CAN THE LEGAL FRAMEWORK IN TALLYING AND TRANSMISSION OF RESULT SUBSTITUTE TRUST? A CASE STUDY OF KENYA

A PRESENTATION BY IMMACULATE KASSAIT M.B.S, DIRECTOR VOTER EDUCATION AND PARTNERSHIP

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

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JOHANNNESBURG

SOUTH AFRICA

Content

- About IEBC;
- Data;
- Legal Framework and changes over the years;
- Administrative Framework;
- Collection of results over the years;
- Application of Technology over the years;
- Challenges;
- Conclusion;
- Recommendations.

About IEBC

The Independent Electoral and Boundaries Commission (IEBC) is established under Article 88 of the Constitution of Kenya and operationalized by the IEBC Act, 2011.

The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament.

Data

YEAR	Counties/ Provence	Constituencies	Wards	Polling Stations	Registered Voters	Elective Positions	Number of Candidates	Number of KIEMs /Gargets
2017	47	290	1450	40,883	19.7M	6	14,542	45,000
2013	47	290	1450	30,983	14.3M	6	12,000	34,000
2010	8	210	2533	27,915	12.6M	1 issue	2 sides	21,000

Number of Voters Electronically Identified During the General Election and Fresh Presidential Election

Election	Number of voters biometrically identified	Number of voters verified using presiding officer account	Total voters Electronically verified
8th August 2017 (General Election)	13,616,129	1,025,844	14,641,973
26th October 2017 (Fresh Presidential Election)	7,364,360	211,446	7,575,806

Deployment of Electronic Results Transmission

- 2009-2010- Implementation of electronic Transmission of Provisional Results (ETR).

- Guaranteed transparency and speed in transmission.

- Use of laptops and mobile telephone network.

- Transmission ranged from 40%-100%.

- The first of its kind in Kenya and regions, public were able to simultaneously receive results from the screen as sent from Polling stations;

- Highly lauded by stakeholders including media;

- There was no legal framework to govern the process.

- Formed the basis for subsequent by-election and 2013 General Elections.

IEBC
Your Vote,Your Future

Electronic Transmission of Provisional Results (ETR)

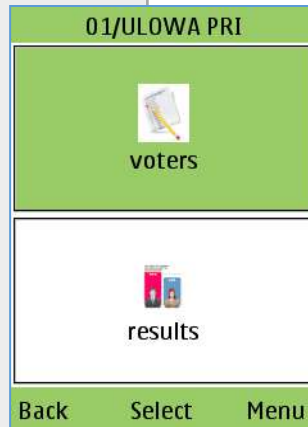The ETR system used by IIEC in 2010/11 consisted of three components namely;

