



Office for Democratic Institutions and Human Rights

**GUIDELINES
FOR REVIEWING A LEGAL FRAMEWORK
FOR ELECTIONS**

**Warsaw
January 2001**

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**GUIDELINES
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I. INTRODUCTION

These guidelines are intended to set forth the basic components of a legal framework governing elections, and the minimum standard relevant to each component, that are necessary in order for a country's legal framework to ensure democratic elections. They are further intended to provide the examiner of the legal framework with an approach that will contribute to uniformity, reliability, consistency, and accuracy in the review of election related text. These guidelines will also provide guidance to national parliaments when they are drafting or amending election related text.

The guidelines were developed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in collaboration with the International Institute for Democracy and Electoral Assistance (International IDEA).¹

The chapters are presented in an order intended to facilitate methodical review and assessment of the legal framework. The heading of each chapter, beginning with chapter three, identifies the subject matter of the legal framework addressed in the chapter. Following the chapter heading is a statement of the objective of the minimum standard relevant to that particular component of the legal framework. Discussion of that particular component of the legal framework follows. The chapter concludes with a checklist of issues relevant to the component. The examiner may use this checklist to confirm that the legal framework has addressed all issues related to that particular component of the legal framework.

II. BASIS OF STANDARDS AND ATTITUDE OF THE EXAMINER

A. Primary Sources for Minimum Standards

The primary sources for the minimum standards set forth in these guidelines are international documents, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Paris for a New Europe – CSCE Summit (1990) and the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. The relevant text of these sources is included in the Appendix. In addition, the examiner should take into account case law of supervisory bodies such as the European Court of Human Rights and the United Nations Human Rights Committee.

¹ A discussion document in the form of draft preliminary guidelines was prepared by Jessie V. Pilgrim on behalf of the ODIHR. The draft was the subject of discussion by experts at a workshop held on 14-15 September 2000 in Stockholm. The project was possible with a generous contribution from Switzerland.

B. Supplementary Sources

When examining the legal framework for participating States of the Organization for Security and Co-operation in Europe (OSCE), the examiner should also consult final reports of election observation missions of the Office for Democratic Institutions and Human Rights (“OSCE/ODIHR”) where they are available. These reports can be accessed at the OSCE/ODIHR website at <http://www.osce.org/odihr>.

As noted in Paragraph 25 of the OSCE 1999 Charter for European Security: “We recognize the assistance the ODIHR can provide to participating States in developing and implementing electoral legislation. In line with these commitments, we will invite observers to our elections from other participating States, the ODIHR, the OSCE Parliamentary Assembly and appropriate institutions and organizations that wish to observe our election proceedings. We agree to follow up promptly the ODIHR’s election assessment and recommendations.” Any recommendations on the drafting of election legislation in OSCE/ODIHR final reports should therefore be a part of the material considered by the examiner when reviewing election legislation in the OSCE region.

Additionally, the examiner should be aware of any requirements which could impact the legal framework governing elections, imposed due to a country becoming a party to a particular international instrument.

Finally, the examiner should consider model codes that have been developed by international governmental or non-governmental organisation to address specific election related issues. The Appendix includes some model codes that are good supplementary sources.

C. General Attitude of the Examiner

The examiner must be mindful of his/her role, which is examining the legal framework for the purpose of determining whether it complies with minimum standards. The review, however, is not intended to be judgmental, but to constructively suggest corrections, improvements, and best practices that should be incorporated into the legislation. *The examiner should not be an advocate of a particular system or practice.*

A country does have discretion in its choice of an appropriate electoral system. However, this does not mean that any electoral system or practice chosen by a country is acceptable. A country’s discretion in choosing an electoral system is not unlimited and should be exercised consistently with minimum standards. Additionally, if the examiner is specifically requested to comment on whether an accepted system or electoral practice is suitable for a country due to particular political, social or cultural factors, then the examiner should so comment. Further, when the examiner is aware of particular facts in a country, which render an accepted system or electoral practice unsuitable for the country (*i.e.*, the system or practice will hinder democratic elections due to the unique circumstances of the country), then the examiner should so state. However, in such an instance, the examiner must be relying on established facts.

A meaningful assessment requires more than examination of text. The assessment is of little value, no matter how thorough the review, if comments, recommendations, and advice are not given in an appropriate and constructive manner. The examiner should keep this in mind when making comments and recommendations.

D. Respect

Respect for the subject of the advice must permeate any comments, recommendations, and advice. The examiner is likely from another country, often with limited knowledge of the specific country under assessment, and presumes to offer advice on fundamentally important issues. Thus, the tone of the assessment should reflect the delicacy of the task at hand, even if criticisms are direct and serious.

E. Critical Importance of Accurate Translations

It is critically important that the examiner have accurate translations of all laws reviewed. Sometimes the examiner will be working from unofficial translations of texts. The examiner must be sensitive to this fact. Some errors in translation are more easily noticed than other errors. Where a recommendation, comment or criticism arises from text that may have been erroneously translated, the examiner should state this possibility in the assessment.

F. Preparation

One manifestation of inadequate respect is anything contained in the assessment that suggests that the examiner has not taken due care with the assessment. The examiner has to do the necessary homework. As an example, it appears unprofessional if an examiner recommends an amendment to an election law when s/he has failed to notice that this would conflict with the constitution. This, of course, assumes that the constitution itself does not conflict with minimum standards. The assessment must be correct, in light of domestic law as well as the minimum standards.

G. Prioritise Recommendations

The examiner should distinguish between what is desirable in an ideal world and what is required under minimum standards. It is not likely that all recommendations will be acted upon. Thus, it is essential to prioritise recommendations. Additionally, some recommendations should be made in more cautious terms than others (“it may be expedient to...” as compared to “it is essential that...” or “it is very strongly recommended that...”). Recommendations should be carefully worded and made in the order of priority.

H. Emphasise Legitimacy Where Possible

The examiner should emphasise that implementing recommendations will enhance the credibility of and public confidence in the elections. This is something that every government wants to achieve. This can be a particularly appropriate point when recommending measures to enhance transparency.

I. Explain the Reason for the Recommendation

It is important to explain why a particular recommendation is being made. Some recommendations are made in order to promote conformity with a minimum standard, a particular international commitment, or a particular human right. Others are made simply to make the legislation more coherent or effective, such as recommendations on addressing particular contradictions or gaps in the laws under review. The examiner should explain the reason for the recommendation.

J. Finer Details

The examiner should be prepared to recognise that not everything has to be regulated by primary legislation. It may be appropriate to relegate some of the finer details of the voting procedures to regulations adopted by government bodies, including the Central Election Commission. Fundamental issues, however, must be addressed by the primary legislation. The examiner must know what issues should be covered specifically by law and what issues may be refined by administrative regulations.

III. STRUCTURE OF THE LEGAL FRAMEWORK

OBJECTIVE: The legal framework should be structured so that it is readily accessible to the public, transparent, and addresses all the components of an electoral system necessary to ensure democratic elections.

The legal framework should be structured in a manner that meets the objective stated above. National authorities will establish a structure of legislation according to legal traditions of the country and the examiner should be open to accept different options. What is important is that the examiner is aware of the various structural approaches and considers all legislative material that may affect the conduct of the elections. Nevertheless, the structure of election legislation has certain consequences that the examiner should be aware of and offer advice on if deemed necessary. Thus, the examiner should be mindful of the following principles.

A. Use and Merit of the Written Law

Although a government has flexibility in constructing the structure of the legal framework, there is a need for written law as opposed to custom or administrative policies as the governing instrument in the field of elections. The written law as the instrument of choice provides the benefits of equity, certainty, visibility and transparency and makes the matter subject to judicial interpretation and review and open to recourse by citizens.

B. Constitutional Provisions

Inclusion of the basic principles of the election system in the constitution creates a safeguard against frequent changes. Constitutional amendments are often subject to a qualified majority vote or other onerous processes. Thus, it is a recommended practice to include the fundamental guarantees protecting suffrage rights in a country's

constitution. This would include provisions regulating the very basics of the electoral system, such as the right to elect and be elected, the institutions subject to democratic elections, and terms of office of elected candidates.

