

Kenya General Election

27 December 2002

The Report of the
Commonwealth Observer Group



COMMONWEALTH SECRETARIAT

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Map of Kenya



Map by Sheila Atton, Nuthaven Partnership

Letter of Transmittal



Commonwealth Observer Group

Kenya General Election, 27 December 2002

Tel: 02 250 900
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The Norfolk Hotel
Harry Thuku Road
Nairobi
Kenya

2 January 2003

Dear Secretary-General,

I have pleasure in transmitting our report to you. You will see that we have no hesitation in saying that in our view the electoral process was credible, the conditions existed for a free expression of the will by the electors and the results reflected the wishes of the people.

We thank you for inviting us to observe this General Election. Now we hope that Kenya will go forward from this electoral success to strengthen all aspects of its democracy and that the Commonwealth will provide whatever help it can for that effort.

Professor Adebayo Adedeji CFR
Chairperson

HE Rt Hon Don McKinnon
Commonwealth Secretary-General
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London SW1 5HX

Dr Kwadwo Afari-Gyan

Hon Senator Dato' Dr Fook Weng Chin

Ms Segametsi Moatlhaping

Hon Irene Mutsila MP

Dr Jayaprakash Narayan

Miss Kaye Oliver CMG OBE

Mr Earl Simpson

Ms Loren Wells

This Observer Group Report was signed by the members of the Group. In this electronic version, their signatures have been removed.

Acknowledgements

We are indebted to many organisations and individuals for their assistance to us during our visit to Kenya.

In particular we wish to thank the Electoral Commission of Kenya, its District Election Co-ordinators and polling station officials, and the police. Without their co-operation our work would have been impossible. We are most grateful to the political parties, non-governmental organisations, Commonwealth High Commissioners and others who briefed us in Nairobi before we were deployed and to the other international observers, with whom we worked closely in the field in order to maximise the effectiveness of our observation effort. We must also thank our drivers for their professionalism and acknowledge the hard work and dedication of the Staff Support Team, led by Professor Ade Adefuye. We were delighted that shortly before the poll the Team was joined by the Commonwealth Secretariat Director of Political Affairs, Mr Matthew E K Neuhaus.

In conclusion, we wish to express our appreciation to Commonwealth Secretary-General Don McKinnon for giving us the opportunity to serve the Commonwealth in the promotion and consolidation of democracy in Kenya.



MEMBERS OF THE COMMONWEALTH OBSERVER GROUP . . . (from left to right) Segametsi Moathlaping, Kwadwo Afari-Gyan, Loren Wells, Jayaprakash Narayan, Adebayo Adedeji (Chairperson), Kaye Oliver, Dato' Fook Weng Chin, Irene Mutsila, Earl Simpson

Introduction

Following an invitation from the Foreign Minister of Kenya in October 2002, Commonwealth Secretary-General Don McKinnon sent an Assessment Mission to Kenya from 11 to 16 November. Its purpose was to determine whether the major political parties and civil society would welcome the presence of Commonwealth Observers and to ensure that observers would have open access to polling stations and be permitted to pursue their mandate. The Mission concluded that there was broad support for the presence of such a Group and that the Group would be free to fulfil its mandate.

The Secretary-General therefore decided to constitute a Commonwealth Observer Group, consisting of nine observers led by Professor Adebayo Adedeji and a staff team of five officials from the Commonwealth Secretariat led by Professor Ade Adefuye. (The composition of the Commonwealth Observer Group is at Annex I.)

Terms of Reference

The Secretary-General informed the Group that its terms of reference would be as follows:

The Group is established by the Commonwealth Secretary-General at the invitation of the Government of Kenya. It is to observe relevant aspects of the organisation and conduct of the General Election in accordance with the laws of Kenya. It is to consider the various factors impinging on the credibility of the electoral process as a whole and to determine in its own judgement whether the conditions exist for a free expression of will by the electors and if the results of the election reflect the wishes of the people of Kenya.

The Group is to act impartially and independently. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.

The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Kenya, the Electoral Commission of Kenya, the leadership of the political parties taking part in the election and thereafter to all Commonwealth governments.

Preparation and Activities of the Group

An Advance Group comprising Mr Earl Simpson and Mr Martin Kasirye, respectively Jamaica's Assistant Director of Elections and a member of the Staff Support Team, began work in Kenya on 26 November 2002. The main group of observers arrived in Nairobi on 14 December 2002 and an Arrival Statement was issued at a press conference on Monday, 16 December (see Annex II).

During the course of their stay in Kenya the members of the Advance Group travelled widely, observing the preparations for the elections, media coverage, the campaign and the pre-election environment as a whole.

On 15 December 2002 the Advance Group briefed the full Observer Group on their observations during the previous three weeks.

The full Group then met and was briefed by the Electoral Commission of Kenya, the police, representatives of several of the political parties, non-governmental organisations, media organisations, Commonwealth High Commissioners and other observer organisations, both domestic and international (see *Annex III* for schedule of engagements). On 19 December 2002 the observers were deployed across the country in six two-person teams and one team of one person (see *Annex IV*). Soon after their arrival in their places of deployment the teams visited the police, provincial and district election officials, representatives of the political parties and the domestic observers and made a point of meeting with *wanainchi* (citizens) — to hear their views on the electoral process. Then the teams familiarised themselves with their deployment areas and observed the final stages of the election campaign. Meanwhile, the Chairperson of the Group visited most of the teams, in order to get a sense of the pre-election atmosphere.

On Election Day the teams visited as many polling stations as possible, observing the voting and counting of votes. They each followed the result of at least one polling station count through to the Constituency Collation Centre, to test the integrity of the results system. In Nairobi the Chairperson's team was at the national results centre to ensure that the results came out at that end as announced at the earlier stages of the system. Altogether the observers visited 137 polling stations in 38 constituencies and were present at 17 counts and eight constituency collation centres. The observers were assisted in their work by Observation Notes and Checklists (see *Annex V*). An Interim Statement was issued to the press by the Chairperson of the Group on 28 December 2002 (see *Annex VI*). On 30 December 2002 the Chairperson attended the Swearing-In of the new President, HE Mr Mwai Kibaki, accompanied by Mr Matthew Neuhaus (Director of Political Affairs, Commonwealth Secretariat) and Professor Ade Adefuye (Special Adviser). The Commonwealth Secretary-General issued a statement of congratulations on behalf of the Commonwealth. A 'Departure Statement' was issued by the Group on 2 January 2003 (see *Annex VII*).

CHAPTER 1

Political Background

Independent Kenya

As Kenya prepared for independence, two national parties were formed: Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). KANU was victorious in two pre-independence elections. Kenya achieved independence on 12 December 1963 from the United Kingdom with Mr Jomo Kenyatta, the KANU leader, as Prime Minister. A year later the Republic of Kenya was formed, with Mr Kenyatta, a member of the Kikuyu, Kenya's largest ethnic group, as President and Mr Oginga Odinga, from the Luo, Kenya's second largest ethnic group, as Vice-President, and remained within the Commonwealth. KADU merged with KANU in 1964. In 1966, Mr Odinga left KANU after an ideological split and formed the rival Kenya People's Union (KPU). Mr Daniel arap Moi, a Kalenjin, was appointed Vice-President. In 1969 the KPU was banned and Mr Odinga arrested and detained. Kenya became a *de facto* one party state.

President Kenyatta died in office in 1978 and was constitutionally succeeded by Vice-President Moi. Kenya was declared a *de jure* one party state by the National Assembly in June 1982. Two months later the army suppressed a coup attempt by the Kenya Air Force. Opposition groups continued to be suppressed throughout the 1980s and the Kenyan government came under increasing international criticism for political arrests, human rights abuses and pandemic corruption.

Return to Multiparty Politics

In August 1991 six opposition leaders, including Mr Oginga Odinga, announced the formation of the Forum for the Restoration of Democracy (FORD). The new party was immediately outlawed and its leaders arrested. International donors suspended aid to Kenya. In December 1991 the ruling KANU held a special conference and agreed to introduce a multiparty system, and new political parties were legally registered.

As Kenya prepared for elections in 1992, fierce tribal conflict gripped Western Kenya; some 2,000 people were killed. In the run-up to the election, FORD split into two factions: FORD Asili led by ex-Cabinet Minister Mr Kenneth Matiba and FORD Kenya led by Mr Odinga. Subsequently other splinter FORD groups were formed. A total of eight political parties contested the 1992 elections. President Moi was re-elected and KANU won a strong majority in Parliament, benefiting from a divided opposition, although he only received 35 per cent of the vote cast in the Presidential Election. A Commonwealth Observer Group was present for the 1992 elections, and their Report details the political background prior to that election.

In 1994 Mr Odinga died. A coalition of opposition groups formed the United National Democratic Alliance, but it was soon plagued by disagreements. A new party, Safina, which included representatives of civil

society, was launched by palaeontologist Mr Richard Leakey in 1995, but was refused registration until 1997. The Commonwealth was not invited to observe the 1997 election. However, the 1997 Electoral Commission of Kenya General Election Report states that in the run-up to the 1997 election 16 new parties were registered, bringing the total registered parties in Kenya to 27.

President Moi won a further term in widely criticised elections in December 1997. He obtained 40.6 per cent of the vote, again profiting from a split opposition. KANU also won a narrow majority in the parliamentary election.

Contemporary Political Context

The campaign for the 2002 elections effectively began soon after the 1997 General Election. Especially over the past two years, Kenya has witnessed a significant realignment of political forces, with the major parties seeking to strengthen their respective ethno-political support bases ahead of the 2002 polls.

In June 2001 President Moi announced a Cabinet reshuffle and appointed the Luo opposition politician, Mr Raila Odinga, leader of the National Development Party and son of late veteran opposition leader Mr Oginga Odinga, as Energy Minister in the first coalition government in Kenya's history.

In August 2001 Parliament threw out a bill on the formation of an independent anti-corruption watchdog, after the government had rejected amendments that would have given it wide-ranging powers. This hampered chances of the IMF resuming a lending programme suspended in 1997 pending action to eliminate corruption and improve revenue collection. In an unsuccessful bid to restore donor confidence, President Moi set up two anti-corruption courts and a police unit.

International confidence in Kenya's economic prospects, already low, declined further. Tourism, a cornerstone of the Kenya economy and a major foreign exchange earner, already affected after the 1998 anti-American terrorist attack simultaneously in Nairobi and Dar es Salaam and by widespread criminality in the major cities, was reduced further in the aftermath of 11 September 2001.

In November 2001, President Moi nominated Mr Uhuru Kenyatta, son of the late President Kenyatta, to Parliament and appointed him to the Cabinet, in an effort to rejuvenate the KANU leadership before the forthcoming General Election.

