

# Towards an Integrated Approach to Election Observation?

## Professionalising European Long-Term Election Observation Missions

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This report was supported by the European Commission  
European Centre for Development Policy Management  
September 1997

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ISBN: 90-72908-24-4

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## *Acknowledgements*

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ECDPM gratefully acknowledges the support of the European Union for its financial support, substantive advice, and encouragement for the initiative to develop, organise and hold a training course for long-term election observers. Without this support, the course would not have materialised.

Also, we would like to thank the Netherlands' Ministry of Foreign Affairs for sharing their views and experiences regarding the problems, pitfalls and possibilities of organising election observation missions.

ECDPM would also like to mention the fruitful collaboration it has had with the Austrian Study Centre for Peace and Conflict Resolution (ASPR), with whom we have set up this undertaking.

Our sincere appreciation goes to the lecturers who accepted our invitation to share their views and expertise with a European group of course participants, and to the participants themselves, who diligently and enthusiastically participated in the course till the very end.

We are also in debt to a number of persons, too large to mention individually, who have given freely of their time to listen to our ideas, to identify our shortcomings in setting up a training course like this one, and to discuss concepts and constraints of election observation, in theory and practise.

Finally, we would like to thank our colleagues within ECDPM, Carola Baur, Suzanne Cartigny, and Roland Lemmens. They have been involved from the early beginning in preparing and organising the training course. Without their help the course and this publication would not have been possible.

## *Preface*

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The general notion that democracy is more than the mere holding of multi-party elections has become evident over the past decade. Elections are only a first, albeit important, step in the democratisation process. While they are not an indicator of the quality of a democracy, they do, however, provide a discrete point of departure on the road to democracy.

International election observation missions have become an important but fragile instrument for the donor community to assist developing countries to accommodate changes in their political systems. Given the rapidly increasing demand for such missions and taking into account the relative scarcity of election observation expertise, missions have been subject to serious criticism.

To overcome such criticism, professional standards of election observation missions need to be enhanced. To that effect, a pilot training course for long-term election observers was organised with generous financial and substantive support from the European Union, from 23 - 28 February, 1997, in Maastricht. In this course, the most important aspects of election observation were treated and where possible, suggestions were made as regards further definition and specification of particular roles and responsibilities.

As a result of the training course, this Policy Management Report has been produced. It presents an overview of the "state of the art" of long-term election observation, it identifies and discusses roles and responsibilities for long-term election observers, and it presents a modest attempt to provide options for an enhanced and integrated approach to election observation missions.

The purpose of the report is to stimulate and facilitate the debate among policymakers and practitioners on how to enhance the professionalisation of observation missions, as it is generally felt that there is considerable room to improve their effectiveness and efficiency. Furthermore, it attempts to inform a wider audience about current practices in election observation.

The report consists of an executive summary with recommendations and a main report in two parts. Part I describes the substantive part of the course and discusses the various topics considered essential for election observation.

It also reflects in general terms the discussions that took place during the week. Part II presents a description of the training course and the methodology used. It furthermore provides a concise analysis of the course evaluation by participants.

As reference is made, time and again, to the further professionalisation of election observation missions, it is our wish that this report may serve as a contribution towards achieving that goal.

Louk Box  
Director, ECDPM



## *Executive Summary*

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### *Overview of the Project*

The trend towards holding democratic multi-party elections has been on the upsurge during the past decade. International organisations including the United Nations (UN), Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Organisation of African Unity (OAU), Organisation of American States (OAS) and the Council of Europe, are confronted with an unmet need to assist in the implementation of electoral processes. These requests for election assistance have mainly come from countries in democratic transition, from countries that hold elections following a declaration of independence, or from countries that have been involved in protracted civil wars or internal strife.

Two main factors explain the increase in international election observation missions. First, the transformation in the philosophy of intervention: election monitoring or technical assistance for the management of electoral processes is no longer considered to be a breach of sovereignty or an intervention in a country's internal affairs and, in particular, in its political reform process. Second, the changing geo-political situation allows the international donor community to include more political oriented aspects in its foreign assistance policies.

The reason for developing a project on election observation must be seen in light of the growing importance of election observation missions, and concomitantly, with the increasing need to professionalise these missions. The increase in missions has also drawn negative criticism on their organisation and on the conduct of election observation mission personnel.

Taking into account the shortcomings and bottlenecks of election observation missions, it appears that improvement of the organisation of the mission, the quality of mission personnel, and indeed the overall preparation of the mission must be considered prerequisites for successful completion.

Resulting from a close collaboration between the Austrian Study Centre for Peace and Conflict Resolution (ASPR) and the European Centre for

Development Policy Management (ECDPM), two pilot training projects were developed with the objective to enhance the quality of election observation missions. One course was designed for election observation managers, and the other for long-term election observers (LTOs). The two proposals were submitted to and approved by the European Commission in October 1996.

In the process of developing the course, and in order to ensure "state-of-the-art" thinking in election observation, ECDPM consulted with experts in various fields such as democratisation, human rights, election laws, electoral processes and election observation.

Upon completing a draft proposal and curriculum for the courses, a meeting of experts was organised in Maastricht on 10 December 1996. The aim of the meeting was to brainstorm on the design of the training courses for election observation personnel, as well as to reflect on related general policy issues.

One of the outcomes of the meeting was a suggestion that the course should pay particular attention to the overall process of election observation from the moment when a mission is agreed to the final report and debriefing of observers. Also, the experts' meeting suggested that an effort was needed to clearly delineate tasks and responsibilities for all mission personnel in each phase of the election cycle.

Another recommendation was to ensure increased coordination between different observation missions and collaboration with local institutions and electoral organisations. Increased exchange of timely and reliable information was considered necessary.

The second draft of the proposal, having incorporated the recommendations of the experts' meeting, was then considered by representatives of the EU Member States in an informal brainstorming session held in Maastricht, on 11 December, 1996. The session concluded, amongst others, that broad political support existed for the development of such courses.

Furthermore, the need was expressed to develop an institutional memory by evaluating previous election observation missions as well as the need to write up the Commissions' experiences in an overview study. It was suggested to create a special working group on Democracy, Electoral Assistance, and Election Observation within the framework of the Committee on Human Rights (COHOM). Finally, the strengthening and expansion of a research network of institutions in the area of electoral assistance was supported.

The first training course for 'European Action Managers' took place from 27 January to 7 February 1997 in Stadtschlaining, Austria.<sup>1</sup>

The second pilot course for long-term election observers was held at Kasteel Vaeshartelt, in Maastricht from 23 to 28 February 1997. This course was attended by 29 participants from the EU Member States, with the exception of Ireland and Luxembourg. Two observers participated in the course; a representative of the European Commission and a representative of the collaborating institution (Austrian Study Centre for Peace and Conflict Resolution).

### ***The Training Course for LTOs***

The overall aim of the project was to strengthen a common, positive, practical, and constructive approach for European Union (EU) support in the development and consolidation of pluralistic, democratic societies through the observation of elections.

More in particular, the training course aimed to enhance the professionalisation of long-term election observers (LTO's) and to develop a common set of agreed criteria for selection, and deployment for mission personnel.

### ***Methodology of the Course***

The methodology of the course was a mix of lectures, case studies, workshops, working groups, role plays, and discussions. The curriculum of the course was designed in close collaboration with experts in the various fields.

The lectures dealt with subjects such as the policy framework of Europe's support for human rights and democracy, the concepts of democracy, the concept of elections, election laws, and the aim, methodology, and preparation and management of election observation missions. Case studies were presented on the South African elections of April 1994, and on the Armenian elections in 1996.

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<sup>1</sup> *Report on the Training Programme for Election Observation Action Managers.* Austrian Study Centre for Peace and Conflict Resolution. 1997. Vienna: ASPR.

Workshop-type sessions were held on "polling, counting, reporting and debriefing" and "information flows". Both sessions included participatory role-plays of 'real life' situations and made the participants painfully aware that the actual situation was most likely to be even more complex.

A workshop on "intercultural communication" raised awareness regarding the problems and constraints that are directly related to communication of information.

The course ended with a lecture on "selection, training and deployment of mission personnel". In this session a set of criteria for selection of personnel was further refined and improved for general acceptance to EU Member States.

Instructors for the course were selected European wide, primarily on the basis of recognised expertise in their specific fields. In this respect, it is important to mention that one of the lessons learned from the course, was that more attention should be paid to the didactical and presentation skills of the lecturers.

It was recognised that workshops, role plays (simulation plays) and working groups are an excellent means of 'learning hands on'. Especially, the role and duties of a long-term election observer deserve ample attention in this respect. In future courses, where useful and necessary, working groups could take up to a whole day.

While time had been reserved for an (inter)active exchange of experiences of participants, the session was skipped due to time constraints. Participants felt, however, that it was a missed opportunity, as from this exchange a further insight into desirable strengths of individual capacities or of organisations could have been obtained.

The programme also included social events and activities in order to enhance team building spirit as well as to activate discussions among and between participants during the off-course hours. A balanced mix of lectures, social events and leisure time was developed to achieve optimal results.

### ***Course Content***

Following introductory remarks by ECDPM, the training course was opened by a representative of the Netherlands Ministry of Foreign Affairs, holding the Presidency of the EU. It was noted that election observation is regarded as a

priority to further develop democratic institutions and structures and to support measures to sustain the process. A note of caution was expressed regarding Western countries imposing their norms and beliefs on the value systems in countries in transition.

In the first part of the course, considerable time was devoted to develop amongst the participants a common shared basis for general concepts such as the EU policy framework; concepts of democracy and human rights; the concept of elections and electoral laws, as well as regulations and procedures.

The reason being that a common understanding of the major concepts and factors involved contributes to a more fruitful exchange of ideas and constructive debate, to achieving the stated objectives of the course, and also to further emphasise that concepts of democracy and human rights are part and parcel of any election observation effort in the long process towards achieving democratic transition. In that regard, there was an expressed need for policy coherence and coordination between different instruments used by the European Union in the areas of democratisation, human rights and good governance.

The second part of the course concentrated on case studies and workshop-type presentations. In each of the workshops, several working groups were formed, which were then given specific problems to solve. Without exception, these problems were often stylised 'real life' cases, accompanied by heated debate and discussions. Creative solutions were found and usually compared well with the actual case.

An important objective of the course was to enhance the quality of the overall organisation of observation missions and to improve preparation, selection, training and deployment. During the course, at different occasions, the strengths and weaknesses of current organisation and deployment practises were discussed. It was generally felt that organisational and logistical aspects of observation missions were weak and deserved more attention, both in terms of resources allocated, as well as time allocated.

Lest there be any misunderstanding, the organisational aspects include the period of preparation 'at home' prior to deployment of the mission. There was considerable doubt about the quality of the decision making process as regards a 'go - no go' decision at the EU level as well as within individual Member States.

Concern was expressed that important factors for successful deployment of the mission were not properly weighted in the decision, especially concerning logistical and staff well-being aspects. Also, criticism was levelled at the often short 'lead time' to properly organise missions.

In an attempt to further standardise the organisation and deployment of election observation missions, in-depth discussions were held about the perceived pre-conditions that need to be fulfilled to ensure the successful completion of a mission. Much attention was paid to the identification and definition of selection criteria for mission personnel.

