



Challenging the Norms and Standards of Election Administration: Boundary Delimitation Standards

Dr. Lisa Handley

I. Introduction: Why Standards Governing Boundary Delimitation are Important

Different sets of electoral district boundaries can produce different election outcomes, even if the underlying vote patterns remain the same. Electoral abuses such as malapportioned districts (districts that vary substantially in population) or districts that have been “gerrymandered” (districts intentionally drawn to advantage one political party at the expense of others) can have major consequences not only for the legislators who represent the districts, but also for the individual voters and community constituents of the districts. Ultimately, election outcomes and the composition of the legislature can be affected by the manipulation of electoral district boundaries, as the examples that follow demonstrate.

Texas, USA: Districting for Partisan Purposes

Districting in the U.S. normally occurs in ten-year cycles: following a decennial census (1980, 1990, 2000), the fifty states are given a maximum of two years to redraw their congressional boundaries to meet U.S. equal population standards. Recently, however, the state of Texas decided to “re-redistrict” when the Republican Party took control of both chambers of the state legislature in 2003. (Although the Texas state legislature is ordinarily responsible for redrawing congressional districts, the plan in place for the 2002 congressional election was created by the court because the divided state legislature – with one chamber controlled by the Democrats and the other by the Republicans – had failed to agree on a plan.)

When the Republican-controlled state legislature entered office following the 2002 elections, they made the unprecedented decision to redraw the congressional districts boundaries off-cycle. They undertook the task with the avowed purpose of increasing the number of Republic congressional districts (and therefore decreasing the number of Democratic incumbents) as much as possible. In fact, Texas Republicans are quite hopeful that they accomplished this: the 2002 congressional election produced a 17-15

delegation in favor of the Democrats; Republicans claim the as many as 22 of the 32 seats will be filled by Republicans after the 2004 general election.¹

Kenya: Disparities in Constituency Populations

Kenya's single-member electoral districts (constituencies) vary greatly in population; constituency populations for the 1997 elections ranged from as few as 3,635 people to as many as 301,558 people (with most constituency populations well above or below the mean population of 102,271). In Kenya, this configuration of constituencies systematically over-represents residents of the most sparsely-populated areas of the country (the Rift Valley and northern, eastern and southern Kenya), and under-represents the residents of the densely populated areas (western and central Kenya, and especially residents of Nairobi).

Although Kenya's constituencies had been malapportioned for many years, this defect was not a source of controversy until the era of the one-party state (1969-1991) came to an end. With the reintroduction of multi-party politics in 1992, it became evident that, because different parties tended to represent the peoples and ethnic groups (tribes) of different regions, this system of unequal representation favored the regions that supported the then-ruling party, KANU, and discriminated against the regions that supported the opposition parties. In fact, in the 1997 elections, KANU won a narrow majority of 107 of the 210 seats in the National Assembly, with only 43% of the vote, in part because of the large disparity in constituency populations.²

Mississippi, USA: Drawing Districts that Discriminate Against a Minority Group

The congressional districts drawn in Mississippi in the late 1960s and early 1970s did not violate equal population standards, nor did they violate such redistricting criteria as contiguity or compactness, but they were drawn explicitly to discriminate against a specific minority group— American blacks.