In March 2002, the ruling KANU party absorbed the smaller National Development Party. President Moi remained Chairman of KANU. Four Vice-Chairmen of KANU were elected. They were Mr Uhuru Kenyatta, Mr Katana Ngala, Mr Musalia Mudavadi and Mr Kalonzo Musyoka. The NDP leader, Mr Raila Odinga, became Secretary-General of the party.

From mid-2002, the key political issues were the succession of President Moi, the timing of the General Election and the fate of a long delayed constitutional review.

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Pre-Election Political Developments

Having served two terms after 1992, President Moi was constitutionally barred from any further term in office, and publicly stated that he would stand down

when his term expired. However, there were indications that President Moi was not planning to leave the political scene entirely. He stated, for example, that he intended to continue as Chairman of KANU “for the time being” and said that he would set up a foundation to facilitate conflict resolution in the Great Lakes and Horn of Africa regions.

In July 2002 President Moi announced that Mr Uhuru Kenyatta was his preferred choice as the ruling KANU party candidate for the Presidential Election. Several KANU Ministers immediately indicated that they too would contest the KANU nomination and questioned the manner in which Mr Kenyatta was selected by President Moi to run as the party candidate. Leading KANU politicians opposed to Mr Kenyatta’s nomination as Presidential candidate formed a faction within KANU, known as the Rainbow Alliance. Vice-President Professor George Saitoti, who had publicly expressed his intention to seek nomination as a presidential candidate for the ruling party, was removed from office by President Moi.

Earlier in 2002 leading Opposition politicians had decided to form an alliance ahead of the election. This resulted in the formation of the National Alliance for Change in February 2002 composed of the Democratic Party, Ford-Kenya and the National Party of Kenya. Ten other parties, together with two pressure groups, later joined these three to form the National Alliance (Party) of Kenya. In September 2002 the National Alliance Party of Kenya announced that their presidential candidate would be the prominent opposition politician Mr Mwai Kibaki. Mr Kibaki, a Kikuyu and a former Vice-President and Cabinet Minister, who resigned from the KANU Government in 1991, had campaigned unsuccessfully as a Presidential candidate both in 1992 and 1997.

Dissent increased within KANU, the ruling party, over President Moi’s choice of Mr Kenyatta as the party presidential candidate. On 14 October, the day of Mr Kenyatta’s official nomination, influential politicians including Secretary-General Mr Raila Odinga, Information Minister Mr Kalonzo Musyoka and former Vice-President Professor Saitoti, carried out their threat to leave the ruling party, and took over the then little known fringe party, the Liberal Democratic Party (LDP). Mr Kenyatta’s nomination also led to violent protests at rallies addressed by President Moi, with two people reportedly killed. Talks immediately began between the LDP and other opposition groups on forming a “super alliance”.

The talks resulted in the creation of the National Rainbow Coalition (NARC) on 14 October 2002 — an alliance on a 50-50 basis between the National Alliance Party of Kenya and the Liberal Democratic Party of Kenya. Two days later, 30 KANU MPs led by Secretary-General Mr Raila Odinga publicly crossed the parliamentary floor and took seats on the opposition benches.

On 22 October 2002 the fourteen parties and two pressure groups comprising the National Rainbow Coalition announced that Mr Mwai Kibaki would be their joint presidential candidate. A steady stream of defections from the ruling party, including Cabinet Ministers, began. There were a few defections in the reverse direction, and also to other opposition parties, but these were of less significance.

.....
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.....

The Constitutional Review

A Constitutional Review Commission was established by an Act of Parliament in October 2000, but did not begin work for several months. The review was due to have been completed well in advance of the 2002 General Election. In June 2002 statements from the key Parliamentary Committee on Constitutional Reform that the elections due in December might be postponed for a year were met with fierce protests from the Opposition. Mass protests were threatened if the elections were not held on time, whether or not the constitutional review process was completed. Opposition parties referred to the constitutional provision that the life of Parliament could only be extended in the event of an emergency such as a state of war. On 18 September 2002 the Constitutional Review Commission announced their draft proposals.

On 25 October President Moi dissolved Parliament, paving the way for Kenya's eighth General Election since independence. This act also brought to a halt the constitutional review process, as Members of Parliament were essential members of the body that was to debate the draft constitutional proposals. Four days later the Electoral Commission of Kenya announced 27 December 2002 as the date for Presidential, Parliamentary and Civic elections.

CHAPTER 2

The Institutional and Legal Framework

The Constitution

The Constitution provides for an executive Presidency and a Parliament which consists of the President and a National Assembly of 210 directly elected members and 12 nominated members, all with a five-year term.

The President is directly elected by popular vote, and has to fulfil three criteria for election:

- election as a member of the National Assembly;
- receiving a greater number of valid votes cast in the Presidential Election than any other candidate for President; and
- receiving a minimum of 25 per cent of the valid votes cast in at least five of the eight provinces.

An amendment to the Constitution adopted in 1991 permitted the establishment of a multiparty system. In 1997 the National Assembly further amended the Constitution to grant all political parties equal access to the media, to prohibit detention without trial and to allow the opposition to participate in selecting the 12 nominated members of the National Assembly. In 1999 a further amendment reduced the level of presidential control over the legislative process.

The Electoral Commission of Kenya

The Constitution provides for an Electoral Commission consisting of a Chairman and a maximum of 21 members.¹ The Constitution defines the Commission's responsibilities as:

- (a) the registration of voters and the maintenance and revision of the register of voters;
- (b) directing and supervising the Presidential, National Assembly and local government elections;
- (c) promoting free and fair elections;
- (d) promoting voter education throughout Kenya; and
- (e) such other functions as may be prescribed by law.

It further gives the Commission the responsibility to delimit parliamentary constituencies. Other laws enable the Commission to supervise party candidate selection processes, at the request of the parties concerned and at the party's expense, and provide for the Commission to have a role in the delimitation of local government areas.

The Commission's independence is guaranteed by the Constitution, which stipulates that in the exercise of its functions it "shall not be subject to the direction of any other person or authority". The Commissioners are appointed

¹ The number was increased in 1997 in order to allow greater representation by opposition parties.

for five years, enjoy security of tenure and can only be removed by the President in the same manner as a High Court judge. Members of the Commission are paid salaries and allowances from the Consolidated Fund, so they are not dependent for their remuneration on the annual budget drawn up by Parliament.

National Assembly and Presidential Elections Act

Under the National Assembly and Presidential Elections Act (NAPEA) the Commission has complete authority to appoint officials for the conduct of elections. The law also puts police on election duties under the direction and instruction of the Commission. The Commission and electoral officers are immune from any personal liability for actions done in good faith in the exercise of their functions.

The Local Government Act

The Local Government Act (LGA) governs the establishment and functions of local government in Kenya. The Government has unlimited powers to establish, alter, amalgamate or divide local governments, in consultation with the Electoral Commission (Sections 5 and 9 of the LGA). Whenever there is a General Election, the law states that “there shall simultaneously be held an election of all councillors” and for that purpose it mandates the Minister to dissolve all local authorities upon the dissolution of Parliament (Section 58 of the LGA).

Kenya Broadcasting

The Kenya Broadcasting Act imposes on the Kenya Broadcasting Corporation (KBC) the responsibility to ensure a fair balance between different political view points in the allocation of broadcasting hours and to allocate free airtime to registered political parties participating in the election.

Campaign Finance

There are no legal limits or regulations whatsoever on either income or expenditure. In effect any amount of money can be raised from any source—local or foreign. And it can be used for electoral purposes with practically no restrictions except those imposed by the Election Offences Act. The Election Offences Act prescribes penalties for several violations of the law including falsification of records, violation of voting secrecy, personation, undue influence and bribery.

Voters and Voter Registration

Section 43 of the Constitution sets out the qualifications to be registered as a voter. Section 4A of the NAPEA entitles only those citizens who produce a National Identity Card or a Kenya passport to be registered as voters, upon application. The fee for a National Identity Card is Ksh50. Further, according

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.....

to Section 15, if a person is not entered on a register of electors for a parliamentary election she/he is not entitled to vote, despite the production of the Identity and Elector's Cards issued to her/him.

Changes in Law and Procedures

There were several significant changes in the electoral laws and procedures prior to this General Election:

- a new section in the State Law (Miscellaneous Amendments) Act 2002 provided for the continuous registration of voters, except between the dissolution of parliament and the date of the election;
- a new Regulation 41 provides for the replacement of a lost or destroyed or unserviceable Elector's Card, until the day before polling;
- Regulation 30 has been amended to allow any marking of any kind on the ballot paper clearly indicating the voter's choice: the cross is no longer the exclusive mark by which voting is done;
- Regulation 31 has been amended to allow an illiterate or incapacitated voter to bring an escort to assist the voter;
- the most significant change is an amendment to Regulation 35 under which the votes must be counted at the polling station (while Regulation 40 states that the tallying of the results from all the polling stations in the constituency by the Returning Officer is to be done at a separate centre specifically established for that purpose).

Other

The law states that the voting age is 18. There is no provision for overseas, postal or proxy voting, and prisoners may not vote.

CHAPTER 3

Preparations for the Election

Voter Registration

The Voters' List for this election consisted of all the registers which had been compiled since 1997. The most recent registration took place from 4 February to 19 March 2002, based on the use of constituency registration centres. Shortly afterwards the law was changed to allow for a continuous voter registration system, but this was not in place in time for this election.

The list used for this election consisted of 10,451,000 electors. A survey in July and August 2002 by the Institute for Education in Democracy found that "by and large ... the register has a satisfactory degree of accuracy, but needs more timely verification and updating".² Media attention in November 2002 focused on projections made on the basis of the IED report suggesting that there might be as many as one million dead people on the list. However, the political parties did not appear to believe that any one party was particularly affected. The Electoral Commission explained that it was reliant on the Registrar of Birth, Deaths and Marriages for details of deaths and that the Registrar's database was not up-to-date. The Registrar had supplied details of deaths and the Commission had removed names where it had the necessary information. The Commission felt that it had done everything in its power to ensure that the list was as accurate as practicable.

We noted that the number of registered voters as a proportion of the population as a whole varied widely from one constituency to another. For example, 26 per cent of the population of Kinango constituency (in Kwale District, near Mombasa) is registered, whereas in Kasarani constituency (in Nairobi) the figure was 70.73 per cent.

.....
A survey in July and August 2002 by the Institute for Education in Democracy found that "by and large ... the register has a satisfactory degree of accuracy, but needs more timely verification and updating"
.....

Presidential Candidates

Five candidates were declared nominated by the Electoral Commission of Kenya at the close of presidential nominations on 19 November 2002.

They were:

- Mr Uhuru Kenyatta (*Kenya African National Union*)
- Mr Mwai Kibaki (*National Rainbow Coalition*)
- Mr Simeon Nyachae (*Ford-People*)
- Mr James Orengo (*Social Democratic Party*)
- Mr Waweru Ng'ethe (*Chama Cha Umma*)

Two other would-be candidates — Mr Joseph Ngacha Karani of Umma-Patriotic Party of Kenya and Dr Lihanda Savai of Kenya Republican Reformation Party—were unable to meet the requirement that they produce a list of 1,000 registered supporters and therefore could not complete the nomination process.

