



NATIONAL
DEMOCRATIC
INSTITUTE
FOR INTERNATIONAL AFFAIRS

**DEMOCRATIC ELECTIONS:
HUMAN RIGHTS,
PUBLIC CONFIDENCE AND
FAIR COMPETITION**

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NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

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Democracy depends on: legislatures that represent citizens and oversee the executive; independent judiciaries that safeguard the rule of law; political parties that are open and accountable; and elections in which voters freely choose their representatives in government. Acting as a catalyst for democratic development, NDI bolsters the institutions and processes that allow democracy to flourish.

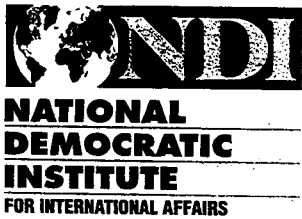
Since 1983, NDI has compiled a remarkable record of achievement. Strictly nonpartisan, the Institute supports the efforts of democrats in every region of the world to:

Build Political and Civic Organizations: NDI helps build the stable, broad-based and well-organized institutions that form the foundation of civil society. Democracy depends on these mediating institutions, which link citizens to their government and to one another by providing avenues for participation in public policy.

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Promote Openness and Accountability: NDI responds to requests from leaders of government, parliament, political parties and civic groups seeking advice on matters from legislative procedures to constituent service to the balance of civil-military relations in a democracy. NDI works to build legislatures and local governments that are professional, accountable, open and responsive to their citizens.

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DEMOCRATIC ELECTIONS: HUMAN RIGHTS, PUBLIC CONFIDENCE AND FAIR COMPETITION

By: Patrick Merloe

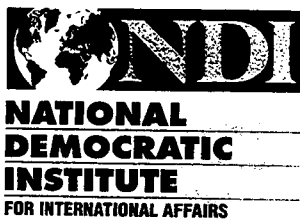
Elections are important milestones in democratic transitions. They provide an opportunity for examining how a range of institutions are functioning in a transitional setting and whether fundamental human rights are being protected and promoted. A critical gauge of this process is whether the population believes that they are free to *exercise* their rights to political expression, association, assembly and movement as part of the electoral process.

The examination of whether elections are genuine includes not only whether the election administration is acting impartially and effectively but whether political contestants have the opportunity to campaign freely for popular support. The examination must also include determining whether government resources are properly utilized in the electoral process, whether the military is neutral and acting as a professional body, whether the police and prosecutors are acting to maintain order and are protecting those seeking to exercise their civil and political rights, whether the judiciary is conducting itself impartially and effectively, whether the news media are free to act as conveyors of accurate information and to act as watchdogs over government and political processes as well as whether they are providing access to political contestants and objective coverage of those contestants and events of national importance.

In effect, elections must be examined in the context of a country's broader transition toward democracy not taken out of context and scrutinized solely onto themselves. A critical element in this process is building public confidence in elections. Unless the electorate feels that it is free to make political choices, is adequately informed to do so and that its choices will be respected, an election process will not be truly meaningful. At the same time, political contestants must feel that they have a fair chance of reaching and winning support of the voters -- that there is a "level playing field" -- in order to have the incentive to participate in the process and to respect the outcome of the elections. This too is crucial for the public to have confidence in the government that results from the elections. Thus, elections are inextricably linked to what precedes and what follows them.

Following are two papers that address these topics. "Electoral Operations, Human Rights and Public Confidence in a Democratic System" and "Electoral Campaigns and Pre-Election Issues: The 'Level Playing Field' and Genuine Elections" were presented to the November 1994 African Election Administrators' Colloquium in Zimbabwe. The Colloquium, jointly sponsored by the African American Institute, International Foundations for Election Systems, United Nations and NDI, was funded by a grant from the Agency for International Development and by the United Nations. The papers, which will be published as part of the Colloquium proceedings, are meant as starting points for discussion of the topics and are offered as a contribution to discussion among those concerned with helping to foster genuine elections in transitional democracies.





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ELECTORAL OPERATIONS, HUMAN RIGHTS AND PUBLIC CONFIDENCE IN A DEMOCRATIC SYSTEM¹

This paper examines the relationship between internationally recognized fundamental freedoms and public confidence in electoral processes in democratic transitions. The paper considers developing international electoral standards, including electoral law checks and balances, transparency of electoral operations and the participation of political contestants and civic organizations in election administration. The basic themes of the paper are: (1) elections are not simply a technical exercise; they are a critical part of a *process* that is essentially political and must be seen in the context of civil and political rights; and (2) public confidence in the electoral process is critical to free and fair elections.

Part One – International Standards and Internationally Recognized Fundamental Rights and Freedoms in the Electoral Process

I. The Rapid Development of International Electoral Standards

There is a marked and rapid development in international standards for holding free and fair elections. This development is arguably the product of the convergence of state views concerning the importance of democracy that accompanied the end of the Cold War. This convergence is perhaps best reflected (1) by the elaboration of standards, especially since 1989, by the United Nations and regional organizations, and (2) by states' willingness to accept these standards, which is evidenced through state practice.

