

Election Observation is More than just a One Day Event

How ODIHR is Meeting the Challenge of Long-Term Election Observation

As the practice of sending election observer missions to assess elections has developed rapidly in recent years, it has become increasingly obvious that an informed assessment of an election process cannot be made on the basis of election day observations only. An election is a process, rather than a one day event. As a result of the Budapest Summit in December 1994, the mandate of the Office for Democratic Institutions and Human Rights (ODIHR) is now more comprehensive and aims to achieve long-term observation of the election process.

The ODIHR has therefore re-orientated its activities towards the pursuit of long-term observation of the election process, rather than being limited to short-term observation on election day. This more complete approach was successfully adopted by ODIHR in both the recent Albanian Parliamentary Election and the Presidential Election in the Russian Federation.

When making conclusions about an election process, observers must take into account the various stages of the election cycle, including: the implementation of the law and election regulations, the effectiveness and impartiality of the pre-election administration, the independence of the media, the nature of the campaign and political environment prior to election day, election day, the final vote count, announcement of the results, and the handling of grievances.

The electoral process has to be seen as a film rather than an instant photo. Long-term observers are responsible for viewing the pre-election period, and thus assisting short-term observers to place election day observations within an informed context. Long-term observers submit interim reports based on their assessments and findings, which are then used to brief short-term observers and contribute to a final report on the election process.

As a consequence, the practical field tasks of the ODIHR election observation mission can be divided into two distinct phases: the long-term observation and the short-term observation. The objective of the long-term observation is to gain an in-depth knowledge of the various phases of the election cycle. The objective of short-term observation is to meet the more "classical" duties of election observation, providing a broad presence throughout the country to assess the closing days of the campaign, election day and the vote count.

An ODIHR On-site Co-ordinator is designated to coordinate the activities of long-term and short-term observers. The Co-ordinator will always stress the impartiality of the observer mission, and the willingness of the mission to receive comments about the electoral process or other aspects of the human rights situation relating to the electoral process.

Election Observation in the OSCE Region

The OSCE commitments, agreed upon in Copenhagen at the second meeting of the Conference on the Human Dimension in 1990, re-emphasise the central role of elections in securing the citizen's right to participate in the government of his or her country. In addition, the Copenhagen Document states that the presence of observers, both foreign and domestic, can enhance the integrity of the electoral process.

Election observation has thus become accepted as an effective and invaluable service that is provided among OSCE participating States in support of democratic transition and universal human rights. The objectives of ODIHR election observation activities are twofold: ODIHR assesses an election process and offers recommendations, when necessary, to improve an election process for the future. In addition, the very presence of election observers can have a confidence-building effect on an election process, and deter cases of electoral fraud or manipulation.

In order to fulfill ODIHR's commitment to long-term election observation, a core group of long-term observers are requested from the participating States for a period of approximately two months prior to the election. The need for long-term observers to be regularly seconded to ODIHR represents one of the greatest challenges associated with long-term election observation, and can only be met with the on-going support and cooperation of the participating States.

Likewise, timely notification of upcoming elections by participating States is essential for ODIHR to be able to organise effective long-term observation. Long-term observation is greatly facilitated when ODIHR is notified at least three months in advance of an election.

The OSCE Commitments

The election process is in essence a celebration of those human rights fundamental to a democratic society. Elections are the mechanism through which the citizen is guaranteed the right of political participation, but also presup-

poses adherence to other basic human rights such as the right to freedom of expression, movement, peaceful assembly and association.

Election observation is therefore more than just a technical exercise, as it can contribute directly to the promotion of universal human rights. Observers are asked to assess elections for their compliance with universal human rights as reflected in the OSCE commitments.

The OSCE commitments can be summed up in seven key words central to democratic tradition: Universal, Equal, Fair, Secret, Free, Transparent, and Accountable.

The principle of *universality* is understood to secure access to an effective, impartial, and non-discriminatory registration procedure for both voters and candidates alike.

The principle of *equality* requires that voters have equal and effective access to polling stations, and that one's vote be given equivalent weight to that of other voters.

The principle of *fairness* should ideally assure a level playing field for all participants in the election process, but at a minimum it should ensure the voter's exposure to basic information about all the contestants in the election and the fundamental issues that they represent.

The principle of *secrecy* can only be assured if the voter casts the ballot alone, in the privacy of a secure voting booth, and in a manner that the marked ballot cannot be viewed before it is deposited in the ballot box.

The principle of *freedom* should ensure a citizen's ability to cast his/her ballot free from intimidation, and secure in the knowledge that his/her rights of freedom of expression, freedom of association and freedom of assembly will be upheld throughout the entire election process.

The principle of *transparency* requires that the election be carried out according to due process of the law, and according to legal ground rules that are established in an inclusive and open manner. A transparent process limits the possibility for large scale election fraud, and thus the vote count should be visible and verifiable from the level of the polling station to the national election authority.

