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Preface

The December 1992 General Elections marked an important step for the people of Kenya in their struggle for democracy. This was all the more important since the entire African continent is experiencing unprecedented Clamour for democratic governance and respect for human rights. The National Election Monitoring Unit (NEMU) is an umbrella body consisting of four groups charged with inter alia election observance of the 1992 General Elections. It comprises:

1. The National Ecumenical Civic Education Programme (NECEP);
2. The International Federation of Women Lawyers (FIDA), Kenya Chapter;
3. The International Commission of jurists (ICJ), Kenya Section; and
4. The Professional Committee for Democratic Change (PCDC).

This report by NEMU on the General Elections is yet another desirable development in the entire process as it bears testimony to the need and usefulness of a viable network for the domestic monitoring of national elections. Local institutions such as NEMU can play a very important role in the creation of an enabling environment for free and fair elections. Indeed election monitoring is not witch hunting. It is an important function which inspires public confidence in the democratic process. Election observers are partners with other governmental and non-governmental organs in their search for electoral perfection.

This report is the product of a corporate effort. It would have been impossible for a few individuals to compile such a comprehensive document. It is in this regard that I take this opportunity to unreservedly thank the following agencies, missions and organizations for their financial and material support of NEMU's entire monitoring exercise:

1. The Canadian International Development Agency (CIDA);
2. The United States Agency for International Development (USAID);
3. The Friedrich Ebert Foundation;
4. The Royal Netherlands Embassy;

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- 5- The European Economic Community (EEC);
6. The Swedish International Development Agency (SIDA);
7. The Embassy of Switzerland;
8. The International Centre for Human Rights and Democratic Change (Canada);
9. The British High Commission.

The Ford Foundation is acknowledged and thanked for funding the preparation and writing of this report. Together, these agencies, missions and organizations demonstrated their care for the people of Kenya through generous support for democracy.

I would also like to thank all the in-house staff of the various organizations that came together to form NEMU for their tireless contributions to the monitoring effort.

Deserving particular mention are NEMU's trainers, monitors, co-ordinators, poll-watchers and count-certifiers. It was through their dedication that the relevant data reached our hands for analysis and subsequent compilation of this report. Mrs Kivutha Kibwana, Okech-Owiti and Smokin Wanjala, all from the Faculty of Law, University of Nairobi, who served as our report consultants, offered valuable comments, criticisms and advice that went a long way in shaping the report. The following people also deserve mention for their assistance: James Gathii and Margaretta wa Gacheru who assisted in collating data, and Charles Hornsby and Judy Geist who assisted in statistical analysis.

Finally, I would like to thank the people of Kenya for their endurance and hunger for democracy. It is for them that all these efforts were expended. However trying and difficult the march towards democracy maybe, its attainment secures a dignified future for generations to come. It is in this regard that NEMU urged the leaders of the main opposition parties to accept the election results despite the various shortcomings which had been observed in the administration of the process. In doing this, NEMU was not prejudging the elections, nor was it adjudging them free and fair. The main concern of NEMU's Council of Elders and the Monitoring Committee was the uncertainty that would have gripped the nation were the boycott threats to be carried out. There had been too many predictions of election and post election violence. In those days it was not clear to determine which forces would have taken advantage of the situation.

The emotionalism of the moment might have destroyed the benefits of sober reflection.

A local domestic monitoring network must, therefore, be strengthened to carry our country into the arena of free and fair elections. We are encouraged by information to the effect that there are moves in international circles to set up an independent International Election Monitoring mission. This will definitely go a long way to strengthen domestic monitoring capacities.

Grace Githu
National Co-ordinator
National Election Monitoring Unit (NEMU)

PART 1

**BACKGROUND TO THE 1992
ELECTIONS**

CHAPTER 1

Kenya General Elections in Historical Perspective

December 1992 General Elections were Kenya's sixth general elections since independence. The elections which produced the first independence government were held in May 1963, under the supervision of the then colonial government. Subsequent general elections were held 1969, 1974, 1979, 1983, and 1988. In 1966 what is generally referred to as the "Little General Elections" were held after some 28 members of parliament left the ruling Kenya African National Union (KANU) to an opposition party named the Kenya Peoples Union (KPU) under the leadership of Jaramogi Oginga Odinga, who had been Kenya's Vice-president. A fresh election was forced before the expiry of the constitutionally mandated five-year period because a hastily passed constitutional amendment decreed that no MP would continue as such if he/she changed political parties after his/her election unless he/she was elected afresh under the auspices of his/her new party.

The history of representation in the legislative body and elections in Kenya and in the East African Protectorate (as "Kenya" was called before 1920) goes beyond May 1963. In Figure 1.1 we summarise the important dates in relation to the development of representation and elections.

-Figure 1.1: *Development of representation and the electoral process: Key dates and events*

YEAR	EVENT
1905	An Order in Council establishes the Legislative Council. Initially only Europeans are represented in it by non-elected official and unofficial persons.

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- 1909 First Indian, A.M. Jevanjee, is appointed to represent Indian interests. After two years his appointment is revoked in response to European settler pressure.
- 1916 The Legislative Council Ordinance, enacted through the East African Order in Council, 1919 provides for full adult white suffrage. Eleven (11) elected seats in the Legislative Council are reserved for whites only.
- 1919 Two (2) Indians are nominated into the Legislative Council to represent Indian interests.
- 1920 The Kenya Colony Constitution allows for two (2) Indian elected members and one (1) unofficial nominated member for Arabs.
- 1924 Five (5) members are elected from the Indian community.
- 1925 One (1) unofficial member is nominated to represent the interests of Africans. He is a European. In 1934 the number increases to two (2).
- 1944 An African, E.W. Mathu, is nominated to the Legislative Council. In 1946, F.W. Odede is nominated as a temporary member. In 1948, number of members to represent Africans is increased to 4 and to 6 in 1952.
- 1956 The Legislative Council (African Representation) Act, 1956 (No. 10) provides for six (6) African elected members. In the same year the number is increased to eight (8).
- 1957 First election in which Africans are elected to the Legislative Council.
- 1958 The Lennox-Boyd Constitution provides for an equal number of elected representatives between the European and African communities. Each racial group has fourteen (14) elected positions.
- 1961 Elections take place after the ban on the formation of political parties has been lifted. KANU garners 63% of the votes and 16 seats and the Kenya African Democratic Union (KADU) gets 16% of the votes and 11 seats.

Kenya General Elections in Historical Perspective

MAY

1963 Elections are held in anticipation of independence. KANU emerges victorious both in the House of Representatives and Senate. KANU garners 83 out of 124 seats in the House of Representatives.

Dec

1963 Kenya becomes an independent country with a government formed on the basis of the pre-independence May 1963 elections.

1966 The “Little General Elections” take place after formation of the Kenya Peoples Union (KPU). In the House of Representatives, out of 28 contested seats, KANU garners 21 with 36,000 votes while KPU scores 79,000 votes and gets 7 seats.

1982 Kenya becomes a *de jure* one party state through a constitutional amendment.

1983 Fifth General Elections.

1988 Sixth General Elections in Which secret balloting at the primary stage is eliminated, and queuing used instead.

1992 Seventh General Elections since independence. First multiparty general elections since independence.

From an examination of Figure 1.1, we can deduce several facts.

Representation in the Legislative Council was based, at any rate initially, on racial lines. Europeans, then Indians, Arabs and finally Africans were **allowed** representation by the colonial government in that order and on incremental basis. Such representation was, initially again, in the form of official representation. Describing constitutional development in the **East** African Protectorate at the turn of this century, Ghai and McAuslan written:

The most significant innovation (under the 1905 Order in Council) was the Legislative Council, which was invested with the competence to make laws for the peace, order and good government of the Protectorate. It was established in response to pressure from the European settlers who, the very same year, had asked for some form of

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representation on a Legislative Council which, initially, they were prepared to see under control. It was assumed that the majority of the members of the Council would be what is termed 'official', i.e. committed to support the Government, and would therefore take their orders from the Governor.

(Ghai and McAuslan, 1970:43)

Official representation in time was supplemented by an unofficial representation, i.e. representation of racial segments by civilians appointed by the government but not employed by government. Such civilians were not expected to support the government. The next stage in the development of representation was the concession by the colonial government regarding elective members within the Legislative Council.

The mix of official, unofficial and elected members was arranged in such a manner that it was only towards the end of the fifties that the African elected voice in the Legislative Council became or was allowed to become predominant. Initially, even unofficial representatives of Africans were nonAfricans; they were European missionaries and retired civil servants. This development, certainly, had racial and paternalist underpinnings.

One crucial factor which is perhaps often not emphasized sufficiently is that Kenya had hardly any significant experience in running a multiparty government or multi-party elections. The only two periods within which experimental multi-partyism was practised were 1963-1964 and 1966-1969. Even during these periods the KANU Government of the day concentrated its efforts on liquidating rather than nurturing plural politics and liberal democracy. The opposition KADU and KPU were through several manoeuvres, some peaceful, others violent, extinguished by KANU. Two multi-party elections in which Africans participated were held under the colonial administration, i.e. 1961 and 1963. From 1964-1991 all elections were held under the superintendence of either a *de facto* or *de jure* one-party state. The 1992 General Elections were the first such elections since independence under a multi-party environment although the Independence Constitution, based on the Westminster Model, had provided for, and, therefore, anticipated multi-party democracy and elections after independence. The lack of experience in plural politics, especially in the domain of elections, had the potential of negatively impacting on the conduct of elections. But given good-will on the part of the government, such eventuality can be avoided. Such lack of experience, although self-induced in Kenya, can occasion minor electoral irregularities, but should

not be used by any party as an excuse for a flawed electoral process.

Although, in Figure 1.1, we have indicated when general elections have taken place, we wish in the rest of this chapter to provide a sketch each of these elections with a view to showing the emerging general trends.

1.1 The Little General Elections, 1966

These elections, as we have seen, were not general elections. They were necessitated by the formation of the opposition KPU, and the passage of a rushed constitutional amendment which stated that any MP who cross to another party after elections automatically lost his/her seat and a byelection was thus mandatory. In 1964 when members of KADU and the akamba Peoples Party (APP) had voluntarily crossed into the ruling party' KANU, no by-elections were thought necessary. In 1966, however, it argued by KANU that MPs elected through the KANU ticket had to renew their mandate with the electorate after joining a different party.

In the 1966 elections, KPU candidates were subjected to considerable official harassment. They were not, on the whole, granted licences for campaign rallies. Their passports were impounded. The Registrar of Societies denied KPU registration until nomination day. The Voice of Kenya imposed a news blackout on KPU. Despite the extensive harassment, KPU garnered more votes than KANU in the contested seats, although KANU won the majority of contested seats.

The 1966 elections revealed that the government of the day could manipulate constitutional and electoral law in order to secure its advantage in an electoral contest. Partisan change of law was therefore developed as a campaign strategy in electoral contest. Also from the electoral results, it was clear that the delimitation of the constituencies by the Electoral commission left a lot to be desired.

The population criterion was not emphasized in the delimitation of constituencies so that extraordinarily uneven populations were to be found in different constituencies. Finally, the trend of harassing an opposition party so as to ensure that it could not concentrate properly on the electoral contest started to take root in the 1966 elections. According to the manner in which the opposition was treated, it was clear that KANU had chosen not to fight competitive elections in a fair manner.

1.2 The 1969 General Elections

local government elections, all KPU candidates were disqualified on the grounds that their nomination papers were filled incorrectly.

Prior to the 1969 elections, the KPU was proscribed and most of its leaders detained.

Since the country was now a *de facto* one party state, KANU party's selection of candidates was crucial in determining who could stand for elections. According to the party's nomination rules, persons wishing to contest elections under KANU had to have been party members for at least 6 months before nomination. KANU's National Executive Committee was responsible for the approval of candidates recommended by KANU district branches. Only two KPU members, Grace Onyango and Bildad Kaggia, were re-admitted to KANU.

In the elections, Jomo Kenyatta and 9 other MPs were elected unopposed. 77 out of 158 of the former MPs were rejected by the voters.

The 1969 elections set a firm precedent regarding the exclusion of former KPU politicians from the electoral process. From 1969 henceforth, KANU argued that these Kenyans had not sufficiently "changed their hearts" to embrace the policies of KANU and as a result their candidature should not be supported by KANU.

1.3 1974 General Elections

These were to be the last general elections during Jomo Kenyatta's presidency, Kenyatta and four others were elected unopposed to parliament. Just as in 1969, there was no contest in the presidential election.

The age of majority and voting age had been lowered from 21 to 18 years. Many young eligible voters did not vote in the elections because they did not have national identity cards.

To become a candidate in the elections, an aspirant had to be a life member of KANU and had to fill in a form of compliance with party rules. Former KPU members had to prove that they fully identified with KANU.

The provincial administration played a significant role in the elections. District commissioners favoured sitting MPs as opposed to new comers,

especially in the granting of licences for campaign meetings.

During these elections, as many candidates as were approved or-“cleared” by KANU could stand in the elections. Although this gave wide choice to the electorate, many MPs were elected without an overall majority in constituencies where the number of contestants was very high. Another important feature of these elections was the record number of election petitions witnessed. A long confidant of Jomo Kenyatta, Paul Ngei, MP for Kangundo, had his election annulled by the High Court on grounds of his intimidating another candidate. By virtue of that decision, Paul Ngei guilty of an electoral offence and could not by law become a candidate he subsequent by-election.

However, a constitutional amendment was passed which enabled Kenyatta to pardon Ngei as a result of which Ngei stood and won in the subsequent by-election. Once more, the election was manipulated to aid individual who should not have participated in the electoral process.

1.4 1979 General Elections

These were the first general elections under President Daniel T. arap Moi.

Prior to the elections, election law was amended to increase election expenses to K Shs. 40,000. A deposit of K Shs. 50,000 was required as election petition deposit.

During the preliminary KANU nominations, all the ex-KPU members barred. Oginga Odinga was barred on the pretext that he had acquired his KANU life membership in Nyeri and not his home area. In elections, the majority of politicians returned had been elected during, Kenyatta’s era. Regarding the 1979 elections, observers have commented President Moi was unable to get his men to parliament.

1.5 1983 General Elections

These elections, which were held in advance of the usual five-year outlimit, were the first general elections under a de jure one party state.

They were held after the country had faced a major crisis in the form of bloody attempted coup detat.

In May 1982 Oginga Odinga and George Anyona had announced the information of the Kenya African Socialist Alliance (KASA). They were ex-

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pelled from KANU and Anyona was detained without trial.

In August, 1982, an attempted *coup detat* led by non-commissioned members of the Kenya Air Force was suppressed. Prior to the elections, President Moi “revealed”. that there existed a traitor in his cabinet who, together with other senior citizens, was plotting to overthrow him, possibly with support of some foreign governments. Eventually, Charles Mugane Njonjo, a former powerful Attorney-General and close friend to Kenyatta and Moi, was mentioned as the “traitor”. The political system, especially the KANU sub-system, was mobilized to flush Njonjo and his perceived collaborators out.

Before the elections, KANU conducted an impressive recruitment drive which enlisted about 22.12% of those over 18 years. In the ensuing elections, those aspirants deemed to be close to Njonjo were ousted. President Moi had shed off Njonjo who had been thought to have been responsible for securing Moi’s succession in 1978. Now parliament had a majority of MPs who owed allegiance to Moi.

1.6 1988 General Elections

These were Kenya’s most controversial elections thus far. They were styled the “queue-voting elections” which were aimed at replacing the secret ballot with open balloting at the party nomination stage. During preliminary nominations by KANU, as many contestants as had been approved or “cleared” by KANU would vie for elections. Voters had to stand or queue behind the candidate of their choice or an agent, representing such candidate, who hosted the candidate’s picture behind him. At the end of the exercise, the number of voters who had queued for a candidate in all polling stations would be collected. Only candidates who polled 30% or more of the total votes cast would go forward to the second-tier secret ballot voting. A candidate gaining 70% of the total votes would be declared elected unopposed.

Registration of voters took place in 1987. 6,091,798 voters were registered, or 82.9% of the potential electorate. Parliament, upon the recommendation of the Electoral Commission, increased the number of constituencies from 158 to 188.

At the KANU nomination stage, approximately 2 million KANU members voted. In about 60 out of the 188 parliamentary constituencies, candidates were declared elected unopposed under the 70/70 rule. This disen-

franchised voters who were non-KANU members in those constituencies. The queue-voting system was opposed by many Kenyans and concerned bodies such as the National Council of Churches of Kenya (NCCCK), Law Society of Kenya (LSK), etc. It was pointed out that if electoral officers miscounted the voters, there could be no fresh opportunity to recount since the queues dispersed after elections.

Perhaps more importantly, open voting contradicted, fundamentally, critical principle of secret voting, considered fundamental in democratic elections

Many election petitions arose as a consequence of the 1988 elections. High Court in several cases refused to intervene, arguing that it had no jurisdiction to question the KANU nomination exercise which it perceived as a matter touching on KANU's internal affairs. The election petitions were concluded two months before the dissolution of the Sixth Parliament. In the case of the Malava constituency, the High Court reversed election of the 'MP' two months before parliament's dissolution. The constituents in Malava had been represented for almost 5 years by a non-elected individual due to, *inter alia*, a faulty election petition system

The aim of this chapter has been to cast Kenya's general elections in a historical context which will enable us to properly evaluate the general elections. It could be concluded that the pre-independence and 1963 elections which sought to bring about black majority rule, person, one vote, were fairly competitive. The initial elections during independence e.g. 1969, 1974, 1979 were state controlled semi-competitive elections. In 1983 and especially in 1988, within the context of a *de jure* party state, the elections were transformed to state controlled non-competitive elections. Obviously then, it was hoped that the 1992 multi-elections would reverse the trend or complete the circle and take Kenya back to competitive elections.

References

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CHAPTER 2

Parameters for Free and Fair Elections

In a FIDA-ICJ sponsored seminar held at Safari Park Hotel, Nairobi, in August 1992, experts were invited to discuss, *inter alia*, criteria for determining the minimal conditions necessary for free and fair elections. It had been recognised that it would be an uphill task to monitor or observe elections if criteria did not exist to be used for evaluative purposes. This chapter draws from the discussions held at Safari Park and also from theoretical studies on elections. See also statement on Minimal Conditions for Free and Fair Elections issued on 15th September, 1992 (Appendix 17).

In a country still smarting from the rigours and maladjustments of decades of a one-party dictatorship, the hope of holding free and fair multi-party general elections can only be fulfilled if certain fundamental conditions are met. The conditions are supposed to clear the way for the People's expression of free-will in choosing a government that would work within a truly democratic framework. This calls for the dismantling of all structures that may have been built over the years by the one-party government for the sole purpose of stifling dissent and entrenching itself in power in total disregard of public sentiment. The following parameters are considered vital if the people are to be truly empowered in their quest for real participation in the process of governance.

2.1 Constitutional Review

One of the most important steps which must be undertaken by all the actors involved to pave the way for a switch from one-party dictatorship to a multi-party democracy is a comprehensive review of the constitutional set-up. This revision would help put in place a framework within which a pluralistic culture can be developed and harnessed. Thus, apart from the legitimization of the existence of other political parties, a thorough re-examination of the constitution would be necessary so as to remove the

constitutional cobwebs that would hamper the germination and growth of democratic ideals and values.

It would be near impossible to hold free and fair elections in a constitutional environment that does not enjoy a harmony necessary to maximise the protection of the fundamental freedoms of the individual. All provisions in the constitution and the resultant laws passed by parliament which extinguish, suppress or dilute the free enjoyment of these rights individual would have to be repealed or be substantially reconciled with the requirements of multi-party democracy.

Of immediate necessity would be to break the monolithic stranglehold instruments of power by the ruling party of the day which, as to be expected, would exploit its incumbency to place impediments in the way of free participation. This exercise can be carried out through the systematic delinking of the ruling party machinery from that of the government.

The next step would be to limit presidential executive powers to the extent to which they may be resorted to in a bid to frustrate the development of competitive politics and the emergence of independent institutions in the post-elections period. This would entail the strengthening of independence of such democratic institutions as the judiciary and parliament, and the widening of their role in public policy creation and implementation. Another constitutional adjustment would be the repeal of all those laws that curtail the freedoms of expression, conscience, the press, movement and assembly. These five freedoms constitute the cornerstone of competitive politics. It is through them that the human spirit and creativity released so as to embellish political debate and choice. Elections should be the end result of a process in which the enjoyment of these rights is exploited to the maximum.

At the end of the day, there needs to be established a constitutional order which conforms to the demands, needs and challenges of pluralism. constitutional review such as the one being discussed can be undertaken in a variety of forms, including a national convention, and inter-party conference, an interim parliament, a report by a commission of experts based on a referendum and other sources to be adopted by the sitting one-party parliament, etc. Of the four mentioned, the first three would appear to be more desirable since the existence of a benevolent parliament born out of elections that are not free and fair is an illusion. Those who wield irregularly acquired power are seldom ready to embrace changes that would facilitate their own removal from such power.

2.2 The Establishment of an Independent Electoral Body

The conduct of free and fair elections in an environment of blackmail, intrigue and suspicion, such as the one that follows the abolition of absolutism and the introduction of multi-partyism, is acutely dependent on an independent electoral body. The establishment of such a body is therefore crucial to the entire process. It is this institution that would evolve administrative and other mechanisms which would guard against any distortions in the electoral process that would interfere with and falsify the expression of free will. The most important attribute of such a body is its independence, both as perceived, and as actually exercised. The independence of an electoral body is achieved basically through the manner of its constitution and the public service records of the men and women who constitute it. The manner in which they go about executing their duties is largely dictated by the first two criteria.

It is therefore most desirable that the creation of an electoral body be a corporate exercise involving all the political parties and other interest groups in the body-politic. It is at this stage that the legitimacy and acceptability of the body is fundamentally determined. Such men and women as would like to serve on this platform would have to be those that inspire confidence and trust in the members of the larger public. Their honesty and integrity would have to pass the litmus test of suspicion. Apart from the participation of all interested parties in the constitution of an electoral body, other issues such as the criteria and standards to be met by the electoral commissioners and their terms of reference would have to be debated and agreed upon.

The way the body goes about performing its duties should be efficient, non-partisan and transparent. The body should not receive any directives from any source or arm of government in the manner in which it conducts its affairs. It must bring its authority to bear on the entire electoral process and be in charge of the elections from start to end. Finally, the electoral body should not conduct its affairs in a secretive manner. Matters that require the attention of political parties and their nominees must be thrashed out between those concerned. Issues that require discussion, clarification and agreement must be subjected to these stages. The legitimacy of election results is in large measure determined by the technical craftsmanship of the electoral body.

2.3 Accessibility of the Electoral System

It is incumbent upon the government of the day to create an enabling environment for political organization and campaigning by all the parties involved. Even when there is in place a judicially-perfect constitutional it, unless other measures are taken to facilitate the accessibility of the political parties to the people, it may not be feasible to create an atmosphere in which fair competition is realized. Fair competition is a vital measure of how the elections reflect the will of the people. Many steps bordering on the application of law, administration, security, media access, etc, must be undertaken by the government at the behest of the electoral body to ensure the equal treatment of all the actors in their scramble for votes.

Thus, such questions as which parties qualify to be recognized as political parties, whether there can be parliamentary candidates not affiliated to any party (independents), what administrative infrastructure exists, enhancement of participation, whether there should be a licensing for political rallies, how much air time each political party should be accorded, what security measures are set in place to ensure accessibility to hostile places, and how uniformly the law for the maintenance of order is applied to suspected offenders, must be considered and adequately dealt with to ensure fair play.

In particular, all parties that satisfy the requirements of the law within the context of a multi-party constitutional order, and which apply for registration, ought to be registered. Refusal of registration should only be based on constitutional considerations.

The administrative infrastructure should be re-orientated to serve all with humility, candour, equality and respect. This is immensely important since any show of inordinate deference towards the incumbent could have a negative psychological effect on the electorate and paint an undesirable picture of the political equation.

The licensing of political rallies and meetings if at all necessary should only be resorted to as a mechanism of planning and establishing orderly campaigns but not as an instrument of obstructing opposition parties from reaching the voters with a view to presenting their alternative agenda. The number of licences an applicant gets should be commensurate with the applications made and the campaign programme formulated.

At no time should the issuance of licences or permits be calculated to disrupt a party's campaign programme. The security apparatus set in place by those concerned should be aimed

at protecting both members of the public and all the candidates involved in the electioneering process. Security should be for all, and those who threaten the lives and property of others should be promptly brought to book-irrespective of which party they support. The security apparatus should not be invoked to frustrate the democratic process by erecting hindrances in the way of free expression and debate. Closely tied to the question of security is one of the equal application of the law to the people by the prosecution arm of the government. There should be no selective prosecution of offenders based on their support of, or belonging to, political parties. The law should be applied in such a manner as to deeply inculcate a sense of citizenship and patriotism in the electorate.

Any action or omission by the government which imbues a section of the electorate with a feeling that it can act to achieve results during the electioneering process in total disregard of the law could seriously undermine the freedom of others to participate freely in the democratization process.

One of the most crucial vehicles for reaching the electorate during the electioneering process is the media (press, radio and television). It is a powerful and most influential organ for the propagation of a party's campaign agenda, the countering of hostile propaganda and the education of the voters.

It is, therefore, necessary that the state-controlled media do afford all the political parties equal coverage for the entire electioneering period. This is more necessary in a society where there is a dearth of alternative or privately owned television and radio. The party in control of these two vital organs could definitely enjoy an unassailable advantage over the other competitors if equitable coverage time is not availed to them. Although the print media is an equally important tool for public information, its influence tends to be limited to urban areas, while most voters may not be equipped with basic education to enable them to engage in fruitful leadership. Where comprehensive voter education has not been undertaken by the election officials, state controlled media could exploit the gullibility of the public to the extent of reducing the campaign process to a facade of democracy.