It was agreed that selection of mission personnel was one of the weak links in the process, determining to a large extent the quality of the outcome of the mission. A plea was made by the participants for the European Commission to assist in the establishment and acceptance of a set of minimum requirements for mission personnel.

Once deployed, experience showed that in many cases collaboration with other election observation missions in the field - both international, regional and local missions - was often non-existent. In some cases, there had been coordination under the UN flag, but in no case was mention made of structurally based co-ordination amongst missions. Suffice it to say that considerable overlap, duplication, waste of scarce resources and often counterproductive activities is the direct unwanted result.

Both at the EU and the national levels, care should be taken to incorporate these concerns in future negotiations on further requests for election observation support. One of the corollaries of such enhanced coordination could also be regular exchange of information and data, not only during the period of election observation, but on a continuing basis year round.

A clear need was expressed for more and qualitative (exchange of) information on codes of conduct, evaluations, mission reports, organisations active in the field, country information and country assessments, etc. It was therefore recommended that an information network be established. Such a network could become part of a larger network described below.

One issue that has hitherto not figured importantly in election observation missions is capacity building at the local level. In order to build sustainable local electoral institutions, election observation missions should closely collaborate with national (local) election institutions. Where possible, technical assistance to train local election monitors should also be considered.

For that reason, it was recommended that the terms of reference of an observation mission should not stop at the end of the mission statement, or with the writing of the report, but rather that it should also include institutional development activities both before and after the election period.

Finally, participants felt that the organisation of courses like the present one would contribute substantially to enhanced professionalisation of election observation missions. To that effect, similar one-week training courses should be held in various Member States, always in an European setting, and always in a composition similar to those held in Stadtschlaining and Maastricht.

In light of the recognised need to train a large group of European election observers, possibilities were discussed to establish a network of training organisations. In this way, an effective organisation of training courses, both related to election observation missions and human rights monitoring missions, could be guaranteed.

The specific objective of such a network would be to provide substantive and organisational support in the area of training, the maintenance of a professional network of instructors as well as qualified observer personnel, literature and information exchange and update in relevant areas as noted above.

### ***Summary of Recommendations***

The recommendations below, are the result of a constructive dialogue between lecturers and participants in the training course for long-term observers.

#### *Course related recommendations*

Content-wise, it was suggested to:

- clearly underline the human rights dimension of election observation missions;

- pay more attention to the security and logistical aspects of election observation missions;
- emphasise more the contact with local monitors;
- pay more attention to follow-up activities, in particular to local capacity building efforts.

With respect to the methodology used, it was suggested to:

- have less formal lectures and to spend relatively more time on workshops and simulation games;
- include a case study on the actual duties and responsibilities of a long-term observer;
- to share experiences among participants.

It was recommended that the cross-pollination element of the course be maintained. The composition of the group of participants in terms of nationality, sex, age, and experience was considered a major contributing factor to the success of the course. In fact, the group could be seen as an observer group in itself.

They furthermore recommended that the overall structure of the course be maintained, but that the lecturers be carefully selected. The latter need not only to have a theoretical/conceptual background and experience in the field, but also good teaching skills.

#### *Policy recommendations*

With respect to the overall organisation of election observation missions, the following policy recommendations were proposed:

- the need for a professional organisation of an election observation mission;
- the need for professional and properly trained personnel;
- the need to coordinate with other international, regional and local missions present in the field;



- the need for sufficient lead time to properly organise a mission;
- the need to adopt a common European standard for observer missions, both regarding the pre-conditions that need to be fulfilled as well as the selection criteria for mission personnel (establishment of minimum qualification standards for observers);
- the need for a network of information, e.g. an international database, including *interalia* codes of conducts, evaluations and reports of previous missions, a list of organisations active in the field and country assessments;
- the need for a network of training institutes, providing for regularly up-dated training courses for both election observation and human rights monitoring missions;
- the need to focus on supporting the democratisation process in general, and not only on the electoral processes:
- the need for policy coherence and co-ordination between the different instruments used.

**PART I:**  
A Syllabus for Election Observation  
Training

## *Introduction<sup>2</sup>*

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Democracy has not always been on the EU agenda as all Member States were established democracies. The issue was first brought into the debate with the enlargement project and with the collapse of the Soviet bloc. States of Central and Eastern Europe, aspiring to become EU members, are being met with strong demands regarding democratic rule, which is a *sine qua non* for membership. Pre-accession funds are conditioned on respect for human rights and facilitation of democratic practices.

Gradually, all political aspects, including democracy, human rights and good governance have moved higher up on the development cooperation agenda, especially in the Lomé Convention. From an initial period of negative conditionality, the 4th Lomé Convention emerged as from 1989 with respect for human rights as an integral part, with a positive approach.

The so-called third wave of democratisation which swept the world in recent years led to greater efforts to observe the conduct of elections. Multilateral institutions and bilateral agencies have mounted election observation missions in many countries, involving large numbers of observers. Between 1993 and 1996, the UN received more than 70 requests for international observer missions. There are no comprehensive statistics, however, showing the total number of missions fielded by various organisations and agencies, nor the total number of observers involved.

The Treaty of the European Union (TEU), which came into effect on 1 November 1993, states that one of the objectives of the Common Foreign and Security Policy (CFSP) is "to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms" (TEU, Title V, Article J.1). In the area of development cooperation this objective is reiterated (TEU, Title II, Article 130u, para 2). Towards that end, the EU has embarked on several election observation missions, as one of the chosen instruments.

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<sup>2</sup> This section draws to a great extent on a Background paper written by Dr. S. Mair Mair, S. 1997. *Election Observation: Roles and Responsibilities of Long-term Election Observers*, ECDPM Working Paper 22. Maastricht: ECDPM.

In pursuit of these democratic objectives, the EU tries to create a measure of preparedness in order to meet the challenge of election observation at short notice. An important element in such a common approach towards election observation is the development of a standardised set of criteria and procedures for qualified personnel. A concomitant element is the training of such personnel in the tasks they are expected to perform. The bulk of training activities are envisaged to be undertaken by the Member States or organisations designated to do so.

Despite the expressed need for a common EU approach to election observation, there exists no common institution or network of institutions to discharge such a task and to ensure coordination of efforts. In this regard, the EU is still an institution in the making. The Commission needs to develop a competence to deal with these issues and to make budgetary room for such activities. Depending on the type of mission and the region in which it takes place, it may take a more pro-active approach and act as a lead coordinator for certain missions. While the Commission does not wish to impose guidelines on the Member States and rather aims to develop complementary expertise, it is in the interest of the EU to project a visible identity in election observation around the world, and not to be entirely absorbed under the auspices of other entities such as the UN and the OSCE.

Whatever the modalities, it is necessary for the Commission and Member States:

1. to develop a set of common criteria for election observation missions and personnel;
2. to undertake training to enhance the professionalism of observers;
3. to standardise procedures to ensure consistency;
4. to assume a complementary position vis-à-vis other international election observation missions in the field;
5. to develop analytical and operational capabilities, particularly in conflict areas; and
6. to ensure EU visibility in the field.

## *Concepts of Democracy*

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Democracy is one of those grand concepts whose content is highly controversial and continuously changing. It is also a many-faceted concept whose elements are given unequal weight by different actors and stakeholders. Furthermore, its underlying cultural bases and historical genesis lend it to controversy, debate and cultural relativism. Moreover, its highly charged normative meaning makes it susceptible to abuse in rhetoric and propaganda. Finally, democracy is not a state of affairs which has been achieved in certain countries and not in others. It is rather an ideal to strive for - and so far only realised to some degree. In other words, a political system of governance is more or less democratic in a relative sense. Hence, democracy eludes precise definition.

Even so, despite controversies, there has emerged a set of elements of democratic rule about which there is a modicum of consensus. Most people have an intuitive understanding of this consensus.<sup>3</sup> But few can state explicitly what elements it comprises.

Let it be stated at the outset that democracy is mainly a system of governance, which defines the rules of the political game in a given territory, aiming at broadening the political arena. It has to do with the rules and procedures in terms of which political processes unfold. In principle, democratic rule does not imply specific outcomes for given groups of citizens or policies in favour of certain segments of the population. However, there is a presumed connection between democratic governance, on the one hand, and outcomes and policies, on the other. But the complexity of this connection makes it exceedingly difficult to establish how it works. Indeed, the establishment of a wide variety of institutions and procedures is required to achieve democracy. The strengths and interests of social forces, committed to the institutionalisation of democratic processes and practices, are indispensable to attaining democracy.<sup>4</sup>

### ***Fundamental Democratic Building Blocks***

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<sup>3</sup> In the words of Professor Anyang'Nyong'o: "... although hard to define, one "recognises a democracy as one lives it" (See: Faber, D. and K. de Jong. 1996. *Broadening and Deepening: Policy Options for SNZA to support Democratic Transitions in Developing Countries*. Report of a Conference, 27-28 August 1996. Maastricht: ECDPM, p.1).

<sup>4</sup> For the purpose of election observation, LTOs should concentrate on rules and procedures, and their enforcement in real life situations.

Democratic rule is made up of several pillars or elements which, taken together, satisfy minimum international standards.<sup>5</sup> They do not necessarily carry the same weight but they are still constituent parts of a democracy.

### *Free and fair elections*

Free and fair elections form an indispensable part of any democratic system (for further details see the section below on electoral laws). Elections are the mechanism whereby the people (the electorate) expresses its will (or an approximation thereof) when choosing their representatives or deciding on a substantive matter by way of a referendum.

To take part in elections means taking part in public affairs, albeit in a limited way. In a modern society the citizens tend to take part in public affairs through elected representatives, rather than directly. *Representative democracy* implies that powers to act on behalf of the electorate are delegated to elected representatives for a given period of time - participation by proxy so to speak. It is considered cumbersome and impracticable to involve scores of citizens directly in the day-to-day decision-making and management of public affairs through very frequent referenda. Many scholars also feel that such an 'instant' democracy is susceptible to cheap populism and could have a destabilising effect on governance.

Elections are also the mechanism whereby the electorate may recall representatives if they are deemed not to have performed as promised or expected. In other words, through elections the people may hold their representatives *accountable* for their actions or inaction. In that sense, elections are a non-violent method for changing the government.

For elections to be meaningful there must be a real choice of alternatives, between parties and candidates. This implies that multiple political parties must be allowed to form and to campaign for votes on the basis of their manifestos or programmes.

This is best expressed in the term *pluralism*. In other words, contestation and

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<sup>5</sup> For further details see Faber, D. and K. de Jong. 1996. *Democracies in Transition: the model, the factors, the approach, Report of a Workshop, 14-15 March 1996*, Maastricht: ECDPM.

genuine competition for votes is at the core of a democratic system. Furthermore, elections must be held at regular and reasonable intervals, typically 4-6 years.

A *free* election means absence of intimidation of voters by any party or force. Any form of undue influence, coercion or violence is anathema to the freedom of elections. In essence, for an election to be free, the voters must have free access to voting for any candidate of their choice, and to be elected as a representative.

