Chapter 5

Voting, Counting and Results

Background

Polling was scheduled to take place from 06.00 to 17.00 hrs and was organised in 24,573 polling stations which were sub-divided into 32,613 polling streams across the country.

Most polling stations were organised within or outside public facilities such as schools, churches and mosques. Campaigning was prohibited on the day before the election and on election day.

The polling stations were managed by a Presiding Officer and a Deputy Presiding Officer, who were supported by six polling clerks. For the purpose of providing security at polling stations at least two police officers were deployed to each stream. Regular police were supplemented by officers from other services for this duty and were sworn in as temporary police officers for the task.

Each polling station contained six ballot boxes – for the President, County Governor, Senator, Women Representative, Member of the National Assembly and the County Ward Assembly. Additionally, as the IEBC employed Biometric Voter Registration, each polling station was to include a laptop with finger print readers and the Biometric Register. There were between one to four cardboard voting booths in each of the polling stations.

Key procedures for opening and voting

The key prescribed procedures for opening and voting are as follows:

Opening
- Prior to opening, the ballot boxes are to be shown to all present to confirm that they are empty and the boxes are then sealed
- Accredited Party Agents, domestic and international observers, as well as media are allowed to be present.

Voting
- The queue control polling clerk verifies that the voter has no ink mark indicating they have already voted, and then the voter's identification document (Identity Card or valid Passport) is checked.
- The next polling clerk verifies that the voter is registered at that particular station by consulting the electronic poll book for the biometric identification of the voter. The voter places their finger on the fingerprint reader. If the poll book is not functional, the clerk reverts to the colour printed Registry. Once found in the Registry the voter

moves to receive the ballot papers.

- The voter receives all six ballots, the counterfoil and the back of the ballots are stamped with the official stamp of the IEBC and then folded.
- The voter proceeds to the booth and marks the ballots to indicate their choice of candidate
- Once all ballot papers are marked, the voter places each ballot in its respective ballot boxes, which is colour-coded to match the ballot papers.
- Prior to departing the polling station, the voter's left finger is marked with indelible ink.

Persons requiring assistance are permitted to bring with them an assistant, who has to take a written oath of secrecy. Alternatively, a voter can request assistance from the presiding officer, but in the presence of party agents serving as witnesses.

Assessment of opening and voting

On Election Day, Commonwealth teams reported a largely peaceful process that was generally well managed and transparent, with voters were free to exercise their right to vote. Additionally, polling officials generally worked hard in sometimes difficult and trying circumstances. Party Agents and national observers were largely present throughout the country. The turnout of voters was high, particularly at the outset of the voting, which created some crowd management challenges but overall voters waited patiently in extremely long queues in order to cast their votes.

Some of the key observations of our teams were:

- In a few locations materials were delivered late to the polling station causing some areas to open late.
- In most cases where the polling station opened late Presiding Officers compensated voters by staying open later.
- At the opening of the polls, the queues were quite lengthy as many voters turned up very early to cast their votes. Despite the large numbers, most voters were patient and orderly.
- Polling stations with large numbers of registered voters were split into smaller streams, and voters were grouped alphabetically, based on first names. As a result, some confusion, and challenges with crowd management, emerged. This situation was exacerbated by the absence of a designated official providing information to voters.
- The layout of polling stations varied. Some were well laid out, facilitating the flow of voters, communication between officers and scrutiny of the process. However, in other instances the layout was quite poor with voters and party agents mingling in and around the booth and the table where officials were situated. Poor layout sometimes compromised the secrecy of the vote as the booths were visible to most.
- The absence of adequate space and facilities (electricity, lights, etc.) in some

locations proved to be a challenge.