The Establishment and Maintenance of the Electoral Register

The registration of eligible voters and the maintenance of an electoral register is one of the hallmarks of free and fair elections. It is the yardstick of voters' enfranchisement because it can determine who gets the opportunity to cast his/her vote or not.

The manner in which the registration exercise is carried out has a bearing on the nature of the elections. It is the quality, accuracy and safety of the electoral register that provide safeguards against interference with the figures and the eventual falsification of the election. However independent an electoral body may appear to be, the manner in which it carries out and controls the registration exercise determines the legitimacy of the elections in the final analysis.

It is imperative that the requirements one has to fulfil to qualify for registration be not unduly obstructive of his/her right to vote. Rather than a bar to voting, registration should be the facilitator of the people's vote. The period within which members of the public ought to register should be sufficient to provide an adequate opportunity for them to place their names on the register. This has to be done taking into account the date of the elections, the population of eligible voters, the geographical terrain of the country, the requirements to entitle one to register and many other factors that would have a direct bearing on the exercise. After the compilation and closing of the register, it should be made available to members of the public for inspection.

Political parties should be given copies of the entire register. It is at this stage that any complaints raised should be addressed and any anomalies detected rectified. Only after these two stages should the electoral body place the register in its exclusive custody. All these measures would ensure that no voter is disenfranchised.

"Election monitors are not witch-hunters; they play an important role ensuring that the conduct of elections is not done in a manner that adversely compromises the outcome. The monitoring agencies may be both local and international. It is important that the relationship between the electoral body and the election monitoring agencies be clearly and fairly spelled out from the outset. While they may not necessarily over-rule the final verdict, election monitors do contribute to the evolution and sustenance of democracy. No impediments should be placed in their way during the

performance of their duties.

2.5 On Polling Day

An efficiently managed election should be reflected in the goings-on on the polling day. The setting of polling stations all over the country, the opening of the stations for voting, the closing of the stations, the nature and quality and availability of voting materials, the preparedness and competence of the election officials, the arrangement of election booths, the handling and transportation of the ballot boxes to the counting halls, the actual counting of the votes and the release of results, all go to show whether the parameters above have been properly adhered to.

In conclusion, the words of **Fred M. Hayward** are instructive in terms of setting out the requisite parameters for free and fair elections. He writes:

All law abiding adult citizens are entitled to vote. Political organizations are free to put up candidates, debate their merits freely and criticize opponents. Political organizations campaign with the objective of winning. Each voter casts one vote and is not hindered in expressing a choice (preferably in secret), votes are honestly counted and the results faithfully reported; the candidate, party or coalition with the most votes wins; the losing individual or party does not try to use force to alter the outcome or prevent the winner from taking office; and the party in power does not restrict political participation and competition which are within the parameters of existing rules.

Reference

Fred M. Hayward (Ed.). *Elections in Independent Africa* (Boulder, Colorado: Westview Press, 1987, at p. 3.)

CHAPTER 3

Setting the Stage for the 1992 General Elections

3.1 Electoral Law Reform

The opening salvo to the constitutional and other legal amendments whose objective was to transform Kenya from one-partyism to multi-partyism the Constitution of Kenya (Amendment) (No.2) Act, 1991 (see Appendix 4 on the Democratization and Election Calendar). This December, 1, constitutional amendment deleted the 1982 Section 2 (A) one-party amendment. The language of the “Memorandum of Objectives and Reasons” of the 1991 constitutional bill emphasized:

The principal object of this Bill is to amend the Constitution to repeal Section 2 (A) which provided that KANU shall be the only political party in Kenya. The Bill also makes consequential amendments to the Constitution to enable each party to nominate candidates for Presidential and National Assembly elections.

The above constitutional bill which was published on 5th December, 1991, was the culmination of the findings and recommendations of the KANU Electoral Review Committee (KERC), established in July 1990, adopted by the KANU December 1991 Special Delegates Kasarani Conference. The KERC under the chairmanship of the then Vice-President Minister for Finance ‘ Professor George Saitoti, was meant to tour the entire country in order to collect and collate the views of Kenyans regarding whether the country should be a one-party or a multi-party state. Kenyans went beyond the narrow mandate given to the KERC and proposed the changes that they wished to see in the entire constitutional system.

If the views expressed by Kenyans had been reflected in what later became *the Saitoti Report* and had also been acknowledged and canvassed in subsequent constitutional changes, a wholesome constitutional and legal framework for multi-partyism would have been created. On the contrary,

the ruling political elite chose to use the KERC as a device through which Kenyans would ventilate their frustrations with a government hardly responsive to the then unfolding global changes. The change introduced by the repeal of Section 2 (A) of the Constitution ignored all the suggestions made to the KERC. Instead the Constitution of Kenya (Amendment) (No. 2) Act, 1991 removed Section 2 (A) and made a few other minor constitutional changes while avoiding a thorough-going review of the constitution so as to bring it in line with a plural system. At this juncture also the burgeoning opposition parties were not allowed to participate in the constitution review process. The manner of repeal of Section 2 (A) to set in motion subsequent *modus operandi* by KANU in relation to changing laws; KANU felt not bound to consult the opposition or individual perceived to be non-KANU. KANU rejected the call for a National Convention whose mandate would have been to put in place available constitutional and legal machinery within which a multi-party democracy would work.

The substantive bills which were introduced to pave the way for multi party elections were:

- * The Election Laws (Amendment) Bill, 1992;
- * The Constitution of Kenya (Amendment) Bill, 1992 (published March, 1992);
- * The Constitution of Kenya (Amendment) Bill, 1992 (published June, 1992);
- * The Constitution of Kenya (Amendment) Bill, 1992 (published July, 1992).

The March and June 1992 constitutional bills were withdrawn the July 1992 bill was passed. The March 1992 bill was perhaps the most far-reaching attempt to date by KANU to restructure the constitutional and political system to accommodate a multi-party scenario. Executive power was, in the bill, fractured so that it would be shared between a President and a Prime Minister; presidential tenure was limited to two 5 year terms; the institution of a referendum was proposed; legal aid for indigent citizens in human rights cases was introduced and Section 127 of the institution which permitted the making of emergency regulations specifically for North-Eastern Province and contiguous districts was recommended for repeal.

What was to be the March bill's most innovative part, i.e.

Introduction of the office of a prime minister, became the greatest stumbling block to the bill. The opposition, while welcoming the introduction of the office of the prime minister, indicated that the bill did not sufficiently separate powers of the president and the prime minister and such blurring of roles and powers could create problems in the future. The proposals of the March bill were also unacceptable to certain individuals within KANU bill was withdrawn. Although the March bill was progressive, it was still the handwork of KANU unaided by an opposition input.

The best the opposition could do was to criticize the bill after it was published. The June, 1992 and July 1992 bills are identical save that the July bill had a Section 4 which purportedly sought to outlaw the formation of the coalition government.

It is clear from the above account that KANU chose to change the constitution as a solo player. Moreover the constitutional proposals were developed in an ad hoc and hurried fashion. No wonder one bill had to go three revisions before eventual passage. Ordinarily, law passed such an environment is likely to be wanting.

Careful scrutiny of the major laws passed during this period reveals KANU passed those laws which would advantage it during the elections. Through passage of the laws then, KANU expected to gain an initial headstart in the elections and/or, by reason of the legal precepts, to down the opposition. The Election Laws (Amendment) Act, 1992 could conceivably have given electoral advantage to KANU in that it made political party to be responsible for financing the preliminary elections, i.e. nomination of the party's candidate for parliamentary office. Previously the state organised this stage of elections and bore the expenses. Henceforth, new political parties which did not have adequate finances for eighed down by the burden brought to bear on them by this new law. Some of the problems which affected the preliminary nation exercise of the opposition parties could be traceable to lack equate finances to finance this stage of the elections.

More bottlenecks to the opposition's efforts in the elections were presented by the Constitution of Kenya (Amendment) Bill, 1992. This introduced a new system for the presidential election. Apart from secure majority of votes cast in the presidential election, the winning presidential candidate had also to garner at least 25% of the votes cast in at least 5 of the country's 8 provinces. If during the first round of the presidential election no candidate emerged a winner, then the two candidates with the highest number of votes would recontest in a run-off. The 25% rule was

still to apply in the run-off.

Widespread criticism of the so-called 25% rule occurred. Its justification, that it was meant to produce a president who had national appeal, was believed suspect. Instead it was seen as a way of stopping a candidate who had a majority of votes but from fewer than 5 provinces from becoming the President.

Some KANU strategists felt that the presidential candidates from major ethnic groups could win a majority of votes, but they would gain the support of 5 provinces.

Against the 25% rule, it was pointed out that some province, North-Eastern Province, had a smaller population than some districts in the country. Moreover, the 25% rule would compromise the one person, one vote rule. In provinces with small populations, one vote could count as more than one. Curiously the above amendment never provided for what would happen if round two elections did not produce a president. A subsequent amendment provided the period within which the run-off held.

The attempt to bar the coalition possibility was also thought to be a ploy to ensure that the opposition parties could not come together to form a government if one of the presidential candidates won but had thin representation in parliament. The result would be an unstable government. Other amendments which could have advantaged KANU regarded:

- Removal of the ceiling on campaign expenses. The party with the most access to resources, especially public, would benefit from the absence of such ceiling.
- Introduction of party symbols in ballot papers meant ruling party KANU whose symbol was most familiar to an electorate had an advantage. After the abolition of queues the government had also abolished symbols in ballot papers for candidates although the voters were still over illiterate.
- The re-introduction of symbols. But this time this appears to have been meant to assist KANU.

A further complication in the electoral law was introduced by the Attorney-General. Through Legal Notice 276 of 1992, he purported to 'correct' the language of Section 13 (3) (b) (i) of the National Assembly and Presidential Elections Act (Chapter 7 of the Laws of Kenya) which

read as follows:

“The day or days upon which each political party shall nominate candidates to contest parliamentary elections in accordance with its constitution of rules *which shall not be less than twenty one (21) days* after the date of publication of such notice”

to read as follows:

“the day or days ... which shall not be *more* than twenty one days

The Attorney-General argued that the earlier wording of “not less” was a mistake and that the appropriate wording should be “not more”. The effect of this change was that the Electoral Commission could legally publish a notice in the gazette telling political parties to arrange for their preliminary elections in one second or even less! Pursuant to the Attorney-General’s “correction” of Section 13 of Cap 7 (as passed via Section 6 of the election Laws (Amendment) Act, 1992) the Electoral Commission gave the party nominations period as eight days. Clearly most Political parties with the possible exception of KANU would have found it extremely difficult to carry out an exercise they had budgeted at least 21 days for in eight days. Although the parties struggled to complete their nominations within 8 days, court action by FORD-Kenya resulted in Legal Notice 276/1992 being declared illegal. The Electoral Commission restored the ,minimum 21 days period for party nominations.

“The above account, in our view, shows that KANU deliberately

- preferred not to introduce constitutional and legal changes which would holistically address the question of the most suitable environment for Multi-party democracy and multi-party elections;
- introduced laws whose primary objective was to advantage it in the electoral contest and conversely disadvantage the opposition;
- chose not to consider recommendations from non-panisan commentators, citizens and the opposition regarding electoral law and constitutional law reform.

In our view, further and extensive constitutional reform is mandatory to ensure that the proper environment for multiparty democracy is created. Many areas of electoral reform still must be addressed so as to ensure

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level playing field exists for all the political parties-present and future in the country.

3.2 Institutional Capacity Building

Constitutional and legal reforms especially via Act number 6 of the Election Laws (Amendment) Act, 1992), can be said to have established an independent system of the administration of elections. Previously the Electoral Commission (see Appendix 1 for its composition) was constitutionally a department of the Attorney-General's Office and was also supervised by the relevant minister's in charge of elections.

Section 41 of the Constitution establishes the Electoral Commission as an independent institution although the appointments to solely by the President.

However the president cannot terminate the tenure of a commissioner except after a tribunal has recommended removal, and such recommendation can only be made for "inability of the commissioner to exercise the functions of his office (whether arising from infirmity of cause or for misbehaviour)". This is the same criterion by which a judge can be removed from office.

The 'new Section 42A of the Constitution described the to Electoral Commission in elections presumably to further ensure the fact that only the commission could discharge electoral responsibilities Section 42A provides: "The Electoral Commission shall be responsible for

- (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, and
- (c) such other functions as may be prescribed by law."

Before the 1992 elections, the Electoral Commission was responsible by and large for the electoral matters dealing with the preparatory stages of the elections, while a Supervisor of Elections was responsible for the actual conduct of the elections. Act No. 6 of 1992 placed the Electoral Commission in charge of the entire electoral process. The position of supervisor of Elections was abolished. The new positions of Director and Director of Elections were created.

These officers were to be appointed by the Chairman of the Electoral Commission. Further, the Electoral Commission now also took charge of local government elections.

In law, therefore, the Electoral Commission created by the 1992 laws enjoyed the greatest independence and security of tenure ever enjoyed by Electoral Commission since independence. Potentially, then, it could have conducted non-partisan administration of the elections without fear of reprisals from any quarter.

The Electoral Commission was responsible for the recruitment of the officers who would directly be responsible for the administration of the elections on the ground. Such officers included returning officers, deputy returning officers, presiding officers, polling clerks and counting clerks. Although no legal provision forbade the Electoral Commission from engaging civil servants in these positions, the Electoral Commission avoided such recruitment in preference to persons not employed as public servants. However, retired civil servants were used as well as some quasi-public servants such as university employees. It was argued by the opposition that some persons in the categories of retired civil servants and quasi-public were capable of being partisan in favour of KANU, the ruling party

Training of election officials, especially at the lower levels, was very brief and not thorough enough. Apart from this being revealed by some of our informants among the low cadre election officials, our observers, in many polling stations, noticed improper discharge of electoral duties due to many instances, to inadequate training. Our observers also noted that some election officials were employed after the initial training and as a result could only be trained on the job

. A final area of institutional capacity-building which we wish to comment is the development of a voter education capacity. A leadership role in voter education was taken by non-governmental organizations such as the National Council of Churches of Kenya (NCCCK), the Legal Education Aid Programme of the Kenya Adult Education Association (LEAP, the Legal Advice Centre, the International Commission of Jurists ICJ, Kenya Section), the International Federation of Women Lawyers Kenya Chapter, PCDC, the National Committee on the Status of women (NCSW), the League of Kenya Women Voters (LKWV), the Greenbelt Movement of Kenya, church groups, community groups, etc. The bulk of the above voter education was in booklet and poster form. Illiterate voters were not reached through the booklet. Most of the above

NGOs relied on donor funds which were limited.

As a consequence materials were inadequate. From our research it was revealed that many of the groups did not have an extensive distribution, framework and their efforts did not as a result cover the entire country. Nairobi and the adjoining environments received by far the most significant portion of voter education material. In some instances, the materials were ready too close to the election time; the voters did not therefore have ample opportunity to digest them.

The NGO community's efforts were complimented by the newspapers especially the *Daily Nation and The Standard* and magazine such as *Society, Finance, and The Nairobi Law Monthly*. These newspapers and magazines carried articles aimed at achieving voter education.

The government also sponsored television and radio advertisements urging voters to register and to vote.

The Electoral Commission also used the public media and newspapers to urge voters to register and vote. The Electoral Commission did not publish a booklet on Election Law for citizens although it developed for election officials. The Electoral Commission did adopt election materials developed by the Legal Advice Centre in poster form.

We find it significant that the Kenya Broadcasting Corporation resist the use of its services by NGOs for voter education and awareness enhancement activities. The NCKK had its TV programme "The Great Conversation" stopped after the first episode was aired. The programme aimed at discussing emerging issues of multi-party democracy. Curiously the KBC in stopping the NCKK programme forfeited payment since the NCKK and the KBC had entered into a contract for the use of KBC TV air time by the NCKK. The Legal Advice Centre TV programme on law for lay-person had been previously discontinued without proper explanation. The impression was thus created that government (public) media had been directed by an appropriate office not to expose citizens to extensive voter education and political awareness creation which went beyond appeals voters to register and to vote.

Finally in this segment, we wish to comment that both the NCSW and League of Women Voters of Kenya developed gender specific election materials separately in the form of posters and a booklet. NCSW also held several grassroot seminars on gender specific voter education in Nairobi, Embu, Nyanza, etc. Some of LEAP's posters were also specific. Despite all the above efforts in voter education, this is one area

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institutional capacity building was hopelessly inadequate. Due to the high illiteracy in the country, a more systematic and effective voter education strategy should have been developed.

If this area of capacity building is not squarely addressed from now onwards, **the** next general elections will still be heavily compromised as consequence of such omission.

3.3 monitoring and Administrative Infrastructure

As stated earlier, the National Election Monitoring Unit (NEMU) is an umbrella body consisting of four groups charged with, *inter alia*, election observance of the 1992 general elections. NEMU is comprised of,

- ◆ FIDA (Kenya Chapter);
- ◆ ICJ (Kenya Section);
- ◆ NECEP;
- ◆ PCDC.

(For a complete list of NEMU's officials see Appendix 6.) - Prior to the merging of the above four groups, they had set in motion independent election monitoring efforts, save for FIDA/ICJ who had established a common effort. In a communication dated November 26 1992(Reference No. FIDA/ICJ/1992), Grace Githu, Chairman, joint Executive Committee, FIDA/ICJ Election Monitoring and National Coordinator, NEMU, wrote that the coming together of four domestic election monitoring groups meant "the strengthening of the independent local monitoring initiative by enabling the groups constituting ,NEMU..... to complement their resources, skills and expertise."

Since the domestic monitoring groups relied significantly on donor funds, it was also convenient for donors to relate to a single rather than fragmented electoral monitoring unit. The Electoral Commission also seemed to be more comfortable with a unified domestic election monitoring unit .NEMU, which formed the major domestic election monitoring effort, was accredited as a domestic election observer unit on 6th November 1992 under regulation 23 of the Presidential and Parliamentary Elections Regulations, -1992. Upon NEMU's accreditation, three separate accreditations requested by FIDA/ICJ, NECEP and PCDC lapsed. (See Appendix 7 for NEMU's accreditation,)

Two important organs of NEMU are the Council of Elders consisting of 27 “eminent persons who are non-partisan and neutral vis-a-vis the politics of the day ... (their) main functions are overall steering of our activities, protecting and enhancing the image of NEMU and ensuring the unit’s effective and efficacious performance of its duties and responsibilities as a serious election monitoring group.” (Letter by the NEMU Co-ordinator to Hon. justice Z.R. Chesoni asking for accreditation of members of the Council of Elders.) (Appendix 19 contains press statements made by the NEMU Council of Elders.)

Another important committee of NEMU is the Opinion Polls committee whose objectives are:

- ◆ to supplement the existing efforts of independent election monitoring;
- ◆ to introduce an “opinion poll culture” in Kenya;
- ◆ to provide information on Kenya’s electoral behaviour.

NEMU’s goals were and are to:

- (a) introduce a local initiative to ultimately install and justify the need for a permanent independent electoral committee;
- (b) educate the electorate on their rights and the implications of their votes in a multi-party political system; and
- (c) facilitate the running, by a team of experts, of an election monitoring training programme.

Flowing from the above goals, NEMU’s short-term objectives

- (a) To train a cross section of Kenyan lawyers, church officials, human rights activists, students and other groups to monitor the elections.
- (b) To monitor the forthcoming elections particularly on the election day to ensure that the process is fair to all political parties and that any attempt at rigging or other forms of electoral misconduct are noted and reported.
- (c) To ensure that the voters are well versed in the correct procedures and their voting rights.

NEMU's long-term objective is: "To seek legitimacy and support for an independent election monitoring unit and to define and elaborate on its composition, structure and role in subsequent elections." some of the key tasks that NEMU has undertaken in the discharge of its goals and objectives are:

- ◆ Training of election monitoring officials for NEMU and other groups.
- ◆ Training of low level NEMU paralegals to serve as monitors, civic educators, pollwatchers and civic count-certifiers.
- ◆ Civic education.
- ◆ Communicating with the electoral commission and government officials on any aspects of the elections which needed (need) to be corrected.
- ◆ Monitoring all aspects of the electoral process.
- ◆ Liaising with other domestic and international election monitors
- ◆ who need information and assistance.
- ◆ Periodically informing members of the public through the press On the state of the electoral processes especially in relation to the existence of electoral malpractices.
- ◆ Liaising with grassroots groups interested in election
- ◆ monitoring-

From August 1992, NEMU sent about 250 election monitors in the field. These were supplemented at the beginning of December 1992 with, another 200 election monitors. A contingent of pollwatchers and count-certifiers was sent to the field close to December 29, 1992. (For a chronology of NEMU's activities see Appendix 5.) NEMU's intention was to use, its domestic status to monitor or observe the elections over a reasonable length of time in order to finally authoritatively pass judgement over the process

Apart from NEMU, there were other local groups which also engaged in monitoring the elections. These were the National Committee on the status of Women (NCSW), the National Council of Women of Kenya (NCWK) and the Bureau of Electoral Education and Research (BEERAM).

PART TWO
THE ELCTORAL PROCESS

CHAPTER 4

Political Parties: Registration, Organization and Operation

One of the basic tenets of multi-party democracy is that those who want to contest elections, or exercise the right to vote, should be free to belong to a party of their choice. This presupposes the existence of more than one party so as to facilitate the choice. If one is not satisfied with the existing political parties, one is at liberty to form another party, provided they satisfy the legal requirements. In essence, the existence of more than one party is central to this kind of democracy. Thus one measure of how free and fair elections are is the extent to which the right to form or belong to a party of one's choice and to participate in its activities is guaranteed, both in law and in practice.

The removal of Section 2 (A) of the Constitution in December 1991 was at least in theory, intended to facilitate this right. Whereas in the past a person could not belong to and participate in the activities of any party other than KANU, the door was now open for those wishing to form parties to do so, subject only to acting within the law. Thus, the Constitution, apart from generally guaranteeing the right of political association now specifically affirmed that that right included forming political parties. And those wishing to stand for elections could be nominated for that purpose by any registered party. Such registration would be facilitated by the Registrar of Societies under the Societies Act.

It is important to analyze, in the context of the information gathered during monitoring, what did happen in fact, in order to establish the extent which the words and spirit of the Constitution were honoured. It is important to establish the extent to which the Organisation and operation of the political parties contributed to the election being free and fair.

4.1 Registration

The effective existence of a political party begins with its registration as such by the Registrar of Societies. Refusal of registration, therefore, denies a "party" the opportunity to organise and operate in the political arena. Delay of registration has a similar effect for the period of delay.

Although the opposition was formally legitimated in December 1991, the actual registration of political parties was not a smooth process, ultimately giving KANU an advantage over these parties in the political process.

The first party to be registered after the repeal of the infamous Section 2 (A) was the Forum for the Restoration of Democracy (FORD). FORD had, hitherto, been a pressure group with people of varied political inclinations brought together by the desire to break the monopoly of KANU in politics. The members decided to register it as a political party when the Constitution was amended. The Registrar of Societies accepted the members' application in December 1991. The following month January 18, 1992) the Democratic Party (DP) of Kenya was registered. By the time of nominations, there were nine (9) registered parties apart KANU. These were the DP, FORD-Asili (FORD-A), FORD-Kenya Kenya National Democratic Alliance (KENDA), Kenya National Congress (KNC), Kenya Social Congress (KSC), Labour Party Democracy (LPD), Party of Independent of Candidates of Kenya (PICK) and the Social Democratic Party (SDP). FORD-A and FORD-K were born out of a split in the original FORD.

KSC was formed by George Anyona after losing his case against those who had registered a party under the name KNC.

Two events are worthy of note in respect of registration. One is the split in the original FORD. The other is the refusal to register certain parties.

FORD-A and FORD-K grew out of the original FORD following disagreements relating to, among other things, the amendment of section 13 of the FORD A Constitution. (Section 13, as it initially stood required the direct election of party officials. The effect of the amendment was to replace this with a delegates system of elections and nominations)

For some time, there existed two factions, one in Agip (the original office), headed by Oginga Odinga, and the other in Muthithi House, headed by Kenneth Matiba. Each of these factions claimed to be the real FORD.

When the Agip faction organised the National Delegate

it was boycotted by the Muthithi faction. The congress, attended on the basis of a delegates system, nevertheless, elected national officials of the party. As the wrangle between the factions intensified, the Registrar delayed the registration of these officials on the ground that consultations were going on with the Attorney-General on the legal implications of granting registration. The Muthithi faction also held its elections and forwarded its papers, for registration on October 6, 1992. The Agip faction was eventually registered as FORD-K on October 10, 1992 with the lion and green as the party symbol and colour respectively. The Muthithi faction then decided to change its name to FORD-A.

It was registered on October 15, 1992 with the "original" FORD symbols. Thus, two full-pledged parties were carved out of the original FORD, both using the two-finger salute.

During the period of wrangling within FORD, opinions were expressed -to the effect that the delay in the registration of the Agip faction officials by the registrar was a deliberate move intended to paralyse the activities of the party to the advantage of KANU. It was argued that the delay was intended to give the Muthithi faction time to organise itself, hold elections and apply for registration of its officials. This would create a crisis which would offer the Registrar and the Attorney-General the opportunity to decide whether or not to reject to register either or both. Whatever the intentions of the Registrar were, the delay had precisely the claimed effect. Confusion reigned in the activities of FORD until the two factions were eventually registered. During the period of delay, the party was essentially paralysed and could not go ahead with the Organisation and plans necessary to make a party strong and effective. Besides, the membership of the party was held in limbo, a situation which is not useful for any party-. Thus, the overall effect of the Registrar's actions was to weaken the party, whether or not this was the intended effect. In the meantime, KANU had no barriers put in its way since it had no problems of registration to worry over. Seeing that FORD constituted, at that time, the biggest challenge to KANU, it is obvious that this state of affairs was of immense advantage to KANU.

