

REPORT ON THE  
1997  
GENERAL ELECTIONS  
IN KENYA  
29-30 December

Institute for Education in Democracy  
Catholic Justice and Peace Commission  
National Council of Churches of Kenya

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## List of Abbreviations and Acronyms

4C s	Citizens' Coalition for Constitutional Change
CJPC	Catholic Justice and Peace Commission
DANIDA	Danish International Development Agency
DAP	Democratic Assistance Party
DC	District Commissioner
DCPD	Democratic Congress Party of Kenya
DDDG	Democratic Development Donor Group
DEMO	Democratic Movement
DFID	Department for International Development (Great Britain)
DC	District Commissioner
DO	District Officer
DP	Democratic Party of Kenya
ECK	Electoral Commission of Kenya
EIP	Economic Independence Party
ERIS	Electoral Reform International Services
IFWL	International Federation of Women Lawyers
FORD-A	Forum for the Restoration of Democracy-Asili
FORD-K	Forum for the Restoration of Democracy-Kenya
FORD-P	Forum for the Restoration of Democracy for the People
FPK	Federal Party of Kenya
GAP	Green African Party
GEMA	Gikuyu , Embu, Meru Association
IED	Institute for Education in Democracy

IPG	Inter-Parliamentary Group
IPK	Islamic Party of Kenya
I PPG	Inter-Parties Parliamentary Group
IPU	Inter-Parliamentary Union
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KAU	Kenya African Union
KBC	Kenya Broadcasting Corporation
KENDA	Kenya National Democratic Alliance
KHRC	Kenya Human Rights Commission
KNC	Kenya National Congress
KNPDP	Kenya Nationalist People's Democratic Party
KPPP	Kenya Party of Proletariat and Peasants Party
KPU	Kenya People's Union
KSC	Kenya Social Congress
KTN	Kenya Television Network
Legco	Legislative Council
LPK	Liberal Party of Kenya
NCCK	National Council of Churches of Kenya
NCEC	National Convention Executive Council
NCPC	National Convention Planning Committee
NCWK	National Council of Women of Kenya
NDI	National Democratic Institute for International Affairs
NDP	National Development Party of Kenya
NGOs	Non-governmental Organization

NPDP	New People's Democratic Party
NTP	National Treaty Party
PICK	Party of Independent Candidates of Kenya
RNE	Royal Netherlands Embassy
RPKU	Reform of Political and Kenya Union
RRP	Republican Reformed Party
SDP	Social Democratic Party
SIDA	Swedish International Development Agency
SPK	Shirikisho Party of Kenya
UPF	United Patriotic Front
UMMA	Umma Patriotic Party of Kenya
UPPK	United People's Party of Kenya

**INSTITUTE FOR EDUCATION IN DEMOCRACY  
CATHOLIC JUSTICE AND PEACE COMMISSION  
NATIONAL COUNCIL OF CHURCHES OF KENYA**

# FOREWORD

In a report of this nature, there are two main concerns. The first is the audience to which it is addressed, the second the purpose of the report.

In the most general sense, our audience is, of course, the Kenyan people. However, to address a report of this kind at large and in a language that is not indigenous creates obvious problems of methodology and communication. Nevertheless, this report deals with issues that are clearly of concern to all Kenyans. Therefore, we have tried to make it as accessible as possible without sacrificing either breadth or depth.

At a more restricted level, the institutions and organisations of civil society require a report of this nature as a key reference tool. This sector of Kenya's national society played a key role in monitoring the 1997 general elections and has a keen interest in assessing the process and outcome of the elections. However, civil society is a vast and diverse component of our nation. In its organised form, it includes trade unions, *matatu* associations, peasant, professional, religious, and student organisations, academia, and youth and women's groups. The challenge was to find a language, style, and structure that would enable our report to be read with ease by both an engineer and a moderately educated councillor.

Other potential consumers of this report include public officials, members of parliament, representatives in local authorities, the donor community, the Electoral Commission of Kenya (ECK), and the elusive "general reader. " To cater for such a disparate audience calls for the deftness of a juggler, a task we have dared to try to accomplish. Here is our fruit. It is the product of many hands and many weeks of hard work. As we send it into the world, we can only hope that it will be adequate to its foremost goals: to inform and educate. Its other main goal is to provide a reliable source of data for researchers and those wishing to crosscheck data, events, and trends. We hope that it performs this function as well.

One issue that immediately arises is whether the length of this report is justified. We could have prepared a short report of, say, 20 pages. This would have had the merit of brevity, but we believe that the current phase of the democratisation process in Kenya demands a more detailed documentation of both the electoral process and the environment in which it takes place. The other point to remember

## Report on the 1997 General Elections

is the magnitude of the project of which this report is the culmination. In sheer numbers and geographical coverage, the election observation project - a joint effort by three major organisations, the Institute for Education in Democracy, the Catholic Justice and Peace Commission, and the National Council of Churches of Kenya - was like nothing that has gone before. Its scale was, indeed, massive, and the amount of information that came out of it simply could not be fitted into a text of more modest proportions.

Finally, there is also the issue of context. We believe that an electoral process cannot be properly understood without an analysis of the factors which shape it and the trends which drive it. Without overloading the report with background detail, we have, therefore, tried to put the 1997 general elections in their historical and political context. Our aim was not to write a study of Kenyan political history but to help our readers to more fully understand the 1997 elections. This report therefore, examines the electoral environment in its totality, including the theoretical foundations and perspectives.

It is our view that an uncritical chronology of events is hardly useful. Thus, we report both the failings and successes of the 1997 elections, analyse the causes of both, and are not afraid to make judgements where appropriate. The report therefore, is a mixture of disappointment and satisfaction. However, the vision is larger. There is, above all, the hope of a better tomorrow where the sun of freedom shines without setting.

Some important questions arise from a reading of the report, answers to which we might not have been able to give. Can democracy, or anything like it, survive in a time of complexities so baffling that the people and their elected representatives can hardly understand the work of government? Is the holding of free and fair elections a sure antidote to political cataclysms? These are questions that you, the readers, will have to reflect on for yourselves. Our own prognosis is that Kenya is poised to enjoy substantial gains from having made the electoral environment more genuinely competitive and more consistent with the fundamental rights and freedoms of the individual.

This report would not have seen the light of day if not for the committed collaboration of a number of people. First and foremost, we wish to record our appreciation for the great efforts put in by the IED team when preparing the report from the raw data. The team consisted of Marren Akatsa-Bukachi, Cleophas Torori, Alice Mumbuchi, Ang'ila Aywa, and Christopher Mulei. They worked out the basic structure of the report and developed the fourteen chapters with the care and patience of sculptors.

## Foreword

At the early stages, it fell to Okech-Owiti, the contents editor, to carry out the difficult task of moulding the clay into an accurate likeness. It was not an easy job to hammer out a uniform work from the various approaches of the different authors. As for the polishing and finishing of the final product, we left the needful to the experts at Arcadia Communications ‘ who have established themselves in technical editing, especially in the NGO sector, as dependable weavers of words. To them, we extend our gratitude for having purged the report of solecisms and for making it as reader-friendly as possible.

We would also like to take this opportunity to sincerely thank our colleagues at the National Council of Churches of Kenya and the Catholic Justice and Peace Commission for timely submission of materials and incisive critical input at various stages of producing the report. Here, we are referring to the NCKK team comprising Samuel Kabue, Martha Mbugguss, Moses Smith, Susie Ibutu, Grace Ndugu, and Gideon Ochanda, and the CJPC team of Anthony Njui, CJPC’s National Executive Secretary, his deputy Peter Weke, Fr Peter Gichure, and Fr Michael Charo Ruwa, Secretary-General of the Kenya Episcopal Conference. All of these committed colleagues made invaluable contributions at all stages of the preparation of this report.

The collective inputs of three organisations fleshed out the main body of the report, and the emerging product was subjected to rigorous revisions to safeguard its quality, authority, and integrity. We have done our best to measure up to the expectations of our multifaceted audience, and we sincerely hope we have succeeded.

There is no such thing as an end to an election. Now is the time to begin preparing for another lap. This we have already begun.

See you in 2002!

**Grace Githu IED,**

**Archbishop Ndingi mwana a’Nzeki,CJPC,**

**Mutava Musyimi NCKK**



## PREFACE

Kenya has just gone through an important transition in the tortuous march towards meaningful democracy. The 1997 electoral exercise vindicated the ancient Chinese saying that the journey of a thousand miles begins with a single step. Kenya has in the past taken a number of steps in giving its people access to the ballot. Indeed, a lot of water has flowed under the bridge since Africans first exercised their right to vote in 1957.

The electoral process has undergone some transmutation, especially from a colonial framework to a post-independence one. However, there has not been a complete metamorphosis. A residue of the colonial system is still embedded in our country's electoral law. This is not surprising, considering that Kenya's legal regime was-and is still-patterned on English precepts and practices.

Two things stand out in reading this report. First, despite some attempts, we still do not have a fully functional electoral system. However, despite lacunae in the electoral legal regime, the electoral process in Kenya is premised on solid democratic principles. Even when there have been highly irregular elections, there has never been an overtly expressed intention to abandon the basic rules of free and democratic elections.

This report sets down for posterity an observation record of the 1997 general elections. It not only covers the more visible aspects of the electoral process the nomination of candidates, the campaigns, the polling, and the counting of votes - it also gives an account and evaluation of what happened in the runup to the elections.

The report is the end result of a joint initiative of three organisations: the Institute for Education in Democracy (IED), the Catholic Justice and Peace Commission (CJPC), and the National Council of Churches of Kenya (NCCCK). The background was a flurry of activity by the three organisations, first individually and later collectively, to create a framework for observing the 1997 'elections. Our concern was very simple and honest: to contribute to a free and fair election and to serve not only as a deterrent to any attempt to derail the electoral process but also as a source of assurance and confidence for the electorate.

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On the actual polling days, the impact of our presence was felt in all corners of the republic. It was a source of great satisfaction for us to see and hear about our diligent observers in virtually every polling station and every counting centre, donning their specially printed IED/CJPC/NCCK T-shirts and caps and assiduously and conscientiously undertaking their duties.

From this dedicated corps of local observers, we received vital informal from the field from nomination day right up to the last day of vote counting. As best as we could, backed up by a very committed technical team, we then analysed the massive data. This report is a product of that painstaking 'rewarding exercise. It is intended to serve both as a reliable guide to the 1997, electoral process and as an authoritative reference tool for further research and analysis. We cannot claim to have been perfect in carrying out -multifarious duties and responsibilities, a feat not possible in any human,undertaking. However, we can say that we did our best in difficult circumstances. It is our hope that we did not betray the trust placed in us,

There were accusations that our observers overstepped their mandate and we had a hidden agenda, to use the hackneyed Kenyan phrase, to campaign for the opposition. However, this pendulum had two sides, and we were also accused of being in cahoots with the ruling party. We plead not guilty to both allegations, Truly, we were-and continue to be-independent and impartial organisation committed to the ideals of democracy.

As the elections neared, we disseminated information on our activities in the print and electronic media. We also published our own newsletter, Tazama, which carried items on the electoral process, especially at the local level issues of this publication were produced. Soon after the completion of the polling, we issued an interim statement on the exercise. To a certain extent, this had the hallmarks of a Babel on account of the utter chaos and colossal, logistical disorganisation which characterised, the polling. However, we followed this with a final statement in which we were able to be more specific as to incidents and events. The statement attracted substantial publicity and varied responses.

Some of the responses were dismissive, even hostile. The source of mischief seemed to hinge on the part of the statement where we gave our verdict the election results reflected the "wishes of the Kenyan people."

Two things need to be said. First, the expression "free and fair" is not a scientific one. There is a value judgement in its application. It is also susceptible

to the fate of a cliché, whose meaning in the end assumes the character of a will-o'-the-wisp. The same fate befalls expressions like “reflection of the general will of the people” and, in our particular statement, “wishes of the people.” Second, the word “verdict” is really a misnomer. There is no way one can, in the space of a few pages, give a clear-cut summation or judgement of a complex electoral process.

Accordingly, there is always a need, in the type of report we are putting out now, to try to remove the cobwebs of doubt and misinformation by offering the necessary data and explanations fully and objectively. In this way, a fuller and clearer picture of the process can finally emerge. Thus, we now attempt a final assessment of the elections.

The integrity of the 1997 elections was greatly undermined by the weaknesses of the Electoral Commission of Kenya, whose deficient conduct and supervision of both the polling and the counting was palpable. At the other end of the spectrum, however, it was obvious that a clear outcome had been peacefully arrived at. A government was voted in, even if more Kenyans voted against it than for it.

This is the nature of a majoritarian parliamentary system, a situation which also obtained in 1992. As this is the system we have, we observers have no option but to accept the outcome of a victory arrived at in that way. Our exhortation to Kenyans to accept the results was an acknowledgment of reality, not an imposition of a political viewpoint. Our mandate was not to anoint any particular political regime. We only accepted the rules of the game, that is, the rules of political competition under a particular legal and political system. However, we are clearly interested in a more equitable electoral system. That is why we have recommended in this report a comprehensive review of the present “first-past-the-post” system.

We must, of course, show humility in relation to our work and its contribution to the democratisation process. We were not the only observers. There were other organisations that were also engaged in the endeavour, albeit on a smaller scale. But when all is said and done, the real salute goes to the people of Kenya, who formed the biggest election observation group ever throughout the country. Indeed, we depended on them to carry out our activities.

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We also take this opportunity to sincerely thank our campaign monitors, watchers, and count certifiers for a job well done. In addition, the efforts of these field staff would have come to little without the work of the secretariats of the three organisations, which coordinated the administrative, training and logistical aspects of the project. Special mention needs to be made of the following for their invaluable contributions: Grace Githu, IED's Exel Director, Anthony Njui, CJPC's National Organising Secretary, and Samuel Kabue, Director of NCKK's Advocacy Programme.

At the helm of the project was the Strategic Management Board, the supreme policy making organ. The board's job involved an immense sacrifice of valuable executive time. Their selfless service will have its reward in the furtherance of democracy in our beloved country.

To all our collaborators outside the joint election observation effort, we also wish to put on record our immense appreciation. Their contributions greatly enhanced the quality and extent of our work. In particular, we gratefully acknowledge the assistance of the Kenya Human Rights Commission (KHRC) and the Media Institute, especially for data relating to media monitoring. We also thank the National Democratic Institute for International Affairs (NDI) which provided essential services at various stages of the training programme

Finally, we wish to register our sincerest gratitude for the financial assistance received from our friends in democracy the Royal Netherlands Embassy, British Department for International Development (DFID), the Swedish International Development Agency (Sida), and the Danish International Development Agency (DANIDA). Their assistance was backed by moral support and a belief in our common democratic ideals. With their help, the IWD/CJPC/NCKK 1997 election monitoring project became the most sophisticated and comprehensive domestic observation programme ever mounted in Africa.

As such, it provides an exciting and innovative model for other countries

It is our hope that the tiny seed of democracy will take root and grow into a baobab.

IED

CJPC

NCKK

# NARRATIVE REPORT

# <sup>z</sup> BACKGROUND

1

# BACKGROUND



## CHAPTER 1

# INTRODUCTION

This report is an analysis of the general elections held in Kenya on December 29 and 30, 1997. These were the second multiparty elections in Kenya since the restoration of multipartyism in 1991. This report aims to provide an analytic and evaluative overview of the 1997 elections in the context of Kenya's political history and ongoing democratisation process. It is intended to be informative not only for Kenyans but also for an international audience interested in the way the electoral system is developing in Kenya.

The report examines the major aspects of the electoral process including:

- ◆ delineation of new constituencies
- ◆ voter registration
- ◆ nomination of candidates
- ◆ campaigns
- ◆ polling
- ◆ counting of votes
- ◆ announcement of results.

The information presented in this report is based on an analysis of the entire electoral process. It draws on reports submitted by election observers deployed in all 210 electoral constituencies by the three participating organisations. The cooperation of the three partners was unprecedented in this country and resulted in the most comprehensive election monitoring project ever carried out in Kenya.

The three organisations all have extensive experience of civic education, advocacy, and policy analysis in addition to election monitoring itself. Thus, they brought to the analysis of the 1997 elections a holistic approach which recognised that the

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events of the campaign and the polling had to be evaluated in the context of a much larger process. This report, therefore, does not just analyse the electoral process but also examines the political, legal, administrative, and media environments in which the elections took place. These environments not only profoundly affected the electoral process but were themselves the results of an evolving historical process. Therefore, this report also examines the historical background of the 1997 elections with particular emphasis on the development of the electoral system.

With regard specifically to elections, IED, CJPC, and NCKK have been examining various aspects of the electoral process as part of their ongoing activities. For example, IED conducted research on the electoral environment in Kenya in 1996 and undertook a survey of the voter registration exercise in 1997. CJPC trained the poll watchers and the constituency organisers who supervised them, and also conducted constitutional reform awareness seminars at community level. NCKK's advocacy programme has been implementing various election-related public awareness projects for some time. In 1996, NCKK monitored the creation of 22 new constituencies as well as the process of issuing second-generation identity cards. The joint election monitoring project benefited from the broad election-related experience of the three organisations.

The election monitoring project was a massive operation that reached every corner of the country. It involved the deployment of 840 nomination and campaign observers, 630 count certifiers, and a total of 28,126 poll watchers. They were able to witness the whole voting process including the opening of polling stations, the actual voting, the closing of polling stations, and the counting process. The reports from these observers have been carefully analysed, and the results are presented in this report.

In addition to monitoring the electoral process at the constituency level, the IED/ CJPC/NCKK monitoring group also considered various factors that affected the electoral process as a whole. The group's basic mandate was to judge whether the conditions of the entire electoral environment allowed the free expression of the will of voters. To arrive at a fair verdict and ensure that this verdict was credible the elections observation group had to be non-partisan and autonomous. None of the three organisations is connected to any political party or political movement and none supported or endorsed any party or candidate in these elections. In addition, all the personnel were non-partisan and were trained to avoid any appearance of partisanship. The Monitoring group's assessment of the election was guided by one paramount interest - commitment to free and fair elections and the development of the democratic process in Kenya.

## Introduction

It has now been widely accepted by election observers that in any election there is need for both domestic and international monitoring. In this spirit, the IED/ CJPC/NCKK group cooperated with a number of international observers, including the Democratic Development Donor Group (DDDG), Electoral Reform International Services (ERIS), and the National Democratic Institute for International Affairs (NDI). DDDG, a democracy watchdog group organised by a coalition of foreign embassies in Kenya, shared election-related information. ERIS, an independent election consultancy based in London, provided support in designing the overall observation project. NDI, a US-based non-profit Organisation working to strengthen and expand democracy throughout the world, provided training in logistics.

Material assistance was provided by a coalition of donors representing the Netherlands, Britain, Sweden, and Denmark. The IED/CJPC/NCKK monitoring project was a unique partnership between donors and local NGOs to promote domestic election monitoring.

A number of other local organisations were also involved in monitoring the elections. Their presence not only added value to the monitoring operation but also reinforced voter confidence. The main local organisations that mounted monitoring projects were the Federation of Kenya Women Lawyers (FIDA) and the National Council of Women of Kenya (NCWK), while the Kenya Human Rights Commission (KHRC) focused its efforts on tracking the media.

The IED/CJPC/NCKK monitoring project received full cooperation from the Electoral Commission of Kenya (ECK). Our observers were allowed to enter and move freely inside the polling stations and were able to examine all aspects of the electoral process. The ECK's election officials were generally cooperative and helpful.

After the official closing of the polls, the IED/CJCP/NCKK issued two statements on the election process - an interim statement on December 31, 1997, and a final statement on January 3, 1998. These two statements were issued in order to provide Kenyans with an early assessment of the elections pending the more detailed analysis contained in this report. The interim statement gave a preliminary assessment of the elections, while the final statement evaluated the entire process after the conclusion of the voting and counting exercises.

Some important lessons which we have been learning since 1992 were strongly confirmed by the 1997 general elections. One is the lack of voter awareness, especially among voters in rural areas. The widespread problems associated with

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illiteracy in these elections clearly showed that there is an urgent need for all concerned to institute massive civic education programmes. The Electoral Commission of Kenya (ECK) is now legally required to undertake voter education, and we will be looking forward to their contribution as well as those of other interested parties such as civil society organisations and Political parties.

A second lesson concerns the disturbing extent to which vices such as violence, rigging, bribery, and intimidation have eroded our society's moral fabric. For, Kenyans to enjoy the full benefits of democracy, we have to urgently tackle these vices. A related problem is the alarming degree to which unbridled competition has eaten into the body politic. This is a problem that needs to be addressed by all shades of the Political spectrum if the credibility of the electoral process is to be Protected.

Perhaps the most important lesson confirmed by the 1997 elections is that without far-reaching legal, administrative, and constitutional reforms the electoral playing field is unlikely to be truly level for all actors in the process. This Problem relates not only to parties and candidates but also to gender. Another lesson is that deep gender imbalances continue to restrict Political Participation in Kenya. We have an electoral playing field that does not facilitate women's Participation in politics, and this fundamental problem must be addressed before truly free and fair elections can be achieved. This should be done in the broad context of legal and constitutional reforms in order to provide for a gender-sensitive electoral environment both within the Political parties and nationally.

### **1.1 Structure of this Report**

This report is divided into three main sections. The first section contains an analysis of the elections, the second section presents detailed statistical information on the results, and the third section gathers together a number of documents relating to the IED/CJPC/NCK monitoring project and the conduct of elections.

The analysis of the elections is divided into four parts. Part One deals with issues of background and context, beginning with a description of the IED/CJPC/NCK election monitoring project. The focus is on the collaborating institutions and their roles in the project, the management structure of the project, and the roles played by other organisations. This is followed by a brief account of the legal and

administrative framework of elections in Kenya. The focus here is on the delineation of constituencies, the constitutional reform debate, and the role of the ECK. To provide a fuller context, an overview is also given of the historical development of the Kenyan electoral system.

Part Two deals with the electoral process itself - the registration of parties and voters, the nomination of candidates, the campaigns, and the various activities of the polling process, culminating in the counting of votes and the announcement of results.

Part Three focuses on two issues of special concern: the role of the media and the question of gender. First, the importance of equal media access and fair coverage is discussed, and then the extent to which these goals were achieved in the 1997 elections is assessed. The question of gender is discussed in terms of three main issues: the participation and performance of women in the nominations, the impact of gender issues in the campaign, and the performance of women candidates at the polls.

Part Four brings the main text of this report to a conclusion by presenting a critical evaluation of the 1997 elections based on all the information at our disposal. This section also discusses in detail the lessons to be drawn from these elections and makes a number of recommendations for improvements in the electoral process and environment.

The second section of this report presents various statistics relating to the results of the presidential and parliamentary elections. This section is intended to provide the reader with a convenient and authoritative point of reference for further study of the 1997 elections. For the same purpose, a third section gathers together a number of documents relating to the overall context in which the elections were conducted.

## CHAPTER 2

# THE ELECTION MONITORING PROJECT

### 2.1 The IED/CJPC/NCK Joint Election Monitoring Group

The 1997 general elections, Kenya's second multiparty general elections since the repeal of Section 2(A) of the constitution in 1991, were a litmus test of the country's commitment to the ongoing democratisation process. These elections also provided a critical opportunity for voters to choose between change or continuity.

In addition, the 1997 general elections came at a time when the country was at the dawn of a new era. After years of pressure from the opposition and civil society to bring the constitution and specific laws into line with multipartyism, a number of important reforms were enacted just before the elections to create a more level electoral playing field. In addition, provision was made for a comprehensive constitutional review process to begin after the elections. Though questions were raised as to whether these reforms would have time to take root before the elections and whether the proposed Constitutional Review Commission would be independent, there was a broad consensus going into the elections that major progress had been made.

These factors made the 1997 elections special and made it important to monitor the whole array of election-related events and processes in addition to the elections themselves. In order to meet this challenge, IED, CJPC, and NCK decided to join together to carry out a comprehensive election monitoring operation under the motto **Together for Peaceful Elections**. The three organisations have extensive track records of supporting democratisation and public awareness initiatives in Kenya. A DFID-funded study by ERIS concluded that between them they offered formidable analytical and methodological sophistication, competent staff, wellorganised structures, and comprehensive nationwide networks.

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The ensuing collaboration was based on a blend of IED's technical expertise election observation and interpretation of data, the Catholic church's grassroots strength, and NCKK's network of regional offices and district coordinating committees. The three organisations Played complementary roles so as to achieve a balanced, comprehensive, and technically effective monitoring of the elections The specific tasks undertaken by each Organisation are discussed in the following organisational profiles.

The aim of the joint -election monitoring project was twofold. First, the of our observers inside polling stations and counting centres was intended to deterintimidation, fraud, and other malpractices. Second, the infomation collected the observers enabled the nationwide electoral process to be assessed objectively and in detail. Therefore, the monitoring project was intended to contribute integrity of the 1997 general elections in particular and to promote democratic development in Kenya in general.

To conduct a thorough observation of the election process and comprehensive report, the project put in place a rigorous monitoring system. The roles of the media, the political parties, the provincial administration security forces, as well as the ECK, were subjected to close and systematic scrutiny. Particular attention was paid to the accuracy of the voter registration list and audits of the register were done as part of the monitoring routine. In addition, the electoral laws and campaign rules were evaluated in greater detail than ever before.

The deployment of observers to monitor the nominations, campaigns, voting and counting was the most crucial aspect of the monitoring work. The observers had to watch and evaluate a host of activities, including the opening and closing of polling stations, the performance of ECK officials and party agents, intergrity of the voting procedures (privacy of voting booths, security of ballot boxes, identification of voters, processing of illiterate or physically challenged management of unregistered voters), and the accuracy, efficiency, of the counting and announcement processes. Greater precision the documentation of anomalies and violations through the deployment of more refined and elaborate checklists provided to the observers. Observers had at their disposal instruments that were more wide-ranging and discriminat than ever before.

## 2.2 The Collaborating Institutions

### 2.2.1 The Institute for Education in Democracy (IED)

IED was established in 1993, as a public non-profit Organisation committed to the promotion of democracy in Kenya. It is non-partisan and is not affiliated to any political party, pressure group, or religious body. IED's vision is of an informed and democratic society where all citizens participate effectively in the social, political, and economic affairs of their country and live in peace and prosperity through justice. To achieve this vision, IED strives to:

- ◆ promote and influence the evolution of a democratic ethic and culture in the management of national affairs
- ◆ provide information and skills for positive political behaviour
- ◆ promote positive attitudes about the electorate's ability to participate in developing the policies and forms of government it considers desirable
- ◆ support the evolution and growth of an institutional framework that will motivate people to participate in the election of their political leaders and the formulation of public policy.

Since its inception in 1993, IED has conducted numerous successful activities in the areas of civic education, voter education, and election monitoring. IED has also developed extensive voter education materials targeted at a wide cross-section of the electorate. Two posters designed and produced by IED, one depicting the polling process and the other showing how to mark the ballot papers correctly, were widely used by other civil society organisations and political parties for voter education in the run-up to the 1997 general elections. IED's video *Utaratibu wa Kupiga Kura* (Kiswahili for *Polling Procedure*) was aired on the eve of the polls by both the Kenya Broadcasting Corporation (KBC) and the Kenya Television Network (KTN).

To facilitate the 1997 election monitoring process, IED prepared profiles of all 210 constituencies in Kenya. These were distributed to the diplomatic community, international observers, and IED's partners in the monitoring project. In the project itself, IED was responsible for the design and production of all data collection tools, training and observation materials, and the design and procurement of T-shirts and caps to identify observers.

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As the technical wing of the joint observation group, IED also conducted training of trainers from the other two partner organisations. These trainers became responsible for training the various observers. IED also design produced the checklists that were used by the observers to vet the nominations, campaign events, polling, and counting. Finally, IED produced the monitoring manual that was used by the 28,126 poll watchers and the guide that was used as the main training tool for all cadres of observers.

In terms of the assessment of the elections, IED was given responsibility for quantitative analysis of the individual polling reports, for collating and analysing other information on the election and for researching the background material. IED also took the lead in writing the election monitoring report.

IED's field management team consisted of 19 regional officers who worked with their counterparts from the other two organisations. The primary functions of the IED field managers was to provide technical advice on the electoral process and electoral law in order to guide observers on what to observe and to ensure that polling reports were returned to IED as quickly as possible.

### **2.2.2 Catholic Justice and Peace Commission (CJPC)**

The Catholic Justice and Peace Commission was established in 1988 as an arm of the Kenya Episcopal Conference (KEC). CJPC's mandate is to examine study all issues connected with justice and peace in Kenya. The objectives of the commission are to:

- develop programmes of education in the principles and practices of justice
- guide and coordinate pastoral action to make justice known through the social teachings of the church
- work for the eradication of injustice in concrete situations
- provide information, advice, and encouragement to all those involved in promotion of justice.

These objectives have been articulated into six programmes, as identified in the commission's strategic plan. The programmes are the annual Lenten campaign, civic education on constitutional reforms, resettlement of ethnic clash civic education, peace and reconciliation, and elections monitoring. The approach to civic and voter education follows the respectful intervention model, where participants are drawn from the grassroots, trained as trainers, and send back for multiplier effects.

