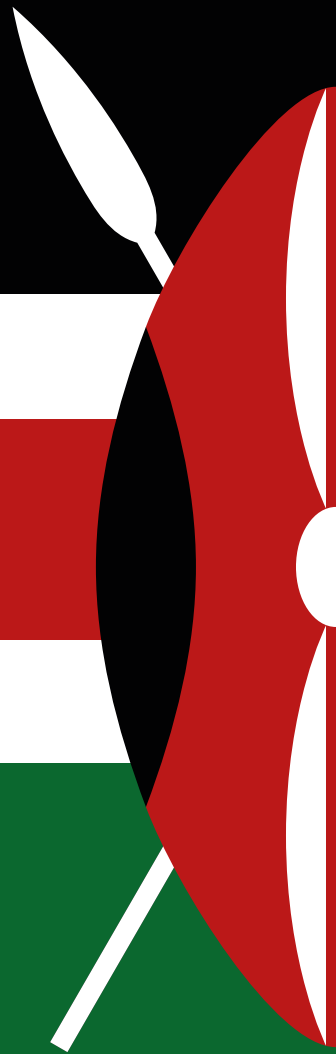


# COVID-19 and Kenya's March 2021 By-Elections

Thomas Molony



In March 2021, eight by-elections took place in Kenya. From a political point of view, they were considered by some to be a litmus test for the popularity of national leaders vying to succeed President Uhuru Kenya in the August 2022 general elections.<sup>1</sup> They were also an opportunity for the Independent Electoral and Boundaries Commission (IEBC) to regain credibility amid continuing questions about its ability to conduct free and fair elections.<sup>2</sup>

This working paper considers the March by-elections from a public health point of view. Although political dynamics at times overshadowed this fact, the by-elections were being held in the context of the COVID-19 pandemic. It is therefore valuable to highlight the lessons that can be learned to help prevent the spread of COVID-19 during future national polls. With a country-wide referendum on a proposed amendment to the constitution ('BBI') currently scheduled for June 2021, there is little time to lose if changes are to be implemented.

This Working Paper is a product of the 'African Elections during the COVID-19 Pandemic' project ('AECPP'), which aims to produce and disseminate detailed, evidence-based, and context-specific recommendations to help ensure that upcoming elections can be conducted relatively safely in the context of the COVID-19 pandemic.<sup>3</sup> The project is based at the University of Edinburgh's Centre of African Studies and is funded by the UKRI GCRF/Newton Fund until August 2021. The research partner organisations are the Centre for Democratic Development in Ghana; the Open University of Tanzania; and the Harvard Humanitarian Initiative, working with Echelle in the Central African Republic. The project impact partners include The Carter Center, the Electoral Institute for Sustainable Democracy in Africa (EISA), the International Foundation for Electoral Systems (IFES), the Royal African Society, and the Westminster Foundation for Democracy.

AECPP working papers have been produced for the project's Tanzania, Ghana and Central African Republic case studies. Kenya was not originally an AECPP case study country but was added when it became clear that the country's by-elections provide an excellent opportunity to research adherence to COVID-19 protocols in an electoral setting. Unlike in the other case studies, no surveys were conducted on public perceptions in relation to COVID-19 and the elections. It was also decided that this working paper would dedicate less space than the others to the country's more general experience of COVID-19, which was first detected in Nairobi on 12 March 2020.<sup>4</sup> Rather, it focuses more narrowly on the measures that the IEBC has in place and the level of adherence to them.

By way of context, Kenya has 135,042 confirmed cases of COVID-19, and has recorded 2,167 COVID-related deaths as of 2 April 2021.<sup>5</sup> For comparison, up to the same date, there were 5,161 confirmed cases and 67 deaths in CAR, and 90,583 confirmed cases and 743 deaths Ghana.<sup>6</sup> At the time of writing, Kenya is experiencing a third wave of the virus, as depicted in Table 1:

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1. <https://nation.africa/kenya/news/politics/tough-battle-for-western-in-two-by-elections-3308866>; <https://www.standardmedia.co.ke/ktnnews/ktn-newsdesk/video/2000206713/matungu-by-election-a-litmus-test-for-raila-s-odm-ruto-s-uda-and-mudavadi-s-anc>.

2. Gloria Orwoba, 5 March 2021, 'Violence, teargas and running battles mar hotly contested Matungu and Kabuchai by-elections', KTN News, at 10m39s-13m14s; <https://foreignpolicy.com/2020/09/02/kenya-2022-elections-already-begun-cycle-violence-chris-msando/>.

3. <https://aecp.sps.ed.ac.uk/>.

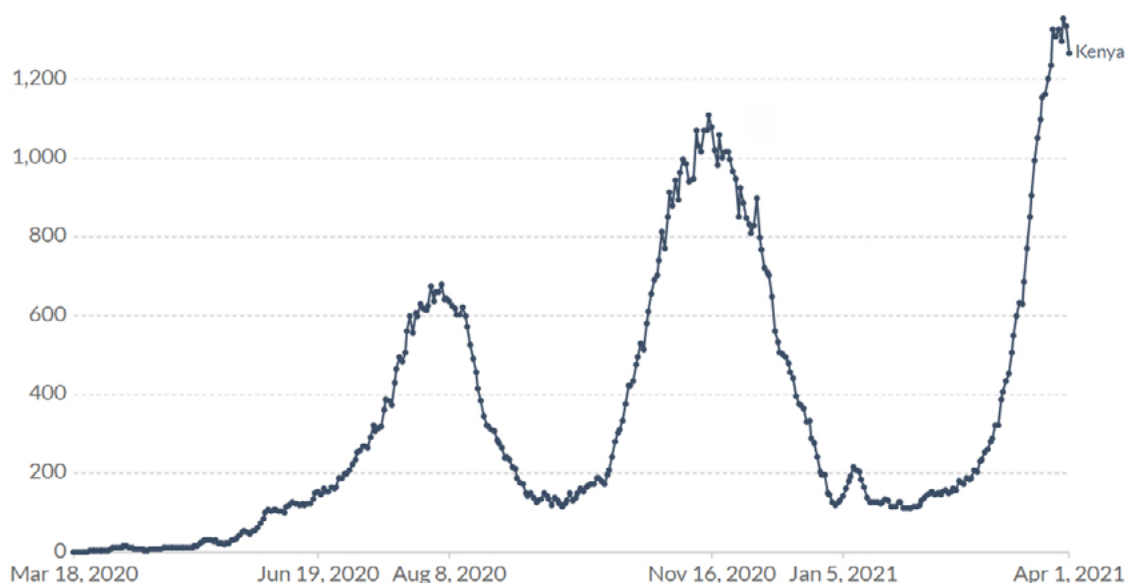
4. <https://citizentv.co.ke/news/kenya-confirms-first-case-of-coronavirus-326254/>.

5. <https://coronavirus.jhu.edu/region/kenya>.

6. <https://coronavirus.jhu.edu/region/central-african-republic>; <https://coronavirus.jhu.edu/region/ghana>.

## Daily new confirmed COVID-19 cases

Shown is the rolling 7-day average. The number of confirmed cases is lower than the number of actual cases; the main reason for that is limited testing.