A *fair* election has above all to do with a so-called "level playing field" in the campaign and the run-up to polling day. The fairness concept embodies non-discrimination, equal distribution of polling stations around the country so as not to impede voting by certain segments of the population. It also covers the right to publicity, e.g. country-wide campaigning without hindrance so as to reach the entire electorate with alternative political programmes and policies with a view to offering a genuine choice. In this regard, equal access to the electronic and print media is crucial. Fairness also incorporates proper counting of ballot papers after completion of polling.

### *The rule of law*

The rule of law is generally considered one of the pillars of democracy. This means predictability and freedom from arbitrary exercise of power by the state. Constitutions normally include a Bill of Rights which sets out the fundamental rights and freedoms of citizens. Other laws define further the rights and obligations of the citizenry. By virtue of the rule of law the exercise of power is restrained; the rule of law acts as protective shield for the citizens.

A presupposition is, of course, that the laws have been passed in a democratic fashion and are thus considered legitimate in the eyes of the people. A case in point where this did not hold true was South Africa prior to the demise of *apartheid*. The legal superstructure of the racial and social order known as *apartheid* was clearly not legislated through democratic institutions because the majority of the people had been effectively disenfranchised.

The rule of law also guarantees access to the judiciary and judicial review when allegations are made that breaches of the law have occurred.

### *Human rights*

An array of human rights is associated with democracy but not all human rights are an integral part of the democracy concept. Yet, many would say that democracy entails protection and promotion of all human rights. At the very least, the freedoms of expression, peaceful assembly and association are indispensable in a democratic system. This notwithstanding, in the public and state interest certain restrictions may be imposed on the freedom of expression, such as libel, racism, sexism, and matters of state security. Such restrictions should not necessarily be construed to be contrary to democracy, as long as they are reasonable. But they are open to abuse and should be subjected to constant public debate to prevent circumvention by the incumbent government and the political forces associated with it.

### *Separation of powers*

Once political leaders and representatives have been elected, governments are constituted on the basis of the constellation of political parties in the elected assembly. But in order to monitor and limit the exercise of power a system of separation of powers has been designed, with built-in 'checks and balances' between the three branches of government: the executive, the legislature and the judiciary.

### *Majority rule*

Majority rule is basic to the democratic concept. But when majority decisions are taken it does not mean that the minority is completely marginalised. On the contrary, democracy means protection of the rights of minorities. Genuine democrats tend to eschew notions of 'the winner takes all'. Democratic rule usually entails power sharing of sorts, or at least an opportunity for the opposition to return to a majority position when elections are held again. For that eventuality to become real, the minority opposition must not be deprived of its means to function as an effective opposition and to epitomise the alternative to the incumbent party or coalition parties.

Various electoral systems and formulae have been introduced to prevent the monopolisation of power, e.g. proportional representation and compensatory member systems, as well as variants of federalism, confederalism and consociationalism. They all have their strengths and weaknesses but they have in common that they are designed to ensure a fairer distribution of power in the



interest of legitimacy and governability.

In certain situations, particularly in divided societies, the winner(s) of elections may invite the losing opposition into a government of national unity. In war-torn societies such a stance may be necessary to allay fears of victimisation on the part of the opposition and to lay the foundation for reconciliation and reconstruction.

### *Democratic political culture*

Apart from the formal rules and regulations of democracy, the evolution of a democratic political culture is critical to the long-term consolidation of democratic rule. In fact, creating a democratic political culture amounts to the institutionalisation of democracy as a sustainable system of governance. History shows that it is possible to hold sham elections from time to time and still retain a large measure of autocracy. To nurture a genuinely democratic political culture takes time, because it involves socialisation and inculcation of democratic values in the minds of people. In practice, it will involve broad popular participation in public affairs, way beyond occasional elections. In this regard, the role of civil society is important. Positioned between the state and the private sphere of the family, the associational life of civil society can play an active part in developing such a democratic political culture as the true spirit of democracy.

### *Discussion and compromise*

A society characterised by a democratic political culture encourages discussion and compromise as means of conflict resolution. It promotes tolerance of difference and forbearance in dealing with opposing views. Although the formal protection of democratic rule as enshrined in law is no doubt important, no amount of legislation can compensate for lack of democratic disposition on the part of political leaders and citizens alike.

## *Elections and Electoral Laws*

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The previous section set out the fundamentals of a democratic system of governance about which there is a fair degree of consensus, despite a number of unresolved controversies. It will be recalled that elections are a key element in democratic rule. Yet, from one country to another there are wide variations in the laws that govern the conduct of elections and the ensuing distribution of seats in the elected assemblies. It is not for the international community to prescribe and insist on any particular set of electoral laws; some scope for variation is admissible as long as the fundamentals are observed. All the same, the existence of agreed international norms no doubt has a strong bearing on legislative processes at national levels regarding electoral laws defining the technicalities and specificities of the conduct of elections.

### *Fundamentals of Elections*

Since the Universal Declaration of Human Rights of 1948, a series of legal instruments has become an integral part of international law in the field of human rights and democratic practice. One of these legal instruments is the International Covenant on Civil and Political Rights (ICCPR) of 1966, which is of particular importance to the political rights pertaining to systems of democratic rule. Altogether, 140 states have acceded to it. With such wide acceptance, this covenant carries much weight and serves as a legal reference point for electoral processes and the proper administration of elections.

The international legal instruments have been echoed at the regional level and adapted to regional circumstances. Concomitantly, commissions have been set up to monitor its enforcement and to hear complaints. For instance, in Europe the European Convention for the Protection of Human Rights and Fundamental Freedoms is in force. In 1969 the Inter-American Convention on Human Rights was passed. Similarly, the African Charter on Human and Peoples' Rights was promulgated in 1968. These regional instruments are to be interpreted in light of international law.

Article 25 of ICCPR deals with the right of every citizen to vote and to be elected:

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

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

In July 1996, the Human Rights Committee issued a general comment on article 25 in order to give an authoritative interpretation of its meaning (see Annex 4 for this general comment *in extenso*). Although the general comment is not legally binding on the signatories to the Covenant, it serves as a clear and strong guideline with respect to the restrictions that may or may not be introduced, as well as to the associated freedoms that need to be adhered to for elections to be meaningful. Accession to the Covenant and, by implication, acceptance of the said general comment, require the signatories to enact national legislation to ensure that their citizens enjoy the stipulated rights regardless of the form of constitution.

The general comment reiterates that the right to vote and to be elected lies at the core of democratic governance based on the consent of the people. Furthermore, it underscores that this is a right to be enjoyed by every citizen and that, as a corollary, no distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Definition of citizenship is critical and must not be used to disenfranchise groups of the electorate. Moreover, the restrictions that may be introduced with regard to eligibility to public office are addressed at length.

The general comment also expounds on the principle of accountability of elected representatives through recall at periodic elections. More importantly, it asserts that states must take effective positive steps to ensure that all persons entitled to vote are in fact able to exercise that right. These include measures to overcome specific difficulties such as illiteracy, language barriers, poverty or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively.

Mention is made of the right of voters to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. To supervise and to ensure that the electoral process is conducted fairly and impartially an independent electoral authority should be established. Without specifying a particular framework of laws to guarantee the freedom and fairness of elections the general comment states that such established laws must be compatible with the Covenant.

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 qualification in the previous sentence does provide some discretion and a certain differential weighting of votes. For instance, it is well known that not all elected representatives have an equal number of votes behind them. In some countries this occurs by design in that, say, votes in rural areas are given more weight than their urban counterparts. As long as such arrangements are reasonable and reflect a broad consensus they are permissible; in effect, they can be considered a form of affirmative action. Similarly, in electoral systems with single member constituencies the votes cannot by any stretch of the imagination be said to carry equal weight.

However, so-called gerrymandering is ruled out categorically as an unfair practice. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secure tenure, ensure that persons holding public service positions are free from political interference or pressures.

Finally, the general comment highlights the importance of the free flow of information and ideas. This implies a free press and other mass media, able to comment on public issues without censorship or restraint and to inform public opinion. It also includes freedom to engage in political activity individually or through political parties and other organisations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticise and oppose, to publish political material, to campaign for election and to advertise political ideas.

All in all, the general comment by the Human Rights Committee on article 25 of the ICCPR sums up and covers very well the international consensus about the definition of elections and their proper conduct, yet allowing some scope for variation with regard to electoral laws on the technical aspects of elections and systems of political representation.

### ***Electoral Laws***

The electoral laws of any country lay down rules and procedures regarding the conduct of elections, i.e. they deal with the freedom of elections in a somewhat narrow sense and less with their fairness, which has rather more to do with the electoral campaign and the run-up to polling day. Still, electoral laws not dealing with the mechanics of polling can have strong bearings on the distribution of seats in elected assemblies.

Typically electoral laws cover such areas as:

- electoral commissions or authorities, their composition and the discharge of their duties with regard to the organisation, administration and conduct of elections;
- delineation of constituencies and distribution of polling stations;
- nomination of candidates;
- voter registration;
- voter education;
- electoral systems, e.g. single member constituencies, proportional representation, compensatory member arrangements, electoral thresholds requirements, coalition formation etc.
- procedures and technicalities of polling, e.g. lay-out of polling stations, designation of election officials, admission to polling stations by election observers and monitors, counting procedures, reporting of results etc.

It is mandatory that election observers are familiar with the elections laws. STOs should be cognisant of the most important features of them in summary manual form. LTOs, on the other hand, should have thorough knowledge of them and preferably have access to the legal texts, at least for reference should the need arise. Heads of mission need to have intimate knowledge of these laws, including the finer points of interpretation.

What is on the statute books may in any given country be acceptable in terms of compliance with the ICCPR. What matters, however, is how the laws are applied and enforced. In this regard, there is often much left to be desired in countries

where authoritarian traditions still linger. A primary task for election observers is, therefore, to document any discrepancy between the letter and spirit of the laws and actual practice. In performing this task, it is incumbent on the observers to carefully check and validate all information acquired or imparted to them. Observers should be wary of hearsay, rumours and unfounded allegations in a charged atmosphere of electoral contestation.

If discrepancies are found, election observers should be able to distinguish between, on the one hand, deliberate fraud, manipulation and rigging, and, on the other hand, mistakes committed due to inexperience or incompetence on the part of election officials. In some cases, there may also be customary procedures, e.g. in the methods of counting ballot papers, which strictly speaking do not conform to the letter of the law. However, such customs may not necessarily violate the spirit of the law and distort the outcome. In situations of that nature observers should be able to exercise sound judgement and desist from overly rigid interpretations.

## ***"Raison d'être" of Election Observation***

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The late 1980s and the early 1990s have seen a sharply increasing trend towards the holding of democratic multi-party elections. International organisations, among them the UN, OSCE/ODIHR, OAS and the Council of Europe, have been and are still confronted with an unmet need for assistance in the administration and facilitation of electoral processes. A concomitant need for election observation has also arisen. Two main factors may explain the increase in international election observation missions.

