

Transparency in Organising Elections

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Introduction

Openness in the election process plays an important role in gaining public confidence in the electoral system and acceptance of election results¹. It may be achieved either through constitutional or legislative requirements or through sound and sensitive administrative practices. For this reason it is instructive to explore the limits of openness or transparency so as to permit a quick assessment to be made of its presence or absence in the organisation of a particular election.

A lack of adequate transparency in a particular country may be due to a failure of the election authorities to keep the public and/or the political parties informed on a timely basis, or to deficiencies in the legislative and regulatory framework of the electoral system, or to a combination of both. In the second situation, a thorough review of the legal provisions would be called for.

A review of this kind encompasses a number of issues, namely:

- (a) the need for a "level playing field" as between the various contending political parties;
- (b) fixed dates for general elections;
- (c) independence of the electoral and boundary commissions;
- (d) creation of subordinate entities to enhance transparency;
- (e) involvement of political parties in election processes;
- (f) the role of observers, opinion polls and the media;
- (g) the openness or otherwise of funding for political parties and their campaigns;
- (h) the effectiveness of limits on campaign expenditure to contain the impact of money on the democratic process;
- (i) the arrangements for the poll on the ground;
- (j) transparency at the counting place; and
- (k) the announcement of results.

(a) Transparency and Level Playing Field

The expression "level playing field" is often used in an election context but is widely misunderstood. No experienced elections official would be likely to subscribe to

the view that an absolute equality can be achieved between contending parties. Some will have more resources, some will be better organised, some will have larger numbers of supporters to mobilise, and an incumbent inevitably has certain built-in advantages.

However, in a more restricted sense, "level playing field" is a necessary ingredient of a free and fair election and in this, transparency in organising such an election is particularly helpful in reassuring opposition parties in particular as to the integrity of the process.

In the context of elections, the expression "level playing field" refers to a requirement that the election rules and regulations, as well as freedom to campaign, including access to the state-owned media, apply fairly to all political parties. The term also embraces the right of each party to satisfy itself that, through frequent consultations with the election management team, and by participating in or observing the major election preparatory processes, the procedures are being properly applied.

The test for determining whether the "playing field" is level or otherwise is not well-defined. It is clear, however, that if all or even most of the elements set out in the description above were absent, the playing field could not be considered as being "level". Nevertheless it is well recognised, and widely accepted, that the party forming the government can enjoy considerable advantages over opposition parties. These may include the right of the Head of Government to call a general election at any time when he thinks it most favourable for his party to be returned to power. Significant advantages also flow from the fact that the party in government remains in power until the election results are known, and in the run up to the poll Ministers may generate additional publicity through official announcements and press conferences. These practical considerations must be accommodated by the test of the "level playing field", reducing it from an absolute to a relative one.

There are other factors which also militate against a strict application of the "level playing field" requirement. For example, even if opposition parties have fair access to the state-owned media, the ruling party may enjoy the support of a larger number of privately-owned media bodies. It may also be the case that a ruling party has legitimate access to greater resources and thus is

able to fund a larger advertisement programme than opposition parties.

The true test of the existence of a "level playing field" is therefore whether opposition parties have a fair opportunity to put their programmes to the electorate through election rallies, media announcements and broadcasts, marches, buntings, billposting advertisements, etc., and equal access to the electoral commission.

Transparency constitutes an important part of the concept of the "level playing field" test as defined above. It requires that the management team of the election deals openly and on equal terms with each of the political parties. Equal opportunity must be given to each political party to participate in or observe the preparatory processes for an election, and each party must have an equal opportunity to consult, whenever it wishes, with the electoral commission.

Transparency is not concerned only with the parties. It has a much wider role, which is to enable the public at large to be kept informed on a timely basis about developments regarding electoral matters and to have confidence that the administration of the electoral process is in capable and impartial hands. By letting the public become aware of the work of the electoral commission and the manner in which elections are organised, the public perception of the electoral process is likely to be positively enhanced. This will in turn feed into and strengthen the integrity of the process.