As amendments to any constitution are normally subject to complicated and time consuming procedures, it is not desirable that constitutional provisions go beyond describing the very foundation of the election system and guaranteeing fundamental rights. In order to allow for necessary flexibility, provisions on the administration of the elections and other procedural matters should be left to legislation enacted by the parliament and administrative rules issued by authorised election administration bodies.

C. General vs. Specific Election Legislation

National election legislation can be divided into two categories:

- General election legislation relevant to any election
Establishes a legal framework governing all elections, including elections to the executive and legislative branches, at national and local levels.
- Specific election legislation relevant to a specific body of government, or to referenda
Establishes special legal provisions that govern elections to a specific body of government with provisions deviating from the general legal framework for elections.

Different countries have handled the division between general and specific election legislation in different ways. A country may adopt a separate law on “the basic principles” of elections, which defines provisions that are applicable to all elections. In addition, the country will adopt separate laws for the election to each state body that contain all provisions specific to that particular election. In contrast, another country may include the entire election legislation in one law with separate chapters establishing provisions for the various elections.

Although either of the above-described approaches is acceptable, one electoral law regulating all elections is highly desirable and is recommended. General election legislation regulating all elections is desirable as it safeguards consistency in election administration and practices, in addition to a unified implementation of the law in connection with all elections. Such an approach also simplifies the drafting process in cases where amendments in legislation are needed. However, one must realise that in some cases, in particular in federated systems, such an approach may not be possible.

Regardless of which of the above-described approaches is adopted by a country, certain principles should be respected when assessing election legislation:

- Election legislation should be stated in objective language. Interpretation of election legislation should not be a matter of subjective opinion.
- Election legislation should avoid conflicting provisions between laws governing national elections and laws governing local elections. The

provisions governing the administration of national elections should be in harmony with the provisions governing local elections.

- Relationships between national and local authorities, and between election administration bodies and other governmental bodies, should be clearly stated and defined. The authority of election administration bodies must be clearly stated and defined to prevent conflicting or overlapping powers being held by other government bodies.
- Election legislation should be enacted sufficiently in advance of elections to enable political participants and voters adequate time to become informed of the rules of the election processes. Election legislation enacted at the “last minute” undermines the legitimacy of the legislation and prevents political participants and voters from becoming informed in a timely manner of the rules of the election processes.
- Election legislation should be enacted in accordance with the applicable legal provisions governing the promulgation of laws by the parliament. Election legislation that is not enacted in accordance with the applicable legal provisions may be of questionable legitimacy, and risks annulment by the courts.
- Election legislation should be published and made readily available for the public.

D. Election Legislation vs. Other Legislation

An election law neither can nor should contain all regulations relevant to the election process. The election process will require involvement of institutions and procedures that are based on other parts of the national legal system. It is important that the examiner is aware of the existence of other relevant legislation and includes them in the review process. Of particular importance is national legislation governing the media, registration of political parties, citizenship, and criminal provisions related to election law violations. The examiner should identify and examine all legal provisions that have an impact on the election process.

E. Election Legislation vs. Central Election Commission Instructions

In a democratic system, the total legal framework for elections is adopted by a popularly elected national parliament. To uphold democratic values, election regulations should not be adopted by way of decree issued by the executive branch of government. However, there are limits to the amount of procedural regulations that can be included in a law. Most election laws, thus, allow for the supreme electoral administrative body, usually the Central Election Commission (“the CEC”), to issue instructions to further clarify issues related to the election process. However, electoral legislation should require that such instructions are directly based on provisions in the electoral legislation.

The role of the CEC in connection with the issuing of detailed instructions should be clearly understood. The role of the CEC is not to act as a substitute legislator, but to respond to occurring needs for clarification by way of interpreting and supplementing the election regulations. Election legislation should create a balance that allows for the necessary flexibility of the CEC to respond to obvious needs, but yet not undermine the principle of legislative control over the election legislation.

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

- Substantive fundamental rights, such as secrecy of the vote, may not be abrogated or diminished by CEC instruction.
- The authority of the CEC should be clearly stated and defined in the electoral legislation. Electoral legislation should clearly state and define the scope and extent of the CEC's authority to issue instructions.
- Electoral legislation should clearly state that CEC instructions may not be contrary to or inconsistent with electoral legislation.
- Electoral legislation should provide a process for political participants and voters to lodge complaints and appeals arising from the adoption and implementation of instructions by the CEC. This process should also allow for complaints and appeals arising from the violation of electoral legislation by the CEC.
- Electoral legislation should clearly state the hierarchy of legal norms governing the elections. It should be clearly stated that constitutional and legislative provisions take precedence over CEC instructions.
- The authority and process for the CEC to issue instructions in emergency situations or on Election Day must be clearly stated and defined in the electoral legislation.

F. Scope of Examination

The examiner should review all applicable legal provisions in a country that may be relevant to the issues raised by the minimum standards stated in these guidelines. The examiner should never assume that an issue is not addressed in the legal framework because is not addressed in the electoral code. The examiner should review all relevant legal provisions, including the country's constitution, and other legislation that impacts the election processes. If possible and appropriate, CEC instructions and regulations should be included in the review.

EXAMINER'S CHECKLIST FOR STRUCTURE OF THE LEGAL FRAMEWORK

- **Is the legal framework objective, clear, transparent and accessible to the public?**
- **Are fundamental suffrage rights safeguarded by Constitutional protections?**
- **Have all relevant laws been reviewed, including the Constitution, general and specific election legislation, citizenship, political party, media and public information legislation, criminal provisions related to election law violations, and Central Election Commission Instructions?**

IV. THE ELECTORAL SYSTEM

OBJECTIVE: The choice electoral system should ensure minimum standards for democratic elections in terms of what institutions are

elected, the frequency of elections, and the organization of electoral units.**A. System Choice**

A country's choice for its electoral system, if it meets the minimum standard for democratic elections, should be respected. Reference texts on the various electoral systems, which the examiner may consult, are included in the Supplementary Sources section in the Appendix.

To the extent possible, however, the examiner should be alert to adverse consequences that might result from the application of a particular electoral system within a particular country context. Although the ruling party may not have engineered the choice of the electoral system, it still may provide the ruling party with an unfair advantage in elections. Thus, if there is some question on this score, it can be useful to examine the results of the previous elections, with a view to see whether the political power of the ruling party has significantly shifted after changes in the legal framework. If warranted, the examiner might also consider how long the ruling party has been in power and the degree of involvement of the ruling party in introducing or making changes in the particular electoral system. This is especially true in a proportional representation system where the law establishes a percentage of the vote as a legal threshold for securing a seat in the legislature.

As part of the context for the legislative review, the examiner should also consider whether a country is deeply divided along political, religious or ethnic lines and whether minorities are properly represented in the political system. If a country has some particular problem, which could be either directly attributed to the choice of electoral system or which could be remedied by use of a different electoral system, then the examiner should comment on the advantages and disadvantages of the different electoral systems and make specific recommendations. Reference texts on the various electoral systems designed to address specific problems, such as a society divided by ethnic conflict, are included in the Appendix.

B. Institutions Elected

Illustrative of the minimum standard on what institutions must be constituted by democratic elections is the standard stated in Paragraph 7.2 of the OSCE 1990 Copenhagen Document, which requires that "all seats in at least one chamber of the national legislature to be freely contested in a popular vote". However, the examiner should be aware that a country that is seeking admission to a particular international organisation, or is a signatory to a particular international instrument, may be required to hold democratic elections for other institutions.

C. Frequency of Elections

Illustrative of the minimum standard governing the frequency of elections is the standard stated in Paragraph 7.1 of the OSCE 1990 Copenhagen Document, which requires that democratic elections be held at reasonable intervals as established by law. This requires that elections be held pursuant to an existing legal framework and scheduled within time parameters established by that framework.

