya National Congress	KNC	EAGLE
Kenya National Democratic Alliance	KENDA	
Kenya Social Congress	KSC	CORD
Maendeleo Democratic Party	MDP	
Mazingira Greens Party of Kenya	MGPK	
Mkenya Solidarity Movement	MSM	CORD
Muungano Party	MP	CORD
Mwangaza Party	MP	
Mzalendo Saba Saba Party	MSSP	
National Agenda Party of Kenya	NAPK	
National Democratic Movement	NDM	
National Labour Party	NLP	
National Party of Kenya	NPK	
National Rainbow Coalition	NARC	JUBILEE
National Rainbow Coalition-Kenya	NARC-K	
New Democrats	ND	
New Forum for Restoration of Democracy Kenya	NFK	AMANI
Orange Democratic Movement	ODM	CORD
Party of Action	POA	EAGLE
Party of Democratic Unity	PDU	
Party of Independent Candidates of Kenya	PICK	

Party of National Unity	PNU	JUBILEE
Peoples Democratic Party	PDP	CORD
Peoples Party of Kenya	PPK	
Peoples Patriotic Party of Kenya	PPPK	
Progressive Party of Kenya	PPOK	
Republican Congress Party of Kenya	RC	JUBILEE
Republican Liberty Party	RLP	
Restore and Build Kenya	RBK	
Roots Party of Kenya	RPK	
Saba Saba Asili	77	
Safina	SAFINA	
Shirikisho Party of Kenya	SPK	
Sisi kwa Sisi Party	SSK	
Social Democratic Party of Kenya	SDP	
The Independent Party	TIP	CORD
The Labour Party of Kenya	LPK	CORD
The National Alliance	TNA	JUBILEE
The National Vision Party	NVP	
United Democratic Forum Party	UDF	AMANI
United Democratic Movement	UDM	CORD
United Republican Party	URP	JUBILEE
Unity Party of Kenya	UPK	
Wiper Democratic Movement-Kenya	WDM-K	CORD

Appendix B

2017 party abbreviations and coalition groupings

Party	Abbreviation	Coalition
Agano Party	AP	
Alliance for Real Change	ARK	TUNZA
Alternative Leadership Party of Kenya	ALPK	
Amani National Congress	ANC	NASA
Chama cha Mashinani	CCM	
Chama Mwangaza Daima	CMD	
Citizens Convention Party	CCP	
Democratic Congress	DC	
Democratic Party of Kenya	DP	
Devolution Party of Kenya	DPK	
Diligence Development Alliance	DDA	
Economic Freedom Party	EFP	
Empowerment and Liberation Party	ELP	
Farmers Party	FP	
Federal Party of Kenya	FPK	
Forum for Republican Democracy	FORD	
Forum for Restoration of Democracy-Kenya	FORD-KENYA	NASA
Frontier Alliance Party	FAP	
Green Congress Party of Kenya	GCK	
Jubilee Party	JP	
Justice and Freedom Party	JFP	
Kenya African Democratic Union-Asili	KADU-ASILI	
Kenya African National Union	KANU	
Kenya National Congress	KNC	
Kenya Patriots Party	KPP	
Kenya Social Congress	KSC	
Liberal Democratic Party	LDP	
Maendeleo Chap Chap	MCCP	
Maendeleo Democratic Party	MDP	
Mazingira Greens Party of Kenya	MGPK	
Movement for Democracy and Growth	MDG	
Muungano Party	MUUNGANO	
Mzalendo Saba Saba Party	MSS	
National Agenda Party of Kenya	NAPK	
National Liberty Party	NLP	
National Party of Kenya	NPK	

National Rainbow Coalition	NARC	
National Rainbow Coalition-Kenya	NARC-KENYA	
New Democrats	ND	
Orange Democratic Movement	ODM	NASA
Party for Development and Reform	PDR	
Party of Democratic Unity	PDU	
Party of Independent Candidates of Kenya	PICK	
Party of National Unity	PNU	
Peoples Democratic Party	PDP	
Peoples Empowerment Party	PEP	
Peoples Party of Kenya	PPK	
Peoples Trust Party	PTP	
Progressive Party of Kenya	PPOK	
Republican Liberty Party	RLP	
Restore and Build Kenya	RBK	
Roots Party of Kenya	RPK	TUNZA
Safina	SAFINA	
Shirikisho Party of Kenya	SPK	
Social Democratic Party of Kenya	SDP	
The Labour Party of Kenya	LPK	
The National Vision Party	NVP	
Thirdway Alliance Kenya	TAK	
Ukweli Party	UP	
United Democratic Movement	UDM	
United Democratic Party	UDP	
Vibrant Democratic Party	VDP	
Wiper Democratic Movement-Kenya	WDM-K	NASA