Source: Johns Hopkins University CSSE COVID-19 Data

**Table 1: Kenya daily new confirmed COVID-19 cases as of 2 April 2021.**

Accessed at <https://ourworldindata.org/coronavirus/country/kenya>

## By-elections during a pandemic

Seven by-elections were conducted in Kenya on 4 March 2021. Five were to determine new Members of County Assembly for the wards of Hell's Gate and London (both in Nakuru County), Kiamokama (Kisii County), Huruma (Uasin Gishu) and Kitise/Kithuki (Makueni). The two other by-elections were conducted to determine new Members of National Assembly (MNAs, but popularly known as 'MPs') in Kabuchai (Bungoma County) and Matungu (Kakamega) constituencies. A by-election to elect a new Senator also took place on 18 March in Machakos County. This working paper concentrates on the Kabuchai, Machakos and Matungu by-elections.

The Machakos by-election came about after the death of Senator Boniface Mutinda Kabaka in December 2020.<sup>7</sup> The Kabuchai seat became vacant in the same month following the passing of James Lusweti MNA.<sup>8</sup> The vacancy for the Matungu seat was created in November 2020 by the death of Justus Murunga Makokha MNA, reportedly after he developed breathing problems and was unable to access oxygen when he was admitted to hospital.<sup>9</sup> Murunga's death led to online accusations that politicians had been flaunting COVID-19 regulations, including by holding rallies and by not wearing masks.<sup>10</sup> It also came at the same time as a heated discussion, amid a spike in COVID-19 cases, over claims that MPs had demanded a helicopter evacuation service in the event of their requiring medical attention.<sup>11</sup>

7. <https://www.the-star.co.ke/news/2020-12-11-machakos-senator-boniface-mutinda-kabaka-is-dead/>.

8. <https://www.the-star.co.ke/news/2020-12-04-kabuchai-mp-james-lusweti-is-dead/>; <https://www.standardmedia.co.ke/western/article/2001396293/kabuchai-mp-dies-after-a-long-illness>.

9. <https://www.kenyans.co.ke/news/59179-hospital-blunder-led-mp-murungas-death>.

10. <https://www.the-star.co.ke/news/2020-11-14-matungu-mp-justus-murunga-is-dead/>.

11. <https://www.reuters.com/article/us-health-coronavirus-kenya-idUSKBN28H0J0>; <https://www.kenyans.co.ke/news/59273-mp-senators-gang-against-daily-nation-over-choppers-story>.

The Kabuchai and Matungu constituencies in Western Kenya had 57,476 and 61,728 registered voters respectively, compared with the five smaller wards that total 94,216 registered voters.<sup>12</sup> The Machakos senatorial by-election had 622,965 registered voters across 8 constituencies.<sup>13</sup> The Western constituency by-elections were the focus of political campaigns that included the support of senior party leaders who were seeking to heighten their standing on the national stage ahead of the forthcoming general elections. As a result, the by-elections were less about the local candidates than they were about the figures behind them, for whom a loss would have been damaging to their future political bids or bargains.<sup>14</sup> Among those who campaigned in Western in the run-up to the polls were Deputy President William Ruto, leader of the opposition Raila Odinga of the Orange Democratic Movement (ODM), Amani National Congress (ANC) leader Musalia Mudavadi and Moses Wetang'ula (FORD-Kenya), all of whom hoped that wins for their party candidates would improve their standing in the race to replace President Kenyatta.<sup>15</sup> The main parties ultimately retained their seats, with FORD-Kenya holding Kabuchai and ANC holding Matungu, with a turnout of 51% and 54% respectively.<sup>16</sup> The Machakos senatorial by-election was a more subdued affair, with the Wiper candidate winning by a landslide – albeit on a turnout of 19%.



**COVID Plaza (Kyanguli, Machakos County), where patrons are to observe pandemic protocols upon entry**



**Graffiti on primary school desk, Mavoko, Machakos County**

## IEBC guidelines on elections during COVID-19

In October 2020, the IEBC published 'Protocols for conducting electoral activities in the COVID-19 context', a handbook with an immediate focus on (what were then the impending) by-elections.<sup>17</sup> Its aim is "Acknowledging the risks inherent in electoral activities and striking a balance between legitimacy of the processes and the measures to be adopted amidst the pandemic outbreak". In doing so, it sets out "measures that reasonably minimize exposure to large groups", which were drafted in consultation with the Ministry of Health (MoH).<sup>18</sup> It is worth noting that the document refers to the protocols as *guidelines* and describes them as *proposed*. It is unclear to what extent the guidelines are binding.

The main focus of the 'Protocols for conducting electoral activities in the COVID-19 context' (hereafter 'IEBC COVID Protocols' or 'Protocols') is on practical guidelines, which the handbook breaks down into general and specific categories. The general guidelines are: the use of face masks and alcohol-based sanitizers; avoiding gatherings or crowds, and the implementation of social and physical distancing measures; cleaning, disinfection and ventilation; preventing physical

12. <https://www.iebc.or.ke/docs/Registered%20Voters%20Per%20CAW%20For%202017%20General%20Elections.pdf>.

13. <https://twitter.com/IEBCKenya/status/1372407437324652544/photo/2>.

14. Jacob Ng'etich and Josphat Thiong'o, 7 March 2021, 'Parties flex muscles, draw battle lines in by-election', The Standard, p.20; Odhiambo Jamwa, The Star, 5-7 March 2021, 'Why the by-elections matter to political leaders ahead of 2022 general election', The Star, p.16.

15. <https://nation.africa/kenya/news/politics/tough-battle-for-western-in-two-by-elections-3308866>; <https://nation.africa/kenya/news/politics/bbi-debate-dominates-campaigns-as-parties-advance-supremacy-wars-3306754>.

16. <https://www.tuko.co.ke/404873-peter-nabulindo-wins-matungu-constituency-by-election-anc-retains-seat.html>; <https://www.tuko.co.ke/404870-kabuchai-by-election-big-win-wetangula-ford-kenyas-majimbo-kalasinga-declared-mp-elect.html>.

17. IEBC, 2020, 'Protocols for conducting electoral activities in the COVID-19 context: Quest for responsive credible elections in a global pandemic', p.8. <https://www.iebc.or.ke/uploads/resources/Oft9tj0dYQ.pdf>.

18. IEBC, 'Protocols', p.iii.



contact and minimizing sharing of general items; temperature checks; and promoting healthy hygiene practices.<sup>19</sup> The section on general guidelines also states that persons with proven pre-existing medical conditions, the elderly, people with disabilities, lactating mothers, pregnant women and the sick are to be given priority.<sup>20</sup>

The specific guidelines pertain to: voter registration; conducting an election; and the post-election period.<sup>21</sup> The guidelines on voter registration are not discussed here because a fresh voter registration process was not undertaken in advance of the March 2021 by-elections, for which the voter register from the 2017 general elections was used. The guidelines on the post-election period are also not covered here because they amount to only three sentences simply indicating that measures should be taken to prevent exposure to COVID-19 during the collection and storing of electoral materials.<sup>22</sup> This working paper focusses on the two stages of conducting an election that the IEBC COVID Protocols define as 1) the 'pre-election period' and 2) the 'election period'. The Protocols offer the most detail on activities conducted during the election period, which they define as 'election day'.<sup>23</sup> According to the Protocols, the pre-election period runs from the issuance of the election notice through to the testing of equipment and includes campaigning.<sup>24</sup>



