



Council of Europe
European Commission



Conseil de l'Europe
Commission européenne

Strasbourg, 13 June 2005

CDL-UD(2005)005
Engl. Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**with the support of
THE EUROPEAN COMMISSION**

**in cooperation with
THE SERBIAN ELECTORAL COMMISSION,
TRANSPARENCY SERBIA
and
THE COUNCIL OF EUROPE OFFICE IN BELGRADE**

UNIDEM SEMINAR

**“ORGANISATION OF ELECTIONS
BY AN IMPARTIAL BODY”**

Belgrade, 24-25 June 2005

**TRANSPARENCY AND IMPARTIALITY OF
THE ELECTORAL ADMINISTRATION ON ELECTION DAY:
THE IMPORTANCE OF THE MANAGEMENT OF THE ELECTIONS
AND THE ROLE OF THE ELECTORAL ADMINISTRATOR**

**Report by
Mr Charles LASHAM
Country Director IFES-Nigeria**

Introduction

1. In recent decades there has been an explosion of democracy throughout the world: Latin America in the 1980s; the fall of the Berlin Wall in 1989 and the spread of democracy throughout Central and Eastern Europe; the dismantling of the Soviet Union and other openings in Africa (Namibia and South Africa) and Asia (Cambodia and East Timor). According to the United Nations Development Program Human Development Report 2002 fifty seven percent of us live under democratic governments. It seems that a day does not go by without elections being mentioned in the electronic or print media.
2. I have had the privilege of observing elections in over 30 countries, some of them immediately following conflict or after regime change. In preparing this paper I looked back on some of the early elections I witnessed: Namibia; Bulgaria; Romania; Estonia; El Salvador; Guatemala, Sierra Leone. These were exciting times.
3. In some “first time” elections the administration of the election day activities was administered by the international community thus ensuring the impartiality of the election process. While this is useful and necessary, it should not in my view be a regular feature of a democracies election management process.
4. As we all know there is no single political system or electoral method suited to all nations. We should not seek to question a State’s sovereign right to choose its own political, social, economic and cultural systems. When it comes to the political system, the chosen system must give the people the opportunity to express their will through periodic elections conducted on the basis of equal suffrage and secret ballot. The ballot must be cast in secret and it must remain secret. No individual’s ballot should carry more weight than the next person’s vote.
5. International and domestic observers should look carefully at the run-up to the election, access to the nomination process, access to the media, bias towards the incumbent and other areas sometimes described as the level playing field. Then of course there is the day of the election and the counting of the votes on or immediately following that day. In my opinion there is an over-emphasis on the polling and count activities. Observers, particularly international observers, tend to arrive just a few days before the election, deploy to their designated area and make their assessment based on polling and count activities. There is sometimes a race to get the first statement to the media on whether the election should have the “free and fair” endorsement.
6. I am not underestimating the value of election day and count observation. There needs to be given a greater value to pre-election issues and the immediate aftermath of the election, particularly in relation to the acceptance of the result.
7. How then do you ensure the transparency and impartiality of the electoral administration on election day? I would argue that there are a number of forces that come into play here that can take us to the position where we can ensure such transparency and impartiality. It involves the constitution and the electoral law; the appointment of the electoral management body; the functioning of that body in an independent way; the training of the EMB and the appointment of staff used to conduct the election. In short, the management of the elections the important role played by the electoral administrator.

The Constitution and the Electoral Law

8. The establishment of the system of democracy is often found in the constitution of that country as is the establishment of an Electoral Management Body. The electoral law sets out the processes for genuine, regular elections conducted on the basis of equal suffrage and the Electoral Management Body make regulations or decrees on a regular basis right up to the day of election to deal with the fine detail associated with the administration of the election.

9. Electoral laws need reviewing from time to time. For example it is universally accepted that at the age of 18 years an individual should be entitled to vote. As times change countries examine whether the voting age should be reduced. Voting at the age of 16 years is one suggested change.

10. Changes in society and changes to the way we live our day to day lives may persuade legislators to be more liberal in the way we cast our vote: individually on election day; individually over a number of days; individually a week or more in advance of the election (advance voting); individually by post; by proxy whereby someone votes on your behalf; by postal proxy; with the use of a friend at the polling station if one is in need of assistance; using a mechanized system; by touch screen computer; by telephone; by telephone messaging; over the internet.

11. These are some of the accepted ways of casting a vote. Twenty years ago some of these methods would have been unacceptable or impossible. Laws need to take account of changes in the way we carry out our daily business. They need to be flexible and evolve as society evolves.