To realise these objectives, the commission is coordinated at national level by an executive committee. This committee is composed of a National Secretary, a theological promoter, a communications promoter, a women's representative, a young people's representative, a Diocesan Coordinators' representative, three KEC representatives, and representatives of lay people.

Of the 22 Catholic dioceses in Kenya, 20 have a Justice and Peace Office with a diocesan team drawn from the area covered by the diocese and a network extending down to the basic Christian community level. Operations at diocesan level involve working with the 630 Catholic parishes and approximately 7,000 prayer houses which are under parishes. The total Catholic population in Kenya is close to nine million.

CJPC's roles in the joint election monitoring project included:

- ◆ development of logistics and deployment of the 28,126 poll observers
- ◆ recruitment and training of the poll observers
- ◆ distribution of materials to observers
- ◆ training of the constituency organisers to whom the poll observers reported
- ◆ deployment of election observers on election day
- ◆ recruitment, training, and deployment of 420 count certifiers
- ◆ collection of completed checklists and onward transmission to IED.

### **2.2.3 National Council of Churches of Kenya (NCCCK)**

The National Council of Churches of Kenya (NCCCK) is one of the largest umbrella church organisations in Kenya. Formed in 1913 as the Alliance of Protestant Missions, it brings together 30 Protestant denominations with the aim of facilitating their common Christian mission. The focus of the NCCCK is ecumenism and human welfare.

For many years, NCCCK has been involved in a myriad of Christian, community development, and advocacy programmes. It is one of the leading development organisations in Kenya. In a recent move to streamline operations in response to changes in the development sector, NCCCK is now shifting its role from provision to facilitation. To help implement this policy, NCCCK - under the "renewed council" - has recently devolved the national NCCCK offices to nine regions.

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The NCKK vision is to share and act together in the experience and extension of the Kingdom of God by witnessing to Jesus Christ. This is guided by the Holy Scripture, empowered by the Holy Spirit, and informed by tradition. The NCKK mission is to facilitate the united mission of the Christian Church in Kenya by proclaiming and demonstrating the holistic witness of the church through corporate activities and by enabling community programmes.

The NCKK has been deeply involved in the democratisation process in Kenya since well before the reintroduction of political pluralism in 1991. Prior to the repeal of Section 2(A), NCKK consistently advocated democracy, social justice and the restoration of multipartyism. Between 1992 and 1997, NCKK has been at centre stage in the constitutional review debate and in civic life in Kenya.

The Public Affairs Desk in the Advocacy Unit, a principal department of the NCKK, has continued to lobby on matters of human rights, economic justice and civic education. This is in line with its basic objective to promote an interpretation and application of the gospel of Jesus Christ in a way that gives meaning to the daily lives of people, thus creating a united, just, peaceful, and sustainable society.

In 1996, NCKK embarked on a major voter education programme until the beginning of the joint monitoring project. At this point, NCKK had just concluded a national circuit of voter education training from the national level down to the congregational.

NCKK's roles in the 1997 election monitoring project were to:

- ◆ select, recruit, and train 840 constituency campaign observers
- ◆ establish systems for the management of constituency campaign monitoring
- ◆ coordinate the observation of nominations
- ◆ collate and analyse campaign report forms
- ◆ establish a public information office to publicise the monitoring project through the media, produce a newsletter, *Tazama*, based on field reports during the campaign, and organise press conferences to release the statements and updates.

## **2.3 Project Management**

To ensure the smooth operation of the 1997 joint election monitoring project, two management organs were established: the Strategic Management Board (SMB) and the Project Steering Committee (PSC).

The SMB consisted of senior board members from the three organisations. It met monthly and fulfilled the strategic role of monitoring the progress of implementation and addressing any bottlenecks created by lack of communication or misunderstandings. Its representatives enjoyed full authority delegated from their organisation's boards to make decisions on these matters.

The PSC was responsible for day-to-day implementation issues and consisted of senior operations staff from each of the three organisations. It reported to the SMB and enabled the SMB to address any bottlenecks. Occasionally, staff from the NDI and ERIS attended PSC meetings and provided useful ideas and advice based on their international experience in election monitoring.

### ***2.3.1 External Consultancy***

Electoral Reform International Services (ERIS) was the external consultant for the project. It is a UK-based, independent, non-profit NGO and a division of the Electoral Society of Great Britain and Ireland. Since its foundation in 1884, the society has worked for the development of democracy in Britain and abroad mainly by promoting, organising, and monitoring elections. In recognition of its work, the society was granted consultative status with the Economic and Social Council of the United Nations in 1983 on all matters relating to elections and balloting. As a result of increasing overseas requests for assistance, ERIS was established in 1990 as the consultancy division of the society.

ERIS's goal is to offer a comprehensive electoral advisory service for all democracies. In the last five years, ERIS has undertaken over 70 missions overseas. It has provided services in election monitoring, constitutional reform, assistance to electoral commissions, training of domestic election monitoring groups, political party training, parliamentary training and institutional development, local government training, voter education, and media training. In the IED/CJPC/NCK election monitoring project, ERIS provided technical assistance and backup throughout the implementation period. ERIS is also conducting an evaluation of the project to enable improvements to be made for the future.

## CHAPTER 3

# BACKGROUND TO THE 1997 GENERAL ELECTIONS

### 3.1 Patterns and Trends in Past Elections

The first general elections in Kenya to be based on universal adult suffrage were the independence elections of 1963. Although these elections were dominated by the two main nationalist parties, the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU), several smaller parties also participated. In 1964, KADU merged with KANU, creating a *de facto* one-party system.

Two years later, the one-party system was briefly challenged when Oginga Odinga, Kenya's first vice-president, and 26 other MPs resigned from KANU to form the Kenya People's Union (KPU). However, the resulting mass by-elections (known as the "Little General Elections") saw KPU win only seven seats in the House of Representatives and two in the Senate. Thus, although there was an opposition party in parliament again, it had too few members to have much impact. In any case, on the eve of the next general elections in 1969, KIPU was banned and Kenya returned to *de facto* one-partyism.

The 1969 general elections should have been held in 1968 but were postponed to consolidate certain constitutional changes, including the abolition of the Senate and the provincial governments. Besides transforming Kenya into a unitary state, these changes further restricted political competition by weakening the legislature and concentrating power in the executive. The trend to concentrate power in the executive intensified in the years that followed. In the absence of other political parties, the 1969, 1974, 1979, 1983, and 1988 general elections were at best only contests for power and influence within the ruling party.

The electoral environment was also restricted. The Electoral Commission was replaced by the Supervisor of Elections, an official in the Attorney-General's chambers whose responsibility was to conduct and supervise elections. The

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provincial administration took over the tasks of issuing licenses for campaign meetings and organising the logistics of voting.

There were nevertheless two notable improvements in the electoral environment beginning with the 1974 general elections. The secret ballot was introduced (voting had previously taken place in the presence of the presiding officer) and the voting age was reduced from 21 to 18. However, in the context of restricted political competition, these changes could not in themselves promote the expansion of democracy in Kenya.

Apart from the isolated voices of a small number of maverick MPs including J M Kariuki, Martin Shikuku, Jean-Marie Seroney, and Chelegat Mutai-who were popular enough to be re-elected despite the efforts of the party and the provincial administration-politics in Kenya in the 1970s increasingly revolved around the President, his family, and a small clique of insiders. Even the ruling party- as Shikuku and Seroney famously pointed out, ceased to function as a genuine mass movement or as a forum of policy development.

The 1979 general elections were the first to be held after the death of President Kenyatta. Like the one-party general elections of the Kenyatta era, the 1979 elections were essentially an internal contest within the ruling party. However, the focus was now on consolidating the power of Kenyatta's successor, Daniel arap Moi. Party nomination and clearance, procedures were used to promote the candidates of Moi loyalists, and in the elections the President openly campaigned for his rallies. The provincial administration did all it could to ensure that candidates endorsed by the President were elected.

After 1979, the government consolidated its hold on power and became increasingly intolerant. A crackdown on dissenting academics, writers, and other independent voices saw the frequent use of detention without trial and banning of publications. Undeterred by the increasing repression, however, Oginga Odinga and George Anyona applied in 1982 to register a new party, the Kenya Socialist African Alliance (KASA). In response, the government put Odinga under house arrest, detained Anyona, and hurriedly passed the Constitution of Kenya (Amendment) Act Number 7 of 1982 making KANU the sole legal party.

After this, the KANU government became increasingly repressive. Increased use was made of detentions, police brutality, and abuse of the courts to quell dissent. The 1983 general elections further consolidated the power of President Moi and KANU leaders loyal to him. By the time of the next elections in 1988, many people perceived to be antigovernment were either in jail or in exile, and only a

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few organisations notably the Law Society of Kenya (LSK) and some churches, provided independent voices.

The 1988 general elections were the most seriously flawed in Kenya's history. The main source of problems was the introduction of a queue-voting system at the KANU nomination stage. Though queue-voting was touted by KANU as an easy and transparent method of ascertaining the will of the people, it ignored the cardinal rule of secrecy and opened the door to all kinds of abuse. In particular, though the secret ballot was retained for the elections proper, any candidate who managed 70 per cent or more of the vote at the nomination stage was declared elected without having to face the voters as a whole. In the end, nearly 60 per cent of MPs went to parliament under this rule.

After the glaring flaws of the 1988 general elections, public dissatisfaction with the one-party system reached new heights. Serious cracks began to appear in Kenya's monolithic political structure, and resistance by various civil society institutions, religious organisations, and individual politicians steadily increased. The *Saba Saba* riots of July 1990 demonstrated the depth of public anger, and by 1991 the Forum for the Restoration of Democracy pressure group (FORD) had managed to unite all pro-reform forces. In addition, with the end of the Cold War, external pressure for change also grew, culminating in a complete freeze on foreign aid in September 1991. In December 1991, the government, under intense pressure from all sides, repealed Section 2(A) of the constitution. This paved the way for the registration of other political parties and the first multiparty general elections since 1964.

These elections were held in December 1992. Thanks in part to a divided opposition, President Moi and KANU retained power, but the opposition parties won a substantial number of seats in parliament. The 1992 elections were held in the atmosphere of a broadened political playing field. Though many laws and practices remained in force that gave KANU an undue advantage, these elections marked a turning point in Kenya's political history. This was aptly captured by the comprehensive report on the elections published by the National Elections Monitoring Unit (NEMU) shortly afterwards. As a result of the 1992 elections and the political maturity of the Kenyan people in accepting the results - Kenya joined the ranks of other democratising nations. Since then political life in this country has become more and more open.

What we have witnessed over the thirty-five years of Kenyan independence, therefore, is a regular pattern of conducting elections despite serious flaws in the electoral environment and process, especially during the single-party era. Though

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some of these flaws undermined basic electoral integrity, the fact that elections have been regularly held and state power peacefully determined is a significant achievement, especially in the African context. With the restoration of multipartyism in 1992 and the two general elections held since then, competitive politics are once again taking shape in this country, and we can be optimistic about continuing progress in the years to come.

## **3.2 Lessons Learnt**

### **3.2.1 The Culture of Authoritarianism**

One of the things our leaders inherited from the colonialists was the need for repression and exploitation as pillars of governance. It was not the business of the colonial regime to educate the new African politicians and administrators on the ethos of democratic governance. This would have contradicted the very nature of colonialism, which was based on repression and dictatorship rather than democracy.

When the new African leaders took over at independence, they adopted, virtually lock, stock, and barrel, the colonial structures, laws, and administrative practices and procedures that had made it possible for a tiny minority to govern a majority. Although the Kenyan independence constitution made some attempts at democracy, it was tinkered with over the following three decades and became only a shell of what it had been. As Kenyans went to elections in 1997, the constitutional order was a very different one from that of the independence constitution.

### **3.2.2 The Ethnic Factor**

During colonial rule, harmony between the various African communities was seen as a threat to white domination, and the colonialists used the "divide and rule" approach to check indigenous opposition. After more than 35 years of independence, not much has changed. Both our leaders and their followers continue to harp on the ethnic card. Although there were serious attempts by early nationalist leaders to forge a united nation, these efforts have since been swept under the carpet. The calls by present-day leaders for a united nation can be seen mainly as lip service. Some leaders have even made it part of their strategy to foment ethnic hatred and conflict in order to prove that multiparty democracy cannot work in Kenya.

Ethnicity is also the factor behind persistent declarations by ethnic-based leaders and their followers that "it is time for us to eat." Leaders and their followers seem

to be concerned only with how to get the tastiest pices of the national cake for themselves and their community or clan. This kind of thinking is retrogressive and makes issues and policies irrelevant.

### **3.2.3 Multipartyism and Democracy**

The last five years in Kenya have demonstrated that multiparty politics does not always bring democracy. Though multipartyism appears to open the political playing field to competition, there can be little democracy if the field is not level. Therefore, it is simplistic to equate a country's democracy with the number of political parties it has. On the contrary, the proliferation of political parties can be a way of fragmenting the democratisation process, as was the case in the last years of Mobutu's Zaire. If the state denies some political parties the opportunity to propagate their policies, the rationale for the existence of different parties can only be to dupe the outside world into believing that the country is democratic. As the report compiled by NEMU on the 1992 Kenyan elections showed, the political, legal, constitutional, and administrative structures in 1992 made a free and fair election impossible.

As Kenyans went to vote in the 1997 general elections, a number of reforms in these structures had been undertaken in order to create a more level playing field. The question for election observers was whether these reforms went far enough or were effectively implemented on the ground. This report contains our views on this question.

### **3.2.4 Social Justice and Electoral Participation**

Poverty has often been cited as one of the basic factors inhibiting political participation. Those who have wealth - a tiny minority of Kenya's population do not seem to flinch at using economic power to buy votes. This has been made easier by repealing the law limiting campaign spending, so that today a rich political party or candidate can spend as much as they want. In addition, there is no legal requirement for a political party or candidate to disclose their sources of funding or how the money is spent. This means that those who have no money stand little chance of making a mark on Kenya's political scene.

However, poverty alone does not make people susceptible to bribery. There is also a debilitating disease of materialism eating away at the fabric of Kenya's national life. Unabashed greed and a corrosive beggar mentality have become major hindrances to a truly democratic electoral process in this country. This materialism had a major negative impact on the 1997 general elections. The potent antidote is voter education based on the values of human dignity and self-respect.

### **3.2.5 The Need for Voter Education**

Before the 1992 elections, little voter education took place in Kenya. Only a few civil society organisations undertook civic education, while the government did nothing and in some cases prevented civic education activities from taking place. The situation improved somewhat after 1992, as various NGOs became involved, in civic education. However, the government and its organs remained largely uninvolved. The ECK, for example, was content to make some roar announcements in the press and print a few posters. Even in 1997, it earmarked a paltry Ksh 10,000,000 for voter education, notwithstanding a constitutional provision that requires the ECK to provide voter education.

### **3.2.6 Do Elections Impact on Policy in Kenya?**

Despite promises made during campaigns - good roads, better hospitals, better schools - the election results rarely seem to bring significant changes. This has created a lot of apathy and cynicism among the electorate. Some voters even justify taking bribes from candidates on the basis that elections do not make any difference anyway. To avoid elections being merely a game of musical chairs it is vital that there be a democratic spirit and patriotic commitment to the republic by all the people of Kenya and the political parties. This requires not just faith in the multiparty system, but also sincere trust in governance based on the sovereign will of the people.

### **3.2.7 Unequal Representation**

During colonial times, administrative boundaries were drawn mainly on ethnic lines. After independence, this practice was extended to parliamentary constituencies and has remained largely unchanged since then. The result has been to favour sparsely populated communities. Because of their isolation and economic hardship, these communities are easier to manipulate into voting for the political regime in power. As demonstrated in Part Two of this report, the present constituency boundaries over-represent certain areas that tend to vote for the ruling party. Taking into account the totality of the surrounding circumstances, gerrymandering remains an active ingredient of the Kenyan electoral environment.

### **3.2.8 The Winner-take-all Electoral System**

A factor that gained importance after the reintroduction of multipartyism is the absolute power that the winning candidate or party obtains in the current electoral system even when the winner gains only a plurality of votes instead of a majority. This winner-take-all system shuts out a great number of voters.

One way of rectifying this would be the introduction of a system of proportional representation. However, an electoral system, no matter how appropriate, cannot be the solution to a country's political problems. The real solution is the evolution of a civic culture.

### **3.2.9 Parliamentary or Presidential System?**

In its constitutional evolution, Kenya has borrowed from both Britain and the United States in defining its political structures. This hybrid system has caused problems with the separation of powers, a universally accepted norm of democratic government. It can be argued that a major flaw in the current Kenyan constitutional arrangement is the awkward marriage of parliamentary and presidential systems. In the current system, the Kenyan President is really an all-powerful executive officer, leaving parliament with no significant ability to provide checks and balances. This situation has an unhealthy impact on the electoral process because the incumbent head of state (who is also head of government) can use his or her control of the public service and the judiciary to help preserve political power.

## **3.3 Pre-election Socio-economic Conditions**

Kenyans went to the polls at a time when the economy was severely battered and the public infrastructure on the verge of collapse. Hospitals had no drugs and health facilities were dysfunctional, a situation which was exacerbated by a nationwide strike of nurses in the public health service. Teachers had -also been on strike, and a good number of educational institutions were closed as a result of student rampages.

Meanwhile, the government continued to interfere in the agricultural sector, especially the coffee, sugar, and tea subsectors, intensifying a downward spiral that began some years ago. The outbreak of political violence at the coast in August and September brought tourism, one of Kenya's major foreign exchange earner, to a virtual halt. As the economy and infrastructure sank, purchasing power plummeted. By polling day, it seemed that for the average Kenyan the only thing left was resilience.

As if this was not enough, the *El Nino* rains wreaked havoc across the country, further damaging what functioning infrastructure remained. Roads and bridges were washed away, and whole regions of North Eastern Province, the coastal plains, and the low country around Lake Victoria were submerged. Thousands of people, mostly poor small-scale farmers and pastoralists, were made homeless,

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and tens of millions of shillings worth of crops and livestock were destroyed. The floods severely constrained election operations in the affected areas.

However, such adverse social and economic conditions do not affect all Kenyans in the same way. Kenya has one of the widest gaps between rich and poor in the world. A tiny minority possesses immense financial resources, while the vast majority live in poverty - a third of them below the absolute poverty line. This means that most Kenyans face a daily struggle to meet their survival needs, a situation that does not augur well for the development of a healthy democracy

### **3.4 The Legal Framework of Elections**

The following subsections of this report provide a summary of the content and salient features of the legal regime governing the electoral process in Kenya. They examine in turn the constitutional, legal, and administrative categories and their impact on elections.

#### **3.4.1 Constitutional Provisions**

The constitution is the supreme law of the land. Any right provided by constitution and any obligation imposed by it take precedence over all other laws. The constitution provides for the right to register as a voter. Everyone qualifies to be registered as a voter in parliamentary, presidential, and civic elections if he or she:

- ◆ is a citizen of Kenya who has attained the age of 18 years
- ◆ has been resident in Kenya for not less than 12 months immediately prior to the date of registration or for a period (or periods) totaling not less than four years during the eight preceding years
- ◆ has been ordinarily resident, carried on business, been employed, or possessed land or residential buildings in the constituency in which he or she applies to be registered for a total of not less than five months during the twelve months immediately preceding the date of registration.

These provisions are spelt out in Section 43 of the constitution, which also disqualifies a person from registering as a voter for a number of reasons including insanity, bankruptcy, or conviction for an election offence.

On the right to be a candidate, the constitution provides that a person is qualified to be elected as a member of the National Assembly if he or she:

- ◆ is a citizen of Kenya who has attained the age of 21 years
- ◆ is registered in a constituency as a voter in elections for the National Assembly
- ◆ is able to speak and, unless incapacitated by blindness or other physical cause, to read Swahili or English well enough
- ◆ to take an active part in the proceedings of the National Assembly
- ◆ is nominated by a political party.

A person is not qualified to be elected as an MP if at the date of his or her nomination for election he or she:

- ◆ is by virtue of his or her own act under any acknowledgment of allegiance, obedience, or adherence to a foreign state
- ◆ is under sentence of death or sentence of imprisonment exceeding 6 months imposed by a court of law in Kenya
- ◆ is adjudged to be of unsound mind through a judicial process
- ◆ is an undischarged bankrupt
- ◆ has an interest (subject to any exceptions and limitations prescribed by parliament) in a contract made with the government of Kenya
- ◆ holds an office in the public service, armed forces, or a local government authority.
- ◆ A person is qualified to be nominated for election as president if he or she:
- ◆ is a citizen of Kenya who has attained the age of 35 years
- ◆ is registered in a constituency as a voter in elections to the National Assembly
- ◆ is qualified to be elected as an MP

### **3.4.2 Nominated MPs**

Before the amendments to the constitution made as a result of the InterParliamentary Group (IPPG) agreement in late 1997, the President had the sole prerogative of appointing twelve nominated MPs. Under the new provisions, the twelve nominated members of the National Assembly are expressly meant to represent “special interests. “ However, this expression was not defined. The nominated MPs are still appointed by the President but from a list named by the parliamentary parties according to their proportion of seats in the National Assembly. The ECK is mandated to work out the correct proportions after every general election and to forward the names of the party nominees to the President. The principle of gender equity is also supposed to be taken into account, though again in an undefined way.

### **3.4.3 The Reforms Debate: the Role of Civil Society**

Following the 1992 multiparty elections, opposition parties realised that Kenya’s constitutional, legal, and administrative structures needed to be overhauled. They viewed KANU’s victory as resulting largely from the manipulation of constitutional structures. President Moi and KANU had been rejected by 65 per cent of voters, yet Moi was re-elected and KANU won a substantial majority of parliamentary seats.

The initial shock of this outcome immobilised the opposition, and it took about a year before they could regroup and begin the process of advocating fundamental reforms. Religious organisations, too, added their voice to the demand for reforms. The NCKK, the Catholic church, and the Muslim community were all convinced that basic reforms were needed to ensure a level playing ground for future elections

Despite this pressure, comprehensive constitutional reforms were opposed by the government. It argued that reforms could only be achieved by a thorough consultative process involving all Kenyans, which would require more time than was available before the next elections. Late in 1997 - and only after mass action had led to riots and deaths on several occasions - the IPPG was put together and a compromise reached to enact certain minimum reforms before the elections and undertake comprehensive constitutional reforms after the elections by means of a Constitutional Review Commission.

The other objective was to frame the reform process in evolutionary rather than revolutionary terms. Consequently, pieces of legislation such as the Public Order Act, the Preservation of Public Security Act, the Chief’s Authority Act, and the

### **3.4.4 The NCEC Reform Campaign**

The birth of the National Convention Executive Council took place at a meeting in Nairobi held on April 29, 1996, which brought together a number of opposition political parties and several groups representing various segments of civil society. At this meeting, it was decided that a partnership should be formed between opposition members of parliament in what was then known as the Interparliamentary Group (IPG) and the NGO known as the 4Cs (Citizens Coalition for Constitutional Change). The aim was to create a broad-based non-partisan grouping that would be able to press for reforms. A National Convention Planning Committee (NCPC) was set up to coordinate the partnership and push for a national constitutional convention. As the reform campaign intensified, NCPC converted itself into the National Convention Executive Council (NCEC).

When government did not heed the NCEC's demands for comprehensive reforms, a mass action plan was implemented. The first mass protest rally was held on May 3, 1997, and ended in a bloody confrontation with the police. Further rallies on July 7 (*Saba Saba*), August 8 (*Nane Nane*), September 9 (*Tisa Tisa*), and October 10 (*Kumi Kumi*) were also dispersed by security forces with resulting injuries and destruction of property.

### **3.4.5 The Role of the Religious Community**

Concerned that the stalemate between NCEC and the government could tear the country apart, religious organisations offered to mediate. A group comprising representatives from the Catholic Church, NCCK, Evangelicals, the Hindu community, and the Muslim community was formed to facilitate a peaceful reforms dialogue. Some of these religious groups had already been pursuing the reforms agenda, and it initially appeared as if their mediation was acceptable to the two sides. However, the initiative collapsed when the government failed to honour an invitation to a meeting convened to launch the mediation process. Instead, the government started its own initiative by bringing together moderate opposition and KANU MPs in the IPPG.

### **3.4.6 The Inter-parties Parliamentary Group (IPPG)**

The IPPG was a KANU strategy to pre-empt the reform crusade. It took advantage of divisions that had emerged in NCEC, mainly between civil society representatives and politicians, to draw the politicians into the IPPG and exclude NCEC from the process. Key NCEC leaders had always been suspicious of politicians, whereas many of the politicians felt that, as the people's elected representatives, they should be the ones to lead the process. Moderate opposition politicians joined IPPG because they feared that NCEC was trying to hijack the reforms agenda. They argued that in any case the NCEC leaders from civil society had no mandate from the people. The opposition MPs who participated in the IPPG talks appeared to believe that KANU was genuine about reforms and that IPPG provided a real opportunity to save the country from civil strife.

The IPPG discussions resulted in the rapid passage of two bills - a Constitution of Kenya (Amendment) Bill and a Statute Law (Repeals and Miscellaneous Amendments) Bill. These bills seemed to respond to demands for minimum reforms before elections and, together with a third bill (the Constitution of Kenya Review Commission Bill, 1997), came to be referred to as the IPPG packages. The Constitution of Kenya Review Commission Bill proposed the appointment by the President of a commission to collect, analyse and collate the views of Kenyans on constitutional change after the elections. All three bills received rapid presidential assent, paving the way for both minimum reforms before elections and more comprehensive reforms afterwards.

## **3.5 The Administrative Framework of Elections**

### **3.5.1 The Electoral Commission of Kenya (ECK)**

The ECK is a public body created under section 41 of the constitution to manage and conduct elections. Before 1992, elections were conducted under the Supervisor of Elections, an officer in the Attorney General's chambers. When Kenya reverted to multiparty politics in 1991, the constitution was amended to give the ECK powers to oversee the conduct of elections as an autonomous body. The office of the Supervisor of Elections was abolished, and new offices of the Director of Elections and Deputy Director of Elections were created under the National Assembly and Presidential Elections Act (Chapter 7 of the Laws of Kenya). Although the ECK never appointed people to these two statutory offices, it is likely some staff from the office of the Supervisor of Elections were transferred to the ECK.

### **3.5.2 The Composition and Structure of the ECK**

In 1992, the constitution stipulated that the ECK was to be constituted by a chairman and not less than four other members appointed by the President. At the time of the 1992 elections, there were eleven commissioners, with Justice (Rtd) Zachaeus Richard Chesoni as chairman. When the tenure of these commissioners expired in 1997, most were reappointed, and Justice Chesoni was reappointed chairman. After the IPPG talks, the President appointed ten more commissioners nominated by the opposition parties represented in the talks. This brought the number of commissioners to 21, where it currently stands. Supporters of IPPG claimed that the inclusion of opposition nominees on the ECK would ensure the independence of the commission through the expression of dissenting views. However, the opponents of the IPPG deal argued that this move created only an *expanded* commission, not an *independent one*.

The inclusion of opposition-nominated members in the ECK seems not to have had any notable impact on the conduct of the elections. The departure of Justice Chesoni in November to become Kenya's new Chief Justice also seems to have made little difference. By the time these changes were made, the whole structure and machinery for the 1997 elections, except the nomination of candidates, was already in place. In terms of building public confidence and assuring voters that the ECK was independent, the appointment of the ten extra commissioners and the replacement of the chairman does not seem to have achieved much.

Both before and during the elections, the ECK seemed to rely too much on the government to enable it to execute its duties, especially in dealing with malpractices and breaches of the electoral code of conduct. ECK argued that it had no means of enforcing the code of conduct and consequently passed the buck to the government. Up to now, the ECK has not done much to reorganise its working procedures, even though current election regulations make this one of its duties. A visit to the ECK's offices in Nairobi revealed a dire need for Organisation. Management seems to be *laissez-faire*, and it is even doubtful if there are means to guard against tampering with information, as there seems to be no credible secretariat. On a positive note, the ECK's practice of holding regular press briefings, particularly during the campaign period, was a step forward, as were the meetings it held with representatives of all political parties, KBC, and election observer groups.

### **3.5.3 Boundary Review and Constituency Delineation**

Delineation of electoral areas is one of the most controversial issues in working out and assessing any electoral system. In Kenya, this is especially true because of ethnic and clan issues as well as allegations of political interference and gerrymandering.

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The Constitution of Kenya and the Local Government Act (Chapter 265 of **the** Laws of Kenya) give the ECK the power to:

- ◆ divide Kenya into constituencies and wards
- ◆ delineate their boundaries
- ◆ assign names to them.

The constitution states that all constituencies should contain as nearly equal numbers of inhabitants as appears to the commission to be reasonably practical. The goal here is to retain the cardinal democratic principle of “one person, one vote” while also providing for special factors. Thus, the commission can depart from the principle of numerical equality of votes in order to take account of population density (in particular the need to ensure adequate representation of sparsely populated rural areas), population trends, means of communication, geographical features, communities of interest, and boundaries of existing administrative areas.

