

# EXISTING COMMITMENTS FOR DEMOCRATIC ELECTIONS IN OSCE PARTICIPATING STATES



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# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	7
<b>PART ONE</b>	
<b>INVENTORY OF OSCE COMMITMENTS AND OTHER PRINCIPLES FOR DEMOCRATIC ELECTIONS</b> .....	10
General Principles and OSCE Commitments .....	10
1. Introduction .....	11
2. Legal Framework: Scope and System .....	12
3. Equality: Constituencies and Districting .....	13
4. Impartiality: Administration and Management .....	14
5. Universality: Right to Vote .....	15
6. Candidacies and Political Parties .....	16
7. Election Campaign .....	17
8. Voting Process .....	20
9. Results: Determination, Publication, and Implementation .....	22
10. Complaints and Appeals .....	23
11. Domestic and International Observation .....	24
12. Co-operation and Improvement .....	25
<b>PART TWO</b>	
<b>EXPLANATORY COMMENTS ON THE INVENTORY OF OSCE COMMITMENTS AND OTHER PRINCIPLES FOR DEMOCRATIC ELECTIONS</b> .....	27
General Principles and OSCE Commitments .....	28
I. Introduction .....	29
II. Legal Framework: Scope and System .....	29
III. Equality: Constituencies and Districting .....	30
IV. Impartiality: Administration and Management .....	30
V. Universality: Right to Vote .....	32
VI. Candidacies and Political Parties .....	33
VII. Election Campaign .....	34
VIII. Voting Process .....	37
IX. Results: Determination, Publication, and Implementation .....	39
X. Complaints and Appeals .....	40
XI. Domestic and International Observation .....	40
XII. Co-operation and Improvement .....	41
<b>PART THREE</b>	
<b>BACKGROUND REPORT: OSCE COMMITMENTS AND OTHER PRINCIPLES FOR DEMOCRATIC ELECTIONS</b> .....	43
I. Introduction .....	43
II. Background .....	45
III. Foundational Commitments and Obligations .....	47
A. Universal Background .....	47
B. Regional Background .....	49
IV. Democratic Elections: Components and Considerations .....	53

A. Introduction .....	53
B. Legal Framework: Scope and System .....	54
C. Equality: Constituencies and Districting .....	55
D. Impartiality: Administration and Management .....	56
E. Right to Vote: Universal and Equal Suffrage .....	58
F. Candidacies and Political Parties .....	62
G. Election Campaign, Finance, and Media .....	66
H. Voting Process .....	71
I. Results: Determination, Publication, and Implementation .....	73
J. Complaints and Appeals .....	74
K. Election Observation .....	76
L. Co-operation and Improvement .....	77
<b>PART FOUR</b>	
<b>REFERENCES</b> .....	78
<b>ABOUT THE OSCE/ODIHR</b> .....	84

## EXECUTIVE SUMMARY

The present document is a **progress report** on a project initiated by the OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to establish an inventory of existing election-related norms, commitments, principles, and "good practices".

Since its adoption in 1990, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE, now the OSCE), commonly known as the Copenhagen Document, has been acknowledged as one of the main international texts setting forth principles for democratic elections in the OSCE region and, indeed, worldwide. Although not primarily an election-related instrument, the Copenhagen Document includes wide-ranging commitments for the OSCE participating States to hold genuinely democratic elections in the broader context of respect for human rights that are free, fair, transparent, and accountable through the rule of law; by suffrage that is universal, equal, and secret; and that guarantee the right to be elected, as well as the right to vote.

The commitments outlined in the Copenhagen Document have served to guide the election-related work of the OSCE/ODIHR since its establishment as the Office for Free Elections in 1991. As the scope and mandate of the ODIHR's election-related activities have expanded, the Copenhagen Document has continued to be highly relevant. After 13 years, the lasting impact of the Copenhagen Document may be due in large part to the comprehensiveness of its language.

Since 1990, the body of texts at national, regional, and international levels that set forth the principles for democratic elections has grown. Although the principle of democratic elections was set forth in the Universal Declaration of Human Rights in 1948 and the International Covenant on Civil and Political Rights (ICCPR) in the 1960s, the international community did not begin to address the issue in greater depth until only recently.

Since the OSCE's adoption of the Copenhagen Document, however, a number of institutions have contributed to the development of international principles related to elections. In Europe, the work in this field by the Council of Europe and its Parliamentary Assembly and the case law of the European Court of Human Rights have enriched the international principles for democratic elections. The European Commission for Democracy through Law (Venice Commission) of the Council of Europe has developed a Code of Good Practice in Electoral Matters. The Parliamentary Assembly of the Commonwealth of Independent States is the most recent contributor to the effort with a convention on the subject that would be applicable within the CIS. The 20 members of the Association of Central and Eastern European Election Officials (ACEEEO) have also approved a draft convention on democratic elections and submitted the document to the Council of Europe for consideration. On the global scale, the UN Human Rights Committee adopted a General Comment (General Comment 25) interpreting the principles for democratic elections set forth in Article 25 of the ICCPR, to which the vast majority of OSCE participating States are State Parties, and other UN bodies have contributed to a growing list of international documents on the subject, as a global consensus in support of democracy emerged in the 1990s.

This rich body of norms, political commitments, principles, case law, comments, and recommendations is dispersed across a considerable number of documents published by various international organizations. As such, practitioners in the electoral field do not have the benefit of a single document presenting this body of materials on the principles of democratic elections in a comprehensive and easily accessible format. As a leading institution promoting democratic elections since the early 1990s in the OSCE region, the ODIHR is well placed to compile such a comprehensive document, in effect an inventory of existing norms, political

commitments, and principles. Accordingly, and in an attempt to assist OSCE participating States with a more consistent methodology when observing elections and providing technical assistance, the ODIHR launched a project in November 2001 to compile the inventory.

Three additional developments prompted the ODIHR in this endeavour. First, during the 2000 Bucharest Ministerial Meeting, the Russian Federation urged the ODIHR to prepare a comprehensive review of the election legislation of participating States with a view to developing common standards under which democratic elections could be enhanced. Second, during the 2001 OSCE Human Dimension Seminar, the ODIHR was encouraged to examine the possibility of building on the Copenhagen Document and clarifying and further developing the commitments for democratic elections. Third, in at least three different forums, projects were initiated to develop new international documents for democratic elections: (a) the CIS Convention on the Standards for Democratic Elections, Electoral Rights and Freedoms adopted in 2001, which is already in the process of ratification by member states; (b) the ACEEEO draft Convention on Election Standards, Electoral Rights and Freedoms, 2002, which has been submitted to the Council of Europe for consideration; and (c) the Venice Commission Code of Good Practice in Electoral Matters, 2002, which could become the basis for further action in this area by the Council of Europe.

The ODIHR has welcomed these initiatives and commented on draft versions of the documents. However, the ODIHR was concerned that without a comprehensive document presenting a complete inventory of existing international norms, commitments, and principles for democratic elections, and given the changes in international relations since the Copenhagen Document was developed in 1990, the well-intentioned efforts of various institutions posed a risk of fragmentation of those generally agreed commitments. As such, and as a first step, the ODIHR initiated in November 2001 a project to catalogue the existing standards in a comprehensive document. The project was made possible with a generous contribution from Switzerland.

For this purpose, the ODIHR convened a diverse group of international law experts with experience in electoral and human rights practices in the West, as well as the CIS and the states of the former Yugoslavia. The group met five times, consulted on an ongoing basis throughout the duration of the project, and prepared two draft reports submitted to the 2002 OSCE Human Dimension Implementation Meeting and the Permanent Council. In Decision 509 of 5 December 2002, the Permanent Council (PC) welcomed the ODIHR effort and tasked it “to further develop ... [the] current draft and to report on progress made to the [PC] by 30 June 2003”. Further, in Decision 7 of 7 December 2002, the OSCE Ministerial Council in Porto tasked the PC “to consider the need to elaborate additional commitments on elections, in the spirit of enhanced co-operation with other international organizations, as well as among participating States, and to report to the next Ministerial Council meeting” in 2003.

In response to the identified requirement to develop a document that both serves as an inventory of existing norms, commitments, and principles of democratic elections and assists the Permanent Council “to consider the need to elaborate additional commitments on elections”, the present progress report sets forth in Part One a comprehensive inventory that clearly identifies: (1) the existing universal norms related to elections contained in UN documents, including human rights treaties; (2) the OSCE commitments from the Copenhagen Document and subsequent texts; and (3) principles derived from other regional instruments applicable to the OSCE area and common standards of practice among participating States. In addition, in some cases in which no universal principle could be identified, the experts have also identified good practices that participating States might consider.

For ready reference and after a section detailing general principles and OSCE commitments, the inventory is organized according to the functional components of an election process:

1. Introduction;
2. Legal Framework: Scope and System;
3. Equality: Constituencies and Districting;
4. Impartiality: Administration and Management;
5. Universality: Right to Vote;
6. Candidacies and Political Parties;
7. Election Campaign, Financing, and Media;
8. Voting Process;
9. Results: Determination, Publication, and Implementation;
10. Complaints and Appeals;
11. Domestic and International Observation; and
12. Co-operation and Improvement.

Part Two of this progress report includes explanatory comments corresponding to each of the paragraphs included in the inventory (Part One). Part Three includes background material in support of the inventory, much of which had been originally included in the draft reports submitted earlier. Finally, Part Four contains the references used in this progress report, organized by source institutions.

# PART ONE

## INVENTORY OF OSCE COMMITMENTS AND OTHER PRINCIPLES FOR DEMOCRATIC ELECTIONS

### General Principles and OSCE Commitments

1. OSCE participating States “recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism, as well as their common determination to build democratic societies based on free elections and the rule of law.”<sup>1</sup>
2. “The participating States express their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation that they seek to establish in Europe. They therefore reaffirm their commitment to implement fully all provisions of the Final Act and of the other [O]SCE documents relating to the human dimension and undertake to build on the progress they have made.”<sup>2</sup>
3. “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.”<sup>3</sup>
4. “They recognize that co-operation among themselves, as well as the active involvement of persons, groups, organizations and institutions, will be essential to ensure continuing progress towards their shared objectives.”<sup>4</sup>
5. OSCE participating States “reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.”<sup>5</sup>
6. “They confirm that they will respect each other’s right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other OSCE commitments.”<sup>6</sup>
7. “They 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:<sup>7</sup> ... the

<sup>1</sup> Copenhagen Document, *op. cit.*, Preamble. *N.B.*, all citations are to the materials listed in the References at the end of this report.

<sup>2</sup> *Id.*, (OSCE substituted for CSCE).

<sup>3</sup> *Id.*, 6 (excerpt).

<sup>4</sup> *Id.*, Preamble.

<sup>5</sup> *Id.*, 3.

<sup>6</sup> *Id.*, 4 (CSCE changed to OSCE).

<sup>7</sup> *Id.*, 5.

activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law. Respect for that system must be ensured;<sup>8</sup> ... human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law;<sup>9</sup> ... all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.”<sup>10</sup>

8. “The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out [in the Copenhagen Document] will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.”<sup>11</sup>
9. “Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.”<sup>12</sup>

## 1. Introduction

1.1 Through the Document of the Copenhagen Meeting of the Conference of the Human Dimension and other instruments, the OSCE participating States have recognized the special importance of political pluralism in achieving their shared goals for co-operative development of the human dimension.<sup>13</sup> They have committed themselves to the establishment and further development of democratic institutions, including representative government and the rule of law.<sup>14</sup> “They recognize the importance of pluralism with regard to political organizations.”<sup>15</sup> They have further agreed that elections in particular will be monitored<sup>16</sup> and assessed in terms of specific commitments, as well as in terms of the process of consolidating democratic institutions.<sup>17</sup>

1.2 The OSCE participating States have recognized that periodic, genuine elections are the foundation of representative government;<sup>18</sup> the right to participate in elections that are free and fair is a fundamental human right<sup>19</sup> guaranteed by international law,<sup>20</sup> and that to be democratic an election process must be universal, equal, fair, secret, free, transparent, and accountable.<sup>21</sup>

<sup>8</sup> *Id.*, 5.5.

<sup>9</sup> *Id.*, 5.7.

<sup>10</sup> *Id.*, 5.9.

<sup>11</sup> *Id.*, 24. All OSCE participating States are members of the United Nations and are therefore subject to the provisions of the Universal Declaration of Human Rights, as well to other UN General Assembly resolutions and documents pertaining to democracy, democratic elections, and human rights. Fifty-one participating States are parties to the International Covenant for Civil and Political Rights (ICCPR) and are subject to its provisions. In addition, 45 participating States are members of the Council of Europe and are subject to the European Convention on Human Rights and decisions of the European Court of Human Rights.

<sup>12</sup> *Id.*

<sup>13</sup> See *id.*, Preamble.

<sup>14</sup> See, for example, *id.*, 6 and Preamble.

<sup>15</sup> *Id.*, 3.

<sup>16</sup> See *id.*, 8.

<sup>17</sup> See Istanbul Declaration, Charter of European Security, 25.

<sup>18</sup> See Copenhagen Document, 6.

<sup>19</sup> See *id.*, 5.

<sup>20</sup> See *id.*, 24.

<sup>21</sup> See ODIHR Bluebook, *op. cit.*, 3; see, generally, Copenhagen Document, esp. 6-8.

1.3 Since the adoption of the Copenhagen Document, there has been continued development of international standards for democratic elections both within the OSCE area and elsewhere in the world. This has made it possible to restate, clarify, and develop the principles of democratic elections set forth in the Copenhagen Document.

1.4 The OSCE commitments and other principles related to democratic elections contained herein are organized under the following sections, reflecting the various aspects of the electoral process:

1. Introduction;
2. Legal Framework: Scope and System;
3. Equality: Constituencies and Districting;
4. Impartiality: Administration and Management;
5. Universality: Right to Vote;
6. Candidacies and Political Parties;
7. Election Campaign, Including Financing and Media;
8. Voting Process;
9. Results: Determination, Publication, and Implementation;
10. Complaints and Appeals;
11. Domestic and International Observation; and
12. Co-operation and Improvement.

## 2. Legal Framework: Scope and System

2.1 OSCE 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:<sup>22</sup> ... a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate.”<sup>23</sup>

2.2 “To ensure that the will of the people serves as the basis of the authority of government, the participating States will<sup>24</sup> hold free elections at reasonable intervals, as established by law;<sup>25</sup> [and] permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote.”<sup>26</sup>

2.3 The composition of primary legislative bodies at all levels of government should be selected through direct elections.<sup>27</sup> Other high public offices, including for senior officials of the state and executive branch, should also be filled through direct election, indirect election by the elected chamber of the national parliament or another representative body, or, for regional or local posts, the relevant legislature.<sup>28</sup>

<sup>22</sup> *Id.*, 5.

<sup>23</sup> *Id.*, 5.2.

<sup>24</sup> Copenhagen Document, 7.

<sup>25</sup> *Id.*, 7.1.

<sup>26</sup> *Id.*, 7.2.

<sup>27</sup> See Copenhagen Document, 6 and 7.2; ECHR Prot. 1, Art. 3; ECtHR, *Mathews, Mathieu-Mohin* cases; CDL Guidelines, I, 5; ACEEEO, 1(1), 2(1), 10(1-2). See esp. CDL Guidelines, *id.*: “The following must be elected by direct suffrage: i. at least one chamber of the national parliament; ii. sub-national legislative bodies; iii. local councils.” Compare CIS Electoral Convention, *op. cit.*, 1(1), which states that elections are “the basis of elective bodies of governmental power and local self-government, of other bodies of people’s (national) representation, of legitimacy of bodies being elected, elective officials.” See also CoE Local Self-Government Charter, Preamble, and especially Art. 3(2): “Th[e] right [to local self- government] shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them.”

<sup>28</sup> See ACEEEO, 2: “The parties recognize that the election standards are the following: 2.1 the right to elect and be elected to bodies of state power and bodies of local administration (bodies of local self-government), other bodies of popular (national) representation, elective state and municipal offices ...”

2.4 The system for direct election of legislators and other public officials is a matter for national determination, provided the system operates transparently; is based on universal and equal suffrage of voters; and does not discriminate among candidates and political parties.<sup>29</sup> In choosing an electoral system, states should take into account to what extent it gives effect to the will of the voters,<sup>30</sup> preserves political pluralism,<sup>31</sup> and protects the interests of minorities and other groups in society.<sup>32</sup>

2.5 A clear and detailed legislative framework for conducting elections must be established through statutory law,<sup>33</sup> either in a comprehensive code or through a set of laws that operate together consistently and without ambiguities or omissions.<sup>34</sup> Except in extraordinary cases – in which serious deficiencies have been revealed in the legislation or its application and when there is an effective political and public consensus on the need to correct them – amendments to the law may not be made during the period immediately preceding elections,<sup>35</sup> especially if the ability of voters, political parties, or candidates to fulfil their roles in the elections could be infringed.<sup>36</sup>

### 3. Equality: Constituencies and Districting

3.1 “To ensure that the will of the people serves as the basis of the authority of government, the participating States will<sup>37</sup> ... guarantee universal and equal suffrage to adult citizens.”<sup>38</sup>

<sup>29</sup> See Copenhagen Document, 5.2, 6; UDHR, 21(3); CDL Guidelines, I, 4; ODIHR Legal Review Guidelines.

<sup>30</sup> The ICCPR, 25, guarantees “the free expression of the will of the electors”, and the ECHR, Protocol. 1, 3, ensures “the free expression of the opinion of the people”; these are generally taken to mean that an election system must lead to a genuinely representative government. The UNHRC Comments, 21, applied the ICCPR provision to the equality of voting rights, *e.g.*, in terms of constituencies and redistricting. Panels asked to assess the representativeness of the results of elections have been cautious, however, especially when asked to review the legality of an entire method of election. In the *X. v. United Kingdom* and *Liberal Party v. United Kingdom* decisions, the European Commission of Human Rights refused to rule that the results of elections in single-mandate districts were unrepresentative since the award of mandates was not proportional to the votes received. In the former case, the Commission concluded that the phrase about “free expression” in ECHR Protocol 1, Art. 3, referred to the voter’s freedom in voting and was not intended to apply to the election system. Despite the absence of a clear legal baseline concerning the representativeness of the results of elections, broader considerations of legitimacy – including under Copenhagen Document 6 and other paragraphs – would apply against a system that seriously distorted the results of elections.

<sup>31</sup> Similar to the question of the representativeness of government, the effect of a system of elections could be assessed – including under Copenhagen Document Preamble and par. 3 – with respect to its effects on political pluralism. At the same time, however, it should be noted that states have a right to achieve certain purposes through their systems of representation; one legitimate purpose is to achieve stability of government and avoidance of fragmentation in legislative bodies.

<sup>32</sup> See UN Minorities Declaration; CDL Guidelines, I, 2.4.b; and ODIHR *Guidelines to Assist National Minority Participation in the Electoral Process* (Warsaw, OSCE/ODIHR, 2001), (Minority Electoral Guidelines). See esp. Copenhagen Document, 31:

“Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

“The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.”

The CIS Electoral Convention, 18(1)(b), excludes from its prohibition against discrimination “special measures undertaken in order to provide for adequate representation of any strata of the country’s population, in particular of national minorities and ethnic groups, which actually is, due to political, economic, religious, social, historical and cultural conditions, deprived of the possibility to avail itself of an equal standing in respect of political and election rights and freedoms as the rest of the population”.

<sup>33</sup> See EComHR, Greek case; CDL Guidelines, II, 2.a: “Apart from rules on technical matters and detail ..., rules of electoral law must have at least the rank of a statute.” The CIS Electoral Convention, 1(3), states: “The citizen’s right to elect and be elected should be fixed in the Constitution and/or in the laws. Its execution should be determined by laws and other legal acts. ...” The Convention, 19(2)(b), also calls for action to adopt “the entire election legal framework” in a legislative manner and not by executive decree.

<sup>34</sup> The UNHCR Comments, 19, indicate that, “... elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights.”

<sup>35</sup> See CDL Guidelines, II, 2.b: “The fundamental elements of electoral law ... should not be open to amendment less than one year before an election.”

<sup>36</sup> See the ODIHR’s final reports on the 2000 Georgian presidential election and 1999 Estonian parliamentary elections.

<sup>37</sup> Copenhagen Document, 7.

<sup>38</sup> Copenhagen Document, 7.3.

3.2 The delineation of constituencies in which elections are conducted must preserve the equality of voting rights by providing approximately the same ratio of voters to elected representatives for each district.<sup>39</sup> Existing administrative divisions or other relevant factors (including of a historical, demographic, or geographical nature) may be reflected in election districts, provided the design of the districts is consistent with the equality of voting and fair representation for different groups in society.<sup>40</sup>

3.3 When necessary, redrawing of election districts shall occur according to a predictable timetable and through a method prescribed by law and should reflect reliable census or voter registration figures. Redistricting should also be performed well in advance of elections, be based on transparent proposals, and allow for public information and participation.<sup>41</sup>

#### 4. Impartiality: Administration and Management

4.1. The administration of elections must be conducted autonomously, free from government or other interference, by officials or bodies operating transparently under the law.<sup>42</sup> Appointees to the election administration shall be required to carry out their responsibilities in an effective and impartial manner and should be individuals with the competence and commitment to do so.<sup>43</sup>

4.2. The impartiality of the election administration can be achieved through either a mainly professional or politically balanced composition.<sup>44</sup> Appointments to election administration positions at all levels should be made in a transparent manner, and appointees should not be removed from their positions prior to the expiration of their term, except for legal cause.<sup>45</sup>

4.3 Election institutions should have sufficient funding and other state support to enable them to operate effectively. They should be assisted by a professional secretariat, preferably also autonomous, and receive the support and co-operation of other agencies.<sup>46</sup> With respect to conducting election-related activities, decisions

<sup>39</sup> See generally *id.*; UDHR, 1, 2, 21(3); ICCPR, 25(b); ECtHR, *X v. United Kingdom and Liberal Party* cases; CIS Electoral Convention, 3(1); CDL Guidelines, I, 2.2, 2.4.b and 2.5; ACEEEO, 9(1.1-1.2). See esp. CDL Guidelines, I, 2.2: "Equal voting power: seats must be evenly distributed between the constituencies. ... ii. It entails a clear and balanced distribution of seats among the constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged."

<sup>40</sup> See UN Minorities Declaration, 2(2); UNHRC Comments, 21; CDL Guidelines I, 2.4; ODIHR, *Minority Electoral Guidelines*; ACEEEO, 9(1.1)-(1.2). The UNHRC Comments, *id.*, state in the pertinent part: "The principle of one person, one vote must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group ..."

<sup>41</sup> See CDL Guidelines, I, 2.2, e.g., I, 2.2.vii: "When constituency boundaries are redefined ... it must be done ... impartially; ... without detriment to national minorities; [and] taking into account the opinion of a committee, the majority of whose members are independent ..."

<sup>42</sup> See UNHRC Comments, 20; CDL Guidelines, II, 3.1; ODIHR *Legal Review Guidelines*, VI; ACEEEO, 5(2.5), 13; IPU, 4(2). See, for example, IPU, *id.*, which indicates: "... States should take the necessary ... steps to ensure the progressive achievement and consolidation of democratic goals, including through the establishment of a neutral, impartial or balanced mechanism for the management of elections. ...." Emerging democracies, without a strong tradition of accountability for government administration, often prefer to achieve impartiality through the formation of independent election commissions. See, for example, CIS Electoral Convention, 11(1), 19(2)(j); ACEEEO, *id.*

<sup>43</sup> See, for example, *id.*: "... States should ... [e]nsure that those responsible for the various aspects of the election are trained and act impartially."

<sup>44</sup> See *id.*; ODIHR *Legal Review Guidelines*, VI.

<sup>45</sup> See *id.*, VIA. See also CIS Electoral Convention, 11(3) (premature termination of election bodies or their members to be carried out as determined by the law).

<sup>46</sup> These principles are based on the observations and recommendations of several ODIHR election observation missions (EOM). See, for example, ODIHR final reports on the 2000 Albanian local elections (appropriate staff needed for Central Election Commission); 2002 parliamentary elections in the former Yugoslav Republic of Macedonia (funding and support for autonomous secretariat recommended); and 2000 Croatia House of Representatives elections (additional administrative support for State Election Commission recommended).

of electoral bodies, adopted within their areas of competence, shall be binding, and the operations of other state agencies must be subordinate to those of the election administration.<sup>47</sup>

4.4 It is desirable for the election administration, especially the central election authority, to be established on a permanent basis<sup>48</sup> and, if possible, provided with a regular budgetary allocation, so that essential election-related functions and programmes can be carried out on a continuous basis.<sup>49</sup> Core members of permanent election bodies should be granted definite tenure of office,<sup>50</sup> and membership should rotate on a regular basis.<sup>51</sup>

## 5. Universality: Right to Vote

5.1 “To ensure that the will of the people serves as the basis of the authority of government, the participating States will<sup>52</sup> guarantee universal and equal suffrage to adult citizens.”<sup>53</sup>

5.2 The guarantee of universal and equal suffrage requires that individuals be permitted to vote on a non-discriminatory basis and without any distinction based on social or economic factors, physical disability, ethnic background, or political belief.<sup>54</sup> Exceptional circumstances, such as the need to provide more effective representation for women, national minorities, or other groups, may justify measures to provide them enhanced voting rights.<sup>55</sup>

5.3 All eligible citizens shall have the right to vote in elections. Non-citizens may be granted the right to vote in sub-national elections pursuant to an applicable international agreement or in other circumstances.<sup>56</sup>

5.4 The guarantee of universal suffrage requires that individuals be eligible to vote once they reach the age of majority<sup>57</sup> and that their suffrage cannot be suspended or withdrawn except for reasons of legal incapacity (e.g., based on mental incapacity) or conviction for a serious criminal offence. Withdrawal of individual franchise must be based on judicial action, and, in the case of criminal conviction, must be proportionate to the nature of the offence.<sup>58</sup>

<sup>47</sup> See CIS Electoral Convention, 11(6): “Decisions of electoral bodies, adopted within the framework of competence, are binding for executive authorities, state institutions, local self-governments, political parties and other public formations, their representatives, organizations, officials, voters, lower electoral bodies, other persons and organizations mentioned by laws.”

<sup>48</sup> See, for example, CDL Guidelines, II, 3.1.c; ODIHR, Legal Review Guidelines, *id.* See also the ODIHR’s final reports on the 2000 Romanian national elections and the 1999 Slovak Republic presidential elections (need for permanent election administration).