1. Results Transmission
2. Telecommunication/Connectivity component
3. Results Presentation

ETR was first tested during the South Mugirango by-election on June 10, 2010 and subsequently used in Starehe, Makadara, Juja, Wajir South, Kirinyaga Central and Ikolomani by-elections.
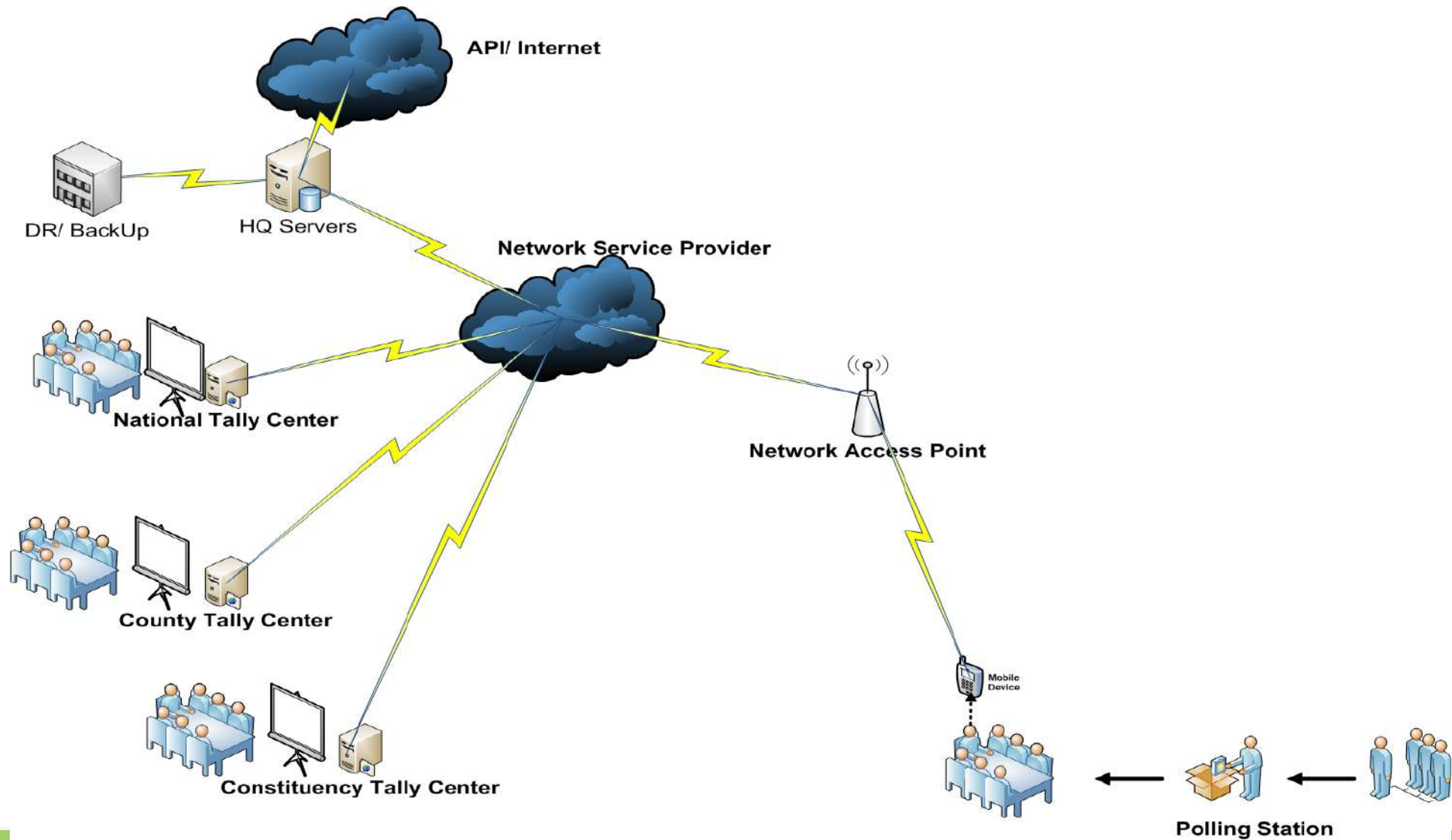
The system fostered public trust by enhancing transparency in the electoral process.

During August 4th, 2010 Referendum, the Commission deployed 21,000 Nokia 1680 mobile phones for result transmission.

Each polling centre was given a mobile phone to transmit the provisional results to their respective Tally Centers and the National Tally Centers.
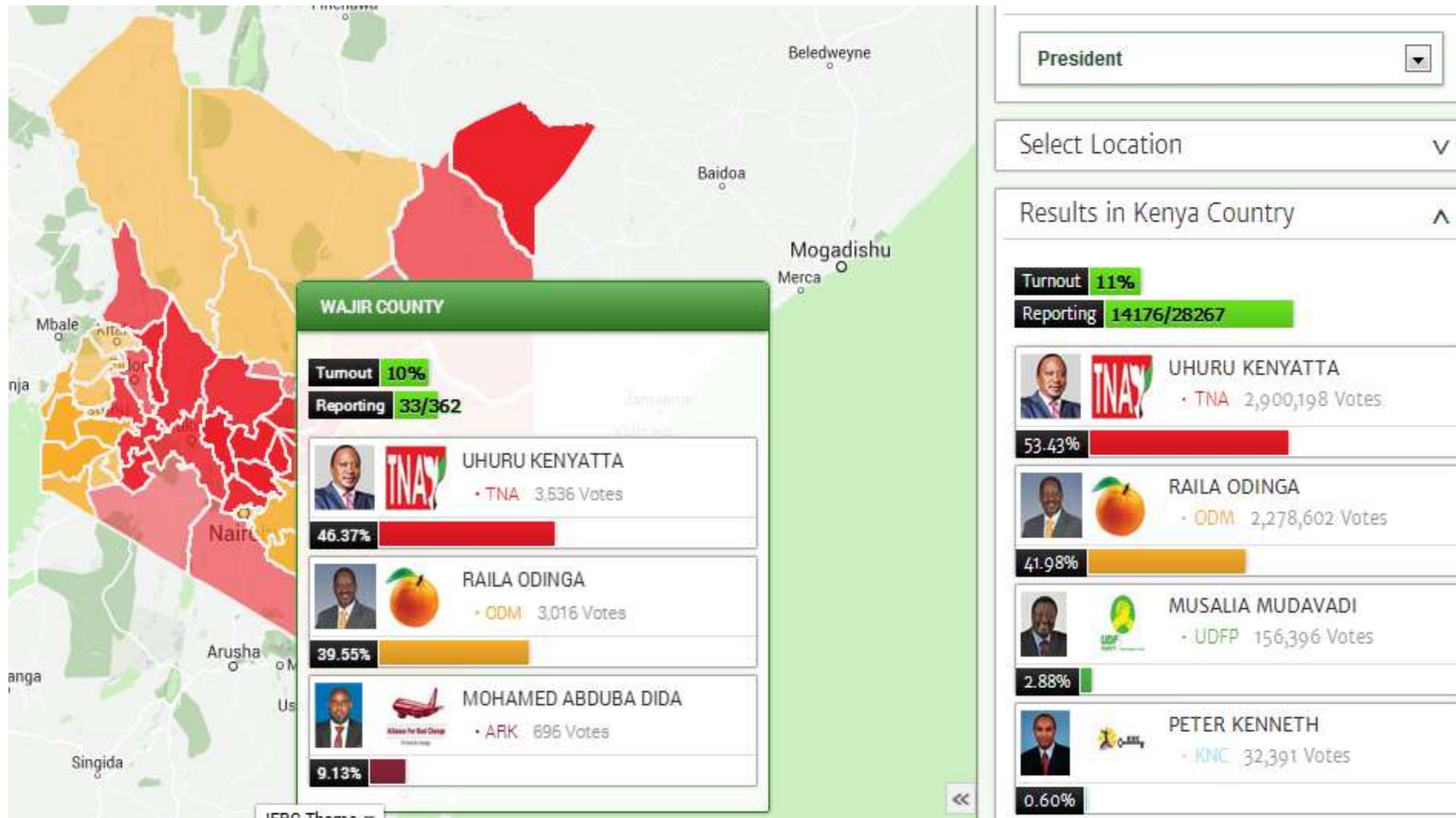
RTS: Components

