

The Presidential, Parliamentary and Civic Elections in Kenya

29 DECEMBER, 1992

The Report of the
Commonwealth Observer Group

COMMONWEALTH



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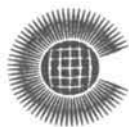
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Letter of Transmittal



Kenya Elections

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1 January 1993

Dear Secretary-General

The Commonwealth Observer Group constituted by you to observe Presidential, Parliamentary and Civic Elections in Kenya issued its interim statement on 31 December 1992. Polling has been extended due to peculiar local circumstances and the final result is yet to be announced, but the trend suggests distinct and irreversible acceptance of a multi-party political culture.

The presence of our Group in this country in response to the request to you from the Government of Kenya was warmly welcomed by the Kenyan people, whose quiet determination to exercise their democratic right on 29 December entirely vindicated our mission.

Our appreciation at being chosen to participate in this rewarding exercise is genuine and we thank you for providing the opportunity to extend the hand of friendship to a key member of the Commonwealth family.

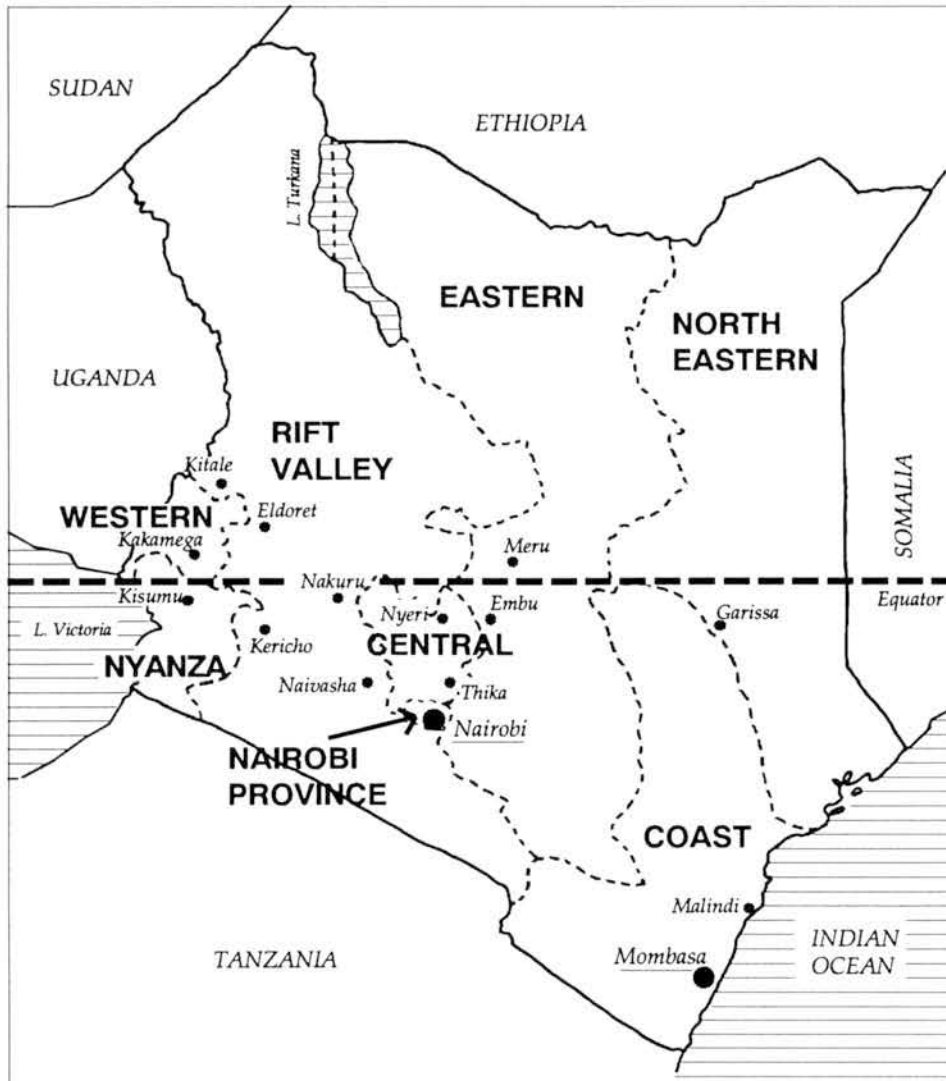
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Map of Kenya



Summary

We were in no doubt that the transition from a one-party to a multi-party system of government would be a difficult process. We further recognised that that the ethnic diversity of Kenya might throw special local complexities on these elections. The reports we received on initial efforts to introduce the multi-party system seemed to confirm some specific early difficulties, such as an insufficient de-linking of the role of government from that of the ruling party. It appeared to us that the process of decoupling the ruling party from the Government was not undertaken with the degree of commitment necessary for the purpose and that the time within which that decoupling could have taken place was too short.

On the basis of the information received we further believed that the Government could have made a greater effort to create a multi-party climate and to promote greater public awareness and tolerance which such a change required of citizens. Given that the change to multi-party politics seemed to have aroused fears that the new system would open the way for greater ethnic discrimination, a special effort should have been made to quell such fears in the Rift Valley and North Eastern Provinces. Many prominent Kenyans told us that these two troubled provinces were not exposed to sufficient public education on the practices of multi-party politics. This contributed to ethnic disturbances with tragic consequences for many, and also caused considerable disruption to the election campaigning of opposition parties.

While we recognise that the transition from a one-party to a multi-party system can hardly be achieved overnight, it is clear that the parties, particularly the ruling party, could have done far more to control and curb the worst excesses of their supporters throughout the election campaign. The inability of the Government to entertain any dialogue with the new opposition parties in the run-up to the elections also contributed to the creation of an inhospitable climate for the launching of multi-party politics.

In view of the difficulties with which each of the major election tasks was faced we believe that it is important for us to examine the irregularities observed and the complaints made to us while travelling throughout the country.

The Electoral Commission

From the outset, opposition political parties complained about the composition and performance of the Electoral Commission. We have discussed in Chapter 2 the regrettable circumstances surrounding the appointment of the Chairman. We noted that the occasion of introducing a change as significant as that to multi-partyism should have been good reason for appointing a new Commission and for demonstrating sensitivity in selecting a Chairman.

It was not surprising that the lack of transparency in the work of the Commission, especially the lack of effort to promote dialogue with the political parties and to keep the electorate informed about the developing electoral process, led to suspicions about the integrity of the Commission. This meant that the whole election process had an unfortunate start and for several months after, public confidence continued to be lacking.

We were glad to note that in the closing weeks of the campaign the performance and credibility of the Commission improved significantly with noticeable benefit in terms of confidence-building, both with the political parties and the general public.

Registration of Voters

In Chapter 3 we deal with the problems which were reported to us during the registration of voters. We note that these problems include a lack of adequate training of registration officers, registration of young persons of doubtful age qualification, the failure of the proper authorities to issue identity cards to many citizens, young adults in particular, the incidence of multiple registration, the initial boycott of the process by opposition parties and the busing of persons from certain districts to others in order to strengthen party support in some constituencies.

The effect of these problems on the register of voters has generated widely differing views and perceptions. There has been no authenticated figure of the number of persons disenfranchised as a result of the problems encountered during registration. The opposition parties have now placed this figure at over three million persons. The Electoral Commission has estimated that the number of persons unregistered could be as many as 1.5 million persons, this figure including those persons who were qualified but did not wish to register, registration being voluntary. The Commission further argued that the estimated population of 24 million, 60 per cent of whom are below age 15, produced approximately eight million voters, a not unreasonable percentage of registration. It was not possible for us to substantiate or otherwise the claims of the one side or the other, but we noted that if the premise of the Commission was sound, its argument would not be unreasonable. We are also of the view that the Government needs to grasp that the registration of voters in the context of multi-party politics is an exercise of critical importance in establishing the viability of the electoral system.

The difficulties in ascertaining the population of Kenya are due to the failure of the Government to publish the 1989 census results. One possible consequence of this is the avoidance of the requirement to review the constituencies' boundaries in accordance with Section 42 of the Constitution.

De-linking of the Ruling Party from Government

De-linking the activities and resources of government from those of the ruling party during the transition period from a one-party to a multi-party system is, perhaps, a test of the commitment of the government of the day to a multi-party system. The Kenyan experience has shown that the failure to implement a timely de-linking programme spells trouble for the process of transition. A failure to de-link the ruling party from the government means that public resources can be used to fund the ruling party's campaign activities and public properties can be used for the party's purposes. Public servants are expected to act in the interests of the ruling party instead of being impartial. The public media remain largely under the control of the ruling party. Unfortunately, many of these manifestations were evident during much of the election campaign in Kenya. In the last weeks of the election period, we noticed some improvements in media coverage of opposition parties' rallies and we received reports from political parties that permits for rallies were either waived or readily granted in many regions. Where there is insufficient de-linking, however, the playing field will never be level for the parties contesting the elections. This inevitably reduces the chances of achieving free and fair elections.

Shortening the Election Period

The infelicitous attempt of the Attorney-General and the Electoral Commission to shorten the period required by law for the parties' nomination of their candidates is discussed in Chapter 3. This severely affected the credibility of both. Opposition parties interpreted the Attorney-General's erroneous finding that there was an error on the face of the law, to be another attempt to favour the ruling party. The Electoral Commission, in remaining silent about the purported change of a legal provision that would affect adversely the opposition parties, and by setting a period for the party nominations well short of the 21 days normally allowed for that purpose, gave an impression of acting in favour of the ruling party, the Kenya African National Union (KANU).

Nominations

The reports we received from the opposition parties, interested groups, independent observers and aggrieved prospective candidates suggested that the nomination proceedings for parliamentary and civic elections were marred by the physical prevention of a substantial number of prospective candidates

from handing in their nomination papers (see Chapter 3). These reports were confirmed in the main by formal complaints made to the Electoral Commission and actions brought before the Court. The result of this unlawful interference with prospective candidates was that in the Rift Valley Province 16 Parliamentary candidates, all belonging to KANU, the ruling party, were declared duly elected unopposed on nomination day. Similar problems also occurred in Wajir District of North Eastern Province. In other constituencies in the Rift Valley, where elections were contested, several of the Parliamentary and Civic prospective candidates were unable to contest the elections as a result of similar unlawful interference by groups some of whom were known to their victims.

Because of apparent legal constraints, the Electoral Commission was able to deal with only a limited number of these cases. It is clear that the nomination proceedings in the foregoing cases were badly flawed. We noted that the physical obstruction of prospective candidates was facilitated by the short period allocated for nomination papers to be submitted under Presidential and Parliamentary Elections Regulation 15.

The Campaign – Violence, Intimidation and State Corruption

We note in Chapter 4 that the campaign was marred in the Rift Valley and neighbouring provinces by widespread tribal disturbances, threats and harassment of party supporters, in particular supporters of the opposition parties. We also noted that conditions were such in the North Eastern Province that opposition parties were unable to gain free access and to hold political rallies. We learnt from one opposition party that when their leader attempted to land there, they found all the airstrips blocked and had to turn back.

We must record our concern at what appeared to be widespread bribery by political parties, particularly the ruling party. Some of our members witnessed the passing of money in significant amounts to party supporters. Defections from one party to another continued after parliamentary and civic nominations. This situation got so bad that the Attorney-General had to warn candidates that the law did not provide for defection or withdrawal of candidates who had been validly nominated by their respective parties (*Nation*, 25/12/92).

Greater efforts should have been made by political leaders to curb the bribery of nominated candidates of other parties which led to their defections, and the purchase of voters' cards.

Our teams which were deployed throughout the country reported peaceful rallies by all parties in most areas. Exceptions were in Rift Valley and North Eastern Provinces.

Polling Day

Although polling day was marred by disorganisation which delayed the

opening of polling stations for voting by several hours in many cases, the voters peacefully waited in an orderly manner in long queues. The late opening of the polls resulted in the Electoral Commission extending the voting hours beyond the statutory closing time of 6 p.m. We note in Chapter 6 that extensions of time in the evening did not fully compensate for the time lost during daylight because many voters, particularly the old, women with young children and the disabled, found it difficult to travel long distances in the dark. Given the many problems which they faced, the performance of most election officials at the polls and counting centres was admirable and contributed to the eventual successful completion of the voting exercise.

We are satisfied that whatever degree of success was achieved in the transition from a one-party to a truly multi-party system must directly be attributed to the patience and determination displayed by the voters. There could have been no greater testimony of their commitment to multi-partyism and this must augur well for the future development of democracy in Kenya. Mention should also be made of the important role played by national monitoring agencies throughout the electoral process, a development of long-term significance in the building of a democratic society.

We were especially pleased with the fact that peace and quiet prevailed throughout the country on polling day. This development was all the more welcomed because it came at the end of a vigorous campaign period marked by serious ethnic disturbances.

We express our concern at the slow pace of the counting of the ballots and the consequential delay in the release of the results.

Despite the flaws, we believe that these elections marked the first step on the path to multi-party democracy. The process, as it turned out, was facilitated greatly by the resolute determination of the voters to make a success of their contribution to its development. Regrettably, the contribution of the Government and the political parties did not match that of the voters on this occasion.

Introduction

The invitation to the Commonwealth from the Government of Kenya to observe the first multi-party elections in almost 30 years followed a decision by the Government in December 1991 to begin the process of transition from a single-party to a multi-party democratic system. It coincided with a renewed Commonwealth commitment by Heads of Government at Kuala Lumpur in 1989 and at Harare in 1991 to assist member countries in the promotion of democratic processes. In support of that commitment, the Commonwealth has in the past two years sent observer missions to Malaysia, Bangladesh, Zambia, Seychelles, Guyana and Ghana.

The visit to Nairobi in early April 1992 of the Commonwealth Secretary-General, Chief Emeka Anyaoku, initiated a practical Commonwealth involvement in the transition to a multi-party system. Soon afterwards, the Secretary-General, at the request of the Attorney-General of Kenya, sent a constitutional expert to Kenya to advise on the adaptation of the Constitution to conform with the requirements of multi-party democracy. On 21 April 1992, President Moi announced that the Government would be inviting the Commonwealth to observe the forthcoming elections.

In response to the subsequent invitation from the Government of Kenya and in accordance with Secretariat practice, the Secretary-General sent a Secretariat Planning Mission to Kenya in June 1992 headed by Deputy Secretary-General (Political) Sir Anthony Siaguru. The purpose of the mission was to ascertain whether Commonwealth observers would be welcomed by all political parties, to explore the logistical parameters of such an exercise, and to gain an appreciation of the major issues involved in the transition process. In confirming to the Secretary-General that there was general support for the presence of Commonwealth observers, the mission identified a range of issues which had come to its attention. These included:

- the importance of an Electoral Commission which should be seen to be both independent and impartial;
- the necessity for a proper registration of voters and a credible register of voters;
- the need for equitable access of all political parties to the state-owned news media;

- the importance of de-linking of the institutions of State and Government from the ruling KANU party;
- the desirability of dialogue among political parties; and
- the need for the authorities to take steps to contain communal violence.

