

CHAPTER 6



Events on Polling Day

Polling day was marred by scenes of disorganisation and confusion at the opening of the polls. Most polling stations throughout the country failed to open for voting at the appointed hour of 6 a.m. and did not do so until two or three hours later. Indeed, in many cases stations were not able to open until the afternoon of polling day, and as a consequence, long queues of hundreds of voters could be seen outside these stations, even well after 6 p.m. The delays were particularly bad in the Nairobi Province, and in the Mombasa, Meru and Busia districts. The late opening and the long delays were attributed to several factors: inadequate supplies of voting material, their late delivery, errors in ballot papers, differences on the number of agents allowed per polling station, boycotts by polling clerks over unpaid allowances, and the relocation of polling stations.

Amidst all this confusion, the patience of voters who queued by the thousands for several hours was most commendable. They displayed determination, and despite moments of tension and frayed tempers, in the main, remained calm and orderly. A wait of five to six hours was not uncommon. There was a welcome absence of violent incidents which many feared could have occurred. We should, however, state that once polling got under way, the initial confusion finally settled into a largely smooth, but in many cases, slow voting process. The agents we met in each stream, on the whole expressed satisfaction with the way in which the voting process was conducted.

The late opening of polling stations meant that the close of polls in many areas took place well after 6 p.m., since instructions from the Electoral Commission required that the polls remain open for 12 hours, or until all voters within the precinct of the polling station at the end of this period had voted. This, however, was not an adequate solution to the loss of daylight hours, since those living in crime-prone areas or in rural districts were not inclined to travel long distances in the dark to vote or to return home. Opposition candidates and supporters complained in particular that the delays in the opening of polling effectively disenfranchised a significant bloc of voters – women. Many elderly or infirm women and women with children drifted away from polling stations after a long wait. As the day got darker and the voters got no nearer to the entrance, many more women gave up. All these factors undoubtedly adversely

affected the turnout. The late closing of numerous polling stations meant that the transportation of ballot boxes to counting centres was delayed and, consequently, the commencement of counting. In the Amagoro constituency in the Western Province where polling stations were not issued with pressure lamps, polling had to close at nightfall and reopen for voting from 6 a.m. to noon on the following day.

Our 17 teams, each of two to three observers, were deployed to cover 144 constituencies in the eight provinces of Kenya. We visited some 283 polling stations, each with several streams. The smallest station had one stream, and the largest 20. In the case of polling stations with more than one stream, each stream was effectively a mini-polling station headed by a Deputy Presiding Officer, assisted by six polling clerks. All streams in the polling station were supervised by one Presiding Officer – which was an overly-demanding task in many instances. Because of the problems at the opening of polling, few of the big stations could open all their streams. And yet at some stations, voters stood in line outside these closed streams and waited in vain for them to open. Frequently, when we arrived at these problem areas, voters volubly welcomed us, making way for us to enter the room to talk with electoral officials. They were irate that after hours of waiting, no electoral official cared to tell them why the opening was so delayed. They had no idea of the disorder and confusion that reigned inside the polling stations. In constituencies where the opposition and the ruling party were locked in tight races, agitated voters alleged that the delays were a deliberate move to ‘rig’ the elections. The general voting procedure is set out at *Annex XIII*.

The late opening of polling and the delays in processing voters suggested that the Electoral Commission was deficient in its planning, organisation and management of the elections. This was compounded by the evident insufficient training combined with inexperience of many electoral officials deployed at the polling stations.

Shortcomings of the Election Machinery

Essential materials like registration lists, ballot boxes and ballot papers, official stamps, security seals and indelible ink were delivered in short supply or not at all in some cases, and in others, to the wrong constituency. In eight polling stations in Tigania constituency in Meru district, the voting materials never arrived at all and polling had to be rescheduled.

A serious problem at numerous polling stations was the severe shortage of the Presiding Officer’s stamp with which each ballot paper was to be stamped. In many districts, only one stamp was allocated per polling station, this to be shared among as many as 20 streams. Some stations were then authorised to use the ‘ECK Officer’ or ‘ECK Voted’ stamp instead to validate the ballot papers. But because of poor communication and lack of co-ordination, not all stations were informed. So in many cases, one stamp made the rounds from stream to stream, causing massive delays as polling clerks waited for the

stamp. The poor quality of the stamps, too, meant that many wore out quickly and this further held up the voting process as replacements or solutions were sought.

The shortage of registration lists meant that in some areas not all the streams due to open could do so. In one polling station in the Mombasa district which was to have 20 streams to cover some 16,000 voters, only six registers were delivered, thus only six streams could be opened. A seventh register arrived late in the afternoon allowing the Presiding Officer to open the seventh stream at 6 p.m. with hundreds of voters still in line.