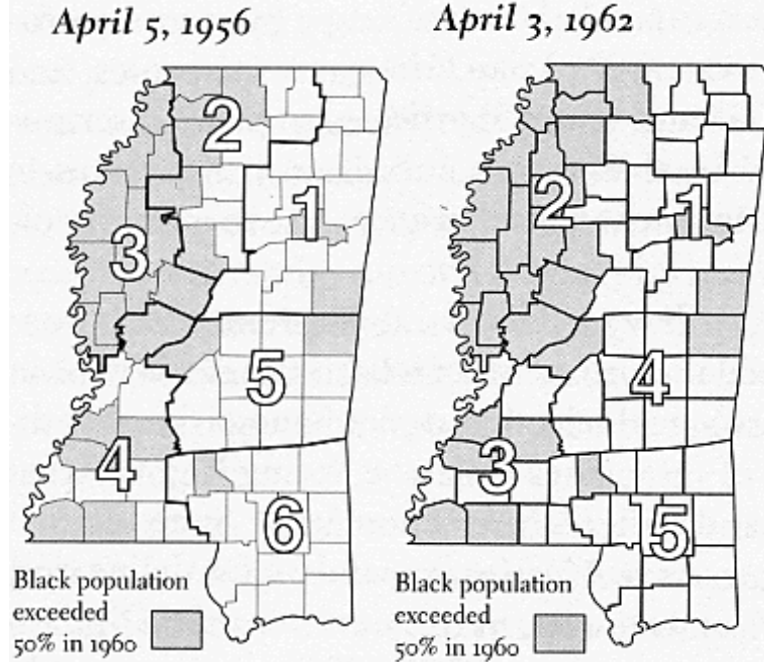
Congressional districts in Mississippi were traditionally drawn with one district centered on the heavily black Delta region along the northwestern border of the state. Prior to the passage of the Voting Rights Act of 1965, Mississippi blacks were denied access to the ballot so the all-white Mississippi legislature was unconcerned about the possibility of a black representative being elected from this district. The two maps below, labeled

¹ Democrats have sued in court to have the new Republican congressional plan declared invalid but have thus far been unsuccessful in convincing the courts to overturn the Republic - gerrymandered plan.

² KANU's defeat in the parliamentary election of 2002 was remarkable given the disparity in constituency size. KANU, in fact, had a 20% advantage in the parliamentary election, meaning that Kibaki had to defeat Uhuru Kenyatta by at least 20 percent of the popular vote to ensure that NARC won more seats in the National Assembly than KANU. In fact, NARC defeated KANU by more than 30 percent in both the presidential and parliamentary elections, giving the new Kibaki government a parliamentary majority of 125 seats to the combined opposition's 85 seats. (*Africa Notes*, number 14, January 2003, published by the Center for Strategic and International Studies.)

“Mississippi Congressional Districts during the 1950s and Early 1960s”, show the congressional districts in the 1950s (when the state was entitled to six congressional districts and in the early 1960s (after the state lost one congressional district in the 1960 round of redistricting). The majority black counties are shaded.

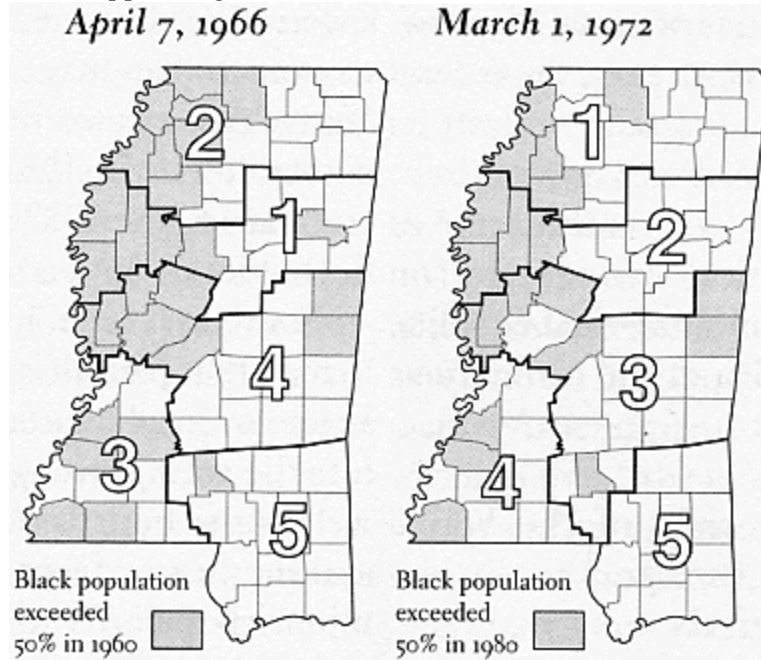
Mississippi Congressional Districts during the 1950s and Early 1960s



When black citizens regained the right to vote in Mississippi, the state legislature decided that the majority black congressional district in the Delta region presented a threat and they redrew the district boundaries to ensure that black voters would not constitute a majority of any of the districts and therefore would not be able to elect black representatives to office. The two maps labeled “Mississippi Congressional Districts in 1966 and 1972” illustrate how the Delta district was carved up among three different districts – none of which were majority black in composition.³

³ It took more than fifteen years and several court challenges before the district lines were redrawn in a less discriminatory fashion.