D. Organization of Electoral Units

The legal framework should address the issue of how electoral units (voting districts) are to be organised. The legal framework regulating the drawing of boundaries for electoral units should state the (1) frequency, (2) criteria, (3) degree of public participation, (4) respective roles of the legislative, judicial, and executive branches of government, and (5) who has the ultimate authority for choosing the final plan for electoral units. The law should also specify under what circumstances the size of an electoral unit might deviate from the established criteria. Electoral units should be drawn in a manner that preserves equality among voters. Thus, the law should require that electoral units be drawn in such a way that each electoral unit has approximately the same number of voters. The manner in which electoral units are drawn should not circumvent the principle of equal suffrage, which is a cornerstone of democratic elections. However, this does not preclude taking into consideration convenience and accessibility for voters, including the delineation of pre-existing administrative boundaries.

Ideally, the legal framework should provide that the persons or institution drawing electoral boundary units are to be neutral, independent, and impartial. The legal framework should also provide for maximum public input and participation in the process for drawing electoral units.

EXAMINER'S CHECKLIST FOR THE ELECTORAL SYSTEM

- Does the electoral system choice ensure minimum standards for democratic elections?
- Are all seats in at least one chamber of the national legislature subject to democratic elections?
- Are democratic elections held at reasonable intervals?
- Does the legal framework address the manner in which electoral units are organised?

V. THE RIGHT TO ELECT AND BE ELECTED

OBJECTIVE: The legal framework should ensure that all citizens of the age of majority are guaranteed the right of universal and equal suffrage.

A. Universal and Equal Suffrage

A minimum standard that the legal framework must meet is the guarantee of universal and equal suffrage to each adult citizen. The right to elect must be guaranteed to each citizen who reaches the age of majority. The right to be elected may require an age beyond that of the age of majority. However, the right to be elected must be guaranteed to each citizen who reaches the legally specified age.

B. Non-Discrimination

The legal framework must ensure that every citizen above a certain age has the right of suffrage and that every person who has the right of suffrage is allowed to exercise his/her suffrage right in a non-discriminatory manner on the basis of equal treatment before the law. Illustrative of this principle is Paragraph 7.3 of the OSCE 1990 Copenhagen Document, which guarantees “equal suffrage”. Application of this principle requires that a person, who has the right of suffrage, be allowed to exercise his/her suffrage right without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The examiner must carefully review and assess any provision that could be applied to discriminate against a citizen in the exercise of his/her suffrage rights.

C. Scrutiny of Any Restriction of the Right of Suffrage

The legal framework should clearly state under what circumstances a person’s suffrage rights might be limited or suspended in any manner or to any degree. Any limitation or restriction on the right to elect or be elected must be scrutinized, and any limitation or restriction must clearly be justified due to exceptional circumstances. Scrutiny and caution on the part of the examiner is required since the right of suffrage is a fundamental human right.

EXAMINER’S CHECKLIST FOR THE RIGHT TO ELECT AND BE ELECTED

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

VI. ELECTION COMMISSIONS/BODIES

OBJECTIVE: The legal framework should require that election commissions/bodies are established and operated in a manner that ensures the independent and impartial administration of elections.

A. Formation of Election Commissions/Bodies

The administration of democratic elections requires that election commissions/bodies are independent and impartial. This is a critical area as the election administration machinery makes and implements important decisions that can influence the outcome of the elections. The examiner must be aware of the political circumstances of the

particular country under consideration when assessing the legal framework regulating election commissions/bodies.

A party-oriented formula for the composition of electoral commissions may be a solution available, but the examiner must apply particular scrutiny to its actual consequences. The views of any opposition forces, if available, can obviously help to identify the practical consequences and weaknesses of a particular arrangement. If the legal framework adopts a party-oriented formula, then it should address how and when changes in commission membership should occur when there are changes in the strength and membership of parties, especially where there are new parties.

The administrative structure established by the legal framework should include a central or state election commission with authority and responsibility over subordinate election commissions. There should be a subordinate election commission for the electoral unit (voting district) in which a member of the legislature is elected. Whether intermediate election commissions are needed depends on the electoral system and geographic and demographic factors unique to the country. However, the examiner should be wary of election commissions that appear unnecessary. The lowest level of the election commission structure should be the polling station level where voting occurs. It is critical that the legal framework defines the relationship between the central election commission and lower election commissions, and the relationship between all election commissions and executive government authorities.

The authority and responsibility of each level of election commission should be clearly defined in the legal framework. The law should provide clear provisions on how the commission shall conduct its business. The law should state how, when, and what type of notice the public should be given of commission meetings. The law should state quorum requirements, voting rules for decisions, the manner of publication of decisions, and provide clear provisions for transparency so that the work of the commission can be observed and monitored.

Where possible, professionals familiar with the electoral framework of a country should be the persons appointed to administer elections in the country. Thus, a common provision found in many legal frameworks requires that members of commissions, at every level, have a background or training in law. On the surface, such a provision is acceptable, although it may be overly restrictive for lower level commissions and polling station commissions. However, to the extent possible, the examiner should evaluate such provisions within the context of the particular country. Is it the result of such a provision that the only persons who are eligible for commission membership are persons who will be biased in favor of a particular party? This could be the case where the law requires commission members to be judges and the party in power appoints all judges. If feasible, the examiner should attempt to ascertain the practical implications of the legal provisions governing the qualifications of election commission members.

The state or central election commission should be a body that functions on an active basis and not for a limited time period just before elections. This means that the central election commission should be required by law to continually work to improve voter registers and take other actions that improve the election process. However, it is normal for lower election commissions/bodies, such as polling station committees, to

be temporary bodies established before an election. The legal framework should require that such bodies be established in a timely manner before an election and adequately funded. The legal framework should also provide adequate funding for the ongoing operations of the central election commission.

The legal framework should ensure that the method of selecting election commission members is impartial. Additionally, it is suggested that members' terms be staggered to provide continuity in the work of successive commissions. The method of selecting commission members should be open and transparent. The legal framework should also specify the grounds and process for removal of a member. The law should contain provisions designed to foster the independence and impartiality of members, including provisions protecting members from arbitrary removal and providing immunity in connection with the performance of legal duties. The law should also specify the rights of each member of the commission, including the right to receive timely and adequate notice of meetings, the right of access to all commission documents, and the right to participate in all commission meetings.

The examiner must be satisfied that the legal framework ensures that an election commission will be an independent body that will carry out its duties in an impartial manner. The legal framework should clearly define the duties of an election commission, including the following:

- ensuring that election officials and workers responsible for the administration of the election are trained and act independently and impartially;
- ensuring that coherent voting procedures are established and made known to the voting public;
- ensuring that voters are informed and educated concerning the election processes, political parties, and candidates;
- ensuring the registration of voters and updating of voter registers;
- ensuring the integrity of the ballot through appropriate measures to prevent unlawful and fraudulent voting;
- ensuring the integrity of the process for counting and tabulating votes;
- certifying the final election results.

B. Operation of Election Commissions/Bodies

Regardless of how formed and the degree of partisanship involved, election administration bodies should operate in an independent, collegial, and impartial manner. Once formed, an election administration body must serve the interests of all citizens and electoral participants. No election administration body should act in a partisan manner or exhibit partiality in the performance of its duties.

The legal framework should also provide mechanisms for an aggrieved voter, observer, political party, or candidate to seek relief from a final decision of an election commission/body. The mechanism could be appeal to a higher election commission/body or, where the decision is of the highest election commission/body, appeal to a court of law. The important point is that the legal framework must provide for the opportunity to have a decision of an election commission/body reversed.

EXAMINER'S CHECKLIST FOR ELECTION COMMISSIONS/BODIES

- Does the legal framework require that election commissions be established in an independent and impartial manner?
- Does the legal framework require that election commissions operate in an independent and impartial manner?
- Does the legal framework require transparency in the establishment and operation of election commissions and provide for observers to monitor their work?
- Does the legal framework clearly define the authority and responsibility of each election commission and its relationship to other governmental bodies and executive authorities?
- Does the legal framework provide for adequate opportunity to seek reversal of a decision of an election commission?
- Does the legal framework protect election commission members from arbitrary removal?