- In many instances, the electronic poll books used to verify the biometric data of registered voters either stopped working (due to a lack of electricity to recharge the batteries) or never functioned. As a result, many polling stations relied on the colour printed register, which most polling staff appeared to be more comfortable with.
- Adequate security was provided and order was maintained at most polling stations.
- Commonwealth teams were impressed with the conduct and professionalism of many of the IEBC polling staff. Most of the officials supporting the electoral process had slept at the polling station the night before elections in order to protect materials and start the process on time. Moreover, many remained late into the early hours of the next morning to complete the count.
- For ease of voting and counting the ballot papers were colour coded with the ballot boxes. Nonetheless, voters still seemed confused by the colour coding, as many found the colouring indistinguishable.
- Although polling officials were generally trying to ensure that voters placed the ballots in the corresponding boxes, some ballots still ended up in the wrong box and these stray ballots were categorised as invalid.
- The law provides for a polling official to assist a voter if required, which is commendable. However, this process included the participation of party agents as witnesses. The inclusion of agents in this compromises the secrecy of the vote and can be intimidating for vulnerable voters. A large number of voters requiring assistance were women.

Key procedures for counting and results tabulation

The key prescribed procedures for the counting and results processes are as follows:

- The polls are officially scheduled to close at 17:00 hrs. However, voters waiting in line at the close of poll are allowed to vote and voting continues until the last person in line has voted.
- Following the last voter, the Presiding Officer closes the polling station and starts preparing for the count. Agents, national and international observers are permitted to witness this process as well.
- Party Agents are briefed on the counting procedures and consensus is reached on what constitutes an invalid ballot.
- Ballot box apertures are sealed, and the numbers of each seal are reconfirmed by the party agents prior to the organisation of the polling station for the count.
- Ballot boxes are then opened and emptied starting with the presidential ballot box.
- The ballot papers are unfolded, to confirm the IEBC stamp on the back of each paper.
- Valid, Rejected, and Disputed ballot papers are identified, with the Presiding Officer clearly showing the ballot to Party Agents and Observers.
- Valid ballot papers are sorted by candidate, audibly announced and subsequently counted.

- Ballot papers are then organised into bundles of fifty each and the vote tally is announced.
- The Results Declaration form is completed and signed by the Presiding Officer and the Party Agents present can also sign.
- The ballot papers are placed in the corresponding ballot box, one Results Declaration form and all associated documents are placed in a tamper proof envelope and sealed.
- Results are then transmitted using the mobile phone encrypted systems.
- This process is then repeated for the five other ballot boxes.
- Upon completion of the process all results are posted outside of the polling station.

Assessment of counting and results tabulation

The vote count at the polling stations was transparent, with party agents and observers able to follow the process closely. This was also the case during the tabulation process. At the polling station level, party agents signed and received a copy of the result and could therefore verify the results later tabulated and announced at the constituency, county and national levels. Results from constituencies were also broadcast extensively on TV, and radio, enabling people to follow on an on-going basis as the results were calculated.

In the lead up to election day, the IEBC experienced problems in the trial run of the electronic transmission systems. On the day of election these problems were again evident, resulting in the abandonment of the electronic transmission system. The IEBC then relied solely on the physical delivery of the official results forms by each Constituency Returning Officer to the National Tally Center in Nairobi.

Some of the key observations of our teams were:

- To reassert their commitment to the transparency of the process, many Presiding Officers took great pains slowly and deliberately communicating every aspect of the counting and tallying process to party agents and observers.
- Due to the late start, long lines and challenges with technology, many stations did not start the count till late in the evening. As a result, in some instances, the count went into the early hours of the morning of the following day.
- The electronic transmission of results from the polling station level was hampered by the failure of the mobile phone encrypted systems, which affected the ability of the IEBC at the national level to communicate official results in a consistent and reliable manner.
- The IEBC initially presented provisional results as a percentage of valid votes cast, rather than all votes casts, resulting in confusion when this decision was reversed.
- Initial broadcasting of results showed an extremely high number of rejected votes, but the IEBC later announced that this was due to a technical fault.
- Due to continued challenges with the electronic transmission, the IEBC abandoned the process and concentrated on the manual transmission, relying solely on the

physical delivery of the Results Declaration Forms by Constituency Returning Officers to Nairobi.
- There was tension between some party agents and IEBC officials at the National Tally Center over access to parts of the tallying process.
- Overall the IEBC's management of the results and tabulation process at the national level was marred by inconsistencies.

