

# **Policy Department External Policies**



## **EU ELECTION OBSERVATION ACHIEVEMENTS, CHALLENGES**

**FOREIGN AFFAIRS & DEVELOPMENT**





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**BRIEFING PAPER**

**EU ELECTION OBSERVATION – ACHIEVEMENTS, CHALLENGES**

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## **1. Executive Summary**

The deployment of EU Election Observation Missions (EOMs) has become a standard intervention of EU foreign policy over the last eight years. Since 2000, more than 50 EU EOMs have been deployed to Africa, the Middle East, Latin-America and Asia. The methodology of EU EOMs is being consolidated in line with international agreements in this field, but there is scope for further development of methodology e.g. observing e-voting, or the counting/aggregation/publication of results. A number of elections in the recent past have hinged on the last two aspects in particular (Ethiopia, Nigeria, Kenya).

EU EOMs are an unusual form of intervention, combining ‘technical’ fact-finding and expertise with political clout and public visibility. There is however a risk in the success of EU EOMs that elections are prioritised over other aspects of democracy support and that the default response to any electoral or democracy problem is the deployment of an EU EOM. Instead of further increasing the number of EU EOMs, which are expensive and logistically complex, the EU should diversify its tools and give more attention to electoral developments between actual elections.

EU EOMs observe elections as they unfold. They have no impact on the development of the election framework until their arrival. Thus changes to electoral legislation often do not get sufficient political and policy attention until the next EU EOM arrives. Sometimes it may be more expedient and efficient to consider other forms of election analysis, e.g. reviews of election frameworks significantly ahead of election day. Similarly there is a significant disparity on the information the EU has on a given election, depending on whether or not an EOM is deployed: This is particularly troublesome in the European Neighbourhood, where almost all elections East of the EU are observed (by the OSCE, using a similar methodology as the EU), but almost none in the South. As a consequence the EU’s political responses to elections in the South differ significantly from those in the East.

While the EU should not undermine the ‘gold standard’ of full-fledged EU EOMs by deploying small missions, there are ways in which the EU could increase its analytical understanding of electoral developments between elections or in non-observed countries. Experience from the OSCE region shows that a continuing long-term engagement and political and technical level can bring significant improvements to the quality of elections, not least by increasing the ‘literacy’ of political parties, media and the public on election issues.

There has been more coherence between EU EOMs’ findings and wider EU foreign policies in the last years, e.g. EU declarations on elections tend to be in line with EU EOM findings. However, the EU’s overall political response to elections remains sketchy, in particular in cases where elections were considered fundamentally flawed by an EU EOMs. Technical

election assistance appears to be seen as a sufficient remedy, when electoral reform would need to be made part of a political strategy.

The EU has no agreed strategy on democracy promotion. This limits the effectiveness of EU EOMs: At the conceptual level the EU tends to focus more on civil or social rights, with less direct bearings on democracy than political rights. Positively the 2007 – 2010 strategy for the European Instrument for Democracy and Human Rights gives more space to political rights, but often the European Initiative for Democracy for Human Rights has supported civil society groups without the EU taking much notice of the reports by these groups.

When the EU focuses explicitly on democratisation it is mostly on elections. This may be a result of the success of EU EOMs. However, genuine elections are a necessary, but not a sufficient condition for democracy. A democratic Parliamentary election is of limited value where the institution enjoys no significant powers. The EU should give more attention to this issue and the EP in particular may play a particular useful role: First, by supporting democratic elected legislatures and second by systematically consulting third countries' legislatures on draft legislation or other acts that may affect them. This would not only provide the EP with more input for its decision-making, it would also help empowering legislatures, which are often over-shadowed by powerful executive branches of powers.

The EU increasingly recognises democratic governance as a core issue of development, but the focus is often on 'softer' aspects like good governance or reform of the public administration. However, the increasing emphasis on partnership and local ownership in development must go hand-in-hand with democratisation: local ownership cannot mean ownership of unaccountable elites. Direct budgetary support requires that public policy is the result of democratic processes and that there is oversight of the executive by Parliament.

The EU has something valuable to offer in terms of elections and democracy: External legitimacy that statements and policies of a union of 27 functioning democracies can provide. It appears that too often the EU makes too little of this 'soft power'.

## **2. History of EU Election Observation**

The EU started observing elections in the early 1990s, but election observation was carried out in a systematic fashion only after 2000. In that year the Commission laid out a new basis for election observation<sup>1</sup>, which was endorsed by the EP<sup>2</sup> and the Council<sup>3</sup>. This had an immediate impact on the way EU EOMs were conducted. E.g. the 1999 EU EOMs to Mozambique and Nigeria were perceived by many civil society organisations as superficial,

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<sup>1</sup> Communication on Election Observation and Assistance, COM (2000)191, 11 April 2000

<sup>2</sup> European Parliament Resolution on the Commission Communication on EU Election Assistance and Observation (COM(2000) 191- C5-0259/2000-2000/2137(COS)); by the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, Rapporteur Giovanni Claudio Fava.

<sup>3</sup> Council Conclusions on Election Assistance and Observation of 31 May 2001 Doc 9990/01

having left the countries quickly after highly contested election days. In both countries civil society organisations were thus surprised when EU EOMs were more rigorous and critical in subsequent elections. This has increased the EU's credibility and therefore its political impact.

Since 2000 the EU has deployed more than 50 EU EOMs to more than 90 elections (see Annex) in all parts of the world, with the exception of the region covered by the Organisation for Security and Co-operation in Europe (OSCE).<sup>4</sup> EU observers were present in seminal elections in Indonesia, Pakistan, Kenya, Palestine, DR Congo and Liberia. The European Commission has also funded a programme to train a large number of Europeans in election observation methods.<sup>5</sup>

### 3. Methodology

The 2000 Commission communication and the related EP and Council reports provide the basis for a systematic EU policy in the field of election observation. The cornerstones of this policy, which have been explained in detail elsewhere<sup>6</sup>, are:

- Long-term planning of priority countries for EU EOM deployment.
- EU Election observation is funded from the European Instrument<sup>7</sup> for Democracy and Human Rights, which allows for independence of EU EOMs, as it does not require host state agreement on details of the mission (observer numbers, deployment plan, etc.);<sup>8</sup>
- In order to avoid *ad-hoc* decisions, there is an annual planning of EU election observation priorities; the decision to deploy an EU EOMs is based on defined criteria; exploratory missions are carried out to determine if it is desirable to deploy a mission;
- The European Parliament has a special role: The Chief Observer of EU EOMs is an MEP and EP observer delegations are associated to EU EOMs
- EU EOMs produce a comprehensive assessment of an election, including the enjoyment of political rights, the legal framework, the campaign, election day, complaints and appeals.
- EU EOMs are independent and impartial.

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<sup>4</sup> Given that the OSCE observes elections with a comparable methodology, there is a gentleman's agreement that the EU does not deploy EOMs to the OSCE region.

<sup>5</sup> See Network of Europeans for Election and Democracy Support' NEEDS: [www.needs-network.org](http://www.needs-network.org)

<sup>6</sup> Meyer-Resende, M. *Exporting Legitimacy – The Record of EU Election Observation in the Context of EU Democracy Support*, CEPS working paper, March 2006; see also Commission Staff Working Paper 'Implementation of the Communication on Election Assistance and Observation', SEC(2003) 1472

<sup>7</sup> Formerly the European Initiative for Democracy and Human Rights.

<sup>8</sup> Obviously the EU needs an agreement by the host state to deploy an EU EOM. Diplomatic considerations apart, it is not perceivable for the EU to mobilise hundreds of observers without knowing if they could be effectively deployed. Autonomous funding is nevertheless important for EU EOMs to avoid negotiations with host states on observer numbers, methodology, deployment plans, etc.



### **3.1. Long-Term Planning for EU EOM Deployment**

The EU only deploys a limited number of EU EOMs per year and does not see itself as a global election watchdog'.<sup>9</sup> Between 9 to 13 EU EOMs have been deployed in each of the past years. Planning can be difficult because of cancelled or postponed elections. The EC identifies upcoming priority elections for EU EOMs on an on-going basis. These are discussed with the EP and the Council.

The EC uses two criteria<sup>10</sup>: First, there needs to be consistency and complementarity with other EU democratisation and crisis management initiatives. Given that all country strategy papers tend to include democratisation or good governance issues, most countries pass this test. Second, there should be a specific value in engaging through EU EOMs. This may not be the case where democratic elections appear to be guaranteed, or - on the contrary - where there is no political space for democratic elections. In other words, target countries should undergo some form of transition with a potential for democratic elections, which should be supported by an EU EOM. On the basis of these criteria still many countries would qualify and it appears that other issues play a role, such as the strategic importance of a country (measured e.g. by size or regional role) or the need for a geographical balance (between continents).

