Encouraging a FAIR VOTE

The Role of the International Community in Helping to Strengthen Electoral Commissions

Rapporteur's Report
Public Sessions

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March 13, 2008.

Opening remarks: ***Philip Oxhorn, Director, CDAS***

Christopher Manfredi, Dean, Faculty of Arts, McGill University

The main objective of the Centre for Developing-Area Studies at McGill University is to find ways to create a dialogue between practitioners, policy-makers and academics. For the past year, the idea of democracy promotion has been at the centre of this dialogue at CDAS. In the wake of the startling events in Kenya, the question of how to prevent such situations arose. The violence that followed the elections was unexpected by most observers, since Kenya was seen as a bastion of democracy in the region. After the fact, however, the situation can be understood as being predictable.

It is in order to begin to build the requisite knowledge and institutional bases to prevent such a situation, that we need to ask ourselves what the international community can do to ensure the fairness and legitimacy of electoral processes.

At a time when CDAS is undergoing an exciting period of expansion and in the process of becoming a fully-fledged institute, the Faculty of Arts has made this area a central component of the University's current fundraising campaign.

It is in this context that this conference was organised. The jumping-off point for our discussions is the provocative op-ed piece in the *New York Times* by our keynote speaker, Edward P. Joseph. An experienced practitioner in conflict resolution, elections and democracy work in Iraq, the Balkans, Democratic Republic of Congo, Haiti and Pakistan, Edward Joseph is a frequently consulted policy advocate, writer and commentator on foreign policy.

Keynote address

Edward Joseph: "Election Violence and Election Commissions: Is Certification the Answer?"

There is an ongoing debate about whether elections should be judged by their legitimacy (the subjective perception by the people and parties involved) or by their quality (the objective assessment of observers and others). However, the focus here is the over-riding need to avoid election-related unrest like that recently seen in Kenya, although Kenya is by no means the only such case.

The motivation behind the New York Times article that prompted this conference was twofold: to show that the conventional formula of technical assistance to electoral authorities along with election observation is inadequate to prevent election-related disasters like Kenya, and to propose a different approach that is not process-based but rather focused on a definable

institution, the electoral management body (EMB) or election commission. The proposal from that piece was for UN certification of the EMB as a means of preventing such problems.

The aim of today's presentation is to expand on that op-ed piece in order to stimulate discussion around the feasibility of the concept, whether the UN is the right body, and the criteria to be used.

Why certify election commissions? As a member of the IRI election observation team for Pakistan's abortive elections on January 8, 2008, I met with Benazir Bhutto where the discussion focused on her allegations on election rigging, centred on the role of the election commission. These concerns, along with Ms. Bhutto's assassination, led to widespread rioting and eventually to the postponement of the elections. At the same time, Kenya was exploding in election-related violence, and in that case also the role of the election commission was central to the problem.

In addition, I reflected on my experience in Haiti as a long-term observer, as chief observer for IFES and as part of the USAID funded mission for the 2006 elections in that country. These elections were repeatedly postponed, very expensive and ultimately their disputed result required ad hoc international intervention. But the real problem, in my estimation, was not so much the intervention as the failure to deal with the dysfunctional and disorganised election commission.

This impression was strengthened by contrast with the elections in Congo in the same year, where the UN served as a co-located partner for the election commission. Confirmed by subsequent research, this impression was confirmed. If we are to prevent more "Kenyas", we must focus on election commissions. Empirical evidence shows both that when they function poorly, poor and often contested elections follow, and when they function properly, they are more likely to get acceptable and accepted results. The answer is not more technical assistance and observation; we need a certification process that will provide a verdict well in advance of election day that complements, not replaces, observation and technical assistance.

If we look at what observation does, we realise what certification could do. Eric Bjonlund's book, "Beyond Free and Fair", identifies key flaws of or limitations to observation. There is too much emphasis on election day, with the media watching at the point where it is already too late to do anything about the problem. Likewise, long-term observation, where available, suffers from the absence of media attention. Bjornlund notes that the methodology of observation is dangerously superficial, potentially leading to Potemkin-village democracies.