First, the modification of the concept of intervention means that election observation or provision of technical assistance on election-related matters is no longer considered to be an infringement of the national sovereignty of a particular state or interference in a country's internal affairs, and more in particular, in its political reform processes. It should be noted that one of the preconditions for election observation missions is that they take place on the basis of a formal invitation by the government concerned. Furthermore, election observation will only take place in countries which have acceded to the various international human rights instruments, all of which, except the African Charter on Human and Peoples' Rights, refer explicitly to the holding of free and fair elections. This legitimises and justifies commentaries on the electoral process and does not constitute interference in breach of the principle of non-intervention.<sup>6</sup>

Up until the late-1980s, and even beyond, international election observation was resented by incumbent regimes which tended to see it as an encroachment on their national sovereignty. It was admissible only in cases of decolonisation, e.g. Zimbabwe in 1980 and Namibia in 1989. This stance has gradually given way to a view that election observation is a legitimate pursuit, indeed a duty of the international community in the interest of democratisation world-wide, provided certain preconditions are met.

Second, the new geo-political situation after the end of the Cold War allows the international donor community to include more political aspects in their foreign assistance policies. Explicitly or implicitly, they impose conditionalities related

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<sup>6</sup> See: Garber, L. 1984. *Guidelines for International Election Observing*, Washington D.C.: International Human Rights Law Group, p. 21.

to the protection and promotion of human rights, democracy and aspects of "good governance". This also encompasses the rights of political participation and competition for state power through regular, fair and free elections which serve to legitimise governmental authority.<sup>7</sup>

The need for election observation arose in the context of certain situations which called for impartial judgement of electoral processes. Due to internal strife and tension, indigenous populations tended to question the impartiality of the electoral authorities of their respective countries, and the international community felt a responsibility to assist in overseeing the proper conduct of elections in accordance with international standards.

One may distinguish between four categories of situations where election observation is seen as particularly relevant:

1. emergence of new states, resulting either from decolonisation, secession or from the dissolution of federations;
2. reconstitution of war-torn societies after protracted internal conflict or civil war;
3. transition from long-standing authoritarian rule to a democratic system of governance;
4. recovery from serious internal tension towards a more stable situation.

While the above are discrete categories, in real life, a mix of situations will be encountered.

### ***Objectives of Election Observation***

There is general agreement that the overriding objective of election observation is three-fold:

1. Legitimation or delegitimation of the electoral process;
2. Improvement of the conduct of elections;
3. Ultimately making election observation superfluous by creating local capacity and by nurturing a democratic political culture.

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<sup>7</sup> There is a growing recognition of the relationship between peace and democracy. Democratic elections are increasingly regarded as an effective device for resolving and preventing armed conflicts. Moreover, in terms of cost effectiveness, let alone the human suffering involved, electoral assistance is to be preferred to costly humanitarian and military operations to re-establish and maintain peace.



These overarching goals may in turn be sub-divided into more specific objectives. The UN Electoral Assistance Division has enumerated the following:

- to serve as a neutral witness expressing the international community's interest and support for the democratic process;
- to raise public confidence in the election process;
- to detect and expose fraud and irregularities whenever they occur;
- to assess the relative legitimacy of an electoral process and outcome in accordance with internationally accepted standards;
- to enhance the meaningful nature of the electoral process itself;
- to enhance the respect for political, civil and other fundamental human rights in accordance with the principles and obligations set forth in international law;
- to make an official public assessment of the election and offer suggestions for improving the electoral process in the future;
- to encourage political contestants to accept the results of a legitimate electoral process.

There is some controversy, however, whether election observation ought to contribute to conflict resolution as well. The view is widely held that election observation can only legitimise an electoral process, but it cannot address the very causes of the conflict which played itself out prior to the elections. If one or more of the parties are unwilling to accept the outcome and choose to revert to armed struggle there is little the observation mission can do to prevent it.

The cases of Angola and Haiti have shown that observation alone cannot guarantee recognition of an election result and quell armed conflict. Additional measures would then be required, extending far beyond election observation. The time horizon for such interventions could be considerable.

### *Interference*

Before the democratisation wave, which started towards the late 1980s, regimes around the world tended to see international election observation as an encroachment on their sovereignty. Many of them still consider observation tantamount to meddling in their internal affairs, and only grudgingly accept it under considerable pressure.

In the past decade, the notion of national sovereignty has undergone change. The international community, notably through the UN, has intervened on a number of occasions to avert major human disasters, even if not invited by the host government.

In some cases of collapsed states or extensive warlordism, it has even been difficult to ascertain which was the legitimate government. It was found unacceptable for national governments, under the guise of national sovereignty, to deny the international community access to its territory with a view to prevent and alleviate human misery on a large scale, in some instances even genocide. Gradually, international intervention on humanitarian grounds has thus gained ground and is today generally accepted, indeed desirable. Similarly, election observation is no longer seen as undue interference in the internal affairs of a country. It is justified on the grounds of international principles of democracy and the right of peoples to elect their governments freely.

Having said that, it should be conceded that election observation does amount to interference of sorts. It is rather a matter of degree. Whether or not this interference is of an undue nature, is a matter of judgement. There have been cases where observer missions have transgressed the boundary of impartial referee, and have been seen by the electorate to be interfering unduly in the internal political process of a country. The underlying causes of such conduct are most likely the geo-political or other interests of the countries despatching observer missions.

Whether a larger role for non-governmental organisations in election observation would help eliminate the danger of undue interference is doubtful. Whereas NGOs might not be swayed by national and geo-political interests and be guided by the standards of free and fair elections only, they might be more prone to disregard considerations of a higher order in passing an ultimate verdict. NGOs tend to be rigidly principled and less inclined to compromise when compromise is called for. This applies in particular to situations where the verdict on the observed elections is equivocal. In such situations, a principled stance without sound judgement involving other considerations could contribute to plunging a country into civil war or widespread civil strife short of civil war. Laudable, yet excessive commitment to democratic standards might jeopardise 'solomonic solutions' in the interest of bloodshed avoidance. Furthermore, when governments or inter-governmental organisations are involved in election observation, it is easier to hold them accountable for their actions than would have been the case with NGOs. At least the addressee of criticism would be clear.

For interference to be justified and legitimate, the observation missions must stick to their mandate and refrain from taking on other tasks.

### ***Credibility***

Since an election observation mission is expected to legitimise or delegitimise an election, it is essential that the verdict passed is credible. If the mission, which is charged with conferring legitimacy on an electoral process is itself not seen to be legitimate and credible, the verdict is not likely to be heeded.

In order to maintain credibility, the members of the mission and its leadership must take preventive measures to guard this credibility jealously throughout - from start to finish - and to take swift remedial action in cases of misconduct to minimise damage.

Loss of credibility has three main sources: (a) the observers themselves; (b) the organisations fielding the missions, and (c) ulterior motives or hidden agendas on the part of the despatching missions.

#### *The observers themselves*

Regrettably, a number of so-called 'election tourists' may be found among the ranks of observers. They are people who do not take their task all that seriously, but rather see election observation as a welcome opportunity to travel to exotic places free of charge. Through their unprofessional attitude - easily observable by the electorate - they may seriously undermine the reputation of their mission and damage its credibility. There is cause for concern that the misconduct of some observers may already have damaged election observation to such a degree that its credibility as an institution may not be fully restorable. It takes only a few culprits to create considerable damage.

The other group of unprofessional observers are those who seek the high profile election observation. They are not particularly interested in the conduct of the elections, but rather in the temporary inflation of their own ego and vanity. This category of people tends to be condescending and arrogant; to the electorate in developing countries they are seen as agents of neo-colonialism.

Their superiority complex makes them feel above social, cultural and political mores; their social insensitivity makes them inclined to be abrasive and to offend the local people.

The problems created by these two categories of observers can be tackled in two ways. The most effective is, of course, to not select them in the first place (see section on selection above). But if some of them slip through the selection net - as some of them are bound to - can be partly remedied through training.

#### *The organisations fielding the missions*

Apart from the members of the observation missions, the other threat to credibility stems from the organisations themselves that mount such missions. Some of them fail to heed the agreed minimum requirements for sending missions at all. For that reason, they are liable to lend legitimacy - perhaps unwittingly - to a regime even before the holding of elections, which never could have been free and fair by any standards. As a result, in an equivocal situation, they tend to get caught up in controversies over the verdict. There is also the danger that hastily launched missions will suffer from poor logistics and organisation, which in turn will damage credibility.

#### *Ulterior motives or hidden agendas on the part of the despatching missions*

Apart from misconduct by observers and poor performance by the despatching organisations a third intervening factor may compromise credibility: ulterior motives or hidden agendas. Whereas states and organisations, under whose auspices election observation missions are fielded, may be genuinely interested in the freedom and fairness of the electoral process, other considerations may enter the picture. This is partly reflected in the decision whether or not to send a mission, but also in the conduct of the mission once deployed, particularly in the final stages when a verdict is to be issued and when that verdict is not as clear-cut as would have been desirable.

In such situations the economic, political and security interests of dominant forces within the mission or associated with it, may try to assert themselves, perhaps willing to stretch the criteria of democracy a bit too much. Whatever the facts of the matter, if observer missions are seen by the electorate of the country concerned to take account of interests other than those of the freedom and fairness of the elections, then their credibility could be badly damaged.

## ***Standards Applied in Election Observation***

The problems of credibility and degree of interference are closely related to the standards applied. When countries emerging from colonialism, protracted civil war or entrenched authoritarianism are organising multi-party elections it is tempting for election observation missions to apply double standards to the task at hand. It is only too easy to contextualise the elections to such a degree that the internationally accepted standards are compromised.

Let it be stated categorically that the standards against which performance is to be judged with respect to the free and fair conduct of elections are the same in established democracies as in those emerging from autocracy. There cannot be first and second class democracies.

Having established that benchmark, it should be noted, however, that the democratisation process has a time dimension and that the concept of democracy is not dichotomous. No system of governance is either democratic or autocratic at a particular point in time. Democratic systems of governance are more or less democratic. The democratisation process is unfolding continuously, striving for ever more popular participation in decision-making, progressively fairer and more transparent political competition for votes, and increasingly greater respect for fundamental political rights. Systems of governance are thus always *en route*.

Recognising that democratisation means an evolution towards ever more democratic practices implies that the criteria for accepting an election as 'free and fair' are somewhat elastic. The direction of movement is important. Even if an election is neither entirely free nor wholly fair, it may still represent a 'significant step towards democracy'.<sup>8</sup> Conversely, it may not facilitate further democratisation to declare an election null and void because of many irregularities if it is still judged to be on the whole reflecting the will of the people. To call for a repeat election could instead lead to a reversion to autocracy.

All this does not mean that everything is relative, that democracy is a rubber concept. It simply means that there must be some exercise of discretion in applying a uniform set of standards, depending on the circumstances and context in which the elections have been held.

It is acknowledged, of course, that the scope for discretion should not be too

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<sup>8</sup> The qualifying phraseology varies: "[substantially] free and fair"; "[accurately] reflecting the will of the [majority of the] people"; "free, secret, universal and direct"; "a [significant and positive] step forward in terms of the country's progress towards [sustainable] democracy" .

wide, and that the exercise of discretion is a minefield of controversy. On the other hand, there is no escaping discretionary judgements. They cannot be exclusively based on facts. In real life the conduct of elections are rarely (probably never) either free and fair or the opposite - painted in black or white. Election observers should be made conscious of the fact that grey is a better description of the colour.