(b) Fixed Dates for General Elections

One of the particular advantages of a party forming the government in a Westminster style National Assembly is that the Prime Minister of the day has the right to call an election at the time when the ruling party is judged most likely to win the election. The ruling party may therefore start planning for an election well ahead of opposition parties. It may be contended that there is no "level playing field" between the parties in such a case. Stipulated dates, in the legislative schemes for elections, on which general elections are held, would remove this particular advantage of the ruling party, which, though widely accepted, can impair overall fairness.

Because of the constitutional questions (discussed below) that would arise if a Prime Minister's right to call elections, were removed, there is need to examine the nature of the disadvantages suffered by opposition parties under the Westminster model with a view to seeing how these can be mitigated. Complaints encountered from time to time which have a bearing on this issue are as follows:

(i) that the ruling party has prior knowledge of the Prime Minister's thinking on election date, and thus stand to gain an unfair advantage over opposition parties. This right of the Prime Minister and hence the ruling party to set an election date has been abused

occasionally, resulting in considerable embarrassment for the authorities responsible for the organisation of the elections concerned.²

(ii) Where the legislative scheme does not provide for sound rules governing the period that should elapse between the announcement of an election date and either the nomination day and/or polling day, the period sometimes allowed for the organisation of either or both of these events may be much too short. When this happens, an undue strain is put on the electoral commission responsible for the election, and costly and embarrassing mistakes are made.³

(iii) The Westminster model presumes that an electoral system will be in place and be ready for activation at any time when the Prime Minister (or President) concerned wishes to call an election. There is no doubt that that is the constitutional position. Experience has shown, however, that in practice many emerging democracies from time to time have failed to keep a proper electoral system in place at a time when the Prime Minister (or President) concerned wished to call a general and/or Presidential election. This situation usually puts the electoral system as a whole under a great deal of strain, and exposes the several election processes to continuous and undue public scrutiny, since election can only be called when the organisation is complete, for example, when the voters' register is ready and election materials and supplies (including ballot boxes) have been acquired.⁴ Where the system is fashioned around a fixed date formula, these infelicitous occurrences would be avoided.

(iv) Conferment of the right on a Prime Minister or President to call an election when he or she sees fit, impinges on the quality of transparency that may be dispensed under the system, since the element of surprise is inherent in, and the key to, the procedure.

Any proposal to move away from the Westminster model to a fixed-date model, such as the Presidential or Congressional elections in the United States of America, will have constitutional implications. For example, the existence of a no confidence vote in the government by the National Assembly and its consequences, if any, would have to be examined. Similarly, the whole matter of whether the government could be dismissed during its term of office would provoke lively discussions in some countries.

There is, in any event, a clear and compelling need for a Prime Minister to be required to give adequate notice of an election date so as to ensure that the election commission has adequate time to prepare an up-to-date electoral roll and to organise the poll.

(c) Electoral and Boundary Commissions

An electoral commission's role lies at the heart of the concept of transparency in election organisation. It is this body which often has the responsibility for the or-

ganisation, superintendence and control of elections. It is thus uniquely placed to develop through its practices and procedures a culture of openness, transparency and consultation that can - and should - infuse the whole electoral process. All aspects of the electoral commission's establishment, composition, status and functions are relevant to the matter of the transparency of the election processes. Each of these attributes merits close examination in order to better understand the requirements of a suitable electoral commission that can contribute fully to transparency in election organisation.

(i) Establishment of an Electoral Commission

The preferred approach is for an electoral commission to be provided for in the Constitution, and preferably in a deeply entrenched provision thereof. The preference for the inclusion in the Constitution in the first place is based on the fact that it is generally more difficult to amend a Constitution than to change the ordinary electoral law. Deeply entrenched provisions are favoured by some countries, because such provisions cannot be changed without a qualified majority vote of 2/3 or 3/4 of the Parliament and at times a referendum with a stipulated majority of the votes cast well in excess of a bare majority.⁷ The Constitutional provisions should deal with the essential characteristics of the commission, such as its composition, status and functions. Matters of detail can be dealt with in legislative and regulatory schemes.