Several applications for registration of political parties were rejected by the Registrar. The blanket ground used by the Registrar was to the effect that the interests of peace, welfare or good order would suffer prejudice if the applicant was registered as a party.

The parties denied registration by the time of nominations included the Green African Party (GAP), the

Green Party (GP), the Islamic Party

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of Kenya (IPK) (with its bastion at the Coast), the Kenya Nationalist Peoples Democratic Party (KNPDP), the Party of the Proletariat and Peasants (KPP), and the Democratic Movement (DEMO) of Ngonyo wa Gakonyo

The last of these was denied registration on the peculiar ground that it was a religious, and not a political, Organisation. Interestingly Ngonyo wa Gakonyo's Tent of the Living God (which transformed to DEMO) had, been previously denied registration as a church on the ground that it was a political and not a religious Organisation! And the GAP was denied registration on the grounds of security as well as the fact that some of its officials were already active in other political parties (like DP, KSC).

Both the IPK and the DEMO made applications to the High Court challenging the Registrar's decision.

The DEMO suit was later withdrawn by Ngonyo after an alleged meeting with the KANU president. The IPK suit is still pending in court. It is discussed in more detail later on in the report.

The issue of refusal to register a political party is, obviously, serious and sensitive one. From a legal point of view the power to the Registrar are discretionary: the law provides only very broad reasons which the Registrar can use to deny registration. And the decision is based on "his/her opinion" as to whether or not an application falls within the stated grounds for rejection. There are no specific criteria which can be used to specifically fetter the discretion of the Registrar.

The effect of this is that the Registrar does, in fact, have the opportunity to misuse the discretion by applying the blanket ground for refusal of registration, without needing to state the precise reasons leading him/her to the opinion. This is even more sinister when placed against the fact that the Registrar is an appointee of the incumbent government

Of significance, as, well, is the political effect of the Registrar's refusal to register a party. As we argued earlier, the theoretical parameters provided by a pluralist constitutional order demand that the citizens should have the right to form as many political parties as they wish.

Each party will then attempt to endear itself to its perceived constituency in order to become strong and effective, and be able to form from the government or participate in parliament. A refusal by the register to register a particular party denies the promoters and the prospective members the opportunity to participate in the electoral process in the manner they would wish to. Such denial is, therefore, inimical to the practice of pluralist democracy, and to the interests of those wishing to become members of

the party

4.2 Organisation and Operation of the Political Parties

Of the existing political parties, KANU was the oldest and most well established by the time elections neared. It has an organisational structure begins at the national, and goes all the way down to the location level, is highly hierarchical, with the national officials having overall control of all party decisions and activities, and President Moi always having the last word. Besides, KANU had developed a system whereby public servants found it difficult to distinguish between governmental and party loyalties

Indeed, this particular fact was not lost to political observers, both in the opposition and elsewhere. And the KANU leadership, as we will see in the next section, did not lose the opportunity to remind public servants that they were appointed by the KANU government, and must, be loyal to it. With little or no experience in serving the public in multi-party situations, most, especially senior civil servants who mattered in terms of decision-making, assumed that this meant that they must KANU sing the KANU tune if they hoped to continue in their positions.

In the run-up to the elections, KANU facilitated the formation of numerous support groups whose basic objective was to help it retain power. The most prominent of these was the "Youth for KANU '92" (YK '92) and operation "Moi Wins" (OMW). The leaders of these groups displayed obvious wealth whose source was the subject of much debate. But they openly stated they would use all the available means, including bribery or (pouring money) to help Moi and KANU retain power.

'KANU's manifesto concentrated more on what it considered to be its unprecedented economic, social and political achievements. It touted the progress' and "success" which had allegedly been achieved under KANU leadership, and on the basis of these, promised a better future. It obviously did not address the issues of deterioration of the economy systematization of political repression which had, indeed, engendered the national and international pressure which forced it to accept pluralism

Finally it is worthy of note that those who were in charge of the legal and the operational supervision of the electoral process (the Attorney the Electoral Commission and the judges of the High Court and

Court of Appeal) were basically KANU Government appointees

Thus, questions of impartiality were often, and legitimated, since KANU had not shown in the past that it was able to delink itself from the government.

Before its rapture, FORD constituted the most serious challenge to KANU. Born in August 1991 on the crest of popular clamour for the improvement of the economy and democratization of political life, FORD captured the imagination of many Kenyans all over the country. Indeed, its first public rally on January 18, 1992 at Kamukunji grounds attracted an estimated half-a-million people, notwithstanding the fact that Kenya Broadcasting Corporation (KBC) had, the previous night, transmitted a ten-minute highly critical statement against the party.

Immediately after the registration of the party, a disagreement arose over the formation of the national committee. Martin Shikuku objected to the inclusion of a number of younger members of FORD—the so-called “Young Turks”—in the committee. After several consultations, this dispute was resolved. Later, Shikuku admitted having held a meeting with President. He was suspended as interim secretary, since the private meeting had not been sanctioned by the committee.

The return of Kenneth Matiba from the United Kingdom did not help matters. Matiba announced that he would challenge Odinga for nomination as the party’s presidential candidate. Further disputes began to arise, chief among them being:

- (a) which was the party office, Agip House or Muthithi House
- (b) who was entitled to print the party membership cards;
- (c) whether party elections should be by direct vote (as required by Section 13 of the party constitution), or via delegates

The first of these was never resolved, but ceased to be a problem after the split. In respect of the second, it was claimed that Matiba had cards printed without seeking the authority of the party headquarters, assumed by the Agip faction to be in Agip House. Again, the issue eventually fizzled out owing to the visibly widening rift.

In respect of the last of these, Odinga argued for a delegates system, saying that the other one was too expensive for FORD to carry out. He was supported in this stand by the Agip faction, especially the “Young Turks”. The Matiba/Shikuku faction argued that the delegates system was undemocratic. The Agip faction went ahead and had Section 13

amended, and then held a congress on the basis of a delegates system. These elections were rejected by the Muthithi faction. And they probably constituted the most damaging event in the Organisation and operation of the party. The split was now near-permanent. The death of Masinde Muliro, then the only visible bridge between the two factions, apparently sealed the split. All attempts made to keep the party together failed. The two factions separately organised themselves, recruiting members, electing officials and eventually getting themselves registered as a party, as already discussed. Thus FORD-A and FORD-K were born. Like KANU, both FORDs had formal structures which began from the national and went down to the local level. However, unlike KANU'S, their structures had not penetrated the social life of Kenyans. These structure being established on the ground amid internal dissension and disagreement, on the one hand, and external barriers placed by KANU governmental administration on the other.

Thus, their effectiveness in recruiting members and organising and selling their respective party policies was much less than KANU's under circumstances.

The FORD-A manifesto largely centred on Matiba's thoughts and aspirations for Kenyans. It had little rigour in analysis of the historical and contemporary situation in Kenya, and in articulating the basic problems and how they would be tackled by the party. Compared to the other manifestos, it was fairly thin in substance.

FORD-K manifesto was probably the most comprehensive of the lot. Apart from analyzing the past and identifying the problems mismanagement had caused in economic and political life, it made precise suggestions as to how the party intended to tackle these problems.

Both parties experienced numerous problems in establishing part branch offices, and in campaigning, as we demonstrate in a later chapter. However, their nominations were not free of complaints of rigging and other unfair electoral practices. It is also worthy to note that FORD-A lost a large number of its committee members to KNC owing to wrangles the party.

DP was registered in January, 1992. Its Interim Chairman was Mwai Kibaki, a former Vice-President and, more recently, Minister for Health who had resigned in December 1991. When the party was formed, there were claims that it was "KANU number two", and that it intended, to cater for the interests of wealthy Kikuyu businessmen. But DP met these claims with a general seriousness in Organisation and dealing

with issues. Its constitution, for example, was considered a well-thought, out document, with a section that more thoroughly addressed women s issues. Its overall structure was not very different from that of the other parties, except for a more prominent position given to women.

The DP manifesto dwelt particularly on developments in post-colonial Kenya. It characterised the period as one of deterioration and lost oppotunities in most sectors, but especially in the economic one. It characterised the period as one of the detereoration and lost opportunities in most sector,but especially in the economic one. It decried thepolitics of tribalism. The elections, it argued, offered Kenyans the opportunity to reverse the downward trend and recreate a vibrant economy.And the party’s campaign issues revolved around the economic down turn,reorganisation of failing parastatal corporations, agricultural policy,repression, health and education systems and corruption.

Compared to FORD and KANU, the DP seemed to have suffered little or no dissension within its ranks.It should, however, be noted thatthe party did not hold any elections prior to the General Elections. And like the other parties, its nomination process was marred by claims of rigging and lack of transparency.

The other parties, apart from these “big four”, were KNC, KSC, KENDA, SDP, LPD and PICK. They had a rather low-key existence as parties appeared more in the name of their chairmen or spokesmen. But their existence did not introduce a variety in Kenyan politics which had not been experienced before

. Examples of this include:

- (a) KNC having a wrangle with George Anyona over the ownership” of the name (which rangwe Anyona lost; he was forced to form KSC);
- (b) KNC being taken over by four defectors from FORD-A)Titus Mbathi, Charles Rubia, Chibule wa Tsuma and Kin Nyoike);
- (c) The SDP being abandoned by its founder-chairman Johnstone Makau (who “redefected” to KANU); and
- (d) Kenya having eight presidential candidates in the first multi- party elections.

Although a lot of effort was expended in attempting to create some kind of alliance among the opposition parties, there was no success by the time of the elections. Co-operation was minimal; each party hoped it couldmake an impact on its own. This meant that there was barely any united

platform against KANU. So, by election time, not only did we have a KANU which was determined to retain power at any cost, but we also had an opposition which did not see any benefit in creating an alliance, eg fielding a single presidential candidate.

CHAPTER 5

The Registration of Voters

The question of registration of voters following the repeal of section 2 (A) of the Constitution instantly became the centre of focus for the newly registered parties, mainly the original Forum for Restoration of the Democracy (FORD) and the Democratic Party of Kenya. The public speeches made by the officials of these parties reflected their initial concern about the possible disenfranchisement of millions of young Kenyans who had become eligible to vote but could not be registered as such because they did not have national identity cards (IDs). The opposition parties demanded that those without ID cards be immediately, and expeditiously, issued with the said cards. Others suggested that other credible identification methods be resorted to *in lieu* of the ID cards to facilitate the voter registration exercise. There is nothing to show that these demands were ever heeded as neither the Electoral Commission nor the government responded to the opposition parties' suggestions. Suggestions credibility of the Electoral Commission itself had come under vigorous attack by opposition party leaders, and especially the personal integrity of the Chairman of the Commission, Mr. Justice Chesoni, and the manner in which the Electoral Commission had been constituted.

No wonder then that when the registration exercise began on the sixth day of June 1992, it was immediately hit by intense controversy among the actors.

The two opposition parties called for the boycott of the exercise citing their earlier demands and making new claims about the ruling party KANU's plan to rig the elections through the manipulation of the electoral register.

Apart from official denials of these claims nothing tangible was done to restore the confidence of these parties in the ongoing registration. It is to be noted that the official registration period had been fixed to last one month from 8th June, 1992, a period that was considered too short by many Kenyans. The President made a rather belated irresponse of the demands by waiving with immediate effect the one hundred shilling fee requirement for one to acquire an ID. This move could have done

little in terms of enabling young Kenyans without IDs to acquire them ,within the thirty-day limit as even under ordinary circumstances an applicant would have to wait for a minimum of two months to,acquire a new ID.The procedures for replacement of a lost or worn-outcard are -even more cumbersome. Indeed there was no visible acceleration of the issuance of the cards.

No figures showing the number of young Kenyans who had acquired these cards to enable them to register as voters were ever released. The bottom line of this entire scenario therefore is that no one knows just how many Kenyans did not vote for lack of identification cards. The estimates have been variously put at three million. The call for the boycott of registration by the opposition parties and the Church affected the pace of the exercise with some centres registering as few as ten people in a day. This proved that the concerns expressed by those who called for the boycott were largely shared by a majority of Kenyans.

In the meantime, many adverse allegations and reports about the possible manipulation of the voter registration were made. The impartiality -Electoral Commission constantly came under serious attack.

Reports were made whereby many eligible voters were denied registration due to their not having identification cards and other voter registration facilities. Reports were also received about the bribery of voters :registration of voters to certain “strategic” places. Other reports were received about the administration’s unwillingness or inability to issue ID cards to hundreds of potential voters.

More damning were reports to the effect that hundreds of youths intending to acquire IDs were turned away by the local administration if perceived to be sympathetic to the opposition. There were claims reported about the possible registration of Somali refugees. Then there were inexplicable changes of registration centres to the disadvantage of those intending to register. Another potent claim about the registration exerciseconcerned the deliberate falsification of voters’ cards by:

- (a) entering on the cards wrong elector’s numbers;
- (b) deleting the entitlement to vote for a presidential candidate;
- (c) inaccurate or false entry of elector’s names;
- (d) deliberate falsification of the elector’s ID card numbers;
- (e) registration of fictitious voters.

Other claims were made to the effect that provincial administration

personnel were in charge of the registration of voters. This was a major cause for worry since the provincial administration had been identified in previous single party elections as not only the architects but also the instruments of rigging. There was ongoing violence which permeated the entire exercise. Many supporters of opposition parties were subjected to diverse acts of violence by people who were never apprehended by the government.

Deserving particular mention is the death of three Kenyans who were killed on the 10th day of June 1992 by people said to be warriors at the Enosupukia registration centres. Ten buildings were razed to the ground during this despicable act of barbarism. Trouble is said to have started after alleged warriors ganged up and vowed not to allow any Kikuyu to register as a voter. This incident occurred after a senior cabinet minister had ordered non-Maasai in the area to join the Maasai in voting for KANU or quit the area.

Notwithstanding calls from a cross-section of Kenyans for the arrest of the MP, no prosecution or reappraisal ever came from the authorities. It is also worth noting that the registration of voters started just when hundreds of Kenyans had been killed and thousands displaced from their homes following the politically instigated ethnic clashes in Rift Valley and Western provinces. After the killing and destruction had abated, there were calls made for the government to resettle those that had been driven away from their homes so that they register themselves as voters. No definitive response to these calls ever came from the authorities. Nobody for sure knows how many people failed to register due to the clashes. On polling day, the problem for these unfortunate Kenyans would resurface again.

Increasingly under pressure from foreign missions operating within Kenya and apparently jolted by the statement by the FIDA/ICJ and later the general assembly of the NCKK urging Kenyans to register as voters and not very sure whether the Electoral Commission would extend the registration period or not, the opposition parties finally called off the on 2nd July, 1992 and urged Kenyans to register.

Registration immediately picked up with large numbers of potential voters turning out to register while thousands made frantic effort to acquire identification cards. Many applicants for the cards complained bitterly about their failed efforts to acquire them.

As the deadline neared, many pressure groups and organisations called upon upon the Electoral Commission to extend the registration ranging from three weeks to two months to enable thousands of Kenyans

to participate in the elections.

The Commission had maintained an eerie silence about this clamour for extension of time, save for one moment when in a rare exercise of the chairman publicly cautioned the KANU Secretary General to desist from making statements that amounted to usurpation of the Commission powers. As pressure mounted and large crowds turned up to register, the Electoral Commission finally buckled and extended the registration period but only for ten days. This extension was not considered satisfactory as many more demands were made for at least one month's extension. In the meantime protests of frustration by those who had failed to get identification cards continued to echo around the country. The Electoral commission then extended the registration period for a further three days. That was to be the last extension. Only an estimated 75% of the eligible voters had registered. (See Appendix 2 for voter registration numbers by administrative province.) No sooner had the registration exercise been closed than a new disturbing dimension emerged. There were claims of fake voters' cards being printed. The opposition parties pointed an accusing finger at the KANU government while the latter accused the opposition, with the President on an occasion ordering a crackdown on members of the opposition for the printing of fake cards.

The other serious allegation reported in the daily press was that many people continued to register as voters in certain areas long after the exercise had been officially closed. This claim was to persist for a long time, disappearing only in the final days to the elections. There were also reports of voter card buying and destruction in different parts of the country. These reports were to persist for a long time until the Chairman of the Electoral Commission made a public statement to the effect that voter card buying and destruction would not affect the right to vote by those concerned. If this statement had been made earlier, then the practice of buying voter cards would have been nipped in the bud.

After the close of the registration exercise, the registers were opened for inspection by members of the public as from the 15th to 29th September. Few people, however, appear to have known about the opportunity and right to inspect the registers. There was very scanty information released to members of the public regarding this very important stage in the preparation of the electoral registers. This information was virtually cut off from the electorate in rural areas notwithstanding the fact that the Electoral commission had at its disposal such vital information organs as the radio.

The commission only agreed to avail the master roll of the voters register in the month of December 1992 and at the exorbitant price of 600,000.

The FIDA/ICJ election monitoring team embarked upon the task of register scrutiny in certain parts of the country. The team reported lack of co-operation and in certain instances outright hostility from those in charge of the registers. In Dagoretti Constituency, for example, members of the monitoring team were openly intimidated and abused by the registration and administration officials in the area.

In the stations where the monitors managed to inspect the registers, a number of anomalies and irregularities were noticed.

One interesting irregularity which appeared to have been deliberately introduced in the register was that of *omitted or skipped numbers*. One could find that in a register after an entry of say 23, the next entry would be 34, followed by 42 and so forth. The inflation of the numbers of voters in the registers was also manifest in numbers which appeared in the registers but did not bear any corresponding names or identity numbers. In some cases the same number, say 09, bore many names under it such names and ID numbers had to be qualified by adding letters such as (a), (b) or (c).

This meant that if the registers bore a total of 1,000 entries and some 20 numbers were in (a), (b) and (c), the actual number that regist 1,060.

One of the most astonishing irregularities was the omission of some names altogether from the voter registers. For example in unit 23 of Starehe constituency, while the final tally of the registers indicated that 7,311 voters had registered, inspection by the monitors revealed that only 6,511 voters had actually registered. There were 38 numbers which had been duplicated, 119 were skipped while 433 were just blank numbers with neither names nor identity numbers. 297 numbers were missing from typed files.

Appendix 3 reveals that Kenyans who were between 15 and 18 years according to the interim 1989 Population Census results were not, on the whole, registered as voters because they had not been given ID cards by 1992. The justification for the claim that 3 million young voters were not registered to vote flows from the above fact.

The 3 million number of unregistered youths is increased by the number of displaced persons in Rift Valley, Western and Nyanza provinces who could not register to vote or could not vote even if registered to the prevalence of "ethnic clashes".

In inclusion, we would like to assert that the registration exercise as a whole was conducted in an environment of controversy, suspicion and bitterness. It is instructive to note that despite the number of irregularities brought to the attention of the Electoral Commission monitors and representatives of the various opposition parties, the commission did not offer any credible explanation as to what had occasioned such anomalies and what steps would be taken to rectify them. (see appendix 8 on interferences with a free and fair election and other exercises during voter registration, and Appendix 21 for a further analysis of the registration data.)

CHAPTER 6

Party Nominations

Eight political parties, i.e. the Kenya African National Union(KANU), Forum for the Restoration of Democracy (Asili)(FORD-A,) (Forum for the Restoration of Democracy (Kenya) (FORD-K), the Democratic Party of Kenya,(DP) , the Kenya National Congress (KNC), the Congress (KSC), the Kenya National Democratic Alliance (KENDA) and the Party of Independent Candidates of Kenya (PICK) participated in the parliamentary and civic elections while KANU, FORD-A, FORD-K,DP, : KSC, KENDA, KNC and PICK participated also in presidential elections. Eight parties then were involved in party nominations for parliamentary and civic elections whereas five participated in presidential nominations. Earlier, we made the point that party nominations were, through Act No. 1 of 1992, made the exclusive province of each that each political party. This meant that each political party would bear the expenses of organising the preliminary elections. Previously the state had borne the expense of this first stage of elections. Given the new arrangement, the newer and poorer political parties could not organise a party nomination exercise covering the entire country and this may, in part, account for the reason why especially KNC, KSC, KENDA and PICK had relatively few parliamentary and civic candidates. In many instances, aspiring candidates who have been rejected by the main parties individually sought the smaller parties for nominations.

The party nomination exercise ran into two technical legal problems. According to the law only the Electoral Commission is empowered to give a time span within which party nominations should occur . Such time span begins to run after a gazette notice for the purpose is published, the period between the publication of the notice and the party nomination being not *less than 21 days* . As early as October 1992, KANU Headquarters instructed its district branches to embark on the party nomination exercise. Other political parties followed suit. Technically then the process of nomination was begun before the Electoral Commission had given the go ahead. That part of the process which began before the Electoral commission had published the appropriate gazette notice could, in strict law, be held

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to be null and void..

When the Electoral Commission published the first gazette notice giving a period of 8 days within which to “complete” party nominations, it was trying to legalize nomination activity which had occurred before the notice. It is our contention that in strict law, the notice could not save “nominations” which had occurred in the absence of a gazette notice. Perhaps where parties had concluded nominations before the gazette notice was published, it was necessary for the nomination results to be adopted afresh in a meeting of the relevant party organ. In our view, an individual who had been excluded in a party nomination prior to the gazette notice, or even an individual who had not vied for nomination, could successfully challenge such party nominations and have them reopened..

The second technical problem arose as a result of the extension of the party nomination exercise owing to the successful challenge of the Attorney General’s correction” of Act No. I of 1992. The political parties had rushed through nominations in the period given initially by the Electoral Commission.

This was an illegal, improper period. When the proper period was given, this is the time within which political parties should have repeated the nominations or at least adopted the prior nominations. Technically, then, many party nominations could have been exposed to legal challenge as their validity owing to the problems created by the Attorney-General and the Electoral Commission. Further, the confusion surrounding the proper period of party nominations made some political parties not to net the candidates that they could have if confusion did not surround this period. On the positive side, the “extension” of nomination time allowed the new parties to identify more candidates, especially those who had not been adopted by KANU. It appears that KANU wished to conduct early party nomination so that those incumbent MPs who held government positions and who did not opt to vie for KANU nomination would be discarded from government and suitable replacement sought in good time. This KANU strategy could have prevented some KANU parliamentarians who wished to defect after parliament was dissolved from defecting because they were forced to make up their minds in advance.

It has to be pointed out that it was not proper, and, perhaps, not legal, to authorize party nominations in advance of the dissolution of parliament.

Due to the unpreparedness within the parties and the “confusion” created by the first party nomination notice,

party nominations did not

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proceed as smoothly as they could have for the following reasons

- The political parties did not always stick to their constitutionally laid down machinery for nomination. Often such machinerye.g. nomination by election through party rank and **file,** proved long drawn and expensive. Often party leadership chose or hand picked candidates.
- After regular nomination, some candidates were replaced by newcomer candidates favoured by the party leadership. FORD-K, for example, found resistance when they tried to replace duly nominated candidates who were thought to be plants other parties.
- Controversy about the accepted manner of party nomination was responsible, in part, for the split in the origin FORD. Two systems-direct election by party members and delegates voting-were preferred by two sections of the party. Due to the lack of consensus on this issue, FORD broke into two parties.
- The organization of party nomination elections and especially the actual polling was, in many ways, flawed. Proper polling materials were not readily available, i.e. ballot boxes and ballot papers. Venues were often changed at short notice or none at all.
- Many Kenyans secured several party cards. As a result they could vote in party nominations of more than one candidate. Often, aspiring candidates bought party cards and distributed them to any willing person who would then vote for the candidate.
- A large percentage of aspiring candidates moved from one party to the other with relative ease. For them, party loyalty was sub-sidiary to getting party nomination.

Although we have raised the above general and some specific concerns relating to the party nomination exercise, on the whole the aspiring candidates and the political parties were satisfied with the manner in which the exercise was conducted. This stage of the election did not, despite some of the anomalies we have pointed out, attract a lot of criticism by those concerned. Perhaps the main reason for this reality was

that **the political** parties had substantial control over this phase of the election.

CHAPTER 7

Nominations Before Returning Officers

Nomination of parliamentary and civic candidates before returning officers took place on the 9th of December 1992. Earlier the chairman of the Electoral Commission had publicly acknowledged the possibility of violence during nominations. He had consequently assured members of that security would be beefed up to ensure that no candidate would be physically prevented from presenting his/her nomination papers. This exercise was supposed to take one day.

The following day, Kenyans were treated in the press to tales of some the most bizarre occurrences of violence that had resulted in the failure of a number of candidates to present their nomination papers. There were reports of kidnappings, blockades, actual beatings, abductions and snatchings of nomination documents from agents of certain candidates. In this whole scenario, the security apparatus appeared helpless. No one was reported arrested or charged before a court of law for this perpetration of violence. Three incidents are worthy of particular mention. In Turkana central, an agent of a DP aspirant was physically prevented from presenting nomination papers by an administration policeman who snatched his briefcase in the presence of regular policemen. The briefcase was then passed over to a government Land-Rover which sped off while the police cocked their guns and pointed them at the agent.

The name of the policeman and the registration numbers of the government were well documented in the daily press. The police officer who committed this offence against democracy in Kenya was never charged in any court of law. He has since been promoted to a higher rank.

In Baringo North, agents of a DP candidate were severely beaten, and had nomination papers snatched from them, thus preventing the candidate from availing himself of the opportunity to contest the general elections. A few days thereafter, his home was razed down by arsonists who were never apprehended.

AFORD Asili candidate for Samia constituency (now deceased) was

reported to have been kidnapped at a police roadlock near Marigat Rift Valley while travelling to present his nomination papers. He never presented the said papers.