² *Registration of Voters in 2002, An Audit*, IED, November 2002.

Three others — Mr Martin Shikuku of Ford-Asili, Mr Richard Lukubo Jeremiah of the Republican Party of Kenya and Mr Stephen Omondi Oludhe of the Economic Independence Party — failed to arrive at the Electoral Commission’s premises in order to present their nomination papers. Mr Shikuku later announced that he had joined NARC.

.....
There was intense competition for nominations, especially in the opposition NARC coalition. There was some violence and critics highlighted the lack of internal party democracy

Nomination of Parliamentary and Civic Candidates

Parliamentary and civic nominations were also made in November 2002, after internal party nomination processes which attracted considerable attention. There was intense competition for nominations, especially in the opposition NARC coalition. There was some violence and critics highlighted the lack of internal party democracy. In NARC, for instance, several leaders were nominated without any contest because of their importance for the coalition. Women’s groups complained that women candidates were squeezed out. Only 44 emerged with party tickets after the internal primaries — six fewer than in 1997.

Political Parties

Thirty-eight political parties/alliances with a total of 1,037 candidates contested the National Assembly elections. The following parties contested at least 20 National Assembly seats:

- Kenya African National Union (KANU)
- National Rainbow Coalition (NARC)
- FORD-People
- Social Democratic Party (SDP)
- Safina Party
- FORD-Asili
- Kenya People’s Party

Political parties and coalitions have to be registered with the Registrar of Societies, although the Electoral Commission is responsible for the allocation of symbols. There is no state funding of political parties, though all parties are entitled to free broadcasting time on the state-broadcasting radio and television networks KBC. Opposition parties alleged that the ruling KANU used state resources on a large scale. During the campaign the media reported that an attack on a candidate’s car revealed that at least one state vehicle was being used by the ruling party for campaigning purposes.

Parliamentary Constituencies

There were 210 parliamentary constituencies. We noted that despite the Constitutional provision that all constituencies “shall contain as nearly equal numbers of inhabitants as reasonably practical” there were wide variations in constituency population size. For instance, Langata (in Nairobi) had 194,851 inhabitants while Lamu East (in Lamu District) had only 15,453.

The delimitation of constituencies is the responsibility of the Electoral Commission. The Commission has discretion to depart from this principle of equal numbers to the extent that it considers it expedient to take account of

.....
We noted that despite the Constitutional provision that all constituencies “shall contain as nearly equal numbers of inhabitants as reasonably practical” there were wide variations in constituency population size

the density of the population, population trends, means of communication, geographical features, community of interest and the boundaries of existing administrative areas. There was no new constituency delimitation prior to this General Election.

.....
*The Commission itself
admitted that it did not
have sufficient funding for
voter and civic education on
the scale that it believed was
required*
.....

Civic and Voter Education

The Electoral Commission produced a series of radio and television commercials, posters, newspaper advertisements and booklets urging a peaceful election and advising voters not to support corrupt or violent candidates. However, the Commission itself admitted that it did not have sufficient funding for voter and civic education on the scale that it believed was required. A number of NGOs organised training workshops and produced training materials for voter educators.

Women

Women's groups we met highlighted three main areas of concern: the difficulties encountered during the nomination of candidates (see above), the obstacles placed in the way of women during the voter registration process and the need for greater voter education targeted at women.

Regarding voter registration we were advised, for instance, that in some regions male heads of households prevented women from obtaining the documents necessary for registration. So far as voter education was concerned, we were told that there was a particular need for programmes to convince women in rural areas of the secrecy of the ballot.

Polling Stations

There were over 14,000 polling centres for this General Election, with 18,366 polling stations. This produces an average of 570 voters per polling station — although the numbers varied considerably from one centre to another, from a low of 52 to a high of 1,000. The Commission told us that where there were more than 1,000 voters at a polling centre there would be several polling stations (sometimes called 'streams'), each managed by a Deputy Presiding Officer and six polling clerks, with three ballot boxes (one each for the Presidential, Parliamentary and Civic Elections).

Materials

Assembling all the materials for this General Election and ensuring that they were distributed to the right places across the country was a major logistical challenge. For instance, there were many different ballot papers. In addition to the ballot paper for the presidential election there were 210 separate ballot papers for the parliamentary elections and many more for the civic elections. Each had to be correctly printed and delivered to exactly the right place at the right time.

On 22 December the Chairperson of the Electoral Commission indicated that all the election supplies had been procured and that all the non-sensitive

materials had been distributed. The distribution of the ballot papers was to begin on Monday, 23 December so that all returning officers would have their ballot papers by sunset on 25 December.

On 23 December a Commonwealth team went to the Electoral Commission's warehouse in Nairobi where materials and ballot papers were being collected by the constituency election officials. There was a substantial security presence at the site and election officials told us that they had sufficient security for the transportation of the ballot papers and other election materials. We were impressed by the efficiency of the operation.

The reports of our observer teams showed that the timing of the arrival of the materials and ballot papers at the polling sites varied across the country. Some presiding officers were in possession of their full complement of materials during the afternoon of 26 December, while some material was delivered only hours before the voting was to begin. Nevertheless, we received no reports that any material was missing when the polls opened.

Although certain sensitive materials — for instance, the ballot papers — were brought in from abroad, the Electoral Commission procured much of its election material from within Kenya. For this election an additional 20,000 ballot boxes were purchased. The boxes were painted to correspond to the colour of the ballots for the election for which they would be used.

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We received no reports that any material was missing when the polls opened ... we were impressed by the quality of the instruction given
.....

Election Officials

The policy of the Electoral Commission was to choose “unbiased individuals” as polling station staff. Generally these were not civil servants. Many were teachers. Commonwealth teams were able to attend many training sessions for Presiding Officers and polling station staff and were impressed by the quality of the instruction given. They were told by the trainees themselves that this time the preparations were more thorough than ever before. We noted that there was no shortage of applicants for appointment as polling station staff. In several places it was alleged that Electoral Commission officials had been biased in their appointment of polling day personnel. We were not able to determine whether these allegations were well-founded.

Security

Kenya has a history of election-related and ethnic violence. The Central Depository Unit, an NGO, calculated that at least 203 lives were claimed by electoral violence in Kenya between January and August 2002.³ At the same time, the opposition have alleged that the Kenya police are biased in favour of the government. For these reasons security was an especially important consideration prior to this election.

We were told by a senior police commander that they had adopted a non-partisan stance for this election and the campaign preceding it. They had rejected confrontation with the political parties and now favoured a co-operative approach. Our own observations and reports from others confirmed that the police were conducting themselves responsibly. The police informed us that they had devised a security plan for the election, and established Rapid

³ A Summary of Electoral Violence in Kenya: January-August 2002, Mugambi Kiai, Central Depository Unit, October 2002.

.....
In every constituency the police, provincial and district officials, the Electoral Commission and representatives of NGOs formed 'Peace Committees' on the South African model to reduce tension in the run-up to Election Day. We welcome this innovation and hope that it will continue in the future
.....

Response Teams to combat electoral violence. Security at polling stations on election day would be provided by the Kenya Police, assisted by the Administration Police, prison warders, game wardens and retired policemen. The Army were not involved. In every constituency the police, provincial and district officials, the Electoral Commission and representatives of NGOs formed 'Peace Committees' on the South African model to reduce tension in the run-up to Election Day. We welcome this innovation and hope that it will continue in the future.

Electoral Commission's Liaison with Outside Bodies

The Electoral Commission told us that they made a point of maintaining close contact with the political parties, whose representatives came together in the form of a Political Party Advisory Committee. The Commission also devised a Code of Conduct governing the behaviour of the political parties and their candidates during the campaign period. The Code provides for penalties in the event of violations. For instance, paragraph 8 of the Code empowers the Commission to penalise any political party, its officials, members or supporters or any candidate who infringes its provisions. Penalties can include formal warnings, the imposition of fines, barring the use of the state media, prohibiting a party from holding public meetings or demonstrations, barring a party from entering an area or undertaking any form of campaign. More serious violations can be referred to the High Court, which is empowered to disqualify a party or a candidate.

We noted that several candidates were brought to Nairobi to appear before the Commission for alleged breaches of the Code and that fines were levied both against political parties and individual candidates for breaches of the Code's provisions.

The Commission also sought close and co-operative relations with NGOs, including the domestic observers of the Kenya Domestic Observation Programme (K-DOP). The Commission encouraged its staff and others to work constructively with accredited observers and other NGOs.

International Observers

A new regulation adopted for this General Election provided for the formal accreditation of international observers and required them to follow a set of Guidelines. The Chairperson of the Electoral Commission told us that polling station staff were being encouraged to co-operate fully with observers.

The Electoral Commission levied a US\$20 fee for the accreditation of each international observer. This is only the third time that a Commonwealth country has charged observers in this way and is against international practice. We regard this as an extremely unfortunate development — not least because the Commonwealth Observers were present at the express invitation of the Government of Kenya — and hope that the Commission will reconsider its policy on this matter before the next General Election.

In addition to the Commonwealth Observer Group the international observers included groups from the European Union, the Carter Centre, the African Union, the European Parliament and the ACP-European Union Joint

Parliamentary Assembly. Various teams of diplomats were deployed across the country for election day, including from Commonwealth High Commissions. We were impressed by the helpful approach of the Electoral Commission and its staff. At every level the international observers were assisted and enabled to do their work.

Apart from the observers, various other international bodies were active in promoting democracy in Kenya. The Democratic Development Group, comprising 24 diplomatic missions, acted as a democracy 'ginger group' and helped to co-ordinate technical assistance. The International Republican Institute (IRI) worked to encourage the participation of young people and sponsored a number of opinion polls. The International Foundation for Election Systems (IFES) provided assistance to the Electoral Commission in improving its information technology and internal telecommunications infrastructure and the National Democratic Institute (NDI) worked with the political parties. DICE-K (Donor Information Centre for Elections in Kenya) was established by various donor agencies to provide information to observers and others on the elections.

Domestic Observers

Several Kenyan NGOs were accredited as domestic observers. In their case they were charged 100 Kenyan shillings per observer in order to observe their own country's elections. These NGOs included the League of Women Voters and the Kenya Domestic Observation Programme (K-DOP), a coalition comprising the Kenya Episcopal Conference, Catholic Justice and Peace Commission, the National Council of Churches of Kenya, the Supreme Council of Kenyan Muslims, the Hindu Council of Kenya, the Institute for Education in Democracy, Transparency International-Kenya and The Media Institute. K-DOP fielded some 19,000 observers. We were impressed by the scale and professionalism of their operation, the broadest-based observer coalition ever assembled in Kenya. We congratulate the domestic observers for their dedication to the strengthening of democracy in Kenya.

