

PROMOTING AND DEFENDING DEMOCRACY

The Work of Domestic Election Observer Groups Around the World



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Preface

Democracy is about far more than elections. However, the holding of transparent, accountable and credible elections is an important cornerstone of the democratic process in any country, and domestic election observers can make a significant contribution in this process. Furthermore, these groups that often represent a broad coalition of civil society organisations can also work to promote and defend democracy in their respective countries before and after the electoral process itself.

This publication wishes to highlight the work done by domestic observers around the world, both in terms of their scrutiny of and support to the electoral process, and in their striving to deepen and consolidate the wider democratic process. As will become evident while reading these chapters, the challenges facing domestic observers – be they in Africa, Asia, Europe or Latin America – are immense, varied and complex. It is to the credit of civil society groups like those presented in the publication, that they have the skill and imagination to meet all these challenges in their respective countries.

Alongside political parties and media, civil society is a vitally important outlet for democratic activity, representing a vehicle for popular participation and civic activism. Civil society groups can effectively encourage the emergence of the popular and political will, so vital for democracy in any society.

However, for a democratic process to deepen and consolidate, it needs to be protected. Such protection includes the development of appropriate legislation, the articulation of rights, upholding of the rule of law, the creation of equitable electoral conditions, the accountability of government, a professional media and constructive engagement by political forces. Monitoring these elements is vital for understanding the direction of change in a country, and for lobbying in favour of a positive development, and it exemplifies the importance of the work of civil society organisations. Taking into account the comprehensive nature of the work of domestic observers – which like democracy itself goes well beyond the simple holding of elections – it is clear that such civil society groups are central partners in the promotion and defence of democratic development around the world.

As the examples in this book illustrate, real democratic development requires genuine political will. Once this political will is present, the scrutiny by domestic observers as well as their public and transparent involvement can help to consolidate democratic institutions and practices. This, in turn, may help ensure

that conflicts are resolved through legal and political processes rather than by the use of force.

NEEDS has organised five domestic observer forums since 2002, in Africa, Asia, Europe, Latin America and the Middle East/Mediterranean. These forums have brought together representatives from some 100 domestic observer groups, highlighting both the wealth of experience already gathered and the serious challenges still remaining throughout the world.

NEEDS hopes that the examples cited in this book will provide encouragement for other civil society groups around the world, as well as inspiration in the development of strategies to overcome the obstacles to real democratic consolidation in their respective countries. NEEDS also hopes that this book will help to further inform international policy-makers on the utility of engaging with civil society as part of their vitally important democratisation work.

NEEDS would like to thank everybody who contributed a chapter on the work undertaken by their respective organisations. Thanks also to Rafael Lopez Pintor and Paul O'Grady for their work on the book!

A handwritten signature in black ink that reads "M. Stevens". The signature is written in a cursive, slightly slanted style.

Mark Stevens
NEEDS Project Director

1. Introducing the Work of Domestic Election Observers

This handbook was conceived as a means of broadening and deepening the understanding of the work carried out by election observer groups. It covers the work of civil society organisations and coalitions that conduct election observation in their home countries (domestic observers). It is based on contributions from seventeen domestic election observer groups from four continents and provides information on a wide range of election monitoring activity.¹ The NEEDS project hopes that the handbook will have a wide range of potential readers, from other civil society organisations, international organisations, donors, governments and the academic world.

Increasingly, it is recognised that the simplistic concept of *free and fair* elections does not adequately reflect the complexities of an election process. A wide variety of factors can affect whether an election meets international standards. Moreover, the context in which an election takes place varies from place to place and over time, making comparisons between elections fraught with difficulty. An election that takes place in a country that has experienced a recent serious and/or protracted conflict will bear few similarities to other election processes in a stable, functioning democracy. In the former, the demobilisation and disarmament of belligerents might not have been completed; peacekeepers may still be providing security; and some fundamental freedoms might be constrained, for example the freedom of movement. In such circumstances, it is unlikely that an election process will comply fully with international democratic standards, but other necessary conditions may be in place. Election observation can play a vital role assessing whether and under which circumstances elections permitted the free expression of the will of the people in a variety of different contexts and settings.

The handbook begins with an overview of international legal standards for democratic elections. These provide the benchmarks against which to assess any election contest. Some human rights instruments are universal and apply to all signatory countries while others apply to certain global regions. Chapter 2 also draws on a number of documents adopted by international organisations including the United Nations, The Organisation for Security and Co-operation in Europe (OSCE) and the Council of Europe, and provides details on best electoral practice.

Over the past 20 years, a number of domestic election observer organisations have been formed. Many retain a permanent structure and conduct democratisation projects continually, not just during election periods. The Chapter ‘Establishing an Election Monitoring Programme’ examines the experiences of three such groups in meeting the challenge of founding an organisation (or coalition of pre-existing organisations) and taking strategic decisions on how to, and whether to, observe an election. The chapter provides information on the evolution and consolidation of the Peruvian organisation *Transparencia*, which over a ten-year period has overcome a variety of obstacles, including the absence of a legal basis for domestic election observation. *Transparencia* succeeded in mobilising international technical, financial and political support enabling the organisation to deploy in excess of 80,000 observers. Over time, it has become the main institutional reference on the quality of elections in Peru. Indeed, its parallel tabulation of the election results in the tumultuous presidential election of 2000 challenged the authenticity of the official results.

Mirroring the experience of *Transparencia*, the success of the *Kenya Domestic Observation Programme* (K-DOP), a coalition of civil society and faith-based organisations in Kenya, was in large part due to the structure of the organisation and its ability to draw on the resources of organisations that supported their aims. Other important factors that bestowed credibility on the organisations include their reputation for political impartiality, the reputation and integrity of the organisations’ leaders and, the ability to deploy observers across Kenya. The experience of *Movement Ivoirien des Droits Humains* (MIDH) in Côte d’Ivoire shows that observing an election may not be appropriate in certain circumstances, for example, where significant candidates are barred from standing, where conditions for a democratic poll do not exist. MIDH decided not to observe the 2000 elections to avoid legitimising a process that, for these reasons, was flawed well before polling began. The chapter concludes with an overview of some of the considerations that should be taken into account when observing in an insecure environment and some practical measures that can help reduce the risks.

The chapter ‘Assessing the Legal Framework and Advocating for Change’ illustrates the importance of conducting elections according to clear and comprehensive legal ground rules. In Croatia, *GONG* identified a number of significant shortcomings in the legal framework and developed an advocacy strategy to bring about legislative reform. Using a variety of tactics, including enlisting the support of the media, securing popular backing and developing constructive relations with state institutions, *GONG* achieved a number of notable successes.

The Serbian organisation the *Centre for Free Elections and Democracy* (CeSID) was founded in 1996. However, it had to wait four years before the law was amended to allow domestic observers to monitor the election process. Hence the

chapter 'Monitoring the Electoral Administration' deals with CeSID's experience of monitoring the work of the election administration between 2000 and 2004, a period in which many parliamentary and presidential elections have been held. CeSID highlights the importance of attending the sessions of the Central Election Commission (CEC), securing access to CEC documents and building good relations with CEC members and the CEC's administrative staff – particularly important if the CEC is being asked to provide accreditation documents to 12,000 observers. In addition to providing practical information on how to observe the election administration, the chapter gives an overview of the principles that should guide election administration bodies and the basis for forming an assessment of its work.

The accuracy of voter registers is of crucial importance in any election. In Guyana, the *Electoral Assistance Bureau* (EAB) conducted an audit of the voter register in advance of the 1992 election. The chapter 'Enhancing and Auditing Voter Registration' provides valuable insight into the methodology of the audit and the far-reaching consequences of EAB's study. After the compilation of new registers from scratch, the number of inaccuracies fell from 35 percent to 3 percent within one year. This activity lessened the scope for election manipulation and made a significant contribution to the goal of ensuring universal and equal suffrage in Guyana.

The chapter on 'Party and Candidate Registration' explores the relationship between parties and democracy. The freedom of association and the right to stand for elections are fundamental universal human rights. As already noted by MIDH, preventing parties or candidates from participating in an election limits voters' electoral choice and can result in a meaningless election process. The *Fair Election Monitoring Alliance* (FEMA) provides an overview of party regulation in Bangladesh, a country where the registration of political parties is not compulsory. As a result, parties are not accountable and their activities lack transparency. This chapter also offers guidance on the type of issues that can be followed by domestic election monitors during the process of registering parties and candidates.

Monitoring the election campaign provides an opportunity to assess respect for fundamental freedoms and the commitment of state institutions to conduct an election according to accepted democratic principles, specifically the equal and fair treatment of all election subjects. In the eighth chapter, four organisations share their experience of monitoring various aspects of the campaign including: the development of adequate observation methodology, monitoring election violence, campaign finance and the abuse of state owned resources.

The *Committee of Voters of Ukraine* (CVU) demonstrates the importance of observing an election process over the long-term, not only Election Day. In 2002, CVU began its pre-election observation activities eight months in advance of Election Day. The organisation prepared an election calendar and a schedule of monitoring

activities. Long-Term Observers (LTOs) received training and logistical and financial support. CVU's observers were systematic in their collection of information regarding campaign violations, the nomination and registration of candidates, the accuracy of voter lists, campaign finance, the adjudication of electoral disputes, and the performance of local government authorities. CVU emphasises the importance of verifying information as accurate, before it is released in its public reports. During the pre-election period, CVU makes recommendations so that the authorities can address any shortcomings identified.