At the regional level, the elaboration of standards is most pronounced in the documents adopted by the Conference on Security and Cooperation in Europe (CSCE) (especially by the CSCE's 1990 Copenhagen Document) and by the Organization of American States (OAS) (especially by the OAS's 1991 Santiago Commitment to Democracy and the Renewal of the Inter-American System). The Organization of African Unity (OAU) also has taken a keen interest in electoral matters, as

¹ This paper was prepared by Patrick Merloe, NDI's Senior Associate for Election Processes, as the basis for a presentation to the African Election Administrators' Colloquium held November 15-18, 1994, in Zimbabwe. It has been expanded slightly since the Colloquium. The Colloquium was jointly sponsored by the African American Institute, International Foundation for Electoral Systems, United Nations and NDI. This paper was prepared together with a paper on the question of prerequisites for a genuine election, which provided the basis for a second presentation to the Colloquium.



evidenced, in part, by the OAU's 1992 seminar on "The Evolving Role of Intergovernmental Organizations in Election Monitoring." The 1990 African Charter for Popular Participation in Development and Transformation is just one more example of interest in democratic development on the Continent.

Recognizing the role of basic freedoms in electoral processes, however, is not a new development, nor is this role a narrow one.

II. Internationally Recognized Fundamental Rights And Freedoms & Genuine Democratic Elections

A. Free and Fair Elections Require an Atmosphere of Respect for Human Rights and an Absence of Intimidation: Elections provide a test of how a range of institutions are functioning in a country and how promotion and respect for human rights -- particularly civil and political rights -- are carried out in practice. Elections cannot take place in a vacuum; they must be viewed in a social, historical and political context. In order for elections to fairly reflect the will of the people, the population must perceive that they are free to exercise their rights, are adequately informed to do so, and have confidence that the electoral process will accurately reflect their choice.

B. Self-Determination: The right to free and fair elections is, in part, rooted in the right to self-determination found in the United Nations Charter (Art. 1, para. 2), Common Article 1 to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and Peoples' Rights (Art. 20), and many other international instruments. The exercise of the right to self-determination is carried out in the context of other internationally recognized rights and freedoms.

C. The Right to Participate in Government: The Universal Declaration of Human Rights, applicable to all Member States of the United Nations, Article 21 states:

"Everyone has the right to take part in the government of his [or her] country, directly or through freely chosen representatives.... The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent voting procedures."

These requirements are elaborated in the ICCPR, Article 25 as follows:

"Every citizen shall have the right and opportunity, without any distinctions mentioned in Article 2 [i.e., race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status] and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors...."

The African Charter on Human and Peoples' Rights, Article 13, states:

"Every Citizen shall have the right to participate freely in the governance of his [or her] country, either directly or through freely chosen representatives in accordance with the provisions of law."

The American Declaration of the Rights and Duties of Man (Article 20), the American Convention on Human Rights (Article 23) and Protocol Number 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3), all have similar provisions concerning the right to participate in government. These provisions have been elaborated in the CSCE's 1990 Copenhagen Document (Articles 5.1, 6, 7, 8, 10, 24 and 26), in the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5), the Convention on the Elimination of All Forms of Discrimination Against Women (Article 7), the Convention on the Political Rights of Women (Articles 2 and 3) and in United Nations documents such as the UN Commission on Human Rights resolution 1989/5 on "Enhancing the Effectiveness of the Principal of Periodic and Genuine Elections: Framework for Future Efforts," the UN Human Rights Subcommission's 1962 "Draft General Principles on Freedom and Non-Discrimination in the Matter of Political Rights," the General Assembly's 1992 resolution on "Enhancing the Effectiveness of the Principal of Periodic and Genuine Elections," and UN Center for Human Rights 1994 publication of Professional Training Series No. 2: "Human Rights and Elections."

D. Non-Discrimination: Central to placing free and fair elections in the context of internationally recognized fundamental rights and freedoms is the right to exercise rights and freedoms -- free from discrimination on the basis of race, color, sex, language, religion national or social origin, birth or other status, property, *or political or other opinion*. This standard is found in every major international human rights instrument.

The non-discrimination standard permeates every aspect of election processes, from delimitation of electoral districts, to voter eligibility and registration, to party and candidate qualification, to allocation of electoral resources, including media exposure, and each other step towards counting ballots and reporting results. It is also directly related to the rights to be equal before the law, to receive equal protection of the law and to be provided with an effective remedy for acts violating fundamental rights. These rights relate to providing timely and effective enforcement of electoral and related laws, effective complaint mechanisms and recourse to an independent judiciary.

E. Freedom of Opinion and Expression: Article 19 of the Universal Declaration of Human Rights states:

"Everyone has the right to freedom of opinion and expression; this includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

This, of course, includes the freedom of political contestants to form political opinions and to

communicate these opinions to others as part of the electoral process. The freedom to seek and receive information relates to the electorate's right to gather accurate information in order to exercise an informed choice between political contestants. The freedom of expression also is central to the news media's roles in the electoral process.

F. Freedoms of Association, Peaceful Assembly and Movement: Obviously, the freedoms to form political associations, to assemble in order to advance political organization and expression as part of electoral competition and the freedom to move about from municipality to municipality and from door to door are central to free and fair elections.