We noted that a number of NGOs made important contributions in other ways. The Institute for Education in Democracy produced voter education materials, an audit of the accuracy of the register and a guide to the constituencies. The Media Institute analysed media coverage of the election and the Central Depository Unit (CDU) monitored election violence.

The Campaign and Media

The Campaign

The campaign, which was mainly peaceful and low key, started immediately after the party primaries. It took the form of public rallies, door to door campaigns, posters and billboards, printed T-shirts and caps, advertisements in all three media (print, TV and radio), mobile loudspeakers, and 'Harambees' (community fundraising events). Religious ceremonies and even funerals were not spared from political campaigning. In many areas of Kenya we were struck by the absence of any obvious evidence that an election was at hand. The campaign was largely personality based and candidates had no strong ideological differences.

Above all, this was an election about change. President Moi's departure meant that whoever won the election there was going to be new leadership. On the one hand KANU's candidate, the youthful Uhuru Kenyatta, claimed that he would provide a 'fresh start'. In the event, the voters were not persuaded. On the other hand, the experienced opposition leader Mwai Kibaki was able to portray himself as the real agent for change. He built an effective coalition which attracted influential figures from KANU while at the same time successfully presenting itself as representing a genuinely new political deal.

Public opinion polls and surveys conducted a few weeks before the election predicted a landslide victory for NARC and its presidential candidate Mr Mwai Kibaki. These were widely reported. Mr Kibaki's return to Kenya from hospitalisation in London, following a motor accident while campaigning in November, was a defining moment which energised the NARC campaign, with tens of thousands of people flocking to his Uhuru Park rally in Nairobi. Plans to stage a presidential debate failed as candidates could not agree to the arrangement.

The police played a helpful role in the peacefulness of the campaign and unlike the past were generally even handed. Some civil servants were identified to be covertly involved in the campaign.

There were reliable reports of state resources (including state personnel, offices, vehicles and aircraft) being used by the ruling party KANU in the election campaign. Incumbency always brings with it certain advantages. However limits could be placed on the advantages of incumbency. We urge the parties to come to an agreement regarding relevant regulations concerning the use of state resources at future general elections. We believe that a clear distinction must be drawn between the roles of ruling party politicians as government ministers and as representatives of their political organisations.

There were allegations of vote-buying, including the distribution of food and other materials during the campaign. Large sums of money were reportedly distributed at campaign rallies. In speaking to the average Kenyan, this practice appears to be widespread and used by most candidates to attract voters to their camp. However it was difficult to say how much impact it had on

We urge the parties to come to an agreement regarding relevant regulations concerning the use of state resources at future general elections. We believe that a clear distinction must be drawn between the roles of ruling party politicians as government ministers and as representatives of their political organisations

influencing votes. Candidates were also clearly aware of the Electoral Commission's Code of Conduct and mindful of its powers to summon, fine, ban or even recommend disqualification of parties' candidates from participation in the elections.

In the main, campaigning was characterised by an atmosphere of tolerance. Despite warnings to the contrary, which we received from some quarters, few isolated incidents of violence were reported throughout the whole campaign. Civil society, the Electoral Commission and the police assisted in restraining the parties in the conduct of their campaign.

Media

The Kenyan media is one of the most diverse in the region, with a cross-section of state and privately owned organisations. The print media includes five major national dailies — four English language newspapers and the other in Swahili.

Frequencies have been provided for nine TV stations and eighteen FM radio stations so far. The explosion of privately-owned broadcast stations in the main cities in recent years has added a new dimension to the political debate and provided a further theatre for politicking. However only the state-owned Kenya Broadcasting Corporation (KBC) has country-wide coverage and this was used to effect by the ruling party in the campaign.

Media guidelines introduced by the Electoral Commission were practical and covered key issues faced by journalists. However these came rather late in the process and the media had little time to implement them. For the first time since its creation the Electoral Commission conducted a media monitoring exercise, with assistance from the Commonwealth. This was important in light of the Guidelines it issued to the media.

KBC's clear bias in favour of the ruling party was a major issue during the election. The results of a media monitoring exercise conducted by a fellow international observer group confirmed this. It found that since 22 November KBC TV and Radio gave KANU and their candidate Uhuru Kenyatta 33 per cent of TV coverage and a further 32 per cent to presidential duties and campaigning by President Moi, while the NARC coalition and its candidate Mwai Kibaki secured 25 per cent of airtime.

There is a Media Council but it has not been very active in recent times. However there has been an informal process of consultations between media editors when deciding on 'grey areas' during the campaign, which has helped in bringing about a more responsible reporting approach.

Except for KBC, media organisations have not been granted frequencies for countrywide reach, provoking many complaints that coverage of privately owned media is being controlled. There is a need for proper management of licensing and allocation of frequencies. A Draft Broadcast Bill which addresses this and other outstanding issues has been prepared by the Ministry of Tourism and Information and is currently with the Attorney-General's Office for legal drafting.

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Print Media

The main dailies are the *Daily Nation*, *East African Standard*, *The People* and the *Kenya Times*. The *Nation* has a sister Swahili paper *Taifa Leo*. The *East African Standard* is owned by the same investment group which owns KTN TV. *The People* is owned by Kenneth Matiba — runner-up to President Moi in the 1992 presidential race. The *Kenya Times* is owned by KANU.

Newspapers were used for voter education by the Electoral Commission, NGOs and civic society organisations. While on some occasions these took the form of paid advertisements, attempts were made to provide special packages (sometimes on the basis of extra space). Newspapers carried editorials and articles on the importance of the vote and the reason why it was vital for Kenyans to exercise this right.

Broadcast Media

KBC is the only radio station accessible nationwide and given the illiteracy rate, which is over 20 per cent, it is important that they live up to their responsibility to keep the public informed in a fair and balanced way. Though their coverage is limited KTN and the other major privately owned broadcaster, Nation, have helped introduce a certain degree of debate among political parties.

While media organisations must be responsible during elections, their task is not made easy by conflicting and confusing messages and the Electoral Commission should be mindful of this fact when making statements. The late changes in rulings on the voters' register was a case in point.

Overall Assessment

The media has come a long way from the last two multiparty elections and there is a clear attempt to portray diverse political views. This has been particularly assisted by the emergence of privately owned TV and FM radio. But despite this, there is still room for improvement. As noted KBC in particular still favoured the ruling party in direct reporting of President Moi, his campaign activities, and the KANU Presidential candidate.

Given the limited coverage that private media has, the issue of licensing and frequencies must be looked at closely. It is hoped that the pending Broadcast Bill will bring both licensing and frequencies under the same umbrella.

There was good coverage of the Commonwealth Observer Group and this helped us in no small measure as people were aware of our presence in the country, and responded positively.

CHAPTER 5

The Poll, Count and Results Process

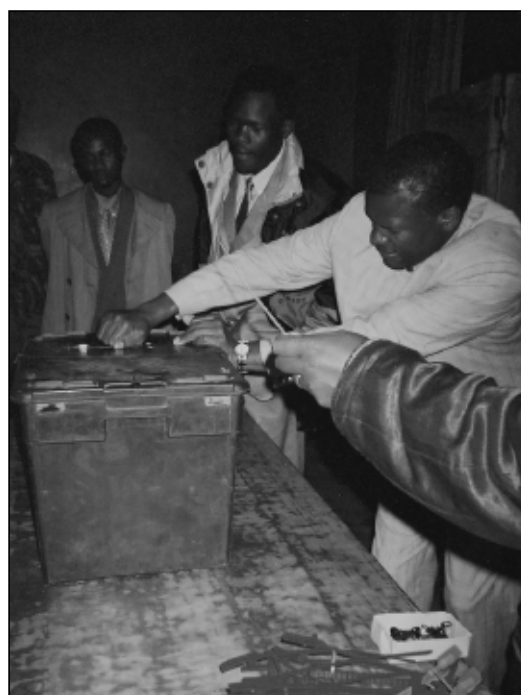
During the campaign many fears had been expressed about the course that events might take on election day. Some predicted that polling stations would open very late, there would be shortages of key materials and biased polling staff would ‘rig’ the results for their political parties. Others suggested that ‘commotion’ would be deliberately stimulated at critical stations so that they would be closed down and the results affected accordingly. Allegations were also made to the effect that the results figures would be changed between the counts and the constituency collation centres. And it was said that large-scale vote-buying would produce a major distortion in the results. In short, polling day would be a mixture of a mess and a conspiracy, and the result would be a ‘stolen election’.

In the event, there were some shortcomings — as set out below. However, the critics’ worst fears did not materialise. The day was generally peaceful, for the most part the voting process worked well, the count was both careful and transparent and the results were accurately transmitted from the polling stations to the Constituency Returning Officers and then on to the Electoral Commission in Nairobi. We were told that Electors’ Cards and votes were both being bought, sometimes on a large scale, and at one rally party leaders were photographed giving out money. However, we have no evidence that this affected the results — it certainly did not seem to have produced a major distortion. In short “the dark prophecies of the pessimists”, as the domestic observers of K-DOP described them in their statement on 29 December, were confounded: it was a very good election day.

The Poll

Our seven teams each began the day by observing the opening of a polling station where, in some places, they found that there were as many as 200 voters in the queue as early as 5.45 a.m. We had liaised in advance with our counterparts in other international observer groups, both to avoid duplication at this stage and to maximise our coverage throughout the day. Neither at this stage nor later in the day were any of us impeded in our observation: throughout we enjoyed open access to the process.

At most polling centres the voters were divided into separate polling stations (‘streams’, see page 12), sometimes as many as twelve, each with its own ballot boxes and sets of officials. Although almost all polling stations were functioning



THE OPENING . . . (top) the Presiding Officer demonstrates that a ballot box is empty, and (bottom) prepares to seal it, prior to the opening of the poll. The Electoral Commission purchased an additional 20,000 ballot boxes for this election

VERIFYING VOTERS . . . election officials check a voter's card prior to establishing from the register that he is entitled to vote. The Observers said that they were concerned that "the voters' register was not as reliable and accurate as it should have been", and that as a result some people were turned away



by 7 a.m., most polling stations opened late — often because the Presiding Officer waited for the agents to arrive and be briefed before starting the voting, sometimes because the officials themselves were not ready and sometimes simply because there was not enough light. We also noted that some election officials found it difficult to close the ballot boxes.

After observing the opening, our teams visited as many stations in as many constituencies as possible, witnessed a 'closure' at the end of voting, saw the counting of votes and then followed 'their' result to the constituency collation centre. Altogether our teams visited 137 polling stations in 38 constituencies and were present at 17 counts and eight constituency collation centres.

