

Free and Fair Elections

Politics, n. A strife of interests masquerading as a contest of principles.

Ambrose Bierce, The Devil's Dictionary, 1911

A government gains its legitimacy from its having won a mandate from the people to govern. The way in which this mandate is won is crucial to the quality of that legitimacy and to the readiness of all to acknowledge it. Elections that lack legitimacy breed instability and an environment in which corruption can quickly breed.

An Independent Election Commission

Such moral authority is immeasurably enhanced if the elected government is seen as being elected according to law and under the watchful eye of an independent Electoral Commission.

At the core of the administration of an election lies the official body responsible for its conduct. While some countries are content to have ordinary civil servants run an election with political party representatives monitoring their conduct, increasingly the trend is in favour of a separate, stand-alone Electoral Commission, which drafts in the staff it needs to run the poll on election days.

Such a Commission should be independent of the government. It can comprise a single person (as has been the case in India with considerable success), or more usually, a group of Commissioners drawn from across the spectrum of politics, civil society and gender. At the core of the Commission's independence lies the manner in which the Commissioners are appointed. Ideally, these should be approved by the major political parties contesting the election, and certainly by all the political parties represented in the Legislature. The legal basis for the Commission can be contained in a country's Constitution, or in its general laws.

The important concept is to create distance between the government of the day and any ability to manipulate the administration of the election. The Commission should therefore be responsible for the preparation of the voters' rolls (and the objection process which follows its publication); the receipt of nominations of candidates and checking their eligibility to stand); the design of the ballot papers; the physical arrangements for the poll; the conduct of the poll itself; the compilation and announcement of the results; the monitoring of the expenditure of the political parties and the individual candidates (to ensure that they comply with the laws in this regard); and the preparation of a public report, accounting for their stewardship and making any recommendations for reforms to the processes. The Commission should also have a public education role, running civic education programmes (ideally in co-operation with civil society groups as this extends the resources available to the Commission), informing voters how to vote and ensuring that they are aware of when and where they should go in order to do so.

Transparency in the elections process

It is widely accepted that elections are generally won or lost before the actual poll takes place. However, the mechanics of the poll itself are wide open to corrupt practices and results can be distorted in a variety of ways:

- voters can be prevented from voting, or intimidated as they go to the polling stations;
- election officials can mis-mark ballot papers for voters with disabilities;
- ballot boxes can be exchanged, before the count, with boxes which have been stuffed in favour of a particular party or candidate;
- counts can take place in secret; the compilation of results can be fraudulent (as in the Philippines, where the last Marcos government used falsifying computer programs);
- and, at the end of the process, a host of minor irregularities (generally unavoidable in an undertaking of such size) can be used as a pretext by a losing ruling party to call the whole election off and order a re-run.

The solution to these various problems is the simple one of transparency. Given that the balloting must take place in secrecy, there are still vast areas of the poll that can, and should be, open to scrutiny, especially by the contesting candidates and political parties, and also (where they are present) international observers.

“Investments” In Nigerian Presidential Elections

TI-Nigeria reported that, long before the campaign began in the aborted presidential elections of 1992, some foreign institutions of a largely religious-economic orientation “invested” equity shares in the personal enterprises of some of the people who were to run for the office of the presidency and arranged for them to draw from these “investments” without let or hindrance.

Although evidence linking political “borrowings” with ultimate denunciations of the electoral process is at present slight, those close to the process are convinced that it is one of the reasons why a losing party can, at the last minute, turn on the polling process and condemn it as unfree and unfair - despite all appearances to the contrary. Party leaders, aware that they are failing in their bid for power, cannot turn to their backers and simply say “Sorry, but you backed the wrong horse...” Instead, they cry foul as a way of excusing their failure to win public support and in so doing try to undermine the democratic credentials of the winner.

Thus, corrupt financial backing can not only be abused by the party aspiring for power but can also undermine the very democratic process itself by violating trust in public institutions, a trust that is vital if strong and vibrant democratic practices are to take hold.

These areas include the appointment of members of an independent Election Commission and polling officials. Each party should have a list of proposed appointments prepared well ahead of time to ensure a reasonable opportunity for their competitors to object where known or suspected politically partisan persons are suggested. Obviously, the whole process is assisted where parties propose candidates who cannot reasonably be objected to by their opponents.

The distribution of election materials should also be a completely transparent process. Parties should know the destination and serial numbers of ballot papers. As voting proceeds, the officials in charge of individual polling stations should inform the “poll watchers”, - the party agents appointed by the competing parties to attend the vote in each polling station - as to which papers are, or are not, being used, and in what order. Copies of electoral lists should be made available, with party agents enabled to keep their own checklists as to who is or is not voting. Where voters need assistance, there should be limits to the number of voters which any one person can assist, unless all of the political parties agree that assistance should be given by polling officials. It may also be necessary to keep the actual design of the ballot paper a secret until the very last minute, in order to minimise the chances of fraud.

At the end of the period of the poll, party agents should know, from what they have seen, precisely how many ballot papers are in the ballot boxes (give or take the odd ballot paper that a voter may have taken away) and their serial numbers. This makes it difficult to even attempt to substitute the boxes. The party agents should then be entitled to be with the ballot boxes from the time polling ends to the time counting begins. They should then be required to certify the accuracy of the count which they have witnessed. A copy of the results of the poll, certified by the officials and the representatives of the other parties, should be given to each agent. In this way, each party is equipped with documentation which enables it to compile its own, independent and accurate assessment of the final result. Even if the documentation is incomplete, it can provide a random check on the official results which can be effective if these have been seriously distorted.

As a matter of policy, citizens' groups should be enabled to observe the processes of their own elections. It is perhaps unfortunate that a need for international observers should be felt in many developing countries, but until the responsibility for monitoring is accepted by a country's civil society and undertaken in a fully professional and non-partisan manner, there will continue to be a role for them.