The shortage of vehicles to transport election supplies to polling stations meant that they were delivered late, some arriving at polling stations as late as 3.30 p.m. At one polling station in the Nambale constituency in the Western Province, the ballot boxes were delivered by public transport. In some districts, the poor condition of the vehicles used led to breakdowns, stranding materials and election officials in the middle of the road. In the Amagoro constituency in the Western Province, the last ballot boxes were delivered at 5.10 p.m. to the southern wards of the constituency. We were informed that the Returning Officer had insisted on personally delivering the boxes from station to station.

The difficulty in correctly fitting the lids on the plastic ballot boxes caused further delays at the opening of the polls. Electoral officials struggled to close the boxes. Often one end of the lid would pop up when the other end had been fitted. At one station in the Sabatia constituency in the Western Province, officials went to the curious length of boring holes in the lids in order to make them fit. The boxes were also not clearly marked to enable voters to easily identify the right box into which each of the ballot paper was to be deposited. Further delays were caused by confusion arising from the layout at many polling stations, principally because the guidelines in the Training Manual failed to take into consideration the limitations of the infrastructure used. Many polling stations did not have separate entrance and exit doors. In stations where rooms were small, the layout impeded the flow of voters and their movement from polling clerk to booth to ballot box. As each voter had to do this three times, confusion and congestion naturally ensued. In Meru district in the Eastern Province, several stations could not be opened on time because they were still waiting for desks and chairs to set up the station. In one station in the North Imenti constituency, all six streams were without furniture for the best part of polling day. Polling clerks had to sit on the floor to process the voters.

Appointment of Party Agents

The election regulations allowed for the appointment of two party agents per candidate per polling station. However, the division of each polling station into several streams, each in a separate room, caused an uproar at some stations as agents protested that they would not be able to witness polling in every stream. In these cases, the agents insisted that they be allowed to bring in extra help to

enable them to cover every stream. Presiding Officers differed in their response. Some allowed this demand, others insisted on sticking by the rule. At several big stations, the Presiding Officers gave in to demands that only two streams be allowed to open until the matter was clarified by the Electoral Commission or until the parties could recruit more agents to cover more streams. Again, these caused delays in the voting getting under way.

We had raised this issue with the Chairman of the Electoral Commission before polling day and were informed that two agents would be allowed in every stream as each was effectively a polling station. Apparently this was not clearly communicated to all Returning Officers or to all parties.

Errors in Ballot Papers

There were several serious errors in the printing of ballot papers that inordinately delayed voting. The Electoral Commission said it was not able to check comprehensively the accuracy of the papers because they were printed abroad; and that even if errors had been discovered, there was insufficient time before polling day to effect corrections. Numerous ballot papers had the wrong party symbol against a candidate's name, or the wrong candidate's name or had totally omitted a candidate and party symbol. The mistakes, however, were mostly in ballot papers for the local government (Civic) elections. Again, responses differed. In some constituencies, there was agreement that the missing candidate's name and party should be written in. In others, polling for that particular ward was suspended. Waiting for decisions on these matters from the Electoral Commission and communicating these to all the polling stations delayed polling for as long as eight hours.

Location of Polling Stations

In several heavily populated districts, polling stations had to be relocated to larger premises; but no prior public announcement was made about this change. At one polling station in the Mvita constituency in Mombasa, opposition party agents demanded that the station be returned to its original site as the new site was opposite the district headquarters of the ruling party whose chairman was a reputed party strongman. This was finally agreed to and polling began several hours late. There were also cases in rural constituencies where polling stations shared a building with the ruling party. In one case, the Presiding Officer objected to this arrangement, but it was too late to make a change.

There were also no signs to identify or direct voters to polling stations. In the problem polling station in the Mvita constituency, we found hundreds of voters waiting in line outside the original polling station even though it was closed and no electoral official was in sight.

For the thousands of people displaced by the violence and burning of their

property the Chairman of the Electoral Commission had promised that mobile polling stations would be set up to enable them to vote. However, there were no such stations on polling day. In the Burnt Forest area in Rift Valley, the Returning Officer claimed that he had received no instructions from the Commission to provide for such an arrangement.

Boycott by Polling Clerks

In several districts, polling clerks alleged that they had been promised payment of their allowances before polling day. When this did not materialise, clerks at some polling stations decided to boycott polling day. Presiding Officers had to spend much time pleading with them to stay on the job. In other instances, the clerks marched to the office of the local Electoral Co-ordinator to demand payment. They went back to work only after assurances were given that they would be paid the next day, or in other cases, in the afternoon. Because of these negotiations, stations could not be opened on time. Clerks, and in some cases, Presiding Officers, also arrived late at polling stations. This was largely due to transport problems as minimal public transport was available to enable them to report for duty by 5 a.m. as instructed.