In my mind, the problem is the opposite: the election process is too multiplicitous for anyone to have a clear responsibility. For the first Namibian elections, the instructions for observers were impossibly broad. The reports produced by observers also tend to be impressionistic and fuzzy. Both problems would be solved by putting in place a certification team comprised of a small group of specially trained people with a specific mandate.

Another limitation of observation is the problem of consistent standards. Although EMBs are usually supposed to be subject to scrutiny, in practice this area is largely ignored. This is conflated by the fact that most observers are not professionals and they often come with their own agendas. Certification would provide consistent standards, applied to election commissions around the world, with room for variations in specific contexts like post-conflict elections, but with a clear emphasis on standards of independence, transparency, electoral rules and openness to technical assistance.

We should recall that EMBs are in fact a formal subject for observers. Yet we know from our own awareness and from academic study that this is generally a neglected problem. Fortunately, the subject of EMBs and electoral governance is receiving increased attention. While I would not suggest that certification is a panacea; in the words of Mozaffar and Schedler, "effective electoral governance alone does not guarantee good elections, of course, but good elections are impossible without effective electoral governance".

If we consider the Rose Revolution in Georgia and the Orange Revolution in Ukraine, we can see the central role of election commissions. According to OSCE reports, in Georgia the EMB was directly involved in rigging and producing dishonest results. The problems were not related to capacity, even though usually this is the diagnosis. In fact, the EMB was politically controlled, which allowed it to distort the election results. In the Ukraine, the situation was similar, and it was only in the second round that the EMB's membership was reshuffled by Parliament to avoid the partisan rigging that had occurred in the first round. Only by chance was widespread violence avoided in both of these cases. In Kenya, the results were grimmer. And the problems with the Election Commission of Kenya are well known. There was a lack of consultation in the appointment of commissioners which undermined the confidence of election stakeholders. These composition problems were linked to a lack of transparency and a perceived tabulation fraud. In this case again, capacity was not the first issue at hand.

So what can we learn from these examples? At a minimum, we learn that observation and technical assistance are not enough. We can also see why certification is crucial, not just assessments and recommendations, because this process not only puts an onus on the EMB to meet minimum standards, but it equally puts an onus on the UN or other certifying bodies to do a thorough job before certifying, and to pronounce itself clearly. The UN's reputation itself will be engaged, and this will avoid the tendency to focus too narrowly on election day. It will also increase the effectiveness of technical assistance which will have more leverage.

The central role of EMBs and measurement is noted in academia. If we accept the premise, how feasible is it for an outside body like the UN to achieve this? If so, what would be the criteria for certification?

In terms of feasibility, we must bear in mind that the purpose of certification of EMBs is to focus on a discrete, digestible element instead of an amorphous election process. In that sense, we are talking about a modest sized institution. It would also be feasible compared to observation because it would be performed by experts with focused training, not diplomats or politicians or amateurs.

In order to develop criteria, we need to start from the purpose of electoral governance. There are three levels of electoral governance: rule making; rule application, involving administrative efficiency, political neutrality and public accountability; and rule adjudication. Functionally, electoral commissions are intended to accomplish regulatory and administrative activities, manage relations with political parties in a balanced fashion, project an image of neutrality and efficiency, and adjudicate disputes fairly. On the basis of this assessment, I have devised four criteria:

1. Inclusiveness, or the balance in the composition of the commission;
2. Transparency, or the visibility of decision making;

3. Electoral rules, with special focus on tabulation; and

4. Openness to technical assistance, to get at the issue of competence.

One measure of legitimacy of EMBS is the perception of stakeholders, and certification would no doubt have a positive impact on perception.

I believe the key criterion –the inclusiveness and independence of the commission – can be measured, by looking at:

- professional autonomy, with individuals chosen because of professional credentials and with a clear expectation of autonomy and impartiality; and
- balanced partisan representation, where all major parties have representation.