A suggestion from the Planning Mission that the Secretariat should provide technical assistance to the Electoral Commission was accepted, and in July 1992 a four-person technical mission visited Kenya to assist the Electoral Commission with its planning process in respect of the election budget, registration and training. The mission spent two weeks in Kenya. Following its report, the Secretary-General wrote to the Attorney-General of Kenya in late July 1992 urging confidence-building measures to improve relations between the Government and the opposition parties.

The Secretariat continued to monitor developments in Kenya and in October 1992 the Secretary-General sent a second Planning Mission which reported that the situation was not conducive to creating confidence that the 'playing field' for all parties would be level. In an effort to encourage progress in this respect, the Secretary-General visited Kenya in mid-November 1992. He met with President Moi, the Attorney-General, the Electoral Commission and the principal political parties and interest groups. Apart from the frank and wide-ranging discussions which he had with the Government and the Commission, the Secretary-General also urged the political parties to adopt a voluntary Code of Conduct similar to that used in other recent elections in the Commonwealth.

The Observer Group

It was against this background that a Group of 25 Observers and 15 Secretariat support staff was organised by the Secretary-General to observe the Presidential, Parliamentary and Civic elections in Kenya. The composition of the Group is set out at *Annex I*. We were given the following Terms of Reference:

- The Group is established by the Commonwealth Secretary-General at the request of the Government of Kenya and with support of the political parties.
- It is to observe every relevant aspect of the organisation and conduct of the elections in accordance with the laws of Kenya relating to elections. Its function is to ascertain whether, in its impartial judgment and in the context of those laws, the elections have been free and fair.
- The Group has no executive role. Its function is neither to supervise nor to act as a Commission of Inquiry; rather it is to observe the process as a whole and arrive at a judgment accordingly.
- It is to submit its report initially to the Secretary-General who will then forward it to the Government of Kenya, and to the leadership of the political parties participating in the elections.

Given the charged political atmosphere over the last year in Kenya, some of which is described in Chapter 2, the Group was conscious of the complexity and importance of the task before it.

Method of Work

En route to Kenya we assembled in London for a briefing by the Commonwealth Secretary-General who emphasised that the integrity of Commonwealth observer groups rested on their independence and impartiality and on the skills and experience which they bring to bear.

In stressing the historic importance of these elections to the people of Kenya, the Secretary-General reminded us that our final report to him would represent our own independent and collective judgment.

A four-person advance party of the Group, led by Secretariat Team Leader Mr Carl Dundas, had been on the ground in Nairobi a week in advance of the arrival of the main party, to set up an office and prepare a programme. Two of them had arrived in time to observe the Parliamentary/Civic nominations on 9 December and the Presidential nominations on 14 December. A copy of a News Release from the Advance Team of the Commonwealth Observer Group commenting on the nominations process is at *Annex II*. By 17 December, virtually the full Group had assembled in Nairobi and immediately launched into a full round of meetings and consultations. Our arrival statement is attached at *Annex III*.

The Group saw representatives of all major political parties and other parties which accepted its invitation to meet. We paid a courtesy call on President Daniel arap Moi and raised with him the broad issues implicit in the introduction of multi-party elections, with particular reference to the need to contain violence, and to the irregularities in the nominations process as described in Chapter 3. We also held meetings with the Attorney-General, the Permanent Secretary in the Ministry of Foreign Affairs, and the Chairman and members of the Electoral Commission. Throughout our stay we kept in constant touch with the Electoral Commission, party officials and other observer groups, especially the National Election Monitoring Unit (NEMU). Our work was much facilitated by the Ministry of Foreign Affairs and in particular the officials assigned to assist international observer groups. We liaised closely with the other observer groups, both domestic and international, and co-operated in respect of information-sharing, documentation and deployment arrangements. As is customary, we issued regular press releases and made media appearances to inform the public of our work – an exercise which we thought could facilitate the resolution of continuing problems. A schedule of our engagements is at *Annex IV*.

The choice of 29 December as election day – falling between the Christmas and New Year holidays – necessarily affected our plans. It was convenient to divide the period over which the separate teams of observers were deployed around the country. Thus, 17 teams went out for four days, from 20–23

December; this was followed by a Christmas break, with the teams again being deployed on 27 December to the same areas. The objective was to cover all provinces and as many polling stations as possible so as to achieve a representative sample of the voting areas. To this end, our teams held discussions with party officials, electoral officials, the police, church and NGO leaders, and familiarised ourselves with the locations of polling stations in an effort to ensure that the Commonwealth presence was both active and visible. We travelled in vehicles clearly marked 'Commonwealth Observer Group' and wore T-shirts and armbands similarly marked. We used a check list to guide us in our work (see *Annex V*). A schedule of our deployment is at *Annex VI*.

We received full co-operation from the authorities, and were allowed complete freedom of movement around the country and access to every aspect of the election machinery. The authorities were always willing to see us, gave generously of their time and received our representations with courtesy and interest. We were also deeply appreciative of the warm welcome from the people of Kenya and their eager co-operation in this critical phase of their political development. Before we left on 2 January 1993, we issued two statements on the whole electoral process, an interim statement on 31 December (see *Annex VII*) and a final statement on 1 January 1993 (see *Annex VIII*).

CHAPTER 1



Political Background

Kenya achieved independence on 12 December 1963 with Jomo Kenyatta as the first Prime Minister and later President when Kenya became a republic in 1964. Prior to independence two national political parties had emerged to contest elections in 1961, namely the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). KANU was victorious in this election and again at the 1963 pre-independence election to a bicameral legislature. Shortly after independence in 1964, KADU dissolved itself and merged with KANU. President Daniel arap Moi was at that time a deputy leader of KADU and with the merger became Vice-President of KANU.

In 1965, dissident members of KANU broke away to form the Kenya People's Union (KPU) under the leadership of Jaramogi Oginga Odinga. In 1969, the KPU was banned and Kenya for all practical purposes became a one-party state. In the same year the House of Representatives and the Senate were merged to form a unicameral National Assembly.

When Jomo Kenyatta died in 1978, he was succeeded by KANU's Vice-President, Mr Moi. In May 1982, the Government amended the Constitution to make Kenya a *de jure* one-party state. In 1991, a campaign for the restoration of a multi-party political system was initiated by prominent Kenyan political personalities. This gathered momentum with the formation in August 1991 of the Forum for the Restoration of Democracy (FORD), which united initially for little more than opposition to the Government of President Moi. Subsequently, under the pressure of competing prominent political personalities FORD split into three political parties. At the Commonwealth Heads of Government Meeting in Harare in October 1991, President Moi emphasised that single-party democracy had served Kenya well but at the same time indicated a willingness to consider the gradual reintroduction of a multi-party system.

It was against this immediate background that in December 1991 the Government of Kenya decided to begin the process of transition to a multi-party system, and formally initiated this change with the repeal of Section 2A of the Constitution by which Kenya had been transformed into a one-party state.

The requirements for a political party to register under the Kenya Societies Act are that the party must have a constitution, officers and a specific minimum

number of members. Nine parties were so registered, while the applications of three were rejected: The Islamic Party of Kenya (IPK), the Green Party and the Green Party of Africa. The IPK, which has a substantial membership, was rejected on the grounds of being a religious group subject to foreign interests and also because it was deemed to be a threat to national security. The other two were turned down for 'security reasons'. The Registrar-General apparently had a wide latitude within which to accept or reject a party's application.

At the onset of the nominations process, seven opposition political parties (three of which trace their origins to the Forum for the Restoration of Democracy) emerged to contest the Presidential, Parliamentary and Civic elections along with KANU, the ruling party. The following eight political parties contested all three elections:

1. **Kenya African National Union (KANU)** led by President Daniel arap Moi;
2. **The Democratic Party of Kenya** led by Mr Mwai Kibaki, a former Vice-President of Kenya and former Minister of Finance and of Health in the Moi Government;
3. **FORD-Asili** led by Mr Kenneth Matiba, also a former Minister in both the Kenyatta and Moi Governments. As the name suggests, FORD-Asili (meaning FORD original) is one of the three parties which emerged from the original FORD;
4. **FORD-Kenya** led by Mr Jaramogi Oginga Odinga, a prominent figure in Kenyan politics since before independence, and a founding member of the original FORD, from which this party is also derived;
5. **Kenya National Congress (KNC)** led by Mr Titus Mbathi, also a former Cabinet Minister, and the third of the three parties formed from the original FORD;
6. **Kenya National Democratic Alliance (KENDA)** led by Mr Mukaru Ng'ang'a;
7. **Kenya Social Congress (KSC)** led by Mr George Anyona;
8. **Party for Independent Candidates of Kenya (PICK)** led by Mr Otieno Otwera.

By the time of the elections, the first four of the above parties and their respective leaders had emerged as the major contenders in the Presidential and Parliamentary elections, with all four claiming to have a solid national base on which to build election victories.

CHAPTER 2



The Electoral Process

Electoral Reform

Changing a society that has been operating under a one-party system of government to a multi-party system is fraught with difficulty. While the process of constitutional reform is comparatively simple, the fundamental problems lie in reforming the administrative machinery of the state and in transforming the attitudes of civil servants, political leaders and party activists nurtured in the one-party system. If this process is to be successful, it is important that steps be taken by the Government and the ruling party on a timely basis to create a political climate hospitable to new and inexperienced political parties.

Recent Commonwealth experience suggests that at the political level two elements are of particular importance to the conduct of free and fair elections during the transition from a one-party to a multi-party system: the creation of a 'level playing field' for the lawful activities of all political parties and a thorough de-linking of government affairs, personnel and resources from those of the ruling party.

In the case of Kenya, we took note of the legal reforms permitting the lawful activities of opposition political parties, including the primary constitutional amendment in December 1991 which effectively ended the status of KANU as the only legal political party. Together with consequential amendments there was thus established a legal framework for political pluralism in Kenya.¹ This was followed by a further significant reform measure introduced in 1992 which amended the Constitution to empower the Electoral Commission to assume responsibility for the registration of voters, the maintenance and revision of the register of voters and the direction and supervision of the Presidential, Parliamentary and Civic (local government) elections.²

Other reforms, introduced to facilitate the holding of free and fair multi-party elections, included the adoption of new election regulations drawn piecemeal from existing electoral legislation in a number of Commonwealth

¹ Section 2A of the Constitution was repealed by Act 12/91 which also amended the following sections of the Constitution: 5(3)(a), 5(5)(a), 34(d), and 39(1)(b) (deleted).

² Section 42A of the Constitution.

countries. The new measures were aimed at improving procedures to prevent fraud in multi-party voting, for example, the stamping of the national identity card with an official stamp when the voter receives a ballot paper and the use of indelible ink.

Previously, ballot papers for all constituencies had been counted at District Headquarters. Proposals were made by the opposition parties that they be counted at polling stations to eliminate the need to transport each ballot box to a central location, with the inherent delays and possible risk of tampering thus engendered. The decision, eventually, was taken to count at a special centre in each constituency. This was considered to be an improvement since there were at least four times as many counting centres as there were District Headquarters and thus some decentralisation was achieved in the election process.

Other amendments permitted independent observers to follow closely the proceedings for nominations, as well as for the polling and counting. These were positive developments in the quest for openness in the electoral process, and potential confidence-building measures. Since the amendments applied to both international and local observers, the opportunity was created for observers to monitor the proceedings at a significant number of the 10,449 polling stations on polling day. Similarly, several counting centres could also be visited by an observer in the course of the count.

However, the opposition parties did not consider these and many other reforms to be adequate, particularly those relating to the Electoral Commission. They complained that the regulations did not empower opposition parties to nominate members to the Commission, and generally expressed strong reservations about most of those appointed to the Commission, including its Chairman.

We received several reports that the transition was marred by the failure of the ruling party to de-link itself from the government. That was aggravated by a seeming reluctance on the part of the Electoral Commission to keep the public informed of its activities or to participate vigorously in the process of educating the public about the anticipated reforms.

The lack of rapid progress in de-linking the ruling party from the government was most pronounced in respect of access to the state-owned media. The opposition parties enjoyed little or no positive media coverage, particularly by the electronic media. There were also allegations that the ruling party was using government funds and vehicles to run its election campaign.

Several of the opposition parties complained to us that the Government was reluctant to allow them free and fair campaigning. They cited the Government's refusal to issue permits for their political rallies in certain areas; where permits had been granted, they noted the failure to provide adequate security to minimise frequent disruption of rallies. On other occasions, permits were allegedly withdrawn arbitrarily and without adequate notice. They informed us, too, that for a long time the ruling party and the Government had refused to talk to the opposition parties.

A confrontation took place in early November between the Government and the opposition parties over steps, taken by the Attorney-General and the Electoral Commission, which considerably reduced the period elapsing between the date of the issue of the writ for the election and the date for the nomination of candidates. The sequence of events is reviewed in detail in Chapter 3. The confrontation led to a court decision in favour of the opposition parties, and the date of the election was consequently postponed. This incident had further fuelled opposition doubts as to the impartiality of the Commission.

The Electoral Administrative Framework

Responsibility for the organisation and conduct of elections resides in the Electoral Commission. The Chairman and members of the Commission are appointed by the President. Its full complement at the time of the elections was 11 (including the Chairman) but the minimum membership is set at five. The Commission elects a Vice-Chairman from among its members and prescribes its own rules of procedure. It takes decisions by the concurrence of a majority of all its members. Its functions include the supervision of national elections, registration of voters and maintenance and revision of the register of voters, determination of the number of constituencies, and the promotion of voter-education and awareness.

The Commission is established under the Constitution and is intended to be an independent body, free from the direction of any other person or authority in the exercise of its functions. Members are appointed for a fixed term of five years. A member can only be removed by the procedure prescribed by the Constitution. The question of removal must be referred by the President to a tribunal appointed pursuant to the Constitution. The tribunal hears and determines the charges laid against the member which are said to justify the member's removal. If the tribunal finds the charges established, it recommends to the President that the member be removed. A member can only be removed for misbehaviour or inability to perform the functions of the office.

We received several complaints from opposition political parties and other interested groups about the composition and performance of the Commission. A major complaint was that opposition parties were not allowed to propose nominees for membership of the Commission. They also contended that the Chairman, Justice Zachary Chesoni, and some members of the Commission were not suitable persons to serve on the Commission because they were perceived to be associated with or to be taking direction from the ruling party. Those allegations were vigorously denied by the Chairman and members concerned and we have not received information which would cast doubts on their denial.

Two particular matters, however, need to be mentioned. First, the Commission, as constituted at the date of the constitutional amendment permitting multi-party elections, was that which existed during the period of one-party

government. Although the reforms introduced entailed a significant change in its role, the Government did not take this opportunity to hold consultations to appoint a new Commission. This would have gone some way to increasing confidence in the process.