Mississippi Congressional Districts in 1966 and 1972



As the preceding examples demonstrate, electoral district boundary configurations can have decidedly adverse effects. Even if the boundaries have not been intentionally manipulated, the result of implementing a less than well-considered plan can be devastating. Producing electoral district boundaries that are perceived as fair and impartial is essential if the election process is to be considered legitimate by all stakeholders.

Countries that delimit electoral districts must adopt electoral legislation outlining the formal structure and rules for districting. These laws (constitutional provisions) should conform to international standards of fairness and should address, at a minimum, the following two sets of issues:

- *Boundary Authority* Who will draw the district lines; and who will have the ultimate responsibility for selecting the final districting plan? Should the authority charged with drawing the districts be independent from the legislature? Should it be politically neutral? Should the legislature have any role at all in the process?
- *Districting Criteria* Should districting criteria be adopted for the line drawers to follow? If so, what should those criteria be?

A good point at which to begin to devise a set of international norms and standards is an examination of current districting practices: how do countries go about delimiting electoral districts, and how well do these practices work in promoting free and fair elections? Districting practices vary markedly across countries. Some current approaches to districting, and the advantages and disadvantages of these approaches, are outlined in the section below.

II. Current Delimitation Practices

Countries that delimit electoral districts must designate a boundary authority and a set of rules for carrying out the task of districting. The task assigned to the boundary authority is the same in all countries: divide the country into districts for the purpose of electing representatives to office. The type of boundary authority established, and the rules this authority is obliged to follow, varies markedly across countries.

At one end of the spectrum is the United States, where the districting process is very political and decentralized. The responsibility for drawing districts for the United States Congress rests individually with the fifty states. There are few limitations placed on the states, and the boundary authorities are almost always political entities – usually state legislatures. The districting plans that are produced usually benefit the political party in control of the process.

At the other end of the spectrum are many of the Commonwealth countries, where politicians have opted out of the districting process and granted the authority for districting (redistribution) to independent, impartial commissions. The commissions usually operate with an established set of districting criteria, and the final decision as to which set of district boundaries to implement rests with the commission, and not the legislature. The process is viewed by stakeholders as impartial and unbiased – although the results may, in fact, have profound political consequences.

III. Designation of a Boundary Authority

During the 19th century, in Europe and in self-governing European colonies around the world, the drawing of district boundaries was the responsibility of the legislature. Partisan politics and gerrymandering were a given part of the districting process. But in most Western democracies, the idea that politicians are best excluded from redistricting has emerged and legislators have opted out, handing the process over to neutral commissioners. The United States is the only notable exception to this rule.

Britain probably pioneered the commission approach to redistricting several generations ago, although it may no longer provide the best (or at least the most efficient) example of redistricting by a neutral, nonpartisan commission. Most of the major democracies once ruled from the United Kingdom have followed suit and adopted impartial commissions for redistricting: Australia, New Zealand, and Canada to name just a few countries that have adopted, and perhaps even improved upon, the nonpartisan commission approach to redistricting.

The Commonwealth boundary commissions tend to include impartial (non-political) public officials with backgrounds in election administration, geography or topography, and statistics. In Australia, New Zealand, and the United Kingdom, for example, the

commissions incorporate electoral officers or registrar-generals, as well as the Director of Ordnance Survey (United Kingdom) and the Surveyor-General (Australia and New Zealand). Statisticians have an important role on Australian commissions because population projections, rather than actual census or voter registration counts, are used to draw electoral district boundaries. In Canada, academics who are knowledgeable about elections and/or geography may be asked to serve on electoral commissions.

Members of the judiciary are also well represented on districting commissions in many Commonwealth countries. They often chair the commissions, as in Canada. In New Zealand, the chair of the Representation Commission since 1956 has been either a sitting or retired judge, although this is not required by law. In the United Kingdom, senior judges serve as Deputy Chairs of the four Boundary Commissions in England, Scotland, Wales, and Northern Ireland. In Australia, the Chairperson of the Australian Electoral Commission, who is a judge, chairs the augmented Electoral Commission.