G. Rights to Security of the Person and Due Process of Law. None of the freedoms described above can be exercised meaningfully in the electoral context unless prospective voters, campaigners and political competitors are free from intimidation and violence. This includes freedom from the threats of arbitrary detention, excessive use of force by governmental authorities, mistreatment while in governmental custody and extra-judicial killings. Central to this is the right of prospective voters, campaigners and political contestants to equality before the law, equal protection of the law and due process of law.

Part Two – Public Confidence and the Electoral Process

I. Public Confidence in the Electoral Process Is Critical to Genuine Elections

A consistent lesson in international electoral experience is that elections are not simply a technical process. Elections are part of a political process that, to be successful, requires public confidence. Sound electoral laws and procedures are necessary but are not enough; the public, including the political contestants, must *believe* that the electoral process will be effectively and impartially implemented. Steps must, therefore, be taken to ensure that the electoral process is not only administratively correct, but is free from the perception of partisanship. It is, therefore, necessary for the government and its electoral administration to take measures beyond the minimum legal requirements to create an expectation that fairness will prevail.

Building public confidence in electoral processes must include:

- setting up an effective and impartial election apparatus that is open and transparent;
 - involving the political contestants in all basic elements of the election process;
 - opening the election process to the observation of citizens and civic organizations;
 - convincing the electorate of the importance of the elections, that their personal safety and ballot secrecy will be secured and that the results of their voting will be respected;
- and

- ensuring that a trustworthy independent monitoring process will be in place.

Election Commissions. Important aspects of the electoral process are discussed below, but it should be stressed that the body charged with administering the election must be independent and competent to effectively administer the electoral process. If this is not the case, the public and the political competitors will not have confidence in the elections, nor will they have confidence in the resulting government. The public's perception of true independence of electoral authorities is vital in ensuring the legitimacy of the electoral process and the perception of legitimacy of the government that follows the elections.

Responsibilities of election commissions vary among countries and may include: promulgating the election law; interpreting the election law; issuing election regulations; registering political parties, candidates and voters; regulating the election campaign; investigating and adjudicating electoral complaints; preparing electoral materials; carrying out voter and civic education campaigns; recruiting and training election officials; selecting polling places; developing voting and ballot-counting procedures; tabulating and announcing election results.

It is important in any country that the election commission have authority to interpret election laws and to adopt regulations and implementation procedures. Moreover, it is crucial that the commission be empowered to ensure compliance with electoral laws and procedures (discussed below). The election commissioners should be afforded privileges and immunities, as are provided to members of the judiciary, in order to safeguard their independence and impartiality. This also helps to bolster the commission's ability to enforce electoral procedures.

A. Transparency: Transparency in electoral administration was a phrase not used frequently a decade ago. "Transparency" is a now byword in election vocabulary.

Transparency, in its electoral sense, has numerous aspects.

1) It applies to allowing political contestants to view all aspects of electoral preparations, from the drafting of election laws and selection of electoral administrators all the way through the tabulation of results and resolution of electoral complaints.

2) It also applies to allowing the public to witness the steps of the election process, usually through domestic nonpartisan election monitors and news media.

3) In many countries it even applies to allowing the international community to witness the steps of the election process, usually through impartial international election observers.

Transparency applies to a range of activities, including, among others:

- drafting or modifying electoral laws and regulations;
- selecting electoral administrators, from the highest bodies down to the polling sites;

- delimitation of election districts;
- qualification of parties and candidates;
- establishing criteria for voter eligibility;
- establishing the mechanism for voter qualification, such as a voter registry;
- training election officials;
- setting up and running computer systems;
- ballot and voting materials design, production and distribution;
- establishing polling sites;
- voting procedures;
- counting and tabulation procedures;
- complaint mechanisms;
- announcement of results; and
- seating winning contestants.

Transparency builds public confidence under the adage that if you are acting properly you have nothing to hide. Transparency at times adds extra time and requires expending resources, but the cost/benefit ratio of extra time and resources compared to enhanced public confidence almost always favors added transparency.

B. Participation of Political Contestants in All Basic Steps of the Election Process: The political contestants play a crucial role in developing public confidence in the electoral process. If the political contestants are involved in a meaningful way at early stages of the electoral process, including in making decisions about electoral law and regulation and in determining the method of selecting the bodies for election administration, their composition and powers, the political contestants will be more trustful of the actions of election administrators, which in turn will greatly affect public perceptions of the election process. Likewise, the involvement of political contestants in each step as the election process unfolds reinforces public confidence.

Involvement of political contestants can take various forms, including, among others:

- deciding fundamental issues concerning election law, regulation and composition of key electoral bodies through the legislative process or through "round-table" negotiations;
- including political party representatives as voting members of election bodies at all levels;
- including political party representatives as non-voting members or observers of election bodies at all levels;
- developing a process by which political contestants agree upon a code of conduct to regulate their behavior during the electoral process;
- establishing party liaison committees as adjuncts to electoral bodies at the national,

regional and local levels to facilitate communication, conflict avoidance and informal dispute resolution.

More than one of these mechanisms can be employed simultaneously. At the same time, the public must be informed of these steps and of key decisions in the election process in order to enhance and reinforce confidence in the elections.