Second, public and judicial records revealed that there was reasonable ground for challenging Justice Chesoni's fitness for the office of Chairman of the Electoral Commission. At the date of his appointment the issue was not as crucial as Kenya was then a one-party state and the Electoral Commission would supervise the process by which members of the ruling party KANU were selected as members of Parliament. Little turned on the independence and impartiality of the body charged with the responsibility for the organisation and conduct of that type of election. With the change to a multi-party system, it became vital that the contestants should have the confidence that the Electoral Commission was indeed an independent and impartial body free from the direction and control of any other person in the exercise of its functions.

Not surprisingly, therefore, the opposition parties objected to Justice Chesoni continuing as Chairman of the Electoral Commission on the grounds that he was not fit for the office. It was public knowledge that he was financially embarrassed and that he had been removed from the office of an acting Judge of Appeal which he had held shortly before his appointment as Chairman of the Electoral Commission. The circumstances of his removal are set out in *Annex IX*

The retention of Justice Chesoni in the face of what were apparently justified opposition protests could reasonably be interpreted by the opposition parties as an unmistakable signal that the Government would use its powers to secure an advantage for the ruling party.

Justice Chesoni's initial lack of transparency, his unwillingness to meet the opposition parties and his apparent collaboration with the Attorney-General in improperly shortening the period between the issue of the writ and the nomination of candidates, confirmed opposition misgivings. These factors cast a cloud over the electoral process.

But we noted with satisfaction that the performance and credibility of the Chairman and his colleagues on the Commission had improved dramatically from the time of the Secretary-General's visit to Kenya in mid-November. Since then the Chairman had held regular press briefings and meetings with all political parties and was more accessible to the media and the public. By the time of our arrival in mid-December, the earlier widespread and sustained criticism of the Chairman, and of the Commission in general, had lessened considerably. Over the period of our stay in Kenya, the performance in office of the Chairman and the quality of the decisions made by the Commission under his leadership on difficult and controversial issues, improved noticeably.

At issue, however, was the extent to which the history of his appointment and his earlier performance might have undermined perceptions that the

election would be supervised in a manner that was free and fair. It is reasonable to require that the conduct of elections should not only be free and fair but that it should also be seen to be so.

Organisation of the Electoral Commission

Details of the functions of the operational personnel and an organisation chart is at *Annex X*.

CHAPTER 3



Preparations for the Elections

Registration and Register of Voters

A fair and efficiently conducted registration of voters is a *sine qua non* for a free and fair election under a multi-party system. The reports which we received from opposition political parties suggested that there were many imperfections in the register compiled during June–July 1992. A very serious allegation was that between one and three million potential voters were unable to register because they had not been issued with Identity Cards (ID) which were a prerequisite for registration. We also noted that some opposition parties boycotted the registration process initially, and that that action also must have had an adverse effect on the final registration list in some areas.

The complaints we received were consistent with those presented to a Commonwealth technical mission which the Commonwealth Secretary-General had sent to Kenya in July 1992 to observe the closing stages of the registration process. That mission, we were advised, identified a number of weaknesses in the registration procedures, including the following:

- (a) lack of consistency in the procedures adopted and criteria applied for dealing with applications at the registration units due to inadequate training of registration officials;
- (b) some registration units did not maintain a list of applicants; in others partial lists were compiled leaving details of applicants incomplete;
- (c) clerical errors were discovered in the entries recorded in both the registration unit books and on some voters' cards;
- (d) no proper verification procedure had been laid down for the District Registration Officer to check the number of applications received at his office with the number recorded at the registration unit in their records for any given day;
- (e) inadequate checks were implemented for residential qualification and age requirement of voters. There was some evidence of multiple registration, some cases of which resulted in successful prosecutions in court; and
- (f) failure to issue ID cards on a timely basis or at all was undoubtedly the most persistent and, indeed, the most serious complaint received from

aggrieved individuals and political parties. This problem caused the registration period to be extended twice, but most of the opposition parties remained of the view that much more time should have been allowed in order to improve the accuracy of the register.

The Constitution of Kenya provides that to qualify for registration, a person must be a citizen of Kenya and be at least 18 years of age on the date of registration. The person must also be resident at an address within Kenya for not less than one year or must reside for an aggregate period of not less than four years in the past eight years. He or she must have been, for a period aggregating not less than five months in the preceding 12 months, ordinarily resident in the constituency, or have carried on business, or have been employed, or have possessed land or residential buildings within the constituency.

Persons who are of unsound mind, are undischarged bankrupts, or are detained in lawful custody or have been convicted of an election offence within the past five years are disqualified from registration.

As already noted, registration had taken place in June–July 1992. We learned of the complaints on our arrival. We were unable to verify the repeated complaints that a large number of persons had been denied registration because of deliberate delays in the issuance of identity cards. We noted the complaints that persons under the age of 18 had had IDs issued to them and thus were able to register and be given voters' cards. However, we did not observe any under-age person in the queues on polling day.

We had nonetheless taken up these issues with the Electoral Commission, which denied that the registration exercise had been seriously flawed. The Commission contended that of an estimated population of 24 million, of whom some 40 per cent could be estimated to be of voting age, the voting population should be some 9.6 million; 7.9 million people had been registered, and this could be considered reasonable. The Commission also pointed out that the system of registration was a voluntary one and so many persons may have chosen not to register.

An opposition party, however, pointed out that the figures for the last census held in 1989 had not yet been made available – an omission which had important implications for the demarcation of constituency boundaries and parliamentary representation. The estimate of 24 million might well have been too low. In 1984 there had been 7.2 million on the register and an increase of only 0.7 million over eight years was obviously far too low. Real estimates of the population were probably closer to 26 million³ giving an estimated voting age population of 10.4 million and a shortfall of 2.5 million – a figure which could indicate serious shortcomings in the registration process.

However, caution must be exercised in any evaluation of registration

³ *Encyclopaedia Britannica Yearbook 1992* put the estimated population in 1991 at 25,905,000.

numbers, since low numbers might be reflective of unwillingness or disinterest on the part of potential voters, or as a result of earlier opposition attempts to boycott the process. Additional difficulties were posed by the stipulation that the place of registration should be the place of voting: transportation from rural areas during the holiday period and residence requirements to be fulfilled were two of the more pertinent.

On the other hand, all reports indicated that in June and July 1992, the Electoral Commission had not yet established that standard of openness and willingness to communicate which marked the subsequent conduct of its operations. If such complaints could be verified, they would indeed seriously affect the fairness of the elections. General satisfaction with the registration process could not be inferred from the fact that the opposition parties contested the elections on the existing register. No constructive alternative was available. On polling day itself, however, the register was not observed to be a contentious issue.

Controversy Over Shortening of Election Period

The opposition parties were taken unawares by the very short period between the date of the publication of the notice by the Electoral Commission (3 November 1992) and the date on which they were to nominate their candidates (9 November 1992). In their understanding of the law a period of not less than 21 days should have been allowed. They protested vigorously.

In response, the Electoral Commission drew their attention to a gazetted notice stating that the words 'not less' than 21 days had been changed to 'not more' than 21 days in Section 13 of the National Assembly and Presidential Elections Act. This change had been made by the Attorney-General purporting to act under a power vested in him by Section 13 of the Revision of Laws Act. In fact, this provision enabled the Attorney-General in effect to correct only clerical or printing errors in editions of the *Revised Laws*.

Although the notice of the change was gazetted, it was apparently not published in the national press, appearing as it may have seemed to be a mere legal technicality, nor was it brought specifically to the attention of the opposition parties. As a result of the short time period, the opposition parties found themselves in considerable difficulties in organising the primary elections for selecting candidates for nomination.

One of the opposition parties, FORD-Kenya, filed a suit for a declaration that the purported amendment of the Revision of Laws Act by the gazetted notice was null and void. The judge granted the declaration prayed, noted in his judgement that there was no error in Section 13 to be rectified, and that the notice had effected a substantial change which had been "sneaked in mischievously". He also held that the purported amendment by the Attorney-General was "a misuse, if not an abuse, of the powers conferred upon him by his office"

These pronouncements by a High Court Judge reinforced the suspicions of

the opposition parties that the powers of senior officials of the State generally were being used to obstruct the process of holding free and fair elections. The fact that the Electoral Commission, headed by a former experienced Justice of Appeal, had accepted this obviously invalid exercise of the amending power of the Attorney-General as proper and had allowed the short period to be fixed, confirmed the opposition's suspicions that the Commission was acting in collaboration with the authorities. In their view, even though the law had been changed from 'not less' than 21 days to 'not more' than 21 days, the Commission could have allowed the maximum of 21 days and not fixed the unrealistically short period of seven days for organising the primaries.

The Court ordered the Electoral Commission to set new dates which it did: 7 December for the holding of primaries for nomination of Presidential and Parliamentary candidates; 9 December for nominating candidates for the Parliamentary elections; 14 December for the nomination of candidates for the Presidential elections and 29 December for the holding of the Presidential, Parliamentary and Civic elections.

Some of the technical aspects of the organisation and planning of the preparatory programme for the elections were embarked upon while the registration process was being conducted during June–July 1992. The Electoral Commission had sought technical assistance from the Commonwealth Secretariat and also from the International Foundation for Electoral Systems (IFES). In July 1992, the Commonwealth Secretary-General at the request of the Government and the Electoral Commission sent a technical mission to assist the Commission to draw up an election budget, including the budget for a training programme for election officers and a voter-education programme. The mission also discussed several other technical issues, such as the requirement for election materials, including the number of ballot boxes and ballot papers required, and options for the screening, selection, and appointments of each category of election officers. Some training assistance was provided by consultants from Britain. In addition, there were offers of financial support from donor countries.

Despite such assistance from overseas, the Commission failed to appreciate the complexity of its task and consequently disorganisation and confusion reigned at most polling stations at the opening of the polls.

The Nomination Process

The procedure for nomination of candidates to Parliamentary elections as provided in the electoral regulations begins with the publication of a notice fixing a date and time for the submission of nomination papers by prospective candidates, all of whom must be supported by a political party. Nomination day must be a date not less than 21 days before the date fixed for polling in Parliamentary elections (Rule 14). Each candidate must be supported by a proposer and seconder and by not less than seven nor more than 18 other persons. The nomination papers are prescribed forms to be filled out by the

candidate and delivered personally or by an agent to the Returning Officer for the constituency at the place designated as the nomination centre, between 8 a.m. and 1 p.m. on nomination day. The subscribers to a candidature must be registered in the constituency concerned and be members of the same political party. The prospective candidate has to deposit KSh 5,000 with the nomination paper.

A candidate cannot be nominated in more than one constituency. The candidate must be properly identified in the nomination paper which must bear the electoral number of each of the subscribers.

The Returning Officer may reject the nomination paper as invalid on any one of the following grounds:

- (a) that the particulars of the candidate or subscribers contained in the paper are not consistent with the regulations;
- (b) that the paper is not subscribed as required by the regulations;
- (c) that the candidate is not qualified, or is disqualified by law from being nominated, or for being elected as an elected member of the National Assembly; or
- (d) that the proposer or seconder, or so many of the supporters as would reduce the number of qualified supporters to less than seven, are not qualified to be subscribers.

The Returning Officer is required to give a decision immediately on an objection to a nomination paper. Where a Returning Officer decides that a nomination paper is invalid, he/she must immediately record on the paper both the decision and the reasoning and append his/her signature. The rules are silent on what recourse (if any) an aggrieved prospective candidate would have when the nomination paper is rejected by the Returning Officer.

At the close of the nomination, if only one candidate is validly nominated, the Returning Officer must declare the candidate to be duly nominated and must certify to the Electoral Commission that that candidate has been duly elected as a member of Parliament for that constituency. The Commission thereafter is required to publish the certification in the Gazette.

Where two or more candidates are validly nominated, the Returning Officer must, by a notice in the Gazette, publish the day, and the hours, when the poll will be taken. The notice must state the names, in alphabetical order of surnames, addresses and occupations or descriptions of the candidates as set out in their nomination papers; the names of the subscribers to the nomination papers; the situation of each polling station, and the description of the electors entitled to vote at each polling station.

In the case of the Civic (local government) elections, the basic procedural steps for the nomination of candidates are as follows:

- (a) every candidate must be a member of a political party that has proposed and seconded him/her;

- (b) there must be not less than five and not more than seven persons other than the proposer and seconder;
- (c) the delivery of nomination paper, along with a statutory declaration made not earlier than one month before nomination day;
- (d) a fee of KSh 1,000 in cash or banker's draft;
- (e) the subscribers to a nomination paper must be persons who were registered as electors for the electoral area concerned; and
- (f) no candidate may be nominated for more than one election, nor can one person subscribe to more than one nomination.

A candidate at a Presidential election must be nominated by a political party on the day and within the hours fixed for delivery to the Electoral Commission of the prescribed nomination form. The form must be signed by the candidate and by a proposer and seconder, both of whom must be electors and also national officials of the political party concerned. It must describe the candidate so that he or she can be adequately identified. The electoral numbers and the constituency of the proposer and seconder must appear on the form which is to be submitted to the Commission by the proposed candidate or his/her proposer or seconder. At the time of the delivery of the nomination form, the person so doing must provide evidence of support by 1,000 electors by handing in 40 standard sheets of foolscap paper serially numbered and headed in a prescribed form each bearing the signatures of 25 electors and their respective electoral numbers.

A Presidential nominee must be a citizen of Kenya who has attained the age of 35 years. He/she must be registered in a constituency as a voter in elections to the National Assembly and has to be nominated by a political party. The winning candidate for President is the one who receives a greater number of valid votes cast in the Presidential election than any other candidate and who also receives a minimum of 25 per cent of the votes cast in at least five of the eight provinces.

Nomination day for the Presidential election was 14 December 1992. The Chairman of the Electoral Commission received the nomination papers. The process was carried out without incident. Eight candidates were nominated.

The successfully nominated Presidential candidates each addressed large numbers of supporters at rallies which were peacefully conducted. The proceedings sometimes assumed a carnival atmosphere with simultaneous television coverage.

The nominations of candidates for the Parliamentary and Civic (local) elections took place on 9 December 1992. A total of 188 Parliamentary and 1,879 Civic seats were to be contested.

The Secretariat's advance team monitored the activities on nomination day and visited a limited number of centres to witness the proceedings. At two of the centres visited, the team noted that the proceedings were conducted efficiently. One Returning Officer explained that he had settled the procedure

with each candidate prior to nomination day and as a result the process at that nomination centre went smoothly. The team noted the presence of large crowds of supporters of the main political parties in the precincts of the centres visited and also a strong presence of the security forces.