(ii) Composition

In practice, the degree of transparency achieved by an electoral commission will depend on the standing and character of the commissioners appointed, particularly the chairman. The members of an electoral commission should be persons of integrity and high standing in the community. They should be - and be seen to be - competent and independent of the government of the day and of all political parties. They should understand and by their acts demonstrate the duty to be impartial and fair-minded in the organisation of a free and fair election, and be responsive to the needs of political parties and the public for the timely release of information on the election processes.

The appointments procedure should be carefully considered by the framers of the Constitution, so as to avoid giving the ruling party for the time being complete or undue control over the selection and appointments process. Opposition parties should be entitled to participate in the process of selection and appointment of members of an electoral commission. Some Constitutions require the leader of the ruling party, in his or her capacity as Head of State, to appoint the members of the electoral commission in his or her own deliberate judgment.⁶

This is improper in the context of the quest for a "level playing field" and transparency. However, the true role

of political parties in the selection, screening and appointment of members of an electoral commission needs careful examination. Examples of different formulae can be studied to see whether or not each is an acceptable approach that works satisfactorily.

One such formula provided for an equal number (three) of members for the ruling party and the opposition parties, with an independent chairman.⁷ The result in this case was almost perpetual disagreement amongst the members, leaving the chairman to side with one group or the other. The upshot was that the whole decision-making process of the Commission was ineffectual.

Another formula, allows an equal number (two) of members to be nominated by the ruling party and the opposition, and three independent members from amongst whom the chairman of the Commission is chosen.⁸ This formula has worked relatively well, but the incidence of active and senior party members serving as members of the Commission jeopardises genuinely confidential matters such as security features on ballot papers, ballot boxes and other voting documents. Yet another formula permits each political party to nominate two delegates to the Commission.⁹ These delegates have the right of access to the Commission's records (except documents dealing with security features on voting materials.) This formula could prove to be effective if utilised in good faith by the political parties.

These formulae were designed to provide maximum transparency in the electoral system. However, serious questions arise as to whether the presence of party nominees on the membership of an electoral commission compromises the independence and impartiality of that commission. Perhaps, the appointment of party nominees does adversely affect the independent status of an electoral commission, or at least it does appear to do so. But the reason frequently given for doing so is not only to enhance transparency, but to build the confidence of the parties in the electoral system, and some countries believe that this is the best way of tending their young and fragile democratic process. It is believed, however, that by including party nominees as members of an electoral commission, the very limits of transparency have been reached and the risk of abuses of the office by political appointments becomes greater.

It is submitted that an electoral commission would be better served if its members were not associated with any political party and were chosen by an independent body of high standing, such as the Judicial Services Commission of the country concerned.¹⁰ Even in cases where appointments are made by the leader of the government party, as Head of State, in his or her own deliberate judgment, the selection and screening of prospective appointees can be done in consultation with opposition parties.

The question of whether transparency would be ad-

vanced by the appointment of a single-member commission should be mentioned. There is no inherent reason in theory why a single-member commission with a competent staff could not so organise elections as to satisfy the requirements of transparency, but especially in a small society a single-member commission can be vulnerable to rumours of supposed partiality. He or she also lacks any colleague with whom to discuss matters of grave concern and the best ways in which these might be handled.

Whatever the approach adopted, it should reflect a broad consensus among both parties and public at large that the arrangement is appropriate for the country in question.

(iii) Status

An electoral commission ought to be an independent body established under the Constitution. It was shown earlier that its very establishment under the Constitution of the country concerned lays the foundations for its independence. The term "independence" in this context means that the electoral commission concerned is not subject to the control of the government of the day or any political party or any other body, and acts impartially and professionally towards all political parties.