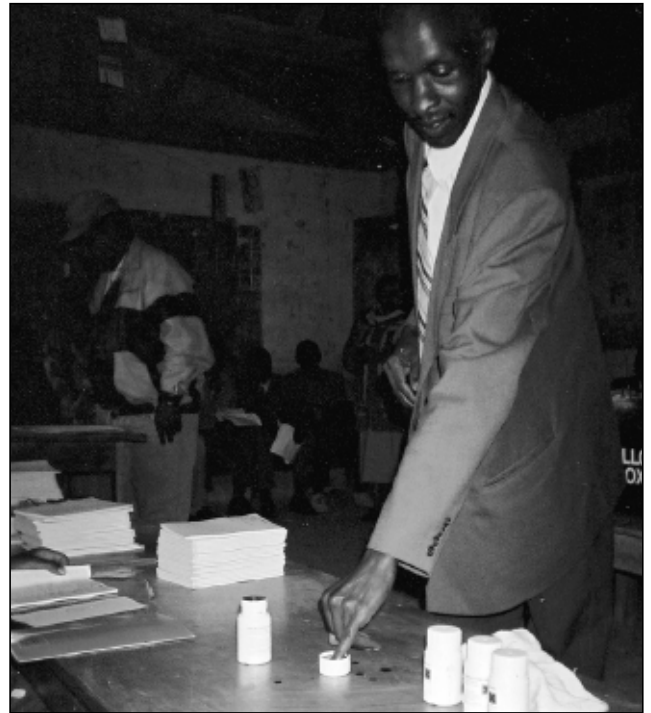
Procedure

The stipulated procedure for voting was as follows. On entering the polling station the voter showed her/his National Identity Card (or passport) and Elector's Card. An official checked to ensure that these were genuine and, in particular, that they each carried the same National Identity Card or passport number. The voter's fingers were then checked for traces of indelible ink. Assuming all was in order the voter's name was marked on the register, her/his name and number were called out and her/his Elector's Card embossed with the words 'ECK 2002'. She/he was then issued with the Presidential ballot paper, stamped with the official mark on the back and on the counterfoil. She/he then took the ballot paper to a screened area, marked it and deposited it in the ballot box for the Presidential Election. The same procedure was then repeated with the parliamentary ballot paper, which was taken to a separate screened area for marking and this time deposited in the ballot box for the Parliamentary Election. Finally, the voter collected the ballot paper for the civic elections, marked this in a third screened area and deposited it in the ballot box for the civic elections. The process concluded with the application of indelible ink to the small finger of the voter's left hand.

There were some variations in practice. In some places, for instance, the ballot papers were not issued singly but all at once. At certain stations the

voter's name was called out by the official marking the register, while at others it was not. But in most cases we found that the procedure was fairly uniform and followed that described above.

In the days prior to the poll the Chairman of the Electoral Commission had made a number of statements about who would be entitled to vote. At first he had stated that even those not on the register would be able to vote, so long as they had the prescribed documents and their name could be found in any register compiled since 1997 or the 'black book' kept by Presiding Officers.⁴ He encouraged everyone to turn up to vote so long as they had the necessary documents. Later, under pressure from the political parties, the Chairman ruled that only those on the 2002 register and with the correct identity documentation would be allowed to vote. This ruling was widely publicised in the media and on the voting day itself through Commission advertisements in the press. Whatever the merits of the Commission's decision, many people found the change of position to be confusing. However, in most of the places we visited only those on the 2002 register were allowed to vote.



PROTECTION AGAINST MULTIPLE VOTING . . . voters were required to mark their finger with indelible ink, to guard against multiple voting

Assessment

There were some shortcomings. Because some materials were distributed later than anticipated polling staff were sometimes awake for much of the night before polling, probably undermining their efficiency the following day. There could have been more centres, the stations were often very small and cramped, and the numbers of agents added to the congestion: one agent per party would have been sufficient, instead of two per candidate per election (which led to as many as six per party). The parties could have trained their agents better, to understand and follow all stages of the process. We hope that training will be improved before the next General Election.

However, the main shortcomings concerned the secrecy of the ballot and persons who were not allowed to vote.

In some polling stations some names were found to be missing from the voters' list, even though the persons concerned insisted that they had registered. At most stations the numbers turned away for this reason were small, although at some the number was said to be as high as one hundred. Whatever the total numbers, for every person affected in this way the outcome represented complete disenfranchisement. In light of the unanimity of the views of the political parties on the matter, the Electoral Commission felt it was wise to rule that only those on the 2002 register could vote. However, it did leave people in this position without the vote: clearly the Commission will need to consider this matter very carefully for the future, in view of its responsibility for ensuring a completely accurate register.

⁴ The 'black book' was the handwritten compilation of the voters' register from which the 2002 computerised database was compiled.



VOTING . . . a voter casts his ballot. The Observers said that “the electoral process was credible, the conditions existed for a free expression of will by the electors and the results reflected the wishes of the people”

We also noted that voters without National Identity Cards or passports were not allowed to vote, even when they were on the register. (At one polling station we found several soldiers who had Army ID cards were not allowed to vote because the Army — which takes in their National Identity Cards when they join up — had not returned the National Identity Cards to them in time.⁵) Although this was in line with the law we hope that the rules on voter identification can be reconsidered by the Commission prior to the next election. In our view, what constitutes entitlement to vote is having one’s name on the register. Any documents required for voting should be for purposes of assisting in the easy identification of the prospective voter.

Finally, we noted that while soldiers were allowed to vote police and election officials were not. Many countries set aside a special day for voting by the security forces, domestic observers and election officials, or issue certificates to enable people in these categories to vote where they are serving on election day. We believe that the Electoral Commission might usefully look at such arrangements for the future.

Our other main concern was with the secrecy of the ballot. Screens were available everywhere. But in some places they were positioned badly; and when illiterate voters required assistance from an official and the agents were called in to observe the official’s instructions to the voter, as many as five or six agents were able to see exactly how the person voted. The regulation was changed for this election, so that illiterate people could be accompanied by an ‘escort’. However, in many cases they were not accompanied by an escort, and therefore still required assistance from an election official. We applaud the Commission’s intention in drawing up the new regulation as they did, but suggest that it needs to be looked at again to ensure that the secrecy of the ballot is not jeopardised. Also, the Commission must ensure that its arrangements are not open to abuse: in some stations we saw that the same ‘escort’ accompanied voters on as many as six separate occasions.

However, none of these observations should detract from our overall assessment, which was that the polling proceeded in a positive way.

Overall, the Electoral Commission was well prepared and their stations well organised. The procedures were followed, at the opening and closing of the stations and throughout the day. The materials were present. The polling stations were generally well laid out. The staff were for the most part professional, impartial, well-trained and helpful to the voters, and agents were present from the political parties. Domestic observers were at all polling stations. We received few complaints either from K-DOP or the party agents. For the most part the provincial administration seems to have kept out of the electoral process. There was little violence, the stations were orderly and security was well provided for: security officers were usually armed and often positioned inside the polling stations, but rather than occasioning concern

⁵ The Chairman of the Commission had earlier told us that the Commission had urged the Army to ensure that all National Identity Cards should be returned to soldiers in time to enable them to vote.

amongst the voters this seemed to have reassured them. We made a note of looking out for obstacles to women casting their ballots, but could not find any. Indeed, we were impressed at the turnout of women voters and that many of the election officials were themselves female.

Above all, the voters voted freely and the general mood was good: one of our teams noted that the atmosphere in the polling stations was quiet and serious, almost ‘reverent’; but it was also good-humoured and positive.

The voters themselves held the key to the success of the day. In the event they demonstrated both knowledge of and confidence in the process. Their responsible, dignified and mature attitude demonstrated the high value they placed on the holding of a good, democratic election. We commend the voters and everyone else involved for a job well done. We agree with K-DOP that “Kenyans have every right to be proud of what they achieved on Election Day”.

The Closure, Count and Collation

After the voting our teams were present for the closure, the counting of votes and the collation of constituency results by the Returning Officers. Some of our Observers also made periodic visits to observe the tabulation in Nairobi of the results of the Presidential Election.

The Closure

At the end of the voting, which generally came at or only shortly after the stipulated time of 6 p.m. (because by then the queues of voters were short or non-existent), the Presiding Officers closed their stations. Notes were made of the number of ballot papers which were used and unused. Seals were applied to the ballot box apertures, both by the Electoral Commission and the political parties, just as they had done at the opening, and their numbers too were noted down by the agents.

Polling Station Count

After a short break, the boxes were opened, beginning with that for the Presidential Election. The ballot papers were counted, then sorted according



THE CLOSURE . . . police store used ballot boxes after the end of polling. The Electoral Commission of Kenya conducted the count at the polling stations



COUNTING . . . (above) the ballot box is emptied, (below) the papers are sorted into piles according to candidate, (opposite) after the count the official forms are completed. The Observers said that the counting process was “admirably open” and was “generally well-organised” with “meticulous attention to detail”

should be noted that all the figures were made public at this stage, including those for the Presidential Election.

Assessment

Once again there were some shortcomings. The counting process was very slow and complicated, particularly by the need to reassure the party agents, who were often intensely suspicious. The completion of the many forms and the production of sufficient hand-written copies for the agents at the conclusion of the count seemed to us to be overly onerous. We believe that the Electoral Commission could both improve the design of the forms and reduce their number for future elections. Examples could be provided by other Commonwealth countries. Sometimes there was also confusion about the process, for instance as to what constituted a spoiled paper and what

to candidate and rejected ballots were put aside. Then each pile was counted. At the end of the count, which was conducted in full view of party agents and K-DOP and other observers, the figures were announced by the Presiding Officer and were entered into a Statement of Poll and signed. Each agent was given a copy and the Presiding Officer took the master copy for the Constituency Returning Officer. The same process was then repeated with the ballot boxes for the Parliamentary and Civic elections. At the end of the whole process the Presiding Officer announced the results for her/his station and the results were fixed to the outside of the building in which the count took place. It



constituted a rejected ballot. We also noted some inconsistencies in procedure: for instance, in some places papers from the Presidential Election which were cast in the Parliamentary ballot box were transferred to the correct box and counted, and in others they were treated as rejected ballots. In some places the results were not fixed to the outside of the building, in others they were. Finally, especially given the long hours involved, we were surprised that proper arrangements were not always made for the election officials’ food and transport home; we hope that this aspect of the arrangements will be more fully considered before the next General Election.

The shortcomings were greatly outweighed by the positive features. First, the process was admirably open: on grounds of transparency alone the decision to amend the electoral law so that counting would be conducted at the polling stations was thoroughly vindicated. Secondly, even though it was very slow the counting was generally well-organised and there was meticulous attention to

detail. Those present appeared to be completely satisfied — and more than willing to exchange speed for certainty and transparency.