<sup>49</sup> See, for example, ODIHR final report on the 2001 Croatian local elections (permanent body needed to support SEC and continue services between elections); report of needs assessment mission on the 2003 Armenian presidential elections (sufficient resources required for election administration).

<sup>50</sup> See ODIHR, Legal Review Guidelines, VI.A.

<sup>51</sup> Election experts advise that continuity should be preserved and that sudden turnovers of membership be avoided through the adoption of such devices as “staggering” the terms of members of permanent election bodies.

<sup>52</sup> Copenhagen Document, 7

<sup>53</sup> *Id.*, 7.3

<sup>54</sup> See Copenhagen Document, 7.3; ICCPR, 25(b); CEDAW, 7(a)-(b); CERD, 5(c)-(d); Women’s Rights Convention, I; CDL Guidelines, I, 2.2-4; ODIHR Minority Electoral Guidelines; ACEEEO, 8(2), 12, 20 (2.3), 21 (2.2); IPU, 2(4), 4(1).

<sup>55</sup> See esp. Copenhagen Document, 31 (quoted previously). See also CDL Guidelines, I, 2.4.b: “Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria ... do not in principle run counter to equal suffrage.” The need to enhance the representation of women has recently been recognized in the CIS Electoral Convention, 10(2), which calls for “further steps aimed at providing women with fair and real, equally with men, possibilities to execute the right to elect and be elected ..., to elective posts both individually and as part of political parties (coalitions) on the terms and in accordance with the procedure stipulated by the Constitution, laws.”

<sup>56</sup> See Foreigners Convention; CDL Guidelines, I, 1.b; ACEEEO, 21 (2.12).

<sup>57</sup> See *id.*; UNHRC Comments, 14; ICCPR, 25(b); Child Rights Convention, 1; CDL Guidelines, I, 1.b & c; ACEEEO, 8 (1.1). The CDL Guidelines, *id.*, state: “[T]he right to vote must be acquired, at the latest, at the age of majority[.]” and the ACEEEO takes the same approach.

<sup>58</sup> See UNHRC Comments and ICCPR, *id.*; ECtHR, *Labita* and *Iwanczuk* cases; EComHR decisions; CDL Guidelines, I, 1.d; ACEEEO, 20 (1) & (2.1)-(2.2). The CDL Guidelines, *id.*, permit deprivation of the right to vote or be elected only if provided for by law, observing the proportionality principle, based on mental incapacity or criminal conviction for a serious offence, with the withdrawal of political rights or finding of mental incapacity imposed by express decision of a court.

5.5 Residence in the state may be required for the exercise of the right to vote.<sup>59</sup> To vote in local or regional elections, a reasonable period of residence in the area may be required.<sup>60</sup>

5.6 Registration of voters must be accomplished in an accurate, timely, and transparent manner, and individuals shall be given effective opportunity to understand their rights, check the accuracy of their registration, and ensure that errors are corrected.<sup>61</sup>

5.7 Secure mechanisms<sup>62</sup> should be implemented to permit absentee voting by persons who are temporarily away from their area of residence, especially if such persons are residing internally.<sup>63</sup> The absence of a permanent residence should not prevent an otherwise qualified person from being registered as a voter.<sup>64</sup>

## 6. Candidacies and Political Parties

6.1 “To ensure that the will of the people serves as the basis of the authority of government, the participating States will<sup>65</sup> respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination,<sup>66</sup> [and] 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.”<sup>67</sup>

6.2 States must permit candidates to seek elective office, either independently or as representatives of political parties or other organizations, without unnecessary obstacles.<sup>68</sup> Candidacies may be subject only to reasonable and equally applied registration procedures, such as a requirement to provide personal identification information, a personal statement or party endorsement, or evidence of a minimum level of public support.<sup>69</sup>

<sup>59</sup> See ECtHR, *Hilbe* case; EComHR, *X v. United Kingdom*. In the latter decision, p. 122, the European Commission of Human Rights found that a residence requirement in national elections was justified by several factors: “[F]irst, the assumption that a non-resident citizen is less directly or continuously interested in, and has less day-to-day knowledge of its problems; secondly, the impracticability for Parliamentary candidates of presenting the different electoral issues to citizens abroad so as to secure a free expression of opinion; thirdly, the need to prevent electoral fraud, the danger of which is increased in uncontrolled postal votes; and finally the link between the right of representation in the Parliamentary vote and the obligation to pay taxes, not always imposed on those in voluntary and continuous residence abroad.” The CIS Electoral Convention, 2(c), adopts a different approach, opting to exclude non-resident status from preventing voting by citizens in national elections: “[E]very citizen living or staying in the period of conducting of the national elections beyond the boundaries of their state has the voting rights equal to those pertaining to other citizens of their state. ...”

<sup>60</sup> See EComHR, *Polacco* case; CDL Guidelines, I, 1.c (ordinarily, a maximum of six months); ACEEEO, 8 (1.3). In the *Polacco* case, *id.*, the Commission indicated that the required period of residency for local elections may not exceed a few months.

<sup>61</sup> See, generally, ECHR, 8; Personal Data Convention, 108; CDL Guidelines, I, 1.2; ODIHR Legal Review Guidelines, VII; ACEEEO, 8(1.5), 21 (2.3-4); IPU, 2(2) & (4), 4(1).

<sup>62</sup> See ODIHR Legal Review Guidelines, XII.E. The CIS Electoral Convention, 3(3), states that, “assuring provision of the maximum convenience for voters”, but subject to implementation through the law, citizens should be provided an opportunity to vote through absentee and other means (including advance voting, mobile voting, or other procedures).

<sup>63</sup> See ODIHR final report on the 2002 parliamentary elections in the former Yugoslav Republic of Macedonia, p. 18.

<sup>64</sup> See ODIHR final report on the 2000 Croatian House of Representatives elections, p. 28.

<sup>65</sup> Copenhagen Document, 7.

<sup>66</sup> *Id.*, 7.5.

<sup>67</sup> *Id.*, 7.6. The CIS Electoral Convention, 9(2), insists that authentic elections are based on “real political pluralism, and ideological variety and a multi-party system that are exercised through functioning of political parties”. See also *id.*, Art. 19(g) (facilitation of political parties). Consistent with the previous practice in the CIS area, however, the Convention, in Art. 10(3) on Fair Elections, also stresses the role of independent candidacies and candidacies sponsored by “other public formations and subjects ... mentioned in the Constitution, laws.”

<sup>68</sup> See UDHR, 20(1), 21; UNHRC Kyrgyzstan report; ECHR, 14; ECtHR, *Podkolzina* case; CDL Guidelines I, 1.3, 2.3 and 3.1.b; ODIHR Legal Review Guidelines, VIII, A-B; ACEEEO, 4(5), 9(1.3), 14, 20; IPU, 3(1) and (7). See, for example, CDL Guidelines, 2.3.a: “Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities ...”

<sup>69</sup> See ODIHR Legal Review Guidelines, *id.*; ACEEEO, *id.* ACEEEO, 4(5) states: “Genuine elections shall ensure fair legal conditions for nomination, registration, refusal or cancellation of registration of candidates, lists of candidates of political parties (coalitions) and for

6.3 No additional qualification requirements, beyond those applicable to voters, may be imposed on candidates except, for certain offices, concerning age and duration of citizenship and/or residence.<sup>70</sup> Some categories of public employment may be made incompatible with candidacy, if justified by the nature of the position<sup>71</sup> or the potential for conflict of interest.

6.4 Denial of candidacy on the grounds that the programme of a candidate or party violates the constitution or that candidacy poses an unreasonable risk of violence must be based on a justified determination, subject to judicial review, that: (a) the programme of the candidate or party is based on ethnic hatred, political violence, or war propaganda or is otherwise inconsistent with fundamental democratic values; or (b) its conduct demonstrates that it is not prepared to respect the law or to confine itself to peaceful means in order to achieve its objectives.<sup>72</sup> Actions against candidacies on such grounds must be proportionate and not undertaken for political reasons.<sup>73</sup>

6.5 No discriminatory actions may be carried out against certain candidacies,<sup>74</sup> and no special advantages of an organizational or financial nature may be granted to other candidates or political parties,<sup>75</sup> except with respect to the submission of signature petitions or financial surety.<sup>76</sup> Any such advantages should be equally available and should reflect the parties' base of support or electoral record.<sup>77</sup>

## 7. Election Campaign

### A. General

7.1 "The participating States reaffirm that [1] everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...; [2] everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise

participation of all political parties (coalitions) in the election campaign. Requirements to registration shall be established in good time before the commencement of the election campaign; they shall be clear, definite, free from any conditions which may serve as a basis for discriminatory restrictions or possible abuses and shall be applied in a uniform manner." See also CIS Electoral Convention, 9(6): "Authentic elections assume equal and fair conditions for registration of candidates, lists of candidates and political parties (coalitions). Registration requirements should be clear, and they should not include requirements that may become the grounds for limitations or privileges of a discriminatory nature. Any arbitrary or discriminatory application of standards for registration in order to damage separate political parties (coalitions), candidates, lists of candidates is not allowed."

<sup>70</sup> See Copenhagen Document, 7.5 and 7.6; UDHR, 29-30; UNCHR Comments, 15; UNHRC Latvian case; ECHR, 10(2); CDL Guidelines, I, 1; ACEEEO, 4(5), 8(1.1), 20(3); IPU, 3(7). The CDL Guidelines, 1.1.a.iii, state that "the right to stand for election should preferably be acquired at the same age as the right to vote and in any case not later than the age of 25, except where there are specific qualifying ages for certain offices (e.g. member of the upper house of parliament, head of state)."

<sup>71</sup> See ECtHR, *Ahmad* case.

<sup>72</sup> See ECtHR, Turkish political cases (esp. *Refah Partisi* case, par. 98), *Stankov* case; EComHR, *Glimmerveen* case. The CIS Electoral Convention, 13(6), provides: "During an election campaign, there shall not be allowed abuse of the freedom of speech and freedom of mass communication, including appeals to a violent seizure of power, violent alteration of the constitutional system and breach of the territorial integrity of the state, appeals aimed at propaganda of war, terrorist, any other violent actions, appeals provoking a social, racial, national, ethnic, religious hatred and hostility."

<sup>73</sup> See ECtHR and EComHR cases, *id.* In its final report on the October 2002 general elections in Bosnia and Herzegovina (Warsaw, 9 January 2003), the ODIHR observed that the basis for international-community decisions to exclude individuals from running for election was not always clearly spelled out, the process was not transparent, and there was no effective means of judicial redress or right to a fair and public hearing. It was found that both international standards and OSCE commitments required these elements.

<sup>74</sup> See Copenhagen Document 7.5 and 7.6; CDL Guidelines, I, 2.3.a; ACEEEO, 14(2).

<sup>75</sup> See Copenhagen Document, 5.4

<sup>76</sup> See, for example, ACEEEO 14(5): "In the cases and in the procedure provided for by laws, nomination and registration of candidates, lists of candidates of political parties (coalitions) may be carried out by collection of the number of voters' signatures established by law or payment of an electoral (monetary) deposit or by means of other procedures which take into account, among other things, the parliamentary status of a political party (coalition), the number of votes received by a political party at the previous elections to the national legislative body (parliament)."

<sup>77</sup> See CDL Guidelines, I, 2.3.b: "Depending on the subject matter, equality may be strict or proportional. .... If it is proportional, political parties must be treated according to the results achieved in the elections. ..."

of these rights will be prescribed by law and consistent with international standards; [3] the right of association will be guaranteed. ....”<sup>78</sup>

7.2 “To ensure that the will of the people serves as the basis of the authority of government, the participating States will<sup>79</sup> 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;<sup>80</sup> [and] 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.”<sup>81</sup>

7.3 The fair and free atmosphere needed for effective political campaigning requires the state to provide election contestants equal opportunity to convey their messages to the electorate.<sup>82</sup> The government and all state bodies must provide equal access to public facilities (including indoor and outdoor meeting venues), services, and assistance<sup>83</sup> and must not discriminate among the contestants in terms of the application of laws, regulations, or administrative procedures.<sup>84</sup>

7.4 The commitment to ensure a fair and free atmosphere for campaigning also obliges state authorities to make every effort to prevent actions by private persons against election contestants that unfairly limit their ability to promote their candidates and programmes, including actions that violate the law or regulations.<sup>85</sup> States have a particular obligation to prevent and respond to any recourse to violence or intimidation against election participants.<sup>86</sup>

7.5 States shall provide, through the state media and other means, for effective programmes of voter information and education.<sup>87</sup> In areas where there is a significant national or linguistic minority, such programmes should also be conducted in the language or dialect of that minority.<sup>88</sup>

## **B. Financing**

7.6 States may establish reasonable limits on private financing of political parties and candidates in order to preserve fair competition during elections<sup>89</sup> and lessen incentives for corruption and undue influence in politics.<sup>90</sup>

<sup>78</sup> Copenhagen Document, 9.

<sup>79</sup> *Id.*, 7.

<sup>80</sup> *Id.*, 7.7.

<sup>81</sup> *Id.*, 7.8.

<sup>82</sup> See Copenhagen Document, 7.7; UDHR, 29(2)-(3); ECHR, 10(2); ECtHR, *Incal* case; CDL Guidelines, I, 3.1.a; ACEEEO, 5(2.2); IPU, 3 (3)-(4). There is less authority concerning the duration of an election campaign; on this point, the CIS Electoral Convention, 9(5), states: “Setting of a term of elections and their conducting [and other election actions] should be performed in the manner and in terms that allow the candidates, political parties (coalitions) and other players of the election process to place the full-fledged pre-election campaign on a broad footing.”

<sup>83</sup> See CDL Guidelines, *id.*: “State authorities must observe their duty of neutrality. In particular, this concerns: i. media; ii. billposting; iii. the right to demonstrate; iv. funding of parties and candidates.”

<sup>84</sup> See, for example, ODIHR final report on the 2002 parliamentary elections in the former Yugoslav Republic of Macedonia.

<sup>85</sup> See Copenhagen Document, 7.7. See also CIS Electoral Convention, 9(8) (obligation to prosecute violations of voter rights and election procedures).

<sup>86</sup> See IPU, 4(8): “States should take the necessary measures to ensure that parties, candidates and supporters enjoy equal security, and that State authorities take the necessary steps to prevent election violence.” See also ACEEEO, 2 (3).

<sup>87</sup> See IPU, 4(1): “In particular, States should ... initiate or facilitate national programmes of civic education, to ensure that the population are familiar with election procedures and issues.” See also CDL Guidelines, I, 3.1.b (previously quoted in part; see also following footnote).

<sup>88</sup> See CDL Guidelines, *id.*, iii: “The [voter] information must also be available in the languages of the national minorities. See also ACEEEO, 17(6): “The Parties shall use their best efforts [to] make the electoral information indicated by law available to representatives of national minorities, ethnic groups in their native language.”

<sup>89</sup> See ECtHR, *Bowman* and *Pierre-Bloch* cases; CDL Guidelines, I, 2.3.c-e; ODIHR Legal Review Guidelines, X.C, ACEEEO, 5(2.2); IPU, 3(3). The CDL Guidelines, I.2.3.e, state: “The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising.”

<sup>90</sup> See UNHRC Comments, 19, which states in part: “Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”

7.7 Any public funding or other support for candidates, political parties, and their election campaigns must be provided in an equitable manner, based on objective criteria such as the candidate or party's current support or results in recent elections and the amount of funds needed to campaign effectively.<sup>91</sup>

7.8 States shall require political parties and independent candidates in elections to disclose and report periodically on the campaign funds they have received and the sources thereof, as well as on their campaign expenditures and the purposes for which they were made.<sup>92</sup> The national election authority or another official body<sup>93</sup> should monitor and enforce the disclosure and reporting of campaign finances and publish the information in a suitable and timely manner.

7.9 States may restrict or prohibit financial or other material contributions or other assistance to political parties and candidates from certain sources, such as from foreign persons or organizations,<sup>94</sup> and shall prevent direct assistance from state bodies or public enterprises.<sup>95</sup> The precise nature of the impermissible sources and types of contribution or other assistance should be clearly identified in the law and specified, if necessary, through regulation by the competent state body.<sup>96</sup>

### C. Media

7.10 States should provide an adequate opportunity, on an equitable and non-discriminatory basis, for election contestants to inform the public about their candidacies and political programmes, including through the state media.<sup>97</sup>

7.11 States should encourage active media coverage of elections,<sup>98</sup> and election authorities must provide the media regular information, as well as other opportunities to cover the election process in a full and timely manner.<sup>99</sup> States should not impose special limitations on the media during elections except with respect to content that could unduly influence the voting (such as publicizing polling data before or during the voting<sup>100</sup> or running electoral advertising or election-related programming during a legally established blackout period).<sup>101</sup>

<sup>91</sup> See CDL Guidelines, I, 2.3.a-b; ODIHR Legal Review Guidelines, X.B; ACEEEO, 16(4). The CDL Guidelines, I, 2.3.a states: "Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to [*inter alia*] public funding of parties and campaigns." (The following paragraph, b, discussing whether equality may be either "strict" or "proportional", was quoted previously.)

<sup>92</sup> See ECtHR, *Pierre-Bloch* case; CDL Guidelines, I, 2.3.d; ACEEEO 16 (5)-(8). The cited CDL guideline merely states: "Political party, candidates and election campaign funding must be transparent." The cited ACEEEO provisions are much more detailed. See also CIS Convention, 12(5).

<sup>93</sup> See CIS Electoral Convention, 12(6) (control or supervision of campaign financing can be exercised either by electoral bodies or other bodies or officials).

<sup>94</sup> See ECHR, 16; ACEEEO, 2(7). The CIS Electoral Convention, 1(7), takes a strong position against "direct or indirect" foreign involvement in elections, including by "foreign citizens, persons without citizenship, foreign legal entities, international non-governmental movements". Under Art. 12(3) of the Convention, all foreign donations to candidates or political parties participating in elections, or other public organizations linked with a candidate or party, would be prohibited.

<sup>95</sup> See CDL Guidelines, I, 2.3.e.

<sup>96</sup> See ODIHR, Legal Review Guidelines, X.

<sup>97</sup> See CDL Guidelines, I, 3.1.b; ACEEEO 7, 17(6). The CDL Guidelines, *id.*, state: "The public authorities have a number of positive obligations; *inter alia*, they must: i. submit the candidatures received to the electorate; ii. enable voters to know the lists and candidates standing for election, for example through appropriate posting ...".

<sup>98</sup> See Copenhagen Document, 7.8.

<sup>99</sup> See CIS Electoral Convention, 13(3) (states to ensure that the press has the right to attend electoral body meetings, review election documents and materials, attend public campaign events, and be present during voting, vote counting, vote tabulation, and announcement of results).

<sup>100</sup> See ODIHR, Electoral Opinion Polls Study.

<sup>101</sup> See ODIHR final report on the 2001 Albanian parliamentary elections, p. 22 (campaign silence should be respected by parties and media).

7.12 States must ensure that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media.<sup>102</sup> This obligation extends to news reports, editorial comment, and all other content.

7.13 The state shall ensure that all parties and candidates are offered consistent and equivalent rates for campaign advertising.<sup>103</sup> During an election period, all media should be required to identify clearly the source of all advertising or other programming related to the elections that is sponsored by political parties, candidates, or others.<sup>104</sup>

7.14 States shall establish means through which the fairness of media coverage of the elections can be maintained but without unnecessarily limiting the ability of the media to report fully on elections and, in the case of the private media, to express views about the candidates, parties, and their programmes.<sup>105</sup> In particular, states should establish procedures to receive and act on complaints by election contestants concerning unfair or illegal media activities during an election.<sup>106</sup>

## 8. Voting Process

8.1 “To ensure that the will of the people serves as the basis of the authority of government, the participating States will<sup>107</sup> ensure that votes are cast by secret ballot or by equivalent free voting procedure.”<sup>108</sup>

8.2 The procedures that govern voting – at regular polling places, as well as in other special locations – must ensure that all voting is conducted in a secure, orderly, personal, and secret manner.<sup>109</sup>

8.3 Voting procedures should ensure that registered voters are promptly and adequately identified and that mechanisms are in place to prevent fraudulent voting.<sup>110</sup> Procedures should also be implemented to safeguard the integrity of ballots and other sensitive election materials before, during, and after the vote.<sup>111</sup>

8.4 Polling places must be established<sup>112</sup> in locations that ensure that voters have an equivalent opportunity to exercise their right to vote in a way that is not unduly burdensome.<sup>113</sup> Subject to necessary security controls, special voting procedures should be employed to permit sick, disabled, elderly, or geographically dispersed voters who are unable to reach the polls an opportunity to cast their votes.<sup>114</sup>

<sup>102</sup> See Copenhagen Document, 7.7, 7.8; OSCE, BiH media case; UDHR, 19; CDL Guidelines, I, 2.3.a.ii; ACEEEO, 4(3), 17; IPU, 3(4).

<sup>103</sup> See CDL Guidelines, I, 2.3: “In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.” See also ODIHR final report on the 2000 parliamentary elections in the former Yugoslav Republic of Macedonia.

<sup>104</sup> See ODIHR Legal Review Guidelines.

<sup>105</sup> See Copenhagen Document, 7.7 and 7.8; UDHR, 19; UNHRC Kyrgyzstan report, 21; ECtHR, *Lopes Gomes Da Silva and Oberschlik* cases; CDL Guidelines, I, 2.3.a.ii & c; ACEEEO, 4(3), 17; IPU, 3(4).

<sup>106</sup> See, for example, ODIHR final reports on the 2000 Kyrgyz Republic parliamentary and presidential elections and Georgian parliamentary elections.

<sup>107</sup> Copenhagen Document, 7.

<sup>108</sup> *Id.*, 7.4 (excerpt).

<sup>109</sup> See Copenhagen Document, 5.1 and 7.4; UNHRC Comments, 20; CDL Guidelines, I, 3.2; ACEEEO, 11 (1 and 3); IPU, 4(5). The CIS Electoral Convention, 5(4), also stresses the exclusion of “the possibility to exert any control or monitoring over filling in the voting paper by the voter ...” The CIS Convention also opposes any compulsion or coercion on voters to cast ballots in an election. *Id.*, Art. 8.

<sup>110</sup> See CDL Guidelines, I, 3.2.

<sup>111</sup> See, for example, ODIHR final report on the 2000 Albanian local-government elections, p. 19.

<sup>112</sup> See *id.*, ii: “[V]oters should always have the possibility of voting in a polling station. ...”

<sup>113</sup> See IPU, 2(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.”

<sup>114</sup> See CDL Guidelines, I, 3.2.ii-vi.

8.5 Polling procedures should ensure a calm and orderly atmosphere within the polling station and, to the extent possible, in the immediate vicinity. Voters must not be subjected to any form of harassment, intimidation, or coercive influence.<sup>115</sup>

8.6 Inside the polling place, there should be no display of party symbols, photographs of officials affiliated with a particular party, or political paraphernalia of any sort or broadcasting of news or other programming with political relevance.<sup>116</sup> Persons who are not authorized to participate in, or observe, polling operations should not be permitted to remain present.<sup>117</sup>

8.7 The polling board should have the authority to request security assistance from the relevant authorities in the event of a disturbance,<sup>118</sup> but, otherwise, the security forces should not enter a polling station or otherwise act in a manner that could influence the voting.<sup>119</sup> The locations of polling places and the immediately surrounding environment should be policed by the authorities to the extent necessary as dictated by local conditions.<sup>120</sup>

8.8 Applicable laws and regulations shall provide that all voting must be personal, and no exceptions should be made by election workers to permit any form of non-personal voting (including group, family, or informal proxy voting),<sup>121</sup> except when a voter who is not able to cast a ballot requires personal assistance in order to do so. In the latter situation, the assistance should be provided by someone of the voter's own choosing or by another person chosen in a neutral manner, who shall be obliged to respect the secrecy of the vote, and the potential for undue influence should be avoided.<sup>122</sup>

8.9 Absolute secrecy of voting must be preserved in all aspects of operations at the polling place, including with respect to the issuance of ballot papers, arrangement and number of voting booths or screens, and casting of ballots.<sup>123</sup>

8.10 Special voting, *e.g.*, voting conducted either in advance or on election day in residential facilities (including hospitals, other residential institutions, or places of detention or imprisonment), at special sites (such as military bases, diplomatic and consular facilities, or ships at sea), through absentee (including postal) balloting; or by other voting conducted outside the polling station (such as for ill or infirm persons), as well various forms of remote electronic voting, potentially gives greater effect to the right to vote.<sup>124</sup> Special or

<sup>115</sup> See Copenhagen Document, 7.4 and 7.7. The UNHRC Comments, 10, indicate: "Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced."

<sup>116</sup> No specific reference has been found on this point, but election observers regularly report violations of the principle of keeping political materials out of polling places in order to preserve the orderly and non-coercive atmosphere required for truly free voting.

<sup>117</sup> See ODIHR final reports on the 1999 Armenian and Uzbek parliamentary elections and 2000 Georgian and Tajik parliamentary elections and municipal elections in the former Yugoslav Republic of Macedonia (no unauthorized persons to remain in polling stations, including, in many cases, local officials).

<sup>118</sup> The Explanatory Report accompanying the CDL Guidelines, *op. cit.*, states: "Every electoral law must provide for intervention by the security forces in the event of trouble. In such an event, the presiding officer of the polling station (or his or her representative) must have sole authority to call in the police[,] ... since what is needed in such circumstances is an on-the-spot decision ..." The recommendation concerning assignment of this power to the presiding officer rather than the polling committee as a whole has not been included in this paragraph, since there is a division of views among election experts on this matter, especially with respect to how it would apply in certain circumstances.

<sup>119</sup> See, for example, ODIHR final reports on the 2002 Ukrainian and Latvian parliamentary elections and the 2001 Belarusian presidential elections.

<sup>120</sup> See IPU, 4(8) (quoted previously).

<sup>121</sup> See CDL Guidelines, I, 4.b: "Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited."

<sup>122</sup> No specific reference has been found on this point, but the principle follows from the overarching rules concerning the avoidance of violations of voter secrecy, security, and freedom of voting. Election experts regularly advise consideration of the factors mentioned in this sentence in connection with assistance to disabled voters.

<sup>123</sup> See ICCPR, 25(2); CDL Guidelines, I, 4.