Both of these can be measured, based on an examination of the character of the institutions that name the members and the perceived independence of the appointees at the time of their appointment. This allows for the measurement of the independence of EMBs based on the nature of the appointment process and on the tenures in office of both appointees and appointers. Even in post-conflict situations where the professional autonomy model is not always possible, it can be replaced by representation on the election commission, with a more flexible but still present criterion of professionalism.

The question we now need to ask is whether the UN would be the right actor to effect certification, and how to find enough support for it. By creating a special Election Management Certification Unit outside the sphere of influence of UNDP and EAD, conflicts of interest would be avoided, and such a function does lie broadly within the scope of the EAD, whereby election assistance would be provided upon direct request by the country involved.

Importantly, the General Assembly would have to give its blessing to such a new unit, which means that the buy-in of the very countries whose electoral commissions will come in for certification would be required. It would also mean that the question of which countries' electoral commissions would be subject to scrutiny would need to be answered. However politically difficult, I do not believe this scrutiny to be impossible. The General Assembly has become increasingly supportive of UN involvement in elections. Obviously, this idea would have to be "sold". But this could go further if developed countries, beginning with the United States, would subject themselves to some form of review and certification.

Another way to get this buy-in and to develop regional capacity would be to perform certification in conjunction with regional organizations, but the UN is central, since it has the most experience in elections and the most legitimacy as an actor.

There are clearly serious sovereignty and ownership issues. It is understandable that there is an inherent resentment towards what may be seen as an intrusion. However, I think we need to keep this in the context of possible "Kenyas", considering the human and democratic cost of such a meltdown. In my experience, people in the Balkans did take ownership of their political process, but this was through a civil war.

In conclusion, it is clear that election commissions are at the core of the biggest and most dangerous electoral failures, and that election observation and technical assistance are not enough. I would argue that a process of certification would solve this problem.

Question and Answer Period

The question and answer period generated mostly questions regarding the crucial issue of obtaining buy-in, due on the one hand to the problem of getting the worst offenders to accept such a programme, and on the other to the more thorny issue of sovereignty. There was also some scepticism as to the willingness of the UN to involve itself in such a project. The point was also made that EMBs are affected by the context in which they function, and so the broader usefulness of certification of EMBs was put into question.

While conceding that EMBs are only part of the process, Mr. Joseph emphasised that they are, however, a necessary component for ensuring a fair vote. Furthermore, EMBs constitute an easily identifiable and concrete entry point for assistance in the democratic process. On the issue of sovereignty and buy-in more generally, he responded that clearly a top-down approach would be unacceptable, but that beginning with a voluntary process, led by the many EMBs that have expressed an interest, should over time create the critical mass needed for certification to become an accepted international norm.

March 14, Public Sessions

Panel One. Achieving Fair Elections: A View from the "Outside Looking In"

Moderator: Philip Oxhorn, Director, CDAS

Horacio Boneo (Argentina)

I was asked to structure my comments around the keynote address, and recount how things were done in this area at the UN during my time there. I will review as I understand them the main points from the keynote address. Elections need to be seen as legitimate, and this is usually done through elections observation and technical assistance. This leads to too much focus on election day itself, and too little attention on the long term processes. With regards to technical assistance, the main problem is that there is little institution building and too much problem solving. In order to focus on the processes, it might be a good idea to have the incentive of sanctions, which might possibly take the form of a process of certification and decertification of election management bodies (EMBs).

In the first period of decolonisation, there were many observations and verifications done by the UN and by others of independence votes. The colonial powers were willing to give up their colonies, and the standards used for the first elections were those of the former colonial power. The last such vote was in Namibia, which was a very special exercise, with one observer for each member of the polling station, and one police officer. Clearly, such an exercise cannot be replicated.

The first real case of modern style observation took place in Nicaragua, the first time an independent country asked the UN to observe and verify its elections. It was quite scary then, because it was new at the UN. At this time, demand was pulling the observation process, with requests from a number of countries around the time of the fall of the Soviet Union. Many countries had never had elections before, and they wanted help. This took place over the course of three or four years.