The final picture which emerged from these acts of violence was as follows:

- That of all 188 candidates fielded by KANU, none was a victim of nomination violence; consequently the ruling party fielded all its candidates. The three main opposition parties, i.e. FORD Kenya, FORD Asili and the Democratic Party of Kenya were variously affected by the violence, especially in many areas of the Rift Valley Province which had constantly been described as a KANU zone by overzealous members of the party.
- That eleven parliamentary seats were declared as have been won by KANU parliamentary candidates unopposed. The vice-President was later on a national holiday to refer gleefully to this fact as an early lead by KANU in the forthcoming general elections. (See Appendix 11 for a list of KANU's unopposed candidates.)

7.1 Response by the Electoral Commission to the Nomination Violence

The Commission's response to the violence was a most puzzling one. The chairman of the Commission used stronger language than hitherto in his condemnation of the violence. Yet in the same vein he declared that the Commission could do nothing about those candidates who failed to get nominated due to the acts of thuggery and gangsterism. He further stated that those aggrieved could only seek redress from courts of law.

This buck-passing caught many Kenyans by surprise since, as it was immediately argued, the Commission had the constitutional mandate to conduct elections in their entirety. It is the Commission that had constituted the various positions of returning officers country-wide. Those officers remained accountable to the Commission throughout the electioneering period. The Commission could therefore have experienced no legal difficulties in ordering the relevant returning officers to accept the nomination papers of those who had complained. When public press mounted the Chairman announced that the Commission would sit to listen to the

grievances of those candidates who had been prevented from presenting their nomination papers, something it had said it lacked powers to do. The complaints body which was consequently set up to undertake this task ordered the returning officers of the following constituencies to receive nomination papers from the following candidates:

- (i) Turkana South: Eliud Kerio Longacha (DP);
- (ii) Mumias: David Muyando (FORD-K);
- (iii) Wajir East: Abdi S. Mohamed (KNC); and Hamad Hussein (FORD-A);
- (iv) Kangundo: A.M. Mutuku (PICK).

The other candidates were then advised to seek redress from the courts.

7.2 Response by the Courts

The High Court, faced with several suits and applications for restraining orders, did not handle the matters in a uniform and final manner. Perhaps influenced by a recent decision which had been handed down following a suit seeking to bar KANU from nominating President Moi as its presidential candidate on grounds that he had already served for two terms, a section of the High Court ruled that grievances emanating from the nomination would only be appropriately brought to court by way of an election petition, i.e. after the elections. Another arm of the High Court handed down orders restraining the Electoral Commission from treating as final nominations of all unopposed candidates.

It was only after these matters found their way to the Court of Appeal that some certainty was realised. The Court of Appeal rejected the argument that a grievance occasioned by anomalies in the nomination process could only be redressed after the elections by way of petition. It ordered the returning officers not to hold elections in the affected areas.

The chairman of the Electoral Commission once again made a startling statement to the effect that even after a court of law had made a decision regarding the declaration or otherwise of a candidate as having been nominated or elected, the final decision lay with the returning officer. Apparently encouraged by this statement, some returning officers went ahead to hold parliamentary elections in constituencies where the Court of Appeal had said they should not.

This action on their part was blatantly contemptuous of the highest court in the land. Even if their argument was that they had not been served the Court's order, the Chairman of the Commission, himself a retired judge of the Court of Appeal, should have communicated this information to the returning officers. This was all the more necessary given the public importance of the issues in question. Thus, the nomination problems were never actually resolved up to the election day and after.

CHAPTER 8

campaigning

Campaigning is an integral part of any electoral process. It is through it that the candidates sell their ideas—in terms of philosophy and programmes for better future—to the electorate. It is through campaigns that the political parties “advertise” themselves so that the electorate may know what each party stands for, and why it is better than the next party. A ‘campaign process that is biased or that allows advantage for some of the candidates or parties to the detriment of others certainly makes the electoral process “unfree and unfair”’.

From a legal point of view, a campaign is supposed to begin after the nominations supervised by the Electoral Commission. The justification here is that it is only after such nominations that one can speak of being a president, parliamentary or civic candidate. Obviously, there is a lot of canvassing prior to and during party nominations which could easily take the form of broad campaigns. The distinctions can be blurred in some situations.

A most peculiar aspect of the December 29, 1992 elections is that there really was no “campaign period” as such in practical terms. It would, therefore, be difficult to identify precisely at what time the campaigning began. Immediately after the removal of Section 2 (A) of the Constitution, KANU continued campaigning against multi-partyism and predicted violence and the formation of “tribal” parties as its most immediate effects. Those in the opposition continued harping on the failure of KANU *in all fields* of social life. After the opposition movement legally registered opposition parties, it continued with its campaign to discredit KANU; KANU on its part carried on with its earlier attacks against opposition figures, who were now members of official opposition parties. These exchanges continued right up to election time and even thereafter.

The meaning of this is that one would not properly capture the campaign process if one limited the period to the official one. Indeed very many things had already happened prior to the official campaign which had serious implications for the conduct of the elections. As such, the

description given below covers the entire period encompassed monitoring reports.

The basic objective of looking at the campaign process is to identify elements within it which might have created a bias, and therefore, made the elections “unfree and unfair” in their essential character.

8.1 Broad Campaigning Methods

Several broad methods were adopted by the various parties and their candidates in the campaign process. Only KANU, FORD-K and DP extensively used the electronic media, especially towards the end of the campaign period, by placing special advertisements in favour of their party and their presidential candidates. Use was also made of the traditional print media by these parties as well as FORD-A. This was again done through placement of advertisements. Probably due to the high expenses, the other parties did not, or were unable to, use these two media to carry out their campaigns. In some situations, these media were inadvertently used for publicizing campaign information via press conferences.

The most common forms of campaigns revolved around directly addressing the public. This was done in campaign meeting or rallies. Such rallies could be recorded and reported by the print and electronic media, thus expanding their campaign value. But their effectiveness depended on a number of things, including applying for and obtaining a licence for a rally; provision of security by the government; extent of circulation of information; and extent and nature of coverage by the electronic media.

A connected method of campaign was the so-called “meet the people” tour. This was done mainly by the presidential candidates of FORD-A, FORD-K and DP in many parts of the country with varying degrees of success. Again, some of these tours enjoyed extensive coverage, even as others suffered black-outs, and many aborted due to barriers erected by the government. Obviously, such tours required **the kind** of finances which only the fairly wealthy could afford.

Posters were also a fairly common form of campaigning. These, simply carried the photograph and name of the candidate, the candidate’s constituency, and a request for votes. Posters seemed to have offered a fairly convenient avenue for campaigning. But, again, the costs were prohibitive for those who depended on the smaller parties.

Other less common and minor methods included door-to-door campaigns through vehicle-mounted public address systems, and banners hang in convenient public places.

8.2 The Realities of the Campaign Process

A myriad of negative elements of the campaign process were disclosed by the monitoring process. The summary given below attempts to classify the same and give illustrative examples in respect of each.

In general, campaigning took place in a context of unequal opportunities for the political parties. The ruling party, KANU, enjoyed unmatched and undue advantage over the opposition parties arising from: its close links with the civil service and provincial administration and other state organs/bodies; its control and indiscriminate use of public resources; unfettered access to the broadcasting media; hold on the Electoral Commission, and the Attorney-General's office; diffusion of state and party functions; and its use of campaign groups and tactics of intimidation, harassment and even violence.

The total effect of all this was that as the elections neared, the opposition increasingly needed a near-miracle to dislodge KANU.

8.3 Media Coverage

8.3.1 Broadcast Media

Kenya has two broadcast media houses. The Kenya Television Network (KTN) is a private media house which provides only television (TV) broad programmes from both Cable News Network (CNN) and other sources. Its audience coverage is very low for two reasons: very few Kenyans own TV sets (a systematic weakness which KTN shares with KBC); and KTN broadcasts have a geographical range that is largely limited to Nairobi and its environs. Also a number of households with TV sets do not tune into the KTN frequency for one reason or another.

The Kenya Broadcasting Corporation (KBC) is a public-funded state corporation with both TV and radio broadcasts. The latter are in both Kiswahili and English, and various Kenyan languages.

Monitoring of the broadcast by the two houses indicate a very high

level of bias in favor of KANU. According to monitoring reports covering **five** days in October 1992 (22nd to 26th), KTN broadcasts demonstrated a one-to-four bias against the opposition parties and in favor of KANU; for every one report of opposition activities, there were four of KANU activities. Besides, the quality of information and footage reflect more positive attitude towards KANU. For example, opposition stories mostly reader ones, whereas KANU stories also depicted actual footage, irrespective of their geographical origin. In another example, actual footage showing an estimated crowd of thousands of supporters attending a FORD-K rally was described as showing hundreds, creating the impression that the party was less popular. And the station very often broadcast KANU press conferences denouncing the opposition.

The public-owned KBC was even more biased in favour of KANU in its reporting of events taking place throughout the country. In general, both TV and radio stations loudly and persistently broadcast news, events and reports to KANU's advantage. The stations engaged in open and blatant campaigns in favour of KANU, thus becoming some of KANU's major campaign fora. Presidential functions and activities of KANU groups and personalities were covered live and extensively. In total, the portrayed KANU as a formidable party, a people's party which had unprecedented success in all aspects of the socio-economic life of Kenyans and which had in President Moi an immortal and indispensability leader

Comparatively, opposition parties and leaders were portrayed as tribal, trivial and of little substance that could be of use to Kenyans. Squabbles were highlighted, and statements made by the opposition given meetings which were patently negative. Opposition rallies were either attended by a small number of people, or were marked by unruly behaviour and even violence according to these broadcasts.

Monitoring done in August, September and October 1992 indicated a very strong pro-KANU bias. The monitoring reports showed that KBC

- allocated disproportionately much more time for reporting political news and information relating to KANU than other political party;
- at times allocated much more air-time to KANU than to all the opposition parties combined;
- concentrated on favorable news and information with respect to KANU, and highlighted news and information which tended to put opposition parties in an unfavorable light

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the entire country.

It is depended upon for news and general information by the majority of the people who have no access to TV and the print media; many of these people are illiterate, and some of them are politic unaware. The power of persuasion of this media is, therefore, tremendous. It is the effects of the exercise of this power which KANU enjoyed, There is no doubt that KANU had immense advantage over the other (opposition) parties arising from this power. Although the DP and FORD-K used the KBC to broadcast paid advertisements, this could hardly even begin to reverse the impact created by the “free broadcast” services accorded KANU, not to mention the fact that KANU itself similar but more elaborate advertisements. We have no doubt that this state of affairs regarding the campaigning adversely affected the elections. (Appendix 9 analyses public media coverage of political party activities.)

8.3.2 The Print Media

At the moment there is no publicly-owned print media house. The most prominent locally-published newspapers are the *Nation* (owned by the Aga Khan), the *Standard* (owned by the Lonrho group) and the Kenya Times (which is Kanu-owned).

The Nation and Kenya Times have sister dailies in Kiswahili under the names of *Taiifa Leo and Kenya Leo*, respectively. Beside these, there are a number of privately-owned periodic magazines, including *Finance, Society, Weekly Review and Nairobi Law Monthly*.

During the period of review, press coverage mainly concentrated on the presidential and parliamentary elections. Civic elections were largely ignored, or given treatment only obliquely when focusing on the other two. Coverage in the press was impressively extensive. This was expected.

After all, apart from the so-called “tribal clashes” and the state of the economy, perhaps nothing else held the attention of Kenyans more than the elections as a whole. The extent of this coverage can be gauged by taking an example of one day a week before the elections. On this day the *Nation* had approximately 459 inches of head news, photographs and letters, and over four (4) pages of related advertising. The Kenya Times had approximately 345 column inches of headline news and photos, one page listing candidates, just over two pages of advertising, and four (4) page “Kanu Briefs” supplement. The *Standard* had 443 column inches

of headline news, photographs and letters, and nearly four (4) pages of related advertising. Overall, there was a clear bias towards KANU on the part of the Kenya Times. Its reports on the opposition activities were generally negative: it highlighted events in the opposition camps) and, sometimes, even distorted the same. For example, on the day mentioned above, its lead story screamed the headline "DP men beat chief to death", claiming that three DP youthwingers were responsible for killing a chief in an incident that took place the day after a DP rally. The Nation had the story on its third page under the headline: "Irate villagers kill chief, stab 2 in vicious attack".

The Kenya Times sister paper had eight (8) out of its sixteen (16) pages given to the Swahili version of the previous Saturday's "KANU briefs" supplement on the life of President Moi and two (2) pages Hindi version of KANU advertisements. Taifa Leo, the Nation counterpart, devoted about 442 column inches to stories, letters, an article and picture on the elections, with a general spread-focus on the political parties. There were three (3) pages of election related advertisements. Its lead story concerned the call by the Catholic priests to the opposition not to boycott the elections.

The story on the chief was given similar treatment as in the Nation, but was on the back page.

A general monitoring survey indicated that although the Nation gave comparatively more space to the election news, the loyalties of the Kenya Times paper and its sister paper were in no doubt; they were KANU campaign machines, this was to be expected, since the papers belong to the party.

As indicated earlier, only the "big four" were able to take advantage of paid advertisements in the print media. There was fairly heavy advertisements on the part of KANU (especially), DP and FORD-A, and comparatively less of FORD-K. None of the other parties took space. Obviously, the issues of finances and affordability are pertinent. Judging by the number of advertisements, style and space occupied by the advertisements, KANU must have had inordinately heavy resources. Indeed, it seemed, so did its supporters, individuals as well as groups. The issue of financial ability cannot be considered as an individual party's or person's affair in a national electoral process. The bias here would be obvious. The elections would be free and fairer if the resources, including state/public ones, available to KANU were equally available to the opposition. The bias in the resource base was, in our view, a serious indictment of the electoral process.

Thus, as compared to other parties, KANU seemed to enjoy unlimited resources, giving rise to a comparative abundance of advertisement in the electronic and print mass media, in the use of posters, and even in the use of novel indelible graffiti! This was in addition to the free and extensive coverage it enjoyed in its papers.

8.4 Denial of Licences and Campaign Opportunities

Campaign meetings arranged by parties and their candidates still required licences from the provincial administration as they did prior to the introduction of pluralist politics. Overall, the requirement of licences was used by the administration to deny opposition parties and figures the opportunity to address or simply meet the public. At times, the issue was used to create chaos and confusion regarding opposition campaign meetings.

Examples of these abound. In Kilifi, a FORD-K parliamentary aspirant Jembe Mwakalu, had his thirteen (13) campaign meetings cancelled by the District Security Committee. In Kikuyu, where FORD-K's Paul Muite was contesting, the District Commissioner (DC) ordered that licences be obtained from his office at the district headquarters rather than at the usual divisional headquarters. In some parts of the country, permits were issued to different parties to hold simultaneous rallies at the same venue without their agreement. A typical example was in Eastleigh Social Hall Nairobi, where three candidates, all on different party tickets, were issued licences to hold rallies at the same time. The end result was a confused shouting match between the three candidates.

In the monitoring period beginning September and ending December, 1992, there were over twenty reports of candidates being denied licences, being prohibited from conducting tours or being harassed in the process, or being prevented from communicating with the public. Such reports came from such varied places as Eldoret, Embu, Githunguri, Isiolo, Kakamega, Kapsabet, Kangema, Kitui, Marsabit, Mombasa, Murang'a, Nairobi, Nyeri, Samia, Tigania and Webuye.

Only one of these involved KANU—in fact KANU and its campaign group YK '92 (in Embu)—on the basis that there were two rival groups seeking a licence! Most of these involved FORD-K's meet-the-people tours, for example their entourage was harassed in Machakos region, and FORD-K were also stopped from flying to Galole to address a public rally. And the DP entourage was harassed during its tour of Western Province.

8.5 Violence, Harassment, Intimidation, Arrests and Declaration of ‘KANU Zones’

These five elements formed part of the most tragic aspects of the run-up to the elections. There were so many examples of these, and so varied in geographical distribution, that it would be unfair to the electorate to consider them inconsequential. We provide a quick run-down of a few of them just to give a fair sketch of the problem. These are limited to the period August to December, 1992.

August

- ◆ Politically instigated clashes displace people in Namubila, Lwandanyi, Sirisia and Chwele in Bungoma District, denying them registration, and, eventually, participation in the elections.
- Maasai morans terrorise market attendants and steal cattle following incitement by the area Member of Parliament against, especially, the Kikuyu living in the area.
- ◆ Baringo and Samburu districts declared “KANU Zones” by KANU leaders.

September

- ◆ A DP vehicle convoy is stoned by KANU youths in Kisii town and the DC cancels DP rally at the last minute.
- ◆ The Parliamentary Select Committee on the so-called land clashes presents a report that amounts to an indictment of top KANU and government officials.
- ◆ One man is killed and five (5) others injured as armed KANU supporters attempt to stop FORD branch elections in Narok
- ◆ The Minister for Co-operative Development, John Cheruiyot, tells Nandis to arm themselves with *Rungus* to chase away opposition leaders from Nandi District.
- ◆ Six officials of FORD (Agip House) are arrested by riot police in Bungoma District for allegedly holding an illegal meeting.
- ◆ A district officer warns a DP rally that no speaker should touch on the personal character of President Moi, or he would close the meeting.

- Attempts by DP to open an office at Moi's Bridge are stopped by an unruly mob; no police intervention.

October

- KANU's Elijah Mwangale warns the DP against opening an office in Bungoma, and Kibaki against setting foot in the district.
- KANU rallies warn areas voting for the opposition that they risked isolation if KANU won the elections and formed the next government. Cabinet positions and development projects promised by Nassir to those areas which vote for KANU as a bloc.
- Njenga Mungai, Molo Member of Parliament, picked up by police and taken to Nairobi after making statements criticizing the government in relation to former Foreign Minister Ouko's and Oyugi's deaths, and for failing to end the so-called ethnic clashes.
- FORD-K's Paul Muite assaulted by a police officer in town.

November

- Anti-opposition incidents of violence reported in Eldoret, Kajiado and Kisii.
- KANU's Joseph Kamotho's entourage pelted with stones by crowds chanting FORD-A slogans in Kangema
- 49 members of "Operation Moi Out" youth group arrested in Ngong township for allegedly possessing offensive weapons.
- One person killed and fourteen houses burnt in "ethnic clashes" in Londiani.
DP officials refused landing rights in Mandera.
- DP candidates in Baringo District, Henry Cheboiwo and Benjamin Sadalla, claim that the people are being forced to renounce their support for opposition parties and to support KANU instead, at the pain of death in some cases.
- FORD-K's Oginga Odinga's efforts to address a large meeting in Kakamega town thwarted by riot police and the provincial administration.

Reports of harassment by police of two voters who filed a suit against KANU to have Moi's candidature for the presidency nullified

December

- Violent attacks reported in Isiolo North, Kilifi, Nairobi and other critical areas; in the case of Nairobi, a FORD-K official's house is broken into and his five-year-old son injured.
- Three bishops in the Rift Valley accuse the government of responsibility for renewed clashes in Eldoret and Nakuru areas, and the police commissioner of complacency.
- Agents of Henry Cheboiwo, a DP candidate, prevented from presenting nomination papers through roadblocks.
- Kericho DC, Timothy arap Sirma, threatens to throw out non-Kalenjin's from the district if they do not sing the KANU tune.
- Ole Lempaka, FORD-A's candidate for Narok North seat, accuses Saitoti's supporters and YK'92 of promoting thuggery and ambushing him.
- KANU West Pokot district chairman tells non-Kalenjins to declare within seven days that they will vote for Moi and KANU, or quit the district; a FORD-A office in the same area destroyed only two days after it was opened.
- FORD-K's Odinga's tour of Kericho District marred by stone-throwing.
- Five people beaten, stabbed and stoned by youth wearing YK 1992 T-shirts as a convoy of DP officials and supporters approach Kakamega Golf Hotel.

Over one hundred similar incidents were reported during the monitoring period. KANU is a victim in less than five percent of the incidents. In a majority of them, DP and FORD-K, and to a lesser extent, FORD A, were the victims in terms of political parties. But again, in many, the ordinary Kenyan has suffered immensely, either physically or psychologically (especially in respect of the "clashes" and declaration of "KANU Zones").

Thus, whereas opposition parties were intimidated and prevented by means including violence from campaigning, Moi and KANU had unrestricted access to any part of the country they wished to campaign

in. Reports indicate that, at times, KANU's Moi addressed as many as three to four meetings a day without hindrance. Incidents or threats of violence which may have surfaced in his way were dealt with swiftly and decisively by the security forces and the provincial administration.

The overall effect of this was two-fold. With respect to political parties, opportunities for campaigning were severely reduced, apart from the fact that there was also loss of property. In respect of the voters, deep fear was created, making it difficult for those who supported the opposition to freely campaign or vote for their candidates, since they feared putting at risk their property and even lives.

Describing elections, which were held in the context of this violence and these threats of violence, as free and fair would be stretching logic to its limits.

8.6 (Mis)use of State/Public Facilities and Personnel

We have already indicated that resources are a very important element in campaigning. Here, we would simply like to mention situations where campaigns were done through the use of public property and personnel.

According to monitoring reports, KANU and Moi enjoyed state property and personnel on a massive scale during the period of the campaign. On his tours throughout the country, Moi carried with him leading civil servants and other established figures from each area. Often, he paraded up these persons before the people as evidence of how much he had rewarded the locals. For example, in his tour of Western Province, he paraded the Attorney-General and Permanent Secretaries. In Ukambani, he, on different occasions, paraded a judge of the Court of Appeal and a Deputy Vice-Chancellor of one of the universities, and promised more "rewards" if the people voted for him and KANU.

Without doubt, KANU deployed massive state resources and personnel in its campaign, including civil servants like DOs and DCs, government vehicles and other transport facilities and the broadcasting media. National occasions were turned into KANU campaign rallies.

Presidential tours were conducted in the presence of local administrative officials clad in uniform; no distinction was made between KANU and government occasions or functions. This confusion of state and KANU property and personnel did no end at the level of the President. Cabinet ministers and KANU senior government officials replicated the practice.

Instances of campaign support for KANU by administrative officials were fairly common. Side-by-side with these were instances of administrative harassment of the opposition as described above. Over twenty examples of misuse of public property and personnel in favour of KANU were reported, apart from the presidential frolics which were the order of the day owing to the diffusion of the state presidency and the party headship.

A practice connected to these incidents was that of the President using announcements of government decisions or activities for campaign purposes: for example, for KANU by announcing the release (on two occasions) of shillings 20 million in payments to coffee farmers who had remained unpaid for over a year, announcing a two-hour Friday leave for Muslims for worship, announcing that coffee auctions would be in foreign exchange; announcing house allowance for all women (an announcement which has since been substantially revised), and announcements of wage increases for low-income workers. These were strategic announcements, made during campaign tours, and calculated to have maximum impact on the electorate.

It is not easy for us to gauge the precise impact of these practices on the electoral process. What is certain, though, is that the use of massive state resources and personnel had two important consequences: it provided KANU with a resource-base beyond the reach of the opposition, and a "campaign personnel" so strategically placed, and so powerful, that the opposition was unlikely to match it.

8.7 Bribery, Giving out of Money, 'Gifts'

One of the most common practices in the campaigns was the wooing of voters through bribery, by whatever name it was called. The forms were varied. Direct payment or promise of money were the most common. Others included giving out of things like meat, sugar beer/sodas, blankets or cloth; promise of jobs, and provision of transport. Instances were widespread surfacing in Bonchari, Bondo, Dagoretti, Embu, Githunguri, Hamisi, Kajiado Central, Kandara, Kangema, Karachuonyo, Kasipul Kabondo, Kathiani, Kilome, Kwanza, Laikipia, Lang'ata (Nairobi), Mathira, Nyeri, Matuga, Mbooni Mvita, Nakuru East and Town Nyando, Rangwe, Samia, Turkana, and Westlands (Nairobi), to mention but some. Many of these reports implicated KANU and government officials. (Certain opposition candidates were also reported to have used unspecified amounts of money

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as a mechanism of wooing voters.)

In one case, the then self-proclaimed chairman of O.M.W. promised in Embu that the organization intended to “pour an amount of money you have never seen before to ensure that President Moi is voted in again” (*Daily Nation*, 17 November 1992, p.4).

In Turkana, the DC, John Ole Mosiany, was accused by DP officials of denying relief food supplies to opposition supporters. In Mwala and in Laikipia District, government famine relief supplies were advertised by a chief as having been supplied by KANU.

Again, the precise impact of such practices is difficult to gauge. But they obviously have a bearing on whether or not the electoral process was free and fair.

CHAPTER 9

Counting, Polling and Declaration of Results

The polling day was marked by an enthusiastic and massive turnout of the people of Kenya, who patiently lined up and waited for their turn to cast a vote in the landmark elections. The National Election Monitoring Unit sent out election monitors and pollwatchers to all parts of the country. The monitors worked all day and kept abreast of the process from the start to the declaration of results. There was a most exacting task which they executed with a high degree of dedication and patriotism. The pollwatchers mainly targeted the following areas of activity:

1. Setting of the polling station

-- Security

- ◆ Election materials: their availability or otherwise
- ◆ Screening of ballot booths
- ◆ Overall atmosphere at the polling station
- ◆ Opening of the polling booths to voters
- ◆ Number of voting streams
- ◆ Presence of campaign materials

2. The actual voting exercise

-- Voting procedure

- ◆ Voters' names in the register
- ◆ Conduct by polling officials
- ◆ Closing of polling station
- ◆ Nature of the ballot papers and ballot boxes
- ◆ Presence of agents for the various political parties

3. The counting process

-- Set-up of counting hall

- Number of counting clerks
- ◆ Reception and custody of ballot boxes

◆ Conduct by agents

Each election monitor had a set of questionnaires which had been prepared in such a way as to extract as much information as possible in the circumstances.