<sup>124</sup> Less attention has been paid to the benefits of special voting than to the problems it creates from the perspective of security. Special voting was recently recommended in the CIS Electoral Convention, 3(3): "In the cases and in the course stipulated by the laws, the citizen should be provided with the possibility to exercise their right to vote through organization of an [advance] voting, voting outside the voting premises or other voting procedures assuring provision of the maximum convenience for voters."

electronic voting procedures must, however, be carefully designed and carried out in order to preserve ballot secrecy and accountability, while safeguarding against fraud and undue influence.<sup>125</sup>

## 9. Results: Determination, Publication, and Implementation

9.1 “To ensure that the will of the people serves as the basis of the authority of government, the participating States will<sup>126</sup> ensure that votes [are] reported honestly with the official results made public;<sup>127</sup> [and] ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.”<sup>128</sup>

9.2 The counting of ballots and determination of the results of voting must be a transparent process that is open to observation by representatives of election contestants, as well as other observers.<sup>129</sup> The summarized results shall be signed by the presiding official and offered for signature or recording of comments by other board members. The results should also be displayed to the representatives of election contestants and other observers present; posted for public inspection; and copies should be provided to all board members, any representatives of election contestants, and, if possible, to other observers in attendance.<sup>130</sup>

9.3 The transfer and receipt of results by election bodies responsible for consolidating the results of voting must also be transparent and permit observation by representatives of the contestants, as well as other observers.<sup>131</sup> Copies of consolidated results should also be provided to the representatives and, if possible, other observers present.<sup>132</sup> There should be means to ensure the integrity of the software and accuracy of the data for voting information that is transmitted electronically.<sup>133</sup>

9.4 The announcement of results – including numerical vote tallies (not only percentages) for different candidates or lists of candidates and, where applicable, the recipients of mandates awarded on the basis of proportional representation or other system that requires further calculation – should be carried out in an expeditious and transparent manner.<sup>134</sup> Final results may be delayed pending timely completion of appeals or required repeat elections, but, except in extraordinary circumstances, preliminary results should be released as soon as possible.<sup>135</sup>

9.5 Published results should include a table containing a complete breakdown of the vote by constituency (district) and region (in the event votes are consolidated by an intermediate election body), as well as by polling station (precinct),<sup>136</sup> except when the vote count is not conducted on a precinct basis. A breakdown of the votes

<sup>125</sup> See CDL Guidelines, I, 3.2; ACEEEO, 9(3).

<sup>126</sup> Copenhagen Document, 7

<sup>127</sup> *Id.*, 7.4 (excerpt).

<sup>128</sup> *Id.*, 7.9.

<sup>129</sup> See CDL Guidelines, I, 3.2.xiii; ODIHR Legal Review Guidelines, XIII; ACEEEO, 5(2.4); IPU, 4(6).

<sup>130</sup> See, generally, ODIHR Legal Review Guidelines, *id.*

<sup>131</sup> See CDL Guidelines, I, 3.2: “xiii. [C]ounting must be transparent. Observers, candidates’ representatives and the media must be allowed to be present. These persons must also have access to the records; xiv. results should be transmitted to the higher level in an open manner.”

<sup>132</sup> See ODIHR Legal Review Guidelines, *id.*

<sup>133</sup> The subject of this sentence has not been addressed in detail in existing norms or standards for election practice. As the transmission of results becomes increasingly computerized, there is a greater need for ways to check the integrity of the software and accuracy of data transfer.

<sup>134</sup> See, for example, ACEEEO, 5 (2): “Fair elections shall guarantee: ... 2.4. honest performance of electoral actions and electoral procedures provided for by laws, specifically during voting and vote counting; rapid provision of full information about all voting results, beginning from the level of election precincts, including provision of the possibility for observers to receive official copies or protocols of voting and/or election results from election bodies with subsequent official publication of all voting and election results within a reasonable time.”

<sup>135</sup> See, for example, ODIHR final report on the 2000 Croatian House of Representatives elections, p. 29.

<sup>136</sup> See ACEEEO, *id.* This principle is also supported by the conclusions of a number of recent ODIHR election observation missions.

by region or precinct may be omitted in the event that its disclosure could lead to discrimination or adverse actions against the population of that area.<sup>137</sup>

9.6 All sensitive election materials (including ballots, polling-station records, and counting protocols at all levels) should be retained after the election for a period of time specified in law, which, at minimum, shall be a period sufficient for the final resolution of all appeals, including to the courts.<sup>138</sup>

9.7 The mandate of a candidate who has won election may not be withheld or withdrawn by any state body (including executive agency, election authority, legislative body, court, or other body) except as required or authorized by law. The law upon which such action is based must not permit the imposition of sanctions in a summary or disproportionate manner and may not be applied in such a way as to infringe on the expressed will of the electorate, the right to be elected to office, or freedom of political or other opinion.<sup>139</sup>

## 10. Complaints and Appeals

10.1 OSCE 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:<sup>140</sup> ... everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;<sup>141</sup> administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available;<sup>142</sup> [and] the independence of judges and the impartial operation of the public judicial service will be ensured”<sup>143</sup>.

10.2 “The participating States, wishing to ensure greater transparency in the implementation of the commitments undertaken in the Vienna Concluding Document under the heading of the human dimension of the [O]SCE, decide to accept as a confidence-building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts as provided for in national legislation and international law; it is understood that proceedings may only be held in camera in the circumstances prescribed by law and consistent with obligations under international law and international commitments.”<sup>144</sup>

10.3 Election contestants must have the ability to submit complaints concerning all aspects of election operations, to have their complaints heard by the competent administrative or judicial body, and to appeal to the relevant court.<sup>145</sup> Voters shall have the ability to complain and appeal concerning a violation of their suffrage rights, including voter registration.<sup>146</sup>

<sup>137</sup> See ODIHR Legal Review Guidelines, XIII.F.

<sup>138</sup> See, for example, ODIHR final report on the 2001 Belarusian presidential election, p. 27.

<sup>139</sup> See Copenhagen Document, 7.9; ICCPR, 2(2), 5, 25(a); ECHR, Prot. I, par. 3; ECtHR, Turkish political cases, *Gaulieder* case, and other cases. See generally UNHRC Comments, esp. 10-17. The CIS Electoral Convention, 1(5), states: “Elected people [who] won a necessary number of votes ... shall assume their office in line with the procedures and the terms stipulated by the laws, and thus they take their responsibility ... and remain in office [until] expiration of the term of their powers or [until] their termination in another way that is regulated by the Constitution, laws in accordance with democratic parliamentary and constitutional procedures.”

<sup>140</sup> Copenhagen Document, 5.

<sup>141</sup> *Id.*, 5.10.

<sup>142</sup> *Id.*, 5.11.

<sup>143</sup> *Id.*, 5.12.

<sup>144</sup> *Id.*, 12 (OSCE substituted for CSCE).

<sup>145</sup> See CDL Guidelines, II, 3.3; ODIHR, Election Dispute Report and Legal Review Guidelines, XIV; ACEEEO, 4(6), 5(2.6), 18. The CDL Guidelines, *id.*, state: “d. The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.”

<sup>146</sup> See CDL Guidelines, I, 1.2.iv: “[T]here should be an administrative procedure – subject to judicial control – or a judicial procedure, allowing for the registration of a voter who was not registered ...”. See also CIS Electoral Convention, 16(1). See, generally, ODIHR, Election Dispute Report.

10.4 Election complaints and appeals should be subject to an expedited process of consideration that permits them to be resolved in a timely and effective manner.<sup>147</sup> The complaints and appeals process should not permit repetitive appeals that could prevent timely announcement of the results.<sup>148</sup>

10.5 All aspects of the consideration of complaints by election bodies and appeals to the courts must be transparent.<sup>149</sup> The results and reasons for decisions on complaints and appeals must be formally adopted, issued in written form, and announced publicly. The public record of election complaints and appeals should include sufficient detail about the complaint, its consideration, and resolution to provide a full understanding of the circumstances and issues involved.<sup>150</sup>

## 11. Domestic and International Observation

11.1 “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 [O]SCE participating States and any appropriate 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 endeavor to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.”<sup>151</sup>

11.2 “In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to<sup>152</sup> ... ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms;<sup>153</sup> allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.”<sup>154</sup>

11.3 Observers from international and domestic organizations should be permitted effective access to all election proceedings.<sup>155</sup> Observers should receive appropriate credentials for this purpose a sufficient period of

<sup>147</sup> See CDL Guidelines, II, 3.3; ACEEEO, 5(2.6); IPU, 4(9). The latter states: “States should ensure that violations of human rights and complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.” See also CIS Electoral Convention, 10(4)(f) (complaint and appeal procedures should be “quick and effective”). See, generally, ODIHR, Election Dispute Report.

<sup>148</sup> The CIS Electoral Convention, Art. 6(4), states: “The Parties hereto proceed from the assumption that there should not be undertaken actions or disseminated appeals to execute actions inducing or aimed at inducement to break or cancel or adjourn the term of elections, of execution of election actions and procedures set in accordance with the Constitution, laws.” See also ODIHR final report on the 2002 parliamentary elections in the former Yugoslav Republic of Macedonia.

<sup>149</sup> See, generally, CDL Guidelines, *id.*; ODIHR, Election Dispute Report and Legal Review Guidelines, XIV; ACEEEO, 18.

<sup>150</sup> See ODIHR final report on the 2002 parliamentary elections in the former Yugoslav Republic of Macedonia. See also ODIHR final reports on the 2002 Ukrainian parliamentary elections, 2001 Belarusian presidential election and 1999 Uzbek parliamentary elections (public decisions required); 1999 Kazakh parliamentary elections (report on disposition of cases required).

<sup>151</sup> Copenhagen Document, 8 (OSCE substituted for CSCE). See also *id.*, 24, quoted in the Introduction.

<sup>152</sup> Copenhagen Document, 10

<sup>153</sup> *Id.*, 10.3

<sup>154</sup> *Id.*, 10.4. See also *id.*, 24, quoted in the Introduction.

<sup>155</sup> See Copenhagen Document, 8; CDL Guidelines, II, 3.2; ACEEEO, 1(2.5), 6(5), 15, 19; IPU, 4(7). The CIS Convention would grant broad access for both domestic and international observers; see Arts. 14 (national observers) and 15 (international observers) thereof.

time prior to elections to enable them to organize their activities effectively. Applicable legal provisions and necessary regulation of observers should allow them to conduct their activities effectively, in accordance with the best international practices for observation.<sup>156</sup>

11.4 “Non-governmental organizations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law. They are an integral component of a strong civil society. We pledge ourselves to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms.”<sup>157</sup>

11.5 Representatives of the participating States “reaffirm our obligation to conduct free and fair elections in accordance with OSCE commitments, in particular the Copenhagen Document 1990. We recognize the assistance the ODIHR can provide to participating States in developing and implementing electoral legislation. In line with these commitments, we will invite observers to our elections from other participating States, the ODIHR, the OSCE Parliamentary Assembly and appropriate institutions and organizations that wish to observe our election proceedings. We agree to follow up promptly the ODIHR’s election assessment and recommendations.”<sup>158</sup>

11.6 “The ODIHR will play an enhanced role in election monitoring, before, during and after elections. In this context, the ODIHR should assess the conditions for the free and independent functioning of the media.

“The participating States request that co-ordination between the various organizations monitoring elections be improved, and task the ODIHR to consult all relevant organizations in order to develop a framework for co-ordination in this field. ....”<sup>159</sup>

11.7 Participating States shall invite the ODIHR to consider observing elections and, once the ODIHR decides to proceed, facilitate the entry of an assessment mission or establishment of an Election Observation Mission (EOM). Host states should assist the ODIHR to fulfil its election observation mandate, including by cooperating with the entry of observers subject to deployment by the ODIHR. Observers who are members of an ODIHR EOM shall be given unimpeded access to all levels of election administration, effective access to other public offices with relevance to the election process, and the ability to meet with all political formations, the media, civil society, and voters.<sup>160</sup>

## 12. Co-operation and Improvement

12.1 “The [OSCE] participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following: ... electoral legislation, administration and observation, ... political parties and their role in pluralistic societies ....”<sup>161</sup>

<sup>156</sup> See ODIHR Bluebook, CoE Observer Handbook, EC Observer Handbook. See also ACEEEO, 15.s

<sup>157</sup> OSCE, Istanbul Declaration, Charter of European Security, 27.

<sup>158</sup> *Id.*, 25.

<sup>159</sup> OSCE, Concluding Document of Budapest, 1994, Budapest Decisions, Chapter VIII, par. 12

<sup>160</sup> See, generally, ODIHR Bluebook.

<sup>161</sup> Copenhagen Document, 26.

12.2 Among the functions of the ODIHR is to “facilitate contacts and the exchange of information on elections within participating States.” In that capacity, the ODIHR will “foster the implementation” of the election-related commitments contained in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document 1990), including by compiling information on elections; facilitating arrangements for election observation; organizing proceedings on election practices and other democratic institutions; and considering the work of, and co-operating with, other organizations in this field.<sup>162</sup>

12.3 “[T]he representatives of the participating States ... appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR’s election assessments and recommendations.”<sup>163</sup>

<sup>162</sup> See OSCE, Charter of Paris for a New Europe, 1990, supplementary document to give effect to certain provisions contained in the Charter of Paris for a New Europe, “Institutional arrangements”, Part G (ODIHR substituted for former Office for Free Elections).

<sup>163</sup> Istanbul Declaration, 26.

## PART TWO

# EXPLANATORY COMMENTS ON THE INVENTORY OF OSCE COMMITMENTS AND OTHER PRINCIPLES FOR DEMOCRATIC ELECTIONS

This part contains a commentary on the contents of the accompanying document, “Inventory of OSCE Commitments and Other Principles Related to Elections”.<sup>164</sup> The Inventory first collects the various election-related commitments that have been made by OSCE participating States to date, particularly through the Copenhagen Document. These are presented as direct quotations and are included in the General Principles and OSCE Commitments, the Introduction, and several other sections.

The Inventory also includes additional principles on elections derived from international and regional human rights law, as well emerging norms and guidelines on election practices that appear to have achieved broad recognition and acceptance. On this basis, it is possible to restate, clarify, and further develop the body of existing norms, commitments, and principles for democratic elections that apply within the OSCE area.

In addition to the General Principles and OSCE Commitments, the document is organized into 12 parts corresponding to key areas of election rules and procedures, as follows:

1. Introduction;
2. Legal Framework: Scope and System;
3. Equality: Constituencies and Districting;
4. Impartiality: Administration and Management;
5. Universality: Right to Vote;
6. Candidacies and Political Parties;
7. Election Campaign, including Financing and Media;
8. Voting Process;
9. Results: Determination, Publication, and Implementation;
10. Complaints and Appeals;
11. Domestic and International Observation; and
12. Co-operation and Improvement.

The Inventory was developed through the work of an expert group on election law and administration convened by the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) in 2002 and early 2003. It followed the preparation and publication the previous year of a draft OSCE/ODIHR paper “International Standards and Commitments on the Right to Democratic Elections: A Practical Reference Guide to Democratic Elections Best Practice”.<sup>165</sup>

The OSCE Permanent Council welcomed the ODIHR’s initiative to develop a practical guide to democratic elections best practice, including a compilation of existing commitments and standards, and tasked it to further develop the draft and report on its progress by 30 June 2003.<sup>166</sup> Shortly thereafter, the OSCE Ministerial Council in Porto took account of the decision of the Permanent Council, called upon participating States to

<sup>164</sup> This commentary was prepared for the ODIHR by a consultant, Dr. Daniel Finn, who also served as rapporteur for the group of experts that considered the Inventory of commitments and principles.

<sup>165</sup> Warsaw, 20 November 2002.

<sup>166</sup> OSCE Permanent Council, Decision No. 509, “International Standards and Commitments: A Practical Guide to Democratic Elections Best Practice” (5 December 2002).

“strengthen their response to the ODIHR’s recommendations following election observations”, and instructed the Permanent Council to “consider the need to elaborate additional commitments on elections, in the spirit of enhanced co-operation with other international organizations, as well as among participating States, and to report to the next Ministerial Council meeting”.<sup>167</sup>

## General Principles and OSCE Commitments

**Paragraphs .1 and .2** are taken directly from the Preamble to the Copenhagen Document. They note the linkage of internationally recognized human rights and fundamental freedoms with the system of pluralistic democracy and the protections of the rule of law.

It is especially important to bear in mind that election rules and procedures, since they implement the right of the people to elect a representative government, must be assessed and interpreted in accordance with international human rights principles and standards. It is also very important to keep in mind with respect to elections their connection to the system of political pluralism and respect for the rule of law to which OSCE participating States have also committed themselves.

**Paragraph .3** repeats Copenhagen Document Paragraph 6, which contains a declaration that the “will of the people, freely and fairly expressed through periodic and genuine elections”, is the basis for governmental legitimacy. The participating States have committed themselves to respect the right of their citizens to take part in governance, including “through representatives freely chosen by them through fair electoral processes”.

**Paragraph .4** repeats a paragraph of the Copenhagen Document Preamble to emphasize the need for co-operation among the participating States, “as well as the active involvement of persons, groups, organizations and institutions ...”. The groups, organizations, and institutions referred to would, of course, include non-governmental and international and intergovernmental bodies.

**Paragraph .5**, from Copenhagen Document Paragraph 3, also highlights political pluralism as an essential part of the tripartite system of governance and includes democracy and the rule of law.

**Paragraph .6** repeats the provision of Copenhagen Document Paragraph 3 regarding the freedom of states to choose their political and other systems, provided they “ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with ... OSCE commitments”.

**Paragraph .7** is drawn from Copenhagen Document Paragraph 5 and addresses “elements of justice which are essential to the full expression of the inherent dignity and of the equal and alienable rights of all human beings”, including guarantees for human rights and fundamental freedoms in accordance with international law, and non-discrimination and equal protection of law.

**Paragraph .8** is taken from Copenhagen Document Paragraph 24 and commits the participating States to ensure that the rights and freedoms described in the Document “will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law ....” It states further that, “Such restrictions have the character of exceptions.” The states are thus to ensure that restrictions are not abused, imposed arbitrarily, or applied in a way that is contrary to international standards.

<sup>167</sup> OSCE Ministerial Council, Decision No. 7, “Election Commitments” (7 December 2002).

**Paragraph .9**, drawn from the same source, indicates: “Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.” Paragraphs 1.4 and 1.5 are very important rules of interpretation in assessing whether practices that affect human rights are consistent with international standards. They stand, in part, for the principle that even a permissible purpose cannot justify means that are excessive or unduly restrictive.

## I. Introduction

**Paragraph 1.1** is a summary of the OSCE commitments on political pluralism, representative democracy, and the rule of law made through the previously described commitments.

**Paragraph 1.2** summarizes the existing general OSCE commitments on elections in particular.

**Paragraph 1.3** takes note of the continued development of international standards on elections and the need for restatement, clarification, and further development.

**Paragraph 1.4** introduces the 12 aspects of the elections process under which the OSCE commitments and other principles can be organized to increase their value as guidance and as a basis for assessment of election practices.

## II. Legal Framework: Scope and System

**Paragraph 2.1** repeats the commitment in Copenhagen Document Paragraph 6 with respect to a representative and accountable system of government.

**Paragraph 2.2** repeats the basic commitments from Copenhagen Document Paragraph 7 with respect to periodic free elections, including to at least one chamber of the national legislature.

**Paragraph 2.3** is a new principle that would note that the commitment to direct elections has largely been extended to other legislative bodies at the regional and local level, as well as to certain senior posts in government (unless these are elected indirectly by an elected legislature or other representative body). This principle is reflected in the recent drafts of the Commonwealth of Independent States, the European Commission for Democracy through Law (Venice Commission), and the Association of Central and Eastern European Election Officials (ACEEEO) and is based on fundamental democratic principles contained in international human rights law.<sup>168</sup>

**Paragraph 2.4** recognizes that the election system is a matter of national determination, provided it meets certain generally recognized criteria. Other factors related to the choice of election system, including its representative character, pluralistic basis, and protection for minorities and other groups in society, are also mentioned.

**Paragraph 2.5** states that a clear framework for elections must exist in statutory law. Aspects of the legislative framework may also be provided for in the constitution or may be addressed through regulatory or

<sup>168</sup> *N.B.*, the references for the specific provisions of the Inventory of OSCE Commitments and Other Principles Related to Elections are contained in the footnotes to that document.

administrative action under proper statutory direction. In the cited European Commission of Human Rights case, it was determined that the absence of an election law for a protracted period (during which military rule was in effect) was itself in violation of the rights of individuals to participate in elections.

This paragraph also provides that election-related laws should not be amended during the period immediately preceding elections unless it is absolutely necessary to do so; there is a strong consensus in support, and the amendments would not infringe the ability of election participants to fulfil their roles in the process. It was not deemed advisable to mention any particular time periods or additional circumstances regarding legislative amendments, such as proposed by the Venice Commission, since the reasons for proposing late amendments to election laws vary widely.

### **III. Equality: Constituencies and Districting**

**Paragraph 3.1** repeats the guarantee contained in Copenhagen Document Paragraph 7.3 of universal and equal suffrage for adult citizens.

**Paragraph 3.2** addresses the need for election districts (constituencies) to be delineated in a way that preserves the equality of voting rights. While various factors may be taken into account in determining districts, their design may not diminish equality or unfairly affect the voting power of different groups in society. In view of the wide variety of geographical, demographic, and other relevant factors in the OSCE area, it was not considered advisable to go beyond these general principles.

**Paragraph 3.3** provides that necessary redistricting of constituencies must occur in a regular, legally determined way and be based on reliable population or voter information. Redrawing of districts should also be performed in a timely and transparent manner. The latter standards are phrased in a general way and do not go as far as the more specific guidelines proposed by the Venice Commission (see footnote to the text), which call for redistricting proposals to originate in an independent committee.

### **IV. Impartiality: Administration and Management**

The subject of actual election administration was not directly addressed in the Copenhagen Document and has also not been considered in detail in other declarations by OSCE participating States. The results of ODIHR election observation missions and other election activities, as well as studies and recommendations by other bodies, do, however, provide considerable guidance of both a general and detailed nature on this aspect of the election process.

The principles identified in this section have been limited to general matters related to the impartiality and effectiveness of election administration. The various functions of election administration, both during elections and in preparation for them, are not described herein, since there is a wide variety in election administration within the OSCE area, different levels of experience, and uneven availability of resources. As a result, it would appear best at this time to treat such matters as good practices rather than general principles. (A discussion of some of the best practices for the detailed functions of election administration is, however, contained in the following Background Report.)

**Paragraph 4.1** recognizes that an election administration should be autonomous and constituted of qualified persons who are required to act in an impartial manner. (Suggestions by other organizations concerning training and specific background for election officials were not included in this paragraph.) The term “autonomous” was

selected so as not to imply that election administration must be entirely independent of the government structure, since some OSCE countries operate elections using regular officials acting in an autonomous election role.

At the same time, it should be recognized that there is a trend in Central and Eastern Europe and the Commonwealth of Independent States supporting the formation of independent election commissions in the states in those regions. (Such an approach would be required for states that ratify the CIS Electoral Convention; see footnote in text.) This is understandable in terms of experience with the socialist system of government, in which neutral and accountable discharge of their responsibilities by government officials could not be assumed due to the incomplete separation of powers and mingling of executive and political channels of authority in decision-making. On this point, the Venice Commission included the following paragraph in its Guidelines on Elections, (par. 3.31):

“This is why independent, impartial electoral commissions must be set up from the national level to polling station level to ensure that elections are properly conducted, or at least remove serious suspicions of irregularity.”

**Paragraph 4.2** reflects the fact that two main models of election administration are followed in the OSCE area and elsewhere in the world, by indicating that the impartiality of election administration may be achieved through mainly neutral or politically balanced composition. In either case, impartiality can be further protected from interference by ensuring that electoral appointments are made transparently and that election administrators have some security of tenure, *i.e.*, will not be removed or replaced without cause.

**Paragraph 4.3** notes that election administration must have sufficient support from the state in order to operate effectively. It also contains the important principle (explicitly set forth in the CIS Electoral Convention) that election bodies should not be subordinate to other state agencies with respect to conducting election activities.

This paragraph also recommends that support to election administration include a professional secretariat, also autonomously organized if possible. Matters of staff support are not usually addressed in international instruments, but the views of experts (supported by ODIHR and other election observation findings) call special attention to the need for a strong and preferably autonomous staff organization.

**Paragraph 4.4** advises that at least some aspects of election administration should be put on a permanent basis. This would include at least the core members of an election administration (especially at the national level) and, if possible, involve a regular budgetary allowance.

Like the recommendations in the previous paragraph, those listed here are mainly not included in international instruments. Instead, these recommendations follow from the views of election experts (including those associated with the Venice Commission) and the results of election observations.

The recommendation that the membership of permanent election bodies should rotate on a regular basis is intended to avoid the disruption that occurs when the membership of such bodies turns over all at once or within a relatively brief period. This problem is often addressed through staggering the terms of appointees.

A related issue concerns the situation that is created when the overall membership of a permanent election body is changed either just before, or immediately after, an election. This practice has been followed in some of the states that have emerged from the former Yugoslavia. In either case, there is inevitably a reduction in confidence in the continuity and impartiality of election administration – either a perception that certain individuals are being appointed to ensure a certain outcome in a near-term election or that individuals are being appointed as the spoils of the victors in a recent election.

## V. Universality: Right to Vote

**Paragraph 5.1** repeats the guarantee from Copenhagen Document Paragraph 7.3 of universal and equal suffrage for adult citizens.

**Paragraph 5.2** states that the universality and equality of voting entails non-discrimination among individuals or groups for social or other reasons. In exceptional circumstances, however, women, national minorities, or other groups that are underrepresented may benefit from measures to enhance their representation.

**Paragraph 5.3** addresses citizenship requirements in elections. It reflects that citizenship is normally required for participation in national elections but that sometimes (particularly in case of an applicable international agreement) the franchise may be extended to non-citizens, especially in sub-national elections. The latter element is not phrased as strongly as was done by the Venice Commission, which indicated that permitting voting in local elections by resident non-citizens is “advisable”.

**Paragraph 5.4** takes up individual suffrage rights, with respect to both eligibility and potential disqualification. The meaning of “adult” citizen referred to in the Copenhagen Document is made somewhat more specific by substituting the concept of legal majority.

There is strong support in international law for the age of majority to occur no later than at 18 years. Proposals to include this age in the election principles were not followed, however, since most international instruments and expert bodies have not yet adopted it specifically for election purposes.

Withdrawal of suffrage is limited to two grounds: legal (or civil) incapacity or conviction for serious criminal offence. In the latter case, the withdrawal would have to be proportionate to the loss of rights. Loss of suffrage for either reason could be imposed only as a result of judicial action (although, unlike the case in certain countries, this paragraph would not require a separate judicial determination on the subject of voting rights).