The demarcation of constituencies in Kenya was first done in 1962 when the then Regional Commission divided Kenya into 8 provinces and 41 districts. In the 1963 elections, there were 113 seats in the House of Representatives and 38 in the Senate. When the Senate was abolished in 1966, the number of constituencies was increased to 158. This number remained in force until 1986, when it was increased to a minimum of 188 and a maximum of 210. In the 1988 and 1992 elections, there were 188 constituencies. In 1996, the ECK carried out a boundary review and increased the number to the constitutional maximum of 210.

One of the most serious accusations against the ECK is that it had manipulated electoral areas to suit entrenched political and class interests. A survey in 1996 conducted by NCKK’s Advocacy Unit seemed to confirm this. The survey found that while the creation of some of the new constituencies, such as Uriri in Migori, Bumula in Bungoma, and Emgwen in Nandi, was justified, there were other cases, such as Mathioya in Murang’a and Gatundu North in Thika, which clearly showed political manipulation and did not reflect the views of local people.

The commission’s method of collecting views in countrywide local meetings was welcome, but several factors dented the ‘Credibility of the exercise and created doubts about the ECK’s independence. First, President Moi announced the review, something he should not have done, as the commission is supposed to be autonomous. He also went round the country announcing the creation of 24 **new** districts, a development that was clearly related to the creation of new constituencies. Out of the 22 new constituencies, eight were granted to the new districts.

*Table 1: Distribution of the 22 new constituencies by district and province (Italics indicate constituencies created in new districts)*

	<b>Name</b>	<b>District</b>	<b>Province</b>	<b>Party</b>	<b>Votes for Winning Candidate</b>
1	Bura	Tana River	Coast	KANU	2,917
2	Wajir North	Wajir	North Eastern	KANU	4,047
3	<i>Tigania East</i>	<i>Nyambene</i>	Eastern	KANU	14,421
4	Manyatta	Embu	Eastern	DP	32,949
5	<i>Mwingi South</i>	<i>Mwingi</i>	Eastern	KANU	25,599
6	<i>Kaiti</i>	<i>Makueni</i>	Eastern	KANU	11,159
7	Ol Kalou	Nyandarua	Central	DP	29,084
8	Kerugoya/Kutus	Kirinyaga	Central	DP	18,149
9	Mathioya	Muranga	Central	FORD-P	13,009
10	<i>Gatundu North</i>	<i>Thika</i>	Central	SDP	7,115
11	Emgwen	Nandi	Rift Valley	KANU	32,688
12	<i>Eldama Ravine</i>	<i>Koibatek</i>	Rift Valley	KANU	14,390
13	Naivasha	Nakuru	Rift Valley	DP	25,845
14	<i>Sotik</i>	<i>Bomet</i>	Rift Valley	KANU	34,622
15	Ainamoi	Kericho	Rift Valley	KANU	32,824
16	Matungu	Kakamega	Western	KANU	10,673
17	Khwisero	Kakamega	Western	KANU	11,840
18	Bumula	Bungoma	Western	FORD-K	24,375
19	Butula	Busia	Western	KANU	10,343
20	Kisumu Town East	Kisumu	Nyanza	NDP	21,210
21	<i>Uriri</i>	<i>Migori</i>	Nyanza	NDP	16,104
22	<i>Gwasi</i>	<i>Suba</i>	Nyanza	NDP	10,68

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Second, the haste with which the boundary review exercise was done created suspicion, and it did not help that the criteria for creating new constituencies or reorganising old ones was not made clear. But the most crucial flaw was that the creation of the 22 new constituencies did not follow the law of demographics. Had demographics been the main factor, the distribution of the new constituencies per province would have been as follows: Nairobi 8, Coast 3, North Eastern 0, Eastern 2, Central 3, Rift Valley 5, Western 1, and Nyanza 0.

*Table 2: How the 22 new constituencies would have been distributed if the only factor had been population*

<b>Name</b>	<b>District</b>	<b>Province</b>	<b>Electoral Roll</b>	<b>New seats</b>
Embakasi	Nairobi	Nairobi	114,354	2
Starehe	Nairobi	Nairobi	109,215	1
Westlands	Nairobi	Nairobi	102,384	1
Makadara	Nairobi	Nairobi	91,605	1
Kasarani	Nairobi	Nairobi	91,517	1
EldoretNorth	Uasin Gishu	Rift Valley	90,947	1
Juja	Thika	Central	89,975	1
Naivasha	Nakuru	Rift Valley	89,774	1
Nakuru	TownNakuru	Rift Valley	89,383	1
Saboti	Trans Nzoia	Rift Valley	82,836	1
Langata	Nairobi	Nairobi	81,123	1
Nithi	Tharaka Nithi	Eastern	78,962	1
Changamwe	Mombasa	Coast	78,553	1
Kisauni	Mombasa	Coast	76,575	1
Molo	Nakuru	Rift Valley	75,942	1
North	ImentiMeru	Eastern	74,661	1
Mvita	Mombasa	Coast	70,836	1
Lurambi	Kakamega	Western	70,344	1
Dagoretti	Nairobi	Nairobi	69,481	1
Kiambaa	Kiambu	Central	68,747	1
Kabete	Kiambu	Central	68,669	1

Distributing the new constituencies in this way would have created a measure of equity and enhanced the competitiveness of the 1997 elections. Even so, this would only have been a mild application of the one person, one vote principle. Given the history of flawed constituency demarcation in Kenya, true equity would require a comprehensive redrawing of all constituency boundaries.

From tables 1 and 2, the following can be seen:

- ◆ Rift Valley got 5 new constituencies, Western 4, Central 4, Eastern 4, Nyanza 3, Coast 1, North Eastern 1, while Nairobi got none.
- ◆ Of the 22 constituencies, eight (36 per cent) are in the new districts.
- ◆ 12 of the 22 new seats went to KANU, while the others were shared between FORD-Kenya (1), SDP (1), DP (4), FORD-People (1) and NDP (3)
- ◆ Some constituencies considered “safe” for KANU turned out not to be, such as Mathioya, Gwasi, Uriri, and Gatundu North.
- ◆ Although the KANU: opposition ratio of seats won was 6:5, the ratio of votes received by the winning candidates was roughly 1:1.

It seems that instead of reviewing the constituency boundaries professionally and creating constituencies based on open criteria, the ECK limited itself to “sharing out” the new constituencies. The rest of the constituencies, save for minor changes in names and boundaries, were left intact. The ECK, therefore, aggravated an already biased structure instead of reforming it.

Regarding demarcations at the local elections level, the present local authorities were constituted by the Minister for Local Government through a number of orders published in a *Kenya Gazette* Supplement (No. 74 of October 24, 1997), while the Statute Law (Repeals and Miscellaneous Amendments) Act, 1997 which transferred the minister’s powers to the ECK- came into force on November 7, 1997. The act stipulates that the principles in respect of constituencies shall *apply mutatis mutandis* (the necessary adjustments having been made) to the creation of wards. Even a cursory look at the number of civic wards in each local authority shows that there is unequal representation at this level too. For example, the populous city of Nairobi has only 55 civic wards while the sparsely populated rural county of Wajir has 79. Although the ECK cannot be blamed entirely for these kinds of problems, it has the responsibility of beginning the process of rectifying these inequities in time for the 2002 general elections.

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**THE ELECTIONS AND  
RESULTS**

# CHAPTER 4

## 4.1 Registration of Voters

### 4.1.1 The Voter Registration Process

The registration of voters for the 1997 general elections began on May 19, 1997, and ended on June 30, 1997, after two extensions of the original June 22 deadline. The deadline was first extended to June 24 due to public concern that voters had not been given enough time. When this date came, the ECK of Kenya (ECK) extended the deadline to June 30 to enable more Kenyans to register.

IED monitored the entire voter registration exercise, though as a survey rather than the more traditional observatory monitoring and documentation. The results of the survey were contained in a report distributed to various NGOs and the donor community. The main conclusions of the report merit close scrutiny. For example, although more than 90 per cent of those who went to register succeeded in being registered, this does not take into account those who did not go to register. It should not be confused with the percentage of *eligible voters* who were registered.

The IED survey observed the following problems with the voter registration process:

- ◆ insufficient materials, including ink, writing materials, and registration forms. This problem occurred throughout the country but was especially serious in Starehe, Mbooni, and Bondo.
- ◆ confusion and frustration caused by changes in constituency boundaries, for example, in Langata, Dagoretti, Molo, and Kisumu
- ◆ administrative problems, including errors in electors' names and identification card numbers, failure to indicate constituency or polling centre number, missing thumbprints (Starehe), and incorrectly filled electors' cards which were later invalidated (North Mugirango, Kajiado North, Ugenya)

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slow, uncooperative, and incompetent registration clerks (Nairobi, Nakuru) voters being required to wait for one to five months before receiving their voters' cards due to problems such as lack of lamination machines. This problem was particularly widespread in Machakos, Nairobi, Kajiado, Bondo, Kisii and Kisumu .

### **4. 1.2 Appraisal of the Voter Registration Process**

A statistical assessment of the registration process shows no evidence of a deliberate and systematic process of manipulation. The main complaints revolved around the inefficiency of the process and the issue of new generation identity cards, as well as the phenomenon of incorrect numbers on voters' cards. The latter problem is critical in Nyanza, Nakuru, Molo, Murang'a, Migori, and Kapsabet, among other areas. The problem of wrong numbering even forced the voter registration exercise to be repeated in Nyanza. At one point, MPs from the province issued a joint statement on the issue, alleging rigging.

For some potential voters, registration was hindered by lack of identity cards, while the issue of new generation IDs caused confusion. In some areas, notably Westlands, Nakuru, and Nandi, people were turned away because they possessed old generation IDs or police abstracts. In Eldoret North, Mosop, and Kajiado North, there were reports of people being told they could only register in the place of their birth.

Many politicians also made provocative and inflammatory statements. Some prominent figures, for example the then Minister for Local Government Francis Lotodo, MP for Kapenguria, told people to go and register "where they were born" or face dire consequences. Others alleged that the elections had already been rigged and that there was no point registering. Kenneth Matiba of the Saba Saba Asili party and some of his supporters called on people to burn their voters' cards. In the end, however, the number of cards actually burnt was insignificant on the whole.

After the voters' registers were compiled, there were instances of double, even multiple registration. Some people were found to have registered as many as 11 times! In the end, there were a few scattered prosecutions around the country for this offense, but many of the culprits went scot-free. The registration process was extremely fast in some centres but painfully slow in others, particularly in those named above.

The display of the registers was far from satisfactory. The commission did not bring the public's attention to the need to inspect the registers, and most people only came to know about the inspection one or two weeks after it had begun. Had the ECK informed the public about the need to verify information in the registers, there would have been more confidence in the accuracy of the registration process.

There were also allegations of registration continuing after the registration period had expired. One newspaper even ran two stories on this and claimed the registration was being done in a Nairobi hotel. These allegations were never satisfactorily dealt with by the commission, which helped add to the suspicion.

On the other hand, the computerization of the register and the use of special forms which were scanned by an optical mark reader ensured that the overall process was fast and generally accurate. However, the commission's performance was marred throughout the exercise by irregularities that could have been avoided by effective publicity, an efficient materials delivery system, and proper training of officials.

## **4.2 Registration of Political Parties**

### **4.2.1 Legal and Political Questions**

Registration of political parties in Kenya has always been a thorny issue. At independence, there were only two dominant political parties - the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). In 1964, KADU merged with KANU, and except for the period of KPU's short life between 1966 and 1969, KANU remained the only political party up to the end of 1991. Following the repeal of Section 2(A) of the constitution in December 1991, several new parties were registered - FORD-Kenya, FORD-Asili, National Development Party of Kenya (NDP), Democratic Party of Kenya (DP), Social Democratic Party (SDP), Labour Party Democracy (LPD), Kenya National Congress (KNC), Kenya Social Congress (KSC), Kenya National Democratic Alliance (KENDA), and Party of Independent Candidates of Kenya (PICK).

After the reintroduction of multipartyism, the power of the Registrar of Societies to register or refuse to register political parties was increasingly questioned. Key among the concerns was the discretionary nature of the registrar's powers. The law provided very broad reasons for denying a party registration or deregistering it. It was up to the registrar to determine whether these grounds existed in any particular case and to take any length of time to do so. The registrar's discretion was, therefore, largely unchecked.

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One result was that some parties that applied to be registered in 1992 were denied registration on very vague or flimsy grounds. These included the Green African Party (GAP), the Green Party (GP), the Islamic Party of Kenya (IPK), the Kenya Nationalist People's Democratic Party (KNPDP), the Party of the Proletariat and Peasants (PPP), the Democratic Movement (DEMO), and the Islamic Party of Kenya (IPK). In most of these cases, registration was denied on the vague grounds that the interests of peace, welfare, or good order would suffer if the parties were registered. IPK was denied registration on the grounds that it was a religious, not a political, Organisation

As part of the 1997 IPPG package, the following subsection was added to section 4 of the Societies Act to deal with this problem:

The registrar shall consider every application for registration of a society or for exemption from registration and shall communicate his decision thereon to the society within one hundred and twenty days of receipt of the application.

This provision was a breath of fresh air, as it meant that the registrar no longer had the power to delay a party's application indefinitely without giving reasons. The IPPG reforms, however, went no further on the issue of registration of political parties or the registrar's unchecked discretion on other matters. In any case, of what use is it to an applicant if he or she is given a speedy denial? The important question is whether there ought to be such bottlenecks to the formation of parties. Another concern is the question of what authority should regulate political parties. Currently, political parties are registered under the same act as welfare associations and membership clubs. This is an unhealthy situation, since political parties are different from any other Organisation in one crucial respect - they are, at least in theory, governments in waiting.

Our view is that the ECK should be granted the power to register and deregister political parties. Two factors justify this. First, the ECK is the body charged with the administration of elections. Since party politics are about securing power through elections, the ECK should have responsibility for monitoring and controlling the activities of political parties as one aspect of its mandate to ensure free and fair elections. Second, the ECK is an independent body, at least in law, whereas the registrar is a civil servant with no security of tenure.

### **4.2.2 The New Political Parties**

In the run-up to the 1997 general elections, a record 16 new parties were registered beginning with the Forum for the Restoration of Democracy for the People (FORD-People) on October 3, 1997. By October 7, 1997, nine more political parties had

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been registered. This was after IPPG had recommended that political parties whose applications for registration were then pending be promptly registered or told why they could not be.

The nine new parties were - the Liberal Party of Kenya (LPK), People's Party of Kenya (PPK), Kenya Socialist Party (KSP), New People's Democratic Party (NPDP), Democracy Assistance Party (DAP), Reform of Political and Kenya Union (RPKU), Green African Party (GAP), Umrna Patriotic Party of Kenya (UMMA), and Kenya Nationalist People's Democratic Party (KNPDP). These were later followed by the United Patriotic Party of Kenya (UPPK), Shirikisho Party of Kenya (SPK), Federal Party of Kenya (FPK), Economic Independence Party (EIP), and Republican Reform Party (RRP). Safina was finally registered on November 26, 1997, after a three-year wait. The National Treaty Party of Kenya (NTP) and the Islamic Party of Kenya (IPK) were denied registration, while the Kenya African Development Union (KADU) and the Democratic Congress Party of Kenya (DCP) had their applications referred back for re-application through the Attorney General. The total number of registered political parties stood at 27 by the time of the 1997 elections.

The case of Safina deserves particular mention, as it demonstrates why arbitrary discretion has no room in democratic practice. Safina, the last political party to be registered before the elections, had applied for registration in 1994. After "perusing the application" for over a year, the registrar finally announced that Safina would not be registered. Safina then appealed to the Attorney General, who also took an inordinate amount of time to respond. In the end, Safina was registered only two weeks before the date for nomination of candidates.

## CHAPTER 5

# NOMINATIONS

### 5.1 Party Nominations

#### 5.1.1 How Parties Flouted their Own Rules

Of the 27 registered parties, 22 participated in the 1997 general elections. Of these, 15 fielded presidential candidates. With the adoption of the IPPG reforms package prior to the dissolution of the seventh parliament, each party assumed responsibility for the financing, Organisation, and administration of its own nominations. In the process, internal party rules and regulations were seriously put to the test. Neither KANU nor the opposition parties had well-developed machineries for holding party nominations. The opposition parties were still building their party organisations, while KANU had always depended on the provincial administration to organise its nominations and elections.

The result for both KANU and the opposition was chaos. No party can be said to have come out of the process unstained. In the majority of cases, party rules and regulations were not followed regardless of the nomination methods each party used. Some of the most blatant cases involved party chairmen single-handedly choosing candidates instead of allowing members to nominate the candidates of their choice. KANU was outstanding in this respect.

DP imposed candidates when repeat nominations failed to yield clear winners. This was most evident in Nyeri, the party's stronghold, where there were reports of youths opposed to the repeat polls destroying ballot papers. The party headquarters appeared biased in the way it handled disputes. It did not even publish a list of candidates who had been nominated, arguing that this remained confidential until the presentation of nomination papers to the ECK. Other parties, such as NDP and DP, were not spared irregular nominations either. All the major parties KANU, FORD-Kenya, DP, NDP and SDP - flouted their own nomination rules.

### **5.1.2 Other Problems with Party Nominations**

All party nominations were beset with logistical and other problems such as:

- ◆ disagreements over nomination procedures
- ◆ returning officers not being available or appearing long after party meetings had despaired and gone
- ◆ lack of election materials
- ◆ lack of coordination at counting centres
- ◆ lack of proper membership identification
- ◆ lack of coordination between party headquarters and grassroots structures to poor or non-existent communication
- ◆ unfavorable weather.

These problems had varying impacts on the conduct of party nominations. For example, KANU planned to hold its nominations on November 25, then changed the date to November 27, but was still unable to conduct even half of its nominations on this date. The exercise was postponed in a number of areas, particularly North Eastern and Eastern Provinces, due to flooding. In the process, some party nominations were postponed or cancelled either by the headquarters or branch officials without the knowledge of the other – an indication of serious lack of information flow.

The nomination problems appeared most severe in areas where political parties had their strongest support and the competition for nominations was there the most intense. Thus, Ford Kenya's nomination problems were most widespread in Western Kenya, DP's in Nyeri, and NDP's in Nyanza. It was in KANU, that the most intense disagreements occurred. The problems largely centered on the choice of queue-voting as the party's nomination procedure. Many members and prospective candidates argued that queueing was open to abuse and cases where there had to be repeat nominations particularly exposed shortcomings of the queue-voting method, as it was impossible to assemble the same people in the same spot for a "recount."

### **5.1.3 Lessons Leant**

A number of lessons arise from the conduct of the party nominations. First, the practical problems surrounding queue-voting suggest that it is not an appropriate method for choosing candidates. Although a political party is free to choose its own nomination methods, it should be able to do so without disenchanting the party's rank and file. Queue-voting is not only contrary to the principle of secrecy which is essential to democratic theory and practice, it also causes needless acrimony, as people are able to identify who voted for whom. Finally, by making recounts impossible, queue-voting is both impractical and unfair.

Second, the practice of party chairmen and other national officials hand-picking candidates has no place in a democratic and genuinely competitive system. In 1997, many candidates who did not have the people's mandate were imposed as if party members did not have the ability to choose for themselves. The leaders who followed this practice in effect turned their parties into their personal property and severely, undermined participatory democracy. This practice also denied party members the benefits of alternative viewpoints and internal competition. When party leaders curtail competition, they stunt the growth of their parties by shutting out new talent. They also fail in their duty to educate party members.

The third lesson relates to the practice of not limiting voting to party members. By permitting non-members to vote, the parties reduced their nominations to circuses where anyone who was interested voted on different days for different candidates from different parties. Those not nominated to contest on a particular party's ticket also had a field day defecting from party to party. The melee of defections and counter-defections testified to the general lack of intraparty democracy and commitment.

## **5.2 Nomination by the ECK**

### **5.2.1 New Procedures in ECK Nominations**

The IPPG reforms brought important changes in the rules for presentation of nomination papers to the ECK. Once cleared by their respective parties, candidates could present their nomination papers to the ECK over a two-day period. The previous, unrealistic requirement that nominations could only be done between the hours of 8.00 am and 1.00 pm was done away with, and candidates were able to present their papers at any time between 8.00 am and 4.00 pm except for a lunch break from 1.00 pm to 2.00 pm. Presidential nominations took place on December 3 and 4, parliamentary and civic nominations on December 8 and 9.

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Candidates were required by the ECK to:

- ◆ present their national identity card or passport for verification
- ◆ produce a voter's card whose number appeared on the register of electors
- ◆ produce a certificate of proficiency from the Language Board or an signed by the chairman of the ECK
- ◆ present themselves personally or through an agent (whose letter of al had to be produced) at the nomination centre between 8. 00 am and 1. 00 pm or 2.00 pm and 4.00 pm on any of the two days.

Fifteen candidates were cleared to seek the presidency. Two prospective presidential candidates, Nyerere Manonda of the Democratic Assistance Party and Mwangi Nyonga of the Kenya Socialist Party, were denied registration because their papers were not in order.

**Table 3: Presidential candidates**

<b>Candidate</b>	<b>Party</b>
Daniel Toroitich arap Moi	Kenya African National Union
Michael Kijana Wamalwa	Forum for the Restoration of Democracy-Kenya
Raila Omolo Odinga	National Development Party
Prof KatanaMkangi	Kenya National Congress
Charity Kaluki Ngilu	Social Democratic Party
Koigi wa Wamwere	Kenya Democratic Alliance
Mwai Kibaki	Democratic Party of Kenya
Joseph Martin Shikuku	Forum for the Restoration of Democracy-Asili
Wangari Maathai	Liberal Party of Kenya
Kimani Wanyoike	Forum for the Restoration of Democracy for thePeople
Munyua Waiyaki	United Peoples Party of Kenya
Geofrey M'Mwereria	Green African Party
Stephen Omondi Oludhe	Economic Independence Party
David Waweru Ng'ethe	Umma Patriotic Party of Kenya
George Moseki Anyona	KenyaSocial Congress

## Nominations

A total of 880 candidates were cleared for the parliamentary elections. KANU emerged with eleven unopposed parliamentary candidates, giving it an immediate and significant advantage.

**Table 4: Unopposed Candidates**

<b>Candidate</b>	<b>Constituency</b>	<b>Province</b>
Robert Igaramatwa Kochalle	Laisamis	Eastern
Francis Pollis Loile Lotodo	Kapenguria	Rift Valley
Christopher Motoywo Lomada	Sigor	Rift Valley
Francis Kipkoech Lagat	Eldoret East	Rift Valley
Joseph Dalldosso Lotodo	Baringo East	Rift Valley
Andrew Chepkoiywa Kiptoon	Baringo North	Rift Valley
William Rongora ole Ntimama	Narok North	Rift Valley
Kipkalya Kiprono Kones	Bomet	Rift Valley
Isaac Kiprono Ruto	Chepalungu	Rift Valley
Charles Davy Kipng'etich arap Kirui	Belgut	Rift Valley
Samuel Kimutai arap Rotich	Kipkelion	Rift Valley

On Christmas day, two opposition candidates withdrew in favour of KANU candidates, thus giving KANU two more seats unopposed. However, as their names were already on the ballot papers, the validity of their withdrawal was not certain. At the end of the two-day exercise, the major parties had fielded the following number of candidates: KANU 210, DP 134, NDP 108, FORD-K 104, and SDP 102. The other parties fielded fewer than 50 candidates each, with the nine smallest managing only 30 candidates in total.

## CHAPTER 6

# THE CAMPAIGNS

### 6.1 Major Issues

#### 6.1.1 Dissolution of Parliament

To pave way for the 1997 general elections, the President dissolved the National Assembly on November 10, 1997. The ECK followed by setting the election date for December 29. Campaigns were then set to begin on December 8 and end on December 28.

The dissolution of parliament went against the wishes of many who had argued for delayed elections so as to give the reform package time to take effect on the ground. Some members of the opposition argued that by not consulting them the President had acted in bad faith and contradicted the spirit of the IPPG deal. Leaders opposed to elections before comprehensive reforms, especially those in NCEC, argued that the President's action was an indication that the KANU government was not committed to genuine reforms. All the same, dismay at the President's action did not last long, as most politicians soon became intensely involved in preparing for the elections.

#### 6.1.2 Campaign Licensing

Among the notable amendments brokered by the IPPG were those relating to the Public Order Act. The act was revised to ease the process of convening meetings or holding processions. Any person wishing to hold a meeting or a procession no longer needed to apply for a license but only had to notify the police of the date, time, and venue of the function so that security could be provided. Moreover, licenses were no longer required for meetings held for social, cultural, charitable, educational, commercial, or industrial reasons.

Nevertheless, there were instances where members of various political parties were roughed up by the administration because they did not have licenses. On one occasion, police tried to stop NDP leader Raila Odinga from addressing people during a meet-the-people tour in Western Province, apparently on orders from the

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District Commissioner. Raila also cited similar obstruction he and his encountered in Kisii and Kuria districts. In another incident, police tried to disrupt a Shirikisho Party meeting in Kilifi. The local police boss claimed that party officials had not applied for a license the meeting was illegal. Eastern province, supporters of FORD-Kenya's Kijana Wamalwa were chased away by police at Kakuma airstrip after a FORD-K rally was declared the area Officer Commanding Police Station (OCS). The pretext was that the permit for the rally had not been Properly processed.

These are only a few documented incidents which indicate that although requirement for licenses had been amended, some Provincial administration office and Police continued to harass members of the opposition Parties. Meanwhile, a single KANU meeting was disrupted for lack of a license. In Most cases, KANU meetings were attended by the local chiefs, police, and other government officials.

### ***6.1.3 Utilization of Resources***

Availability of funding was an important factor in the 1997 campaigns. During the IPPG talks, the Electoral Code Committee Proposed that parliamentary parties be funded publicly according to their relative strength in Parliament. However, this recommendation was not implemented, and political parties continued to raise their own campaign funds. Most Political parties held public fundraising functions, notably the Social Democratic party (SDP), Democratic Party of Kenya (DP), National Development party (NDP), and KANU.

By and large, there was very inequitable distribution of funding among political parties and a huge inequality in access to financial resources. Opposition parties, especially the smaller ones, continued to be marginalised for lack of funds. An extreme case was that of Mwangi Nyonga, the Kenya Socialist Party (KSP) presidential aspirant, who was unable to raise the Kshs 25,000 nomination fee and was disqualified. In addition, no legal ceiling on how Much money a party or an individual candidate could spend on the election was put in place. This widened the already existing gap between those with and those without resources.

### ***6.1.4 Access to the Media***

The IPPG Electoral Code Committee recognized the media, and especially KBC, as a vital aspect of the electoral process and recommended that the KBC Act be amended to provide for equitable access to publicly funded media by all political parties and candidates (IPPG ill iv d). The change has since been incorporated in the Statute Law (Repeals and Miscellaneous Amendments) Act, which obliges KBC to:

## The Campaigns

- ◆ keep a fair balance in all respects in the allocation of broadcasting hours as between different political viewpoints
- ◆ allocate free airtime, in consultation with the ECK, to registered political parties participating in an election during the campaign period preceding any presidential, parliamentary, or local government election.

The IPPG recommended that the ECK be empowered to ensure that these rules are followed. However, the act does not provide sanctions for non-compliance, and KBC has continued to act in violation of the law.

## **6.2 Campaign Methods**

### **6.2.1 Public Rallies and Meet-the-People Tours**

The most widely used campaign method was direct contact with the voters. This took the form of candidates going out to meet and address the public face to face in campaign meetings or rallies. On occasions, meetings and rallies were reported in either the print or electronic media depending on the issues discussed and the prominence of the personalities involved. Reportage enhanced a rally's campaign value, constituting a form of "free airtime" for those involved.

A closely related method of campaigning was the "meet-the-people tour." This involved impromptu meetings that took place in shopping centers, open areas, or simply by the roadside as the candidate toured a constituency or ward. This method was especially popular with people in rural areas. Less common methods of direct contact included door-to-door visits by candidates or their agents and campaigns using vehicle-mounted public address systems.

### **6.2.2 Posters**

The most widely used form of campaigning was the poster. Posters were pasted in every available place, especially in urban areas. Sometimes in colour - especially for presidential candidates - but more often in black and white, they usually displayed a head-and-shoulders photograph of the candidate, the candidate's name, party, and constituency, and a straightforward request for votes. Some candidates also hung banners in prominent places. Heavy use of graffiti was made by some candidates in certain areas.

### **6.2.3 Other Campaign Materials**

Another widely used campaign medium involved printed paraphernalia such as T-shirts, caps, shopping bags, umbrellas, and other utility items. Like campaign posters, these items normally displayed a photograph of the candidate along with his or her party symbol and a request for votes. This campaign method was relatively costly and was only used by the larger parties and more prominent candidates.

### **6.2.4 Media Advertisements**

Buying space in the newspapers or electronic media and placing an advertisement explaining party policies and requesting votes is the most expensive campaign method and was used only by the major parties-KANU, SDP, DP, NDP and FORD-Kenya.' KANU was able to finance these advertisements throughout the campaign both in the print and electronic media and far outdistanced its rivals in use of the mass media. Most media advertisements were for presidential candidates. Only a few parliamentary candidates could afford to run such advertisements.