Apart from answering the questionnaires each head monitor in charge of a constituency prepared a comprehensive report on the day's experiences. All the questionnaires and reports were analyzed and synthesized by a team of experts at NEMU Headquarters. The relevant information covering more than 5,000 polling stations is summarized in Appendix 16. The summary is based on detailed information on all the electoral irregularities during polling, counting and declaration of the results.

In this chapter, we concentrate on the broad issues. For details of irregularities, the reader must consult Appendix 16.

The reports received from the field monitors revealed basic and minor irregularities on polling day. Many polling stations did not open on time. In Nairobi, for example, most stations opened at 6 a.m. The election queues had already built up by the time polling started. The main reason given by the returning officers for the delay was lack of voting materials like rubber stamps, indelible ink, etc. This lack of materials could not be logically explained since Nairobi is the headquarters of the Electoral Commission.

The delay in opening the stations led to the delay in closing them, with some stations operating to as late as midnight. Some stations opened on 30th December, 1992.

Another irregularity was the absence of presidential ballot papers in certain polling stations. This anomaly was not satisfactorily explained by the returning officers. Obviously it had a direct bearing on the elections.

Quite unbelievably ballot papers meant for certain constituencies were found in the wrong places. Again no explanation was given by the returning officers in the affected areas.

Curiously some areas in the Rift Valley which were not as easily accessible as Nairobi were reported to have received all the voting materials on time and voting started either at 6 a.m. or shortly thereafter with a record turnout of voters (as the results were later to show).

Another problem which hindered the smooth running of elections was transportation. With all the resources available to it, the Electoral Commission failed to make safe and adequate arrangements for the transportation of officers, equipment and ballot boxes. As a result many officers had to arrange for their own transport. A most unacceptable occurrence reported

on polling day was the transportation of ballot boxes to counting centres through private means, sometimes unaccompanied by the agents of political parties. Reports received from our head office revealed that up to 45 constituencies recorded more presidential votes cast than parliamentary ones.

These constituencies were won by KANU and FORID-A presidential candidates; while one of them was won by the FORD-K presidential candidate. (See Appendices 12-14.)

Despite our appeal to the chairman of the Electoral Commission for information regarding the serialisation of ballot boxes per each constituency and information on each ballot box's physical location, we did not get any help from him in this regard. We received allegations about the introduction of uncertified ballot boxes and extra ballot papers in the counting centres but could not verify such information. Had the Electoral Commission supplied us with the information we had sought, it would have been easy to verify these adverse reports.

Another objectionable omission by the Electoral Commission was its failure to gazette the polling stations in time for members of the public to familiarize themselves with them. From the time of voter registration to the last four days to the elections, the polling stations remained unknown. It was only in those last few days that 10,499 polling stations and voting streams were gazetted. Then there came the last minute re-location of some polling stations which caused unnecessary confusion and in effect resulted in the disenfranchisement of some voters. In Kajiado North, for example, voters were forced to walk about 50 kilometres to cast their votes at the newly designated polling station.

Other minor shortcomings which nonetheless affected the elections were the faint nature of printing on the ballot papers which made it difficult for voters to make their choice and the absence of agents for certain political parties in some parts of the country. Some polling booths were too open for the needs of the secret ballot, particularly given the high number of illiterate voters who needed assistance.

The election monitors' reports also revealed some positive aspects on polling day. Deserving particular mention is the orderliness of the voters.

From station to station members of the public lined up in peace and cast their votes. People were observed chatting in a most brotherly and relaxed manner. It was this orderliness by the electorate that saved the day for Kenya.

The returning officers in the 10,000 plus polling stations also deserve particular mention. The reports show that these officers were generally

co-operative during the entire exercise. They showed an eagerness to assist in the event of any difficulty. Given the exacting demands of their duties, the dedication displayed by the returning officers had a positive impact on the elections as a whole.

The counting process was also affected by basic irregularities. NEMU deployed at least two count certifiers at each counting centre. It was evident that the Electoral Commission deployed an inadequate number of counting personnel in counting centres. These counting clerks became over worked and visibly showed signs of fatigue during the counting. This in turn led to long-drawn counting and the late release of results. The delay in the release of election results created an opportunity for manipulation as the attentiveness of the party agents faded away with time. It is also curious to note that certain constituencies with a large number of registered voters released their results early enough while others took as long as three days to release results. The fatigue also affected the other election officials and security personnel. Kenyans will remember the reported incident of a policeman who suddenly ordered all those in the counting hall to lie down without any justification. The said officer was later to claim that he had been dreaming. Other noticeable shortcomings were the untimely remuneration of counting clerks which led to strikes, sit-ins and costly stoppages, and the poor setting of counting halls.

A further and important irregularity which could have been easily corrected by the Electoral Commission pertains to the commission's failure to enable registered voters who had been displaced due to the "ethnic clashes" to exercise their voting rights. The chairman of the Commission had promised that such voters, especially those who were camping on church-grounds, would be availed mobile voting units. The chairman did not fulfil this promise. As a result, a large percentage of displaced Kenyans could not vote, especially in the Rift Valley. (For a further analysis of polling, voting and counting processes, see Appendix 21.)

PART THREE
A CRITIQUE OF THE ELECTORAL
PROCESS

CHAPTER 10

‘Critique of the Electoral Process

10.1 The Election Date

As was indicated earlier, the elections were scheduled for, and held on December 29, 1992. December is generally a holiday period. Consequently, many people travel to different parts of the country. A majority of people travel from towns where they work and live to their rural homes around the time of Christmas. The effect is that such people would have to be registered to vote in their country home areas, or they would have to travel back to their town homes where they were registered in order to vote. The inconvenience in this is fairly apparent. Although we were not able to determine the number of people affected by this, it is important to note the **fact** that the election date was such that it may have made it difficult, if not impossible, for some Kenyans to vote.

10.2 Electoral Law Reform

In Chapter 4, we clearly established that the ruling party KANU through the one-party Sixth Parliament made constitutional and other legal amendments meant to ensure an electoral head-start for KANU. Indeed the major legal changes introduced had a result of weakening the opposition's chances of electoral success and enhancing KANU's chances. The "25% rule", for example, ensured that if an opposition presidential candidate merely won a majority of the votes, that was not enough to secure the presidency. A regional criterion was introduced whose major purpose was to dilute the one-person-one-vote principle. Through the 25% rule a presidential candidate supported by the so-called major tribes could still be stopped after gaining a majority, if more than three provinces controlled by the so-called minority tribes did not support such a candidate. The bad intentions of the 25% law were clearly shown by the fact that it left

a lacuna in case no president was produced by two presidential elections. In such an event there was going to be a constitutional crisis. Such a crisis can still occur in a future election. We have given other examples of partisan amendments of the law so as to advantage KANU in the elections, such as the party symbol law, withdrawal of a campaign finance ceiling, etc. The opposition was not consulted in the promulgation of laws intended to create the legal environment for multi-party elections. When the opposition or ordinary citizens suggested changes in the intended amendments, their reasoned suggestions were, on the whole, ignored or rejected.

Of crucial significance was the fact that KANU's Sixth Parliament avoided a process of changing the constitution and other laws in a holistic as opposed to an *ad hoc* manner so as to create a conducive environment for multi-party democracy and multi-party elections.

It will be recalled that the Attorney-General, presumably in a bid to ensure that opposition parties fielded few candidates, purported to enact electoral law changing the period of nomination of candidates by political parties. The political parties had expected to be given at least 21 days for the task initially, but through the Attorney-General's legal notice were given 8 days only. Opposition parties would have had greater difficulty nominating candidates for over a one week's period than KANU, which had had more national penetration and had started recruiting candidates in advance of the notice of the Electoral Commission announcing the onset of party nominations. Although the Attorney-General's Legal Notice was quashed by the High Court, nonetheless, damage had been done. The opposition political parties found it difficult to reverse party nominations undertaken within the initial period. The new period was on the whole used to look for candidates in constituencies and wards where a political party had not previously recruited any.

The passage of KANU-friendly laws aimed at assisting KANU in the electoral contest can be viewed as the beginning of an ingenious strategy aimed at long range manipulation of the electoral process which would, in the thinking of KANU's electoral strategists, minimise the need to introduce irregularities during the polling stage. Such long range manipulation must have had the advantage, to the strategists, of surprise. The impact it had on the electoral results is not easily quantifiable. KANU probably believed it could convince ordinary citizens that the amendments were not intended to favour any party.

The bottom line, in our view, is that the amendments to the law prior to the elections worked to KANU's advantage, whether they were inten-

tionally introduced to achieve that result or not.

10.3 Registration, Organisation and Operation of Political Parties

With regard to the registration, Organisation and operation of political parties, several factors are worth underlining. The first of these relates to the right of every Kenyan to form a political party, or to join any party of their choice. This right is fundamental to the system of plural democracy. Any impediment to this right, unless distinctly justified on the basis of consensual social good, is an abrogation of this right.

We noted that at least six proposed political parties were denied registration. In respect of five of them, the blanket ground was adopted. We are of the view that the Registrar must explain to promoters of a party the reasons why he/she considers that the registration of any proposed party is inimical to the interests of peace, welfare, or good order. It is not adequate for the Registrar to simply express an opinion in these broad terms. This should be done so that the reasoning can be subjected to scrutiny in order to ascertain its veracity.

Regarding the Green African Party (GAP), all that needed to be done was to ask the promoters to provide other officials, if the only objection to their officials was that they were already in other parties. And in respect to the Tent of the Living God (TLG), all that needed to be done was the preparation of a constitution which declared that the body was, indeed political, and not religious.

In our view, therefore, the denial of registration to the five proposed parties was contrary to the word and spirit of the Constitution, and also to the basic tenets of multi-party democracy. This had the effect of denying certain Kenyans the right to vote for a party of their choice.

The second factor was the position of KANU among the political parties. We noted that KANU had enjoyed a very long incumbency in power, which had enabled it to establish itself all over the country, both in structural terms, as well as in terms of its intervention in the lives of Kenyans. We noted, further, that it was able to establish fairly formidable peripheral structures in the form of campaign groups. Besides this, KANU had established very strong links with governmental structures which made it difficult-if not impossible, in some cases-to make a distinction between the two. This was in marked contrast with the opposition parties

which were just beginning to establish themselves and build up structures. Thus, the opposition parties entered the “fray” as underdogs in these terms.

Only an atmosphere of real fairness could have provided them with the necessary context for steady growth. However, too many barriers were put in their way, deliberate efforts were put in place to weaken them, and consequently, they were put at a great disadvantage in the electoral process.

1 0.4 Registration of Voters

It has already been pointed out that registration of voters is the public measure of the extent of enfranchisement. The one distinctive feature about the registration of voters prior to the general elections was the disenfranchisement of many young Kenyans who had reached the age of majority, but did not have identification cards. As this country moves into the 21st century, its future belongs to those who at present we call young. It would have been a most desirable development if many young men and women had been allowed to participate in these landmark elections in the history of this country.

It was not entirely beyond the government’s capability to issue these Kenyans with identification cards prior to the commencement of the registration exercise. The disenfranchisement of the younger population to this magnitude would definitely impact upon the outcome of the elections.

It is also to be observed that the preparation and maintenance of the electoral register was shrouded in secrecy. Until the announcement of the dates registration was to commence and end, neither the political parties, nor members of the public were apprised of the goings-on in the preparation of the register. This situation was worsened by the fact that public inspection of the register never actually took place due to the limited publicity given to it by the Commission and the haphazard manner in which the registers were exposed to the public. Public inspection of electoral registers is the only insurance against pre-election rigging and fundamental human error. It is an opportunity which members of the public should not be denied. The limited inspection by the

10.5 Party Nominations

Party nominations were thrown into confusion by the initial and illegal shrinking of the nomination period by the Attorney-General. Opposition parties might have failed in some cases to get the proper candidate material due to the hurried nature of the initial nominations. Even when the period was extended, the opposition parties on the whole found their hands tied. They felt constrained not to reopen nominations.

Further, the opposition parties suffered from withdrawals of candidates who had been nominated through their parties. Such withdrawals left KANU's candidates unopposed in several constituencies. The opposition parties felt that such withdrawals were, from the word go, plotted against the opposition. If it is true that the candidates who withdrew were initially planted by KANU, KANU was guilty of violating electoral ethics, and the opposition was at fault for not scrutinizing their candidates properly.

10.6 Nomination before Returning Officers

The violence directed against certain opposition candidates directly resulted in the latter's failure to present their papers for nomination. This not only denied the opposition parties the opportunity of fielding candidates in many parts of the Rift Valley Province but also gave KANU an undeserved head-start in the parliamentary contest. What effect this had on the presidential and civic elections in that part of the country is difficult to determine.

10.7 Protection of the Electoral Process by the Law

The prosecution of alleged offenders took a definite pattern throughout the year following the repeal of Section 2 (A). Many public statements were made and courses of action resorted to that may not have conformed to the structures of the law. In these circumstances, it was the duty of the Attorney-General to use his immense powers to bring all offenders to book.

Many senior personalities in the KANU government made public statements that were utterly contemptuous of the law. These ranged from warning opposition parties against operating in certain parts of the country, otherwise their offices would be burned down, to giving ultimata to

some Kenyan communities within which they were to vacate certain parts of the county otherwise they would face dire consequences. On most occasions, actual acts of violence and arson followed these threats, yet no action was taken to bring the force of law to bear on the situation. There were many incidents where certain groups of people, in their bid to scandalise the opposition parties, publicly confessed to having committed acts of destabilization against the government allegedly at the instigation of the said opposition parties, yet no action was taken against them. Instead they were given heroes' treatment for the defence of the motherland. Another conspicuous omission by the Attorney-General came at the time he allowed certain pressure groups to operate as fully fledged legal organizations. Most of these groups undertook tasks during the elections which would have required their registration under the Societies Act.

On the other hand, many opposition operatives and sympathizers were frequently arraigned in courts of law on diverse charges ranging from rumor-mongering to incitement and sedition.

This unequal application of the law by the Attorney-General must have deeply eroded the confidence of Kenyans in his office. It must have encouraged high profile government personalities to conduct their campaigns as if they were above the law. The development of a democratic society is not only dependent on just laws for the governance of men but also on their impartial application.

10.8 The Media

The media played a fundamental role in the run up to the elections.

In the earlier part of this report, it was pointed out that the media are some of the most effective means of actualizing access to the election system by the political parties involved. It is never possible to reach the majority of the electorate through physical campaign rallies. In a situation where the electorate is heavily dependent on centrally generated information, the mass media is critical during an electioneering process.

It is an undeniable fact that the state-controlled radio and television in Kenya gave undue coverage to KANU campaign and propaganda programmers, often with bloated accolades to the disadvantage of the opposition parties. This strategy could have played havoc on the gullible public, the majority of whom, in the absence of any comprehensive education programmed, hankered for and internalized any information.

This trend continued up to the end of November notwithstanding repeated calls for fair play by the opposition parties and other pressure groups, especially the PCDC. Almost on a daily basis after July 1992, these two media organs completely shut out the activities of the opposition parties from the public while they painted KANU as an unstoppable engine of democratic governance. Any reference made to the opposition parties by these two organs related to adverse occurrences between them or among their ranks, or were outrightly calculated to cast the parties in the most negative political light.

The trackings of television news items in those days show that throughout the campaign period, the total air time devoted to KANU activities was inordinately more than that devoted to all the opposition parties combined. (See Appendix 9.)

Frustrated by the lack of a positive response from and the stony silence by the management of the Kenya Broadcasting Corporation, opposition party FORD-K turned to the High Court for redress. The suit filed in the High Court was, however, dismissed on a technicality. The PCDC instituted a suit on the 8th December 1992 against the KBC and the Minister for Information and Broadcasting. Despite all efforts, it was not possible to get a judge to hear it before the elections. The case is still pending. It is only after the opposition parties' vehement persistence in their demands for fair play, joined by the voices of international election observers, that the KBC started airing news items about the activities of the other parties in a positive light. This change of attitude came in the very last days of the campaigns.

The conclusion flowing from the above facts is irresistible. It is that, on the whole, the ruling party KANU used the state-controlled media which is maintained by taxpayers' money in an unfair and unequitable manner to promote its re-election campaign programmed. The opposition parties were grossly disadvantaged on this score.

1 0.9 Voter Education

It may be difficult to authoritatively measure the degree to which lack of, or the presence of a mere smattering of, voter education, compromised the elections. It is a fact that the average voter, especially the illiterate voter was not adequately prepared to exercise his or her vote in a scenario where choice was being offered meaningfully for the first time since independence.

The voters country-wide appeared not to understand the new multiparty system. This was to be expected because, since independence, the country has on the whole witnessed state-controlled, non-competitive elections. To disabuse voters of attitudes accumulated during the past, it was necessary to conduct a mammoth civic and, especially, voter education campaign. We have indicated that only non-governmental organs and donors were interested in such an endeavour. The coverage undertaken by the NGOs was small especially due to limited time and financial resources. It is a fact that the Electoral Commission, which was also charged with the task of voter education, preferred not to go through the motions of voter education. In some instances, the Electoral Commission did not extend the requisite co-operation to NGOs which tried to interest it in joint voter education campaigns. Because of the low levels of voter education, in some instances, citizens were told and were made to believe that making an X against a candidate's name meant rejection of such a candidate, while the truth is that the voter makes an X cross against the name of the candidate he wishes to elect. illiterate voters were easy targets of intimidation and manipulation.

Civic and voter education should have been undertaken on the initiative of the government to ensure free and fair elections.

10.10 Gender Dimension

Although NEMU's monitoring mandate covered the activities of all sexes, NEMU's electoral observers also paid some special attention to women candidates and voters. The elections produced the highest number of elected women members of parliament since independence. In our opinion, more women could have won parliamentary and civic positions were it not for electoral malpractices targeted specifically against women.

Without exception, all women candidates we observed were harassed by their male political opponents. Many of them, especially the women parliamentary candidates, had their campaign meetings disrupted. The political parties across the board seemed to accept women nominees as a last resort measure after failing to get suitable male candidates. Even after women were adopted by political parties, they seemed to be given less financial support than the male candidates.

Due to the late start of polling countrywide, many women voters were unable to vote because they could not wait to vote at night due to their

housekeeping duties and fear of nocturnal violence.

Women voters were more vulnerable to manipulation owing to their higher levels of illiteracy, as compared to men.

The most pronounced level of violence against women candidates and voters in the country were witnessed in Kerio South and Kitui Central. In Kerio South, Tabitha Seii was literally prevented from campaigning in many areas of the constituency. She was continuously threatened with physical violence.

In Kitui Central, Charity Kaluki Mwendwa had her vehicles burned by mobs. She was also, in the last stages of the campaigns, prevented by mobs from leaving her house until she got security from the state. In one incident, some ten women supporters of Charity Kaluki Mwendwa were sexually abused and raped by men who claimed to support her rival.

10.11 Campaign Process

Monitoring the campaign disclosed very serious anomalies in this aspect of the electoral process. Certain types of campaign modes (like the electronic and print media), were too expensive for some of the opposition parties. They were totally out of reach for the “smaller” parties. Lack of resources for such parties was an obvious problem.

This meant that they could not adequately expose their ideas to the public, even without some of the other barriers deliberately placed in their way. KANU, obviously, did not suffer from this problem due to its resource base, which included state property.

Besides this state of affairs, the opposition was often denied access to the public by being denied licences to hold rallies or being harassed and intimidated, or through arrests or violence instigated by KANU or state officials. Many Kenyans were denied the right to participate in the process through the so-called “tribal clashes” and the declaration of certain parts of the country (especially the Rift Valley) to be “KANU Zones”.

Misuse of public property and personnel provided KANU with a broad resource-base and a network of servants whose loyalty to the state was largely indistinguishable from their loyalty to KANU.

And then there was the ever-present “bribery syndrome”, a disease which had been “perfected” by KANU over a very long period of time. Only those with adequate resources could afford to use this method of soliciting for votes.

10.12 Electoral Commission and the Administration of Elections

The work and mood of the Electoral Commission could be divided into four phases.

The first phase was an extremely unfortunate one. This was the period subsequent to the appointment of the Chairman of the Commission. The Commission's initial work was then shrouded in secrecy and red-tape. The Commission was inaccessible and defensive; it emerged from its cocoon only when responding to and rejecting criticisms. The secrecy over the election date reinforced the suspicions harbored against the Electoral Commission. The Chairman, justice Z.R. Chesoni, failed to clarify this issue until the last minute, regarding whether he or the president had the power to announce the date of elections.

In the name of the Electoral Commission, the Chairman issued a large number of ambiguous statements. For example, the statement that voters who had lost or sold their cards could still vote eventually resulted in ambiguity on election day; it was certainly of dubious legality. The failure to appoint a Director of Elections, until close to election time, was problematic as the Commission seemed to be claiming that it, and not a Director, was in charge of the actual elections. Decisions were made by the Electoral Commission or its Chairman at the last minute, or else not revealed until then. An example was the question of the number of polling stations.

The reluctance to work with electoral observers, particularly local ones, added to the impression of secrecy. Limitations put upon the activities of monitors in the first meetings between observer groups and the Electoral Commission gave the impression that the Electoral Commission had something to hide regarding the elections. In the first phase under description, the role of the Chairman seemed to unnecessarily overshadow the body of the Commission.

The Chairman acted as if he expected endless criticisms from the opposition and therefore wished to develop a shield to deflect criticisms from any quarter. Surprisingly and refreshingly, the Chairman and the Electoral Commission were jolted into changing the *modus operandi* by internal criticism through a well publicised hard hitting letter from Commissioners Nyamu and Nganatha. These two Commissioners revealed that the Electoral Commission was extremely inefficient and basically a one-man affair (the letter is reproduced as Appendix 8). Clearly the Electoral Commission had a bad and false start in laying the foundation for the elec

toral process. No wonder polling day revealed major inadequacies in **the** organization of the elections.

In phase two of the Commission's work, the Commission finally seemed to, and indeed did, start showing willingness to hold dialogue with its critics and those who expressed interest in the on-going electoral process. It does appear that apart from Nyamu's and Nganatha's criticisms, the extension of the election time-table facilitated the change of heart witnessed during this phase.

Meetings were held between the Electoral Commission and representatives of political parties initially primarily intended to resolve, among other issues, the issue of symbols to be used by the parties during the campaigns. Subsequently such meetings became regular, and their agenda also expanded to reflect an array of issues affecting the entire electoral process.

First, there was the frequent release of plans well before-hand; candidates and voters were advised on nomination polling venues and the necessary requirements. Then there was the establishment of a complaints committee to listen to aspiring candidates who had run into trouble in the nomination exercise. On the eve of the presidential nominations, elaborate plans were released, including a time-table of the order of presentation of the nomination papers and the venues where candidates would address their supporters after the nominations. Similarly, on the eve of polling, all procedures were released beforehand. The presidential nominations were conducted smoothly without civil disruptions and went ahead as scheduled. Candidates were given time to collect items they needed but had omitted to take with them. President Moi for example, had forgotten a letter from the party that had nominated him, while KENDA Chairman, Mukaru Ng'ang'a, had to go to the Registrar of Societies offices in order to collect a certified list of his party's officials to confirm that one of his seconders had validly nominated him.

In other circumstances such omissions may have been grounds to disqualify candidates. Then there was John Harun Mwau, the leader of PICK, whose name had not been listed in the schedule of leaders expected to present their papers. 'The Electoral Commission did, however, let him present his papers.

The Electoral Commission also did meet with members of the press on Saturday, 5th December, 1992. This meeting with members of the print and electronic media addressed how best the media and the Electoral Commission should relate. In this meeting, it was agreed that daily press briefings by the Electoral Commission Chairman would henceforth be given

at 9.00 a.m ‘ A Press Centre was also opened at the Kenyatta International Conference Centre to act as a pool of information on the elections.

For example, on December 3, 1992, at such a meeting, the Electoral Commission Chairman accepted a request by leaders of the opposition political parties for provision of adequate security in their presidential campaigns. Other concessions that came from the Electoral Commission that had before been declined include:

- Availirig of the master-roll of the Voters Register, though at the exorbitant price of K Shs. 600,000;
- Offer of replacement of defaced or lost voting cards, provided the person who had lost or defaced his/her voting card could prove that he/she had been validly registered;
- The drafting, deliberation on and approval of a code of conduct for the campaigning period;
- Deliberation on the mode of scheduling of campaign rallies;
- Extension of the register inspection period by the Electoral Commission.

Further on the Electoral Commission expressed concern on *inter alia*:

- Incidents of violent confrontation between some politicians and administrative officials, e.g. when meetings or demonstrations were being stopped by the police and the administration. Hence these officials were asked to accord equal respect for all presidential candidates, especially;
- The need for the government administration to be impartial;
- Access by political parties to all areas of the country without inhibition;
- Proliferation of unregistered parties and organizations affiliated to political parties whose operations put the electoral process to test by their uncoordinated and questionable conduct and activities;
- The issue of fresh accreditation of press officers covering the elections as demanded by the Ministry of Information and Broadcasting;
- The need to comply with judicial orders on the electoral process;
- The need for commitment in working with monitoring groups in ensuring free, fair, orderly and peaceful elections;

Establishment of links with political parties in composing a team to work on a code of conduct agreeable to all parties for purposes of conducting peaceful campaigns. The committee established was referred to as the Technical Committee.

Perhaps the most important decisions by the Electoral Commission with regard to holding of free and fair elections were made just prior to, during and after the nomination exercise for all three elective positions civic, parliamentary and presidential.