**Paragraph 5.5** reflects that national residency may also be required for participation in elections, a requirement that has been upheld in a determination by the European Commission of Human Rights. (Some states, such as those that are in process of ratifying the CIS Electoral Convention, may, however, commit themselves to permit participation by non-resident citizens.)

In the case of local or regional elections, a reasonable period in the area may also be required – a principle supported by expert groups such as the Venice Commission and the ACEEEO. This paragraph does not attempt to indicate what period of local residency would be considered “reasonable”, as it appears better to leave that question to best practices. It should be added, however (see footnote to text), that the European Commission on Human Rights once decided that the period should not exceed a few months, and the Venice Commission has recommended that the period should ordinarily not exceed six months.

**Paragraph 5.6** addresses the important subject of voter registration, concerning which there is a wide range of specific practices in the OSCE area. The paragraph indicates that the registration process must be accurate, timely, and transparent and also that individuals shall have effective opportunity to check their registration and request corrections. (The latter opportunity would be supported by a right to appeal, to court if necessary, under the relevant provisions set forth in the Complaints and Appeals section below.)

A major issue concerning the voter list is not addressed in the Inventory. This is the question of access by voters to information in the list that does not apply to them personally or by other persons to voter information in the

list. Many countries permit access to voter list information by other voters, election contestants, or researchers, sometimes on a controlled or limited basis, to protect personal information about voters. Some countries even permit access by other organizations, including commercial interests, except that in many cases certain personal information is removed (sometimes at the request of the voter).

New international and national privacy regulations about the storage and handling of personal information – especially information available in electronic form – make it very difficult to define a clear and generally acceptable principle to govern access to voter list information. Clearly, election contestants have a legitimate interest in obtaining information from the list in order to assist them to reach the electorate and monitor the danger of fraudulent voting. At present, however, it is unclear how that interest can be exercised under the rules applicable in this area in many countries.

**Paragraph 5.7** addresses absentee voting. It recommends that absentee-voting procedures should be made available to those voters who are away from the areas of residence on election day. This principle is based on the fact that such procedures give much greater effect to the individual right to vote.

This paragraph calls for absentee voting to be implemented through secure mechanisms. It also addresses the issue of homelessness or the potential exclusion of voters who lack residential documentation by indicating that persons without a permanent address should not be excluded from voter registration.

Most of the published international standards on absentee voting focus on the security issue and do not, as such, recommend that such systems should be put into place. The views of election experts and the results of election observations do, however, support a recommendation that appropriate absentee-voting systems should be implemented for voters who are away from their home areas, especially if they are located elsewhere on national territory.

## **VI. Candidacies and Political Parties**

**Paragraph 6.1** repeats the provisions from Copenhagen Document Paragraphs 7, 7.5, and 7.6 concerning respecting “the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination; the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations;” and providing such parties and other 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”.

**Paragraph 6.2** re-emphasizes the importance of avoiding discrimination among individual candidates and political parties and other political organizations. It also adds the necessity of avoiding unnecessary obstacles to candidacies, specifying that registration of candidacies can only be subject to certain reasonable and equally applied registration procedures.

Common and acceptable registration requirements include providing personal identification information for candidates, a statement by the candidate and/or party concerning the nomination, and evidence of a minimum level of public support (such as through submission of a petition containing a reasonable number of voter signatures), all of which are specifically mentioned in the paragraph. Other requirements should be scrutinized carefully to determine whether they are truly necessary, unduly burdensome, or potentially discriminatory. On this point, it is also useful to refer to the provisions referred to in the footnotes that were recently adopted by the CIS and recommended by the ACEEEO.

**Paragraph 6.3** would make clear that no additional qualifications can be required to exercise the right to be elected than for the right to elect (vote), except in certain cases for factors related to additional age and/or the duration of citizenship or residence.

This paragraph also reflects international legal authority, including European Court of Human Rights case law (see footnotes), related to disqualification of candidacies based on the holding of certain types of government employment. Similarly, many political systems include provisions for prevention of conflicts of interest between overlapping governmental responsibilities – often also referred to as incompatibility. Thus, it is common for senior executive branch officials to be prevented by law from serving in the legislative branch.

**Paragraph 6.4** addresses concerns over candidacies that violate the national constitution or include incitement to violence. This paragraph also reflects international human rights case law and other authority related to the permissibility of excluding such candidacies in certain circumstances.

Relying in great part on the *Refah Partisi* case decided by the European Court of Human Rights and the *Glimmerveen* decision of the European Commission of Human Rights (see footnotes and references), the paragraph would permit a candidacy to be excluded for certain reasons that do not, as such, include illegal or violent conduct. These grounds would include that the programme of the party is “inconsistent with fundamental democratic values”, such as by including appeals for ethnic hatred, political violence, or war.

A party that advocates peaceful change of the constitutional order, including even by altering the boundaries of the state, would not be making an appeal that is inconsistent with fundamental democratic values (see footnotes). Such candidacies may not be excluded from the electoral process unless they also involve specific conduct that demonstrates that the candidate or group is not prepared to respect the law or limit itself to peaceful means.

Nor is it sufficient for a candidacy to present a risk of public disorder, including violence. The probability of disorder or violence initiated by others in response to a candidacy is not grounds for excluding the candidacy.

Finally, if candidacies are to be excluded for the reasons addressed in this paragraph, there must be a specific determination on the grounds, subject to judicial review, and the electoral sanction must be proportionate to those grounds.

**Paragraph 6.5** addresses special preferences for candidacies put forward by certain organizations, *e.g.*, registered or established political parties. Such preferences would be considered impermissible unless they are limited in nature and supported by objective criteria, such as the party’s base of support or electoral record.

Some of the limited advantages extended to established parties include exemption from, or limitation of, the requirement to submit signature petitions or financial surety. Such advantages are relatively common and tend to enhance political pluralism by facilitating the participation of political parties in elections. At the same time, however, these or other preferences can become discriminatory if they make participation in the electoral process too difficult for new entrants.

## VII. Election Campaign

### A. General

**Paragraph 7.1** incorporates parts of Copenhagen Document Paragraph 9 concerning the rights of free expression (including communication), peaceful assembly and demonstration, and association. As the excerpts

make clear, any restriction of these rights must be prescribed by law and be consistent with international standards.

**Paragraph 7.2** deals more directly with the protection of the above-mentioned rights in connection with election campaigns and is taken from Copenhagen Document Paragraph 7, especially 7.7 and 7.8. Through those paragraphs, OSCE participating States have committed themselves to create a fair and free atmosphere for political campaigning, unhindered by administrative action, violence, or intimidation, and not to place obstacles in the way of unimpeded access to the media on a non-discriminatory basis for all election participants.

**Paragraph 7.3** summarizes the relevant commitments in Copenhagen Document Paragraph 7 by indicating that states are required to provide election contestants equal opportunity to convey their messages to the electorate. This general principle would be made operational by including more specific standards, such as equal access to public facilities and services, and non-differentiation in terms of the application of laws, regulations, or administrative procedures.

This paragraph also makes clear that there should also not be discrimination among election contestants in terms of indirect state support to their campaigning, such as access to government facilities, services, or other assistance. This would include scheduling events in state-controlled halls or public spaces, hanging election posters in designated areas, access to postal delivery, or the like.

**Paragraph 7.4** expands on the commitment to ensure a fair and free atmosphere for campaigning, which was the subject of Copenhagen Document Paragraph 7.7. Paragraph 7.3 makes clear that the latter commitment requires the state also to make every effort to prevent actions by private persons that unfairly limit campaigning by election contestants, including actions that violate the law or regulations. (See the section on media for a related provision.)

Also, this paragraph emphasizes that the commitment to ensure a fair and free campaign atmosphere particularly requires states to prevent and respond to any recourse to violence or intimidation against election participants. Aside from the Copenhagen Document provision just cited, this obligation is recognized in publications of the Inter-Parliamentary Union and the ACEEEO.

**Paragraph 7.5** requires states to conduct effective programmes of voter information and education through state media and other means. In areas where there is a significant minority, such programmes should also be conducted in the language of that minority. While there are often disputes concerning the language(s) of ballot papers and other election materials, most experts believe that at least informational programmes and materials for voters should be available in their own language.

## ***B. Financing***

**Paragraph 7.6** recognizes that states may establish reasonable limits on private financing of political parties and candidates, especially during elections. This is consistent, *inter alia*, with the recent recommendations of the Venice Commission.

This paragraph would not commit states to impose limitations on political finance. It reflects, however, that many states have chosen to do so for the purposes mentioned in the paragraph, *viz.*, to lessen the incentives for corruption and undue influence in politics.

The paragraph also indicates that limitations on private financing must be “reasonable”. No attempt has been made to elaborate on what forms or levels of limitation are reasonable. Much would depend on the economic

circumstances of the country, the costs of reaching the electorate, and the evidence that limits on political finance are required by the factors mentioned.

**Paragraph 7.7** indicates that any public funding or support for election contestants must be provided in an equitable manner and based on objective criteria such as the party's recent support or electoral success. (The Venice Commission used the word "equal" in this regard but recognized that the equality in question could be either "strict" or "proportional", based on similar factors.)

**Paragraph 7.8** calls for states to require disclosure and reporting of election campaign funding by political parties and candidates. Up to now, this principle has not been explicitly established in international legal or political instruments, although international law (see cases cited in footnotes to this and previous provisions) supports the application of limits that, in order to be enforced effectively, would require disclosure and reporting.

The ACEEEO draft convention specifically calls for comprehensive disclosure and reporting of political financing. This is consistent with the strongly held view of election experts and observers that such provisions are necessary to enable the electorate to assess the relative level and type of financial support for candidates and political parties in deciding for whom to vote.

The paragraph also indicates that such disclosure and reporting should be monitored by the competent state agency (which may be an electoral body) and the resulting information published in a suitable way. (The latter provision could provide protection for the confidentiality of contributions from particular individuals, provided the amount and nature of their contribution were reflected.)

It should also be the case that the disclosure and reporting of private contributions by election contestants should be done in a timely manner that would permit voters to assess this information prior to voting. Due to the difficulty of determining a particular standard, however, this point has not been included in the recommended principle.

**Paragraph 7.9** recognizes the general practice for states to prohibit financial or other material contributions to election contestants from certain sources, such as foreign persons and organizations, state bodies, and public enterprises. The paragraph also provides that such prohibitions should be specifically described in law or regulations.

Restrictions on foreign support for election contestants or observers from certain international or foreign sources – especially international organizations and well-established non-governmental organizations – should not be extended beyond substantial financial and material support that could directly affect the ability of election contestants to conduct their campaign. It is useful to bear in mind in this connection the language in the Preamble and Paragraph 10 of the Copenhagen Document related to the role of persons, groups, organizations (including non-governmental organizations), and institutions in co-operating on the protection and advancement of human rights and democratic institutions. (Some of the relevant language from the Copenhagen Document is included in Paragraphs .4 and 11.2 of the Inventory, and other relevant language from the recent Istanbul Declaration is contained in paragraph 11.4.)

### **C. Media**

**Paragraph 7.10** calls upon states, including those that operate public media, to provide an adequate opportunity for election contestants to appear in voter information programmes.

**Paragraph 7.11** goes beyond the literal language of Copenhagen Document 7.8 (see the General subsection on Page 34), which provides that states must not prevent free access to the media by election contestants. Paragraph 7.11 indicates that states should encourage active media coverage of elections and that an election administration should provide the media regular information and opportunities to cover the elections. An affirmative obligation in this respect would be undertaken by states that ratify the recent CIS Electoral Convention.

This paragraph also makes clear that states should not impose special restrictions on the media during elections, except with respect to publication of certain materials (such as election polls or advertising) during the period immediately preceding elections. These matters often arise during the observation of elections, as indicated by the footnotes.

**Paragraph 7.12** also goes further in the same direction as Copenhagen Document Paragraphs 7.7 and 7.8 by providing that states must ensure equal access and fair treatment of election contestants on all programming by state media.

**Paragraph 7.13** requires states to ensure that all election contestants are offered consistent and equivalent rates for their campaign advertising in both state and private media. The paragraph also calls for all election-related advertising to be clearly identified.

**Paragraph 7.14** requires states to establish means to address the fairness of coverage of elections by private media. While this requirement could be met through normal legal channels, the paragraph also indicates that states should establish procedures to receive and act on complaints about unfair or illegal media activities during the election period.

## VIII. Voting Process

This section deals mainly with technical aspects of the voting process conducted inside polling stations or in other places or ways. No attempt has been made to address sometimes-controversial issues about the materials available to voters at the time they vote.

Perhaps the most difficult issue in this regard is the language, or languages, of ballot papers and other voting materials. (The other materials in question include published and posted official notices identifying candidates and giving instructions on how to vote.)

It is generally conceded (see Paragraph 7.5, discussed previously) that purely informational programmes and materials should be addressed to voters in their own language. For constitutional and other reasons, however, there is less agreement on whether and under what circumstances actual election materials should also be made available in minority languages or dialects.

A recent attempt to address this issue in a legal document is that of the CIS in its Electoral Convention. This treatment of the issue in the CIS Convention, however, only strengthens the view that the language issue about election materials cannot be well addressed through general principles at the present time. Article 9(4) of the Convention essentially refers the question of the issuance of election materials in languages other than the state language to determination by law; it is reproduced below (see also Art. 17[1] thereof):

“In the course of preparation for and conducting of elections, there is used the official language or official languages, and in the cases and in the course being fixed by laws, also the official languages of the

composite parts of the state territory, languages of nations and nationalities, national minorities and ethnic groups in the territories of their [concentrated residence].”

**Paragraph 8.1** repeats the language of Copenhagen Document Paragraphs 7 and 7.4 with respect to the necessity for the will of the people to be expressed in votes cast by secret ballot or equivalent free voting procedure.

**Paragraph 8.2** identifies the basic principles of the voting process as ensuring secure, orderly, personal, and secret balloting. These principles are consistent with those put forward in numerous sources, some of which are cited in the footnote to this provision.

**Paragraph 8.3** calls for efficient and effective voter identification and other anti-fraud mechanisms to be in place to ensure that only eligible voters are permitted to cast ballots. The paragraph also calls for other safeguards, especially with respect to the control of ballots and other sensitive election materials.

**Paragraph 8.4** indicates that polling stations must be established in places where voters would have an equivalent opportunity to vote in a way that is not unduly burdensome. These concepts are similar to those used by other recommendations about polling-station locations, such as those of the IPU (“equal and effective access to a polling station”).

This paragraph also indicates that, subject to necessary security controls, special voting procedures should be employed to enable voting by persons who cannot reasonably be expected to travel to a polling station.

**Paragraph 8.5** addresses the atmosphere within (“calm and orderly”) and, in the vicinity of, polling stations. It indicates that voters must not be subjected to harassment, intimidation, or coercive influence.

**Paragraph 8.6** makes clear that, inside the polling station, there should be no party symbols or other political paraphernalia. It also provides that unauthorized persons should not be permitted to remain present during voting and counting.

Many election laws do not clearly provide for the exclusion from election facilities of persons who are not specifically authorized to attend them. The exclusion in this paragraph is phrased in terms of not allowing such persons to “remain” in the polling station. This is because election observation shows that inevitably some unauthorized persons enter the polling station for ostensibly innocent purposes. For example, a candidate may come in to speak to his representatives at the station, or a local official may enter to check up on arrangements (physical, equipment, or staffing) there. Such visits are not of particular concern so long as they are of brief duration.

**Paragraph 8.7** calls for appropriate policing of polling stations and the immediate surrounding area. It indicates that the polling board should have the authority to request security assistance but that, otherwise, security forces should not enter the station or act in a manner that could influence the voting.

There is some disagreement among election experts whether it is more desirable to assign the responsibility for calling for security assistance to the chairman or presiding officer or the entire polling board or committee. For this reason, no specific practice is recommended in this regard.

**Paragraph 8.8** emphasizes that applicable laws and regulations must provide for all voting to be personal and that exceptions should not be made by election workers to permit group, family, or informal proxy voting except by voters who are unable to fill in or cast a ballot by themselves. For the latter voters, assistance may

only be provided in a way that is voluntary and avoids violation of voting secrecy or exercise of undue influence over the voter.

**Paragraph 8.9** indicates the highest importance attached to the secrecy of voting, including with respect to all operations at polling stations. The specific references to issuance of ballot papers, arrangement of voting booths or screens, and casting of ballots draw attention to the problems associated with ballot swapping and so-called open voting, *i.e.*, filling in a ballot outside the voting screen.

**Paragraph 8.10** deals with various forms of special voting and also deals with emerging systems of remote electronic voting in connection with this category. The paragraph recognizes that special voting procedures have the desirable effect of expanding the franchise but must be carefully designed and carried out to prevent fraud or undue influence.

## **IX. Results: Determination, Publication, and Implementation**

**Paragraph 9.1** repeats the provisions of Copenhagen Document Paragraph 7, including 7.4 and 7.9, with respect to honest reporting and official publication of results and implementation of the results through the installation in office of successful candidates. Note that, under Copenhagen Document Paragraph 7.9, winning candidates must not only be “duly installed in office” but “permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures”.

**Paragraph 9.2** characterizes the key criterion of the process of counting ballots and determination of results as transparency, fulfilled through such measures as openness to attendance at related operations by representatives of election contestants and other observers. In order to achieve the necessary level of transparency, members of election commissions should sign reporting forms and record any comments thereto; results should be shown to representatives and observers and posted for public inspection, and copies should also be given to all commission members and, if possible, to other representatives and observers.

**Paragraph 9.3** extends the transparency of proceedings during this phase of an election also to the transfer to, and receipt of, results by election bodies responsible for consolidating the vote count. Similar provisions for openness should be applied during this process, and, in addition, there should be a means for checking the accuracy of results that are transmitted electronically.

**Paragraph 9.4** calls for announcements of results to be carried out in an expeditious and transparent manner. Final results may be delayed due to appeals, but, except in extraordinary circumstances, preliminary results should be released as soon as possible. (Such circumstances could include extreme closeness of the vote or other results and the likelihood of unrest in case partial results might not reflect accurately the trend of the total results.)

**Paragraph 9.5** provides that all results should be announced in terms of the numbers of votes received by the contestants, and not only percentages. This is essential for the transparency of the count, since it enables election contestants and observers to compare the official results with reported returns.

The final published results should also include a complete breakdown of the voting by district, region, and polling station whenever possible. Election administrators may, however, avoid releasing regional or precinct-level tallies when publication of such data could cause discrimination or adverse action against the population in those areas.

**Paragraph 9.6** calls for the retention of all sensitive election materials, including ballots, polling-station records, and tabulation forms at all levels, to be retained at least for a sufficient period of time for the resolution of all appeals. Failure to do so could jeopardize the ability of contestants to pursue their complaints.

**Paragraph 9.7** addresses the commitment contained in Copenhagen Document Paragraph 7.9 (reprinted here as part of Paragraph 9.1) related to installation of successful candidates in office. It indicates that mandates cannot be withheld or withdrawn from elected candidates except under law and never in a summary or disproportionate manner.

Denial of mandate may be based on specific grounds that cause the person to be ineligible for assuming office due to a specific personal disqualification (such as certain types of employment) or incompatibility (with other positions). The paragraph, however, indicates that other grounds for denial are not permissible, especially if they could be applied in order to infringe on the will of the voters, the right to be elected, or freedom of political or other opinion.

## **X. Complaints and Appeals**

**Paragraph 10.1** recalls the basic provisions of the Copenhagen Document, in Section 5, on the rule of law *vis-à-vis* the protection of human rights. These include, in Paragraph 5.10-5.12 thereof, that there be effective redress against administrative decisions, that adverse decisions be justifiable and subject to remedy, and that the impartiality of judicial functions be ensured.

**Paragraph 10.2** repeats how OSCE participating States also committed themselves, through Copenhagen Document Paragraph 12, to make it possible for judicial proceedings to be subject to observation by representatives of other participating States, non-governmental organizations, and other interested persons. In addition, they agreed that such proceedings would not be held *in camera* except where provided by law and in accordance with international law and commitments.

**Paragraph 10.3** requires that election contestants (candidates and parties or other organizations proposing candidates) have the ability to submit complaints concerning all aspects of election administration and also to appeal to the relevant court. The paragraph also provides that individual voters should have similar abilities with respect to violations of their suffrage rights, *e.g.*, voter registration.

**Paragraph 10.4** indicates that election complaints and appeals should be resolved in a timely and effective manner. In addition, the appeals process should be designed so that repetitive appeals do not prevent timely announcement of results.

**Paragraph 10.5** requires that all aspects of the election complaint and appeals process be transparent. This means that, to the extent possible, all parts of the record of consideration of complaints and appeals should be publicly disclosed and published, including the decisions and reasoning adopted by election bodies or the courts.

## **XI. Domestic and International Observation**

**Paragraph 11.1** quotes in its entirety Copenhagen Document Paragraph 8 with respect to the desirability of international and domestic election observation and the need to facilitate arrangements for observers.

**Paragraph 11.2** repeats provisions of Copenhagen Document Paragraph 10, especially Paragraphs 10.3-10.4, related to the role and activities of non-governmental organizations with respect to promoting and monitoring the protection of human rights and fundamental freedoms, including in co-operation with similar bodies in other countries and also international organizations.

**Paragraph 11.3** calls for observers from qualified international and domestic organizations to be permitted effective access to all election proceedings. Observers should receive credentials for this purpose sufficiently in advance of elections in order to enable them to organize their activities effectively; applicable legal provisions and regulations should allow them to conduct their observation in accordance with the best international practices.

With respect to observers, particularly domestic observers, this principle does not attempt to address which sponsoring organizations should be considered qualified to seek observer accreditation. The best practice in this field, however, would encourage states to accept applications from unbiased and non-partisan organizations with a demonstrated commitment to the defence and promotion of human rights and democratic governance.

As Footnote 156 indicates, authoritative guides to best practice for election observation practices have been published by the Council of Europe, the European Commission, and the ODIHR. Other guides have also been published by other organizations, including international organizations and non-governmental organizations.

**Paragraph 11.4** repeats Paragraph 27 of the OSCE Istanbul Declaration, Charter of European Security. In this provision, the participating States pledged themselves to enhance the ability of non-governmental organizations (NGOs) to make their full contribution to the further development of civil society and human rights and fundamental freedoms.

**Paragraph 11.5** quotes the recent reaffirmation in the Istanbul Summit Declaration of OSCE election-related commitments, including concerning the ODIHR's role with respect to electoral legislation and observation. It also expresses the new commitment the participating States entered into there to "follow up promptly the ODIHR's election assessment and recommendations".

**Paragraph 11.6** highlights two paragraphs from the OSCE Concluding Document of Budapest, 1994, with respect to enhancing the role of the ODIHR, in co-ordination with other organizations, with respect to monitoring elections.

**Paragraph 11.7** describes the procedures followed by the OSCE and participating States with respect to ODIHR deployment of assessment missions and election observation missions (EOMs). It emphasizes that participating States shall grant an EOM unimpeded access to all levels of election administration, as well as access to other relevant public offices, and enable the EOM to meet with all political formations, as well as other interested sectors.

## **XII. Co-operation and Improvement**

**Paragraph 12.1** repeats the relevant portions of Copenhagen Document Paragraph 26 with respect to practical co-operative measures, including sharing of information and expertise, to help participating States continue to develop their democratic institutions. Among the areas identified for special attention were "electoral legislation, administration and observation" and "political parties and their role in pluralistic societies".

**Paragraph 12.2** summarizes the provisions from the OSCE Charter of Paris for a New Europe, 1990, on developing institutional arrangements for co-operation on electoral matters. In this provision, the function of the ODIHR in facilitating contacts and exchange of information on elections was considered, and further specific assignments of responsibilities to the ODIHR were made.

**Paragraph 12.3** repeats the pledge by OSCE participating States, made through the Declaration of the Istanbul Summit, reaffirming the commitment to elections that are “free and fair, in accordance with OSCE principles and commitments”. In that document, the states also agreed “to follow up promptly the ODIHR’s election assessments and recommendations”.

# PART THREE

## BACKGROUND REPORT: OSCE COMMITMENTS AND OTHER PRINCIPLES FOR DEMOCRATIC ELECTIONS<sup>169</sup>

### I. Introduction

Although the principle of democratic elections was set forth in the Universal Declaration of Human Rights (UDHR) in 1948 and the International Covenant on Civil and Political Rights (ICCPR) in the 1960s, the international community has only more recently addressed the issue in greater depth. The Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1953, but, until 1990, it applied only to the established democracies of Western Europe.

Since 1990, however, there has been substantial growth in the body of texts at national, regional, and global levels setting forth standards for democratic elections. The Document of the Copenhagen Meeting of the Conference on the Human Dimension,<sup>170</sup> adopted by the then-Conference for Security and Co-operation in Europe (CSCE), represented the most detailed compilation at its time of international standards for democratic elections and the first occasion in which states had made specific international commitments concerning the election process.

Since adopting the Copenhagen Document, OSCE participating States have made additional election-related commitments, *e.g.*, in the OSCE Istanbul Summit Declaration,<sup>171</sup> which contained the commitment to follow up promptly on election assessments and recommendations by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). Considerable work on election-related matters has also been performed by the institutions of the Council of Europe. Other actions have been taken through the United Nations and other global or regional bodies. In the OSCE area, related initiatives have also been undertaken by the Commonwealth of Independent States (CIS) and the Association of Central and Eastern European Election Officials (ACEEEO).

As a result of the regional and other institutions described in this Background Report and reflected in the accompanying Inventory of OSCE commitments and other principles, there is now a rich body of authority about elections – including legal norms, political commitments, general principles, case law, proposed standards and recommended practices, comments, and observations – distributed among numerous sources. Thus far, however, there is no convenient synthesis for practitioners concerned with electoral assistance and monitoring or for policy makers considering whether existing commitments and principles on elections are adequate or sufficiently comprehensive.

It was on this basis that the ODIHR initiated a review of the sources of electoral principles for practitioners and policy makers. In addition to its potential value as a reference guide, such a product could also help address other issues arising from the multiple texts and alternative sources on elections. It could also ensure that the clear vision of the Copenhagen commitments are not diminished by the multiplicity of sources. Pursuant to discussions at the 2000 OSCE Bucharest Ministerial Council meeting and the 2001 Human Dimension Seminar, in 2002, the ODIHR convened a group of international experts on election laws and standards.

<sup>169</sup> An earlier draft of this paper was prepared for the ODIHR by Jessie Pilgrim, Legal Consultant, USA, and submitted by the ODIHR to the OSCE Permanent Council under the title "International Standards and Commitments on the Right to Democratic Elections: A Practical Reference Guide to Democratic Elections Best Practice" (Draft, Warsaw, 20 November 2002).

