

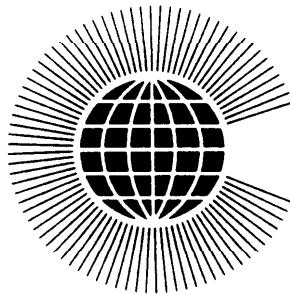
# **Voting for Democracy**

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## **VOTING FOR DEMOCRACY**

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## THE STATE OF MODERN ELECTIONS

In two years, humankind will mark the advent of a new millennium. This may be an opportune moment to reflect on the course of the twentieth century as well as the challenges the next could pose. The manner in which nations choose their leaders or representatives and hold them to account during this period was subject to numerous changes. The philosophy of laissez-faire which seemed to dominate the political arenas of Europe in the 19<sup>th</sup> century, has apparently had an enormous influence on the basis upon which many of the substantive rights such as freedom of the press, freedom of association and assembly and particularly the right to universal adult suffrage, were incorporated into the fabric of modern constitutions. Procedural rights through which governments are controlled were gradually sanctioned. The protection of these rights has been a cornerstone of democratic thought and constitutionalism since the American and French revolutions.

Today, such features may be taken for granted but, a sober reflection will reveal that it is only fairly recently that universal adult suffrage was attained in many of the established democracies and in most cases not without bitter struggles. Such rights have always been subject to limitations. However, never before have they been so much in conflict with the aims of government as in our age. As the responsibility of governments has ventured into many areas formerly untouched by political authority, societies are challenged by the need to reconcile the rights of the individual with the needs of society. Such situations obtain in the new states that emerged in Africa and other parts of the world. From the attainment of independence, many African nations have been concerned with the search for political consensus upon which, the foundation for traditional rights, which are central to the concept of democracy, is based.

In the course of the late twentieth century, the notions of democracy, free and fair elections and good governance have become established as global norms. Although there exists no legal definition of democracy and, no global consensus over the political meaning of the concept, it is understood to be a universal value, open to different legitimate interpretations and deriving from various historical, cultural and political experiences of peoples around the world. To this end, democracy is an objective towards which states should aspire and less of a model government.

Holding free and fair elections is a standard by which the legitimacy of governments is judged. The choice of electoral system will vary depending on the prevailing circumstances. At present, there is a serious global commitment to elections. The number of electoral observer and international assistance missions undertaken in the 1990s bears testimony to this.

International practice has established criteria against which the validity of elections may be judged.

The type of equipment used to conduct elections is a crucial factor in modern systems. Fifty years ago, elections were conducted based on manual registers. Today many countries maintain permanent electoral databases. Advances in computer technology are so great that equipment used for one election may be obsolete by the time another is conducted. It is reasonable to infer therefore, that the financial implications of conducting an election are not minor. In countries where permanent registers are not maintained, the costs of hiring people to conduct registration and other logistic matters involve the investment of financial resources. The calibre of personnel involved in managing elections is rapidly improving. Rolls of election managers are maintained by a variety of international organisations and institutions. The international dimension of modern elections has the potential to integrate variations in historical and cultural circumstance by making available a number of alternative elements, which if appropriate to the local conditions will enhance the administration of the process.

Organising cost effective elections poses a major challenge to election managers around the globe, more so, those operating in the newly emerged states where funding is a major problem. However there is no single solution to the cost implications of conducting modern elections thus each case has to be considered within the context of the specific social and political conditions that exist within a given country. We look forward with great anticipation to the sessions on the “cost of elections” scheduled for 25 March.

