

International
Electoral Standards
*Guidelines for reviewing
the legal framework
of elections*



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the legal framework

of elections

Guidelines Series

This publication originated as a set of regional guidelines, applicable to the Organization for Security and Co-operation in Europe (OSCE) region, jointly developed by International IDEA and the Office for Democratic Institutions and Human Rights (ODIHR) of OSCE in Warsaw, which was published in 2001. The OSCE publication provided the basis for further developing these International IDEA Guidelines and the Institute is grateful to the ODIHR for their continued co-operation and contribution to this global work.

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Preface


International IDEA seeks to promote sustainable democracy around the world and has consequently laid much emphasis on supporting efficient and sustainable electoral processes. IDEA has in this context worked on clarifying, defining and promoting internationally-recognized standards in the election field. The Institute has published three Codes of Conduct covering election administration, election observation and political parties campaigning in democratic elections, and Guidelines for external involvement in election observation.

This book sets out internationally-recognized standards applicable across a range of areas of electoral legislation. This, we hope, will be useful to those engaged in reviewing existing legal frameworks for elections, or formulating new electoral legislation.

These standards are intended to be used as benchmarks to assess whether or not an election is free and fair. While IDEA's earlier Codes of Conduct set

out the basic procedural principles underlying the election process (e.g. "*how to*" observe elections), these guidelines are more substantial, setting out what should be the actual content of an election process (e.g. "*what to*" observe in an election).

These guidelines will fulfil a long-felt need in the electoral field. I hope they will be useful not only to professionals in this field but to all those concerned to see good electoral practice across the world.

A handwritten signature in black ink, appearing to read "Karen Fogg". The signature is fluid and cursive, with the first name "Karen" written in a larger, more prominent script than the last name "Fogg".

KAREN FOGG
SECRETARY-GENERAL
International IDEA

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ABBREVIATIONS

CSCE.....	Conference on Security and Co-operation in Europe
ECOSOC.....	Economic and Social Council of the United Nations
EMB.....	Electoral management body
NGO.....	Non-governmental organization
ODIHR.....	Office for Democratic Institutions and Human Rights
OSCE.....	Organization for Security and Co-operation in Europe
UN.....	United Nations
PR.....	Proportional representation

Introduction

Objective

International IDEA's intention in developing these Guidelines is to set out the basic components of a legal framework governing democratic elections, incorporating internationally-recognized electoral standards ("international standards"). These international standards are relevant to each component, and necessary for the legal framework to be able to ensure democratic elections. This publication is intended to identify electoral standards which contribute to uniformity, reliability, consistency, accuracy and overall professionalism in elections. Though there is a greater degree of acceptance of international standards in certain areas, it is recognized that in some areas they remain inadequate.

How to use these guidelines

The sections are presented in an order intended to facilitate methodical review and assessment of a country's legal framework for elections. Section headings identify the subject matter of the legal framework addressed in the

section. Beginning with Section Two, following each section heading is a statement of the objective of the international standard relevant to that particular component of the legal framework. Discussion of that particular component of the legal framework follows. Each section concludes with a checklist. This checklist can be used to verify if any legal framework has addressed all issues related to that particular component.

Where the electoral legislation being reviewed has been in existence for some time, it cannot be reviewed in isolation, without some reference to the way it is applied. A minimum level of knowledge of a country's electoral practices is essential to assess effectively how legal provisions are interpreted and enforced. Therefore reviewing the legal framework should normally extend beyond the letter of the law and at times might include observations regarding a country's practices -- the spirit in which a such legal framework is interpreted.

These Guidelines are meant to be used to examine a country's legal framework for elections. These standards should be used to ensure non-discrimination and equality of access for all citizens. The legal framework must therefore ensure that no identifiable societal group is excluded or marginalized from electoral and political processes. Such groups include women, ethnic minorities, citizens with disabilities, language minorities, internally displaced persons and refugees. Sometimes very important political issues might be put directly to the electorate through referendums or plebiscites. Though there may be some points of similarity between the two, these Guidelines do not specifically deal with such referendums or plebiscites.

1. The bases of internationally recognized electoral standards

Primary sources

The primary sources for the international standards set forth in these guidelines are various international, regional and UN declarations and conventions on human rights and other relevant legal documents. The more important of these instruments include the following:

- The 1948 Universal Declaration of Human Rights;
- The 1966 International Covenant on Civil and Political Rights;
- The 1950 European Convention (together with its Protocols) for the Protection of Human Rights and Fundamental Freedoms;
- The 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Co-operation in Europe (CSCE);
- The 1948 American Declaration of the Rights and Duties of Man;
- The 1969 American Convention on Human Rights; and
- The 1981 African Charter on Human and People's Rights.

The formal applicability of such standards to a particular country will depend upon its international undertakings in relation to such documents. In any case it is hoped that the overall normative guidance they provide will nevertheless foster the promotion of, and support for, these international standards. The other instruments and relevant texts are included in Annex 1 (see page 95).

When a country's legal framework is being reviewed and it is a signatory to an international treaty or convention, the provisions of such a treaty or convention incorporating electoral standards are directly applicable and might even have a constitutional or a legal status therein. Other UN instruments to which the country is not a party, or which lack strictly binding force, may be seen as incorporating electoral standards of a strong persuasive value for that country.

Supplementary sources

A review of a country's legal framework should also consider the following:

- Final reports of various election observation missions (international and domestic) where they are available;
- The requirements of any international instruments to which the country is a party, which impact on the election law; and
- Model codes of conduct addressing election issues developed by international, governmental or non-governmental organizations (NGOs). Annex 3 includes examples of such model codes (see page 111).

General approach

It is important to assess to what degree the country's legal framework for elections complies with international electoral standards. This will provide a set of constructive suggestions for corrections, improvements and possible best practices to strengthen the legislation. At the same time, another country's particular system or practice of legislation should not be considered to be ideal or directly transferable.

A country has discretion in its choice of an appropriate electoral system. However, such discretion in choosing an electoral system is not unlimited and should be consistent with international standards. Given the past tendency of many countries to adopt electoral systems which applied during their colonial periods or for other historical reasons, the review of a country's legal framework could usefully reflect on current cultural, political, social or other factors and realities. A question to pose is: Which is the electoral system most likely to promote democratic elections today?

A meaningful review of a country's legal framework requires more than an examination of the relevant instruments' texts. An assessment is of little value, no matter how thorough the review, if comments, recommendations and advice are not given in an appropriate and constructive manner. Even if it delivers direct and serious criticisms an assessment should be phrased to reflect the delicacy of the task at hand.

When reviewing a country's legal framework, all related legislation (such as the constitution, civil and criminal codes, nationality and citizenship laws, laws relating to the media etc.) need to be consulted and analysed to ensure that they do not conflict with one another and that they do meet international standards.

Accurate translations

It is critically important that, wherever necessary, accurate translations of all laws reviewed are available. Sometimes a recommendation, comment or criticism can arise from a text that may have been unofficially or erroneously translated. This constitutes a significant challenge when reviewing a translated text and should be highlighted in the assessment report.

Prioritizing recommendations

If recommendations are put forward they should be prioritized to distinguish what is required under international standards from what is more generally desirable, as it is likely that not all recommendations will be acted upon.

Recommendations should be carefully worded to indicate both their importance and their priority. (For example : "it would be advantageous if...", "it is strongly recommended that ...", "it is essential to...", etc.). Recommendations which will enhance the credibility of, and public confidence in, the elections -- such as legal provisions which enhance transparency -- should be given a high priority.

Rationalizing recommendations

It is important to explain why a particular recommendation is being made. Some promote conformity with an internationally-recognized electoral standard, a particular international commitment or a particular human right. Other recommendations are made simply to make the legislation more coherent or effective, such as recommendations on addressing particular contradictions or gaps in the laws under review. The internationally-accepted norms and standards discussed in these Guidelines are designed to enhance the credibility of, and public confidence in, elections and to provide increased legitimacy.

Finer detail: laws or regulations

It may be appropriate to incorporate some of the finer detail -- such as voting procedures -- into regulations adopted by government bodies or by electoral management bodies (EMBs), rather than to include it in the electoral law itself. Fundamental issues that should be addressed in the primary electoral legislative frameworks (the electoral law and the constitution) include:

- Qualification to register as a voter, together with any restrictions on such right, if any;
- Qualification for and restrictions on candidacy;
- Rules governing seat allocation;
- Qualification on terms of office;
- Methods of filling casual vacancies;
- Removal of mandates;
- The secrecy of the vote; and
- Election management.

2. Structuring the legal framework

The legal framework should be so structured as to be unambiguous, understandable and transparent, and should address all components of an electoral system necessary to ensure democratic elections.

Scope of the legal framework for elections

The term "legal framework for elections" generally refers to all legislation and pertinent legal and quasi-legal material or documents related to the elections. Specifically, the "legal framework for elections" includes the applicable constitutional provisions, the electoral law as passed by the legislature and all other laws that impact on the elections. It also includes any and all regulations attached to the electoral law and to other relevant laws promulgated by government. It encompasses relevant directives and/or instructions related to the electoral law and regulations issued by the responsible EMB, as well as related codes of conduct, voluntary or otherwise, which may have a direct or indirect impact on the electoral process.

Briefly, the legal framework will include the following sources, each with an attendant degree of flexibility for amendment:

Type of legislation (source)		
dealing with election	Formal authority	Flexibility
Constitution	Constituent assembly, or the Legislature exercising its constituent powers	More difficult to amend, requiring debate and decisions often with special majorities or special procedures.
International peace agreement	The high contracting parties to the peace agreement	An amendment can normally be done only if all high contracting parties to the peace agreement unanimously agree.
Electoral law	The legislature	Normally requires a simple majority to amend, easier to amend than the constitution.
Other legislative acts dealing with other aspects of elections	The legislature	Normally requires a simple majority to amend, easier to amend than the constitution.
Rules and regulations	The government department (executive)	The government department concerned can amend these regulations, subject to possible confirmation or veto by the legislature.
Instructions and directives	The electoral management body (EMB)	Flexible: the EMB can change these to achieve the desired objective.
Codes of conduct for political parties, for election officials and for election observers	Regulatory bodies such as EMB or political parties or non-governmental organizations (NGOs)	Normally these codes are not a part of the formal legal framework; can be amended by consensus amongst the political parties or the responsible regulatory body or NGO, outside the purview of either the legislature or the executive.

The terminology may vary, e.g., "Electoral Law" as defined above was called the "Proclamation" in Namibia in 1989 and the "Regulations" in East Timor in 2001. Sometimes all the above elements may not be available within a country's legal framework, e.g., there is no written Constitution in the UK, or there was no Electoral Law in East Timor in the 1999 referendum.

It is important to note that each successively inferior authority cannot make provisions that contradict or are inconsistent with those of a superior authority. For example, an act of the legislature cannot contravene the constitution; regulations can contravene neither the constitution nor the electoral law.

National authorities enact the legislation according to their own legal traditions. What is important is that the structural approaches and the legislation that may affect the conduct of elections are all taken into account.

Use and merit of the written law

Although governments are free to develop their legal frameworks, there is a need for written law as opposed to customary law or administrative policies to govern elections. Written law provides the benefits of certainty, visibility and transparency. It is more readily subject to judicial interpretation and review, and is more useful to interested parties, including electors.

Constitutional provisions

A written constitution, as the basis of a country's governmental structure, should provide the foundation for key elements of its electoral framework. As constitutional amendments are often subject to a qualified majority vote or other comparatively onerous processes, the constitution's electoral provisions should only contain fundamental electoral rights and the basic principles of the electoral system. These should include the following:

- The right to vote and to be elected;
- The institutions subject to democratic elections and their terms of office;
- The composition of any non-elected institutions; and

- The body or agency to be entrusted with the conduct of elections.

It may also be appropriate to include the essential elements of the electoral system to be used.

As constitutions are generally more complicated and time-consuming to amend, constitutional provisions should not go beyond describing the very basics of electoral rights and the electoral system. In order to allow for necessary flexibility, provisions related to the management of elections should be incorporated into parliamentary legislation, and administrative and procedural matters should be left to administrative rules and regulations, to be issued by subsidiary bodies, including through instructions and directives of the EMBs.

General versus specific election legislation

National election legislation can be divided into two categories:

- General election legislation relevant to any election. This establishes a common legal framework governing all elections, including elections to the executive and legislative branches, at national and local levels.
- Legislation relevant to specific elected institutions. This establishes special legal provisions that govern elections to a specific body of government with provisions deviating from or supplementing the general legal framework for elections.

