

within the regions were conducted on motorised transport. The schedule of our engagements appears at **Annex VII**.

At the close of the poll and before counting commenced, and as had previously been arranged, preliminary reports were transmitted from each of the four regional teams operating away from Kuala Lumpur to the Chairman, who headed a team based there. The Chairman's statement on behalf of the Group to the Secretary-General at the end of the poll appears at **Annex VIII**.

The polls having closed, the teams at the regional centres returned with their support staff to Kuala Lumpur and we assembled to finalise our Report.

3. PREPARATIONS FOR ELECTIONS

The essential legislative framework for the holding of elections in Malaysia consists of the Constitution of 1957, the Elections Act 1958, the Election Offences Act, 1954 and the Elections (Conduct of Elections) Regulations 1981. There are other related enactments. Their provisions take root from the system obtaining at the time of independence. They mirror in large measure the electoral provisions and procedures found in many other jurisdictions in the Commonwealth. But, of course, they are special provisions drawn, and since amended, very much to suit and to reflect the character and experience of Malaysia.

At the centre of the electoral system is the legislative framework and the Election Commission. But over and above all, the system is shaped by the character of the Malaysian people. At every stage of our observations we were struck by their high degree of political awareness and their attachment to things Malaysian and to what is best for the country. The existence of a large number of political parties and other groups and the turn-out at the polls seemed to us to point clearly to a deep commitment to the political process of shared responsibility and freedom of choice. We are reminded that elections are after all a means of making political choices by voting. And with the proliferation of political groupings it cannot be said that in Malaysia there is a lack of alternatives for choice.

The Election Commission

The Constitution provides for an Election Commission to conduct and to ensure the fair conduct of elections. It is charged with the preparation and revision of electoral rolls, and with the review and redrawing of constituencies for purposes of elections to both the House of Representatives and to the Legislative Assemblies of the States. Members of the Commission consisting of a Chairman, a Deputy Chairman and three others are appointed by the Yang di-Pertuan Agong on the recommendation of the Prime Minister and after consultation with the Conference of Rulers. The present administrative head of the Commission is the Secretary who, we were told, was seconded from the public service. The Constitution requires that in their appointment

regard be paid to the importance of securing an Election Commission which enjoys public confidence. To underline the importance and independence of the Commission the Constitution further provides that a member may not be removed from office except on the same grounds and in like manner as a judge. We noted that the Election Commission reports to the Government, not to Parliament.

We had three formal meetings with the Commission. The members appeared to us to be persons of considerable experience and drawn from representative regions of Malaysia. There was a high standard of organisation both at the Kuala Lumpur headquarters and the State election offices, and we were particularly impressed by the professionalism amongst the Commission staff, especially those in the field.

This perception of independence was not shared by some of the political parties and concerned citizens we met. It is crucial to the democratic process that the Election Commission is independent and seen to be independent. This perception of independence would be enhanced if the Commission were to report not only to Government but also to Parliament.

Parliament

The Federation of Malaysia consists of 13 separate states, each with its own state assembly, and two Federal Territories. The Federal Parliament and a state assembly each has a life of 5 years and so, unless dissolved early, there is a general election every 5 years to be held within 60 days (90 in the case of Sabah and Sarawak) from the date of dissolution. The elections this year on 20 and 21 October were held well within this time frame, Parliament having been dissolved on 5 October 1990. There was nothing untoward about this since the minimum time allowable by law is 14 days after dissolution and a quick election had been widely expected. The previous general election on 3 August 1986 was also held within 15 days following dissolution of the House on 19 July 1986.

It will be observed from these dates that the life of the recently-dissolved Parliament was almost exactly 4 years. This was also the case in the period from 14 June 1982 (when Parliament was convened) until the dissolution on 19 July 1986. As in a previous election a short time was allowed for the holding of the election campaign. This was deliberate, we were told, for security reasons, as prolonged political activity at previous elections had generated high tension and unrest in the past with the tragedy of 1969, the prime example. Both the Election Commission and the Government emphasised their concern to minimise the risk of recurrence, but we must mention that some political parties expressed the view to us that the campaign period should last longer than 15 days. Also as was done in previous years, Federal and State general elections were held simultaneously in 1990, except for Sabah and Sarawak which had State elections earlier in the year. Under its terms of reference the Observer Group was concerned only with elections to the Federal Parliament.

The Constitution provides for a Parliament to consist of the Yang di-Pertuan Agong and two Majlis (Houses of Parliament) known as the Dewan Negara (Senate) and the Dewan Rakyat (House of Representatives). The Senate (which is not affected by the dissolution of Parliament and with which the Observer Group was not concerned), consists of 69 elected and appointed members. The House of Representatives consists of 180 elected members; 172 from the states in Malaysia and 8 from the Federal Territories of Kuala Lumpur and Labuan. Every citizen resident in the Federation is qualified to be a member of the House of Representatives if not less than 21 years old and not affected by the grounds for disqualification stipulated in the election laws. We refer to the procedures for the nomination of candidates for election to the House below.

Polling Arrangements

The Federation is divided into 180 constituencies equal to the membership of the House. Every constituency returns one member and every voter has one vote, and the voting is by secret ballot. The Election Commission is required by the Election Act to divide each constituency into polling districts and to establish polling stations for the districts.