Public health warning signs from the Los Angeles County Department of Public Health (USA), in a Matungu primary school



Sign outlining COVID-19 protocols at polling centre entrance, Emanani, Matungu

## Campaigning during the COVID-19 pandemic: Protocols

The guidance on campaigning comes at the very end of the section on the pre-election period in the IEBC COVID Protocols, and is dealt with only by the following three sentences: "Campaigns will have to be conducted through social and main stream [sic] media. For areas where gatherings are inevitable then the guidelines for crowds' management will be followed. The guidelines will be included in the code of conduct and will be signed by all parties before start of campaigns."<sup>25</sup> This guidance on campaigning is somewhat ambiguous, since the first sentence appears to recommend that political campaigning takes place on social media (e.g. Facebook, Instagram, Twitter and WhatsApp) and in traditional media (e.g. newspapers, radio and television). Nevertheless, the second sentence then appears to offer an opportunity for in-person campaigning to take place, since it is unclear what an 'inevitable gathering' might be. For instance, if a well-known politician begins to address a small group of socially-distanced individuals in a public space, it may be inevitable that more people join the gathering and social distancing becomes impossible. In this case, the guidelines for crowd management are required. The guidelines for crowd management, as presented in the IEBC COVID Protocols, appears to

19. *ibid.*, pp.9-11.

20. *ibid.*, p.11.

21. *ibid.*, pp.12-27.

22. *ibid.*, p.27.

23. *ibid.*, p.17.

24. *ibid.*, p.16.

25. *ibid.*, p.17.

be that “The Commission in collaboration with other authorities shall enforce the guidelines issued by the Ministry of Health on all social and political gatherings including meetings and crowds”.<sup>26</sup> Furthermore, it is unclear from this document which Code of Conduct the parties are required to sign, and whether the guidelines that are to be included in that Code of Conduct match the Protocols.

## Campaigning during the COVID-19 pandemic: Practice

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Four by-elections were postponed in April 2020, with the IEBC noting that it would be difficult to undertake campaigns without exposing the public to the risk of contracting COVID-19.<sup>27</sup> This followed two Presidential Directives issued in March 2020 aimed at containing the spread of the virus. President Kenyatta put more measures in place later, including in November 2020 when he suspended all political gatherings and rallies for 60 days.<sup>28</sup> These suspensions were lifted prior to the by-elections in Western, which saw the major political parties deploy their heavyweight leaders.<sup>29</sup> They drew large crowds, and almost no COVID-19 mitigation measures were implemented.<sup>30</sup> The most recent ban on political gatherings was enforced shortly before the Machakos by-election,<sup>31</sup> leading the UDA's senatorial candidate to declare that it had prevented many people in Machakos from hearing his message.<sup>32</sup> In an article on this most recent ban, *The Star* newspaper points out that previous directives have been disregarded by the political class, including the President.<sup>33</sup>

## Voting during the COVID-19 pandemic: Protocols

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The IEBC COVID Protocols outline pre-poll activities, including a list of the tasks that the presiding officer is to undertake to prepare the polling station for voting as safely as possible during the pandemic. When voting begins, much of the work in ensuring adherence to COVID-19 mitigation measures in the polling station is overseen by the queuing clerk, whose tasks include: checking the temperature of voters, directing them to the hand-washing area, checking that they are wearing face masks, and ensuring that a social distance of 1.5 metres is maintained in the queues.<sup>34</sup> The other important IEBC polling station staff member in terms of COVID-19 protocols is clerk one, whose tasks include requesting that voters use sanitizers to clean their hands and their identification document. The clerk is then required to sanitize their hands before serving the next voter.<sup>35</sup> To assist the presiding officer and their staff, a bird's-eye view illustration of the recommended polling station layout is provided, including the suggested location of the non-contact thermo-gun, and the soap and water.<sup>36</sup>

Around 100 minutes after voting had begun in the 4 March by-elections, the IEBC took to its official Twitter account to announce that ‘Polling stations opened at 6am and voting is currently underway in seven electoral areas across the country’, and to present two pages offering ‘Voter information for 4 March 2021 by-elections’.<sup>37</sup> This included information on voting for citizens in the seven electoral areas concerned, and would have been helpful for those who follow the IEBC Twitter account and who had not already voted by the time of the tweet. The relatively small readership of this information notwithstanding, it does succinctly summarise the electoral commission's main protocols, and is more likely to have been read by voters than

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26. *ibid.*, p.10.

27. <https://www.iebc.or.ke/uploads/resources/Cd6P2lzYpE.pdf>.

28. <https://www.standardmedia.co.ke/health/health-science/article/2001392710/uhuru-reviews-measures-as-covid-19-cases-spike>.

29. <https://www.standardmedia.co.ke/western/article/2001404839/matungu-kabuchai-campaign-enters-final-stretch>.

30. See ‘Raila Odinga attends huge rally in Matungu to campaign for ODM candidate’: <https://www.youtube.com/watch?v=LSWA8xZtlw0>; ‘DP Ruto team led by Sudi heading UDA troops in Matungu for final campaign’: <https://www.youtube.com/watch?v=yZibWF7AQPo>; “‘Kuna watu wawili wanatusumbua sana”, Musalia Mudavadi speech during Matungu campaigns”: <https://www.youtube.com/watch?v=Hl1EKEEAyss>; ‘Mudavadi, Wetangula, Kalonzo and Gideon Moi in joint massive campaign in Kabuchai for Ford-Kenya’: <https://www.youtube.com/watch?v=Bg-CWOHUdmA>.

31. <https://www.theeastafrican.co.ke/tea/news/east-africa/covid-19-mesures-kenya-3320746>.

32. Urbanus Mutunga Muthama Ngengele to Molony, 18 March 2021, Mwala DEB Primary School, Machakos.

33. <https://www.the-star.co.ke/news/2021-03-13-uhuru-deals-a-blow-to-bigwigs-as-he-bans-rallies/>.

34. IEBC, ‘Protocols’, p.21.

35. *ibid.*, p.22.

36. *ibid.*, p.25.

37. <https://twitter.com/IEBCKenya/status/1367333882526326789/photo/1>; <https://twitter.com/IEBCKenya/status/1367333882526326789/photo/2>.

the detailed and technical 30-page 'IEBC COVID Protocols' document, which was only downloaded 101 times between its 19 October 2020 publication and 19 March 2021. Furthermore, the IEBC tweet was issued on polling day in the Western constituencies and therefore presented the most recent information aimed specifically at local voters. Alongside the other information on voting, the IEBC's tweet offered the following COVID-19-specific guidance:

**IEBC**  
Your Vote, Your Future

**VOTER INFORMATION FOR THURSDAY MARCH 4, 2021 BY-ELECTIONS**

**1.0 BY-ELECTION DATE**  
The Commission will conduct the following by-elections on **Thursday 4th March 2021**

- Member of National Assembly for **Kabuchai Constituency** in Bungoma County
- Member of National Assembly for **Matungu Constituency** in Kakamega County
- Member of County Assembly for **Hell's Gate CAW** in Nakuru County
- Member of County Assembly for **London CAW** in Nakuru County
- Member of County Assembly for **Kiamokama CAW** in Kisii County
- Member of County Assembly for **Huruma CAW** in Uasin Gishu County
- Member of County Assembly for **Kitise/Kithuki CAW** in Makueni County

**4.0 COVID - 19 VOTING PROTOCOL**  
In Compliance with MoH COVID-19 health protocols, one **MUST**:

- Wear a facemask covering your nose and mouth before being allowed into the polling station area
- Have his/her temperature checked by the clerk at the polling station gate
- Wash his/her hands at the polling station gate with water and soap or sanitizer provided
- Maintain a Social distance of 1.5 metres while waiting to vote

**5.0 VOTER IDENTIFICATION METHOD**  
All voters shall be identified by use of:

- Fingerprints as found in the Kenya Integrated Electoral Management System (KIEMS) kits.
- His/her ID or Passport number in the KIEMS Kit in case of a challenge in identifying the voter by use of finger prints
- The KIEMS Kit will be sanitized by the Clerk after every voter has been successfully identified.