The constituency reports received from across the country clearly indicated that widespread violence and irregularities had affected the nomination process in a significant number of constituencies, with adverse consequences for both Parliamentary and Civic candidates. Several prospective opposition candidates complained that they had been forcibly prevented from handing in their nomination papers within the prescribed time period. Some of these persons were reported as having been kidnapped, or having disappeared. Other irregularities included robbing prospective candidates of nomination fees and destroying nomination papers.

It was against this background that 16 Parliamentary seats were finally declared unopposed in favour of KANU, the ruling party. Some nominations were rejected on technicalities while others were time-barred, i.e., prospective Parliamentary candidates had arrived after 1 p.m. and Civic candidates after noon. Reports indicated that some 43 prospective opposition candidates at Parliamentary and Civic levels claimed to have been hindered from presenting their nomination papers. Much dissatisfaction was expressed over the limited time allocated for concluding nominations – a mere five hours in a single day. The point was repeatedly made that that hardly conformed to acceptable practice in many Commonwealth countries where nominations period normally ranged from four to seven days.

The opposition parties reacted with predictable fury. Some threatened to boycott the elections and to take court action to have the nominations in the constituencies concerned declared null and void and to constitute fresh nominations. Lists of those affected, both Parliamentary and Civic, were submitted with supporting evidence to the Electoral Commission.

The initial reaction of the Commission was that it could do nothing to reverse the decisions of the Returning Officers involved and that it was a matter for the Courts to decide. However, after further representations by the parties concerned, the Chairman of the Commission set up a special committee, under his chairmanship, to examine the complaints of the aggrieved persons. The complaints were subsequently classified into three categories:

- (i) those in which the Electoral Commission could intervene. These were cases involving the conduct of the Returning Officers. There were nine such complaints. The Electoral Commission directed the acceptance of the nominations in four of these cases on the basis that the complaints were justified. It rejected five complaints, holding that they were not justified.
- (ii) instances of alleged kidnapping, physical assault, forcible prevention, etc., which constituted offences under criminal law. These needed to be investigated by the Attorney-General and Commissioner of Police. There were 17 Parliamentary and seven Civic cases in this category.

- (iii) cases where the elections were complete, i.e., where candidates had been declared elected. These elections under the Constitution could only be open to inquiry by the Election Court. There were six such cases, and the candidates were advised that petitions to the Court represented the correct procedure.

There were 10 complaints on difficulties experienced with internal party nominations. Eight Civic cases and 14 Parliamentary cases were rejected and the decisions of the Returning Officers were upheld. One case dealt with a candidate who could not hand in his nomination paper on time.

The Chairman of the Electoral Commission confirmed that, in all, a total of 72 cases had been received and processed but the Commission could not entertain any more complaints once the printing of the ballot papers had begun.

CHAPTER 4



The Campaign

The formal campaign period began with the nominations for Parliamentary candidates on 9 December 1992. With the Advance Team on the ground in Nairobi from 7 December 1992, and the arrival on 16 December of the main Group, we were in effect present throughout the period of the formal campaign, and were therefore in a position to observe all aspects of it. But political campaigning by the fledgling opposition political parties had effectively begun well before nominations on 9 December, and indeed not long after the announcement in December 1991 of the return to multi-party democracy. Such campaigning took the form of meetings and rallies, some of which were mounted without official permits. They received reasonably extensive coverage in the privately owned local print media.

This early period, which the Secretariat was able to evaluate in the course of its Planning and Technical Missions, visits by the Secretary-General, and through monitoring of the news media, was characterised by recurring episodes of violence, harassment and intimidation in particular areas of the country. Political party rallies, particularly those of the opposition, were often disrupted and broken up by political hooligans, sometimes in organised groups. It was consistently alleged, for example, that the KANU Youth Group (YK92) was frequently involved in such disruptive activities. Opposition parties were consistently denied permits by the authorities to hold rallies while in some instances, permits were withdrawn without notice or any right of appeal. Permits were issued by District Commissioners. It was explained that in instances where permits were either denied or withdrawn, it was to avoid inter-party clashes.

In general terms, the emerging opposition parties encountered continuing difficulties and obstructions in their efforts to conduct dialogue with officialdom, particularly the electoral and provincial authorities. The initial failure on the part of the newly formed Electoral Commission to establish a sound basis for dialogue and trust with these opposition parties generated a climate of deep suspicion which bedevilled the best efforts of the Commission to prepare for elections.

The arrival of our Advance Team coincided with the beginning of the formal three-week campaign period, signalled by parliamentary nominations of 9

December 1992. The deployment of our main Group throughout the eight provinces of Kenya enabled us to reach an informed view of the nature and conduct of the election campaign in a wide variety of locations and varying circumstances, covering different tribal areas, urban and rural communities, and relatively isolated outposts.

An immediate impression common to virtually all the locations visited was the noticeable extent to which the people of Kenya had embraced the novel culture of multi-party politics. In sharp contrast to little more than a year ago, candidates, political party supporters and the ordinary voters were now able to express their political views and preferences in a relatively unrestricted manner. Campaign rhetoric in both the news media and at public meetings was increasingly lively and robust, and mobile loudspeakers were very much in evidence in Nairobi and elsewhere, even in the smallest villages. At the same time, we learned of instances of constraints on the exercise of freedom of speech and assembly, some of which were of a serious and even violent nature. We were told, for example, of denials of permits for rallies, arbitrary curtailment of seemingly legitimate political activity by law enforcement authorities, organised disruption of campaign rallies by rival political parties, and intimidation and harassment of candidates and party supporters.

Where permits for rallies were concerned, we were told by the Attorney-General shortly after our arrival in Kenya that the 14-day notice period no longer applied. As polling day approached, opposition parties reported a marked improvement in the number of permits granted to hold rallies, although there were still occasions when permits were denied to opposition political parties or withdrawn at the last moment, often on the somewhat spurious grounds of insufficient security. Notwithstanding such incidents, we could not fail to conclude that a sea change had taken place within the political culture whereby the rights to freedom of speech and assembly had taken firm root in Kenyan society across the political spectrum.

The role of the news media is covered in detail in the next chapter. We simply wish to note in the context of this chapter on the campaign and from the perspective of general availability of information, biased or otherwise, that the people of Kenya had adequate access to the news media. In the capital, Nairobi, this included newspapers – both private and party-owned – and state-owned radio and television. Outside of Nairobi, the choice was obviously more limited with radio being overwhelmingly popular in rural areas. There were regional publications, including in the national language Swahili, and limited television coverage, but radio remained the most important medium for the dissemination of information for most of the country.

In the light of the pervasive influence of radio, that medium along with others, could have been used to greater effect in voter education; which should have been the prime responsibility of the Electoral Commission. The objective of such an education programme would be to make voters aware of their electoral rights, to encourage a high turnout on polling day and to prompt critical attention to the policies of the various political parties.

In practice, the Electoral Commission relied for such a programme on a mix of newspaper, radio and television advertisements, and at a late stage, distributed as newspaper inserts a useful pictorial poster of a typical polling station and the steps a voter should take (see *Annex XI*). However, the voting instructions issued through the media were generally inadequate and did not prepare voters well for the polling process. Several Western governments sought to finance voter education through the Commission, but these negotiations apparently came to naught. Returning Officers whom we questioned usually replied that it was the responsibility of the candidates to educate voters about their rights and the polling process; but candidates tended to have other messages to convey.

Unofficial groups did their best to fill this vacuum. A local group of women lawyers, the International Federation of Women Lawyers – International Commission of Jurists (FIDA-ICJ), produced in five languages a guide for women voters, and went on to become the nucleus of the National Election Monitoring Unit (NEMU), which performed in outstanding fashion throughout Kenya during both the polling and counting stages of the elections. Meanwhile, a leading woman activist formed the Middle Ground Group in an effort to provide non-partisan education through seminars and meetings with voters. These and similar initiatives may well have helped increase the turnout of voters and reduce the incidence of spoiled ballots; but a much larger effort by all concerned would have been needed to bring most voters to the point of understanding and assessing more than the surface issues of the election campaign.

We were somewhat reassured by what we perceived to be a high level of political awareness throughout the country. This was evidenced by the seemingly high turnout on polling day and by the widespread enthusiasm which the members of our Group encountered throughout the country. This confirmed to us the keen interest of the people of Kenya in their new multi-party democratic system, and augurs well for the future of the system.

During initial meetings with senior government officials, the Group was told that the issue of de-linking the civil service from KANU did not arise as there had never been such links. Nevertheless, the Group subsequently came to the conclusion from discussions with a broad range of civil servants that a substantial proportion of their numbers continued to confuse loyalty to the government with loyalty to KANU. We met with Provincial and District Commissioners, District Officers and Chiefs in all regions of the country, as well as members of the uniformed services and the general public. While Section 2A of the Constitution was repealed in December 1991, its legacy appeared to have remained intact in the minds of many people. We were advised of instances in which government and parastatal vehicles were made available to KANU for the purposes of electioneering. We observed one District Commissioner openly distributing KANU literature from his office, while in another instance the KANU office was located in government buildings less than fifty yards from the District Commissioner's Headquarters. There were widespread complaints that the granting of permits for political rallies strongly favoured KANU

candidates in terms of numbers and timing. In the main the conduct of such officials during the election campaign was generally supportive of KANU, often to the detriment of other parties' election campaigns.

On the other hand, in many instances we observed a heartening level of co-operation and support by such civil servants in the tasks faced by electoral officials on polling day, particularly in relation to security. Although there were allegations of interference by civil servants in the electoral process, we could not find any firm evidence to support them.

We witnessed many political meetings during our deployment in the regions, at Presidential and Parliamentary levels. Most of these were conducted in Swahili or local languages, but the common thread was the concentration on personalities rather than issues. There was a festive atmosphere attending many rallies with street theatre, songs, buntings and motorcades.

We also met and consulted with a wide variety of administration and electoral officials, law enforcement officers, church and community leaders, and the voters themselves. Our Commonwealth teams were received with warmth and enthusiasm throughout the country and were often told that our presence confirmed the great importance of these elections compared with those of previous years.

Officers of the law enforcement and security agencies were very much in evidence at the campaign events we witnessed. There was no lack of allegations about the supposed bias of some of these officers against opposition parties and their rallies. Our observations could not substantiate these allegations. While some party leaders and their supporters interpreted the police presence as a form of intimidation, the administration explained that security considerations made this necessary. There was merit in both points of view.

In our own limited contacts with representatives of the law enforcement agencies, we were treated at all times with courtesy and efficiency.

Soon after our arrival in Kenya, in a News Release of 20 December 1992 (see *Annex XII*), we expressed our strong concern about the reports of numerous cases of violence and land clashes which marred the period immediately preceding polling day and which exacerbated the distrust which prevailed among tribal groups, other communities and the political parties. Members of our Group were made very much aware of the pervasive effects of the violence, particularly in the Rift Valley, and were able to gain a ready appreciation of the volatility of the areas where violence had occurred. Not only was there large-scale violence on a group basis, there were also individual acts of violence perpetrated against candidates from all parties.

There were many reports of the purchase and destruction of voters' cards and the disbursement of cash and food by political party activists to potential voters. Indeed, some of our observers were presented with direct evidence of such malpractices. In a case in Western Province, our observers were provided with documentary evidence of the purchase of voters' cards. In another instance, one of our teams received a formal complaint from a registered voter

that although his relatives and friends had all received gifts of cash to entice them to vote in a certain manner, he had not! However, we should note the reassurance of a Swahili saying conveyed to us, *Ninakula hapa na ninalala huko*, which roughly translates as 'I eat here and sleep there'. We took this to mean that potential voters would happily accept such gifts but still vote in the manner they wished, protected by the expectation of the secrecy of the ballot. The situation regarding voter secrecy, however, proved to be somewhat problematic in the case of illiterate voters.

This was a turbulent and sometimes frenetic campaign. There were huge rallies in the major cities and towns, while in the rural areas such events often provided the novel experience of competing national and local political party leaders vying for the popular vote, and submitting themselves for public scrutiny. There were constraints on both freedom of speech and freedom of assembly, but candidates and political party supporters were able to express their views in a relatively unrestricted manner. Violence in various forms was an unfortunate accompaniment in the more volatile areas, particularly in the Rift Valley and the North Eastern Provinces. In some instances the violence was organised and premeditated, while in others it appeared to be spontaneous and random. This was a disappointing and sometimes tragic feature of the campaign and one which we would hope would disappear with the nurturing of a new political culture by the leadership of Kenya.

CHAPTER 5



The Role of the Media

Even before the opening of the official campaign, opposition parties began to complain that they were being denied reasonable access to the media in general and to the publicly-owned radio and television in particular. They repeatedly gave expression to resentment at what they felt was biased reporting on radio and television. They also alleged that their electoral activities and pronouncements were being blacked out by the official media.

We were surprised at the number of complaints which reached us on this matter. Indeed, this became one of the most contentious issues during the campaign. We consider that arrangements to ensure that all parties have equal access to the media are always an important indicator of the strength of the commitment to the democratic process. The media in a democracy has a crucial role to play in informing voters of the programmes and policies of all political parties. Shortly after our arrival, therefore, we issued a statement pointing out that there was a noticeable imbalance in the reporting of the election on radio and television and that we would hope to see greater exposure given to the activities of the opposition parties in the publicly owned media (see *Annex XII*).

Although the complaints against the print media were less strong, it did not take us long to realise that there was a widely shared perception that the print media, too, was not impartial, and was by no means as free as it appeared on the surface. It was clear that every newspaper and magazine was identified by the public as supporters of, or affiliated to, a party or an ethnic group, which meant that the media generally was understood as being partisan.

The media in Kenya is well-established and relatively well-endowed and should have been in a commanding position to play an important role in the structuring of the country's democratic institutions. It was our hope that both the print and electronic media would make strenuous efforts to be more even-handed in their coverage of the election campaign, so as to inform voters and politicians about their new responsibilities in a democratic society.

Adequate information about the policies put forward by the political parties was not being provided to voters. No serious efforts were made to analyse or criticise any of the economic or social programmes being canvassed in the campaign. With one or two notable exceptions, therefore, party leaders were

not assessed in a serious manner, for their socio-economic and nation-building programmes.

The Print Media

This failure to take a vigorous position on political issues characterises the media in many developing countries. Newspapers and radio in these societies were originally controlled by the colonial authorities and handed over to the incoming governments at the time of Independence. As one-party rule became the norm in Africa, strict government controls tended to be maintained over the media; thus in many countries, newspapers and particularly radio and television functioned as outlets for government propaganda.

Kenya had managed in earlier years, and even later on, to escape the full impact of this. While the publicly owned Kenya Broadcasting Corporation monopolised the electronic media, the print media included two privately-owned newspapers and several independent weekly news-magazines. The two leading English-language daily newspapers, the *Daily Nation* and *The Standard*, are owned by foreign interests and have succeeded in maintaining a modicum of independence. The third newspaper, the *Kenya Times*, is closely linked to the ruling party, and is therefore a firm and unabashed supporter of the party, reflecting the views of the Government. There is also a parallel, vigorous and widely read Swahili press, published by these newspapers.