Interactive Visualization of Results - Presidential

Legal Framework Evolution from Generality to Details 2017

- Elections Act of 1969 Repealed 2011;
- 2011- 6 elections on the same day;
- 2016-verification of biometrics;
- Number 0f voters per station -700;
- Sequencing of results when reporting;
- Presidential results –electronically transmitted in prescribed form;
- Tallying and verifying results.

- Online public portal maintained by the Commission;
- Duration for declaration 7 days;
- Integrated technology;
- Specifications; procurement, testing, verification, system audit, data storage/retention access to software/source codes, capacity building, telecommunication network, disaster recovery, technical committee;
- Complementary mechanism.

2017 General Elections

In 2016 - Clamor for electoral reform resulted in.

| Changes Electoral Law | Reconstitution of the Commission |

Adoption of Election Results Management Framework

| Technology Kenya Integrated Electoral Management System (KIEMS). | Carbonated Forms, Chain of custody, training and examining |

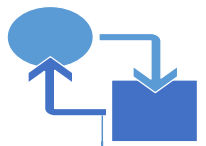## Counting, tallying, announcement, declaration of results

Verification of voters, Public portal (access all results), results posted outside all polling station, results scanned and sent

Key features of 2017 General Elections

- Very details administrative and legal frameworks-specifications, integrated system, stakeholder engagement.

- More legal challenges to the results system-**Maina Kiai and 2 Others vs The IEBC and Another Nairobi High Court Petition No 207 of 2016 -Court of appeal rules no room for Provisional results.**

- Implication-even if there were visible arithmetic errors-National Tallying centre could not amend.
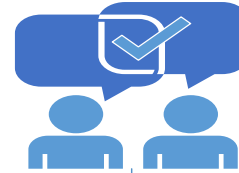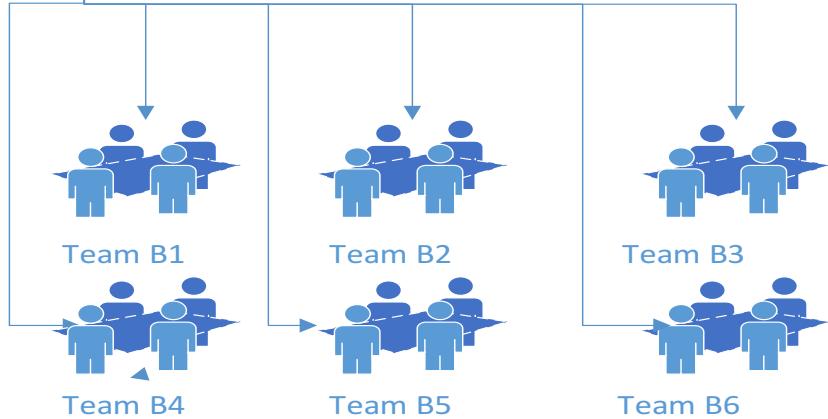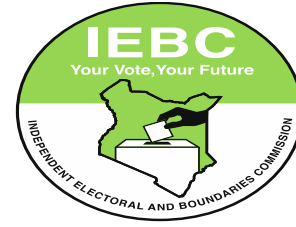
Questions to Reflect on ?