**7.0 MARKING OF BALLOT PAPER**

- After successful identification, a voter will be issued with a ballot paper
- The voter will proceed to the voting booth and select **ONLY ONE CANDIDATE** of his/her choice by marking in the **space provided** on the ballot paper.
- The marking pen will be sanitized by the polling official after every voter has used it
- Always maintain a social distance of at least 1.5 meters in the polling room

**Independent Electoral and Boundaries Commission (IEBC)**  
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**Your Vote, Your Future**

Figure 1: IEBC's 'Voter information for 4 March 2021 by-elections' tweet

## Voting during the COVID-19 pandemic: Practice

Mactilda Mbenywe and Thomas Molony conducted the field research in the Western constituencies of Kabuchai and Matungu, and Molony conducted the field research in Machakos. The researchers visited a total of 66 polling stations, comprised of 16 located in Matungu constituency, 14 in Kabuchai and 36 in Machakos.<sup>38</sup> In Matungu and Kabuchai, Mbenywe was able to gain entry to all polling stations by using her press pass, while Molony, after speaking to the presiding officers, was able to interview staff at all the Machakos polling stations that were visited.<sup>39</sup> Both researchers were able to determine the extent to which the IEBC's COVID-19 voting protocols were observed by electoral officials and by voters. The following assessment is presented using the main categories outlined in the IEBC's 'Voter information for 4 March 2021 by-elections' tweet.

38. Matungu polling centres/stations were visited first, in the following order: Matungu (3 polling stations), Emanani (3), Mwira (3), Emakale (3), Ebubambula (1), Manyoni (3). Kabuchai polling stations were visited in the following order: Chebunyi (1), Lufutu (1), Sikusi Market (1), Sikusi Primary (2), Nakitumba (1), CDF Musese (2), Busakala (4), Sanadiki (2). Close of polls was observed at a polling centre with four polling stations in Kabuchai. Machakos polling centres/stations were visited as follows: Patmon Junior School (9), Kinanie (4), Kathome Trading Centre (2), Syanthe SA (1), Kangundo Social Hall (4), Kangundo AIC (2), Kyaluni (2), Mwala DEB (3), Musalani (1), Kithimani HGM (5), Mutwamwaki (1), with close at Musingini (2).

39. The researchers signed the Polling Station Diary as required.

## Face masks (and protective gloves)

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The small number of voters who were not wearing a face mask when they arrived at the polling station were told to do so by the queuing clerk. Some of those who did not have a mask were sent away to get one, while in other instances polling staff found solutions to provide them. For example, a presiding officer stated that she had issued a spare IEBC mask to a voter who did not have a one.<sup>40</sup> The only really concerning case was a presiding officer who, due to what may have been an individual interpretation of the electoral law by his superior, claimed that he had “received the order from the Returning Officer that those without masks can vote”.<sup>41</sup> Elsewhere in the same constituency, a party agent complained that “some people were chased away for not wearing masks” – although this was not observed by the researchers.

That most voters turned up with a face mask is perhaps an indication of a high degree of awareness of the requirement to wear one when in the polling station area. As a party agent put it: “Out there in the street, in the market, people do not wear masks. Nobody is wearing them. But they know that you have to have a mask in order to be allowed to come here and vote. Wearing masks is just for voting. If you leave [the polling station], you will see nobody is wearing masks”.<sup>42</sup>

In their widespread acceptance that face masks were required in order to enter the polling station area, voters seem not to have been unduly affected by events leading up to the by-elections in Matungu, where ANC politicians allegedly claimed ODM had been issuing unique face masks in an attempt to rig the poll.<sup>43</sup> An accredited observer remarked that attempts had been made to play down the pandemic in a bid to encourage locals to vote: “Politicians are saying that there is no COVID. They want power, so they need people to vote. Whether you die from COVID because you didn’t wear a mask – they don’t care.”<sup>44</sup> This seems not to have been the position of most politicians though, and a group of agents with mixed affiliations reported that all parties had given out masks during their campaigns.<sup>45</sup> These initiatives would not necessarily ensure that voters would bring their masks to the polling stations, and at least one political party seems to have prepared for this eventuality by proposing in a ward-level meeting that the party would issue masks to any voter who turned up to vote without one. This idea was attacked by another party on the grounds that issuing voters with a face mask outside the polling station would constitute a bribe.<sup>46</sup>

The enforcement of the *correct* wearing of face masks in the polling station area was poor. While queueing to vote, or when they were in or in the polling stations themselves, around 50% of voters in Western were wearing their masks in a way that did not sufficiently cover the nose and mouth. Polling station staff – including many presiding officers – were equally lax in their wearing of masks and gloves. Of the 264 IEBC staff and party agents counted at 36 Machakos polling stations, over a third were either not wearing their masks in a way that covered the nose and mouth or were not wearing their masks at all. In one polling station in Western, not a single IEBC staff member was wearing a face mask.<sup>47</sup> The worst culprits were party agents, who seldom wore face masks while sitting in the polling station. Those polling station staff who were most likely to wear a mask were the queuing clerks, some of whom also wore face shields.

No IEBC staff were witnessed using rubber gloves in Machakos, and many said that they had not been issued with them. Few staff in Western wore gloves despite most (but not all) polling stations having been issued them by the IEBC. In one polling station, the gloves that were supplied had already worn out within two hours of the opening of the polls.<sup>48</sup>

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40. Presiding officer, PSg, Kabuchai. To protect informants and/or to prevent identification of the polling stations concerned, some references to discussions or to locations are anonymised using a lettered code associated with the polling station (PS), from Psa to PSz. References for Kabuchai and Matungu are from 4 March 2021, and for Machakos are from 18 March 2021.

41. Presiding officer, PSg, Matungu.

42. Party agent, PSm, Matungu.

43. <https://www.tuko.co.ke/404566-odm-issuing-unique-masks-rig-matungu-by-election-cleophas-malala.html>.