In their election coverage, the *Nation* and *Standard* made commendable attempts to be even-handed and to present a coherent overall picture of the campaign. It is true that as the date of the election approached, the media became increasingly open. However, in the print media a certain degree of self-censorship continued to prevail while radio and television remained overtly partisan to the end. This was a great disappointment to us.

Every day, the newspapers were full of articles detailing the 'dirty tricks' being practised during the campaign. It seemed to us that emphasis was placed on the more sensational side of the elections. There was a plethora of daily reports of candidates being kidnapped, voters being bribed, voters' cards being purchased, candidates being forced or persuaded to defect from one party to another, and political killings taking place in certain areas of the country.

Little effort was made to investigate and report fully on the reasons for the outbreak of violence. There were few interviews with or photographs of the thousands of internal refugees, widely believed to have been reduced to living in distressing circumstances in makeshift camps. This should normally have been a big story in any national media. We regret that the Kenyan media has failed to take adequate note of this ongoing story of a grim tragedy. It was not a reassuring picture of a country standing on the threshold of democracy and it showed that the newspapers were unable or unwilling to tackle some of the serious political issues which faced the country.

Fortunately, the media in Kenya is greatly strengthened by a number of excellent weekly and monthly news-magazines, which are edited and written by dedicated and independent local journalists. The leaders in this field are the *Weekly Review*, *Finance* and *Society*, all providing well-researched and lively articles on the candidates and parties.

The failure of the newspapers to speak out forcefully on these issues has led us to conclude that journalists in Kenya are still unable to express their views as freely as would be expected in a society with a truly free press. The reasons for this are understandable. It is no secret that in the past, many journalists were harshly treated by the Government for stepping out of line and daring to question the certainties of the one-party state and the entrenched ruling party. Independent-minded journalists have been detained, prosecuted for sedition and have been deprived of their jobs. The Government has continued to seize copies of, or to ban, publications with articles considered critical of the State.

Some editors have paid a price for their candour. In recent months, people like Pius Nyamara of *Society*, Blamuel Njururi of the *Monthly Observer* and Njehu Gatabaki of *Finance* have been arrested on various charges. Mr Gatabaki is still facing a charge of sedition.

These points have regretfully to be made here, as there is a perception in Kenya that the media is free. When we met President Moi he told us that it was "the freest in the world". We hope that, with the advent of democracy, this statement will become a reality.

There is also a wide range of foreign newspapers, books and magazines widely available in Kenya. Over 100 journalists representing foreign news organisations are based in Nairobi. During the election campaign they were able to provide an additional source of information regarding what was happening throughout the country.

Radio and Television

The Kenya Broadcasting Corporation (KBC) transmits radio and television broadcasts in several languages including English and Swahili while the recently established Kenya Television Network (KTN) has introduced a second television channel for their viewers. For decades, KBC has devoted its news coverage to chronicling the comings and goings of the President, his Ministers and various government functionaries. It will need, as time goes by, to begin the process of broadening its coverage of events throughout the country. KTN is said to be privately-owned, but it remains dependent upon, and therefore supportive of, the Government. Its election coverage, like that of the KBC, was tilted in favour of the ruling party.

We were told that it was only after the most vigorous complaints by opposition parties that the KBC began, in the final weeks of the campaign, to give regular coverage to political statements and meetings of the opposition parties. This coverage invariably began with reports of the President and

Ministers carrying out official duties, followed by footage of the KANU campaign. KBC also gave extensive coverage to defections from other parties to KANU, ignoring defections from KANU to the opposition parties. KTN sometimes carried stories of these defections from KANU.

An independent group,⁴ has made an analysis of the airtime provided to the various parties starting in late October and ending on 23 and 24 December. It has analysed KBC RADIO 7 p. m. news, KBC TV 10 p.m. and KTN 9 p.m. news. The results indicate that KANU was given a disproportionate amount of the time devoted to election coverage. On KBC TV, KANU had up to half of the allotted time, with the three leading contenders being given between 5 per cent and 1.5 per cent of the time. As regards the Radio network, KANU received nearly six times as much airtime as the opposition combined. On KTN the airtime given to KANU was slightly more than the three others combined.

Conclusion

It is regrettable that efforts were not made early enough by the Electoral Commission to encourage the media to adopt guidelines for impartial coverage. This would have gone a long way to allay some of the criticisms of the media which surfaced during the campaign. Many Commonwealth countries have successfully worked out schemes which allow political parties free-time access to the media through party political broadcasts and other arrangements.

Several of the political parties complained to us that they could not afford to pay the cost of advertising in newspapers and on radio and television. We were told that the advertisement tariff was prohibitive.⁵ This no doubt explains why KANU advertisements were the most frequent, leading to the charge that this unfairness stemmed from the KANU party having access to unlimited funds.

Whenever we raised these matters with the Electoral Commission and the Information Ministry, the standard official response was that there was no great pressure from the opposition parties for a media code of conduct, that this matter had never been pressed by them and that, indeed, the opposition had been better served in the indigenous language press than in the national English-language dailies.

We need to keep in perspective the role of the media, by examining the figures about its outreach. With the exception of radio, the outreach of all other sectors of the media, across the countryside, is somewhat limited. As far as we could discover, the circulation figures for the independent newspapers are approximately 188,000 for the *Nation*, 75,000 for *The Standard* and much smaller

⁴ The Professional Committee for Democratic Change (PCDC), a local non-governmental organisation.

⁵ Information provided by the Ministry of Information showed that the cost of a noon-time advertisement on TV was KSh 4,000 per minute, prime time radio in Swahili was KSh 5,000 and in English KSh 5,000. The cost of a half-page advertisement in the newspapers was KSh 60,000.

for the *Times*. The leading Swahili weekly newspaper commands a circulation of about 70,000. TV is limited to urban areas and recent estimates given to us by the Ministry of Information put the number of TV sets at 300,000 – covering about 1.5 million people – and the number of radios at five million.

It is estimated that one in nearly 200 Kenyans owns a TV and one in five a radio. As in most developing countries, there is much sharing of newspapers and radios, and the news is rapidly disseminated through an efficient word-of-mouth process. The level of access to newspapers, radio and television continues to remain low for such a modern country.

There is much scope for improvement in this regard. The stirrings of democratic freedoms are bound to have a beneficial impact on this aspect of national life.

CHAPTER 6



Events on Polling Day

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

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

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

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

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

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

Shortcomings of the Election Machinery

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

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

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

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

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

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

Appointment of Party Agents

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

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

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

Errors in Ballot Papers

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

Location of Polling Stations

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

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

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

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

Boycott by Polling Clerks

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

Secrecy of the Ballot

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

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

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

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

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

Performance of Party Agents

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

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

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

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

Voter Identification

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

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

Allegations of Irregularities

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

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

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

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

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

Conduct of the Count

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

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

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

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

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

Assessment

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

CHAPTER 7



Conclusions

These were elections which proved difficult to evaluate in terms of freeness and fairness. It was evident to us from the start that some aspects of the elections were not fair. These included:

- the registration process in many parts of the country
- the nominations process – particularly in the Rift Valley, resulting in the unopposed return of 16 KANU Parliamentary candidates
- the lack of transparency on the part of the Electoral Commission
- the intimidation, administrative obstacles and violence that marked the political campaign
- the partisanship of the state-owned radio and television
- the reluctance of the Government to de-link itself from the KANU Party.

These negative aspects were compounded by the numerous administrative problems which can be directly attributed to the inability of the Electoral Commission to plan ahead and pay adequate attention to the many basic and essential elements of the electoral process. This resulted in late delivery of materials, polls with too many voters, lack of adequate training of officials and an ineffective public education programme.

At the same time we believe that at least in the last few weeks before polling day, the Electoral Commission made every effort to act responsibly, impartially and openly. We would attribute many of the Commission's problems at the earlier stage to inexperience, a weakness in planning and administrative ability, and certain aspects of the electoral law and regulations which contributed to the difficulties which arose.

On the positive side, notwithstanding all of the problems described above, it was encouraging to find that on polling day, with few exceptions, millions of enthusiastic people cast their votes in a general atmosphere of calm throughout the country. We were extremely impressed with the dedication and persistence of the voters, many of whom waited long hours in uncomfortable situations to exercise their right to vote. Much praise is also due to so many of the Presiding Officers, election officials at the polls and at the counting centres for their commitment and tenacity, given all of the problems they had to overcome.

Special mention again must be made of the substantial contribution of candidates, party agents and national observers. The fact that so many people made an impressive transition from a violent and confrontational pre-election period to a vigilant partnership as poll observers was a hopeful indication of the effective application of multi-party democracy for the future.

These elections were an important turning point in Kenya's history and for Kenya's future. Despite the fact that the whole electoral process cannot be given an unqualified rating as free and fair, the evolution of the process to polling day and the subsequent count was increasingly positive to a degree that we believe that the results in many instances directly reflect, however imperfectly, the expression of the will of the people. It constitutes a giant step on the road to multi-party democracy.

Acknowledgements

We wish to record our deep appreciation to a number of persons and institutions who in a variety of ways assisted us in carrying out our mandate.

Initially, we would like to thank His Excellency President Daniel arap Moi who found time to personally welcome and exchange views with us. To Justice Chesoni and the members of the Electoral Commission our particular thanks for the readiness with which they were always available and the full co-operation which they granted us at a time when they were under continuous pressure. Our work would have been made much more difficult but for the comprehensive assistance given to us by the Liaison Team of the Ministry of Foreign Affairs and we would here like to acknowledge the roles of Permanent Secretary Dr Sally Kosgei and of Ambassador Joseph Sefu.

Our warm thanks go out to the members of the Commonwealth diplomatic community for their supportive interest in our work and the many courtesies which they provided us.

Special words of appreciation must be extended to the network of local observer groups represented by the National Election Monitoring Unit (NEMU) whose sterling contribution we have already mentioned in the report but whose comradely co-operation was invaluable. We must also note here the ready co-operation and goodwill shared with other international monitoring groups.

As citizens of the Commonwealth we would in particular like to acknowledge the pivotal role of Commonwealth Secretary-General Chief Emeka Anyaoku whose perceptive guidance enhanced our efforts, and who provided us with a support team from the Secretariat whose professional skills were fundamental to the success of our Mission.

Finally, we express sincere gratitude to the people of Kenya who welcomed us as partners in this most important phase of their political development and whose goodwill and hospitality encouraged us in our task. We would like to wish them every success as they go forward in this promising new stage of democratic development.

Annexes

ANNEX I

Composition of the Commonwealth Observer Group

The Rt Hon Mr Justice Telford Georges (Trinidad and Tobago – Chairman)

The Rt Hon Mr Justice Telford Georges, who was born in Dominica, is a national of Trinidad and Tobago where he was a judge of the High Court before going on to be Chief Justice in Tanzania, Zimbabwe and the Bahamas in that order. He has held many high public offices in the Caribbean and other parts of the Commonwealth including most recently that of Chairman, Regional Constituent Assembly of the Windward Islands. Justice Georges is a member of the International Commission of Jurists and a Privy Councillor. He continues to work as part-time Appellate Judge and freelance consultant. His higher education was at the University of Toronto and the Middle Temple, London. He headed the Commonwealth Observer Group to the 1991 Zambian elections.

The Hon Lionel Bowen (Australia – Deputy Chairman)

Formerly in practice as a solicitor, The Hon Lionel Bowen's public service career started in local government, then the New South Wales Parliament in 1962. In 1969, he was elected to the Federal Parliament of Australia. He was a Minister in the Whitlam Government in 1977. He was appointed Deputy Leader of the Opposition in 1983. He became Deputy Prime Minister, Minister for Trade and Minister assisting the Prime Minister and Attorney-General in 1984. He retired from Parliament in 1990.

Dame Josephine Maria Abaijah (Papua New Guinea)

Dame Josephine Abaijah is a former Member of Parliament having been elected the first woman MP in Papua New Guinea. She is a businesswoman, President of the Papua Women's Council and a former Chairperson of the National Capital District Commission. Her higher education was at the Institute of Health Education in Port Moresby, the London Institute of Education and the Institute of Health Education at the University of the Philippines.

The Hon Victoria Fikile Chitepo (Zimbabwe)

The Hon Victoria Chitepo is a Member of Parliament and for 10 years was a member of the cabinet, first as Minister of Natural Resources and Tourism from 1982-1990 and later as Minister of Information, Posts and Telecommunications until she retired voluntarily at the end of June 1992. Between 1980-82, she was Deputy Minister of Education and Culture and Deputy Minister of Information. Prior to her involvement in politics, Mrs Chitepo was a teacher and social worker. She has also been active in the environment movement and in women's development issues. She holds a degree in Social Science.

Mr Alan Clark (Canada)

Mr Alan Clark is the Chief Returning Officer for the Federal Electoral Riding of Yellowhead in Alberta, Canada.

Mr Rudolph A Collins (Guyana)

Mr Rudolph Collins is the Director of General Services and Administration of the Caribbean Community Secretariat. From June 1991 to November 1992, he was Chairman of the Elections Commission where he presided over Guyana's recently concluded multi-party elections. He was formerly Guyana's Ambassador to Venezuela and Permanent Secretary of the Ministry of Foreign Affairs. He was educated at Carleton University, Ottawa, and the University of the West Indies.

Mr Michael Cox (New Zealand)

Mr Michael Cox served in the British Merchant Navy between 1956-1965 after which he became an industrial accountant and went into accountancy practice. He was elected as National Party Member of Parliament for Manawatu in 1978 and between 1978 and 1987 he was Government and Opposition Whip and Opposition Spokesman on Finance. He is currently National Treasurer for the National Party and a Member of the Casino Control Authority. Mr Cox was educated at Magdalen College, Oxford.

Shri V Kishore Chandra Deo (India)

Shri Kishore Chandra Deo's long public service career commenced when he was elected to the Lok Sabha from the No. 2 Parvatipuram (ST) Constituency, Andhra Pradesh, in 1977. He served as a Member in the Sixth, Seventh and Eighth Lok Sabhas from 1977-1989. He served as Union Minister from 1979-80. He became Deputy Chief Whip and General Secretary of the Congress Party in 1979 and became Chief Whip and Deputy Leader of Congress in 1985. He has served as a Member of many and various Parliamentary Committees including the All Party Committee of Electoral Reform and the High Powered Expert Committee on Electoral Reforms. Shri Deo was educated at the Madras Christian College and has a Bachelor of Arts Degree in Economics and a Master of Arts Degree in Political Science.