VII. VOTER REGISTRATION AND REGISTERS

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

A. Transparency in the Process

The right to vote is of diminished value if the legal framework makes it difficult for a person to register to vote. The right to vote is also of diminished value if the legal framework fails to ensure accuracy in voter registers or makes it easy for fraudulent or double voting. Thus, the minimum standard for voter registration and maintenance of registers is that there be full and complete transparency in the process. Full and complete transparency in the process should ensure that registration is easy for a person who has the right to vote, while at the same time ensuring accuracy to prevent fraudulent voting. The examiner should carefully review the legal framework and be satisfied that the legal framework provides transparency in the process of voter registration and maintenance of registers. The legal framework should clearly specify the method of establishing voter eligibility, including what documentation is required, so that the process is fully transparent, not subject to arbitrary decision, and can be publicly monitored in an objective manner.

Transparency requires that voter registers must be public documents that are available for inspection, without cost to the requester. The legal framework should clearly specify who may inspect, how the inspection will occur, and during what periods voter registers are available for public inspection. The legal framework should clearly state the permitted uses of information obtained from inspection of the voter registers and whether the information can be used for purposes other than making challenges to

the registration of a particular voter. In particular, the law should state whether the information might be used for the campaign activities of political parties and candidates. The legal framework should also state the sanctions for misuse of information obtained from voter registers. The law should also specify whether voter registers must be made available in an electronic format if requested in such a format.

The legal framework should clearly specify who is permitted to request registration changes, entries, and deletions, how such requests are made, and during what time period requests may be made. Requests for changes, entries, and deletions in the voter registers should not be limited to a time period just before a given election, except where necessary to finalise registers prior to an election. A person should not be limited to making requests that relate only to that person. A person should be permitted to make a request that affects another person, provided the other person is notified of the request and permitted to respond to the request. Additionally, requests for changes should be available for public inspection. Changes, entries, and deletions should be made only upon the presentation of specific documentation and in accordance with the procedure identified in the legal framework. Decisions on requests should be made expeditiously, within a time period specifically stated by the law. Adverse decisions must be subject to appeal and appeals must be determined expeditiously, within a time period specifically stated by the law.

A voter registration system may be active or passive. The final responsibility for accuracy of the voter registers may be with local authorities or a central state authority. However, the examiner should carefully review the provisions governing this issue and be satisfied that the system established by the law ensures that voter registers are maintained in an accurate and transparent manner that protects the right of citizens of legal age to register and prevents unlawful or fraudulent registration.

The legal framework should also require that the voter registers be systematically updated and corrected in a transparent manner, well in advance of elections, to allow electoral participants and voters the opportunity to review it for accuracy.

B. Protection of Personal Data and Information

In addition to requiring full transparency to protect the integrity of voter registers, the law should provide for the protection of private personal data and information that has been collected during voter registration. The legal framework will require that a person disclose certain information to authorities for purposes such as registration as a voter or as a candidate. The examiner should carefully review the legal framework and be satisfied that it does not allow for collection, use, or dissemination of personal data or information in any manner for any purpose other than the exercise of suffrage rights. In particular, the examiner should carefully review provisions that relate to fingerprints, photographs, and personal identification numbers, as well as to ethnicity or other factors that could lead to discrimination or place the voter at risk to personal harm. The examiner should also carefully review and assess legal provisions specifying what personal information and data concerning a voter will be publicly listed on registers.

EXAMINER'S CHECKLIST FOR VOTER REGISTRATION AND REGISTERS

- Does the registration process provide for accurate and transparent voter registers?
- Are the requirements for voter registration stated in clear and objective language?
- Does the law clearly identify what documents are necessary for registration as a voter?
- Is the procedure for challenging a registration decision stated in clear and objective language?
- Are time periods for challenging a registration decision clearly stated?
- Is a voter protected from the wrongful disclosure of personal data and information?

VIII. POLITICAL PARTIES AND CANDIDATES

OBJECTIVE: The legal framework should ensure that all political parties and candidates are able to compete in elections on the basis of equal treatment before the law.

A. Equal Treatment Before the Law

The legal framework should ensure that all political parties and candidates are able to compete in elections with each other on the basis of equal treatment before the law. Paragraphs 7.5 and 7.6 of the OSCE 1990 Copenhagen Document are illustrative of this minimum standard.

Paragraph 7.5 of the Copenhagen Document requires that citizens be permitted “to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.” Thus, candidates seeking office must be permitted to run as either party candidates or independent candidates. Additionally, candidates, regardless of party affiliation or lack of party affiliation, cannot be discriminated against.

Paragraph 7.6 of the Copenhagen Document requires respect of the “right of individuals and groups to establish, in full freedom, their own political parties or other political organizations”, and that the government “provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law.” This requires that the legal framework provide a level playing field for all political parties and candidates involved in the electoral processes.

B. Placing Candidates or Parties on the Ballot

A potential problem issue that the examiner must carefully review is the process by which candidates or parties are placed on the ballot. The examiner should review the

law regulating formation and registration of political parties to determine whether there are any unreasonable requirements for formation of a political party.

Although a legal framework may not hinder the general activities of political parties or independent candidates, it may present obstacles for a political party or independent candidate to be placed on the ballot for a particular election. The legal framework should clearly set forth all details on this issue for a particular election. This includes the dates for commencement and closure of registration, during what time period and how signatures are to be collected where registration is to be established by signatures, and the process of verification of registration. Where the legal framework provides for the collection of signatures, it should provide for a reasonable amount of time for collection of the signatures. The legal framework should provide for uniformity in the registration process so that the same process applies to all candidates at all levels.

Ballot access for a particular election is usually granted when a political party, coalition, bloc, or independent candidate meets one of the following requirements: (1) payment of a monetary deposit, refundable upon receiving a certain number or percentage of votes, (2) collection of a minimum number of signatures of registered voters, or (3) allocation of a mandate or obtaining a minimum percentage of the votes in the last election.

Regardless of the procedures available for registration, registration should not be tied to irrelevant requirements unrelated to the issue of whether a political party or independent candidate has sufficient support to be placed on the ballot. The examiner should carefully review the applicable registration requirements. The grounds for rejection of a registration application should be based on objective criteria and clearly stated in the legal framework.

Monetary deposits should be of a sufficient amount to discourage frivolous political parties and independent candidates, but should not be so high as to prevent legitimate political parties or independent candidates from obtaining ballot access. Additionally, monetary deposits should be refundable upon receiving a certain number or percentage of voters. The threshold required for a refund should be reasonable.

Special attention should be given to the manner of validating signatures. An invalid signature should be merely what it is – an invalid signature. An invalid signature should not invalidate other signatures or the signature list. Additionally, instead of being required to submit a fixed percentage of valid signatures (*e.g.* 99%), a candidate should be required to submit a fixed number of valid signatures (*e.g.* 1,000), and should be permitted to submit excess signatures in the event some of the signatures are determined to be invalid. The following example, taken from an actual electoral law, illustrates why, when signature collection is involved, registration should be based on establishment of a fixed number of valid signatures without regard to the number or percentage of invalid signatures that may be on the registration list.

Assume a candidate for the parliament needs at least 1,000 valid signatures to meet the requirements for candidacy. Candidate B is extremely popular and receives 2,500 signatures of support. Of those 2,500 signatures, 2,130 signatures are valid and 370 are invalid. Under the country's verification procedure, 875 signatures are checked, of

which 699 are valid and 176 invalid. Now, however, the law provides that further verification of the signatures in the signature lists shall be terminated because the number of invalid signatures found during the verifications constitutes more than 15 percent of the total number of signatures verified in the signature lists. The end result is that a candidate, who had 2,130 valid signatures, when only 1,000 were needed, is prohibited from being a candidate. This example is provided to show why it is critically important for the examiner to carefully review legal provisions related to signature collection and verification.