Overview of the Countrywide Observation

Commonwealth teams were deployed to seven of the eight Provinces of Kenya. Our teams observed the voting, counting and results tabulation. They also met with electoral officials, observers and other stakeholders at the Constituency level to build up a broader picture on the conduct of the process.

Central (Nyeri)
- Most Presiding Officers reported that the Electronic Voter Identification Devices (EVID) worked well. However, in locations without electricity supply, the batteries (including the three back-ups provided) were exhausted within 3–4 hours of opening.
- There was wide discrepancy in the space provided for the polling streams, including at times within a single polling station. In one stream, for instance, there was not enough space even for party agents to observe the polling.
- Guidelines for giving priority to vulnerable voters such as expectant mothers, elderly people, and women with young children, were generally not being followed.
- There were instances when a voter's record was found in the EVID but not in the printed voter poll book, and vice versa. Voters in both cases were allowed to vote, and in one stream a separate record was being kept of such cases.
- In one case, it was noticed that the polling station was located directly opposite a building functioning as the cultural centre of a particular political party. This could have been avoided.
- In one stream it was observed that, contrary to the guidelines, the Presiding Officer decided, in consensus with the party agents present, that a 'stray ballot' (i.e. a ballot paper not placed in its corresponding ballot box) would be counted as a valid vote.
- At the Nyeri Town Constituency Tally Centre, one of the candidates for the National Assembly member seat challenged the results from two polling streams, claiming that the votes cast in his favour had been misreported (nil against 400 in one and 2 against 700 in the other). The difference between the two candidates was about 7,000 votes, so it was apparent that even if these disputed votes were counted, it would not make a difference to the overall result. The candidate was advised to approach the courts if he wished to, and the frontrunner was declared the winner.

Coast (Mombasa)
- Violence was reported to have occurred in Mombasa. Policemen were attacked by unknown assailants and reportedly hacked to death.
- Late opening of some polling stations was attributed to the fear engendered by this

perception of violence.
- Assistance to blind or illiterate voters could have led to the secrecy being compromised.

Eastern (Kitui)
- Almost all polling stations visited opened 2–3 hours later than expected due to a delay in delivery of materials.
- Given the large number of voters at each polling station the standard number of polling booths i.e. generally between 2–3, was not sufficient. At one polling station there was one booth for 626 registered voters.
- Voting time was extended based upon the morning delay e.g. where a polling station opened 2 hours late it was then kept open for an extra two hours.
- There were a high number of illiterate voters in the area who required assistance in voting. In these circumstances party agents acted as witnesses and often seemed to be quite intrusive.
- At one station a clerk was arrested for issuing more than one ballot to a voter. The incident occurred prior to our visiting the polling station. The Presiding Officer did not mention this to us despite us asking if there had been any incidents or challenges that day.
- Party agents and domestic observers were kept well informed throughout the tally and results process.
- Under the co-ordination of the presiding officer general consensus was reached on which ballot papers were spoilt, rejected and valid.
- Polling stations which did not have electricity or were prone to power cuts were provided with lamps which came in useful during the tallying process which continued late into the night.
- At almost all polling stations visited there were clear signs towards voting streams and an adequate number of staff available to assist.

Eastern (Isiolo)
- One voter was allowed to vote twice as one of her first ballots was placed in the wrong box.
- One candidate entered a polling station to 'advice' PO his voters know him by another name other than the one stated on the ballot paper. Advice was to mark the ballot accordingly as this was a largely illiterate group of voters who needed assistance.
- Counting proved a challenge in some areas as it was quite dark and the use of only one gas lamp was perhaps not adequate.
- There were very long queues but voters in general were patient and orderly.
- Overall, the IEBC in Isiolo pulled off polling day with ease and great efficiency.