There are factors that can affect adversely the desired level of independence that an electoral commission should enjoy. It was mentioned earlier that in certain cases its very composition may be perceived as compromising a commission's independence.¹¹ This may occur where the stipulations dealing with the composition of an electoral commission provide for party nominees to be appointed. It may also happen where the wrong individuals are appointed to the membership or the chair of the commission. Some electoral commissions are temporary bodies only, and it is believed that this quality can detract considerably from their independence, due to the uncertain tenure of the commissioners and their staff.¹²

The way an electoral commission is funded may also affect its independent status. Where funds are provided through any special or block vote in the Ministry responsible for electoral matters, valuable time may have to be spent negotiating the budget with that Ministry, or the Ministry Finance, as the case may be. It is believed that the budget for an electoral commission should be voted directly by Parliament. Independence of an electoral commission also implies that the commission should enjoy full and complete control over the selection, appointment and dismissal of its staff (including all election officers).

(iv) Functions of an Electoral Commission

The general functions of an electoral commission centre on the superintendence, control and organisation of elections. In short, all aspects of electoral matters ought to fall under the responsibility of the commission.

Where this is not the case, the integrity of the electoral process is liable to being put at risk without the commission having the ability to take remedial action. Experience has shown that where functions, such as the registration of voters (which is obviously an election task), are hived off and given to some body other than the commission, not only is the integrity of the electoral process impugned, but serious breakdowns are more likely to occur in the system.¹³

In discharging its functions, an electoral commission needs to be competent, and have the ability to appoint staff and election officers who are also competent, as well as impartial.

Some electoral commissions are empowered to prepare and promulgate election rules and regulations which have the force of law.¹⁴ This power greatly strengthens the independence of the commission, as it removes an important regulatory function in the sphere of election management from the government of the day. It also enables the commission to respond swiftly to complaints in proper cases, thus enhancing its efficiency. If parliament has been dissolved, necessary regulations can still be made.

In some cases the responsibility for the compilation of the voters' register is shared between a national registration body (primarily responsible for a national identification system) and the electoral commission (which has to compile a register of voters).¹⁵ Sometimes the sharing process is avoided, but the national identification card is "imported" into the electoral process by requiring its holder to present it as a condition precedent to either or both registration and voting.¹⁶ These schemes are unsound conceptually, because they tend to usurp an aspect of voter registration which properly belongs to the electoral commission; and they are flawed in practice, since the loss of a national identification card may deprive the voter of the right to vote and the commission may not be able to rectify the problem. (Best electoral practice suggests that any intending voter should not be disenfranchised simply for having lost an identification or voter's card, but should be entitled to vote where he or she can establish an entitlement to do so by other means).

In discharging its functions, an electoral commission can do much to advance the cause of transparency. It can hold regular meetings with political parties and issue regular press releases to the public. An electoral commission should be empowered to play a key role during an election campaign with a view to securing a fair access to the state-owned media by all the political parties, proper security at all political rallies and a reasonable standard of conduct by all political parties, through an agreed code of conduct. The electoral commission should be the authority to promote and enforce the principles of the code of conduct.

An electoral commission should develop public educa-

tion programmes for the registration of voters exercise and for polling. These programmes should be designed to reach the entire electorate in a language that they can understand, and should be commenced on a timely manner. Such programmes also serve to advance the cause of transparency of the system.

(v) Boundary Commissions

Much of what has been said above about the establishment, composition and status of an electoral commission applies equally to a boundary commission. Indeed, the similarity is demonstrated clearly when it is seen that there are cases where the delimitation of constituency and other polling district boundaries is undertaken by the electoral commission.¹⁷ Where there are separate bodies to undertake the functions of an electoral and a boundary commission, it is the function of the boundary commission that distinguishes it from the other commission. In all other respects, its status should be the same as that of an electoral commission.