The procedures for checking signatures can provide ample scope for abuse. A list submitted for verification by one party or candidate may be scrutinised in great detail, while another is approved without any checks at all. The election law should specify how signatures are to be verified and make clear that this applies equally to all lists. As important, the law should specify the degree of detail to be used to verify signatures. Signature lists can be checked for errors on the face of the document (the same voter signing twice, or a voter not providing his/her address where required). The law should be very clear as to what kind of verification process is involved in order to ensure that all lists are exposed to the equal scrutiny, under clearly stated objective criteria.

The examiner should ask whether the law provides a protocol for checking signatures which is defensible from the point of view of statistical quality control. Such protocol needs to specify at least the following:

- the size of the sample to be drawn and checked;
- the method by which the sample is to be drawn (this should involve the computer generation of random numbers);
- the tests which are to be applied to determine whether a particular signature is valid;
- a formula for determining the number of signatures in the sample which must be valid in order for the registration to be accepted; and
- if necessary, the circumstances under which a further sample may be drawn.

Provisions regarding the geographic regions where signatures are obtained must also be carefully reviewed. An election law may require that a party obtain a certain number of signatures in every region of the country. Such a provision discriminates against parties that enjoy a strong public following but whose support is limited to a particular region. Such a provision can also discriminate against small parties and minorities.

A requirement that voters may only sign in support of one candidate or party may also be problematic. In such instances, a candidate who has collected in good faith the required number of signatures may be disqualified through no fault of his or her own because voters have signed more than one petition. In a worst case, voters may deliberately sign more than one petition in order to try to disqualify a candidate.

Deadlines for the registering authority to approve or reject registration requests should be defined. The grounds for rejection must be clearly stated in the law and based on objective criteria. The law should allow for correcting minor deficiencies within a reasonable amount of time after rejection. The law should provide for appeal to a court of law after final rejection of registration. The law should clearly specify the

process for appeal and require an expedited court ruling to enable a candidate or party to be placed on the ballot where registration was improperly denied.

Once registration is approved, the question of registration or possible de-registration should not again become an issue. In order to avoid speculations and abuse connected to possible de-registration, the possibility to recall a political party or candidate's registration should be very narrow, allowing for a review of a registration only in cases of serious violations of the law and pursuant to clearly defined procedures.

The examiner should assess all provisions governing registration, including the amount of a monetary deposit or the number of required signatures, within the context of the country, *i.e.*, considering economic and demographic realities.

C. Conduct of Political Parties and Candidates During Electoral Campaigns

The legal framework should provide in clear language what conduct is and is not permitted on the part of political parties and candidates during electoral campaigns. Provisions regulating the conduct of political parties and candidates may be found in the criminal law and/or the electoral law. These provision should not be unduly restrictive and should provide the opportunity for active and open campaigning free from government interference. Examples of model codes of conduct for political parties and candidates during electoral campaigns are included in the Model Codes section of the Appendix.

D. Special Problem of Premature Termination of a Candidate's Mandate

A special problem that the examiner must be aware of is where a legal framework permits premature termination of a candidate's mandate due to a change in political party affiliation. An elected candidate should be accountable to the electorate. This accountability can be undermined if the legal framework requires a candidate who has changed political party affiliation to prematurely surrender his/her mandate. Such a legal provision is also subject to abuse by political party leaders.

EXAMINER'S CHECKLIST FOR POLITICAL PARTIES AND CANDIDATES

- **Are all political parties and candidates ensured equal treatment before the law?**
- **Are candidates ensured the right to seek office as either political party or independent candidates?**
- **Does the legal framework provide a level playing field for all political parties and candidates?**
- **Are the requirements for candidates to be placed on the ballot based on relevant, reasonable, and objective criteria and clearly stated in the law?**
- **Are the procedures for candidate registration reasonable and clearly stated in objective language in the law?**
- **Does the legal framework ensure judicial review of decisions on candidate registration?**

- Does the law regulate the conduct of political parties and candidates during electoral campaigns and provide for active and open campaigning free from government interference?
- Does the legal framework protect an elected candidate's mandate from premature termination due to a change in political party affiliation?

IX. EQUAL TREATMENT AND ACCESS TO MEDIA

OBJECTIVE: The legal framework should ensure that all political parties and candidates are provided access to media and equal treatment in media owned or controlled by the state, and that no unreasonable limitations are placed on the right of political parties and candidates to free expression during election campaigns.

A. Equal Treatment and Access

Political parties and candidates should be provided access to media and equal treatment in media owned or controlled by the state so that voters can be informed of political platforms, views, and goals in a fair and unbiased manner. This covers all forms of the media, including radio, television, newspapers, and evolving forms of media such as the Internet.

Paragraphs 7.6 and 7.8 of the OSCE 1990 Copenhagen Document are illustrative of this minimum standard. Paragraph 7.6 requires that the government provide political parties and organisations “with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”. Paragraph 7.8 requires that the government ensure that “no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.” A country’s legal framework should contain these guarantees and a clearly defined process for timely implementation of these guarantees before and during elections. The process for establishing a formula or schedule for access and equal treatment in the media for a given election should be understandable and capable of objective application.

One practice that can ensure this standard is to require provision to political parties of the right to free time on public radio and television on a permanent basis, and not only during electoral periods. A legal framework that provides that all political parties are guaranteed an established number of minutes of broadcasting per month can ensure this practice. Ideally, during electoral campaigns, political parties and candidates would be allocated additional free time in order for them to disseminate information about their candidatures.

Free broadcasting time or free newspaper space during election periods should be allotted under an established formula that can be applied objectively. Objective application is ensured if the law specifies the percentage to be distributed to political parties and candidates on an equal basis, regardless of parliamentary strength. It is

also recommended that the amount of broadcast time distributed on an equal basis be sufficient to enable all political parties and candidates to compete effectively in the elections.

In the area of paid political advertising there should also be a guarantee of access and equal treatment. An inequality is created in the area of paid political advertising if the legal framework fails to ensure that the same commercial rate for such ads be offered to all political parties and candidates, and that the times and location of the advertising be on similar terms. Alternatively, and where not contradicting other laws, the legal framework could prohibit all paid political advertising. If paid political advertising is permitted, then it should be offered at the same commercial rate for such advertising and under similar conditions to all political parties and candidates in order to ensure access and equal treatment. Moreover, paid political advertising should be identified as such and should not be disguised as news or editorial coverage.

Regulation of equal treatment and access to media may be regulated in a country's law on media or public information. Additionally, the law may only provide general statements on equal treatment and access and may delegate authority for promulgating the specifics of implementation to an administrative body such as a specialized media commission. Regardless of whether regulation is by statute or administrative provisions, monitoring of the media is recommended to ensure compliance. The law and its implementation should not give an undue advantage to any particular political party or candidate.

The standard of equal treatment and access to media is undermined if state owned or controlled media is able to favour a political party or candidate in news coverage, political coverage, forums, or editorials. Biased coverage or treatment in state media should be prohibited and authorities should be required to immediately act upon any violation.

B. Limitations on Free Expression During Election Campaigns

A democratic election is not possible where the legal framework inhibits or chills campaign speech and expression. Too often, the legal framework in a country making the transition to democracy censors campaign speech through the imposition of sanctions for speech that “defames” or “insults” another person, which could include the government, a government official, or a candidate in the electoral campaign. Such provisions are commonly found in the electoral code or media (public information) law. However, the examiner should be thorough in examining the legal framework as such provisions are also found in general constitutional, civil, criminal, and administrative laws.

Any law regulating defamation of a person's character or reputation should be included only in the applicable civil law. A provision in the electoral law regulating defamation is not justified and the examiner should so comment. The examiner should also propose changing any provision, regardless of the legal source, that requires forfeiture of candidacy or imposes imprisonment or monetary fines for “defaming” another candidate or political party.

Such limitations on free expression violate international human rights law. Additionally, such provisions usually violate free speech guarantees found in a country's constitution. When reviewing provisions which permit censorship of candidates, supporters, or the press and media, the examiner should point out that such provisions are contrary to international standards and, where applicable, the domestic law of the country. This standard, however, is not applicable to prohibitions on inflammatory speech that is calculated to incite another person to violence.