II. Participation of Citizen Groups in the Election Process Is Central to Public Confidence

Another important recent development in international electoral trends is the widespread acceptance of the contribution of domestic nonpartisan election monitors. During the last year, for example, domestic nonpartisan monitors played important roles in elections in countries as diverse as South Africa, Mexico, the Former Yugoslav Republic of Macedonia, Ukraine and Nepal.

Election monitoring by impartial domestic NGOs adds significantly to public confidence in the election process. Nonpartisan domestic election monitoring also provides an excellent example of citizen participation in governmental processes and of ensuring governmental accountability. This experience often enhances further citizen participation in government, which helps in the development of civil society.

Nonpartisan election monitoring is addressed in the Copenhagen Document of the Commission on Security and Cooperation in Europe (CSCE). It is also recognized in the recent United Nations publication, UN Professional Training Series No. 2: "Human Rights and Elections," as helpful in securing public confidence in the electoral process.

III. Ensuring Due Process and Trustworthy Election Monitoring Are Central to Building Public Confidence

A. Ensuring Due Process: In addition to being impartial, the election bodies must be able to take independent and effective action to protect the integrity of the election process. It is essential that the election system institutionalize guarantees of equal treatment and procedural due process in order to ensure a credible election. Such precautions help ensure the satisfaction of voters and political contestants in situations where they perceive, rightly or wrongly, that they have been unfairly treated.

Appropriate due process guarantees include legislative, regulatory and judicial procedures that provide notice, hearings and appeals and that protect against arbitrary or biased rulings. These guarantees should be present in every aspect of the election process, including appointing staff and election officers, accrediting candidates, registering voters, designing and producing election materials, enforcing election law and adjudicating violations, conducting voting and counting, and announcing final results.

B. Trustworthy Election Monitoring: As stressed above, allowing party representatives to be present at all steps of the election process is an important way to ensure fairness; and, allowing a similar presence of the nonpartisan domestic NGO monitors also is an important way to ensure fairness.

Parallel Vote Tabulations. An important device in trustworthy election monitoring is independent, parallel vote tabulations (PVTs, sometimes called "quick counts"). This exercise can be carried out by political parties, news media, nonpartisan domestic election monitors or international election observers. PVTs are important in deterring those who may seek to tamper with election results or in verifying official results for those who may be skeptical about the election process. A significant number of nonpartisan civic organizations have successfully conducted PVTs; Mexico provides a recent example. Church-related organizations also have played important roles in conducting independent PVTs; for example, in Panama's 1989 elections the Catholic Church laity group conducted a PVT. PVTs also have been successfully conducted under the auspices of the UN and OAS.

PVTs are not exit polls but are done on the basis of an independent tabulation of actual election results. PVTs may be done on the basis of comprehensive tabulation of results or on the basis of random statistical sampling. They provide an important foundation for independently verifying the accuracy of the official election results. In countries such as Mexico this year or the Philippines and Bulgaria in past elections, PVTs did much to raise public confidence in the electoral process. PVTs can easily be provided for by administrative rulings.

IV. Voter and Civic Education Are Critical to Genuine Elections

Critical to the principal that "the will of the people shall be the basis of the authority of government" and that "this will shall be expressed in periodic and genuine elections" is voter and civic education. "Will" to be genuinely expressed must be adequately informed in order to provide the basis for making a free choice.

Civic and voter education must cover the basics of why it is important to vote and that the vote will be secret, secure and respected. Civic and voter education must also address how to distinguish between political contestants in order to make an informed choice. These more complicated elements of civic education should not be lost in informing voters about where, when and how to register and to vote.

Additionally, the task of conducting civic and voter education provides roles for the government, election bodies, political contestants, mass media, and nongovernmental organizations alike. Carrying out these activities can raise the civic conscience of actors in each of these sectors. It can also serve to build the capacity of NGOs to carry out programs reinforcing civil society after the elections.

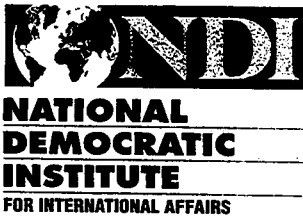
V. International Adjuncts to Electoral Bodies and International Election Observers Can Be Important

The international community can play a supportive role in the electoral process in transitional democracies. The role of providing technical assistance to electoral bodies and others in the election process is clearly established. Such activity not only demonstrates international support for democratic processes and institutions in a country but helps build public confidence in the election process.

A. International Adjuncts to Election Bodies: International non-voting members were added to the Independent Election Commission (IEC) in South Africa in order to mobilize a valued pool of expertise and to enhance public confidence in the effectiveness and impartiality of the IEC. The international members provided technical knowledge and helped the regular IEC members resolve problems and disputed issues by being present throughout the IEC's day-to-day work. In other African countries, international advisory committees have been set up for similar purposes. In a third model, election commissions in some countries have added international technical advisors supplied by the intergovernmental and/or nongovernmental organizations. The Dominican Republic provides a recent example in this regard.