Nairobi
- Voters were enthusiastic and showed quiet determination to vote, notwithstanding the long queues. A defining image of these elections was the queue outside the Moi

Avenue Primary School, in Starehe Constituency, where the media extensively covered thousands of voters waiting patiently to cast their votes. A similarly lengthy queue was witnessed at Lavington Primary School in Dagoretti North Constituency.

- Some polling station compounds were dangerously overcrowded at the commencement of the poll. At St Peter Clavers Primary School, for example, thousands of voters, in twelve streams, were crowded into a relatively small courtyard. This represented a safety risk, and made it difficult for voters to identify their correct stream and queue. Access to the polling station itself was difficult in these circumstances.

- Again, at St Peter Clavers Primary School, polling staff struggled to get the BVM equipment to function. In steam 11, for example, staff took 15 minutes to identify the first voter, much to the frustration of voters waiting outside to cast their votes.
    - Some polling stations were difficult for disabled voters to access. For example, some polling streams were located in classrooms on the second floor at Nairobi Primary School.

- There was a very long queue at Riverbank Primary School in Starehe Constituency, which had formed hours prior to the opening. At 06.00 it proved difficult for the police to maintain order at the gate to the centre, as the crowds became impatient.

- At Kiambiu Social Hall in Kamakunji Constituency, which was a low income high density area, there was a very large crowd crammed in a small courtyard and with makeshift tents as polling stations. Proper management of the queue was impossible and the management of the voting was extremely challenging under the circumstances.

Nairobi (Team 2)

- There was a remarkable enthusiasm and patience of voters. Polling staff were well organised and knew their roles and tasks. Party Agents were present in large numbers and the process was transparent overall.

- Queues were arranged in alphabetical order based on first name and this caused some confusion and division of family groups. Biometric equipment failed in a number of polling stations due to a lack of electricity.

- The secrecy of the ballot was compromised in the case of assisted voters as Party Agents were involved in the process. The booths did not ensure secrecy but this did not seem to be an issue for the voters

- The electronic transfer of results did not succeed after the count.

- In one case the count was conducted with the assistance of an observer's torch due to the lack of electricity

Nyanza

- All polling stations visited had materials delivered in good time to enable the commencement of voting at the stipulated time, but several lacked electricity and in one instance had to use the torch light from cell phones to enable the voters to see the ballots clearly as voting began before the sun had come up.

- We also witnessed an incident in which one polling agent raised very strong

allegations of multiple voting against another polling agent operating in the same polling stream. We witnessed the polling agent that had been accused of multiple voting casting his ballot and we observed that his hand had been marked with ink indicating that he had assisted another voter to vote. The matter was resolved by the accusing polling agent withdrawing her accusation after a small caucus between the Presiding Officer and the security personnel at that particular polling stream.

- All polling stations seemed to have been overwhelmed by the large turnout of voters. Some stations were better able to handle the large numbers than others. In one instance, as a result of the unfamiliar alphabetical system that relied on first names rather than surnames, there was difficulty in controlling the queues for polling streams, prompting an IEBC official to reprimand the Presiding Officer in our presence and threatening to change the leadership at the polling stream so that order could be restored and maintained.