The list of proposed priorities is a first indication of an intention to deploy an EOM, but does not imply a firm decision to do so. This depends on further analysis on the ground by an expert Exploratory Mission (ExM), which is deployed by the EC some six months before an election. ExMs assess whether deploying an EU EOM is “advisable, feasible and useful”<sup>11</sup>. This involves a summary assessment of the electoral framework, the human rights and political context, logistical and security issues and negotiations with the government to ensure minimum conditions for observation (granting of visa, access to the election administration, etc.). Exploratory missions have rarely concluded that no EU EOM should be deployed. Nevertheless ExMs are vital in preparing EU EOMs politically (explaining implications to host governments), logistically (plan the number of observers, security, etc.) and to ensure that the final decision on deployment is made on the basis of an informed decision.

### **3.2. Independence and Impartiality**

For EU EOMs to be credible and have a political effect, they must be independent and impartial. Given that EOMs impact through public reporting, it is also important that they are perceived as being independent. The appointment of MEPs as Chief Observers is advantageous, because they are not identified with the EU’s executive’s interest towards a

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<sup>9</sup> See in particular Council conclusions *op.cit.* point 19

<sup>10</sup> The criteria were endorsed by the Council Working Group on Human Rights in 2003, see for more p.7-8, Commission Staff Working Paper 2003, *op.cit.*

<sup>11</sup> See for more p. 8 Commission Staff Working Paper 2003, *op.cit.*

country and because they can bring political visibility. At the same time, their party affiliation can be an issue in elections marked by deep partisan division. Likewise it should be avoided to appoint Chief Observers who come from a former colonial power of the country observed.<sup>12</sup>

### ***Impartiality: Promoting Democratic Elections, not Regime Change***

Election observers who are seconded by Member States and under the authority of the Chief Observer tend to respect the principal of impartiality, but on a few occasions this has not been the case with EP Parliamentary delegations that joined OSCE/ODIHR EOMs, e.g. during the ‘orange revolution’ in Ukraine. While it was one issue to support the call for repeat elections, it was another issue to show support to the ‘orange’ coalition of political parties. A number of MEPs wore orange banners and appeared on stage for the ‘orange’ coalition. MEPs are free to support like-minded political parties, but they should not do so from the platform of an impartial EOM. The EP adopted a press release which did not distinguish between calling for democratic elections and support for the ‘orange revolution’.<sup>13</sup>

Since the ‘colour’ revolutions there has been a backlash against democracy promotion around the world<sup>14</sup>, in particular in the former Soviet Union. The appearance of bias by some observers made it easier for authoritarian regimes to denounce democracy promotion as a tool of partisan foreign policy. The EU’s public diplomacy should stress support to democratic elections whatever their outcome and should not be seen to promote regime change.

### ***Impartiality and the Terrorist List***

Impartiality and the perception of impartiality can be more difficult for the EU than for ‘specialised’ international organisations (OSCE, Council of Europe), because the EU’s external relations have more layers and dimensions. This is obvious in regard to the terrorist list on which groups or individuals are included if they are deemed to pursue terrorist activities. Beyond the immediate impact of freezing assets and financial transactions, the political implications of a listing are far-reaching, implying that those persons and groups do not enjoy any legitimacy and in practice it is often interpreted as a ban on any official dealings with such groups.

This can clash with the need for EU EOMs to appear impartial to an elections process, as was the case with Hamas’ participation in the 2006 elections to the Palestinian Legislative Council (PLC)<sup>15</sup>. The EU deployed an EU EOM, but could not claim impartiality, given that it considered the most important opposition party a terrorist organisation. Had Hamas narrowly lost the elections and alleged fraud, the EU EOM would not have been perceived to be

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<sup>12</sup> The EC generally respects these rules; in a case where it did not do so, it led to negative media reports, see ‘People’s Power is an American Brand’, The Guardian, 15 August 2006

<sup>13</sup> “The European Parliament’s support for the ‘Orange Revolution’ in Ukraine is a step towards an ambitious Wider Europe - Neighbourhood policy.”, EP press release, 7.9.2005; “Yesterday Georgia, today Ukraine. Tomorrow? Ambitions for freedom, for a better life, are now indelibly associated with the colour orange.” MEP Saryusz-Wolski in the European Voice, 10 March 2005

<sup>14</sup> E.g. President Meles of Ethiopia stressed repeatedly around the 2005 elections that he would not allow a ‘colour revolution’ to take place.

<sup>15</sup> According to many analysts the policy worked, resulting in less violent activities and political moderation, e.g. in Hamas’ election platform.

credible in defending the integrity of the election process. These knock-on effects should be taken into consideration when the terrorist list policy is examined or when a decision on deploying an EU EOM is made. The underlying policy tension results from competing objectives: Either the EU tries to isolate and undermine groups it considers to be terrorist, or it hopes to moderate them through democratic inclusion. The terrorist list is categorical and does not allow for a policy pursuing both aims (encourage moderates, isolate hardliners).

### **3.3. ‘Comprehensive Observation’**

Comprehensive observation is a cornerstone of the EU’s methodology: An EU EOM should be in a position to provide an independent evaluation of all components of a democratic election process. Taking into account all aspects of an election process is a matter of credibility and fairness. It also provides EU EOM’s added value. Any observer can make political statements on an election, but only a comprehensive mission can underpin the assessment with data and detailed analysis.

The EU’s methodology is in line with the UN-sponsored Declaration of Principles for International Election Observation (2005) which has been endorsed by numerous governmental and non-governmental international organisations, including the EC and the EP.<sup>16</sup> It stresses the need for systematic and comprehensive observation.

Comprehensive observation includes an assessment of the enjoyment of political rights in a country, in particular freedom of association (registering a party, being member of a party), freedom of assembly (hold demonstrations) and media freedoms. EU EOMs thus avoid a narrow focus exclusively on voting arrangements.

Already the EU is deploying larger and longer international observation missions to countries outside the OSCE area<sup>17</sup>, than any other organisation. EU EOMs cover aspects that no other international observers (except the OSCE) address, notably the systematic monitoring of media coverage and in-depth analysis of legislation. Nevertheless there are still some aspects of elections which are not fully covered under the EU EOM model.<sup>18</sup>

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<sup>16</sup> The declaration can be downloaded on:

[http://www.accessdemocracy.org/library/1923\\_declaration\\_102705.pdf](http://www.accessdemocracy.org/library/1923_declaration_102705.pdf)

<sup>17</sup> The OSCE tends to deploy EOMs for the same duration as the EU, but the OSCE achieves in most cases a higher ratio of observer/voters than the EU. This is due to financial constraints: EU observers generally have to travel longer distances. It is also a reflection of the political context: The OSCE is observing elections in its participating states, while the EU observes elections ‘abroad’, requiring an individual agreement with each host state requiring a balance between the needs for credible observation and avoiding a perception of ‘over-intrusion’.

<sup>18</sup> Some six months before elections the EU deploys an exploratory mission to establish if the conditions warrant the deployment of an EU EOM. While these missions provide a valuable overview of the pre-electoral situation, their presence is too short to ‘observe’ voter registration or do a full-fledged detailed legal analysis.

EU EOMs' core teams usually arrive six weeks before Election Day and leave the country one or two weeks after that day. This time frame does not usually allow missions to observe the registration of voters or the handling of complaints and court appeals after elections. Often there is no rigorous observation of counting and aggregation of votes. All these aspects can be highly controversial in an election process; counting/aggregation and complaints/appeals may decide an election outcome. While EC delegation and EU embassies in country can follow some of these issues, they tend not to have the human resources and expertise for in-depth assessments and they usually do not issue public reports.

### **3.3.1. Voter Registration**

Controversies about *voter registration* can be addressed in some ways by an EU EOM during its presence in country. The legal-administrative framework for registration can be analysed, observers can try to compare data (e.g. between a central register and local excerpts of registers) and on Election Day problems with voter registration tend to be revealed (e.g. where voters cannot find their names in registers in polling stations). In some cases, where voter registration is likely to be the most contentious point, it could be considered to deploy a specialised mission to follow that process, or to fund an independent group to carry out such a study. This would however require careful negotiations with a host government: Assessing an on-going voter registration process would require full co-operation by the election administration. When programming election assistance, the possibility of an independent audit of voter registration efforts should be considered.

### **3.3.2. Electronic Voting**

Electronic voting is an increasing practice around the world. Well organised electronic voting reduces scope for errors (e.g. unclear expression of voters' will) and ensures faster and more accurate counting and aggregation of results. At the same time, electronic voting raises concerns, in particular in circumstances where voters and parties have little trust in the election administration. Electronic voting makes observation more difficult.

The EU has observed elections where e-voting was used (e.g. Venezuela); in these cases missions' core teams were complemented with e-voting experts. Some organisations have started to develop detailed methodologies on how to observe e-voting<sup>19</sup>. Once the EU has gathered sufficient experience on this issue, it should define a methodology for the observation of e-voting and minimum conditions for observers' access to information.