## **6.3 Use of Public Resources**

KANU blatantly continued to use state resources for its campaigns. The party's candidates used government vehicles during nominations, campaigns, and even on the polling days. For example, during a KANU rally on December 26 in Vihiga constituency, the DC, DO, and chief of the area were present at the meeting. In Turkana North, government officials involved themselves in politics by holding meetings and rallies in support of the KANU civic candidates in their areas. In Migori constituency, vehicles from the Veterinary Department were used for KANU campaigns, and the then area DC, Peter Raburu, openly campaigned for Charles Owino, the KANU candidate, in the presence of the DO and the chief of the area.

## **6.4 Role of the Youth**

According to reports, the role of the youth was twofold. First, they attended meetings as ordinary party supporters and spectators. However, some of them also played a prominent role as hecklers and more often than not caused chaos in meetings. As in -1992, large numbers of rowdy youths were used to parade as party supporters, causing tension in political meetings and often instigating fights. These youths usually attended political meetings drunk, often with the prior intention of disrupting them. All parties were, in one way or another, involved in rowdy, intimidatory acts using youths. For example:

- ◆ in many different constituencies, young men were paid between 100 and 200 shillings to drive around the towns in hired lorries dancing and chanting party slogans on behalf of KANU, SDP, DP, NDP, and Ford-Kenya
- ◆ during a campaign meeting in Mvita constituency, a group of rowdy KANU youths unleashed violence on the local people and looted shops in the area
- ◆ in Kisumu Town East, a KANU youthwinger was beaten to death by NDP supporters after a group of KANU youth wingers invaded the venue of an NDP rally armed with *Rungus* and axes
- ◆ in a meeting convened by presidential candidate Charity Ngilu in Sotik constituency, youths threw stones at her entourage after unsuccessfully demanding *kitu kidogo* (Kenyan euphemism for a petty bribe)
- ◆ in Eldama Ravine, Democratic Party candidate Joseph Leboo, was unable to hold campaign meetings due to intimidation and harassment by KANU youth wingers
- ◆ youths parading as supporters of various parties often carried crude weapons such as *rungus*, knives, axes, and stones to campaign rallies
- ◆ in Sirisia, KANU candidate Moses Wetangula formed a Students Association to campaign for him around the clock. The youths bought voters cards at Ksh 500 each.

Nevertheless, many young people attended campaign meetings simply as spectators or for the purpose of learning about a candidate's or party's stand on youth or other issues.

## 6.5 Political Zoning

Unlike 1992, when various constituencies were declared exclusive political zones for certain parties - particularly KANU - the trend was different in the buildup to the 1997 elections. For instance, KANU strongholds such as Baringo Central (President's Moi's own constituency) and Samburu East had opposition candidates for the first time. Nevertheless, opposition candidates or their supporters continued to be beaten, harassed, threatened with violence, and generally given a rough time by KANU supporters or candidates during the campaigns in a number of "sensitive" constituencies such as Baringo Central, Baringo East, Belgut, Chepalungu, and Narok.

In other traditional KANU strongholds, the KANU candidates were once again elected unopposed. These constituencies included Laisamis, Kapenguria, Sigor, Eldoret East, Baringo East, Baringo North, Narok North, Bomet, Chepalungu, Belgut, and Kipkelion. In Wajir North, the KANU MP was also elected unopposed, though he initially had an opponent who stepped down in his favour during the campaign.

## 6.6 Violence, Intimidation, and Corruption

### 6.6.1 Incidents of Violence

Incidents of inter-party violence were less common in 1997 than in 1992. They mainly occurred when different political parties inadvertently scheduled rallies at the same venue or when supporters of one party happened to meet supporters of another on the way to or from rallies. Incidents of inter-party violence were reported in Sirisia, Bumula, Mathira, Kisumu Town West, Rangwe, Kuria, and Sotik. In addition, the common borders of Gucha, Transmara, and Migori Districts remained tense throughout the campaign.

However, most incidents of violence were within individual parties. These incidents tended to be centred in specific constituencies, notably Meru, Malava-Lugari, Shinyalu, Garissa, Konoin, and Tinderet. Under the new Electoral Code, KANU, DP, SDP, FORD-Kenya, and NDP supporters were arraigned before a court for alleged violence and warned. The Shirikisho Party was almost deregistered after being accused of inciting its supporters to violence.

### 6.6.2 Intimidation and Harassment

Although there was no evidence of a political party being systematically targeted for harassment or intimidation, there were isolated incidents which seriously marred the free conduct of the campaigns. The most notable incident was in Kisii, where Charity Ngilu was not only barred from addressing her supporters but also tear gassed. In Malava constituency, the chief for South Kabras interfered with opposition rallies by intimidating party agents. In Baringo Central, the opposition candidate, who was challenging President Moi, was harassed and intimidated to such an extent that he was unable to campaign at all. The local KANU leaders, together with the provincial administration, made it impossible for him to conduct his campaign. After presenting his nomination papers, he was forced to stay away from Baringo Central because of death threats.

Other incidents of harassment were reported in North Eastern Province. For example, the NDP Presidential candidate Raila Odinga was denied landing rights at Hola airstrip during a campaign tour. The runway was completely barricaded. Cases of intimidation and threats to “outsider” communities in Kericho, Nandi, and Bomet were also reported and resulted in some voters fleeing these areas, effectively barring them from participating in the elections.

### **6.6.3 Selling and Buying of Votes**

Selling and buying of votes increased towards the close of the campaign period. Our reports indicate that this practice was concentrated in Kitui, Machakos, and Makueni Districts of Eastern Province, and in Teso and Mt Elgon Districts and parts of Bungoma District (particularly Sirisia and Bumala constituencies) in Western Province. The going price for a voter’s card was said to be between 1,000 and 5,000 shillings in these areas.

### **6.6.4 Bribery of Voters**

All constituencies reported cases of bribery of voters, with candidates allegedly paying voters anywhere from twenty to one thousand shillings either directly or through agents. Maize flour, sugar, clothing, and iron sheets were also handed out. Purchase of food and drinks in order to woo voters, though legal, constituted another kind of bribery. Some of the affected constituencies included Mathioya, Kitui West, Mogotio, Eldama Ravine, Dagoretti, Imenti Central, and Keiyo South. The practice was also widespread throughout North Eastern Province.

## CHAPTER 7

# THE POLLING

### 7.1 The Polling Days

Originally, polling was scheduled for one day only, December 29. However, it was officially extended to December 30 nationwide as a result of the numerous technical problems that occurred at so many polling stations on the 29th. In some constituencies in North Eastern and Coast Provinces that were affected by floods, polling went on beyond the official two days.

Our analysis of events on the polling days is based largely on checklists filled by our poll watchers and count certifiers, who were deployed in all 210 electoral constituencies. A total of 13,500 checklists were distributed. Of these, almost 90 per cent (11,794) were returned in time to be included in the analysis.

One important characteristic of the 1997 general elections was the high voter turnout. A total of 65.7 per cent of registered voters turned out to vote in the parliamentary elections, which represents a marked improvement on the 58.9 per cent turnout recorded in 1992. In terms of gender, 9 per cent of polling stations recorded a disproportionately high number of male voters, 49.8 per cent recorded mostly female voters, while 39.4 per cent had a roughly equal distribution of male and female voters. Regarding age, there appears to have been a good distribution of age groups. According to our observers, 36 per cent of all polling stations visited had a fair distribution of all age groups. However, 22 per cent of polling stations were mostly visited by youths (18-35 years), 36.7 per cent had a mostly middle-aged attendance (36-55 years), and 7 per cent had mostly older voters (56 years and above).

Kenyan's obvious enthusiasm for voting was marred, however, by widespread logistical and administrative problems, which not only caused disruptions and delays in the voting but also disrupted and delayed the vote counts in many polling stations. These problems raise serious questions about the credibility and integrity of the elections. For instance, a large number of polling stations (64 per cent) failed to open on time. Even when they did, voting was frequently delayed or disrupted by other problems such as lack of sufficient voting materials (48 per

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cent of polling stations), absence of election officials (43.5 per cent), or absence of political party agents (5 per cent).

In many cases, polling stations were not able to open until late on polling day. In some cases, they failed to open at all on the first day. Long queues of hundreds of voters could be seen outside many polling stations. After voting was extended to December 30, this day was declared a public holiday, as December 29 had also been. However, according to observers, the logistical problems persisted to the second day. The delays were particularly acute in parts of Coast and Eastern provinces where heavy El Nino rains had caused serious flooding. Voting in some constituencies in these areas continued to a third day, with results only released as late as the sixth day. These problems confirmed earlier fears that the ECK was seriously deficient in planning and organisational capacity.

Amidst this confusion, the patience of voters was very encouraging. At many polling stations, they were forced to queue for many hours, but nevertheless demonstrated their commitment to electing their representatives in a peaceful manner. They also displayed determination, and despite moments of anxiety, tension, and frayed tempers, they mostly remained calm.

### **7.2 Provision of Election Materials and Facilities**

The system of supply, distribution, and delivery of voting materials and facilities failed in almost 50 per cent of polling stations. More than 6,750 polling stations failed to begin operations at or near the stipulated time of 6.00 am on the first day of voting owing to the absence or late arrival of materials. In all, only about 48 per cent of polling stations received the required materials on time. The poor distribution of voting materials was further complicated by last-minute changes in the siting of some polling stations, with eight new venues being announced on the eve of polling. The most serious effect of the loss of control over distribution of materials was to prevent voters from fully exercising their franchise. For example, in a number of polling stations in Changanwe and Kitui South, voters were unable to vote in all three elections (presidential, parliamentary, and civic), as ballots for one or more levels were missing at various polling stations.

### **7.3 Voting Procedures at Polling Stations**

In response to the dramatic increase in voters registered at some of the 13,500 stations, voter streams were introduced in order to process voters more quickly. Some polling stations had as many as 15 streams based on alphabetic arrangement

of voters. Each stream served as a full-fledged polling station with its own voters' register, voters' booth, and ballot boxes. In Nairobi, which had the largest number of streams, all the polling stations were streamed. The average number of streams per polling station was six, with Moi Avenue Primary School in Starehe constituency, Nairobi, leading the country with a total of 15 streams.

However, there were widespread inconsistencies in the application of the streaming system. For example, due to problems arising from late opening of polling stations, some large stations, especially those with many streams, could not open all their streams at the same time. At a number of polling stations, voters stood in long queues waiting for the opening of their streams while voting proceeded in other streams. Labour and Bidii Primary School polling stations in Makadara constituency, Nairobi, which had five and eight streams respectively, provided glaring examples of this problem.

The slow voting in many polling stations was also caused by the incompetence and sheer ineptitude of some presiding officers and their deputies. Though 95.5 per cent of them had been trained for the job, some demonstrated unfamiliarity with basic opening and sealing processes and wasted tremendous amounts of time on these procedures. For example, at Kianthumbi polling station in Central Imenti constituency, Meru, the presiding officer had to keep referring to the ECK manual for guidance.

At a number of polling stations, officers seemed to be unaware of the requirement to record the serial numbers and seal labels of all ballot boxes. In some cases, observers had to remind them of this requirement. A number of boxes could only be identified by handwritten markings made on ECK stickers or masking tape. This problem was widespread in many polling stations in Kajiado North. At Scheme Six polling station, for example, the failure to properly mark and seal the ballot boxes created such confusion and chaos that the presiding officer had to resign.

In some instances, presiding officers simply misled voters. At Kanunga polling station in Kiambu, for example, the presiding officer instructed voters in the queue to put a mark next to the *picture of the candidate* of their choice rather than the symbol of the political party. As a result, illiterate voters went in to vote expecting to see a photo of their candidate on the ballot paper. Enquiring about the validity of this procedure and correcting it led to further delays.

In virtually all polling stations (99.3 per cent), ballot boxes were placed in open and conspicuous positions as required. However, in some stations the voting rooms were too small. This slowed down not only the movement of voters from one

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polling clerk to another but also the flow from polling clerk to voting booth to ballot box. In other polling stations, congestion was caused by failure to provide separate entry and exit doors for the voting booths.

The procedure of stamping the ballot papers and voter's card with the ECK stamp, dipping the voter's finger in indelible ink, and imprinting the identity card with the ECK seal took time but worked well in the great majority of cases (92 percent). Only 8 per cent of polling officials used improper identification and voting procedures.

### 7.4 Irregularities and Malpractices

The administration of the 1997 general elections was weaker than any previous election including 1992. The elections were marred by a number of irregularities and Malpractices.

There were cases of extraordinary mix-ups in the allocation of ballot papers. For example, 22,000 parliamentary ballot papers destined for Ntonyiri constituency in Nyambene District were dispatched to Kipkelion in Kericho District, a place that was not even scheduled to hold parliamentary elections, as the candidate there was unopposed. In Nairobi, ballot papers meant for Moi Primary School polling station in Starehe constituency were taken to Kasarani constituency. Five booklets of parliamentary ballot papers intended for Mathira constituency in Nyeri District and Mwala constituency in Machakos District were found at Passenga and Githunguri polling stations in 01 Kalou, Nyandarua. Other ballot papers meant for Karachuonyo in Rachuonyo District ended up in Imenti North in Meru District. This confusion meant that keeping a log of serial numbers was not of much use, as ballot papers borrowed from elsewhere had serial numbers that did not correspond to the new polling station to which they were taken. The ECK confirmed these administrative problems and revealed that up to 28 constituencies were affected. This represents 13 per cent of all constituencies.

There were also widespread reports of lack of ballot papers and misprinted ballot papers. For example, in Mwingi North in Kitui District many polling stations did not get enough ballot papers for the civic elections. Other areas affected with this problem included Rarieda and Mbita constituencies in Homa Bay District and Kaloleni constituency in Mombasa. Buni polling station in Kaloleni constituency received ballot papers which belonged to a different ward.

There were also reports of names of candidates missing from the ballot papers. At Nabuyole polling station in Webuye constituency, for example, a civic candidate's name was missing on the ballot paper. In Kinango constituency, the name of a Shirikisho Party candidate did not appear in the ballot paper in one polling station. Similar cases were widespread in Changamwe constituency in Mombasa.

Some polling stations sealed their ballot boxes on the first day of polling and refused to re-open them following the extension of voting. This happened in spite of voters turning up to vote. A good example of this problem was at Hospital Hill polling station in Westlands constituency, Nairobi.

At Kahara Shopping Centre in Kajiado North, there were only 100 presidential and parliamentary ballots. In Kandara constituency, one polling station received only 400 presidential ballot papers for over 3,000 registered voters. In Nguuku Primary School polling station in the same constituency, voters were permitted to improvise their own **ballot** papers for the civic elections by stamping normal ruled paper, writing the names of the candidates, and marking their choices. In Kinango Primary School polling station in Kinango constituency, cartons were used as ballot boxes when the official boxes were found to be defective. (They could not be opened so as to be officially sealed.)

Our poll watchers reported that the secrecy of the ballot was not consistently guaranteed. Though the great majority of polling stations (83.7 per cent) did a good job on this, about 16 per cent did not provide sufficient polling booths or adequate screens to protect the secrecy of the vote. These problems were most widespread in rural areas. In Mutithi Secondary School polling station in Mwea constituency, and in Nabutula and Bukiri polling stations in Funyula constituency, voters were forced to mark their ballots openly. This was in complete violation of the Electoral Code, yet the ECK officials did nothing about it.

There were reports of inaccuracies in the voters' register such as misspelling of voters' names or missing names. In other cases, the correct names appeared, but the voters did not have their national ID cards. Some presiding officers used their discretion to deal with such cases, but others denied people the right to vote. For example, we encountered a prospective voter at Limuru Town Primary School polling station in Limuru constituency who had been denied a chance to vote because he did not have a national ID card. However, his name was in the register, he had his voter's card, and he had also taken the precaution of carrying other documents that could be used to identify him, such as income tax returns. A number of reports of people being disenfranchised for lack of 'ID cards were also received from polling stations in Changamwe and Nyatike constituencies. Although

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the law requires voters to identify themselves, it does not require any particular form of identification

In Nyamanga Polling Station in Nyatike constituency, a number of people were unable to vote because their names were not in the register. It was later discovered that the page where their names should have appeared was missing from the register. These and similar cases in other areas resulted in many people being disenfranchised through no fault of their own. Observers also reported cases where changes of electoral boundaries forced people to vote in polling stations where they could not make their desired choices. For example, while many voters at Kawelu Primary School in Mwingi South thought they belonged to Wingeni Location, they discovered that they had actually been placed in Mutyangome Location, a place where they could not vote for the civic candidate of their choice. Similar reports were received from Langata and Dagoretti constituencies in Nairobi.

Illiteracy also presented opportunities for irregularities. Though it is difficult to estimate the proportion of illiterate voters, problems to do with illiteracy were most widespread in rural constituencies in Kitui, Bungoma, Kajiado, Baringo, Bomet, Transmara, and Kisii Districts and throughout North Eastern Province. The ECK's electoral rules and procedures provide that illiterate voters are to be assisted by the presiding officer in the presence of party agents and observers. The presiding officer is required to ask the illiterate voter to state the candidate of his choice either by pronouncing the name of the party symbol or the name of the candidate. The presiding officer then assists the voter to mark the ballot paper correctly. This procedure amounts to public voting, which subverts the secrecy of the ballot. It needs to be revised for future elections. However, even this procedure was frequently ignored, and in many cases party agents were allowed to take control of the exercise and influence illiterate people's votes.

With regard to the monitoring process, there was significant improvement over 1992 in giving election observers access to polling stations. At almost 80 per cent of polling stations, no problems were reported. However, at 12.6 per cent of stations, observers were not only denied entry but were also subjected to harassment and intimidation by presiding officers, security personnel, or even party agents. For example, at Mugumoni polling station in Kipkelion constituency, no observers were allowed to witness the polling process. At Kahuhu polling station in Ndaragua constituency, the presiding officer barred an observer from casting his vote, yet this is where the observer was entitled to vote. In parts of Meru, there were reports that poll watchers were not allowed to operate because their letters of accreditation were alleged to be wrongly addressed.

## **7.5 Performance of the ECK**

The ECK conducted its affairs more openly during the preparatory stages of the 1997 elections than it did in 1992, as demonstrated in particular by the daily press briefings it gave. However, it performed very poorly during the actual polling days in terms of logistical and administrative planning and coordination. The logistical and administrative problems were so widespread that they elicited criticism across the political spectrum. KANU's presidential candidate, Daniel arap Moi, even alleged at one point that the ECK was conspiring to rig him out of office. Numerous opposition candidates claimed the ECK was doing just the opposite.

A number of incidents of alleged rigging were reported. For example, in Kajiado North the KANU candidate, George Saitoti, was blocked by supporters of his opponent as he allegedly tried to introduce an alien ballot box into the counting centre with the help of the electoral officials. In the ensuing melee, a number of ballot boxes and papers were torched. Police had to fire in the air to disperse the crowd and restore peace. In Kitui Central, the home constituency of SDP presidential candidate Charity Ngilu, a presiding officer was allegedly found with partially burnt voters' cards and blank ballot papers hidden under a chair in his office. Mwai Kibaki, the DP presidential candidate, alleged that the ECK conspired with Smith and Ouzmann, the British firm that printed the ballot papers, to print two sets of papers in order to facilitate massive rigging.

When voting was extended to a second day, the announcement by ECK Chairman Samuel Kivuitu was issued so late that voting in many places continued deep into the night amidst conflicting instructions for postponement in some areas. For example, many polling stations in Kaiti, Mwingi North, Mwingi South, Turkana, and Makueni - to name only a few - continued voting late into the night of the first day, some up to as late as 3.00 am. Many of these places had started voting late due to transportation or weather-related problems. Consequently, even with the one-day extension, polling was done very sluggishly in many constituencies, especially in remote areas of North Eastern, Eastern, and Coast provinces. In some places, the counts were not ready even by the sixth day. For example, results for Wajir West had not been submitted even one full week after the opening of the polls. In Kirinyaga District, civic elections had still not been held as late as January 13. Calls for Kivuitu's resignation were made from many quarters.

The severity of these problems prompted the IED/CJPC/NCKK monitoring group, in their preliminary report on the elections issued on December 31, to demand an independent inquiry into the massive logistical and administrative problems surrounding the poll. Two main categories of problems were identified for

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investigation: the printing and packaging of ballot papers by Smith and Ouzmann on the one hand, and the distribution of the ballot papers and ballot boxes by the ECK on the other.

Despite the election's enormous logistical and administrative problems, the conduct of the ECK officials on the ground during the polling was reported to be satisfactory in the vast majority of areas (95.5 per cent). The IED/CJPC/NCKK observation teams reported good cooperation from most ECK officials and also found them to be generally vigilant, as well as helpful to elderly, handicapped, and illiterate voters. For example, in 94.6 per cent of cases, handicapped voters were offered appropriate assistance, usually by way of creating "fast tracks" or special queues. However, some election officials were less than helpful. In some polling stations, they were a real hindrance. There were reports of election officials barring observers and party agents from witnessing the polling process. Perhaps these officials were among the 4.5 per cent who were never trained for the job. Some examples include Mugumoni polling station in Kipkelion constituency and Kahuhu polling station in Ndaragua constituency.

In one polling station in Eldoret North, a presiding officer appeared to assume that voters had to make all their choices from the same party, since he guided illiterate voters to do so. Other presiding officers are reported to have permitted "proxy" voting. This happened, for example, at Kabamet Cereals polling station in Baringo Central, where a woman was allowed to vote on behalf of her daughter and her son as well as herself. A similar case was reported at a polling station in Kapenguria, where a man was allowed to vote on behalf of his wife.

In other areas, polling clerks failed to provide proper direction on polling procedures. As a result, ballot papers were put in the wrong ballot boxes. At Mikindani Primary School polling station in Changanwe constituency, our observers reported this problem as being severe. The problem was also common in rural constituencies with large numbers of illiterate voters such as Kitutu Masaba, Mwingi North, Funyula, Amagoro, and Butere. The results for parliamentary elections in Butere, for example, indicate that six per cent of ballots were spoiled. This was more than the difference between the two leading candidates.

### **7.6 Performance of Party Agents**

The election rules allow only two agents per political party in any polling station. However, the division of polling stations into streams introduced a complication. The question was whether every stream should have separate agents, as it technically represented a full-fledged polling station. Many parties were of the view that they

should be represented in the streams as well, and in many polling stations we noticed that some political parties had mobilised extra agents. At Bidii Primary School polling station in Makadara constituency, for example, KANU and DP wanted to station agents in all the eight streams. The other parties, however, had only one or two agents available for the whole polling station. In most constituencies in Baringo North and Baringo Central, KANU reportedly stationed more than four agents in many polling stations. Different presiding officers interpreted the rule differently, with some allowing as many agents as there were streams, while others stuck to the two-agents-per-party rule for the whole polling station regardless of the number of streams.

The presence of party agents in polling stations added significantly to voters' confidence that the process was being conducted openly. The commitment, vigilance, and enthusiasm of party agents at polling stations kept presiding officers and their deputies busy attending to the grievances and other concerns the party agents raised. On the other hand, arguments and contests provoked by party agents caused delays in the voting process in many places. Party agents do not necessarily undergo any training in electoral laws and procedures. Many agents did not even have the voters' register to help them determine the validity and number of voters in polling stations. They appeared interested more in voting procedures than anything else.

Many incidents of bribery, intimidation, violence, and vote buying were attributed to party agents. For instance, in a number of polling stations in Tinderet, Kwanza, Kajiado North, and Turkana Central, to name only a few, party agents, many of them from KANU, openly dished out cash to voters at polling stations. It was also reported that DP agents shouted party slogans and sang praises for their party leader in many polling stations in Mvita, Changamwe, Dagoretti, Juja, and Nyatike constituencies. Many other agents openly campaigned for their parties within the precincts of polling stations.

Party agents interfered with the voting process most clearly in cases of illiterate voters. In many areas with a high turnout of illiterate voters, party agents are reported to have misled or intimidated voters into voting in particular ways. In Kyamuoso polling station in Kaiti constituency, for example, agents campaigned openly and mainly targeted illiterate voters. At a polling station in Eldoret South, KANU agents were reported to have accompanied illiterate voters into voting booths. A similar case was reported at Sango polling station in Kwanza constituency. Here, party agents were seen barring the presiding officer from assisting illiterate voters and doing so themselves.

There were also reports (5.2 per cent of constituencies) of literate voters being advised to feign illiteracy in order to be “assisted” by party agents. Such cases were reported in a number of polling stations in Gachoka, Naivasha, Kipkelion, Baringo Central, and Emuhaya constituencies. In Baringo Central, the majority of voters were treated as illiterate and were openly assisted, mainly by party agents, thereby interfering with the secrecy of the ballot. It was not clear why presiding officers could not cross-check from these voters’ identity cards (which would be signed if the person were literate) to ensure that claims of illiteracy were genuine.

## **7.7 Role of the Provincial Administration**

One of the outcomes of the IPPG talks was a proposal to de-link the provincial administration from the ruling party and prevent it from playing any role in elections. This proposal was subsequently enacted into law under the Statute Law (Repeals and Miscellaneous Amendments) Act, 1997. However, even though the role of the provincial administration was reduced tremendously in the 1997 elections compared to 1992, there were instances where it was “business as usual.”

For example, there were a number of cases of chiefs, DOs, and DCs being present in polling stations and interfering in the polling and vote counting processes. In a polling station in Kandara, the area DO was reported to have engaged in “educating” voters on how to mark their ballot papers. In a polling station in Turkana North, a DO was reported to have dished out cash to voters on polling day. In Baringo Central, it was reported that a local DC was present in the counting centre throughout the counting process. There were also a number of cases of chiefs openly trying to influence voters. At a higher level, the independence of the ECK was arguably compromised by making use of vehicles belonging to the provincial administration. The ECK could easily have hired vehicles from a private firm.

## **7.8 Security**

The quality of security at polling stations was generally described as good (92.9 per cent of reports) compared to 1992, when numerous incidents of insecurity marred the process. Nevertheless, there were some very serious incidents of violence, including six cases of police shootings in Nakuru and Siaya districts on the first day of polling. Outside the Homa Bay counting centre, police reportedly

shot two people, one of whom died on the spot. At a polling station in Kinangop constituency, sudden gunshots sent voters scampering for safety. These voters were unwilling to take part in the voting afterwards.

There were -also some cases of harassment and intimidation of political party agents, observers, and voters by members of the security forces. In an incident in Kipkelion, observers and party agents were chased from a polling station by security officers. There were also reports of some unidentified security personnel interfering with the voting process in Kelelwet polling station in Nakuru Town constituency. In Tigania East constituency, the distribution of ballot papers and boxes was delayed because there were not enough security officers to escort them to polling stations.

There were also cases of violence involving political parties that raised questions about the adequacy of security. In Mathioya constituency, for example, vehicles belonging to a Ford-People candidate were burnt, allegedly by KANU supporters. Other incidents of violence and intimidation were reported in Mukarweini and Kisumu.

Cases of unauthorised persons or unusually large numbers of security personnel in polling stations during polling and vote counting also raised serious questions. A good example was Westlands constituency, particularly during the counting of votes at Railways Hall. These were clear breaches of the electoral law, which stipulates that only members of the ECK, candidates or their agents, members of the press, and officially accredited observers may attend voting and counting.

Some areas in Rift Valley and Nyanza Provinces had been designated “security zones” during the campaigns owing to ethnic clashes. During the polling days, there were no reports of further violence, which indicates that the security arrangements that had been taken were adequate. It was therefore possible for the residents of these areas, some of whom had been hostile towards each other, to participate peacefully in the elections.

## **7.9 Transportation, Storage, and Audit of Ballot Boxes**

Transportation of ballot boxes has always been a delicate issue in Kenya. In 1997, the exercise was once again a cause for concern. The postponement of polling to a second day created a significant problem with regard to ballot boxes after the first polling day. Many areas that did not conclude voting on the first day kept their ballot boxes in the polling stations overnight. In such cases, security personnel,

party agents, and some observers either stayed in the polling stations throughout the night or ensured that the stations were securely locked.

In a number of areas, the transportation and storage of ballot boxes at the conclusion of polling was a problem. In Eastern, North Eastern, and Coast provinces, heavy rains completely disrupted transportation. Although the ECK put helicopters into service in these areas, in many constituencies in Tana River District, Wajir, Malindi, and Kilifi, to name only a few, ballot boxes were not able to reach counting centres promptly. In one case, election officials transporting ballot boxes to the counting centre were drowned and the ballot boxes lost as the officials tried to cross the swollen Tana River. In other areas, poor planning and poor coordination among presiding officers, security personnel, and party agents caused the delays.

Many presiding officers relied on provincial administration vehicles for transporting ballot boxes. In almost all cases (99.8 per cent), ballot boxes were transported under police escort. Others who accompanied them included party agents in 99 per cent of cases, observers in 92 per cent of cases, and candidates in 67.8 per cent of cases.

All in all, there were relatively few allegations of ballot boxes being tampered with, new ballot boxes being introduced, or other forms of mishandling during transportation, as was often alleged to have happened in previous elections. In addition, there were not many complaints of problems such as breaking of seals or removal of ballot box identification documents. A high percentage of boxes (97.6 per cent) arrived at counting centres with their seals and serial numbers intact. Only 2.8 per cent had their seals or serial numbers tampered with.