Different countries have handled the division between general and specific election legislation in different ways. A country may adopt a separate law on the "basic principles" of elections, which defines provisions that are applicable to all elections. Additionally, that country may also adopt separate laws containing provisions specific to individual elected institutions, or other elections. In contrast, another country may include the entire election legislation in one law with separate chapters containing provisions for the various elected institutions or other elections.

Although either of these approaches is acceptable, one electoral law regulating all elections is highly desirable and is recommended. It encourages consistency in election administration and practices whilst fostering unified implementation of the law in connection with all elections. Such an approach also simplifies the drafting process in cases where amendments to legislation are needed. However in some cases, particularly in federal systems, such an approach may not be possible.

Regardless of which of the above-described approaches is adopted by a country, certain principles are fundamental to election legislation:

- Election legislation should be stated in clear and unambiguous language.
- Election legislation should avoid conflicting provisions between laws governing national elections and laws governing sub-national (provincial or state) and local elections; provisions governing the administration of national elections should be in harmony with the provisions governing such other elections because court decisions at one level could affect legislation in other jurisdictions.
- The respective powers and responsibilities of the national and local electoral management bodies, and governmental bodies, should be clearly stated, distinguished and defined to prevent conflicting or overlapping powers being exercised by other bodies.
- Election legislation should be enacted sufficiently far in advance of an election date to provide political participants and voters with adequate time to become familiar with the rules of the election processes. Election legislation enacted at the last minute tends to undermine the legitimacy and the credibility of the law and prevents political participants and voters from becoming informed in a timely manner about the rules of the election processes.
- Election legislation should be enacted in accordance with the applicable legal provisions governing the promulgation of laws by the legislature. Election legislation that is not enacted in accordance with the applicable legal provisions may be challenged and risks annulment by the courts.
- Election legislation should be published and made readily available for the intended users including the general public.

Election legislation versus other legislation

An election law neither can nor should contain all provisions relevant to the election process. The election process will require the involvement of institutions and procedures based on other parts of the national legal system. It is important that the existence of other relevant legislation is included in the review process. Of particular importance is national legislation governing the media, registration of political parties, citizenship, national registers, identity documents, campaign finance and criminal provisions related to election law violations. All legal provisions that have an impact on the election process should be identified and assessed.

Election legislation and EMB's instructions and directions

In a democratic system, the legal framework is enacted by a popularly-elected national legislature. To uphold democratic values, the regulation of elections should not be done by way of executive decrees. However, there are limits to the number of administrative matters that can be included in the enacted law. Most election laws allow for the EMB to issue instructions to further clarify issues related to the election process. However, electoral legislation normally requires that such instructions are consistent with the provisions of the existing electoral legislation. The role and powers of the EMB in this connection should be clearly defined but sufficiently broad to enable it to deal with gaps in the law and unforeseen contingencies.

The EMB does not act as a substitute legislator, but it must be able to respond to emergent needs and provide practical solutions by way of interpreting and supplementing electoral law and the regulations.

Certain principles should be respected when authority is given to EMBs to issue instructions. These principles include:

- Electoral legislation should adhere to basic election principles, such as the secrecy of the ballot.
- Electoral legislation should provide for the authority of the EMB and should clearly state and define the scope and extent of the EMB's authority to issue instructions.

- Electoral legislation should provide for a process whereby electoral participants and voters can lodge complaints and appeals arising from the adoption and implementation of EMB instructions. This process should also allow for such complaints and appeals to be resolved in a timely and effective way.
- Electoral legislation should state clearly the legal hierarchy, including the precedence of constitutional and legislative provisions over EMB instructions.
- Electoral legislation should state and define clearly the EMB's residual powers (its "inherent powers") to issue instructions in emergency situations, including on election day, to meet any unforeseen contingency.

Election legislation and codes of conduct

In addition to formal election legislation, other relevant electoral instructions may also be contained in the informal codes of conduct agreed among various political parties and generally overseen by the EMB. In some countries such codes play a more important role than in others. They may relate to a number of aspects of elections, such as for the rules of behaviour for political parties and candidates during the electoral campaign, the conduct of the ruling government party to prevent it from having an undue advantage over the other parties, or the self-regulation of the media. Sometimes a code of conduct contains a set of normative ethical principles for practical application in the field, such as a code of conduct for electoral observers or for EMB staff engaged in the conduct of elections. The legal status of such codes varies between jurisdictions, as do the consequences of breaches of them.

Informal codes of conduct should also be reviewed with a view to checking their conformity with internationally-recognized standards. The legal framework may sometimes set out the procedures and mechanisms to be used when dealing with complaints and disputes arising from violations of a code of conduct. Such provisions will obviously differ from country to country, both in detail and in content, and may affect how a code of conduct is enforced. For example, a country's legal framework may provide for adjudication or media-

tion to deal with infringements of a code of conduct or disputes arising from an infringement.

The general guiding principles that a code of conduct for election administrators must conform to are:

- Election administration must demonstrate respect for the law.
- Election administration must be non-partisan and neutral.
- Election administration must be transparent.
- Election administration must be accurate, professional and competent.
- Election administration must be designed to serve the voters.

The general guiding principles that a code of conduct for election observers must conform to are the following:

- Election observation must recognize and respect the sovereignty of the host country.
- Election observation must be non-partisan and neutral.
- Election observation must be comprehensive in reviewing the election, considering all relevant circumstances.
- Election observation must be transparent.
- Election observation must be accurate, professional and comprehensive.

Checklist

- Is the legal framework objective, clear, transparent and publicly accessible?
- Are fundamental suffrage rights, such as the right to vote and to register as a voter, the right to run for a public office etc., safeguarded by constitutional guarantees?
- Have all relevant laws been reviewed, including the constitution, general and specific election legislation, laws relating to citizenship, political parties and campaign finance, media and public information legislation, criminal provisions related to election law violations and EMB instructions?
- Do the codes of conduct form part of the electoral legal framework? If so, have they been reviewed to ensure that they conform and contribute to the overall objective of holding free and fair elections?
- Does the legal framework ensure that the instructions and directives of EMBs at all levels are consistent with the provisions of the constitution and the electoral law?
- Does the legal framework ensure that the provisions relating to national-level elections, sub-national (provincial or state) level and local elections are in harmony with each other?
- Was any part of the electoral law enacted just before the elections without affording a sufficient opportunity for discussion and debate?

3. The electoral system

The choice of electoral system should ensure that the international standards for democratic elections are met in terms of institutions elected, the frequency of elections and the organization of electoral units.

The choice of an electoral system should ensure that the political cleavages of a society are properly addressed by the electoral legal framework in such a way that the main conflicts and differences between and among social groups can be accommodated through the system of political representation. This is to guarantee political inclusiveness and representation. Thus the choice of electoral system is best approached as an exercise in which particular goals (e.g., proportional election outcomes, strong local district representation) are first enumerated, before moving on to consider which electoral system is most likely to deliver such goals in the context of a particular country's social, political, geographic and historical situation.

Choosing an electoral system

Choosing an electoral system is one of the most important institutional decisions for any democracy. An electoral system can help to "engineer" specific outcomes, such as encouraging cooperation and accommodation in a divided society. Electoral systems are the rules and procedures through which votes cast in an election are translated into seats won in the legislature or some other office (e.g., a presidency). Electoral systems can also influence other aspects of the political system (e.g., development of the party system) as well as being of importance to the link between citizens and their leaders (e.g., political accountability, representation and responsiveness). Thus electoral systems have many long-term consequences for democratic governance.

An electoral system has three main tasks:

- To translate the votes cast into seats won in a legislative chamber;
- To act as the conduit through which the people can hold their elected representatives accountable; and
- To give incentives to those competing for power to frame their appeals to the electorate in distinct ways. In divided societies, for example, where language, religion, race or other forms of ethnicity represent a fundamental political cleavage, particular electoral systems can reward candidates and parties who act in a cooperative, accommodating manner to rival groups, or they can punish these candidates and instead reward those who appeal only to their own group.

Thus a country's choice of electoral system is the foundation upon which the legal framework of an election is built. The application of a particular electoral system within a particular country context can make a significant positive or negative impact on the electoral fortunes of the various political contenders. If there is a question of the appropriateness of a particular electoral system to a specific country, it would be useful to examine the results of the previous elections, with a view to seeing whether, for example, the ruling political party significantly benefits at the cost of other parties or whether other factors in the system significantly distort the international standards or thwart a

valid democratic result. For example, in a proportional representation (PR) system where the law establishes a percentage of the vote as a legal threshold for securing a seat in the legislature, this percentage can be "adjusted" in such a way as to benefit certain parties and adversely affect other parties, to the point of even eliminating others.

Electoral systems are often categorized according to how proportionately they operate in terms of translating votes cast by electors into seats won by parties. A typical three-way structure divides such systems into plurality-majority, semi-proportional and PR systems. Plurality-majority systems typically give more emphasis to local representation via the use of small, single-member electoral districts than to proportionality. By contrast, PR systems typically use larger multi-member districts and deliver more proportional outcomes. Semi-proportional systems offer yet other approaches, as well as various mixtures of plurality and proportional models (such as the "mixed" models by which part of the legislature is elected via PR and part from local districts, a common choice in many new democracies over the past decade).

There is no "best" electoral system suitable to all and no universally recognized standard. The choice of electoral system needs to be made with desired goals in mind. The effects which different kinds of electoral system can promote are ultimately contextual and depend on the specific cleavages and divisions within any given society. While some electoral systems are certainly more likely to produce, say, more proportional electoral results than others, the overall consequences of electoral systems are highly context-specific.

When reviewing the electoral system an important consideration is whether a country is sharply divided along political, religious, ethnic or other lines and whether minorities are properly and equitably represented in the political system. If a country has some particular problem, which could be either directly attributed to the choice of electoral system or remedied by using a different electoral system or by introducing certain reforms to the existing electoral system, the advantages and disadvantages of the different electoral systems should be described along with related recommendations for resolving existing inequalities. (For more details see the International IDEA Handbook of Electoral System Design).

Institutions elected and frequency of elections

In a federal polity there are central as well as provincial or state (federal unit) legislatures that are elected, and either one of these or both levels might have legislatures that are bicameral. Sometimes the mandate of the EMB or the scope of the electoral law includes provisions for election to municipal and other local bodies as well. In countries where the chief executive (president) is directly elected, or elected through a directly-elected college of representatives (the USA, for example), the electoral law will include provisions relating to election to that institution as well. Normally the regulation of election to political party offices does not fall within the mandate of electoral law and the EMB but, in such cases, it should also be examined.

As a general principle, international standards require that all seats in at least one chamber of the national legislature be freely contested in a popular vote, held at reasonable intervals as established by law. This could, in practice, be up to six years. However, there may be situations where a country is seeking admission to a particular international organization, or is a signatory to a particular international instrument, and may be required to hold popular or direct elections for other institutions within other specified timeframes.

Special provisions for under-represented groups

In many countries the electoral system includes provisions intended to promote the inclusion of historically under-represented groups in elected institutions. Most often this is to assist the election of women, ethnic and linguistic minorities or groups with treaty or similar rights within the state.

Such provisions can take the form of :

- Reserved seats: where a number or percentage of seats can only be contested by candidates from, and sometimes only voted for by voters from, designated historically under-represented groups.
- Rules pertaining to candidate recruitment and selection: where parties are required to put forward a set number or percentage of candidates from designated historically under-represented groups.

Where such provisions exist, the law must clearly define the group that is the subject of the provision, whether the provision is a transitional or permanent measure, and must detail the mechanism for enforcement. Any such provisions should be carefully examined to ensure that they do not themselves lead to exclusion from elected institutions.

Checklist

- Does the legal framework provide that all seats in at least one chamber of the national legislature are subject to direct or popular elections to be held at regular and reasonable intervals as provided by law?
- Does the legal framework clearly provide an electoral formula for converting votes into legislative seats?
- Has any adjustment to the legal threshold for securing a seat in the legislature been made which could benefit a party or parties at the expense of others?
- Is the length of the term of the institution being elected acceptable?
- Does the country have sharply divided political, religious or ethnic minorities, and does the existing electoral system accentuate such differences?

4. Boundary delimitation, districting or defining boundaries of electoral units

The legal framework for elections should seek to ensure that the boundaries of electoral units are drawn in such a way as to achieve the objective of according equal weight to each vote to the greatest degree possible to ensure effective representation.

The legal framework needs to address the issue of how constituencies or the electoral units being represented (sometimes also called voting districts) are to be defined and drawn. The overriding importance of this subject means that it is often part of the constitutional provisions of a country. The legal framework regulating drawing boundaries for electoral units should state:

- The frequency of such determination;
- The criteria for such determination;
- The degree of public participation in the process;
- The respective roles of the legislature, judiciary and executive in the process; and
- The ultimate authority for the final determination of the electoral units.