<sup>170</sup> *Op. cit. N.B.*, except when actually referenced in the footnote, all citations are to materials described in the references at the end.

<sup>171</sup> Istanbul Declaration, *op. cit.*, Charter of European Security, 25

The group of experts combined legal, political, constitutional, electoral, and observational expertise; perspectives from North America, Europe, the Commonwealth of Independent States (CIS), and Central and Eastern Europe; and experience from various international institutions (the OSCE, Council of Europe, CIS, and European Union) and non-governmental organizations. The group met five times in Warsaw and Vienna, consulted on an ongoing basis throughout the duration of the project, endorsed the concept of an “inventory of norms, principles, standards and good practices”, and prepared two interim reports.

The ODIHR initially presented the group’s work in September 2002 to the OSCE Human Dimension Implementation Meeting in Warsaw and subsequently to the Permanent Council in Vienna. On 5 December 2002, the Permanent Council tasked the ODIHR “to further develop” the draft inventory and “to report on progress” by 30 June 2003.<sup>172</sup> On 7 December 2002, the Ministerial Council, in Porto, instructed the Permanent Council “to consider the need to elaborate additional commitments on elections, in the spirit of enhanced co-operation with other international organizations, as well as among participating States, and to report to the next Ministerial Council meeting”.<sup>173</sup>

The present document, which derives from a 2002 draft paper published by the ODIHR after its consideration at the Human Dimension Implementation Meeting,<sup>174</sup> is part of the progress report that the ODIHR has developed, with the assistance of the group of experts, on the subject of election commitments and principles currently applicable within the OSCE area. It is the third part of a four-part document, organized as follows: Executive Summary, Inventory of OSCE Commitments and Other Principles for Democratic Elections (Part One), Explanatory Comments on the Inventory (Part Two), Background Report (Part Three), and References (Part Four).

The current version of this report has been revised to identify more clearly what aspects of the standards and best practices included derive from existing OSCE commitments and other principles from international law or from other standards and best practices followed by states and recommended by international organizations and associations and leading experts. In addition to this Introduction, the present report contains three additional sections.

The second section, Background, gives a more detailed description of the overall development of international election principles and their application through political commitments, legal norms, and recommended standards and practices than could be included in this Introduction.

The third section, on Foundational Commitments and Obligations, examines the international norms and principles related to democratic elections. It describes the various universal norms and OSCE regional standards and commitments that govern the rights to popular participation, representative government, and rule of law, together with the closely related freedoms of expression, assembly, and association.

The fourth section, Components and Considerations for Democratic Elections, addresses the OSCE commitments and other principles applicable to the basic elements of a system of democratic elections. These elements are organized under 12 functional headings that are the same as those used in the organization of the accompanying Inventory of OSCE Commitments and Principles for Democratic Elections and the Explanatory Comments thereto. The final section also discusses specific examples of practices that have been found to be

<sup>172</sup> Dec. No. 509, OSCE/ODIHR Draft Paper “International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice”.

<sup>173</sup> Dec. No. 7, “Election Commitments”.

<sup>174</sup> OSCE/ODIHR, Draft Paper, *op. cit.*

consistent with, or contrary to, the international legal norms for democratic elections and OSCE commitments; identifies election principles established through regional legal and political instruments; and takes note of some related “best practices”.

## II. Background

A universal right to democratic elections and representative government was first proclaimed in Article 21 of the Universal Declaration of Human Rights (UDHR) in 1948.<sup>175</sup> The following year, the Council of Europe (CoE) was formed. Through the 1953 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), an attempt was made to make the principles of the Declaration legally binding. In addition to being enforceable among the member states themselves, the relevant obligations were also potentially justiciable between a member state and any person subject to its jurisdiction.

With respect to elections and representative government in particular, the obligations of states were made explicit in 1954 through Protocol No. 1, Article 3, to the ECHR. The application of this right was limited to the democracies of Western Europe.

In 1966, the UN General Assembly adopted a resolution to which were annexed two International Covenants: on Economic, Social and Cultural Rights and on Civil and Political Rights (ICCPR). Article 25 of the ICCPR amplified the substance of Article 21 of the UDHR concerning rights of citizens to participate in government directly or through representatives freely chosen in democratic elections. Through the UN Human Rights Committee’s oversight of compliance with the ICCPR’s requirements and its role under the first optional protocol to the Covenant, the ICCPR provided a measure of state accountability for global human rights obligations, including those related to elections. To varying extents, the right to democratic elections also became legally enforceable in other regions, for example, through the American Convention on Human Rights.<sup>176</sup>

Ratification and implementation of the ICCPR and progress in other monitoring and enforcement of democratic institutions, especially in the OSCE area, were facilitated by co-operation between the former East and West blocs through the “Helsinki process”, initiated in late 1972. The Helsinki process culminated provisionally in the Final Act of the Conference on Security and Co-operation in Europe (CSCE), 1975.<sup>177</sup> Although there was no mention of elections in the Helsinki Final Act, the Act contained 10 principles,<sup>178</sup> the so-called Decalogue, of which Principle VII addressed respect for human rights and fundamental freedoms, including freedom of thought, conscience, religion or belief.

Principle VII was the basis for the CSCE’s activities in the human dimension from 1975 onward. Fifteen years elapsed, however, before the principle could be translated into a set of detailed political commitments through the Document of the 1990 Copenhagen Meeting of the CSCE Conference on the Human Dimension – commonly known as the Copenhagen Document.

The Copenhagen Document extended the commitments by CSCE participating States on human rights and fundamental freedoms to elections and representative government. It also provided the electoral mandate, first,

<sup>175</sup> UDHR, *op. cit.* The relevant parts of the documents referred to in the Introduction are reproduced in the following section, Foundational Obligations.

<sup>176</sup> American Convention on Human Rights, Article 23, OAS Treaty Series No. 36, 1144 UNTS, 123, entered into force 18 July 1978 (“ACHR”); see also the African Charter on Human and Peoples Rights, Article 13, OAU Doc. CAB/LEG/67/3 rev. (entered into force 27 June 1981) (“ACHPR”).

<sup>177</sup> CSCE, Helsinki Final Act, *op. cit.*

<sup>178</sup> *Id.*, I, Declaration of Principles Guiding Relations between Participating States.

of the Office for Free Elections, set up in 1990 under the Charter of Paris for a New Europe, and subsequently,<sup>179</sup> of the Office for Democratic Institutions and Human Rights (ODIHR), established in 1992 and exercising the wider functions its name implies.<sup>180</sup>

Since the commencement of its election observation activities, the ODIHR has observed well over 100 elections in the OSCE region, deploying in the process a total of more than 10,000 international observers, often in conjunction with smaller teams dispatched by the OSCE Parliamentary Assembly, the Council of Europe, and the European Parliament. The written record of the ODIHR election observation missions (EOM), in particular the preliminary and final observation reports, as well as other analyses of electoral processes and legislative frameworks, constitutes a rich source of information on how the relevant commitments from the Copenhagen Document have been implemented in the OSCE region.

During the past decade or so, other institutions have also contributed to the advancement and progressive development of international standards related to elections, especially within the OSCE area. In Europe, the Council of Europe's (CoE) Parliamentary Assembly, Congress of Local and Regional Authorities of Europe, and the European Commission for Democracy through Law (Venice Commission),<sup>181</sup> – which co-operate under the framework of the Council for Democratic Elections – as well as the case law of the European Court of Human Rights, have developed regional standards for democratic elections. The Commonwealth of Independent States is the most recent contributor, endorsing a draft convention on election standards that will enter into force when ratified by three CIS states.<sup>182</sup> The Association of Central and Eastern European Election Officials (ACEEEO) also recently developed a proposed convention, which has been submitted to the CoE for consideration.<sup>183</sup>

On the global scale, the UN Human Rights Committee adopted a General Comment on standards for democratic elections in 1996.<sup>184</sup> Other UN bodies, as well as multilateral and non-governmental organizations, have also contributed to a growing list of international documents on the subject, as the consensus in support of democratic governance emerged in the 1990s.

Democratic elections have become a condition of membership in certain international organizations and serve even more broadly as a basis for the legitimization of governments within the international community.<sup>185</sup> International and regional institutions generally acknowledge that civil and political rights, such as the freedom to hold opinions, exchange information, form associations (including political parties), and participate in free and fair elections, are central to the consolidation of democratic governance and the rule of law.<sup>186</sup>

The development of more detailed guidelines on such key election issues as the periodicity of elections, role of political parties, registration of voters, or conduct of the ballot has proceeded more slowly. Yet, beginning in the 1990s, the interested institutions have, including through their active involvement in election monitoring

<sup>179</sup> OSCE, Charter of Paris, "Institutional Arrangements", Part G.

<sup>180</sup> OSCE, Concluding Document of Budapest, 1994, Budapest Decisions, Chapter VIII, par. 12.

<sup>181</sup> CDL Guidelines, *op. cit.*

<sup>182</sup> CIS Electoral Convention, *op. cit.*

<sup>183</sup> ACEEEO, *op. cit.*

<sup>184</sup> UNHRC Comments, *op. cit.*

<sup>185</sup> See, for example, Protocol of amendments to the Charter of the Organization of American States, Article I (14 December 1992) (hereinafter, Washington Protocol); Accession of Monaco to Council of Europe contingent upon reform of election law (Report of CoE Parliamentary Assembly, June 1999).

<sup>186</sup> See, for example, UNHRC Comments, *op. cit.*, 8; and UN Commission on Human Rights, Res. No. 1999/57 on Promotion of the Right to Democracy (1999) and Res. No. 2000/47 on promoting and consolidating democracy (2000).

and technical assistance, steadily produced a body of practice that may be used to identify international principles and consolidate the best practices for democratic elections.<sup>187</sup>

The various political commitments, legal obligations, international standards and practices, case law, comments, and reports related to democratic elections are dispersed across a considerable number of documents from different sources. The ODIHR has accumulated rich experience in the implementation of election-related commitments and principles and is well placed to review and compile these materials.

The present paper contains background on OSCE commitments, other principles, and emerging international standards and best practices related to democratic elections. When completed, this review could assist the ODIHR and the OSCE participating States apply a more consistent approach to observing elections, making assessments, and providing technical assistance. Moreover, the ODIHR project under which this review has been undertaken could serve to facilitate discussion on further development of OSCE commitments for democratic elections. This ODIHR activity could also enhance co-operation on the delineation and development of electoral principles, standards, and practices with the Council of Europe, the Commonwealth of Independent States, and other interested organizations.

The need for such principles and standards is clear. Terms like periodic, genuine, and democratic contained in international legal norms and political commitments are often interpreted subjectively. It has been noted that, “In practice, it may be easier to identify what is not a free, fair or genuine election, by focusing on evidence of overt external influence, the lack of meaningful choice in single candidate single party systems, or terrorism of the electorate.”<sup>188</sup> This report and the accompanying materials strive to address this concern by formulating principles that can be applied more objectively and by beginning to identify best practices for their implementation.

### **III. Foundational Commitments and Obligations**

#### ***A. Universal Background***

The foundational international obligations for democratic elections recognize citizens’ right to participate in government and are succinctly stated in the UDHR and ICCPR. Article 21 of the UDHR identifies five basic premises of electoral democracy: periodic and genuine elections, universal and equal suffrage, and secret voting:

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. ...

(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 by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.<sup>189</sup>

The election-related principles of the UDHR were made into enforceable legal obligations through Article 25 of the ICCPR.<sup>190</sup> Article 25 of the ICCPR also clarified and amplified further norms for the conduct of

<sup>187</sup> See Goodwin-Gill. Aside from the institutions whose work is cited in this report, some of the other organizations that have made significant contributions to the development of international election standards and practice are the United Nations Secretariat, particularly the UN Electoral Assistance Division (<http://www.un.org/Depts/dpa/>); the National Democratic Institute for International Affairs (NDI) (<http://www.ndi.org>); the International Institute for Democracy and Electoral Assistance (<http://www.idea.net>); and the International Foundation for Election Systems (IFES) (<http://www.ifes.org>).

<sup>188</sup> Goodwin-Gill, p. 2.

<sup>189</sup> UDHR, *op. cit.*, 21(1), (3).

<sup>190</sup> The primary means of enforcement is through periodic reports to the UN Human Rights Committee and other state parties to the Convention; see ICCPR, 40 *et seq.*

democratic elections: non-discrimination, the obligation for states to provide the opportunity without unreasonable restrictions to exercise the applicable rights, and the obligation to guarantee the free expression of the will of the voters. At the same time, Article 25 delineated the UDHR Article 21 provisions into separate, yet interdependent, potentially enforceable citizen rights: the right to take part in the conduct of public affairs, directly or through freely chosen representatives (often referred to as the right to participatory or representative government); the rights to vote and to be elected; and the right to have access to (to take part in) public service.<sup>191</sup>

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned ... 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.

Four other articles of the ICCPR state relevant obligations. Article 19 of the ICCPR provides that:

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 paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 21 of the ICCPR provides:

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 of the ICCPR provides in part:

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 which are 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. ...

<sup>191</sup> *Id.*, 25.

Article 12 of the ICCPR on the freedom of movement is also relevant to the election context.

These provisions state the core principles that create the foundation for the right to democratic elections.<sup>192</sup> Under certain circumstances, these human rights, coupled with the entitlements to free and fair elections, offer a legal basis for an individual enforceable claim to participatory and representative government.

In effect, these articles can be viewed as containing “obligations of result” required by these international instruments.<sup>193</sup> Although states undertake to achieve a specific result, they retain substantial choice of means for reaching the required objective. Whether such obligations of result have been fulfilled depends on assessment of both the means chosen for implementation and the actual result. Nonetheless, the standard of achievement in large part remains an international one. This is particularly true in the electoral field, where practices and procedures are significantly structured by the need to comply with the underlying principles of non-discrimination, universal and equal suffrage, secret ballot, due process of law, and the will of the people as the basis of government authority.<sup>194</sup>

## ***B. Regional Background***

The global legal norms described above are reflected in regional human rights instruments.<sup>195</sup> The Preamble to the ECHR, 1950, reaffirms the “profound belief” of the Contracting States “in those Fundamental Freedoms which are the foundations of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend”.<sup>196</sup>

Electoral rights – as distinct from the right to live in a representative democracy – are not addressed in the body of the ECHR but instead appear in Article 3 of the First Protocol, which provides:

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 European Court of Human Rights subsequently observed that the words of the Preamble are of primary importance since they enshrine a characteristic principle of democracy, developing “[f]rom the idea of an ‘institutional’ right to the holding of free elections ... [moving] to the concept of ‘universal suffrage’ and then, as a consequence, to the subjective rights of participation – the ‘right to vote’ and the ‘right to stand for election to the legislature’”.<sup>197</sup>

<sup>192</sup> Although these are the foundational articles, international principles for democratic elections may also arise from other general sources of international law. Determining an international standard should be guided by the concept of international law found in Article 38 of the Statute of the International Court of Justice, which declares that such authority may derive from “(a) international conventions, whether general or particular, establishing rules expressly recognized by ... states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) ... judicial decisions and the teachings of the most highly qualified publicists of the various nations, as a subsidiary means for the determination of rules of law”. Signed 26 June 1945, UNTS No. 993, in force for all UN member states (see UN Charter, Art. 93).

<sup>193</sup> Goodwin-Gill, p. 7. (Another set of terms to distinguish between direct obligations and obligations of result is “specification” *vice* “performance” standards.)

<sup>194</sup> See *id.*

<sup>195</sup> For purposes of this paper, the description of the regional situation shall be limited to the OSCE region.

<sup>196</sup> ECHR, Preamble.

<sup>197</sup> ECtHR, *Mathieu-Mohin* case

What has been called the most “extensive and coherent statements of principle with respect to elections”<sup>198</sup> is found in the 1990 Copenhagen Document of the OSCE. In the Copenhagen Document, the participating States recognized that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms.<sup>199</sup> In Paragraph 6, the Document provides:

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 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 of that of another participating State.

Under Paragraph 7 of the Copenhagen Document, OSCE participating States have made the following specific commitments:

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 candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

<sup>198</sup> Goodwin-Gill, p. 23.

<sup>199</sup> See, for example, Copenhagen Document, 6.

Paragraph 8 of the Copenhagen Document deals with the role of national and foreign observers in enhancing the electoral process. It provides:

The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and 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.

The Copenhagen Document is generally acknowledged to be one of the most important and comprehensive international formulations of principles for democratic elections. Designed for a broad region extending from North America through Europe to Central Asia, its validity has been recognized worldwide. Though not specifically an election-related document, it records wide-ranging commitments by participating States to the holding of genuinely democratic elections, *i.e.*, elections that are universal, accountable, transparent, secret, free, fair, and equal<sup>200</sup> in a broader context of respect for human rights. In addition, for the first time, all OSCE participating States asserted their commitment to pluralistic democracy and the rule of law as preconditions of proper respect for human rights and fundamental freedoms.<sup>201</sup>

The specifically election-related commitments of the Copenhagen Document are set forth in Paragraphs 6, 7, and 8. Paragraph 7 in particular sets forth nine specific commitments to which the participating States have agreed. However, a key strength of the Copenhagen Document is that the election-related commitments are integrally connected to the broader human rights commitments and democratic development. The applicability of these and other commitments in the Copenhagen Document was strengthened the following year by the Moscow Document, through which the participating States agreed that human dimension commitments were matters of direct and legitimate concern to all participating States and were not exclusively subject to the internal authority of the state concerned.<sup>202</sup>

In another paragraph, the Copenhagen Document also stresses that co-operation and exchange of information are important for democratic elections.<sup>203</sup> Several additional paragraphs, containing further commitments, are also highly relevant to electoral matters.

The principle of transparency lay at the heart of the process facilitated through the CSCE, predecessor of the current OSCE. An increase in the transparency of the political systems of countries within the CSCE area was considered to be an important confidence-building measure, which served the twin objectives of political stability and democracy.

Paragraph 8 of the Copenhagen Document applied the overarching principle of transparency to elections by laying the foundation for international and domestic observation. International observation of elections was more directly focused on democracy than political stability. But it also reinforced stability, since election

<sup>200</sup> See ODIHR, Bluebook.

<sup>201</sup> See Copenhagen Document, 5.

<sup>202</sup> CSCE, Moscow Document, *op. cit.* One paragraph of the Preamble stated as follows:

The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. They express their determination to fulfill all of their human dimension commitments and to resolve by peaceful means any related issue, individually and collectively, on the basis of mutual respect and co-operation. In this context they recognize that the active involvement of persons, groups, organizations and institutions is essential to ensure continuing progress in this direction.

<sup>203</sup> *Id.*, 26.

observation operated as a means of verification of, and thereby an incentive for, adherence to the rule of law and political pluralism in the governance of the state.

Although the language of Paragraph 8 was somewhat cautious, this paragraph opened the door to the deployment by the ODIHR of over 10,000 international observers to more than 100 elections in the following decade. Other international organizations, both intergovernmental and non-governmental, have also provided important contributions through observation of elections in OSCE countries, as have domestic election observers, which have mobilized hundreds and often thousands of observers in their respective countries. For many countries in greater Europe, a reasonably acceptable election was among the criteria of admission to the Council of Europe, as well as being the key to decisions on co-operation and assistance by the European Union, and, for emerging states, on international recognition and UN membership.

Many of the ODIHR's election observations have been conducted in co-operation with delegations from the OSCE and Council of Europe Parliamentary Assemblies and the European Parliament. The post-election assessments and the outline reports attached thereto have thus had the authority of positions taken, provisionally, on behalf of the international community more broadly. This role was lent force by the status of the OSCE as a "regional arrangement" under Chapter VIII of the UN Charter.

The written record of these observations – the pre-election assessments and final reports, analyses of electoral processes and legislative frameworks – constitutes a rich source of information on how election-related commitments from the Copenhagen Document have been implemented and monitored. It has been the source of a large part of the election principles identified in the Inventory of OSCE Commitments and Other Principles in the accompanying document, as well as more detailed recommendations of best practices for elections.

After 10 years of experience with the Copenhagen Document in 2000, it was natural to take stock of what had been and what remained to be achieved. Many new constitutions and election laws had been written, often with the assistance of the ODIHR, the Council of Europe's Venice Commission (Commission for Democracy through Law), and international non-governmental organizations. At the Bucharest 2000 OSCE Ministerial Council meeting, the ODIHR was urged by the Russian Federation to review these laws with a view to common standards.

In addition to the accumulation of experience by the ODIHR and its memorialization in a number of reports, there had been two other particularly significant developments in the decade. The jurisdiction of the European Court of Human Rights, in line with the growing membership of the Council of Europe, had expanded geographically to cover 45 OSCE participating States, and the Court's case law relating to elections grew substantially.

There had also been several initiatives to produce more detailed statements on elections. The Inter-Parliamentary Union (IPU) adopted its Declaration on Criteria on Free and Fair Elections in 1994. The UN Human Rights Committee issued General Comment No. 25 in 1996.

A recent proposal to develop regional guidelines and standards for elections was made by the European Commission for Democracy through Law (CDL), an advisory body (enlarged agreement) of the Council of Europe. At sessions during 2002, the Venice Commission adopted a "Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report".<sup>204</sup> The CDL Guidelines set forth a more comprehensive list of principles, standards, and practices for elections within Council of Europe member states; they have been approved by the Council of Europe's Parliamentary Assembly and Congress of Local and Regional Authorities of Europe, with the recommendation that they be further developed into a Council of Europe convention.<sup>205</sup>

<sup>204</sup> CDL Guidelines, *op. cit.*

<sup>205</sup> CoE Parliamentary Assembly, Recommendation 1595 (2002), *op. cit.*

Two other recent developments in the OSCE area must also be mentioned. First, the participating states of the Commonwealth of Independent States signed in 2002, and are currently considering the ratification of, a Convention on Standards for Democratic Elections, Electoral Rights and Freedoms in the States-Participants of the Commonwealth of Independent States.<sup>206</sup> Second, the ACEEEO has developed a Draft Convention on Election Standards, Electoral Rights and Freedoms, which was submitted to the Council of Europe for consideration also in 2002.<sup>207</sup>

## IV. Democratic Elections: Components and Considerations

This section examines the necessary component parts of democratic election procedures, law, and administration in light of the OSCE commitments and international human rights norms discussed in the previous section. It also includes a discussion of relevant cases and specific international instruments that address the components of the electoral process.<sup>208</sup> For purposes of presentation, various aspects of the election process are divided into the following components, which is the same organization as in the accompanying Inventory of OSCE Commitments and Other Principles for Democratic Elections, and the Explanatory Comments:

### General Principles and OSCE Commitments

1. Introduction;
2. Legal Framework: Scope and System;
3. Equality: Constituencies and Districting;
4. Impartiality: Administration and Management;
5. Universality: Right to Vote;
6. Candidacies and Political Parties;
7. Election Campaign, including Financing and Media;
8. Voting Process;
9. Results: Determination, Publication, and Implementation;
10. Complaints and Appeals;
11. Domestic and International Observation;
12. Co-operation and Improvement.

### A. Introduction

The discussions in Parts I-III of this background report demonstrate that election rules and procedures must be assessed and interpreted in accordance with international human rights principles and standards, since they implement the right of the people to elect a representative government. It is also very important to keep in mind that elections have a close connection to the system of political pluralism and respect for the rule of law, to which OSCE participating States have also committed themselves through the Copenhagen Document and other declarations.

Through Copenhagen Document Paragraph 24, OSCE participating States committed themselves to ensure that the rights and freedoms described in the Document “will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law ...”. The paragraph states

<sup>206</sup> CIS Electoral Convention, *op. cit.*

<sup>207</sup> ACEEEO, *op. cit.*

<sup>208</sup> In discussing the European Court of Human Rights cases, it is also worth noting that they often reflect the idea that election systems have conflicting objectives: the need to reflect the opinion of the electorate *versus* the need to promote the emergence of sufficiently representative currents of thought in order to allow the emergence of a sufficiently clear and coherent political will.

further that, “Such restrictions have the character of exceptions.” Thus, participating States must ensure that restrictions are not abused, imposed arbitrarily, or applied in a way that is contrary to international standards. Participating States are in fact obliged to ensure that any restrictions are applied to ensure the effective exercise of the rights that are recognized in the Copenhagen Document.

Another clause drawn from the same source indicates: “Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.” These provisions from Paragraph 24 are very important rules of interpretation in assessing whether practices that affect human rights are consistent with international standards. They stand, in part, for the principle that even a permissible purpose cannot justify means that are excessive or unduly restrictive.

## ***B. Legal Framework: Scope and System***

Democratic elections require that there be an election system in place to convert the will of the people, expressed through their votes, into seats or mandates to be held by elected representatives (in legislative bodies or other public offices). This may be through a proportional voting system, a majoritarian voting system, or a combination of both. Regardless of the method chosen, there must be an established mechanism for converting the popular vote of the people into representative government in the legislature.

OSCE commitments,<sup>209</sup> regional jurisprudence, and UN General Assembly resolutions<sup>210</sup> recognize that there is no single electoral system that is equally suited to all states.<sup>211</sup> A country’s choice for its electoral system should be respected. But, “The chosen system ... must facilitate the expression of the will of the people through periodic and genuine elections conducted on the basis of universal and equal suffrage and secret ballot.”<sup>212</sup>

Electoral systems are subject to historical, political, cultural, religious, and other factors that result in different methods of election.<sup>213</sup> Whatever the system chosen, however, elections must result in a legislature representative of the country’s main political forces.<sup>214</sup> The requirements for democratic choice also apply to elections for executive offices.

The term *periodic* is susceptible to varying interpretations, depending on the length of time between elections. The European Commission of Human Rights determined that a particular five-year electoral cycle did not constitute an unreasonable interval.<sup>215</sup> This decision is consistent with the general international practice to hold regular elections every four to five years for national legislatures and presidencies.<sup>216</sup> Attention should also be given to the appropriate time interval between calling and setting elections, so that parties and candidates have sufficient time to prepare for elections, particularly for communicating political messages to the electorate.

The Copenhagen Document provides that, in OSCE participating States, at least one chamber of the national parliament must be elected by direct and universal suffrage. Emerging regional standards in Europe,<sup>217</sup> Eurasia,<sup>218</sup> and elsewhere go further to include regional and local legislative bodies as well. (The standard in the CIS Electoral Convention also appears to include other state offices.)<sup>219</sup>

<sup>209</sup> Copenhagen Document, 4.

<sup>210</sup> See ECtHR, *Mathieu-Mohin* case, p. 54; EComHR, *Liberal Party and X v. United Kingdom* case.

<sup>211</sup> See, for example, UN General Assembly Res. Nos. 46/137 (17 December 1991) and 47/130 (18 December 1992).