## **7.10 Evaluating the Polling Exercise**

There were some claims from candidates, particularly those who appeared to be losing, of systematic rigging such as the use of two sets of ballot boxes and even the age-old practice of box-stuffing. However, no evidence of such practices was found by our network of election observers countrywide. Such evidence should be easily available from the ECK, which ought to have a movement schedule of all the election materials - ballot boxes, ballot papers, indelible ink, seals, and stamps - showing the name of the manufacturer, the date of manufacture, the quantities involved, and the totals of the items dispatched to the field.

## Polling

There were also incidents, some clearly documented by our observers and even published in the media, of stray ballot boxes and ballot papers. One wishes to believe that misrouting of materials was not part of a deliberate scheme to rig the electoral process but only a manifestation of administrative and managerial incapacity.- There were various other anomalies such as the use of makeshift ballots, photostat copies of ballots, and cartons as ballot boxes. In some cases, results were announced even though the official certificates and score sheets had been lost.

## CHAPTER 8

# COUNTING OF VOTES AND ANNOUNCEMENT OF RESULTS

Our analysis of the counting process is based on reports received from 206 out of the 210 counting centres throughout the country (98 percent). Observers at four centres in remote areas were unable to submit reports in time to be included in the analysis.

### **8.1 Delays in Counting**

The counting of votes has always been a highly charged affair in every election in this country. However, the 1997 count was especially problematic due to a botched attempt by the ECK to compensate for the logistical problems experienced during the polling. The problem began with the ECK's announcement on the evening of December 29 that counting should commence only on the following morning. This applied to all counting centres in the country, including those in constituencies where all the polling stations had completed the voting exercise.

The ECK announcement created widespread suspicion of a plan to rig the results. It was difficult for many people to believe that ballot boxes filled with votes could remain unopened overnight. Moreover, the ECK appeared unwilling to explain the reasons for the change of plan in a clear and cogent manner. To add to the confusion, in more than 50 per cent of counting centres counting proceeded on the same night regardless of the ECK's instructions. An amendment to the instructions was made later - reversing the previous postponement of counting but by then the harm had already been done, and there were frayed tempers, suspicion, and dismay all round.

In those places where the returning officers postponed the count, members of the electorate, mainly youths, kept a tenacious vigil through the night, guarding the ballot boxes against would-be riggers. Our count certifier in the Wanguru County Hall polling station of Mwea constituency, Kirinyaga District, reported that "there were more than 1,000 people who spent the night in the hall guarding the ballot boxes. The whole night was peaceful. " These voter vigils were the result of two

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main factors: first, the voters' firm belief in the power of the ballot and, second, their doubts about the dependability of the country's security forces. In the end, however, there were relatively few allegations of ballot box tampering. Only 4 per cent of our count certifiers reported allegations of ballot boxes being stuffed, while 8.2 per cent reported allegations of alien ballot boxes being introduced.

The counting was very slow. In 48.4 per cent of counting centres, the process was repeatedly interrupted. In 19 per cent of these cases, the interruptions were due to lighting problems as a result of power failures. In some centres, counting had to be restarted when those in charge lost track of the count, and in other centres arguments about the validity of some ballot boxes delayed the process. The count was so dilatory that the first election results were not broadcast for more than 20 hours after counting had started. The first results came from Kangema constituency in Central Province. Further results were announced anywhere from ten hours to five days after this. Admittedly, there were considerably more candidates in 1997 than in 1992. However, this cannot justify the inordinate delays.

The level of training of some returning officers was very doubtful. Westlands, a high-profile urban constituency in Nairobi, provides the most agonising example. Not only did the returning officer refuse to allow a recount in a close and hotly contested result, but she even went into hiding before hurriedly announcing the result in the presence of heavy security. One particularly disturbing trend was the disappearance of some returning officers from the counting halls for long periods of time, ostensibly to "verify" the figures collected during the counting exercise. This happened, for example, in Westlands and Kajiado North constituencies. Such actions do little to promote transparency or inspire confidence.

Another practice which aroused suspicion was the ordering of party agents (and sometimes election observers) out of the counting halls. The presence of members of the Provincial Administration and the Special Branch was also observed in some counting centres, such as Westlands and Kajiado North.

At the counting centres, counting was done polling station by polling station. As the count for each polling station was completed, the figures were noted down by the election officials, the candidates, their agents, and the election observers. However, there were a number of cases, the most notorious being Westlands, where these figures were substituted with other figures which were never explained.

Clearly, it is vital to have a speedy counting exercise, with results verified by all parties and announced immediately after the count is completed. This is the only way public confidence in the result can be ensured. Unfortunately, this was not

the case in 1997, especially in constituencies as critical as Westlands and Kajiado North.

On the other hand, delays in announcing results are justified if the cause is a recount. For the sake of transparency and public confidence, returning officers should normally grant requests for recounts in order to remove any doubts about the accuracy of the final results. In the great majority of cases in the 1997 elections (90.6 per cent), recounts were granted when requested.

There has, of course, to be a limit to incessant demands for recounts, especially when these are frivolous and vexatious. Though a returning officer should try to accede to legitimate requests for recounts, he or she has the power to close the counting process when further requests for recounts are clearly unnecessary. However, it is contrary to basic notions of justice to refuse a recount when the results of the first count are close, as occurred in Westlands.

This incident again raises questions about the quality of training given to election officials by the ECK. The law on recounts is very clear. Regulation No. 37 of the Presidential and Parliamentary Elections Regulations (under the National Assembly and Presidential Elections Act) states:

- (1) A candidate or counting agent, if lawfully present when the counting or any recount of votes is completed, may require the returning officer to have the votes rechecked and recounted or again recounted, or the returning officer may, on his own initiative, have the votes recounted or again recounted.
- (2) No steps shall be taken on the completion of a count or recount of votes until the candidates and counting agents present at the completion have been given a reasonable opportunity to exercise the right given by this regulation.

## **8.2 Aggregation of the Votes**

The counting of votes continued into the first week of January 1998 in more than 50 per cent of constituencies. It was not until January 6 that all the results for parliamentary and civic elections were finally announced. The presidential results were announced before the presidential vote from all constituencies had been announced. This deviated from past practice, but the ECK argued that the results up to that point clearly indicated victory for the leading candidate and that the remaining results would not alter this.

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The law on the matter is that presidential results should only be released after the results from every constituency have been received. However, a lawyer with the pro-establishment Movement for Dialogue and Non-Violence (MODAN) offered a justification of the legal anomaly by quoting Section 28 of the National Assembly and Presidential Elections Act, which states:

No election shall be declared to be void by reason of a non-compliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in that written law, or that the non-compliance did not affect the result of the election.

## CHAPTER 9

A record fifteen candidates vied for the presidency, but only five - Daniel arap Moi (KANU), Mwai Kibaki (DP), Raila Odinga (NDP), Michael Wamalwa (FORD-K), and Charity Ngilu (SDP) - were serious contenders. The incumbent, Daniel arap Moi, won the presidential elections with slightly over 40 per cent of the vote. Mwai Kibaki came second with just over 30 per cent, Raila Odinga placed third with 10.82 per cent, and Michael Wamalwa came fourth with 8.19 per cent. Charity Ngilu trailed among the serious contenders with 7.91 per cent. None of the remaining candidates managed even one per cent. Indeed, together they received only 1.73 per cent.

*Table 5: Presidential votes*

<b>Rank</b>	<b>Candidate</b>	<b>Votes</b>	<b>Per cent</b>
1	Daniel arap Moi (KANU)	2,500,856	40.51
2	Mwai Kibaki (DP)	1,911,472	30.97
3	Raila Odinga (NDP)	667,886	10.82
4	Michael Wamalwa (FORD-K)	505,704	8.19
5	Charity Ngilu (SDP)	488,600	7.91
6	Martin Shikuku (FORD-A)	36,512	0.59
7	Katama Mkangi (KNC)	23,554	0.38
8	George Anyona (KSC)	16,428	0.27
9	Kimani Wanyoike (FORD-P)	8,306	0.13
10	Koigi wa Wamwere (KENDA)	7,745	0.13
11	Munyua Waiyaki (UPPK)	6,194	0.10
12	Godfrey Mwereria (GAP)	4,627	0.07
13	Wangari Maathai (LPK)	4,196	0.07
14	Stephen Oludhe (EIC)	3,691	0.06
15	Joseph Ng'ethe (UPPK)		

*Total votes cast: 6,173,171*

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All five serious presidential contenders won their parliamentary seats. Both President Moi and Mwai Kibaki won their seats with overwhelming majorities. Moi won his Baringo Central constituency with 99.45 per cent (38,015 votes), and Kibaki won his Othaya constituency with 97.78 per cent (31,637 votes).

Charity Ngilu won her Kitui Central constituency with a strong majority of 72.61 per cent (28,172 votes). The other two serious contenders won their parliamentary seats with relatively slim majorities. Kijana Wamalwa won his Saboti seat with 58.8 per cent (37,944 votes), while Raila Odinga, the only presidential candidate based in an urban constituency, captured the Langata seat in Nairobi with a majority of only 52.11 per cent (22,339 votes). Among the fringe candidates, only George Anyona made it to Parliament. He obtained 48.69 per cent (14,653) of the votes cast in his Kitutu Masaba constituency.

Only President Moi obtained the required 25 per cent of the vote in at least five provinces which is needed, along with a plurality of all votes cast, to be elected president. He satisfied the 25 per cent rule in North Eastern Province (72.89 per cent), Rift Valley Province (69.37 per cent), Coast Province (63.09 per cent), Western Province (45.95 per cent), and Eastern Province (35.30 per cent). Nevertheless, the combined opposition candidates took 59.49 per cent of the votes nationwide against Moi's 40.51 per cent. This demonstrates the inherent injustice of the first-past-the-post system in which a candidate with a plurality of the votes (as opposed to a majority) can be declared president.

Of the other serious contenders, Mwai Kibaki was able to satisfy the 25 per cent requirement in Central Province (88.64 per cent), Nairobi Province (43.74 per cent), and Eastern Province (28.20 per cent). The other three serious candidates only managed 25 per cent in their home provinces. Raila Odinga obtained 56.56 per cent of the votes in Nyanza Province, Wamalwa got 49.37 per cent in Western Province, and Ngilu got 33.28 per cent of the votes in Eastern Province.

In the parliamentary elections, KANU won 107 seats, securing a slim parliamentary majority of two. Of the KANU victors, 11 were elected unopposed. DP took 39 seats, NDP 21 seats, FORD-Kenya 17 seats, and SDP 15 seats. Among the smaller parties, SAFINA - despite its late registration - managed five seats, while FORD People took three. KSC, SPK, and FORD-Asili managed only one seat each. It should be noted that KANU, despite winning 50.9 per cent of the parliamentary seats, received only 38.43 per cent of the vote (2,243,463 votes) against the opposition's 61.57 per cent (3,594,145 votes).

There were two women candidates among the 15 presidential contenders. One of them, Charity Kaluki Ngilu, was considered a strong contender. In the end, a very low percentage of the total votes went to the two women candidates. Between them, they only obtained 7.98 per cent (492,796 votes). This consisted of Wangari Maathai's 4,196 and Ngilu's 488,600. The male candidates together captured 92.02 per cent.

In the parliamentary elections, there were 47 women candidates against 833 men. Only four women candidates won seats. SDP had two successful women contestants, while KANU and DP had one each. The number of votes obtained by women in the parliamentary elections was 220,756 (3.78 per cent). This contrasts sharply with the 5,616,600 (96.22 per cent) for the male candidates, an even higher percentage than in the presidential election.

There were interesting differences between the total valid votes cast in the presidential election and those in the parliamentary election. The biggest difference in favour of the presidential election was in Rift Valley Province (361,649). Most of this difference can be attributed to the 10 constituencies there in which MPs were elected unopposed and there was therefore no parliamentary vote. These constituencies account for 356,037 votes. The same cannot be said of Nyanza, however, which registered a difference of 17,168 in favour of presidential votes. Curiously, Western Province had 28,151 more parliamentary than presidential votes. Of all the constituencies, only Bondo in Nyanza and Mvita in Coast Province registered no difference in votes between the presidential and parliamentary elections.

**Table 6: Party representation in parliament**

Party	Elected	Nominated	Total Seats
Kenya African National Union	107	6	113
Democratic Party of Kenya	39	2	41
National Development Party	21	1	22
FORD-Kenya	17	1	18
Social Democratic Party	15	1	16
Safina	5	1	6
FORD People	3	0	3
Shirikisho Party of Kenya	1	0	1
Kenya Social Congress	1	0	1
FORD-Asili	1	0	1

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The relative strengths of the different parties in different provinces are also interesting. KANU's main strength is in Rift Valley Province, where it elected 39 MPs (36.5 per cent of its total elected seats). However, KANU also won the majority of seats in Coast, Western, Eastern, and North Eastern provinces. Compared to the 1992 parliamentary elections, when KANU won 53.2 per cent of the elected seats, this time round it won only about 51 per cent. DP's stronghold is Central Province, where the party has 17 MPs (43.5 per cent of its elected seats). The SDP stronghold of Eastern Province yielded 9 of its 15 MPs (60 per cent), while FORD-Kenya got 9 of its 17 MPs (52.9 per cent) in Western Province. NDP support is the most highly concentrated in terms of region, with 19 of its 21 elected M-Ps (90.4 per cent) coming from Nyanza Province.

**Table 7.- Parties'parliamentary strength (elected MPs only)**

Province	KANU	DP	NDP	FORD-K	SDP	SAFINA	FORD-P	Others
Nairobi	1	5	1		1			
Coast	18	2						1 (SPK)
North Eastern	9					2		
Eastern	16		8	1		9		1 (FORD-A)
Central		17	1		5	3	3	
Rift Valley	39	7	3					
Western	15			9				
Nyanza	8	19		4				1 (KSC)
<b>Party Totals</b>	<b>071</b>	<b>39</b>	<b>21</b>	<b>17</b>	<b>15</b>	<b>5</b>	<b>3</b>	<b>3</b>

The percentage of rejected ballots compared to the votes cast was six times higher in 1997 (1.62 per cent) than in 1992 (0.27 per cent). The highest percentages of rejected ballots were in Gem Constituency in Nyanza Province (15.82 per cent) and Butere Constituency in Western Province (6.97 per cent). The higher percentage of rejected ballots in 1997 compared to 1992 demonstrates the need for more voter education efforts on this seemingly simple procedure.

In the civic elections, KANU won the highest number of seats. Out of the 2,919 wards in which elections were held, KANU won 1,754 (60 per cent). The closest contender, DP, took only 427 seats (14.6 per cent). When the number of seats in the civic elections is compared to the number of seats in the parliamentary elections,

there is a marked difference in distribution by party. KANU has 51 per cent of the elective parliamentary seats, but 60 per cent of the civic seats. Put differently, for every one seat that DP has in parliament, KANU has 2.7, while for every one seat that DP has in a local authority, KANU has 4. 1.

This disparity is large, especially considering that the number of nominated councillors is equal to one-third of the number of wards in every local authority. This means that the issue of gerrymandering at the civic level needs greater and more serious treatment than it has been given in the past. After all, it is the leaders at the local authority level who are closest to the people and in a position to have the greatest impact on people's lives. The ECK did not conduct civic elections in a total of 36 wards. The reasons for this were mainly logistical. They included inaccessibility and candidates' names missing from ballot papers. In areas where candidates tied, the ECK will hold repeat elections.

**Table 8: Distribution of civic seats (as of Feb 16, 1998)**

<b>Party</b>	<b>Elected Councillors</b>
Kenya African National Union	1,754
Democratic Party of Kenya	427
National Development Party of Kenya	296
FORD-Kenya	187
Social Democratic Party	139
Safina	38
FORD-People	33
FORD-Asili	19
Kenya Social Congress	7
Liberal Party of Kenya	6
Labour Party Democracy	4
Federal Party of Kenya	4
United Patriotic Party of Kenya	2
Kenya National Democratic Alliance	1
Kenya National Congress	1
Party of Independent Candidates of Kenya	1

**Total wards.- 2,919; wards in which elections have not been held.- 36**

3

SPECIAL ISSUES

## CHAPTER 10

# ROLE OF MEDIA

### 10.1 Significance of Fair Coverage

Free and fair elections depend to a significant degree on the ability of the media to function in an impartial, independent, and professional manner. The electorate must have the opportunity to make informed choices, and political parties and candidates must enjoy proper and equal access to the electronic and print media. All essential information must be communicated effectively and on time.

Adherence to the standards of accuracy, objectivity, and balance in news and other information is also essential. Balanced coverage does not require that precisely equal time be given to each of the contending parties and candidates, but it does preclude giving unnecessary and disproportionate coverage to one or more parties, or giving one or more parties or candidates positive or negative coverage in order to favour certain contenders. Departure from these standards deprives the public of a balanced view of the contending parties and the important issues raised in their campaigns. However, upholding these standards during an election period is more difficult than at other times, as objectivity may require reporting facts that are detrimental to one contender or another. Accuracy may demand reporting a story differently from the political contestant's perception of it. But balance must still be the goal.

Following the review and repeal of laws restricting the freedom of the media prior to the elections, there was an upsurge in the number of newspapers and magazines, especially as elections drew near. The new entrants were mostly weeklies, including *Dunia*, *the Star*, *the Rift Valley Times*, *Dispatch* and *Kenya Confidential*, all in English. Though intended for a national audience, technical and distribution problems prevented circulation of these newspapers to a large part of the population. There were also a number of new entrants in the vernacular market, but they were restricted to their local regions or to readers of the respective languages living in the cities.

As part of the pre-election IPPG reform deal, it was agreed that KBC would provide equitable access to all political parties. The ECK was given the responsibility for monitoring this, but it did not take this responsibility seriously. In the end, the goal of free and fair coverage on the national television network was not achieved. The extent of the bias in KBC election coverage in favour of KANU was revealed in detail by media monitoring undertaken by the Media Institute and by the Kenya Human Rights Commission (KHRC) through a project named Elections 97 Media Watch.

## **10.2 Media Monitoring**

In the run-up to the elections, KHRC's Elections 97 Media Watch monitored the fairness of media coverage and tried to ensure that a policy of fair, balanced coverage was implemented. Throughout the campaign, Elections 97 Media Watch provided regular, systematic reports that provided an objective basis from which KHRC lobbied for equal and fair coverage. Six weeks before polling day, a weekly summary report, the *Weekly Flash*, was also launched to intensify the campaign for fair and impartial coverage by the print media. The Media Institute also conducted a survey and produced a report which analysed coverage by the print media

The media that were reviewed included the print media (daily newspapers, weeklies, and monthly magazines which are published regularly and have a reasonable circulation) and KBC television and radio. However, the main focus was on the electronic media because of their much greater reach and potential impact.

### **10.2.1 The Print Media**

The Media Institute's survey covered the four-week period from December 4, 1997 to the end of the first week of January, 1998. It analysed coverage by the three major daily newspapers, the *Daily Nation*, the *East African Standard*, the *Kenya Times*, and the major weekly newspaper, the *People*. The survey revealed that President Moi got almost twice as much coverage as his four major opponents. Moreover, his coverage increased compared to the others as the campaign wore on. Compared to the first week, Moi had gained 24 per cent more coverage by the end of the survey period, while Kibaki gained by 8 per cent, and Raila and Ngilu by 5 per cent each. The only candidate whose coverage declined during the period of the survey was Michael Wamalwa. Coverage of Wamalwa declined by 18 per cent.

Regarding coverage of the political parties, KANU's proportion during the fourweek period dropped by 19 per cent from the first week. DP gained by 2.8 per cent, SDP by 3.2 per cent, and NDP-K by 3.1 per cent, while FORD-Kenya lost 3.5 per cent of coverage compared to week one. Thus, the loss of 19 per cent by KANU did not all go to the opposition, who only gained by a combined total of 9.1 per cent.

In week four, reports indicated that the *Kenya Times* had a total of 175 news items on elections, followed by the *Nation* at 113, and the *East African Standard* at 98. These translate into 44 per cent, 28 per cent, and 25 per cent of their total news coverage respectively.

### **10. 2.2 The Broadcast Media**

The KBC, in line with the the IPPG agreement on equitable access, produced a timetable allocating television and radio airtime to all registered political parties. However, the ways in which coverage was given continued to reflect an obvious bias towards the ruling party and its candidates. According to observations made during the media monitoring exercise, KANU received considerably more coverage than the opposition in terms of both the allocated time and general news coverage, and it was presented in a consistently more favourable light.

The reports indicate that:

- ◆ 99 per cent of KANU's activities were covered positively and only 1 per cent negatively by KBC radio andTV news
- ◆ only 4 per cent of opposition activities were covered positively, while 96 per cent were covered negatively
- ◆ defections from KANU went unreported or were only mentioned in passing, while defections from the opposition got extensive coverage. For example, the defection of Kuria Kanyingi from KANU was not covered at all, even though Kanyingi's KANU activities had formerly received a lot of coverage, while the defection to KANU of former FORD-Asili MP Mary Wanjiru received wide coverage.

While the negative coverage of the opposition did not always mean that KBC was telling untruths, KBC's selection of what opposition matters to highlight indicated clear bias towards the negative. It also proved unable to distinguish between the activities of government officials and party campaigning. KBC gave coverage to government officials, particularly the President and cabinet ministers, without

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regard to the fact that in an election period this coverage would benefit their campaigns. Politicians without government portfolios, particularly those in the opposition, were placed at a considerable disadvantage by this practice.

In some instances, the imbalance in KBC coverage indicated a conscious attempt to influence potential voters. For example, on December 28 presidential hopeful Mwai Kibaki held a mammoth rally at Uhuru Park but was given less than ten seconds on KBC television. Moreover, the portion of the rally that KBC covered was of little political significance. For her part, Presidential hopeful Charity Ngilu suffered an almost complete blackout on KBC. In contrast, there was extensive coverage of KANU rallies, complete with generous segments of speeches. When opposition rallies were reported, newscasters only gave summaries of the speeches rather than broadcasting from the speeches themselves.

### **10.3 Special Election Programmes**

In this election, the opportunity to appear on television was extended to the opposition parties through a system of 25-minute party broadcasts on KBC agreed by the IPPG. These broadcasts enabled opposition parties not only to promote their policies and programmes but also to present their presidential candidates. The Programmes took the form of interviews, commentaries, and documentaries.

Panel discussions were also conducted, in which several candidates or representatives from different parties held joint discussions.

One KBC TV programme, the weekly *Yaliyotokea*, had to be suspended due to Pressure from opposition parties and the general public, as it was in essence a survey of the President's political activities during the week. However, the Presidential Press Unit (PPU) continued to flood the KBC airwaves with the President's campaign speeches.

The other television network, KTN, which only reaches Nairobi and Mombasa, held debates on its regular programme *The Summit*, but the only episode that went on the air was an interview with President Moi. New programmes, *Forum* and *Heart of the Matter*, were also introduced by KBC. *Heart of the Matter*, which was presented in both Kiswahili and English and aired immediately before the main evening news programme at 7 pm, was heavily pro-establishment. it continues to be aired up to now.

There are two important requirements for fair allocation of time for direct-access programming:

- ◆ clear and impartial criteria for parties to qualify for airtime
- ◆ fair and impartial methods of allocating airtime among the qualified parties.

The main challenge is to give access to all genuine political contenders while recognising that dividing limited time between too many contenders may adversely affect the electorate's ability to make informed choices. By attempting to give equal access to all registered political parties, KBC flooded the air waves with messages from presidential contenders who had little or no chance even of winning their own seats and from parties with little or no chance of playing a role in forming a government. This diluted the messages from the main contenders and confused voters more than it assisted them. The practice also resulted in timeslots that were not adequate for any candidate or party to present their messages properly. This problem put the opposition at a particular disadvantage, since the ruling party has been able to use the media to promote its policies for a long time.

### **10.3.1 An Analysis of Media Coverage During the Elections**

KBC continued to give very limited and mainly negative coverage to opposition candidates and parties. Though the time allocated to coverage of the opposition increased dramatically, rising from 10 per cent in the first week of November to 32 per cent by the last week of November, as soon as the official campaign started on December 10, opposition coverage fell, and KBC reverted to giving a disproportionate amount of time to President Moi and KANU. As well, KANU items usually received better coverage in terms of both the length and depth of news items. Moreover, despite the increase in opposition airtime during November, this airtime increasingly portrayed the opposition negatively.

Another important point about KBC coverage is that it was clearly against the spirit of the IPPG deal, and plainly illegal, for civil servants to campaign for any party. Although KBC employees may argue that they are not civil servants strictly speaking, they are nevertheless public officials in an institution sustained by public funds. Accordingly, those KBC employees who in effect campaigned for KANU by participating in KBC's biased coverage should be held to account for this.

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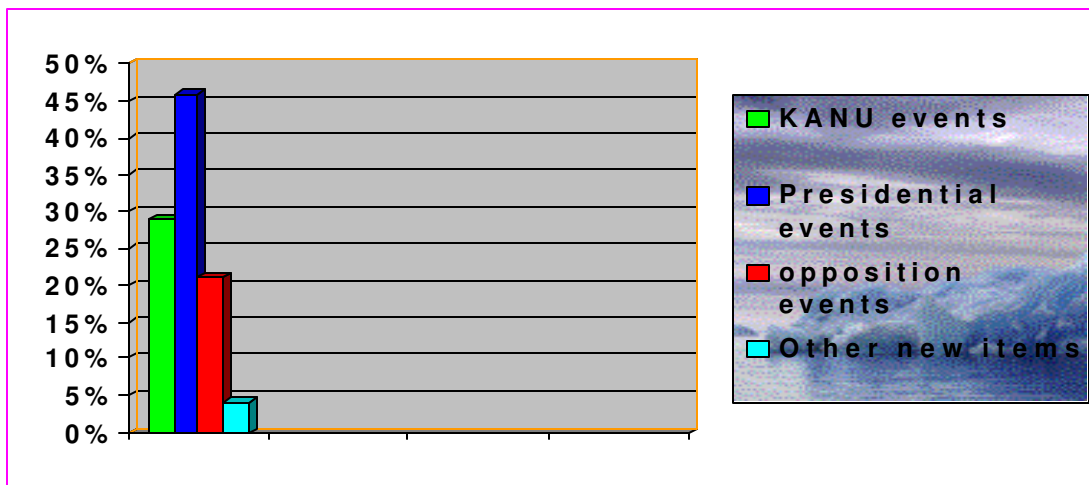
The general observations made by the KHRC Media Watch monitoring report can be summarised as follows:

- ◆ President Moi came first on most news items, regardless of whether he was carrying out executive functions or doing the rounds in his capacity as KANU .chairman. He received 46 per cent of total airtime.
- ◆ In spite of the increase in coverage of the Opposition during November, most of the airtime given to Opposition candidates and parties portrayed them negatively. Moreover, this negativity increased steadily during the campaign period, rising from 86 per cent negative coverage in week one to 96 per cent by week four.
- ◆ Three Opposition Presidential candidates - Michael Wamalwa of FORD-Kenya, Mwai Kibaki of DP, and Raila Odinga of NDP - received a disproportionate amount of air time compared to Charity Ngilu of SDP and other presidential candidates.

A new talk show, *Forum*, featuring discussions with political leaders, was introduced on KBC, and, although it did not outrightly support KANU, it was nevertheless slanted towards KANU. This programme was sponsored by a media group owned by a State House employee.

The following graphs summarise news coverage on radio and television during November 1997.

Figure 1: Radio coverage



## CHAPTER 11

# GENDER ISSUES IN THE 1997 ELECTIONS

### 11.1 Nominations

In the 1992 elections, 19 women were nominated by various parties to contest parliamentary seats. Six women MPs were elected, and one more was later nominated. Women's numerical inferiority in the 7th parliament ensured that the motions they attempted to put through parliament addressing gender issues, such as the motion for affirmative action in favour of women, received scant support and were unsuccessful. Before the 1997 elections, a total of 150 women declared their interest in contesting parliamentary seats. Women hoped that this time round they would achieve sufficient representation in parliament to have some legislative impact and be able to push through motions addressing the problems of women.

In the end, the political parties nominated only 47 women parliamentary aspirants. This represented only slightly more than 5 per cent of the 880 candidates who were nominated. Two women MPs in the previous parliament, Nyiva Mwendwa and Agnes Ndetei, were ousted at the nomination stage. Their early exit did not augur well for the performance of women during the actual elections. Both women came from Ukambani, and with their exit the region lost two political giants. Mwendwa was Minister for Culture and Social Services at the time, while Ndetei, after defecting from DP in 1996, had been rewarded with the post of Assistant Minister of Education. The departure of Mwendwa and Ndetei left SDP leader and presidential hopeful Charity Ngilu as the only major female politician in Ukambani.

Of the six women legislators in the seventh parliament, only two, Gichugu's Martha Karua and Kitui Central's Charity Ngilu, made it back to the new parliament. Karachuonyo's Phoebe Asiyo retired, while Kinangop's Mary Wanjiru defected to KANU and then re-defected to FORD-Kenya when she lost in the KANU nominations. She succeeded in winning the FORD-Kenya nomination but was defeated in the elections.