There are different ways in which boundaries of the electoral units are drawn up. Since this whole exercise is politically very sensitive, in many jurisdictions the EMB is not directly involved. The process is often undertaken by a special commission, to which the EMB might provide support. Such a commission or a similar body may be made up in a variety of ways including:

- Representatives of political parties;
- Independent non-political individuals such as judges;
- Relevant experts -- demographers, geographers, statisticians, cartographers; or
- A combination of all or some of the above.

The most important element that differentiates electoral systems is the manner in which seats in the legislature are allocated. Allocation may be:

- To candidates receiving a plurality of the vote;
- To candidates obtaining a majority of the vote; or
- Proportionally on the basis of votes cast for political parties or candidates.

Of course, the general aim of all these electoral systems purportedly remains the same, namely, to translate the will of the general electorate into representative government. Boundary delimitation in each of these types of electoral system produces a different result, but each should ensure that certain guiding principles are honoured in its implementation. The ideal international standard for this exercise is the equality of voting power for each vote, providing effective representation.

Though boundary delimitation or redistricting practices vary greatly around the world, there are three universal principles to guide the delimitation process:

- Representativeness;
- Equality of voting strength; and
- Reciprocity and non-discrimination.

Representativeness

Boundaries of the electoral units should be so drawn that constituents have an opportunity to elect candidates they feel truly represent them. This usually means that electoral unit boundaries should coincide with communities of interest as much as possible. Communities of interest can be defined in a variety of ways. They can be administrative divisions, ethnic or racial neighbourhoods, or natural communities such as islands delineated by physical boundaries. If electoral units are not composed of communities of interest, however defined, it may be difficult for a single candidate to represent the entire constituency. However, this principle will often be compromised, especially in large multi-member proportional representational constituencies or where the whole of the country is a single constituency.

Equality of voting strength

Boundaries should be drawn so that constituencies are relatively equal in voter strength, resulting in each voter casting a vote of equal weight to the greatest degree possible. Equi-populous electoral units allow voters to have an equally-weighted vote in the election of representatives, but this ideal is not attainable in practice and many other competing principles are applied simultaneously.

Reciprocity and non-discrimination

The procedure for delimiting electoral units should be clearly spelled out in the legal framework so that the rules regulating the process are the same, regardless of who is drawing the electoral unit boundaries. If the redistricting process is to be non-partisan, then all political parties shall refrain from attempting to distort the outcome. If political concerns are permitted to play a role in the process, then all political parties must be given equitable access to the process. If the legislature is to draw electoral unit boundaries, then the political party with a majority in the legislature will have an opportunity to control the process. These rules must be clearly understood and must be acceptable to all major political parties and participants in the redistricting process.

The law should also specify under what circumstances the number of voters in an electoral unit might deviate from the established "equality criterion". Thus, the legal framework should require that electoral units be drawn in such a way that each electoral unit has approximately the same population in order to ensure equal suffrage to the maximum degree possible (in the absence of a continuous voter registration process the exact number of voters might not be available; hence the use of the term "approximately the same population"). However, this does not preclude consideration of such factors as natural barriers, convenience, accessibility for voters or pre-existing administrative and historical boundaries. Care should be exercised to ensure that the standard deviation from one electoral unit to another is within acceptable and clearly stated limits.

Ideally, the legal framework should provide that the persons or institution drawing electoral unit boundaries be non-partisan, independent, professional and impartial. Failing this, an alternative is to allow all political parties in the legislature to take an equitable part in the process of boundary delimitation. The legal framework should also provide for maximum public input and participation in the process of drawing electoral units.

Jurisdictions vary in their treatment of appeals against or reviews of the decisions of boundary delimitation, some allowing them, others not.

Depending on the historical and local needs of a jurisdiction, either approach is acceptable so long as it is non-discriminatory and applied equally in all situations.

Checklist

- Does the legal framework provide for the principle of equality of votes, drawing electoral unit boundaries with a more or less equal number of voters? Does the legal framework also provide for objective criteria for deviating from the "equality" standard in terms of physical geographical features, existing administrative and historical boundaries, or other well-established criteria?
- Does the legal framework provide for an impartial, non-partisan, independent and professional body of persons or an institution to undertake boundary delimitation?
- Is there a broad consensus and measure of support among the political parties regarding the existing electoral units' boundaries?
- Does the legal framework clearly state the events which trigger the boundary delimitation process?
- Do the existing boundaries of electoral units favour the ruling party?
- Is the EMB involved in the boundary delimitation exercise? Is it likely to impinge upon the impartiality and independence of the EMB?
- Does the legal framework provide for appeals against decisions concerning boundary delimitation?

5. The right to elect and to be elected

The legal framework should ensure that all eligible citizens are guaranteed the right to universal and equal suffrage as well as the right to contest elections without any discrimination.

Formal constitutional or statutory recognition of a citizen's right to vote, and to run for public office, is common to democratic states and plays both a substantive and a confidence-building role. These rights are often subject to certain qualifications insofar as most states make them subject to citizenship, age and residency requirements. Those reviewing the legal framework of a country need to look carefully behind the veil of such restrictions to check for any possible hidden intent. For example, where a citizen convicted of treason cannot vote, in the context of a spate of such convictions only against leaders of the opposition by an apparently "packed" court, the genuineness of such a qualification becomes questionable. The denial of suffrage rights for long-past political crimes would be equally open to question. Even seemingly simple and clear rules such as disqualification for "mental incapacity" may require examination.

Access to voting can be as important as substantive rights, because a right which cannot be exercised is a right denied. For example, where voters are not provided with accessible voting facilities or where the identification of a voter at the polling station is overly complex, this effectively deprives an elector of the right to vote. Where disproportionately large deposits are required for nomination, this effectively can deprive poor candidates of the ability to freely contest an election. Frequently, facilities for voting are not afforded to expatriate citizens, though this restriction must be weighed against a consideration of the capacity of, for example, a poor country to provide the facility. On the other hand, depending on the economic and technological development of a country, providing voting access to citizens by allowing voting by mail or via the Internet might be considered.

Universal and equal suffrage

One clear international standard which must be provided for is the guarantee of universal and equal suffrage to each adult citizen. The right to be elected as a member of the legislature or other provincial or local body, as well as the right to be elected president, may require an age beyond the age of majority, but must be guaranteed to all citizens of that age without discrimination.

Non-discrimination

The legal framework must ensure that every citizen above a certain age has the right of suffrage and that every person who has the right of suffrage is allowed to exercise that right in a non-discriminatory manner on the basis of equal treatment before the law. No discrimination on account of race, colour, sex, language, religion, political or other opinion, association with a national minority, property, birth or other status should be allowed to deprive an otherwise eligible citizen of the right to vote or the right to contest an election.

Scrutiny of restrictions on suffrage

The legal framework should clearly state the circumstances under which a person's suffrage rights may be curtailed or suspended, in what manner or to what degree. Any limitation or restriction on the right to elect or be elected is justifiable only by exceptional circumstances or according to accepted principles. Different jurisdictions have taken different approaches to the issue of giving voting rights to convicts: these range from a total ban on registering as a voter for any person convicted of any offence, to restricting these rights in cases where the conviction is for certain identified offences (of moral turpitude, for example) with a defined term of sentence, to imposing no restrictions at all on convicts. The principle of natural justice requires that any class of citizens disqualified from voting be known in advance. Such disqualifications should be clearly laid down in the legal framework and not be subject to the arbitrary discretion of an institution or a person. Scrutiny and caution are required since the right of suffrage is a fundamental human right.

Checklist

- Are all citizens of the age of majority guaranteed the right of universal and equal suffrage?
- Does the legal framework ensure that suffrage rights are exercised in a non-discriminatory manner on the basis of equal treatment before the law?
- Are there any limitations or restrictions on the right of suffrage and, if so, are they clearly justified by exceptional circumstances or based on recognized norms?

6. Electoral management bodies

The legal framework should require that EMBs be established and operate in a manner that ensures the independent and impartial administration of elections.

General overview

In some established democracies, national and local government officials, whose neutrality and fairness are generally accepted by the electorate, handle electoral administration. Ordinary courts settle disputes, as they have a tradition of fairness and neutrality and generally enjoy the confidence of the electorate.

In emerging democracies, there has been an increasing trend to establish independent EMBs. This is seen as an important step in building a tradition of independence and impartiality, as well as building the confidence of the electorate and political parties in the electoral process. However, since there is yet no internationally-recognized standard in this respect, the term "independent EMB" in this section means an autonomous and impartial EMB.

For any EMB to be credible and effective, sufficient and timely funds must be made available to it as well as human resources (election officials) who are impartial and independent.

Administering democratic elections requires that EMBs be, and be seen to be, impartial and independent of government or other influence. This is a critical area, as the election administration machinery makes and implements important decisions that can influence the outcome of the elections. The political circumstances of the particular country under consideration need to be taken into account when assessing the legal framework regulating electoral management bodies.

Formation of electoral management bodies

The legal framework for elections must provide for the size, composition and membership tenure of the EMB, as well as for the appointment and removal of members. All these factors directly affect the independence and impartiality of the EMB. Considerations to be taken into account concerning the formation of EMBs include the following.

Structure

The administrative structure established by the legal framework should include a central or national EMB with exclusive authority and responsibility over any subordinate electoral bodies. There should be a subordinate electoral body for the lower levels, for a province or a state in a federation, or for other electoral units (i.e., for a voting district in which a member of the legislature is elected), depending on the size of the electoral unit and the level of communications available. Whether any additional intermediate electoral bodies are needed will depend on the electoral system, and on the geographic and demographic factors of the country. However, the creation of unnecessary or superfluous electoral bodies should be avoided. The lowest level of the election structure is the polling station where actual voting takes place. It is critical that the legal framework for elections defines the relationship between the central EMB and the lower-level election bodies as well as the relationship between all election bodies and the executive government authorities.

Authority and responsibility

The authority and responsibility of EMBs at each level should be clearly defined in the legal framework for elections. The legal framework needs to address the following questions:

- How is each EMB constituted?
- How does each EMB conduct its business?
- What are the quorum requirements for each EMB?
- What are the voting rules for EMB decisions?
- How are the EMB's decisions to be made public?
- What are the clear-cut, transparent procedures for the conduct of business so that the work of the EMB can be transacted smoothly?

Composition and qualifications

Where possible, professionals familiar with the electoral framework of a country should be appointed to administer a country's elections. A common provision requires that at least some members of EMBs, at every level, have a background or training in law. Such a provision is reasonable but may present a problem for lower-level bodies and polling stations. EMBs comprising political party representatives also have advantages and disadvantages. Provisions such as those requiring that EMB membership must include party representatives or judges, who are ultimately appointed by the incumbent party, obviously will impact on an EMB's independence and impartiality. Generally, people having political credibility, such as members of civil society or those from the judiciary, might be more suitable for appointment to the EMB. Any conflict of interest, especially where the EMB is party-based, should be disclosed by the appointed members in advance. The age of retirement for the members of the EMB should at least be same as for a judge of the highest court of that country, although retired judges could also be considered for these positions.

Tenure

An EMB should be a body that functions continuously and not only for a limited time period just before elections. This means that the EMB, if empowered to maintain voter registers, should be required by law to work either

continuously or periodically to improve and update them, prepare for an election and strengthen the system. However, it is normal for lower-level election bodies, such as polling station committees, to be temporary bodies established for a certain period before an election and to cease to function once the results are published or the appeals process is complete. The legal framework should ensure that the selection and appointment of EMB members are impartial. Additionally, it is suggested that members' terms of office be staggered to provide continuity in the work of successive EMBs. The legal framework should specify the grounds and process for removal of a member to protect members from arbitrary removal and to provide immunity in connection with the performance of legal duties and salary provisions that cannot be manipulated by the government. The legal framework should lay down the general principle that the terms of appointment should not be varied to a member's disadvantage during the term of his/her appointment. The law should also specify the rights of each member of the EMB, including the right to receive timely and adequate notice of meetings, the right of access to all EMB documents, and the right to participate in all EMB meetings. Some jurisdictions also provide for functional immunity of members of EMBs to enable them to carry out their duties and responsibilities efficiently and fearlessly.

Financing

The legal framework should require that all levels of electoral bodies be established in a timely manner before an election and be adequately funded. It is crucial that the legal framework contains provisions as to how funding for the ongoing operations of the EMB will be made available. Some of the major methods of funding election operations are:

- The budget is allocated to an EMB through a department of the government (though in many emerging democracies this arrangement has not worked very satisfactorily).
- The budget is directly voted by parliament without the intervention of a department, sometimes through the medium of a standing all-party parliamentary committee.

