

Introduction

The invitation to the Commonwealth from the Government of Kenya to observe the first multi-party elections in almost 30 years followed a decision by the Government in December 1991 to begin the process of transition from a single-party to a multi-party democratic system. It coincided with a renewed Commonwealth commitment by Heads of Government at Kuala Lumpur in 1989 and at Harare in 1991 to assist member countries in the promotion of democratic processes. In support of that commitment, the Commonwealth has in the past two years sent observer missions to Malaysia, Bangladesh, Zambia, Seychelles, Guyana and Ghana.

The visit to Nairobi in early April 1992 of the Commonwealth Secretary-General, Chief Emeka Anyaoku, initiated a practical Commonwealth involvement in the transition to a multi-party system. Soon afterwards, the Secretary-General, at the request of the Attorney-General of Kenya, sent a constitutional expert to Kenya to advise on the adaptation of the Constitution to conform with the requirements of multi-party democracy. On 21 April 1992, President Moi announced that the Government would be inviting the Commonwealth to observe the forthcoming elections.

In response to the subsequent invitation from the Government of Kenya and in accordance with Secretariat practice, the Secretary-General sent a Secretariat Planning Mission to Kenya in June 1992 headed by Deputy Secretary-General (Political) Sir Anthony Siaguru. The purpose of the mission was to ascertain whether Commonwealth observers would be welcomed by all political parties, to explore the logistical parameters of such an exercise, and to gain an appreciation of the major issues involved in the transition process. In confirming to the Secretary-General that there was general support for the presence of Commonwealth observers, the mission identified a range of issues which had come to its attention. These included:

- the importance of an Electoral Commission which should be seen to be both independent and impartial;
- the necessity for a proper registration of voters and a credible register of voters;
- the need for equitable access of all political parties to the state-owned news media;

- the importance of de-linking of the institutions of State and Government from the ruling KANU party;
- the desirability of dialogue among political parties; and
- the need for the authorities to take steps to contain communal violence.

A suggestion from the Planning Mission that the Secretariat should provide technical assistance to the Electoral Commission was accepted, and in July 1992 a four-person technical mission visited Kenya to assist the Electoral Commission with its planning process in respect of the election budget, registration and training. The mission spent two weeks in Kenya. Following its report, the Secretary-General wrote to the Attorney-General of Kenya in late July 1992 urging confidence-building measures to improve relations between the Government and the opposition parties.

The Secretariat continued to monitor developments in Kenya and in October 1992 the Secretary-General sent a second Planning Mission which reported that the situation was not conducive to creating confidence that the 'playing field' for all parties would be level. In an effort to encourage progress in this respect, the Secretary-General visited Kenya in mid-November 1992. He met with President Moi, the Attorney-General, the Electoral Commission and the principal political parties and interest groups. Apart from the frank and wide-ranging discussions which he had with the Government and the Commission, the Secretary-General also urged the political parties to adopt a voluntary Code of Conduct similar to that used in other recent elections in the Commonwealth.

The Observer Group

It was against this background that a Group of 25 Observers and 15 Secretariat support staff was organised by the Secretary-General to observe the Presidential, Parliamentary and Civic elections in Kenya. The composition of the Group is set out at *Annex I*. We were given the following Terms of Reference:

- The Group is established by the Commonwealth Secretary-General at the request of the Government of Kenya and with support of the political parties.
- It is to observe every relevant aspect of the organisation and conduct of the elections in accordance with the laws of Kenya relating to elections. Its function is to ascertain whether, in its impartial judgment and in the context of those laws, the elections have been free and fair.
- The Group has no executive role. Its function is neither to supervise nor to act as a Commission of Inquiry; rather it is to observe the process as a whole and arrive at a judgment accordingly.
- It is to submit its report initially to the Secretary-General who will then forward it to the Government of Kenya, and to the leadership of the political parties participating in the elections.

Given the charged political atmosphere over the last year in Kenya, some of which is described in Chapter 2, the Group was conscious of the complexity and importance of the task before it.

Method of Work

En route to Kenya we assembled in London for a briefing by the Commonwealth Secretary-General who emphasised that the integrity of Commonwealth observer groups rested on their independence and impartiality and on the skills and experience which they bring to bear.

In stressing the historic importance of these elections to the people of Kenya, the Secretary-General reminded us that our final report to him would represent our own independent and collective judgment.

A four-person advance party of the Group, led by Secretariat Team Leader Mr Carl Dundas, had been on the ground in Nairobi a week in advance of the arrival of the main party, to set up an office and prepare a programme. Two of them had arrived in time to observe the Parliamentary/Civic nominations on 9 December and the Presidential nominations on 14 December. A copy of a News Release from the Advance Team of the Commonwealth Observer Group commenting on the nominations process is at *Annex II*. By 17 December, virtually the full Group had assembled in Nairobi and immediately launched into a full round of meetings and consultations. Our arrival statement is attached at *Annex III*.

The Group saw representatives of all major political parties and other parties which accepted its invitation to meet. We paid a courtesy call on President Daniel arap Moi and raised with him the broad issues implicit in the introduction of multi-party elections, with particular reference to the need to contain violence, and to the irregularities in the nominations process as described in Chapter 3. We also held meetings with the Attorney-General, the Permanent Secretary in the Ministry of Foreign Affairs, and the Chairman and members of the Electoral Commission. Throughout our stay we kept in constant touch with the Electoral Commission, party officials and other observer groups, especially the National Election Monitoring Unit (NEMU). Our work was much facilitated by the Ministry of Foreign Affairs and in particular the officials assigned to assist international observer groups. We liaised closely with the other observer groups, both domestic and international, and co-operated in respect of information-sharing, documentation and deployment arrangements. As is customary, we issued regular press releases and made media appearances to inform the public of our work – an exercise which we thought could facilitate the resolution of continuing problems. A schedule of our engagements is at *Annex IV*.

The choice of 29 December as election day – falling between the Christmas and New Year holidays – necessarily affected our plans. It was convenient to divide the period over which the separate teams of observers were deployed around the country. Thus, 17 teams went out for four days, from 20–23

December; this was followed by a Christmas break, with the teams again being deployed on 27 December to the same areas. The objective was to cover all provinces and as many polling stations as possible so as to achieve a representative sample of the voting areas. To this end, our teams held discussions with party officials, electoral officials, the police, church and NGO leaders, and familiarised ourselves with the locations of polling stations in an effort to ensure that the Commonwealth presence was both active and visible. We travelled in vehicles clearly marked 'Commonwealth Observer Group' and wore T-shirts and armbands similarly marked. We used a check list to guide us in our work (see *Annex V*). A schedule of our deployment is at *Annex VI*.

We received full co-operation from the authorities, and were allowed complete freedom of movement around the country and access to every aspect of the election machinery. The authorities were always willing to see us, gave generously of their time and received our representations with courtesy and interest. We were also deeply appreciative of the warm welcome from the people of Kenya and their eager co-operation in this critical phase of their political development. Before we left on 2 January 1993, we issued two statements on the whole electoral process, an interim statement on 31 December (see *Annex VII*) and a final statement on 1 January 1993 (see *Annex VIII*).