44. Observer, PSg, Matungu.

45. Party agents, PSm, Matungu.

46. Party agent, PSm, Matungu.

47. PSv, Matungu.

48. Matungu Primary School, Matungu.



## Temperature checks

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The IEBC COVID Protocols require the queuing clerk to: “check the temperature of the voter and candidates. In case of a voter with a temperature over 37.5°C or displaying symptoms of COVID-19, the queuing clerk shall immediately inform the presiding officer”.<sup>49</sup> All of the polling stations that were visited had a non-contact thermo-gun, and in most cases this was in the possession of the queuing clerk. Exceptions were observed in five cases in which the presiding officer was performing the temperature checks, and in one case in which the non-contact thermo-gun was on a table because there were no voters. Queuing clerks were proactive in identifying voters as they approached the polling station area, and voters did not object to having their temperatures checked. In keeping with their high awareness of the requirement to wear a face mask, voters’ willingness to have their temperatures checked may indicate a general acceptance among many people that COVID-19 protocols are now a part of everyday life in some public places. Even so, a number of elderly voters, and some voters of other ages in rural areas, seemed quite perplexed when the non-contact thermo-gun was held to their head without explanation from the queuing clerk. In one instance, an old woman whose temperature was being checked was overhead being told by a youth that, by using the thermo-gun, the queuing clerk “is taking information for Nairobi” – presumably suggesting that the device was gathering data for the IEBC or the government.<sup>50</sup> It was not clear if the youth believed this himself, or if he was trying to cause trouble in a polling station where, at that time, the police were dealing with a violent incident some forty metres away.<sup>51</sup> While the youth’s comment did not seem to cause any further unrest, the incident shows the potential for misinformation about COVID-19 protocols to be a spark that ignites existing tensions.

Queuing clerks’ regular use of the non-contact thermo-gun was not always complemented by a knowledge of what constituted a high temperature. One in Kabuchai considered a high temperature to be a reading of 35°C, while another in Matungu said the voters were not allowed in the polling station if they had a temperature of above 38.1°C.<sup>52</sup> These figures were even more extreme in Machakos where the gun’s operator stated that temperatures “below 36” and “above 40”°C were not acceptable for admittance to the polling station. Notably, in both cases from Machakos these figures were given by police officers who at the time were operating the non-contact thermo-gun.<sup>53</sup> The correct figure is 37.5°C, meaning that some voters may have been admitted while having too high a temperature and some may have been refused entry despite being under the threshold. However, queuing clerks at other locations had thermo-guns that were easier to understand because they show the reading in red, rather than in the usual green, when the voter’s temperature is above the permitted temperature.

In most cases the queuing clerk would show the voter their temperature reading on the thermo-gun, and the queuing clerk generally knew the essence of the protocol on what to do if they came across a voter with a high temperature. This rarely corresponded exactly to the advice as written in the October 2020 IEBC COVID Protocols – that “in [the] case of a voter with a temperature over 37.5 degrees Celsius or displaying symptoms of COVID-19, the queuing clerk shall immediately inform the presiding officer”<sup>54</sup> – but the consistency in the responses did suggest that a sensible course of action had been agreed to in the queuing clerks’ training. In the main, queuing clerks said that they would ask anyone with a high temperature to sit in the shade to cool down, after which they would take their temperature again. If the temperature remained above the threshold, they would call for help from medics who were on stand-by – although very few queuing clerks knew where exactly this assistance would come from. Except for at one polling station, queuing clerks were adamant that a voter whose temperature did not drop to within the admissible range would not be allowed to enter.

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49. IEBC, ‘Protocols’, p.21.

50. PSg, Matungu. The comment, made in Swahili, was ‘*anachukua habari kwa Nairobi*’.

51. PSg, Matungu.

52. PSb, Kabuchai and PSv, Matungu.

53. PSo and PSi, Machakos.

54. IEBC, ‘Protocols’, p.21.

## Hand-washing

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In Western, the enforcement of hand-washing protocols by queuing clerks was good. At polling stations where the water and soap were positioned such that voters had to pass them to proceed to voting, adherence was especially high. When the facilities were situated to the side, and voters could easily miss them, the clerk would often have to send voters back to wash their hands, causing unnecessary congestion among voters. In nearly all cases, the queuing clerk or another IEBC staff member also used a spray bottle to apply sanitizer to voters' hands.

This was in stark contrast to Machakos, where some polling stations had no bucket, soap or water available for voters to wash their hands, and hand sanitizer was only applied when the voters left the polling station.<sup>55</sup>



IEBC-banded water bucket, Chebunyinyi, Kabuchai

## Social distancing

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There was almost no respect for social distancing at any point during the by-elections. While the queuing clerks in Western excelled in ensuring that masks were worn (although not always correctly), that temperatures were checked and that hands were sanitized, they largely failed in the role of overseeing queues, which their title suggests is central to their job. Of the 16 polling stations that were visited in the first 5 hours from opening, 763 voters were counted in the queues of people waiting to vote, averaging 47 voters queuing at each polling station. Not one of these voters was observed to be socially distanced by the minimum of 1.5 metres. As mentioned above, the IEBC COVID Protocols state that it is the job of the queuing clerk to ensure that a social distance of 1.5 metres is maintained in the queues.

The IEBC COVID Protocols also require that the queuing clerk be a community health worker.<sup>56</sup> More often than not, in Western it was teachers who performed the role of queuing clerk, and it was usually teachers who held the role of presiding officer. This had its benefits, as the teachers tended to be excellent at issuing clear and firm instructions to voters. Notably,

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55. For example, PSq and PSs, Machakos.

56. IEBC, 'Protocols', p.19.

those IEBC staff who were both women and teachers were particularly adept at ensuring that voters followed the mask, temperature, and hand-washing protocols. However, nobody issued instructions to voters that they should observe social distancing while queuing. Given this clear disparity in the enforcement of different protocols, it is possible that the lack of social distancing in the queue was partly caused by the limited emphasis that had been placed on this measure during the training of polling station staff. The issue was compounded by the fact that the bird's-eye view illustration of the recommended polling station layout, which uses lines to indicate the minimum permitted distance, appears to allow four people to be able to share a space of 1.5 metres.<sup>57</sup> The polling station layout map also seems to indicate that polling stations have sufficient room for one agent, one member of the media and one observer. Whereas observers will not always be present in a polling station (although for general elections domestic observers are often present throughout the day), and members of the media will not often stay for long, political party representatives will nearly always be present. The polling station layout map does use the plural term, 'agents', but it does not provide sufficient space for the reality that each polling station may have six to ten party agents present at the same time. This common scenario does not allow for a social distance of 1.5 metres.

## Sanitization of equipment

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In Western, the requirement that clerk one requests that voters use sanitizers to clean their hands was generally not met since this step had usually been completed by the queuing clerk. Clerk one also tended not to ask the voters to use sanitizer to clean their identification documents, but did at times reduce the risk transmitting coronavirus by not touching the documents. This reduced physical contact is presumably the reason that these clerks then seldom sanitized their hands before serving the next voter.

There is physical contact between all voters and the pens used to mark their ballots though, and these marking pens were not regularly sanitized despite polling staff being aware that this was required. It is therefore likely that the need to sanitize the marking pen was covered in training, but that polling staff simply did not bother to apply this measure. Curiously, the IEBC COVID Protocols make no mention of the need to sanitize the communal pen, but instead state that "Electorates are encouraged to bring and use their own items such [as] pens or writing materials where applicable to reduce chances of sharing".<sup>58</sup> No voter was observed with their own writing materials.