Appointment of the Electoral Management Body

12. Different countries administer their elections in different ways. The formation of national election management bodies is a common practice and one recommended by the international community to developing democracies. In the past, as someone responsible for pre-election assessments, I have found myself recommending the formation of national Electoral Management Bodies only to be reminded that the country where my organization is based, the United States of America, and the country of my birth and residence – the United Kingdom, both did not have national Electoral Management Bodies. Points well made. I am pleased to say that in UK there is a National Electoral Commission, more of a policy-making body than an implementer of elections, with a heavy dependence on returning officers at the local government level to administer the day to day activities of the electoral process. In the USA, local political officials run elections at state and county level. Some of these officials are elected; others are appointed.

13. There are different methods used for the appointment of the members of Electoral Management Bodies: nomination by the president; representatives selected from the judiciary; nominations from political parties represented in the legislature; nominations from parties securing a certain percentage of the vote at previous elections; a mix of judges, political appointees and representatives of civil society; by public advertisement for people of outstanding character interested in becoming commissioners.

14. A lot will depend on the maturity of the democracy concerned and the level of trust the players have in those responsible for the administration of elections. In new or transitioning democracies there is frequently a lack of trust among the political players; all will want a stake

in the new election body. Commissions at the national, regional, constituency and polling place level will often have representatives of the major parties contesting the election. I witnessed one election in Bulgaria where there were 9 members of the polling place commission representing political parties drawn by lot to serve on the commission under the “independent” chairmanship of a local schoolteacher. Compare that to any election in the UK where one will find two people in the polling station, seconded (generally) from local authority staff with no particular political affiliation. At the end of polling the transportation of the ballot box in countries in transition is likely to be witnessed by members of the commission, party agents and any civil society representatives present, often with a police presence. The transportation of the ballot box in developed democracies where the level of trust in the system is high, is a low key affair with just one of the poll workers putting the box in the back of the car and proceeding unaccompanied to the designated spot for the delivery of the box.

15. There are different categories of national Electoral Management Bodies throughout the world. An Electoral Management Body may be a permanent body, an independent national election commission, a government ministry responsible for elections, a decentralized body, or a temporary commission established for a particular election. Different types of Electoral Management Bodies exist throughout the world.

16. In South Korea, for example, Election Management Committees are established, with the Central Election Management Committee being appointed for a six-year term. The nine members of the Committee are selected as follows: three by the president, three by the National Assembly, and three designated by the chief justice of the Supreme Court. In some countries, the national electoral commission may not undertake all the duties detailed below. In Bulgaria and Iceland, for example, the compilation of the electoral register is the responsibility of the national census bureau or its equivalent. Electoral disputes may be left to the judiciary to determine, particularly at the appeal stage.

17. It is interesting to read reports of western organizations following their observation missions or technical assessments of a developing democracy's electoral process. As mentioned earlier in drawing attention to improvements that can be made in the country's electoral administration, these organizations recommend the establishment of a permanent electoral commission. They suggest that one way of reducing problems of registration, increasing voter turnout, and bringing professionalism into the electoral process is to create a permanent electoral management body. This recommendation is given despite the fact that the officials often come from countries where there is no permanent national Electoral Management Body. The argument offered is that permanent bodies can devote more time and energy to training staff and to encouraging citizen awareness of and participation in elections. It may also be easier for a permanent body to build on the achievements of a previous election, rather than starting from the same point each time.

18. If it is agreed that there should be some form of Electoral Management Body to ensure the achievement of democratic goals, consideration must be given to the aims of such a body. The Electoral Management Body should be a neutral and balanced mechanism, able to carry out its duties in an impartial manner. The question then arises whether it should be established under the constitution or by statute. There is a strong argument for the Electoral Management Body to be a constitutional body, rather than a mere statutory body, in order to prevent the government of the day from changing the components of the Electoral Management Body by parliamentary procedures.