B. International Election Observers: Impartial international election observers, organized by intergovernmental organizations and by nongovernmental organizations, can play a constructive -- and sometimes critical -- role in enhancing public confidence in the electoral process. Such efforts demonstrate the interest and concern of the international community in supporting the democratic process in a particular country. This can help deter those who would seek to manipulate the election process and reassure those who may be skeptical of the integrity of the election process.

A great deal of experience has been accumulated by international election observers that allows some organizations to act impartially, objectively and professionally in their activities. The role of international election observers, therefore, has become generally accepted in democratic transitions around the world.



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ELECTORAL CAMPAIGNS AND PRE-ELECTION ISSUES: THE "LEVEL PLAYING FIELD" AND DEMOCRATIC ELECTIONS¹

This paper examines a number of prerequisites for free and fair elections, particularly in relation to the campaign period. The paper considers: use of state resources; media access and coverage; impediments to campaigning; party codes of conduct; party liaison committees; complaints and dispute resolution; and several pre-campaign issues. The basic theme of the paper is that free and fair elections require a "level playing field" for political contestants to present the electorate with genuine choices; that is, political contestants must be provided with equitable opportunities in the campaign process. The international standard of non-discrimination, the right to receive and impart information, the right to security of the person as well as the responsibilities and obligations of political contestants to respect the rights of their opponents are central to guaranteeing a level playing field for genuine political competition.

I. Creation of a Level Playing Field Begins Prior to the Campaign Period

This paper focuses primarily on the election campaign period and prerequisites for genuine elections. It is important to note, however, that such considerations depend, in part, on the fairness of electoral processes that usually take place well before the beginning of the official campaign period. Elections are a critical part of a process that is essentially political, and they must be viewed in the context how a country promotes and protects civil and political rights. In this respect, a number of pre-campaign period procedures are important to genuine democratic elections.

A. Political Party Registration

The recognition of political organizations as legal entities, with the right to seek governmental power through the electoral process is fundamental to pluralist democracy. The right of each person to take part in the government of his or her country, directly or throughfreely chosen representatives,

¹ This paper was prepared by Patrick Merloe, NDI's Senior Associate for Election Processes, as the basis for a presentation to the African Election Administrators' Colloquium held November 15-18, 1994, in Zimbabwe. It has been expanded slightly since the Colloquium. The Colloquium was jointly sponsored by the African American Institute, International Foundation for Electoral Systems, United Nations and NDI. This paper was prepared together with a paper on the relationship between internationally recognized fundamental freedoms and public confidence in electoral processes in democratic transitions, which provided the basis for a second presentation to the Colloquium.



and rights to free expression and association are combined in the formation of political parties. Political parties provide a practical vehicle for citizens to pursue a program for contributing to civil, political, social, economic and cultural progress in a country. As such they are a critical part of building civil society.

Requirements for legal recognition as a political party may be set forth constitutionally. If this is done, it is usually done in general terms. Whether or not the constitution explicitly provides for legal recognition of political parties, the details for party registration and legal recognition are almost always provided for by law. Political party laws usually take one of two basic approaches:

1) a minimal requirements approach, with legal recognition granted as a matter of administrative routine upon submission of the party's name, symbol, officers, charter and perhaps a small list of members; and

2) a more stringent approach, with added requirements for evidence (e.g., through signatures or reliable public opinion polls) of a large number of members and/or supporters, perhaps with a minimum geographical distribution in the country, a party manifesto and a significant registration fee.

Additionally, restrictions against anti-democratic platforms or programs may also apply (e.g., fascist parties or parties aimed at fostering racial, ethnic or religious hatred). Accepted international electoral standards, however, establish the precept that no unreasonable limitations may be placed on the right to establish political parties or other associations to seek government offices through the electoral process.

The political party law may also define permissible party activities, such as: publishing; recruiting and training campaigners, party functionaries and candidates; fundraising; holding meetings and rallies; distributing literature; and using the mass media. Certain activities, such as engaging in commercial enterprises in order to generate profits for funding party activities, may or may not be addressed. The political party law may also proscribe certain activities, such as use of violence and intimidation, vote-buying, verbal attacks on opponents' character or other types of negative campaigning. The political party law also may require internal democratic organization, regulations and a mechanism for maintaining party discipline as well as financial regulation.

B. Delimitation of Election Districts

Delimitation of election districts is important in both proportional representation (PR) and majoritarian systems. In PR systems the larger the district, the more proportional the outcome; the smaller the districts, the more they approximate a majoritarian system. Issues such as whether to employ single-member or multi-member districts, single or multi-candidate or cumulative voting and whether to employ thresholds for winning seats -- all encourage or discourage smaller parties, independents or geographically and ethnically based parties, depending on how they are implemented.

In majoritarian systems, delimitation of districts is a critical issue with broad political implications. "Gerrymandering" raises particular concerns in majoritarian systems, but is an important problem in PR systems as well. Issues such as who draws districts (e.g., legislatures, courts, election commissions), when they are drawn, on what data they are drawn and the mechanism to challenge delimitation, all pose important considerations.

C. Voter Registration

Voter registration poses special problems. Whether to create a voter registry is a threshold issue. Whether to computerize the process is also important. Questions, such as whether to base the registry on a pre-existing list (such as a national identification registry), on a census-type process or to require prospective voters to take affirmative steps to register, pose important issues as well.