The function of a boundary commission is to draw the boundaries of constituencies and other polling districts in a fair manner, applying a stipulated formula. One such formula to be found in some constitutions is the electorate quota, which uses the average electorate of the constituencies as the basic size of the electorate to be placed in a constituency. The average electorate is determined by dividing the electorate of all the constituencies by the number of constituencies.¹⁸

A boundary commission may depart from the strict application of the electorate quota by taking account of the topography and transport facilities of an area, and differences between urban density and rural sparsity of population distribution.¹⁹ Fair play in drawing constituency

boundaries is likely to avoid gerrymandering which is designed to draw the boundaries in a particular way to favour a particular political party.²⁰

(d) Specific Bodies Created to Enhance Transparency

In seeking to advance the cause of transparency in election organisation, an electoral commission should examine new and creative ways of projecting activities that demonstrate its commitment. It should therefore be empowered to appoint its own high level observers, consisting of 2 or 3 persons of high standing who are independent of the commission itself and whose impartiality and integrity is well known in the community, in each constituency to monitor and report back to the commission on all stages of the implementation of major election processes, such as registration of voters, preparation for an election and the events on polling day. These observers would act as the "eyes and ears" of the commission in discharging their terms of reference, which may include the following:

- (a) an evaluation of the efficiency or otherwise of the execution of the election tasks concerned in a particular constituency, and make recommendation for improvements, if desirable;
- (b) receipt of complaints from political parties and individuals about any shortcomings in the administration of the election tasks concerned and bringing them to the attention of the Returning Officer for the constituency for remedial action, if the matter falls within the competence of the Returning Officer to settle, if not, the matter should be drawn to the attention of the commission promptly;
- (c) report on any irregular act, whether in the nature of any commission or omission by election staff, political parties, candidates or the police.

The role of these observers may be modified to meet the specific needs of a particular constituency. It is believed that if the right calibre persons are selected and if they are trained properly, this management technique has the potential not only to enhance the transparency of the electoral process, but also to improve the quality of election services delivered to the electorate.

The formation of constituency committees is another imaginative way of solving problems swiftly at the constituency level. Each constituency committee may consist of the returning officer, who will be the chairman, candidates, representatives of the political parties and senior officers of the police in the constituency. The purpose of these committees would be to meet promptly (within 24 hours) to consider complaints. They would also serve to improve the communication between the police, political parties, candidates and the electoral office, within each constituency.

(e) Involvement of Political Parties

Although, as shown above, some doubts exist as to the appropriateness of including political parties' nominees as members of electoral commissions, it is widely believed that the involvement of parties' representatives or agents in the electoral process helps the transparency of the system and generates the confidence of the parties in it.

In practice, parties' or candidates' agents are allowed to participate in several election functions and tasks. For example, some legislative schemes permit political parties to participate in the registration process.

Participation in this case may be at two levels, namely, in the screening and selection of registration officers and by appointing agents to accompany the registration officer when persons are being registered.²¹ The act of permitting political parties to help in the selection of officers is essentially a confidence-building measure, designed to purge the system of persons of doubtful credentials to work in the electoral process. The main category of undesirable people in this regard is the

political activist, that is to say, anyone who is an active member of or political campaigner for a party.

In some countries, a political party has to achieve a certain standing before it is qualified to appoint agents to accompany registration officers. In one case, a party has had to win 5 or more seats in House of Representatives.²² This formula is not considered to be particularly useful, since if no opposition parties succeeded in meeting the requirement, the ruling party alone would have the right to attend at the registration of voters.²³

Political parties and election candidates may also be empowered by the legislative scheme to have their agents present at each polling booth at a polling station, and at the counting of the ballots at the polling stations and/or elsewhere, as the case may be. Where the count takes place at counting centres, parties' agents should be allowed to accompany the ballot boxes from the polling station to the counting centre. For these purposes, accompanying the ballot boxes means actually travelling in the vehicle transporting the boxes. (Where there is insufficient room to accommodate all of the agents, the agents should agree amongst themselves as to which of them should actually be on the vehicle and which should follow on separate transport. Commissions should ensure that transport arrangements are adequate in this regard.)

Parties' agents, whether they be participating in the registration or observing polling or the count, must be properly trained. The primary responsibility for their training lies with the political parties concerned, but the electoral commission can help by preparing suitable manuals on the respective procedures.