The *Central Depository Unit* (CDU) developed a methodology to monitor election-related violence in Kenya with the aim of reducing the incidence of violence and lessening impunity for perpetrators of violence. Election violence was defined as “acts of violence that are intended to, or result in influencing electoral choices or electoral outcomes”. Between January and December 2002, election-related violence claimed 325 lives, an average of 6 deaths per week. Although this figure is strikingly high, CDU's monitors were confident that the monitoring programme did deter violence, particularly planned violence, by drawing attention to the problem and challenging the culture of impunity. CDU offers a number of interesting lessons learned over the course of the programme.

Poder Ciudadano's (PC) activity of monitoring campaign expenditure in Argentina between 1997 and 2003 is a showcase example of the effective role that civil society organisations can play during an election, using a straightforward methodology and limited financial resources. PC gathered information on candidates' campaign advertising, enabling the organisation to make an estimate of total campaign expenditure. This activity highlighted a number of serious problems, and the organisation began lobbying for the adoption of campaign finance regulations. In 2002, PC's ambition was realised when Congress adopted the law on “Funding of Political Parties and Electoral Campaigns”. In subsequent elections, PC continued its activity, this time focusing on the implementation of the law and identifying legal deficiencies.

The *Programme for Protection of Public Resources* (PPPR) shows how Sri Lankan civil society organisations came together to monitor the use and abuse of publicly owned property during an election campaign. The abuse of public property by incumbent politicians is a problem in many countries and can have a detrimental effect on the equality of campaign conditions between election contestants, and cause the distinction between state and party to become blurred. After identifying a list of activities that constitute the abuse of public property, PPPR monitors collected information directly from the public, political parties and selected public institutions as well as from the media. As for CVU, PPPR only used information that could be verified as accurate.

The media play a very significant role in forming public opinion and ensuring a more or less even playing field for parties and candidates contesting an election, and this is discussed in chapter nine. Since the late 1990s, media monitoring has been established as a vital component of election monitoring activity, enabling observer organisations to assess respect for the freedom of speech, the pluralism of information available to voters and the fairness and political balance of the media's campaign coverage. *MEMO 98* was formed in Slovakia in the run up to the crucial 1998 parliamentary elections, with support of the American NGO, the National Democratic Institute for International Affairs (NDI). At this time, the media environment was not conducive to a democratic election, and the law restricted the public's access to information and private media's ability to broadcast political information. Furthermore, intimidation and harassment by the government created an atmosphere of self-censorship. *MEMO 98* used a variety of quantitative and qualitative methods to analyse the political content of TV broadcasts and the printed media. Additionally, *MEMO 98* analysed the applicable legislation, monitored restrictions on media freedoms, and provided information to the Slovak public on the nature of the campaign in the media.

The equality of men and women in public life is a well-established principle. However, gender issues are frequently overlooked by election monitoring organisations when making their assessment of whether an election was democratic. Drawing on the experience of the *Electoral Institute of Southern Africa* (EISA), which sent observers to monitor the 2000 elections in Tanzania, the chapter 'Elections from a Gender Perspective' highlights the importance of the issue and offers various indicators by which women's participation during an election can be assessed. EISA developed a "Gender Checklist for Free and Fair Elections" which was extremely useful in identifying the main gender issues in an election. The organisation's findings provide an important insight into women's electoral experiences and identify a number of obstacles women face in contesting elections.

While the importance of monitoring an election during the pre-election period is clear, the need to deploy well-trained observers on Election Day cannot be overstated. The handbook contains two chapters that present case studies on observing voting and counting: the first covers the pioneering activity of the *National Citizens' Movement for Free Elections* (NAMFREL), an organisation founded in 1983 in the Philippines during the Marcos era. The second is much more recent, covering the activities of the *International Society for Fair Elections and Democracy* (ISFED) in Georgia, where the organisation conducted a parallel tabulation of votes, which ultimately led to the Rose Revolution and the downfall of President Shevardnadze.

NAMFREL has been monitoring election processes in the Philippines since 1984. In recent elections it has deployed up to 500,000 volunteer 'poll watchers'

and support staff to follow events on Election Day at polling stations across the country, and at higher levels of the election administration. Volunteers receive training for their specific tasks. Poll watchers report using incident report forms and regular periodic forms that include a four-point overall evaluation of the conduct of elections (desired, tolerable, intolerable and abusive situation). NAMFREL also conducts a 'quick count' based on copies of the election returns given to its poll watchers. The Law requires NAMFREL to submit a final election report to the Electoral Commission within thirty days after the elections, although its contents are usually made public two-to-three weeks after Election Day. Over the years, NAMFREL observers have run considerable risks in undertaking their activity. In the 1984 and 1986 elections, 158 volunteers were injured, and since its founding nine have been killed while performing their tasks.

Many domestic observer organisations, including Transparencia, CeSID and NAMFREL, conduct a parallel tabulation of votes (PVT) to ascertain the accuracy of the official results and detect election fraud. The Georgian civil society organisation ISFED conducted just such an operation for the 2003 parliamentary election. A well-publicised PVT may have not only a detective effect, but may also actually deter anyone considering manipulating the election results. ISFED selected a 20 percent 'representative' sample of polling stations and tabulated the results of voting and turnout. Some 650 observers and technical staff participated in the exercise. The PVT's margin of error was anticipated at 1–2 percent. On the day after the election, ISFED announced the results of its election monitoring programme and PVT. The organisation found a significant incidence of disenfranchisement, intimidation, ballot box stuffing, and changing of results data (protocols) at polling stations and district electoral commissions. Even more significantly, there existed major differences between ISFED's PVT results and the preliminary results announced by the CEC. Political tensions rose, particularly after the Central Election Commission's announcement of false election results. These culminated in the so-called 'Rose Revolution'. ISFED lodged a formal complaint against the conduct of the elections and the election results with the Supreme Court, which annulled the election and ordered the process to be repeated.

Election disputes may surface in almost any country holding a multi-party election. The adjudication and resolution of election disputes is of critical importance, and is considered in chapter 12. On occasions, the legitimacy of an election and the election results are challenged in court. Cases such as these test the independence and impartiality and fairness of the judiciary. However, the legal arrangements to adjudicate election claims vary greatly from place to place. In some countries, for example Uruguay, electoral claims are handled exclusively by an independent electoral commission. Elsewhere, for example Mexico, electoral claims are the exclusive responsibility of special electoral courts separate from ordinary judiciaries. More

commonly, both election commissions and the courts can hear election claims and appeals.

In Nigeria, special election tribunals and the courts hear election claims. The *Legal Defence Centre* (LDC) monitored the work of the electoral tribunals with the aim of improving understanding of the shortcomings in the dispensation of justice on electoral cases and advocating for reform. Some of the problems found in the 1998/99 elections were due to a lack of clarity and familiarisation with regulations adopted by the outgoing military regime. LDC presents a number of case studies concerning the adjudication of disputes concerning regulatory barriers for political party registration, the manipulation of voter lists, media and campaign issues, primary elections and numerous complaints on the conduct of the election voting procedures.

Georgian legislation entitles election observers to lodge election claims with the election administration and the courts. The Handbook's final contribution is made by the *Georgia Young Lawyers Association* (GYLA), which filed a number of formal complaints with the judicial authorities over the conduct of the 2003 parliamentary elections. GYLA offers practical advice on how domestic observers should file complaints to ensure that they are not dismissed on procedural grounds, and gives concrete examples of the role election observers can play in challenging undemocratic practices by exercising their legal rights.

1. Most of the contributing organisations have significant experience of monitoring election events throughout the election cycle. In many cases this experience extends beyond their expertise on the subject on which they made a contribution in this book.

2. Standards for Democratic Elections: The Basis for Election Observation

The establishment of an international legal framework for democratic elections began in 1948 with the adoption of the Universal Declaration of Human Rights. In the years that followed, other international and region-specific legal instruments were adopted. More recently, a global consensus on democratic elections standards has begun to emerge. These standards have been formalised in a variety of new international agreements and declarations. In addition, international organisations including the United Nations, the European Union, the Organization for Security and Cooperation in Europe, the Council of Europe, the Inter-Parliamentary Union and the International Institute for Democracy and Electoral Assistance (IDEA) as well as international associations of electoral practitioners and election monitoring organisations have all issued codified guidelines on best electoral practice (Lopez-Pintor, 2000, 102–109; European Commission, 2002, 57–106; IDEA, 2002, 11–94; Goodwin-Gill, 1998, 64–73). These supplement and elaborate the international legal instruments and international agreements. Taken together, they provide the ‘standards for democratic elections’. The remainder of this chapter provides an introduction of the main applicable international legal instruments, and an overview of best practice at key stages of the electoral cycle.

2.1. The International Legal Framework

The United Nations established a universal legal umbrella on human rights, which includes provisions applicable to the holding of democratic elections. *The Universal Declaration of Human Rights* establishes key democratic principles and the central role of ‘genuine’ elections in conferring legitimacy on the authority of government. These are set out in Article 21, which reads:

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 ballot or by the equivalent free voting procedures.

Electoral rights were further developed in *The International Covenant on Civil and Political Rights* (CCPR) adopted in 1966. Article 25 reads:

Every citizen shall have the right and the opportunity [...] 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.*

Article 25 of the CCPR enshrines the right to suffrage. The requirement to hold ‘genuine periodic elections’ establishes the concept of an election cycle, and therefore the continuous right to participate in the conduct of public affairs. However, such a formal provision might be of little use in terms of practical application and substantive impact, were it not for the political and campaign rights that are essential for a meaningful election process (European Commission, 2002, 9–15). The right of political participation presupposes adherence to fundamental freedoms including those of expression, movement, peaceful assembly and association. Articles 12, 19, 21 and 22 of the CCPR establish these rights.