At the same time there is a need for international standards on minimum conditions for e-voting. The Council of Europe already determined standards for e-voting<sup>20</sup>, but given that the EU observes elections outside Europe, it cannot rely on these. Standard-setting would need to take place in the UN context; the EU should contribute to relevant policy initiatives.

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<sup>19</sup> See e.g. The Carter Center, "Developing a methodology for e-voting", October 2007

<sup>20</sup> See Council of Europe's Recommendation on legal, operational and technical standards for e-voting, Rec(2004)11, September 2004. [http://www.coe.int/T/e/integrated\\_projects/democracy/02\\_Activities/02\\_e-voting/](http://www.coe.int/T/e/integrated_projects/democracy/02_Activities/02_e-voting/).

### ***3.3.3. Counting, Aggregation and Publication of Results***

The counting, aggregation and publication of results has raised serious concerns in elections in the last years (e.g. Ethiopia 2005, Yemen 2006, Nigeria 2002, 2007, Kenya 2007). Anecdotal evidence suggests that election day manipulation (e.g. ballot box stuffing) becomes less prevalent, while manipulation of counting and aggregation of votes becomes more widespread. International observers are not paying sufficient attention to this process, including the EU. There is a logistical reason: Short-term observers, who attend the opening of polling stations early in the morning and spend the whole day visiting polling stations tend to be exhausted once these close. While observation of the closing of polling stations and the beginning of counting are usually observed, often observers are not able to stay through a complete counting process, which may take up a whole night or longer. The next stage of aggregating results from different polling stations and election districts sometimes goes completely un-observed. There may also be problems of access: E.g. in Rwanda 2003 EU observers were not permitted to enter regional election commissions where results were aggregated. The same occurred in some regions of Kenya in 2007. In Mozambique 2004 there were significant disagreements between the EU and the authorities on the need of observers to be present when results are aggregated in the Central Election Commission. More attention should be given to this crucial stage in any election.

Election assistance should stress the need for transparent counting, aggregation and publication procedures and offer support in drafting of administrative regulations or technical assistance (e.g. equipment to ensure safe and prompt transfer of election results to higher levels of the election commission). Positively, the current EC assistance to Yemen focuses on this issue in line with findings of the EU EOM 2006.

In political dialogue and EU post-election declarations the need for a transparent detailed accounting of results should be stressed. The EU's post-election statements in particular should always raise the issue of a detailed accounting of election results. EU EOMs should be re-configured to give more focus to this process. Observers should try to collect relevant data (notably results from polling stations, district levels, etc.) to allow a comparison with published data. However, EU EOMs should not offer alternative results or speculate on who actually won elections, but merely point out where officially published data are inconsistent or do not substantiate claims of winners and losers.

### ***3.3.4. Post-Election Complaints and Appeals***

Post-election complaints and appeals can be decisive for an election's outcome (e.g. US Presidential elections 2000, Ukraine 2004). In a number of EU-observed elections complaints and appeals were potentially decisive (Nigeria 2003/2007, Ethiopia 2005), but the EU was not able to observe them systematically. Administratively post-election appeals are challenging for EU EOM planning. Whether complaints and appeals become a decisive stage of an election process depends on factors which cannot be foreseen in advance, such as close results and the extent of electoral violations. Observing them may also be a logistical challenge if not

impossible. For instance, after the 2007 Nigerian elections, 1,250 separate legal challenges were brought against the elections<sup>21</sup>.

The type of expertise needed in such cases may differ from other stages of an election: while additional legal expertise is almost always required, in some cases monitoring procedures in the Highest Court may suffice, while a process of de-centralised judicial fact-finding (e.g. Ethiopia 2005) requires Long-Term Observers to remain in the regions. Finally, the length of complaints and appeals procedures is not foreseeable. While human rights instruments<sup>22</sup> require that appeals should be completed swiftly, often this is not the case. After the 2003 elections in Nigeria, appeals took on average three years<sup>23</sup>. Sometimes long-drawn out appeal proceedings are used to drain political attention from flawed elections.

Thus, even if the EC built contingency funds into EU EOM budgets, they may prove to be too small and there is no guarantee that EU EOM experts and Chief Observers would be available to remain on contract to follow this over a long process. On the other hand it is inconsistent if all parts of an election are closely followed, but no attention is paid to decisive court appeals. This may be particularly problematic where the EU emphasises the importance of election appeals, through EU EOM findings (“the process can only be fully assessed once appeals are completed”) or EU declarations (e.g. Presidency declaration on Nigeria, 27 April 2007 “The EU looks to INEC and others to quickly provide the evidence which the electoral tribunals will need in order to complete their work as swiftly as possible.”). The EC should explore ways to address this dilemma by establishing a standing response procedure, e.g. using the Stability Instrument to either fund an extension of an EU EOM or ‘outsource’ the task to independent NGOs.

### **3.3.5. Security Limitations**

Security has become an increasing concern in EU EOMs in countries like Afghanistan, Pakistan, Yemen, Nigeria, Sri Lanka, etc. There are cases where EU EOMs cannot access areas of a country for security reasons (e.g. in Pakistan, Afghanistan, Nigeria). This poses a dilemma in terms of comprehensive observation, because a mission cannot claim to make a comprehensive evaluation when it has not been present in all relevant parts of the territory. It is particularly troublesome if there are close election results and where voting results from non-accessible areas have a decisive impact on the overall outcome.

Given the need of due care for EU observers there is no obvious solution to the problem of limited coverage, except for an EU EOM to clarify in all its statement the limitations of its work. Security limitations may reach an extent where the EU should consider deploying an observation mission altogether.

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<sup>21</sup> Suberu, R., ‘Nigeria’s Muddled Elections’, *Journal of Democracy*, Vol.18, No.4, October 2007, pp. 95–110

<sup>22</sup> Art.2 International Covenant for Civil and Political Rights requires an ‘effective remedy’ against alleged violations of Covenant rights, such as the right to vote (art.25)

<sup>23</sup> Suberu, R., op.cit., p.105

### **3.4. EU EOM Recommendations**

Recommendations for improvements should be the most important long-term contribution of an EU EOM. However, often recommendations are neither followed up by the EU nor the government concerned. EU EOMs issue long lists of recommendations, but it can be unclear which the most essential ones are. E.g. the Pakistani authorities adopted only one of a long list of recommendations by the 2002 EU EOM: the introduction of translucent ballot boxes. This is a marginal improvement when the election context and set-up is doubtful. EU EOMs should prioritise recommendations to guide EU lobbying efforts towards the most essential issues.

The immediate post-election period tends to be the best moment for promoting reforms: At that point there is still public interest in an election process; if there were problems in the elections governments tend to be willing to discuss reforms, while later attention and interest tend to slip.

The EU should therefore seek to agree on an election reform strategy directly after an election, on the basis of EU EOM recommendations. Such a strategy should include all aspects of the EU's external relations (political dialogue, development policies, technical assistance, civil society support, etc.).

### **3.5. The EU EOM Recipe: Combining Facts-based Analysis and Political Clout**

EU EOMs are an unusual form of EU intervention in combining significant expert field research with political clout and visibility. EU EOMs produce a large set of data, from quantitative data (media coverage of contestants, incidents during the campaign, scores on the quality of polling, etc.) to qualitative analysis (assessment of the legal-administrative framework, complaints and appeals, etc.).

In contrast to other regional organisations (OSCE, AU, OAS), the EU observes elections outside its own territory and can therefore not apply 'internal' European standards. The EU is not seeking to export particular European democracy models. It is therefore important that EU EOM's analysis is firmly based on international human rights standards that the given country has ratified, usually the International Covenant for Civil and Political Rights. This is consistent with the EU's objective of promoting a rule-based international order. Overall this means that election analysis has become more demanding. After 15 years of international election observation, with increased awareness of election standards and observation methodology, subjective and simplistic 'free-and-fair' statements have lost credibility. The particular problem with the 'free and fair' formula is that it only allows a black/white evaluation, while the quality of an election is mostly in a grey zone between fully in line with international standards and fundamentally flawed. Describing the 'position' of an election in the grey zone accurately is the challenge of election observers.

Detailed fact-finding and analysis provides a firm foundation for EU EOM findings and it has been rare that findings are called into question. Domestic stakeholders who do not agree with

the findings usually resort to unspecific accusations, such as observers' lack of understanding for local culture'. Beyond the credibility of a statement, accurate analysis is also vital in order to inform the EU's political intervention, e.g. in crisis-management intervention after a contested election process<sup>24</sup>.

The information and analysis is presented by the Chief Observer and the leader of the EP observer delegation and thus generally receives significant media coverage, not the least because it is perceived as being the EU's position, although technically speaking they only represent the EU EOM. Chief observers mostly have the chance to share their findings and concerns at highest political levels in the host state.