- A lump sum advance allocation, with some guiding principles, is provided for. Once the EMB has conducted the electoral operation and exhausted that amount, the necessary audited sums are approved by the legislature.
- The EMB has direct and uncontrolled access to the State treasury for funding elections and reports to parliament only after an election.

Duties and functions

The legal framework should clearly define the duties and functions of the EMB. These must particularly include the following:

- Ensuring that election officials and staff responsible for the administration of the election are well trained and act impartially and independently of any political interest;
- Ensuring that clear voting procedures are established and made known to the voting public;
- Ensuring that voters are informed and educated concerning the election processes, contesting political parties and candidates;
- Ensuring the registration of voters and updating voter registers;
- Ensuring the secrecy of the vote;
- Ensuring the integrity of the ballot through appropriate measures to prevent unlawful and fraudulent voting; and
- Ensuring the integrity of the process for the transparent counting, tabulating and aggregating of votes.

In some cases the duties and functions of an EMB may also include the following:

- Certification of the final election results;
- Delimitation of electoral boundaries;
- Monitoring and overseeing electoral campaign finance and expenditure; and
- Research, advice to government and/or parliament, and international liaison.

Operation of electoral management bodies

EMBs should operate independently, transparently and impartially. Once formed, an EMB must impartially serve the interests of all citizens and electoral participants. The primary objective of a legal framework is to guide the EMB and enable it to achieve the delivery of a free and fair election to the electorate. In doing this, the EMB must undertake its functions at each step in the election process in an impartial and efficient manner.

The critical attributes of a free and fair election, and of the electoral management body, include the following:

Independence and impartiality

The functioning of the EMB should not be subject to the direction of any other person, authority or political party. It must function without political favouritism or bias. The EMB must be able to operate free of interference, simply because any allegation of manipulation, perception of bias or alleged interference will have a direct impact not only on the credibility of the body in charge but on the entire election process.

Efficiency and effectiveness

Efficiency and effectiveness are integral components of the overall credibility of an election. Efficiency is critical to an electoral process insofar as technical breakdowns and problems can, and do, lead to chaos and a breakdown of law and order. Efficiency and effectiveness depend upon several factors, including staff professionalism, resources and, most importantly, sufficient time to organize the election and train those responsible for its execution.

Professionalism

Elections should be managed by a specialized group of highly trained and committed experts who manage and facilitate the electoral process and who are permanent employees of the EMB.

Impartial and speedy adjudication

The legal framework should make provision for a mechanism to process, adjudicate and dispose of electoral complaints in a timely manner.

Transparency

The overall credibility of an electoral process is substantially dependent on all relevant groups (including political parties, government, civil society and the media) being aware of and participating in the debate surrounding the formation of the electoral structure and processes. An informed debate in these groups should also take place regarding the functioning of the EMBs. In this respect the value of constant consultation, communication and cooperation among EMBs, the political parties and the institutions of society cannot be over-emphasized.

Checklist

- Does the legal framework for elections provide for the EMB to be constituted as an independent and impartial body?
- Does the legal framework protect EMB members from arbitrary removal?
- Does the legal framework require the EMB to operate in an independent, impartial and transparent manner? Are there any provisions in the legal framework that could prevent the EMB from working in such a manner?
- Does the legal framework clearly define the authority and responsibility of each level of EMB and their relationships to each other as well as to other relevant governmental bodies and executive authorities?
- Does the legal framework provide for adequate opportunity to seek review or reversal of an EMB decision?
- Does the legal framework provide for continuity of electoral administration by staggering the terms of office of its EMB members?
- Does the EMB have sufficient lead time to organize elections, especially at the lower levels?
- Does the legal framework provide for making available sufficient and timely funds to the EMB to manage its operations?

7. Voter registration and voter registers

The legal framework should require that voter registers be maintained in a manner that is transparent and accurate, protects the right of qualified citizens to register, and prevents the unlawful or fraudulent registration or removal of persons.

Transparency

The right to vote is violated if the legal framework makes it difficult for a person to register to vote, as normally a person who is not registered cannot legally vote. The right to vote is also violated if the legal framework fails to ensure accuracy in voter registers or facilitates fraudulent voting. The international standard for voter registration is that the register must be comprehensive, inclusive, accurate and up to date, and the process must be fully transparent. The process should facilitate the registration of a qualified voter, while at the same time safeguarding against the registration of ineligible persons. Some of the fundamental issues that must be clearly defined in the legal framework for elections are:

- Citizenship and age qualifications;
- Residential qualifications;
- Methods of voter registration;
- Process for dealing with objections and appeals;
- Identification of voters; and
- Documentation required by voters.

All the above must be clearly stated, objectively determinable and not subject to arbitrary decision.

Transparency requires that voter registers be public documents that can be monitored and made available for inspection at no cost to the requester. The legal framework should clearly specify who may inspect voter registers, how the inspection will take place, and the period when voter registers are available for public inspection. It should also specify who is permitted to request registration changes, additions and deletions, the procedure for making such requests, and during what time period such requests may be made. Requests for changes, additions and deletions in voter registers should only be limited to a minimum time period before a given election in order to finalize registers. A person should not be limited to making requests that relate only to herself/himself. When a person is permitted to make a request that affects another person, such other person must be notified of the request and be permitted to respond to the request. Changes, additions and deletions should be made only upon the presentation of specific documentation and in accordance with the procedure identified in the legislation. Before finalizing voter registers, in addition to the general public, all registered political parties should also be given notice of and provided access to such registers so that they may verify, object to or seek to add such names as they wish. Decisions on requests should be made expeditiously, within a set time period provided by the law. Decisions must be subject to appeal to be determined expeditiously, also within a set time-period.

The legal framework may provide that the responsibility to register lies either with the individual -- *passive voter registration* where the individual voter has the responsibility to approach the registration authorities to get herself/himself registered -- or with the state -- *active voter registration* where the state, the EMB or other authorized body sends its official enumerators from

house to house to register voters. In some cases the responsibility may be a combination of both active and passive voter registration. In all cases, however, the final responsibility for the accuracy of the voter registers lies with a local or central state authority or EMB, which must ensure that voter registers are maintained in an accurate and transparent manner. This should both facilitate and protect the right of citizens of legal age to register and prevent unlawful or fraudulent registration.

The legal framework should require that voter registers be systematically updated and corrected in a transparent manner to allow electoral participants and voters the opportunity to review their accuracy. It should also provide for voter registers to be updated either on a continuous basis or periodically by a certain cut-off date, in advance of polling.

Protection of personal data and information

The legal framework often requires that a person disclose certain information to authorities when registering as a voter or as a candidate. Legislation related directly to voter registration should not allow for the collection, use or dissemination of such personal data or information for any purpose other than the exercise of suffrage rights. This includes provisions that relate to fingerprints, photographs and personal identification numbers, as well as to ethnicity or other factors that could lead to discrimination or place the voter at risk of personal harm. The legal provisions should specify what personal information and data will be publicly listed on the voter register. As an alternative, some jurisdictions rely on the civil registration as the basis of their voter registers.

The legislation should also clearly state the permitted uses of information obtained from inspection of the voter registers and whether the information can be used for purposes other than challenging the registration of a particular voter. In particular, the law should state whether the information may or may not be used for the campaign activities of political parties and candidates, for police investigations or for commercial or other purposes. The legal framework should also state the sanctions for misuse of information obtained from voter registers.

Checklist

- Does the registration process provide for accurate voter registers? Is the process itself transparent?
- Does the legal framework contain provisions for regular and timely updating of voter registers before an election?
- Are the requirements for voter registration stated in clear and unambiguous language?
- Does the law clearly identify what documents are necessary to register as a voter?
- Are the provisions for challenging a registration decision stated in clear and unambiguous language?
- Is the time period for challenging a registration decision clearly stated?
- Are voters protected from the wrongful disclosure of personal data?

8. Ballot access for political parties and candidates

The legal framework should ensure that all political parties and candidates are able to compete in elections on the basis of equitable treatment.

The legal framework should differentiate between the registration of political parties in general and the rules governing ballot access at election time. Many of the procedural requirements for getting access to the ballot may be the same as for the initial registration of parties (signature requirements, deposits, geographic spread etc.) but the legal framework might make it easier, or sometimes even automatic, for registered parties to be on the ballot papers.

Equitable treatment

The legislative framework for elections should provide for the right of all individuals and groups to establish, in full freedom, their own political parties or other political organizations with legal guarantees to enable them to

compete with each other on a basis of equitable treatment before the law. Accordingly the legal framework must provide a level playing field for the recognition and registration of all political parties, regardless of ideological position. Once registered, each category of political parties must be treated equitably for the purposes of access to the ballot. Similarly, within the confines of the electoral system, the right of individuals to run as independent or non-affiliated candidates must be protected.

Registration of political parties

The legal framework may provide a structure for the registration of political parties. The legal framework should clearly provide for notification of the dates for commencement and closure of registration, or provide that such registration could be continuously open; specify when, how and where registration procedures must be undertaken; and set out the process of verification of registration. Where the legal framework requires the collection of signatures as evidence of support of an application for registration, it should provide for a reasonable timeframe for this to be done and for the subsequent verification of the signatures. The legal framework should provide for uniformity in the registration process so that the same process applies to all political parties at all levels.

The grounds for rejection of a registration application should be based on objective criteria and clearly stated in the legal framework for elections, along with avenues of appeal against such rejection.

Ballot access

Some registered parties may be able to gain ballot access automatically by virtue of their status as a registered party, while unregistered parties may need to fulfil some or all of the requirements for registration before gaining ballot access.

The legal framework should clearly provide for notification of the dates for commencement and closure of nominations; specify when, how and where

nomination procedures must be undertaken; and set out the process of scrutiny and verification of nomination forms and declarations. Where the legal framework requires the support of a nomination by the collection of signatures, it should provide for a reasonable timeframe for this to be done and for the subsequent verification of the signatures. The legal framework should provide for uniformity in the nomination process so that the same process applies to all political parties at all levels.

Unless the electoral system is restricted to parties or party lists, individuals should not be precluded from being nominated as independent or unaffiliated candidates.

Ballot access for a particular election is usually granted when a political party, coalition, bloc, or independent candidate meets one or more of the following requirements:

- Having paid a monetary deposit: monetary deposits should be of a sufficient level to discourage frivolous independent candidates and political parties, but should not be so high as to prevent legitimate political parties or independent candidates from obtaining ballot access. Additionally, monetary deposits should be refundable upon a reasonable number or percentage of votes being received. This threshold should be stated in the electoral legislation;
- Having previously won a seat in the legislature or having gained a minimum percentage of the votes in the last election; and
- Having collected a minimum number of validated signatures of registered voters. Special attention should be given to the manner of validating signatures. An invalid signature should merely be what it is -- an invalid signature. It should not invalidate other signatures or the signature list. When signature collection is involved, registration should be based on verification of a fixed number of valid signatures without regard to the number or percentage of invalid signatures that may be on the registration list. The law should be very clear on the verification process involved in order to ensure that all party and candidate lists are exposed to the same level of scrutiny, under clearly stated objective criteria. Legal provisions to achieve this objective may include:

- The size of the sample to be drawn and checked;
- The method by which the sample is to be drawn (for example, the computer generation of random numbers);
- The tests to be applied to determine whether a particular signature is valid;
- A formula for determining the number of signatures in the sample which must be valid in order for the registration to be accepted;
- The circumstances under which a further sample may be drawn if necessary;
- The definition of the deadlines for approval or rejection of registration application;
- The acceptable grounds for objections by other parties, candidates or voters.

There are three other points worth noting:

- Provisions regarding the geographic regions where signatures are obtained must also be carefully reviewed. An election law may require that a party obtain a certain number of signatures in every region of the country. Such a provision discriminates against regional, ethnic and smaller parties that enjoy a strong public following but whose support is limited to a particular area,
- Any requirement that voters may only sign in support of one candidate or party which can give rise to abuse of the registration process; and
- Provisions regarding the process for appeal and the requirement for expedited court ruling -- adequate time must be permitted for correcting minor deficiencies before formally rejecting the nomination. The law should provide for appeal to a court of law after final rejection of registration. The law should clearly specify the process for appeal and require either an expedited court ruling to enable a candidate or party to be placed on the ballot where registration was improperly denied, or to allow the appellant to file an election petition after the election is concluded.

Checklist

- Are all political parties and candidates assured equitable treatment?
- Are eligible citizens assured of the right to seek office as either candidates for a political party or independent candidates?
- Does the legal framework provide a level playing field for registration and ballot access for all political parties and candidates?
- Are the requirements and procedures for party and candidate registration based on relevant, reasonable and objective criteria? Are these criteria clearly stated in the law?
- Does the legal framework provide for a timely appeal to expeditiously review the decisions made on party and candidate registration?
- Does the legal framework provide for minor corrections of errors or allow further information to be added so that candidates' nominations are not rejected on flimsy grounds?