Each polling station was equipped with a Kenya Integrated Electoral Management System (KIEMS) kit that is used for biometric verification and results transmission. Its biometric verification function identifies voters by taking a fingerprint (or thumbprint) reading. The device is often slow to work, and can fail to register fingerprints for a variety of reasons.<sup>59</sup> During the 2017 general elections, a common solution was to ask voters to clean their hands with soap and water. In the March 2021 Machakos by-elections, when the KIEMS kit did not register voters' fingerprints some polling centre staff instructed voters to vigorously rub their unsanitized thumbs on their foreheads in order to improve the likelihood of a reading. (These were the same polling stations that had no soap or water available for voters to wash their hands, and where the application of hand sanitizer only took place *after* the voters had used the KIEMS and voted.) According to one presiding officer in a polling station where some voters' hands were worn from year of manual labour in a nearby quarry, the idea of voters rubbing their thumbs on their foreheads "was shared among presiding officers and deputy presiding officers after our training – we decided to do it if the voter's fingerprint doesn't register [in the KIEMS]".<sup>60</sup>

During the Kabuchai and Matungu by-elections, a number of presiding officers or clerks stated that when the KIEMS did not register a voter's fingerprint, they used sanitiser to clean both the voter's fingerprints and the device.<sup>61</sup> That some polling staff are now instructing voters to use sanitizer is possibly because, as it is available in the polling station and saves the voter having to go out, the sanitizer is regarded as a quicker solution than soap and water. Yet the voter should already have

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57. *ibid.*, p.25.

58. *ibid.*, p.11.

59. European Union Election Observation Mission to the Republic of Kenya, 2018, 'Final report, Republic of Kenya, General Elections 2017', p.23, fn66.

60. Presiding officer, PSs, Machakos.

61. For example, PSc, Kabuchai.

cleaned their hands with soap and water, and should have applied sanitizer to them, so adding further sanitizer prior to re-attempting to verify the voter's identity only risks damaging the KIEMS. Indeed, some polling staff (the vast majority of whom were in Machakos) reported that they had been specifically instructed by the IEBC *not* to clean the KIEMS with sanitizer due to concerns that the machines may be broken.<sup>62</sup> If correct, this contradicts the IEBC tweet that said the KIEMS kit would be sanitized by the clerk after every voter had been successfully identified. On this topic, the US-based Centres for Disease Control and Prevention provides the following in their recommendations for election officials and poll workers: "Alcohol-based hand sanitizers may not be compatible with electronic voting equipment and may damage paper ballots. Poll workers and voters should ensure their hands are completely dry before handling these items."<sup>63</sup> It is unclear whether hand sanitizer played any role in slowing the KIEMS voter identification process during the Kabuchai and Matungu by-elections, but it is evident that the queues built up when voters could not be identified quickly. Where no issue was identified with KIEMS, voting took on average three minutes from entry to exit of the polling station.<sup>64</sup> Where KIEMS was a problem, voting took considerably longer. When voters have to spend longer queuing, this obviously increases the risks of contracting or transmitting COVID-19.



**Woman washing hands with improvised sanitation device, Machakos**

## Adherence to measures during count

During the vote count, which began shortly after the close of polls at 17.00, adherence to COVID-19 protocols in the Western polling centre (with four polling stations) where the researchers observed was almost non-existent. Social distancing was ignored, and face masks were generally not worn. Of the 53 IEBC staff and party agents at these polling stations, only ten were wearing masks.<sup>65</sup> At the Machakos polling station, a higher percentage of staff and party agents were wearing face masks at close of polls, with just over half still adhering to the protocols.

## Adherence to measures in tally centre

The IEBC tweet also states that "before accessing the tallying centres, the authorized persons must: wear a facemask at all times; wash or sanitize their hands; have their temperature taken; and observe 1.5 metres rule on sitting positions".<sup>66</sup> By and large, all of these measures were ignored in Western. (Tallying was not observed in Machakos.) When Mbenywe accessed the Kabuchai tally centre it was raining heavily, and people were more concerned with keeping dry than in imposing or

62. For example, PSI, Matungu.

63. <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

64. This is an average from 30 polling stations, for by-elections where voters were issued with and asked to mark one ballot. In August 2017, Kenyans were issued with six ballots for various elections including for the presidency, the parliament, governors and county assemblies.

65. PSz, Kabuchai.

66. <https://twitter.com/IEBCKenya/status/1367333882526326789/photo/1>.



following COVID-19 protocols. At the Matungu tally centre, the focus among police officers was on enforcing tight security, and the focus among agents and some IEBC staff on seeking to pass the security with minimal fuss – again, rather than following COVID-19 mitigation measures.

## By-elections: a litmus test on COVID mitigation measures in the electoral setting

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An unusually high number of well-known political leaders took part in campaigning for the Kabuchai and Matungu by-elections. Ultimately, the main parties retained their constituency seats. While it is still debatable as to whether the by-elections really acted as a political litmus test in advance of future polls, it is certainly evident that all three by-elections discussed here were a litmus test on COVID-19 mitigation measures for elections. Coverage in Kenya's media predominantly focused on the political aspects of the by-elections, with only occasional and passing reference made to the fact that the eight polls were being held during a pandemic. Observations in Kabuchai and Matungu for this working paper suggest that, while measures were certainly taken to mitigate against COVID-19, the state-run KBC's description of the regulations in place in Kabuchai as 'tight' is off the mark.<sup>67</sup> However, it would also be incorrect to say that the comments of an IEBC-accredited domestic observer were any closer to the mark: "IEBC are understaffed and have not trained enough staff ... on COVID. They are not able to manage COVID-19 [mitigation measures] in all the polling stations."<sup>68</sup>

Evidence from the by-elections suggests that IEBC polling station staff – *and the voters who they serve* – are undoubtedly capable of limiting the spread of COVID-19 during future polls. The positive evidence for this upbeat assessment is as follows: Voters are aware of the need to bring face masks, and they also know that they are required to have their temperature checked. Queuing clerks are generally proactive in their jobs and performed some of their tasks very well, especially in ensuring voters' temperatures were checked, and that voters washed their hands. Queuing clerks also had sufficient knowledge of actions to be taken in the event of a voter with a high temperature. As detailed below, there is some more work to be done. The fact that it is now possible to point to where improvements can be made is an advantage of Kenya having conducted a small number of by-elections. In sum, election day preparations should take note that: The correct wearing of face masks – both by voters and polling station staff – was poorly enforced; Social distancing was almost totally absent among all taking part in the by-elections, namely voters, polling staff and party agents; And some communal items were not sanitized.

Another conclusion from the seven by-elections held on 4 March is that circumstances can make adherence to COVID-19 mitigation measures unfeasible. As the IEBC knows well after its staff members were assaulted by "goons" in Matungu,<sup>69</sup> violence can undermine even thorough planning. As one informant put it: "If you are attacked by a group of thugs with *rungus* (knobkerries) and clubs and sticks and other weapons – like the man over there was attacked, he was beaten like a dog – of course you will not care about COVID. You will want to stay alive then. You can catch COVID – sure! But you will also die from the injuries you sustain before you even reach a hospital".<sup>70</sup>

## Lessons learned

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The following recommendations are aimed at Kenya, which is likely to hold a referendum in 2021 and general elections in August 2022. A fresh voter registration exercise is also expected around six months in advance of the general elections. Here it is worth noting that when Ghana carried out a fresh voter registration prior to its December 2020 general elections, a striking coincidence was quickly observed between the timing of the exercise and the trajectory of COVID-19 infections.<sup>71</sup> Many of the recommendations regarding polling station activities are therefore also relevant to voter registration.