In addition to providing a standard for democratic elections, Article 25 of the CCPR is considered to offer a justification for election observation. However, the cyclical nature of an election process implies that short-term observation of an election process (i.e. observation activity that only covers polling activity) is insufficient, and that the thrust of observation must be of a long-term nature (Suksi, 2002, 3).

Other relevant legal instruments adopted within the UN system include: *The Convention on the Political Rights of Women* (1952); *The Convention on the Elimination of All Forms of Discrimination Against Women* (1979); and *The General Assembly Resolution on Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections* (17 December, 1991).

Outside the framework of the United Nations various regional level instruments exist. Article 3 of *The European Convention on Human Rights* (1950) enshrines the commitment “*to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature*”.

In 1990, the Organization for Security and Cooperation in Europe (OSCE) adopted the so-called ‘*Copenhagen Document*’², which *inter alia* elaborated a set of election standards to which all the 55 OSCE participating states pledged adherence. *The Copenhagen Document* contains four extensive articles, directly or indirectly relevant to elections. These go beyond a restatement of pre-existing electoral principles (periodic elections; respect for the will of the people; universal and equal suffrage; secrecy and free expression etc.) and introduce new concepts and apply existing human rights principles to all stages of the election cycle. The provisions include: the honest counting and public reporting of votes; that all seats in at least one chamber should be popularly elected; the right to stand for office without discrimination; the right to establish political parties and enable inter-party competition to take place on the basis of equal treatment in law; the need to establish fair and free campaign conditions, including unimpeded and fair access to the media; guaranteed tenure for elected representatives; and the need to maintain a separation between the state and political parties. *The Copenhagen Document* also specifically provides for international and domestic observation of electoral processes.

The American Declaration of the Rights and Duties of Man (1948) and *The American Convention of Human Rights* (1969) are the main legal instruments applicable to the American Continents.³ Article 23.1 of the latter establishes: “*Every citizen shall enjoy the following rights and opportunities [...] (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantee the free expression of the will of the voters*”. Similarly, Article 13.1 of *The African Charter on Human and Peoples’ Rights* (1981) reads “*Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives*”. Other international declarations, where the exercise of the right of suffrage is established, include *The Declaration on Criteria for Free and Fair Elections* (Inter-Parliamentary Union, 1994) and *The Harare Declaration* (the Commonwealth, 1991).

Recently, the UN, the OSCE, the Council of Europe, International IDEA, and the Inter-Parliamentary Union have developed detailed guidelines for good electoral practice. In addition, some of these organisations have produced guides and codes of conduct for international election observers.

2.2. Defining Standards for Democratic Elections and an Overview of Best Electoral Practice

The international legal instruments outlined above all have elements in common, specifically establishing that: all eligible persons have the right to vote and contest an election as a candidate; elections should be periodic, ‘genuine’ and respect the free expression of the will of the electors; suffrage should be universal and equal;

and the ballot should be secret. These principles are the foundations of a democratic election and are applicable at various stages of the electoral cycle, from the adoption of the election legislation, the functioning of election administration bodies, the registration of eligible voters, respect for civil and political rights and freedoms during the campaign, the conduct of the poll, the impartial adjudication of election disputes, to the announcement of results and the assumption of office by those elected. The remainder of this chapter examines how the standards can be applied during the election cycle, enabling election observers to make an assessment on degree of adherence to democratic principles.

The domestic legal framework includes: the Constitution; the election law; other relevant legislation such as laws on political parties, campaigning and the media, and regulations and decisions adopted by election administration bodies. The legal framework should provide for periodic elections. In this context, the legal framework should clearly stipulate the length of elected representatives' mandates, when elections must be held and the procedures for calling an election. The electoral rules should create conditions for 'genuine elections' by including adequate provision for: the universality and equality of the vote; independent, impartial, transparent and accountable election administration bodies; respect for citizens' fundamental freedoms; non-discriminatory candidate registration procedures; the equality of campaign conditions; the fairness of hearings to resolve election disputes; the secrecy of the vote; and a transparent and honest counting and reporting of the results. The main electoral legislation should be adopted well in advance of an election in an open and inclusive manner. Once adopted, the electoral rules should not in normal circumstances be changed once the election process has begun. However, simply creating a legal framework that incorporates the key principles is insufficient to guarantee a democratic election. The application of legislation by the electoral, judicial and political authorities can have a significant bearing on whether or not an election is democratic.

The election system. In any country, political cleavages based on territorial-regional, ethno-cultural, and ideological issues may be present. One of the main challenges for the legislator is to ensure that procedures are in place to ensure the election outcome is a true reflection of all the citizens. Therefore, the type of election system is of paramount importance. Systems based on proportional representation, majoritarian principles and mixed systems are all accepted as democratic. Whichever system is in place, election observers should assess respect for the principle that electors should have an equal vote. Observers should also assess the equality of voting conditions provided for electors, the formula for allocating mandates, the size of the electorate within different election districts, the delimitation of election district boundaries, and the type of ballot (closed/open list, or single/multiple vote).

Election administration bodies usually take the form of independent electoral commissions, although in some countries they are a part of the executive branch of government. Election commissions are either composed of party nominees, independent professionals or a combination of the two. Whichever model is in place, members of election administration bodies should organise the election in a politically neutral manner, transparently, and should be open to dialogue with the contesting parties. An assessment of the role of election administration bodies throughout the electoral process constitutes a crucial election monitoring activity.

The voter registration legislation and its application must respect the principle of universal suffrage. Procedures should be effective, impartial and non-discriminatory, thereby enabling all eligible citizens the opportunity to participate in the election. Eligibility criteria should not be unduly restrictive, although reasonable restrictions may apply, for example when establishing a minimum voting age (normally citizens aged 18 and over). No segments of the population should be disenfranchised either by law or in practice. *Inter alia*, it is unreasonable to impose restrictions based on gender, religion, race or ethnic origin, party affiliation, language, literacy, property status, physical ability, or to impose a registration fee (European Commission, 2002, 13). In special electoral circumstances, such as those found following a violent conflict, it may be necessary to introduce special procedures enabling eligible persons to exercise their suffrage rights. To ensure the equality of the vote, voter registries should ensure that it is technically not possible for citizens to have more than one voter registration entry, and that procedures are in place to prevent multiple voting. Registers should be updated regularly to remove the entries of deceased persons and to take account of changes of residence. To assess the equality and universality of the vote, election observers should pay attention not only to legislation governing voter registration and its implementation, but also to issues concerning the practicalities of exercising suffrage rights, for example the number of polling stations in an election district, or the distance voters must travel to vote. Such factors could be discriminatory and discourage particular groups of citizens from voting. Rural populations, the illiterate, women, minority ethnic/religious groups, and poor citizens are sometimes vulnerable in this regard.

Political party registration and the nomination and registration of candidates should respect the principle of the right and opportunity of all citizens to stand for election without unreasonable restriction. As for other phases of the election cycle, this should be respected in law and in practice. Parties and candidates should therefore not be impeded nor hindered by unnecessary or burdensome requirements, and all prospective contestants should be treated equally. Reasonable requirements include payment of a financial deposit or demonstrating a minimum level of support by presenting a list of signatures supporting the party

or candidate nomination. However, the size of the financial deposit or the required number of supporting signatures should not be so great as to deter serious candidates. As a general principle, because the right to seek election is a fundamental right, parties and candidates should not be denied registration as election contestants for minor irregularities in their registration documents.

Allocation of mandates. As seen earlier, a number of different electoral systems are in common use. Proportional representation systems frequently require a party to receive a certain minimum percentage of the vote before it can share in the distribution of mandates. It is not possible to establish if a representation threshold is 'reasonable' without reference to an understanding of the arguments made by the legislator in setting the threshold level, and whether there is political agreement on the threshold among the main stakeholders. Frequently, thresholds between 2–5 percent of the valid votes are considered reasonable. However, it is extremely important that the legislation is unambiguous about how the threshold is to be calculated, for example, whether the percentage is of all votes cast or only 'valid' votes.

Respect for the **freedom of expression, association, peaceful assembly and movement** should exist at all times. During a campaign period, respect for fundamental freedoms is a pre-requisite of a 'genuine' election process. In order to assess respect for fundamental freedoms, election observers should monitor the entire campaign period. Limitations or restrictions to fundamental freedoms must be reasonable, set out in law and applied only in specific and justifiable circumstances, for example, by the clear necessity to preserve public order.

Equal treatment and media access. Best practice establishes that the media managed or funded by the state should provide broadly equal access to the main election contestants and unbiased coverage of their campaigns. This creates a more equal campaign environment and provides an opportunity for voters to receive information on the various political platforms. In privately owned media, access is not to be denied to contestants, and tariffs should be equal for all parties at rates no higher than those for commercial advertising. Media monitoring methodologies can be applied to assess the fairness of the media's campaign coverage.

Frequently, **finance rules and expenditure limits** are established for parties' and candidates' campaigns. Among other factors, their aim is to lessen the detrimental effect that *de facto* inequalities in the contestants' financial resources can have on the evenness of an election campaign and to provide for transparent campaign funding. While no specific international election standards concerning campaign expenditure have been adopted, domestic legislation in many countries addresses the issue, albeit with different approaches. Some jurisdictions provide for public funding of parties' campaigns; others do not. Both approaches are equally legitimate. Campaign finance rules frequently set expenditure limits, restrictions on certain types of donation, reporting requirements and sanctions for non-compli-

ance. The failure to incorporate adequate provisions on campaign expenditure issues, or the failure to apply them effectively can cause (or leave unresolved) significant electoral inequalities. Best practice establishes that the legislation attempts to regulate the issue by ensuring at least minimum levels of financial transparency.

