
INTRODUCTION

The framework for election law and practice of the 37 Commonwealth countries presented in this compilation offers a useful insight into the democratisation process in the member countries of the association. A number of issues can readily be identified by even a cursory examination of the various election schemes presented herein, some of which are mentioned below in order to stimulate the interest of election officials.

The presentation of the election framework focuses on a range of issues – varying from eight to 12, depending on the nature of the particular country’s scheme. In addition, the presentation itself throws light on some related issues, for example, common practice or otherwise with respect to the approach to elections in the Commonwealth. There is also the matter of whether or not there is an emergence of such a factor as Commonwealth “best practice” at the present time.

Constitutional Provisions

The presentation shows clearly that the majority of the countries of the Commonwealth with a written Constitution provide for a basic framework for election of members to the National Assembly (by whatever name called) in the Constitution. In many cases, the relevant constitutional provisions contain the fundamentals of the legislative framework for election to the National Assembly of the country concerned.

There is a trend in the newer Constitutions to provide for an independent electoral management body whose functions, where appropriate, include the demarcation of the boundaries of constituencies or electoral districts. It does remain the case that many Constitutions create a separate body to deal specifically with the demarcation of the boundaries of constituencies or electoral districts, and one to deal with the organisation and conduct of elections.

Some constitutional provisions deal with the electoral system which is to be implemented, the secrecy of the vote and the formation and registration of political parties.

Election Management and Administration

Many of the election frameworks presented herein provide for an independent management body to oversee the organisation and conduct of elections. The United Kingdom has a decentralised system of election management which resides essentially in the structures established by the various local government bodies.

The quest to achieve an independent electoral management body, that is to say, independent of the control of the ruling party, the government of the day and any other authority, has attracted more than 20 formulae among the 37 Commonwealth countries included in this compilation. These formulae range from entities whose members are independent of political parties, for example, Australia, Canada, India, Pakistan and South Africa (transition – first democratic elections) to entities with some or all of whose members are political party nominees, for example, Guyana, Jamaica, Malawi and Mozambique. Other interesting formulae may be observed in respect of the Bahamas, Barbados, Malta and Solomon Islands. Experience has shown that no single formula is the right one, and some of the formulae presented are less likely than others to contribute to the organisation of free and fair elections. Some formulae which are capable of enabling independent managerial operation are tarnished by the behaviour of the appointees to the management body. Sometimes the standing of a management body is undermined by incompetence and poor judgment.

There is a trend to confer competence on the electoral management body with respect to all matters relevant to the organisation and conduct of any election of members to the National Assembly, including the demarcation of constituencies or electoral district boundaries. However, there remain many cases where different aspects of election organisation are not only governed by separate legislative enactments, but are also administered by separate authorities, for example, boundaries commissions being separate entities from the principal electoral management body; national registration authorities being separate from registration of electors entities; registration of political parties being done by entities different from the electoral management body; appointment of electoral officers being done by some entities other than the electoral management body; election regulations being issued by some entity other than, and without prior consultation with, the electoral management body, and so on.

Registration of Voters

Voters' registers (sometimes called voters' roll or official list) often become a controversial feature of many elections. An attempt has been made herein, wherever possible, to present registration schemes in as complete a form as possible. Upon an examination of the various schemes presented certain features will no doubt attract attention.

Voluntary schemes are the most common ones to be found in the presentation, but quasi-compulsory schemes, such that of the United Kingdom's, and compulsory schemes such as those of Australia, Papua New Guinea and Singapore, are presented. Some countries, such as Kenya, Pakistan and Zambia, have a national registration system separate from that of the registration of electors, as did Guyana until recently. Experience has shown that when the registration of voters is dependent on the otherwise qualified person having a national registration card as a condition precedent for registration as a voter, it is easy for large numbers of persons who did not possess a national registration card to lose the franchise. Similarly, where a voter is required to produce both a national registration card and a voter's card, unnecessary difficulties often arise with the loss of one or both cards.

States with a federal system or a provincial and central government system sometimes have difficulties adopting a central voters' register. Australia has been tackling this problem with success, Canada perhaps with less success at the time of writing, while South Africa, at the time of writing, was contemplating the way to go.

