

Summary

We were in no doubt that the transition from a one-party to a multi-party system of government would be a difficult process. We further recognised that that the ethnic diversity of Kenya might throw special local complexities on these elections. The reports we received on initial efforts to introduce the multi-party system seemed to confirm some specific early difficulties, such as an insufficient de-linking of the role of government from that of the ruling party. It appeared to us that the process of decoupling the ruling party from the Government was not undertaken with the degree of commitment necessary for the purpose and that the time within which that decoupling could have taken place was too short.

On the basis of the information received we further believed that the Government could have made a greater effort to create a multi-party climate and to promote greater public awareness and tolerance which such a change required of citizens. Given that the change to multi-party politics seemed to have aroused fears that the new system would open the way for greater ethnic discrimination, a special effort should have been made to quell such fears in the Rift Valley and North Eastern Provinces. Many prominent Kenyans told us that these two troubled provinces were not exposed to sufficient public education on the practices of multi-party politics. This contributed to ethnic disturbances with tragic consequences for many, and also caused considerable disruption to the election campaigning of opposition parties.

While we recognise that the transition from a one-party to a multi-party system can hardly be achieved overnight, it is clear that the parties, particularly the ruling party, could have done far more to control and curb the worst excesses of their supporters throughout the election campaign. The inability of the Government to entertain any dialogue with the new opposition parties in the run-up to the elections also contributed to the creation of an inhospitable climate for the launching of multi-party politics.

In view of the difficulties with which each of the major election tasks was faced we believe that it is important for us to examine the irregularities observed and the complaints made to us while travelling throughout the country.

The Electoral Commission

From the outset, opposition political parties complained about the composition and performance of the Electoral Commission. We have discussed in Chapter 2 the regrettable circumstances surrounding the appointment of the Chairman. We noted that the occasion of introducing a change as significant as that to multi-partyism should have been good reason for appointing a new Commission and for demonstrating sensitivity in selecting a Chairman.

It was not surprising that the lack of transparency in the work of the Commission, especially the lack of effort to promote dialogue with the political parties and to keep the electorate informed about the developing electoral process, led to suspicions about the integrity of the Commission. This meant that the whole election process had an unfortunate start and for several months after, public confidence continued to be lacking.

We were glad to note that in the closing weeks of the campaign the performance and credibility of the Commission improved significantly with noticeable benefit in terms of confidence-building, both with the political parties and the general public.

Registration of Voters

In Chapter 3 we deal with the problems which were reported to us during the registration of voters. We note that these problems include a lack of adequate training of registration officers, registration of young persons of doubtful age qualification, the failure of the proper authorities to issue identity cards to many citizens, young adults in particular, the incidence of multiple registration, the initial boycott of the process by opposition parties and the busing of persons from certain districts to others in order to strengthen party support in some constituencies.

The effect of these problems on the register of voters has generated widely differing views and perceptions. There has been no authenticated figure of the number of persons disenfranchised as a result of the problems encountered during registration. The opposition parties have now placed this figure at over three million persons. The Electoral Commission has estimated that the number of persons unregistered could be as many as 1.5 million persons, this figure including those persons who were qualified but did not wish to register, registration being voluntary. The Commission further argued that the estimated population of 24 million, 60 per cent of whom are below age 15, produced approximately eight million voters, a not unreasonable percentage of registration. It was not possible for us to substantiate or otherwise the claims of the one side or the other, but we noted that if the premise of the Commission was sound, its argument would not be unreasonable. We are also of the view that the Government needs to grasp that the registration of voters in the context of multi-party politics is an exercise of critical importance in establishing the viability of the electoral system.

The difficulties in ascertaining the population of Kenya are due to the failure of the Government to publish the 1989 census results. One possible consequence of this is the avoidance of the requirement to review the constituencies' boundaries in accordance with Section 42 of the Constitution.

De-linking of the Ruling Party from Government

De-linking the activities and resources of government from those of the ruling party during the transition period from a one-party to a multi-party system is, perhaps, a test of the commitment of the government of the day to a multi-party system. The Kenyan experience has shown that the failure to implement a timely de-linking programme spells trouble for the process of transition. A failure to de-link the ruling party from the government means that public resources can be used to fund the ruling party's campaign activities and public properties can be used for the party's purposes. Public servants are expected to act in the interests of the ruling party instead of being impartial. The public media remain largely under the control of the ruling party. Unfortunately, many of these manifestations were evident during much of the election campaign in Kenya. In the last weeks of the election period, we noticed some improvements in media coverage of opposition parties' rallies and we received reports from political parties that permits for rallies were either waived or readily granted in many regions. Where there is insufficient de-linking, however, the playing field will never be level for the parties contesting the elections. This inevitably reduces the chances of achieving free and fair elections.