Due to the controversial nature of formulating a press statement regarding the conduct of the elections and its acceptance by the international community, courses for LTOs ought to include exercises, working groups and role plays which provide opportunities to confront hypothetical, yet realistic situations where discretion is involved.

### ***Approaches and Operational Practice***

A considerable number of international organisations - multilateral and bilateral agencies and NGOs - have mounted election observation missions of some magnitude. They include the Organisation for Security and Co-operation in Europe (OSCE) mainly through its Office for Democratic Institutions and Human Rights (ODIHR), the Organisation of African Unity (OAU), the Organisation of American States (OAS), The Commonwealth Secretariat, the National Democratic Institute for International Affairs (NDI), the International Republican Institute (IRI), the European Union (EU), Association of European Parliamentarians for Africa (AWEPA), and the United Nations (UN).

#### *EU missions*

As far as the EU is concerned, three main types of activity related to election observation may be listed in descending order indicating different degrees of EU engagement:

- undertaking joint actions under the Common Foreign and Security Policy (CFSP) (e.g. South Africa and Palestine);
- facilitating activities related to election observation (e.g. Russia);
- taking part in observation missions, co-ordinated by the OSCE or the UN.<sup>9</sup>

The most demanding and expensive activity is the so-called joint action; it

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<sup>9</sup> Before the introduction of the Treaty of Maastricht, a fourth type of activity was used; the so-called "European Political Cooperation" actions. In such an action, the European Union only played a marginal role, usually limited to requesting the Member States to send observers.

requires an official mandate issued by the Council. Both the South African and the Palestinian observer missions were long-term endeavours, comprising several hundred observers.

They were coordinated by an EU Election Unit whose head issued an official statement on the freedom and fairness of the elections at the end of the observation process. The agreed joint action with respect to the Bosnian municipal elections is also a case in point.

In the other cases, EU contingents were part of a more heterogeneous observer group, often coordinated by the UN (in particular by UNDP) or the OSCE through the Council of Europe. In those cases, the EU issued separate statements or sought to bring their input into a joint statement of all observer groups. The EU contingents also inform the ambassadors of the EU Member States in the country concerned and the EU delegates about their findings, who in turn try to draw conclusions with regard to the election on behalf of the EU.

#### *UN missions*

The UN distinguishes seven types of electoral assistance activities, mostly carried out by the Electoral Assistance Division (EAD) of the UN, often in conjunction with the UNDP. Not all of them entail election observation in a limited sense, but three of these activities have a strong international observer component.

- *Organisation and conduct of elections.* In such cases the UN is mandated to organise and administer the elections and thus, in effect, performs the function of an independent electoral authority. This was the case in Cambodia (1993);
- *Supervision.* This implies that the UN is responsible for supervising the elections, short of organising and administering them. This instrument was mainly used in situations of decolonisation. The only recent example is Namibia (1989);
- *Verification.* In these cases, the elections are organised and administered by the respective national electoral commissions. The role of the UN is limited to

monitoring closely the electoral process and to verify its outcome over an extended period of time (6 months or more). Such missions are normally linked to peace-keeping operations. Exception to this include Nicaragua (1989), Eritrea (1992) and South Africa (1994);

- *Coordination and supporting missions.* In responding to Member State requests to observe elections, the United Nations has increasingly opted for a type of electoral assistance referred to as co-ordination and support of international observers. No mandate is required from the General Assembly or the Security Council to establish such an operation. This approach is most commonly used in cases where several governments and international non-governmental organisations have been invited to observe an electoral process. While the UN is not in a position to verify an election without a mandate from the Security Council or the General Assembly, it can provide expertise and logistical support to international observers through this assistance mechanism;
- *Training of domestic monitors.* The objective is to enable the domestic monitors to play an effective role in the electoral process. This approach was first used in Mexico (1994);
- *Technical assistance.* The UN sends technical experts of various categories to assist the national electoral commissions in preparing and organising elections;
- *Following and reporting.* In this instance the UN's role is very limited. The task is given to the UN resident representative in the relevant host country to follow an election and to report on it to the UN. This 'safety-belt method' is commonly used when the EAD has reached the conclusion that the preconditions for sending observers are not met by the requesting government.

Decisions regarding type and scope of intervention - by the EU or the UN - is based less on the political context of a given election than on the political importance attributed to the election or to the country in which the election takes place. This is borne out by a glance at the list of countries in which both the UN and the EU deployed their largest observer groups and implemented the most ambitious and costly missions: Namibia, Nicaragua, Haiti, Angola, Eritrea, Cambodia, South Africa, Mozambique, Palestine and Bosnia-Herzegovina. In Namibia and South Africa, international election observation was intended to contribute to healing one of the most sore wounds of the international political system: *apartheid* and defiance by the then South African *apartheid* regime over its illegal occupation of Namibia.



The considerable UN engagement in Haiti and Nicaragua was caused by the prominence these small countries had gained in the internal political debate of the United States. The EU decision to get deeply involved in the Palestinian election and the UN involvement in the elections of the remaining countries listed above, was based on the hope that elections would help end protracted civil wars which had been destabilising the respective regions and even the international system. Thus, the fact that the above elections took place at the end of civil wars was not decisive for the commitment of the UN and the EU but rather the international repercussions of these civil wars. This partly explains why the engagement of both organisations in the post-war elections in El Salvador, Guatemala and Sierra Leone was less significant.

## *Tasks and Responsibilities of LTOs*

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It is important to arrive at a clear division of labour between various categories of personnel involved in the electoral process.

To start with, election observers are not involved in the preparation, organisation and administration of elections; those tasks belong to Technical Assistance Personnel (TAPs) or supervisors<sup>10</sup>. Observers should observe, take note and report their observations. They are not mandated to intervene directly in the process or to instruct election officials, even if what they observe is contrary to procedures. Incidents and irregularities reported to the head of mission may, in turn, be drawn to the attention of the electoral authorities or the public in a final statement on the freedom and fairness of the election.

Even if election observers try hard to avoid interfering directly in the electoral process they may be asked to help out. In fact, this is not an uncommon occurrence. It is not always possible to refuse, but in such situations observers should adhere strictly to the impartiality principle. Above all, it is mandatory that they be seen to be impartial by the parties concerned. It does not matter if the observers themselves think or insist that they have acted impartially if the parties to the election or the electors do not perceive their actions to be impartial. Secondly, any interference must be in strict conformity with the electoral laws or any other valid regulations. Third, interventions should be based on giving advice, without pressure or coercion of any kind. Fourth, any intervention must subsequently be reported to the mission head.

The best method of reducing the degree of interference is to abide by the defined tasks for long-term observers. They may be differentiated by the phases of the electoral cycle: (a) pre-announcement phase; (b) election preparation (voter education, voter registration, candidate nomination and registration, campaigning); (c) polling; (d) counting and tabulation of votes; (e) reporting and passing a judgement; and (f) follow-up. At all stages, observers must seek to verify the information acquired and to double-check sources of secondary data. Accepting hearsay and rumours at face value is inadmissible.

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<sup>10</sup> see also the section on types and tasks of personnel on page 40.

### ***Phase I: Pre-announcement<sup>11</sup>***

In this phase, the key areas of work for LTOs is observing, analysing and reporting to the mission head on the general political atmosphere of the country, including tension and other factors which may have a bearing on the conduct of the forthcoming elections.

### ***Phase II: Election Preparation***

During this critical phase LTOs will be busy observing, analysing and reporting on how the organisational framework for the elections is being set up, how campaign rallies and meetings are being conducted and how the mass media cover these events. The selection and training of election officials under the auspices of the electoral authority is a key object of observation. Likewise, civic and voter education campaigns are important to observe, whether they are conducted by the electoral authority or by organisations of civil society.

A key area of keen observation is the registration of voters, including eligibility criteria; distribution, location, opening hours and arrangement of registration centres; the conduct of the registration process; as well as the constitution of electoral registries.

Another principal area of importance for LTOs is the nomination process of candidates. Attention should be focused on the rules and requirements set by the electoral authorities for lawful registration of candidacy, the location, opening hours and arrangement of registration offices, as well as the conduct of the nomination process itself.

The electoral campaign is also a major focus of attention for LTOs. What role do the mass media play? Are they fair to the contesting parties in terms of coverage and allocation of space and time? Does the incumbent party exploit its position by using state resources to its own advantage? Are opposition parties obstructed in their campaigning by the imposition of unreasonable restrictions such as refusal to grant permission to hold public rallies, stage peaceful demonstrations etc.

A major task for LTOs is to prepare the ground for short-term observers (STOs).

<sup>11</sup> The following division of the electoral cycle into six phases and the respective roles of LTOs in each of these phases is an "ideal" one. In practise, LTOs are often not (continuously) present during all phases, due to a.o. insufficient lead time and budgetary and other constraints.

This involves briefing and training them, and setting up a communications network to be used after deployment around the country.

In discharging of these duties, LTOs are advised to establish good relationships with local monitors. This is useful in data collection and in acquiring insights into phenomena which often escape foreigners. An amicable working relationship is also important in the field where LTOs (and STOs for that matter) are likely to meet local monitors.

LTOs should also seek to establish good relations with electoral officials, local authorities and security forces, other international observer groups, parties and candidates, as well as journalists. However, great circumspection should be exercised in dealing with journalists who might be inclined to tarnish the impartiality image so precious to observers.

Observers should be keen to explain their mandate and purpose to the general public with a view to building confidence in their mission. Invitations to the public to approach observers should be encouraged.

### ***Phase III: Polling Day***

In conjunction with STOs, it is a task of LTOs to take part in poll-watching. Do polling stations open and close at the stipulated times? Are polling stations moved from one location to another at short notice and without the knowledge of the electors? Are the polling procedures followed to by the election officials? Is the secrecy of the vote safeguarded? Is there tension/violence in or around the polling stations? Is campaigning still taking place on polling day and in the polling stations? Are there any signs that voters are pressurised to vote for a specific party or candidate, or intimidated to refrain from voting? Are disabled electors assisted in casting their votes in an impartial manner? Are the ballot boxes sealed in accordance with the procedures? Keeping a keen eye on these questions and reporting on observations to the mission head is the key task on election day itself. Reporting should be in writing on a pre-prepared questionnaire so as to ensure uniformity.

While LTOs carry special responsibilities in the pre-election period they are in principle equal in status to STOs on polling day. They may, however, act as sub-regional team leaders with responsibility for deployment and liaison with co-ordinators at a higher level in the organisational structure. By virtue of such responsibilities they become, in effect, part of the management of election

observation. In this regard, LTOs should guard against becoming too absorbed in management and logistical matters to the detriment of election observation *per se*.