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Among the political parties, the SDP nominated the largest number of women, perhaps influenced by the fact that its presidential contender was also a woman. SDP fielded 13 women, a substantial 27.7 per cent of the total women candidates, but only 12.6 per cent of SDP's total candidates. FORD-K, NDP, and KANU each fielded only 6 female candidates. This amounted to about 5.7 per cent of the FORD-K candidates, 5.5 per cent of the NDP candidates, and only about 2.8 per cent of the KANU candidates. The Liberal Party of Kenya (LPK), led by presidential candidate Wangari Maathai, fielded five female candidates. This represented 16.6 per cent of their candidates, the largest percentage of female candidates of any party, FORD-A and DP nominated only three women candidates each. This was about 8 per cent of FORD-A's candidates and a mere 2.25 per cent of DP's candidates, giving DP the lowest percentage of female candidates of any party. KSC and Ford-P fielded two female candidates each (10.5 and 5.5 per cent of their candidates respectively), while KNC fielded only one female candidate, representing 8.3 per cent of its candidates.

Women were not spared political tricks in the general elections. Ijara's Sophia Abdi Noor of KANU, who had been declared the winner in the constituency nominations, lost in mysterious circumstances while awaiting her nomination certificate at KANU headquarters. She immediately moved over to FORD-Asilli, on whose ticket she vied for the same seat, losing by only 521 votes. This means she would have stood an excellent chance of winning had she been sponsored by KANU. Phelgona Okundi of KANU, the Nyanza provincial chairperson of *Maendeleo ya Wanawake*, seemed to have it easy when the KANU chairman, against the wishes of many KANU members, unilaterally nominated her to vie for the Rangwe seat. However, she went on to lose to the NDP candidate Shem Ochuodho. Another contender was Beth Mugo, who once again vied for the Dagoretti seat. In 1992, she was a prominent DP activist and ran on that party's ticket, only to lose to FORD-Asili's Chris Kamuyu. She later joined FORD-Asili herself but later defected to SDP. She seemed to have done her ground work well in Dagoretti, including starting a bursary fund which might have helped endear her to the constituents, and went on to win the seat.

## **11.2 Campaigns and Polling**

Though there was more of an attempt in 1997 than in 1992 to provide suitable conditions for political campaigns, in many areas little actually changed on the ground. This was particularly the case with women candidates. For example, though Charity Ngilu successfully traversed the country campaigning for herself and her party, she occasionally had serious problems with security personnel. On one

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occasion in Kisii, the police declared an SDP meeting illegal and dispersed Ngilu and her group using teargas. This was after President Moi had declared the Kisii and Transmara areas security zones following clashes between the Luo and the Kisii. However, he had just concluded his own presidential campaign in the area and, with the declaration of the security zone, conveniently excluded other candidates. Ngilu also had a run-in with the police in Machakos when they claimed that the license of a hotel where she was meeting her supporters had expired.

The violence that sometimes characterised the campaigns did not spare women candidates. At one point during her campaign, Phelgona Okundi was roughed up and injured and her car burnt. In Dagoretti, Beth Mugo beefed up her security after claiming that her life was in danger. Mugo's opponents claimed that Dagoretti was not ready for a woman parliamentarian, and the arguments on this and related points that characterised her campaign meetings often ended in physical confrontations between her supporters and those of the KANU candidate.

Mugo was not alone in having to contend with gender-based stereotypes during the campaign. All the women candidates faced similar arguments. Charity Ngilu attempted to counter these stereotypes using strategic newspaper advertisements which presented her as a serious candidate. The ads explained her party's vision and plans for Kenya using the theme *mwanzo mpya* (new beginning). She dwelt on what she called her "clean track record," claiming the record spoke for itself and was devoid of corruption.

Otherwise, though most parties made brilliant statements in their manifestos about their commitment to gender equality, this commitment was barely visible on most campaign platforms. In fact, there was an enormous gap between statements of intent in manifestos and the articulation of policy on the platform. For example, almost all the parties pledged to integrate the gender question in their operations, yet in actual practice this was rarely seen. Some leaders were even quoted in the press saying women cannot lead and should not be elected to an executive position such as the presidency.

Even elite women who are considered role models of female leadership and enterprise made the performance of women candidates difficult. With regard to the presidential contest, for example, they argued publicly that women should not contest the seat as long as the male Head of State was still alive. Zipporah Kittony, chairperson of *Maendeleo ya Wanawake*, the largest and oldest women's Organisation in Kenya, was in the forefront of this campaign and was quoted several times in the media advising women to reject any woman opposing the President. She advised women to focus instead on lower positions in the political hierarchy.

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When statements like this come from a woman of such stature, other women are bound to pay attention. In the end, Kitony's efforts to campaign for Moi seemed to pay off when she herself was nominated to parliament by KANU. Out of its six nominees, KANU also nominated one other woman, the *Maendeleo ya Wanawake* district chairperson for Makueni, Grace Mueni Mwewa, who had also campaigned for KANU during the election. This brought the number of KANU women legislators in the eighth parliament to three.

The opposition parties, on the other hand, did not do very well in terms of presenting women candidates as parliamentary nominees. DP and NDP nominated only one woman each and the rest none. With regard to nominations to local authorities, very few complied with the ECK requirement to nominate as many women as possible. The failure to nominate more women also contravened the spirit of IPPG and further reinforced the tendency towards male-dominated decision-making structures in this country.

Polling patterns confirmed that women do not necessarily vote for their fellow women. Out of the 47 female parliamentary candidates, only four were elected. These were SDP's Charity Ngilu, DP's Martha Karua, KANU's Marere wa Mwachai, and SDP's Beth Mugo. Compared to 1992, when women garnered six seats out of 19 contenders, this was a very discouraging showing after five years of multipartyism.

### **11.3 Women's Performance in the Elections**

Women are still asking themselves what happened during these elections. Several reasons can be offered for their dismal performance. One is the lack of marketing strategies for mobilising the support of fellow women. Women candidates appeared to mainly target male voters and to overlook the potential voting bloc represented by their fellow women. In the end, a majority of women voters voted for male candidates. A second reason centres on the question of resources and their role in Kenya's electoral process. The truth of the matter is that most women are poorer than most men and in any case, have little experience with the culture of handouts entrenched in Kenyan politics.

At the political level, women have also not played an effective role as stakeholders in the democratisation process. As a result, they remain marginalised in politics, in economics, and in public decision-making processes generally. Numerous studies of electoral politics in Kenya confirm that women constitute the majority of voters. However, very few present themselves as candidates for political office, and even

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fewer succeed in becoming MPs. The higher one goes either in party or state hierarchies, the fewer women one finds.

In short, the problems that face women are diverse and complex. The solutions require a concerted effort in terms of needs assessment, legislative reform, and institutional restructuring. Perhaps the most important issue is intensified civic education emphasising the gender issue. NGOS, policy makers, and practitioners all have a role to play in this process. Above all, a mechanism that can effectively reach rural and grassroots women will be the key to making substantial gains by 2002.

4

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## CHAPTER 12

# CRITIQUE OF THE ELECTORAL PROCESS

### 12.1 Evaluating the Integrity of the Electoral Process

In order to evaluate the integrity of the 1997 electoral process and outcome, one needs to understand the extent to which certain basic conditions for free and fair elections were met. For instance, were all Kenyans who fulfilled the age and residence requirements able to register as voters? Were all registered voters able to vote? Were all those who satisfied the requirements for candidature in presidential, parliamentary, or civic elections free to stand? Were candidates allowed to campaign freely? Finally, were the votes counted accurately and honestly and the results announced promptly? Answers to these questions are critical for evaluating the electoral process. This section of the report attempts to address these questions.

Despite the widespread administrative and logistical flaws ‘discussed in the earlier parts of this report, the outcome was generally accepted by a majority of the losing political parties, by the election observers, and by a cross-section of stakeholders, such as the business community, the academic community, and the churches, at least if one can judge from the messages of acceptance and appeals for peace that were issued following the polls.

Although the structural imbalances in Kenya’s political system continued to deprive all parties of an equal chance of competing for political power, both the domestic and international observers generally felt that the elections should be deemed acceptable. There were three main reasons for this view. First, there was a large voter turnout. Second, voters were able to cast their ballots freely and peacefully on the whole. Third, election observers were granted access to the voting and counting processes. On the other hand, a number of issues impinged on the electoral environment and compromised the integrity of the process. These issues are discussed in the following pages.

## **12. I. I Evaluation of the ECK**

There have been incessant claims that the ECK was not independent or impartial in the exercise of its duties as required under the law. Similarly, there were concerns about its capacity to enforce the electoral code. Its expansion to include representatives from the opposition parties, though welcome, nevertheless came too late to have a meaningful impact on the conduct of the elections. In other words, the ECK - the supreme organ for managing the electoral process - failed to gain the confidence of either the voters or the political parties.

The commission's capacity to perform its functions came under the greatest scrutiny with regard to the polling and subsequent events. The myriad logistical and administrative hitches that occurred have been cited as grounds in most of the election petitions that have been launched, including the petition by Mwai Kibaki challenging President Moi's re-election.

### **12.I.2. Delineation of Constituencies**

There were well-argued claims that the adjustment of constituency boundaries, an exercise that resulted in the creation of 22 new constituencies prior to the elections, was not done fairly. Many people felt that the process was undertaken for political gain. The fact that KANU later won 13 of the 22 new seats lends some basis to these claims. In particular, the large variations in population of many constituencies violated the principle of equality of the vote. For example, Embakasi in Nairobi has some 114,000 registered voters, whilst Ijara in Garissa District has only 7,500. This has resulted in an obvious over-representation of particular provinces in parliament and an imbalance in the weight of each vote.

### **12.1-3. Registration of Voters**

The integrity and fairness of any election begins to be eroded when prospective voters are disenfranchised. There is a consensus that the registration process was not conducted in a manner to promote a fair electoral contest amongst the parties. There were claims, for example, that the registration figures in some areas, particularly in the Coast and Rift Valley, were far from correct. The failure of the ECK to clarify the matter further compounded people's fears. There was also a good deal of confusion about which national identity cards (old or new) were valid for the voter registration process, besides the slow issuing of identity cards to persons coming of age. These problems did not have any serious material impact on the legitimacy of the process as a whole, as they did not occur on a large enough scale to compromise the overall process. Nevertheless, there are a substantial number of voters, candidates, and political parties with a lingering sense of grievance.

#### **12.1.4 Media Coverage**

In spite of the pre-election agreement on equitable access by all political parties to the state media, KBC radio and television remained heavily biased in favour of KANU. The operational guidelines drawn up by the ECK - which all political parties agreed on - were largely ignored. KBC reneged on its pledge to provide a fair balance in terms of both allocation of airtime and quality of coverage. In addition, there were no safeguards for political parties against the KBC's unfair practices. A proposal to create an independent body with responsibility for media monitoring, including authority to oversee political broadcasts as well as handle complaints on media access during the electoral period, was not passed. Instead, media monitoring was done by local NGOs largely for their own consumption.

#### **12.1.5 The IPPG Reforms Package**

Though the introduction of a series of legal, constitutional, and administrative reforms enhanced the fairness of the electoral contest, particularly in relation to licenses for holding political meetings and the role of the electoral code, the late enactment of these reforms denied voters and candidates the opportunity to benefit fully. Similarly, despite the fact that some of the reforms were aimed at sensitising public officials on the virtues of democracy, this goal was not fully achieved. There were reports of members of the provincial administration as well as the security forces continuing to interfere with the elections.

#### **12.1.6 Polling, Tabulation, and Reporting**

A major problem of the December 1997 elections was the administrative dis-organisation of election materials and facilities. As a result, the administration of the elections failed to pass the test of efficiency and transparency. Numerous flaws were reported with ballot papers, ballot boxes, voting booths, and voter registers. A number of problems were also reported in the performance of both party agents and election officials. These have been discussed in this report.

The counting process was severely delayed in many areas. However, in the great majority of cases, observers and party agents were able to accompany ballot boxes to the counting centres. The overall picture that emerged was one of election officials, party agents, and observers doing their job as well as they could in very difficult circumstances.

Despite these areas of concern, it was gratifying to find that on the polling days, millions of voters demonstrated their determination by turning out to cast their

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votes in an atmosphere of relative calm. This was Particularly important given the initial fears that the elections might see intimidation, coercion, or disruptions of one kind or another. These fears were based on repeated threats by a number of opposition political parties not only to boycott but actually to disrupt the polling. It was stated that various forms- of pressure would be applied to deter people from voting. However, these threats were defeated by the sheer determination of voters to exercise their franchise.

The zeal and determination demonstrated by party agents at all stages of the election process added to the integrity of the elections. Arrangements were put in place by the ECK to ensure that party agents could fulfil their role, and the various parties appeared to take full advantage of the opportunity. Moreover, citizens also were enabled to witness various aspects of the poll, and a commendable measure of transparency was achieved. This helped prevent malpractices and contributed to the overall integrity of the process despite the many problems. The free access that both domestic and international observers were given to the polling and counting processes further legitimised the elections.

## CHAPTER 13

# CONCLUSIONS AND RECOMMENDATIONS

### 13.1 Conclusions

The following are the main conclusions we draw from the preceding analysis of the 1997 general elections.

Kenyans still have faith in the power of the ballot despite various basic flaws that continue to debilitate the electoral process.

A number of factors militated against a conducive environment for free and fair elections. These included a disproportionate allocation of parliamentary constituencies and civic wards; a regime of electoral law that does not ensure competitive politics; the absence of an effective and efficient electoral body which is independent and impartial; a worrisome lack of a national democratic culture; a constitutional framework that does not support basic democratic principles and values; and a system of public administration still based on colonial and authoritarian precepts inimical to democratisation.

Since the restoration of multipartyism, the 'first-past-the-post' electoral system has prevented over 50 per cent of the Kenyan population from being represented in the government of the day.

The potential and capacity of the Kenyan people to create a country whose guiding light would be truth, entailing ready and unqualified embrace of the principles of human rights, democracy, and the rule of law, is gradually coming of age.

## **13.2 Lessons Learnt and Prospects for the Future**

### **13.2.1 Diagnosis**

The lessons of previous general elections have been discussed in Chapter 3. Many of the same fundamental flaws were repeated in the 1997 elections. It is useful to have a succinct recapitulation of the major items. The most basic lesson is that democracy still has a long road to travel in this country. This is because democracy is a way of doing things that has to extend to a whole system. You cannot be democratic in one area and undemocratic in another. Thus, the enemies of an open society are not just those wielding executive power in the government, but, also the leaders in various political parties who refuse to facilitate a democratic culture in their own parties.

The genesis of this situation is twofold: first, the colonial inheritance of authoritarianism and, second, the reluctance of the government to fully accept multipartyism. The lack of sufficient civic education of both the leaders and their supporters exacerbates the situation by producing a distorted understanding of the electoral process. Neither the psyche of the politician who bribes *wananchi* in order to protect his or her interests nor the mentality of the voter who has to be given twenty shillings to attend a political rally has yet to be fully studied. Lurking in the shadows are civil servants who seem to have accepted a role as servants of the ruling party. Ethnicity continues to bedevil the political landscape and prevent the real issues of development from being addressed. Both the politicians and the people have yet to acquire a political consciousness that sees Kenya as a unitary state with a common destiny.

The legal and political structures necessary for free and fair elections are yet to be put in place. Indeed, the initiative to make the necessary structural changes has only just been taken. The ECK, the administrative agency with the onerous responsibility of delineating the country's electoral areas and of planning, conducting, and supervising elections, continues to show little energy or commitment to the task. As presently constituted, it is clearly ill-suited to ensure either the efficiency or integrity of the electoral process.

Another critical problem is lack of ideological development. What was very clear during the recent elections - and during others before it - was the general absence of policies and positions for dealing with the greatest enemy facing the country poverty. The manifestos of the various parties were well-packaged affairs, but apart from impressive graphics and high-flown language, there appeared to be little serious or genuine concern for the mass of our society. The upshot of this is

## Conclusions and Recommendations

that the -country is still miles away from issue-oriented elections. It is in the context of this ideological aridity and callousness that defections are so common. If principles were, the guiding lights of our political discourse, it would not be possible to change parties with the ease of changing gears. The systemic imbalance in access to resources and facilities for all political 'parties and candidates only worsens this unprincipled and opportunistic scenario.

In the 1997 elections, a large number of fringe candidates vied for the high office of the President. This is a disturbing trend. It is the right of every Kenyan to seek any public office in the land if he or she meets the requirements in terms of age, education, and so on. However, it is against the public interest to allow anyone who is publicity-smitten to stand as a presidential candidate. It is clear that most of the presidential aspirants in 1997 were frivolous candidates who merely added to the clutter and confusion of the electoral scene.

### **13.2.2 Prognosis**

It is always tempting to play star-gazer, but we can only hazard the future on the basis of what we see in the present. Clearly, the people of Kenya are determined to walk in the path of democracy, human rights, and the rule of law. Patently manipulated electoral processes are now a thing of the past, and Kenyans today look back with anger and wonder at the country's previous political history.

However, elections in themselves do not put food on the table, nor do they pave roads. In order for elections to have a real impact on the development of the country or the provision of public services, the voters must have a voice. The value of elections is seen in the formulation and implementation of policies and structural changes in the way we are governed. If this happens - that is, if the pledges of the politicians materialise rather than ending up as more pie in the sky - then and only then can we be certain of a brighter political future.

## **13.3 Recommendations**

### ***13.3.1 Civic Education***

Immediate steps should be taken to create effective civic education programmes nationwide. The government has an important role to play because its duty is to facilitate all-round development for wananchi. Among other things, this means using public resources such as the media to create awareness of civic issues. The ECK also has a responsibility to promote civic education through voter education, a task it has not carried out to any meaningful extent. Civic education means more

than merely knowing how to vote on polling day. It also means fighting the culture of silence and building confidence among *wananchi* to play their full role in shaping the political future of their country.

As for civil society, it must implement civic education activities that truly incorporate participation by the people. This should be done through the medium of popular education, which has yet to take firm root in Kenya. The political parties also have a stake in the process and a responsibility to contribute positively to the important task of enlightening the citizenry.

It is imperative that civic education programmes, not just for ordinary people but also for our leaders, start straight away as one of the key components of the post-election programme. The practice of mounting frantic civic education programmes when elections are just around the corner should be discarded. Such “briefcase” initiatives are of little use. They are ephemeral in nature and limited in vision.

### **13.3.2 Gerrymandering**

In order to recover the basic tenet of democracy - one person, one (equal) vote - the ECK should undertake an immediate review of all the boundaries of parliamentary constituencies. An act of parliament can be passed to empower the ECK to undertake this absolutely necessary task. The last review was in 1996, but it was not comprehensive. The task is especially urgent in view of the imminent constitutional reform process. The basic principle to be followed is clearly spelt out in Section 42 of the constitution: “All constituencies shall contain as nearly equal numbers of inhabitants as appears to the commission to be reasonably practicable. “

The delineation of electoral areas in local authorities is also skewed. There is need for the ECK to review the boundaries of wards throughout the country to ensure equality of representation. Previously, it was the Minister for Local Government who created and adjusted civic electoral areas, but the process was often carried out capriciously without any guiding parameters. Under the new law which came into force in October 1997, the ECK has this responsibility.

### **13.3.3 The Electoral Code**

There is a dearth of adequate electoral law in Kenya. There is need for a comprehensive code covering all aspects of the electoral process. This code should be a single piece of legislation guided by the basic principles of the Bill of Rights, without the current numerous exceptions which erode these rights. The electoral

code should deal with the following key areas that affect the freedom, fairness, and integrity of the electoral process:

- ◆ registration of political parties and enforcement of the Code of Ethics by the ECK
- ◆ financing of political parties through state subsidies
- ◆ financial ceilings on how much political parties and candidates can spend on elections
- ◆ disclosure of sources of funding of political parties and candidates and accounting for these funds
- ◆ provision for independent candidates
- ◆ counting of votes at polling stations
- ◆ use of other forms of identification apart from the National Identity Card and passport during both the registration of voters and the casting of votes
- ◆ provision for special voting arrangements (for example, through Kenyan embassies or high commissions, or by post) for non-resident Kenyans
- ◆ method of voting (for example, along the lines of the one used in Malawi) in which illiterate voters are able to vote without the assistance of the presiding officer so as to ensure the secrecy of the ballot and preserve illiterate voters' dignity
- ◆ provision for a permanent ongoing registration process
- ◆ provision for declaring an election petitioner the winner without having to subject the constituency to a by-election in cases where a recount shows that the petitioner won the majority of votes.

#### **13.3.4 Constitutional Reforms**

The task of making major changes in Kenya's constitution will be the most important undertaking during the period before the next general elections scheduled for 2002. A constitutional review commission is in the process of formation. This body will be a major centre of attention for pundits, enemies of an open society, pro-democracy forces, and various Cassandras. It is also clear that there will be other moves in the constitution making process. Civil society is expected to play a key role both within and outside the projected constitutional review commission.

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It seems that all players are finally agreed that a comprehensive constitutional review is long overdue. However, serious differences remain regarding how to go about this review. Some feel strongly that any constitutional reform must be carried out within the ambit of parliament, as parliament is the only legitimate expression of the popular will. Others hold the radical view that the only genuine way to achieve constitutional change is through a national constitutional convention. A national conference on the constitution has also been proposed.

It is not our intention here to enter the constitutional debate. We want only to enumerate the critical areas relating to the electoral process which in our view require constitutional changes. The necessary changes include:

- ◆ an express provision laying down the right to vote
- ◆ the establishment of an independent, impartial electoral commission comprising representatives from all the major political parties, civil society, and other key sectors of Kenya's national life, with the final list of commissioners being ratified by a special committee of parliament
- ◆ provision for independent candidates in presidential, parliamentary, and local government elections
- ◆ the financing of political parties from state resources
- ◆ abolition of the constitutional requirement that a presidential candidate has to garner a minimum of 25 per cent of the votes in at least five provinces and the enactment of a new constitutional provision requiring a presidential candidate to obtain a minimum of 50 per cent of the total votes cast
- ◆ a provision for a proportional electoral system
- ◆ specific provisions in the event of a run-off, one of which would be for a senior public official (say the Speaker of the National Assembly) to act as President
- ◆ a firm provision requiring a coalition government in the event of a minority government assuming office
- ◆ a fixed five-year electoral calendar for the President, MPs, and councillors, with no presidential power to dissolve parliament and no executive power to dissolve local authorities
- ◆ the establishment of a constitutional court to deal with all constitutional issues, including those affecting the electoral process and the certification of both presidential and parliamentary elections

- ◆ a provision to enable the High Court or a constitutional court to deliberate on serious flaws in an ongoing election from the registration of voters to the activities on the actual polling day and speedily rectify them, or even nullify a fatally flawed aspect of the process
- ◆ a firm entrenchment of a new Bill of Rights safeguarding the fundamental rights and freedoms of the individual. Two provisions need specific mention the abolition of the queuing system at all levels of the electoral process, including party nominations, and the mandatory provision of civic education by the government.

### **13.3.5 Institutional Capacity of the ECK**

Most of the logistical flaws in last year's general elections were attributable to the lack of an effective secretariat at the ECK. The chairman, like his predecessor, undertook to act as chief executive, a combination of roles which did not promote good management. However, in 1992 there was at least a senior official who in effect acted as the director of elections. In 1997, there was no senior official who could handle even minor complaints. Everything had to be referred to a commissioner, usually the chairman himself.

There is no way the ECK can operate efficiently without a corps of experienced and skilled professionals at both the secretariat and field levels. Therefore, as soon as possible there should be an evaluation exercise (if this has not already been done) to establish the human resource needs of the commission, followed by a transparent recruitment and deployment programme. There must be no half measures on this.

The key to the success of every electoral process is an efficient administration. As we are here dealing with an activity which is very much in the public sphere, the government should never be heard pleading lack of funds in such an important area. Donor funding, much as it is welcome, should not be the major source of funding but rather a complement to government funding. Sadly, the government does not appear to share this attitude. There is an urgent need for it to adopt a more responsible position.

### **13.3.6 De-linking the Public Service from the Ruling Party**

After decades of monolithic politics, public officials, especially in top positions, have still not internalized the idea that the task of the public administration is to

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serve the people, not the ruling party. Ways and means must urgently be found to de-link the ruling party and public service.

An attempt was made in the recent IPPG reform package to criminalize overt political partisanship on the part of public officials during elections, but when the campaigns and elections came there was little discernible improvement. A number of senior civil servants and top officials in the parastatal sector openly campaigned for the ruling party, accompanying the President in what were purely electioneering tours across the country. Though it is not possible to make democrats out of public officials through legal sanctions, it should nevertheless be possible to create an environment - a political and administrative culture - in which guidelines on how public servants should conduct the affairs of state are enforced. Some regulations were expected to be drawn up by the head of the public service before the general elections, but nothing more was heard about the matter.

One way of proceeding would be to make it a constitutional requirement that all appointments of key personnel in both the public service and the armed forces be subjected to scrutiny by a special committee of the National Assembly. This measure should be backed up by a strict code of ethics for both public officials (including those serving in the security forces) and politicians. Of special importance is the need for all leaders in the key sectors of Kenya's national life to declare their assets. There should be no escape from this basic requirement of political morality.

In the final analysis, Kenyans have to depend on the courts to ensure that executive oppression is curbed and that responsible forms of governance are in place. It needs to be stressed that the role of the judiciary is an essential element in a liberal democracy, buttressing a system of checks and balances and the rule of law, and providing a safeguard against arbitrary government. If judges shrug off their duty, not only does justice suffer but also the law itself. The judiciary cannot abandon responsibility for the rule of law to parliament or the executive. If the job of parliament or the executive job is to government the country, it is the task of judges to see to it that governance is carried *out according to law*.

It is as much in the interest of the executive (and *parliament for that matter*) as it is in the interest of the public and the courts themselves that justice is pursued without fear or favor. Public confidence in the government would be enormously aided by a perception that fair procedures were being followed. The same applies to court judgments or rulings, for example, in election petitions. The public will only have confidence in judicial officials if their decisions are seen to be made in accordance with the precepts of justice.

### **13.3.7 The Appropriate Electoral System**

An electoral system has considerable influence on campaign strategies. It provides incentives and disincentives for different strategies. Moreover, an electoral system can profoundly affect the relationship between elected members and their constituents. The present Kenyan electoral system was inherited from Britain. It is a “first-past-the-post” or “winner-take-all” system. This system is often praised for simplicity and for the fact that it tends to produce strong, stable governments. The system is also credited with allowing voters to choose between people rather than just between parties, and also for permitting independent candidates not tied to a party line to be elected.

However, there are also a number of disadvantages to the winner-take-all system. Four disadvantages stand out very prominently in the case of Kenya. First, this system encourages political parties based on clan, ethnicity, or region. Second, it tends to put the incumbents in an immensely favorable position, as they usually have an array of public resources at their disposal, augmented by material and financial support. Third, the system tends to institutionalize unresponsiveness to changes in public opinion in a long-serving government. This is a particular problem in Kenya, where many constituencies are not competitive because of gerrymandering. This means that one party can form a government even with little popular support. Finally, the winner-take-all system is very susceptible to pre-election rigging strategies such as the manipulation of electoral boundaries.

These disadvantages require us to rethink the justification for maintaining a system which is arguably an anachronism. Britain itself, the mother of the winner-take-all system, is re-assessing the system. In the Kenyan context, there is need to consider adopting a system of proportional representation. The most important advantage of this system would be the possibility of forming a more broad-based government which would accurately reflect the will of the people.

### **13.3.8 People’s Participation in Governance**

Elections have the effect of making people reflect on the essence of democracy, which is that the people are the source of the political and legal legitimacy of any state. Elections may decide who governs, but constitutions decide what the government is. A constitution not only establishes a set of rules for conducting elections, it also - and more importantly - identifies the institutions and offices of government for which the electorate can vote.

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Democracy is not secured by having impressive parliament buildings or state-of-the-art ballot boxes. It requires a foundation of belief and a foundation of development. Democracies are based on the rule of law, justly applied, and the legal institutions and processes are crucial to democratic development. A consistent democratic constitution should exclude only one type of change in the legal system - change that would endanger its democratic character. Democracy, therefore, provides an invaluable battleground for any democratic political idea, since it permits results without violence. But if the preservation of democracy isn't made the first consideration, then the latent antidemocratic tendencies which are always present may undermine democracy. An understanding of these principles has not developed very far in Kenya and must continue to be fought for. The opposite policy may prove fatal by causing the loss of the most important battle the battle for democracy itself.

## CHAPTER 14

# BEYOND THE 1997 GENERAL ELECTIONS: UNRESOLVED QUESTIONS

### 14:1 Post-election Ethnic Violence

Immediately after the 1997 general elections, there were outbreaks of political violence in Laikipia, Njoro, and Baringo. About 100 people were killed, and the destruction of property was immense. These politically instigated clashes caught many people unawares and surprised many others. The clashes appeared to be linked to the voting behavior of certain groups of people, as a number of leaders had been quoted in the press warning people of dire consequences if they voted in a certain way. The government reacted by accusing opposition parties, church groups, and individuals critical of the government of having instigated the clashes.