The principle of *accountability* requires that those elected have to recognise their accountability to the electorate.

Observation of an Election Process in the Pre-Election Period

The OSCE commitments should be clearly reflected in the legal framework for the election, including the Constitution and the statutory provisions (election law, political party law, media law, criminal code, rules of procedure). Assessing an election process requires first and foremost reference to these

domestic laws. The performance of the government and election authorities in implementing the law is assessed throughout the election cycle.

There are certain key aspects to an election which are fundamental to a successful process. Long-term observers should pay particular attention to the following aspects of the election cycle:

- training of election officers
- civic and voter education
- voter identification and registration
- registration of candidates and political parties
- the election campaign
- campaign resources
- media coverage
- pre-election administration
- technical arrangements
- review process

Training of Election Officers

Observers should assess whether election commission members receive standardised training. Such training should be available to all persons sitting on election commissions at all levels of the election administration. Training should be available no matter whether members of election commissions are independent or appointed by political parties.

Civic and Voter Education

Observers should assess the extent and effectiveness of civic and voter education. Sufficient civic and voter education needs to be implemented to ensure that participants in the electoral process are fully informed of their rights and responsibilities as voters. These efforts can also generate knowledge and interest about the election process and build a climate for open debate.

Civic education is a longer term process of educating citizens in the fundamentals of democratic society and civic responsibility. It may focus on the choices available to the voter and the significance of these choices within the respective political system.

Voter education is focused on the particular election and should inform voters of when, how, and where to vote. It is therefore essential that this information is provided in a timely manner, allowing voters sufficient time to make use of the information.

While political parties and civic organizations may contribute to civic and voter education efforts, it is ultimately the responsibility of the government and the election authorities to ensure that objective and impartial information is provided to voters. This information should be made available to all eligible voters, including traditionally disaffected segments of the population which could include ethnic minorities, women and illiterates.

Voter Identification and Registration

The right to vote must be given to all citizens of the country on equal terms, provided they have reached a qualifying age. A national voter register establishes the nationwide list of all eligible voters, and should insure against ineligible and multiple voting.

It is important that the implementation of the registration process be evaluated, to ensure that no unreasonable restrictions are placed on voter registration. Unreasonable restrictions are those based on race, gender, religion, ethnic origin, past political affiliations, language, literacy, property, or ability to pay a registration fee.

Reasonable restrictions may include factors such as residence, citizenship, persons in legal detention, and those considered mentally incapacitated by the courts. In relation to these factors, persons may be barred in some countries from exercising the right to vote without the violation of the universal principles. However, in regards to citizenship, those people who have lived in the country as de facto citizens for a reasonable number of years should be given a fair chance to register to vote.

The maxim "one person, one vote" is strengthened by a well maintained and regularly updated register. One comprehensive, computerised list can assist the authorities in verifying the accuracy of the lists, thereby enhancing the integrity of the voter register. Safeguards should exist to avoid multiple registration.

Registration facilities should be readily accessible to the electorate, and the registration procedures clearly stated. The voters list should be a public document which will be posted well in advance of the election to permit complaints about illegal inclusion or exclusion. If the voters receive special voter cards, there must be adequate security to avoid duplication or counterfeiting of the cards.

All votes should carry the same weight to ensure equal representation. Although not strictly in accordance with OSCE commitment 7.3¹ which

¹ Cf. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, in: Arie Bloed (Ed.), *The Conference on Security and Co-operation in Europe. Analysis and Basic Documents, 1972-1993*, Dordrecht/Boston/London 1993, pp. 439-465, p. 444.

guarantees equal suffrage to adult citizens, in some cases a different weighting of votes may be granted as a positive discrimination to ethnic minorities to ensure that they have some representation in the national political institutions.

(In exceptional cases a separate voting list may not exist, and voting may be allowed on the basis of a citizens register. In such cases, the citizens register should be equally well maintained and accessible. Where, in very rare cases, an election has to be conducted without any register or list, special arrangements should be considered such as the use of indelible ink, to guard against multiple voting.)

Registration of Candidates and Political Parties

OSCE commitment 7.5² guarantees to respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination. Any arbitrary or discriminatory application of the law for the purpose of damaging specific political forces, contravenes the OSCE commitment.

The same general principles underlying the right to vote apply for the right to be a candidate. All political forces and movements should therefore be able to nominate candidates on equal terms, and not be limited for reasons of race, gender, language, religion, political affiliation, ethnic or national origin, or economic status.

Reasonable restrictions for persons wishing to become candidates must not unjustly discriminate, and may include a residency requirement in the country for a certain period of time before the elections, or having reached a higher age than the minimum voting age.