All political parties contesting an election, to the extent practicable, should be allowed to participate in the screening of election officers, since their regional or local knowledge may be helpful in avoiding the selection of unsuitable people. As mentioned earlier, an electoral commission should consult regularly with each political party that is contesting an election. Where possible, these matters should be handled in writing so as to avoid the possibility of opposition parties claiming subsequently that there was inadequate consultation.²⁴

(f) Local and International Observers, Opinion Polls and the Media

(i) Observers

The presence of observers at the polling and the count can have a calming effect on the election atmosphere, and is believed to promote the transparency of both the polling and counting of the ballots. Their general role is to pronounce on whether an election is "free and fair".

Local observers, who are nationals of the country

concerned, have the advantage of knowing the local conditions better than international observers, but the former are sometimes regarded with suspicion as having their own agenda and not being neutral.²⁵ Local observers also have the ability at times to mobilise large numbers of people, enough to cover all the polling stations.²⁶ There is no doubt that the presence of local observers advances the cause of transparency of the election processes on polling day, particularly as they tend as a matter of course to be drawn from opposition groupings.

International observers have added a new dimension to election transparency. Their presence in a country attracts considerable interest by the international media which add their scrutiny to the whole matter of election organisation in the country concerned. There are limitations to the extent to which observers generally can impact on the transparency of the system, since they are not in charge of the machinery which runs the election. This limitation may be contrasted with the position when an international body is responsible for the actual organisation of the election, as was the case of the United Nations mandate in Cambodia. Another limiting factor is that most observers have a limited time to see only the final days of the campaign leading up to the polls, and sometimes many leave before the final results are known. They would not have observed the registration process or the greater period of the campaign. Obviously, the longer they are in the country, the more profound their effect. Ideally they should stay to observe any consequential transfer of power, and they should monitor (necessarily from a distance) the hearing of any election petitions.

(ii) Opinion Polls

Opinion polls, particularly exit polls of people who have voted, may indicate the existence of some form of transparency. However, very few developing countries have been able to conduct reliable opinion polls, and some Commonwealth countries (including Canada) discourage the publication of opinion polls near to election day. Exit polls are not popular in many emerging democracies, as it may not be fair for voters to be asked to reveal how they voted, even before the polls closed. Voters who value the secrecy of the ballot as a means of protection against threats, violence and political victimisation will not lightly participate in an exit poll and it can even be seen as a potential challenge to public belief in the secrecy of the ballot.

(iii) The Media and Transparency

The precise level of influence of the media on the transparency of an electoral process is difficult to measure, because in many cases the control of the media by the ruling party and government is at the heart of any imbalance of the "playing field" and of contributing to a lack of transparency through selective reporting.²⁷

Where there is a thriving private media, their role should be to advance the cause of transparency. This they can do by seeking regular interviews on the relevant election issues with the political parties and with the electoral commission and publish them for the benefit of the public. The media may also publish official statements by the electoral commission prominently, and generally take a positive attitude towards the work of the commission and its staff.

(g) Political Party Funding

The funding of political parties is a controversial issue in many countries. The question of funding by the State has not been countenanced in many countries because it is felt that taxpayers should not pay for parties' election campaigns. Some political parties are funded through the dues paid by the party members and contributions by business firms or trade unions. In some countries, for example, the United Kingdom, political parties are not required to publish a list of the contributions received, and from whom. Secret donations thus become a feature of the funding of many political parties, particularly during election campaign periods.

In order to improve the transparency in the funding of political parties, it is desirable that they be required to publish donations from all sources. Publication of donations would have the effect of exposing any link between donation of funds to a ruling party and political patronage handed out to the donor in return.

(h) Limits on Campaign Expenditure

The expenditure of political parties during an election campaign should be limited to realistic levels and be strictly controlled. It is desirable that the legislative and regulatory framework for elections deal with the issue of political party funding. If realistic limits were set by legislation for the expenditure of both parties and candidates during an election campaign, excessive expenditures would be avoided, and it would, perhaps, strengthen the case of those who support state funding of parties. Limits of expenditure could be set for major areas of expenditure, for example, broadcasts on radio and television, posters and bunting display and rallies, etc.