9. Democratic electoral campaigns

The legal framework should ensure that each political party and candidate enjoys the right to freedom of expression and freedom of association, and has access to the electorate, and that all stakeholders in the election process have an equal chance of success.

Elections are a means to translate the general will of the electorate into representative government. To achieve this objective it is necessary that all parties and candidates be able to put out their manifestos -- the political issues and their proposed solutions -- freely to the electorate during the electoral campaign. The electoral campaign period should normally be well defined and should commence after the valid nomination of parties and candidates, ending one or two days before polling. However, certain jurisdictions might not have any well defined campaign period. All contesting parties and candidates should be afforded an opportunity to reach out to the electorate at large and to put forth their views, policies and programmes. The legal framework should ensure that:

- There are no unreasonable restrictions on the right to freedom of expression and whatever restrictions there are be set out in the law.

- Every party and candidate has equitable access to the media, especially the electronic media, to undertake their campaign.
- Where state or private funding is permissible, every party and candidate has equitable access to resources to undertake a credible election campaign.
- No party or candidate (especially the ruling party) is favoured, financially or otherwise through the availability or use of state resources, over the other parties and all stakeholders in the election process have an equal chance of success.
- No party or candidate threatens or does violence to another party or candidate, or incites anyone to violence or otherwise impedes the freedom to campaign.
- All parties and candidates should normally cease active campaigning one or two days prior to polling day, allowing the electorate to weigh the options and to exercise their franchise freely and without undue pressure. However, in certain jurisdictions this may not be possible or adhered to for historical reasons.

Campaign violence

The legal framework should state in clear language what type of conduct and behaviour is prohibited during the electoral campaign. Provisions regulating the conduct of political parties and candidates or references to codes of conduct may be provided in the electoral law or the criminal law. Sometimes such informal codes of conduct are arrived at as a result of an agreement reached between various political parties, often brokered by the EMB. These provisions should be consistent with the legislation but should not be unduly restrictive and should provide the opportunity for active and open campaigning, free from interference.

Campaign mechanisms

Electoral legislation generally sets out the procedures and mechanisms for

dealing with complaints and disputes during the campaign. Some legal frameworks for elections provide for adjudication or other mechanisms, such as mediation, to deal with disputes. The legal framework should provide for a mechanism for interaction between contesting parties and candidates during the campaign period -- such as a standing committee coordinated by the EMB. This enables the stakeholders to exchange views with each other or raise complaints of violations of campaign provisions or codes of conduct with a view to finding a common approach to resolving them and containing electoral violence.

Sanctions

Merely incorporating provisions for a free electoral campaign in the legal framework is not sufficient unless it is backed by a reasonable, effective and credible sanctions regime. If a code of conduct is incorporated in the electoral law or based on the provisions of the law, criminal or civil penalties may apply. Other specific electoral penalties, such as the disqualification of candidates or parties, may also be possible. Whatever legal or other sanctions are established, a party and its members have to clearly understand their obligations. Therefore, it is important that rights, obligations and the sanctions should be spelt out unambiguously.

The legal framework should ensure that penalties are not disproportionate to offences and that the same infractions are treated equally.

Basic assumptions

The parties and candidates should agree that the legitimacy of a government coming to power through a democratic multiparty election rests on the following principles:

- That having been informed during the electoral campaign of the policies and qualities of all political parties and candidates the voters have made an informed choice which is reflected in the election results; and
- That voters have been able to vote freely, without interference, fear, undue influence, bribery or intimidation.

All parties and candidates should then recognize that the elections express the credible free choice of the voters and accept the result of the election as an expression of that choice.

Code of conduct reflecting campaign legislation provisions

The campaign period is crucial to reach out to the electorate. A code of conduct for democratic campaign management should ensure that all parties and candidates:

- Respect the right and freedom of all other parties and candidates to campaign and disseminate their political ideas and principles without fear;
- Conduct themselves in a manner that respects the rights of other parties and candidates, and respects the rights of voters and other members of the community;
- Respect the freedom of the press;
- Use their good offices to seek to ensure reasonable freedom of access by all parties and candidates to all potential voters; and
- Seek to ensure that potential voters wishing to participate in related political activities have freedom to do so.

At the same time the code of conduct should ensure that no party or candidate will:

- Harass or obstruct media representatives engaged in their professional activities;
- Disrupt, destroy or frustrate the campaign efforts of any other party and in particular will not:
- Prevent the distribution of handbills and leaflets, nor the display of posters, of other parties and candidates;
- Deface or destroy the posters of other parties and candidates;
- Deface private property or government or public buildings by writing slogans, pasting posters etc.;
- Prevent any other party from holding rallies, meetings, marches or demonstrations;

- Seek to prevent any person from attending the political rallies of another party;
- Permit their supporters to do anything prohibited by the code of conduct.

Checklist

- Does the law regulate the conduct of political parties and candidates during electoral campaigns and provide for active and open campaigning free from government and other political parties' or candidates' interference?
- Where admissible, does the legal framework define the campaign period -- the date of its commencement and date when it ends?
- Where admissible, does the legal framework provide for cessation of all active campaigning one or two days prior to polling day?
- Are there provisions and safeguards to avoid electoral violence so that the electorate and other candidates and parties are not intimidated?
- Does the legal framework for elections provide for procedures and mechanisms to deal with complaints and disputes during the campaign period in a timely manner?
- Is there a prohibition on the use of government resources during the campaign period, other than those available to all parties and candidates?

10. Media access and freedom of expression

The legal framework should ensure that all political parties and candidates have access to the media and are treated equitably by media owned or controlled by the state, and that no unreasonable limitations are placed on the right of political parties and candidates to free expression during election campaigns.

Some political parties own newspapers and even television channels, which are used as party mouthpieces to communicate the campaign issues of the party to the electorate. Where there are private rather than government-owned media the question of equitable access for parties and candidates arises and may need to be regulated. The acceptable international standard in this respect is that of non-discrimination. If political advertising is allowed, private media should charge the same rates to all parties and candidates without any discrimination. Some jurisdictions ban political advertising altogether; in other jurisdictions such a ban has been interpreted as an unjustified breach of the right of free speech and expression. Nevertheless, paid political advertising should always be identified as such and should not be disguised as news or editorial coverage.

Equitable treatment and access

The legislative framework for elections should ensure that all political parties and candidates have access to the media and *equitable* treatment in media owned or controlled by the state, so that the general public can be informed of the political platforms, views and goals of all parties and candidates in a fair and unbiased manner. This includes all forms of print and electronic media.

A country's legal framework should contain the following guarantees:

- That the political parties and candidates are given the necessary legal guarantees to enable them to compete with each other on a basis of equitable treatment before the law and by the state authorities; and
- That no legal or administrative obstacle stands in the way of access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.

There should be clear legal provision for the timely implementation of these guarantees before and during elections. The process for establishing a formula or schedule for access and equitable treatment in the media for a given election should be unambiguous and capable of objective application.

The legal framework should ensure equitable access for political parties and candidates on state-owned radio and television during the election campaign period by providing that all parties are guaranteed a certain amount of broadcasting time according to a defined formula. For example, 50 percent of the time could be allocated equally among all parties with the remaining 50 percent differentially allocated on the basis of the number of votes obtained by a party in the last election or in proportion to its seats in the previous legislature.

Access to the media by parties and candidates may be regulated in a country's law covering the media or public information rather than in the election law. Media law may only provide general statements on access and delegate authority for promulgating the specifics of implementation to an administrative body such as a specialized media commission.

The standard of equitable treatment and access to the media are undermi-

ned if state-owned or controlled media are able to favour a political party or candidate in supposed news coverage, political coverage, forums or editorials. Biased coverage or preferential treatment in State media should be prohibited by law, with penalties or corrective mechanisms defined.

Limitations on free expression

A democratic election is not possible where the legal framework for elections inhibits or dampens campaign speeches and free expression. Too often, the legal framework in a country in transition to democracy censors campaign speeches by imposing sanctions against public speaking that "defames" or "insults" another person or political rival, which could include criticism of the government, a government official or a candidate in the electoral campaign. Such provisions may not only be found in the electoral code or media (public information) law but may also be included in general constitutional, civil, criminal and administrative laws. Any law regulating defamation of character or reputation should be limited to the civil law. Any provision, regardless of the legal source, that imposes disqualification or imprisonment or monetary fines for criticizing or "defaming" the government, another candidate or a political party may be subject to abuse.

Limitations on free expression violate international human rights law. Additionally, such provisions may violate free speech guarantees found in a country's constitution. These freedoms need consideration when reviewing provisions that permit censorship of candidates, supporters or the media, and are contrary both to international standards and often to the domestic law of the country. The only exception may be the specific prohibition of inflammatory speech calculated to incite violence or hatred against another person or group.

The conduct of opinion polls and exit polls -- especially when their findings can influence the judgement of a part of the electorate which has not yet gone to the polls -- is another area for consideration. Some jurisdictions consider any limitation on opinion polls or exit polls as an infringement of freedom of speech and expression, and hence unacceptable. On the other

hand, some jurisdictions permit publication of such findings only after the polling is completed.

Any legal provisions placing unreasonable or disproportionate limitations on free speech and expression during election campaigns should be amended or deleted from the legal framework.

Checklist

- Does the legal framework for elections ensure that all political parties and candidates are provided access to the media and equitable treatment in media owned or controlled by the state?
- Does the legal framework establish a formula for media access and equitable treatment that is fair, understandable and capable of objective application?
- Does the legal framework provide for free expression during election campaigns?
- Does the legal framework provide that no party or candidate shall be discriminated against in terms of access to the media or, where paid advertising is permitted, in being overcharged for political advertising?
- Does the legal framework ensure that the ruling party does not get disproportionately large media coverage in the guise of news or editorial coverage?

11. Campaign finance and expenditure

The legal framework should ensure that all political parties and candidates are equitably treated by legal provisions governing campaign finances and expenditures.

One of the main characteristics of a democracy is the holding of multi-party elections. The availability of credible alternative choices depends on the existence of robust political parties. In turn, political parties require a secure base for financing their election campaigns and their routine operations. Thus it is an acceptable practice for a legal framework to provide for the campaign financing of parties and candidates. Laws relating to the financing of parties and candidates are sometimes found not in the electoral legislation but in separate laws. Basically there are two forms of funding of parties and candidates: public funding and private funding, with contributions sometimes coming from foreign sources.

The legal framework may provide for electoral campaign financing on the basis of the following internationally-recognized standards:

- That there should be a transparent system of disclosure of the funding received by any party or candidate;

- That there should be no discrimination with regard to access to public funds for any party or candidate;
- That public funding should be made available to parties on an equitable basis; and
- That there should be a level playing field among the parties or candidates.

Public funding

Payment of direct financial subsidies to candidates or to political parties from public funds is gradually becoming the norm. The main forms of indirect public funding could be one or more of the following:

- Free broadcasting time;
- Various types of state payments and facilities made available to members of the legislature;
- Use of government facilities and public personnel;
- State grants to party foundations; and
- Tax relief, tax credits and matching grants.

The distribution of direct public funds for political parties or candidates may be based on several criteria. Some of the main criteria are:

- The grant may be a proportion of actual expenditure where the receipt of public money is conditional on the party or candidate also raising money from private sources.
- The grant to parties may be proportional to their votes in the previous general election.
- The grant may be proportional to the number of each party's seats in the legislature.

If the legal framework for elections provides for public funding, it should be provided on the basis of equity. This does not mean that all political parties and candidates are to receive an equal amount of campaign funds. Provisions for public funding should be clearly stated in the law and based on objective

criteria that are not open to subjective interpretation by government authorities. Additionally, the legal framework should ensure that state resources are not used or misused for campaign purposes by the party in power. The legal framework should specifically provide that all State resources used for campaign purposes, such as state media, buildings, property and other resources, are also made available to all electoral participants on an equitable basis.

Private funding contributions

The main forms of private funding are:

- Membership subscriptions;
- Donations to political parties or candidates by individuals;
- Funding by institutions such as large business corporations, trade unions etc; and
- Contributions in kind by supporters.

Where there are provisions in the legal framework for elections relating to private contributions to campaign expenses incurred on behalf of parties and candidates, these should be so designed as to ensure equality of freedom to raise private funds. Furthermore, these provisions may include limits on contributions in order to "level the campaign playing field" to a reasonable degree, taking into account geographic, demographic and material costs. However, the enforceability of such provisions must be kept in mind while framing or assessing such provisions.

