

NDI STATEMENT ON THE DECEMBER 29, 1997 ELECTIONS IN KENYA

In the period leading up to the December 1997 elections in Kenya, NDI worked with domestic civil society groups, assisting them in their efforts to monitor the elections. The three main groups were: the Institute for Education in Democracy (IED); the National Council of Churches of Kenya (NCCK); and the Catholic Justice and Peace Commission (CJPC). Following the elections, these groups issued a joint statement outlining their assessment of the electoral process:

Final Statement

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

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

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

Election Observation

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

Registration of Voters

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

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

levels of apathy among some sections of the population, as well as the burning of voters cards by some persons, resulted in low registration levels in some areas.

Given the fact that there existed widespread dissatisfaction with the registration process, it is regrettable that the Electoral Commission did not act to allay fears and did not make public the numerous objections and claims made.

It is also regrettable that more publicity was not given to encouraging registered voters to check the voters registers prior to the election. This would have cut out a number of the problems some voters faced on election day.

Delineation of Electoral Constituencies

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

Likewise, Nairobi with some 726,000 registered voters has just 8 constituencies whilst the Rift Valley with some 2,156,000 registered voters has 49 constituencies, Central Province with some 1,346,000 has 29 constituencies North Eastern Province with some 172,000 registered voters has 11 constituencies. Thus on average it takes 91,000 voters to elect a member of parliament in Nairobi, 44,000 in the Rift Valley, 46,000 in Central Province and 15,600 in North Eastern Province.

These anomalies result in an obvious over-representation for particular provinces in the parliament, and an imbalance to the weight of each vote.

Whilst the variances in population density between various areas in Kenya will result in some differentiation in constituency size there needs to be an adherence to the principle that all votes are equal.

The addition of a further 22 constituencies prior to the election served to exacerbate the perception that the decisions for delineating constituency boundaries were made for political gain. Constituency boundaries need to be readdressed prior to the next election.

Legal, Constitutional and Administrative Reforms

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

The amendment of the Public Order Act, negating the requirement for a license for the holding of political meetings was welcomed, as was the introduction of a provision in the Kenyan Broadcasting Corporation Act allocating equal air time for all registered political parties.

However, the fact that these changes were introduced so late meant that they had a limited benefit with regards the conduct of these elections. Further, in the case of the amendments to the Public Order Act and the new provisions regarding equality of media time, they were not, in practice, fully implemented or adhered to.

There is also a need for a further series of such reforms, including bringing in regulations regarding campaign spending and allowing independent candidates.

The Electoral Commission

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

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

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

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

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

Media Coverage

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

Following the agreement of IPPG recommendations the Kenyan Broadcasting Act was amended to include: "The Corporation shall keep a fair balance in all respects in allocation of broadcasting hours as between different political viewpoints. Following this the situation in which the media was heavily biased in favor of Kanu improved to the extent that by the fourth week in November, the combined opposition

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

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

Candidate Nominations and the Political Campaign

Whilst violence continued to be a feature of the campaign and nomination processes it was noticeably decreased from 1992.

It was welcome that the nomination process was extended from one to two days. It was also welcome that there were no reports of abductions as occurred in 1992. However some isolated attempts to intimidate and prevent prospective candidates from presenting their papers for candidature were reported in Baringo Central, Eldama Ravine, Mt. Elgon and Turkana South.

During both the nomination and campaign processes a significant number of violent incidents occurred. Such incidents have no place in a democratic society. It was noticeable that much of the violence was intra-party rather than inter-party, particularly in areas where a party enjoyed overwhelming support.

It was observed that the ruling party was particularly guilty of such a practice, particularly in Tinderet, Cherengani, Shinyalu. It was observed that violence occurred in the DP party nomination process in Mathira, Tertu, and in the NDP nomination process in Nyakach.

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

A further worrying factor during the campaign was the involvement of public employees, such as District Commissioners, District Officers and Chiefs, and state resources on behalf of the ruling party, particularly in Eldama Ravine and Mogotio, Samburu and Turkana in Rift Valley Province; Moyale in Eastern Province; and Mt. Elgon in Western Province. It was also noted that a Permanent Secretary and a Parastatal Chief used their positions to openly campaign on behalf of one presidential candidate.

The state exists to serve all the people and should not be used by one party to gain a benefit over others.

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

Poll Watchers reported that in 48% of polling stations voting materials, such as ballot boxes, ballot papers and voters registers, were not available at 6 a.m. on election day. Poll Watchers also reported that in 50% of cases election officials were not present at the allotted time to start the opening procedures.

As a result of these shortcomings, poll watchers reported that at least 56% of polling stations failed to open on time.

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

However, it is clear in the vast majority of cases that although seriously delayed, polling materials were eventually available, enabling voting to take place, often due to the tenacity of election officials at the local level and due to the patience of the voting public.

Based on figures so far available, the vote turnout is estimated at some 65%, with the lowest turnout being approximately 40% in Coast Province and the highest being approximately 75% in Rift Valley Province.

Once voting did commence, 98% of poll watchers rated the actual voting process as being acceptable.

A further positive aspect of the voting process is that 92% of poll watchers reported that security personnel behaved in an appropriate manner.

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

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

organization of the election, and some isolated incidents around the country, the voting process does appear to have eventually been undertaken in a serious and largely satisfactory manner.

The Vote Count

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

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

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

Conclusions

As stated, we have covered all aspects of the electoral process, including analyzing the electoral framework, voter registration, the nominations process, the political campaign, the role of the media, and the voting and counting processes.

From our analysis of these vital factors it is clear that a level playing field does not currently exist in Kenyan politics. The institutional bias in favor of Kanu, such as domination of the state media and unfair delineation of electoral constituencies, needs to be seriously addressed.

It is also clear that the logistical and administrative organization of the elections was characterized by chaos and inefficiency, which served to increase tensions around the country and decrease confidence in the process.

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

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

The dignity and determination of the Kenyan voters in participating in

country.

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