Mr Ron Gould (Canada)

Mr Ron Gould is Assistant Chief Electoral Officer, Elections Canada. He has served in the public service of Canada in various capacities since graduating from the University of Toronto in 1955. During the past three decades, he has worked in many government departments, including being responsible for Canadian citizenship and management of national social programmes. He has extensive experience as an observer or technical adviser for elections involving over 20 missions in 12 countries including most Central American countries, Bulgaria, Mongolia, Albania and Zambia. Mr Gould was also leader of the United Nations Mission in 1991 to design the electoral plan for Cambodia.

Mrs Sylvia Heal (Britain)

Mrs Sylvia Heal is a former Labour Member of Parliament. She was born and educated in Wales and attended University College, Swansea, where she gained an Economics degree in 1968. She has worked as a social worker and in the health service as well as in the Department of Employment. While in Parliament, she was a member of the Select Committee on Education, Science and Arts and front bench shadow spokesperson on health and women's affairs. She is a member of the Council of the Advertising Standards Authority and was appointed Justice of the Peace in 1973.

Mr Rashleigh Jackson (Guyana)

Mr Rashleigh Jackson's long public service career commenced in 1948. He was appointed as Master, Queen's College in 1957 and he then moved on to the Ministry of Foreign Affairs in 1965 as Principal Assistant Secretary. He became Permanent Secretary in 1969 and was posted as Guyana's Permanent Representative to the United Nations from 1973-1978, during which time he was appointed President of the UN Council for Namibia. He returned to Guyana as Minister of Foreign Affairs in 1978 and held the post until 1990. Mr Jackson was educated at Queen's College, Georgetown, University College, Leicester, and Columbia University, New York.

The Hon Zephania Kameeta (Namibia)

The Hon Zephania Kameeta is the Deputy Speaker of Parliament since 1990 when Namibia gained its independence. He was first elected to the Constituent Assembly in 1989 before winning a seat in Parliament the following year. He was a teacher in the Theological Seminary from 1978-81 and from 1982-89 was a church leader. He is a member of the SWAPO central committee and is also vice-president of the Commonwealth Parliamentary Association, Namibia branch. He graduated with a PhD in Divinity from Wartburg Theological Seminary, USA.

Dr Paul J F Lusaka (Zambia)

Dr Paul Lusaka, who has recently retired from the Zambian Foreign Service, holds a consultative position with the firm of Reichler & Soble, Attorneys at Law in Washington, DC. He previously served Zambia in several ambassadorial posts – in the USA, USSR, and at the United Nations in New York for two separate terms. While at the United Nations, he was elected President of the 39th Regular Session of the General Assembly (1984-1985); he was President of the Security Council and of the Economic and Social Council and President of the UN Council for Namibia. He served in London as Deputy and Acting High Commissioner and was Zambia's Chief of Mission on a non-resident basis in the following countries: Romania, Yugoslavia, Canada, Jamaica, Guyana, Trinidad and Tobago, Barbados, Argentina, Brazil, Colombia, Cuba and Venezuela. He was a nominated Member of Parliament from 1973-1978 and served at various times as Minister of Rural Development, Power, Transport and Communications and Health, as well as acting in other key ministries including Foreign Affairs and Finance. He was also Roving Ambassador and Special Assistant to the President on Political Affairs. He was educated at University College, Lesotho, University of Minnesota, USA, and McGill University, Montreal, Canada.

HE Ambassador Vijay Singh Makhan (Mauritius)

HE Ambassador Vijay Singh Makhan is Mauritius' Permanent Representative to the Food and Agriculture Organisation, Unesco, the UN Office in Nairobi and the Organisation of African Unity. He is also concurrently Head of Multilateral Division, Ministry of External Affairs. He has represented Mauritius at various UN, OAU, Non-Aligned Movement, Indian Ocean Commission meetings and other international conferences as leader or member of delegation. Ambassador Makhan has served on OAU observer missions to elections in Zambia in 1991 and Mali in April 1992. He is also Roving Ambassador of Mauritius.

Mr Athanasios (Thasos) Michaelides (Cyprus)

Mr Athanasios Michaelides was first elected to Parliament in 1991 as the Member for Larnaca Constituency. He is a Member of the House Standing Committee on Communication and Works, the Committee on Education, the Committee on Commerce and Industry and the Rule Defining Committee. Prior to his parliamentary career he was a Lecturer at the Higher Technical Institute and an Instructor in Mechanical Engineering subjects in various technical schools. Mr Michaelides was educated at the American Academy, Larnaca and gained a Mechanical Engineering MSc (Technical) from the University of Prague.

The Hon Colin Moynihan (Britain)

The Hon Colin Moynihan's public service career commenced in 1983 when he was elected as Member of Parliament for Lewisham East Constituency and was appointed Political Assistant to the Foreign Secretary. He then moved on as Parliamentary Private Secretary to the Minister of Health, 1985, to the Paymaster-General, 1985-1987. He was appointed Parliamentary Under Secretary of State (Minister for Sport) in the Department of the Environment and became Minister for Sport, 1987-1990, and Parliamentary Under Secretary of State at the Department of Energy, 1990-1992. Prior to his public service career he held several senior posts in Tate & Lyle plc, and was Chairman of Ridgways Tea and Coffee Merchants. Mr Moynihan was educated at Monmouth School and University College, Oxford.

Dr Bojosi Otlhogile (Botswana)

Dr Bojosi Otlhogile is a law lecturer at the University of Botswana in Gaborone. He has written extensively on a wide range of legal issues, including on free and fair elections, free speech, right to legal representation and the rights of children. He is also an attorney in the High Court of Botswana and a member of the Democracy Research Project based at the University of Botswana. He was educated at the University of Cambridge in Britain.

Mr Alfred Parsons, AO (Australia)

Mr Alfred Parsons was a career diplomat. He served in Indonesia (twice), Burma, Berlin, at the United Nations, New York and in a number of very senior positions in

the Department of Foreign Affairs and Trade. He also held appointments as Australian High Commissioner to Singapore, to Malaysia and to Britain. He was chairman of the Commonwealth Committee on Southern Africa and of the Commonwealth Observer Group to the Preparations for Elections in Namibia.

Justice Mohammad Abdur Rouf (Bangladesh)

Justice Mohammad Abdur Rouf is the sitting judge of the Supreme Court of Bangladesh and has been the Chief Election Commissioner of Bangladesh since December 1990 when he presided over the first multi-party elections in Bangladesh after 15 years of military rule. He had been for four years the Chairman of the Advisory Council, a constitutional forum for reviewing cases of detention on political charges.

Mr Nawabzada Salahuddin Saeed (Pakistan)

Mr Nawabzada Salahuddin Saeed is a member of the National Assembly of Pakistan and was first elected to the Lower House of Parliament as independent member from Mansehra NWFP Constituency in 1985. He was returned to Parliament in 1988 and 1990 and was Minister of Forests in the NWFP in 1988 under the then caretaker government. He was a member of Pakistan's delegation to the United Nations General Assembly in 1985 and 1991 and also participated in other international conferences as an official delegate including the IPU Conference. In 1990 he won a seat as representative of the Pakistan Muslim League.

Mr Clyde Sanger (Canada)

Mr Clyde Sanger has been a journalist since 1952, having been Editor of the *Central African Examiner* and editorial adviser to *Drum Magazine* in Lagos; he was Africa correspondent of *The Guardian* based in Nairobi, and United Nations correspondent covering Latin America and the Caribbean for *The Guardian* and editorial writer on international affairs for *The Globe and Mail*, Toronto and then one of its parliamentary reporters. He was Special Assistant to the President of the Canadian International Development Agency from 1970-1972 and Associate Director, Communications, in the International Development Research Centre from 1972-1977. Mr Sanger served as Director of the Information Division in the Commonwealth Secretariat, 1977-1979, and has been Director of Communications, North-South Institute, Ottawa, since 1989. He has been Canada correspondent for *The Economist* since 1967. He is active in several Canadian NGOs and was a member of the Canadian Council for International Co-operation Mission to Namibia in 1989. Mr Sanger was a classical scholar at Shrewsbury School and holds an MA (Modern History and Political Science) from Oxford University.

Mr S K Singh (India)

Mr S K Singh entered the Indian Foreign Service in 1954 and having worked his way through various posts in the Ministry of External Affairs was appointed Ambassador to Lebanon concurrently accredited to Jordan and Cyprus from 1974-1977, and then

moved on as Ambassador to Afghanistan until 1979. He was Ambassador to Austria and India's Permanent Representative to the United Nations in Vienna and also Governor for India on the Board of Governors of the International Atomic Energy Agency from 1982-1985 from where he was posted as Ambassador to Pakistan until 1989. He returned to India and held the post of Foreign Secretary until 1990. Mr Singh holds an MA and an LLB from Agra University.

The Hon Anthony Isidore Smart (Trinidad and Tobago)

The Hon Anthony Smart is a practising lawyer in Trinidad. His public service career commenced when he was appointed Deputy Speaker of the House of Representatives in 1987, after which he was appointed Minister of State in the Ministry of Legal Affairs. He served as Minister of State in the Office of the Prime Minister from 1988-1989 and was then appointed Attorney-General. He was also Chief Whip in the House of Representatives from 1987-1989 and has served on the Standing Orders Committee of the House of Representatives and the Joint Select Committee of Parliament on Television Broadcasting. Mr Smart holds a BA in Economics from the University of Toronto and Professional Law Qualifications (Solicitors Exams), England.

HE Mr Dudley Thompson, OJ, QC (Jamaica)

HE Mr Dudley Thompson has had a distinguished career as a barrister and statesman, and served his country in several ministerial posts, including Minister of National Security and Foreign Minister. After serving in the Royal Air Force in the Second World War, Mr Thompson was awarded the Rhodes Scholarship in 1947 which took him to Oxford University. He qualified for the Bar at Gray's Inn and then went to East Africa where he served on the defence team at the trial of Jomo Kenyatta in the early 1950s, before returning to Jamaica to practise as a lawyer and be active in politics. Mr Thompson was a member of the Commonwealth Observer Group in Namibia in 1989 and chaired the Commonwealth Observer Group to the parliamentary elections in Malaysia in 1990. He is now High Commissioner for Jamaica to Nigeria and some other African countries.

Lord Tordoff (Britain)

Lord Tordoff, the Chief Whip of the Liberal Democratic Party, House of Lords since 1988, is a former President of the Liberal Party and has also served as Chief Whip of that party. He was a marketing executive at Shell International for 30 years. In 1990 he served as a member of an Observer Team to the elections in Bulgaria and in the same year accompanied the Archbishop of Canterbury's team to Iran. He was also a member of the Commonwealth Observer Group to Zambia. In 1991 he accompanied Sir David Steel, former leader of the Liberal Party, to Jordan, the West Bank and Gaza, and visited the Iran/Iraq border to investigate the refugee situation. He has been Chairman of the Middle East Committee of the British Refugee Council since 1989. Lord Tordoff was educated at the University of Manchester.

SECRETARIAT SUPPORT STAFF

Mr Carl Dundas (Jamaica – Team Leader)
Mr Max Gaylard (Australia – Deputy Team Leader)
Mrs Patsy Robertson (Jamaica – Media Adviser)

Assistants to Observers

Mr Chris Bowman
Dr Ursula Barrow
Dr Chi Amako
Mr Terrence Dormer
Ms Brenda Vomwo
Dr Samura Kamara
Ms Zainah Anwar
Ms Madhuri Bose

Consultant

Dr Neville Linton

Administrative Officer

Mr P Morawaka

Secretaries

Ms Lilibet Nyasunu
Ms Charlene Lee Ling

ANNEX II

Statement Urging Action on Nominations



Commonwealth News Release

92/46

13 December 1992

COMMONWEALTH TEAM URGES ACTION ON NOMINATIONS FOR KENYAN ELECTIONS

The advance team of the Commonwealth Observer Group to the Kenyan elections has called for a speedy and satisfactory completion of the examination into what went wrong on nomination day. Commenting on the sitting today of the special committee appointed to look into alleged irregularities in the nomination of parliamentary and civic candidates for the forthcoming elections, the advance team said it would consider this part of the election process to be severely compromised if the end result was that a substantial number of prospective candidates would be unable to contest the elections.

Announcing this today, the team's spokeswoman Mrs Patsy Robertson said: "We are deeply concerned by the extent of the reports we have been receiving about allegations of violence, misconduct and intimidation apart from general impropriety on the part of officials. These have led some opposition parties to threaten to boycott the elections and we are concerned that the elections may now be at risk."

Continuing, Mrs Robertson said that the Commonwealth team had noted the opposition parties' affirmation that they were prevented from nominating candidates in as many as 45 parliamentary seats. "In our view, there is an urgent need for a satisfactory investigation of these figures as well as the other reports received by us to date, which suggest that a substantial number of opposition candidates failed to secure nomination because they were forcibly prevented from doing so. The need for such investigation is made all the stronger by the fact that reports also show that all the seats in which there will be no contest have been declared for the ruling party.

A proper and efficient nomination process is fundamental to the conduct of a free and fair election in a multi-party democracy. Other key issues are the registration of voters, conduct of the campaign, access to the media and arrangements for polling day. These are among the crucial processes in which both the advance and full group of Commonwealth observers will continue to monitor keenly", said Mrs Robertson.

Nairobi, Kenya
13 December 1992

*Issued by the Information Division, Commonwealth Secretariat, Marlborough House,
Pall Mall, London SW1Y 5HX, Britain. Tel: 071-839 3411; Fax: 071-930 0827; Telex: 27678*

ANNEX III

Statement on Arrival



Kenya Elections

Commonwealth Observer Group

News Release

STATEMENT ON ARRIVAL

We are here in Kenya to observe the 29 December elections at the request of the Commonwealth Secretary-General, Chief Emeka Anyaoku. This follows an invitation for a Commonwealth Observer Group from the Government of Kenya which was supported by all parties involved in the elections.

All of us will serve as Observers in our personal capacities and not as representatives of our countries, governments or organisations to which we may belong. Our broad task will be to observe every relevant aspect of the organisation and conduct of the elections in accordance with the laws of Kenya. To this end, in the last eight months, Commonwealth planning and technical missions have already visited Kenya at the various stages of preparing for these elections.

We have come to observe the process as a whole and to form a judgment based upon these observations. As part of our work, we will meet all the contending political parties and other groups who wish to meet with us and we will be based in all the eight provinces of the country both before and on election day.

It is our belief that the presence of observer groups will contribute to the transparency of the process. Our conclusions will reflect our independent and collective judgment. We are delighted to be here in Kenya at this historic time and it is our sincere hope that events during the next two weeks will ensure that the electoral process will be peaceful and orderly and will enable the people of Kenya to participate fully in this crucial election.