<sup>212</sup> Goodwin-Gill, p. 28. See also CDL Guidelines, II.4: “With respect of the above-mentioned principles, any electoral system may be chosen.”

<sup>213</sup> Goodwin-Gill, *id.*

<sup>214</sup> See ECtHR, *Mathieu-Mohin* case, p. 54; EComHR, *Liberal Party* case.

<sup>215</sup> EComHR, *Timke* case.

<sup>216</sup> The CDL Guidelines, I.6, call for the period between elections for legislative assemblies not to exceed five years.

<sup>217</sup> See CDL Guidelines, I.5.

<sup>218</sup> See ACEEEO, 2(2.1).

<sup>219</sup> CIS Electoral Convention, 1(1).

However, even this list should not be considered exhaustive but, rather, expansive. In *Matthews v. United Kingdom*, the European Court of Human Rights applied Article 3 of Protocol 1 of the ECHR to election of a body (*viz.*, the European Parliament) “sufficiently involved” in the “legislative process” to “constitute part of the legislature”.<sup>220</sup>

### ***C. Equality: Constituencies and Districting***

The election system must provide for the organization of constituencies (election districts) in which electoral contests take place. This includes establishing boundaries of electoral units and involves determining the: (1) frequency; (2) criteria; (3) degree of public participation; (4) respective roles of the legislative, judicial, and executive branches of government; (5) assignment of the ultimate authority for choosing the final plan for electoral units; and (6) determination of circumstances in which the size of an electoral unit might deviate from the established criteria.

Electoral units must be drawn in a manner that preserves equality among voters, a cornerstone of democratic elections.<sup>221</sup> However, this does not preclude considering convenience and accessibility for voters, including through utilizing pre-existing administrative boundaries. In addition, electoral units must not be drawn on a discriminatory basis that dilutes the voting power of ethnic, national, racial, religious, or other groups.

Best practices for electoral units should be redrawn under guidelines such as the following:<sup>222</sup> (1) redistricting should be conducted periodically to ensure that equality among voters is not diminished due to population movements; (2) there should be a high degree of public participation in the process of drawing boundaries; (3) deviation from uniform populations in electoral units should be kept to a minimum; and (4) districts should be reviewed sufficiently in advance of elections in order to minimize the effect of new boundaries on the election results and to avoid instability and voter confusion and disappointment.

Elections conducted on the basis of equal suffrage require equality of voting power. In principle, no vote should carry proportionally more weight than another, so that there is an approximately equal number of voters per elected representative in each district. (The maximum deviation is usually expressed as a percentage above or below the average for all districts, and some experts have attempted to identify an acceptable range.)<sup>223</sup>

The principle of equality of voting power does not require a system of proportional representation. On a complaint originating from the United Kingdom, the European Commission of Human Rights interpreted Article 3 of Protocol 1 to the ECHR to mean that different political parties must be given a reasonable opportunity to present their candidates for election but did not require an electoral system that would ensure that the total number of votes for each candidate or party would be proportionally reflected in the composition of the legislature.<sup>224</sup>

From the perspective of international law, districting is an artifact of the overall electoral system<sup>225</sup> rather than a separate subject in itself. The general aim always remains the same: to translate the will of the people into effective representative government.<sup>226</sup> State practice and the disparity among states themselves in terms of

<sup>220</sup> European Court of Human Rights, Application No. 28433/94, 18 February 1999.

<sup>221</sup> See, generally, *Id.*; UDHR, 1, 2, 21(3); ICCPR, 25(b); ECtHR, *X v. United Kingdom and Liberal Party* cases; CDL Guidelines, I, 2.2, 2.4.b & 2.5; ACEEEO, 9(1.1-1.2).

<sup>222</sup> See, generally, CDL Guidelines, I, 2.2.

<sup>223</sup> See, for example, *id.*, I, 2.2.iv (no more than 10 per cent deviation in normal circumstances).

<sup>224</sup> EComHR, *X v. United Kingdom*, *op. cit.* The European Court of Human Rights adopted a similar position in the *Mathieu-Mohin* case, see esp. pp. 23-24. See also EComHR, *Liberal Party* case, p. 211.

<sup>225</sup> See *id.*

<sup>226</sup> See *id.*

population, geography, population distribution, community traditions, and resources reveal a range of potential variations.<sup>227</sup>

Substantial discrepancies in the representation-to-population ratio among electoral units, however, raise other questions. For example, does the disparity have the effect of disenfranchising a group or groups, contrary to the international norm of non-discrimination? Alternatively, does the unequal division unfairly affect the outcome of an election?<sup>228</sup> Either case raises the possibility of a violation of international law or standards.<sup>229</sup>

#### ***D. Impartiality: Administration and Management***

The administration of democratic elections requires institutions to carry out the work of conducting the elections. There must be an election administration in place to see that ballots are printed, polling stations opened and properly staffed and operated, votes counted, and winners declared. This is a critical area, as election administration institutions often make important decisions that can influence the outcome of elections. To ensure genuinely democratic elections, election administration must be politically impartial and administratively effective.

There are two main forms of election administration. Where there is a long-standing tradition of independence of administrative authorities from those holding political power, election administration may be carried out directly by the government through one or more civil service structures, with or without a special supervisory body overseeing the process. Election administration may also be operated independently from the regular government structure, an approach that is particularly favoured in those countries that have a shorter tradition of autonomy for the regular governmental authorities.<sup>230</sup> In countries without a long tradition of democratic elections and a pluralist political system, particularly where public confidence in the integrity of election administration is not yet well established, setting up independent election commissions has proven to be the better practice.<sup>231</sup> Independent election administration usually includes a central or national election commission with authority and responsibility over subordinate election commissions and boards.

Impartial election administration may be achieved through a mainly non-partisan composition or consist of a balanced membership that includes a range of political organizations (parties or other nominating organizations). When an election administration includes political party representatives, the best practice is to provide for inclusion of representatives of a full spectrum of parties, ensuring that no one party or alliance of parties controls the commission.

In terms of the hierarchy of an independent election administration, there is usually a tier of commissions between the central commission and the lowest-level boards. These subordinate election commissions are often formed for each electoral district in which a member of the legislature is elected. In multi-district elections, these commissions usually play a major role in consolidating the vote and adjudicating complaints, as well as other registering candidates.

Sometimes, a further intermediate body is also formed at the regional level in order to carry out administrative and sometimes other functions (including consolidating the vote results). In general, the basic level of election administration is the board at the polling station, where the actual voting occurs.

<sup>227</sup> See *id.*

<sup>228</sup> See *id.*

<sup>229</sup> See *id.*

<sup>230</sup> See, for example, CIS Electoral Convention, 11(1), 19(2)(j); ACEEEO, *id.*

<sup>231</sup> See CDL Guidelines II,3.

The state or central election commission should be a body that functions on a continuous basis and not for a limited time period just before elections. This recommendation – a best practice – is justified by the need to continue certain election-related programmes and to represent the electoral perspective with respect to other government programmes during the time between elections. However, lower election commissions/bodies, especially polling-station committees, are often temporary bodies established prior to an election.

In general, the election administration will oversee all aspects of conducting the elections, including the following:

- Recruiting and training election officials and workers responsible for the administration of the election;
- Supervising the registration of voters and preparing voter lists;
- Qualifying contestants for the ballot;
- Producing and distributing ballots and other voting materials in a secure and efficient manner;
- Regulating the voting process;
- Informing voters of the elections, polling places, and voting procedures;
- Informing voters of political parties and candidates;
- Safeguarding the secrecy and security of the balloting;
- Counting ballots and tabulating results in an accountable manner;
- Determining the winners and awarding mandates; and
- Resolving, in the first instance, complaints concerning the electoral processes, including violations of the right to vote or stand as a candidate.

Impartial election administration is critical for democratic elections.<sup>232</sup> Further, impartiality in election administration must be accompanied by the appearance of fairness. Regardless of how an election administration is structured, it is important that it not only function in an impartial manner but also be perceived by the electorate as doing so.

Special attention should be directed to the need for a system for democratic elections to provide voters with the ability to learn about the significance of elections and about the political parties and candidates and their programmes. This may include more general civic education about the function and purpose of democratic institutions, the importance of representativeness, and the role of governing and opposition parties. Voters should also be informed about specific election procedures, including how to fill in their ballots, find the correct place of voting, or obtain information on alternative methods of voting. In addition, Paragraph 7.7 of the Copenhagen Document states that neither administrative action, nor violence, nor intimidation may be allowed to bar parties and candidates from freely presenting their views and qualifications in order to win the support of voters.

The developing body of jurisprudence on democratic elections has dealt primarily with basic issues such as the rights to vote and to be elected. Thus, the area of civic education and voter information has generally been considered not within a legal context but from the standpoint of good practice. However, as shown by election observation reports issued by international organizations, voters must be adequately educated and informed about voting processes, candidates, political parties, and complaint mechanisms and dispute resolution in order for there to be a true expression of the will of the people in an election.

<sup>232</sup> See UNHRC Comments, 20; CDL Guidelines, II, 3.1; ODIHR Legal Review Guidelines, VI; ACEEEO, 5(2.5), 13; IPU, 4(2). See, for example, IPU, *id.*, which indicates: "... States should take the necessary ... steps to ensure the progressive achievement and consolidation of democratic goals, including through the establishment of a neutral, impartial or balanced mechanism for the management of elections. ..."

The importance of civic education and voter information is presented by Paragraph 7.7 of the Copenhagen Document, which indicates that law and public policy should see to it that voters are not prevented from learning about political parties and candidates. The obverse of this principle is that the responsible authorities should actively work to inform and educate voters concerning election processes, the candidates and political parties (or other nominating organizations), and the programmes of the contestants.

In addition to the subjects mentioned, voter information programmes should include reference to the procedures for voters to protect their electoral rights, including with respect to their voter registration. Finally, civic education and voter information materials should also be made available in the languages or dialects of national or linguistic minorities in those geographical areas where such minorities are located and through media appropriate to reach such minorities.

### ***E. Right to Vote: Universal and Equal Suffrage***

Voting is the basic element of a democratic election system. First of all, there must be clear and inclusive criteria to identify who has the right to vote in a given election in light of requirements in the Copenhagen Document and all major international human rights instruments that genuine elections must be conducted on the basis of universal and equal suffrage.

The election system therefore must provide clear and narrowly defined criteria concerning the circumstances in which the right to vote can be denied, withdrawn, or suspended. Criteria establishing the definition of universal suffrage (for example, age and citizenship) must be addressed in the constitution and electoral law, and criteria for disqualification (for example, due to mental incapacity or criminal conviction) must be defined in law and should be implemented with judicial involvement.<sup>233</sup>

Every person who has the right of suffrage must be allowed to exercise his/her suffrage right in a non-discriminatory manner on the basis of equal treatment before the law.<sup>234</sup> This principle requires that a person who has the right of suffrage be allowed to exercise his/her suffrage right without distinction of any kind, such as race, colour, gender, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, disability, or other personal status. This is an element of equal suffrage. Another, which is discussed elsewhere in this Background Report, relates to equivalent weight for each person's vote when delimiting election constituencies and other aspects of election system design.

The election system must provide a mechanism for registering voters. The right to vote cannot be secured if it is not possible to determine efficiently who is eligible and therefore allowed to vote in an election. Further, the right to vote is subverted if the election system fails to ensure the accuracy of voter lists and thereby either disenfranchises eligible voters or allows illegal voting. Thus, another major component of the election system is the proper conduct of voter registration and maintenance of voter lists. This also requires specifying the method of establishing voter eligibility.

#### ***1. Suffrage Rights Generally***

As the right to vote is the most basic element of a system for democratic elections, there is a developed body of practice addressing what limitations may be imposed on the right without violating the principles of

<sup>233</sup> See UNHRC Comments and ICCPR, *id.*; ECtHR, *Labita* case; EComHR decisions; CDL Guidelines, 1, 1.d; ACEEEO, 20 (1) and (2.1)-(2.2). The CDL Guidelines, *id.*, permit deprivation of the right to vote or to be elected only if provided for by law, observing the proportionality principle, based on mental incapacity or criminal conviction for a serious offence, with the withdrawal of political rights or finding of mental incapacity imposed by express decision of a court.

<sup>234</sup> See Copenhagen Document, 7.3.

universal and equal suffrage set forth in international human rights law. In general, these limitations fall within four categories: (1) minimum age requirements; (2) citizenship requirements; (3) residency requirements; and (4) loss of franchise due to mental incapacity, criminal conduct, or other factors. Any limitation or restriction on the right to vote, however, must be scrutinized as to whether it is clearly justified due to exceptional circumstances and whether it is proportionate to the circumstances in question.

The right to vote is naturally subject to a minimum age. The accepted practice in the OSCE region is for the minimum age for voting not to exceed 18 years.<sup>235</sup> Most existing norms specifically related to elections, however, have refrained from specifying a definite age and instead refer to the age of majority or adulthood.<sup>236</sup>

The right to vote is normally subject to a citizenship requirement, especially for national elections. However, specific regional instruments provide for citizens of participating countries to be allowed to vote in local elections in other participating countries after a certain period of residence there.<sup>237</sup>

The right to vote may also be subject to residency requirements, so the voting rights of citizens voluntarily residing abroad may be suspended.<sup>238</sup> For voting in local or other sub-national elections, a reasonable period of residency in the area may be required for voting.<sup>239</sup>

In some countries, persons who have been sentenced to prison terms are denied the right to vote. Such restrictions have been upheld by the European Commission of Human Rights.<sup>240</sup> However, in *Labita v. Italy*,<sup>241</sup> the European Court of Human Rights found a violation of Article 3 of Protocol 1 to the ECHR in a case in which a person experienced a loss of rights as a voter under legal provisions aimed at controlling organized criminal activity. Acknowledging that temporarily suspending the voting rights of persons against whom there was evidence of Mafia membership pursues a legitimate aim, the Court nevertheless observed that there was no concrete evidence on which a “suspicion” that Mr. Labita belonged to the Mafia could have been based. The Court therefore could not regard the sanction as proportionate and determined that there had been a violation of the Protocol.

The right to vote may be subject to loss for reasons that involve withdrawal of a person’s civil capacity, such as for mental incapacity, commission of a serious crime, or possibly other factors. However, any provision for loss of the right to vote must be narrowly circumscribed. The grounds for potential loss of the right to vote must be clearly stated in law. The principle of proportionality must be respected.<sup>242</sup> Loss of the right to vote or stand for election may be imposed only following adjudication by a court of law and, in some countries, must be the basis of a separate judicial proceeding. Moreover, under the interpretations of the European Court of Human Rights, the right to vote should be automatically restored once the grounds for its withdrawal have expired or been removed.

<sup>235</sup> See Child Rights Convention, *op. cit.*, 1, which states that a person obtains political rights at age 18.

<sup>236</sup> See *id.*; UNHRC Comments, 14; ICCPR, 25(b); Child Rights Convention, 1; CDL Guidelines, I, 1.b and c; ACEEEO, 8 (1.1). The CDL Guidelines, *id.*, state: “[T]he right to vote must be acquired, at the latest, at the age of majority”, and the ACEEEO takes the same approach.

<sup>237</sup> See Convention on the Participation of Foreigners in Public Life at Local Level, Art. 6, ETS No. 144 (entered into force 1 May 1997); it should also be noted that the Commonwealth of Nations allows Commonwealth citizens to vote in national elections in their country of residence; elections for the European Parliament also enfranchise citizens of European Union countries to vote in their place of residence, and further examples of this type could develop in the future.

<sup>238</sup> See EComHR, *X v. United Kingdom* (residency decision).

<sup>239</sup> See CDL Guidelines, I, 1.c; ACEEEO, 8(1.3).

<sup>240</sup> EComHR, 5 October 1972, c/RFA, DR 43 p. 28; *X. v. Federal Republic of Germany*, App. No. 2728/66, 25 European Commission on Human Rights Dec. and Rep. 38, 40 (1967); *H. v. The Netherlands*, App. No. 9914/82, 33 European Commission on Human Rights Dec. and Rep. 242, 245-46 (1983).

<sup>241</sup> ECtHR, *Labita* case

<sup>242</sup> See footnotes accompanying Subsection 1, above.

Voting in elections is usually considered a right associated with citizenship. A few countries go further and consider that registering to vote, or even voting itself, is a duty and therefore compulsory. Some countries go so far as to impose sanctions on citizens who fail to register or fail to vote, but these sanctions are not always enforced. The European Commission of Human Rights has determined that compulsory voting is in conformity with Protocol No 1, Article 3.<sup>243</sup>

## 2. *National Minorities*

National minorities are recognized to have an equal right to participation in public affairs, including through being effectively represented in public offices.<sup>244</sup> This includes the rights to vote, stand for election, participate in public affairs, and form political parties without discrimination.

The representation of national minorities can be facilitated by removing barriers to participation, such as constituency delimitations and quorum regulations. When necessary, however, representation of national minorities may also be strengthened through more active measures, such as (1) printing ballots and/or other election materials in both the official language(s) and the language(s) of minorities; (2) reserving or allocating positions in all the branches of government, including the legislative, judicial, executive, and administrative branches; (3) setting up single-member districts so that concentrated minority voters may be able to elect a candidate from their district; (4) developing proportional representation systems in large districts, with a formula for allocation of mandates that is favourable to smaller parties and without a substantial legislative threshold (minimum percentage of votes required to obtain representation); (5) allowing preference voting by letting voters rank candidates in order of choice or choose specific candidates on one or several lists; and (6) lowering numerical thresholds for representation in the legislature (legislative threshold).<sup>245</sup>

If adequate representation for national minorities cannot be obtained through elements of the electoral system or in similar ways, minority representation can be enhanced directly through special voting arrangements. Such measures are considered not to violate the principle of equal suffrage if they are adopted for a legitimate remedial purpose or to enhance the participation of minorities in national political life.<sup>246</sup>

## 3. *Women*

Entitlement to equal rights (including to political participation) regardless of gender has generally been recognized by the United Nations Charter, the UDHR, the ICCPR, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and other conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child.

The 1952 Convention on the Political Rights of Women states in Article I that “Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.” The more recent CEDAW (see reference) provides in Article 7 that:

<sup>243</sup> EcomHR, *X v. Austria*.

<sup>244</sup> The right of national minorities to participate equally in the political process is recognized in the UN Minorities Declaration, *op. cit.*, 2(2), which states that members of national minorities have “the right to participate effectively in ... public life”, and in the CoE Minorities Convention, *op. cit.*, 15, which recognizes a state obligation to facilitate participation of “national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.” Also, the Copenhagen Document places a burden on participating States to respect the participation of national minorities in public affairs, particularly those “relating to the protection and promotion of the identity of such minorities”. See also Articles 1.4, 2.2, and 5(c) of the International Convention on the Elimination of All Forms of Racial Discrimination, to which many OSCE participating States are state parties.

<sup>245</sup> See, generally, ODIHR, *Minority Electoral Guidelines*.

<sup>246</sup> See esp. Copenhagen Document, 31. See also CDL Guidelines, I, 2.4.b: “Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria ... do not in principle run counter to equal suffrage.”

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.

Nevertheless, women often face barriers to fair and effective representation due to generalized discrimination, including with respect to their participation in public life. In some countries within the OSCE area, the votes of women are subject to violations of secrecy and undue influence connected with the practice of group, family, and proxy voting, which has not been entirely suppressed.

To combat discrimination in representation, states should strive to establish electoral systems that facilitate full equality of men and women so that both men and women may fully realize their guaranteed rights to electoral and public participation. In addition, active efforts to eliminate all forms of non-personal voting must be continued.

In addition, special measures may be taken to increase the number of female candidates and office-holders.<sup>247</sup> In some countries in the OSCE area, political parties and other nominating organizations are required to put forward a minimum number of candidates of each gender, although it has been observed that female candidates are often not put in positions on the candidate lists that would result in an equivalent number of seats in the event the party is successful.<sup>248</sup> In a few cases, additional requirements have been imposed that attempt to address the latter issue.

With respect to special measures to address discrimination against women, CEDAW Article 4(1) states:

Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in this Convention, but shall in no way entail, as a consequence, the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality and opportunity and treatment have been achieved.

#### **4. Persons with Disabilities**

The ICCPR establishes electoral rights for all citizens “without unreasonable restrictions” and through “universal and equal suffrage”. Thus, no restrictions on the right to vote should be imposed on the basis of (1) physical or sensory disability; (2) literacy and education; or (3) intellectual disability or psychiatric illness, unless amounting to a mental incapacity that justifies withdrawal of the right to vote. Moreover, criteria that are used to restrict the right to vote must be non-discriminatory.

Discrimination, ignorance, poverty, and neglect all contribute to the political and electoral disenfranchisement of persons with disabilities. Some of the best practices to address this problem include assistance to disabled voters to reach the polling station and cast their ballots in a dignified manner that preserves the secrecy of the

<sup>247</sup> See, for example, CIS Electoral Convention, 10(2), which calls for “further steps aimed at providing women with fair and real, equally with men, possibilities to execute the right to elect and be elected ..., to elective posts both individually and as part of political parties (coalitions) on the terms and in accordance with the procedure stipulated by the Constitution, laws.”

<sup>248</sup> See, for example, ODIHR final report on the 2002 parliamentary elections in the former Yugoslav Republic of Macedonia.

ballot and prevents undue influence on the voter; and application of special voting methods (such as absentee voting using a two-envelope system, or voting outside the polling station – sometimes referred to as “mobile voting”). In addition, the authorities responsible for civic education and voter information should consider the needs of special voters in designing and carrying out these programmes.

## **5. Voter Registration**

From the individual’s right to vote follows a duty of states to guarantee effective exercise of that right through the registration of voters. Voter lists should be current, accurate, complete, easily accessible for inspection by qualified voters and – subject to the protection of personal information – possibly by others (such as election contestants and scientific researchers) with a legitimate reason to access them. A procedure must be in place to provide for the proper registration of voters who have been omitted from the register, whose details are registered incorrectly, or who have reached the legal age for registration after publication of the register. Likewise, procedures must be in place to object to the presence and call for the removal of entries on the voter lists of persons who have died, are underage, or are otherwise ineligible to vote.

Some of the best practices for voter registration include maintenance of permanent lists that are periodically updated, at minimum once a year. If voters are not registered automatically, then it should be possible to apply for registration over a relatively lengthy period. Voters should be fully informed of their ability to check the accuracy of their registration. If the authorities fail to make requested corrections, the individual should have the ability to seek further review, including by a court.

No matter what system is employed for creating and maintaining a voter list, it is necessary for the system to be transparent and open to verification by voters, political contestants, and election observers. While there are important privacy considerations, which may be weighted differently by different countries, access to the voter lists for verification exercises should be provided. In many countries, political contestants and election observers are not only allowed to inspect the voter lists but are provided copies of the list. Computerization of voter lists allows inexpensive and easy copying of data onto CD-ROM and other means, which enhances the ability of an election administration to encourage verification of the voter list, leading to improved accuracy of the voter lists and higher public confidence in the election process.

## **F. Candidacies and Political Parties**

### **1. Equal Treatment in Legal Recognition of Political Parties and Ballot Qualification**

Together with the right to vote, the right to be elected is a fundamental element of democratic elections. Individuals and groups must be allowed, without discrimination or unreasonable restrictions, to establish political parties in order to seek governmental office and to advance public policies based on their common programmes.<sup>249</sup> Legal recognition to political parties must be granted on a non-discriminatory basis and in a timely manner that allows the effective exercise of the right to be elected and all of the related civil and political rights.<sup>250</sup> All political parties and candidates must be able to compete in elections with each other on the basis of equal treatment before the law.<sup>251</sup> In addition, the law and official policies should create a level playing field for all political parties and candidates involved in the electoral processes.<sup>252</sup>

<sup>249</sup> See Copenhagen Document, 7.6.

<sup>250</sup> See *id.*; see also ICCPR, 25, *op. cit.*; UNHRC General Comments, *op. cit.*; and discussion and footnotes in Section 3 below.

<sup>251</sup> See Copenhagen Document, 7, esp. 7.5-7.6.

<sup>252</sup> See *id.*, esp. 7.7-7.8.

As with the right to vote, restrictions on the right to be elected must be confined to accepted criteria: age requirements, which may be somewhat higher than the legal voting age in the case of candidacies for high governmental office; citizenship requirements; reasonable residency requirements; and proportionate restrictions or disqualification in cases of findings of mental incapacity and criminal convictions. In addition, it is permissible to deny qualification for candidacy to elected office those who presently hold certain other governmental offices on the basis of conflicts of interest or the doctrine of incompatibility of offices. All such restrictions on the right to be elected must be reasonable, non-discriminatory, and must be defined clearly in law or in the constitution.

Candidates seeking office must be permitted to run either as party candidates or individually.<sup>253</sup> In countries using proportionate representation based on party list voting, parties must be allowed to include persons who are not party members on the party lists. In addition, candidates cannot be discriminated against regardless of party affiliation or lack thereof.

## 2. *Ballot Access*

In order to give effect to the right to be elected, the procedures for registration of candidacies must be non-discriminatory and should also be straightforward.<sup>254</sup> The grounds for rejection of a registration application should be based on objective criteria clearly stated in law. Monetary deposits may be of a sufficient amount to discourage frivolous candidacies but should not be so high as to prevent legitimate political parties or independent candidates from obtaining access to the ballot. Financial sureties should be refundable if a certain reasonable number (or percentage) of votes is obtained. The threshold level of support (such as demonstrated through the submission of petitions signed by voters) should also be reasonable (in terms of the number of signatures required, the time allowed for collection, and other procedural requirements). The process of verifying the authenticity of signatures supporting a candidacy must be reasonable and applied in a non-discriminatory manner. Such processes must also be transparent, including being open to monitoring by political party/candidate representatives and election observers. Registered voters, or citizens more generally, should be allowed to sign ballot qualification petitions of more than one party and candidate, so that citizens are free to demonstrate their support for a system of political pluralism and are free from circumstances that could become politically coercive by being called upon to demonstrate support for just one party or candidate.

Deadlines for the registering authority to approve or reject political party applications for legal recognition and party and candidate ballot qualification requests should be clearly specified. The grounds for rejection must be clearly stated in the law and based on objective criteria. The law should allow for correcting minor deficiencies concerning applications for the legal recognition of political parties and for ballot nominations within a reasonable amount of time after rejection, provide for appeal to a court of law after final rejection of legal recognition or ballot qualification, and clearly specify an expedited process for appeal to enable legal recognition and access to the ballot if registration or ballot qualification was improperly denied.