Illustrative of this minimum standard is Paragraph 7.7 of the OSCE 1990 Copenhagen Document. Paragraph 7.7 requires that the "law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them...." Legal provisions limiting free speech and expression in a political campaign may also be contrary to international instruments to which the country has become a signatory. Thus, any limitation on speech or expression during election campaigns must be scrutinised by the examiner.

EXAMINER'S CHECKLIST FOR EQUAL TREATMENT AND ACCESS TO MEDIA

- **Does the legal framework ensure that all political parties and candidates are provided access to media and equal treatment in media owned or controlled by the state?**
- **Does the legal framework establish a formula for access and equal treatment that is fair, understandable, and capable of objective application?**
- **Does the legal framework ensure free expression during election campaigns?**

X. CAMPAIGN FINANCE AND EXPENDITURES

OBJECTIVE: The legal framework should ensure that all political parties and candidates are treated on the basis of equal treatment before the law by legal provisions governing campaign finances and expenditures.

A. Public Funding

If the legal framework provides for public funding, then public funding should be provided on the basis of equal treatment before the law. This does not mean that all political parties and candidates are to receive an equal amount of campaign funds. This only means that political parties and candidates should be provided public funding on the basis of equal treatment before the law. The minimum standard presented in the previous chapter on Equal Treatment and Access to Media is applicable, if public funding is indeed provided by the legal framework.

Any provisions for public funding should be clearly stated in the law and based on objective criteria that is not open to subjective interpretation by government

authorities. Additionally, the legal framework should ensure that state resources are not misused for campaign purposes and that they are used only with strict adherence to the applicable legal provisions. The examiner should carefully review the legal framework to ensure that no advantage is given to incumbents in the use of state resources. The legal framework should specifically provide that all state resources used for campaign purposes, such as state media, buildings, property, and other resources are made available to all electoral participants on the basis of equal treatment before the law.

B. Private Funding

Any restriction on private funding of political campaigns must be scrutinised carefully. Any restriction or limitation on private funding could be a violation of a person's rights to free association and expression. Thus, the examiner should carefully evaluate legal provisions regulating private funding of political campaigns. The examiner should also point out the inadequacy of a legal framework that provides that electoral campaigns are to be completely financed by the state.

The examiner should carefully consider legal provisions that attempt to funnel private funding to specific parties or candidates. This is most commonly found in a legal framework that prohibits direct private contributions to political parties or candidates, and instead requires private contributions to be made to a "public" fund where the private contributions are then given to all political parties and candidates pursuant to a government distribution formula. Such a provision effectively requires a private contributor to support "enemies" if the contributor wants to support a "friend".

Although the legal framework should permit private funding of political campaigns, reasonable limitations on the amount of private contributions are permissible. What is reasonable depends on the type of election and factors unique to the particular country, such as geography, demographics, and relative costs of media and other campaign materials.

It is also acceptable to limit the *total* amount of expenditures of the electoral contestants in a given campaign. Although the legal framework should permit electoral contestants to expend *sufficient* resources to convey a political message, there is no minimum standard that requires that electoral contestants be given an opportunity to buy an election.

C. Reporting and Disclosure Requirements

Legitimate limitations on campaign expenditures are meaningless without reporting and disclosure requirements. Thus, the legal framework should require periodic reporting, related to reasonable time intervals, of all contributions received and expenditures made by an electoral contestant. However, the examiner should be realistic about the reporting requirements for any transition democracy. Additionally, any penalties for failing to file reports or filing reports with erroneous information should be clearly stated in the legal framework and should be proportional to the offence. For example, candidates should not be disqualified from running due to minor reporting irregularities.

The legal framework should specifically identify the agency responsible for receiving and maintaining campaign contribution and expenditure reports. The legal framework should clearly specify where and when such reports are available for public inspection. The law should also permit the copying of campaign contribution and expenditure reports so that the contents can be disseminated to voters.

EXAMINER'S CHECKLIST FOR CAMPAIGN FINANCE AND EXPENDITURES

- **Does the legal framework ensure that all political parties and candidates are treated on the basis of equal treatment before the law by provisions governing campaign finances and expenditures?**
- **If the legal framework provides for public funding or the use of state resources for campaigns, does it provide for such use on the basis of equal treatment before the law for all political parties and candidates?**
- **Are limitations on private funding of campaigns reasonable, clear, and capable of objective application?**
- **Does the legal framework require periodic reporting on campaign contributions and expenditures?**
- **Does the legal framework provide for public access to reports on campaign contributions and expenditures?**

XI. OBSERVERS

OBJECTIVE: The legal framework should provide for observers, including domestic and foreign, and representatives of the media, political parties and candidates, to ensure transparency of all electoral processes.

Transparency of the electoral process is a minimum standard necessary to ensure democratic elections. Illustrative of this minimum standard is Paragraph 8 of the OSCE 1990 Copenhagen Document, which recognises the importance of the presence of observers, both foreign and domestic, to ensure transparency in the electoral process. The legal framework should provide for the presence of observers, domestic and foreign, and representatives of the media, political parties and candidates, to ensure the transparency of all electoral processes. The legal framework should not limit the right to observe to agents or representatives of political parties and candidates. The media and observers from non-governmental organisations have an important role in enhancing transparency of the electoral processes and should have the right to be accredited to observe. However, in exceptional cases where the very act of voting presents serious risks to voters, certain restrictions may be appropriate.

To the extent that time and resources permit, the examiner should review the applicable law regulating non-governmental organisations and public associations to

ensure that these laws do not create unreasonable requirements for acquiring legal status necessary to apply to observe election processes.

The legal framework should provide clear and objective criteria on the requirements for registration as an observer. The legal framework should also be clear as to what governmental authority accredits observers, what are the requirements to obtain observer status, and under what circumstance observer status can be revoked.

The legal framework should be clear and precise concerning the rights of observers. A general provision allowing observers to “observe the carrying out of elections” is insufficient. The law should provide clear and precise provisions establishing the rights of observers to inspect documents, attend meetings, monitor election activities at all levels at all times, including counting and tabulation, and to obtain copies of protocols at all levels. The law should also establish an expedited process for observers to obtain corrective relief when an election commission/body denies the rights of an observer, including the right to be registered as a domestic observer.

The legal framework must also be clear and precise concerning what a domestic observer may *not* do, such as interfering with voting, taking any direct part in the voting or counting processes, or attempting to determine how a voter will vote or has voted. The legal framework should ensure that only bona fide observers are permitted to have access to observe electoral activities. The legal framework should strike a balance between rights of observers and the orderly administration of the election processes. Thus, requirements for registration to observe at specific polling locations may be appropriate. However, the examiner should carefully review any requirements that could be onerous to observers and serve to hinder legitimate observation. This is especially applicable to any provision that attempts to “muzzle” observers or prevent them from reporting or releasing information that has been obtained by observation efforts.

Examples of model codes of conduct for observers are included in the Model Code section of the Appendix.

EXAMINER’S CHECKLIST FOR OBSERVERS

- **Does the legal framework allow domestic and foreign observers to observe all electoral processes?**
- **Does the legal framework allow representatives of the media, political parties, and candidates to observe all electoral processes?**
- **Does the legal framework provide clear and objective criteria on the requirements for registration as an observer?**
- **Is the legal framework clear as to what governmental authority accredits observers?**
- **Is the legal framework clear as to the rights of observers and as to when and under what circumstance observer status can be revoked?**

- **Does the legal framework strike a balance between the rights of observers and the orderly administration of elections?**
- **Are there any legal requirements that could be onerous to observers and serve to hinder legitimate observation?**

XII. BALLOTING PROCEDURES

OBJECTIVE: The legal framework should ensure that secrecy of the vote is guaranteed, and that all votes are counted and tabulated equally, fairly, and transparently.

A. Secrecy of the Vote

Secrecy of the vote is a minimum standard for a democratic election. Illustrative of this minimum standard is Paragraph 7.4 of the OSCE 1990 Copenhagen Document, which requires that votes are cast by secret ballot.