Use of state resources in the election campaign may be legitimate, for example by allowing public facilities to be used for campaign meetings and fair coverage of the campaign in the state media. However, state resources should not be made available to a contestant or contestants on an exclusive or selective basis. It is a general principle of democracy that a clear separation be maintained between political parties and states.⁴ Misuse of state resources during an election campaign can blur this important distinction.

Voting procedures must ensure the secrecy of the vote. Polling officials should undertake their tasks in a politically neutral manner, and voting conditions should be broadly equal for all voters. Those with special needs, for example disabled persons, should enjoy appropriate voting arrangements. To ensure the equality of the vote, safeguards should be put in place to prevent multiple or fraudulent voting. Best practice demands that polling should be conducted openly and transparently, and polling officials should receive adequate training for their tasks.

The vote count. It is of paramount importance that votes are counted accurately and reported honestly. The first stage of the vote count usually takes place at the polling place where the votes were cast, unless extraordinary security circumstances dictate otherwise. This counting process at all levels should be transparent and conducted in the presence of party or candidate representatives and election observers. Best practice establishes that to ensure a transparent process, representatives of the election contestants and observers should be entitled to receive copies of election returns at all levels.

The announcement of election results should be timely and comprehensive. Early publication of preliminary results enhances transparency. To increase confidence that the official election results have been accurately and honestly calculated, the election administration body should make election results from all polling levels publicly available before announcing the final results.

The adjudication of electoral disputes (formal claims, complaints and appeals) shall be prompt, neutral and effective, regardless of the manner in which the adjudication function is institutionally structured (ordinary judiciary, special judiciary or election administration bodies). All formal complaints submitted by election contestants should be substantiated with evidence supporting the claim. Where serious and substantiated election violations have taken place, the competent judicial bodies have a duty to provide legal redress.

Observation of the election at all stages by international and domestic monitors enhances transparency and may increase the credibility of the process. The main

rights and duties of electoral observers are usually set out in the election law or regulations adopted by the election administration. The adoption of a Code of Conduct by election observer organisations can enhance popular and partisan confidence in their activities and impartiality.

2. The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

3. However, as participating states of the OSCE, the provisions of the Copenhagen Document apply to the United States of America and Canada.

4. Paragraph 5.4 of the OSCE Copenhagen Document makes specific reference to this issue, and as such can be considered as an election standard.

3. Establishing an Election Monitoring Programme

Setting up an Election Observation Organisation Transparencia, Peru

In 1992, Alberto Fujimori, the former President of Peru, dissolved Congress and pushed through a new Constitution that allowed him to stand for a second five-year term. These events heightened concerns that the administration was unwilling to accept a democratic transfer of power. The next presidential and parliamentary elections were due in 1995. In April 1994, a group of professionals with various backgrounds initiated discussions on forming a non-political organisation to monitor the elections.

On 18 July 1994, 11 persons formed a general assembly, and agreed the statutes of the civil association Transparencia.⁵ The founding members were all distinguished persons, some with international standing. Their prestige and reputation for impartiality ensured that Transparencia would be recognised as independent and trustworthy and broadened the organisation's appeal to other civil society organisations.

It was decided that the organisation should not only observe electoral processes countrywide but also work continuously to promote democracy and mobilise citizens.⁶ The founding principles are as follows:

“Transparencia, formed by a group of citizens without partisan allegiance – convinced of the urgency of generating among the Peruvian citizenry the credibility required for the health of the democratic system, the need to strengthen faith in republican institutions and contribute to guaranteeing liberty, honor, and efficiency in the voting process – has decided to unite efforts to achieve two essential objectives:

1. *To work towards achieving, through an active civic education campaign, an effective mobilization of the citizenry that should yield a high voter turnout;*

2. *To collaborate with the electoral authorities and with the electorate so that all stages of the electoral process, including the act of voting and its follow-ups, be carried out in a framework of complete liberty, transparency, legitimacy and honor”.*

Transparencia’s legal status was approved on 6 September 1994. However, at this time, the law made no mention of election observation by national organisations. Nevertheless, the electoral administration granted Transparencia’s observers the authority to monitor the 1995 elections, and in 1997, the electoral law was amended to provide for domestic non-party observation of electoral processes. It set out the rules for applying for accreditation, observers’ rights, their duties, prohibitions on certain activities and the conditions required of NGOs to monitor the process. However, the law only dealt with observation on the day of the election. It did not envisage pre-election monitoring or establish the right to access or receive information during the run-up of the election. Fortunately, with the exception of the controversial year 2000 elections, Transparencia has not been impeded in carrying out its work.

The organisation is founded on the principles of independence and political impartiality. All members are required to resign if they become politically active. Each volunteer is required to sign a declaration that he or she is not affiliated to any political party and will remain completely neutral while conducting their observation activities.

While the organisational objectives were clear – to found the first national-level election observation organisation in Peru – it faced a number of challenges. While the founding members had sufficient legal expertise, they lacked experience in building an organisation and some technical aspects of observing elections, for example how to conduct a “quick count” of votes.⁷ To assist Transparencia to overcome these challenges, various specialist international institutions provided crucially important technical assistance and financial support, and lessons were learned from NGOs engaged in electoral observation in other countries.⁸

The decision to create Transparencia as a civic movement, rather than a typical NGO, has affected its organisational structure, especially between election periods. At the top level, a seven-member Board of Directors was elected by the General Assembly (the assembly of the organisation’s members). The Board continues to have a steering rather than an advisory role and has remained very involved in the organisations activities. The General Assembly also founded a ‘Technical Secretariat’ to direct day-to-day activities. With the exception of some staff in the Technical Secretariat and some support staff, almost all other activists are unpaid volunteers, whether election observers at polling stations or members of the Board of Directors.

At the sub-national level, a network of provincial committees was formed. The network gives the organisation nationwide reach. However, it is more properly described as a “network of networks” as it was built upon the existing structures

of other bodies, especially religious and social organisations. At the outset, Transparencia made the first approaches to these organisations. In addition, visits were made to provincial cities to establish contacts with universities, the mass media, labour unions and agricultural groups. However, once the organisation was properly established and its activities became widely known, many other organisations contacted Transparencia. The support received from these organisations, for example by recruiting their members as volunteer election observers or providing material resources, remains crucially important. Every committee has a Coordinator and three to five other members, many of whom are teachers or journalists and all of whom are respected in their local community. Volunteers are mobilised through the existing networks by announcements in the local media. A large part of the network remains active between election periods.

To ensure observers are familiar with the role and tasks, Transparencia provides training. Due to the large number of volunteers, a “cascade method” is used whereby persons are trained to train others, who in turn provide training to others and so on. The initial phase is to “train the trainers”. Workshops are held throughout the country, using specially prepared manuals. The training covers: key electoral principles; the country’s electoral system; rules covering the electoral campaign; electoral materials and documents; polling procedures; possible electoral violations as well as observation methodology and techniques. Some observers are trained for “quick count” operations. Additionally, students receive training on providing election related information to citizens at public information stands located in polling stations.

Evolution of the Organisation

For the 1995 parliamentary and presidential elections, local committees were established in 47 provinces in Peru and two foreign cities, principally to monitor events on polling day. The organisation recruited over 9,000 volunteer observers, easily surpassing the target of 4,500. Over the next five years, the organisation grew. For the 2000 elections, local committees were active in all of Peru’s 194 provinces as well as 44 cities in 16 countries throughout the world. In 2000, over 19,000 people volunteered to observe the elections. This number rose to 23,000 when fresh presidential elections were held in 2001. Many volunteers participate as election observers year after year. While university students are particularly enthusiastic supporters, the organisation is able to recruit volunteers from various backgrounds. Men and women are represented in equal numbers.

In 1995, Transparencia promoted the so-called Pact of San Marcos, an agreement between all the competing political parties whereby they pledged to conduct fair electoral campaigns. All parties signed the agreement, except the incumbent party. After 1995, the organisation broadened its observation activities to include the pre-election period.

The 2000 elections were highly controversial. The incumbent President Alberto Fujimori was permitted to run for a third term, despite the two-term limit established by the Constitution. The election administration was effectively under governmental control, and real concern existed that the process would not be democratic. Transparencia decided to begin monitoring the process several months before Election Day. All 194 provincial committees were active, providing information on the misuse of public resources and inaccuracies in voter registers. The political content of the main national media were monitored from the central offices. However, due to the danger that official results would be manipulated, the “quick count” remained the key element of Transparencia’s activities.

Over time, Transparencia’s reputation for impartiality and the accuracy of its “quick count” results has been consolidated among Peruvian citizens and political parties. Thus, when the organisation announced that none of the presidential candidates had received enough votes for a first round victory in the 2000 election, the figures were widely accepted. However, over the coming days, the official results began to deviate from these data, and Alberto Fujimori’s share of the vote edged ever closer to 50 percent. In many quarters, the results were regarded as having been manipulated, and many national and international organisations and foreign governments called for the holding of a second round. Although the authorities eventually declared a second round would take place, conditions for a democratic election were not in place. Consequently, Transparencia announced it would not observe the runoff election. The opposition candidate boycotted the election. Three months after his re-election, President Fujimori fled Peru following the eruption of a corruption scandal. New elections were scheduled for 2001.

In 2001, once again Transparencia promoted an electoral pledge, ‘the Civic Pact’, between the presidential candidates. With the exception of the former Minister of Economic Affairs, all gave their agreement to abide by its terms. In addition, Transparencia organised the only televised debate between the two second round candidates.

Relations with Donors

Transparencia relies heavily on the unpaid work of its volunteers and the support of other non-governmental organisations. However, without adequate funding it would not be able to function. Private businesses have made significant financial contributions, including airplane tickets, communication costs, and food and beverages for observers. Other funds, received from international donors, cover the running costs of the central office, training materials, conducting workshops and recruitment campaigns.