Shortening the Election Period

The infelicitous attempt of the Attorney-General and the Electoral Commission to shorten the period required by law for the parties' nomination of their candidates is discussed in Chapter 3. This severely affected the credibility of both. Opposition parties interpreted the Attorney-General's erroneous finding that there was an error on the face of the law, to be another attempt to favour the ruling party. The Electoral Commission, in remaining silent about the purported change of a legal provision that would affect adversely the opposition parties, and by setting a period for the party nominations well short of the 21 days normally allowed for that purpose, gave an impression of acting in favour of the ruling party, the Kenya African National Union (KANU).

Nominations

The reports we received from the opposition parties, interested groups, independent observers and aggrieved prospective candidates suggested that the nomination proceedings for parliamentary and civic elections were marred by the physical prevention of a substantial number of prospective candidates

from handing in their nomination papers (see Chapter 3). These reports were confirmed in the main by formal complaints made to the Electoral Commission and actions brought before the Court. The result of this unlawful interference with prospective candidates was that in the Rift Valley Province 16 Parliamentary candidates, all belonging to KANU, the ruling party, were declared duly elected unopposed on nomination day. Similar problems also occurred in Wajir District of North Eastern Province. In other constituencies in the Rift Valley, where elections were contested, several of the Parliamentary and Civic prospective candidates were unable to contest the elections as a result of similar unlawful interference by groups some of whom were known to their victims.

Because of apparent legal constraints, the Electoral Commission was able to deal with only a limited number of these cases. It is clear that the nomination proceedings in the foregoing cases were badly flawed. We noted that the physical obstruction of prospective candidates was facilitated by the short period allocated for nomination papers to be submitted under Presidential and Parliamentary Elections Regulation 15.

The Campaign – Violence, Intimidation and State Corruption

We note in Chapter 4 that the campaign was marred in the Rift Valley and neighbouring provinces by widespread tribal disturbances, threats and harassment of party supporters, in particular supporters of the opposition parties. We also noted that conditions were such in the North Eastern Province that opposition parties were unable to gain free access and to hold political rallies. We learnt from one opposition party that when their leader attempted to land there, they found all the airstrips blocked and had to turn back.

We must record our concern at what appeared to be widespread bribery by political parties, particularly the ruling party. Some of our members witnessed the passing of money in significant amounts to party supporters. Defections from one party to another continued after parliamentary and civic nominations. This situation got so bad that the Attorney-General had to warn candidates that the law did not provide for defection or withdrawal of candidates who had been validly nominated by their respective parties (*Nation*, 25/12/92).

Greater efforts should have been made by political leaders to curb the bribery of nominated candidates of other parties which led to their defections, and the purchase of voters' cards.

Our teams which were deployed throughout the country reported peaceful rallies by all parties in most areas. Exceptions were in Rift Valley and North Eastern Provinces.

Polling Day

Although polling day was marred by disorganisation which delayed the

opening of polling stations for voting by several hours in many cases, the voters peacefully waited in an orderly manner in long queues. The late opening of the polls resulted in the Electoral Commission extending the voting hours beyond the statutory closing time of 6 p.m. We note in Chapter 6 that extensions of time in the evening did not fully compensate for the time lost during daylight because many voters, particularly the old, women with young children and the disabled, found it difficult to travel long distances in the dark. Given the many problems which they faced, the performance of most election officials at the polls and counting centres was admirable and contributed to the eventual successful completion of the voting exercise.

We are satisfied that whatever degree of success was achieved in the transition from a one-party to a truly multi-party system must directly be attributed to the patience and determination displayed by the voters. There could have been no greater testimony of their commitment to multi-partyism and this must augur well for the future development of democracy in Kenya. Mention should also be made of the important role played by national monitoring agencies throughout the electoral process, a development of long-term significance in the building of a democratic society.

We were especially pleased with the fact that peace and quiet prevailed throughout the country on polling day. This development was all the more welcomed because it came at the end of a vigorous campaign period marked by serious ethnic disturbances.

We express our concern at the slow pace of the counting of the ballots and the consequential delay in the release of the results.

Despite the flaws, we believe that these elections marked the first step on the path to multi-party democracy. The process, as it turned out, was facilitated greatly by the resolute determination of the voters to make a success of their contribution to its development. Regrettably, the contribution of the Government and the political parties did not match that of the voters on this occasion.