The registration requirements should be clear and predictable, and not involve potentially discriminatory demands such as excessive deposits or an unreasonable number of names on registration petitions. A right of appeal must exist for the refusal of registration to a party or candidate.

The Election Campaign

The OSCE commitments require political campaigning to be conducted in an environment that assures freedom of expression, assembly, and association. These rights must be safeguarded for a period adequate to allow political organizing and campaigning and to inform citizens about the candidates and issues. Adequate security measures must be provided.

The existing government is responsible for ensuring that the ground rules for the campaign enjoy broad support from the contestants, and ensure effective compliance with the regulations. The contestants may adopt a Code of Con-

² Cf. *ibid.*

duct to ensure responsible behaviour, and should not use any means of violence or intimidation to further their cause.

Candidates must have the freedom to convey their programmes to the voters without disruption of campaign meetings, and with no geographic infringement imposed by government "no-go areas". There must be a well defined process for ensuring the issuing of permits for conducting public rallies, political meetings, and fund raising activities. There must be judicial recourse in the case of unreasonable delays in granting such requests.

The observers should note the availability of venues for rallies, access of all candidates and parties to places and audiences of their choice, distribution of campaign materials, and the effective freedom of assembly, association and expression for all competing political forces. Particular attention should be paid to the use of intimidation or violence to inhibit campaigning.

Campaign Resources

An effective campaign needs sufficient financing. Campaign costs can include salaries, transportation, office expenses, the purchase of print and electronic media, and the printing and distribution of campaign materials. While it is understood that elections do not always take place on a completely level playing field, an equitable and unbiased formula should be agreed upon to ensure some financing to all contestants. This may be regulated by the election law or separate legislation dealing with public financing if these funds are to be provided by the state.

It is the responsibility of the government not to abuse state resources, both human and material, in support of its own candidates. For example, government vehicles, office space and telecommunications should not be used for partisan purposes unless equal access can be provided to the other contestants.

Time is also an important resource for a meaningful election campaign. The duration of the campaign must provide enough time for the contestants to convey their policies to the electorate. The right to freedom of expression, association and assembly, if not previously secured on a permanent basis, must be ensured in sufficient time to allow effective political organization and campaigning.

Observers must ultimately consider whether any disparity of resources between the contestants meant that voters were not well informed about their available choices and whether this substantially affected the outcome of the election.

Media

The OSCE commitments call for unimpeded access to the media on a non-discriminatory basis. The very basis of democratic governance requires that the electorate be able to make informed choices. This demands that all contesting points of view be fairly and equitably communicated.

In this respect, government regulation of the media is of crucial importance to a meaningful election campaign. While larger and better financed parties and candidates may be able to purchase media time or space, an equitable formula should be reached to permit all contestants reasonable access to print and electronic media. This may require the donation of state media time or space or some formula for public financing.

The media should be evaluated by its degree of independence in informing the electorate about the candidates and issues. It should be assured by the government of:

- the right to gather and report objective information without intimidation;
- no arbitrary or discriminatory obstruction or censorship of campaign messages.

While long-term observers should pay attention to the media, it may be necessary to cooperate with specialised agencies in order to have a precise and scientific analysis of the media.

The Election Administration

The Central Election Commission, the Supreme Court or an equivalent body are usually assigned to administer an election. Whichever body is constituted to administer the election, its work should be independent, impartial, and transparent.

The administering body should be independent and immune from politically motivated manipulation. Alternatively, it could be composed of multi-party representatives, with equal representation at all levels of the election administration. If a judicial body is charged with administering the elections, its independence must be assured through transparent proceedings.

The administering body should be able to implement the legislation governing the election process without any undue interference, intimidation or impediment to its duty. Its independence can be further guaranteed if the members have a fixed tenure, the right of return to their previous employment and an independent budget for public record.

It is also imperative for the administering body to be impartial. It must enforce the rights of freedom of expression, association, assembly,

non-discrimination and due process of the law. Any partial treatment or abuse of authority may pose serious threats to an election's legitimacy.

Finally, the administering body should be transparent in order to instill public confidence. Its transparency could be assisted if it is composed of well known, respected, and experienced individuals.

Technical Arrangements

The observers should, if possible, establish whether there is a realistic understanding of the requirements for an efficient process in terms of equipment, human resources, specialised skills, and training of election officials. Observers should note what instructions have been issued in the polling station and at constituency level, whether the necessary materials are in place (electoral roll, ballots, ballot boxes etc.), and if electoral officers have received sufficient training and are familiar with the tasks to be carried out on election day.

Three examples of technical planning that often raise questions in an election process are the establishment of the voter register, election boundaries and the design of the ballot:

Voter Register - Large scale emigration and internal migration can cause significant population shifts between elections. The difficulty of identifying and registering large numbers of voters who have moved is a substantial technical undertaking. The technical challenge increases when there is a lack of computer equipment available to authorities. To avoid last minute census taking, an updated registration of the population should be conducted at regular intervals, and the voter register should ideally be computerised as a safeguard against multiple registration.