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67. <https://www.kbc.co.ke/voting-in-kabuchai-matungu-constituencies-by-elections-kicks-off/>.

68. Domestic observer, PSg, Matungu.

69. Chebukati, W. 5 March 2021, IEBC press release: 'Poll-related violence in the March 4th 2021 by-elections'. <https://www.iebc.or.ke/uploads/resources/HRpzDF13FM.pdf>.

70. Domestic observer, PSg, Matungu.

71. Paul Nugent, Gilfred Asiamah, Thomas Molony and Edem Selormey, 2021, 'COVID-19 and Ghana's 2020 Elections', African Elections during the COVID-19 Pandemic project working paper no.2, pp.4-5. <https://aecp.sps.ed.ac.uk/wp-content/uploads/2021/03/COVID-19-and-Ghanas-2020-Elections.pdf>.

## **1. Emphasis on public health agency guidelines**

The IEBC is clear that it integrated Ministry of Health guidelines when designing its COVID Protocols document.<sup>72</sup> In many countries, trust in health officials tends to be higher than that of officials working in other institutions.<sup>73</sup> Emphasising to voters that the protocols for COVID-19 mitigation during elections are based on Ministry of Health guidelines can heighten credibility and bolster confidence in the IEBC message, and may therefore also increase voter adherence. If association with the Ministry of Health is deemed to be too political during the electoral period, advice can be adopted from other agencies such as World Health Organisation (WHO) or Africa Centers for Disease Control and Prevention (CDC).

## **2. Clarify extent to which protocols/guidelines are binding – and the implication of violations**

There is a general need for the Protocols to clarify the extent to which the IEBC's guidelines are binding. This can simply be achieved by stating the relevant sections of the Independent and Electoral Commission Boundaries Act 2011, which gives the IEBC a mandate to make regulations and to develop guidelines that, once adopted by the plenary, become operational and binding.

There is also a need for the Protocols to clarify what actions may be taken if the rules are broken. Where possible, specific examples of anticipated violations could be given. For example, what actions may be taken if a voter does not have a face mask and insists on voting? The further anticipated knock-on effects of the IEBC's actions should also be considered. For example, if it is decided that, when voters do not have a face mask, they should be given one by the polling station staff, does the IEBC then have adequate resources to provide them? If no, then the uneven distribution of face masks to voters could be politicised during the elections – which may spark unrest.

## **3. Clarity on campaigning guidelines**

The IEBC position on campaigning during a pandemic needs to be much clearer than the existing text contained in the Protocols. It should be made explicit that the current mention of 'the code of conduct' refers to the Electoral Code of Conduct. Prior knowledge of the Electoral Code of Conduct, as well as the Election Offences Act should not be assumed. The relevant sections of these acts should be cited in the Protocols so as to give a clear indication of how they relate to COVID mitigation measures during the elections.

In drafting the guidelines, one option is to deal with the reality that – as at points in the lead up to the March 2021 by-elections in Western – in-person campaigning later in 2021 and in 2022 is unlikely to be halted completely. As in the 2017 elections, evidence from the 2021 by-elections suggests that parties will attempt to influence the electorates as the IEBC COVID Protocols currently recommend: via social media and traditional media. But parties will still undoubtedly also attempt to conduct rallies, some of which may be very large gatherings of many thousands of people. As discussed above, the IEBC COVID Protocols appear to acknowledge this reality. Guidelines therefore need to be crystal clear on specific crowd management protocols, and how they will be enforced. For example, what will happen in the event of campaign rallies where politicians and/or voters do not respect social distancing and or wear masks? Precisely the same text should then be put in the Electoral Code of Conduct.

## **4. COVID Protocols Clerk**

In terms of adherence to COVID-19 protocols, queuing clerks play perhaps the most important role. Their evident success in Western in ensuring that voters wear face masks, that they wash their hands, and that they have their temperatures checked, suggests that queuing clerks also have the ability to ensure that face masks are worn correctly, and that social distancing is adhered to in the queue. These essential measures should be emphasised to the queuing clerks during their training.

Given the duties of the queuing clerk, their title is a misnomer. As shown above, they do far more than marshal the queue. To all intents and purposes, on election day the queuing clerks oversee the management of some of the most important COVID-19 protocols – especially those that are most visible to voters. It is recommended that the IEBC considers changing

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72. IEBC, 'Protocols', pp.8, 28 and 30.

73. IPSOS, 2019, 'Global trust in professions: Who do global citizens trust?', <https://www.ipsos.com/sites/default/files/ct/news/documents/2019-09/global-trust-in-professions-ipsos-trustworthiness-index.pdf>.

the title of 'queuing clerk' to 'COVID Protocols Clerk' (CPC). The proposed new name for the queuing clerk would demonstrate to voters and polling station staff the centrality of COVID-19 mitigation measures in the electoral process.

Having a named COVID Protocols Clerk provides each polling station with an explicit and dedicated COVID-19 focal point. *However, the presiding officer should still retain overall responsibility for the polling station and all staff in that polling station – including the COVID Protocols Clerk.* This means that although the COVID Protocols Clerk has his/her dedicated role, the presiding officer should still have ultimate responsibility for ensuring that supplies of all materials have been received, that they are sufficient for the entire day, and that the required supplies are in place before voting begins. If hand-washing materials are not delivered, for example, the presiding officer should ensure that soap and water are in place before voting begins. Furthermore, even though there is one person assigned to act as COVID Protocols Clerk, all polling staff should have ownership over and responsibility for adherence to the protocols in the polling station.

Given the new title, and the explicit focus of the role on adherence to COVID protocols, it would also make sense for the COVID Protocols Clerk to contribute to ensuring adherence to some of the following recommendations.

## **5. Voters should not be encouraged to rub their thumbs on their foreheads**

Asking voters to rub their thumbs on their foreheads in the belief that this will improve the likelihood of the KIEMS kit reading their fingerprint goes against the COVID-19 public health advice that people should avoid touching their faces. The IEBC should decide on alternative means of improving the likelihood of fingerprints being read by the KIEMS kit. The training of polling station staff should expressly cover the fact that voters should not be told to touch their foreheads (or anywhere on their faces) for any reason.

## **6. Sanitization of communal items**

The IEBC COVID Protocols call for the minimal sharing of general items. Both the marking pen and KIEMS kit are touched by every voter, so are therefore potential vectors of transmission. At the very least, any polling station staff member who handles the marking pen or operates the KIEMS kit should wear gloves.

The IEBC COVID Protocols indicate that, immediately before a voter is verified, clerk one is to "request the voter to sanitize his/her hands and the identification document using sanitizers".<sup>74</sup> Since alcohol-based hand sanitizers may not be compatible with the KIEMS kit, voters should be instructed to ensure their hands are completely dry before placing their thumb on the device. IEBC should provide clean, single-use tissues for this purpose.