#### **4. EU EOM's Impact and Long-Term Promotion of Elections**

##### **4.1. Impact on the Election Observed**

EU EOMs are intended to increase – where warranted - the public's confidence in an election process and to deter fraud. While there may be indicators on whether EU EOMs can achieve these objectives, EU EOMs usually do not have such data available and would not have time to analyse them if they were available.<sup>25</sup> Anecdotal evidence suggests that the presence and expertise of observers increases the confidence in an election process, in particular where sending organisations have acquired a reputation for independent observation.

Openly criticising manipulated elections can pose a political risk for local election observation groups. It seems that EU EOMs, by being the first to point out shortcomings, can provide some political cover for local groups. At the same time local observer groups can be frustrated, e.g. when international observers issue positive statements, which then overshadow nuanced reporting from their side.<sup>26</sup>

In tense environments, e.g. post-conflict situations EU EOMs can help reducing animosities, e.g. dispelling unwarranted allegations of fraud, calling parties or media to refrain from inflammatory statements, etc. EU EOMs are put in a difficult position where a negative post-election statement could inflame a tense situation (see below).

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<sup>24</sup> During the 'orange' revolution in Ukraine some European politicians demanded a re-count of the votes, but given that one of the main accusations had been ballot box stuffing, a recount would have been the wrong remedy. The OSCE ODIHR EOM clarified the point.

<sup>25</sup> E.g. one could compare election results in polling stations/counting centres/regions where observers were present against those where they were not present and test such data against other data, such as results in earlier elections. However, in most countries results are not published to that level of detail. Anecdotal evidence suggests that the effect differs from country to country. Almost every experienced election observer has seen cases of blatant rigging despite his/her presence.

<sup>26</sup> Domestic Observer Groups in Morocco disagreed with the entirely positive EU statement on the country's September 2007 elections to the Chamber of Representatives.



## 4.2. Longer Term Impact: EU EOMs are not the only way to support elections

EU EOMs are present only during a short period of an electoral cycle, namely in the weeks around Election Day. During most parts of the election cycle there is no independent observation, e.g. when an election reform is carried out, when election budgets are produced, when voters are registered, when sub-national elections are held<sup>27</sup>, etc. While all these efforts culminate in elections and some may be assessed then, EU EOM's findings and recommendations are *post-facto*. EU EOMs do not influence the course of events before their arrival. EU EOMs may have an impact on the next elections through their report and recommendation, but even here, the EU is often absent from specific discussions on electoral reform and rarely lobbies at political levels for such reforms. Occasionally Exploratory Missions have been able to initiate and inform EU lobbying on an upcoming election and sometimes EC delegations benefit from having an election expert on staff, but this has not amounted to a systematic policy.

Experience from the OSCE and the Council of Europe's election work shows that continuing political and technical involvement on the quality of elections can contribute to significant improvements in the quality of elections, not the least, because such involvement over time increases the 'literacy' of political parties, the media, civil society and the public on electoral issues. Albania may serve as an example: The OSCE has deployed eight EOMs to that country, has regularly reviewed the legal framework and draft legislation and has intervened politically on many occasions; by all accounts the quality of elections in Albania has increased significantly over the last ten years.<sup>28</sup> Obviously, other factors also played a role, in particular Albania's EU aspirations.

In comparison, EU involvement through EOMs is generally too isolated an intervention<sup>29</sup>. E.g. the EU observed the 2002 Parliamentary and Presidential elections in Ecuador and returned in 2007 to observe the Constituent Assembly elections. The 2007 mission identified as a key problem that the election system produces significant inequalities in the way votes are weighed, resulting from law changes in 2006. An earlier engagement in election analysis could have provided an opportunity to address the problem before it emerged in the elections. Early electoral analysis is significantly less costly than EU EOMs<sup>30</sup> and can be more effective in addressing shortcomings before they manifest themselves in elections. This is particularly obvious where problems are of a technical nature. It may be more difficult to intervene successfully if shortcomings are politically motivated; yet, even then early exposure may create political pressure for changes.

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<sup>27</sup> Occasionally the EU has also observed local elections.

<sup>28</sup> As can be seen in OSCE EOM reports and indirectly reflected in improved ratings by Polity IV, Bertelsmann Transformation Index and Freedom House.

<sup>29</sup> There have been *ad-hoc* cases where the EU was engaged continuously, e.g. the EU embassies in Mozambique funded regular visits by an election adviser to update them on electoral developments and inform their political positions.

<sup>30</sup> It generally requires the deployment of a couple of experts for a number of weeks, costing around 1%-5% of the costs of an EU EOM.

There are cases where EU EOMs have had little tangible impact on electoral reform. E.g. the EU has deployed four EU EOMs to Sri Lanka in five years. They have all reported the same problems and reiterated the same recommendations without much effect. In such cases the EU may be able to send a stronger signal by not deploying an EU EOM and may use its resources more effectively by promoting election reform between election dates.

There should also be greater efforts to feed into the work of multi-lateral bodies. E.g. the UN's Human Rights Committee issues regular 'concluding observations' on reports by states which have ratified the Covenant for Civil and Political Rights. Usually there is very little discussion on the right to vote (art.25) and EU EOM findings are never referred to, although EU EOM reports would be an ideal source to discuss respect of art.25 and other political rights.

Beyond *observation*, the Commission has paid more attention to the methodology of election *assistance* in recent years<sup>31</sup>. Election assistance is now rightly seen as a long-term strategic engagement throughout the electoral cycle, which interacts with the deployment of EU EOMs. The EU invests significantly more funds in election assistance than observation<sup>32</sup>, thus sending a political message that the EU is not only observing, but is also willing to help where necessary. However, in its implementation election assistance is a pre-dominantly technical exercise aimed at a broad improvement of the overall management and conduct of elections (e.g. training of election management bodies, or voter education), rather than a targeted reform of specific - possibly politically sensitive - shortcomings (e.g. in-transparent publication of results, or unequal delimitation of constituencies for political reasons). Care needs to be taken that election assistance does not become an excuse for not addressing more difficult underlying political problems which may be the root cause of poor election practice. While the EC's Sri Lanka country strategy paper 2007-2013 foresees follow-up to EU EOM recommendations as a non-focal sector intervention, in its analysis of the political situation elections are not mentioned and no specific strategy for promoting election reform or democratisation is offered.

There is a risk that the EU's default response to any electoral situation is the deployment of an EU EOM in the spirit of the saying: "If your only tool is a hammer, every problem looks like a nail." The EIDHR 2007-2010 strategy focuses on support for elections entirely through the lenses of EU EOM deployment.<sup>33</sup> However, while EOMs are the most expensive response, they are not necessarily always the most appropriate one: alternatives should be considered and not only for cases where an EU EOM cannot be deployed, e.g. because a country refuses to invite (see 4.5. and conclusions on alternatives to EU EOMs).

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<sup>31</sup> See e.g. 'Methodological Guide on Election Assistance', European Commission, October 2006

<sup>32</sup> Over €300 Mill. between 2001 – 2006, Commission Staff Working Document, 30 August 2006, SEC (2006) 1020

<sup>33</sup> The explanation of objective 5 of the strategy, which relates to democratic elections, starts: "The aim is to develop electoral observation (...)", point 61, *supra*.

While the last years have seen an increase in the number of EU EOMs and a consolidation of observation methodology, the challenge will now be to ensure that necessary electoral reforms are followed more closely and promoted more effectively between elections. Positively, the Commission intends to support domestic civil society groups which promote follow-up of EU EOM recommendations<sup>34</sup>, but there may be electoral developments for which EU EOM recommendations are not directly relevant, e.g. when the political situation changes, when a new election system is contemplated, or indeed when no EU EOM has been deployed to the country in question in the past.

### **4.3. Political Follow-Up**

The impact of EU EOM findings remains limited if the message is not adopted and reiterated by the EU at political levels.

#### ***The Case of Nigeria***

The EU EOM to the 2003 elections in Nigeria concluded that the elections were fraudulent in a number of states. While the subsequent EU declaration expressed concern, there was no further follow-up by the EU at the political level. Nigeria's economic and strategic importance trumped concerns about democratisation and President Obasanjo remained a favourite interlocutor for European governments. The EC's 2004 mid-term review of EC – Nigeria co-operation mentioned the fraudulent elections, but drew no conclusions from the fact: Giving credit to the efforts at poverty reduction by President Obasanjo's economic team, the financial support to Nigeria was maintained at the same level as before.<sup>35</sup> With no political or economic price paid for the manipulation of the 2003 elections, the 2007 elections were again manipulated on large scale to ensure the election of Obasanjo's chosen successor. Significant funds invested by the EU on election reform (more than USD 27mill.) in the run-up of the 2007 elections had little effect and failed in their main objective of ensuring democratic elections. Elections assistance could not compensate for an absence of political will by the EU to treat democratic elections as a priority issue with Nigeria<sup>36</sup>.