Because of this high demand, a number of institutions started to be built. When this need started to decrease, it was supply that started to push observation, with organisations offering their services to EMBs because, if they were invited to observe, they could obtain further funding. In Nicaragua's second elections, there were 200 observation organisations. The funds available for election observations were plentiful, whereas they were more difficult to obtain for other types of activities. Because of this situation, among other factors, technical assistance and the quality of observation suffered. This resulted in a high level of "pollution" in the field of observation.

Those of us who are interested are always looking for ways to solve this problem. We need to differentiate between observation as a collection of data and talking to the press and getting attention. At the beginning, the European Union had very good technical staff, but the front person was not widely known. The cooperation between international observers and national observers tends to suffer. Although there are a number of ways in which observation could be effectively improved, there have been no incentives for this since the 1990s.

Technical assistance has experienced similar problems. Elections are seasonal events: there is a lot of work for six months or so, and then nothing for three years. In Guatemala, for example, the EMB works all the time, registering new voters, but this amounts to one person or less per week. As a result, they use the downtime for technical assistance, but it is too theoretical at this time,

consisting mainly of a review of the regulations. Therefore, technical assistance is difficult to provide between elections. This situation is not like providing assistance to a ministry of finance, because one is working with something that doesn't exist at the time that the training is being provided. This is because it is impossible to maintain indefinitely the entire election structure when they have nothing to do.

Are there ways to redefine the structure so that they have something to do? In Costa Rica, the EMB combines the issuing of documents with elections, civic education in schools, etc. What is clear is that we need to overcome the seasonality problem. Also, the people who work for EMBs have little incentive to stay on for the long term, because they have little to do and their salaries are only decent, so they tend to leave for other work.

It is clear that there are real structural problems in observation and in technical assistance, and certification could be one way forward to improving some of these. Many of the things that could be involved in certification are normally done in good observations, as was the case in Nicaragua in the early 1990s and by the EU. I will divide the process into many stages and analyse each of them. For voter registration, the key issue is to see who does it and how. What are the procedures? How do the institutions involved work? How is it done? Are the procedures fair? Last, like in Mexico, the accuracy of the voters' lists needs to be checked to see if they fit with the census. If we do the work well, we have a good idea of what the problems are. At the initial stages of needs assessment, you look at the political context, review the laws and regulations of elections, and evaluate the electoral college and the procedures for their appointment. This would be involved in certification. The problem at the moment is that at the needs assessment stage when we identify things that need to be changed, the authorities can say no, and therefore real participation is not that easy.

There is also the problem of incentives versus sanctions. One of the contributors to the deterioration of the process since the early 1990s was in fact that these were no longer present. In Malawi, in the early 1990s, the EU and the Nordic countries threatened the government with the withdrawal of non-humanitarian assistance if they failed to adhere to their recommendations. The same happened in Haiti, where there were real consequences for non-compliance. But this is no longer the case; for the last five to eight years, nothing has happened. The Bush policy might have something to do with this, but in fact most developed countries just don't care. I think that certification, as a peer-review evaluation, might be an incentive, but it should re-establish some relationship between democracy and international support. More resources should be given to those who excel.

Last, there is the problem of how to go about certification. There are many practical problems, such as the fact that many EMBs are very decentralised. In this sense, the United States is a good example, where there are two commissions but the real work is done at the state and county level. We have the same situation in Pakistan, for example, where the elections commission is an advisory body to help the returning officers. Second, we need to stop thinking that politicians are automatically crooks and should not be part of the EMB, as demonstrated by the good honest work done by some Sandinistas in Nicaragua. Third, there is the problem of some lost experience in non-competitive elections, as was the case in Mexico and perhaps in Kenya. At that time, some electoral commissions were OK but perhaps susceptible to corruption or manipulation. Finally, there are many issues that are out of the control of the EMBs that still have a real impact

on the fairness of the elections, such as districting. So while I agree that good commissions lead to fewer problems, I am not sure that certification will add much to the already existing tools.