Rift Valley (Nakuru)

- Many of the polling stations visited opened between 15–30 minutes late. Reasons given for the delays primarily related to internal logistical arrangements (putting up signs, organising the polling station, signing in party agents etc.)
- There was some confusion over the streams to which voters were allocated resulting in even longer waits for those who were not in the line-up for the correct stream from the beginning. While some streams were clearly marked, others were not and queuing clerks were most often posted at the entrance to the stream rather than assisting voters joining the line to find their proper stream.
- The failure of the BVR system, together with the failure of the poll books (due to battery failure, a lack of electricity or general problems with the system) resulted in the manual register being widely used to identify voters.
- In some instances, voters' names were not in the poll book nor recorded in the manual register. In such cases it appears as though the IEBC ROs approved the creation of a supplementary list provided that a voter provided adequate proof of registration.
- The team was told by voters and all party agents that they were satisfied with the arrangements for voting and that they were pleased with the process.
- The counting process at the polling stream visited was transparent. The process began at 18.00 on 4 March and concluded at 07.00 on 5 March.
- During the tally of the votes, allegations by a candidate and the subsequent rumours that spread through the tally station (to party agents, observers etc.) were not addressed nor clarified by IEBC staff leading to tensions rising. The riot police were brought in to calm the situation.

Rift Valley (Eldoret)

- Voting generally started on time with most stations starting within 30 minutes of the expected start time. The late start was attributed to various issues such as poor lighting and irregular formatting of the register.
- Problems encountered with EVIDS but generally both party agents and voters were

comfortable voting without the electronic verification. In fact voting appeared to move faster in those streams where the device was not being used. At least one station reported having received an EVID kit with the wrong voter list loaded on.

- Long queues were seen in some polling stations in the urban area but some attempts were made at queue management with clerks sitting outside the polling stations directing voters to specific streams where their names appeared.
- Tallying rules were explained by the PO and agreed with the party agents before the start of the count.
- Constituency tallying centres were well organised but the process was quite long given the numbers of polling stations that each Returning officer had to process.
- By 10am of 6th March, four out of six Constituency Returning officers had reported to the County Returning Officer.

Western (Kakamega)

- At most of the primary school polling stations that we visited in the new constituency of Mumias East, biometric ID devices were not present.
- Where paper Registers were used it was noticeable that queues were moving much faster than areas where biometric ID devices were sometime causing delays.
- Observers noticed that ROs were from different regions thereby catering for rotation, e.g. the RO in Kakamega High School Tallying Centre was from Nairobi.
- Observers noticed that an element of rotation was also present at the level of the police that were securing the various Tallying Centres. For example, the police at the Chivakari High School were not from the Western Region but from the Rift Valley. This also contributed to the confidence.
- Observers encountered members of the prison service who had been deployed and sworn in as police to boost the number of police securing the election. We were impressed with their clear understanding of their role on voting day having been adequately briefed on their powers as police on voting day.

The results – presidential elections

Candidates (ballot order)	Votes	% (of all votes cast)
James Kiyiapi	40,998	0.33%
Martha Karua	43,881	0.36%
Mohamed Dida	52,848	0.43%
Musalia Mudavadi	483,981	3.93%
Paul Muite	12,580	0.10%
Peter Kenneth	72,786	0.59%

Raila Odinga	5,340,546	43.31%
Uhuru Kenyatta	6,173,433	50.07%
Total valid votes cast	12,221,053	
Total rejected votes	108,975	0.88%
Total votes cast	12,330,028	
Total registered voters	14, 352,533	
% Turnout	86%	

Recommendations

- It is commendable that provisions are made for persons requiring assistance to vote. However it is not appropriate that party agents should be part of this process. The assistance should be limited to a person of their choice or an electoral official.

- In the event that Kenya has multiple elections on the same day, and thereby necessitating multiple ballots and ballot boxes, then it is important that the ballots and their respective boxes are more distinctly coloured to ensure easier differentiation by voters. Further voter education can also help in this regard.

- It is essential that if an electronic results transmission system is to be used again then the system must be adequately tested to ensure that it is reliable.

- At present the number of voters per polling centre requires that polling stations are sub-divided into streams. But the system of managing queues and directing people to their respective queue needs to be improved to ensure better management of crowds and less confusion for voters. Further, the streaming alphabetically by first name means that family members can be separated. It might be considered if this is a reasonable and helpful practice or not.

- Electoral activities across the country must be adequately resourced to ensure inadequacies do not affect the process.