Expenditure control

The legal framework may control the election expenditure of the parties and candidates in order to bring about some semblance of an equal chance of success. Certain financial limits may be prescribed for varying levels of elections: presidential, legislative and local. Parties and candidates are then periodically required to file statements and reports of election expenditure to the moni-

toring organization, which in most jurisdictions is the EMB. However, some jurisdictions do not restrict election expenditure (as is the case in the USA), regarding it as an unconstitutional curtailment of the fundamental right to freedom of speech and expression.

Reporting and disclosure requirements

Limitations on contributions or campaign expenditure are meaningless without transparent reporting and disclosure requirements. The legal framework should require periodic reporting at reasonable intervals of all contributions received and expenditure incurred by an electoral contestant. Penalties for failing to file reports or filing erroneous reports also should be clearly stated in the legal framework and should be proportional to the gravity of the offence. For example, candidates should not be disqualified from contesting elections or taking their seats, if elected, due to minor reporting irregularities.

The legal framework should specifically identify the agency responsible for receiving, compiling and holding campaign contribution and expenditure reports. The legal framework should clearly specify where and when such reports are available for public inspection. The law should also permit the public access to campaign contribution and expenditure reports so that the contents will be available to other interested parties, candidates and voters.

Monitoring and enforcing compliance

Often there are too many laws and too little enforcement. For political financing to be effective, the legal framework should provide mechanisms for monitoring and enforcing compliance with political finance laws.

Checklist

- Does the legal framework ensure that all political parties and candidates are treated equitably through provisions governing campaign contributions and expenditures?
- If the legal framework for elections allows public funding or the use of state resources for campaigns, does it regulate such use on the basis of equitable treatment for all political parties and candidates?
- Are limitations on funding of campaigns reasonable, clear and capable of objective application?
- Does the legal framework for elections require periodic reporting on campaign contributions and expenditure?
- Does the legal framework for elections provide for public access to reports on campaign contributions and expenditure?
- Does the legal framework for elections provide for adequate and effective enforcement of the political finance laws?
- Does the legal framework for elections provide for equality of freedom to raise private funds without unreasonable limitations?

12. Balloting

The legal framework should ensure that polling stations are accessible, that there is accurate recording of ballots and that the secrecy of the ballot is guaranteed.

Secrecy of the ballot

The international standard for a democratic election requires that votes be cast by secret ballot or by other equivalent free, secret voting procedure.

The provisions in the legal framework regulating control and security of the ballot, as well as the provisions governing the casting of a ballot at the polling station, should ensure ballot security, while at the same time ensuring that no individual ballot can be identified as having been marked by a specific voter. Ballot secrecy is an effective counter to vote-buying, to voter intimidation and to other undue influences. No member of a polling station committee or any other person, except during the counting of ballots, should be allowed to see a voter's marked ballot. Obviously, this prohibition does

not apply to a person legally authorized to assist a blind voter or a voter requiring assistance due to physical infirmity or illiteracy in certain cases. However, a member of a polling station committee should not handle or control the voter's marked ballot before it is placed in the ballot box.

The principle of secrecy of the ballot requires election legislation to ensure that secret voting is not only a right on the part of the voter but an absolute obligation. The tear-off part of the ballot should not bear any serial number, while the counterfoil might have these numbers for control purposes. The practice of family voting -- where the head of a family casts ballots on behalf of the other members of the family -- should not be condoned. Similarly, proxy voting is another practice to be discouraged. Legislation should make it clear that every voter's ballot must be marked and cast individually and secretly.

Voting procedures

When reviewing the legal framework all provisions regulating the voting process should be carefully examined. These should ensure that voters are adequately identified and that other mechanisms are in place to prevent fraudulent or double voting. However, voting procedures should not be so cumbersome or complicated as to hinder the voting process. Voting provisions should require that all ballots and voting materials be adequately safeguarded before, during and after voting.

The legal framework should be flexible enough to allow for technological innovations to be applied to various aspects of balloting and counting, for example, utilizing electronic voting machines for recording and counting of ballots. Such wide flexibility might be regulated by requiring that certain types of approval be obtained before adopting them.

The legal framework for elections should prohibit the presence of unauthorized persons in polling stations. This can usefully be coupled with a provision for police officers only to enter polling stations either to vote or when officially requested to restore order. In the latter event, police should enter polling stations only if authorized by the person in charge of the polling station, and should be required to leave as soon as order is restored.

The legal framework for elections may provide for other methods of voting, such as voting by mail or mobile voting. These types of voting may be available to a single individual, such as a person who is abroad on business; to a class of voters, such as diplomats, police, the military or other security forces; or to an entire community, such as persons displaced due to the outbreak of war. In the case of mobile voting, it may be available to a single housebound, incapacitated voter or to an entire community, as, for instance, in a hospital or other institution. In all cases adequate mechanisms must be provided to prevent the abuse of such methods of voting.

Election laws may contain special provisions to facilitate voting by persons who are physically disabled, those in hospital or in prisons, those who are out of the country or who cannot come to the polling station for other valid reasons. Such provisions must not be discriminatory and must be applied uniformly to all similarly-placed voters.

It is common and acceptable for the electoral framework to provide for members of the military and the police to be able to exercise the right to vote while on active duty. Although protecting the right to vote of a member of the military or the police is appropriate, the provisions must be written carefully to avoid abuse.

It is not unusual for the legal framework for elections to permit special polling stations to be set up within military units located in remote areas far from any centre of population. While such a provision may be unavoidable, it should be accompanied by an express provision that this is strictly exceptional and that, wherever possible, members of the military and the police should vote in advance polls. Otherwise on polling day those not on duty should vote in ordinary civilian polling stations where they reside, without bearing arms and without wearing uniform.

Some or all of these groups may be the subject of provisions which include: bringing the ballot box to the voter or "mobile voting"; voting by mail for security forces and other persons outside the country such as refugees, and advanced polling. The voter accommodation principle is commendable. However, related provisions may be written in such a manner that they are not subject to abuse and fraud. To minimize this possibility and to safeguard

the integrity of the special voting activities, the legal framework should include the following:

- There must be a process to clearly identify voters eligible to use alternative voting provisions and to prevent double voting.
- Special voting provisions should only be applied in well-defined situations, e.g., in cases where it is not physically possible for the voter to travel to a regular polling station to vote; however, some jurisdictions might provide exceptions to this for special reasons, for example, allowing a large section of its voters to vote by mail.
- Representatives of parties and candidates as well as election observers should be permitted to monitor special voting stations.
- The number of ballot papers with serial numbers and other security features used and the number later returned, should be formally and transparently recorded.
- The number of ballot papers issued should correspond with the number of requests received, plus a specified small number of extra ballots to allow for voters who may spoil their ballot paper.
- The names and number of requesting voters who have used or are using the special provisions should be recorded in polling-station and other protocols in order to avoid double voting and to identify particular areas where the proportion of votes cast is unusually high, which may point to the occurrence of fraud.

Balancing voter convenience with safeguards against fraud

Accommodating voters' needs must be carefully balanced against safeguarding against voting fraud. If not drafted carefully, a provision accommodating the needs of a special group of voters, by establishing exceptional voting procedures, can be abused by persons attempting to vote more than once or who do not meet the legal requirements for the exceptional voting procedure. Such provisions must provide sufficient safeguards to prevent abuse and fraud when alternative methods of voting are permitted.

Checklist

- Does the legal framework guarantee that votes are cast by secret ballot? Are there adequate prohibitions against "family voting"?
- Does the legal framework for elections require that voters be adequately identified prior to receiving a ballot?
- Does the legal framework contain sufficient provisions for the security of all ballots and voting materials before, during and after voting?
- Does the legal framework provide alternative methods of voting for specific persons or special categories of person?
- Does the legal framework contain sufficient safeguards to prevent fraudulent or double voting?
- Does the legal framework prevent a person from using an alternative method and the regular process to vote twice in the same election?
- Does the legal framework prohibit the routine entry of police or other armed forces into polling stations except when they enter to vote or when they are specifically authorized by the person in charge of polling station to restore order?

13. Counting and tabulating votes

The legal framework should ensure that all votes are counted and tabulated accurately, equally, fairly and transparently.

General principles

A fair, honest and transparent vote count is a cornerstone of democratic elections. This requires that votes be counted, tabulated and consolidated in the presence of the representatives of parties and candidates and election observers, and that the entire process by which a winner is determined is fully and completely open to public scrutiny.

The legal framework should provide for the presence of the representatives of parties and candidates and election observers during the counting, tabulation and consolidation of votes. The legal framework must clearly state the electoral formula that will be used to convert votes into legislative seats. Thresholds, quotas and all details of the electoral formula must be stated clearly and all possibilities, such as ties, withdrawals or death of a candidate,

must be addressed. The law must lay down clear criteria for determining valid and invalid ballots in all polling and counting stations across the jurisdiction. Rules for determining the validity of ballots to be counted should not be so stringent as to unreasonably result in disenfranchising a voter. The paramount principle should be that if the intention of the voter is clear, the ballot should be counted.

Counting ballots

Regardless of whether ballots are counted at the polling station or at a central counting location or at both places, the representatives of parties and candidates and election observers should be permitted to remain present on this occasion. As well as ensuring the presence of above all entities during the counting of ballots, the legal framework should provide safeguards where technology is used to count ballots. The legal framework must make possible the independent verification of the accuracy and soundness of hardware and software used for counting ballots. Whether manual, mechanical or electronic counting is used, overview procedures must be in place to ensure accuracy and reliability. The law must also allow objections to counting procedures, including objections to criteria used to determine the validity of ballots.

The legal framework for elections should clearly specify that the representatives of parties and candidates and election observers be given, as far as practicable, certified copies of tabulation and tally sheets. The law must also clearly specify what authorities, if any, are entitled to receive this information prior to certification of the election results by the central EMB.

Tabulating results

The legal framework should provide, in clear and objective language, the procedures for transferring the certified copies, results of counting, ballot papers and other election materials from polling stations and other, lower levels of EMBs to intermediate and higher EMBs for consolidation and safekeeping. The law should require that all consolidation of vote counts be available in

tables or similar format so that representatives of parties and candidates and observers may track the vote count of any polling station all the way up, through intermediate levels to the final consolidated results. The tabulation for any polling station should provide detailed information such as the number of ballots used and returned, the number of blank, spoiled and invalid ballots, and the number of votes for each political party or candidate. This information should be broken down for alternative methods of voting, such as voting by mail or mobile voting, where this can be done without compromising the secrecy of the ballot. This degree of detail is necessary to enable the representatives of parties and candidates and election observers to track results and locate specifically, if fraud has occurred, where the numbers have been unlawfully changed during the consolidation processes.

A strictly defined division of responsibility among various tiers of EMB and the state authorities is vital during the tallying process. Election legislation should underline the principle that only EMB members should be involved in this process. To ensure this it is also important that representatives of parties and candidates and election observers are given access to all stages of the process of counting, tabulating, consolidating and tallying results.

Publication of counting, tabulation and consolidation of results

Many times timely publication of the result of ballot count may turn out to be crucial for its acceptance by all contenders. Therefore the legal framework should provide for such timely publication of results. It should also clearly state whether the election authorities may announce partial or preliminary results prior to final certification. If results can be announced prior to final certification, the legal framework should clearly regulate the making of such announcements. Subject to restrictions regarding time zones, the media and party, candidate or other representatives should be free to publicize the poll results. It is normally the chair of the polling station committee, in the case of counting at the polling station level, or the director of elections at the higher level of the EMB, who announces the results of the count. It is acceptable in countries that spread across more than one time zone for there to be restrictions on the reporting of results before all polls have closed.

The legal framework should require that all relevant counting documents other than the ballots, such as election protocols, tabulation and tally sheets, and decisions determining or affecting election results, be publicly accessible. Such electoral documents should be publicly posted at all levels of election administration, including the polling station, municipal, and state EMB levels. Detailed tabulations of overall results, including the voting results in each polling station, should be posted at each election office. These detailed tabulations should also be published in state-owned or-controlled print media, in the official gazette and, wherever possible, on the website of the EMB as soon as the results are certified.

To prevent fraud, the legal framework should require public posting of ballot counts and tabulations at each level where the count or tabulation occurs. The possibility of fraud arises where an intermediate EMB is not required to publicly post the tallies and tabulations.

Effective date of certified results

The legal framework for elections should clearly specify the timing of the final certification of the election results, the process of final certification including public announcement and notification to candidates of their election, and the terms of office of elected candidates. Additionally, the law must be clear as to what circumstances require a recount or new election in any or all polling stations. The law must be clear as to who can request a recount or new election, the deadline for the request, all necessary procedures to make the request, the deadline for adjudicating on the request, and the date of and procedures that will govern a recount or new election. Where technology is to be used in counting or tabulating, the law must be clear as to what the recount would entail i.e., whether the data would be re-entered, a parallel manual count be conducted, etc.