The financial and technical assistance given by the National Democratic Institute (NDI), the International Foundations for Elections Systems (IFES), the

National Endowment for Democracy (NED), and the International Republican Institute (IRI) during the 1995 election was essential for the success of the observation programme. Other donors, including USAID, the Governments of Canada, Germany and the United Kingdom, were among the first to provide financial assistance and have supported Transparencia during most electoral periods as well as its long-term democratisation projects. In 2000 and 2001, additional funding enabled Transparencia to mount its largest ever observation efforts and broaden its activities.⁹ Transparencia participated in donor coordination initiatives and met regularly with its donors, providing them with in-depth information on the electoral situation in Peru. The donors never interfered in Transparencia's work or sought to influence its findings, and permitted the organisation to allocate the funds flexibly to meet the changing electoral circumstances.

Today, Transparencia manages a variety of democratisation projects. While many donors continue to support its work, in general it has been harder to secure funding for longer-term democracy monitoring projects than it was to receive funds for electoral observation at times when democracy was jeopardised.

Relations with the Media

In any election, the media plays a crucially important role. Although Transparencia suffered defamatory attacks in the media, in general the organisation has developed very good relations with many local, national and international mass media.¹⁰ They have proved to be important allies, particularly as they have the power to disseminate Transparencia's messages widely and improve the public's awareness of its activity. However, paid advertisements or articles are never placed. Indeed, many local and national media have granted Transparencia free space to make public announcements or broadcast specially prepared programs.¹¹ Care is taken to make these announcements only in media that are considered "politically neutral".

During election periods, press conferences are held frequently to present the findings on the campaign period and polling. Journalists from all media are invited. Transparencia produces a weekly publication, 'Electoral Facts', containing statistical information on diverse election-related issues, including the media coverage of the campaign. This provides journalists with expert research and newsworthy items. In the run up to elections, international information days are held for international election observers and journalists. These provide background on events that took place in the weeks and months before Election Day. In 2000 and 2001, Transparencia took a proactive approach and made contact with many newspapers around the world to give information on electoral developments. Eventually, some 50 foreign journalists were contacting the organisation on a regular basis. They also received Election Day and post-election reports that evaluated the process, as soon as they were released.

Consolidation of the Movement

Election observation can be a sensitive activity and can lead to negative responses from state authorities. It is of the highest importance that an organisation retains political impartiality and bases its public election assessments on available evidence. Transparencia's role in highlighting inadequacies in electoral processes in Peru has given the organisation a much higher public profile than NGOs engaged in other activities. Its strategies and interventions have always been clearly thought out, and the professionalism of its staff and observers enabled the organisation to retain its credibility with various stakeholders. The reputation of the founders and current members of the General Assembly was particularly important in conferring legitimacy and acceptance on the organisation.

The establishment of a national network of provincial committees gives Transparencia the capacity to operate its activities countrywide, and its strategic alliances with other NGOs in Peru strengthen its operations further. Because Transparencia is a permanent organisation, over time it has developed expertise in a range of election observation activities, including monitoring the campaign and the media, as well as in implementing civic education programmes. However, it was important to perfect Election Day observation methodology before broadening the range of activities. The experience provided by election monitoring organisations from other countries was important in avoiding some potential pitfalls.

5. The name Transparencia is based on an election monitoring organisation in Paraguay, *Saka*, meaning transparency in the majority language, Guarani. Over the coming years, the general assembly expanded to include 33 members.

6. This was achieved by conducting a large-scale civic education campaign covering the importance of voting, how to vote and the basic principles of "free and fair elections". Activists held workshops, participated in radio and television programs and set up information stands in public spaces.

7. See Chapter 11. A 'quick count' enables a tabulation of votes to take place in parallel to the official calculation of results.

8. In November 1994, representatives of NAMFREL (Philippines), *Participa* (Chile), *Alianza Cívica* (Mexico), *Justice and Peace* (Panama) and *Saka* (Paraguay) were invited to a seminar in Peru to share their experiences.

9. Funding was received from USAID, the European Union, the Open Society Institute, eight governments (Canada, Finland, Germany, Switzerland, the Netherlands, Great Britain, Denmark and France) and a Belgian NGO. In 2001, the media monitoring project was expanded and formalised with financial and technical assistance from the European Union.

10. Currently, four members of Transparencia's General Assembly are media professionals and there is at least one journalist in almost every provincial committee.

11. In 2001, prior to the first round of the presidential election, Transparencia received free airspace on nationwide television and radio to the value of over US\$ 115,000.

Building a Coalition to Observe Elections K-DOP, Kenya

In 2002, presidential elections were due in Kenya. These were widely regarded as critical to Kenya's democratic development. Daniel Arap Moi, President for the previous 24 years, was ineligible to stand and Kenyans realised that a peaceful transfer of power was a real prospect. The non-governmental sector recognised the importance of the elections and set about working together to monitor the process.

The Non-Governmental Sector

Kenya has a well-established and active network of non-governmental organisations (NGOs) and faith-based organisations, some with a long history of promoting human rights and democracy. Indeed, during the 1990's, the leadership of Kenya's four major faiths – Catholics, Hindus, Muslims and Protestants – worked successfully with NGOs to promote wide-ranging constitutional reform (the *Ufungamano* Initiative).¹²

This collaboration demonstrated that people of different faiths and backgrounds could work together effectively and gave impetus to the formation of a broad-based election observation coalition. It was readily apparent that faith-based organisations should play a significant role in the electoral process and as members of the observer coalition, not only because of their experience of observing previous elections but also because their moral authority, high public regard and political impartiality would enhance the credibility of the observation programme, particularly in Kenya where the highly charged political environment can lead to electoral violence. Additionally, these organisations possessed significant physical and human resources, established national networks and an effective mobilisation capacity.

Three organisations formed a coalition to observe the 1997 elections: the Catholic Justice and Peace Commission (CJPC), the National Council of Churches in Kenya (NCCCK) and the Institute for Education in Democracy (IED). However, in the run-up to the 2002 elections, it was considered necessary to broaden the membership of the coalition, even if this might lessen its stability. The CJPC and the NCCCK had a long history of reaching out to other faiths through their ecumenical activity. Consequently, organisations representing the Muslim and Hindu faiths were invited to become partners in the observation programme. Addition-

ally, it was decided to include more NGOs in the coalition, as their specialist expertise and strong analytical capability would add additional value.

In June 2002, after lengthy discussions, the Kenya Domestic Observation Programme (K-DOP) was formally established by the signing of a memorandum of understanding between four faith-based organisations and three non-governmental organisations.¹³ The coalition members shared common objectives. It was hoped that the presence and visibility of observers would improve the transparency of the process and lessen the potential for electoral malpractice. In addition, K-DOP believed its activity could lessen political tension and consequently reduce election-related violent acts, increase popular participation in the process and increase the accountability of state authorities. Nevertheless, despite sharing common objectives and the attractions of forming a broad-based coalition, some doubt remained whether it could work in practice, particularly at grassroots level where faith-based organisations and NGOs had less experience of collaborating.

The Structure of the Coalition

The Memorandum of Understanding defined in broad terms the roles of the coalition members, the management structure and organisational issues. This agreement was a critical building block in the formation of the coalition. Shortly afterwards, members were elected to the Strategic Board (SB), which provided political direction and was the highest decision-making organ, and the Programme Technical Board (PTB) which provided day-to-day programme management. Both boards approved a Code of Conduct, to which all observers were to be bound, and “Standards for Free and Fair Elections”, based largely on those adopted by the African Union. The creation of the PTB was of vital importance in ensuring the effective co-ordination and organisation of such a large and broad-based initiative. It took decisions on the programme’s terms of reference, recruitment strategy, fields of activity, reporting formats and observer training schedules. Additionally, it was responsible for finance and administration issues, logistics, observation methodology, observer deployment and supervising the nine-member Secretariat. The PTB contributed hugely to the success of the programme. The SB enabled a free flow of information among the coalition partners, which helped build trust among the participants. The Secretariat received and analysed the thousands of reports sent from the field, providing the PTB and SB with up to date information.¹⁴

The Terms of Reference and the Memorandum of Understanding proved very useful when allocating responsibilities and local-level leadership positions among the four faith-based organisations. Over a three-day period in September, K-DOP members agreed upon the structure of the programme and its nationwide deployment plan, including the number of staff and volunteers each organisation was to

recruit and train. A straightforward operating structure was developed – the PTB would co-ordinate the teams working in Nairobi on national-level issues, while Regional Co-ordinators would lead teams composed of ‘Organisers’ and ‘Observers’ working at the constituency level. These teams were to recruit and train some 19,000 ‘Poll Watchers’ who would follow events at polling stations on Election Day.¹⁵ However, the need for flexibility in planning became evident in November, when the Electoral Commission of Kenya (ECK) increased the number of polling places from 14,000 to 18,400!

Decisions on the deployment plan included identifying the ‘lead organisation’ in specific constituencies. All decisions on deployment were taken by consensus. The criteria employed was simple; whichever had the capacity to recruit and train the majority of poll watchers would also recruit the ‘Constituency Organiser’ while other organisations in the coalition would recruit at least one of the two ‘Constituency Observers’. As a result, the observer teams in virtually all of the constituencies were composed of volunteers from a variety of faiths. On Election Day, poll watchers from the Christian, Muslim and Hindu faiths were seen working side by side in many large towns and cities.