The compilation of the voters' register under a voluntary scheme of registration is achieved by employing various methods. Some schemes require a house-to-house visit to take place, others require the prospective voter to visit a designated centre or office to be registered. Many voter-registration schemes require voter registration to be done during a stipulated period, after which claims and objections are allowed within a specified period. This process is facilitated by a period for public inspection of the list. Aggrieved claimants are often able to appeal in accordance with a prescribed procedure. Some voter-registration schemes provide for annual revision and new registration every five years or so. In addition, a growing number of Commonwealth countries have established methods for purging their voters' registers of the names of deceased persons, persons who have become demented, persons who have become incapable of registering because of conviction of election offences which carry such a consequence and persons who have been convicted and given long-term sentences for very serious crimes.

Even voter-registration schemes which contain most or all the foregoing elements seem often to fail to produce a voters' register satisfactory to the general public.

The Namibian general election of 1994 and the first democratic elections in South Africa earlier the same year were conducted without the use of voters' registers at the polling stations.

Political Parties

Many Constitutions and election laws in the Commonwealth give modest recognition to the role of political parties in elections. Malta, in 1991 focused on this matter as one in need of attention then and in their new election law sought to give greater prominence to the role of political parties.

Commonwealth countries, such as Kenya, Malawi, Seychelles, Zambia and Mozambique who have experienced the transition from a one-party to a multi-party system of government were required either to amend their Constitution or to adopt a new Constitution which enabled political parties, in addition to the then ruling political parties, to be formed and to operate freely. Similar action was taken in South Africa to enable the African National Congress (ANC) and other banned political parties and political movements to campaign for the first democratic elections.

Some legislative schemes set conditions to be met before a political party may be registered and require a party when registered to continue to meet such conditions failing which the party is struck from the list of registered parties. Usually the senior officials, leader, chairman or secretary, of the party, are required to file the relevant documents for the registration of a political party and to ensure that the party adheres to the rules of registration.

Nomination of Candidates

Nomination procedures vary according to the electoral system which is in place. Thus in a proportional representation system, where a list of candidates is required to be submitted by each political party contesting the election in question, a political party will satisfy the nomination requirements by the submission of party lists within the time prescribed; a single-constituency representation system will require the nomination of one candidate each by the political parties wishing to contest the election in the constituency concerned; some schemes allow multi-representation in each constituency, in which case each party may put up for nomination as many candidates as are permitted for the constituency concerned; in Sri Lanka, entities, called independent groups, may put up candidates, and in many countries (though not in Kenya) independent persons may seek nomination to contest elections in a constituency.

There is a trend in Commonwealth countries to lengthen the nomination period from a matter of a few hours, for example, in Jamaica and Kenya, to days, as in Pakistan and Trinidad and Tobago. This trend is in the right direction since it removes the technicality of prospective candidates being prevented from being nominated through lack of time and, even more important, it reduces considerably the incidence of forcible prevention of prospective candidates from handing nomination papers at a particular time on a stipulated day. The movement towards giving more time for nomination not only offers more time to correct defective nomination papers, but also may permit appeal to the courts by an aggrieved prospective candidate – see Malawi, Malta, Pakistan, and Trinidad and Tobago.

Preparation for Polling

The presentation deals with the framework for the preparation for the poll in some detail in every case, but it is appreciated that in this context more than any other, managerial competence and judgment play a large role, since many of the administrative details are not contained in the legislative schemes or even in the practice notes. Some of these hidden details that may impact on the proper organisation and conduct of an election include the training of election officers, the costing of the election concerned, the quantity of materials and supplies required, the timing of the purchase and storage of such materials and supplies, and the distribution of supplies and materials for polling day or days. It is possible to stipulate by regulations (as South Africa has done for local government elections) when supplies and materials must be delivered to presiding officers.

In the context of preparation for the poll, recent experience has shown that, in the implementation of the provisions of election legislation and practice instructions, more creativity in general needs to be given to the logistics of dealing with the movement and distribution of supplies, equipment and materials on a timely basis. Similarly, in some cases more attention should be given to the quality of election services delivered on polling day/days, particularly through establishing, where possible, more polling centres and less voters per polling station.

Polling Proceedings

The presentation places emphasis on the polling proceedings, wherever polling takes place – at local polling stations, through postal voting, voting at polling stations in foreign countries or voting by proxy.

Despite the fact that most of the schemes presented herein have firm opening and closing rules for the polls, late opening of the polls is a frequent occurrence in many cases and in turn this event often leads to failure to observe the procedures for the opening of the poll.

Many countries in the Commonwealth permit postal voting as well as voting in foreign countries in which polling stations are established. In these cases the procedures, safeguards and polling dates need to be carefully worked out to prevent election manipulation or late return of the ballot papers or the results of the ballot.

Some countries allow proxy voting to facilitate the old, persons who may be absent from home during polling, persons who may be working in essential services or persons who are ill. Most of these proxy voting schemes have in-built procedures which protect them against election fraud.