Some argue that weak political responses by the international community to flawed elections in Ethiopia 2005 and Nigeria in early 2007 contributed to the problems in Kenya's elections in late 2007, because the Kenyan government felt it could get away with remaining in power despite an inconsistent and incomplete publication of election results.

The lack of political follow-up significantly reduces the 'return on investment' in an EU EOM and election assistance. Without a supporting political climate, their impact and effectiveness remains *a priori* limited.

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<sup>34</sup> EIDHR Strategy Paper 2007-2010, point 65:

[http://ec.europa.eu/europeaid/where/worldwide/eidhr/documents/eidhr-strategy-paper-2007\\_en.pdf](http://ec.europa.eu/europeaid/where/worldwide/eidhr/documents/eidhr-strategy-paper-2007_en.pdf)

<sup>35</sup> DG Development, 2004 Mid-Term Review/ Federal Republic of Nigeria, A1 \*3 (04) D/6582

<sup>36</sup> The European Commission contributed more than USD 27mill. to the UNDP-managed 'Joint Donor Basket Fund', representing more than 80% of the overall input. As far as the basket fund supported civil society organisations it may have had more of an effect.

Generally it appears that the EU is reluctant to go beyond critical declarations where states concerned are strategically important. Despite the violent suppression of demonstrations and wide-spread arrests on political grounds after the 2005 Ethiopian elections and deeply flawed elections in Nigeria, the EU did not invoke art.96 of the Cotonou agreement in either case.

Obviously political follow-up is most difficult and sensitive where EU EOMs conclude that elections were not held in a democratic manner. Such cases remain rare (Pakistan 2002, Nigeria 2003/07, Ethiopia 2005) and in other cases political follow-up of EU EOMs tends to work well, at least in the sense that EU statements on elections now refer to EU EOM almost without exception, though some problems remain in fine-tuning political messages, e.g. where EU member states with a special relationships to a country issue statements before an EU EOM has given its preliminary statement, or when the EC weighs in pre-maturely<sup>37</sup>. In the longer term election concerns often fall off the political agenda, only to resurface shortly before the next elections, when it may be too late for election reform.

#### **4.4. Promoting Elections in the European Neighbourhood**

The European Neighbourhood policy offers partner countries a trade-off between a “deeper political relationship and economic integration” in exchange for a commitment to common values, such as democracy and human rights. Elections as an essential element of democratic governance should be a key aspect in such an equation. However, it appears that the way the EU addresses elections in the Eastern neighbourhood differs significantly from the way they are addressed in the South.

The EU’s responses to flawed elections has been markedly different in the South and East. While the EU condemned the 2005 election in Belarus and issued a visa ban for high-ranking election officials, the only response to equally flawed Tunisian elections was a diplomatic statement.<sup>38</sup> In all action plans with Eastern partner countries election-related language is straightforward, e. g. the EC – Georgia action plan includes a commitment for Georgia to:

“ensure the local (2006), parliamentary (2008) and presidential (2009) elections in Georgia are conducted in accordance with international standards, through implementation of OSCE/ODIHR and Council of

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<sup>37</sup> After the recent elections in Togo the EC praised the conduct of the elections before the EU EOM had published its statement. This undermined the work of the EU EOM and weakened the Commission’s credibility in defending the agreed ‘acquis’ on election observation.

<sup>38</sup> In the case of Tunisia the EU congratulated the President, pointed out positive aspects of the elections, noted that the overall process did not provide a level playing field and that “in general, fuller freedom of expression and association would consolidate earlier steps to towards (...) democracy.” The EU response to the Ukrainian elections in the same year were less circumspect: “The European Council (...) regrets that the first round of the presidential elections in Ukraine on 31 October did not meet international standards for democratic elections. (...)” European Council 4, 5 November 2005

Europe recommendations, notably regarding the need for a reliable voter registry and a functioning and transparent electoral commission;”<sup>39</sup>

The language in other action plans with Eastern neighbours is equally categorical and detailed, in contrast to action plans with Southern neighbours. The action plans with Morocco and Tunisia do not mention elections, the Jordan action plan refers in a generic way to the need for electoral reform and in the case of Egypt an exchange of experience in the field of elections is envisaged.

All Southern neighbours of the EU have ratified the International Covenant for Civil and Political Rights which includes detailed obligations for elections,<sup>40</sup> but the action plans never call for elections to respect these standards. Obviously the action plans are a result of political negotiations and many Southern neighbours categorically reject discussing elections at an international level. However, even the Commission proposals included no such language. The comparison of action plans illustrates not only the difference of negotiating power on the issue of democratisation<sup>41</sup>, they also result from a lack of detailed analysis and information on elections. While in the East the EU always relies on the reports by the OSCE’s Office for Democratic Institutions and Human Rights and the Council of Europe, in the South there are no comparable organisations.

The lack of detailed, authoritative information is reflected in the action plans, but also in other aspects of EU foreign policies. For instance, the EU statement on the Moroccan September 2007 elections was thus not only factually incorrect<sup>42</sup>, but failed to include any reference to shortcomings of the election process, in contrast e.g. with the EU statement on the Ukrainian elections, which was issued in the same period. A comparison of the two statements leaves the impression that Morocco is an established democracy, while its political system is described by analysts as an ‘executive Monarchy’. In Ukraine in contrast, all layers of state powers are contested through elections. Human Rights Watch criticised the EU’s silence in the face of allegedly rigged local elections in Jordan in July 2007<sup>43</sup>.

In the South only the action plans with Lebanon and the Palestinian Authority (PA) include detailed points on elections. In the case of the PA the EC was well-informed through its election assistance to the Palestinian election commission<sup>44</sup>, while in the case of Lebanon it relied on the report by the 2005 EU Election Observation Mission. In other Southern Neighbourhood states the EU has been impeded by governments’ refusal to invite EU

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<sup>39</sup> All action plans are published on [http://ec.europa.eu/world/enp/documents\\_en.htm#2](http://ec.europa.eu/world/enp/documents_en.htm#2)

<sup>40</sup> Art.25, authoritatively interpreted by the UN Human Rights Committee in 1996.

<sup>41</sup> This is most conspicuous in the action plan with the Palestinian Authority, which has by far the most detailed prescriptions on elections of all ENP action plans. The PA, largely depending on EU aid, had little leverage in the negotiations.

<sup>42</sup> The EU praised the new framework for elections, but the election law was the same as for the 2002 elections.

<sup>43</sup> Human Rights Watch, World Report 2008, p.16

<sup>44</sup> Subsequent to the signing of the action plan the EU also deployed EOMs to the Presidential elections in 2005 and the elections to the Palestinian Legislative Council in 2006.

elections observers. Even more co-operative partners, such as Jordan and Morocco, have not responded positively to EU suggestions to allow EU election observation.

As mentioned above, the lessons learned from election work by the OSCE ODIHR and the Council of Europe suggest that improvements require continuous and long-term technical and political attention to electoral reform. With the exception of the Palestinian Authority such attention has been missing vis-à-vis Southern neighbours.<sup>45</sup> While most Southern partner states are reluctant to engage on the politically sensitive subject of electoral reform and do not invite EU EOMs, the EU should enlarge its toolbox in this area. The EU could e.g. rely more on analysis by local and international Non-Governmental Organisations.<sup>46</sup> NGOs may face occasionally less constraints in carrying out fact-finding missions and reporting. Furthermore, as a community of 27 democracies, the EU plays a role in providing external democratic legitimacy. Uncritical EU statements on elections in the Southern Neighbourhood are a missed opportunity for the EU to create incentives for election reform.

#### **4.5. Alternatives to EU EOMs?**

As in the European Neighbourhood, the EU tends to be generally weak in promoting elections in countries to which it deploys no EU EOMs, because it lacks detailed analysis to promote concrete steps in the practice of holding elections. It is sometimes proposed that the Commission should deploy small and short observation missions in cases where it has not enough capacities or where the host state is opposed to a full-fledged observation mission. The Commission has rightly been wary of these proposals, as they would erode the ‘gold standard’ of full-fledged observation. Host countries could start insisting on ever shorter and lighter missions, making it impossible for missions to carry out a comprehensive assessment<sup>47</sup>.

There may however be ways to achieve some things that EOMs do without undermining the model. The OSCE occasionally deploys ‘Election Assessment Missions’, in particular to more established democracies,<sup>48</sup> which issue public reports. These address qualitative aspects of an election (the legal framework, the political context, the election administration), but not quantitative issues (Election Day statistics; media monitoring, etc.). For the reasons explained

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<sup>45</sup> And it appears that the EU’s interest in the Palestinian election framework has dropped after the Hamas’ take-over of Gaza. A PA decree with amendments to the election law was not commented on by the EU, although it contains serious setbacks; it allows e.g. the President of the PA to dismiss members of the ‘Independent Election Commission’ at will. The strength and independence of the election commission was the aspect most praised by both EU EOMs.