The reemergence of ethnic hostilities following the 1997 general elections clearly does not portend well for a country comprising over 40 ethnic groups, and the emerging problem cannot be wished away. It is not enough for political leaders to make calls for peace without appearing to take steps to bring peace about. All parties to the conflicts - the government, opposition leaders, ethnic leaders, churches, and NGOs - must work together to find a solution. The starting point is to ease tensions by promoting understanding and reconciliation between all the affected ethnic communities.

The fact that such violence can happen is an indictment of the government, which has a basic constitutional responsibility to provide security for all its citizens irrespective of their ethnic background, political opinions, social status, religious affiliation, sex, or race. Chapter V of the Constitution of Kenya states this responsibility very clearly. The government is obliged to do everything in its power to ensure that the fundamental rights of the people are not violated. Any abdication of this duty brings the government's legitimacy into question.

The economic ramifications of this violence and insecurity are also important. The Njoro and Laikipia areas account for a significant portion of food production in Kenya. Coupled with predictions of poor weather and reduced food production countrywide this year, the disruption of agriculture in these areas as a result of the clashes could have far-reaching consequences for the national economy.

Along with the pre-election violence in parts of Coast Province, the post-election clashes have also had deeply negative effects on Kenyan society. The task of nation building has been seriously set back, and many Kenyans now find comfort and security only amongst their kinsmen. The voting patterns in 1997 bear this out. One of the biggest lessons learned from these events, however, is that elections by themselves are not likely to be integrative unless there is an underlying agreement to adhere to the verdict of the people. In other words, without an unequivocal commitment by all parties involved in an election to accept its outcome, the basic purpose of the election is severely undermined.

## **14.2 Constitutional Reforms**

While the majority of Kenyans are agreed on the need to go beyond the IPPG reforms deal and make fundamental changes to the constitution, they hold very divergent views on the means to achieve reform. The government has already passed the Kenya Constitution Review Commission Bill which, as the name suggests, proposes to form a commission to collect and collate views from Kenyans on constitutional change. Some opposition parties, churches, and various elements in civil society, however, vehemently oppose this process. They have reservations about the sincerity of the government and the independence of the commission and therefore propose different modalities, the main one being a constitutional conference spearheaded by the churches.

Many observers argue, however, that whatever method is adopted, the involvement and participation of the public in the process is the paramount consideration. If the process takes the route of a commission, then care must be taken to ensure that it acts independently and genuinely consults the people. The government has a duty to convince Kenyans that this will be the case. The commission must be completely independent not only in the way it manages and steers the process, but also in terms of how it communicates its ideas to the people and collects feedback from them. Similarly, every sector of society and every interest group, particularly marginalised groups, must be represented in all phases of any constitution-making process.

One of the most important requirements of the process will be to translate the issues at stake into a language that can be understood by the people. A comprehensive civic education initiative to promote informed discussion at the grassroots level must precede the actual process of soliciting citizens' opinions about constitutional change. The idea of involving the people stems from the need to enable them to shape their own destiny. In a democracy, full participation by the people is crucial. Therefore, the most important goal of civic education on the constitution-making process is to empower people to claim ownership of the process and the outcome.

### **14.3 The 1997 Election Petitions**

Election petitions have emerged over the years as a characteristic post-election phenomenon in Kenya. Petitions have come to be viewed as offering the only safety valve for conflicts and enmities engendered by the electoral process. The 1997 general elections were no exception. At the close of the deadline for filing petitions, there was one presidential election petition (*Mwai Kibaki versus Daniel Toroitich arap Moi, and others*), 26 parliamentary election petitions, and 63 local government petitions (or election inquiries as they are often referred to in law). A list of petitions can be found in the "Documents" section of this report.

A concentration on petitions - by way of analyses and debates - is likely to be a major feature of Kenyan political discourse over the next eighteen months, the period in which the High Court of Kenya has undertaken to dispose of all petitions. Whether or not this deadline is actually met, the petitions are bound to foster public awareness of electoral issues. The courts will also be under close scrutiny regarding the extent to which they fulfill their role as public institutions accountable to the Kenyan people.

Documents

## **Members of the Electoral Commission of Kenya**

Samuel Kivuitu (Chairman)

Gabriel Mukele

Margaret Kenyatta

Isaiah Cheluget

Francis Nganatha

Bashir Sheikh Ali

Silas Buko Tunu

Eliphelet Njiru M'Sambu

Edward Chemoiwo Cheronu

Henry Jura

Nicholas Ng'ang'a

*Stephenson Mageto*

*Abuya Abuya*

*Habel Nyamu*

*Justice (Rtd.) William Mbaya*

*Kihara Muttu*

*Ambassador (Rtd) Jack Tumwa*

*Brig (Rtd) Reuben Musonye*

*Philip Gachoka*

*Samuel Muiya Manyunza*

*Rachel Muzera*

Italics indicate commissioner appointed on November 30,1997 as a result of the administrative arrangement brokered by the Inter-parties parliamentary Group (IPPG)

## Calendar of Events Culminating in the 1997 General Elections

- May, 1994: Constitutional reform movement emerges. Its main actors are from civil society organisations.
- October, 1994: A model constitution *the Kenya We Want* developed by the Law Society of Kenya (LSK), the Kenya Human Rights Commission (KHRC), and the International Commission of Jurists (ICJ) Kenya Section is launched.
- November, 1994: A broad-based constitutional reform initiative, the Citizens Coalition for Constitutional Change (4Cs), is launched. Its single objective is to pursue the goal of a new constitutional order in Kenya.
- Dec. 31, 1994: In his New Year's message, President Moi promises a review of the constitution beginning in 1995 to be undertaken with the assistance of foreign experts.
- 1995-1996: The Kenya government fails to honor the promise to review the constitution. Pressure for reform continues to build and mass action programmes initiated by civil society intensify.
- March, 1997: The National Constituent Assembly (NCA) and its executive arm, the National Convention Executive Committee (NCEC) emerge and lead the constitutional reform movement.
- April 3-6, 1997: **1st** Limuru Conference on Constitutional Reform convened by NCA.
- April 6, 1997: NCA issues a declaration on minimum facilitative reforms before elections,
- May 22, 1997: President Moi declares that reforms will only be undertaken after elections.
- May 29, 1997: A pro-reforms rally at Kamukunji Grounds, Nairobi, is violently dispersed by police, and a number of people are injured.
- May 29, 1997: Voter registration begins (scheduled to end on June 22).

## Calendar of Events

- June 6, 1997: NCK asks the government to heed demands for constitutional change before elections.
- June 8, 1997: Churches join in and urge government to accept and implement reforms before elections.
- June 13, 1997: Attorney General publishes Peaceful Assemblies Bill to replace the Public Order Act.
- June 19, 1997: Budget Day. Opposition MPs persistently interrupt the budget speech, which has to be read amid shouting and heckling in support of pre-election reforms.
- June 19, 1997: Attorney General reiterates the government's position that there is no time to carry out reforms before elections.
- June 22, 1997: Voter registration period but is extended to June 24.
- June 24, 1997: Voter registration is extended to June 30.
- June 25, 1997: Nairobi-based envoys write to President Moi urging him to carry out reforms. The government approves applications for licenses for pro-reform rallies.
- June 30, 1997: Voter registration is closed. Calls for a further extension are refused.
- June 30, 1997: A group of KANU MPs urges the government to initiate reforms.
- July 7, 1997: 13 people die when police break up pro-reform rallies in Nairobi and other centres dubbed "Saba Saba" (7th of July).
- July 11, 1997: President Moi promises to convene KANU's National Delegates Conference (NDC) and the National Governing Council (NGC) to deliberate on reforms.
- July 11, 1997: KANU's National Executive Committee (NEC) recommends the publication of a bill to set up a constitutional review commission.
- July 27, 1997: An inter-parties meeting of 110 KANU and opposition MPs declares support for minimum reforms before elections.

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- August 4, 1997: The government publishes two bills - The Statute Law (Repeals and Miscellaneous) Amendment Bill and the Constitution of Kenya Review Commission Bill - initiating a process of negotiation on reforms.
- August 8, 1997: The NCEC's "Nane Nane" (8th of August) rally is blocked by police.
- September 3, 1997: An *ad hoc* Inter-Parties Parliamentary Group (IPPG), composed of elected members of parliament from KANU and the opposition emerges and takes charge of the reform negotiations.
- September 3, 1997: An IPPG meeting rejects NCEC and forms a 13-member committee, split into three technical areas, to spearhead constitutional review negotiations.
- September 3, 1997: IPPG presses for the appointment of 10 additional electoral commissioners to be nominated by opposition parties.
- September 4, 1997: IPPG denounces mass action and reiterates its commitment to minimal reforms before elections.
- September 9, 1997: IPPG plenary meeting adopts, on full-package basis, wide-ranging reforms proposed by the three IPPG technical committees.
- September 12, 1997: NCEC rejects the reforms package and instead agitates for intensified mass action.
- September 12, 1997: An 18-member Religious Community Facilitation Team (RCFT) consisting of NCCK, the Catholics, Evangelicals, Hindus, and Muslims attempts a mediation between the opposition and KANU. KANU fails to attend a meeting organized for this purpose.
- September 14, 1997: Leading opposition figures, including DP's Mwai Kibaki, accept the reforms deal.
- September 15, 1997: Churches and envoys back the IPPG reforms package.

## Calendar of Events

- September 25, 1997: Constitution of Kenya (Amendment Bill) 1997 is published.
- October 3, 1997: A new party, Ford People, is registered with Mr Kenneth Matiba listed as party chairman. Matiba, however, disowns the party.
- October 7, 1997: Nine more political parties are registered - Liberal of Kenya (LPK), People's Party of Kenya (PPK), Kenya Socialist Party (KSP), New People's Democratic Party (NPDP), Democracy Assistance Party (DAP), Reform of Political and Kenya Union (RPKU), Green African Party(GAP), Ununa Patriotic Party (UPK), and Kenya Nationalist People's Democratic Party(KNPDP).
- October 10, 1997: A pro-reforms rally dubbed "*Kumi Kumi*" (10th of October) is violently broken up by security forces.
- October 19, 1997: Parliament begins debate on the Statute Law (Repeals and Miscellaneous Amendment) Bill, the Constitution of Kenya (Amendment Bill), and the Constitution of Kenya Review Commission Bill.
- October 30, 1997: Parliament passes the Statute Law (Repeals and Miscellaneous Amendments) Bill and the Constitution of Kenya (Amendment) Bill.
- October 31, 1997: President Moi appoints 10 new Commissioners nominated by opposition political parties.
- November 6, 1997: Parliament passes the Constitution of Kenya Review Commission Bill.
- November 7, 1997: Reform bills receive Presidential assent.
- November 10, 1997: Parliament is dissolved.
- November 12, 1997: Speaker of the National Assembly issues writs declaring parliamentary seats vacant.
- November 13, 1997,: ECK names December 29, 1997, as the election date.
- November 26, 1997: Safina is registered, the last party to be registered before the 1997 general elections.

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- December 3, 1997: Presidential nominations are held.
- December 7, 1997: Deadline for party nominations.
- December 8-9, 1997: Parliamentary and civic candidates present their nomination papers to the ECK.
- December 10, 1997: Election campaigns officially commence.
- December 28, 1997: Campaigns officially close.
- December 29, 1997: Election Day. However, due to logistical problems voting is extended to December 30, 1997.
- January 5, 1998: Daniel arap Moi, winner of the presidential elections by a plurality of votes, is sworn in as President for a final five-year term.

## Registered Political Parties as of December 29, 1997

1. National Development Party of Kenya (NDP)
2. Democratic Party of Kenya (DP)
3. Kenya African National Union (KANU)
4. Social Democratic Party (SDP)
5. FORD-Kenya (FORD-K)
6. FORD-Asili (FORD-A)
7. FORD-People (FORD-P)
8. Federal Party of Kenya (FPK)
9. Labour Party Democracy (LPD)
10. Liberal Party of Kenya (LPK)
11. Kenya National Congress (KNC)
12. Kenya Social Congress (KSC)
13. Kenya National Democratic Alliance (KENDA)
14. Kenya Nationalist People's Democratic Party (KNPDP)
15. Kenya Socialist Party (KSP)
16. United Patriotic Party of Kenya (UPPK)
17. Umama Patriotic Party of Kenya (UMMA)
18. Party of Independent Candidates of Kenya (PICK)
19. Peoples Party of Kenya (PPK)
20. Green African Party (GAP)
21. Reform of Political and Kenya Union (RPKU)
22. Democratic Assistance Party (DAP)
23. Safina
24. Shirikisho Party of Kenya (SPK)
25. Republican Reformed Party
26. New Peoples Democratic Party (NPDP)
27. Economic Independence Party (EIP)

## **Electoral Code of Conduct**

Statute Law (Repeals and Miscellaneous Amendments) Act No.10 of 1997, Fourth Schedule (s. 34).  
*Kenya Gazette Supplement, Acts, 1997.* Nairobi, November 7, 1997 pp. 864-874.

1. Subject to paragraph 6, this code shall be subscribed by -
  - (a) every political party participating in the election of a President, a member of the National Assembly, and a member of a local authority; and
  - (b) every candidate nominated, as a condition of the candidate's respective rights to be so nominated.
2. In this code unless the context otherwise requires -

"electoral area" means a constituency under this act or an electoral area under the Local Government Act and defined in the Local Government Election Rules.

"electoral court" means the High Court under this act or, as the case may be, the Resident Magistrate's Court under the Local Government Act.

"electoral laws" means the Constitution, the National Assembly and Presidential Elections Act, and subsidiary legislation there under as they relate to the presidential, parliamentary, and local government elections.
3. The object of this code is to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance, in which political activity may take place without fear or coercion, intimidation, or reprisals.
4. All registered political parties and other persons bound by this code shall endeavor to promote the object of the code to enable free political campaign and open public debate to take place in all parts of Kenya during any election period.
5. Registered political parties and candidates do, by subscribing to this code, further commit themselves -
  - (a) to give wide publicity to this code;

(b) to promote voter education campaigns which ,may be conducted in concert with the Electoral Commission

(c) to condemn,avoid and take steps to prevent violence and intimidation

(d) to instruct theircandidates, office bearer, members, and supporters of their obligations under this code; and

(e)generally, to affirm the rights Of all ParticiPants in an election

(i) to express divergent Political opinions;

(ii) to debate and contest the policies and programmers of other parties;

(iii) to canvassfreely for membership and support from voters;

(iV) subject to the public Order Act, to hold public meetings;

(V) to distribute non-offensive electoral literature and campaign materials;

(vi) to publish and distribute non-offensive notices and advertisements;

(vii) to erect non-offensive banners, place cards, and posters;

(vii) to promote free electoral campaigns by all lawful means:and

(ix) to cooperate with the Electoral Commission and the relevant government and other authorities in the investigation of issues and allegations arising during the election period

6. All those bound by this code shall, throughout any election period,have the duty -

(a) to publicly and repeatedly condemn violence and intimidation and the use of language or any kind of action which may lead to violence or intimidation whether to demonstrate party strength, to gain any kind of advantage,or for any Other reason

(b) to refrain from any action involving violenceor intimidation

(c) to ensure that no arms or weapons of any kind are carried or displayed at political meetings or in the course of any march, demonstrations or other event of a political nature

(d) to refrain from publishing or repeating false, defamatory, or inflammatory allegations concerning any person or party connected with the election;

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- (e) subject to the Public Order Act, to cooperate and liaise in good faith with other parties to avoid, in so far as possible, arrangements involving public meetings, demonstrations, rallies, or marches taking place at the same time and venue as similar events organised by other parties;
- (f) to do nothing to impede the right of any party, through its candidates, canvassers, and representatives, to have reasonable access to voters for the purposes of conducting voter education, fund raising, canvassing membership, and soliciting support;
- (g) to avoid plagiarising the symbols, colors, or acronyms of other parties; and to discourage and prevent the removal, disfigurement, or destruction of political campaign materials of any party;
- (h) to refrain from offering any inducement or reward to any person in consideration of such person either joining any party; attending or not attending any political event; voting or not voting (either at all, or in any particular manner); or accepting, refusing, or withdrawing such person's nomination as a candidate in the election;
- (i) to refrain from any attempt to abuse a position of power, privilege, or influence, including parental, patriarchal, or traditional authority, for political purposes, including any offer of reward or threat of penalty;
- (j) to avoid any discrimination based on age, race, tribe, place of origin or residence, or other local connection, political opinions, colour, creed, or sex in connection with the election and political activity;
- (k) in relation to the Electoral Commission
  - (i) to acknowledge the commission's authority in the conduct of the election;
  - (ii) to ensure the attendance and participation of representatives at meetings of any parties' liaison committee and other forums convened by or on behalf of the Electoral Commission;
  - (iii) to implement the orders and directions of the Electoral Commission;
  - (iv) to facilitate the commission's right of access through official observers and other representatives to all public political meetings or other electoral activities;
  - (v) to cooperate in the official investigation of issues and allegations arising during any election period;

## Electoral Code of Conduct

(vi) to take all reasonable steps to ensure the safety of observers and officers of the Electoral Commission from exposure to insult, hazard, or threat in the course of their official duties; and

(vii) to establish and maintain effective lines of communication with the Electoral Commission;

(1) to reassure voters with regard to the secrecy and integrity of the ballot and, furthermore, to reaffirm the provisions of section.25 of this act to the effect that no one should know how any other person has voted;

(m) to take reasonable steps to discipline and restrain their party office bearers, employees, candidates, members, and supporters who -

(i) infringe this code;

(ii) engage in activities of commission or omission which amount to offenses under the electoral laws or otherwise fail to observe this code;

(iii) contravene or fail to comply with any provision of the electoral laws;

(n) without prejudice to the right to present a petition to an election court, to accept the final outcome of the election and the commission's declaration and certification of the results thereof.

7. The registered political parties shall execute this code of conduct through the hand of their respective authorized leaders to signify their acceptance to be bound by the provisions of this code and as their committal to strive to ensure that their members and supporters abide by the code at all stages of the elections for President, the National Assembly, and local authorities.

8. Where, in the opinion of the commission, any political party participating in any election or the leader or any office bearer, member, or supporter of such political party or any candidate at any election, in any way infringes any provision of this code, the commission may -

(a) in the case of any political party and, subject to paragraph (b), also in the case of the leader or any office bearer, member, or supporter of such political party or candidate, impose upon that party one or more of the following penalties or sanctions of which any or all may be suspended on specific conditions:

(i) a formal warning;

(ii) a fine determined by the commission;

(iii) notwithstanding the provisions of any other law, an order prohibiting such political party, whether permanently or for a specified period, from utilizing any public media time, through the television or radio broadcasting services of such media as have been or may be allocated to the political party for electoral purposes;

(iv) an order prohibiting the political party -

(aa) from holding particular public meetings, demonstrations, or marches, or any kind of such meetings, demonstrations, or marches;

(bb) from entering any specified electoral area for purposes of canvassing for membership, or for any other electoral purpose;

(cc) from erecting placards or banners, or from publishing and distributing campaign literature;

(dd) from publishing or distributing campaign literature and electoral advertising;

or limiting the rights of the political party to do so, and such prohibition or limitation shall be notified to the relevant Regulating officers under the Public Order Act in the affected places or electoral areas for purposes of that act.

(b) in the case of the leader or candidate or any office bearer, member, or supporter of such political party impose any one or more of the penalties or sanctions referred to in sub-paragraph (a) (i) or (ii) of this paragraph.

9. Without prejudice to the provisions of paragraph 8, the commission may either of its own motion or in consequence of any report made to it, institute proceedings in the High Court in its unlimited original civil jurisdiction as may be appropriate in the case of any alleged infringement of the code by a political party or any candidate and where such court finds the infringement of the provisions of this code -

(a) in the case of a political party, any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any political party, candidate, or voter, such court may in addition to or in substitution for any other penalty or sanction specified in sub-paragraph (a) of paragraph 8 make an order canceling the right of such party to participate in the election concerned; or

(b) in the case of the leader or any office bearer, member, or supporter of such political party or of any candidate, that any act or omission involving violence or gross or systematic intimidation of the rights of any political party, candidate, or voter, such court may in addition to or in substitution of any other penalty or sanction specified in paragraph 8(a) (i) and (ii) make an order disqualifying, in the case of a person who is a candidate, such person from being a candidate or deleting the name of such candidate from the list or lists of candidates concerned.

10. There shall be no appeal from an order of the commission imposing a penalty or sanction under paragraph 8(a), but a party aggrieved by the decision of the commission shall have direct access to the High Court under Order 53 of the Civil Procedure Rules.

11. In making its- decision regarding appropriate penalties or sanctions, **the** commission or, as the case may be, the High Court shall have regard to any other legal consequences that may result from civil or criminal proceedings instituted by reason of the same occurrence.

12. The High Court shall ensure that any proceedings initiated under paragraph 9 are dealt with in priority to all other matters brought before it, and that the decision of the court is given before the date of the election concerned.

13. The procedure of the High Court in cases falling within the provisions of this code shall, without prejudice to paragraph 10, be in accordance with such rules of procedure as shall from time to time be promulgated by the Chief Justice in consultation with the commission.

## **The Role of Election Observers and the Code of Ethics**

(The Electoral Commission of Kenya, 1992)

Observers have now become a common feature at elections, especially in the third world. An observer is an accredited person who watches the election process to see whether it is conducted in accordance with the electoral law of the country concerned and that it is free and fair.

### **Observer or Monitor?**

These two terms do not carry the same meaning. An observer is generally a spectator as described in paragraph one above while a monitor is almost-an official participant within the polling station at which he/she must exclusively operate. A monitor may point out the errors noted to the presiding officer whereas the observer communicates with the presiding officer at the latter's request. While the law in Kenya, i.e., Regulation 23(l) (e) of the Presidential and Parliamentary Elections Regulations 1992, allows the presence of observers at the polling stations, there is no provision that permits the accreditation of monitors at Kenya elections.

### **The Role of an Observer**

Since one of the goals of using observers is to see whether elections are free, fair, or impartial, observers may wish to take an interest in watching the political campaign, the role of political parties, the role of the media, the responsibilities of the security personnel and how they are exercised, and the democratic processes, which would include among other things the general layout of polling stations, adequate voting secrecy, and the overall administration of the polling sites, but in particular-

- (i) maintenance of peaceful and orderly voting process;
- (ii) documentation and recording of accountable equipment and papers;
- (iii) display of empty boxes before voting;
- (iv) sealing before and after polling;
- (v) maintenance of law and order;
- (vi) transportation of ballot boxes from the polling stations to the counting centres;

## Observers' Code of Conduct

- (vii) checking of the seals to the aperture and elsewhere before opening of ballot boxes;
- (viii) noting the sealed packets of accountable stationery from the polling stations and the presiding officers' statement of papers issued;
- (ix) the manner in which votes are counted;
- (x) collating and correlating of results; and
- (xi) visible indication that the presiding officer is in control of the entire polling situation.

There shall be international and domestic observers appointed by either foreign governments or non-governmental and local non-governmental organisations.

The Code of Ethics for Observers is based on the following understanding-

- (a) that an international observer is a visitor to the country where the elections are taking place; whereas domestic observers are citizens of the country where elections are taking place;
- (b) that his/her role is simply to watch the process and report to his/her principals and as appropriate to the Electoral Commission and to inform the international and domestic communities whether in his/her objective opinion the electoral process was free and fair;
- (c) that over and above the considerations of the electoral laws being observed, the Electoral Commission will allow a wider scope for observers covering political activities, the role of the media, and the responsibilities of the security personnel and how they are exercised.

All observers, i.e., domestic and international, shall be required by the Electoral Commission to observe the following code of behavior-

1. To be non-partisan at all times and be seen to be so. For example, they shall not express partisan political views whether by word, conduct, or otherwise;
2. To respect the role, status, and authority of the presiding officer at all times and accordingly to exercise discretion in seeking to communicate with the presiding officer;
3. Not to communicate with the voters at any time within the precincts of the polling station;

Report on the 1997 General Elections

4. Not to interfere in the electoral process at any time;
5. To undertake to report objectively the results of the process and the election and inform/submit to the Electoral Commission the irregularities noted;
6. To inform the commission of the hotel/place of residence and in case of change to advise the Electoral Commission of the same;
7. To inform the Electoral Commission in a brief written statement the object of their observing the elections in Kenya;
8. To agree to attend the briefing of all observers by the Electoral Commission;
9. To apply to the Electoral Commission for approval or accreditation; and
10. To wear the Elections Commission Observers' Official Badge or other identification at all times.

**Particulars**

The Electoral Commission reserves the right to request that the observers provide the following information-

1. Name, address, fax, and telephone number of the sponsoring authority;
2. Source and nature of funding;
3. Aims and objectives of the sponsoring authority;
4. Organisational rules of the sponsoring authority;
5. Statement of non-partisanship in the context of Kenya;
6. Whether you have knowledge of political trends of Kenya's history;
7. For domestic observers evidence of working knowledge of both English and Swahili languages and any local vernacular; and
8. Acceptance of the Electoral Commission's right to admit or withdraw accreditation for those who violate the law of the host country.

### **Commission's Rating of Observers' Presence**

The Electoral Commission realises that the presence and balanced reporting of observers will help in lending local as well as international credence to the conduct of free and fair elections. All accredited observers are therefore assured that their presence is welcome.

## **Members of the Project Steering Committee (PSC)**

### **Institute for Education in Democracy (IED)**

Grace Githu  
Marren Akatsa-Bukachi  
Francis Ang'ila  
Cleophas Torori  
Alice Mumbuchi

### **Catholic Justice and Peace Commission (CJPC)**

Antony Njue  
Peter Weke  
Rev Peter Gichure

### **National Council of Churches of Kenya (NCCCK)**

Samuel Kabue  
Susie Ibutu  
Moses Smith  
Gideon Ochanda

## **Members of the Strategic Management Board (SMB)**

### **IED**

Githu Muigai  
Charles Nyachae  
Aoko Midiwo-Odembo

### **CJPC**

Bishop Ndingi Mwana a' Nzeki  
Rev Michael Ruwa

### **NCCCK**

Rev Mutava Musyimi  
Rev Peter Disem  
Bethwel Kiplagat

# ELECTORAL COMMISSION OF KENYA

Telephone:  
When replying please address the  
Chairman Electoral commission of Kenya  
**Ref. non  
and date**

ANNIVERSARY TOWERS  
  
6TH FLOOR  
UNIVERSITYWAY  
P.O. Box 45371  
  
NAIROBI

**6th December 1997**

.....

**Ms. Grace Githu**  
Executive Director

**Institute for Education in Democracy (I.E.D.)**  
Adams Arcade

**Off Elgeyo Marakwet Road**  
**P. O. Box 43874**  
**NAIROBI**  
**Fax: 562357.**

**Dear Grace**

## **RE:APPLICATION FOR ACCREDITATION TO OBSERVE THE FORTHCOMING GENERAL ELECTIONS**

I refer to your application seeking accreditation to observe the forthcoming General Elections scheduled to take place on 29th December, 1997.

The Electoral Commission has accredited you to observe the said General Election. **The Returning Officers and Presiding Officers are by copy of this letter** requested to permit into the precincts of each polling station and counting hall one observer upon presentation to the said election officials of acceptable identification and letter of introduction signed by yourself.

Please ensure that your observer personnel do not interfere with the electoral process and that they maintain non-partisan and impartial position through their observing exercise.

Report on the 1997 General Elections

The election officials have authority to exclude from any polling station or counting hall any person who does not comply with the regulations governing elections. The Commission will be interested in receiving a copy of your report on completion of the General Elections.

Yours

S.M.KIVUITU  
CHAIRMAN  
ELECTORAL COMMISSION OF KENYA

C.C

All Returning **Officers**

ELECTORAL COMMISSION OF KENYA

ANNIVERSARY TOWERS,  
16 Floor,  
UNIVERSITY WAY,  
P.O.Box 45371,  
NAIROBI.

6th December 1997

Anthony N. Njui  
National Secretary  
Catholic Justice and Peace Commission

Waumini House - Westland's  
P. O. Box 48062  
NAIROBI

Fax: 02-441758/442910

Dear Antony

RE:APPLICATION FOR ACCREDITATION TO OBSERVE THE FORTHCOMING  
GENERAL ELECTION

I refer to your application seeking accreditation to observe the forthcoming General Elections scheduled to take place on 29th Dec 1997

The Electoral Commission has accredited you to observe the said General Election. The Returning officer and the Presiding officer are by copy of this letter requested to permit into the precincts of each polling station and counting hall one observer upon one presentation to the said Election officials of acceptable identification and letter of introduction signed by yourself.

Please ensure that your observer personnel do not interfere with the electoral process and that they maintain non-partisan and impartial position through their observing exercise.

The election officials have authority to exclude from any polling station or counting hall any person who does not comply with the regulation governing elections. The commission will be interested in receiving a copy of your report on completion of the General Elections.

Yours sincerely

S.M KIVUITU  
CHAIRMAN  
ELECTORAL COMMISSION OF KENYA

## **Preliminary Statement**

This is the independent preliminary statement of IED, CJPC, and NCKK, which have jointly undertaken the observation of the 1997 Kenya elections. The three organisations observed all aspects of the pre-electoral processes, including the registration of voters, candidate nomination, the electoral campaign and media coverage, as well as the voting itself and the vote count. This statement is primarily concerned with the voting and counting processes and the events of the last few days since voting began.