Constituency Collation

Once the polling station count had been completed the results, together with the rest of the paperwork and the used and unused materials, were taken to the Constituency Returning Officer at her/his 'collation centre'. Here the Returning

Officer took down the figures from all the Presiding Officers in the constituency, eventually totalling all the individual polling station results to get one constituency result. This was then announced at the centre and the details forwarded to the Electoral Commission in Nairobi. Party agents and K-DOP observers were present throughout.

Our teams had taken note of the polling station results as announced by the Presiding Officers and given to the party agents. We were able to check whether the results as announced at the polling station were transmitted faithfully and accurately by the Presiding Officer to the Constituency Returning Officer. Our checks showed that in all cases they were.

Assessment

The collation process was time-consuming. This was compounded where there was no simultaneous aggregation of the count results. The location of the collation centre — sometimes a long way from the main town — often did not help. In some cases the collation was not well organised. And we noted that the party collation agents, while present, were often not in a position to see the procedures properly. They did not appear to be greatly concerned, probably because they already had the polling station results. For the future we urge the political parties to take a keener interest in the collation process.

Overall, the procedures appear to have been followed properly. Our own observation showed that the transmission of the results was done accurately and faithfully. And there were few complaints: the collation process may not have been rapid or elegant, but it commanded the confidence of those involved.



Conclusions and Recommendations

Conclusions

This was an important General Election, generating considerable international interest and even more in Kenya itself — the Electoral Commission stated that the turnout for the Parliamentary Election was 57.2 per cent and for the Presidential Election 57.1 per cent. It:

- was the third occasion on which Kenya had held multiparty elections;
- marked the end of the 24-year tenure of the second post-independence Head of Government and an eagerly-awaited change of political leadership;
- was the first Kenyan General Election at which power was transferred from one political party to another: KANU lost its first election in nearly 40 years, representing a major shift in the political landscape; and
- by common consensus, it was the best General Election the country had ever had, and the most peaceful: despite the intense interest it provoked the atmosphere was less violent and more tolerant than in either 1992 or 1997.

Our Terms of Reference required the Group to:

- consider the various factors impinging on the credibility of the electoral process as a whole;
- determine in its own judgement whether the conditions existed for a free expression of will by the electors; and to
- determine whether the results of the election reflected the wishes of the people of Kenya.

Our Interim Statement, issued on 28 December, testified that in spite of some defects the elections were conducted in a responsible and orderly manner.

We congratulated the people of Kenya, their political leaders and the parties on their commitment to democracy, we commended the Electoral Commission on their performance and we said that this General Election represented a major improvement on previous such exercises.

Now we have considered in greater depth the various aspects of the organisation and conduct of the General Election.

As can be seen from the preceding pages, there are some areas of concern which we believe will require attention. In particular, we were dismayed at the pro-KANU bias of the Kenya Broadcasting Commission's coverage; we were disturbed at the use of state resources by the ruling party during the election campaign; and we were concerned that the voters' register was not as reliable and accurate as it should have been.

At the same time, we recognise that the success of this year's General Election is a manifestation of the growing belief in and commitment to democratic values and ethics in Kenya. It also reflects both the Electoral Commission's professionalism and its remarkable responsiveness to the views of the parties and the people.

We also wish to highlight the role of the international and domestic observers — who were free to carry out their work without hindrance — and

Kenya's non-governmental organisations and Peace Committees. Together they played a crucial role by promoting transparency, accountability and a sense of fairness and confidence in the election process.

Finally, we are ready to state that, in our view, the electoral process was credible, the conditions existed for a free expression of will by the electors and the results reflected the wishes of the people.

Recommendations

In its report on the 1997 General Election the Electoral Commission of Kenya identified twelve benchmarks for free and fair elections, as follows:

- neutrality and impartiality;
- ensuring that everyone qualified to register as a voter has the opportunity to do so;
- free flow of information and independence of the media;
- promotion of electoral information and voter education;
- giving all the political parties a level playing field and unhindered participation in the electoral process;
- equal access to voters in order to propagate their policies and programmes;
- ensuring the secrecy of the ballot and the security of personnel at polling stations in order to give confidence to voters;
- making polling stations close to the voters so that they have little difficulty in voting;
- equal facilities at polling stations;
- opening and closing time on polling day should be generally known and adhered to;
- voting procedures should be uniform and voting materials should be available in sufficient quantities at all times during the poll;
- the counting of votes must be transparent.

Most of these benchmarks were met, in whole or in part, during the 2002 elections. But further progress needs to be made. Therefore, in line with our Terms of Reference — which invited the Group “to propose such action on institutional, procedural and other matters as would assist the holding of such elections” — and in order to continue to deepen the commitment of the people of Kenya to democracy and strengthen their adherence to democratic values, our Group wishes to put forward the following recommendations:

Government

We urge the Government to:

- protect the independence of an adequately resourced Electoral Commission of Kenya;
- ensure that the Executive does not interfere in election arrangements; and
- promote the strengthening of Kenya's democratic arrangements.

Specifically, we call upon the Government to:

- allow nationwide coverage by privately-owned broadcasting organisations and ensure that KBC complies with the Kenya Broadcasting Act;

- put in place a mechanism for the transition from one government to another; and
- in the interests of the voters, avoid calling General Elections close to major religious festivals.

Political Parties

We call on the political parties to:

- abide by the highest standards of public life and ensure that at all times their leaders, members and supporters behave in a manner which is beyond reproach;
- ensure that they play their full part in deepening Kenya's democratic culture and improving its democratic processes; and
- provide improved training to their agents at polling stations and constituency collation centres and take a keener interest in the constituency collation process.

Media

We encourage the media to:

- continue to promote transparency in public life and to hold both office-holders and institutions to account;
- promote as full as possible an understanding of electoral and wider democratic processes;
- provide balanced and fair coverage, promote public access to the media and reflect the full range of political views and opinions; and
- continue to promote live debates among Presidential candidates at the next General Election.

Electoral Commission

Earlier in this report we made a number of recommendations for consideration by the Electoral Commission of Kenya. In particular, our Group wishes to highlight the following proposals:

- **Constituency Demarcation:** at the earliest opportunity begin the process of constituency demarcation in line with the provisions of the Constitution and with a view to removing unacceptable discrepancies in constituency size.
- **The Voters' Register:** make greater efforts to ensure that the register is accurate, reliable and up-to-date. The Commission should ensure that members of the public have easy access to the current list. It should use the latest technology so that it employs the highest possible quality of data-management (for instance, to remove duplicate entries on the list). We also urge that only the most recent version of the register should be used at election-time and that people should be encouraged to register and vote where they live.
- **Voter Education:** secure adequate funds to conduct more effective voter education, in order to enhance political participation.
- **The Media:** given KBC's pro-KANU bias during this election campaign, that KBC is the only broadcaster with country-wide coverage and that in

the interests of democracy there needs to be a level media playing-field, take measures to:

- ensure KBC's full compliance with the Kenya Broadcasting Corporation Act;
- press the Government to allow nationwide coverage by privately-owned broadcasting organisations;
- guarantee the implementation by all media organisations of the Commission's *Guidelines for Media Coverage*.

- **Abuse of Incumbency:** sponsor inter-party agreement regarding and the adoption of relevant regulations concerning the use of state resources during the election campaign and promote a clear distinction between the roles of ruling-party politicians as government ministers and as party politicians.
- **Peace Committees:** the Commission should continue to promote the use of local Peace Committees, which we consider to be an effective instrument in preventing violence.
- **Campaign Finance:** introduce regulations governing party income and expenditure, the financing of election campaigns and other party activities, in line with international best practice.
- **Code of Conduct:** consider whether it has sufficient powers with regard to the Code of Conduct for Political Parties and, of even greater importance, review the Commission's capability to use its existing powers effectively to enforce compliance with the Code and deal with erring political parties and candidates.
- **Special Voting Arrangements:** enable members of the security forces, domestic observers and election officials to vote prior to polling day.
- **Logistics:** establish clear arrangements for the distribution and collection of election materials.
- **Secrecy of the Ballot:** issue clear advice prior to the next General Election so that screened voting areas are correctly positioned.
- **Illiterate Voters:** to prevent abuse of the special arrangements for illiterate voters, limit the number of times a 'friend' of the voter can assist in the same polling station; and review the voting process for illiterate voters, with a view to ensuring that the secrecy of the ballot is not jeopardised (for instance through enhanced voter education).
- **Voter Identification:** make it as easy as possible for Kenyans to obtain National Identity Cards, by reducing the cost and ensuring ease of access to the issuing authorities. Armed forces identity cards should be accepted as a valid form of identification and the Commission should emphasise that a valid Kenyan passport is allowed as a form of identification. When the voter's name is on the register it should be made as easy as possible for the voter to identify herself/himself and then vote.
- **Polling Centre Arrangements:** with a view to preventing abuse of the voting process, the Commission should review its polling station arrangements. Specifically, we suggest that it should consider the sub-division of the polling centre Voters' List into separate lists of no more than 700, with each voter assigned to a specific, numbered, polling station. To expedite the arrangement a 'Voters Assistant' might be assigned to direct the voters to the correct stations. To make the stations more easily

accessible to the voters consideration might also be given to the creation of more polling centres.

- **Counting of Votes:** change the rules so that a properly marked ballot paper which has been put in the wrong ballot box can still be counted as a valid vote. The Commission can also improve the design of the forms that need to be completed by the Presiding Officer and reduce their number for future elections.
- **Results Process:** insist that all polling station results arrive without delay at the constituency collation centres, together with the ballot papers and boxes, that there should be simultaneous aggregation of the counts results by the Constituency Returning Officer and that the Commission must ensure the instant communication of the results from the constituency collation centres to the Electoral Commission in Nairobi.
- **The Observers:** discontinue the practice of charging international and domestic observers, which is in breach of international agreements and conflicts with best electoral practice.

ANNEX I

Composition of the Commonwealth Observer Group

Professor Adebayo Adedeji (Nigeria — Chairperson)

Professor Adebayo Adedeji was United Nations Under-Secretary-General from 1978 and Executive Secretary of the United Nations Economic Commission for Africa from 1975, until 1991. From 1971 to 1975, he served as Nigeria's Federal Commissioner (Minister) for Economic Development and Reconstruction. This followed his tenure as a Professor of Public Administration and Director of the Institute of Administration at the University of Ife (now Obafemi Awolowo University). In 1991, Professor Adedeji founded the African Centre for Development and Strategic Studies (ACDESS), which he currently heads. Professor Adedeji was appointed Nigeria's Special Envoy to Zimbabwe in 2002 to facilitate reconciliation between the political parties.