Once registration of candidacy is obtained, the issue of registration or possible de-registration should normally not again be considered by the election authorities. The possibility for withdrawing a political party or candidate's registration should be very narrow, allowing for a review of registration only in cases of serious violations of the law and pursuant to clearly defined procedures, including judicial involvement.

<sup>253</sup> Copenhagen Document, 7.5

<sup>254</sup> See ACEEEO, 4(5).

### 3. *Denial of Candidacy: Grounds and Limitations*

Due to the importance of access to the ballot for political pluralism and democratic elections, a body of jurisprudence has developed concerning what limitations may be imposed on the right without violating international human rights principles. This section discusses some of the main cases that have addressed limitations on candidacy and political parties.

In *Podkolzina v. Latvia*,<sup>255</sup> the European Court of Human Rights addressed the problem of lack of procedural and substantive legal guarantees to protect a person's right to be a candidate. The applicant stood as a candidate in the parliamentary elections. Based on an assessment given by a state examiner, the Central Election Commission struck her name off the list of candidates on the grounds that she had an inadequate command of the state language. The applicant argued that the removal of her name from the list of candidates for the parliamentary elections infringed her right to stand as a candidate in elections as guaranteed by ECHR Protocol No. 1, Article 3. The Court found that, since the assessment had been left to the sole discretion of a single official, and due to the absence of any objective guarantees or procedures for challenging such an assessment, the handling of Ms. Podkolzina's candidacy was incompatible with the procedural requirements of fairness and legal certainty for determining eligibility for election. It held unanimously that there had been a violation of Protocol No. 1, Article 3.

In *Ahmad and Others v. United Kingdom*,<sup>256</sup> the Court dealt with restrictions limiting senior local-government officials' involvement in certain types of political activity, including restrictions on their right to be candidates in elections. The applicants challenged the limitations as denying their rights to participate fully in the electoral process under ECHR Protocol No. 1, Article 3. The Court noted that under the article, states may impose restrictions on an applicant's right to contest seats at elections. However, these restrictions must be viewed in the context of the aim pursued by the legislature in enacting the limiting regulations. Here, the aim of securing political impartiality in certain civil service positions was considered sufficient for the purpose of restricting the exercise of the applicants' subjective right to stand for election, especially in light of the fact that the limitation only operates for as long as the applicants occupy politically restricted posts. The Court therefore concluded that there had been no violation of Protocol No. 1, Article 3.

In *Sadak and Others v. Turkey*,<sup>257</sup> the European Court of Human Rights addressed the right to be a candidate within the context of post-election forfeiture of a mandate. A Turkish court terminated the applicants' parliamentary mandates following the court-ordered dissolution of their political party based on statements of the party's former chairman and not as a result of the applicants' political activities as individuals. The European Court of Human Rights held that the extremely harsh penalty imposed on the applicants could not be regarded as proportionate to the legitimate aim relied on by Turkey, that the measure was incompatible with the very essence of the right to stand for election and to hold parliamentary office, and that it had infringed the unfettered discretion of the electorate that had elected the applicants.

A similar case is *Socialist Party and Others v. Turkey*.<sup>258</sup> A Turkish court dissolved the Socialist Party, finding the objectives of the party unacceptable, and banned the founders and managers of the party from holding similar office in any other political body. The applicants claimed that dissolution of the party and the ban

<sup>255</sup> ECtHR, *Podkolzina* case.

<sup>256</sup> ECtHR, *Ahmad* case.

<sup>257</sup> See ECtHR, Turkish political cases, *op. cit.*

<sup>258</sup> See *id.*

placed on its leaders had infringed their right to freedom of association under ECHR Article 11.<sup>259</sup> The court found that the protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11, which also applies to political parties. The court also considered whether the dissolution of the party could be considered to have been necessary in a democratic society. The court reiterated that the exceptions set out in Article 11 are to be interpreted strictly when political parties are concerned. Applying strict review, the court concluded that the dissolution of the Socialist Party was disproportionate to the aim pursued and consequently unnecessary in a democratic society. Accordingly, there had been a violation of ECHR Article 11.

Another case from this series is *United Communist Party of Turkey and Others v. Turkey*.<sup>260</sup> Within 14 days of the formation of the United Communist Party of Turkey (TBKP), a Turkish court dissolved the party and banned its founders and managers from holding similar office in any other political body. This was based on a finding that the TBKP's objectives encouraged separatism and the division of the Turkish nation. The applicants maintained that the dissolution and the ban placed on its members infringed their right to freedom of association guaranteed by ECHR Article 11. The European Court of Human Rights determined that Article 11 is applicable to political parties, even though such organizations are not specifically listed therein, because political parties are essential to the proper functioning of democracy and the importance of democracy in the ECHR system. The Court concluded that a measure as drastic as the immediate and permanent dissolution of the TBKP, ordered before its activities had even started, together with a ban barring its leaders from discharging any other political responsibility, was disproportionate to the aim pursued and consequently unnecessary in a democratic society. Accordingly, the Court held that there had been a violation of ECHR Article 11.

In these two cases, *United Communist Party of Turkey and Others v. Turkey*<sup>261</sup> and *Socialist Party and Others v. Turkey*,<sup>262</sup> the European Court of Human Rights recognized the right of citizens to participate in political deliberation and activity regarding the political questions of the day. The Court made clear that political parties in Turkey could not be proscribed on the grounds that they advocated autonomy for the Kurdish population within a federal state. In other words, individuals and parties may not be excluded from the political debate merely because they are members of a minority group or because they espouse views or programmes that are incompatible with the principles and structures of the current government. Similarly, in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*,<sup>263</sup> the Court held that a group calling for autonomy or secession of part of a country's territory could not automatically be prohibited from entering the country's assemblies.

In *Refah Partisi (The Welfare Party), Erbakan, Kazan and Tekdal v. Turkey*,<sup>264</sup> however, the European Court of Human Rights found no violation of the ECHR when the Welfare Party was dissolved. The Court held that the sanctions imposed on the party and its leaders could reasonably be considered to meet the pressing social need of protecting democracy, since, on the pretext of giving a different meaning to the principle of secularism, the leaders of the party had declared their intention to establish a plurality of legal systems based on differences

<sup>259</sup> ECHR Art. 11 reads as follows:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

“2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

<sup>260</sup> See ECtHR, Turkish political cases, *op. cit.*

<sup>261</sup> See *id.*

<sup>262</sup> See *id.*

<sup>263</sup> ECtHR, *Stankov* case.

<sup>264</sup> See ECtHR, Turkish political cases, *op. cit.*

in religious belief and to institute Islamic law, a system of law that was in marked contrast to the values embodied in the ECHR. They had also left in doubt their position regarding recourse to force in order to obtain and retain power. Acknowledging the narrow margin of appreciation for actions involving the dissolution of political parties, and considering that pluralism of ideas and parties is an inherent element of democracy, the Court held that a state can reasonably prevent the implementation of such a political programme.

The *Welfare Party* case is consistent with principles stated in international human rights instruments for limiting activities against the constitution or that involve incitement to violence, such as those that promote hatred between different groups.<sup>265</sup> For instance, the ICCPR requires a prohibition against advocacy of national, racial, or religious hatred that constitutes incitement of discrimination, hostility, or violence.<sup>266</sup> Also, the European Court of Human Rights has repeatedly held inadmissible complaints from neo-Nazi organizations that their right to freedom of expression has been limited by such restraints.<sup>267</sup> The Court has also emphasized that it is up to states to consider what the “real policies” of a political party are, regardless of its stated objectives.<sup>268</sup>

## ***G. Election Campaign, Finance, and Media***

### ***1. General***

Through the Copenhagen Document, OSCE participating States committed themselves to respect and provide effective opportunities for the exercise of the rights and freedoms guaranteed under international law, including, among others, to free expression, assembly, and association.<sup>269</sup> They went beyond these general guarantees to the subject of the exercise of these rights during election campaigns, through the following provisions:

“To ensure that the will of the people serves as the basis of the authority of government, the participating States will<sup>270</sup> ... 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 ...”<sup>271</sup>

These provisions imply that participating States have a duty to create a level playing field for election contestants and above all not to hinder them from addressing their messages to the electorate. This not only prevents participating States from obstructing the political campaigns of parties and candidates but requires them to act against unfair interference by private persons.

The provisions concerning the role of participating States in creating a fair and free atmosphere for election campaigning, combined with the commitment to provide that no legal 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, creates an affirmative duty to encourage and facilitate some level of

<sup>265</sup> The UN Commission on Human Rights has argued that “political platforms based on racism, xenophobia or doctrines of racial superiority and related discrimination must be condemned as incompatible with democracy.” UN Commission on Human Rights, E/CN.4/2000/40, Preamble. The General Assembly of the UN has likewise condemned such political platforms, urging states to “combat political platforms and activities based on doctrines of superiority which are based on racial discrimination or ethnic exclusiveness and xenophobia, including, in particular, neo-Nazism”. UNGA Res. No. 55/82, adopted 26 February 2001, A/RES/55/82, at par. 3.

<sup>266</sup> Article 20(2).

<sup>267</sup> ECtHR, *Glimmerveen* case.

<sup>268</sup> ECtHR, *United Communist Party of Turkey and Others v. Turkey*, *op. cit.*, par. 58.

<sup>269</sup> Copenhagen Document, 9 and 24

<sup>270</sup> *Id.*, 7.

<sup>271</sup> *Id.*, 7.7.

campaigning by all election contestants that would enable them to bring their candidacies and programmes to the attention of the voters. This duty could be fulfilled in part through providing non-discriminatory access to any state media, as well as certain other state-owned or regulated facilities (such as meeting facilities, public places, and locations for posting campaign materials).

The authorities also have an obligation to provide basic voter information and should also support broader civic education programmes relating to elections. For countries with state media, it would be in accordance with best practices especially for those channels of communication to be used to deliver voter information programmes. A related best practice is that state-sponsored voter information programmes should be delivered to national or linguistic minorities, in areas where they are concentrated, in their own language or dialect.

## 2. Finance

The cases discussed in the section Denial of Candidacy: Grounds and Limitations provide guidance on what general limitations may be imposed on the rights of candidates and political parties. Increased attention is now being directed towards regulation of electoral campaigns, especially through restrictions on campaign fundraising and spending. Such controls and limitations may include disclosure of sources of funding, auditing, and regular reporting on political accounts; a limitation on the amount of money raised and/or spent by election contestants; and regulation of funding by interest groups that may support or oppose particular candidates or parties in elections.

### (a) Limitation on expenditures

A reasonable limitation on campaign spending has been found to be permissible under international law, as has the imposition of financial penalties on candidates or others for violating such a limitation. However, electoral contestants must be permitted to expend sufficient resources to convey their political messages.

In *Pierre-Bloch v. France*,<sup>272</sup> for example, the European Court of Human Rights found no violation of the ECHR after a candidate was assessed a financial penalty for failing to disclose that he had violated a statutory limit on campaign spending. In *Bowman v. U.K.*,<sup>273</sup> however, the Court found that a very strict restriction on spending related to an election by a private person was an unreasonable infringement of freedom of expression.

### (b) Public funding

Any public funding of political parties or their campaigns must be provided on the basis of equal treatment before the law. This does not mean that all political parties and candidates are to receive an equal amount of campaign funds. It means only that political parties and candidates should be provided public funding on an equal basis.<sup>274</sup>

Any provisions providing for public funding should be clearly stated in the law and be based on clear, relevant, and objective criteria. In addition, state resources should not be diverted or misused for campaign purposes; all state resources used for campaign purposes, such as state media, buildings, property, and other resources, must also be made available to all electoral participants on the basis of equal treatment.

<sup>272</sup> ECtHR, *Pierre-Bloch* case, *op. cit.*

<sup>273</sup> ECtHR, *Bowman* case.

<sup>274</sup> See CDL Guidelines, I, 2.3.a-b; ODIHR Legal Review Guidelines, X.B; ACEEEO, 16(4). The CDL Guidelines, I, 2.3.a-b states: “a. Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to [*inter alia*] public funding of parties and campaigns. b. Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunities applies in particular to [*inter alia*] public funds and other forms of backing.”

### **(c) Restrictions on funding**

Any restriction on private funding of political campaigns must be reasonable.<sup>275</sup> Overly strict restrictions or limitations on private funding would be a violation of the donor's rights to free association and expression. The reasonableness of limitations on the amount of direct or indirect private contributions to candidates and parties in an election depends on the type of election and factors unique to the particular country, such as geography, demographics, and the costs of media and other campaign materials.

### **(d) Disclosure and reporting**

Legitimate limitations on campaign expenditures cannot be monitored or enforced without reporting and disclosure by candidates and parties. Best practices include periodic reporting at reasonable intervals; timely disclosure of all contributions received, the source of those contributions, and the amount and type (cash or in-kind) of the contributions; and disclosure of expenditures made by an electoral contestant, the purpose of the expenditure, and the amount spent. Disclosure reports should be publicly available to ensure transparency, accountability, and public confidence in the integrity of the electoral process.

In terms of the publication of financial reports, it is desirable to provide for publication of a preliminary report before election day, so that voters can take that information into account when deciding for whom to cast their vote. A final report, preferably subject to accounting requirements, should be filed a relatively short time after elections. The privacy of donors, especially private individuals, may be protected in published reports, but the reports should identify the amounts of each contribution made by such individuals, as well as other private interests (such as commercial entities or other private organizations).

## **3. Media**

The importance of media access is indicated by Paragraph 7.8 of the Copenhagen Document, which states that there should be unimpeded access to the media on a non-discriminatory basis for all political groups and individuals wishing to participate in the electoral process. In light of this principle, and based on experience in the field of election observation, international standards require that all candidates and political parties be provided equal opportunity for access to media in order for voters to become adequately informed of the views, programmes, and opinions of electoral contestants. It can be expected that this issue will be brought into judicial forums as communications technology and media become more pervasive in electoral campaigns. Some emerging standards and best practices in this area are described in the following two subsections.

### **(a) Equal treatment and access**

Political parties and candidates must have non-discriminatory, unimpeded access to all media, as well as equal treatment by media owned or controlled by the state. This covers all forms of media, including radio, television, newspapers, magazines, and evolving forms of communication such as the Internet.

Time provided *gratis* by the state media during election periods should be allotted under an established formula that can be applied objectively. Examples of objective application include laws or regulations that specify: (1) the percentage of broadcast time to be distributed to political parties and candidates according to the number of seats they hold in parliament or the results of recent elections; or (2) the percentage to be distributed to political parties and candidates on an equal basis, regardless of parliamentary strength.<sup>276</sup> It is also desirable that

<sup>275</sup> See ECtHR, *Bowman* case; CDL Guidelines, I, 2.3.c-e; ODIHR Legal Review Guidelines, X.C; ACEEEO, 5(2.2); IPU, 3(3). The CDL Guidelines, I.2.3.e, states: "The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising."

<sup>276</sup> See CDL Guidelines, 2.3.a-b. See also "Guidelines for Election Broadcasting in Transitional Democracies", Article 19: Global Campaign for Free Expression (London: 1994).

the amount of broadcast time distributed on an equal basis be sufficient to enable all political parties and candidates to compete effectively in the elections and for voters to gain sufficiently accurate information upon which to make informed political choices.

The area of paid political advertising also presents issues of access and equal treatment. When political advertising is allowed, there should be a guarantee of open access and equal treatment with respect to the ability of election contestants to sponsor private political advertising.<sup>277</sup> While there is no international standard requiring provision of paid political advertising, in countries where there is a history of one-party rule and state-owned broadcast media that have a history of unbalanced coverage of the ruling party, paid political advertising can be an important means for other parties and candidates to present their messages to the electorate. Measures to ensure non-discriminatory access for paid political advertisements are necessary, and measures to cap the amounts of time purchased by any one party to ensure a more level playing field may be considered.

The standard of equal treatment and access to media is also seriously undermined if state-owned or -controlled media favour a political party or candidate in news coverage, political coverage, forums, or editorials. Biased or unequal coverage or treatment by all forms of state media should be prohibited, and the authorities should be required to act immediately upon any violation. Expedited complaint procedures and specific remedies should be provided to correct the effects of biased and unfair amounts of coverage in state media.<sup>278</sup>

While press freedom and other freedom-of-expression issues make it difficult for the state to regulate bias in private media, election authorities and authorities responsible for licensing private broadcast media have a basis to issue guidelines for impartial and accurate news coverage in private media. In addition, journalist associations, associations of broadcast media owners, press councils, and similar organizations can be encouraged to issue guidelines for fair news reporting and to adopt self-regulatory measures to promote journalistic ethics and responsibilities for helping to ensure genuinely democratic elections.

#### **(b) Protection of freedom of speech and expression**

A democratic election is not possible where governmental authorities prevent, inhibit, or otherwise curb campaign speech or expression. Limitations on free expression violate international human rights law. In addition, such provisions usually violate the free-speech guarantees found in national constitutions.

These guarantees, however, are not applicable to prohibitions on inflammatory speech that is calculated to incite another person to violence. Nor does this standard prohibit reasonable restrictions on opinion polling or exit polling near the time of voting but before the close of balloting results.

Media access and protection of freedom of speech and expression in electoral campaigns are closely related. The developing body of jurisprudence on democratic elections has dealt more with the latter area than the former. However, as shown by election observation reports compiled by international organizations in the field, candidates and political parties must have sufficient, minimum access to media, on a fair and equal basis, to inform voters of their candidacies and programmes if the expressed will of the voters is to be considered genuine.

With respect to freedom of expression during elections, the European Court of Human Rights has called for governments to “display restraint” and to accept that even offensive, shocking, and disturbing speech can

<sup>277</sup> See *id.*, 2.3.c.

<sup>278</sup> See Copenhagen Document, 5.10 and 11.

contribute to pluralism and must usually be tolerated in a democratic society. This is especially true during electoral campaigns and of speech that “targets” government authorities, elected officials, and candidates for office.

### (c) **Judicial interpretation**

The issue of free speech and expression related to elections has been a subject of judicial consideration, especially in connection with criticism of candidates. Protection of free speech and expression is especially important within the context of a political campaign. Case law from the European Court of Human Rights emphasizes this point.

In *Oberschlick v. Austria*,<sup>279</sup> the Court held that the applicant’s conviction for insulting a politician had violated ECHR Article 10. In this case, the Court reiterated that, subject to Paragraph 2 of that article, freedom of expression was applicable not only to “information” and “ideas” that were favourably received or regarded as inoffensive or as a matter of indifference but also to those that offended, shocked, or disturbed. Further, as to the limits of acceptable criticism, they were wider with regard to a politician acting in his public capacity than in relation to a private individual. In conclusion, the Court considered that the necessity of the interference with the exercise of the applicant’s freedom of expression had not been shown.

Similarly, in *Lopes Gomes Da Silva v. Portugal*,<sup>280</sup> the Court found a violation of ECHR Article 10. The applicant in this case was the manager of a daily newspaper that published an editorial criticizing a political party’s choice of a particular candidate. The applicant was eventually convicted on charges of criminal libel and ordered to pay a fine, damages, and costs. He argued that his conviction had infringed his right to freedom of expression under Article 10. Noting that freedom of expression is of particular importance with regard to the press and that the limits of acceptable criticism are wider with regard to a politician acting in his public capacity, the Court stated that the personal tone of political invective is one of the hazards of political life and free debate. Journalists may resort to a degree of exaggeration or even provocation. Despite the fact that the penalty imposed had been minor, the applicant nevertheless now had a criminal conviction, a sanction that was not reasonably proportionate to the legitimate aim pursued.

In *Bowman v. United Kingdom*,<sup>281</sup> the Court also found a violation of ECHR Article 10. Mrs. Bowman distributed leaflets in the period immediately before parliamentary elections and was charged under a law that prohibited an expenditure of more than 5 pounds sterling by an unauthorized person during the period before an election for the purpose of conveying information to electors with a view to promoting or procuring the election of a candidate. Mrs. Bowman alleged a violation of her right to freedom of expression under Article 10. Although the law did not directly restrain freedom of expression but instead limited spending during the election period, the Court considered that the prohibition amounted to a restriction on freedom of expression that directly affected the applicant. The Court found that the law operated as a total barrier to her publishing information with a view to influencing the voters in favour of a particular candidate. Accordingly, the Court concluded that the restriction in question was disproportionate to the aim pursued and that there had been a violation of ECHR Article 10.

In *Incal v. Turkey*,<sup>282</sup> the Court again considered the scope of Article 10. Mr. Incal was convicted under Turkish law for handing out leaflets that contained separatist propaganda capable of inciting the people to resist the government and commit criminal offences. The leaflets criticized measures taken by local authorities against

<sup>279</sup> ECtHR, *Oberschlick* case, *op. cit.*

<sup>280</sup> ECtHR, *Lopes Gomes Da Silva* case, *op. cit.*

<sup>281</sup> ECtHR, *Bowman* case, *op. cit.*

<sup>282</sup> ECtHR, *Incal* case, *op. cit.*

small-scale illegal trading and squatters' camps. Mr. Incal argued that the criminal conviction infringed his right to freedom of expression guaranteed by ECHR Article 10. The Court concluded that Mr. Incal's conviction was disproportionate to the aim pursued and therefore unnecessary in a democratic society. The Court found that there had accordingly been a breach of Article 10.

#### **(d) Publication of polling data**

An issue that often arises with respect to the media during elections concerns the publication of polling data just before or during the time of voting. Some restriction on publication of pre-election polls is not uncommon, although the time period prior to election day in which the restriction applies is subject to considerable variation.<sup>283</sup> The best practice is that the publication of such polling data should only be restricted during the immediate pre-election period and during voting hours, since, during that time, there would not be an effective opportunity for election contestants who might be adversely affected by the published report to challenge the findings of the polls.

For a short time before election day and during voting hours, it is a common – but by no means universal – practice to prohibit political campaign advertisements or other media programmes that directly discuss the election campaign and/or likely outcome of an election (based on opinions rather than recent polling data). The length of such a “blackout” period, beyond voting hours, is usually relatively short – not more than one day. In some countries, free-speech considerations have caused this issue to be addressed through voluntary self-regulation by the media rather than law or regulation.

### ***H. Voting Process***

The election system must regulate the process of voting, in particular by establishing the procedures necessary for ensuring the secrecy and security of the vote. This requires the election system to address the form, printing, secure distribution of ballots, their manner of casting and method of counting, as well as procedures for tabulating and reporting electoral results. Every one of these steps should be transparent, by opening them to the scrutiny of the political contestants and election observers. Clear rules must be established for voting in polling stations, as well as other methods of voting, that include safeguards for secret balloting and that provide for monitoring by political contestants and observers. Voting procedures must ensure that only persons who have the right to vote are permitted to do so and that all persons who have the right to vote are able to exercise that right effectively.

The importance of balloting procedures is indicated by Paragraph 7.3 of the Copenhagen Document, which states that participating States will 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.<sup>284</sup> Although this appears self-explanatory, some technical procedures are better suited than others for meeting this commitment. As shown by election observation and other reports compiled by international organizations active in this field, there are practices to be recommended, as well as avoided, in this area.

One issue related to polling stations is their location and the number of voters they are expected to service. The location of polling stations should be, as far as possible, equally convenient and accessible to voters<sup>285</sup> in terms of geographical conditions and existing transportation facilities. The station and the polling board (and staff, if applicable) should be of sufficient size to handle the expected number of voters. It is often

<sup>283</sup> See ODIHR, Electoral Opinion Polls Study.

<sup>284</sup> Copenhagen Document, 7.4.

<sup>285</sup> See, for example, IPU, 2(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.”

recommended that election authorities conduct time-and-motion studies to determine the amount of time required to process each voter under established rules for voter identification and filling-in of ballots.

The recruitment of polling-station officials, the comprising of polling-station boards that are politically impartial, and the adequate training of polling-station officials are all sensitive matters that require sufficient time and resources derived through a politically inclusive process that promotes public confidence. Considerations discussed above in Section IV.D., Impartiality: Administration and Management, are relevant to polling-station administration as well.

Another issue related to voting in polling stations is the physical adequacy and the layout and organization of the station itself. Polling places should be of sufficient size, preferably with an open floor plan that enhances the visibility of all parts of the voting process. Stations should also be laid out in a manner that provides for an orderly flow of voters to the identification and ballot-issuance counters, the voting screens or booths (of which there must be a sufficient number), and the ballot box.

Various forms of special voting are a major concern. Special voting procedures give greater effect to the right to vote by providing an opportunity for voting to those who might not be able to go to the polling station. Special voting materials and procedures must be designed and operated in a way that provides the necessary security, as well as for sufficient transparency of the voting process, return of ballots, and counting.

There is little jurisprudence on balloting procedures, since they are primarily of a technical nature.<sup>286</sup> It is to be expected, however, that this issue will be brought into judicial forums as voting technology develops and electronic means of voting are explored.

A key developing issue in the area of balloting is the use of electronic and older mechanical means of automating voting and counting. In the world of developing voting and counting technology, the security of electronic systems is a major concern. Another area of concern is the reliability of the systems that require both reliable hardware and software and that should be able to function even if the hardware or software should fail. Other important concerns include: ensuring public confidence, which is closely related to the security and reliability issues; designing a ballot that will avoid confusion; creating a system that will allow voters to confirm their votes and/or correct errors in voting without the secrecy of their votes being compromised; making a back-up system available in case of failure of the electronic system (which may include the ability to print votes onto ballot papers); and ensuring that the system can be checked to determine whether it is functioning properly. Protecting balloting secrecy is of particular concern for electronic and other special voting that takes place at locations not under the control of election officials.

Electronic counting, tabulating, and transmitting of results also pose concerns. It is important that all such systems be verifiable and subject to scrutiny of representatives of the political contestants and election observers. As discussed immediately below, it is necessary to allow political contestants and observers to test computer programs for tabulating results and take other measures to ensure public confidence in electoral technology used to determine which competitor won election.

<sup>286</sup> The European Court of Human Rights has briefly addressed the issue of balloting procedures within the context of prisons. In the *Iwanczuk* case, *op. cit.*, the Court found that it was doubtful whether the exercise of the right to vote in parliamentary elections by persons detained in prison should be subject to any special conditions other than those dictated by the normal requirements of prison security. Specifically, the Court found that it was not appropriate to require a prisoner to strip naked in front of a group of prison guards before being given a ballot.

## ***I. Results: Determination, Publication, and Implementation***

Through the Copenhagen Document, OSCE participating States committed themselves to “ensure that votes [are] reported honestly with the official results made public ...”.<sup>287</sup> The key factor in implementing this standard is the transparency of the process of counting the votes, determining the results, announcing and publishing the results, and later respecting the outcome.