#### ***Phase IV: Counting and Tabulation***

As the counting phase is perhaps most susceptible to fraud, the role of observers is critical. It is also the phase during which observers tend to become tired and lose their concentration. In most elections counting is a time-consuming process, often lasting till small hours of the next morning, in some cases extending over several days. Election officials also get tired and make mistakes; in tense situations where only a few votes may make a big difference causing any number of recounts before the party agents are satisfied that the count is correct. It is advisable, therefore, that mission heads organise shifts of observers to counteract loss of vigilance due to fatigue. If counting does not take place at the polling station, observers should monitor the transportation of the ballot boxes in a properly sealed state from the polling stations to the counting centres in order to prevent the substitution of genuine ballot boxes for bogus ones or the disappearance of ballot boxes.

#### ***Phase V: Reporting and Passing a Judgement***

The assistance provided by LTOs in drafting a press statement with a verdict on the election is invaluable. LTOs are clearly better informed than STOs about the run-up to polling day, and often better placed than the managers to formulate a balanced statement. Yet, almost invariably the heads of observer missions and a few hand-picked collaborators draft the statement. This may cause resentment on the part of LTOs who feel excluded. The time pressure imposes severe constraints on how wide a circle can be actively involved in drafting the statement. But heads of mission would be well advised to draw on the insights of LTOs, if nothing else, at least through the mechanism of a thorough debriefing session. Heads of mission should ascertain that the overwhelming majority of the observers (LTOs and STOs alike) are behind the final statement.

If, when the final press statement has been issued, LTOs may feel let down because the statement does not conform to their own assessment, there is no justification for their making independent statements to journalists in order to undermine the mission's verdict. A minimum of loyalty is required. First, LTOs should recognise that the mission's leadership has a better overview and

complete aggregate data upon which to base its statement than do LTOs who have been deployed in specific parts of the country and only seen a limited part of the full picture. Second, LTOs should be aware that the mission's leadership may have taken other considerations into account, which may be justified, albeit strictly speaking not related to the electoral process itself. Third, heads of mission and co-ordinators maintain close contact with other representatives of the international community, local politicians and parties, and the electoral authorities. These contacts provide them with a broader basis for making an overall judgement, and above all a better basis for judging the consequences of a specific verdict.

It is conceivable, on the other hand, that extraneous factors, which are totally irrelevant, and which amounts to a hidden agenda may have influenced the verdict. If LTOs feel strongly that considerations other than those having a bearing on the elections have entered into the final verdict, the matter should be raised with the head of the mission directly, with a demand for an explanation. But it would be most unfortunate for a given mission to disclose disagreement in its own ranks, and potentially damaging for the credibility of future observer missions if factions were to make contradictory statements.

### ***Phase VI: Follow-up Activities***

LTOs are normally expected to assist in the processing and analysis of the information gathered as a basis for regional and national briefings and later the drafting and issuance of a press statement on the conduct of the election.

As a rule, LTOs are not involved in the preparation of the final report from the mission. That responsibility rests with the leadership of the mission.

The insights acquired by LTOs may, on the other hand, be drawn upon for subsequent purposes of capacity-building and broader democracy support by donors. Such activities are, strictly speaking, beyond the terms of reference of election observation. It should be recalled, however, that the limited scope of election observation must be placed in a broader context of democratisation. It makes much sense to use the experience gained through election observation for institution-building and deepening of the democratisation process.

## ***Fielding a Mission***

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The success of an election observation mission depends to a large extent on the extent and the quality of preparation made to ensure its credibility and integrity, notwithstanding the fact that election observation undeniably amounts to a measure of interference.

### ***Pre-assessment***

Before deciding whether or not to send an election observation mission a pre-assessment should be made in order to ascertain whether the minimum preconditions for meaningful observation exist. Based on experience over the past years, most organisations today subscribe to the following:

- Sufficient lead time to conduct a pre-assessment mission and plan the mission adequately;
- Unequivocal signs of impartiality by the electoral authority administering the election in the country concerned;
- Support for international observer involvement by the main contesting parties;
- Basic freedom of association, movement, assembly and expression;
- Non-interference by the host government in the selection and deployment of observers by the despatching mission;
- Freedom of movement and action by the mission and its members.

### ***Organisation and Management***

#### *Coordination*

Effective co-ordination is important at all levels. First, internal coordination of each observer mission is mandatory. Second, coordination should take place between all international observer missions, especially in the final reporting phase when a verdict is to be passed on the freedom and fairness of the election. Third, coordination ought to be enhanced between the different international observer missions and the local actors involved in the electoral process, including electoral authorities, incumbent and opposition parties, domestic monitoring groups, NGOs, the mass media etc. In this way, a measure of local

ownership of the electoral process may be achieved.

### *Types of personnel*

It is important to distinguish between four categories of personnel involved in matters pertaining to elections in order to avoid confusion and to establish a division of labour between them. The first category, short-term observers (STOs), normally arrive shortly before an election to observe its conduct by the electoral authority, and leave shortly after having reported what they saw to the head of the mission. The second category, long-term observers (LTOs), arrive as some time in advance of election day in order to observe activities in the run-up to polling, and to assist in the preparation of large-scale observation by STOs. The third category, supervisors, do not stop short of observation in their activities. Up to a point they interfere in the administration of the elections by offering advice and performing certain functions. The last category, technical assistance personnel (TAP), is more heavily involved in the administration of the elections by assisting the electoral authorities in various ways over an extended period.

### *Tasks of personnel*

The delineation of the tasks of these categories often becomes blurred and may give rise to conflict of interest if one and the same institution is involved in all types of activity. Observers ought to be precisely what the terms suggests and be independent observers of those charged with the free and fair conduct of the elections. This independence is critical to the credibility of observer missions. It would be unfortunate if supervisors and TAP assumed observation roles in which they might become defensive on account of having been partially responsible for the administration of the elections whose freedom and fairness they are subsequently set to judge. Such a mix of roles and responsibilities could deter professionals from taking part for fear of compromising their integrity.

### ***Selection, Training and Deployment of LTOs***

No single formula will work for every situation. Adaptation to specific conditions is necessary at all stages of the process. But there are some general rules to be applied, based on experience so far.<sup>12</sup>

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<sup>12</sup>See: Balch, J. , Granstedt and K. Kenny. 1997. *Standardisation of Practice in the Selection, Training and Deployment of International Election Observers*, Amsterdam:



## *Selection*

Selection of LTOs is critical, because it may damage the credibility of the mission if one or more mission members misbehave or breach the code of conduct. The quality character of the observers is fundamental; more so than other skills and expertise. Care should be taken to eliminate candidates who might cause problems later.

Among the personal traits to look for in the selection process are the following:

- commitment to democracy, human rights and justice;
- ability to exercise sound judgement in a politically sensitive and charged atmosphere;
- calmness, diplomacy and patience under pressure and in complex, tense and potentially violent situations;
- leadership capabilities;
- ability and preparedness to work and live in a multi-cultural environment, as part of a team, under uncomfortable physical conditions, for long hours and under unpredictably changing circumstances;
- social and political awareness and restraint, such as sensitivity to local customs and traditions, and to political and ethnic tension;
- objectivity in the interpretation and reporting of first-hand and second-hand information with accuracy and impartiality.

Not only must observers be independent, they must also be seen to be independent by the electorate in the country concerned. A corollary to the need for independence is the need to keep a professional distance, albeit with sensitivity to situations at hand. In the case of the mission to South Africa there was an inclination to select persons who had been active in anti-*apartheid* work. Thus, there was a danger of bias, although such persons had great advantages of knowledge and insight. Secondary information must never be accepted at face value; it needs to be verified. Communicative and listening skills are essential for information gathering, for understanding the underlying dynamics of the situation, and for contributing to confidence-building.

To develop interpretative skills, a degree of life experience is desirable. Therefore, observers should not be too young and preferably have some international experience. It is advisable to avoid recruiting over-qualified people who tend to become condescending and opinionated; after all, observation is limited in scope. Good health as well as physical and mental fitness are vital in a

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Association of European Parliamentarians for Africa and African-European Institute, Occasional Paper Series no. 2.

strenuous and stressful mission where observers must be prepared to work under hardship conditions. Old age may therefore become a cause for rejection on grounds of ill health and poor fitness.

In addition, all observers should possess a range of social skills in dealing with other cultures. They should also have investigative prowess to uncover irregularities, and being amenable to adjust to local customs when required. In principle, the selection of journalists should be avoided; they tend to be looking for a 'scoop' rather than observing elections and could potentially be leaking information before a press statement has been prepared and thus risk jeopardising the credibility of the mission.

In a contingent of LTOs the following elements should be represented, not necessarily in every individual LTO, but rather in the group as a whole:

- specialised knowledge of conditions in the country concerned;
- legal expertise regarding constitutional affairs and electoral laws;
- practical skills, e.g. auto mechanics, computer specialists, telecommunications specialists etc.
- security expertise related to the personal safety of observers;
- mediation and diplomatic skills.

The ideal election observation mission should consist of a balanced team of women and men with a range of expertise normally found among jurists, parliamentarians, electoral systems specialists, political scientists, human rights specialists and development practitioners - supplemented by support personnel in logistics, computation and statistical processing, communications and security.

### *Training*

Every election is unique and warrants its own handbook, not a standard one. But training needs are both specific and general. Examples and role plays may be useful, but situations that observers are likely to encounter will never be the same as those described in training sessions. No amount of training can eliminate the unpredictability of situations.

Training programmes for LTOs comprise three main modules:

- country-specific and region-specific information, including a host of factors such as the prevailing socio-economic conditions, cultural factors, history and political situations;<sup>13</sup>
- knowledge about the electoral process, including legislation, the role of observation, and preparation for situations which may arise in the course of the mission;
- knowledge about the structure and organisation of the mission, such as logistics, code of conduct, procedures for assessing the process, health and security.

Training sessions should be phased over time:

- once an observer has been selected, he or she should receive regular (e.g. monthly) up-dated information about the situation in the country concerned;
- pre-departure training sessions should be held to familiarise observers with the applicable code of conduct and to make a contractual commitment to it;
- a briefing session should be organised immediately upon arrival. Its focus should be on the local election administration, the electoral authority, the contesting political parties, party manifestos, update on security, accreditation as observers, deployment plans, communication lines and reporting procedures, assessment of the prevailing situation;
- a post-deployment briefing is also required, which would include an updated recapitulation of the points covered in the post-arrival briefing session. Above all it should emphasise the specificity of local conditions (community knowledge) where observers are deployed;
- liaison with other observer missions and local monitors.

For reasons of funding and time constraints or other considerations, ideal or optimum training programmes will generally not be feasible; compromises and trade-offs are inescapable. Although flexibility is necessary, certain minimum requirements should not be forfeited.

### *Deployment*

The overriding deployment consideration is coverage. In order to acquire as

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<sup>13</sup> See Faber, D.C. and K. de Jong. 1996. *Democracies in Transition: the model, the factors, the approach, Report on a workshop 14-15 March 1996*, Maastricht: ECDPM, 1996, pp. 20-23.

good a basis as possible for a sound verdict on the conduct of the elections, it is necessary to cover a large number of polling stations and counting centres. Not only need the number be considerable, the mission's presence around the country should be distributed evenly. Coordination between observer missions would help avoid concentration of observers in certain easily accessible areas such as urban centres.