## **THE ELECTION MANAGEMENT BODY**

The authority to administer elections vests either in a government official (Supervisors) or with special institutions created solely for this purpose. The nature of the election management body depends on both the backgrounds of its members and the mandate prescribed by law. Some bodies are responsible for conducting all aspects of the electoral processes. In some cases however, other electoral matters e.g. the demarcation of boundaries are the responsibility of bodies (Boundary Commission) established to deal exclusively with such matters. Positions in the election management body may be filled in different ways. Two main approaches are:

- a) by appointing persons not affiliated to political parties
- b) by appointing representatives of political parties

These two approaches may have a heavy influence on the manner in which the election management body (EMB) operates. Where party representatives are appointed as members of the EMB the integrity of the process may be jeopardised. Although this may not always be the case impartiality will be near impossible to achieve. A much more constructive approach is the appointment of individuals who are not members of political parties. This is the approach adopted in The Gambia. The legal framework requires that for

a person to qualify to be appointed a member of the independent Electoral Commission (IEC) he/she must not be associated with any organisation that sponsors candidates for election to a public office. Any person who is employed by the Commission to perform any aspect of the Commission's operations can qualify to contest an election only three years after. Such measures in selecting the personnel for the EMB lays the foundation that will enhance the operational independence.

The degree of independence accorded an EMB will depend on the system operating in any given country. In some countries as in The Gambia the basic principles of operations and the mandate of the EMB are provided for in the Constitution or some other act of the country's law making body.

In the Gambia, the Electoral Commission is guaranteed operational independence by Section 43 of the Constitution. This provision requires the Commission to be operated only on the basis of the law and should therefore not be subjected to the direction of any other person or authority.

The constitution also makes provision for a procedure for allocating funds from the consolidated revenue fund. The IEC may raise funds provided that such funds are not received from a political party.

The degree of independence accorded to EMBs is of great concern in the newly emerged states of Africa. It is not possible to discuss these matters in a paper of this nature but a couple of questions may be posed to provide food for thought. In cases where state officials whose work is related to elections are dismissed for acting against the wishes of the ruling party, what appropriate course of action is open to the EMB? Will it be enough to say that such matters should be followed through the normal Courts or will it be feasible to make provision for the EMB to apply for Judicial Review an interested party?

The relationship of the EMB with other state organs, the public and political parties is an important factor to be considered at this stage. In the emerging democracies, many are the instances have surfaced when genuine efforts geared towards the establishment and maintenance of a credible electoral system are frustrated. This may be due to a number of factors. Two main groups can be identified.

The establishment of a new institution charged with the administration of elections may pose a practical problem for many in that there is insufficient know how and experience in dealing with an independent constitutional entity such as an Electoral Commission. On the other hand, it must be admitted that there are cases when there is lack of sufficient will and courage on the part of Electoral Commissioners to implement the requirements of the law. Perhaps the conference could come up with tips as to how these possible causes of frustration could be dealt with.

The EMB must always consult with the Political Parties as the main organisations in the electoral process. This has the advantage of ensuring that many problems can be rectified before it is too late thus reinforcing the confidence that such organisations may have in the EMB's ability to exercise its mandate.

## **GETTING THE REGISTER RIGHT**

An election management body may register voters in various ways. Some countries maintain permanent registers. Others (as was the case in Canada) compile a list of voters every time an election is called. This feature of the electoral system like the others depends on prevailing socio-political conditions. There are financial implications to be considered as well as methods of ensuring that the register is accurate and updated regularly.

One of the most crucial factors in this area is ensuring that only eligible persons are registered. Most systems require citizenship as proof of loyalty to enable one to be registered. Residency is also a prerequisite for qualification. Some countries however do grant citizens living abroad the right to register and vote in elections. This trend is on the increase. However many systems do not grant such rights. It is presumed that citizens living abroad are not very current on local conditions and therefore will not be in a position to make appropriate choices.

Where a permanent electoral register is maintained (as in Denmark), there is a need to update the contents to keep abreast with changes in the society. This may be effected in the form of deletions, transfers, or additions.

In some countries like the UK, registration is compulsory. Not all countries have this problem, as registration is optional. Whatever the method chosen measures aimed at protecting the integrity of the process must be introduced. In jurisdictions where records are properly kept the EMB is faced with an additional problem. Where, however, records are not properly kept the EMB is faced with an additional problem.

In The Gambia, voters are registered periodically at general and supplementary registration exercises. Where an applicant cannot provide documentary evidence such as a Birth Certificate as proof of citizenship, one must obtain the attestation of five elders (registered voters) to testify that the person is a citizen of the Gambia.

