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**STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE
FOR INTERNATIONAL AFFAIRS (NDI)
PRE-ELECTION DELEGATION TO KENYA'S DECEMBER 29 ELECTIONS**

Nairobi, December 5, 1997

I. THE DELEGATION AND ITS WORK

This statement is offered by an international pre-election delegation organized by the National Democratic Institute for International Affairs (NDI). The delegation visited Kenya from December 1 through December 5, 1997. The purposes of the delegation were: to express the international community's continuing interest in and support for advancing the democratic process in Kenya; to examine conditions leading to the December 29 elections, including but not limited to the effects of the recently passed legal and constitutional reforms; and to provide support to Kenyan organizations that are observing the election process.

The delegation was not in Kenya to certify the electoral process; it recognized that ultimately it is the people of Kenya who will judge the legitimacy of elections. The delegation met with government and election officials, leaders of political parties and civic groups, candidates for the presidency, parliament and local office, journalists, representatives of the diplomatic community and others interested in the electoral process. The delegation would like to thank those with whom it met for sharing their views on the elections and broader democratization processes and for their warm hospitality.

This delegation's work was part of NDI's ongoing technical assistance to nonpartisan election observation efforts being conducted by Kenyan nongovernmental organizations, including the Institute for Education in Democracy (IED), Kenya Catholic Justice and Peace Commission (KCJPC), National Council of Churches of Kenya (NCKK), Kenya Human Rights Commission (KHRC), Bureau of Electoral Education Research and Monitoring (BEERAM) and others.

These organizations are monitoring the pre-election period by observing and reporting on matters such as media coverage, electoral violence and security issues and the overall campaign environment. They are also preparing a nationwide effort to observe the voting, counting and tabulation processes, as well as the processing of electoral complaints. These organizations are employing internationally recognized methodologies for observing election processes in an impartial, professional and comprehensive manner. Since June, NDI has provided technical support to these organizations, as it has done with similar groups around the world.



NDI has formed a committee of senior international political and electoral figures to highlight the activities of and lend international attention to nonpartisan Kenyan election observing organizations. This International Advisory Committee (IAC) includes: John Bruton, former Irish Prime Minister; Paul Simon, former United States Senator, who chaired the Foreign Relations Subcommittee on Africa; Maria Leissner, former Member of Parliament and former Leader of the Liberal Party of Sweden; Alan Wheat, former Member of the United States House of Representatives; Walter Kamba, Dean of the Law School of the University of Namibia and former international member of South Africa's Independent Election Commission (IEC); Jack Quinn, former legal counsel to the president of the United States; and Kenneth Wollack, President of NDI. This pre-election delegation included Walter Kamba, Maria Leissner, Alan Wheat, Kenneth Wollack and Patrick Merloe, NDI's Senior Associate for Election Processes. Almami Cyllah, NDI Kenya field representative for election monitoring programs and former member of the election commission of Sierra Leone, assisted the delegation.

NDI has provided assistance to domestic, nonpartisan organizations involved with election observing in more than 35 countries around the world, and the Institute has organized international election observer delegations to more than 40 countries. Nonpartisan domestic election observing is increasingly practised around the world because it helps to build public confidence in democratic election processes. It also encourages citizen participation in elections, deters serious electoral irregularities and exposes such irregularities should they occur. It also promotes citizen participation in governmental and political processes between elections.

The delegation was impressed by the enthusiasm, dedication and professionalism of the Kenyan nonpartisan election observer organizations. NDI will continue to keep the international community informed of the important activities of these organizations throughout the election process.

II. THE ELECTION ENVIRONMENT

Political events over the course of 1997 demonstrate once again the deeply-rooted desire of the Kenyan people for democratic reform. The recently enacted constitutional and legal reforms have been seen by many political leaders as positive, if incomplete, steps in a larger reform process, while some leaders have criticized the reforms as insufficient. There is virtual consensus, however, that much needs to be done to implement the letter and the spirit of the reforms before the elections -- and that even greater efforts will be required after the elections. The short amount of time from passage of the reforms to election day emphasizes the need for immediate, effective actions to implement the reforms.

There is a growing involvement of Kenyan citizens who are observing the pre-election period and planning to mount a comprehensive observation inside the polling stations and counting centers around the country on election day. In addition, there has been a substantial increase in the number of women seeking elective office. Also, political parties are campaigning vigorously. NDI, in response to requests from political parties, is planning to conduct party agent

training programs in the capital and the seven other regions of the country.

Reforms related to the elections, such as fair media coverage and neutrality of provincial officers, must be implemented fully and quickly in order to provide a basis for meaningful elections. Moreover, the momentum for reform that has developed over this year must be continued after the elections, if the broader democratic process is to be meaningful and lasting. The elections therefore should be examined as part of a larger political process, and both Kenyans and the international community should monitor post-election developments.

Many observers noted that the movement for democratic reforms in 1992 was slowed following those elections. Failure to advance the reform process following the 1992 elections had a negative effect over a substantial period of time. Many with whom the delegation met pointed to positive elements in the 1997 election environment, in contrast to the period leading up to the 1992 elections. Some of these elements include: expansion of the Election Commission to include members put forth by opposition parties; free time on radio and television for parties taking part in the elections; an improved ability of candidates to organize meetings and rallies, as well as to travel more freely on so-called "meet-the-people tours," as a result of the repeal of colonial-era laws; modest improvements in broadcast media news coverage of both opposition and ruling parties; improved freedom of expression; and fewer instances of interference with political activities by provincial and local officials in some areas.