There is some confusion as to when and how the KIEMS kit should be sanitized, and which sanitizers are compatible with the device. While the IEBC tweeted that the KIEMS kit is to be sanitized by the clerk after every voter has been successfully identified, some polling staff had reportedly been instructed not to clean the KIEMS with hand sanitizer. The IEBC COVID Protocols do not give this information for the voting process, but they do provide some clues when covering the voter registration process: "Sanitize the finger print scanner using suitable sanitizer for the scanner as prescribed by the manufacturer ... sanitize the scanner and invite the next applicant."<sup>75</sup>

Clear instructions need to be given to polling staff about when and how the KIEMS kit is sanitized, and which sanitizer is compatible with the device. If there is a specific 'suitable sanitizer' available for the KIEMS kits in all polling stations, its name needs to be given in the instructions. If there is no specific 'suitable sanitizer' for the KIEMS kits and the IEBC actually intends that hand sanitizer is used, this needs to be clarified in the instructions. If hand sanitizer is not compatible with them – and this can only be ascertained after extensive trials – then there is potential for the KIEMS kits to malfunction. This would not only slow the electoral process, but it would also increase the number of people queuing to vote, thereby putting voters and polling staff at greater risk from COVID-19.

The IEBC COVID Protocols state that "alcohol-based sanitizers placed in strategic locations shall be used by everyone participating in an electoral process."<sup>76</sup> This is too vague. As most of the uses for which sanitizer is required can be

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74. IEBC, 'Protocols', p.22.

75. *ibid.*, p.15.

76. *ibid.*, p.10.

anticipated, the precise location where the sanitizer should be placed can therefore also be determined in advance. The exact uses of sanitizer, and its precise location, should be indicated in IEBC documentation.

## **7. Recommended polling station layout needs to accurately reflect protocols – especially for social distancing**

If the minimum permitted social distance in the polling station is 1.5 metres, the bird's-eye view illustration of the recommended polling station layout should not require people to be closer together than 1.5 metres.

On a related point, there is a disconnect between the recommended polling station layout illustration and the number of people who are permitted to be present in a polling station at any given time. In particular, the polling station layout illustration needs to provide sufficient space for the maximum number of party agents who are allowed in the polling station at once – *while also maintaining a social distance of 1.5 metres*. If a social distance of 1.5 metres cannot be realised with the maximum permitted number of party agents, and the size of the polling station cannot be increased (which is likely the case, given that most polling stations are primary school classrooms), then the IEBC needs to decide on which to cut: the maximum permitted number of party agents, or the minimum social distance of 1.5 metres. Cutting the latter risks undermining IEBC's message that they are serious about COVID-19 mitigation measures during elections. The former is probably a more sensible route, and there are examples from Kaimokama and London wards where the presiding officer consulted with the agents, who agreed to restrict their number in order to allow for social distancing.<sup>77</sup> Such an arrangement could be offered as a potential solution and placed in any Protocols update – although there is a risk that by *requiring* the number of agents to be reduced, the IEBC is accused of undermining the credibility of the polls. This issue should therefore be negotiated with the political parties at the highest level.

## **8. Voter education: incorporate COVID-19 mitigation measures**

There is clearly a need for voter education regarding the IEBC's COVID-19 mitigation measures during polling. To save on resources, this can simply become a component of the IEBC's existing voter education programme.

## **9. Voter education: 'Voting procedure during the COVID-19 pandemic' illustration**

A straightforward intervention in voter education is to include COVID-19 mitigation measures in the 'Voting procedure' illustration used by the voter educator to explain how the voting process works. The pre-pandemic voting procedure illustration includes an outline of seven numbered steps, depicting a voter entering the polling station and undergoing voter identification, then subsequent steps through to the voter voting and exiting the polling station.<sup>78</sup> It should now be adapted to include the extra steps that relate to COVID-19 mitigation measures. The pandemic need not take centre stage in the illustration – the COVID-19 mitigation measures can merely be added to the existing pre-pandemic voting procedure guidance illustration. This currently begins with '1 Identification of voter' in the polling station. The illustration should now be preceded by:

- 'Voter wears a face mask covering nose and mouth';
- 'Voter's temperature is checked';
- 'Voter washes hands';
- 'Voter waits in line', with a clear indication of 1.5 metres between people in the queue.

(The AECP project has produced sample 'Voting procedure during the COVID-19 pandemic' (to help reduce the risk of transmissions) illustrations. The illustrations offer ideas to electoral commissions on how they might design such an illustration to adapt their own pre-pandemic 'Voting procedure' illustrations for elections and referendums held during COVID-19.)

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77. Senior IEBC official to Molony, 18 March 2021, Machakos.

78. Versions are available at IEBC, n.d., *General elections handbook for observers*, p.29, and at [https://i0.wp.com/www.thetimpata.info/wp-content/uploads/2017/08/voting\\_eng.jpg?resize=5000%2C3526](https://i0.wp.com/www.thetimpata.info/wp-content/uploads/2017/08/voting_eng.jpg?resize=5000%2C3526).



## **10. Voter education: Dispel myths**

It is better to dispel myths before they gain currency – especially on social media. It is not within the remit of the IEBC to counter disinformation and misinformation relating to COVID-19 and non-electoral matters. However, voter education is an opportunity for the IEBC to dispel myths relating to COVID-19 *and the elections*. For example, there is a place for voter education to make voters aware that the non-contact thermo-gun is only capable of one function: reading voters' temperatures. These efforts should not appear in the 'Voting procedure during the COVID-19 pandemic' illustration, which is most effective if it is as clear, simple and uncluttered as possible.

## **11. Polling station training: non-contact thermo-guns, temperatures and procedures**

Some polling centre staff are not sufficiently familiar with the functioning of the non-contact thermo-guns that are used to check voters' temperatures. Those who are using them need to know the precise temperature above which people are not permitted to access the polling station/tally centre. If the non-contact thermo-gun has a colour coding light that signals temperatures within particular ranges (e.g., red for above the threshold, green/blue for below), then the IEBC needs to check that the non-contact thermo-guns are programmed to the correct thresholds before they are issued to polling stations. The colour coding then needs to be explained to the person – ideally the COVID Protocols Clerk – using the non-contact thermo-gun. Polling station staff also need to know the exact procedures if they come across a voter whose temperature is above the permitted threshold.

## **12. Polling station training: Security officers focus on security**

There may be instances when the polling staff require the polling station security officers to assist with issues relating to COVID protocols. However, these should be the exception rather than the rule – it is not the job of the security officers to undertake the tasks (as outlined above) of the COVID Protocols Clerk, nor that of any other polling station staff. As with elections held before the current pandemic, the primary task of the polling station security officers is still to maintain the peace in and around the polling station. A focussed vigilance by the polling station security officers is required to avoid violent incidents that could lead to the abandonment of COVID-19 protocols altogether.

If, as a last resort, there are insufficient polling staff in the polling station and the security officer is the only person available to take the temperature of voters, it is essential that the security officer knows the permitted and non-permitted temperatures.

## **13. Learn from by-elections**

It is evident from Kabuchai, Machakos and Matungu that by-elections are an excellent opportunity for electoral management bodies to learn. If by-elections need to take place at this time, electoral management bodies should use the opportunity to assess preparations and perhaps to run pilots. If they do, these by-elections can provide valuable, country-specific lessons for future larger-scale, national elections.

## **14. Update the IEBC COVID Protocols**

In light of the above recommendations, the 'Protocols for conducting electoral activities in the COVID-19 context' need to be updated to reflect any changes that the IEBC decides to implement.

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