A few schemes permit military and police personnel to vote a few days before general voting, in order presumably to free the members of these forces for service, if required, on the general polling day. These measures apart, none of the schemes appears to purport to deal clearly with the relationship of the security forces and the electoral management body, although the election legislative scheme of a few countries, for example Pakistan, allows the electoral management body to request the services of public entities, including the army, for assistance in the organisation and conduct of elections.

The Count and Announcement of Results

The presentation has revealed that in the first-past-the-post systems the counting of the votes is done either at the polling stations, or at specially designated counting centres, or at both the polling stations (usually called preliminary count) and at counting centres (sometimes called the final count). Counting the votes at the polling stations is believed to reduce the risk of ballot-tampering between the close of the poll and the commencement of the count.

At the heart of the counting procedure is the reconciliation of election materials supplied to each polling station – and in particular the ballot papers. Every ballot paper supplied to a presiding officer at every polling station must be accounted for – whether used, unused or spoiled. Sometimes the procedure in the legislative scheme proves difficult to implement, as was the case with respect to the April 1994 elections in South Africa where, for a variety of reasons, ballot papers issued to polling stations could not be reconciled. One of the difficulties in this case was caused by the absence of any voters' register at the polling stations.

In the case of proportional representation voting systems, there is a tendency to count at counting centres – particularly where the voters' registers are not used. However, there are

cases where counting at polling stations has taken place, for example in Guyana in 1992, although in this case the voters' register was used at the polling stations.

In the first-past-the-post system, the count at the polling stations, when it is a final and not a preliminary count, or at the counting centre for a constituency or polling district, allows a swift indication of the winning candidate, but in the case of a proportional representation system, the results may have to be computed over a period and seats allocated according to the prescribed formula – see Malta, Mozambique and South Africa within. The counting method of Malta has been presented in some detail to illustrate this point.

Temporary Legal Structures

Some Commonwealth countries have, in recent times, shown an impressive measure of creativity in the establishment of new and/or temporary legal structures to ensure the organisation and conduct of free and fair elections according to acceptable international norms. This achievement often takes place under considerable local and international pressure. These new or temporary structures, frequently include a new or amended Constitution, new or amended election laws and an independent electoral management body with complete control over the organisation and conduct of elections. Examples of countries which have in the recent past introduced these temporary legal structures are Guyana, Malawi, Seychelles and South Africa (prior to its Commonwealth membership). Many other Commonwealth countries, such as Ghana, Kenya, Lesotho and Zambia, also created new but more permanent legal structures to facilitate the holding of free and fair elections according to norms acceptable to the local population and international community.

In an operational sense, many of the temporary or new structures above-mentioned were aimed at making possible the creation of opposition political parties to the then ruling party in the countries concerned, and to establish a “level playing field” between political parties contesting the first multi-party election to be held in many years or at all.

Observers

A clear trend has been discerned in the legislative scheme of many countries towards providing for observers at elections. Countries which have provided for observers in their legislation include Guyana, Kenya, Malawi and South Africa. In some cases local observers are not encouraged but in practice local observers are allowed to operate in several countries, for example. in Kenya, Namibia, Pakistan and Zambia.

Minorities

A few of the election laws contain provisions to ensure adequate representation of minority groups in a constituency or an area or in the country as a whole – see, for example, New Zealand, Pakistan and Singapore.

Commonwealth Common And ‘Best Practice’

The 37 Commonwealth countries whose laws for the National Assembly elections have been presented herein disclose a rich variety of provisions and procedures. Each scheme has

as its goal the organisation and conduct of free and fair elections, and each aspires to confer some measure of independence on the management body for elections. In some specific areas, for example, the definition of certain offences which constitute corrupt practices – bribery, personation, undue influence and treating – and the requirement to maintain the secrecy of the ballot, there is a large measure of convergence in the actual definition of these offences in most of the schemes presented herein.

The presentation in the compendium was designed to facilitate comparative methods. The identification of “best practice” in the Commonwealth cannot readily be discovered by an examination of the provisions and procedures which are written down, for often sound provisions and procedures are badly implemented. Nevertheless, where an election is pronounced to have been satisfactorily held by opposition parties, the general public and the international community, it is reasonable to take recognizance of the ability of the scheme concerned to deliver free and fair elections and then to look further at particular election tasks and functions which may serve as models. The criteria therefore against which Commonwealth “best practice” may be assessed will have to evolve over a period as the process of democratisation takes firm roots in the association.