Appendix C

4 March 2013 gubernatorial vote count, by party/coalition and county (IEBC 2013)[4]

County	JUBILEE	CORD	Other parties or coalitions	Independent	Winning party or coalition	Total votes
Baringo	99,356 (64.21%)	-	55,387 (35.79%)	-	JUBILEE	154,743
Bomet	136,377 (60.53%)	4,156 (1.84%)	84,757 (37.62%)	-	JUBILEE	225,290
Bungoma	8,399 (2.43%)	69,577 (20.13%)	267,651 (77.44%)	-	NFK	345,627
Busia	-	128,290 (58.59%)	90,672 (41.41%)	-	CORD	218,962
Elgeyo Marakwet	71,395 (58.42%)	15,937 (13.04%)	34,874 (28.54%)	-	JUBILEE	122,206
Embu	94,471 (47.95%)	-	102,537 (52.05%)	-	JUBILEE*	197,008
Garissa	35,098 (38.51%)	47,552 (52.18%)	8,486 (9.31%)	-	CORD	91,136
Homa Bay	5,257 (1.73%)	295,657 (97.31%)	-	2,925 (0.96%)	CORD	303,839
Isiolo	34,149 (71.79%)	-	13,418 (28.21%)	-	JUBILEE	47,567
Kajiado	95,526 (36.55%)	125,563 (48.04%)	40,263 (15.41%)	-	CORD	261,352
Kakamega	7,593 (1.63%)	277,642 (59.60%)	177,239 (38.05%)	3,389 (0.73%)	CORD	465,863
Kericho	181,862 (70.57%)	14,714 (5.71%)	61,132 (23.72%)	-	JUBILEE	257,708
Kiambu	729,289 (93.86%)	27,987 (3.60%)	19,728 (2.54%)	-	JUBILEE	777,004
Kilifi	58,893 (27.47%)	139,914 (65.27%)	11,751 (5.48%)	3,803 (1.77%)	CORD	214,361
Kirinyaga	213,296 (89.93%)	-	23,894 (10.07%)	-	JUBILEE	237,190
Kisii	71,958 (20.99%)	229,380 (66.91%)	41,501 (12.11%)	-	CORD	342,839
Kisumu	7,300 (2.12%)	336,270 (97.88%)	-	-	CORD	343,570
Kitui	85,723 (31.26%)	188,478 (68.74%)	-	-	CORD	274,201
Kwale	7,199	73,410	42,600	-	CORD	123,209

[4] IEBC, '4th March 2013 General Election: Election Data' (2013). https://www.iebc.or.ke/uploads/resources/EIqEo3LuiB.pdf, pp. 230-41.

	(5.84%)	(59.58%)	(34.58%)			
Laikipia	126,584 (81.30%)	-	29,115 (18.70%)	-	JUBILEE	155,699
Lamu	17,785 (41.09%)	-	25,501 (58.91%)	-	UDF	43,286
Machakos	-	355,046 (97.43%)	9,347 (2.57%)	-	CORD	364,393
Makueni	-	231,506 (93.13%)	17,076 (6.87%)	-	CORD	248,582
Mandera	103,184 (99.07%)	970 (0.93%)	-	-	JUBILEE	104,154
Marsabit	34,829 (38.90%)	48,491 (54.17%)	6,204 (6.93%)	-	CORD	89,524
Meru	180,273 (42.87%)	9,500 (2.26%)	230,747 (54.87%)	-	APK	420,520
Migori	10,310 (3.99%)	247,957 (96.01%)	-	-	CORD	258,267
Mombasa	27,459 (10.22%)	229,746 (85.51%)	2,432 (0.91%)	9,045 (3.37%)	CORD	268,682
Murang'a	336,070 (80.03%)	4,636 (1.10%)	79,238 (18.87%)	-	JUBILEE	419,944
Nairobi	623,381 (44.77%)	705,089 (50.63%)	62,312 (4.47%)	1,754 (0.13%)	CORD	1,392,536
Nakuru	470,495 (77.32%)	118,965 (19.55%)	19,057 (3.13%)	-	JUBILEE	608,517
Nandi	194,291 (83.78%)	13,067 (5.63%)	24,553 (10.59%)	-	JUBILEE	231,911
Narok	87,832 (37.19%)	59,889 (25.36%)	64,215 (27.19%)	24,248 (10.27%)	JUBILEE	236,184
Nyamira	5,075 (2.81%)	89,717 (49.75%)	85,537 (47.43%)	-	CORD	180,329
Nyandarua	237,875 (100.00%)	-	-	-	JUBILEE	237,875
Nyeri	265,245 (81.31%)	2,849 (0.87%)	58,126 (17.82%)	-	JUBILEE	326,220
Samburu	48,382 (90.04%)	4,710 (8.77%)	640 (1.19%)	-	JUBILEE	53,732
Siaya	-	141,205 (50.13%)	136,382 (48.42%)	4,076 (1.45%)	CORD	281,663
Taita Taveta	7,714 (8.53%)	67,180 (74.26%)	15,569 (17.21%)	-	CORD	90,463
Tana River	23,526 (37.58%)	32,091 (51.26%)	6,990 (11.16%)	-	CORD	62,607
Tharaka Nithi	71,033 (51.62%)	10,663 (7.75%)	55,903 (40.63%)	-	JUBILEE	137,599
Trans Nzoia	29,030 (15.06%)	41,532 (21.54%)	122,240 (63.40%)	-	FORD-K	192,802
Turkana	15,808 (15.76%)	54,622 (54.45%)	29,895 (29.80%)	-	CORD	100,325
Uasin Gishu	210,682 (74.82%)	70,912 (25.18%)	-	-	JUBILEE	281,594[†]