In most countries, civil society organisations assuming this responsibility will involve some change to electoral laws to enable the presence of accredited local observers to be present inside polling stations and to observe the count. Where such groups are barred by law from being officially involved in the election processes they can still make their presence felt. Information can be compiled by monitoring electioneering and by questioning voters after they leave polling stations. "Exit surveys" of voters, too, can have a sobering impact on those who might feel tempted to manipulate the results.

The number of people involved in the mechanics of the election process is directly related to the degree of transparency and accountability within the process. The more who are involved, the more difficult it becomes to suppress information and to manipulate figures. Particularly when civil servants are involved who are drawn from a cross-section of a society's political matrix, the level of basic trust in the process should rise significantly.

Here are some best practice suggestions designed to address problems in the area of elections and campaign funding. They are drawn from a wide range of election observers' reports of elections in several parts of the world -

- there should be a code of conduct agreed between the parties as to how they will conduct themselves during an election campaign so as to ensure that it is seen as being free and fair;
- the Electoral Commission should, where possible, establish a forum for debate and consultation with and as between the political parties and ensure that the political parties fully understand their rights and responsibilities with regard to all aspects of the election process;
- contributions (in cash or in kind) by private individuals and corporations should be limited to reasonable amounts that would fall short of perceived as "buying" influence. These limits should not extend to volunteer work;
- candidates guilty of false declaration or over-expenditure should forfeit the positions to which they have been elected;
- all parties and candidates should be required to declare their assets and liabilities before the start of the campaign and immediately after the poll;
- paid-for radio and television advertising should be controlled to acceptable levels, if not altogether banned. In addition, the Electoral Commission should determine how much free time on public radio and television should be available to each party during the election campaign;
- election advertising by special interest groups and others not authorised by particular candidates or parties should be banned to stop circumvention of spending limits by supposedly-publicly-minded individuals and groups; and
- all officials of the Election Commission should declare their assets, income and liabilities both before and after every national election;

Monitoring MPs assets starts to bite in Thailand...

When Thailand enacted a new political charter in 1997 even the drafters of the new Constitution never expected that in less than 30 months the setting up of new election and corruption watchdogs would have the country's notoriously corrupt politicians on the run.

Politicians, viewing the declaration of assets under the new Constitution with scorn, lost little sleep over the new laws, believing that the watchdogs would have a loud bark but not many teeth. Even under the old Constitution there were many bodies empowered to tackle corruption.

This time the new watchdogs, with the clear support of the electorate, are sticking to the spirit of the Constitution by no longer turning a blind eye to corruption.

At first, the electorate was even more sceptical than the politicians of the new charter having any efficacy. This hardly raised an eyebrow when campaigning for the first directly-elected Senate descended into the usual mire of vote-buying and mud-slinging.

Initial results showed that the Senate, formerly regarded as a graveyard for retired generals and senior government officials, was still a club for the wives and relatives of senior ministers and bureaucrats.

When the Election Commission failed to endorse the victories of 78 candidates there was widespread disbelief. Among the dumped candidates were the wives and sister of three ministers and two former police chiefs.

Most of the winning candidates came from the well-heeled political elite of Thai society, previously regarded as untouchables, along with monks, the monarchy and the military.

The publishing of the list of disqualified candidates, dubbed the "roll of shame" by an equally incredulous media, is unprecedented in Thai elections.

The Election Commission has ordered new polls for 78 seats in 35 provinces. In earmarking a budget of 400 million baht (\$17.3 million) to hold new elections, tentatively set for April 22, the Election Commission has declared that it will hold as many polls as necessary to ensure candidates win by fair means.

"It won't wash: Thai politics comes clean: Bangkok Observed", by Bruce Cheesman, Financial Review, 31 March 2000.

- campaign periods ought not to be too long - by truncating them the campaigning costs can be reduced, but if they are too short, the ruling party will have advantages over the opposition parties;
- restrictions should be placed on political parties' and candidates' expenditures (in both cash and in kind) in the course of an election campaign. Declarations of these expenditures should be publicly available and filed with the Election Commission within two months of the date of the poll together with an audit certificate certified by a qualified auditor. Additionally, political parties should file audited accounts annually detailing income at electorate, regional and national levels;
- anonymous donations and donations through "front" organisations should be banned, and if received, should be passed over to the Electoral Commission to help meet the costs of that office;
- grants from public funds should be made, either in accordance with past election performance, or according to an agreed formula administered by an independent Electoral Commission;

Some indicators of free and fair elections

- Are the elections the responsibility of an independent and fully professional body of high public standing and enjoying public confidence? In particular, are the processes of appointments to the Election Commission such as to command the support of the political parties themselves as well as of the wider public?
- Are parties and candidates acceptably free to campaign for support for their policies? Do all major parties have a reasonable chance to get their message across through the mass media, and particularly any media which is state owned or controlled?
- Are the polling procedures to be rendered more transparent but in ways which do not intrude upon the secrecy of the ballot? Are political parties aware of their own role in checking the various stages of the polling process and thereby playing an essential part in guaranteeing its integrity?
- Do the election laws reflect best international practice in their openness and transparency? Are there effective procedures to ensure that government assets and funds are not used by a government in support of its election campaign?
- What are realistic limits to political party expenditure, both during an election campaign and at other times? Is there effective monitoring of political parties' income and expenditure?
- If civil society through non-partisan observer groups have a role to play in observing national and other elections, do present electoral laws enable them to do so?
- All in all, does the electoral process (however imperfect it may be and whatever the advantages to the ruling party of its incumbency) offer a means by which public opinion can in fact be expressed in ways which bring about a change in the administration?