On election day, some 28,126 poll watchers were deployed throughout all of the 210 electoral constituencies of the republic. Three count certifiers were deployed to each count centre. In addition, 840 observers had covered the campaign and nomination periods. We would like to take this opportunity to thank the Electoral Commission and election officials for their cooperation in allowing our poll watchers to fully carry out their duties.

All observers filled out a series of report forms, covering the voting and counting processes as well as the general environment on election day. These forms were returned to the central Nairobi offices to be qualitatively and quantitatively analysed.

This statement is based upon the observations of our poll watchers. It should be stressed that it is made before the publication of the final results, and indeed prior to the actual completion of the electoral process, and thus before it has been possible to verify those results.

A more detailed statement covering the entire electoral process will be issued once the count has been completed. This second statement will comment on issues relating to voter registration, media coverage of the campaign, and the nominations and campaign processes.

### **The Kenyan Voters: Turnout and Behaviour**

The Kenyan public are to be congratulated on turning out to vote in such large numbers and for participating in such a dignified and patient manner. Maintaining a high level of voter participation is key to the further development of a functioning and accountable democratic system, and thus ensuring an improvement in the level of registration of the eligible electorate for future elections is crucial.

## **The Electoral Commission and Management of the Electoral Process**

Unfortunately, at this moment the overriding impression one has of the events since voting commenced is of a totally unsatisfactory logistical and administrative handling of the election by the Electoral Commission. It can only be concluded that public and political confidence in the process has been seriously undermined.

In large numbers of polling stations across the entire country, insufficient and incorrect ballot papers were delivered. Indeed, in a number of instances polling stations failed to receive any ballot papers whatsoever. It was also observed that in a number of cases ballot boxes were delivered to the wrong polling stations or were delivered late.

The result of these mistakes is that a large number of polling stations across the country failed to open on time, and some did not open at all on the original election day. For example, in Meru, Central Imenti constituency, a number of polling stations did not receive ballot papers until 4 pm on election day, and in Kisumu a number of polling stations did not open on election day, as they had received no ballot papers. Poll watchers report that some 60 per cent of polling stations failed to open on time, but they also report that in some 90 per cent of cases the correct voting material was eventually available.

As a result of these delays in voting, the Electoral Commission announced that a second day of polling would take place in areas where voting had not been completed. It is very unfortunate that such a situation was allowed to occur. The result was confusion, uncertainty, and fatigue among election officials, party agents, poll watchers, and the general public.

Due to the fact that a second day of voting was not foreseen, no arrangements had been put in place for the securing of ballot boxes and ballot papers overnight. From reports received it would appear that various *ad hoc* arrangements were made on a local basis. Reports have also been received of ballot boxes being taken to count centres, taken home by election officials, and being taken to police stations. In the majority of cases, it would appear that party agents and observers remained with the ballot boxes throughout the night.

This series of events led to an increase in suspicion and tension among political parties and voters. In Kajiado North constituency in Ngong, it was reported that voters who had been unable to vote due to the lack of ballot papers seized a number of ballot boxes and burnt them. In Nakuru Town, a violent incident ensued on the afternoon of 30 December when ballot boxes from the Ingobar polling

station were forcibly brought into the count centre by security forces with the backing of an aspiring Kanu candidate. The boxes were unaccompanied by party agents. A clash ensued during which two persons were shot dead and at least five others admitted to hospital with wounds. A further unsatisfactory outcome of this situation was that in some constituencies, such as Starehe in Nairobi, counting commenced on the morning of 30 December whilst voting was still taking place in parts of the constituency.

In some areas, such as Kitui, it was also noted that voting materials, such as books of ballot papers, were not properly secured, leading to anger and suspicion. Proper procedures for the handling of election materials need not only be established but also implemented for future elections.

All of these ramifications of the general confusion and incompetence in the management of the electoral process serve to sow seeds of doubt in the integrity of the electoral process among parties and the public alike. It is the job of the authorities to ensure the process not only properly serves the people but is also seen to properly serve the people.

### **The Conduct of Political Parties**

The presence of party agents from most political parties served to increase accountability during the voting and counting processes. It is welcomed that the parties organised themselves and engaged constructively in the electoral process. However, the actual conduct of members of a number of parties served not to increase the democratic nature of the process but actually to undermine it. Across the country it was reported that representatives of political parties were guilty of handing out money, on election day and before, to voters in order to induce the voters to cast their vote for the party. Bribing of voters was reported in many areas, including Kitui Central, Moyale, and Kisumu.

There were also numerous reports of voters who might support an opposition party or candidate being paid not to cast a vote. This was sometimes achieved by the purchasing of a person's voting card. Disenfranchising and influencing voters in such a manner is against the electoral law and has no place in a democracy.

It was also observed that party representatives sought to unduly influence voters, and even intimidate them, by mingling with lines of voters in contravention of the electoral regulations. Poll watchers reported incidents of intimidation in some 9 per cent of polling stations. Voters should be able to cast their ballot in a secure and fair environment and should not be subject to any undue influence.

## **Analysis of the Vote Count**

Our observers have been present at all of the count centres. However it is difficult to comment at present, as the count is still on going in some areas and reports are still being received by our analysis unit.

It is encouraging, however, that the count does appear to be finally reaching a conclusion and results are starting to be published. We reiterate once more that we will issue a further, more detailed statement once this part of the process has been completed and once it has been possible to verify the official results and vote tabulation against the results recorded by our observers.

## **Conclusions**

The level of confusion and maladministration on behalf of the Electoral Commission served to bring a crisis of confidence in the electoral process among political parties and the public alike. At a time of such tension as during the country's election, such a poor performance by the authorities is an abrogation of duty. The Kenyan people, who displayed such patience and dignity in participating in the process, deserve much better than this. The reported incidents of vote buying and intimidation by political parties represented a serious breach of responsibility as civic and political leaders. Such an abuse of power has no place in a democratic society. Until all observations have been received and analysed, and until all reported incidents have been investigated, it is not possible to say whether the problems and violations recorded during the election serve to bring into question the whole process.

It is encouraging that the country has remained relatively calm, that the results are now starting to be announced, and that on the whole the process has continued and people have remained engaged. We look forward to a full publication of all results so that we will be in a position to verify the official results against those taken down at every counting centre by our observers. In the final analysis, notwithstanding the extensive technical shortcomings of the process and the level of suspicion towards it, the final arbiter of the process is the accurate reflection of the will of the people in the **official** results.

**Rev Mutava Musyimi**  
**Chairman, Strategic Management Board**  
**Nairobi, December 31, 1997**

## **Final Statement**

This is the final statement of IED, CJPC, and NCKK, which have jointly undertaken the observation of the 1997 Kenyan elections. This statement supplements the preliminary findings reported to the media on 31 December.

This statement is based upon reports from our 840 campaign and nomination process monitors, the 28,126 poll watchers, who worked in teams of two in all of the 210 electoral constituencies, and the three-person teams present at all of the country's count centres. Over 10,000 reports have been received and analysed from all parts of the country, covering all aspects of the process.

As part of our on-going task to analyse these elections, we will produce a final report within two months, which will make a more in-depth assessment of all aspects of the electoral process.

### **Election Observation**

The purpose of non-partisan election observation is twofold: firstly to deter fraud through the presence of observers inside the polling stations and count centres, and secondly to make an assessment of all aspects of the electoral process. By doing this we hope to contribute towards the integrity of the process, and thus towards the further democratic development of the Republic of Kenya. This has been the aim of the three organisations cooperating on this project. It has also been the aim of the 29,600 non-partisan campaign monitors, poll watchers, and count certifiers, who we would like to thank for dedicating so much of their time and energy in contributing to the further democratic development of their country.

### **Registration of Voters**

A total of 9,063,390 voters were registered for the elections. We believe that this figure should have been higher for this election and should be further increased for future elections, given adequate and more timely and coherent administrative reforms to the registration process.

There was a political consensus that a number of significant problems were prevalent during the voter registration, most noticeably the confusion as to which identity cards were acceptable and the slow issuance of identity cards to persons turning 18 years of age. These administrative problems were compounded by the fact that voter registration is not permanent but only for a designated period. The existing registration should now be built upon in order to establish a permanent voters register.

## Report on the 1997 General Elections

It was observed that active rejection by some political parties, and levels of apathy among some sections of the population, as well as the burning of voters cards by some persons, resulted in low registration levels in some areas.

Given the fact that there existed widespread dissatisfaction with the registration process, it is regrettable that the Electoral Commission did not act to allay fears and did not make public the numerous objections and claims made. It is also regrettable that more publicity was not given to encouraging registered voters to check the voters registers prior to the election. This would have cut out a number of the problems some voters faced on election day.

### **Delineation of Electoral Constituencies**

The existing structure of the country's electoral constituencies continues to be a cause of great concern. The significant variation in demographic size of many constituencies violates the principle of equality of the vote. To take the extremes of constituency sizes, Embakasi in Nairobi has some 114,000 registered voters, whilst Iljara in Garissa District has just 7,500.

Likewise, Nairobi with some 726,000 registered voters has just 8 constituencies, whilst the Rift Valley with some 2,156,000 registered voters has 49 constituencies, Central Province with some 1,346,000 has 29 constituencies, North Eastern Province with some 172,000 registered voters has 11 constituencies. Thus on average it takes 91,000 voters to elect a member of parliament in Nairobi, 44,000 in the Rift Valley, 46,000 in Central Province, and 15,600 in North Eastern Province. These anomalies result in an obvious over-representation for particular provinces in the parliament, and an imbalance to the weight of each vote.

Whilst the variances in population density between various areas in Kenya will result in some differentiation in constituency size, there needs to be an adherence to the principle that all votes are equal. The addition of a further 22 constituencies prior to the election served to exacerbate the perception that the decisions for delineating constituency boundaries were made for political gain. Constituency boundaries need to be re-addressed prior to the next election.

### **Legal, Constitutional, and Administrative Reforms**

The introduction of some legal, constitutional, and administrative reforms to diffuse the political unrest at the end of last year was a welcome response from the authorities. Changes allowing for an increase in the period for nominations, the introduction of a code of conduct for political parties, and the increase of opposition representation on the Electoral Commission were welcomed.

The amendment of the Public Order Act, negating the requirement for a license for the holding of political meetings, was welcomed, as was the introduction of a provision in the Kenyan Broadcasting Corporation Act allocating equal airtime for all registered political parties. Important legal changes relating to the freedom of association, assembly, and free speech were welcomed for the campaign period.

However, the fact that these changes were introduced so late meant that they had a limited benefit with regard to the conduct of these elections. Further, in the case of the amendments to the Public Order Act and the new provisions regarding equality of media time, they were not, in practice, fully implemented or adhered to. There is also a need for a further series of such reforms, including bringing in regulations regarding campaign spending and allowing independent candidates.

### **The Electoral Commission**

The Electoral Commission conducted its affairs in a more open manner than in 1992. There were regular press briefings and meetings with political parties, the media, and election observer groups. However, there is continuing concern regarding the method for appointing the chairman of the commission and the inability of the commission to enforce a number of election regulations.

The chairman of the commission should not be a political appointee, as this serves to decrease public and political confidence in the neutrality of the incumbent. The Electoral Commission is the ultimate electoral body and needs to enjoy the full confidence of voters and parties alike.

The expansion of the commission to include 10 representatives of opposition parties was also positive. But the fact that this came so late, along with the late appointment of a new chairman, may in the end have served to weaken the functional capacity of the commission, particularly as the structure of the body means it does not appear to have senior permanent staff able to carry some of the burden.

There needs to be a stronger legal basis for dealing with electoral complaints, particularly those of a criminal nature, rather than being solely based upon a code of conduct. In addition, the Electoral Commission must ensure that regulations pertaining to the elections, such as the supposed allocation of campaign media time, are fully enforced. This will prevent the state media from being a fool of the party in power.

## Report on the 1997 General Elections

With regard to the formation of electoral bodies throughout the country, it was reported to observers that in some isolated cases Kane election candidates were involved in the selection and recruitment of some electoral personnel at the polling station level. This was reported to have occurred in Kiambaa, Mathioya, Samburu West, and Mogotio. This, of course, should not be allowed to occur.

### **Media Coverage**

.A comprehensive qualitative and quantitative study of media coverage has been undertaken by the Kenyan Human Rights Commission (KHRC).

Following the agreement of IPPG recommendations the Kenyan Broadcasting Act was amended to include: “The Corporation shall keep a fair balance in all respects in allocation of broadcasting hours as between different political viewpoints.” Following this, the situation in which the media was heavily biased in favour of Kanu improved to the extent that by the fourth week in November, the combined opposition was receiving 32 per cent of coverage on KBC TV and radio.

This state of affairs continued into the first two weeks of December, during which time the combined opposition received 29 per cent, of coverage. However from 19 December until the elections took place, KBC TV and radio reverted to a heavy bias in favour of Kanu. During this period, Kanu received 85 per cent of KBC TV and radio news airtime in contrast to 10 per cent received by the opposition. The remaining 5 per cent went to other news items. The reversion to this bias should not have occurred, and violated the new regulations.

The provision of equitable access and coverage to all political parties by state media is an essential aspect of any election. It is therefore of great concern that, despite a legal requirement for this to happen, the drawing up of guidelines by the Electoral Commission which were agreed by all parties, and an initial improvement in the situation, state media remained heavily biased in favour of Kanu. Such a situation should not have occurred at these elections and must not be repeated at future elections.

### **Candidate Nominations and the Political Campaign**

Whilst violence continued to be a feature of the campaign and nomination processes it was noticeably decreased from 1992. It was welcome that the nomination process was extended from one to two days. It was also welcome that there were no reports of abductions as occurred in 1992. However some isolated attempts to intimidate

and prevent prospective candidates from presenting their papers for candidature were reported in Baringo Central, Eldama Ravine, Mt Elgon, and Turkana South.

During both the nomination and campaign processes a significant number of violent incidents occurred. Such incidents have no place in a democratic society. It was noticeable that much of the violence was intra-party rather than inter-party, particularly in areas where a party enjoyed overwhelming support. It was observed that the ruling party was particularly guilty of such a practice, particularly in Tinderet, Cherengani, and Shinyalu. It was observed that violence occurred in the DP party nomination process in Mathira, Tetu, and in the NDP nomination process in Nyakach.

It was also observed that bribery and vote buying continue to be a feature of the electoral process. Such practices cannot be part of a democracy. During the campaign it was primarily the ruling party which employed such tactics, and particularly in Sirisia and Bumula in Western Province; in Kitui, Makueni, Machakos, and Meru in Eastern Province; and in Mathioya in Central Province.

A further worrying factor during the campaign was the involvement of public employees, such as District Commissioners, District Officers, and Chiefs, and state resources on behalf of the ruling party, particularly in Eldwna Ravine, Mogotio, Samburu, and Turkana in Rift Valley Province; Moyale in Eastern Province; and Mt Elgon in Western Province. It was also noted that a Permanent Secretary and a Parastatal Chief used their positions to openly campaign on behalf of one presidential candidate. The state exists to serve all the people and should not be used by one party to gain a benefit over others.

### **The Voting Process**

In our preliminary statement, we commented on the logistical and administrative mess that served to not only cause serious disruptions to the voting and counting processes but to also decrease public and political confidence in the process and increase suspicion towards it. It is clear that this assessment regarding the Organisation of the election stands, and an investigation into responsibility should be undertaken.

Poll watchers reported that in 48 per cent of polling stations voting materials, such as ballot boxes, ballot papers and voters registers, were not available at 6 am on election day. Poll watchers also reported that in 50 per cent of cases election

## Report on the 1997 General Elections

officials were not present at the allotted time to start the opening procedures. As a result of these shortcomings, poll watchers reported that at least 56 per cent of polling stations failed to open on time.

The Electoral Commission's instruction for voting to take place for a second day was not consistently communicated to all parts of the country. There were also contradictory statements from the Electoral Commission, as they later said that an extra polling day should only occur where it was not completed on day one. This caused confusion and uncertainty. In a limited number of cases, some polling stations did not open on the second day as instructed, thus effectively disenfranchising those persons not able to vote on day one.

However, it is clear in the vast majority of cases that, although seriously delayed, polling materials were eventually available, enabling voting to take place, often due to the tenacity of election officials at the local level and due to the patience of the voting public. Based on figures so far available, the voter turnout is estimated at some 65 per cent, with the lowest turnout being approximately 40 per cent in Coast Province and the highest being approximately 75 per cent in Rift Valley Province.

Once voting did commence, 98 per cent of poll watchers rated the actual voting process as being acceptable. A further positive aspect of the voting process is that 92 per cent of poll watchers reported that security personnel behaved in an appropriate manner.

The large number of incidents of bribery which took place during the campaign were also prevalent on election day. Whilst many parties were guilty of this, it was noted that Kanu was particularly so. This remains of great concern to all who want to see Kenya further enhance its democracy. Such a practice should not be a feature of our political life.

On a technical level, there was some concern among poll watchers as to the secrecy of the ballot, and at 6 per cent of polling stations it was reported that polling booths were either not to be found or did not afford voters proper secrecy. There was also concern regarding the provisions for aiding voters who could not read, whereby party agents closely observe the presiding officer, who physically helps the voter. Such participation by party-affiliated persons is not appropriate, as it not only violates the secrecy of the ballot but might also be construed as intimidation.

it appears that despite the technical shortcomings of the overall Organisation of the election and some isolated incidents around the country, the voting process does appear to have eventually been undertaken in a serious and largely satisfactory manner.

### **The Vote Count**

The extension of voting meant that the count was seriously delayed, resulting in fatigue and tension in the count centres, and confusion as to what arrangements should be made for the security of ballot boxes. However, it was reported that in the majority of cases observers and party agents were able to accompany ballot boxes.

The counting process has been laboriously slow, and there have been a few disturbances. However, the overall picture is one of election officials, party agents, and poll watchers continuing with the task under very difficult circumstances.

Whilst acknowledging some problems in the Organisation and conduct of the count, 85 per cent of count certifiers rated the general counting process as being satisfactory. Some complaints from poll watchers have been received from various areas of the country, and whilst these may need to be looked into, it is not felt that they would affect the overall result in any material way.

### **Conclusions**

As stated, we have covered all aspects of the electoral process, including analyzing the electoral framework, voter registration, the nominations process, the political campaign, the role of the media, and the voting and counting processes. From our analysis of these vital factors it is clear that a level playing field does not currently exist in Kenyan politics. The institutional bias in favour of Kanu, such as domination of the state media and unfair delineation of electoral constituencies, needs to be seriously addressed. It is also clear that the logistical and administrative Organisation of the elections was characterized by chaos and inefficiency, which served to increase tensions around the country and decrease confidence in the process.

However, notwithstanding these problems, it should be acknowledged that a large number of voters did turn out to vote and were, in the vast majority of cases, able to do so. The voting process was generally handled well by polling station officials, and closely scrutinized by party agents and poll watchers. The vote count, whilst quite chaotic and slow, was also closely scrutinized by party agents and observers, and appears to have been largely carried out satisfactorily.

## Report on the 1997 General Elections

As a result, the organisations conducting the observation of the elections have to conclude that the results do on the whole reflect the wishes of the Kenyan voters.

If there is any dispute over the official published results, we trust that the vote tabulation will be transparent enough to enable a clear and satisfactory resolution of the problem.

The dignity and determination of the Kenyan voters in participating in the 1997 elections give us hope to go on. We call upon the Kenyan people to respect the results and to continue to work together to deepen the reform process and to strengthen democracy in our country.

**Mutava Musyimi**

**Chairman, Strategic Management Board  
Nairobi, 3 January, 1997**

## Presidential and Parliamentary Election Petitions

COURT REGISTRY NO.	HIGH COURT OF KENYA AT	PARTIES	CONSTITUENCY
E. P. 1/98	Nairobi	Mwai Kibaki ( <i>Petitioner</i> ) versus Daniel Toroitich arap Moi, S M Kivuitu Electoral Commission of Kenya ( <i>Respondents</i> )	Presidential
E. P. 2/98	Nairobi	Abubakar Dubow, Abdi Mohamed, and Abdille Abdi ( <i>Petitioners</i> ) versus Said Adan Warsame ( <i>Retuning Officer 1st Respondent</i> ) Mohamed Abdi Affey ( <i>2nd Respondent</i> )	Wajir South
E. P. 3/98	Nairobi	Betty Njeri Tett ( <i>Petitioner</i> ) versus Rosemary Moraa ( <i>Returning Officer/1st Respondent</i> ) Fredrick Omulo Gumo ( <i>2nd Respondent</i> ) Electoral Commission of Kenya ( <i>3rd Respondent</i> )	Westlands
E. P. 4/98	Nairobi	Said Hemed Said ( <i>Petitioner</i> ) versus Emmanuel Karisa Maitha ( <i>1st Respondent</i> ) Hotham Nyange ( <i>Retuning Officer, 2nd Respondent</i> )	Kisauni
E. P. 5/98	Nairobi	Mohammed Abdi Ali ( <i>Petitioner</i> ) versus Adan Keynan Wehliye ( <i>1st Respondent</i> ) Abdi Rahim Haji Abbas ( <i>Retuning Officer, 2nd Respondent</i> )	Wajir West
E. P. 6/98	Nairobi	Joseph Kennedy Kiliku ( <i>Petitioner</i> ) versus Mary Mwamondo ( <i>Retuning Officer/1st Respondent</i> ) Seif Ramadhan Kajembe ( <i>2nd Respondent</i> ) Electoral Commission of Kenya ( <i>3rd Respondent</i> )	Changamwe
E. P. 7/98	Nairobi	Tache Wako Gaji ( <i>Petitioner</i> ) versus Omar Sheikh ( <i>Deputy Retuning Officer/1st Respondent</i> ) Charfana Guyo Mokku ( <i>2nd Respondent</i> ) Electoral Commission of Kenya ( <i>3rd Respondent</i> )	Isiolo North
E. P. 8/98	Nairobi	Alexander Kipaiyn Sialaia ( <i>Petitioner</i> ) versus Daniel Tallam ( <i>Retuning Officer/1st Respondent</i> ) George Saitoti ( <i>2nd Respondent</i> ) Electoral Commission of Kenya ( <i>3rd Respondent</i> )	Kajiado North

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E. P. 9/98	Nairobi	Yussuf Issa Abdi ( <i>Petitioner</i> ) versus Enow Adawa ( <i>first Respondent</i> ) Elias Barre Shile ( <i>2nd Respondent</i> ) Electoral Commission of Kenya ( <i>3rd Respondent</i> ) Perez Malande Olindo ( <i>Petitioner</i> )
E. P. 10/98	Nairobi	versus Joseck Tsuma ( <i>Retuning</i> Langata <i>Officer/1st Respondent</i> ) Electoral Commission of Kenya ( <i>2nd Respondent</i> ) Raila Amolo Odinga ( <i>3rd Respondent</i> ) Charles Maranga Bugwasi ( <i>4th Respondent</i> ) Samuel Kamau Macharia ( <i>Petitioned</i>
E. P. 11/98	Nairobi	versus Electoral Commission of Kenya Gatanga ( <i>first Respondent</i> ) Naphtai H Chomba ( <i>Retuning Officer/2nd Respondent</i> ) A. Samuel Macharia alias Samuel Macharia alias Sammie Macharia alias Samuel Macharia
E. P. 12/98	Nairobi	Ernest Eugene Osogo ( <i>Petitioner</i> ) versus Bahati Shikanga ( <i>Retuning Officer/1st</i> Budalangi <i>Respondent</i> ) Raphael Wanjaia S Bitta ( <i>2nd Respondent</i> ) Electoral Commission of Kenya ( <i>3rd Respondent</i> ) Ochieng Gilbert Mbeo ( <i>Petitioner</i> )
E. P. 13/98 Kasarani	Nairobi	versus Thomas Ochieng ( <i>list</i>  <i>Respondent</i> ) Adolf Isaac Muchiri ( <i>2nd Respondent</i> ) Japheth Galagati Shamalla ( <i>Petitioner</i> )
E. P. 14/98	Nairobi	versus Philip Wekesa ( <i>Retuning</i> Shinyalu <i>Officer/1st Respondent</i> ) Daniel Lyula Khamasi ( <i>2nd Respondent</i> ) Meshack Luchendo Libasia ( <i>Petitioner</i> )
E. P. 15/98	Nairobi	versus Philip Wekesa ( <i>Retuning</i> Shinyalu <i>Officer/1st Respondent</i> ) Daniel Lyula Khamasi ( <i>2nd Respondent</i> ) Electoral Commission of Kenya ( <i>3rd Respondent</i> ) Abdi Waticho ( <i>Petitioner</i> ) versus
E. P. 16/98	Nairobi	Rophin Mwakio Nda ( <i>Retuning</i> Bura <i>Officer/1st Respondent</i> ) Mohamed Abdi Galgalo ( <i>2nd Respondent</i> )

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E. P. 17/98	Nairobi	Wario Hukha Ali ( <i>Petitioner</i> ) versus Stephen Miriti Muguna ( <i>Retuning Officer/1st Respondent</i> ) Bonaya Adhi Godana ( <i>2nd Respondent</i> )	North Horr
E. P. 18/98	Nairobi	Stephen Kimani Gakenia ( <i>Petitioner</i> ) versus Francis Mwangi Kimani ( <i>Retuning Officer/1st Respondent</i> ) Karue M Muriuki ( <i>2nd Respondent</i> ) Electoral Commission of Kenya ( <i>3rd Respondent</i> )	01 Kalou
E. P. 19/98'	Nairobi	Abdi Hassan Haji <i>Petitioner</i> Mohammed Abdullahi Omar ( <i>2nd Petitioner</i> ) versus Shaban Ali Issack ( <i>1st Respondent</i> ) Ibrahim Mohammed Hussein ( <i>Retuning Officer/2nd Respondent</i> ) Mohammed Korow Nur alias Sheikh Burhan ( <i>Third Respondent</i> ) Mohammed Khalif Ali ( <i>Fourth Respondent</i> ) Richard Rakuomi ( <i>Fifth Respondent</i> )	Mandera East
E..P. 20/98	Nairobi	Stephen Mukangu ( <i>Petitioner</i> ) versus David K. Kituku ( <i>Retuning Officer/1st Respondent</i> ) Electoral Commission of Kenya ( <i>2nd Respondent</i> ) Benjamin Ravel Ndubai ( <i>3rd Respondent</i> )	Tigania West
E. P. 1/98	Meru	Eustace Mbuba Ntwiga ( <i>Petitioner</i> ) versus Julius Musyoki ( <i>Retuning Officer/1st Respondent</i> ) Electoral Commission of Kenya ( <i>2nd Respondent</i> ) Samuel Kivuitu (Chairman, Electoral Commission of Kenya) ( <i>3rd Respondent</i> ) Benard Njoka Mutani ( <i>4th Respondent</i> )	Nithi
E. P. 11/98	Mombasa	Khamis Chome Abdi ( <i>Petitioner</i> ) versus Francis Chibwara ( <i>Retuning Officer/1st Respondent</i> ) Basil Nguku Mwakidngo ( <i>2nd Respondent</i> ) Electoral Commission of Kenya ( <i>3rd Respondent</i> )	Voi
E. P. 1/98	Kakamega	Alfred Muhadia Ngume ( <i>Petitioner</i> ) John Sitati Teka ( <i>Petitioner</i> ) versus George W. Sitati ( <i>1st Respondent</i> ) Peter Soita Shikanda ( <i>2nd Respondent</i> ) Electoral Commission of Kenya ( <i>3rd Respondent</i> )	Malava

Withdrawn by application dated 6.4.98 (Ref *Gazette Notice No. 1890 of 17.4.98*)

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E. P. 2/98	2 Kakamega	Nandwa Anjiru ( <i>Petitioner</i> )	Harry Roger Keya ( <i>Petitioner</i> ) William Peter Leo	Butere
			Omurunga ( <i>Petitioner</i> ) versus Amukowa Fredrick Anangwe ( <i>Respondent</i> ) J. B. Omatete ( <i>Respondent</i> ) Bishop Horace Etemesi ( <i>Respondent</i> )	
E. P. 1/98	Kisumu	Electoral Commission of Kenya (Ist)	Elijah Obare Asiko ( <i>Petitioner</i> ) versus Walter Juma Absaloms ( <i>2nd Respondent</i> ) Joseph Aketch Donde ( <i>3rd Respondent</i> )	Gem
E. P. 28/98	Kisii	versus Oburu Obara ( <i>Returning Officer/1st Respondent</i> )	David Ondimu Kombo ( <i>Petitioner</i> ) Enock Nyakeya Magara ( <i>2nd Respondent</i> )	South Mugirango
	E. P. 1/98	Nakuru	Alice J R Chelaite ( <i>Petitioner</i> ) versus David Manyara Njuki ( <i>Ist Respondent</i> ) Simon K ole Kerore ( <i>Retuning Officer/2nd Respondent</i> )	Nakuru Town
			Electoral Commission of Kenya ( <i>3rd Respondent</i> )	

*Total number of pending election petitions: 26*

*Withdrawn by application dated 14.4.98 (Ref Gazette Notice No. 1889 of 17.4.98)*

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