- Did this level of detail in the Administrative and legal framework make it easier for the Commission to deliver election ?

- Did election become more complex?
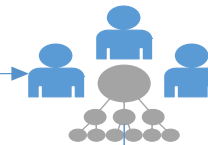
- Did this enhance trust?

- Confirmation Team (A) to receive, download and print Form 34Bs from the FTP and encrypted emails
- Confirmation team (A) compare soft copy FTP 34B transmitted by RO and printed Form 34B ;
- RO calls to confirm the authenticity of the transmitted;
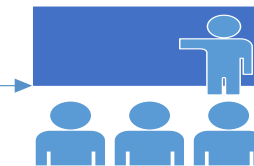- Confirmation team (A) hands over hardcopy 34B to collation team

- Chief Agents of Presidential Candidates (one per candidate) are allowed to observe the NTC proceedings

Team B1   Team B2   Team B3

Team B4   Team B5   Team B6

- Validation Team compares Form 34C against the 34Bs
- Validation Team hands 34C to the Commission

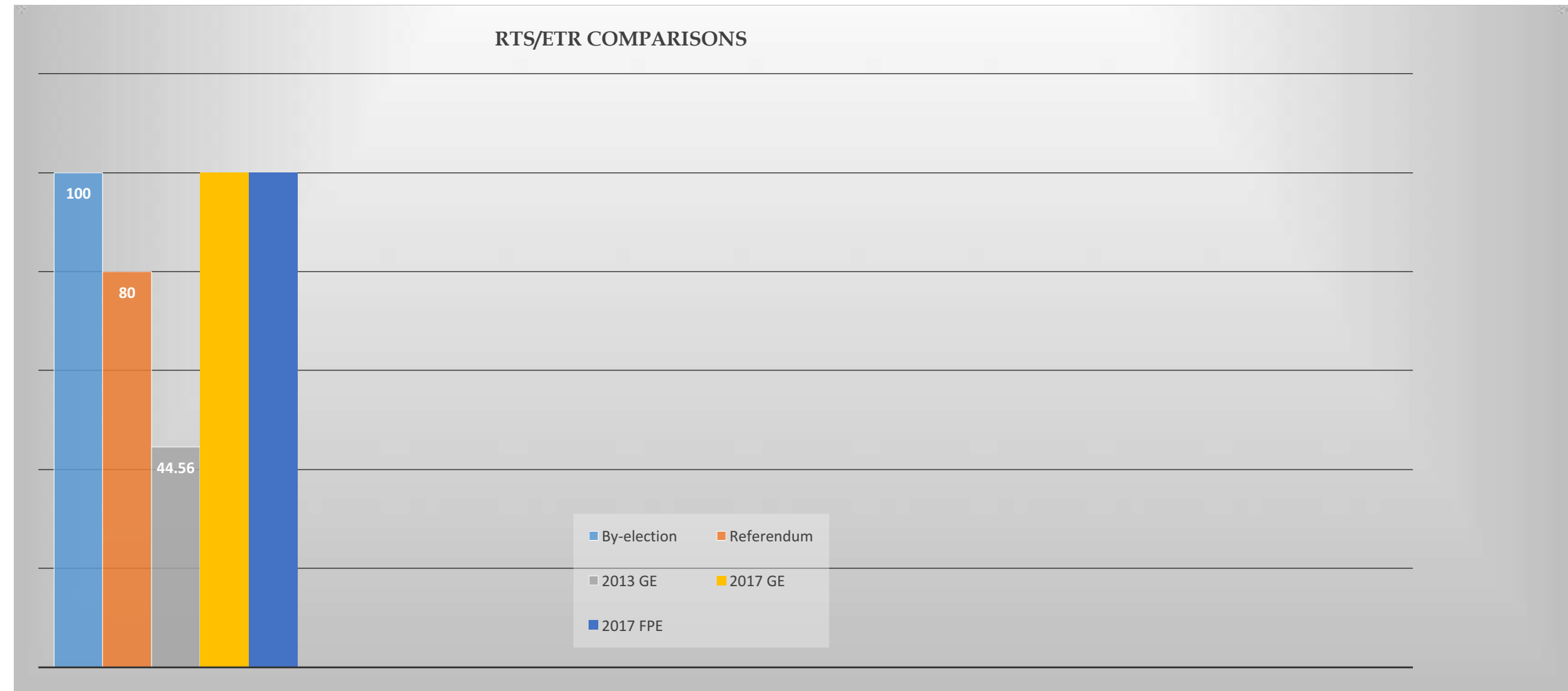- Commission adopts the Presidential Election Results 34C