The examiner should carefully review provisions in the legal framework regulating control and security of the ballot, as well as the provisions governing the casting of a ballot at the polling station. The legal framework should provide for ballot security, while at the same time ensuring that no individual ballot can be identified as being marked by a specific voter.

Under no circumstances, except for counting of ballots after close of the polling, should a polling station committee member or other person be allowed to see a voter's marked ballot. Obviously, this prohibition does not apply to a person legally authorised to assist a blind voter or a voter requiring assistance due to physical infirmity. However, it is unacceptable for a member of a polling station committee to handle or control the voter's marked ballot before it is placed in the ballot box.

The principle of secrecy of the vote requires that election regulations underline that secret voting is not only a right on the part of the voter, but an absolute obligation. In this regard the most frequent abuse is "family voting", which is still a relatively common practice in many OSCE countries. The legislation should make clear that every voter's ballot must be marked and cast secretly. Election officials should under no circumstances accept deviations from the principle of secrecy of the vote.

B. Voting Procedures

The examiner should carefully review all procedures regulating the voting process. Voting procedures should ensure that voters are adequately identified and that other mechanisms are in place to prevent fraudulent or double voting. However, voting procedures should not be cumbersome or complicated so as to hinder the voting process. Voting procedures should ensure that all ballots and voting materials are adequately safeguarded before, during, and after voting.

The examiner should carefully review if and how the legal framework provides for other methods of voting, such as postal voting or mobile voting. Both types of voting

may be available to a single individual, such as a person who is abroad on business, or for an entire community, such as persons who are displaced due to the outbreak of war. In the case of mobile voting, it may be available to a single voter homebound due to physical incapacity, or to an entire community, such as a hospital or institution. A legal framework may provide special voting provisions for members of the military. The examiner should carefully review all provisions for other methods of voting and be satisfied that adequate mechanisms are in place to prevent the abuse of other methods of voting. The examiner should carefully review the legal framework to ensure that mechanisms are in place to prevent a person from using another method of voting and the regular voting process in the same election.

The legal framework should prohibit the presence of unauthorised persons in polling stations. In particular, local executive leaders should not be on hand to deal with any “difficulties” arising during the polling processes. It is therefore useful to recommend, if it does not already feature in the legal framework, an unambiguous prohibition on the presence of all unauthorised persons in polling stations. This can usefully be coupled with a provision that police officers should enter polling stations only to vote in the ordinary way or to restore order. In the latter event, police should enter only upon the invitation of the chairman of the polling station election commission, or person acting on his/her behalf, and should leave as soon as order is restored.

C. Mobile Voting

It is common for an election law to provide for mobile voting for persons who are physically disabled or who cannot come to the polling station for other valid reasons. The voter accommodation principle underpinning the concept of mobile voting is commendable. However, provisions for mobile voting are often written in such a manner that they are subject to abuse and fraud.

If mobile voting is allowed under the legal framework, it is certainly appropriate for the examiner to make the following recommendations to safeguard the integrity of the mobile voting process:

- A procedure must be in place to identify voters using mobile facilities to prevent double voting.
- Mobile voting should be used only in cases where it is physically impossible for the voter to travel to the polling station to vote. This fact must be established by the voter, making where possible a written application to the polling station committee, explaining why it is physically impossible for the voter to travel. The application must be submitted by the voter, and acted upon by the polling station committee, within deadlines established by law.
- Observers of all categories, or their representatives where numbers must be restricted for practical reasons (i.e., transport by helicopter, etc.), should be permitted to accompany the mobile ballot box.
- The number of ballot papers taken out for mobile use and the number later returned should be formally recorded.
- The number of ballot papers taken out should accord with the number of requests received, plus a specified small number of extra ballots to allow for voters who may spoil their ballot paper.

- The number of persons who have used the mobile box should be recorded in polling station and successive protocols. This makes it possible to identify particular areas where the proportion of votes cast using mobile boxes is unusually high, which may point to fraud.
- At least two members of the polling station committee should administer mobile voting jointly within the geographical territory covered by a polling station.

D. Military Voting

It is common and acceptable for the electoral framework to have special provisions ensuring that a member of the military is able to exercise the right to vote while on active duty. Although protecting the right to vote of a member of the military is appropriate, the provisions must be written carefully as voting by the military can be subject to abuse.

Concerning military voters, it is not unusual for the legal framework to permit special polling stations to be set up within military units located in remote areas far from any centre of population. While such a provision may be unavoidable, it should be accompanied by an express indication that this is strictly exceptional and that, wherever possible, military voters should vote in ordinary civilian polling stations.

When local elections are involved, a member of the military should normally vote a ballot of the constituency of the member's permanent place of residence.

E. Balancing of Voter Accommodation With Safeguards Against Fraud

Voter accommodation must be carefully balanced against the need to safeguard against voting fraud. If not drafted carefully, a provision accommodating the needs of a special group of voters, by establishing exceptional voting procedures, can be abused by persons who are attempting to vote more than once or who do not meet the legal requirements for the exceptional voting procedure. Thus, such provisions should be evaluated carefully. The examiner should be satisfied that the legal framework provides sufficient safeguards to prevent abuse and fraud when alternative methods of voting are permitted.

EXAMINER'S CHECKLIST FOR BALLOTING PROCEDURES

- **Does the legal framework guarantee that votes are cast by secret ballot? Are there adequate prohibitions against "family voting"?**
- **Does the legal framework require that voters be adequately identified prior to receiving a ballot?**
- **Does the legal framework contain sufficient safeguards to prevent fraudulent or double voting?**
- **Does the legal framework contain sufficient provisions for the security of all ballots and voting materials, before, during, and after voting?**

- Does the legal framework provide alternative methods of voting for specific persons or special categories of persons?
- Does the legal framework prevent a person from using an alternative method of voting and the regular voting process in the same election?

XIII. TRANSPARENCY IN COUNTING/TABULATION OF VOTES

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

A. General Principle

A fair and honest count of the votes is a cornerstone of democratic elections. Illustrative of this minimum standard is Paragraph 7.4 of the OSCE 1990 Copenhagen Document, which requires that votes “are counted and reported honestly with the official results made public.” This requires that votes be counted and tabulated in the presence of observers, and that the entire process by which a winner is determined be fully and completely transparent. The legal framework should provide for the presence of observers, domestic and foreign, and representatives of the media, political parties and candidates, during the counting and tabulation of votes.

The legal framework must clearly state the electoral formula that will be used to convert votes into mandates. Thresholds, quotas, and all details of the electoral formula must clearly be stated and all possibilities, such as ties, withdrawals, and death of a candidate must be addressed. The law must clearly define valid and invalid ballots. Rules for determining the validity of ballots should not be so stringent as to unreasonably disenfranchise a voter. The paramount principle should be that if the will of the voter is clear, the ballot should be counted. For example, if a voter circles his or her choice rather than placing a cross next to it, this should not invalidate the ballot. Prior to voting, the law must be clear as to what ballots will be considered valid and how valid ballots will be converted into mandates.

B. Counting of Ballots

Regardless of whether ballots are counted at the polling station or a central counting location, ballots must be counted in the presence of observers. The legal framework, in addition to ensuring the presence of observers for the counting of ballots, should also provide safeguards where technology is used and ballots are counted other than manually. Provisions must be in place in the legal framework so that independent verification of the accuracy and soundness of hardware and software used for counting ballots can occur. Whether manual, mechanical, or electronic counting is used, procedures for audit and inspection to ensure accuracy and reliability must be in place. Procedures must also be in place to allow objections to counting procedures, including objection to criteria used to determine the validity of ballots.

The legal framework should clearly specify that observers can make copies, or shall be given copies, of all protocols, tabulation and tally sheets. The law must also

clearly specify what government authorities, if any, are entitled to receive this information prior to certification of the election results by the Central Election Commission.