The greater part of the country does not have proper street addresses. In the urban areas, this problem is magnified due to the size of the settlements. In the past criticism has been levelled at the inability of the system to minimise the loopholes in the registration procedures. The regulatory framework makes provision for the establishment of Revising Courts to hear any appeals pertaining to the contents of the register. This implies that any applicant whose claim is rejected may raise an objection to have his/her name included

in the register. The IEC recently took measures to increase the checks in the procedures. Political Parties may appoint Registration Agents in accordance with formalised rules, to observe the conduct of the supplementary registration of voters by the IEC. These agents may note any inconsistencies and raise objections at the appropriate time.

## **WHAT KIND OF ELECTIONS?**

Electoral systems are designed to ensure that there is a fair representation of the people in the corridors of power. In The Gambia candidates are elected based on first past the post, all public elections are based on single member electoral units (i.e. Constituency or Ward). The paraphernalia used on election day to execute this preference of elections is unique. We are probably the only country in the Commonwealth that uses ballot tokens to vote.

## **CIVIL SOCIETY AND THE ELECTORAL PROCESS**

A sound electoral system depends not only on the existence of a proper institutional framework but also on the acceptance and commitment of the electorate to the establishment and maintenance of a democratic system of government. Political and civil rights conventions are not established overnight but over a period. A number of factors may therefore influence the manner in which a certain phenomenon is accepted as a convention. The Media, Political Parties, and Election Observers are important players in the election ball game.

Political parties pursue their objectives according to the legal provisions regulating their activities. In The Gambia, there are a number of criteria to meet before the IEC, as the body responsible for the Registration of eligible parties, issues a Certificate of Registration.

Political parties are organisations through which people of the same political conviction associate. They provide an umbrella organisation that may contest for the chance to determine the nature of the policies to be implemented within a particular state. In so doing, parties may nominate eligible candidates to contest an election. Sponsoring candidates at an election require the investment of campaign funds.

The manner in which such an objective can be achieved varies from country to country. Some countries impose a maximum sum to be spent on election campaigns. In others, the state provides funds. In the emerging democracies the provision of state resources for party activity is one of mixed blessing. Where a two party system operates the problems are limited. However, in multi-party systems especially in countries with scarce financial resources this may lead to the mushrooming of parties. The Gambia has a comprehensive system for regulating party financing which is yet to be tested. The IEC

recognises the need to embark on implementing the constitutional provisions but not before it has the sustainable capacity to do so

In the young democracies, parties may have a role to play in educating the ordinary person about the virtues of modern government. During the conduct of elections or the registration of voters, political parties will canvas for votes or encourage their supporters to register but at the same time ensure that their supporters are adequately informed of what is required of them. Such activities will complement any voter education programs that the EMB or other non-governmental organisations may implement.

The media is an important channel through which EMB and political parties transmit their respective messages to the electorate. The functions of the different media are regulated based on principles enshrined in the Constitution. Laws guaranteeing freedom of expression as well as the presence of an independent media are central to the idea of a free and fair electoral system.

In many developing countries, the state owned media usually has more resources at its disposal than the private sector. There must be a level playing field so that all candidates contesting an election have a reasonable opportunity to publish their programs. This is evident in the amount of airtime to each candidate during an election campaign.

The approach to this problem varies. Some systems require the EMB to provide an equal distribution of airtime whilst others call for an equitable distribution of airtime. The former does not pose much of a problem. The latter however may require consideration of a number of factors such as the number of seats won by that party at previous elections and the number of candidates nominated to contest the current one.

In The Gambia, the IEC has the mandate to regulate use of the private media. It also has formal powers to regulate the use of the public media. During the conduct of the National Assembly elections, the IEC established a Review Panel and a Committee of Eminent Persons. The panel had the mandate to preview political broadcasts recorded by candidates. Where any party or candidate believed that the contents of a particular recording was not in line with the media guidelines for candidates he/she may file an objection. Only candidates contesting in a particular constituency could preview tapes of other candidates in that constituency, either themselves or through a representative.

The Committee of Eminent Persons was established to decide on any objections raised by the Review panel.

These ad-hoc measures were necessary to ensure that the content of the political messages broadcast by candidates were in line with the law and Code of Conduct for political parties.