Edward McMahon (USA)

I would like to provide some thoughts regarding independent electoral commissions. I want to start with two bookend examples. The first is Kenya, where we saw a failed elections process with roots in very complex reasons but more immediately due to the functioning of the electoral commission and its inability to deal with the process, due to a flawed appointment process and perhaps also to political pressures. This situation leads to a questioning of the nomination process to electoral commissions.

The other case is Côte d'Ivoire in the 1990s, where an autocratic general wanted to legitimise his rule through elections. The early returns were negative and so he tried to intimidate the electoral commission with soldiers, but the commission stood up to them and bought time to announce the results to the press and the diplomatic corps. This example demonstrates the importance of the issue of leadership in electoral commissions.

An article published in January of 2008, entitled "How to Steal an Election", identifies five ways to do this:

1. Executive control of the elections;
2. Manipulation of the media;
3. Forbidding observations;
4. Fostering chaos; and
5. Theft of results.

I am an optimist, and I believe that with a higher level of knowledge it becomes harder to use the more overt acts of manipulation. However, there is a never-ending process of regulation and circumvention. In Belize, for example, people went so far as to take photographs of their ballot in order to get kickbacks from political parties. But these problems can be addressed through elections management.

It is fashionable these days for elections commissions to have the adjective "independent" appended to their name. There is perhaps some relationship between this and the growth in democratic functioning in Africa, as was the case in South Africa, Benin and Malawi. The region is becoming quite democratic, as evidenced by the fact that alternance in power went from zero to 14% since 1990. However, in Togo, Cameroon, Guinea and Gambia there are also "independent" elections commissions but low democratic scores.

So this may be a simple issue of nomenclature, since there are also many established democracies that have no independent electoral commission. Some countries may be able to rely more easily on government controlled elections, because emerging democracies have no experience with an independent civil service or judiciary, but have a large and active civil society.

It is clear that the independence of election commissions is important, but we need to ask to what extent this has a place in international norms, standards and law. The notion is not present in basic UN documents, but these are not aimed so specifically. The 1990-91 Copenhagen documents refer to elections being operated transparently by autonomous bodies. The 2007 African Charter on elections refers to competent, independent election bodies. These are significant steps.

I believe the issue is increasingly one of determining the independence of EMBs, and in this vein I have a few ideas.

First, it is important for the international and domestic focus to be on an enabling environment, where the EMBs can function adequately. This environment involves security, the extent of media focus on the EMB functions, issues of corruption, and the legal and regulatory environment. A focus on these areas would make for better conditions.

Second, in the spirits of the suggestions made in the keynote address, there should be more focus on the likelihood of EMBs being subjected to influence and identifying the points of vulnerability. Third, it is important to embed independent electoral commission status in international forums and norms. Regional organisations can do this, and it would be part of a trajectory towards a greater embedding of democratic functioning expected of member states.

Finally, I have two other ideas not directly related to electoral commissions. There has been some academic work on the effect of two-term limitations, and it seems that term limits can help electoral commissions by removing entrenched incumbents, but this may be related to the commission's independence. And we should also mention the South Asian example of caretaker governments for elections.

Ron Gould (Canada)

I want to pick up on some of the comments that have emerged from yesterday's address and from today's presentations. I have been involved with elections both from the inside and the outside, in South Africa, Cambodia and Bosnia, as well as with various international organisations.

I want to pick up on the notion of how to steal an election; specifically one can do this by determining who gets on to the voters' list and who can register as a candidate. There is also the issue of ballot design, but the most popular way is at the time of the count. Tabulation is also popular. There is also the choice of location of the polling stations. All this involves electoral commissions to a greater or lesser degree.

I want to raise two points with regards to electoral commissions; the first is that this is the wrong terminology. Different terms are often used, like electoral commissions or electoral boards. The currently accepted term is electoral management bodies, or EMBs. The EMB is sandwiched between the legislators and politicians on the one hand, and the electors and the media on the other. So they are not so free to make key decisions to improve elections, since they are under pressure from both sides. This is the real challenge for trying to set up or certify EMBs.

In my view, the most independent EMBs are found in India. When elections are called, this body can prohibit the government from enacting any new laws, for instance, to ensure its actions are

not intended for partisan purposes. The EMB has control over the police and the military, and it has access to financial resources without government oversight.