C. Tabulation of Results

The legal framework should provide, in clear and objective language, the procedures for transferring the protocol results of counting, ballots, and election materials from lower election commissions to intermediate and higher election commissions for tabulation and safekeeping. The law should require that all tabulations of results be available in tables or a similar format that allows observers to trace the results of each counting location or polling station up through all levels of aggregation to the final results. The tabulations should contain detailed information, including the number of ballots used and unused, the number of invalid ballots, and the number of votes for each political party or candidate. This information should also be broken down for alternative methods of voting, such as postal or mobile voting. This degree of detail is necessary to enable observers to track results and locate specifically where fraud has occurred if the numbers are unlawfully changed during the tabulation processes.

A strictly defined division between election administration bodies and state authorities is vital also during the process of tallying the results. Election legislation should underline the principle that only election commission members should be involved in the process of tallying election results. It is also important that observers are given access to all stages of the process of counting and tallying of results to ensure this.

D. Public Announcement and Publication of Counting/Tabulation of Results

The legal framework should clearly state whether election authorities might announce partial or preliminary results prior to final certification. If results can be announced prior to final certification, then the legal framework should clearly regulate the process for making such announcements.

The legal framework should require that *all* relevant electoral documents be publicly accessible, including election protocols, tabulation and tally sheets, and decisions determining or affecting election results. Such electoral documents should be publicly posted at *all* levels of election administration, including polling, municipal, and state election commission levels. Detailed tabulations of overall results, including the voting results in each polling station, should be posted at each election commission. These detailed tabulations should also be published in state owned or controlled print media as soon as the results are certified.

Fraud can occur too easily if the legal framework fails to require public posting of vote counts and tabulations at each level where the count or tabulation occurs. The possibility of fraud exists where an intermediate commission is not required to publicly post the tallies and tabulations. The examiner must carefully evaluate legal provisions governing counting of ballots and tabulations of results.

E. Effective Date of Certified Results

The legal framework should clearly specify the dates for final certification of the election results, how the process of final certification is to occur, including public announcement and notification to candidates of their election, and the terms of offices of elected candidates. Additionally, the law must be clear as to what circumstances require a recount or new election in any or all polling stations. The law must be clear as to who can request a recount or new election, the deadline for the request, all necessary procedures to make the request, the deadline for adjudicating the request, and the date and procedures that will govern a recount or new election.

The legal framework must provide for secure storage of all ballots and election materials until the deadline for making legal challenges to the certified results has passed.

F. Personal Safety Exception

In extreme circumstances, publication of election results at the polling station level might jeopardise the safety of voters or electoral commission members in that community. This possibility exists where an election is held after civil conflict and tensions remain high. The examiner should be sensitive to this issue and understand that in extreme circumstances the law may provide limited exceptions to these principles so as not to place the voter at risk to personal harm.

EXAMINER'S CHECKLIST FOR TRANSPARENCY IN COUNTING/TABULATION OF VOTES

- **Does the legal framework ensure that the entire process for counting and tabulating votes is conducted in the presence of observers?**
- **Is the electoral formula for converting votes into mandates clearly stated?**
- **Does the legal framework provide for independent verification of all hardware, software, and other elements in the counting and tabulation processes where methods other than manually counting are used?**
- **Does the law require that all tabulations be available in a format that allows observers to trace the results of each polling station through all levels of aggregation to the final results?**
- **Does the law require that tabulations of results contain detailed information on results for all methods of voting?**
- **Does the law require public posting and publication in print media of detailed results from the polling station level to the Central Election Commission?**
- **Does the law clearly specify the processes for final certification of election results, notification to candidates, and the terms of office for elected candidates?**
- **Are all requirements and procedures for a recount of ballots clearly stated?**
- **Are all requirements and procedures for a new election clearly stated?**

XIV. ENFORCEMENT OF ELECTORAL RIGHTS

OBJECTIVE: The legal framework should provide effective mechanisms and remedies for the enforcement of electoral rights.

The legal framework should provide effective mechanisms and remedies for the enforcement of electoral rights. OSCE/ODIHR has published comprehensive guidelines on how a legal framework should address the process of resolving electoral disputes. These published guidelines are comprehensive and the examiner should refer to the guidelines for assistance when reviewing and assessing how the legal framework provides for the enforcement of electoral rights. These published guidelines are referenced in the Appendix.

The examiner should always keep in mind that protection of the right to vote is an essential element of the legal framework. The right to vote is a fundamental human right and the right to a remedy for violation of the right to vote is also a fundamental human right. Thus, the legal framework for elections must set forth detailed and sufficient provisions protecting suffrage rights.

The legal framework should clearly state who is permitted file to complaints with election commissions/bodies and/or courts for electoral violations. The legal framework should provide that every voter, candidate, and political party has the right to lodge a complaint with the competent election commission or court when an infringement of electoral rights has occurred. The law must require that the appropriate election commission/body or court render a prompt decision. The law must provide for the right to appeal the decision to an appropriate court with authority to review and exercise final jurisdiction in the matter. The decision of the court of last resort must also be issued promptly.

The examiner should be satisfied that reasonable deadlines are included in the law for the consideration and determination of a complaint and the communication of the decision to the complainant. Some complaints can be determined immediately, others in hours, and some will take days. Deadlines must therefore allow for a degree of flexibility, taking into account the level of the election commission or court and the nature of the complaint.

Although the above principles are minimum legal standards that must be included in the legal framework, a country does have flexibility in determining the legal structure of the system that will resolve electoral disputes.

EXAMINER'S CHECKLIST FOR ENFORCEMENT OF ELECTORAL RIGHTS

- **Does the legal framework provide effective mechanisms and remedies for the enforcement of electoral rights?**
- **Does the legal framework clearly state who can file complaints for election law violations and the process for filing complaints?**

- Does the legal framework provide for the right to appeal an election commission decision to a court of law with authority to review and exercise final jurisdiction in the matter?
- Does the legal framework provide reasonable deadlines for filing, consideration, and determination of a complaint?

APPENDIX**I. Primary Sources for Minimum Standards****A. The United Nations****UNIVERSAL DECLARATION OF HUMAN RIGHTS****Article 21**

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

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**Article 25**

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

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

B. The Council of Europe**PROTOCOL N°1 TO THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS****Article 3**

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

C. The Organisation for Security and Co-operation in Europe**CHARTER OF PARIS FOR A NEW EUROPE - CSCE SUMMIT (21 NOVEMBER 1990)****Human Rights, Democracy and Rule of Law**

Democratic government is based on the will of the people, expressed regularly through free and fair elections.

Everyone also has the right : (...) to participate in free and fair elections.

DOCUMENT OF THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE (29 JUNE 1990)

- (5) [The participating States] solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:
 - (5.1) free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;
- (6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes. They recognise their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or that of another participating State.
- (7) to ensure that the will of the people serves as the basis of the authority of government, the participating States will
 - (7.1) hold free elections at reasonable intervals, as established by law;
 - (7.2) permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;
 - (7.3) guarantee universal and equal suffrage to adult citizens;
 - (7.4) ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
 - (7.5) respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;
 - (7.6) respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;
 - (7.7) ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;
 - (7.8) provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;
 - (7.9) ensure that the candidates who obtain the necessary number of votes required by the law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.
- (8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE

participating States and any private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavor to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

II. Supplementary Sources

Harris, Peter and Ben Reilly (eds.). 1998. *Democracy and Deep-Rooted Conflict: Options for Negotiators*. Stockholm: International Institute for Democracy and Electoral Assistance.

Petit, Denis. 2000. *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System*. Warsaw: Office for Democratic Institutions and Human Rights.

Reynolds, Andrew and Ben Reilly. 1997. *The International IDEA Handbook of Electoral System Design*. Stockholm: International Institute for Democracy and Electoral Assistance.

The ODIHR Election Observation Handbook (Fourth Edition). 1999. Warsaw: Office for Democratic Institutions and Human Rights.

III. Model Codes

Code of Conduct for Political Parties: Campaigning in Democratic Elections. 1999. Stockholm: International Institute for Democracy and Electoral Assistance.

Code of Conduct for the Ethical and Professional Observation of Elections. 1996. Stockholm: International Institute for Democracy and Electoral Assistance.