Each political party should be required to report the details of its expenditure to either the electoral commission or another independent body who should have powers to audit party accounts and take legal action in proper cases.

Some countries see fit to exclude non-citizens from contributing to the funds of political parties and to require persons who contribute to any party to give the details to a body designated for the purpose of receiving such information.²⁸

(i) Transparency and the Layout of Polling Stations

The layout of polling stations should be such as to ensure transparency but without jeopardising the secrecy of the ballot. Each voting booth should be constructed and so arranged that the voter votes in secrecy, although the processing of each prospective voter is done in the presence of party agents and observers (if any).

Where separate ballot boxes are used for each candidate and the method of voting is by token ballots, the boxes should be so situated in the polling booth as to avoid the election officers finding out for whom a voter voted. The sound emitted by each token when inserted into the ballot box should be identical in all cases.

The layout of polling stations should also take account of disadvantaged voters who may require assistance of election officers. The secrecy of their votes should be protected to the extent practicable.

Where the members of the security and police forces vote before the general electorate, or on separate premises, the environs of the polling station should be free from the presence of senior officers who are not connected with the voting, in order to avoid any indirect influence on members of the forces when they arrive to vote.²⁹

(j) Transparency at the Counting Place

The counting place, be it at the polling station, a constituency centre or other centre, should be so organised as to allow the candidates and/or party agents and observers (if any) to see the counting proceedings directly. A copy of the statement of the results of the count at each centre should be given to the party agents.

The regulatory framework should ensure that the method of counting takes full account of the intention of the voter, so that the incidence of spoiled ballots is kept at the irreducible minimum. The procedure should enable each candidate or party agent present at the count to satisfy himself or herself that each spoiled ballot falls properly within the applicable rule.³⁰ In doubtful cases there should be some procedure whereby redress can be sought from the decision of the counting officer concerned. Many electoral legislative schemes permit a recount at the request of a candidate or party agent who is present at the counting proceedings.³¹

(k) Announcement of Results

The timely announcement of election results enhances the transparency of the electoral process. The prompt-

ness or otherwise with which the results of an election are made known may depend on the electoral system that is in place. The first-past-the-post system has the ability to produce early results, particularly when the counting of the ballots is done at the polling stations.

Proportional representation systems are known to yield slower results, especially those using the Hare and d'Hondt formulae for determining the winning candidates and the distribution of constituency seats³².

The election authorities should proceed to publish the results as soon as they are available. The question of whether the Courts should be empowered to restrain the election authorities from publishing election results because of alleged irregularities at the polls should be answered in the negative.³³ The proper procedure should be through an election petition.

ENDNOTES

1. The Commonwealth Observer Group in Ghana (1992) commented that "None of us has ever witnessed a poll of such manifest transparency. ... The count, in the presence of the general public, was also novel to most of us, and exemplified a degree of transparency, and openness that few could contemplate for our own societies" Despite these observations, the opposition did not accept the results and contended that the election was rigged.
2. In 1983 the Prime Minister of Jamaica called a general election allegedly in breach of an understanding with the opposition party that a general election would not be held until a new voters' register was prepared. The nomination of candidates was set for only a few days within the announcement of the election. These factors combined led to the opposition party boycotting the elections. It can also backfire where an electorate does not think a snap election to be justified as the late Sir Robert Muldoon discovered in New Zealand in 1984.
3. In 1992, in an attempt to shorten the election period, the Attorney-General of Kenya purported to change the rules governing the time within which the political parties held their primaries for the selection of candidates. The date for the primaries had a bearing on the respective dates for the Parliamentary nominations and the elections. When the Electoral Commission, acting on the purported change in the law, set dates for the parties' primaries, the nominations and the elections, it was taken to Court by one of the opposition parties. The Court held in favour of the opposition, and the Commission had to set new dates for the primaries, the nominations and the elections.
4. This situation existed in Jamaica in 1980, in Zambia in 1991, and in Guyana and Kenya in 1992.
5. See for example, section 47 of the Constitution of Antigua and Barbuda, also sections 35, 39 and 53-56 of the Constitution of Grenada, and section 41 of the Constitution of St. Lucia.
6. See section 80 of the Constitution of Zambia and section 41 of the Constitution of Kenya.
7. The Electoral Advisory Committee of Jamaica.
8. The Elections Commission of Guyana (1992).
9. The Electoral Commission of Malta.
10. This formula is used in the Solomon Islands for the appointment of the Boundaries Commission, section 53 of the Constitution.
11. The Chairman, and some members of the Kenyan Electoral Commission in 1992, was under persistent criticism by opposition parties and sections of the public for allegedly being under the influence of the ruling