The accuracy and integrity of the voter registry as well as voter identification cards pose critical issues on election day. They directly effect the possibilities of multiple voting by individuals, on the one hand, and voter disenfranchisement, on the other. Experience has shown that even computerized systems, with voter photo-identification cards, do not necessarily preclude questionable election results. Therefore, voter registration procedures merit close attention.

D. Candidate or Party Qualification for the Ballot

Requirements for qualifying parties and candidates for the ballot present important issues. There may be automatic qualification based on pre-existing actions. It may be necessary to produce a certain number of signatures, which can include specified geographic distributions. Filing fees or deposits may also be required, as may submission of a list of campaign officers and representatives as well as other information. International standards recognize candidate qualifications based on reasonable requirements for such matters as age, citizenship, residence within a jurisdiction, mental and physical competence, and lack of criminal convictions (usually pertaining to serious crimes). Ballot qualification is critical to electoral competition, and the potential for manipulation in this area warrants careful scrutiny.

E. Non-Discrimination

In each of these areas, whether party registration, delimitation of districts, voter registration, or party and candidate qualification for the ballot, the over-riding fairness consideration is whether the principal of nondiscrimination is respected. If party registration is denied, districts are drawn or voter registration is conducted in order to discriminate on the basis of ethnicity, color, race, gender, religion, language, national or social origin, property, birth or other status, or political or other opinions, then the genuineness of an electoral process will be compromised.

II. Fairness in the Campaign Often Determines Whether an Election Is Free and Fair

The genuineness of an election is not often called into question based on election-day problems or fraudulent actions. Marcos's attempted manipulation of the 1986 Philippine election and Noriega's attempted manipulation of the 1989 Panamanian elections are examples. The May 1994 elections in the Dominican Republic were an example where election-day problems rendered it impossible to say whether the will of the electorate was reflected in the official results, which brought the integrity of those elections into question.

More commonly, questions about the genuineness of an election focus on the fairness or lack of fairness in the campaign period. The analogy most often used is to ask whether there was a level playing field for the electoral contestants. This issue relates to a number of considerations.

At the core of the level playing field question is the degree of equity political contestants actually obtain in matters such as campaign financing, media access and coverage, and availability of material resources. A second core issue is the effective compliance with and enforcement of election-related laws and regulations.

A. Adequate Resources

Contestants and election administrators need adequate resources to conduct a free and fair election. If there is not adequate resources for training election officials, printing ballots and producing election materials, a genuine election is difficult -- if not impossible -- to achieve. The same is true for the political contestants.

Time may be the most valuable resource. Just as time is needed to prepare the election apparatus (e.g., recruiting and training of officials, printing ballots, selecting voting sites), time is needed for political contestants to set campaign strategy, develop a program and messages, recruit campaigners, raise money and complete many other tasks. Calling elections unexpectedly and setting a very short campaign period could be fatal to a fair electoral contest in a transitional democracy. Holding elections too often can exhaust resources early and can cause voter apathy, both of which undermine the legitimacy of later elections.

Highly unequal resources, especially when incumbent parties have this advantage, pose a critical problem. While it is almost impossible to provide equal resources to every political contestant, equitable resources are necessary to a genuine electoral contest. This does not mean that the government has to provide complete funding to every political contestant. The major contestants, however, either should possess or should be provided with the minimum resources needed to mount a meaningful election campaign, and all qualified contestants either should possess or should be

provided with at least those resources necessary to ensure a fair opportunity to compete.² There are various ways to approach this issue:

- by providing full public funding to qualified political contestants and prohibiting other funding;
- by providing more limited public funding and allowing supplemental fundraising by political contestants;
- by matching funds raised by political contestants with public funds, perhaps up to a pre-established limit;
- by providing public funds according to one of these methods, but requiring reimbursement if the political contestant does not reach a pre-determined degree of success in the election;
- by allowing contestants to finance their election campaign solely with private funds, where such funding is adequate.

In addition, questions of limits for campaign contributions and/or expenditures are important considerations, as are issues of in-kind subsidies, such as tax benefits to contestants and/or contributors, postage discounts and free or discounted media time and materials. Requiring timely and accurate public disclosure of contributions and expenditures can greatly enhance public confidence in the election process. The issues of whether or not to allow contributions from corporations or organizations such as trade unions and foreign contributions are also important.

B. Use of Government Resources for Electoral Advantage

Incumbent political contestants, both candidates and parties, have the opportunity to take advantage of access to government resources in order to advance their electoral fortunes. Government resources belong to the citizens of a country, and thus should not be used for the electoral advantage of a particular political contestant (whether a party or candidate). Such resources include:

² In initial or "breakthrough" elections, providing equal and sufficient resources to all political contestants may be the only way to ensure an equitable opportunity to compete. After a few elections, perhaps even in the second, or where there is a prior history of free political competition, it may be possible to differentiate between major and minor contestants based on objective and fair criteria. Such criteria could include percent of the vote and/or number of offices won in prior elections, number of persons presented as candidates in the present election, number of signatures collected in a reasonable time, reliable public opinion data or other methods. Where such criteria are used to stratify political contestants into categories, at least the minimum amount of resources for fair competition should be made available for minor, new or independent contestants.