It is important to mention that meetings of the Electoral Commission with political parties were attended by representatives from the offices of the President, the Commissioner of Police and the Attorney-General. December 1992 was a critical period for the elections, not only because actual polling would be done during this month, but also because campaigns were conducted during the month amidst reports of fresh episodes of tribal violence in parts of Eldoret District and, in particular, the Burnt Forest area. The Electoral Commission kept its activities in the run-up to the elections open for all. Representatives of political parties were involved in the scrutiny of ballot boxes, the deliberation on sealing them and serializing them. They were also notified about arrangements for the dispatch of the boxes to the polling centers which had already been gazetted. The parties agreed to these arrangements, including that the boxes could be stored under security in district headquarters in each district until just before the elections.

Popular pressure led to more responsiveness on the part of the Electoral Commission. There are, however, other reasons that are as valid. The Electoral Commission was funded externally. As a result, it owed a certain measure of accountability to its donors, who were committed to free and fair elections. This motivated the Electoral Commission to become more responsive to popular pressure. Further, the Electoral Commission must have realised that unless it was seen to be open and accessible, then the entire electoral process could be derailed with the probable upshot of violence. There was no cost in opening up the activities of the Electoral Commission to public involvement and scrutiny. Consequently, some of the Electoral Commissioners soon became household names and the people could at least identify with the elections more positively, and even look forward to them.

Due to the above change, the Electoral Commission began to build public confidence not only in itself, but also in the Commission's ability

to facilitate free, fair, orderly and peaceful elections. The Electoral Commission, as a result of its efforts as aforesaid, won the rare praise of the international Republican Institute (IRI) in its preliminary statement of findings dated 10th December, 1992.

Phase three of the work of the Commission was not necessarily completely distinguishable from phase two. That is to say, as the attitude of the Electoral Commission seemingly thawed, it also undertook actions which were obstructionist, often in subtle ways. For example, the Electoral Commission decried the lopsided nature of the public media's coverage of the campaigns in favour of KANU, but stated it could do nothing positively to correct the situation. The Electoral Commission advised those who had been prevented from presenting their nomination papers to returning officers to go to court. When the individuals went to court and got in their favour orders asking the returning officers to accept their nomination papers, the Chairman of the Electoral Commission decided the courts could not change the ruling of the returning officers. These examples of subtle obstructionist operation on the part of the Electoral Commission can be multiplied.

Phase four of the Commission's work was revealed especially during polling and counting of the results. To some extent, the criticisms levelled against the Commission by Nyamu and Nganatha were vindicated. For many polling stations, it was clear that the Commission's preparatory work was inadequate. We have, for example, seen that as a rule polling started late almost throughout the country, because, *inter alia*, balloting materials did not reach the polling stations in time.

We may never know whether this was by design or merely a function of inefficiency or both. The performance of the Commission was not assisted by the personal stature of its Chairman. A court case, which was dismissed on technical grounds, had raised the question of the propriety of the Chairman's appointment to serve on the Commission due to a prior case relating to bankruptcy proceedings against the Chairman. Throughout his tenure, especially during phase one of the Commission's work a barrage of criticisms was continuously aimed against the Commission. It was even pointed out that the Chairman hardly ever crossed swords with KANU, although he did this perennially with the opposition and non-partisan citizens. The charges of unpreparedness, partiality and inefficiency levelled against the Chairman and his Commission are, in our view, justified.

Perhaps if the Chairman of the Commission, whose position enjoys

security of tenure, would have voluntarily resigned when opposition parties and other organizations and ordinary citizens expressed lack of confidence in him, the President would have had the opportunity to appoint another Commissioner surrounded by less controversy. Perhaps in such **an** eventuality, the organization of the Commission would not have adversely affected the electoral process as it did. Resignation from public office in circumstances such as these is the only way to allay public suspicion.

10.13 Polling, counting and Declaration of Results

While no one demands administrative perfection during the polling and counting exercise, most of the irregularities cited by the election monitors could easily have been avoided by the Electoral Commission. Some of the irregularities were just human errors. The impact of these irregularities on the overall result on the election cannot be underestimated

CHAPTER 10.

Conclusion and Evaluation

From the foregoing description and analysis of the electoral process, we have reached the considered conclusion that the December 1992 election, were not free and fair. The manner in which the elections were administered and therefore conducted fell far short of meeting the parameters for free and fair elections that we set out in Chapter Two of this report. Given the irregularities that we have unearthed in relation to the electoral process, it would be a contradiction to pronounce the election as having met the standard of “free and fair”. Indeed both Appendices 16 and 17 which are FIDA/ICJ and NEMU interim reports suggested that if the then trend of electoral irregularities was not stopped and/or reversed, the elections ran the risk of being seriously compromised.

Despite the verdict reached in the above paragraph, there exist certain positive attributes about the elections given the country’s historical and political experience.

The December 1992 elections, in our view, constitute an important step in the development of multi-party democracy in Kenya. These were the first multi-party elections since independence. The elections gave the country an opposition represented by 88 members of parliament in a 200 member strong chamber. Such an opposition is likely to offer an alternative voice in the government of the country. The citizenry of Kenya have learnt that it is possible to have a system of government where a government side exists side by side with an opposition in the same parliament. This is a critical lesson. If the opposition’s responsible survival is assured by the mutual actions of both the government and the opposition Kenya could become one of the few African countries to germinate plural democracy.

Secondly, compared to the 1988 queue voting elections were semi-competitive in contradistinction to the 1988 state controlled non-competitive elections. Indeed the 1992 elections could be said to be the most competitive elections in independent Kenya’s history although they did not measure up to the standard of “free and fair”.

Thirdly and flowing from the above positive attribute, the 1992 elections have exposed some of the glaring and not so glaring pitfalls which must be avoided in future elections if the will of the people is to be truly expressed via the electoral process. We have exposed many areas which must be addressed if future elections will be conducted in a free and fair manner. The government, the opposition and civil society must seek to remove the pitfalls identified in this report and by others to prepare the environment for truly free and fair elections.

In this concluding chapter, it is germane to make several general observations regarding the electoral process just concluded.

Throughout the process, Kenya's people stood all and resolute in their desire to see a just election. Even in situations of immense provocation such as the persistent ethnic clashes, the people's resolve to grow the tree of multi-party democracy and freedom triumphed. The polling day was crowned by a unique peace which had not been anticipated by many observers. The 1992 elections demonstrated Kenyans' political maturity and hunger for peace. Certainly the people emerged victorious in the elections.

Secondly, the opposition parties must also share their part of the blame for the imperfections in the electoral process. While it is proper and indeed democratic to have inter-party criticism, such criticism within the opposition at one stage degenerated into a diatribe similar to that existing under one-party rule in this country. While some of the opposition parties exhausted their energies in self destruction, they, unwillingly perhaps, allowed KANU the opportunity to pour scorn on multi-partyism and to manipulate the electoral process to its advantage. Often the people were left bewildered and confused at the wrangling in the opposition ranks. Indeed the people had variously advised the opposition to seek greater cohesion and unity; unfortunately this message went largely unheeded.

Thirdly, a large number of election petitions are waiting to be resolved by the courts. These petitions are one of the best ways to correct some of the imperfections in the electoral process. The election petitions should be heard and concluded speedily. The judges who hear these petitions must be perceived as independent and fair by the citizenry. The resolution of election petitions should not be transformed into the political act of diminishing the representation secured at the polls by any political party.

Finally, it is critical that the President, members of his government, ruling party and opposition parties should exercise unqualified statesmanship. All leaders must accept the reality of multi-partyism: perhaps

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the time has come when all political leaders must in public and in occasional public statements embrace multi-partyism. Both the government and the opposition must not seek to destroy each other; their roles are complementary in achieving democratic governance. On their part the people must maintain an eternal vigilance; they must not allow the government or the opposition to frustrate the incremental growth of democracy and freedom.

Kenya, through the repeal of Section 2 (A) , which legalized one-party rule, followed by the holding of the December 1992 multi-party elections, has taken, a first step in her quest for freedom.

The government and the opposition owe the citizenry a duty to deepen rather than subvert the growth of democracy and freedom.

PART 4

Appendices

Democratization and Election Calendar

<i>Date</i>	<i>Event</i>
1st Jan, 1990	Rev. T. Njoya launches the multi-party debate in his New Year Sermon.
Early May, 1990	Matiba and Rubia join the multi-party debate. Later they announce a political rally for 7th July.
June, 1990	The Saitoti Review Committee is formed.
3rd July, 1990	Matiba and Rubia are detained.
7th July, 1990	The “Saba Saba” riots break out in Nairobi.
Nov. 1990	The Saitoti Committee’s Report is released.
Dec. 1990	KANU scraps the queue-voting system, lifts party suspensions and restores the security of tenure of judges, the A-G, the Controller and Auditor-General.
Feb 13th 1991	Oginga Odinga launches the National Democratic Party (N.D.P).
April 1991	Rubia is released from detention.
May 1991	A-G Muli is replaced with Amos Wako.
June 1991	Matiba is released from detention.
Late June 1991	KANU scraps the party nomination rules, decrees a maximum of three parliamentary candidates per constituency.
Early July 1991	N.D.P. of Oginga Odinga is denied registration in court.
Late July 1991	Forum for the Restoration of Democracy (FORD) is launched by Oginga Odinga.
August 1991	Justice and Peace Convention of Kenya (J.P.C.K) involving the Church of the Province of Kenya (C.P.K.), the National Council of Churches of Kenya (N.C.C.K) and the Law Society of Kenya (L.S.K.) is launched.

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- Sept. 1991 Threats to introduce a federal system of government (*majimboism*) in Kenya are issued by KANU members of parliament.
- Sept 1991 FORD makes known its intentions to hold a rally at Kamukunji on the 5th of October and seeks a licence which is denied.
- Sept, 21st & 28th 1991 Two political rallies are held by KANU MPs in, which the members of the opposition are banned from the Rift Valley and Moi declared President for life.
- Sept - Oct 1991 The land clashes begin in which the objective is to drive out members of “foreign” ethnic tribes from the Rift Valley.
- Oct 3rd 1991 FORD members withdraw a High Court case seeking licence for the October 5th meeting and set another for 16th November.
- Oct 28th 1991 Njoya launches Moral Alliance for Peace (M.A.P.).
- 15th Nov. 1991 A major crackdown by the government on FORD members in which some are arrested.
- 16th Nov. 1991 The other FORD members are arrested as thousands of people throng Kamukunji Grounds the venue for the proposed political rally.
- Nov. 1991 The Donors Consultative Meeting in Paris pegs further. their aid to Kenya on visible political and economic reforms and sets a period of six months for the reforms to be put in place.
- Dec. 1991 KANU Special Delegates Meeting recommends repeal of Section 2 (A) of the Constitution.
- Dec. 1991 Section 2 (A) is repealed making Kenya a *dejure* multi-, party state.
- 25th Dec 1991 Mwai Kibaki resigns from KANU followed by other leading KANU leaders, notably Mr. John Keen and George Muhoho.
- 2nd Jan. 1992 Mwai Kibaki and others launch the Democratic Party of Kenya (D.P.).
- 18th Jan. 1992 The first multi-party political rally is held by the officials of FORD and attended by an estimated half a-million people in Nairobi.
- 19th March 1992 A ban is imposed by the government on all political rallies

- 2nd May 1992** Matiba returns from London and squabbles in FORD begin.
- June - july 1992** Voter registration exercise is done amidst claims of anomalies and boycott calls.
- 3rd Sept 1992** Oginga odinga's FORD faction holds its elections during a National Congress; this leaves the Matiba faction out.
- Late Oct 1992** The two FORD factions are registered as FORD (KENYA) under odinga and FORD (ASILI) under Matiba.
- 5th Nov 1992** Nomination date is set for 13th November and the election date as 7th December 1992.
- 12th Nov 1992** -The High Court restrains Electoral Commission from conducting the nominations.
- Late Nov 1992** The nomination process is set for 9th December 1992 while the elections are to be on 29th of the same month, i.e. 29/12/92.
- Wed. 9th Dec. 1992** The nominations are held.
- 29th Dec 1992** The first multi-party elections are held.

APPENDIX 5

Nemu's Monitoring Activities

NEMU

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February 18, 1993.

A NARRATIVE OF THE ELECTION MONITORING EXERCISE

1. INTRODUCTORY REMARKS

The period just before the general elections, the actual polling day, and immediately thereafter, marked the most demanding part of the election monitoring exercise extremely hectic and inevitably full of hustle and bustle.

Thus for our field personnel, as well as those operating from the NEMU Secretariat, it was work round the clock. Their committed efforts, we believe, contributed a great deal to the success of the election monitoring exercise. The Extended spill-over of the duration of both the polling and counting process was something which was not quite expected, and it speaks volumes on dedication that the NEMU election monitors both the pollwatchers and count - certifiers - as well as the Unit's officials, had in order to cope with the long hours which stretched to days even.

This aspect of election monitoring of course marked **only** one phase of the electoral process - but needless to state, the most conspicuous and the most electrifying. However, in keeping with the original conceptualization of the election monitoring unit, the pre - election conditions were methodically monitored as these no doubt impinged on the overall electoral process. With a view to carrying this out, the various organizations constituting NEMU monitored this phase of the electoral process by paying particular attention to such key matters as the registration exercise and the creation or lack of it, of a level playing ground expected in the practice of competitive politics. And where necessary, there were interventions with the relevant authorities, especially the Electoral Commission. This would be by way of press statements and paid advertisements or by making personal representations to the Electoral Commission. When NEMU was launched, fairly regular meetings were held with the statutory body charged with the planning and supervision of elections.

In terms of the actual deployment of field staff in the field, only FIDA/ICJ Election Monitoring Unit had full - nine election monitors throughout the country. From August, upto the general elections, FIDA/ICJ had over- 40 District Liaison Officers. There had under- them election monitors averaging five per district. All in all, there were at any time about 250 field staff monitoring the pre - election conditions. The number was lipped by 200 under the auspices of NEMU on the eve of the general

elections. NECEP did carry out some pre - election monitoring especially in **Western** Kenya.

The National Election Monitoring Unit, and other domestic election monitoring groups had to work amidst all odds and frustrations, especially at the initial stages. This was especially with regard to accreditation and acceptance by both the Government and all the political parties, including those in the opposition. As time passed, however, the bonafides of NEMU or the organisations forming the umbrella body were recognised both locally and internationally, something which no doubt helped in achieving the intended goals.

In sum, the election monitoring exercise was the first undertaking of its kind with all the challenges and problems which engulf such a massive exercise. The best we could do was to try our best and this we did.

2. OPERATIONS

Initially, that is during the first half of 1992, the idea of engaging in the election monitoring exercise was mooted by a number of private voluntary non governmental organisations. It was at this time, in May, to be exact, that FIDA/ICJ Election Monitoring Unit was launched. It was also more or less at this time that the National Ecumenical Civic Education Programme (NECEP) was formed, this being an association of the National Christian Churches of Kenya (NCCCK) and the Catholic Secretariat. The Professionals Committee for Democratic Change (PCDC) was formed later.

From a practical point of view, it was found, when NEMU was formed, to complement the efforts already made in the FIDA/ICJ initiative. The point was that the two human rights organisations had already created a country - wide network of election monitors and that it was therefore more useful to build on what had already been established as opposed to starting afresh.

The upshot of this situation was that the FIDA/ICJ Election Monitoring Unit became the nucleus of the operation of NEMU, and it was, amongst other things, because of this that the National Co-ordinator came from this unit. Because of administrative convenience, the offices of the NEMU Secretariat were situated on Bruce House.

The nucleus field staff had been recruited by FIDA/ICJ from 21 - 22 August 1992, we had an intensive induction course for our election monitors from the districts, who numbered about 235. During the training workshop, the participants were introduced to the skills in the mechanics of election monitoring and also acquired basic voter/civic education which they were expected to impart on the local communities in places from which they were to return and operate from. The training programme was conducted at the Kenya Science Teachers College.

The field staff - who included District Liaison Officers and Constituency Election Monitors, were expected to pay particular attention to the political events in their respective areas of operation and how these impinged on the holding of free and fair elections in the country. They were to scrutinise the registers of voters at the district and divisional headquarters and chiefs' centres. They were additionally expected to make reports to the (FIDA/ICJ) Secretariat on the various observations made, and especially with regard to reported claims of anomalies and malpractices during the voters' registration exercise.

From the time they went back to the field, the Secretariat started receiving regular reports from the field - virtually from every corner of our republic. These reports contained very useful information some of which will filter through in the final report being compiled on the entire election monitoring exercise. Whenever possible, measures were undertaken to take correct tions or omissions by the administration and players in the political field. This we did byway of interventions with the relative authorities or by going public in cases where

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we thought we were being given short shrift. A number of statements and paid advertisements were carried in the local press in this regard.

Reports from the field staff on the pre - election monitoring exercise continued to be forwarded to us right on the eve of the general elections. It was a sterling performance on the part of these dedicated persons who, notwithstanding the hostile-atmosphere in which they operated, were nevertheless able to send in well - thought out reports which made it easy for us to look at the whole electoral process from vantage point.

In October 1992 FIDA/ICJ carried out provincial training sessions for all the elections monitors and district liaison officer. The main object was to offer special training to the field staff to enable them to recruit and train pollwatchers and count - certifiers. We were then nearing the general elections and we were mindful of the fact that the climax of the election monitoring would of course be pollwatching on the day on which Kenyans would be casting their votes and registering their verdicts.

During these provincial training sessions, we were fortunate to have a training team come from- overseas under the auspices of the International Human Rights Law Group. We benefited a great deal from the contributions of Mr Patrick Macrory, Professor Jorgen Elklit, and Mr Rafael Sabat Mendez, who were on the team.

A NEMU training workshop for about 250 participants was held at the silver springs Hotel in December some few weeks to the general elections with a view to augmenting the complement of election monitors in the field. The course also offered skills in recruiting and training pollwatchers and count - certifiers.

We also had two officials from Zambia who supplemented our efforts especially in, laying down the actual mechanics on the polling day. They were from the Forum for Democratic Process (FORDEP) which is the offshoot of one of the most successful, domestic monitoring groups in Zambia and which played a very important role in monitoring that country's multiparty politics after decades of one - party rule. We found their assistance, especially with regard to the logistical aspects on the eve of the elections, very useful.

To aid the training of election monitors, as well as to promote civic education, we prepared, under the auspices of NEMU, a publication titled A Manual for Election lated into Kiswahili and 10,000 copies of the English -Kiswahili booklet were printed and distributed across the country. The publication was used not only by those directly involved in the monitoring of the elections, but also general reader for we firmly held the view that Kenyans were also election monitors by virtue of being committed to democracy.

POLLWATCHERS:

A total of 5000 pollwatchers were directly engaged and recruited under the supervision of the NEMU Secretariat. The total number of the actual pollwatcher deployed on the polling day was higher- and one can put the total number as between 7,500-and 10,000. This is in respect of those pollwatchers, who one way or the other were connected with NEMU. The Catholic Secretariat, in particular, did recruit and train a large corps of election monitors the bulk of whom were pollwatchers. Like those engaged and trained by FIDA/ICJ, these were spread throughout the country, NECEP also deployed some pollwatchers on the actual polling day.

Despite the delay by the Electoral Commission in granting the pollwatchers accreditation, we did manage to have presence in most of the critical polling stations throughout the country, in such remote areas as Turkana, Marsabit, Garissa and even Mandera.

The performance by our pollwatchers on the crucial date was truly beyond all expectations. We had a lingering fear upto the early hours of the polling day that

large numbers of poll watchers would not turn up. But it was with relief when early during the polling day we started getting telephone calls from poll watchers from different areas.

NEMU officials who went round were also impressed: More often than not, there would be a NEMU poll watcher at polling stations visited. For Nairobi and the adjoining districts such as Kajiado, and most of the Central Province, there were poll watchers at all the polling stations.

Poll watching did however stretch beyond what we had planned or envisaged. In some areas like Tana River, polling took place the following day with our poll watchers in those areas virtually camping at the polling stations there for more than 24 hours.

At the close of the exercise, we received from every poll watcher, a report form (which was a detailed standard checklist) duly completed. Election Monitors and District Liaison Officers also took part in the actual poll watching and their reports which accompanied the checklists were most useful.

Count - Certifiers:

We had count - certifiers in virtually all the constituencies in the country, in some of them with more than one count - certifier. The composition of count - certifier, in some areas read like "Who is Who?" with senior lawyers and well-known public officers engaged in the exercise.

The counting of course dragged on to between two to three days. Yet, our spirited count - certifiers stayed on and did a splendid job.

Payment to Pollwatchers and Count - Certifiers

This was a massive exercise which started with the giving out of allowances during the training sessions and effecting payments at the end of their work.

Though in some areas it was necessary to make cash payments, most of the payments to the poll watchers and count - certifiers were effected through the banks. The exercise is more or less complete save some isolated cases where payments had not been made either through non - submission of poll watching or count - certifying checklists or some administrative oversight. There are also some few cases where payments had not been made because the persons concerned did not have bank accounts. We are attending to these cases.

The monitoring exercise, in its various phases, could not have been possible without grants from various donor agencies. The following were the sources of the funding which made it possible for FIDA/ICJ, and NEMU, to carry out the election monitoring exercise just concluded. There were: The Canadian International Development, Tile Ford Foundation, Friedrich Ebert Foundation, Royal Netherlands Embassy, the European Economic Community (EEC), Swedish International Development Agency (SIDA), Embassy Switzerland, and the International Centre for Human Rights and Democratic Development in Canada.

3. IMPACT OF THE MONITORING EXERCISE

The most noteworthy thing is that this was the first time ever that election monitoring took place in Kenya in what, one might say, professional level. It was thus a new experience for us all - the domestic groups, the Electoral Commission, the Government, the political parties and not to mention the people of Kenya. It was gratifying that at the end of the day, the idea seemed to have taken root and to have been accepted all - round.

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The mere fact that it was evident to all those concerned - especially the Government and the Electoral Commission, as well the political parties - that the electoral process was being monitored' meant that there was restraint where there might have been deliberate abandon in observing the rules of the game. Put in another way, overt rigging was minimised with the presence of pollwatchers and count - certifiers during the polling and Counting processes.

The other impact which we think NEMU's initiative achieved was to create a bridge between the electorate and the Electoral Commission. Indeed, many aggrieved electors did contact NEMU seeking remedy arising from some dereliction of duty, **and** we did act on such grievances. We also articulated the concerns of the day as these pertained to the electoral process and also made representations to the Electoral Commission. A good example was the adamant stand taken by FIDA/ICJ to the effect that it behove the Electoral Commission to appoint a Director of Elections. At first, the Electoral Commission (here read Mr Justice Z.R. Chesoni) held **the** view that there was **no** legal requirement to appoint the senior official since the Commission itself "constituted the Director (sic). "It was only after the FIDA/ICJ Election Monitoring Unit had threatened to take the Electoral Commission to court over the matters that the Commission relented and appointed, albeit rather belatedly.

The exercise also gave rise to some salutary of good governance, it was necessary to carry out such undertakings as the conduct of elections in a transparent and accountable **manner**. It is indeed a great achievement that in future elections, election monitoring will **not** be a novel thing but something to be undertaken as a matter of Course.

In the course of monitoring the electoral process, NEMU (or individual constituent organizations) was able to forge close working relationship with the foreign election observers groups, notably **the** Commonwealth Observer Group and the International Republican Institute . Such a relationship was no doubt useful in complementing the efforts of the various group., with the domestic groups drawing **on** the solid technical expertise of the foreign groups and with the latter drawing on the vast local knowledge of the former in the respect of the various events on the ground.

The other- lasting impact was the measure of success, albeit modest, in promoting civic education. In preparation to the actual elections, various materials were produced with a view to educating wananchi on the electoral process and good governance **in** general. In this regard a number of posters and brochures were produced and distributed widely especially in the rural areas. NEMU was also had some radio programmes in Kiswahili and some major vernacular languages. This although it is difficult to have an accurate measure of the impact on the target audience, one can safely say that the programmes were effected judging from the responses we got from a wide section of listeners.

Our- public awareness programmes were augmented by materials produced by other domestic groups such as- Kituo Cha Sheria (Logical Advice Centre) and Legal Education and Aid Programme (LEAP) . We believe this area of co - operation, with other domestic groups and other combined efforts did make an impact in impacting civic education which is an important component in the democracy process.

The most immediate impact was of course giving our verdict on the electoral process which culminated in the general elections. At the end of it all, it is necessary to **give** a reasoned verdict in totality - on night from the repea of Section 2A to theholdings of what transpired on the actual polling day and immediately the elections and thereafter. **Our** preliminary assessment was to the fact that the electoral process was flawed in many material ways but that the anomalies and malpractices thereof were not fatal as to make the results of the 1992 general elections migatory. Whichever way one looked at it, there was no going over the fact that the elections marked solid beginning towards genuine democracy. A final report is being compiled and will **be** printed soon for distribution to interested parties. It will contain detailed infomation

and data (as well as reliable evidence) regarding the electoral process concluded towards the end of last year.

After the dust had settled after the general elections, one senior lawyer had participated in count - certifying for one of the Nairobi constituencies came forward with two suggestions which seemed to him to be quite pressing, that is:

- (1) the need to hold seminars for all those who participated in monitoring the elections so that a post election out: and
- (2) the need to promote civic education countrywide as this was one of the best ways **Of** purging the political system of the corrupt ills which have plagued it for four- years.

There are good suggestions which can be followed up but of course outside the scope of the original project proposal.

When the FIDA/ICJ Election Monitoring Unit was established, it was stated that one of the reasons for embarking on the election monitoring initiative was the intention to retain some of its function especially in the field of democratisation and the preparation for future elections. Thus it was not envisaged to disband the unit after the end of the elections. It was, and is still the intention, to have a resourceful nucleus which would follow up the post - election events and also build up expertise in the monitoring of elections so that our neighbours could count on us in enabling them to set up domestic election monitoring groups in their retained will be under the auspices of FIDA/ICJ **or** NEMU is something which can be determined internally.