16 December 1992

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ANNEX IV

Schedule of Engagements

Wednesday, 16 December

- 0630 Arrival of Commonwealth Observer Group (COG)
- 1445 COG Briefing
- 1700 Meeting with Permanent Secretary, Ministry of Foreign Affairs

Thursday, 17 December

- 0845 Meeting with Kenya National Congress
- 1000 Press Conference
- 1145 Meeting with National Election Monitoring Unit
- 1500 Meeting with Attorney-General

Friday, 18 December

- 0900 Meeting with President Daniel arap Moi
- 1400 Meeting with Electoral Commission
- 1500 Meeting with Democratic Party of Kenya
- 1800 Deployment Briefing

Saturday, 19 December

- 0900 Meeting with FORD-Asili
- 1030 Meeting with FORD-Kenya

Sunday, 20 December

- 0600 17 teams of observers deployed to cover all eight provinces. Teams to attend political rallies, meet with party leaders and supporters, Electoral Commission officials, provincial and district officials, the police and general public. Two teams, including Chairman and Mr Dundas based in Nairobi. Daily reports to be submitted to headquarters
- 1100 Meeting between Chairman and a delegation from Rift Valley representing FORD-Asili and Democratic Party

Monday, 21 December

- 0930 Chairman and Mr Dundas meet with Returning Officers for Nairobi Province
- 1500 Meeting with Mr Mwai Kibaki, Democratic Party

Tuesday, 22 December

- 0900 Chairman and Mr Dundas visit Eldoret, Rift Valley

Wednesday, 23 December

- 0900 Chairman and Mr Dundas meet with the Executive Board of Bishops of the Catholic Church
- 1000 Meeting with Mr Oginga Odinga, FORD-Kenya
- 1430 Meeting with the Chief Justice

Thursday, 24 December

1000 Chairman and Mr Dundas meet with Permanent Secretary,
Ministry of Information

24–26 December

Christmas Break

Sunday, 27 December

0600 Redeployment of observers. Teams to meet with party leaders
and candidates, other election observers, attend rallies,
check on preparations for the polls, identify polling
stations and counting centres. Daily reports to be
submitted

Monday, 28 December

0900 As above

Tuesday, 29 December

POLLING DAY

0500 Observer teams visit selected polling stations to
observe opening of the polls
Observe polling throughout the day
PM Return to selected polling stations to observe
closing of the polls
Observe count at selected counting centres

Wednesday, 30 December

AM Observe count at selected counting centres
PM All teams return to Nairobi
1700 COG consultations. Oral presentation from all teams

Thursday, 31 December

0900 Discussion on first draft of Final Report
1230 Interim statement issued. Press Conference by Chairman

Friday, 1 January

0900 Discussion and approval of Final Report
1800 Final statement issued

Saturday, 2 January

1045 Departure from Nairobi

ANNEX V

Check List for Polling Stations and Counting Centres

NOTES FOR OBSERVERS Some of the things to look for

PART A

The Observers may focus particular attention on the following aspects of the conduct of the elections:

POLITICAL CAMPAIGN

1. The nature of access to the electronic media (TV and radio) available to the opposition parties.
2. The procedure for the allocation of time for political broadcasts and advertisements (free or on payment), on the radio and television as provided in the guidelines of the Electoral Commission and the extent of their observance.
3. The nature of access enjoyed by the political parties to the print media; allegations of misreporting and how the complaints were dealt with.
4. The tone and contents of political broadcasts, advertisements and posters put out by the political parties.
5. The conduct of political meetings.
6. The conduct of house-to-house canvassing of voters.
7. The voter-education programme on radio and television conducted by the Electoral Commission, parties and other organisations.
8. Permits for public meetings.
9. Role of police at public meetings.
10. Access to printing facilities.
11. Access to funds and sources of funds.
12. Access to state services; instances of misuse of state resources.

Questions that may be put before polling day:

1. Is electoral register full and correct? People missed off? Are there names of dead people/people who have moved away included?
2. Are election officials confident about arrangements? Are political parties and local notables (priests, lawyers, etc.) satisfied?
3. Is the man in the street satisfied with arrangements? Will he vote? If not, is he afraid to do so? Why?

4. Has the campaign been free of intimidation, etc? Have all parties had full access to the media?
5. Is advertising (posters, leaflets, etc.) free?
6. How will voters' IDs be checked? Will it be possible to vote twice?
7. How will those away from home or ill in bed be able to vote?

PART B

CONDUCT OF THE POLLS ON POLLING DAY

1. The siting of polling stations.
2. Seating arrangements in the polling stations.
3. The accuracy of the list of electors at the polling stations.
4. Distances travelled by voters to polling stations in rural areas.
5. The length of time voters waited to cast their votes.
6. The state of readiness of polling stations.
7. Availability of adequate supplies, e.g. ballot papers, sealing wax, etc.
8. Security of ballot papers prior to elections.
9. The steps (if any) taken to ensure that the secrecy of the ballot is assured.
10. The performance of the elections officers at the polling station visited.
11. The procedure followed at the opening of the polls.
12. The adequacy or otherwise of polling stations' facilities.
13. Comments of party agents on the arrangements.
14. The procedure for use of indelible ink.
15. The incidence of loss of voters' cards.
16. The number (if any) of persons without identity cards but with other evidence of identity who were not allowed to vote.
17. The procedures in place to ensure the proper security of ballot papers, ballot boxes and official seals.
18. The general electoral environment that prevailed at the polling stations visited.
19. Intimidation of voters by security officers and others, if any.
20. Procedures for voters to challenge their exclusion from the rolls.

THE COUNT

1. The process of reconciling the number of ballots in the box with the number of ballots cast as reported by the Presiding Officers.
2. The determination of invalid ballots.
3. The conduct of Returning Officers and their counting assistants at counting.
4. Inspection of seals.
5. The facilities for candidates and their representatives to witness and verify the count.

Questions that may be put on the polling day:

1. Were all procedures agreed beforehand being adhered to?
2. Before polling starts, were the ballot boxes empty? Were they properly sealed?
3. Were all parties represented at polling stations? Were they satisfied with the process?
4. Were ids being properly checked? In the absence of id cards, was other evidence of identity taken into account and voters allowed to vote?
5. Were voters apparently voting freely? Were they enthusiastic? Did they talk freely? Did they exhibit signs of fear or intimidation?
6. Did voters understand procedures properly? If not, were they being explained fully and impartially? Were attempts being made to suggest how people should vote?
7. Was only one person at a time allowed into the voting booth? Did their ballot papers go straight into the ballot box?
8. How long were voters waiting to vote? If a long time, were some being put off?
9. Who were the elections officers? How were they chosen?
10. Were all parties present at polling stations throughout voting and at counting centres during counting?
11. Did foreign observers have free access to all stages of the process?
12. Were voters asked suspicious questions after leaving the ballot box?

After voting:

1. Were all parties/observers present at opening of the boxes?
2. Did the number of used ballot papers tally with the record of those who had voted?
3. Were the ballot papers counted properly? Were any valid ones spoiled during counting, intentionally or otherwise?

ANNEX VI

Deployment of Commonwealth Observers

Province	Station	Names	Accommodation
1. Coast	Mombasa	Jackson/Zainah	Mombasa B. Hotel
	Malindi	Parsons/ Chandra Deo	Eden Rock Hotel
2. Western	Kakamega	Makhan/Moynihan	Gulf Hotel
	Kakamega	Sanger/Linton	Gulf Hotel
3. Nyanza	Kisumu	Singh/Vomwo	Sunset Hotel
4. Central	Thika	Bowen/Barrow	Blue Posts Hotel
	Nyeri	Cox/Bose	Outspan Hotel
5. Eastern	Meru	Chitepo/Kamara	Pig & Whistle
	Embu	Heal/Amako	Isaac Walton
6. N Eastern	Garissa	Kameeta/Gould	Marsabit Lodge
7. R Valley	Kericho	Smart/Michaelides	Tea Hotel
	Eldoret	Tordoff/Saeed/ Clarke	Sirikwa Hotel
	Nakuru	Collins/Lusaka	Kunste Hotel
	Kitale	Thompson/Dormer	Alakara Hotel
	Naivasha	Abaijah/Bowman	Safariland Club
8. Nairobi	-	Georges/Dundas/ Robertson	Intercontinental
		Rouf/Otlhogile	Intercontinental

ANNEX VII

Interim Statement



Kenya Elections

Commonwealth Observer Group

News Release

31 December 1992

The announcement that the final results of the elections would not be immediately available will undoubtedly heighten the tension which has been evident in Kenya ever since the decision to move to a multiparty system. The Chairman of the Electoral Commission had confidently predicted at our meeting with him that the results would have been available by today at the latest.

The apprehensions created by the early scenes of disorganisation which led to the late start of polling all over the country had to some extent been dissipated by the calm and comparative orderliness which marked the late afternoon. There were complaints of irregularities but reports from agents of all political parties at the great majority of the polling stations we had visited were that on the whole, the polling had been conducted to their satisfaction. Reports of polling taking place in some places as late as tomorrow and the delay in completing the count can only cause resurgence of these early apprehensions.

This must be viewed against the widespread perception of a lack of real commitment on the part of the Government to the process of multiparty democracy. There was little evidence that serious efforts had been made to accomplish the difficult task delinking the institutions and resources of the State from the ruling party. There appeared to be a reluctance to permit any real challenge in districts which the ruling party considered to be its strongholds - a factor which contributed to the violence and dislocation of many people which marred the period immediately preceding the elections and exacerbated the distrust. The complaints in certain areas of harassment and intimidation of candidates and voters right up to polling day cannot be ignored. We sincerely hope that now that voting has almost been completed, the thousands of displaced citizens will quickly be returned to their homes and given all the available help to enable them to resume their normal lives.

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On election day, millions waited for hours in hot sunshine and in rain, determined to play their part in the process of selecting their government. Despite the incidence of delays, disorganisation and irregularities, the voters had the patience and commitment to remain in line and cast their vote. They have demonstrated a commitment to the democratic process which was outstanding and which we hope will be respected and nurtured by their leaders.

We have to base our judgement of this election on the entire process which began before we arrived in Kenya. We also have to judge it by standards which are acceptable internationally. Kenya is a respected and important member of the Commonwealth and the international community and the people of Kenya would expect no less of us.

ANNEX VIII

Concluding Statement



Kenya Elections

Commonwealth Observer Group

News Release

1 January 1993

CONCLUSIONS ON THE DECEMBER 1992 KENYA ELECTIONS

On the eve of its departure, the Commonwealth Observer Group has issued the following statement of its conclusions:

This was an election which proved difficult to evaluate in terms of freeness and fairness. It was evident to us from the start that some aspects of the election were not fair. These included:

- the registration process in many parts of the country
- the nomination process - particularly in the Rift Valley resulting in the unopposed return of 16 KANU parliamentary candidates
- the lack of transparency on the part of the Electoral Commission
- the intimidation, administrative obstacles and violence that marked the political campaign
- the partisanship of the state-owned radio and television
- the reluctance of the Government to delink itself from the KANU Party.

These negative aspects were compounded by the numerous administrative problems which can be directly attributed to the inability of the Electoral Commission to plan ahead and pay adequate attention to the many basic and essential elements of the electoral process. This resulted in late delivery of materials, polls with too many voters, lack of adequate training of officials and non-effective public education programme.

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At the same time we believe that at least in the last weeks of the election the Electoral Commission made every effort to act responsibly, impartially, and openly. We would attribute many of the Commission's problems at that stage to inexperience, a weakness in planning and administrative ability, and certain aspects of the electoral law and regulations which contributed to the difficulties which arose.

On the positive side, notwithstanding all of the problems described above, it was encouraging to find that on polling day, with few exceptions millions of enthusiastic people cast their votes in a general atmosphere of calm throughout the country. We were extremely impressed with the dedication and persistence of the voters, many of whom waited long hours in uncomfortable situations to exercise their right to vote. Much praise is also due to so many of the Presiding Officers, election officials at the polls, and at the counting centres for their commitment and tenacity, given all of the problems they had to overcome.

Special mention again must be made of the substantial contribution of candidates, their agents, party agents and national observers. The fact that so many people made an impressive transition from a violent and confrontational pre-election period to a vigilant partnership as poll observers was a hopeful indication of the effective application of multi-party democracy for the future.

This election was an important turning point in Kenya's history and for Kenya's future. Despite the fact that the whole electoral process cannot be given an unqualified rating as free and fair, the evolution of the process to polling day and the subsequent count was increasingly positive to a degree that we believe that the results in many instances directly reflect, however imperfectly, the expression of the will of the people. It constitutes a giant step on the road to multiparty democracy.

ANNEX IX

Circumstances Surrounding Justice Chesoni's Removal as Acting Justice of Appeal

In 1984 Justice Chesoni held the office of judge of the High Court of Kenya. His business involvements caused him severe financial embarrassment and bankruptcy proceedings were filed against him personally and winding up proceedings against the company through which he operated his business. An arrangement was reached under which he was allowed to retire with a pension and his principal creditor, a bank controlled by the Government, was directed not to press on with the bankruptcy proceedings.

In February 1990 Justice Chesoni was reappointed an acting Justice of Appeal presumably on the basis that his financial affairs had been brought to order. In fact that was not so. An application to commit him to prison in High Court Case 1234 of 1984 was listed for hearing on 18 May 1990. He was asked to resign but did not do so.

Thereafter a hearing was arranged before the Judicial Service Commission, which Justice Chesoni attended and at which he was legally represented. The Commission found that Justice Chesoni's conduct had been 'inconsistent with the position, dignity and judicial integrity of a Justice of these Honourable Courts'. This recommendation was forwarded to the President who duly signed an instrument revoking his appointment.

The Commonwealth Observer Group has in its files copies of the following documents substantiating the account which were made available to the Chairman, who obtained permission to use them:

- (1) Letter dated 13 December 1984 from the Attorney-General to Justice Chesoni
- (2) Letter dated 7 May 1990 from the Chief Justice to Justice Chesoni
- (3) Gazette Notice revoking the appointment of Justice Chesoni as a Justice of Appeal
- (4) Letter dated 15 May 1990 from the Chief Justice to Justice Chesoni
- (5) Letter dated 30 May 1990 from Justice Chesoni to the Chief Justice.

ANNEX X

Organisation of the Electoral Commission

The Commission is empowered to appoint a Director of Elections, a Deputy Director of Elections and other staff necessary to assist it in the discharge of its functions. These officers undertake their duties under the direction of the Commission.

District (Supplies) Co-ordinators are appointed by the Commission to deal with the practical operational aspects of the elections and to communicate with the Commission regarding transport and supplies. The District Co-ordinators receive reports from Returning Officers on their transport and supplies needs, and generally play an important role in ensuring that adequate supplies and transportation are provided to constituencies for polling day.

Returning Officers are appointed by the Electoral Commission for the purpose of conducting elections within constituencies. Theirs is the broad responsibility of organising and conducting free and fair elections in the constituency to which each is appointed. Returning Officers are required to be of impeccable character so as to portray the integrity and impartiality of the Electoral Commission (see Training Manual for Election Officials).

