

Report to Parliament on Electoral Reform 13th August 1997

REPORT ON ELECTORAL REFORM

The Electoral Advisory Committee presents to Parliament recommendations set out hereunder, in respect of the following subject matters:

- a. *Movement of Candidates on Election Day***
- b. *Observers to Elections***
- c. *Continuous Registration***
- d. *Supplies of Election Material***
- e. *Custody of Ballot Boxes***

A. *Movement of Candidates on Election Day*

Officials of contending parties are in the habit of visiting polling stations in different constituencies on Election Day. This causes major disruptions as more often than not they are accompanied by throngs of supporters. There is **consensus** that no good purpose is served by this practice.

Section 75 of the Representation of the People Act, forbids the use of motor vehicle or animal drawn vehicle for the purpose of conveying into or within any constituency within a period of six hours before the hour appointed for the opening of the poll and one hour after the closing thereof any person not registered as electors in such constituency for the purpose of supporting or opposing the candidature of any individual.

Where non-electors are in the vehicle, there is a presumption that the vehicle is being used for the purpose supporting or opposing the candidature of an individual.

Sub-section (3) (b) of Section 75 of the Representation of the People Act states "nothing in this section shall prevent the conveyance into or within any constituency of any candidate at any elections taking place on that day anywhere in the island".

Opinion is divided on the interpretation of this sub-section. There is a view that the sub-section permits the conveyance of a candidate into and within the constituency for which he is a candidate although not registered as an elector therein whereas another view exists that any candidate may on voting day go to any constituency anywhere in the island.

The EAC recommends that on voting day no candidate should be allowed to move from constituency to constituency. This could require an amendment to Section 75 (3) (b) to remove the ambiguity that seems to exist.

The EAC further recommends that any candidate who moves outside of his constituency shall be presumed, until the contrary is proved, to have done so for the purpose of supporting or opposing the candidature of an individual against some other or others at the election.

The legislation, even when amended to remove the ambiguity will not address the matter of disruptions including intimidation which result from the mass movement of supporters

who accompany candidates from place to place within the constituency.

The EAC therefore also recommends that on voting day no candidate acting in the exercise of the right given by Section 41 to visit each polling station within the constituency should be accompanied by more than five (5) persons.

Penalty

Any candidate who breaches these recommended provisions shall, if found guilty, be liable to a fine not exceeding \$500,000.00 or in default of payment to be imprisoned within or without hard labour to a term not exceeding three (3) years. Additionally the candidate shall be disqualified for a period of at least ten (10) years from contesting future elections or from holding a seat in Parliament.

B. Observers to Elections

The EAC has for sometime been considering the matter of "Observers" to elections. The issue of invitation to International Observer Missions provoked lengthy discussions without consensus and a distillation of the arguments for and against are as follows:

Arguments for International Observers

1. Jamaica has embarked on a process of electoral reform. The EAC has already submitted to Parliament three (3) Reports with recommendations for changes to the electoral system as well as substantial amendments to existing legislation to effect meaningful reforms. The presence of International Observers would provide an opportunity to showcase the progress, which has been made in achieving free and fair elections.
2. The approach being taken by Jamaica in respect of the new system of Enumeration and Voting seeks to use Electronic Technology to automate the system, thereby restricting the human intervention in defrauding the process. Jamaica by this decision is pioneering a system, which is most likely to benefit the Democratic Process Internationally.
3. Over the years the security forces have increasingly been accused of partisan activity or benign neglect during elections. The presence of local persons unofficially observing, including members of the clergy, has not in the past been a deterrent to these activities. The presence of International Observers may serve as a restraining influence with respect to any intervention which members of the security forces may contemplate.
4. International Observers would provide a more balanced report than the foreign press who tend to opt for sensationalism.
5. There is public perception that our electoral process had for several years been seriously compromised. In February, 1994 a Stone Poll in response to the question "Do you thing that the Election (1993) was Free and Fair" found as follows: yes – 32% - no – 44% - unsure – 25%.

In order to restore confidence in our electoral process, the reforms undertaken must be directed at putting in place mechanisms which seek to ensure the integrity of the process and the removal of doubts about the legitimacy of any elected administration.

6. We have been invited by other countries to observe their elections and this did not detract from their status as a democracy. Indeed the international community now acknowledges the use of International Observers as a democracy enhancing mechanism

in countries where democracy, relatively speaking, is not in danger.

- a. In this region Belize and Costa Rica are strong functioning democracies. Costa Rica, one of the most established democracies and a model in electoral affairs has for sometime utilised International Observers in elections. Belize has recently invited International Observers for its elector registration process.
- b. At the Conference on Security and Co-operation in Europe in June, 1990 the thirty four countries who were parties to the Conference accepted a document which states in part:

"The participating States consider that the presence of Observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organisations who may wish to do so, to observe the course of their national election proceedings to the extent provide by law" (Conference on Security and Cooperation in Europe, Document of the Copenhagen Meeting of the Conference on the Human Dimension (CSCE,1990), sec.1.par.8.)