Noticeably missing from districting commissions in most Commonwealth countries are legislators and representatives of political parties. The express purpose of this omission is to maintain the neutrality of the commissions. New Zealand is one exception to this rule. Two “political” appointees, one representative for the governing party and one for the opposition parties, serve on the seven-member Representation Commission. Their presence on the commission helps to ensure that any egregious political bias is recognized and rectified. Because the two political appointees constitute a minority of the commission, they cannot outvote the non-political commissioners. The neutrality of the commission is, therefore, unquestioned.

Authority for Choosing the Final Districting Plan

In most countries today, the legislature plays only a limited role or no role at all in the districting process. However, some countries do require executive approval, rather than legislative approval, before a districting plan can be implemented. While this removes the decision from legislators—those who directly benefit from the districting plan—it still leaves the districting process open to charges of political influence.

In many countries with districting commissions, the legislature plays no role in the districting process; the plans produced by the commissions have the force of law. In New Zealand, for example, the final plan of the Representation Committee, once published, cannot be changed or appealed. Since 1983, Australia’s augmented Electoral Commission has had the same power.

In other countries, the legislature can debate and even delay the enactment of a commission’s plan, but it cannot modify the plan. In Canada, for instance, the 1964 Electoral Boundaries Readjustment Act took the responsibility for districting away from the Parliament and gave it to independent electoral commissions in each province. Parliament is permitted to consider plans produced by the commissions, but has no vote

on their implementation.⁴ In the United Kingdom, the final proposals of the four Boundary Commissions take effect only after an affirmative vote by Parliament. But Parliament's power to accept or reject a plan is a formality. It has almost always affirmed Commission proposals; to do otherwise would be viewed as "political".⁵

IV. Establishment of Criteria for Delimiting Districts

Countries that engage in periodic districting have often instituted a set of formal rules, or criteria, for their boundary authorities to consider when drawing electoral districts. These rules are usually listed in the electoral law, but they are sometimes found in the country's constitution.

The rules often specify that districts should be as equal in population as possible, taking into account a variety of other factors. Administrative and natural boundaries, as well as other geographic features such as population density are factors commonly listed. Respect for communities of interest is another criterion many countries specify. In some countries, especially developing countries, the boundary authority is asked to consider the means of transportation and/or communication as well.

Countries that delimit districts usually do not adopt criteria relating to the fairness of an election outcome. This is because countries with single-member districts can rarely meet such standards, if fairness is defined as proportional or near proportional representation for political parties and minority groups.

Equal Population

The most widely accepted rule for districting is that districts should be relatively equal in population. This is because representation by population is a central tenet of democracy and, in countries that employ single-member districts, this rule translates into the principle of equal populations across districts.⁶ Equi-populous districts are necessary if voters are to have an equally balanced voice in the election of representatives. If, for example, a representative is elected from a district that has twice as many voters as another district, voters in the larger district will have half as much influence as voters in the smaller district.

⁴ Parliament has used this provision to delay the implementation of plans, however. This has prompted a change in the law; there is now a 60-day limit on Parliamentary debate and consideration.

⁵ The only two exceptions were in 1948, when Parliament proposed the addition of 17 seats for under-represented urban areas, and in 1969, when Parliament delayed the implementation of a redistribution plan on the grounds that impending changes to local government boundaries would render the plan obsolete. Conservatives viewed both of these actions by the Labour government as political.

⁶ In multimember districts, the same ratio of voters to elected representatives should be maintained across all districts.

The degree to which countries demand population equality varies. The United States is unique in its adherence to the doctrine of equal population. No other country requires deviations as minimal as the “one person, one vote” standard that has been imposed by U.S. courts since the early 1960s. New Zealand comes closest to that strict standard, but deviations of up to five percent from the electoral quota (calculated by dividing the total population by the number of district representatives to be elected) are permitted.

In Australia, federal electoral districts must fall within 10 percent of a state’s electoral quota, as forecast by population projections three and one-half years into the future. Australia aims for equality of population halfway through its seven-year districting cycle to avoid wide discrepancies at the end of the districting cycle.