The Elections Decree makes provision for the IEC to provide candidates with equal access to the public media.

Although elections are conducted based on the right of every nation to determine its destiny, states have accepted by way of obligation, the observation by foreign nationals, all aspects of the electoral process. The Gambia is no exception. International observers were present during the conduct of the Presidential and National assembly elections. Local observers representing international bodies also took part. The comments made by these observers were helpful to the Commission, in particular, the Provisional Independent Electoral Commission (PIEC) the predecessor of the IEC established in December 1995 to oversee the electoral processes during the transition. The PIEC's mandate ended in April 1997.

Local observers have the opportunity to observe the process for a longer period. Besides they are familiar with local conditions and therefore will find it easier to understand current events. International observers spend a limited period in countries where observer missions are undertaken, arriving almost at the end of the campaigns and leave almost immediately after the poll. Therefore, there is a need to improve the capacity of local observers, possibly, by training them together with persons selected as polling or registration staff.

## **THE VOTERS PERSPECTIVE**

Elections are a means of ensuring that a nation chooses its representatives based on clearly defined pro-democratic rules. In this process political parties, government institutions and the media play vital roles. The voter is equally important. After all, these people at the end of the day determine the persons eligible to occupy a political office. In so doing, a certain standard of behaviour as well as conformity to the established procedure is expected of them. The level of a voter's perception of what is right and what is wrong will depend on a number of factors.

In developing countries, where the official language is of European origin, the average literacy level is generally low. The EMB must therefore design appropriate methods to inform voters of the important aspects of the process.

Voter Education is now accepted as an integral component of the electoral process. The voter is seen as a consumer of a service. One that provides reasonable access to polling stations, information on what is expected of the voters as well as the prohibitions and safeguards built into the system.

In The Gambia, the IEC designed and implemented voter education programmes. These took into account the various languages spoken in the country, the procedures nominating candidates, voting on polling day and the need to boost and maintain public confidence in the process. The programs



also catered for informing women of their rights. The disabled were also a particular target group for enlightenment.

## **TRAINING AND TECHNOLOGY**

Technological advances have influences every aspect of our existence. The Electoral system is no exception. Mention has been made of the use of computers in the registration process.

In The Gambia, votes are cast by means of inserting a ballot token into a ballot drum. A drum painted in the colour of the political party of each candidate is provided for each polling station within the electoral unit where such a candidate is nominated. Counting is effected with specially designed counting trays.

Criticism has been levelled at the use of such equipment for being too expensive. A drum has to be provided for each nominated candidate. Where a large number of candidates are nominated, the financial implications are high. This is notwithstanding the IEC intends to continue with this unique method of voting for two reasons:

- a) the ballot equipment is one of the most suitable for voting by non-literate voters;
- b) the ballot drums are manufactured locally. The technology is therefore sustainable.

The drums may be fitted with electronic counters to so speed up the counting process.

Training election personnel can be expensive. There is a need to train whenever an activity is being conducted. This is the case where the process is constantly subject to improvements. Not all the people engaged during election time are retained by the EMB on a permanent basis. What implications does this have for the type of training? It is often said that an academic discipline such as elections does not exist. This may be a true reflection of the current state of affairs. However, the seriousness with which the international community in general and our individual nations in particular approach this issue may justify the development of an appropriate curriculum. Election management is becoming a profession and as such the establishment of permanent EMB responsible for the conduct of all public elections may require a reconsideration of the role such professionals play in the democratic process. These are persons whose moral fortitude and sense of fair play are utilised to ensure that only the candidates who represent the will of the people are given the responsibility to lead their communities.

The future looks promising for democracy and the electoral systems particularly in Africa. The emphasis states have placed on the establishment of credible electoral systems in the 1990s has gone a long way in rebuilding confidence that developing states have acceptable formulae to maintain their societies on the basis of a political consensus.

The achievements made in the past should not lead to complacency. Thus far, only the foundations for viable democratic systems are being laid. The test for Election Managers will be the ability to adopt to the numerous changes that may take place in society. The choice of the electoral system however will depend on the historical and political factors in a given country.