GRACE GITHU
NATIONAL CO-ORDINATOR.
NATIONAL ELECTION MONITORING UNIT (NEMU)

APPENDIX 6

Nemu Monitors' Committee and Council of Elders

Officials

1. Rev. Samuel Kobia - Chairman
2. Grace Githu
3. Charles Nyachae
4. Lee Muthoga
5. Jane Michuki
6. Rose Waruinge
7. Githu Muigai
8. Prof. Kivuti Ndeti
9. Prof. Sande
10. Mr. B. S. Rihal
11. Dr. Frank Njenga
12. Rev. John MacOpiyo
13. Mr. Joseph Ikalur
14. Rev. J. Gathaka

Council of Elders

1. Mr. Duncan Ndegwa
2. Ambassador J. P. Mbugua
3. Mr. Francis Nyammo
4. Dr. Eric Mngola
5. Mr. G. K. Mwai
6. Very Rev. John Gatu
7. Bishop Raphael Ndingi Mwana'a Nzeki
8. Dr. (Mrs.) Muringo IGereini
9. Very Rev. George Wanjau
10. Mr. Brian Hobson
11. Prof. Zablon Nthambitry, can tolerate to work under.

- 14 Bishop Johnson Komora
- 15 Rev.Mutava Musyimi
- 16 Rev. Benard Musyimi
- 17 Mr. Richard Kimoli
- 18 Dr. Wilson M. Wambo
19. Mr.Zachria Mbori
20. Mr.Isaac Lugonzo
21. Mr. Kanti Shah
22. Mr. A. O. Menya
23. Rt.Rev. Bishop Joseph Otieno Wasonga
24. Brig.(Rtd) B. M. Kiilu
25. Mr. H. S. Mangat
26. Mr. Pancrease Arrum
27. Rev. Morris Mwenda

APPENDIX 7

Letter Accrediting Nemu as Domestic Observers

ELECTORAL COMMISSION

Telephone:Nairobi
When replying please quote,
Ref nu.....EC/EMG/4,
and date,

ELECTORAL COMMISSION,
ANNIVERSARY TOWERS,
6th Floor,
UNIVERSITY WAY,
P .o .Box 454371,
NAIROBI.

6 th November, 1992

Rev. Samuel Kobia,
Chairman,
National Election Monitoring Unit,
P.o Box. 38640,
NAIROBI.

Dear Rev. Kobi,

RE: APPROVAL OF NEMU AS DOMESTIC OBSERVERS

I wish to inform you that the Electoral Commission has considered your application to observe the forthcoming General Elections and has decided to accredit your Organisation as observer under Regulation 23 para (1) sub-paragraph (e) of the Presidential and Parliamentary Elections Regulations of 1992.

We trust that your organisation will make an objective assessment of the Electoral process. You will be entitled to have a representative of your organisation within the precincts of the polling station so as to enable him/her properly observe the Electoral Process.

Yours faithfully

JUSTICE Z. R. CHESONI
CHAIRMAN

Election. Yet time is no respecter of commissions, electoral or otherwise.

“But the commission has absolutely no right to cheat the people of Kenya that it does have everything under control because it does not. What this means to the maintenance of high prospects of peace in the country is unimaginable—at least to us. Yet we have Kenyans who possess abilities to dismiss even the most frightening prospects of chaos with a casual smile mingled with some informed mischief.

“Few processes are more expensive than general elections—three elections at the same time. Transport for all election can be a mind-boggling exercise, not to mention facilities demonstrate to the whole country that these elections shall be by civil authorities as opposed to the public service; offices, training, to mention only a few.

“The purpose of this statement is only one: to appeal to all thinking and peace-loving Kenyans to adopt a spirit of total co-operation with the commission, to be ready to assist if and when called upon to do so and above all to resolve that any attempt to tamper with free and fair elections from any quarter will be out-lawed in the hearts and minds of peace loving Kenyans.

“The task belongs to every Kenyan—not only to the Electoral commission, for it is the peace of generations to come that we are called upon, to safeguard through free and fair elections. This land of Harambee can surely apply the same spirit when an electoral process demands that we do so”

APPENDIX 9

A: Interferences with Preparation for Free and Fair Elections and Other Political Activities Since Voter Registration: June-August, 1992

1. Number of times in which anomalies in voter registration cards have been reported: (8).
2.
 - a. Number of times in which the opposition and other organisations called for a boycott of the voter of the registration exercise: (9).
 - b. Number of times the boycott has been opposed or withdrawn: (20).
3. Number of times, reported, in which the impartiality of the Electoral Commission has been questioned: (20).
4. Number of times reported in which eligible voters have been denied registration for:
 - a. Lack of identity cards: (15).
 - b. Other voter registration technicalities: (11).
 - c. Unsettled families in the tribal clashes area: (2).
5. Number of threats of violence by:
 - a. Opposition: (2).
 - b. KANU supporters: (15).
6. Number of times in which opposition supporters have been injured: (4).
7.
 - a. Number of times in which the electorate have called for an extension of the voter registration period: (20).
 - b. Number of times KANU Government officials and officials of the Electoral Commission have stated that the period will not be extended: (6).
8. Number of times in which allegations of illegal practices such as importation and bribery of voters, registration of refugees and double registration have been cited: (29).
9. Number of times in which extension of the voter registration period was granted: (2).
10. Number of times in which independent bodies have criticized the on-going registration exercise: (9).

B: A Detailed Picture of the Political Goings-on During the Voter Registration Exercise, as Reported in the Press from 8 June to 8 August 1992, Giving Examples of Interferences outlined in Appendix 9(A)

8 June, 1992

The government abolishes with immediate effect charges for new **identity** cards.

National registration begins. There are 5,631 centers, 30,000 registration clerks and 6,000 supervisors. The exercise is supposed to take one

More than 400 youths denied I/D cards because they are non-Kalenjins in Trans-Nzoia District. (4a)

Opposition officials protest against registration clerks in charge of registration in Nyamira District, saying they are relatives of the KANU candidates (3)

A Democratic Party of Kenya supporter reported severely beaten day by bodyguards of Cabinet Minister Joseph Kamotho clenched fist symbol at his entourage. (6)

The interim chairman of the D.P. party urges Kenyans to register as voters. However, he criticises Minister Ole Ntimama for inciting saying the people have no confidence in justice Chesoni. (3a; 5b)

9 June, 1992

President Moi rejects demand by the opposition to halt the voter registration exercise and dissolve the Electoral Commission. (3b)

President Moi assures *wananchi* that the government would do its best to ensure the elections are conducted freely and fairly. (3b)

Complaints about the administration's inability or unwillingness to issue identity cards are aired. Many people are turned away from registration points because they lack identity cards. (4a)

The N.E. Provincial Commissioner appeals to registration clerks to make sure that refugees are not illegally registered as voters. (8)

In **Mombasa** there is a large turn out of Muslims in various voter registration centres. The district registration bureau issues over 40 new identity cards and replaces over 100 identity cards which had been lost. (4b)

In **Kisumu** few people turn up for registration. In Likoni and Ganjoni areas in **Mombasa** registration centres are virtually empty. Opposition officials accuse the Electoral Commission of not publicizing the location of the centres. (3a)

Some areas in **Mombasa** record big turn outs; at Pumwani Hall 300 people are registered by 2.00 p.m. and more still coming in.

In **Nyahururu**, most centres handle an average of 15 people by the middle of the day.

In **Mathira**, a scuffle almost erupts in one of the centres when some people complain that their cards have not been endorsed for presidential elections. (I).

In **Nakuru** the Molo MP protests against the changing of the old registration centres in Molo South areas. He states that registration centres have been moved to areas bordering forests or to farms whose residents are predominantly Kalenjin. This has made people who had recently returned to Molo South after displacement by political violence reluctant to travel to the new stations. (3a)

In **Nairobi**, registration centres which issued identity cards have the largest turnout. Registration clerks cannot handle the big workload. (2a).

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Majority of people who register are either house help or **jobless people** Hardly any people travel from their **offices**.

In **Kakamegag** about 100 people are turned away from registration centres because, according to the supervisor, they are not residents particular localities. (4b)

In **Kisumu**, very few people register.

In **South Nyanza** many people register.

In **Nyahururu town** the exercise takes off at a low key with registering not more than 10 people. Many people from the rural areas confide that they had been collected by local politicians and made to register in the town. (8)

In **Kiambu** the 179 registration centres witness long queues of people seeking to be registered.

Four opposition parties call for a boycott of the on-going voter registration claiming it was fraudulent and the beginning of electoral rigging. They also call for international and local observer teams to be present to

the exercise. (2a)

Mr. justice J.R. Chesoni announces that both local and international observers are free to witness the on-going registration. (3a)

The Evangelical Fellowship of Kenya (EFK) opposes the move to have the voter registration exercise boycotted. (2b)

10 June, 1992

Three people are killed by people said to be warriors at the Enosupukia registration centres. Ten buildings are razed to the ground. Trouble started after alleged warriors ganged up and vowed not to allow and register as voters. This comes after the call by MP for Narok to non-masaai, to either co-operate with Maasai in voting for KANU or to quite the area(5a and 6a)

Politicians claim that people are being lured to register as voters in Mombasa. (8)

Opposition parties ask the government to nullify the voter registration done so far because it is fraudulent. (3a)

They produce evidence of deliberate falsification of voters cards

- (a) by entering wrong electors' numbers; (1)
- (b) by deletion of entitlement to vote for the president; (1)
- (c) by deliberate falsification of the elector's I/D card number and inaccurate or false entry of names; (1)
- (d) by deliberate pre-registration of fictitious voters in a place like Kayole. (1)

Opposition states that the registration exercise is not being carried out by employees of the Electoral Commission, but by personnel hired directly by the state in concert with KANU. (3a)

Opposition parties declare that they have no confidence in KANU and that the Electoral Commission should be appointed from a list of people agreed upon by all the parties. (3a)

The MP for Molo urges the Kikuyu community to vote as a block to protect its political interests.

The Professional Committee for Democratic Change appeals to the Electoral Commission to take special measures to ensure that people displaced by the "tribal clashes" are allowed to vote. (3a)

The DP renews its appeal for a boycott of the voters registration exercise. (2a)

Justice Chesoni states that the Electoral Commission will not resign but will remain until the expiry of its five-year tenure. (2b)

The DP Interim Secretary names individuals who should be considered for appointment in a new and independent Electoral Commission. He also censures the participation of the Provincial administration in the

voter registration exercise, stating that they were the riggers of yesterday
opposition parties recommend a list of at least 100 personalities to be more competent than the Electoral
Commission chairman

At the **Coast** the PC says that people being transported in two lorries from Kaloleni in Kilifi area were
intercepted on their way to register as voters in Mikidani, Mombasa. refugee camp, attempt to register as
voters. (8)

Over 200 people, allegedly from the Utange refugee camp, attempt to register as voters.(8)

justice Chesoni says that all voters who suspect falsification should return the cards to the various centres so
that anomalies can be corrected(3b)

12 June, 1992

In Narok, opposition leaders call for the arrest of MP Ntimama over the of four people at a voters' registration
centre. They state he should be charged with incitement to violence and promoting warlike activities. (5b)'

The C.P.K. Church asks the Attorney-General for advice on the legal position regarding threats and intimi-
dation against certain ethnic groups.

In Murang'a, the DC says that claims that some people were transporting people to register as voters in
areas where they intended to vie for the forthcoming multi-party elections would be Investigated. (8)

A senior voters' registration clerk, Mr. Ezekiel Akunia, says that errors made by the registration clerks
should not be blamed on the ruling party (3b)

Voters retaining cards used in the previous general elections are obtain new ones in the on-going voters'
registration.

The Presbyterian Church of E.A. joins those calling for an indendent Electoral Commission. (3a) in

the participation of the provincial administration in the voter

2nd Interparty Symposium organised by the NCKK is held. The purpose is to address the on-going voter registration process with a view to ensuring free and fair elections for all Kenyans. They also discuss a report from a task force appointed to investigate the clashes, and renew the call to boycott the voter registration exercise.

(3a) 13 June 1992

A total of 595,403 voters have so far registered nationwide, with Nairobi and the N.E. Province doing the poorest.

Interparty symposium held at Limuru comes up with the following resolutions:

- (a) The government has 2 weeks to dismantle the Electoral Commission, failing which the opposition would explore ways to force the government to comply. (3a)
- (b) The government should ensure that "tribal clash" victims return to their farms and register as voters. (4c)
- (c) The public media should give proper information and propaganda and allocate equal time to all registered parties.

Justice Chesoni says that security personnel have been posted to Narok and other areas such as Molo and Mount Elgon. (3b)

The Attorney General spells out conditions that entitle an individual to vote in an area in a press conference. He states that Section A(D) of the Electoral Offences Act forbids the use of force, violence or threats to prevent a person from registering as a voter; people who violate this section are liable to fines and imprisonment.

The Attorney General states that investigations into the Narok killings are being carried out. (3b)

The joint Electoral Monitoring Committee set up by the I.C.J. and F.I.D.A urges the A.G. to arrest Minister Ntimama for his warlike statements. (10)

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15 June 1992

Two new registration centres are opened in Narok to ward off trouble in that area. (3b).

About 12,709 people have been registered in Narok.

Registration hits a snag in two locations of Nyandarua district after wananchi are informed they have to register in another district (Laikipia). 'They vow to boycott the exercise since they were not informed when their areas allegedly transferred to Laikipia District. The two locations affected approximately 3000 voters. (4b)

The joint Electoral Monitoring unit formed by the I.C.J. and F.I.D.A asks the Electoral Commission to quit and pave way for a truly independent Electoral Commission formed on the recommendations of all parties (10)

16 -7une 1992

A memorandum prepared by the Interparty Symposium held states, amongst other views, that the current Electoral Commission appointed by President Moi and set up before the country became a de jure multi-party state. There is need to appoint a new one with the approval of the opposition. (3a)

The Commonwealth observer team arrives. Sir Anthony outlines the *modus operandi* of the team for the press. (10)

Oginga Odinga claims Britain is an interested party in Kenya's leadership

FORD officials, Mr. Salim Ahmed Bamhariz and his supporters, are questioned over a threat to burn down local registration centres. (5,9)

FORD official, Kimani wa Nyoike, claims that the observer team will not be effective in monitoring the elections unless they are assisted by local counterparts. (10)

C.P.K. demands changes in the voter registration exercise. (3a)

17.june 1992

Catholics join in the call for a mass boycott of the voter registration exercise. (2a)

Archbishop Manasses Kuria states that his church will call for civil disobedience if the exercise is not halted within 48 hours. (2a)

Catholic bishops ask for adequate time after the voter registration exercise for greater public explanation of registration programme to make people aware of its ramifications. They are concerned that KANU has unequitable latitude and influence in the on-going registration exercise. (7)

People through the Moyale information office complaining that they had been denied registration, because according to their national identity cards they were not from Marsabit. (4b)

Residents in Tender ward of Ogembo urban council in Bomachoge Constituency in Kisii District boycott voter registration, protesting that they were illegally moved from their former Machoge Chache ward. (4b)

Former A.F.C. Leopards Chairman Mr. Alfred Sambu defends the Chesonu Electoral Commission against rigging claims by the opposition, saying it was premature to predict polls abuse. (3b)

Kamotho declares July 7th as the conclusive deadline of the voters' registration exercise. (7b)

The- M.P. for Bunyala in Busia District, Mr. Peter Habenga Okondo, justifies Kanu's absence in the joint multiparty meeting organized by NCKK.

18.june, 1992 A former chief asks eligible voters to get their identity cards and register

as voters. (2b)

The Evangelical Fellowship of Kenya (EFK) accuses the NCKK of issuing a report on tribal clashes based on "lies and half truths".

The Commonwealth elections observer team urges the Kanu government to stop treating opposition parties as though they were enemies.

19 June, 1992

The Commonwealth advance team expresses the need for an autonomous and independent Electoral Commission to preside over the actual electoral process. (3b)

Mombasa District Kanu branch chairman, Sharrif Nassir, asks Moi to call for elections as soon as the voter registration exercise is included. He says elections should be called regardless of whether all eligible voters are registered or not. (7b)

22 June, 1992

Biwott says voters in possession of old voters' cards should register afresh. He urges wananchi to shun those calling for a boycott of registrations. (2b)

Bishop Gitari asks Christians in Kirinyaga to boycott registration until four conditions set by the C.P.K. are met. (2a)

200 people registered initially want to surrender their voting cards in Kirinyaga saying they are defective. (1)

President Moi threatens to ban the NCKK because of siding with the opposition. (5b)

Youths in a meeting held in Kipchoge Keino Stadium resolve to support President Moi. They support Youth for Kanu, '92 lobby group.

Paul Muite calls for the boycott of voter registration until the government

scraps the justice Chesoni Electoral Commission. He says foreign countries financing the elections should send their representatives to monitor how money is being spent. (2a)

Labour Minister Philip Masinde says that by calling for the boycott of voter registration, Bishop Kuria and the opposition aimed at creating anarchy. (2b)

NCCK is attacked by the MP for Rangwe, Raymond Oloo Ndong, for siding with the opposition in calling for a boycott of the voter registration exercise. (2b)

23 june, 1992

The Electoral Commission refuses claims by the KANU Secretary-General, Mr. Joseph Kamotho, that the registration period would not be extended beyond July 7. He says the Commission has the sole responsibility of deciding whether to extend or not to extend the registration period. (3b)

Catholic Bishop Peter Kairu urges voters to register despite anomalies. In this way wananchi might avoid being barred from participating in the general Elections. (1, 3b)

The Bishop also asked the Commission to enlighten the public on peculiarities that raise doubts on the veracity of the registration exercise such as the fact that in Kirinyaga District cards were being stamped on the spot while in Murang'a they were not. (1)

In Eldoret, Youth for KANU '92, Uasin Gishu, say that Kenyans should ignore calls by the opposition to boycott voter registration. (3b)

Residents of Makuu on Sunday scramble for leaflets bearing the names of five opposition parties which carry a headline: "Do not register for the moment". (2a)

In Othaya, a hide and seek game is carried out between the police and a well organised group distributing leaflets calling for the boycott of voter registration. (2a)

Three people are killed in ethnic clashes in Molo District on Tuesday night. The attackers had earlier visited farms and warned people, who after fleeing the eruption of violence, to go away if they did not want to be killed. (4c)

24 June, 1992

Over 2.1 million people have registered as voters.

The Minister for Foreign Affairs and International Co-operation, Mr. Ndolo Ayah, criticises the opposition for calling for a boycott of the voter registration process. (2b)

KENDA Chairman, Mr. Mukaru Ng'ang'a, accuses Bishop Murang'a Catholic Diocese and Mr. George Anyona of sabotaging opposition efforts to call for a boycott of voter registration. (2a)

25 June, 1992

The Deputy Headmaster of Baragoi Secondary School requests the government and the Electoral Commission to extend the voter registration to allow students, teachers, tutors and lecturers from boarding institutions to register in places of their choice. (7)

Three young men are fined Sh. 5,000 each for double registering in Meru District. (8)

The United States criticises the call for polls boycott. They also note that an extension of the voter registration exercise is advisable and Electoral Commission should have the confidence of a broad spectrum of Kenyan society. (2b, 3a, 7)

The Minister for Local Government warns of bloodshed if the Maasai are provoked by members of other ethnic communities. He Molo MP and Mr. Haroun Lempaka of provoking the Maasai attempt to import voters into Narok constituency. (5b, 8)

A fourth suspect is charged with inciting violence at Enosupukia trading centre in Narok District where five people were killed and several others injured. (5b)

The Kirinyaga DC, Mr. Francis Tilitei, and the Kirinyaga C.P.K. Diocese Bishop Gitari are reported to have met the day before in Kerugoya. Dr. Gitari stated that his flock would register as voters. (2b).

George Anyona, a former detainee, says that the opposition has failed to give Kenyans tangible reasons to validate need for a boycott. (2b)

A man appears before a Mombasa court charged with registering as a voter twice in Mvita constituency. (8)

In Narok, a fourth suspect appears in court charged with inciting people to violence at Enosupukia registration centre. (5b)

The Kenya Episcopal Conference asks the government to vigorously issue identity cards to potential voters to enable those without them to register as voters. They also urge voters to register in large numbers. (2b, 4a)

Opposition groups vow to continue calling for a boycott of registration. (2a)

26 June, 1992

The government commits itself to free and fair elections. (3b,

The opposition explains their call for a boycott of the on-going voter registration exercise on the basis of the absence of an independent Electoral Commission and the non-participation of opposition parties in the formation of the current Electoral Commission. (2b)

Mr. Kibaki says that opposition parties are aware that refugees are being registered as voters. (8)

Mr. Kibaki also states that there had been deliberate relocation of registration centres to the advantage of KANU. (3a)

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30 June, 1992

The U.S. government is urged to continue applying political and economic pressure on Kenya in order to force it to hold free and fair elections among others FORD activist, Raila Odinga.

An elector from Narok North constituency, which is represented by Ole Ntimama, supports Ntimama's call for non-Masaais to "either vote for KANU or leave Narok North until after the elections" (5b)

Kitutu Masaba member of parliament, Augustus Otieno Momariyi, alleges a plot by a Kisii politician to export voters from his constituency they would vote for him at Kitutu Chache constituency. (8)

The opposition parties formally instruct an advocate to file proceedings of the Electoral Commission in the High Court challenging the composition of the Electoral Commission (3a)

Minister Joseph Kamotho calls upon members of his Kangema constituency to use the remaining period in the on-going voter registration to register themselves. (2b)

1 July, 1992

The General Assembly of the National Council of Churches of Kenya calls on all eligible Kenyans to register as voters. This is an apparent change of heart from a resolution passed at the Inter-parties Symposium called for the suspension of the voter registration exercise. (2b)

Anglican bishops are reported to have yesterday told opposition to hold their elections as soon as possible and to seek the mandate of the people, so that *wananchi* can know who the properly elected representatives are. (2b)

Opposition parties urge Kenyans to register as voters after their three weeks campaign to have the exercise boycotted. They say the boycott has been lifted on the understanding that the government is responding positively to the demand for an independent Electoral Commission. (2b)

The NCKK asks for an extension of the voter registration exercise for a period of 2 months with an additional 1 month for the inspection of the voters' register. (7)

The African Women Development and Communication Network (Femnet) appeals to all Kenyan women who are eligible to vote to register before the July 7 deadline. (7)

3,july, 1992

The United Nations High Commissioner for Refugees clears claims by the opposition that the Kenya government was registering Somali refugees as voters. He says that independent investigations had established that no such activity was taking place. (8)

A Minister of State in the Office of the President, Mr. Jackson Angaine, charges that a certain politician was exporting people from Timau in his North Imenti constituency to register as voters in Laikipia District. (8)

Voter registration figures hit 3.9 million.

32 Catholic clergy of the Nairobi Arch Diocese urge the Electoral commission to extend the voter registration period, saying that there are students who have attained the voting age but had not yet registered.

The Chairman of the Electoral Commission, Mr. Justice Chesoni, says the Electoral Commission may not extend the voter registration after July 7 deadline due to prohibitive costs. He urges eligible voters to register before the deadline. (7b)

Justice Chesoni assures all Kenyans that Sec. 26 of the National and Presidential Elections Act stipulates that a voter will not be victimised for any mistakes made at the time of registration. (3b)

Leaders, professionals and organizations such as the African Women Development and Communication Network call for the registration period to be extended. (7)

They propose:

- (a) the commission make maximum use of the media in publishing locations of registration centres; (3a)
- (b) the commission should teach people at grassroots levels the requirements of registration. (3a)

Registration picks up.

A student writes on the predicament of University students still on semester who would like to take an active role in the elections, and calls for an extension of the registration period to include campus holidays so as to allow them to register in their respective constituencies. (4b, 7)

KANU Secretary-General Joseph Kamotho criticises the move by the opposition to sue the government, stating that Sections 23 and 24 of the constitution spell out the powers invested in the President, which include the creation and abolition of public offices. (3b)

About 1 00 National Youth Service men from Mombasa's Vocating Camp located at Mtongwe in Likoni Constituency are registering as voters in Kisauni. This is in return for a payment of a sum

of K Sh. 100. (8)

Two people are found recruiting employees of a giant company along Likoni Road to register as voters. The employees are promised K Sh. 50. (8)

4 july, 1992

Hundreds of people turn out to get identity cards.

An Assistant Minister for Planning and National Development, Mr. Noah Abdi Ogle, asks for an extension of the registration period for at least 3 weeks to allow people in the N.E. Province to register. (7)

Ndhiwa Member of Parliament, Mathew Otieno, has asked chiefs and registration clerks to desist from demanding K Sh. 20 from national identity card seekers.

The Vicar of Mtito C.P.K. Church requests the government to extend the voter registration period. (7)

In Westlands Division, at the district office, several new applicants for ID cards claim they have tried for more than 3 days to acquire new ID cards, to no avail. (4a)

The Vicar of St. Emmanuel C.P.K. Church, Eldoret, says *wananchi* should make use of the remaining five days to beat the deadline for voter registration. (7)

KANU Secretary-General Joseph Kamotho is reported to have said yesterday that the party had not falsified any voters' cards, contrary to opposition claims. (3b)

New body to monitor elections, known as the Elections Rigging Examiners, is announced. They are presently seeking registration. (10)

Ruling on whether or not treason suspects Koigi wa Wamwere and his co-accused will be allowed to register as voters is set for the 7th of July. (4b)

Voter enrolment hits 4 million.