<sup>46</sup> In a number of Arab countries domestic election observer groups issued detailed reports on elections. See also for detailed assessments of electoral frameworks of Jordan, Egypt, Algeria and Morocco by Democracy Reporting International.

<sup>47</sup> This tendency can be observed in the OSCE region, where Russia leads calls for ever shorter and smaller observation missions.

<sup>48</sup> See also : Democracy Reporting International/Transparency Maroc: ‘Evaluation qualitative de l’élection à la chambre des représentants, Maroc, 7 September’: [http://www.democracy-reporting.org/downloads/reports/ltd\\_a\\_7\\_sep\\_07.pdf](http://www.democracy-reporting.org/downloads/reports/ltd_a_7_sep_07.pdf)

above the EU should not launch such missions under its own name, but it could fund other independent organisations to do so and make use of the findings.

Under the EIDHR the Commission occasionally funds local observer networks, but more efforts should be made to ensure that their findings feed into political positions by the EU. E.g. the EIDHR financed a significant domestic election observation of the September 2007 Parliamentary elections in Morocco, involving 3,000 observers deployed by the Moroccan *Collectif pour l'Observation des Elections*. The *Collectif's* preliminary statement raised a number of serious concerns<sup>49</sup>, none of which was reflected in the EU statement on the elections, which was entirely positive.

## **5. Election Support and Democratisation**

### **5.1. EU EOM Impact on Broader Democratisation**

EU EOMs deal primarily with elections, but given that democratic elections are not a one-day affair, EU EOMs address a wide variety of issues which have an impact on broader democratisation, such as the rule of law, political party legislation, the media environment, the quality of the public administration, etc.

However, beyond the election period and the legitimacy of the elected institutions, EU EOMs tend to have little direct effects on further democratisation. According to definitions of democracy in international instruments<sup>50</sup> and in academic literature<sup>51</sup> democracy not only requires the guarantee of political rights, but also a system of governance characterised by the separation or a balance of powers, including sufficiently powerful legislatures. The point is obvious: The most democratic elections are of limited value if they do not impact on government policies via Parliament. The EU tends to have few analytical, assistance or policy tools to address this issue. Thus, once an EU EOM has left the country the role of the elected institutions is not further assessed. EU EOMs should not be over-burdened with additional assignments, not least because they would become unpalatable to host governments. However, EU EOMs should be sensitive to these issues beyond their mandate and recommend further action to the EU.

### **5.2. The Role of EU EOMs in Absence of a Broader Democratisation Strategy**

The EU has no specific agreed strategy on promoting democracy abroad. An inter-institutional 'food-for-thought' paper on the issue was issued in 2006, but subsequently

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<sup>49</sup> Statement on: <http://www.forumalternatives.org/article70.html>

<sup>50</sup> For an overview see: Democracy Reporting International, 'Discussing International Standards for Democratic Governance', Discussion Paper No.2, September 2007

<sup>51</sup> Among many: Wolfgang Merkel, *Systemtransformation*, Opladen 1999, p.32

withdrawn. Promoting democracy is an official purpose of the EU's foreign policy (art.11 EU Treaty<sup>52</sup>) and indeed measures promoting democracies are taken at all layers of the EU's external relations, including public declarations, political dialogue, multi-lateral policies, EU aid policies (election support, support to good governance), etc. Nevertheless, in absence of a comprehensive strategy EU positions on democracy issues tend to depend on circumstances and personalities involved. *Ad-hoc* views and assessments e.g. on what democratisation means for stability in a given country can thus determine an EU position. While EU EOMs have an intrinsic value in providing transparency to and reporting on elections, the absence of broader strategies limits their effectiveness.

### ***More Focus on Civil, Economic Rights than Democracy (Political rights)***

Obviously the concepts of human rights and democracy are inter-twined. Political rights are an integral part of democratic governance, notably the freedoms of expression, association, assembly, media and the right to vote. Other issues are less closely linked to democratic governance (rights of the child, death penalty, trafficking in human beings)<sup>53</sup>. On the other hand, the notion of democracy has components which may not be directly related to human rights, such as the separation of powers. Overall it appears that human rights with less direct links to the concept of democracy are more emphasised by the EU: There is an annual Council/Commission report on human rights<sup>54</sup> but none on the state of democracy. The report lists 20 thematic human rights issues of which only one is directly relevant to democratic governance<sup>55</sup>; there are six human rights guidelines, but none related to political rights. On the positive side, the 2007-2010 strategy paper for the European Instrument for Democracy and Human Rights (EIDHR) emphasises political rights more strongly than before.

## **6. Election Support and Conflict-Prevention**

Elections should overcome violent struggle by allowing conflicting interests, political platforms and opinions to compete in a peaceful and regulated environment. Elections should be held regularly, ensuring that there is no sense of irreversibility; the losing side must have an incentive to respect the rules, because it will have another chance.

The legitimacy that flows from democratic elections reduces the motivation and potential for violent challenges against a political system or its institutions. This makes it all the more important to ensure that the way in which elections are conducted indeed creates legitimacy: Where elections are manipulated, or are perceived to be so for lack of transparency, the potential for violent challenges increases.

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<sup>52</sup> See also art. 10 A Lisbon Treaty

<sup>53</sup> This is not to mean that they are not worthwhile issues, on the contrary. However, there are less directly linked to democratic governance.

<sup>54</sup> See EU Annual Report on Human Rights 2007

<sup>55</sup> The point is called 'Democracy and Elections', but only deals with elections. Ibid, p.41



Election observation thus contributes to conflict-prevention, because it adds transparency to an election and may increase the electorate's confidence in the process. Observers may also play a direct role in diffusing tensions between parties to an election. The 2007 EU EOM to DR Congo encouraged the parties and candidates to accept the election results. Care must be taken by missions however not to erode domestic mechanisms of conflict resolution: a political party should primarily use the election administration and courts to address grievances, rather than seeking remedy from international observers. Likewise, EU EOMs should not get involved in mediation, as this would conflict with the principle of non-interference. Where international mediation becomes necessary other actors should be sought (EU missions, UN field missions, etc.). An EU EOM should provide accurate and detailed briefings to mediators to illuminate the context and technical aspects of election conflicts.

In one political constellation EU EOMs may not be able to directly support the prevention of conflicts: Where a losing party/candidate questions the integrity of an election process and an EU EOM finds that it was indeed flawed. In such a situation an EU EOM may even exacerbate tension, as was possibly the case in the recent Kenyan elections: International election observation missions concluded that the official results were not sufficient to underpin President Kibaki's victory claims. These findings were vindicated when the Chief Electoral Officer conceded that the official results were not credible. Observer reports provided the losing candidate and his supporters with additional reasons to challenge the election outcome.

The primary objective of an EU EOM is to assess the quality of an election. It should not alter its findings for the purpose of conflict-prevention. Glossing over flaws in elections for the sake of stability is likely to create higher long-term tension. Though a critical statement is often perceived as adding to tensions, proper international attention for electoral shortcomings may help preventing conflicts: Where losing parties or groups feel that their concerns are ignored by the international community, they may believe that resorting to violence remains the only way to keep international attention on an election process.

Furthermore, an accurate understanding of the election process and its shortcomings may be a pre-condition for successful conflict management.<sup>56</sup> The key in such situations appears to be for EU EOMs to call on all parties to channel grievances through complaint and appeal mechanisms<sup>57</sup>. This would however require the EU to then follow the complaints and appeals process closely, something which has not happened hitherto (see above).

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<sup>56</sup> E.g. the EU's response to Ukraine's 'orange revolution' has been seen as successful. The EU HR referred extensively to detailed analysis by the OSCE ODIHR's election observation mission.

<sup>57</sup> The EU EOM to Kenya's 2007 elections called for an independent investigation, noting that the election dispute mechanisms "does not provide sufficient guarantees for redress.", Preliminary Statement, 1 January 2008

## 7. Election Support and Development

Development aid has moved away from an over-emphasis of economics to a broader and more meaningful notion of human development. Given that development aid relies to a large extent on co-operation with governments, raising the issue of elections, democratisation and legitimacy has however been sensitive. The EU therefore sometimes prefers using ‘softer’ notions, such as good governance.<sup>58</sup>

There is increasing emphasis on local ownership and partnership in EU development assistance.<sup>59</sup> In practice this means more consultation on development priorities and e.g. direct budgetary support to countries. However, increasing local ownership requires increasing emphasis on democratisation: Local ownership cannot mean ownership of small, unaccountable elites. Electorates should have a meaningful role in determining development priorities. For direct budgetary support to work, there needs to be functioning Parliamentary oversight, as is recognised in the ‘European consensus on development’.