The legal framework must provide for secure storage of all ballots and election materials until either the deadline for making legal challenges to the certified results has passed or, in case a legal challenge is made, the final adjudication of such a challenge is pronounced.

Personal safety exception

In extreme circumstances, publication of election results at the polling station level might jeopardize the safety of voters or polling station committee members in that community. This possibility exists where an election is held after civil conflict or in a society with deep-rooted conflict where tensions remain high. In such extreme circumstances the law may provide limited exceptions to these principles in order not to place voters at risk of personal harm.

Checklist

- Does the legal framework ensure that the entire process for counting and tabulating votes is conducted in the presence of representatives of parties and candidates as well as election observers?
- Does the legal framework provide for independent verification of all hardware, software and other elements in the counting and tabulation processes where methods other than manual counting are used?
- Does the law require that all tabulations be available in a format that allows representatives of the parties and candidates and observers to track the vote count of each polling station all the way up, through intermediate levels to the final consolidated results?
- Does the law require that tabulations of results contain detailed information on results for all methods of voting other than where the secrecy of the ballot might be threatened?
- Does the law require public posting and publication in the print media of detailed results from the polling station level up to the central EMB?
- Does the law clearly specify the processes for final certification of election results and notification to candidates, and the tenure of office for elected candidates?
- Are all requirements and procedures for a recount of ballots clearly stated?
- Are all requirements and procedures for a new election clearly stated?

14. Role of representatives of the parties and candidates

As a necessary safeguard of the integrity and transparency of the election, the legal framework must contain a provision for representatives nominated by parties and candidates contesting the election to observe all voting processes. The rights and responsibilities of candidate and party representatives in polling stations should also be defined in the legal framework.

Observation and monitoring role

The legal framework should clearly state that party and candidate representatives are permitted to observe proceedings, not to campaign or otherwise participate in voting. All legal restrictions on campaigning within the polling station area -- such as communication with voters, distribution of partisan material, wearing of badges or apparel, or public broadcasts that can be heard within the polling station -- must be enforceable. The law must clearly state whether the representatives of parties and candidates are to be allowed to handle any election document at any stage, as well as any penalty for mishandling.

The legislation should provide that the representatives of parties and candidates are subject to the authority of the polling station committee president and staff, and may be removed from the polling station on the orders of the polling station committee president if their conduct breaches any of the standards laid down in the regulatory framework, including any code of conduct.

The legislation should specify that, while the representatives of parties and candidates should have the right to immediately query decisions made by polling officials or the implementation of voting procedures, they should not be permitted to influence voters, to disregard polling officials' directions or to otherwise disrupt voting.

The legislation should provide that, while they are within the boundaries of the polling station, representatives should prominently wear an identifying sticker indicating their role. Legal frameworks may restrict the numbers of representatives any one candidate or party may have present in a polling station at any time. A balance has to be struck between transparency of the process and the capacity of polling stations to manage large numbers of representatives. Where there are large numbers of candidates and parties, and hence large numbers of representatives present, the legal framework may provide for restricting the movement of representatives within the polling station so as not to interfere with voting processes.

Recording complaints and challenges

The legislation should provide that any challenges to voters by the representatives of parties and candidates or complaints regarding the operations of the polling station must be recorded in writing by the polling station committee president (and preferably countersigned by the relevant representative of a party or candidate) and included with the polling station committee president's reports on voting submitted to the EMB.

Rights of representatives of the parties and candidates

While the specific manner in which their observation duties are undertaken may vary according to the voting systems used, the legal framework should

generally provide the following rights to duly accredited representatives of parties and candidates in polling stations:

- To remain within the polling station while lawfully carrying out her/his functions and enter and leave the polling station at any time, subject to restrictions on the number of representatives for any one party or candidate;
- To observe all activity -- with the exception of the marking of ballots by voters -- within the polling station, from the check counting of ballots and sealing of ballot boxes prior to the commencement of voting to the final packaging of material after close of voting;
- To challenge the right of any person to vote;
- To query any decisions made by polling officials with the polling station committee president and election management officials;
- To witness the marking of ballots for physically impaired or non-literate voters by a polling official, where such assistance to voters is allowed and such witnessing is provided for in the law; and
- To make notes of any occurrences, make copies of any official documents and take note of any statements freely made by voters.

Additionally, formal training may be provided in order to help representatives of parties and candidates discharge these responsibilities more effectively.

Conduct of representatives of the parties and candidates

The legislation may provide that, as a condition of accreditation to voting locations, the representatives of parties and candidates must have formally accepted the applicable code of conduct on behaviour. If a full code of conduct has not been developed, then at the very minimum it is expected that as a condition for accreditation they will make a formal declaration that:

- They maintain voting secrecy.
- They follow the directions of polling officials.
- They not interfere with election processes.
- They be bound by the legal framework for elections.

A more comprehensive code of conduct for party and candidate representatives while within the polling station area would include the following:

- They shall not attempt to influence or intimidate any voter.
- They shall not attempt to intimidate, harass, otherwise threaten or interfere with the work of any polling official.
- They shall communicate with polling officials and voters only as necessary for the conduct of their duties.
- They shall neither mark nor handle any official election material (except to witness records of the poll).
- They shall not attempt to remove any official election material from the polling station, nor attempt to introduce any purported official election material into the polling station.
- They shall not attempt to destroy any official election material in the polling station.
- They shall obey all lawful directions by the polling station committee president and polling officials delegated by her/him to issue directions to representatives.
- They shall not campaign for votes within the polling station area.
- They shall not provide any voter with false information regarding their eligibility to vote at that polling station or in the election.
- They shall not enter the voting compartments, except (if allowable under the law) when nominated by a voter to assist her/him in voting or to witness the vote of a voter who is assisted by a polling official.

The legal framework must also be clear on what representatives may bring with them into the polling station: for instance, a ban on carrying weapons into a polling station should be in the law and not subject to local interpretation. Any ban on communication devices such as mobile phones or radios should also be in the law.

Checklist

- Does the legal framework provide for independent observation of the polling process, and of the counting of ballots, by the representatives of political parties and contesting candidates?
- Does the legal framework facilitate observation of elections by providing for easy accreditation of such representatives, by way of provision of training manuals for the representatives of parties and candidates for polling and counting, and by imparting formal training?
- Does the legal framework contain sufficient safeguards to ensure that the representatives of parties and candidates do not undertake active campaigning within the premises of the polling stations and within the prohibited limits around the polling stations?
- Does the legal framework provide a clear procedure for the representatives of parties and candidates to obtain relevant information to facilitate their observation of polling, or for challenging the identity of the voter? Does the legal framework provide for clear procedure for dealing with such challenges by the polling station chairperson?
- Does the legal framework provide for a code of conduct for the representatives of parties and candidates to ensure orderly conduct on polling day within polling stations and during the counting at the counting station (if it is separate from the polling station)?

15. Election observers

To ensure transparency and to increase credibility, the legal framework should provide that election observers can observe all stages of election processes.

A transparent election process is an international standard necessary to ensure democratic elections. The presence of domestic and international election observers in the evolving democracies tends to bring credibility and legitimacy to the election process being observed and serves to deter overt acts of electoral fraud, especially during the polling. However, certain mature democracies, where there is public trust in the impartiality and neutrality of the election administration, such observation of elections may not be provided.

Many legal frameworks provide for the presence of observers, both domestic and foreign, in addition to representatives of the media, political parties and candidates, to ensure transparency. Essentially, election observation means *the purposeful gathering of information regarding an electoral process, and making informed judgements on the conduct of such process on the basis of information collected, by persons who are not inherently authorized to intervene in the*

process and whose involvement in mediation or technical assistance activities should not jeopardize their main observation responsibilities.

Domestic election observers

There is now an increasing trend to permit domestic election observation. Election observers from civil society groups (such as various church groups, women's and youth organizations, and NGOs) can play an important role, and should have the right to be accredited to observe. All facilities should be afforded to these domestic observers to carry out their assigned duties. Any laws regulating NGOs and public associations should be reviewed to ensure that they do not unreasonably obstruct acquisition of the necessary legal status and accreditation as domestic election observers. The legal framework should provide clear and objective criteria for registration and accreditation as an observer and be clear as to the authority accrediting observers, the requirements for obtaining observer status and the circumstances in which observer status can be revoked.

The law should provide clear and precise provisions establishing the rights of observers to inspect documents, attend meetings, observe election activities at all levels and at all times, including counting and tabulation, and to obtain relevant certified copies of documents at all levels. The law should also establish an expedited process for observers to obtain corrective relief when an election management body refuses to accredit an observer or observer group.

The legal framework must also be clear and precise concerning what a domestic observer may not do, for instance, interfere with voting, take a direct part in the voting or counting processes, or attempt to determine how a voter will vote or has voted. It should strike a balance between the rights of observers and the orderly administration of the election processes. But in no case should it hinder legitimate observation, "muzzle" observers, or prevent them from reporting or releasing information that has been obtained through their observations.

International election observers

International election observation is neither a right, nor as yet an recognized international standard. State sovereignty still requires that there should be a formal invitation to foreign election observers, and there may be more stringent requirements for accreditation of international as opposed to domestic election observers. However, regional and similar international agreements may require countries to open their elections to international observers (for example, in the Organization for Security and Co-operation in Europe (OSCE) countries); if this is the case the law must make appropriate provisions for observers. The law should also state when and by whom such election observers are to be invited.

International election observation may sometimes occur as part of a broader human rights observation process regarding minority rights or the rights of oppressed groups, without a formal invitation or accreditation.

Checklist

- Does the legal framework allow accredited election observers to observe all election processes?
- Does the legal framework provide clear and objective criteria for the accreditation requirements for election observers as well as providing a well-defined role?
- Does the legal framework provide clear criteria as to which governmental authority accredits election observers?
- Does the legal framework provide clear criteria and time-frames for applying for election accreditation?
- Does the legal framework provide clear criteria for the activities of election observers and as to when and under what circumstances election observer status can be revoked?
- Does the legal framework strike a balance between the activities of election observers and the orderly administration of elections?
- Are there any legal requirements that could be too onerous for election observers and serve to hinder legitimate observation?

16. Compliance with and enforcement of electoral law

The legal framework should provide effective mechanisms and remedies for compliance with the law and the enforcement of electoral rights, defining penalties for specific electoral offences.

The legal framework should provide effective mechanisms and remedies for the enforcement of electoral rights. The right to vote is a fundamental human right and the right to a remedy for violation of the right to vote is also a fundamental human right. The legal framework for elections must set forth detailed and sufficient provisions protecting suffrage rights.

The legal framework should provide that every voter, candidate and political party has the right to lodge a complaint with the competent EMB or court when an infringement of electoral rights is alleged to have occurred. The law must require that the appropriate EMB or court render a prompt decision to avoid the aggrieved party losing his/her electoral right. The law must provide a right of appeal to an appropriate higher level of EMB or court with authority to review and exercise final jurisdiction in the matter. The decision of the court of last resort must be issued promptly.

The legal framework should provide for timely deadlines for the consideration and determination of a complaint and the communication of the decision to the complainant. Some complaints can be determined immediately, others in hours, and some will take days. Deadlines must therefore allow for a degree of flexibility, taking into account the level of the EMB or court, and the nature of the complaint and the electoral urgency. Prompt resolution can frequently prevent escalation of a minor complaint into a major problem. However, certain types of dispute in some jurisdictions can only be raised by means of an election petition after the electoral process has concluded.

The paragraphs above outline the minimum legal standards that must be included in the legal framework. A country has some flexibility in adopting and determining the legal structure of the dispute settlement mechanism most suitable to resolve its electoral disputes.

Checklist

- Does the legal framework provide effective mechanisms and remedies for compliance with the law for the enforcement of electoral rights?
- Does the legal framework clearly state who can file complaints for election law violations and the process for filing complaints?
- Does the legal framework provide for the right to appeal an election management body decision to a court of law with authority to review and exercise final jurisdiction in the matter?
- Does the legal framework provide for timely deadlines for filing, considering and determining remedies for a complaint?

Annex 1

Primary sources for international standards

1. The United Nations

The 1948 Universal Declaration of Human Rights

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be held by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures.

The 1966 International Covenant on Civil And Political Rights

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in the foregoing paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are necessary, (1) for respect of the rights or reputations of others, (2) for the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labor Convention of 1948 on Freedom of Association and Protection of the Right to

Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in the Convention.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) to have access, on general terms of equality, to public service in his country.

The 1952 Convention on The Political Rights of Women

Article 1

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

Article 2

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

Article 3

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

The 1965 International Convention on the Elimination of All Forms of Racial Discrimination

Article 5

- (b) In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without

distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights...