A deployment plan should be worked out jointly with all the international observer missions. It could be based on a sample design to avoid bias in subsequent reporting of observations for statistical collation and analysis. Political conditions in the country may warrant denser deployment in specific areas where contestation has been particularly fierce, where fraud attempts are rumoured, or where violence may erupt. If deployment is purposively uneven for such reasons, the statistical biases can be corrected afterwards.

In most countries local organisations launch monitoring exercises of their own. It is advisable for international observation missions to collaborate with them. Their knowledge of local conditions and insights into the political dynamics of local areas could be very useful to international observers. Drawing on the expertise and observations of local monitors could contribute to making the coverage of observation more comprehensive. There could also be security benefits. The leadership of international observer missions and their rank and file members should seek to establish cordial working relations with local monitors at an early stage.

By working alongside local monitors the international observers would also contribute to capacity-building, perhaps even by offering assistance if resources permit. A close working relationship should not, however, be allowed to compromise the independence of international observers.

A deployment pattern includes reporting arrangements and procedures. It is crucial that these functions satisfactorily, otherwise the deployment rationale will be undermined. Getting the duly completed questionnaires and the narratives of incidents to the mission headquarters quickly is essential to the success of the mission. Concomitant to reporting systems the security arrangements should be attended to.

## *Pitfalls and Problems*

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Notwithstanding careful preparation, it is not possible to guard against all possible pitfalls or to foresee all problems that might be encountered. It should be acknowledged that the guidelines for fielding election observations missions are not always followed, due to constraints of time and resources, which necessitate sub-optimal compromises. Also, extraneous factors not necessarily related to the observation exercise itself, and largely beyond the control of the mission leadership, could also enter the picture.

The criticisms levelled against election observation can be divided into three discrete categories: (a) compromising on pre-assessment criteria when deciding to field a mission; (b) sub-standard organisation and management of field missions; (c) external interference in the verdict based on considerations unrelated to the election process itself.

The general criteria for fielding an election observation mission were set out above. In some cases, there may be acceptable reasons for not applying them strictly. In such instances, adverse consequences are likely to ensue. Among the most common criteria to be discounted is sufficient lead time to allow for proper preparation. Sometimes the holding of an election is decided upon at shorter notice than desirable. Organisations sending missions may then take a calculated risk and hope that no serious problems will arise as a result of inadequate preparation (e.g. recruitment and training of observers) for a large-scale operation. Another criterion often downplayed in the pre-assessment phase is whether there is a level playing field to dispel accusations at the outset that the upcoming elections cannot be free and fair.

Since no absolute benchmarks exist in this regard, difficult judgements have to be made, which might backfire by undermining the credibility and integrity of the final verdict.

Once observer missions are in place, disregarding trade-offs with respect to pre-assessment criteria, there are many other things that could go wrong. Perhaps the most debated phenomenon is the misbehaviour or lack of professional conduct by some observers in breach of the code of conduct. Even a few such cases could, if given much publicity, severely damage the credibility of

the mission. Another factor is poor organisation and management of the mission itself by its leadership, some of which may be attributable to insufficient lead time and poor preparation before deployment.

Lack of coordination between different international observer missions is a third common charge. In some cases one organisation may have been agreed upon as the lead mission in charge of overall coordination. In other situations this may not be true, in which case there is a 'free-for-all' of sorts.

For a variety of reasons missions are inclined to want to hoist their own flag and to display a high profile so as to ensure visibility. Visibility is not bad in itself as long as it does not stand in the way of effective coordination. If it leads to contradictory statements it would certainly undermine the credibility and integrity of election observation, not only in that particular country but in general.

Related to lack of coordination is interference in the observation effort by extraneous factors of hidden agendas. Indeed, what may seem like pure lack of coordination could have its roots in diverging geo-political agendas by the states sponsoring the respective missions.

There are no easy remedies for the problems stemming from compromising on pre-assessment criteria or hidden agendas. But much can be done to enhance the professionalism of individual observers and to improve the organisation and management of observer missions. Careful selection of mission members is an effective tool. So is training of all categories of personnel.

**PART II:**  
A Prototype Course

## ***Introduction***

In pursuit of its objective to professionalise election observation missions and to enhance their authority and credibility, the EU has embarked on a training programme for various categories of election observation personnel. Towards that end the European Centre for Development Policy Management (ECDPM) was requested to design and organise a pilot training course tailored to the needs of long-term election observers. With funding from the European Union, the course was held in Maastricht from 23 - 28 February 1997.

Altogether 29 participants from 13 EU Members States attended, plus two observers (see annexes). An overwhelming majority of them had already taken part in observer missions, at least once. Some had considerable experience from several countries. There was a remarkable age span of about 40 years, great diversity of professional backgrounds and cultures, which facilitated cross-pollination of ideas and experiences. The course was like a microcosm of a mission.

Nine resource persons gave presentations on various topics and organised group exercises or role plays. Two members of the European Commission made introductory comments on EU policy in the field of democratisation and human rights and a representative of the Dutch government made some remarks of welcome at the start of the course.

## ***Approach and Methodology***

The approach chosen by the organisers of the course was a mix of lectures by experts with extensive experience in their respective fields of competence, interspersed with group work and role plays. Overheads and flip-overs were used by most lecturers, and written hand-outs were made available to participants.

Introductory lectures on substantive issues are unavoidable, but they represent a passive form of learning. To activate the participants through group exercises and role plays is, therefore, a good alternative in the pedagogical sense. Not only do group work and role plays encourage active learning and more efficient learning, they also help train LTOs in team work as a spin-off.



The social events and activities included in the programme also contributed to creating a good learning atmosphere, and set off informal discussions among participants during meal breaks and otherwise.

The time schedule of the programme was neither too tight nor too slack. It allowed participants to recharge their energy between sessions and from one day to the next. Besides, informal debates were lively during breaks and useful network contacts were made.

### ***Course Structure and Contents***

The course was structured in such a way that the participants were first introduced to the fundamentals of democracy and elections (see relevant sections of Part I of this report for details). The logic and progression of the course later moved into the specifics of election observation at various stages.

Along the lines of the course programme, a brief description of each of the lectures and working groups is presented below.

#### *Welcome address by the Dutch Ministry of Foreign Affairs*

The course was opened by an official from the Chair of the European Union, The Netherlands Ministry of Foreign Affairs. It was recognised that election observation was regarded as extremely important for further democratic development in countries in transition, and that supporting measures were needed to ensure a sustainable process. It was noted, however, that Western countries should not be seen to be forcing their norms and values of democracy on recipient countries, but rather to recognise that democracy is a flexible but hard to define concept with its own specificities in a given country.

#### *Introductory round for the participants*

Following the welcome address, the participants were requested to introduce themselves and to share information and experiences relevant to the course. It appeared that there was both similarity in experiences and widely differing backgrounds and functions. It could be said that the participants represented a 'real life' election observation team.

In addition to the personal introductions, each country team was asked to present a concise and brief overview and description of election observation policies and activities within the broader framework of human rights and democratisation. The purpose of this exchange of information was to familiarise other participants with specific insights and ideas as well as similarities and problems that might benefit the discussions during the course of the week.

#### *The policy framework for Europe's support for human rights and democracy*

The representative from the European Commission stressed, that the European Commission is striving for a common approach towards election observation. He also noted that care must be taken not to impose western values on recipient countries but to ensure that human rights were strictly adhered to. He said that there was a recognised need for instruments to stimulate the democratisation process through positive measures.

The fact that the EU was supporting most of the election observation activities under the umbrella of the OSCE/ODIHR was related to cost sharing aspects and the lack of expertise and know-how within the Commission to adequately manage the process from beginning to the end.

#### *Concepts of democracy*

The concept of democracy is many-faceted, highly controversial and changing. Hence, it is susceptible to abuse in rhetoric and propaganda. It was underscored that systems of governance are not either fully democratic or entirely autocratic; they tend to be more or less democratic. Democracy is thus an ideal to be striven for continuously, but never to be achieved completely.

Notwithstanding this elasticity, there are certain minimum criteria that systems have to satisfy in order to qualify for a democracy label. They include reasonably free and fair elections; accountability; pluralism (i.e. multiple contesting parties); the rule of law; respect for fundamental human rights and freedoms; separation of state powers to avoid monopolisation and arbitrary exercise of power; majority rule, yet with protection of minorities.

Finally, apart from formal rules and regulations, the evolution of a genuine democratic political culture is seen as critical for the consolidation, institutionalisation and sustainability of democracy. This will take time and it will involve civil society in progressively more active participation in decision-making.

In each country a series of electoral laws have been enacted, guided by international legal instruments. These laws and regulations govern the specifics of the conduct of elections. The role of election observers is principally to ascertain whether they are in fact enforced.

### *The concepts of elections*

The concept of elections was traced back to the UN Charter and the UN Declaration of Human Rights (1948). The importance of the International Covenant of Civil and Political Rights was discussed; special emphasis was given to the importance of International Obligations and to the notion that the people have a right and an obligation to demand of their states to fulfill those obligations. States are obliged to take positive action to vote and to be elected within the law of the country concerned.

### *Electoral laws, regulations and procedures*

From the presentation on election laws, it became clear that there is a great difference in election laws between countries. The presentation showed very systematically how to carefully check on each of 12 steps, ensuring a proper electoral process, describing the process exhaustively from the development of electoral laws till possible appeals to (higher) Courts. Also, the presentation treated the intrinsic value of the law. Long-term election observers should, prior to their deployment, have at their disposal the essential chapters of the country's election laws.

### *Aim, methodology, preparation and management*

Considerable time was spent on the aims, methodology, preparation and management of observation missions (relevant section in Part I provide further details). Criticisms levelled against missions in the past were brought into the open and discussed freely. Intractable problems to which no manual solutions

exist were dealt with and analysed from numerous angles. The point was underscored that elections are about politics and that the political interests behind observer missions also make themselves felt, particularly in the process leading up to a final press statement. Participants were able to draw on their own experiences in this regard, argued and related stories to illustrate the issues. The tasks and responsibilities of observers were enumerated and related to various stages of the electoral process from pre-announcement through polling to passing a verdict and follow-up.

Working groups were given tasks and problems to solve with a view to activating the participants and to sensitise them to problems they might encounter. Group work was generally based on hypothetical situations, but most resembled real situations and gave a realistic touch to the exercise.

#### *A case study from South Africa*

The election observation mission in South Africa is one of the largest mounted by the EU. As a result, the experiences garnered are of great interest.<sup>14</sup> There were three other big observer missions: (a) the United Nations; (b) the Commonwealth; and (c) the Organisation of African Unity. In addition, there were scores of smaller groups, NGOs, parliamentarians (e.g. AWEPA) etc. Coordination was needed but virtually impossible. There was a tendency towards election tourism.

Coordination was the responsibility of the UN, whose objectivity and good name was an advantage. Coordination was particularly important with respect to deployment, establishing a code of conduct, reporting and pooling of information, debriefing and preparing a press statement. Despite being well organised the UN is also very bureaucratic which led to delayed deployment and much irritation on the ground. There was little understanding on the part of South Africans what the EU stood for and what its role was; much explaining was needed. This hindered the visibility of the EU. In the end the joint statement prepared by all missions and issued by the UN was more favourable than that of the EU, due to political considerations.