Alongside these positive developments, many Kenyans expressed serious concerns about a number of important issues. These include: violence during the parties' nominating processes and possibilities for increased election-related violence, including violence directed towards women candidates; so called "no-go zones" where rival candidates are prevented from campaigning freely; the limited amount of time provided to implement electoral-related reforms and to adequately inform the electorate of the nature and significance of these reforms; the negative effects on campaign preparations of the late registration of Safina and other political parties; biased and unbalanced news coverage of parties and candidates by radio and television; a perception of partiality and a lack of independence of the Election Commission; concerns about the integrity of voter registration lists and the disenfranchisement of young, prospective voters who did not receive their national identity cards -- which are required to register to vote; use of state resources for the electoral advantage of one political party.

III. OBSERVATIONS AND RECOMMENDATIONS

From NDI's experience in more than 50 countries in transition to democratic governments, it is clear that, when segments of a society are doubtful about the fairness of an electoral system, additional safeguards -- including measures to make the system more open and transparent -- are often introduced to build public confidence in the electoral process. In situations like that of Kenya, the longevity of the ruling party imposes a special responsibility on the government and electoral authorities not only to ensure that the electoral process is administratively correct, but that it is free from the *perception* of partisanship and corrupt

practices. At the same time, all parties share an obligation to respond to the elections in a responsible manner. Confidence in the electoral system and the perception of fairness are as important as the letter of the law.

Under such circumstances, extraordinary steps -- beyond legal requirements -- are often necessary to overcome scepticism concerning the integrity of the electoral process. As noted above, Kenyans have demonstrated their strong desire for genuine elections as part of developing the country's democracy. It is in this context and in the spirit of international cooperation that the delegation offers the following recommendations.

- 1) The Election Commission should address concerns about its ability to function impartially and effectively by opening its proceedings to political party representatives, accredited observers and others and by establishing regular liaison meetings with the political parties.
- 2) The Election Commission should make available, free of charge, one copy of the voter list for each constituency to each registered political party and to each accredited Kenyan election observing organization, so that they can verify the accuracy of the lists and use them to scrutinize the voting process on election day. The Commission should also allow an expert chosen by the political parties to examine the computerized voter registry.
- 3) The Election Commission and the government should further stress to civil servants that they must act in a politically neutral manner.
- 4) Intensive civic education, aimed at explaining the meaning of the constitutional and legal reforms, as well as electoral procedures, should be undertaken, including by nonpartisan nongovernmental organizations.
- 5) The Election Commission should guarantee that political party polling agents and accredited observers are able to accompany the ballot boxes from the polling stations to the constituency counting centers in the same vehicle as the ballot boxes. Where space restrictions may prevent all party agents and accredited observers from traveling in the same vehicle (including aircraft, if used) with the ballot boxes, the party agents and observers should be allowed to select representatives from the ruling and opposition parties and domestic observers to physically accompany the ballot boxes.
- 6) All Kenyan organizations that have demonstrated a capability to conduct nonpartisan election observing, such as the National Council of Churches of Kenya (NCCCK) and the League of Women Voters of Kenya, should be accredited as well as those organizations that already have been told that they will receive accreditation. In addition, election authorities, especially at the polling station level, should be instructed to allow accredited nonpartisan Kenyan observers to carry out observation of all aspects of the election process.

- 7) Effective complaint and enforcement mechanisms should be established to guarantee that electoral complaints and court challenges, raised at all levels, are investigated and resolved impartially and expeditiously.
- 8) The government and the Election Commission should provide effective security protection for all candidates to enable them to campaign safely at all times and throughout the country. This should include special measures to address threats faced by women candidates.
- 9) An effective enforcement mechanism should be established to ensure balance and unbiased news coverage of the elections. In this regard, Presidential Press Service (PPS) programs produced for Kenya Broadcasting Corporation (KBC) television and radio, could be suspended during the official election campaign period. This would permit KBC to cover the President in the same manner as other candidates. Candidate debates could be carried by radio and television to enhance voters' ability to make an informed choice at the ballot box.
- 10) In order to prevent or minimize election-related violence and to allay fears of such violence, a concerted effort should be put forth by each of the political parties and candidates to ensure that their supporters respect the rights of other political contestants and promote a peaceful electoral environment. They should issue assurances through the mass media stating that effective steps will be taken, as required by the Electoral Code of Conduct, to ensure that voters, candidates and their supporters will be free from violence in election activities through and after election day.

The recommendations set forth above would help inspire confidence in the electoral process. The delegation was constantly reminded that the December 29 elections must be placed in a larger democratization process that includes further constitutional, legal and institutional reform. These elections provide an opportunity to establish a meaningful step in that ongoing process. The process must continue beyond the elections in order that Kenya may take its rightful place in the growing community of democracies. It is the delegation's hope that the momentum for democratic reform will be maintained, deepened and broadened in the months ahead and that all participants will embrace the spirit of tolerance and cooperation in searching for advances that serve the interests of the country.