In Canada, the independent commissions charged with creating federal electoral districts are allowed to deviate by up to 25 percent from the provincial quotas. But since 1986, commissions have been permitted to exceed the 25 percent limit under “extraordinary circumstances”.⁷ In Germany, like Canada, districts are not to deviate from the electoral quota by more than 25 percent. It is not until a district deviates by more than 33 percent, however, that the law requires that a district be redrawn. The German legislature, which must approve any proposed federal districting plan before it can be implemented, often refrains from adopting district modifications recommended by the Electoral Districts Commission until a district deviates by 33 percent or more.

The United Kingdom allows even larger deviations in district populations. The original standard was set at 25 percent in 1944. But the standard was repealed only two years later. The current rule requires that constituencies be “as equal as possible”, but this rule must be balanced against the principle of respect for local boundaries as much as possible. Equi-populous districts can also be disregarded for “special geographic circumstances”. Allowances for natural communities prompted English Boundary Commissioners in 1983 to leave the Isle of Wight with 95,000 electors as a single constituency, while respect for local London boundaries left suburban Surbiton with only 48,000 electors. Likewise, recognizing the difficulties of island travel, the commissioners in Scotland granted the Western Isles (with a population of 24,000) and Orkney and Shetland (with a population of 31,000) their own representatives.

Geographic Criteria

In many countries, the electoral laws specify that geography, or certain geographic factors, be taken into account when delimiting electoral district lines. Respect for clearly established boundaries such as local administrative units (i.e., counties or municipalities) and “natural boundaries” created by such dominant topographical features as mountain ranges, rivers or islands is often specified. In fact, in some countries, geographic criteria are the most important concept guiding boundary commissioners. In the United

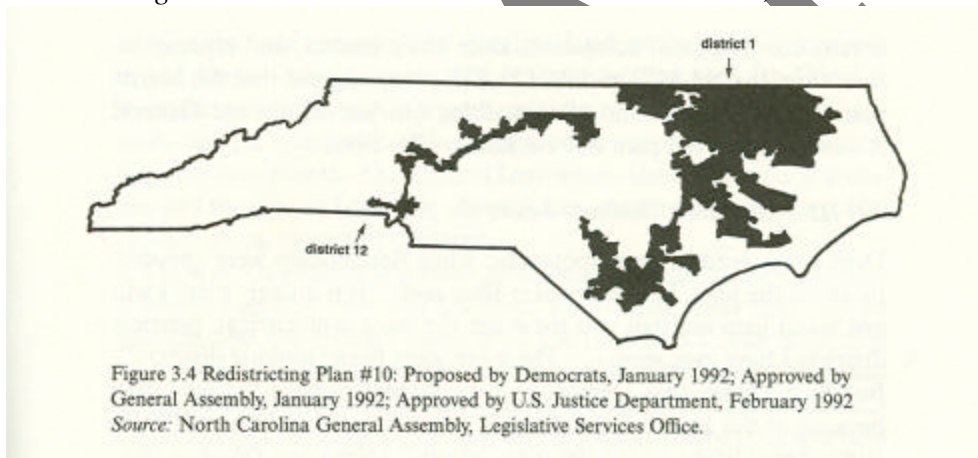
⁷ This provision was used to create five of the 295 seats in the Canadian House of Commons in 1987, and two of 301 seats in 1996. In 1996, one Quebec seat was created with a population 40.2 percent below the provincial average and one Newfoundland district was created with a population 62.5 percent below the provincial average.

Kingdom, for example, respect for local administrative boundaries and natural communities are paramount—large population deviations are tolerated if they are the result of complying with this criterion.

Factors such as the remoteness of a territory, the sparseness of population, and “geographic accessibility” are sometimes listed as criteria to consider when drawing district lines. These factors are particularly important in countries which have large, sparsely populated territories, like Canada, Australia or Russia, or countries with islands or other isolated constituencies that are more difficult to serve.