A total of 14,645 polling stations was established for the 1990 elections. In terms of the Conduct of Elections Regulations public notification was duly given on 27 September 1990 of the details as well as exact location of each polling station throughout the country. Additionally, the Election Commission had established for the first time in a general election, a "hot line" system by which any elector may telephone through on advised telephone numbers to seek information and guidance on the polling stations and, indeed, on any matter relating to that voter's ballot. By this highly sophisticated and computerised system every enquiry could be answered immediately with precise details of an elector's identification or registration number, constituency, together with the location of the polling station, its address, and the exact room in the building where the ballot box would be located. The existence of the "hot line" was itself given the widest publicity and we were able to observe its operation at several state Election Commission offices. We could not judge how effective the "hot line" system was.

Electors

Every citizen is qualified and entitled to vote if aged 21 years on the date the electoral roll is prepared or revised, and if residing in a constituency or is an absent voter. A qualified voter may vote only if registered on the electoral roll. Both parliamentary and state electors are registered in the same electoral roll.

Absent voters vote by post. But they must first register as such in the constituency in which their home addresses are situated. These voters include members of the Malaysian armed forces, public servants serving abroad, full-time students studying abroad and their spouses. Together with members of the

police force absent voters form the category of postal voters whose names are shown separately in a list of postal voters at the end of each section of the electoral roll in a registration unit. There were 196,522 postal voters contained in the electoral roll for 1990 including 120,000 to military personnel and 72,000 to the police. Postal voters are sent ballot papers in advance. The Election Commission stipulates the arrangements for the security of ballot papers and transportation of ballot boxes to specified counting centres. Postal votes which are not received in time for the official count are simply discarded. This problem is accentuated when the election period is so short. The Election Commission recognises the difficulties relating to voting by the military and police and that the present system has imperfections. It was also pointed out to the Observer Group that the relatively small number of votes at stake is unlikely to materially affect the results, but we were advised that postal votes could be decisive in some constituencies. We believe that it would be wise to review arrangements for postal votes before the next general election to see if such recognised imperfections can be corrected.

Preparation of the Electoral Roll

This process is begun by the Election Commission calling publicly on every person qualified and wishing to be registered as an elector to make application to the registering officer by a stated time. This application must contain certain details of the identity card, which every Malaysian citizen over the age of 18 is required by law to carry. The registration period set in respect of the current elections was 1 - 27 March 1990. The registering officer and his staff also make house to house and other enquiries. In revising the roll the registering officer expunges from it the names of persons who are dead and who appear to him to have become disqualified for registration and inserts in it the names of every person from whom an application had been received within the prescribed time and who appear to him to be qualified for registration as an elector. On completion of the revision the registering officer gives public notice of the fact and advises also that the revised electoral roll is open for inspection. Any applicant whose name has been omitted may file a claim to have it entered on the roll and any person whose name appears on the roll may object to the inclusion of his/her name or the name of any other person. A dissatisfied claimant or objector has the right to appeal to a revising officer who hears and determines the appeal. The registration officer then certifies the roll. The law requires further public notification of the certification of the roll and its availability for inspection.

The electoral roll for the current general election was certified on 27 July 1990. Printing was completed in September. The roll for 1990 contains a total of 7,958,640 registered electors compared to the 6,964,960 for the 1986 general elections, an increase of approximately 14 per cent.

General Observations

The registration of voters is a most important element in the election process. In Malaysia it is entirely voluntary and every year the Election Commission opens the register and invites people to come forward to check if they are correctly listed and register if they are not. In previous elections, there have not been many complaints about the process, but during the past year, events have shaken the confidence of many people in the system. Earlier this year the Election Commission itself announced that a large number of voters had had their names and addresses changed to other constituencies without their knowledge, as a result of its alerting party workers to submit "names for bulk registration". The Commission itself also admitted publicly that false particulars and signatures were used by certain groups to effect the changes. The matter was brought up in Parliament, and the Election Commission made a new ruling on the manner in which a voter could register a change of constituency. The Secretary of the Commission announced on 3 March 1990 that 9,000 voters in Kelantan and Terengganu were adversely affected as a result of changes wrongly entered. Later that month the Commission warned of legal action being taken against those of its officers who refused to register voters under the new system. There were reports of thousands of voters either "missing" or "phantom" and shortly before the election was announced on 4 October, the Chief Minister of Kelantan announced that 27,100 "phantom" voters had been discovered on the roll in his state. In fact the suggestion was made to us that these problems affected about 300,000 voters of which 200,000 were possibly carrying duplicate identity card numbers. In addition we observed that on polling day some voters were turned away because their names were not on the roll or that their identity card number did not tally with the number on the roll. In fact the following day some newspapers reported that some polling stations were besieged by angry voters.

It was not surprising that the strongest possible representation was made to us about the situation and several political parties expressed concern to us about the registration process and the potential for the creation of "phantom" voters and for movement of voters between constituencies from the safest to the marginal.

Because confidence in the integrity of the Commission and of the registration process is such a vital component of the democratic process, we decided that this was a matter which we should take up with the Election Commission. Late on the evening of Saturday 20 October on the eve of polling day, we asked for an appointment with the Commission, which was immediately granted, and we raised the matter with the Chairman and Secretary. They admitted that they were aware of the situation and that the discrepancies affected about 300,000 voters.

This again is an area of the electoral process that we believe might benefit from an urgent review well before the next general election. We reiterate our view that the registration process is at the heart of the conduct of any election. However immaculate the nomination and voting procedures may be, if the voters' roll is flawed, and it is admitted that it was, then this must raise a question mark over the process. This is why it