Established liberal democracies such as France, Germany and the United Kingdom were among the parties.

- c. In 1990 the Unit for the Promotion of Democracy of the Organisation of American States was established. This Unit provides a programme of support for democratic development, which can respond promptly and effectively to member States, which in the full exercise of their sovereignty request advice or assistance to preserve or strengthen their political institutions and democratic procedures. Jamaica is a member of the Organisation of American States.
 - d. In 1991 the General Assembly of the United Nations Organisation passed a resolution, supported by Jamaica, entitled "Enhancing the Effectiveness of the Principles of Periodic and Genuine Elections". (133 States voted for, 4 against with 13 abstentions). This resolution affirms that the use of International Observers is in the context of full respect for States sovereignty, and implies that this usage is not confined to endangered or first time democracies.
1. The willingness to have International Observers would establish once and for all our commitment to transparency in the election process and would place beyond question the outcome of elections.
 2. In the final analysis if we have noting to hide then we have noting to fear from persons outside witnessing the electoral process.

Arguments Against International Observers

1. There is no Government interference in the process and there is nothing antecedent or anything on the horizon to suggest that this would change and thus require International Observers.
2. International Observers are generally invited to countries which are new entrants to the democratic process or who have deviated from it.
3. That it would be a travesty to the legacy of our democratic reputation to suggest that we are incapable as a people to administer our electoral affairs.
4. That since 1944 Jamaica has enjoyed an effective and robust democratic tradition, which has resulted in the peaceful transition of Government from one political party to the other on five previous occasions.
5. That despite the difficulties of the 1980's and the 1990's the authoritative Freedom House Index, which ranks countries around the world on the basis of their recognition of political rights and liberties, scores Jamaica 2.5 on a scale of, 1 to 7 where 1 represents the most and 7 the least, free states in the global community of nations.
6. That the overall results of elections in Jamaica have always reflected the will of the majority.
7. That there has been no wide spread distortion of the electoral process to justify any invitation to International Observers to certify the results.

EAC Position

1. ***The EAC has reached a consensus that permission should be granted to "Local Observers" to monitor the Campaign Activities and the Election System and to enter polling stations to observe the Voting Process.***
2. There is no consensus on the issue of an invitation to "Foreign Observer Missions" to observe the campaign activities and the election system leading up to the election, or to enter polling stations to observe the voting process.
3. ***The majority of the members of the EAC support having Foreign Observer Missions, invited particularly from organisations with whom we are affiliated such as CAPEL, OAS, IFES rather than a broad brush approach to every organisation.***
4. ***The minority view was that a properly constituted and prepared panel of local observers could adequately monitor and report on the campaign activities and the election system leading up to the elections as well as observe and report on the voting process.***
5. That observers whether local or foreign must have due respect for the principle of non-intervention and must operate under such terms and conditions as agreed to by the EAC.
6. That no more than four authorised observers shall be in a voting centre at any time.

Section 41 of the Representation of the People Act provides as follows:

"In addition to the Presiding Officer and the Poll Clerk, the Candidates, and one Agent for each candidate in each polling station, and, in the absence of agents, one elector to represent each candidate on the request of such elector, and no others, shall be permitted to remain in the polling station during the time the poll remains open."

The EAC recommends that the section be amended to allow persons who are permitted by the Director of Elections, acting on the advice of the EAC, to enter the polling stations on such terms and conditions as the Director of Elections may determine.

A. Continuous Registration

The EAC recommends that the Act including the First Schedule thereto be reviewed and revised to make provision for Continuous Enumeration at Electronic Fixed Centres and to remove the need for amendments to the Legislation where changes are of an administrative nature. The power to make administrative changes should be vested in the Director of Elections acting on the advice of the EAC.

B. Supplies of Election Material

Section 32 (1) of the Representation of the People Act requires that the Returning Officer shall furnish to each Presiding Officer at least two clear days before polling day, all the materials listed therein. The problem associated with this requirement was signaled by the EAC in its report to Parliament dated July 13, 1994 (Page 19 paragraph 7).

The possession of electoral material for two clear days before polling day provides the opportunity for the marking of ballots prior to the opening of the poll. The EAC has had reports of the completion of voting at certain polling stations within two hours of opening and this suggests to the members of the EAC that ballot papers were pre marked.

The EAC recommends that the legislation be amended to remove the need for Returning Officers to furnish the Presiding Officer with ballot papers at least two clear days before polling day and to provide instead that the Returning Officer, with such assistance as the Director of Elections shall provide, furnish each Presiding Officer with the ballot papers in sufficient time and as near as is reasonably practicable to the time for the opening of the poll.

C. Custody of Ballot Boxes

Section 51 (i) of the Representation of the People Act requires that after an election, ballot boxes with locks and keys are to be deposited into police custody at the police station in the electoral division. The police have not proven to be good custodians and boxes become damaged and are sometimes missing.

An amendment is necessary to give discretion to the Director of Elections to store all electoral equipment and supplies at such places as he deems to be appropriate.