Election Boundaries - The election law should provide detailed and uniform criteria for the drawing of electoral district lines, specifying considerations such as the number of voting population per district, natural and historical continuity of boundaries, or norms guaranteeing equal and fair representation to ethnic groups. The boundaries must be drawn in a transparent manner, and ideally by a non-partisan commission of experts assigned for this purpose. Otherwise it may be difficult to determine if the boundaries are elaborated by some politically neutral electoral principle, or in a selective and biased manner.

Ballot Design and Security - The complexity or simplicity of the ballot directly affects the efficiency of the voting process. The ballots should be easy to fill out for the voter, and safeguarded, e.g. by watermarks, to avoid duplication. The ODIHR On-site Co-ordinator should determine who printed the ballots and where, how they were stored and distributed to the different regions, and at what time this was done prior to the elections. Where envelopes

are used to authenticate a vote, similar observation should be carried out to ensure their security.

Review Process

The right to appeal to an independent, impartial, national legal body must be ensured for all involved parties in the electoral process. A complaints procedure should be established as a review mechanism which can serve as the final arbiter of disputes.

Observers should pay particular attention to the selection and composition of the review authority, its terms of tenure and its institutional autonomy, as the integrity of the election process can only be upheld if the review mechanism is independent and impartial.

Complaints concerning the election process that are submitted by candidates or voters alike, must be dealt with equitably and according to due process of law. Procedures and deadlines should be clearly enumerated in the election code. There must also be accessible and adequate facilities for filing complaints with the judicial authorities nominated for this purpose by the electoral law.

Response should be in a timely manner, and all rulings should be recorded and made public. The complaints that are registered during the electoral process can serve as indicators of the issues that should be investigated by the long-term observers.

Election Day Observation

The basic aim of observing the election day process is to verify whether the voting and counting process are implemented in an orderly manner and in accordance with the electoral procedures. The presence of observers in polling stations can also contribute to building confidence in the election process.

Observers should recognise that some mistakes made by election officials may be because of inexperience or human error rather than due to any deliberate intention to compromise the integrity of the process. However, observers should pay attention as to how irregularities are addressed, and particular attention to recurring patterns of irregularities.

The Vote Count

Although observers are normally fatigued by the time the vote count begins, this is a crucial stage in the election and should be observed to the end. This

provides the opportunity to spot check whether ballots are counted accurately, reflecting the choices expressed by the voters.

The results should be made available at the polling station level, and can be recorded. The results from particular polling stations can constitute a sample of verified results that can be matched with the overall published results. The tabulation of results should be verifiable at all levels of the election administration.

The first stage in the vote count is normally organised in the polling stations. Any counting system in which the ballots are not counted in the polling station but transported to a central counting location produces significant extra problems of visibility and verification.

The Final Assessment

A de-briefing will be organised by the ODIHR On-site Co-ordinator the day following the election. During the de-briefing the observers should share their findings on the election process and try to reach a common conclusion on how the elections were administered in relation to the commitments of the Copenhagen Document 1990 and the legal framework of the country concerned. The input of observers should concentrate on a factual summary, with particular emphasis on recurrent trends noted during election day observation.

Conclusions are drawn from the collective findings of the pre-election period as reported by long-term observers, as well as the election day findings of short-term observers. The de-briefing should provide an opportunity for all observers to report their findings.

ODIHR issues a post-election statement within 24-36 hours after the election. The statement contains a brief explanation of the composition and deployment of the observation mission and a short factual assessment of relevant aspects of the election cycle. The On-site Co-ordinator submits a short but comprehensive analytical report, including recommendations for improvements in the election process, within two weeks after the election.

An election within the OSCE region may not meet the ideal standard for an election as set out in the commitments. There will always be imperfections and irregularities in an election process. However, all OSCE participating States are committed to do their utmost to ensure that these principles are upheld.

While isolated infractions should be noted, it is the pattern of recurring irregularities that may indicate a serious threat to the integrity of the election process. Therefore, when assessing an election according to the commitments, a relative determination must be made as to whether any breach of the

commitments materially affected the voter's choice and the overall election outcome.

ODIHR's long-term approach to election observation permits an assessment of the entire process. This allows ODIHR to make more useful recommendations to the host country, and also permits an in-depth and well documented coverage of the entire election process.

Ultimately, the principle of freedom can only be fulfilled if the citizens of a country are free to cast their ballot and to effectively choose their leaders. ODIHR hopes that the technical recommendations that it can contribute as a result of long-term observation, as well as documentation of any violations in an election process, will serve as an effective tool in supporting the fundamental human rights as outlined in the OSCE commitments.