In October, after finalising the allocation of responsibilities and recruitment of regional-level staff, the Regional Co-ordinators received a two-day briefing on their role and tasks. Later, the Regional Co-ordinators received training on how to train the ‘Organisers’ and ‘Observers’ who were to work at constituency level. In early December, the Regional Co-ordinators received additional training on how the constituency organisers and observers should train the 18,500 poll watchers. In mid-December, the training of poll watchers took place. Regular contact between the Regional Co-ordinators from the four faith-based organisations enabled findings and problem solving solutions to be exchanged freely.

Some Lessons Learned

The K-DOP experience demonstrates that there are both advantages and disadvantages to working as a coalition. Certainly, the K-DOP coalition represented a much broader spectrum of public interests than a single organisation could hope to achieve, and consequently its findings could not be easily dismissed. Ordinary citizens genuinely wanted the elections to be democratic and were able to identify with at least one of the organisations within the organisation. This increased the public’s confidence in the independence and impartiality of the observation exercise. In short, while each member organisation made a specific contribution to the programme, K-DOP was stronger than the sum of its parts. However, it was vital to the success of the observation programme that all participants steadfastly remained politically neutral actors, and that ongoing activities outside

the election observation programme did not jeopardise the reputation of the coalition as a whole.

The larger coalition partners lent significant human resources to the programme, ensuring nationwide reach. Being able to use existing organisational networks was a significant advantage. Nevertheless, these had to be adapted to the needs of the programme and meet its structural requirements. Managing such large-scale operations was a significant challenge. Fortunately, the coalition's structure enabled information to be passed from the grassroots to the top echelons rapidly. Regional, constituency and local co-operation was extremely effective and has left a lasting legacy of good will for future collaboration. Indeed, the programme brought unforeseen benefits, including a better understanding between different faith-based organisations and NGOs.

However, coalitions can be unstable, lack cohesion and be prone to rivalries. Collective decision-making and the need for compromise can cause frustration among individual partners. The smaller organisations in the coalition may feel intimidated by the larger organisations, and individual partners may fail to value fully the contribution made by others or underestimate their technical expertise. Trust, mutual respect, effective communication and information-sharing among partners are critical factors in holding together a coalition. By keeping the coalitions' objectives in clear focus and subsuming individual ambitions, K-DOP was generally able to avoid these problems. Nevertheless, despite the hard work at the local and national level by all partners, confidence in each other was sorely tested when it became clear that one partner was conducting a parallel, separately funded observation programme.

12. It led to the formation of the People's Commission of Kenya, which later merged with the Parliamentary-led group to form the Constitution of Kenya Review Commission that spearheaded the review of the Kenyan Constitution.

13. K-DOP was composed of the CJPC, NCKK, Supreme Council of Kenyan Muslims (SUPKEM), the Hindu Council of Kenya (HCK), the Media Institute (MI), IED and Transparency International – Kenya (TI-K).

14. The Secretariat collated and assessed over 5,000 reports from the field on pre-election activities and 36,000 reports on the conduct of voting and counting. These formed the basis of the publication *“When Kenyans Spoke”*, a comprehensive report on the 2002 General Elections produced by K-DOP, which was distributed to a wide variety of stakeholders including: Government, political parties, the Parliament, Members of Parliament, NGOs, the media and the Election Commission of Kenya. A number of recommendations contained in the publication are being implemented.

15. 64 Regional Co-ordinators, 210 Constituency Organisers and 420 Constituency Observers were recruited.

Dilemmas of Observing MIDH, Ivory Coast

Background

From 1960 to 1990, a single political party, the *Parti Démocratique de Côte-d'Ivoire* (PDCI), and a sole President, Felix Houphouët-Boigny, ruled Côte d'Ivoire. The first multi-party election took place in 1990. Prior to this, opposition parties were not permitted; hence observing the electoral process was senseless.

Like many African countries, Côte d'Ivoire has a population of different ethnicities and two major faiths. Christians reside mainly in the south, and Muslims reside mainly in the north. The major parties have strongholds in the different regions. The country is home to a large number of immigrants, many of whom lack Ivorian citizenship. From 1995, political rhetoric in Côte d'Ivoire became increasingly nationalistic, particularly that of Henri Konan Bédié (Houphouët-Boigny's successor as President) and Laurent Gbagbo, leader of the *Front Populaire Ivoirien* (FPI). These factors have significantly affected the nature of election contests.

In December 1999, amid rising public discontent with the political and economic situation, General Robert Guei overthrew President Bédié in a military coup. Presidential elections were scheduled for July 2000. However, before they took place, a new constitution was adopted. Article 35 narrowed the eligibility criteria to stand for election by requiring that both parents of candidates must be Ivorian.

Taking a Decision: to Observe or Not to Observe

Since the creation of the *Mouvement Ivoirien des Droits Humains* – MIDH (the Ivorian Movement of Human Rights) in October 2000, four elections have taken place in Côte d'Ivoire: presidential (October 2000), legislative (December 2000), local assembly (March 2001) and district and regional elections (July 2002).

In 2000, the presidential election campaign was marred by xenophobic speeches by the military President Robert Guei, Laurent Gbagbo and their followers, incitements to violence against foreigners and assimilated persons and the disenfranchisement of large numbers of potentially eligible voters, whose citizenship was questioned. Shortly before the election, the Supreme Court barred 15 of the 19 candidates from contesting the election, including Henri Konan Bédié and Alas-

sane Ouattara who led the *Rassemblement Des Républicains* (RDR), an opposition party with strong support in the north of the country. This decision served to further divide the communities. The narrowing of the field left only Laurent Gbagbo as a serious challenger to Robert Guei.

Clearly, the poor election environment, lack of respect for fundamental freedoms, and the serious restriction of voters' choice were not conducive to a democratic poll. In this situation, MIDH felt that it was not appropriate to monitor the poll, a decision announced in its first declaration on 19 October 2000, three days before the election. International organisations withdrew their support for the election, including for observation of the process by NGOs. The PDCI and the RDR urged supporters to boycott the election.

Robert Guei attempted to falsify the election results, but after large demonstrations of popular protest, Laurent Gbagbo was declared the winner. However, following calls for the elections to be repeated with all candidates allowed to stand, a wave of violent clashes between supporters of the RDR and the FPI claimed the lives of hundreds of people. Legislative elections had already been scheduled to take place on 10 December. Violence re-erupted in early December, after the Supreme Court prevented Alassane Ouattara from participating in the parliamentary elections on suspicion that he might be of foreign origin. The RDR responded by boycotting the process. Once again, the restriction on voters' choice ensured that the election did not provide for a genuine choice, and MIDH decided not to observe the process.

In 2001, slowly the political and security situation began to improve, although local unrest remained a problem. Importantly, no obstacles were placed on parties' full participation in the March 2001 local elections, and an observation of this process and the July regional elections became practicable. Nevertheless, MIDH faced a number of challenges. While the organisation used reliable methodology and had gained respect for its independence, impartiality and objectivity, a section of the public viewed the organisation with distrust, regarding it as an opponent to the government. As a result, some MIDH observers faced hostility from pro-government activists and some police. Incidents included: attempts to physically prevent them carrying out their activities; verbal threats and disparagement of MIDH by some voters; non-cooperation from local authorities and polling boards; and restrictions on their freedom of movement. Additionally, the insecure location of some polling stations was problematic, although the biggest electoral problem was with logistics and the freedom of movement.

Security Considerations and Observing Elections

The security situation must always be considered fully as it may not make a comprehensive observation feasible. However, where an acceptable level of secu-

rity is present but tensions remain high, a credible observation of the process can serve as a moderating element. Providing that observers retain their impartiality and objectivity, the organisation can win the confidence of political leaders.

Due to the insecure environment, MIDH recognised the importance of ensuring that observers received proper training four to six weeks before the election. The organisation deployed approximately 100 election observers for the March 2001 election. They were drawn from all the different ethnic communities of Cote D'Ivoire. However, for their own protection they were never deployed to the area in which they resided. It was obvious that observers could face a hostile reception and certain other security measures were put in place. These included:

- Identifying the most potentially problematic areas in advance of deployment;
- Conducting a visit to these areas, assessing the situation and what special measures were required;
- Ensuring permanent communication between MIDH's central office and National Electoral Commission (CNE);
- Observation in teams of two or three, never alone;
- Deploying some mobile teams which took turns at observing the same polling station;
- Establishing regional bases to serve as information relays between observers and MIDH's central office;
- Ensuring that the role and function of observers was well explained to potentially hostile groups;
- Providing observer teams with mobile telephones to communicate problems rapidly;
- Minimising the visibility, which in the context of the March and July 2001 elections lessened potential risk; and,
- Advising teams not to get involved in election disputes, to leave polling stations where the situation became tense or where their security was threatened.

MIDH's experience shows that election observation is not always appropriate, for instance where legal provisions deny candidates and voters their rights and a lack of pluralism means that the contest is not a 'genuine' election. Additionally, due to security considerations it may not be possible to observe elections.

In recent years, political tension between supporters of rival political groups has led to serious violence and civil conflict, which has *de facto* divided the country. The organisation of democratic elections in October 2005 will be extremely challenging, and unless security is restored it may not be possible to hold the elections.

4. Assessing the Legal Framework and Advocating for Change

GONG, Croatia

The Croatian non-governmental organisation GONG was founded in 1997 to encourage citizens' active participation in political processes. During the first three years of its existence, most of its efforts were focussed on building its non-partisan election-monitoring programme and deploying observers. Over time it diversified its activities. However, from the outset GONG has campaigned for change. The first challenge was to secure an amendment to the legislation to permit GONG and other civil society organisations the right to observe elections; until 1999, the law did not foresee this right. Proposing amendments to the election legislation have remained a key part of GONG's advocacy work ever since.