Two other factors that are sometimes identified as districting criteria relate specifically to the geometric shape of a district: contiguity and compactness. Advocates of these criteria hold that districts should not be oddly-shaped and that all pieces of a district should be inter-connected. The issue of district compactness, like contiguity, is often taken for granted but can occasionally lead to controversy. For example, in the United States, district compactness has not been required by federal law since 1929 but when a number of states created some bizarrely-shaped districts in the 1990s, the U.S. Supreme Court indicated that districts such as the two North Carolina congressional districts illustrated in the map below were unconstitutional.⁸

Congressional Districts 1 and 12 in North Carolina, 1992



Communities of Interest

Many countries that delimit districts emphasize the importance of creating districts that correspond as closely as possible to pre-existing communities, defined as administrative divisions or other types of “communities of interest”. The rationale for recognizing such communities is that electoral districts should be more than conglomerations of arbitrary, random groups of individuals; electoral districts should, as much as possible, be cohesive

⁸ Although the shape of these districts was not the basis for the Supreme Court’s decision, the fact that the districts were not compact was considered evidence of an impermissible motive in creating the district boundaries.

units with common interests related to representation. This makes a representative's job of articulating the interests of his or her constituency much easier.

"Community of interest" is rarely defined by statute, but it is generally thought of as a group of individuals united by shared interests or values. In general, criteria related to communities of interest can be divided into three categories: (1) criteria related to administrative or geographic boundaries; (2) criteria related to common interests or common characteristics (for example, a shared racial or ethnic background, a common religion or language, or a common history or culture); and (3) criteria related to patterns of interaction such as transportation or communication networks or economic ties. Boundary authorities knowledgeable about local conditions can identify communities of interest, or these communities can be identified through a public hearing process.

Fairness for Political Parties and Minority Groups

Criteria specifying fairness for political parties and minority groups within a country focus on the electoral outcome, rather than the process, of districting. Electoral systems that rely exclusively on single-member districts, however, cannot guarantee proportional representation or even some minimal percentage of seats for minority political parties or for ethnic, religious or other minority groups in the population. Special electoral provisions are required if single-member systems are to ensure minority groups some representation. Mixed electoral systems, because they combine single-member districts with seats that are allocated to political parties on the basis of a party list, may not have to institute special provisions to provide minority representation.

Minority parties and minority voters that are optimally concentrated geographically, and are of sufficient size to control the majority of votes in a requisite number of districts, can hope to achieve representation that is more proportional even in pure First-Past-the-Post, single-member district systems. For example, the Bloc Quebecois in Canada, because its adherents are geographically concentrated within specific regions of Canada, have long enjoyed proportional representation. Most minority parties and minority groups, however, do not achieve this level of proportionality in representation in single-member districts. In fact, absent special provisions for minority groups can lead to severe under-representation. A few countries that delimit districts have made provisions to ensure that racial, ethnic or religious minorities are represented in the legislature. The United States and New Zealand are two examples.

Minority Representation in the United States

The United States, because of its sizeable racial and ethnic minority population and its history of discrimination against certain minority groups, has had to address the issue of fairness to minorities in promulgating districting plans. The Voting Rights Act of 1965 and its amendments in 1982 have established that a districting plan that dilutes the voting strength of minority voters by dividing the minority community among different districts may be invalid. Protected minority groups (blacks, Hispanics, Asians and Native Americans) must meet three conditions to qualify for this protection:

- The group must be sufficiently large and geographically compact to form a majority in a single-member district;

- The group must be politically cohesive (they must share common political interests);
- The group must be able to demonstrate that the majority population votes as a bloc against the minority community's preferred candidates and that the minority-preferred candidates usually lose.

If a minority group is able to satisfy all three of these conditions, a districting plan must be fashioned such that minority voters constitute a majority of voters in one or more districts.

The Voting Rights Act guarantees racial and ethnic fairness in some minimal sense in the United States. It is "minimal" because only minority communities that are able to satisfy all three of the conditions are given an opportunity to form the majority of a district and elect a candidate of choice. As a result, blacks, Hispanics, Asians and Native Americans are far from proportionally represented in the U.S. Congress. The minority community in New Zealand is better represented in the legislature because of a more effective provision.