party and the government.

12. The Elections Commission of Guyana (in 1992) and the Electoral Commission of Zambia are examples.
13. An example existed in Guyana in 1991 when it contributed to the failure to have a proper register of voters in time for elections set for that year. The elections had to be cancelled. Other examples are to be found in Zambia and Kenya.
14. For example, the Electoral Commission of Zambia.
15. In Guyana, before the system was reformed in 1991, the Commissioner of Registration (who was appointed under the National Registration Act) was responsible for the preparation of the preliminary list of voters. As a result of the reform, the preparation of the preliminary list came under the control of the Elections Commission, Regulation 3 of the National Registration (Residents) (Revision of Registers) Regulations, 1991.
16. In both Zambia and Kenya.
17. See section 42 of the Constitution of Kenya.
18. See the Second Schedule of the Constitution of Jamaica, and section 81 of the Constitution of Zambia, where the formula is called "population quota" and is based on the number of inhabitants and not on the electorate.
19. See section 81 of the Constitution of Zambia.
20. The term came about as a result of the practice of Elbridge Gerry, USA, politician, who when Governor of Massachusetts in 1812, reshaped electoral districts in a salamander-like outline for political reasons.
21. Such agents are called scrutineer in Jamaica, section 12 of the Representation of the People Act, also see section 5 of the Representation of the People Act of Trinidad and Tobago.
22. Jamaica, section 12 of the Representation of the People Act, but in Trinidad and Tobago the requirement is merely that a political party have a member or members as candidates for a Parliamentary election is entitled to nominate persons for appointment as scrutineers, section 5 of the Representation of the People Act.
23. In Jamaica this situation occurred in 1983 when the opposition party boycotted the general election, however, the ruling party agreed to a waiver of the strict application of the relevant provisions which would give it alone the right to nominate scrutineers for the registration process. The election in Lesotho in 1993 returned only one party to Parliament.
24. This occurred in Ghana in 1992.
25. Guyana did not permit local observers to its elections in 1992, and both Zambia (1991) and Kenya (1992) only reluctantly allowed local observers to observe the polling and counting events. Ghana (1992) and Bangladesh (1991) welcomed this added aspect of transparency, although their activities in Ghana attracted more criticism from the Commonwealth Observer Group.
26. This happened in Zambia in 1991.
27. There were widespread complaints that the government controlled the state-owned media to the advantage of the ruling party in Malaysia (1990), Zambia (1991), Guyana (1992) Ghana (1992) and Kenya (1992).
28. See for example, Papua New Guinea, section 129 of the Constitution.
29. There were reported cases of this happening in Guyana and Kenya in elections before 1992.
30. See Regulation 25(8) and (9) of the Elections (Conduct of Elections) Regulations of Malaysia 1981.
31. See Rule 36 of the Constituency Election Rules of The Gambia.

32. The Hare Formula (better known as the Hare System) uses a ballot that allows the voter to rank the competing candidates in order of preference. When the ballots are counted, any candidate who received the necessary quota of first preference votes is awarded a seat. The votes received by a winning candidate in excess of the quota are transferred to other candidates according to the second preference marked on the ballot.

The d'Hondt formula deals with the largest average formula, that is to say, the number of votes won by each party is divided by the number of seats held by the party, plus one. The first seat is awarded to the party with highest number of votes, since no seats had yet been allocated, the initial denominator is one.

33. This situation occurred in the Nigerian presidential elections in 1993.