Assessing the Legal Framework

Over the years, GONG gathered a huge amount of information on the election processes in Croatia, and the organisation has identified flaws in a number of legal provisions.¹⁶ However, before embarking on a campaign to improve the legislation, GONG conducted a comprehensive assessment of the legal framework to identify all the major weaknesses. To give a comparative dimension to the assessment, the organisation drew on the experiences of election observer organisations active in other countries. Staff members participated in seminars and conferences, monitored elections outside Croatia and broadened their knowledge of the various legal frameworks for conducting elections.

Croatia does not have an all-embracing 'Election Code'. The legal framework for elections is fragmented between a variety of different acts, including three separate laws regulating the presidential, parliamentary and municipal elections. Other relevant acts include the Law on Voter Registers and the Law on Political Parties. Between 1990 and 2004, the election legislation was amended frequently, sometimes close to Election Day. This created an unstable legal basis for the elections and a degree of confusion. Moreover, even now the legislation does not regulate adequately all aspects of the election process. Many issues are decided by the State Election Commission (SEC), which routinely issues legally binding instructions, sometimes only weeks or days before the election. During previous elec-

tions, many SEC instructions dealt with significant issues¹⁷, and the timing of their adoption created uncertainty and caused confusion among certain voters.

The lack of clarity concerning the allocation of electoral responsibilities among the various state bodies is a serious weakness. While the SEC has overall responsibility for organising the electoral process, it is constituted as an *ad hoc* body which functions only during election periods. Hence difficulties arise in resolving issues that require a coordinated long-term approach. GONG identified the failure to constitute the SEC as a permanent body as the most significant shortcoming in the electoral legislation.

Elsewhere, parts of the election process are left almost unregulated; for example, while the Law on Political Parties contains some vague provisions on party financing, no legal act exists to regulate the financing of election campaigns or provide rules on disclosing donations and expenditure. Consequently, only one political party has issued a report on its finances. The Law on Voter Registers fails to provide for a nationwide central voter register. This caused inaccuracies in voter lists and the inability of some otherwise eligible citizens to participate as voters.

The main point of reference for assessing the legal framework is whether the legislation complies with international electoral standards and best practices. GONG concluded that the universality of the vote and voters' confidence in the process cannot be assured, if voter registers are not accurate; there cannot be a transparent and fair process, if campaign finance is left unregulated; and the transparency and certainty of the process suffers when legislation is changed shortly before an election. GONG identified five legal acts requiring review by the Parliament: the three Election Laws, which among other things required harmonisation; the Law on Voter Registers and the Law on Political Parties. GONG proposed the adoption of a new law regulating the Financing of Election Campaigns. However, the organisation's main goal was to convince the public, experts and decision-makers that without a permanent SEC the election process could not be improved significantly, and that a new Law on the State Election Commission (as a permanent body) was required.

Reporting Findings

To ensure that observation findings are presented coherently, GONG issues two types of election report – a preliminary report, issued one day after elections, and a more comprehensive final report, issued about one month after Election Day. The preliminary report is succinct and usually generates media interest. The final report is more detailed and comprehensive, covering the entire electoral process, including problems and issues that arose during the pre-election period as well as during polling. Additionally, it provides an overview and analysis of the legal frame-

work and assesses whether the legislation and its application meet international standards. A constructive approach is taken, and recommendations are made on how the legislation can be improved and how laws can be implemented.

To ensure that the final report reaches the notice of decision-makers, it is disseminated widely to state institutions, legislators, election administration bodies, experts, the media, donors, domestic and international civil society organisations and international organisations. It is also posted permanently on GONG's official website and used after elections for its advocacy campaigns. However, GONG found that simply reporting shortcomings in the legislation was insufficient to bring about change, and that a pro-active approach to advocating change was required.

Advocacy Strategies

In recent years, GONG has employed several different advocacy strategies, depending on the specific objective and target group. The following describes the strategies that proved most effective.

Research and Analysis: Thorough research provides the basis for every advocacy campaign. Collect and analyse as much information as possible and draw upon a variety of different sources and perspectives. To maintain credibility, those advocating change must be familiar with all the arguments surrounding a particular issue and willing and able to explain these to the public and decision-makers. Comparative analysis, referring to international standards and providing examples of good practice in other countries, may help to build strong arguments. In addition to issuing reports and recommendations, organisations should consider drafting so-called 'model laws'. These can be useful as a basis for discussions with the Parliament or government ministries.

Public Action: Enlisting the support of the public can strengthen the advocacy effort. However, this can prove difficult where the issue is complex and not easily comprehensible to the majority of citizens. Thus, this strategy may not be appropriate for all campaigns. If this strategy is employed, the issue must be brought closer to the "ordinary people" by explaining why they too should be interested. To retain the public's attention, messages should be kept as simple as possible, focussing on the nature of the problem and the positive results of implementing the change. An action plan should be developed, setting out a schedule of public appearances specifying when, where, how and for how long the action will take place. These often consist of launching petitions, locating information stands in the public places, disseminating leaflets. GONG also found it useful to raise campaign issues during public panel discussions, conferences and expert meetings.

Media coverage: Generating coverage in the media is particularly helpful in raising public awareness and gives the organisation a higher profile. Building and maintaining good relations with the media is a long-term process but of crucial impor-

tance for any advocacy campaign. However, it can be a serious challenge to keep journalists interested in issues that may not be seen as burning issues. Therefore, a media strategy should be agreed upon, which may include appointing a spokesperson for the organisation, ensuring that newsworthy events such as public action get the media's attention. To increase the media's interest in the organisation's work, from time to time press conferences can be held and press releases issued, for example, at the launch of a campaign. It is also useful to give media interviews and keep journalists informed about planned events and campaigns. The media helped GONG develop a critically important category of supporter: the so-called 'change agents' – people that possess public recognition (experts, civil society members, politicians etc) but who initially were unaware of the issue on which GONG was advocating, but once informed subscribed to the organisation's position.

Direct lobbying: This approach seeks to influence key decision-makers. It can take place at any time, but is more effective once the issue has gained visibility through the media and a high level of public awareness. Direct lobbying includes explaining the issue and proposals to decision-makers through correspondence and face-to-face meetings, and ideally enlisting their support and assistance.¹⁸ It is also useful to enlist the support of those who may have some leverage over decision-makers, such as resident international organisations and donors. In general, it is important to avoid personalising the issues, and it is vital to remain polite and professional while lobbying – it makes no sense to alienate key decision-makers. The organisation's proposals should be in everyone's interest and consequently not require a 'hard sell' approach.

Legal remedies: Seeking a legal remedy or lodging an appeal can be very effective in overcoming inadequate legislation or challenging dubious decisions. However, legal research, knowledge of the judicial system and patience are required. Judicial procedures can often take a long time, but if the case is successful, the organisation will gain respect and enhance its credibility.

Using these strategies, GONG has achieved some concrete results. The organisation has won a number of cases at the Constitutional Court, including a 1998 ruling that overturned a decision of the SEC to prevent non-partisan domestic observers from entering polling stations. In 1999, after compiling a 28,000-signature petition, the Election Law was amended to establish the right of impartial observers to observe the whole election process.¹⁹ In 2004, following an 18 month review process, the Court ruled as unconstitutional provisions of two different Election Laws which dealt with voters' rights to file petitions.

In August 2003, GONG worked in co-operation with the Ministry of Justice on drafting a "Law on the State Election Commission as a Permanent Body".²⁰ GONG was also invited to comment on a draft "Law on Financing Election Campaigns for Presidential Elections". The comments were considered by the Parliamentary Commit-

tee and cited during the parliamentary debate. Four amendments proposed by GONG to the law were adopted by Parliament. Additionally, in large part due to GONG's advocacy work, Parliament adopted two "Conclusions" which obliged the Government to propose a Law on the State Election Commission as Permanent Body and a Law on Amendments to the Law on Voter Register.

Some Lessons Learned

GONG has seven years of experience gained from successful and not so successful advocacy campaigns, and some valuable lessons were learned. Most importantly, it has been vital to have an effective in-house decision-making process that can set priorities and overall objectives, define the organisation's policy position and adopt an advocacy strategy. It is advisable to identify those that may support or oppose proposals, develop contingency plans, anticipate reactions to proposals and build good relations with the media.

The timing of a campaign is hugely important. This can be influenced by a variety of internal and external factors, for example, when a piece of legislation is due to be discussed in Parliament. An organisation should consider if the timing is right prior to beginning its campaign. If so, a realistic timeframe should be prepared, which takes into account foreseeable delays and provides sufficient flexibility to overcome unforeseen delays.

To ensure that its advocacy efforts had a focal point, GONG appointed a full time "Advocacy Coordinator" with responsibility for monitoring legislative amendments, coordinating and conducting legal research, liaising with key persons and bodies (parliamentary committees, members of parliament, government officials, the SEC, the Constitutional Court, election experts, the media and international organisations), organising public events and centralising data on all developments affecting the issue.

An organisation should be sure it is using the most effective tactics for a specific issue. Sometimes a combination of approaches used simultaneously provides the best result. Getting the media and public to support its aims has never failed to deliver positive results. Being visible and sometimes loud will get the attention of decision-makers, and having enough support to back up the organisation's goals could speed up the process of getting legislation amended or adopted. However, advocacy work often needs a long-term perspective, and patience may be required to realise objectives.

16. In addition to issues identified by GONG's electoral experts, during the elections of 2000 and 2001, many ordinary voters, election observers and even candidates drew attention to a variety of other legislative shortcomings.

17. Including voting by internally displaced persons, refugees and the eligible Croatian Diaspora.

18. In 1999, over two months, GONG sent a birthday card to all MPs whose anniversary fell within this period along with the proposal to amend the Election Law to include provisions allowing for domestic election monitoring.