Vihiga	57,096 (34.72%)	-	107,343 (65.28%)	-	PPK	164,439
Wajir	35,269 (35.48%)	40,622 (40.87%)	23,508 (23.65%)	-	CORD	99,399
West Pokot	19,905 (18.46%)	27,057 (25.09%)	60,859 (56.44%)	-	KANU	107,821
Total	**5,182,274 (42.61%)**	**4,582,549 (37.68%)**	**2,348,679 (19.31%)**	**49,240 (0.40%)**		

* In Embu, the total votes for other parties exceeds those for Jubilee, but were split between four candidates.
† For Uasin Gishu, the official IEBC results do not have it that the total number of votes cast equals the sum of the votes for each candidate. The total has been recalculated here to allow for appropriate comparison on the percentages of votes each party received.

Appendix D

Valid vote tally for 8 August 2017 presidential election, by county (IEBC 2017)

County	Registered voters	Valid votes	Rejected ballots
Baringo	232,311	190,411	768
Bomet	322,024	263,777	1,368
Bungoma	559,866	418,612	3,603
Busia	351,087	275,636	2,272
Elgeyo Marakwet	180,679	146,507	477
Embu	309,731	251,182	1,835
Garissa	163,350	113,236	883
Homa Bay	476,932	402,998	1,017
Isiolo	75,355	54,112	258
Kajiado	411,267	326,275	1,960
Kakamega	743,929	553,377	4,152
Kericho	375,691	294,215	1,234
Kiambu	1,181,076	985,152	3,828
Kilifi	508,425	185,204	1,316
Kirinyaga	349,970	301,856	3,139
Kisii	546,682	403,665	3,036
Kisumu	539,593	378,903	1,127
Kitui	474,563	359,560	2,793
Kwale	281,102	185,204	1,316
Laikipia	246,693	199,502	830
Lamu	69,793	49,214	894
Machakos	620,363	469,665	3,294
Makueni	423,434	332,461	1,398
Mandera	175,650	135,681	198
Marsabit	141,730	110,839	299
Meru	702,776	543,327	4,661
Migori	388,700	322,261	1,148
Mombasa	580,644	342,337	2,838
Murang'a	587,222	509,006	1,182
Nairobi	2,251,929	1,629,894	6,884
Nakuru	949,971	754,405	4,687
Nandi	346,102	270,895	1,299
Narok	341,761	281,961	641
Nyamira	278,853	204,833	1,422
Nyandarua	335,696	289,514	1,057
Nyeri	457,197	395,936	1,014
Samburu	82,794	63,952	70
Siaya	457,957	379,080	1,105
Taita Taveta	155,794	112,683	736
Tana River	118,338	86,920	711

Tharaka Nithi	213,157	174,476	1,083
Trans Nzoia	339,715	247,726	1,988
Turkana	191,435	160,912	780
Uasin Gishu	450,159	247,726	1,988
Vihiga	272,415	200,392	1,566
Wajir	162,912	118,688	656
West Pokot	180,241	151,086	448
(Diaspora)	4,393	2,844	N/a
Total	**19,611,423**	**15,114,622**	**81,685**

NB: The totals do not match exactly with the total numbers if one sums all the line items. This is an inconsistency within the IEBC data.

Appendix E

Observed and expected frequencies for purposes of chi-square goodness-of-fit test for 8 August 2017 presidential election

The observed frequencies describe the national survey results, while the expected frequencies describe what one would expect to see in the survey if the official IEBC results were true. Assuming the null hypothesis—that the IEBC announcement meets our expectations according to the observed survey results—the expected frequencies are generated by applying the IEBC vote proportions.

	Uhuru Kenyatta (JP)	Raila Odinga (NASA)	*N*	χ^2
National				
Observed	**1,239**	**992**	**2,231**	**0.47**
Expected	**1,222.8**	**1,008.2**		