Dr Kwadwo Afari-Gyan (Ghana)

Dr Kwadwo Afari-Gyan has been the Chairman of the Electoral Commission of Ghana since 1993 and Executive Secretary of the African Association of Election Authorities (AAEA) since 1998. Before becoming an election administrator, he taught for nearly two decades at universities in the USA, Ghana and Nigeria. In 1991 he served as a member of the Committee of Experts that drafted proposals for the Fourth Republican Constitution of Ghana. In 1992 he became a Deputy Chairman of the Interim National Electoral Commission (INEC), which conducted a referendum on the Constitution and the subsequent presidential and parliamentary elections. He has undertaken election work in several countries in and outside Africa under the auspices of various international organisations.

Hon Senator Dato' Fook Weng Chin (Malaysia)

Dato' Fook Weng Chin has been a Member of Parliament (Senate), representing the State of Penang, since 1999. From 1974 to 1998 he was a Member of the Municipal Council of Penang Island. He is the National Speaker of the Malaysian People's Movement Party, and Chairman of the party's National Elections Supervisory Committee. Dato' Fook Weng Chin was a lecturer at the Science University of Malaysia from 1970 to 2000. Since 2001, he has been President and CEO of Distd Stamford College, Penang, Malaysia.

Ms Segametsi Moatlhaping (Botswana)

Ms Segametsi Oreeditse S Moatlhaping is the Regional Youth Co-ordinator for the Commonwealth Youth Programme (CYP)'s Africa Region Youth Caucus. In this role she is responsible for co-ordinating youth development programmes, as well as creating and strengthening youth networks in 22 Commonwealth countries. Ms Moatlhaping is also Deputy Chairperson of the Executive Committee of the Botswana National Youth Council. She has represented Botswana at various United Nations, Commonwealth, and other regional and international forums.

Hon Irene Mutsila MP (South Africa)

Ms Irene Mutsila has been a Member of Parliament since 1994. Previously, she had a long career as a teacher and lecturer. Ms Mutsila has been an active member of the ANC since 1991 and has been involved in numerous community activities.

Dr Jayaprakash Narayan (India)

Dr Jayaprakash Narayan is the Campaign Co-ordinator of Lok Satta, which is a civil society initiative and people's movement for electoral, governance and political reforms. He is a physician by training, but spent many years as a public servant, having joined the Indian Administrative Service (IAS) in 1980. During nearly 17 years in the public service, he was Secretary to both the Governor and the Chief Minister of Andhra Pradesh State. Dr Narayan resigned from the IAS in 1996, to work for Lok Satta.

Miss Kaye Oliver CMG OBE (United Kingdom)

Miss Kaye Oliver is a former British diplomat. She joined the Department of Customs and Excise in 1962 and entered the Diplomatic Service in 1965. She was on secondment to the Overseas Development Administration (ODA) from 1994 to 1995. She was Ambassador to Rwanda (1995 to 1998), non-resident Ambassador to Burundi (1996 to 1998) and High Commissioner to Lesotho (1999 to 2000). Miss Oliver was awarded an OBE in 1994 and a CMG in 2001.

Mr Earl Simpson (Jamaica)

Mr Earl Simpson is Assistant Director of the Electoral Office of Jamaica, with responsibility for Field Operations. Previously he was a Field Administrator in the Electoral Office. Mr Simpson has been a member of Election Observation Missions to the Dominican Republic, Haiti, Guyana, Trinidad and Tobago, St Vincent and the Grenadines, and Guatemala.

Ms Loren Wells (Canada)

Loren Wells, the Assistant Chief Election Officer of Ontario, has an extensive background in election administration in Canada, at both the federal and provincial levels. At Elections Ontario she deputises for the Chief Election Officer and assists him with the administration of all aspects of the electoral process. Her international experience includes assignments for the Organisation of American States, the United Nations Centre for Human Rights, the International Foundation for Election Systems and the National Democratic Institute in Haiti, Lesotho, Comoros and South Africa. She has also prepared reports for the Canadian Government on the electoral process in Ghana and in Russia. She was a member of the Commonwealth Observer Groups for the parliamentary elections in Pakistan in 1993 and for the elections in the Republic of South Africa in April 1994.

Secretariat Support Staff

Professor Ade Adefuye
Mr Christopher Child
Mr Martin Kasirye
Ms Minelle Fernandez
Ms Zippy Ojago

Team Leader
Assistant to Observers
Assistant to Observers
Media Adviser and Assistant to Observers
Administrative Assistant

Arrival Statement, 16 December 2002



Commonwealth Observer Group

Kenya General Election, 27 December 2002

News Release

ARRIVAL STATEMENT PROFESSOR ADEBAYO ADEDEJI CFR CHAIRPERSON, COMMONWEALTH OBSERVER GROUP

The whole Commonwealth Observer Group is now in Kenya. We are very pleased to be here and to have this opportunity to introduce ourselves to the people of this country, to explain our Terms of Reference and to describe how we are going about our work.

As you can see, we are a mixture of election experts, parliamentarians, senior representatives of civil society and diplomats. Each of us is serving in our individual capacity. We represent the whole Commonwealth rather than the countries from which we have come. We are independent of our governments and any organisations to which we belong. Our loyalty is to the fundamental political values of the Commonwealth, our concern is purely with the electoral process and its credibility.

We have been chosen by the Commonwealth Secretary-General on the basis of criteria such as experience, relevant expertise and other qualities which he believes will enable us to make a judgement about the process here.

As you will see from our Terms of Reference, our mandate is to:

- consider the various factors impinging on the credibility of the electoral process as a whole;
- assess whether the conditions exist for a free expression of will by the electors; and
- determine if the results of the elections reflect the wishes of the people.

Since there are 14 people in our group, including a Staff Support Team of five, we cannot visit every polling station or be present everywhere. But we can and will attempt to take a representative sample of the process, so that we can arrive at a broad overview.

We will work closely with other international observer groups to ensure that there is no unnecessary duplication and to maximise our combined coverage. We will listen most attentively to the reports of the domestic observers, especially the Kenya Domestic Observation Programme (K-DOP) whose observers we understand will be present at every polling station.

I must emphasise that we have come to your country at the invitation of the Government of Kenya and after a visit by an Assessment Mission whose purpose was to consult with your political parties and civil society. We are not here to interfere. At every stage we will act with neutrality, impartiality, objectivity and

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independence and, of course, all our activities will be undertaken in the context of the laws of Kenya.

An Advance Group has been here since 26 November, so by election day Commonwealth Observers will have been here for over a month. We heard from them yesterday morning. Their report to us has shown how extremely valuable it has been to have had a presence here for so long, collecting information and experiences and evaluating the electoral environment.

Now that all the members of the Observer Group are here, we will see and assess the end of the campaign and the immediate pre-election period. On election day we will visit as many polling stations as we can and see the counting of votes. Then we will observe the results process.

We have already been briefed by the Chairman of the Electoral Commission, Mr Samuel Kivuitu, the Deputy Chairman and members of the Commission, and Mr E J Nyaseda, Police Director of Operations.

Today and tomorrow we will meet the political parties which are contesting the presidential election. On Tuesday and Wednesday we will be briefed by non-governmental organisations, media representatives, other observers and Commonwealth Heads of Mission. We will deploy around the country on Thursday 19 December to begin our observation. We will return to Nairobi after the count to write our report.

In keeping with the usual practice of Commonwealth Observer Groups, we will not be making public statements on the electoral process during the course of our observation. There will be no 'running commentary'. We may make a Statement after the polls close. Whether there will be such a Statement, its timing, and of course its content, will be determined nearer the time. We will be preparing a detailed Report on the General Election, which we will compile here and sign before we depart on 2 January 2003.

Immediately after our departure, that Report will be sent to the Commonwealth Secretary-General, Don McKinnon. He will in turn forward it to the Government of Kenya, the Electoral Commission, the leadership of the main political parties and then to all Commonwealth governments. Our Report will then be made publicly available, here and throughout the Commonwealth, about a week after we have left this country.

We are aware of the high expectations of Commonwealth and other international observers. I assure you and the people of Kenya that the Commonwealth Observer Group will travel extensively, consult widely and take every opportunity to observe the electoral process as it unfolds. We look forward to meeting as many people of this country as possible.

We look forward to our task. We hope that Kenya will have a good election.

ANNEX III

Schedule of Engagements

Engagements in Nairobi

Sunday, 15 December

Briefing by Advance Group

Briefing by Electoral Commission of Kenya

Monday, 16 December

Arrival Press Conference

Briefings by representatives of:

Kenya African Union (KANU)

National Rainbow Coalition (NARC)

FORD People

Social Democratic Party (SDP)

Safina Party

Tuesday, 17 December

Briefing by Chama Cha Umma

Briefing on political background: Dr Karuti Kanyinga, Institute of Development Studies, University of Nairobi

Briefing by women's organisations: Women's Political Alliance and Women's Political Caucus

Briefing by representatives of High Commissions

Briefing by international bodies: European Union Observer Group, African Union Observer Group, Donor Information Centre on Elections in Kenya, Democracy Development Group, International Foundation for Election Systems, National Democratic Institute, US Embassy

Chairperson's Reception

Wednesday, 18 December

Briefing by Kenya Domestic Observers (K-DOP)

Briefing by Central Depository Unit

Briefing by media representatives

ANNEX IV

Deployment of Observers

Deployment Arrangement

Base Location

Chairperson's Team, Nairobi

Nairobi

Mombasa

Nakuru

Nyeri

Kisumu

Eldoret

Observer Team Members

Professor Adebayo Adedeji
Professor Ade Adefuye

Senator Fook Weng Chin
Ms Minelle Fernandez

Dr Kwadwo Afari-Gyan
Mr Martin Kasirye

Hon Irene Mutsila
Dr Jayaprakash Narayan

Mr Earl Simpson
Ms Segametsi Moatlhaping

Ms Loren Wells
Miss Kaye Oliver

Mr Christopher Child

ANNEX V

Observation Notes and Checklists

5. The adequacy or otherwise of facilities at polling stations and their state of readiness. 6. Availability of adequate supplies, e.g. ballot papers, official stamps and stamp pads etc 7. The performance of electoral officials at the polling stations visited 8. The procedures in place to ensure proper security of ballot papers, ballot boxes and official seals 9. Arrangements to facilitate voting by women 10. The steps taken to ensure that the secrecy of the ballot is assured. 11. The general atmosphere at the polling stations visited. 12. Access of party agents and domestic observers to polling stations 13. Whether illiterate voters are assured of a vote in secret 14. Whether disabled voters are assured of a vote in secret 15. Whether the ballot boxes are properly sealed at the end of the voting, and their security	THE COUNT 1. Inspection of seals 2. The process of reconciling the number of people who voted with the number of ballots in the boxes 3. The determination of invalid ballots 4. The facilities for party agents and their representatives to witness and verify the count and overall transparency 5. Access by domestic and international observers 6. The conduct of election officers 7. Transport arrangements for the boxes, statements of poll, documentation and other material.
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COMMONWEALTH OBSERVER GROUP Kenya General Election – 27 December 2002	OBSERVATION NOTES FOR POLL AND COUNT PART A The Observers may focus particular attention on the following aspects of the conduct of the election: THE CAMPAIGN 1. Balance of TV/radio election coverage and extent and nature of access by party and other candidates. 2. Print media: nature of coverage and extent of access by the political parties 3. The tone and content of material put out by the candidates, access to printing facilities 4. The conduct of political meetings/rallies (permits for public meetings?) 5. The conduct of house-to-house canvassing of voters. 6. Nature, scale and effectiveness of Electoral Commission and other voter education on radio and television, in the print media and by other methods. 7. Activities/measures to encourage the participation of women 8. Access to funds and sources of funds THE POLL 1. The location of polling stations 2. Distances travelled by voters to polling booths, particularly in rural areas. 3. The procedure followed at the opening of the poll, including voter identification. 4. The length of time voters wait to cast their votes.
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PART B

Questions that may be put and which you may ask yourself:

1. Was the Voters' Register compiled in a satisfactory way? Were people missed out? Were the names of dead people or "phantom voters" included?
2. Who are the election officials? How were they chosen? Are voters confident that they will be impartial?
3. Is the person in the street satisfied with arrangements? Will he/she vote? If not, is he/she afraid to do so? Were there any attempts to discourage/encourage the participation of women and were they effective?
4. Have all parties been able to campaign freely? Has the campaign been free of intimidation etc? Have all parties had full access to the mass media?
5. Is there freedom to advertise and distribute posters, leaflets etc?