Minority Representation in New Zealand

A unique feature of New Zealand's electoral system is a provision for representation of the descendants of New Zealand's aboriginal Maori population. In addition to 60 general legislative districts, the Representation Commission created five Maori districts in the last redistribution in New Zealand. These Maori districts are geographically defined and overlay the general electoral districts. To vote in a Maori district, rather than a general election district, a Maori voter must register on the Maori roll. Registration on this roll is optional; Maoris can choose to register on the general roll instead. Because of this electoral feature, Maoris have been represented in the legislature in roughly the same proportion to their percentage in the population in the past few elections.

Conflicting Criteria

Districting criteria can conflict with one another. For instance, although almost all countries list population equality as a districting criterion, few countries actually have districts that are close to equal in population. The reason is that other criteria have been deemed more important than strict adherence to population equality. Respect for administrative boundaries and natural communities, for example, often require districts to be smaller or larger than the electoral quota.

Countries that establish districting criteria must either prioritize the criteria or accept certain inconsistencies in district construction. Many countries choose to specify the most important criteria or place limits (such as population tolerance levels) on the boundary authorities, but still permit boundary authorities some discretion in balancing these criteria.

V. Proposed Standards for Boundary Delimitation

As the above discussion demonstrated, delimitation practices vary greatly around the world. In fact, countries disagree on even the most fundamental of issues, such as how

impartial and independent the process can and should be from political concerns. To date, few international election standards have been proposed to guide the delimitation process. However, there are at least four principles that should be considered international standards for boundary delimitation: (1) representativeness, (2) equality of voting strength, (3) independent, impartial boundary authority or, at a minimum, reciprocity and (4) non-discrimination.

Representativeness

Electoral district boundaries should be drawn such that constituents have an opportunity to elect candidates they feel truly represent them. This usually means that district boundaries should coincide with recognized communities as much as possible. These communities can be defined in a variety of ways; for example, they can be the constituents of existing administrative divisions, they can be geographically-defined communities delineated by physical features such as islands, or they can be “communities of interest” that share a common race or ethnic background, or the same religion or language. If districts are not composed of communities of interest, however defined, it may be difficult for a single candidate to represent the entire constituency. The electoral law should include a list of rules, or districting criteria, based on “representativeness” criteria particularly relevant to the given society.

Equality of Voting Strength

Electoral district boundaries should be drawn so that districts are relatively equal in population (using reliable census or voter registration figures). Equi-populous districts allow voters to have an equally weighted vote in the election of representatives. The following are two standards developed to reflect this principle, one offered by the Organization for Security and Cooperation in Europe (OSCE) and one by the UN Committee on Human Rights (UNCHR):

- The delineation of constituencies in which elections are conducted must preserve the equality of voting rights by providing approximately the same ratio of voters to elected representatives for each district. Existing administrative divisions or other relevant factors (including of a historical, demographic, or geographical nature) may be reflected in election districts, provided the design of the districts is consistent with the equality of voting and fair representation for different groups in society. (OSCE, “Inventory of OSCE Commitments and Other Principles for Democratic Elections”)
- The principle of “one person, one vote” must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely. (UN Committee on Human Rights, General Comment 25, “The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service”)

Independent, Impartial Boundary Authority

Ideally, the legal framework for boundary delimitation should provide that the persons or institution responsible for drawing electoral boundaries be independent, non-partisan and impartial. In addition, the recommendations of the Boundary Authority should not be subject to modification or veto by the government or by the legislature.

Failing this, the procedure for delimiting electoral districts should be clearly spelled out in legislation so that the rules regulating the process are the same, regardless of who is drawing the district boundaries—that is, the process should offer reciprocity. If political concerns are permitted to play a role in the process, then all political parties must be given access to the process. These rules must be clearly understood and must be acceptable to all major political parties and participants in the districting process.

Non-Discrimination

The drawing of electoral boundaries should not discriminate against any political party or minority group. Of course, electoral systems that rely exclusively on single-member districts cannot guarantee even some minimal percentage of seats for minority political parties or for ethnic, racial or religious minority groups in the population. However, this fact should not open the door to active discrimination against a particular group; the boundary authority should be prohibited from devising boundaries that would overtly harm any political party or minority group.

Possible Additional Standards to Consider

Two additional standards that should be considered are:

- Redrawing of election districts shall occur according to a predictable timetable, and should be completed well in advance of elections.
- Redistricting should allow for public information and participation.