- use of government employees as campaigners, while working on government time;
- use of a contestant's government position to capture media attention for campaign purposes;
- use of government moneys, telephones, photocopiers, vehicles or other equipment for campaign purposes;
- use of government programs, such as public works, job creation or social benefit projects, to gain electoral advantage.

The election law as well as government ethical codes should address and proscribe such activities. In addition, there should be effective mechanisms to enforce these prohibitions, such as using government auditors to investigate these matters, allowing citizens and rival political contestants to file complaints with the election authorities and/or the courts concerning these issues and empowering the electoral authorities to investigate these matters on their own initiative.

As part of the 1994 electoral reforms in Mexico, for example, an independent Special Prosecutor's Office for Electoral Crimes was established to pursue, among other offenses, any public servant who: compelled subordinates to vote for or against any specific party or candidate; conditioned the granting of public service, the development of a public program or performance of a public work on the vote for or against any specific party or candidate; assigned resources, goods or services in his or her power due to public functions (such as, vehicles, real estate and equipment) for the purpose of supporting any party or candidate; or gave support to any party or candidate through his or her subordinates' labor.

C. Media Access and Coverage

Democracy depends on all contesting points of view being fairly and equitably communicated so that the people may make informed choices. The ability of the political contestants, especially those not in power, to avail themselves of the mass communications media is critical in this regard. There cannot be meaningful and vigorous debate of fundamental issues facing a country without a vehicle for expressing views. The mass communications media provide that vehicle in many instances.

The mass media, to play their roles as conveyors of information and as watchdogs of government processes, must be free from censorship -- in both its direct and indirect forms. The media must also be free from intimidation and attacks from nongovernmental or quasi-governmental forces as well, which goes to the government's obligation to protect freedom of expression.

1) Access to the Media by Political Contestants

Media access by political contestants, whether by paid political advertisements or by government-mandated free access, contains a number of important sub-issues, including:

- types of access (e.g., live or taped messages, only one person speaking or use of music, images and several speakers);
- amounts of time allocated (e.g., whether the allotted times are sufficient to communicate meaningful messages);
- timing of direct access programming (e.g., in prime listening and viewing hours or at odd times);
- financing minimum time to communicate meaningful messages (e.g., government payment for time, mandating free time on government media, preventing discriminatory pricing of time on private media); and
- criteria for allocating time (e.g., equal time to all qualified contestants or larger blocks for main contestants, established by number of signatures collected, number of candidates qualified, national or wide geographical distribution of supporters, versus smaller blocks for new or weaker contestants);

2) News and Information Coverage

News and information coverage is a more difficult, but no less important, issue to address in ensuring a level playing field. Here too there are a number of important sub-issues, including:

- imbalanced coverage, which favors certain contestants (e.g., allotting more time to one contestant than others or consistently presenting a certain contestant first);
- failure to distinguish between newsworthy government activity and campaigning, which favors incumbent contestants;
- manipulation of coverage to favor certain contestants (e.g., using camera angles that exaggerate or diminish the numbers of supporters at rallies for a contestant or consistently broadcasting the voice of one contestant, while a reporter summarizes what is said by other contestants);
- manipulation of special information programs such as debates and candidate forums (e.g., using biased moderators or questioners, manipulation of camera angles and/or amounts of time given to each contestant); and

- coverage of opinion polls and election projections in a manner that favors or disfavors unfairly the fortunes of one contestant (e.g., exaggerating their reliability, failing to reveal who commissioned the studies, failing to report margins of error or timing of the studies or polling trends).

3) Mechanisms for Developing Campaign Broadcasting Policy and Enforcement

An important aspect of evaluating the media's role in level playing field considerations is whether there are established policy guidelines or regulations for fair media coverage of political contestants. It is also important to examine whether there are mechanisms to address complaints about media coverage of election campaigns, including:

- government mechanisms (parliamentary commissions, courts, election commission);
- self-regulation (extra-legal codes of media conduct and/or journalist association ethical committees); and
- media monitoring by civic organizations and others.

In addition, it is important to evaluate whether there are effective remedies available for media infringements of level playing field considerations. The right of correction and the right to reply are important in this respect as may be ways to request additional time to counter-balance disproportionate coverage given to other contestants.

D. Impediments to Campaigning

An election campaign of significant length, which provides equitable resources to the contestants, nonetheless may not be free and fair -- if the political contestants are not able to campaign freely and vigorously. A number of factors come into play in this regard, all of which are related to fundamental rights, including:

- violence against and intimidation of candidates, campaigners and/or prospective voters;
- failure to provide reasonable times and places for peaceful political assemblies;
- failure to guarantee freedom of movement in order to distribute campaign literature or to seek personal contacts;
- failure to protect free expression concerning political matters; and
- failure to provide effective remedies for violation of fundamental rights in the election campaign.

It is important to assess whether electoral authorities and/or police and prosecutors are adequately monitoring these factors and taking effective action to protect against problems and pursuing violations. This is directly related to providing equality before the law and equal protection of the law for all political contestants.