There have been attempts at defining standards for EMBs, among them a successful effort from the Carter Center to develop principles for observation. There might be agreement for the adoption of a set of general principles which might produce international guidelines and a code of conduct for observation and even for EMBs.

The application of such guidelines is another question. Fifty-six OSCE members are already required to invite observers to their elections, who are often critical of the practices they observe. The problem is that they have a minimal effect, since their criticisms are often disregarded or met with token changes, even if in principle these countries are bound by the organisation's agreements.

There is a second approach of elections assessment, which would involve a team of long-term observers throughout the process, from registration to tabulation. The current practice of short-term observation only looks at voting and counting, and not at the process itself nor at the EMBs. For the assessment process, a small team could look at the process to see where it can be strengthened, even in countries with some tradition or history of having reasonably good experiences.

After looking at and being involved in all of these processes, I feel there are three major factors that can impact the success or failure of elections:

1. There needs to be a recognition that the election process begins from the constitution and it forms an integrated process, rather than separate building blocks;
2. Timing is crucial for solving every major problem. Often the decisions are introduced too close to election day, whereas the ideal time for the introduction of reforms is immediately after an election, and this is increasingly recognised;
3. The most important factor is that no matter how good and technically savvy an EMB may be, elections are guaranteed to fail without the confidence or perception of credibility of the media, the politicians and the voters.

Question and Answer Period

The questions and comments from the audience repeatedly raised the issue of sovereignty and the perception of its violation in any process of certification, and therefore the high political sensitivity required for any such process to be put in place. This also relates to the notion of ownership of the process, since there was a consensual perception that the participation of the local civil society and the media would be a key factor for ensuring the compliance with recommendations that seems to be absent in the current processes of observation and technical assistance.

There also seemed to be consensus on the importance of the role of regional bodies to ensure the legitimacy of any certification process, as well as the need for all countries, rather than only developing countries or emerging democracies, to be subject to certification. It was noted that the notions of deterrence and conditionality need to be handled with care, especially in the wake of

structural adjustment programmes, which tended to create a perception of external imposition and therefore reduced participation from voters.

In terms of guaranteeing the legitimacy of the elections process, the distrust of the use of proprietary software for vote counting and tabulation was also raised.

Another point raised was the need for ensuring the safety and security of the members of EMBs, with regards to the need for their political leadership to ensure the independence of the EMB. There was agreement that ensuring the stability and independence of the EMBs funding would be an important factor in encouraging its political independence.

Panel Two. Achieving Fair Elections: Learning from Success

Moderator: Aristide Nononsi, Associate Director, CDAS

Eunice Akweley Roberts (Ghana)

The EMB in Ghana was founded in 1992-93, and the position of the Election Commission (EC) is entrenched in the Constitution. It is formed of seven members: a chair, two deputies, and three other members, all appointed by the President on the advice of the Council of State. The EC has so far been successful since the 1992 elections with regards to the transparency of the process, the secrecy of the vote, and in terms of the verifiability in the spirit of fairness.

The Ghanaian EC functions on the basis of two cardinal principles: what should be fair, and who should be fair. What should be fair is the legal framework and the electoral process. This guarantees the independence of the EC from all influence and control. This is based on the security of the tenure of the members of the EC, who cannot be dismissed without just cause. In case of misconduct, there is a process of dismissal which is the same as that of the judiciary, since the members of the EC are considered to be the equivalent of appeal court judges (chair), high court judges (deputies) and circuit court judges (other members).

In addition, the EC has the power to have its own personnel, and it is guaranteed to have adequate financial and other resources. This year, an election year, the money has been made available on the basis of a request made last year.

The EC regulates the political parties and their registration, setting a code of conduct for the election and inspecting their offices to ensure the respect of the law.

As to who should be fair, this is the shared responsibility between the EC and the stakeholders. While everyone has a stake in the fairness of the elections, the key stakeholders are the political parties, the judiciary (to ensure the speedy resolution of disputes), the voters, the government of Ghana to ensure a conducive environment, and the media.