Secrecy of the Ballot

The secrecy of the ballot was often compromised because of the layout of the station, inadequate screening of polling booths and poor control of streams, especially during the first few hours of polling. This was potentially serious in those cases where one or more of the parties were either inadequately represented or unrepresented by agents. In streams where confusion reigned, zealous party agents milled alongside voters. The agents lent them pens to mark the ballot papers, ushered them to the right ballot boxes and made sure that they went back to the polling clerk to get their ballot papers for the other two elections. Very often these voters held up their marked ballot papers in open display. Often, too, agents peered over their shoulders to see which way they voted. Occasionally, two voters would share the same ballot booth. Clearly, there were not enough clerks to guide voters from one step to the next. At one station in Kitale in the Rift Valley, no screen separated one voting booth from the next. It was just one long booth with three chairs in it. At another, voters sat on benches in the middle of the room to mark their ballot papers. The Presiding Officer said he had abandoned the polling booths in order to speed up the process. But at all the stations we visited, no one seemed upset that the secrecy of the ballot was compromised, least of all the party agents.

A striking feature of the Kenya elections was the way illiterate voters were helped to cast their vote. The regulation required the Presiding Officer or the Deputy Presiding Officer to mark the ballot paper in the presence of all party agents. In several rural stations where a large majority of voters, in particular the women, were illiterate, the whole process effectively became a public

voting system. At many stations, agents crowded around the voter as the Deputy Presiding Officer asked how he or she would like to vote; at other stations, the voter was led to the row of agents. The paper was then marked and held up for all to see, before being handed back to the voter to deposit it in the ballot box.

At several stations, some 95 per cent of the voters were illiterate. There were allegations that agents of the ruling party had directed these voters to declare themselves illiterate to ensure that they would then vote only for KANU. But we were not able to verify this.

There was concern that this open system for illiterates could be abused, particularly in stations where parties were inadequately represented or unrepresented by agents. Eager party agents crowding around an illiterate voter could also be an intimidating experience, thus putting undue pressure on the voter. But we did not meet any agent or voter who complained about this system and we did not see any Deputy Presiding Officer record a cross against a party other than the one chosen by the voter. We did receive isolated eyewitness reports of illiterate voters being led by Deputy Presiding Officers to vote for KANU, but were told that such incidents were soon detected and stopped by party agents.

Performance of Party Agents

The vigilance, dedication and zealousness of party agents kept Presiding Officers and their deputies busy attending to complaints and concerns. This also contributed to delays in the voting process. But most electoral officials went out of their way to deal with the grievances in order to alleviate any suspicion of foul play.

The overwhelming majority of agents did not have copies of the registration list with them to check the identity of voters and cross off the names of those who had voted. To them, this did not seem important. They were more interested in keeping a vigilant eye on the voting process. With the confusion at the opening of the polls, candidates and their agents took over the organising and management of some polling stations. They moved tables and chairs to facilitate a better flow of voters and they crowded the ballot booths and boxes to assist voters, they helped polling clerks flip through the registration list to locate a voter's name. In these first hours, some Deputy Presiding Officers seemed to have lost control of the voting process. It was a disorderly scene, but the agents were happy to be involved actively, instead of observing the process from their chairs and raising complaints with the Presiding Officer or the Deputy.

In general, polling stations were more orderly and calm by the afternoon. The agents sat in their allocated seats and got up only when called to witness voting by an illiterate voter. Any concerns they had of perceived breaches of election regulations were immediately brought to the attention of the Presid-

ing Officers or their Deputies. The ability of the agents to witness the process fully, their involvement beyond the scope provided for by the rules and the responsiveness of electoral officials to their grievances meant that at the end of the day, most agents we talked to said that after the initial delay and confusion, they were happy with the voting process.

Voter Identification

The Electoral Commission had made clear announcements in the media that voters who had lost their voters' card should be issued with a replacement, that those without a voter's card but whose ID name and number matched the register should be allowed to vote and that those whose names were missing but who claimed that they had registered should be allowed to vote if their original registration form could be located in the files that had been delivered to each polling station. It was also announced that those without ID cards or with temporary cards would not be allowed to vote.

In spite of this, there was much confusion at many polling stations. Some Presiding Officers did not allow those without voters' cards to vote, some turned away those who were not on the register without first checking through the registration forms. At most stations, those with temporary ID cards were turned away, much to their disgruntlement as those cards had been issued by the Registration Department and treated as authentic cards for other official purposes. But at other stations, Presiding Officers used their discretion to allow these voters to vote. There were, however, allegations that some Presiding Officers were only allowing supporters of the ruling party to vote with temporary cards, while turning away others.