The transparency of the process of determining and announcing the results depends on a variety of measures. Similar to the voting process considered earlier, numerous best practices have been proposed by international groups interested in this subject.

Among the transparency measures that are recommended are:

- The counting and tabulation of votes should be fully transparent and accessible to representatives of election contestants, as well as other observers;
- Representatives and, if possible, observers should also be given copies of results compiled at all levels of election administration;
- The transportation and receipt of sensitive election materials should also be accessible to representatives and observers under appropriate security arrangements;
- The announcement of results should be expeditious, and the information that is published should be complete (including the actual numbers of votes cast, and not just percentages);
- The publication of results should include detailed breakdowns nationally, regionally (if applicable), and by polling stations (if votes are counted in this manner) or other voting sites or methods, except in highly exceptional circumstances where identifying the geographical distribution of the results of voting could lead to discrimination, retributions, or other severe adverse action against a local or regional population, and such circumstances should be explained and be subject to judicial review;
- Voted ballots and counting sheets (protocols) should be stored in a secure place, at least for a period of time sufficient for the final resolution of all election appeals.

OSCE participating States have also committed themselves to “ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures”.<sup>288</sup>

Questions have arisen after elections in certain participating States concerning the fulfilment of this fundamental democratic commitment. In the most serious cases, individual candidates or even an entire list of candidates put forward by a political party have been denied mandates or had them withdrawn subsequently, despite having won election.

Mandates may be denied or removed from persons who are not qualified to receive them (for example, due to specific personal factors or incompatibility with other public responsibilities). If such factors were known, they should have been the basis of denying candidate qualification, rather than denying mandates. Denying elected mandates may be done only under law, with the standards clearly set forth in advance. Such denial may not be arbitrary or discriminatory. In addition, sanctions against successful candidates may not be taken in a summary or disproportionate manner.

<sup>287</sup> Copenhagen Document, 7.4

<sup>288</sup> *Id.*, 7.9.

Other questions about respecting the results of elections have occurred in situations in which:

- A party or other nominating organization is permitted, under law, to substitute other persons for the candidates who ran for office on its list or to change the order of awarding mandates to candidates on its list; or
- A party or other organization may seek denial or withdrawal of a mandate from a victorious candidate on its list if that candidate is expelled or had his privileges limited by that party.

In both these cases, there is serious cause for concern that the will of the voters is not being respected. In the latter case, there are also issues concerning the freedom of political opinion of the mandate-holder and his/her ability to represent the voters in good conscience. Also in the latter case, action against a candidate by a party or other nominating organization would contravene the commitment in the cited provision of the Copenhagen Document that such action be taken “in conformity with democratic parliamentary and constitutional procedures”.<sup>289</sup>

Also of concern, but to a somewhat lesser degree, is the situation in which a party may seek the denial or removal of a mandate from a victorious candidate on its list on the grounds that the candidate has voluntarily left the party. In this case, it is unjustifiable for states – even those employing “closed-list” election systems – to view the parties or other nominating organizations as controlling the mandates awarded to their lists. In addition, the determination that a candidate has voluntarily left a party is one that is best left, if at all, to the courts and not to electoral or parliamentary bodies, which might be asked to take action in such cases.

## ***J. Complaints and Appeals***

The election system must provide effective mechanisms and remedies for the enforcement of electoral rights.<sup>290</sup> Protection of the right to vote and to be elected is an essential element of a democratic election system. The rights to vote and to be elected are also fundamental human rights, which requires that there be an effective remedy for their violation.

Mechanisms adequate to protect suffrage rights must be in place before, during, and after elections. There must be adequate procedures for adjudicating electoral disputes and protecting electoral rights. For example, in the *Podkolzina v. Latvia* case, discussed earlier, the European Court of Human Rights found that the candidacy of Ms. Podkolzina had been wrongfully denied and that she had not been provided adequate procedural and substantive legal guarantees to protect her right to be a candidate.

The human rights instruments discussed in Section III of this Background Report indicate the minimum procedural and substantive standards that must be available to remedy a violation of suffrage rights.<sup>291</sup> The key elements are the existence of an effective means to complain about violations and seek redress and that there be a process of resolving disputes that is sufficiently transparent, so that all election participants (candidates, parties, and voters alike) can understand the issues and their resolution.

<sup>289</sup> Copenhagen Document, 7.9.

<sup>290</sup> See Copenhagen Document, 5.10 and 11.

<sup>291</sup> See Articles 8 and 10 of the UDHR; Articles 14, 15, and 16 of the ICCPR; Articles 6, 13, and 17 of the ECHR. See also Paragraph 13.9 of the OSCE 1989 Vienna Document, pars. 5.9 through 5.12 and 11 of the Copenhagen Document, and pars. 18 through 21 of the OSCE 1991 Moscow Document.

For OSCE participating States, the requirement that persons have the opportunity to complain and appeal adverse decisions is a broader one. The Copenhagen Document ensures that:

“[E]veryone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;<sup>292</sup> administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available;<sup>293</sup> [and] the independence of judges and the impartial operation of the public judicial service will be ensured.”<sup>294</sup>

Furthermore, the OSCE participating States, “wishing to ensure greater transparency”, decided:

“... to accept as a confidence-building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts as provided for in national legislation and international law; it is understood that proceedings may only be held *in camera* in the circumstances prescribed by law and consistent with obligations under international law and international commitments.”<sup>295</sup>

Based on international law and OSCE commitments, election contestants must have the ability to submit complaints against election arrangements that affect them adversely and the right to appeal to court if necessary. Voters must have the right to protect their suffrage rights in similar ways.

Proceedings on complaints and appeals, including within election administration and in the courts, must be transparent. *In camera* proceedings are acceptable under certain circumstances, but the general obligation of transparency applies to the record of these proceedings as well. The authorities must publish full details concerning the handling of each complaint or appeal, including the decision of the dispute-resolution body and its justification.

One best practice for election complaints and appeals is to provide for an expedited process of complaint and appeal, to permit resolution of complaints in an effective manner – if possible, during the election period.<sup>296</sup> Going beyond the requirements and practices described earlier, some additional best practices for handling election complaints and appeals include the following:

- The opportunity to present or submit evidence in support of a complaint;
- The opportunity to participate in a public hearing on a complaint if the timetable for resolution of complaints permits, especially if the proceedings are judicial or adjudicatory in nature;
- The right to a fair hearing on the complaint;
- The right to an impartial tribunal to decide the complaint;
- The right to transparent proceedings on the complaint;
- The right to an effective remedy;
- The right to a timely remedy; and
- The right to appeal to court if redress is denied.

<sup>292</sup> *Id.*, 5.10.

<sup>293</sup> *Id.*, 5.11.

<sup>294</sup> *Id.*, 5.12.

<sup>295</sup> *Id.*, 12 (OSCE substituted for CSCE).

<sup>296</sup> See CDL Guidelines, II, 3.3; ACEEEO, 5(2.6); IPU, 4(9). The latter states: “States should ensure that violations of human rights and complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.” See also ODIHR, Resolving Election Disputes paper.

## K. Election Observation

The Copenhagen Document commits OSCE participating States to invite observers from OSCE participating States and from domestic and international organizations, particularly to observe national elections and to endeavour to provide access to election proceedings below the national level.<sup>297</sup> The Document also emphasizes the role of non-governmental organizations to help ensure the fulfilment of human rights and fundamental freedoms in their countries,<sup>298</sup> and participating States commit to allow and encourage such organizations to develop and maintain contacts with, and receive assistance from, similar groups outside their countries, including in election monitoring.<sup>299</sup> Later, OSCE documents contain additional commitments regarding expanding the role of the ODIHR on elections and observation<sup>300</sup> and “following up promptly the ODIHR’s election assessment and recommendations”.<sup>301</sup>

In order to ensure the transparency of all electoral processes, the election system should explicitly provide for the role of observers, including international observers, domestic observers, and representatives of the media, political parties, and candidates, in all election operations. Election laws and regulations should provide for observation of all aspects of the election process by any appropriate domestic or foreign organizations, as well as by observers from OSCE participating States. Paragraph 24 of the Copenhagen Document requires that all legal provisions must ensure the effective exercise of rights, which applies to election observation. It should be noted that the Copenhagen Document explicitly endorses election observation by “any appropriate” private institutions or organizations, domestic or foreign. This is an expansive definition aimed at permitting observation by non-governmental organizations without burdensome requirements for accreditation to enter electoral facilities.

Election observation by domestic organizations is an element of exercising the right to take part in the conduct of public affairs through participation in the election process.<sup>302</sup> The OSCE’s Istanbul Summit Declaration recognizes the critical role of non-governmental organizations in strengthening the role of civil society as an essential element of democratic development.<sup>303</sup> Election observation by domestic organizations is an important element of this and has contributed to both improving electoral integrity and building public confidence in OSCE participating States.

With respect to deployment of international observers by the ODIHR and other organizations, the host state should do everything possible to facilitate the entry of election observation delegations and missions and should co-operate with their establishment in-country. The activities of international observers will be under the supervision of their sponsoring organizations. Participating States must not place any obstacles in the way of such observers gaining access to any government agencies or officials whose activities have relevance to the elections process, nor should participating States in any way hinder access to candidates, political parties, the media, or voters.<sup>304</sup>

International election observers demonstrate the interest of the international community in the organization of democratic elections. They boost the confidence of electoral officials, political contestants, domestic organizations concerned with promoting democratic elections, and voters. The presence of international election observers can deter those who may seek to manipulate the election process, can offer appropriate recommendations for improving the process, and can help build international and domestic public confidence in democratic processes observed. International election observers also help develop direct contacts and co-operation among individuals, groups, and organizations that support practical co-operative endeavours and the

<sup>297</sup> Copenhagen Document, 8.

<sup>298</sup> *Id.*, 10; see also Istanbul Document, 25.

<sup>299</sup> Copenhagen Document, 10.4 and 26.

<sup>300</sup> Concluding Document of Budapest, 1994, Budapest Decisions, Chap. VIII, par. 12

<sup>301</sup> Istanbul Declaration, Charter for European Security, 25.

<sup>302</sup> See ICCPR, 25, *op. cit.*, and UNHRC General Comments, *op. cit.*

<sup>303</sup> Istanbul Document, 25.

<sup>304</sup> See, generally, ODIHR Bluebook; CoE and EU Election Observation Handbooks.

sharing of information, ideas, and expertise that promote and protect human rights, the rule of law, and development of pluralist democratic political systems.

### ***L. Co-operation and Improvement***

Mutual co-operation and assistance for the improvement of democratic institutions is a cornerstone of OSCE activities. In connection with elections and political pluralism, the Copenhagen Document specifically mentions, among other matters, “electoral legislation, administration and observation” and “developing political parties and their role in pluralistic societies” as special focuses.<sup>305</sup>

The ODIHR is the leading agency within the OSCE that is mandated to pursue programmes and activities in the areas of free elections,<sup>306</sup> democratic institutions, and human rights.<sup>307</sup> Recently, in the Istanbul Summit Declaration, the participating States indicated that they “reaffirm our obligation to conduct free and fair elections in accordance with OSCE commitments, in particular the Copenhagen Document 1990. ... We agree to follow up promptly on the ODIHR’s election assessment and recommendations.”<sup>308</sup>

The OSCE participating States recognize that “vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions” and, on that basis, they have committed themselves to “encourage, facilitate and, where appropriate, support practical co-operative endeavors and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations”.<sup>309</sup>

This approach set forth in the Copenhagen Document has brought tangible benefits in the area of promoting democratic elections and has allowed the development of a rich body of state practice and the further development of international norms, standards, and good practices described in this Background Report and in the accompanying Inventory of OSCE Commitments and Other Principles for Democratic Elections. This Report and the Inventory illustrate the strength of the Copenhagen Document’s comprehensive language, which has guided a growing practice and the development of standards. The Report and Inventory also illustrate certain gaps that have developed between the explicit provisions of the Copenhagen Document and standards and good practices that have clarified and amplified the principles and commitments contained in the Copenhagen Document to address those gaps. As the approach of practical co-operation and sharing of information, experience, and expertise continues, the OSCE will be positioned to address further developments in the period ahead.

<sup>305</sup> Copenhagen Document, 26.

<sup>306</sup> OSCE, Charter of Paris for a New Europe, 1990, supplementary document to give effect to certain provisions contained in the Charter of Paris for a New Europe, “Institutional arrangements”, Part G.

<sup>307</sup> Concluding Document of Budapest, 1994, *id.*

<sup>308</sup> Istanbul Declaration, 1999, Charter for European Security, 25.

<sup>309</sup> Copenhagen Document, 26.

## PART FOUR REFERENCES

### United Nations

#### *Treaties*

International Covenant on Civil and Political Rights, signed 16 December 1966, entered into force 23 March 1976, 999 UNTS 171.

Convention on the Rights of the Child, signed 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3.

Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), signed 18 December 1979, entered into force 3 September 1981, 1249 UNTS 13.

International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), signed 7 March 1966, entered into force 4 January 1969, 660 UNTS 195.

Convention on the Political Rights of Women, (“Women’s Rights”) signed 31 March 1953, entered into force 7 July 1954, 193 UNTS 135.

#### *General Assembly Resolutions*

Universal Declaration of Human Rights, General Assembly Res. 217 A (III), 10 December 1948 (“UDHR”).

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly Res. No. 47/135, 18 December 1992 (“UN Minorities Declaration”) (right to effective participation in public life).

“Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes”, General Assembly Res. Nos. 48/124, 20 December 1993; and 47/130, 18 December 1992; also “Enhancing the effectiveness of the principle of periodic and genuine elections”, General Assembly Resolution 46/137, 17 December 1991 (“UNGA Resolutions”). (“[T]he efforts of the international community to enhance the effectiveness of the principles 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 ... system.”)

#### *Other*

UN Commission of Human Rights (“UNCHR”), “The incompatibility between democracy and racism”, UN Doc. E/CN.4/2000/40 (neo-Nazi and other political platforms declared “incompatible with democracy”) (“UNCHR Resolution”).

Human Rights Committee (“UNHRC”), General Comment 25 on “The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service,” UN Doc. CCPR/C/21/Rev.1, Addendum 7, 27 August 1996 (UNHRC Comments).

Human Rights Committee, report on Kyrgyzstan, UN Doc CCPR/CO/69/KGZ (24 July 2000) (“UNHRC Kyrgyzstan Report”) (*inter alia*, that unclear broadcast licensing regulations resulting in effective coercion of the media and exclusion from parliamentary elections of political parties that were not registered for at least a year and had explicitly declared the intent to participate in elections in their statutes were causes of concern). *Ignatana v Latvia*, UNHRC, Communication No. 884/1999 (adopted 25 July 2001), UN Doc. CCPR/C/72/D/1999 (“UNHRC Latvian case”) (parliamentary candidate in Latvia wrongfully removed from list by election commission after a single inspector determined she did not have the required proficiency in the state language even though the candidate held a legal certificate of proficiency issued on the advice of several experts).

## OSCE

Second Conference on the Human Dimension of the CSCE (Copenhagen, 5 June-29 July 1990), Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (“Copenhagen Document”).

Third Conference on the Human Dimension of the CSCE, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 10 September-15 October 1991 (“Moscow Document”).

Summit (Helsinki, 1975), Final Act (1 Aug. 1975) (“Helsinki Final Act”).

Istanbul Summit Declaration (19 November 1999) (See Par. 25: “... We appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR’s election assessments and recommendations. ...”) (“Istanbul Declaration”).

Concluding Document of Budapest, 1994, Budapest Decisions, Chapter VIII, par. 12.

Charter of Paris for a New Europe, 1990, supplementary document to give effect to certain provisions contained in the Charter of Paris for a New Europe, “Institutional arrangements”, Part G (“Charter of Paris”).

Mission in Bosnia and Herzegovina (BiH), Election Appeals Sub-Commission, Decision in Case No. 98-GE-81 (1998) (“BiH media case”) (decision that public radio station run by the Serb Democratic Party (SDS)-governed entity had to broadcast a statement of the sub-commission concerning unfair broadcasting or one SDS candidate would be struck from the party’s list each day).

### ***OSCE Office for Democratic Institutions and Human Rights***

OSCE/ODIHR, *Guidelines for Reviewing a Legal Framework for Elections* (Warsaw, March 2001) (“Legal Review Guidelines”).

OSCE/ODIHR, *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System* (Warsaw, 2000) (“Election Dispute Report”).

OSCE/ODIHR, *Guidelines to Assist National Minority Participation in the Electoral Process* (Warsaw, March 2001) (“Minority Electoral Guidelines”).

OSCE/ODIHR, *Comparative Study of Laws and Regulations Restricting the Publication of Electoral Opinion Polls*, prepared by Article 19 Global Campaign for Free Expression (London, January 2003) (“Electoral Opinion Polls Study”).

OSCE/ODIHR, *Election Observation Handbook*, 4th edition (Warsaw, April 1999) (“Bluebook”).

OSCE/ODIHR, *International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice*, OSCE/ODIHR Draft Paper (Warsaw, 20 November 2002) (“Election Standards and Commitments Draft”).

OSCE/ODIHR, final reports of election observation and other election missions can be found on the ODIHR website at <http://www.osce.org/odihr>.

## **Council of Europe**

### ***Treaties***

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, together with its Protocols as amended by Protocol No. 11 (ECHR), signed 4 November 1950, entered into force 3 September 1953, ETS 005; Protocol No. 11, entered into force 1 November 1998 (ETS 155); Protocol No. 1, entered into force 18 May 1954 (ETS 009); Protocol No. 4, entered into force 2 May 1968 (ETS No. 46); Protocol No. 6, entered into force 1 March 1985 (ETS No. 114); Protocol No. 7, entered into force 1 November 1988 (ETS No. 117).

Convention on the Participation of Foreigners in Public Life at Local Level (“Foreigners’ Convention”), signed 5 February 1992, entered into force 1 May 1997, ETS No. 144.

Framework Convention for the Protection of National Minorities, (“Minorities Convention”), opened for signature 1 February 1995, entered into force 1 February 1998, ETS No. 157.

European Charter of Local Self-government (“CoE Local Self-Government Charter”), opened for signature 15 October 1985, entered into force 1 September 1988, ETS No. 122.

Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (“Personal Data Convention”), opened for signature 28 January 1981, entered into force 1 October 1985, ETS No. 108.

### ***Decisions of the European Court of Human Rights***

*Ahmad & Others v. United Kingdom*, ECHR Reports 1998-VI.

*Bowman v. United Kingdom*, ECHR Reports 1998-I (very strict restriction on the amount of funds that could be spent by an individual to influence voters in a local election found to be an unjustified infringement on right to expression).

*Mathews v. United Kingdom*, ECHR Reports 1999-I (U.K. citizen resident in a U.K. territory had right to vote in elections for European Parliament).

*Gaulieder v. Slovakia*, App. No. 36909/97, judgement of 18 May 2000 (affirming decision of EComHR that loss of mandate was not justified in a case in which an elected parliamentarian had voluntarily left a coalition).

*Gitonas & Others v. Greece*, ECHR Reports 1997-IV (individuals have “subjective right” to vote and be elected, but it is subject to restriction by states for certain purposes such as excluding officials of former authoritarian government).

*Hilbe v. Liechtenstein*, ECHR Reports 1999-VI (right to vote and stand for elections may be subject to residence requirement).

*Incal v. Turkey*, Reports 1998-IV (variety of strict sanctions against a board member of the local branch of a political party applied found disproportionate after a military court seized the party's leaflets, claiming they constituted incitement to resistance and separatism).

*Iwanczuk v. Poland*, App. No. 251196/94, judgement of 15 November 2001 (strip search of prisoner requesting a ballot to vote while in prison unjustified under the circumstances).

*Labita v. Italy*, ECHR Reports 2000-IV (loss of voting rights based on suspicion of involvement in organized crime unjustified).

*Lopes Gomes Da Silva v. Portugal*, ECHR Reports 2000-X (conviction for criminal libel and imposition of financial penalties found unjustified and disproportionate in case involving critical remarks in an editorial concerning the nomination of a particular candidate).

*Mathieu-Mohin & Clerfayt v. Belgium*, Ser. A 113 (right to vote in direct elections to legislature applies to local bodies, but only when they are of a truly legislative nature) (*Mathieu-Mohin*).

*Oberschlick v. Austria* (No. 2), Reports 1997-IV (conviction of journalist for insulting a politician held impermissible).

*Pierre-Bloch v. France*, Reports 1997-VI (imposition of statutory penalty for violation of ceiling on campaign expenditures upheld).

*Podkolzina v. Latvia*, App. No. 46726/99, judgement of 9 April 2002 (withdrawal of candidate registration by election commission of candidate whose proficiency in the state language had been questioned by a single inspector was unjustified in view of the fact that the candidate held a legally valid certificate of proficiency issued upon the advice of several experts).

*Stankov & United Macedonian Organization Ilinden v. Bulgaria*, App. Nos 29221/95 and 29225/95, judgement of 2 October 2001 (exclusion of a group from the political process, even for espousing a separatist programme, not permissible in the absence of further grounds).

*Sadak & Others v. Turkey*, App. No. 25144/94 *et al.*, judgement of 11 June 2002; *Socialist Party & Others v. Turkey*, Reports 1998-III; *United Communist Party & Others v. Turkey*, Reports 1998-I; *Refah Partisi and others v. Turkey*, App. Nos. 00041340/98, 00041342/98, 00041343/98, 00041344/98, ECHR GC judgement of 13 February 2003 (all of which concerned whether the state had permissibly excluded certain political parties and politicians from the electoral process; herein collectively referred to as the "Turkish political cases").

***European Commission of Human Rights (EComHR) determinations:***

*Glimmerveen & Hagenbeek v. Netherlands*, App. No. 8384/78 & 8406/78, 13 DR 187 (1979) (protection of electoral rights cannot be claimed by those who seek to destroy them) ("*Glimmerveen*").

*Liberal Party v. United Kingdom*, App. No. 8765/79, 21 DR 211(1980) (right to representative government not infringed by election system that does not directly translate voting results into mandates awarded).

*Palacco and Garofalo v. Italy*, App. No. 23450/94, 15 September 1997 (residency requirement for voting in local elections may not exceed a few months) (“*Polacco*”).

*Timke v. Germany*, Application No. 27311/95, 11 September 1995 (five years found to be an acceptable interval between elections).

*X. v. F.R. Germany*, App. No. 2728/66, 25 DR 38 (1967); *H. v. Netherlands*, App. No. 9914/82, 33 DR 242 (1983) (withdrawal of franchise of convicted criminals permissible, provided the duration is proportionate to the offence) (“*X*” and “*H*”).

*X. v. F.R. Germany*, App. No. 4984/71, decision of 5 October 1972 (prisoner who was incorrectly denied the right to vote in an election and also wrongfully denied permission to organize an election petition to complain was nonetheless not denied his human rights under the ECHR, including Protocol No. 1, since the petition in question could not have affected the outcome of the election).

*X. v. United Kingdom*, App. No. 7140/75, decision of 6 October 1976 (ECHR Prot. No. 1, Art. 3 concerning free expression of the will of the voters does not require adoption of a proportional system of representation; reference to “free expression” was intended to apply to the freedom of voting, not the representativeness of election results).

*X. v. United Kingdom*, App. No. 7566/76, decision of 11 December 1976, 9 DR 121 (residence required for voting in national elections found justifiable in terms of several factors, including less direct involvement in public affairs, difficulty of campaigning abroad, need to prevent fraud, and link of taxation and representation) (“residency decision”).

*X. v. Austria*, 8 Yearbook of ECHR (1965), pp. 168-174 (dictum that compulsory voting does not violate the norm of free expression of the will of the voters in a case that was declared inadmissible for procedural reasons).

*Yearbook of the European Convention on Human Rights: The Greek Case*, Vol. 12 (1969) (absence of an election law over two years after military takeover prevented fulfillment of electoral rights guaranteed by ECHR Prot. 1, Art. 3) (“EComHR Greek case”); accord, CoE, Council of Ministers, Resolution DH 70(1) (15 Apr. 1970), par. 12).

European Commission for Democracy Through Law (CDL, or Venice Commission), *Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report*, adopted 18-19 October 2002 (“CDL Guidelines”).

### **Other**

*Handbook for Observers of Elections* (1996) (“CoE Observer Handbook”) CoE Publications.

Parliamentary Assembly, Recommendation 1595 (2003), “Code of Good Practice in Electoral Matters”, adopted 30 January 2003 (recommending that CDL Code of Good Practice should be transformed into a European Convention, also taking account of the work of the ACEEEO and the OSCE).

### **Additional Documents**

Commonwealth of Independent States (CIS), Convention on Standards of Democratic Elections, Electoral Rights and Freedoms in the States-Participants of the Commonwealth of Independent States, signed

7 October 2002, not yet in force (three ratifications required) (unofficial translation) (“CIS Electoral Convention”).

Association of Eastern European Election Officials, Draft Convention on Election Standards, Electoral Rights and Freedoms, adopted 26-28 September 2002, submitted for consideration to the Parliamentary Assembly of the Council of Europe (CoE), CoE Doc. 9646, 20 December 2002.

Inter-Parliamentary Union (IPU), Inter-Parliamentary Council, Declaration of Criteria for Free and Fair Elections, adopted 26 March 1994 (“IPU”).

A. Eriksson (ed.), European Commission, *Handbook for European Union Election Observation Missions* (Brussels, 2002) (“EC Observer Handbook”).

G. Goodwin-Gill, *Free and Fair Elections: International Law and Practice*, Inter-Parliamentary Union (Geneva, 1994).

V. Hinz and M. Suksi, *Election Elements: On the International Standards of Electoral Participation* (Turku/Abo, 2002).

S. Coliver and P. Merloe, *Guidelines for Election Broadcasting in Transitional Democracies*, Article 19, Global Campaign for Freedom of Expression (London, 1994).

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It co-ordinates and organizes the deployment of several observation missions with thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, gender equality, and trafficking in human beings. The ODIHR implements more than 100 targeted assistance programmes every year, seeking both to facilitate and enhance state compliance with OSCE commitments and to develop democratic structures.

The ODIHR promotes the protection of **human rights** through technical-assistance projects and training on human dimension issues. It conducts research and prepares reports on different human rights topics. In addition, the Office organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States. In its anti-terrorism activities, the ODIHR works to build awareness of human dimension issues and carries out projects that fundamentally address factors engendering terrorism.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (<http://www.osce.org/odihr>), which also contains a comprehensive library of reports and other documents, including all previous election reports and election law analyses published by the ODIHR. In addition, the ODIHR's Legislationline (<http://www.legislationline.org>) includes the most comprehensive and up-to-date database on election legislation and case law from some 44 participating States within the OSCE region.