In 1992, after a long military regime, there were difficulties and a lot of mistrust from the body politic, especially because the existing regime became a political party in order to contest the elections. The opposition demanded a number of reforms based on the 1992 general elections, which had been the first since 1981. On that occasion, the Presidential election was held first, followed a week later by parliamentary elections. The opposition accused the government of using its incumbency in the presidential campaign and as a result didn't participate in the parliamentary elections, which were dominated by the military party. Since the grounds for these allegations were based on presidential control of the process, the parties brought together a Party Advisory Committee, which proposed some changes:

- The use of transparent ballot boxes;
- That the voter registry be compiled in the presence of party agents at each polling station;
- That the counting of votes take place at the polling stations themselves, and that the filled forms be then transferred to the collation centre;
- That voter identification be made easier and require photographic identification cards (due to a lack of resources, this was limited to urban areas only until 2000, but now covers the entire country);

- That to ensure voters only vote once, they should be marked with indelible ink on their left thumbs; and
- That more polling stations be provided to ensure easy access for voters.

These reforms came about as a result of constant discussions between the EC, the political parties and international donors. Since 1992, this forum has enhanced the work of the EC and the electoral process. Every year, improvements are made and reforms are put into effect, in order to ensure the credibility and fairness of the process, on the basis of monthly meetings of the Party Advisory Committee.

Jesús Cantú (Mexico)

In Mexico, post-electoral conflict seems to be part of the past, and yet the 2006 elections have shown that the possibility is still present and that the electoral institutions are not as solid as we thought they were. In three consecutive elections (1997, 2000 and 2003), all challenges were solved within the legal institutions. It was competitive elections that led to the end of the PRI (Institutional Revolutionary Party) as the hegemon.

In 1997, for the first time in seventy years, the PRI lost its majority in the House of Representatives. In 2000, it lost the presidency to the PAN (National Action Party), and in 2003, the PAN lost many seats in the lower House, and ended up with even fewer members than it needed to maintain presidential vetoes.

What is interesting in these cases is that the turnout was usually motivated by opposition to the party in power. This cancelled the possibility that the government could claim a victory. But equally important was the fact the electoral institutions had the confidence of all the parties. In the last elections, the general council consisted of nine very proactive members, who were not afraid to challenge the president's activism nor to penalise parties for misconduct, and apply sanctions and fines. They showed themselves to be an autonomous authority, not afraid of hurting private interests nor of fining both individuals and institutions.

The primary problem is one of financial support. The budget for the EMB was reduced, not coincidentally, by the exact amount of the fines it had imposed. More serious problems began with the renovation of the council in 2003. The PRI accused the council of causing its defeat and so refused to endorse the permanence of any of the members of the council. In other cases, the PRI and the PAN worked together to exclude the PRD (Party of the Democratic Revolution), so that the new commissioners were appointed without the input of the PRD, the party that was leading in all the opinion polls for the presidential elections. And the PRD candidate lost by less than 0.5%. The lack of confidence in the IFE (Federal Electoral Institute) arising from the councillor selection process caused a lot of conflict, as did the fact that irregular campaigning by President Fox received no sanctions.

The question before us now is who should do the examination of EMBs and how, and how monitoring should take place in order to guarantee the fairness of elections without violating sovereignty.

The *Inter-American Commission on Human Rights*, established by the OAS, is currently authorised to monitor the status of human rights. However, there is little participation by citizens

who feel they have no access to appeal the results of elections, and this is made more problematic by the absence of independent candidates. In order to ensure the fairness of the process, the functions and the powers of an electoral commission should be huge. Any monitoring process should include universal principles that all the countries involved agree should characterise fair elections. I believe, however, that there should be no certification process, because most countries would find such a process to be offensive. Instead, there should be a body to make recommendations and to ensure the creation of participatory and inclusive instruments of elections management.

Somadoda Fikeni (South Africa)

I would like to highlight some aspects of the South African EC as well as comment on some of the issues raised so far at this conference with regards to what might be a watchdog body. Whenever we are faced with a complex problem, we have a tendency to simplify; we tend to look for the solution to our problems where it is most convenient, and this is not necessarily where the real problem is.