Allegations of Irregularities

We received reports of irregularities in several districts visited. There were allegations of 'imported' voters in constituencies with close contests. It was claimed that voters residing in other districts had been brought to these constituencies to bolster support for particular candidates. The claims ranged from 100 to over 20,000 'imported' voters in these constituencies. In the Mombasa district, in particular, where such allegations were rife, a bus supposedly carrying 'imported' voters was stoned. A group of voters who had asked others waiting in line whether this was the polling station they were looking for were also hounded out by the crowd, while another group of voters who could not speak Swahili and were identified as refugees from Somalia were chased away.

Allegations of vote-buying were also rife in several areas. Numerous complaints were received from the opposition parties that candidates and agents of the ruling party were distributing money to voters. In the Gachoka and Siakago constituencies in the Eastern Province, bags of millet from donor

agencies were handed out to voters. We also received reports of vote-buying by some of the opposition parties. At a large polling station in Thika in the Central Province, the team's driver saw agents of an opposition party handing out cash to voters standing in line.

There were also attempts at ballot stuffing. At a polling station in the Bungoma district in the Western Province, a book of ballot papers had been filled in, ripped from the counterfoils and stuffed unfolded into a ballot box. When that stack fell out of the box during the counting process, the Returning Officer ruled that these ballot papers should not be counted and placed them in sealed ballot boxes.

A Deputy Presiding Officer at a station in the Kwale District in Coast Province was arrested when he was caught trying to erase a voter's mark on a ballot paper. At a station in the Mombasa district, seven unmarked ballot papers were found in the drawer of a polling clerk. The clerk denied any knowledge of the papers, saying that he had just relieved someone else. The Presiding Officer, however, could not identify the clerk previously on duty.

Conduct of the Count

The delays in opening polling stations for voting naturally delayed the start of counting for hours. The commencement of counts varied between centres: in some, the Returning Officers commenced counting as the boxes arrived, while in others the letter of the law was vigorously applied – requiring all boxes to be received before commencement of count. In some cases, counting did not begin until 10 a.m. the following day. Electoral officials, counting assistants and party agents had a sleepless night waiting for the process to begin and then had to complete the task without a break.

We were impressed by the dedication and patience shown by officials during the counting process. At many counting centres, over-zealous agents crowded around the counting table, others standing behind on chairs, to make sure that ballot papers were sorted into the correct piles and that the counting was accurate. However, given the distrust and suspicion, it was inevitable that there would be allegations of irregularities. The delay in receipt of boxes at the counting centres raised questions about the possibility that they might have been tampered with or that there might be substitution of boxes. But we neither saw nor heard of substantiated evidence of this. Agents at counting centres raised no complaints with us, and the serial numbers on the seals appeared to afford satisfactory security.

There were allegations that pre-stamped and marked papers had been slipped on to counting tables as boxes were being emptied. These were not substantiated, and such ruses would have not succeeded with ease given the fact that the number of ballots in the box had to correspond with the number of ballots cast as reported by the Presiding Officers and thus subject to subsequent check.

Given the highly charged atmosphere at some counting centres, it was inevitable that aberrant or inconsistent actions or merely elementary mistakes made by electoral officials would be seen as direct evidence of connivance in vote fraud. In a constituency in the Meru district, the inordinately long delay between the end of counting and the announcement of the result was seen by the opposition parties as an attempt by the Returning Officer to fiddle with the results to ensure that the KANU Presidential candidate, President Moi, would obtain enough votes to gain 25 per cent of the votes in the Eastern Province.

We witnessed the counts in 35 constituencies. We were aware that the count was a critical phase at which irregularities could be introduced. It was, however, the most visible and transparent part of the polling process and would be witnessed by at least two agents of each candidate, together with the candidates themselves, international observers and local monitors, as well as accredited press representatives and others. Some counting centres were extremely crowded, with 30 or more counting assistants and many more party agents than the numbers specified in the rule book.

Assessment

Given all the serious and numerous shortcomings, the disorganisation and confusion that reigned in most polling stations which marred the opening of the polls, the poor communication between the Electoral Commission and Returning Officers and between Returning Officers and Presiding Officers, the lack of co-ordination and inconsistencies in dealing with clear-cut problems, we can only conclude that neither the polling day arrangements nor the polling and counting processes were adequately designed or carried out to meet the specific situations and needs which the Kenyan electoral environment required. This, coupled with a serious lack of comprehensive training and civic education, led to the inevitable delays and confusion at the polls. If it were not for the laudable commitment, dedication and patience of some poll officials, party agents and, in particular, the electors, the whole process could easily have become a fiasco. Special mention must be made of the thousands of local monitors who tirelessly and vigilantly kept watch at all polling stations and counting centres. As it was, polling day, and the many hours afterwards, was probably the most positive aspect of the whole electoral process.