III. Party Codes of Conduct, Party Liaison Committees, Complaints and Dispute Resolution

A. Party Codes of Conduct

Extra-legal party codes of conduct can be important in ensuring a fair election campaign. To be effective, however, such codes should be reached as a result of careful consultations among the parties taking part in the election, even parties that are not putting up candidates. Codes of conduct adopted mechanically from other countries are not as likely to produce positive effects on campaign behavior. Election administrators as well as civic organizations can play essential roles in convening consultations among the parties in order to encourage adoption of codes of conduct through genuine exchanges.

Codes of conduct can address such issues as: not interfering in the campaign activities of other political contestants; enforcing party discipline to prevent violence and intimidation; respecting the rights of voters and other contestants; refraining from negative campaigning; and similar matters. Codes of conduct can also address affirmative requirements, such as stressing ballot secrecy in campaign propaganda and accepting the results of a genuine electoral process -- even if a party fairs poorly.

B. Party Liaison Committees

Election administrators can set up party liaison committees at the national, regional and local levels in order to facilitate communication between the parties and election authorities as well as among the parties. Liaison committees can provide the same information to all of the parties simultaneously and in the presence of the other contestants. This may reduce possibilities of giving differing information or advice to contestants. It also has an advantage of preventing a party from claiming it was told something other than what was actually communicated.

A second important function of party liaison committees is that they give party representatives the opportunity to interact regularly and build relationships. They also provide a forum for parties to raise questions and to raise informally complaints concerning the behavior of other political contestants. This can lead to informal and effective conflict avoidance and dispute resolution.

C. Complaint Mechanisms and Dispute Resolution

Free and fair elections require equality before the law and equal protection of the law for all political contestants. In order to meet this obligation the government and election administration must provide political contestants with impartial and efficient complaint mechanisms and with effective remedies. This is an extension of due process of the law.

Appropriate due process guarantees include legislative, regulatory and judicial procedures that provide notice, hearings and appeals, which protect against arbitrary and/or biased rulings. These procedures should be available to political contestants at each step of the election process, including: party registration; delimitation of districts; appointing election officials; qualifying for the ballot; creating and updating the voter registry; designing, producing and distributing election materials; developing and implementing voting, counting and tabulation procedures; and determining official results.

Three models are generally employed when setting up an election complaint mechanism:

- electoral bodies investigate and rule on electoral complaints, with appeal to the next higher electoral body (certain decisions of the highest electoral body may be reviewable by an appellate or supreme court, but in some cases the highest electoral body has the final say);
- special electoral tribunals process such complaints;
- regular courts process electoral complaints (in this instance, it is crucial to provide for an expedited judicial process to ensure timely resolution of electoral complaints).

In matters concerning delimitation of election districts, sometimes special legislative commissions receive complaints from political contestants, with appeal to the courts.

In any of these circumstances, appropriate legal sanctions must be available in order to deter improper conduct and to punish violators. Fines, ordering a correction or right of reply in the news media, imprisonment, suspension or cancellation of a party or candidate qualification for election, all should be available and applied appropriately, without discrimination and in a manner proportional to the violation. In some instances, it may also be appropriate to hold party leaders or candidates responsible for the actions of their supporters.

As with all other aspects of the election process, complaint mechanisms should be transparent and open to party representatives, domestic nonpartisan election monitors and impartial international observers.

In addition to adjudicatory or formal complaint mechanisms, informal and alternative dispute resolution avenues may be appropriate. As mentioned previously, political party liaison committees can play an important role in informal conflict avoidance and dispute resolution. Mediation may also be an effective tool, as was seen in the 1994 elections in South Africa. There parties involved in

disputes were required to attempt to resolve them through mediation before formal adjudication was undertaken. Such avenues require dialogue between complaining contestants and their having confidence in the election process.



ACKNOWLEDGMENTS

Democratic Elections, Human Rights, Public Confidence and Fair Competition was written by Patrick Merloe, NDI's Senior Associate for Electoral Processes. Appreciation is expressed to Larry Garber, Guy S. Goodwin-Gill, Michael Stoddard and Antonio Vitorino, whose writings on electoral processes provided valuable resources material. Appreciation is also due to Michael Stoddard, formerly NDI's Assistant Council for Election Processes, for his close collaboration on a number of programs that contributed to this project.

For further reading on topics covered in the preceding pages, see the following publications:

- S. Coliver & P. Merloe, *GUIDELINES FOR ELECTION BROADCASTING IN TRANSITIONAL DEMOCRACIES (ARTICLE 19)*; London: 1994);
- L. Garber, "Establishing a Legal Framework for Elections" and "Election Commissions: Responsibilities and Composition" (NDI; Washington, D.C.: 1992);
- L. Garber & G. Cowan, "The Virtues of Parallel Vote Tabulations," 4 *JOURNAL OF DEMOCRACY*, No. 2, at p. 95 (1993);
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- A. Nadais, "Choice of Electoral Systems" and A. Vitorino, "Models of Transition," in *THE NEW DEMOCRATIC FRONTIER* (L. Garber & E. Bjornlund eds.; NDI; Washington, D.C.: 1993);
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