This poses a major problem when elections are fundamentally flawed: Does it make sense to insist on local ownership of governments which enjoy no democratic legitimacy or on Parliaments to provide effective oversight, if Parliamentarians have not been elected democratically? Where elections are flawed, Parliaments’ majorities tend to be closely intertwined with executive interests and are thus unlikely to provide any genuine oversight. The EU has no strategy to deal with such situations: Co-operation with Nigeria and Ethiopia does not differ from other countries although EU election observation missions concluded that elections were fundamentally flawed.

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<sup>58</sup> E.g. although the EC treaty stipulates that development policies should “contribute to the development and consolidation of democracy and the rule of law” (art.177 EC Treaty), ‘democracy’ is not retained as a common objective in the ‘European consensus on development’, which notes that “sustainable development includes good governance, human rights and political, economic, social and environmental aspects” (point 7). However, democracy is mentioned in other parts of the ‘European consensus’, e.g. under ‘common values’.

<sup>59</sup> See points 14-16 of the ‘European Consensus on Development’

## **8. The Role of the EP**

The EP has an obvious role to play by virtue of being the only directly elected institution of the European Union. Though the EP's role in the EU's constitutional architecture is not typical for a legislature, it is involved in key roles of legislatures, namely having a role in legislating, providing a level of accountability of the executive and being a forum for public debate. In addition, the EP may provide a role model for a regional or 'international' legislatures, which transcend national borders (such as the Pan-African Parliament).

### ***Role during Elections***

As far as EU election observation is concerned, the EP has a double involvement: On the one hand the Chief Observers of EU EOMs are MEPs and on the other hand the EP deploys delegations to elections in third countries. EP delegations are integrated into EU EOMs<sup>60</sup>. They are briefed/de-briefing by the EOM, which also plans and organises their deployment. The Chief Observer and the Head of the EP delegations present the findings jointly in the post-election press conference. The presence of many MEPs in a mission increases the mission's visibility and helps building support in the EP for possible post-election measures by the EP.

### ***Political Role before and after Elections***

The EP plays a political role before and after elections, in particular by adopting resolutions, discussing elections in the relevant committees, the work of country delegations and Parliamentary assemblies. The EP could consider intervening more systematically on election issues by establishing an official, public position on upcoming elections on the basis of expert reports (e.g. by EU exploratory mission reports, EU or other political reports, NGO reports on elections<sup>61</sup>). Such positions would be effective if they highlighted specific concerns relevant for the legitimacy of an upcoming election, recommended remedies and expressed expectations<sup>62</sup>. These could be followed-up through committee work, delegations, etc. The parties in the EP could also discuss these with their counterparts through the international party families. The same could be done in the aftermath of elections and in view of electoral reform. In order to research and prepare such positions, the EP would possibly need to expand its election services or organise regular input from outside actors.

### ***Support to Elected Legislatures***

The EP has an obvious role to play in supporting duly elected legislatures. Where election observers conclude that elections have taken place peacefully, the EP could seek to raise the profile of such legislatures, e.g. by attending opening ceremonies, or by inviting heads of government and opposition factions to the EP.

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<sup>60</sup> For elections in the OSCE area, they are integrated into the OSCE EOMs.

<sup>61</sup> As far as international NGOs are concerned, the National Democratic Institute, the Carter Center, Human Rights Watch, Democracy Reporting International, etc. publish pre-election assessments.

<sup>62</sup> As opposed to general declarations calling for 'free and fair' elections, which tend to have little impact.

Democratic legislatures could be more substantially involved in all cases where the EP has a role in EU policies towards third states (legislation or otherwise). In these cases the EP could systematically consult Parliaments in partner countries. This would increase their profile vis-à-vis often powerful legislatures, give the EP a realistic insight into the potential of a given legislature and increase the EP's information base for adopting its own position.

## **9. Conclusion: More Strategy, More Tools**

The lack of an agreed inter-institutional strategy on democracy promotion means that the issue is often addressed in an *ad-hoc* manner although the EU has a multitude of levers and ways to support democracy abroad. In order to define a strategy in this area it could be useful to map out all layers of EU foreign relations that impact on democratisation, including political intervention, EIDHR action, bi-lateral co-operation (e.g. good governance activities, such as public administration reform), development co-operation, conflict management, etc. and test how they could be applied in a strategic way in a given country situation.

The EU has gone a long way in improving its support for elections through observation and assistance. However, the success of EU EOMs may have led to an over-focus on elections and in the election field on this particular tool. More consideration should be given to additional 'tailor made' responses.

In terms of support for democracy, the focus on elections has meant that other issues tend to be neglected, in particular those related to the fate of elected institutions: Is an elected Parliament playing a meaningful role in the political process of a country? Is there a separation/balance of powers?

As far as elections are concerned the EU should consider adding tools in terms of analysis and political intervention. To support such a discussion [annex 1](#) gives an overview of existing and possible 'new' interventions.

## **10. List of Recommendations**

### **1. EU EOM Methodology**

#### ***Impartiality***

- When appointing Chief Observers the EC should continue to be careful that their nationality or party affiliation is not perceived as leading to conflicts of interest or lack of impartiality in the host state concerned;
- Where the EU observes elections, all EU actors should avoid a perception that one or another political party is favoured; if a major political party is named on the EU's

terrorist list, it may not be useful to deploy an EU EOM, because it would not be perceived as being impartial.

### *Comprehensive Observation*

- Where **voter registration** is a particular concern, EU election assistance should consider deploying a specialised observation mission for that process or funding independent groups with carrying out an audit;
- Accurate **counting/aggregation/publication of votes** is an increasing concern: methodology should be adapted to focus more on this part of an election process; at the political level it should be made clear that accurate and detailed accounting of votes is vital for the legitimacy of results; EU declarations after elections should draw attention to this aspect;
- **Complaints and appeals** may decide an election, therefore the EU should be better prepared to observe them: There should be contingency planning to extend an EU EOMs stay in country where an election process results in wide-spread complaints and appeals; should this be beyond EU EOM capacity, the EU should finance independent groups to carry out such observation.
- **Electronic voting** remains a challenge for election observation: The EU should consolidate its experiences in this area.

### *EU EOM Recommendations*

- In order to make it easier to follow-up on EU EOM recommendations they should be sorted into a few key recommendations and an additional list of other recommendations.
- All EU actors should agree on a strategy to promote EU EOM recommendations technically and politically; the immediate post-election period tends to be a vital to reach agreement with host governments on election reform.

## **2. Beyond EU EOMs: Enlarge the tool-box**

- The EU should stick to the EU EOM model and methodology of long-term deployment and the comprehensive assessment of an election process; any variation to the model/methodology could erode proper election observation.
- Nevertheless, the EC should consider supporting other organisations, which deploy smaller missions (qualitative assessments/specialised assessments) to countries where the EU is not able to observe, e.g. because it is not invited.
- The EU should consider using other tools than EU EOMs to assess and promote democratic elections, incl.: reviews of election legislation between elections, placing election experts in EC delegations to closely follow election reform, etc.
- The practice of supporting domestic observer groups is positive, but their findings should feed back into the EU's policies.

### **3. Political Aspects**

- Where warranted, the EU needs to prioritise election reform issues at the political level, otherwise the impact of EU EOMs and election assistance is limited;
- In order to avoid *ad-hoc* political decisions on essential democracy questions (e.g. what does democratisation mean for stability?) in relation to a particular country, the EU should agree on an official strategy for democracy promotion.

### **4. Elections in the European Neighbourhood (ENP)**

- The ENP is premised on closer integration of neighbours in exchange for political reforms, but this objective is pursued with more vigour in the East than the South. The EU needs more analytical tools to closely follow democracy issues in Southern neighbour states;

### **5. EU EOMs and Conflict-Prevention**

- EU EOMs must report truthfully on an election, even if a critical statement is perceived as adding tensions in a post-election situation; EU EOMs should however always encourage the use of official complaints and appeal mechanisms; this requires that complaints and appeals are closely followed by an EU EOM and the EU at large.

### **6. Election Support and Development**

- EU development support increasingly insists on consultation with partner countries and local ownership; while this is positive in principle, it requires increased attention to democratisation to avoid ownership of un-accountable elites.
- Where direct budgetary support is provided, the need for Parliamentary oversight must be stressed and efforts made to strengthen such oversight.
- Where elections have been found to be fundamentally flawed by an EU EOM, the philosophy of local ownership needs to be re-considered: E.g. a Parliament which was not elected democratically cannot provide accountability.

### **7. The Role of the EP**

- As the only elected EU institution, the EP has a special role to play in supporting elections and democratisation.
- The EP should raise the political profile of legislatures which have been democratically elected, e.g. by attending their opening ceremony, or by inviting leaders of government and opposition parties to the EP.

- When involved in the EU's legislative process in relation to third countries, the EP should consult Parliaments of those countries in order to increase its own policy input and to raise the profile of those Parliaments.