- (c) Political rights, in particular the right to participate in elections -- to vote and to stand for election -- on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
 - (viii) The right to freedom of opinion and expression;
 - (ix) The right to freedom of peaceful assembly and association.

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Various UN documents (Secretary-General's reports, General Assembly resolutions, ECOSOC resolutions, reports in the Human Rights Committee etc.)

United Nations General Assembly Resolution, A/RES/46/137 dated 17 December 1991: Enhancing the effectiveness of the principle of periodic and genuine elections

The General Assembly...

...Reaffirms the Universal Declaration of Human Rights, which provides that everyone has the right to take part in the government of his or her country, directly or through

freely chosen representatives, that everyone has the right of equal access to public service in his or her country, that the will of the people shall be the basis of the authority of government and that this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures,

...Notes that the International Covenant on Civil and Political Rights provides that every citizen shall have the right and the opportunity, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors, and to have access, on general terms of equality, to public service in his or her country,

...Recalls that, under the Charter, all States enjoy sovereign equality and that each State, in accordance with the will of its people, has the right freely to choose and develop its political, social, economic and cultural systems,

...Recognizes that there is no single political system or electoral method that is equally suited to all nations and their people and that the efforts of the international community to enhance the effectiveness of the principle of periodic and genuine elections should not call into question each State's sovereign right, in accordance with the will of its people, freely to choose and develop its political, social, economic and cultural systems, whether or not they conform to the preferences of other States...

2. Underscores the significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which establish that the authority to govern shall be based on the will of the people, as expressed in periodic and genuine elections;
3. Stresses its conviction that periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights;
4. Declares that determining the will of the people requires an electoral process that provides an equal opportunity for all citizens to become candidates and put forward

- their political views, individually and in cooperation with others, as provided in national constitutions and laws;
5. Underscores the duty of each Member State, in accordance with the provisions of the Charter of the United Nations, to respect the decisions taken by other States, in accordance with the will of their people, in freely choosing and developing their electoral institutions;
 6. Reaffirms that apartheid must be abolished, that the systematic denial or abridgement of the right to vote on the grounds of race or colour is a gross violation of human rights and an affront to the conscience and dignity of mankind, and that the right to participate in a political system based on common and equal citizenship and universal franchise is essential for the exercise of the principle of periodic and genuine elections;

Other UN Resolutions and reports

- Various reports of the Secretary-General on Enhancing the effectiveness of the principle of periodic and genuine elections.
- General Assembly Resolution number A/Res./55/2, 18 September 2000, United Nations Millennium Declaration.
- General Assembly Resolution number A/C.3/54/L.74, 12 November 1999, Respect for the Principles of National Sovereignty and Non-interference in the Internal Affairs of States in their Electoral Processes.
- Economic and Social Council, Draft Report E/CN.6 /1997/L.2/Add.2, 14 March 1997, Moderator's Summary of the Panel Discussion and Dialogue on Women in Power and Decision Making.
- General Assembly Resolutions numbers:
 - A/Res./43/157
 - A/Res./47/130
 - A/Res./48/124
 - A/Res./48/131

2. European Human Rights Instruments

The 1950 European Convention on Human Rights

Article 3

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

The 1990 Charter of Paris For a New Europe: CSCE Summit

Human Rights, Democracy and Rule of Law

Democratic government is based on the will of the people, expressed regularly through free and fair elections. Everyone also has the right : (...) to participate in free and fair elections.

The 1990 document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE

...

- (5) [The participating States] solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:
 - (5.1) free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;
- (6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their

country, either directly or through representatives freely chosen by them through fair electoral processes. They recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or that of another participating State.

- (7) to ensure that the will of the people serves as the basis of the authority of government, the participating States will
- (7.1) hold free elections at reasonable intervals, as established by law;
 - (7.2) permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;
 - (7.3) guarantee universal and equal suffrage to adult citizens;
 - (7.4) ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
 - (7.5) respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
 - (7.6) respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;
 - (7.7) ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;
 - (7.8) provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all

political groupings and individuals wishing to participate in the electoral process;

- (7.9) ensure that the candidates who obtain the necessary number of votes required by the law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.
- (8) 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 private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

3. American Human Rights Instruments

The 1948 American Declaration of the Rights and Duties of Man

Article 20 Right to Vote and to Participate in Government

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

Article 21 Right of Assembly

Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

Article 22 Right of Association

Every person has the right to associate with others to promote, exercise and protect his

legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

The 1969 American Convention on Human Rights

Article 23 Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

4. African Human Rights Instruments

The 1981 African [Banjul] Charter on Human and Peoples' Rights

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

5. Other inter-governmental and international organizations

The 1994 Inter-Parliamentary Union Declaration on Criteria For Free and Fair Elections

The Inter-Parliamentary Council,

Reaffirming ...

Therefore adopts the following Declaration on Free and Fair Elections, and urges Governments and Parliaments throughout the world to be guided by the principles and standards set out therein:

1. Free and Fair Elections

In any State the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage.

2. Voting and Elections Rights

- (1) Every adult citizen has the right to vote in elections, on a non-discriminatory basis.
- (2) Every adult citizen has the right to access to an effective, impartial and non-discriminatory procedure for the registration of voters.
- (3) No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law.
- (4) Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.
- (5) Every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote.
- (6) Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others.
- (7) The right to vote in secret is absolute and shall not be restricted in any manner whatsoever.

3. Candidature, Party and Campaign Rights and Responsibilities

- (1) Everyone has the right to take part in the government of their country and shall have an equal opportunity to become a candidate for election. The criteria for participation in government shall be determined in accordance with national constitutions and laws and shall not be inconsistent with the State's international obligations.
- (2) Everyone has the right to join, or together with others to establish, a political party or organization for the purpose of competing in an election.
- (3) Everyone individually and together with others has the right:
 - To express political opinions without interference;
 - To seek, receive and impart information and to make an informed choice;
 - To move freely within the country in order to campaign for election;
 - To campaign on an equal basis with other political parties, including the party forming the existing government.
- (4) Every candidate for election and every political party shall have an equal opportunity of access to the media, particularly the mass communications media, in order to put forward their political views.
- (5) The right of candidates to security with respect to their lives and property shall be recognized and protected.
- (6) Every individual and every political party has the right to the protection of the law and to a remedy for violation of political and electoral rights.
- (7) The above rights may only be subject to such restrictions of an exceptional nature which are in accordance with law and reasonably necessary in a democratic society in the interests of national security or public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others and provided they are consistent with States' obligations under international law. Permissible restrictions on candidature, the creation and activity of political parties and campaign rights shall not be applied so as to violate the principle of non-discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- (8) Every individual or political party whose candidature, party or campaign rights are denied or restricted shall be entitled to appeal to a jurisdiction competent to review

such decisions and to correct errors promptly and effectively.

- (9) Candidature, party and campaign rights carry responsibilities to the community. In particular, no candidate or political party shall engage in violence.
- (10) Every candidate and political party competing in an election shall respect the rights and freedoms of others.
- (11) Every candidate and political party competing in an election shall accept the outcome of a free and fair election.

The 1991 Commonwealth Harare Declaration

...

4. Its members also share a commitment to certain fundamental principles...
 - we believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives;
9. Having reaffirmed the principles to which the Commonwealth is committed, and reviewed the problems and challenges which the world, and the Commonwealth as part of it, face, we pledge the Commonwealth and our countries to work with renewed vigour, concentrating especially in the following areas:
 - the protection and promotion of the fundamental political values of the Commonwealth;
 - democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government;
 - fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief;
 - equality for women, so that they may exercise their full and equal rights.

Annex 2. Supplementary sources

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http://www.francophonie.org/oif/actions/rtf/Declaration_de_Bamako.rtf

Annex 3. Model codes

International IDEA, *Code of Conduct for Political Parties Campaigning in Democratic Elections* (Stockholm, International Institute for Democracy and Electoral Assistance, 1999).

<http://www.idea.int/publications/conduct/polparties.pdf>

International IDEA, *Code of Conduct for the Ethical and Professional Administration of Elections* (Stockholm, International Institute for Democracy and Electoral Assistance, 1996).

<http://www.idea.int/publications/conduct/admin/intro.htm>

International IDEA, *Code of Conduct for the Ethical and Professional Observation of Elections* (Stockholm, International Institute for Democracy and Electoral Assistance, 1996).

<http://www.idea.int/publications/conduct/obs/intro.htm>

Inter-Parliamentary Union, *Codes of Conduct for Elections*, (by Guy S. Goodwin-Gill: Geneva, 1998).

Annex 4. Glossary of electoral terms

absentee voting | a process by which registered electors who are unable to go in person to the polling site on polling day can still cast their ballot at another location.

amendment of electoral law | a change made to the electoral legislation by formal procedure.

campaign (electoral) | the political activity, including meetings, rallies, speeches, demonstrations, parades, other events, and the use of the media, intended to inform the electorate of the platform of a particular candidate or political party and to gather support.

candidate | person who seeks, or who is nominated, to be elected either as an official representative of a political party or as an independent.

code of conduct | a set of rules of conduct for certain activities in the electoral process. Applicable to political parties and candidates to regulate the conduct of meetings, demonstrations and political propaganda; to election observers to prescribe the conditions and limitations for the conduct of election observation; to the media; and to election administration.

consolidation of votes | a process of bringing together the election results from a number of polling stations.

- constituency** | the electoral unit of conversion of votes into seats, normally on a territorial basis.
- constituency** | a geographic unit of conversion of votes into seats.
- constituency** | geographical areas into which the national territory is divided for electoral purposes within which the voters are called on to elect their representatives. There can be a single national constituency model (in the national territory there is only one constituency) or a plurality constituency model (the national territory is divided into a number of constituencies). Regarding the seats in every constituency there can be single-member constituencies (every constituency has one seat) and multi-member constituencies (every constituency has several seats).
- constituency** | a body of voters in a specified area which elects a representative member to a legislative body.
- constitution** | set of basic rules by which the government of a state is organized, regulating the relationships between the legislature, the executive and the judiciary.
- counting centre** | a central or regional place where the votes from more than one polling station are counted.
- decree** | a legal text coming from the executive branch of government. In democratic legal systems, a decree is of inferior rank to a law passed by parliament. Sometimes, under exceptional circumstances, a decree may declare itself to be superior to other laws, including even the constitution.
- disclosure** | exposure of certain financial details in accordance with law by candidates, political parties and other persons and groups engaged in an election to the public, the EMB or other electoral authority.
- district** | see constituency above.
- domestic election observers** | groups of individuals, residents or citizens, who monitor and observe the electoral process in their own country (as opposed to international election observers).
- election law** | the legislative provisions governing all aspects of the electoral process.
- election observation** | purposeful gathering of information regarding an electoral process, and making informed judgements on the conduct of such a process on the basis of the information collected, by persons who are not authorized to intervene in the process.

electoral dispute (recourse) | any complaints, challenges, disputes, claims, recalls and contestations relating to the electoral process.

electoral precinct | the territorial unit served by a single polling station.

EMB (electoral management body) | an authority responsible for the management of elections, whose functions may include maintaining and updating the electoral roll; registering voters, parties and candidates; administering the electoral process; issuing the declaration of polls and settling electoral disputes.

eligible voter | an individual who satisfies all the legal requirements by voting in the election.

franchise | the right to vote.

group voting | process by which several persons enter a polling booth and vote together.

international election observers | groups who monitor and observe the electoral process in a foreign country (as opposed to domestic election observers).

invalid votes | ballots which, due to accidental or deliberate errors of marking on the part of voters, cannot be included in the count.

legal framework | the structure of electoral processes consisting of the constitution, electoral laws, complementary regulations, instructions, directives and codes of conduct.

mobile voting | a polling station operating at various designated locations on polling day.

polling centre | an official premise where voters from a particular electoral precinct cast their votes. A polling centre might contain a number of polling stations.

proxy voting | a procedure whereby voters unable to attend a polling station may appoint another person to vote for them.

quota | threshold for winning a seat in a proportional representation system.

quota | system whereby a number, proportion of seats or a number, proportion and/or placement of candidates are reserved in advance for specific groups such as women, minorities etc.

registered political party | political party which meets the requirements stipulated in the electoral law in order to participate in the election.

riding | see constituency.

suffrage | the right to vote.

tabulation of votes | the process of compiling the result of a count at an election.

threshold: 1. | minimum percentage or number of votes necessary for a candidate or a political party to win a seat and/or for other defined purposes; 2. minimum level of support which a party needs to gain representation or a refund of deposit; usually expressed as a percentage of the total vote.,