The Returning Officer for a constituency appoints, in consultation with the Electoral Commission, the Presiding Officers and Deputy Presiding Officers for that constituency. He/she also appoints polling clerks and counting assistants and is primarily responsible for the proper training of all of these officials. The other critical functions of a Returning Officer include conducting the nomination proceedings, selecting polling stations and arranging their layout, providing adequate equipment and supplies (including ballot papers and boxes for polling stations) and ensuring the delivery of quality election services at the polls and at the counting centres.

The Presiding Officer is responsible for the proper management of the polling station on polling day. The duties of the Presiding Officer include ensuring the proper care of equipment and supplies at polling stations, and the security, peace and good order of the polling station and its environs. It is the duty of the Presiding Officer to observe and enforce the election procedures governing the polling stations proceedings. Presiding Officers should be impartial and be able to display good human relations in enforcing the elections rules (see Training Manual). Each Presiding Officer is assisted by a Deputy Presiding Officer and six Poll Clerks.

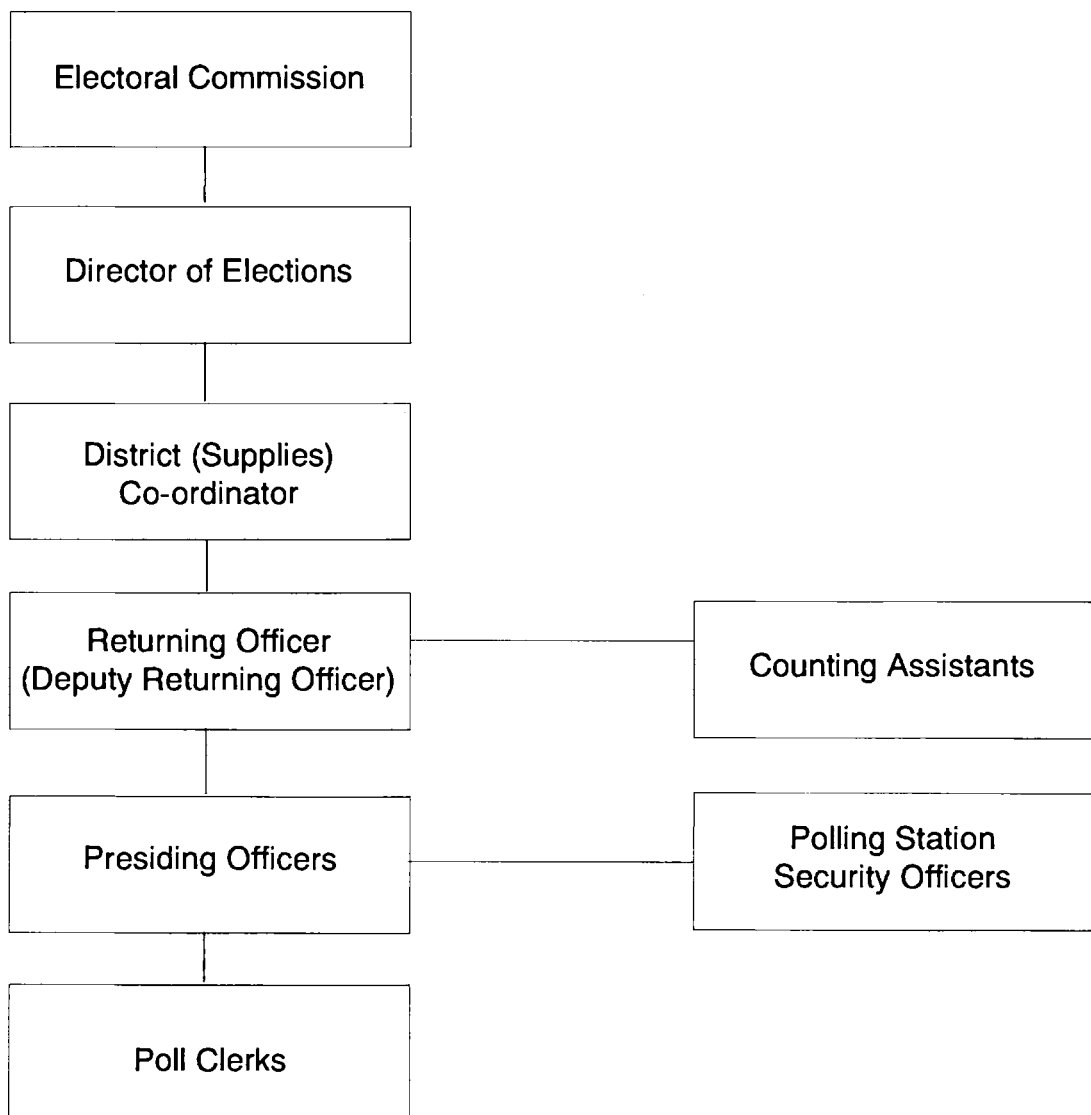
Since three elections were being held simultaneously, each of the six clerks was assigned a specific task on polling day itself. Clerk No. 1 checked fingers for voting ink, inspected the national identity card and the voter's card, and stamped the voter's card with the official stamp. Clerk No. 2 checked the elector's name and number in the register. Clerk No. 3 stamped the back of the Presidential ballot paper with the official stamp, stamped the face of the ballot paper counterfoil with an official stamp provided for that purpose, entered on the ballot paper counterfoil the electoral number of the elector and issued the Presidential ballot paper to the elector. Clerk No. 4 dipped the elector's left little finger in the indelible voters' ink, embossed the voter's national identity card and directed the voter to the polling booth. Clerk No. 5 witnessed the voter depositing the Presidential ballot paper into the Presidential ballot box, stamped the back of the Parliamentary ballot paper with the official stamp, and then the face of the ballot paper counterfoil, entered on the ballot paper counterfoil the electoral number of the elector, issued the Parliamentary ballot paper

to the elector and directed the elector to the polling booth. Clerk No. 6 observed the voter putting the Parliamentary ballot paper into the Parliamentary ballot box, stamped the face of the Civic election ballot paper with the official stamp, stamped the face of the ballot paper counterfoil, entered the electoral number of the elector on the ballot paper counterfoil, issued the Civic election ballot paper to the elector and directed him/her to the polling booth and witnessed the voter placing the Civic election ballot paper into the Civic election ballot box.

Counting Assistants are assigned duties to assist the Returning Officer with the counting of the ballots at the counting centre within the constituency.

Polling Station Security Officers operate under the general direction of the Presiding Officer in ensuring that peace and good order is kept within the precincts of the polling station. They are drawn from the Kenyan security forces.

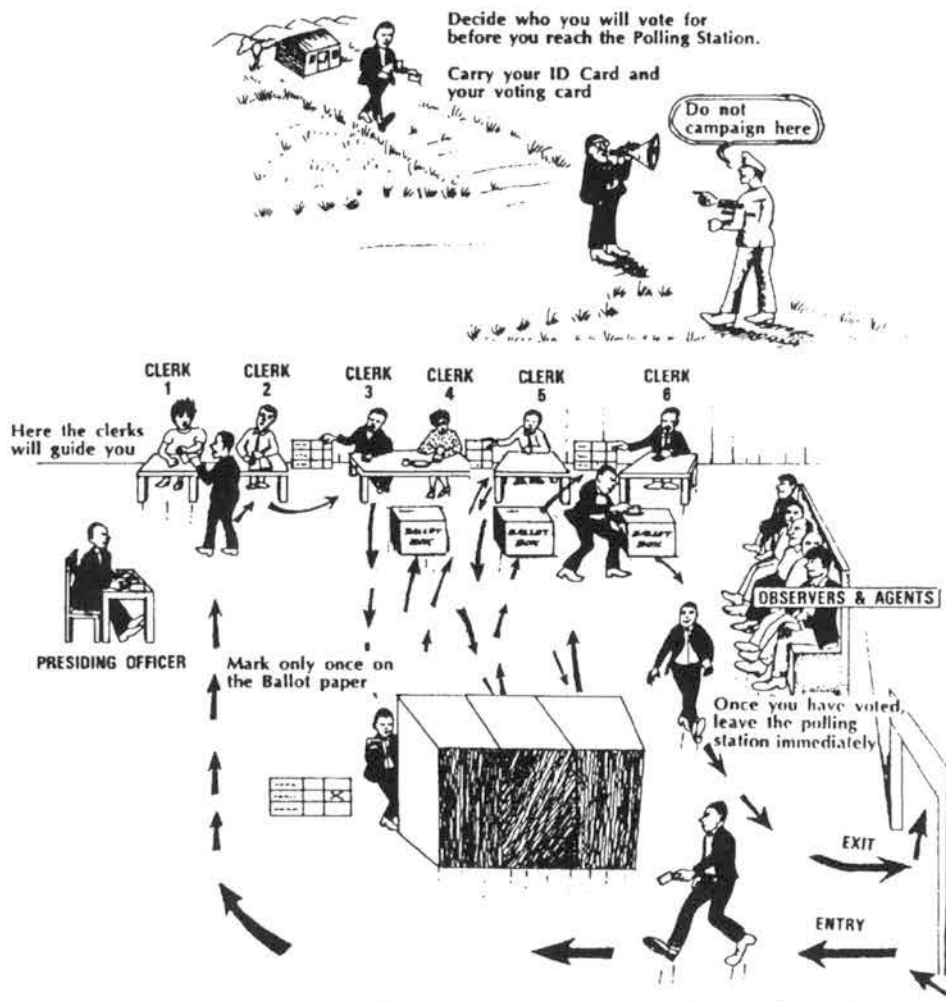
Electoral Administrative Framework



ANNEX XI

Poster on How to Vote

HOW TO VOTE ON 29th December 1992



Electoral Commission of Kenya

Anniversary Towers 6th Floor
P.O. Box 45371
Nairobi

ANNEX XII

Statement on Violence and Media Access



Kenya Elections

Commonwealth Observer Group

News Release

GROUP VOICES CONCERN ABOUT VIOLENCE AND MEDIA ACCESS

The Commonwealth Observer Group has expressed strong concern at the reports it has been receiving of numerous cases of violence and "land-clashes" which have resulted in the death of hundreds of people, the destruction of houses and other property with the result that thousands have had to flee their homes and are now refugees in their own country.

Speaking today on behalf of the Group, the Chairman Mr Justice Telford Georges said: "We appeal to all Kenyans, particularly leaders and influential party officials, to call on their supporters to do everything possible to reduce this violence which is marring this historic election. We also urge the law enforcement authorities to take more effective action to put an end to this situation."

Access to the Media

The Group has also received complaints from the opposition parties about the denial of access to the media. The difficulties which opposition parties are facing in getting access to the publicly-owned media have been brought to the attention of the Group. Complaints have been made by independent groups, which have been monitoring election coverage by the electronic media in particular, that there has been a systematic imbalance in the coverage of the election campaign.

Mr Georges said: "We would wish to see greater exposure given in the public media to the activities of the opposition parties. The situation has improved somewhat but there is still a noticeable imbalance in the reporting of the election particularly by radio and television. The result of this imbalance is that ordinary voters are being denied the opportunity to be informed about the programmes and policies of all political parties. This is a serious matter in a multi-party election where voters expect to be given enough information about the contending parties to enable them to choose their leaders. We urge the Government to take immediate steps to allow all parties equitable access to radio and television."

Before the full Group arrived on Wednesday (16 December), a statement was issued by its advance team which warned that irregularities in the nomination process had "severely compromised" the election.

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During the past few days, the Observers have been getting first-hand information from political leaders, candidates and witnesses about what went wrong on nomination day. In several meetings with Justice Zachaeus Chesoni, Chairman of the Electoral Commission, the Group has discussed the allegations which have been made and sought explanations. He has told them that 72 complaints at parliamentary and civic level came before the Commission. Of these, nine have been allowed and six are going to the High Court. Twenty-four are being investigated by the police, and in another 13 cases, the Commission has upheld the decisions of returning officers. The other ten cases were found to be complaints internal to political parties. The Group was informed that further action would have been initiated by election petitions.

During the weekend the Commonwealth Group divided into 17 teams and left Nairobi for the eight regions where they will be stationed until after polling day. The Chairman is remaining in the Nairobi area. The group has now completed most of its meetings with government and election officials, and with representatives of political parties and monitoring organisations.

20 December 1992

ANNEX XIII

The General Voting Procedure

Extract from the Training Manual for Election Officers issued by the Electoral Commission of Kenya, November 1992:

The General Voting Procedure

- (i) Before the delivery of a ballot paper to an elector, the Presiding Officer must ensure that the following sequence of activities is strictly adhered to:
 - (a) **Stamping of the ballot paper** with the official mark of the electoral commission.
 - (b) **Calling out the number and name** of the elector. This information is contained in the voter's card, the voter's national identity card and the copy register of electors.
 - (c) **Marking the counterfoil** of the ballot paper with the electoral number of elector.
 - (d) **Marking on voters register** against the electoral number of the elector to denote that a ballot paper has been delivered but without showing any particulars of the paper.
 - (e) **Stamping of elector's card** to denote that a ballot paper has been delivered to the elector.

- (ii) Upon receiving a ballot paper, an elector is required to do the following:
 - (a) Submit a particular finger for immersion in indelible ink.
 - (b) Submit his/her national identity card to be impressed with the seal of the Electoral Commission.
 - (c) Proceed to the polling booth and secretly place an 'X' mark on the appropriate column of the ballot paper, indicating his/her choice of candidate.
 - (d) Fold up the ballot paper to conceal his/her vote.
 - (e) Put the ballot paper into the ballot box in the presence of the Presiding Officer.

- (iii) Since we shall have three elections i.e. presidential, parliamentary and civic, the elector will be required to receive relevant ballot papers and perform activities (ii)(c) to (e) three times.

- (iv) After thus casting his/her vote, the elector will be required to quietly leave the polling station so as to give room to other electors who will be eager to exercise their democratic right to vote.

- (v) Incapacitated voters must be assisted by the Presiding Officer as laid down in Regulation 31.

Votes marked by Presiding Officer

These are votes marked by the Presiding Officer himself with the assent of the elector in the process of assisting the following persons:

- (a) a blind voter, or voter incapacitated by any other physical cause.
- (b) an elector who declares orally that he is unable to read or otherwise requests the assistance of the Presiding Officer.

Such marking will be witnessed by one representative of each candidate. The Presiding Officer shall ensure that a record is made in the register of electors against the name of the elector who is so assisted. The reason for the assistance must be indicated.

Spoilt ballot papers

If an elector inadvertently spoils a ballot paper, such that it cannot be conveniently used as a ballot paper, it is the duty of the Presiding Officer to issue to the elector a replacement of the ballot paper.

The spoilt ballot paper will be immediately cancelled and the counterfoil thereof marked accordingly.

Evidence of identity

All electors shall be identified by both the national identification card and the voter's card.

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