## **ANNEX 1 Technical and Political Tools to Support Elections**

### **- Election Assistance**

Election assistance is not the focus of this paper. The Commission has developed a systematic and methodological approach to election assistance.

### **- EU Election Observation Mission**

EU EOMs are the EU's established instrument to support the quality of an election. EU EOMs gather data and report on all relevant aspects of an election. Due to their size and composition (headed by a politician), EOMs enjoy significant visibility and potential political impact. EU EOMs follow the quality standard laid out in the UN-sponsored Declaration of Principles for International Election Observation.

### **- Election Assessments by the EC**

The EC deployed teams of experts to assess selected aspects of elections in Tanzania, Madagascar and Guyana. The teams reported internally and did not publish reports. Such an activity is useful to assess the impact of election assistance and to provide the EU with detailed analysis which can be used for political intervention and long-term support of election reform. However, the public in the countries concerned does not benefit from these internal reports.

### **Funding Domestic Observer Groups**

The EU regularly funds domestic observer groups. However, very often their findings do not inform the EU's political positions; their support tends to be managed as a technical matter. Also domestic observer groups sometimes make it difficult to rely on their findings: They may not publish findings timely enough for them to be picked up at political levels, they tend not to refer to internationally binding standards, at times they are identified with the political opposition and there may also be doubts about their methodology: "A weakness often mentioned in the evaluation of domestic observers' performance is the disproportionate importance attributed to anecdotal evidence and their excessive criticism of particular aspects of the process without having credible and substantiated elements to prove the claims."<sup>63</sup>

### **Election Assessment by other organisations (IGOs or International NGOs)**

Election assessment teams evaluate qualitative aspects of an election process (legal framework, operation of the election administration, etc.), but they do not have a presence that allows the systematic gathering of statistically significant data (e.g. on polling, counting, etc.). These type of missions need to be rigorous on methodology and avoid suggesting to the public that they can comment on the overall election process. The OSCE ODIHR deploys this type of missions; they are usually composed of 5 – 10 experts who stay in country for some ten days. International NGOs are likewise undertaking such

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<sup>63</sup> EC Methodological Guide on Electoral Assistance, p.38



missions, normally with 2-5 experts for several weeks.<sup>64</sup> The UN-sponsored declaration allows the deployment of such specialised missions. The EU should not consider deploying such missions under its name, as they would erode the standard of full-fledged EU EOMs, but it could consider sponsoring such missions: They would provide the EU with analytical information for its political and assistance strategies, but the EU would not be bound to these findings.

Such missions can also be envisaged for assessing only one component of an election process which may raise concerns (e.g. a media monitoring or voter registration observation mission).

### **Comprehensive Review of Electoral Frameworks by NGOs**

A comprehensive review assesses all aspects of the legal-administrative framework for elections in a given political context significantly ahead of an upcoming election. The report is published and can inform public debate as well as the international community on electoral issues. The timing of such review should allow for issues of concern to be addressed before the elections; in this sense reviews are more ‘constructive’ than observation/assessment missions can be. In circumstances where significant international election assistance is foreseen it may be useful to start the process by a comprehensive review of the election framework carried out by independent organisations that are not involved in election assistance. Such reviews cost a fraction of the funds invested in election assistance. Reviews of this type have been carried out in the Arab world<sup>65</sup> and sometimes by the OSCE ODIHR with a focus on legislation.

### **EU Political Interventions**

The EU can use information and analysis from all the above tools for political interventions, such as political dialogues, demarches, declarations, country strategy papers, etc.

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<sup>64</sup> E.g. Nordem or Democracy Reporting International, see e.g. report on elections in Morocco: [http://www.democracy-reporting.org/downloads/reports/ltd\\_a\\_7\\_sep\\_07.pdf](http://www.democracy-reporting.org/downloads/reports/ltd_a_7_sep_07.pdf)

<sup>65</sup> Democracy Reporting International together with local NGOs, Comprehensive Assessments of Electoral Frameworks of Jordan, Egypt, Algeria, Morocco, see: reports under: <http://www.democracy-reporting.org/frameworks.html>

### Distribution of Interventions along the Election Cycle

	Technical Response/ <i>Analysis</i>	Technical Response/ <i>Assistance</i>	Political Response
- Legal Framework (constitution, election laws, regulations) 1-2 years before election day - Overall human rights context (freedom of media, expression, association/political party legislation, etc.)	Comprehensive assessment of the election framework (by NGOs for publication, or by EU teams for internal report)	Advise on election law drafting; election administration, districting, etc.	Taking up findings of assessment report at political levels, e.g.: political dialogue, demarche, declaration, deployment of political mission, etc.
Voter Registration	Specialised observation mission (either EU internal or carried out by others – NGOs, etc.)	Advise, financial and logistical support	Taking up findings of assessment report at political levels, e.g.: political dialogue, demarche, declaration, deployment of political mission, etc.
Immediate Pre-Election Period (2-8 months before elections)	Exploratory Mission (determines desirability of EU EOMs, issues internal report, may suggest pre-election interventions beyond EU EOM); Pre-Election Missions (e.g. carried out by NDI and the Carter Center)	<i>Same as above</i>	Taking up findings of ExM report at political levels. Political Pre-Election Delegation could take up issues of ExM if no EU EOM deployed (see Sri Lanka example in text).
Campaign Period (3 months – election day)	EU EOM Where no EU EOM is present: - sponsor domestic observer groups; - assessment team to carry out qualitative	<i>Same as above</i>	EU EOM Other political interventions as necessary (political dialogue, demarche, declaration, etc.)

	assessment (could be EU internal <sup>66</sup> , or carried out by others, e.g. NGOs and in that case public findings)		
Election Day	<i>Same as above.</i>	<i>Same as above</i>	<i>Same as above</i>
Counting/ Tabulation / Publication	<i>Same as above.</i>	<i>Same as above</i>	<i>Same as above.</i>
Complaints and Appeals	<i>Same as above.</i> If appeals take long and EU EOM has to leave, specialised appeals monitoring mission could be considered (EU internal, or NGOs which can publish)	<i>Same as above</i>	<i>Same as above</i>

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<sup>66</sup> The Commission deployed such missions, which did not report publicly, to Tanzania, Madagascar and Guyana.

## Annex 2: EU Election Observation Missions 2002-07

Country/ Year	Type of Election
Kenya 2007	Presidential , Parliamentary
Togo	Parliament
Ecuador 2007	Constituent Assembly
Guatemala 2007	President, Parliament, Local
Sierra Leone	President, Parliament
Nigeria 2007	President, Parliament, Governors, State Assemblies
Mauritania 2006/7	President, Parliament, Local
Indonesia: Province of Aceh 2006/7	Governor, Regent/Mayor
Venezuela 2006	President
Nicaragua 2006	President, Parliament
Zambia 2006	President, Parliament, Local
Yemen 2006	Presidential, Local
Mexico 2006	President, Parliament
Bolivia 2006	Constitutional Assembly Referendum on Regional Autonomy
DR Congo 2006	Presidential, Parliamentary
Fiji 2006	Parliamentary
Uganda 2006	Presidential, Parliamentary
Haiti 2006	Presidential, Parliamentary
West Bank, Gaza 2006	Palestinian Legislative Council
DR Congo	Constitutional Referendum
Venezuela 2005	Parliamentary
Sri Lanka 2005	Presidential
Liberia 2005	Presidential, Parliamentary
Burundi 2005	Parliamentary
Guinea-Bissau 2005	Presidential
Afghanistan 2005	Parliamentary
Lebanon 2005	Parliamentary
Ethiopia 2005	Parliamentary, State
West Bank, Gaza 2004	Presidential
Mozambique 2003	Presidential, Parliamentary
Malawi 2003	Presidential, Parliamentary
Sri Lanka 2003	Parliamentary
Indonesia 2003	Presidential, Parliamentary
Mozambique 2003	Local
Guatemala 2003	Presidential, Parliamentary, Local
Cambodia 2003	Parliamentary
Rwanda 2003	Constitutional Referendum, Presidential, Parliamentary
Nigeria 2003	Presidential, Parliamentary, Governors, State Assemblies

Kenya 2002	Presidential, Parliamentary, Local
Madagascar 2002	Parliamentary
Pakistan 2002	National, Provincial Assembly
Ecuador 2002	Presidential, Parliamentary
Sierra Leone 2002	Presidential, Parliamentary
East Timor 2002	First Presidential
Congo-Brazzaville 2002	Presidential
Cambodia 2002	Communal (Local)
Nicaragua 2001	Presidential, Parliamentary
Sri Lanka 2001	Parliamentary
Bangladesh 2001	Parliamentary
Guyana 2001	General, Regional
East Timor 2001	Constituent Assembly
Zambia 2001	Presidential, Parliamentary
Peru 2001	Presidential, Congressional

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