ON POLLING DAY

1. Before polling starts, are the ballot boxes empty? Are they properly sealed? Are all procedures being adhered to?
2. Are all the parties/candidates represented at polling stations? Are they satisfied with the process?
3. Are the voters apparently voting freely? Are they enthusiastic? Do they talk freely? Do they exhibit signs of fear or intimidation?
4. Do voters understand the procedures properly? If not, are the procedures being explained fully and impartially? Are attempts being made to suggest how voters should vote?
5. Does the turnout indicate that women have been deterred from attending to vote?
6. Is only one person at a time being allowed into the voting compartment?
7. How long are voters waiting to vote? If a long time, are some being put off?
8. Will all parties be represented at the polling stations throughout voting and the count? Are agents adequately trained and vigilant?

9. Will domestic and international observers have free access to all stages of the process?
10. Is the security presence effective/oppressive?
11. Were the proper procedures followed at the end of the day?

THE COUNT

1. Are the boxes kept safe until opened? Are all parties present when they are opened?
2. Does the number of used ballot papers tally with the record of those who voted?
3. Are the papers counted properly? Are counting agents present? Are they satisfied with the procedures of the count?
4. Are the proper procedures followed for declaring votes as invalid?
5. Are the sealing, transport and security arrangements in order?
6. Is the result of the count posted on the wall of the polling station?

THE CONSTITUENCY RETURNING OFFICER'S COLLATION OF THE POLLING STATION RESULTS

1. Do the Statements of Poll and the boxes arrive in good order?
2. Are party agents present and are they able to do their job?
3. Are the correct procedures followed? In particular, do the Statements of Poll as declared to the Returning Officer match those given at the polling station?
4. What determinations does the Returning Officer make concerning postal votes? Are there other matters on which he rules and which have a bearing on the overall constituency result? How long does the process take?

COMMONWEALTH OBSERVER GROUP Kenya General Election - 27 December 2002

CHECKLIST FOR POLLING STATION VISITS

Team Member(s):

District/Constituency:

Polling Station:

Time of Arrival:

Time of Departure:

Voters in Queue: Rate of Processing:

1. Opening of Poll

On time?	Procedures followed?	All materials available?
Yes/No	Yes/No	Yes/No?
Details:		

2. Party Agents

Present/Absent – please tick:

1	KANU
1	NARC
1	Ford People
1	Chama Cha Umma
1	SDP
1	Safina
1	FORD Asili
1	Kenya People's Party

Others: please state

3. Register

State of the register?
Are voters names easily found?
Are parties/agents complaining?
Details:

4. Polling Station Layout and Facilities

Good? Adequate? Poor?

5. Polling Staff

Efficient? Satisfactory? Poor?

6. Security Presence

Police present?
Discreet? Intrusive? Oppressive?

7. Complaints by Party Agents

Any complaints? Yes/No?
Details:

8. Complaints by Voters

Yes/No Details:

9. Presence of unauthorised persons

Yes/No Details:

10. Atmosphere at Station?

Orderly? Tense? Chaotic?

11. Secrecy of Ballot

Assured? Poor? Uncertain?
Please explain:

COMMONWEALTH OBSERVER GROUP

Kenya General Election - 27 December 2002

THE COUNTING OF VOTES

1. The Count

Are procedures observed? Yes/No

Detail:

Are police present? Yes/No

Who else is present?

Indicate any inappropriate behaviour:

2. Agents

Are party agents present? Yes/No

Which parties

1 KANU

1 NARC

1 Ford People

1 Chama Cha Umma

1 SDP

1 Safina

1 FORD Asili

1 Kenya People's Party

Others: please state

Are there any major challenges to the Presiding Officer's rulings?

Do they have any complaints or comments?

Name of agent:

Party:

Substance of complaint:

12. Voting

(a) Personation attempts alleged: Yes/No

Details:

(b) Multiple voting attempts alleged: Yes/No

Details:

(c) Women deterred from voting: Yes/No

Details:

(d) Is the voting procedure (ink/register/ID check, ink application, stamping ballots etc) being followed? Yes/No

(e) Are procedures being followed re illiterate and incapacitated voters? Yes/No

13. Station Limits – 400 yards being observed? Yes/No

14. Numbers - how many voters had cast their ballots?

- how many on the roll altogether?
- how many tendered ballots?
- estimated percentage of women voters in queue?

15. Closing of Poll

On time? Numbers still in queue? Adequate seals applied? Procedure followed? Yes/No

16. Other Remarks

COMMONWEALTH OBSERVER GROUP

Kenya General Election - 27 December 2002

COLLATION OF RESULTS BY THE CONSTITUENCY RETURNING OFFICER

1. **Who is present?**
Domestic observers?
International observers?
Candidates/election agents?
Others? Please state:
2. **Are procedures followed?**
Does the Returning Officer act in line with the procedures described in the manuals? Yes/No? If no please give detail:

Are there any major challenges to the Returning Officer's decisions?
If so please explain:
3. **Transmission of polling station results?**
Are the results from the count at which you were present conveyed accurately? Yes/No. If not please explain:
4. **Adherence to the rules, speed, accuracy and transparency**
Is the procedure in line with that stipulated by the Commission? If not please explain:

Are the officials efficient and well-trained?
How long does the process take?
Does it seem to be accurate?
Is it transparent?
5. **Overall, is the process fair?**
6. **Was the collation process:**
 - ☐ well organised
 - ☐ unsatisfactory
 - ☐ chaotic

3. **Statement of Poll**
Is a copy of the results given to all Party Agents?
Do they all sign it?
Any fabrication alleged at this point?
Do any of the agents object? If so why?

4. **Transport Arrangements** What arrangements are there to transport and ensure the security of the ballot boxes after the end of the count?

5. **Transmission of results**
 - (a) are the results displayed at the polling station? Yes/No
 - (b) how are the results transmitted to the Constituency Returning Officer?

6. **Fairness overall** Good? Acceptable? Questionable?

7. **Adherence to the rules, speed, accuracy and transparency**
Is the procedure in line with that stipulated by the Commission? If not please explain:

Are the officials efficient and well-trained?
How long does the count take?
Does it seem to be accurate?
Is it transparent?

Other Comments

Interim Statement, 28 December 2002



Commonwealth Observer Group

Kenya General Election, 27 December 2002

News Release

**Kenya General Election 2002 Interim Statement by
Professor Adebayo Adedeji, CFR
Chairperson of the Commonwealth Observer Group**

On 19 December Commonwealth Observers were deployed to different parts of Kenya. Their reports and my own observations indicate that the 2002 Kenya General Election has on the whole been conducted in a responsible and orderly manner. The people of Kenya, the political leaders and the parties deserve to be congratulated on their demonstrated belief in, and commitment to democratic values and ethics, particularly to free, fair, peaceful and transparent elections. The general atmosphere pre and during the elections was essentially peaceful with relatively few incidents of violence reported.

Mr Samuel Kivuitu, the chairman of the Electoral Commission of Kenya (ECK) and his staff deserve to be commended on their overall performance. Organising elections anywhere in the world, particularly in developing countries, is a major logistics challenge. There were limited logistical problems observed on election day. In many polling stations voting did not start on time. In some centres, the names of some eligible voters were missing from the 2002 voters register and polling staff did not do enough to help. But overall they acted professionally.

In spite of some defects, the conduct of the 2002 election is a significant improvement on the previous exercises. The ECK should be assisted to continue to improve its performance so that the faith of the people of Kenya in democracy and adherence to democratic values can be strengthened further.

We are about to prepare our final report which will be submitted to the Commonwealth Secretary-General. Meanwhile, we appeal to the political parties, the candidates and the people of Kenya to accept the outcome of the elections, act with statesmanship, look to the future of their nation and allow democracy - a pre condition for sustainable development - to thrive.

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Nairobi
28 December 2002

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Departure Statement, 2 January 2003



Commonwealth Observer Group

Kenya General Election, 27 December 2002

News Release

**DEPARTURE STATEMENT BY PROFESSOR ADEBAYO ADEDEJI, CFR
CHAIRPERSON OF THE COMMONWEALTH OBSERVER GROUP**

We leave Kenya today after several weeks in the country – our first observers began work on 26 November 2002.

This was an historic General Election for Kenya. There is also a widespread consensus that it was the best the country has ever had. In our Interim Statement on 28 December we testified that we were impressed that, in spite of some defects, the elections were conducted in a responsible and orderly manner. We congratulated the people of Kenya, their political leaders and the parties on their commitment to democracy and we commended the Electoral Commission and its staff on their performance.

Now we have considered in greater depth the various aspects of the organisation and conduct of the 2002 General Election and prepared our final report to the Commonwealth Secretary-General, Don McKinnon. There are some areas of concern which we believe will require attention and we have itemised these. Nevertheless, we have no hesitation in saying that in our view the electoral process was credible, the conditions existed for a free expression of the will by the electors and the results reflected the wishes of the people of Kenya.

We return to our countries with a deep respect for the people we have met, gratitude for the many acts of personal kindness we have been shown and a sense of privilege to have been here for a General Election which everyone recognises represents a major step forward for democracy in Kenya.

The challenge for Kenya in the weeks and years to come is to go forward from this electoral success to strengthen all aspects of the country's democracy. In that we hope and trust that Commonwealth countries and others will be ready to provide support, cooperation and assistance. We wish the people of Kenya well in their efforts to build on their achievement and to ensure that this country's democracy is full, certain and enduring.

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