19. All Electoral Management Bodies should be impartial. But what should the administrative type do? What should the supervisory body supervise? According to G. Goodwin-Gill in *Free and Fair Elections: International Law and Practice* (Geneva: Inter-Parliamentary Union, 1994, page 88), the Electoral Management Bodies' aims should be to:

- ensure that those responsible for the administration of the election are trained and act impartially
- ensure that coherent voting procedures are established and made known to the voting public
- ensure the registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers, as appropriate
- encourage parties, candidates and the media to accept and adopt a code of conduct to govern the election campaign and the election period
- ensure the integrity of the ballot through appropriate measures to prevent double and multiple voting and fraud
- ensure the integrity of the process for counting votes
- announce the election results and facilitate any transfer of authority

20. The functions of the Electoral Management Body could include the following:

- compilation and update of the voters register, or list
- delineation of constituency and other boundaries
- promotion of civic and voter education
- registration of political parties
- registration of candidates at elections
- organization of elections
- training of election officials, political parties and candidates
- printing of ballots
- procurement of equipment, etc.
- monitoring expenditures of candidates
- determining complaints, disputes and challenges

Independence of the Electoral Management Body

21. The independence of the Electoral Management Body is crucial for the success of any election. If the Electoral Management Body is perceived as not being independent then there is little chance of the electoral administration on election day being perceived as transparent and impartial.

22. A report from the observers on the 1990 elections in the Dominican Republic sums up the important role the Election Management Body has to play and the standards expected of it:

“The consolidation of democracy requires that the institution that manages the electoral process be independent, competent, and perceived as completely fair by all the candidates and parties participating in the electoral process.”

Training of the EMB and election staff

23. An election is a huge, complex and costly event involving large numbers of people all of whom should be accountable to the law and fully aware of their responsibilities in the electoral process. Successful elections do not happen without preparation and planning.

24. Training is essential for permanent and temporary staff. There are a variety of ways of providing training. Training programs for permanent staff need to reflect the career development potential of those staff and meet the training needs, which are best identified in staff performance and review interviews. Programs also need to be prepared to cover changes in legislation or working practices and for the introduction of new technology or processes.

25. The position with temporary staff is usually more simple. They are likely to undertake a specific electoral task, such as vote counting or working at a polling site, so training can be targeted to this task and the timing of the training can be fixed so as to ensure the impact covers the electoral process period. As with all training, there should be continual review and feedback on the effectiveness of the training program and the extent to which it is achieving the desired objective. A quality, well-delivered and interesting training session at the right time will inspire and motivate electoral staff; a dull and poorly prepared session will have the opposite effect.

26. Electoral processes are governed by law and the application of the law must be consistent. This idea alone is sufficient reason for a major training program. The need for consistency of decisions is a thread which should run through and be an integral part of the program. Not all electoral decisions are clear cut, however. One area which frequently causes controversy is whether a ballot paper should be declared invalid or not. The decision is difficult enough with proper training; without it, the electoral manager may find that two members of the staff faced with the same markings on a ballot paper have made different decisions at different count centers. The training program should be designed to ensure this problem does not occur. Training for consistency is one way of doing so. In any cascade training system, areas where this type of problem can occur should be highlighted and the correct approach stressed.

Appointment of Staff

27. The type of staffing arrangements used to facilitate the work of the national election body will depend on the temporary model used. An independent body may use temporary staff recruited for the specific purpose of assisting the members of the election body. A judicial or government ministry model may have the luxury of being able to second civil servants from their normal duties to assist the national electoral body on a temporary or permanent basis. Whatever the model, it is clear that there needs to be appointed a chief electoral officer (CEO), who has the role of carrying out the decisions of the national election body, if there is one, and who is assisted by a staff organized in a way that is structured to facilitate the efficient discharge of their duties.

28. In the Commonwealth of Dominica, the chief electoral officer is appointed by the president following consultation with the national electoral commission. In Uganda, the Interim Electoral Commission had an active chairman who oversaw administrative arrangements and was assisted by a team of officers and employees with responsibilities for many aspects of the electoral process.

29. The chief electoral officer should be a judge, senior lawyer, top civil servant, some other top professional, or an individual with a wealth of experience in the field of elections. The person appointed to the position should be known for their personal integrity and leadership capability. Although there have been cases where the individual was not a citizen of the country for which they were working, it is more likely that the constitution or electoral law would prevent a foreigner from occupying this highly sensitive position. Whoever the CEO is, the person should have finely-tuned management and political skills, and the first job should be to review or introduce a management structure that reflects the particular needs of the country in delivering effective electoral administration.

30. Any structure should have regard to the separate and distinct functions undertaken prior to, during and after the election. The structure should include

Logistics or Operations Division. responsible for the procurement and distribution of election materials, identification of voting sites and the creation of timetables for the different functions at election time.