On the face of it, observing the South African elections would appear to be a mission impossible. Amidst widespread violence and in a charged atmosphere

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<sup>14</sup>For full details see: *Observing South Africa's 1994 National and Provincial Elections: Final Report to the European Commission from the European Union Election Unit*, May 1994.

the odds were not overwhelmingly good. The Independent Electoral Commission (IEC) was in charge of the organisation and administration of the elections. In addition, an Independent Media Commission (IMC) was set up to oversee the role of the media in their coverage of the campaign. Due to its wide out-reach, radio was far more important as a medium than TV and the press.

There was no registry of voters. Any person above the required age who had identity papers would be allowed to vote. But millions of voters had not been issued identity cards. This caused some problems but seems to have been overcome amicably through verification by relatives and others in the community.

At the end of the mission there was a sense of relief that violence had been contained and that organisation on the extreme right had not made their presence felt. The problems encountered were, therefore, mostly practical and logistical. A long list of imperfections and irregularities was included in the final report. Still, the election was considered free, but not entirely fair. Yet, it expressed on the whole the will of the people. The outcome was accepted by all the parties concerned, which guaranteed its legitimacy.

#### *Polling, counting, reporting and debriefing*

A workshop was organised on polling, counting, reporting and debriefing. An introduction was given to the statistical approach to reporting and to the purpose of reporting in buttressing the authority of the final verdict. The importance of wide and even reporting coverage was emphasised lest the statistical basis become too weak or too narrow to allow valid inferences.

Role plays were conducted in a simulated polling station. The intention was partly to train observers in spotting irregularities, and partly to give them practice in reporting accurately on the questionnaires for later submission to their mission head.

#### *Information flows*

The informational requirements of observers were devoted considerable attention. Not only was the nature of the information highlighted but also the timing and sequencing of information provision. Emphasis was placed on information flows to LTOs from both the organisers of the mission and from the

mission leadership once the LTOs were deployed. Conveying information in that direction was justified in terms of the motivation and operational efficiency of LTOs.

However, the flow of information from the LTOs to the head of the mission was not neglected. After all, the success of an election observation mission depends on the volume, coverage and accuracy of the information gathered by the observers on the ground. Hence, much attention was given to reporting systems and procedures.

Group work was organised to familiarise the participants with the logistics of information flows before and after deployment in the field.

#### *Dealing with fraud: a case from Armenia*

A special session addressed the problem of how to deal with fraud. The Armenian elections in September 1996 were taken as a case. A thorough discussion focused on the extreme sensitivity of such situations and the challenges they pose to observers in terms of diplomatic and mediation skills so as to avert unrest and bloodshed. There are, of course, no textbook or manual prescriptions on how to tackle situations of that nature. Ultimately, it boils down to the sound judgement of the observers and the leadership of the mission, in liaison with the despatching organisation headquarters, in this case the OSCE.

Complementary to the introduction and plenary discussion on fraudulent elections, group work was conducted as practical exercises in dealing with these problems.

#### *Inter-cultural communication*

Since LTOs become members of large observation missions they are liable to meet with colleagues from other cultures. As members of missions sent to foreign countries they are also placed in a cultural context which is different from their own. Both of these facts call for skills in inter-cultural communication. Mis-interpretation of events and incidents would at best lead to a faulty data base from which the mission would draw its conclusions. At worst, misunderstandings due to cultural differences could cause major complications. Sensitivity to differences in cultural conditioning, symbols and posturing is, therefore, mandatory in election observation.

With this in mind the course included a session on inter-cultural communication designed to sensitise the participants to the pitfalls involved and how to avoid them. An introduction presented, necessarily in stylised form, various cultural features which are likely to give rise to misunderstandings and misinterpretations.

Role plays were conducted to confront the participants with frustrating situations where messages are not getting across or received as expected. As cultures are diverse and do not fit stereotypes, a short session in inter-cultural communication can only scratch the surface and give the participants rough guidelines as to how problems can be averted. But even short sessions can contribute to heightening the general awareness about inter-cultural exchange and communication.

### *Selection, training and deployment*

The nitty-gritty of observer selection, training and deployment was the subject of a thorough session (see relevant section in Part I for details). With regard to selection criteria and procedures the point was underscored that a mission's authority and credibility can be severely damaged by adverse selection of its members. It takes very few breaches of the code of conduct before negative impact is noticeable. It is crucial, therefore, that every effort be made to eliminate unsuitable observer candidates at the recruitment stage. Should those efforts not be 100 per cent effective, it is incumbent upon the leadership of the missions to take swift and firm action to discipline those who are in breach of the code of conduct, and to repatriate them if necessary.

It was further emphasised that the personality of observers is arguably as important as their skills in substantive fields. Adaptability, flexibility, tact and sensitivity to the culture and conditions may be just as important as through knowledge of the country concerned. Being obtrusive, abrasive or obnoxious is incompatible with being an election observer.

Training for LTOs should comprise three main elements: (a) country-specific knowledge; (b) familiarity with electoral laws and processes; and (c) information about the structure and organisation of the mission to which they belong.

Furthermore, training sessions covering different themes and in variable depth should be phased over time, from the selection, pre-departure, post-arrival stages through to post-deployment.

The overriding deployment consideration is coverage of polling stations and counting centres. Avoiding a biased coverage is essential lest the data base of the verdict become distorted. A sample design should be used to work out a deployment plan, coordinated among all the major missions present. Consideration should also be given to the deployment of local monitors with a view to drawing on their observations as well.

As a supplement to the general introduction and plenary discussion, group work was organised to confront the participants with problems they might encounter in the field.

### *Overall assessment of structure and contents*

The overall contents of the course suggest that all major items were covered adequately. There is a time and resource constraint to how long and extensive a course can be. After all, LTOs need not become experts on democracy and election systems. But they need to acquire the fundamentals and to appreciate the nuances in order to exercise sound judgement when called upon to do so. Moreover, there is a limit to the absorptive capacity of course participants. Course fatigue is a well-known phenomenon. Five working days is probably an appropriate duration for a course of this nature. The remarkable discipline throughout the course in terms of attendance and committed discussion attests to that. The logical progression of the course from the general towards the specific gave the participants a good introduction to what their task is all about.

### ***Evaluation***

The last session was devoted to an evaluation of the course by way of a questionnaire, comprising questions with fixed response alternatives, as well as open-ended questions. In addition, the participants were encouraged to express and expound on their views orally and directly to the organisers in a plenary session. The results of the structured questionnaire are presented below.

It is inevitable that the views voiced are diverse and disparate, but some common themes appear to recur.

There was virtual unanimity that the course was very well organised and participants would recommend it to their colleagues. The logistics worked perfectly and the social component of the programme was much appreciated.



In terms of substance, most participants found most of the lectures very interesting, but it was surprising that all of the lecturers were men. The quality of presentations varied considerably, from excellent and pedagogical to mediocre and unstructured. It was acknowledged that it would be difficult for the organisers to know the presentational skills of lecturers beforehand. But it was suggested that course organisers attach greater importance to the presentational and communicative skills of the invited lecturers, not only the depth of their professional knowledge.

The in-depth case studies of mission experiences in South Africa and Armenia were found to be instructive. Supplemented by the participants' own experiences from other countries the illustrative repertoire was expanded; this added to the understanding of problems likely to be confronted and their possible resolution.

Some participants felt that more emphasis should have been put on practical aspects of election observation, e.g. mundane problems of logistics. It is difficult, however, to separate theory and practice; they are two sides of the same coin.

The workshops could have been deeper and more detailed. It would have taken more time, but also given more experience in team work; group dynamics should be allowed to play themselves out, not be cut short prematurely on account of a tight time schedule. This applies particularly to workshops on cultural sensitivity and inter-cultural communication; it would be difficult to find room in a one-week course.

A substantive point was made that democratic rule should be related to more general aspects of societal development. A regime built on democracy and respect for human rights could be seen as an instrument for broader socio-economic development. An issue of similar nature was how democracy relates to human rights; there appears to be some confusion in this regard in the literature and in the minds of participants.

A case history of a long-term observer would have been useful for illustrative purposes. It could be used to address practical problems along the way.



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## ***Annex 3: Distributed Course Material***

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## ***Annex 4:***

### ***The Human Rights Committee***

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GENERAL COMMENT No. 25 (57): Article 25 ICCPR (1510th meeting, 57th Session, 12 July 1996) [UN Doc. CCPR/C/21/Rev.1/Add. 7]

General Comments under article 40, paragraph 4 of the International Covenant on Civil and Political Rights

1. Article 25 of the Covenant recognizes and protects the rights of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislation and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.
2. The rights under article 25 are related to, but distinct from, the right of peoples to self determination. By virtue of the rights covered by article 1(1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol.
3. In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State) article 25 protects the rights of "every citizen". State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.
4. Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.

For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

5. The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.
6. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office. This right of direct participation is supported by paragraph (b). Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (b). Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government. Where a mode of direct participation by citizens is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, paragraph 1, and no unreasonable restrictions should be imposed.
7. Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws which are in accordance with paragraph (b).
8. Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.
9. Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.

10. The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.
11. States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. 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. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.
12. Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movements which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. State parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.
13. State reports should describe the rules governing the right to vote, and the application of those rules in the period covered by the report. State reports should also describe factors which impede citizens from exercising the right to vote and the positive measures which have been adopted to overcome these factors.
14. In their reports, State parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.
15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. State parties should indicate and explain the

- legislative provisions which exclude any group or category of persons from elective office.
16. Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b). The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedure.
  17. The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.
  18. State reports should describe the legal provisions which establish the conditions for holding elective public office, and any limitations and qualifications which apply to particular offices. Reports should describe conditions for nomination, e.g. age limits, and any other qualifications or restrictions. State reports should indicate whether there are restrictions which preclude persons in public service positions (including positions in the police or armed services) from being elected to particular public offices. The legal grounds and procedures for the removal of elected office holders should be described.
  19. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. 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. The results of genuine elections should be respected and implemented.
  20. An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant. States should take measures to guarantee the requirement of the secrecy of the vote during elections including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant. The security of ballot boxes must be guaranteed and votes should be

counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.

21. Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.
22. State reports should indicate what measures they have adopted to guarantee genuine, free and periodic elections and how their electoral system or systems guarantee and give effect to the free expression of the will of the electors. Reports should describe the electoral system and explain how the different political views in the community are represented in elected bodies. Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law. The practical implementation of these guarantees in the period covered by the report should be explained.
23. Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public services positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secure tenure, ensure that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.
24. State reports should describe the conditions for access to public service positions, any restrictions which apply and the processes for appointment, promotion, suspension and dismissal or removal from office as well as the judicial or other review mechanisms which apply to these processes. Reports should also indicate how the requirement for equal access is met, and whether affirmative measures have been introduced and, if so, to what extent.
25. In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between

citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.

26. The right to freedom of association, including the right to form and join organizations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.
27. Having regard to the provisions of article 5, paragraph 1, of the Covenant, any rights recognized and protected by article 25 may not be interpreted as implying a right to act or as validating any act aimed at the destruction or limitation of the rights and freedoms protected by the Covenant to a greater extent than what is provided for in the present Covenant.