I would like to reflect on South Africa's bold experiment and experience in democratic elections. Under Apartheid, South Africa was known as an exporter of gold, diamonds, and bad news. More recently, a home-grown experiment of negotiated settlement led to a transition that established the conditions for democratic elections, and it is important that it was home-grown, put in place by internal stakeholders. This successful experiment has been on demand in the Middle East and in East Timor, and the key seems to be active participation. It is not a perfect system, but it is certainly bold.

This model presents a number of challenges, but also opportunities. The focus of this conference on the functioning of elections, rather than whether elections are a good thing, seems appropriate, because elections are sometimes used to end all idea of democracy and are appropriated for the wrong reasons. And this is the role of electoral commissions, observers and monitors. It is a complex and variable milieu, politically, socially and economically. Therefore, the institutional architecture and its relationship with political behaviour are at the heart of the issue.

South Africa became a democracy in 1994, at the time that the new electoral institutions were established. The electoral commission, along with other watchdog institutions – for the media, human rights and gender equality organizations, among others – is entrenched in the constitution, along with other safeguards. The EC has its own budget, passed by the parliament.

The most important element is that elections monitoring cannot be seasonal, and I am happy to note that my colleague Rev. Bongani Finca has embarked in a pioneering activity: forums for democratic education. South Africa's vibrant and assertive civil society is very conscious of the stakes in holding everyone accountable. But investment in democratic education helps to consolidate democracy and to hold officials accountable. This targets a specific subsector of the stakeholders, such as women, labourers, traditional leaders, etc.

One thing to consider is that South Africa has shared its experiences with many countries, especially in Africa, in the spirit of learning also for the experiences of others. We have had six

successful elections and by-elections so far, at all levels of government, and we have sometimes also helped to organise elections within universities.

There are also other challenges, such as the fact that there is a separate body for the demarcation of wards, even though the EMB is seen as being responsible for this also by the population. There is also the issue of proportional representation (PR) that allows party-crossing and calls for party funding of candidates. The PR system is one of closed parties, designed to be inclusive in order to avoid replicating the divisions of the past. It was felt that an electoral system of first past the post would have excluded many constituencies from effective representation.

All of this raises a number of issues. We need to locate in a broader and more complex level the diagnostics of electoral issues, with EMBs certainly but also within constitutions and with the international community. Observers are not innocent to interference in their own countries. There is a tendency also on the part of external involvement to abandon the EMBs without providing assistance. A multilateral watchdog would be a noble idea, but the key to its functioning would be the depoliticisation of the agency. We must remember that the Cold War left a legacy of seemingly innocent institutions but that were in fact not innocent at all. This is in North-South dialogue the issue of equal partnership and engagement is the key. Logic alone is not enough; transparency and the perception of openness would work much better. The perception of imposition would mean that such an agency would be bound to fail. Transplants without taking into account local voices and conditions fail as soon as they arrive. One must observe what already exists and link it in terms of peer-review on the ground. All nations should be subjected to the same principles. However, nothing can replace democratic education, which is difficult to sustain, but once the public is aware they will become the first observers and monitors of the electoral process.

Question and Answer Period

The questions and comments from the audience focused on the importance of practical experience of cooperation between successful EMBs and the transmission of know-how and resources within regions.

A lot of interest was expressed in the notion of democratic or civic education as a permanent function of EMBs, as is the case in South Africa but also in Mexico.

The importance of autonomy in terms of success stories was noted, particularly in regards to their financial autonomy, which significantly reduces the possibilities for external pressure to be exerted. The process of appointment of the members of EMBS was again recognised as a fundamental element in establishing their credibility and legitimacy.

The consensus from the discussion seemed to lean against the notion of a formal certification process, in light of the history of colonisation and domination of such processes by a small group of countries. This was recognised as being of particular importance given the need for the active participation and ownership of stakeholders for ensuring the legitimacy of any democratic process.