Information Technology Division. responsible for planning and developing computerized information systems for the national election body when such technology is to be used. There may be funding constraints, and it needs to be borne in mind that state-of-the-art equipment may not be necessary or even suitable in some developing democracies. It is important that this division be up-to-date with the latest technological advancements and that staff be qualified and experienced. Computerized voter registration systems, computerized voting and counting systems, electronic transmission of results, and in remote areas, high-frequency radio transmission of results should all be on the agenda for this division.

Human Resources Division. responsible for the recruitment and training of election staff centrally and throughout the country.

Finance Division. responsible for the production of timely budget estimates, management of funds, making payments to suppliers and staff and reporting on the use of funds.

Legal Division. may be responsible for drafting new election laws and procedures and interpreting the law for the national body to determine its position on legal challenges and complaints.

Civic and Voter Education Division. useful in new or developing democracies and particularly when changes in methods of voting or new election systems are introduced. This division handles the design of posters and other civic and voter education material and delivers programs throughout the country via media, distribution of materials, production of videos or touring theaters to get its message across.

31. There could also be a separate media office to handle relations with domestic and international journalists, which could be parallel to voter education under a broader public information division. In some cases, the media office also publishes a newsletter and oversees a library or research office. Some election bodies now also have international relations offices

to handle observer matters, requests for external assistance, and general relations with counterpart organizations in other countries.

32. The type of staffing arrangements will be dependent on the model selected for the national electoral body. It is clear that the chief electoral officer should be appointed at a level high enough to attract the quality and experience required to carry out the functions of this important position. This person should be appropriately graded, equivalent to a judge or senior civil servant.

33. A temporary national election body will engage temporary staff. A permanent body has the opportunity of employing permanent staff but may choose to use temporary staff or a suitable mix of the two. It is recommended that permanent staff be supplemented by temporary staff at peak periods of activity.

34. Each division will seek differing skills, such as lawyers and experienced executives for the legal division, trainers and teachers for the civic and voter education division, accountants for the finance division, computer professionals for the information technology division, and so forth. The chief electoral officer will need to quickly appoint key staff to assist with recruitment of other staff to the various positions in each of the divisions. Good employment practices should be adopted, although it is recognized that this may not always be possible. Pay scales, conditions of service, ordering of office equipment, office administration, petty cash, and so on, although perhaps considered minor issues, all need to be put in place to contribute to the successful organization of the election administration process.

35. Appointment of staff in developed democracies is a problem. One often hears of the difficulties in recruiting appropriately experienced staff in USA and UK. In Nigeria, where I am currently working closely with the Independent National Electoral Commission, *ad hoc* staff are blamed for the failures on election day.

36. If we are to have elections that are considered free and fair the administration of the elections must be of the highest standard, run by trained impartial and independent electoral administrators. In the UK election officials working in the polling stations have to declare that they have not worked for any particular candidate at the elections. Similar requirements were made in the Poland's election law where it stated that no person appointed to a commission may stand as a candidate, act as an agent or observer or engage in political canvassing. It is understood that election staff will have opinions and they will cast their vote using their own political preferences but that must not be brought into the polling station.

37. I served as one of the UK's 11 Regional Returning Officers for the administration of elections to the European Parliament. I was also a parliamentary returning officer. I recall on election when I was summoned to a particular polling station by a Labour parliamentary candidate because one of my polling staff allegedly had a photograph of Margaret Thatcher, the then Conservative Prime Minister, on the desk where the votes were being issued. This was going too far and I immediately visited the station to discover that a national newspaper, being read by the poll worker, had a photo of Mrs. Thatcher on the front page. An inadvertent mistake I was assured but something considered totally unacceptable. By the time the message got to me, the newspaper image of Thatcher had developed into a colour framed photograph. Chinese whispers at their best.

Electoral Associations

38. One additional way to ensure the transparency of the election process and the success of election day is to allow electoral administrators to form and join electoral associations. Examples of these include the Association of Electoral Administrators (UK) formed in 1987, the Association of Central and East European Elections Officials (ACEEEO) formed in 1990, [Association of Election Officials in BiH \(AoEOBiH\)](#) 1999, [Association of African Election Authorities \(AAEA\)](#), [Electoral Institute of South Africa \(EISA\)](#) 1996, [IACREOT](#) (USA) 1971.

39. These associations provide training, professional expertise, standards for electoral administrators and can act as effective lobbyists for the electoral professional.

Charles Lasham, Country Director IFES-Nigeria contributed to the Electoral Management sections of the UN-IFES-IDEA Administration and Cost of Elections Project (www.aceproject.org).