- Collation Team (B) compiles Form 34C from Form 34Bs downloaded from FTP;
- Collation Team (B) compares Form 34As generated from KIEMS with 34B downloaded from FTP; if there are any variances, they are noted;
- Collation Team (B) completes Form 34C with the county percentages;
- Collation Team (B) prints Form 34C, and forwards to the Internal Auditors with the Form 34Bs.

NATIONAL TALLYING CENTRE RESULTS WORKFLOW

- The Chairperson announces and declares the Presidential Election results
- The Chairperson issues certificate Form 34D to the winner

Performance Comparisons: ETR; By elections; 2010 Referendum; 2013 GE: 2017 GE; 2017 FPE

RTS/ETR COMPARISONS

Legend:
- By-election
- Referendum
- 2013 GE
- 2017 GE
- 2017 FPE

Values shown: 100, 80, 44.56

KEY: BLUE :BY-ELECTIONS 2010; ORANGE: REFERENDUM 2010; GREY:GENERAL ELECTIONS 2013 YELLOW GENERAL ELECTIONS 2017 BLUE FPE

Contested Results yet Again???

- Despite the detail legal reform and water tight technology and administrative measures examples- training of staff carbonated result clarify on custody of document timeliness declaration of results by Retuning Officer (Maina Kiai)

- After the August 2017 election, the Opposition filed a presidential petition at the Supreme Court which by a majority decision annulled the presidential election on 1st September 2017.

- Reasons for annulment- illegalities and irregularities committed during the transmission of presidential results.

- Supreme Court directed IEBC to conduct a fresh presidential election within 60 days as stipulated under Article 140 (3) of the Constitution.

Challenges

2013 General Election

✧ At the point of training, the system was not ready thus leading to inadequate cascaded training of users.

✧ The was no adequate mapping of network Connectivity thus resulting in challenges in remote areas.

✧ Due to competing priorities we lack sufficient time to collect GPS Coordinates for timely network mapping by network service providers.

✧ Lack of infrastructure for EVID leading to re-allocation of RTS server.

✧ Conflict of interest from Next technologies.

✧ Obsoleteness of equipment warehouse challenges.

✧ Cost of elections going up.

2017 General Elections and FPE

✧ Time to procure, install, test, and commission technology due to late enactment of laws:

✧ Late adoption of election technology;

✧ Inadequate service level agreement with service providers;

✧ Court cases challenges that concluded late in the day and affected the design of the system;

✧ Vendor wars leading to procurement challenges;

✧ 0ver 10,000 polling station lacked network coverage;

✧ Over dependant on technology as a solution to trust;

✧ Highly polarized political environment;

✧ Inadequate communication strategy especially on post results announcement;

✧ Obsoleteness of equipment warehouse challenges;

✧ Cost of elections going up;

✧ Mistrust and propaganda around final results.

Conclusion

- From the Kenyan experience technology does not come in to replace concerns on absence of trust, transparency and integrity;

- The issue of contested election results have been with us for over two decades with the exception of 2002 GE,2005 and 2010 referendum;

- What are the underlying causes of the discontent?

- Technical or legitimacy? Has the Kenyan electoral system played apart?

- What can the EMB do to shield itself from being the punching bag?

Recommendations

- Before implementing Results Transmission System an EMB needs to;

- Undertake an assessment of its political environment;

- Have a well thought and documented Elections Results management Framework(ERMF);

- Type of technology to be adopted should be informed by:
  - connectivity infrastructure;
  - Resources Finance and human resource;
  - Longevity of the utility (obsoleteness);
  - Service level agreement

- Stakeholders needs; type of technology available and results process Political parties, Judiciary.

- Timely legal reform;

- Mitigate long legal battle (vendor wars);

- Capacity building of your staff;

- Invest on voter education prior during and after elections to demystify technology and electoral results.

Thank you