European Commission
United Nations Development Programme
International IDEA

Joint Training on
Effective Electoral Assistance

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Legal Frameworks and Electoral Systems

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Day 2
Legal Framework

• The foundation of every democracy is its constitution and the legal framework that governs its electoral institution

• Electoral assistance in this area is intricate, often perceived as intrusive and yet again fundamental
Legal Framework

- Peace Agreements
- Constitutions
- Electoral Law and subsequent legislation
  - Law on Elected Assemblies
  - Political party law
  - Campaign finance law
  - Media laws
- Regulations
- Procedures
Legal Framework

Main elements:

• System of representation / Electoral System
• Eligibility criteria
• EMBs and electoral management model
• Operational framework
• Electoral justice mechanisms
• Rule for stakeholders
Legal Framework

Types of assistance provided:

• Overall design after peace agreements enforced by international community (Bosnia, Iraq)
• High-level expert advice (Nigeria, Indonesia,)
• Research, studies and design
• Legal drafting (Sudan, Nepal)
• Facilitation of negotiation
• Public consultation, often through CSO (DRC, Kenya)
Electoral System Design

- The most important and inevitable institutional decision for any democracy
- Conscious electoral design has become much more frequent recently
- Essentially, a political process, often a compromise of different interests
- No such a thing as the perfect system
Electoral System Design

- Translates the votes cast in an election into seats won by parties and candidates.
- The choice of electoral system can effectively determine who is elected.
- Key variables are the mathematical formulae used, the ballot structure and the district magnitude.
- Affects many other areas of electoral administration: voter registration, ballot design, boundary delimitation, counting of votes AND COST!
Electoral systems choice: a political process

• The choice of electoral system is influenced by the parties

• The parties are influenced by the choice of electoral system
There are different views of representation.....

- Geographical
- Ideological
- Party political
- Identity
- Descriptive - women and men, ethnic groups, young and old
....And different views of accountability

- To all of the people?
- To all voters?
- To party supporters?
- To party members?
- To party activists?
- To the party leader?
- To whoever’s going to give elected members their next job?
The institutional framework matters

- Parliamentary or Presidential System?
- Who nominates candidates?
- Term limits?
- How easy is it to change?
Electoral System Families

- Plurality/Majority
  - FPTP
  - Two Round
  - Alternative Vote
  - Block Vote
  - Party Block Vote
  - Parallel
  - MMP
- Mixed
- Proportional
  - List PR
  - STV
  - SNTV
  - Limited Vote
  - BC
- Other
FPTP – General Characteristics

- Assists stronger parties
- Assists parties with a base in one locality
- Disadvantages medium parties
- Excludes small parties
- Enables popular independents to win
- High number of ‘wasted votes’
- Coalitions to avoid splitting the vote?
- Easy to vote
- Easy to count
List PR – General Characteristics

- Normally has a party based political system
- Lists can be closed - fixed by party... Or
- Lists can be open - voters can change the order
- Effects for smaller parties related to average number of members elected from districts
- Accurately translates votes won into seats gained
- Leads to few wasted votes, which can encourage voter turnout
- Allows parties to present diverse and balanced lists of candidates
Mixed Systems – General Characteristics

- Two different versions: Parallel and MMP
- Can combine advantages of FPTP and List PR
- Can help small parties to gain representation
- Can create 2 kinds of members, even from the same party. Party list members can be seen as having no mandate from the people
- Difficult to understand and requires a comprehensive public information campaign for voters
- Slightly more invalid votes likely
Electoral systems around the world
## India Andhra Pradesh State Assembly 2004 election results

<table>
<thead>
<tr>
<th>Party</th>
<th>Seats won</th>
<th>Net gain</th>
<th>Votes %</th>
<th>Change from 1999</th>
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<tbody>
<tr>
<td>TDP</td>
<td>47</td>
<td>-133</td>
<td>37.33</td>
<td>-6.54</td>
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<td>BJP</td>
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<td>-10</td>
<td>2.82</td>
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<td>Congress</td>
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<td>94</td>
<td>38.25</td>
<td>-2.36</td>
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<tr>
<td>TRS</td>
<td>26</td>
<td>26</td>
<td>6.36</td>
<td>6.36</td>
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<td>CPI(M)</td>
<td>9</td>
<td>7</td>
<td>1.38</td>
<td>-0.32</td>
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<tr>
<td>CPI</td>
<td>6</td>
<td>6</td>
<td>1.4</td>
<td>0.85</td>
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<tr>
<td>Total</td>
<td>275</td>
<td></td>
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<td></td>
<td>Election 1998 FPTP</td>
<td></td>
<td>Election 2002 MMP</td>
<td></td>
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<tr>
<td>------------------------</td>
<td>-------------------</td>
<td>-------------------------</td>
<td>-------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td></td>
<td>Votes %</td>
<td>Seats</td>
<td>Votes %</td>
<td>Seats</td>
</tr>
<tr>
<td>Lesotho Congress for Democracy (LCD)</td>
<td>60.7</td>
<td>79</td>
<td>54.9</td>
<td>77</td>
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<td>Opposition</td>
<td>39.3</td>
<td>1</td>
<td>45.1</td>
<td>41</td>
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<tr>
<td>Total</td>
<td>100</td>
<td>80</td>
<td>100</td>
<td>118</td>
</tr>
</tbody>
</table>
Indonesia 1999
Parties Gaining Plurality in 1999 Legislative Elections
Second Tier District Level
• Parallel system chosen after long drawn out negotiations as the “best of two worlds”
• A political faction pulled out from the process after realizing that the electoral system chosen would not be to their advantage
• Will other parties accept a move to full PR?
• Who pays the bill for the delay?
Conventional wisdom that is not true

- Many claim FPTP is good because members are close to constituents.
- Some claim PR is good because almost everyone votes for a winner.
- BUT Global analysis shows most voters think it doesn’t matter.
- Exception: people who contact their elected members - who want to vote for candidates not parties.
Trends

- More use of proportional systems
- More use of MMP systems
- More action to promote the election of women
  - Gender friendly electoral systems
  - Quotas
Gender Representation

- Electoral systems are NOT gender neutral
- More women stand - and more women win - in multi-member district systems
- 14 of the 20 legislatures with most women members use List PR
- Closed v open list: are the parties or the voters more woman friendly?
Quotas

- Mandatory quotas in the election legislation
- Not only quotas but position on the list - Argentina
- Indonesia’s ‘maybe-quotas’
- Political parties adopt voluntary quotas - Scandinavia
- ‘Contagion effect’
- Reserved seats - South Asia
- The effects of noncompliance - France and New Caledonia
IDEA’s Publications on Electoral System Design