32 Catholic clergy urge the Electoral Commission to extend the voter registration period. In a statement to the press they express concern over:

- (a) those who have been displaced in the Rift Valley Province “tribal clashes”. (4c)
- (b) the youth who have not yet been issued with IDs to enable them to register. (4a)

The Assistant Minister for Livestock Development, Mr. Reuben Chesire, asks for an extension of the voter registration period, citing the slow issuance of ID cards which are a requirement for voter registration. (7)

The Kenya National Youth Service urges **the** government to extend the voter registration period, saying that 6,090 eligible voters had not yet registered. (7)

Councillor Joseph Makari of North Mugirango in Nyamira District requests the government to extend the registration period because some people have not yet succeeded in obtaining ID cards. (7, 4a)

Kericho District Registrar of Persons states that a mobile registration unit had been dispatched to improve the issuing of IDs. (3b)

In **Nyeri** the voter registration exercise is intensified as a large number of potential voters line up at registration centres.

Registration centres in **Kisumu** receive a large number of people wanting to register as voters as the deadline nears. At some registration centres officers are sometimes compelled to work beyond the normal working hours.

Councillor Rose Arondo of Central Seme, Maseno District, appeals to the government to increase voters’ registration staff and extend the period for the exercise.

6 July, 1992

Mombasa Kanu branch chairman, Shariff Nassir, opposes suggestions that the registration of voters should be extended to allow more eligible people to register. (7b)

An Electoral Commission member, Mr. Habel Nyamu, says that each province had been allocated a commissioner to monitor the elections. (3b)

In **Eigeyo Marakwet** District, the Kerio South Kanu Sub Branch Organizing Secretary asks the Electoral Commission to extend the Tuesday deadline to enable more people to register. He says the exercise had been hampered by the unavailability of national Identity Cards. (7)

7 July, 1992

Registration of voters and issuing of ID cards in West Pokot District has been extended beyond normal working hours to enable those wishing to register as voters to do so.

An Assistant Minister in the Office of the Vice-President and Ministry of Finance, Mr. Mathias Keah, calls on the Electoral Commission to extend the registration period. (7)

In **Garissa**, Mr. Ibrahim Salat makes a similar call saying that many of the eligible voters in the area had not registered because they had not ac-

quired identity cards. He also appeals for more national ID cards issuing centres. (7)

Thousands of eligible voters might not register in **Kericho** and **Bomet** due to the lack of ID cards. In Bomet two ID cards issuing units are trying to cope with large numbers of youths who are trying to beat today's voter registration deadline. (4a)

Tana River District Kanu Executive Officer, Mr. Japheth Kase, appeals to the Chairman of the Electoral Commission, Justice Zacheaus Chesoni, to extend the deadline of the on-going voter registration exercise. (7)

Rangwe MP, Raymond Ndong, asks the government to ignore the extension call. (7b)

Pressure mounts on the Electoral Commission to extend the voter registration period as thousands of people rush to beat the deadline. The most affected areas are Murang'a, Turkana, Nairobi, Kakamega and Embu. (7)

Bishop Henry Okullu of the C.P.K. appeals to the government to extend the voter registration period. (7)

Father Kitnani Wainugunda of the Githunguri Catholic Parish urges people to register. He states that this is the people's chance to reject a bad government. (7)

In **Mombasa**, the DP Secretary-General states that the Commission's failure to extend the registration period is tantamount to killing democracy in the country. (7)

Hundreds of people jam **Iten** registration office seeking to be issued with ID cards. (4a)

In **Limuru**, hundreds of people turn out for ID cards but only a few are able to get them. (4a)

Commonwealth Secretary, Chief Emeka Anyaoku, states that the Commonwealth, is satisfied with the efforts of the government to ensure free and fair elections. He states that the Commonwealth will not engage in the debate on the acceptability or non-acceptability of the Electoral Commission. (3b)

Chief Anyaoku says he would be releasing-a sizeable team of observers to monitor the elections; some Kenyans will also be taken to London to upgrade their skills.

Thousands of people flock to registration centres trying to beat the July 7 deadline.

In **Kisumu**, hundreds of people turn up at registration centres; some state that they had failed to register earlier as they were waiting for a green

light from their respective parties.

In **Kilifi**, officers have a difficult time controlling the crowd.

In **Embu**, hundreds of would-be voters turn up at registration centres.

In **Nakuru**, some voter registration centres close due to shortage of cards. (4b)

In **Naivasha**, card shortages are experienced. (4b)

In **Molo**, MP John Njenga Mungai complains to reporters in Nakuru town that prospective voters had been frustrated after some stations in Njoro ran short of ID cards. 4(b)

8 August, 1992

Kenyans have 10 more days in which to register as voters. Mr. Justice Chesoni states that registration centres would remain open between 7 a.m. and 6.00 p.m.

5.2 million people have registered as voters so far.

The Chairman of the Electoral Commission states that the requirements for the procurement of ID cards have been relaxed to ease the voter registration process. (3b)

The joint election monitoring committee of the I.C.J. and F.I.D.A. appeals for the exercise to be extended by one month. (7). The committee mentions that:

- (a) Many young people had not been issued with ID cards, and thus were unable to register; (4a)
- (b) Registration clerks and officers had received scarce training for the job and were therefore ill equipped to explain the procedure to people seeking registration; (3a)
- (c) There was no provision for closing the registers at the end of the day, thus leaving room for names to be added to the registers

later. (4a)

A man is speared to death at the Ereteti registration centre in Osupuko Division of Narok South Constituency. Mr. Njoroge Njuguna was walking to the centre to register as a voter. (6)

Treason suspect Koigi wa Wamwere and his three co-accused lose their bid to register as voters. (4b)

An individual who registered at Karamba Primary School seeks explanation on what he thought was irregular and strange behavior on the part of registration clerks. (3b)

Rev. Gilbert of Nairobi asks for an extension of the registration exercise, to aim at a target of 10 million voters. He also asks that officers at registration centres who do not comply with the rules be replaced with people in whom the public has confidence. (7)

The I.C.J. Kenya Section urges the Electoral Commission to extend the registration period for a month. (7)

A Nairobi University student appeals to the Electoral Commission to establish registration centres within University campuses to enable students to register. (7)

More than 800 youths from Kiru Location in Kangema, Murang'a, are reported to have demonstrated on Monday against the chief for demanding a fee of K Sh. 20 before issuance of ID cards. (8)

11 July, 1992

A second team of experts from the Commonwealth arrives to assist in the forthcoming multi-party elections. The team intends to arrange modalities for assisting the training of election officials, as well as modalities for relating to the Electoral Commission, government officials and political parties.

FORD activist George Nyanja is arrested by police for allegedly being in possession of 103 blank voters' cards and attempting to bribe a registration

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officer at Nderu registration unit, No. 145. (8) 6,274,265 voters have

registered as voters.

The Youth for KANU '92 chairman and secretary, in a press statement, say that high registration of voters in border constituencies was meant to ensure that the opposition guaranteed themselves a 25% vote in provinces where opposition parties were not popular and this amounted to rigging on the part of the opposition.

13 july, 1992

The Anglican Archbishop urges the government to act on on-going complaints about the on going voter registration process. (10)

Mr. William ole Ntimama denies saying that *wananchi* from a certain ethnic group should not register as voters.

14 july, 1992

A group of professionals and politicians in Nairobi launch a movement calling itself the Movement for Free and Fair Elections. (10)

The Minister for Transport and Communications expresses concern over low voter registration in Migori and Homa Bay.

The Mombasa KANU Chairman Sharrif Nassir threatens to revisit the call to a return of *Majimbo* (regionalist government) should opposition parties insist on direct presidential elections.

Aspirants for parliamentary seats will be able to spend as much as they wish during the election campaigns if parliament endorses an amendment to the current bill which puts the ceiling at Shs. 40,000 on expenditure.

The Attorney-General proposes, stringent rules and regulations to curb electoral offences.

The President orders a crackdown on opposition members who are allegedly cheating on voter cards.

Concern is expressed about Kenyan students living abroad who cannot exercise their right to participate in the on-going elections. (9b)

15 July, 1992

The KANU parliamentary group wants specific changes in the constitution to allow whoever is elected as President to form the next government regardless of the number of parliamentary seats his party commands.

President Moi orders a crackdown on people acquiring blank voter registration cards. (8)

A Kenyan student writes about the right of the almost 30,000 Kenyan students living in India to vote. (4b)

KANU proposals for a constitutional amendment bill requiring a winning President to have 40% support of elected members commended.

Professor Wangari Maathai forms the Movement for Free and Fair Elections to press for a just and peaceful democratic society. (10)

Four registered opposition political parties are reported to have yesterday instituted legal proceedings against the Government seeking among others a declaration that the on-going voter registration is null and void. (3a)

Over 6.7 million people have registered as voters.

One member of the electorate in Machakos urges the electorate not to be bribed to vote unwisely. (8)

16 July, 1992

The High Court will be hearing the mention of a civil suit filed by four opposition parties against the Attorney-General.

Matiba is barred at an army airstrip at Wajir from conducting a meet-the-people tour of the North Eastern Province.

Minister Ole Ntimama claims that he never stated that Kikuyu people should not vote in Narok.

Police are reported to have yesterday picked up a *Nation* reporter to quiz him on how he found out that 89 voters' cards had been damped in Nairobi. (10)

Four main opposition parties propose to meet to discuss the proposed amendment to the constitution.

Lawyer japheth Shamalla claims that the proposed constitutional amendment is meant to safeguard the position of those who are in leadership.

The DP interim Secretary-General, Mr. John Keen, says that the constitution is the property of 24 million Kenyans in a multi-party system.

KANU is no longer qualified to alter or change the constitution without consulting the other parties.

The Minister for Information and Broadcasting tells the house of alleged massive fraudulent registration of voters masterminded by the opposition. (8)

The opposition demands an extension of the voters' registration exercise to September 8. (7)

The Bunyala MP tells parliament that the opposition is "corrupting the registration exercise by importing people to enroll in opposition-prone constituencies. (8)

The Y.M.C.A. appeals to all women throughout Kenya to register as voters.

The Chairman of the Electoral Commission states that there might be no need to extend the voters' registration period. (7b)

A *Nation* reporter states that it is estimated that nearly 3.5 million Kenyans above 18 years do not have ID cards and therefore cannot register

as voters. (4a)

A suit against the Chairman of the Electoral Commission is to be mentioned on July 21st. It seeks an order restraining justice Chesoni from serving as a member of the Commission.

17 July, 1992

The opposition criticises the proposed constitutional amendment bill which seeks to enable a president whose party has a minority in parliament to form the next government.

People who have failed to register as voters during the extended period, which ends today, are told to blame the opposition for its boycott call earlier on.

The Electoral Commission will hold a crucial meeting to consider further extension of the voter registration exercise.

University students of the Kenyatta University KANU sub-branch accuse Raila Odinga of involvement in mass exportation of voters to Langata constituency. (8)

18 July, 1992

The voter registration exercise is extended by 3 more days. (8)

Nairobi lawyer, Paul Muite, appeals to district commissioners to exercise fairness in issuing licences for public meetings to opposition leaders.

Mr. Kenneth Matiba and his entourage are blocked from proceeding to Embu and Kirinyaga districts by security personnel. (5b)

20 July, 1992 A member of the electorate writes about the high chances of election rigg-

ing since no one knows who printed the voter registration cards or how many were printed, thus making it possible to introduce fictitious voters. (8)

In Thika, a priest, Father Ndirangu, claims that some politicians in the town were buying voters' cards and destroying them. (8)

A Nation report calls upon the Electoral Commission to play a role in educating the people and allaying their fears concerning 'the registration process, especially over anomalies reported.

The MP for Cherangani, Mr Kiprono Kirwa, claims that some people were being imported as voters into his constituency. (8)

Mr. Kenneth Matiba states that the order barring him from touring Wajir, Embu and Meru was tailored to sabotage his attempts to reach the electorate. (5b)

Mr. Makau condemns police action in harassing Mr Matiba's entourage. He also decries the administrative requirement that those wishing to hold political rallies must give 14 days notice.

KENDA chairman, Mr. Mukaru Ng'ang'a, calls on all political parties to put off their party elections until after the General Elections date has been announced to prevent KANU from taking advantage of the sharp party divisions that would emerge after party elections.

Molo MP Nienga Mungai slams the government for using the police to intimidate presidential hopeful Kenneth Matiba. (5b)

The Australian Ambassador to Kenya calls upon the government to hold the general elections immediately to end diversion from substantive issues, and to end squabbles amongst political parties.

21 July, 1992

In **Nyahururu** town and its environs hundreds of young people were yesterday still chasing national identity cards, according to reports, but failed to meet the deadline.

In **Nairobi** long queues of ID seekers were seen at Kariokor Social Hall, Kibera and Makadara, according to reports. (7a)

22 July, 1992

KANU headquarters announces satisfaction with the completed registration process.

24 July, 1992

The Chairman of the Electoral Commission states that the voter registration cards were only issued for the Purpose of the General Elections, and may not be used in FORD party elections.

MPs express concern over the proposed use of voters' cards in the forthcoming FORD party elections.

KENDA officials state that a circular dated 8th July,, 1992 ordered members of the armed forces to register as voters near their bases. (8)

A student writes to complain that although he had attained the age of majority he, like many other students, could not register to vote because they were still in school when the exercise was going on. (4b).

25 July, 1992

A DP supporter is reported to have yesterday claimed he was beaten by the Ngong District Officer, Mr. Reuben Rotich, and ordered to surrender his party cap in Kiserian last Saturday.

Election observer team returns to the U.K.

A Kiambu court is reported to have yesterday issued a summons to FORD activist George Nyanja compelling him to answer charges of stealing voter registration cards and creating a disturbance. (8)

DP activist Paul Kiptoo Koech yesterday denied a charge before a Nairobi court of uttering words with a seditious intent when addressing a rally in Ruringu stadium. He allegedly stated that the Kalenjin community had taken an oath binding them to perpetuate violence against members of other communities.

The Chairman of the National Council of Women of Kenya urges women to vote in leaders who will promote their political development.

Nearly 8 million people have registered as voters. Provincial figures are released by the Electoral Commission.

'Me Attorney-General, Amos Wako, has published a bill seeking an amendment to the constitution on the elections of president. The bill also proposes to widen the responsibilities of the Electoral Commission to cover registration of voters and maintenance and revision of the voters' register.

'Dr. Ellon Wameyo, an Assistant Minister in the Office of the President, calls on all registered voters to safeguard their electors' cards and reject .@plans by some politicians to confuse and mislead them.

The Electoral Commission warns Kenyans against being misled into ustheir voters' cards for any other reason.

26 7u ly, 1992

'Many young people in the Ngong and Kiserian area complain of deliberate attempts by the administration to deny them identity cards and hence their right to register as voters. (4a)

Most young people who did not register as voters cite lack of identity cards as the reason of their inability to obtain registration. (4a)

Professor Wangari Maathai alleges that the government has played many tricks during the registration period. (3a)

27 July, 1992

The Democratic Party Secretary-General, John Keen, vows to expel members of the Asian community who support the KANU government if his party comes into power. He, however, promises to protect all Asians supporting his party. (5a)

Mr. Kibaki alleges that 1 million youths who had already attained 18 years have been denied identity cards and would, therefore, not participate in the forthcoming General Elections. (4a)

Two members of parliament from Bungoma district on Saturday asked the government to investigate reports that Sabaot tribesmen were planning harassment against non-Sabaots; they warn of severe consequences if other ethnic groups living in the Mt. Elgon area are harassed again.

Minister John Cheruiyot calls for the arrest of residents in Nandi District circulating leaflets urging the rejection of KANU and President Moi. (5b)

KANU Secretary-General, Mr. Joseph Kamotho, orders his constituents to expel members of the opposition from Kangema as they are war-loving people.

28 July, 1992

Voter registration is still going on in Nakuru District to enable a certain Kenyan community to vote more than once in the forthcoming elections, the MP for Molo, Mr. Njeng'a Mungai, claims. (8)

The High Court is reported to have yesterday denied a statement made by DP Secretary-General, Mr. John Keen, accusing the Chief Justice, Mr. A.R. Hancox, of suppressing opposition parties.

29 July, 1992

Justice Chesoni, Chairman of the Electoral Commission, denies that voter registration was still going on in some parts of the country. He says that

the exercise would go on until August 5 for voters residing outside the country.

Mrs. Koigi wa Wamwere is held at the Jomo Kenyatta International Airport for 8 hours. She states that she has come to register as a voter to be able to take part in the forthcoming elections. (5b)

A FORD activist, George Nyanja, is to be charged with theft of voters' cards and creating a disturbance in a manner likely to cause a breach of the peace.(8)

1 August, 1992

A member of the electorate in Bunyala seeks clarification on procedures suggested by registration clerks in his district of clipping the cards at the corner once issued. (1)

An individual draws attention to the possibility of a popularly elected president being thrown out of office through a parliamentary vote of no confidence.

4 August, 1992

A Nairobi businessman, Kennedy Wainaina, urges Kenyans to vote wisely.

5 August, 1992

The Attorney-General and law makers are urged to take the matter of the new presidential bill with great seriousness to ensure that it does not create conditions for a potential constitutional crisis.

6 August, 1992

Parliament passes the constitutional amendment bill. Under the new bill the President must have a 25% endorsement from at least five of the 8

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administrative provinces of Kenya.

7 August, 1992

The chairmen of four opposition parties sign a post-election economic plan, seeking to stop economic collapse.

8 August, 1992

The British government donates office machinery worth KShs. 1.2 million to the Electoral Commission. (10)

Mombasa KANU branch chairman, Sharrif Nassir, says that KANU would not hold any inter-party consultations with the opposition, since the opposition leaders have not yet been elected to office.

APPENDIX 15

The Electoral Commission of Kenya

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

PRINTED BY THE GOVERNMENT PRINTER, NAIROBI

THE ELECTORAL COMMISSION OF KENYA
THE ROLE OF ELECTION OBSERVERS AND THE
CODE OF ETHICS

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

Observer or Monitor

These two terms do not carry the same meaning. An observer, is generally a spectator as described in paragraph one above while a monitor is almost an official participant within the polling station at which he/she must exclusively operate. A monitor may point out the errors noted to the presiding officer whereas the observer communicates with the presiding officer at the latter's request. While the law in Kenya i.e. Regulation 23 (1) (e) of the Presidential and Parliamentary Elections Regulations, 1992, allows the presence of observers at the polling stations there is no provision that permits the accreditation of monitors at Kenya elections.

The Role of an Observer

Since one of the goals of using observers is to see whether elections are free, fair or impartial, observers may wish to take an interest in

watching the political campaign, the role of political parties, the role of the media, the responsibilities of the security personnel and how they are exercised and the democratic processes, which would include among other things, the general layout of polling stations, adequate voting- secrecy and the overall administration of the polling sites, but in particular-

- (i) maintenance of peaceful and orderly voting process;
- (ii) documentation and recording of accountable equipment and papers;
- (iii) display of empty boxes before voting;
- (iv) sealing before and after polling;
- (v) maintenance of law and order;
- (vi) transportation of ballot boxes from the polling stations to the counting centres;
- (vii) checking of the seals to the aperture and elsewhere before opening of ballot boxes;
- (viii) noting the sealed packets of accountable stationery from the polling stations and the presiding officers' statement of ballot papers issued;
- (ix) the manner in which votes are counted;
- (x) collecting and correlating of results; and

(xi) visible indication that the presiding officer is in control of the entire polling situation.

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

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

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

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

1. to be nonpartisan at all times and be seen to be so. For example they shall not express Partisan political views whether by word, conduct or sign or otherwise;
2. to respect the role, status and authority of the Presiding Officer at all times and accordingly to exercise discretion in seeking to communicate with the Presiding Officer;
3. not to communicate with the voters at anytime within the precincts of the polling station;
4. not to interfere in the electoral process at any time;
5. to undertake to report objectively the results of the process and the election and inform/submit to the Electoral Commission the irregularities noted;
6. to inform the Commission of the hotel/ place of residence and in case of change to advise the Electoral Commission of the same,
7. to inform the Electoral Commission in a brief written statement the object of their observing the elections in Kenya;
8. to agree to attend briefing of all observers

by the Electoral Commission;

9. to apply to the Electoral Commission for approval or accreditation; and
10. to wear the Electoral Commission Observers, official Badge or other identification marks at all times.

Particulars

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

1. name, address, fax and telephone number of the sponsoring authority;
2. source and nature of funding;
3. aims and objectives of the sponsoring authority;
4. organizational rules of the sponsoring authority;
5. a statement of non-partisanship in the context of Kenya;
6. whether you have knowledge of political trends or trends of Kenya's history;
7. for domestic observers evidence of working knowledge of both English and Swahili languages and any local vernacular; and
8. acceptance of the Electoral Commission's right to admit or withdraw accreditation

for those who violet the law of the host country.

Commission's Rating of observers' Presence

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

APPENDIX 16

Polling and Counting of Votes: Statistical Analysis

(a) Factual **Findings at the Polling Stage**

Number of polling stations out of a total of 1722

Observation

Actual time voting began	
At 6.00 a.m.	230
Between 6.00 and 7.00 a.m.	298
Between 7.00 and 8.00 a.m.	413
Between 8.00 and 9.00 a.m.	.270
Between 9.00 and 10.00 am	118
After 10.00 a.m.	200
Accessibility of stations	1719
Proper inspection of ballot boxes	692
Presence of campaign materials	6
Interference with polling by organized gangs	0
Cooperation from officers with polling observers	676
Half-hearted cooperation from offices with observers	9
Proper stamping of ballot papers	313
Intimidation of voters by security forces	4
Barring of voters from participation	0
Proper sealing of ballot boxes	690
Presence of problems in transportation of ballot boxes	32
Leaving of agents back at polling station when transporting ballot boxes	8
Availability of adequate security	266
Representation of all political parties by agents	None

Actual time polling stations closed	
At 6.00 p.m.	236
Between 6.00 p.m. and 7.00 p.m.	418
Between 7.00 p.m. and 8.00 p.m.	219
Between 8.00 p.m. and 9.00p.m.	221
Between 9.00 p.m and 10.00 p.m.	179
After 10.00 p.m.	215
Assessment of polling process as fair	1268
Assessment of process as fair with minor problems	386
Assessment of process as not fair	42

Notes

1. This data relates only to those stations from which reports were received and not to all the stations in the country.
2. A small marginal error must be taken into account owing to the fact that some information was not available on a few stations which were observed, and in respect of which data was analysed. The data is, however, more than adequately representative of the state of stations throughout the country.
3. In the original NEMU report on the elections released in February 1993, the information which has now been summarized was given on the basis of each polling station.

(b) Factual Findings at the Counting and Announcement of Results Stages

<i>Observation</i>	<i>No. of counting centres out of a total of 107</i>
Representation of political parties by agents:	
Full representation	None
Partial representation	107
No representation	None

2. In the original NEMU report on the elections released in February 1993, the information which has now been summarized was given on the basis of each counting centre.

Other Observations

Only a very small percentage of the monitored polling stations- 1993 did open and close on time. From the sampled number of polling stations, 75% opened and closed late. (We did not get information on the opening and closing of polling stations from 12% of our sample.)

It is also interesting to compare the opening and closing times of the polling stations. The figures are as follows:

Time	Opening No. of polling stations	Closing No. of polling stations
Opening: 6.00 a.m. Closing: 6.00 p.m. (Legally mandated time)	230	236
Opening:6.00-7.00 a.m. Closing: 6.00-7.00 p.m.	298	418
Opening:7.00-8.000 a.m. Closing: 7.00-8.00 p.m.	413	291
Opening:8.00-9.00 a.m. Closing: 8.00-9.00 p.m.	270	221
Opening:9.00-10.00 a.m. Closing: 9.00-10.00 p.m.	118	179
Opening:after 10.00 a.m. <u>Closing:</u> after 10.00 p.m.	200	215

The figures on the left and right columns of the above table should be identical. It is thus clear that the overwhelming majority of the polling stations sampled did not open for the legally required 12-hour period. It is irregular for polling stations to open for less or more than the 12-hour period.

In about 24% of the polling stations we monitored, the ballot papers were not stamped appropriately due to unavailability of the official stamp. If other unstamped ballot papers were introduced in these polling stations

detection would be virtually impossible.

Interestingly, in none of the 1722 polling stations were all the political parties represented by agents. The ruling party KANU, however, was virtually represented in all of them. The opposition parties stated that they had no proper advance knowledge of the number of streams in a polling station to make ample preparations for agent representation.

In about 8% of the polling stations, problems relating to transportation of ballot boxes were reported.

In about 4% of the polling stations agents were not allowed to accompany the ballot boxes to the counting centres. Such ballot boxes stood a high chance of being tampered with *en route* to the counting centres.

Despite the above problems, polling went on reasonably smoothly. The polling stations were easily accessible to the voters. concerned parties were given an opportunity to inspect ballot boxes prior to the start of elections; the co-operation of the electoral officers was very commendable; ballot boxes were, on the whole, properly sealed; there was hardly any intimidation of the voters by the security officers in the polling stations, etc.

Our monitors were able to state that in 74% of the polling stations the polling process was fair whereas in a further 22% of the stations, the polling exercise was fair but marred by minor problems.

It was at the counting and announcement of election results stages where major problems occurred in the electoral process. In 23% of the counting centres counting started before all the ballot boxes had arrived. In 3 of the stations, lights were interrupted during counting. In 3 there was theft of ballot papers and in one destruction of ballot papers. In 5 stations, there was fraud in counting. In 12% of the centres, misleading and incorrect results were announced. In 6 centres, results were not announced immediately after completion of counting. In 36% of the counting centers invalid ballot papers were counted despite protests by candidates. In 3 centers, there occurred substitution of results.

After careful scrutiny of the counting process, our counting certifiers formed the opinion that only in 48% of the counting centres was the process outrightly fair.

The conclusion could therefore be reached that whereas in 74% of the polling stations monitored polling was fair, only in 48% of the counting centres was counting fair. The counting stage then attracted most electoral irregularities.

It is to be noted that the above remarks were not in the original NEMU elections report.