19. Based on GONG's recommendations, the SEC adopted instructions detailing further observers' rights and duties.

20. However, due to the elections of November 2003 the draft was never discussed in Parliament.

5. Monitoring the Electoral Administration

CeSID, Serbia (Serbia and Montenegro)

During the Milosevic years, serious election violations took place frequently. At this, the majority of central and regional-level election commission members were appointed from the judiciary by the Milosevic regime, and were loyal to it. Their work lacked transparency, and in some cases election results were manipulated.

The Centre for Free Elections and Democracy (CeSID) was founded in 1996 as a non-partisan domestic monitoring group. Until the Serbian parliamentary elections of December 2000, the election administration refused to accredit CeSID's observers. Under these circumstances, CeSID monitored the election process to the largest extent possible, even conducting a parallel vote tabulation of the September 2000 federal elections. However, its observers had no formal right to attend sessions of election commissions or enter polling stations.

The Composition and Functioning of Election Administration Bodies

The composition of election commissions is an extremely important and frequently contentious issue. Different countries apply different criteria to select members. Often political parties nominate commission members (the 'partisan' model). Sometimes the country's president or parliament selects the members. In some countries, election commissions are composed on a non-partisan basis with commissioners drawn from the ranks of the judiciary or other professional bodies (the 'professional' model). The partisan model can promote transparency and enable stakeholders to be involved in decision-making, but can also lead to 'politicised' commissions. Certainly, no single political bloc should be in majority on an election commission. The professional model sometimes results in a lack of independence from the governing authorities.

Regardless of the composition, certain principles should guide the functioning of an election administration, including: strictly observed political impartiality; consistent application of the law among all election contestants; independence from other state structures; and transparency of decision-making. In general, election commissions should function as 'collegial bodies' achieving consensus for decisions, where possible.

Since 2000, the Serbian CEC is composed mainly of persons nominated by political parties according to the party's numerical strength in Parliament. While all CEC members are lawyers, some are nominated more because of their work within a political party than for their knowledge of the election law or administration. Indeed, some parties lack qualified candidates to serve as election commissioners.

Monitoring the Work of the Election Administration

Following the federal elections of September 2000, which led to the ouster of Slobodan Milosevic, a parliamentary election was called in Serbia and a new election law was adopted. It included provisions that for the first time recognised the right of domestic observer groups to monitor the election process. Following the creation of a legal basis for election observation, it was important to establish observers' rights regarding monitoring sessions of the election administration and granted access to relevant documents. In Serbia, as in many other countries, the CEC has overall responsibility for conducting the elections.²¹ However, unusually Serbian legislation establishes a simple two-tier structure of election administration, comprising the CEC and some 10,000 polling boards.²² No intermediate or lower level (regional, district or constituency) election commissions are formed for national elections. Consequently, because decision-making is centralised, it was extremely important that the CEC's sessions were monitored effectively.

If permission to attend the sessions of the election is granted, it is advisable to nominate specific observers for the task. This will facilitate good communication and allow observers to gain an in-depth knowledge of the functioning of the CEC. It is important that the CEC observers have good knowledge of the election law and ideally experience from public administration. In order to monitor the CEC sessions, the organisation will need to be notified in advance of the session time. Sometimes these are fixed in advance, other times they may happen on an ad-hoc basis. Thus, it is important to establish a formal channel of communication.

The role of the designated CEC observer is twofold. Firstly, he/she monitors the application of the legislation and the extent to which the CEC adheres to the principles of election administration. Observers can also informally draw the attention of the CEC to issues or problems identified by regional-level observers and seek clarification of the legislation. Secondly, the observers gather information that is relevant to deployment and organisation of election monitors on Election Day. This is important because decisions taken by the CEC will effect decisions on observation activities and priorities.

Observers may wish to gain access to election-related documents held by the CEC, for example materials prepared for the CEC's sessions, copies of complaints submitted and records of the sessions and minutes of the meetings. Additionally, the CEC will hold other data relevant to election monitoring, for example, lists

of polling stations, numbers of voters per region, detailed results of previous elections. Some of this may be considered public information and might be published. The CEC may provide the information in an electronic format, which is more useful to a monitoring organisation.

The observer(s) should collect copies of all regulations and decisions made by the CEC. A system to receive these promptly should be agreed with the CEC, unless all decisions are available publicly within a short period after their adoption. CEC decisions should be analysed by the monitoring organisation to assess whether they conform to the key electoral principles. In general, CEC decisions provide additional details on how the elections are to be organised rather than varying the law.

As already mentioned, Serbia no longer has regional level election commissions for national level elections. However, in local elections, Municipal Election Commissions are formed. These can be monitored using an approach similar to the one outlined above.

Accreditation

In Serbia, while the new election law provided for domestic election observation, it did not regulate the means by which observers were to be accredited. The parliamentary election took place in December, and CeSID deployed almost 12,000 observers. Since this was the first time that domestic observers were permitted to monitor the process, the issuing of such a large number of accreditation badges was a considerable challenge for the CEC administration. With the good will of the CEC, these problems were overcome. However, this cannot be guaranteed everywhere – hence the importance of building good relations with the electoral authorities and addressing the issue of accreditation as early as possible.

Gaining Acceptance and Access to Information

In Serbia, the concept of domestic election monitoring was unfamiliar, not only to the citizens but also to the bodies charged with conducting elections. Until the appearance of the first domestic election-monitoring organisation in 1996, only foreign observers had any public recognition. When CeSID was created, many people questioned its right and capacity to monitor the elections. To some extent, these questions are still present.

Many CEC members regarded CeSID as a “third party” in the electoral process. Some were curious about the organisation’s interest in the process, about received funds and whether the organisation supported any of the election contestants. Regardless of any political views that any observer may hold, it is of the utmost importance that all staff and volunteers remain objective, professional, and above all, politically impartial.

Since the observers at the CEC are not entitled to speak in the CEC's formal sessions, it is important to establish effective lines of communication with CEC members, including the Chairperson and Secretary of the Commission. This will enable observers to raise their concerns or seek clarification of the legal provisions. CEC members are also a good source of information on irregularities and potential violations. While it was not possible to establish good relations with all CEC members, CeSID remained willing to listen to concerns raised by all participants.

The CEC Secretary and administrative staff should assist observers in getting access to relevant documents and information. Therefore, it is important to establish good lines of communication with these officials. Often, the administrative staff are experts on the election law and possess a detailed knowledge of the election operations. In Serbia, the CEC administration is largely non-partisan. This facilitates good communication.

If the election monitoring organisation wishes to conduct election-related projects in conjunction with the CEC, e.g. training voting board members or printing jointly prepared educational materials, it is vital to have good relations with the CEC. Some lobbying of CEC members to accept this form of cooperation may be required.

Forming an Assessment on the Election Administration

A monitoring organisation may include an assessment of the work of the election administration in its overall assessment of the electoral process, for example, whether it conducted the election transparently. Other aspects and criteria will depend on the scope of its jurisdiction. Issues to monitor can include:

- The general adherence of the election administration to the legislation;
- How election commissions and polling boards are selected and if the selection process was fair;
- The effect of the CEC's composition on decision-making;
- The equality of its treatment of election subjects during the registration period;
- Its coordination with other state bodies, for example, on the preparation of voter lists;
- The CEC's supervision of lower level commissions and the effectiveness of polling boards training;
- The sufficiency of voter information material and public service announcements;
- The independence of the election administration;
- Its organisation of the voting process;
- Arrangements to ensure the integrity of the process and the security of election material;

- Arrangements for “special voting” (voting at home, in prisons, abroad, in military units etc);
- The impartiality, objectivity and consistency of its rulings on election complaints and appeals; and,
- If the tabulation of results is conducted transparently, honestly and accurately.

21. The Federal Election Commission (FEC) administered the federal-level elections in the Republic of Yugoslavia. The Central Election Commission (CEC) administered the elections in the Republic of Serbia.

22. In 2000, Parliament took the decision to dispense with intermediate-level election commissions, largely because of their poor performance and political bias during elections in the 1990s.

6. Voter Registration and Auditing Voter Lists

EAB, Guyana

Voter Registration Principles

Most constitutions contain provisions on the right to vote, also known as the active voting right. Normally, suffrage is granted to all adult citizens over a certain age – usually those aged 18 years and above. In some countries, other criteria apply, for example, those based on permanent residence. Sometimes restrictions are placed on the right to vote, for example, those sentenced to a prison term. Although election systems vary, usually the ‘weight’ of one citizen’s vote should be equal or approximately equal to that of another citizen. The ‘universality’ and ‘equality’ of the vote are key electoral principles that can only be assured if the voter register is accurate and compiled in a transparent manner.

If large numbers of citizens are prevented from registering or omitted from the voter register, the ‘universality and equality’ principles are compromised. Similarly, the inclusion of the deceased, ineligible voters, multiple individual inscriptions or entries missing vital data can distort the process, lessen popular confidence, and in extreme cases even affect the election results. The accuracy of the voter register can also, directly or indirectly, influence an election for other reasons, for example, in countries where aspiring candidates are required to collect the signatures of a certain number of registered voters to participate in the contest, or the law provides that a certain percentage of the electorate must participate for an election to be considered valid.

The method of voter registration varies from country to country. Sometimes it is held as a permanent record of eligible citizens; elsewhere it is compiled for each election. The voter register can be kept as a single, national-level database or a collection of different registers (or voter lists) held at local or regional level.²³ Some countries require citizens to take the initiative to register to vote (the ‘active’ model), while others extract a voter register automatically from other civil records (the ‘passive’ model). Whatever the system of voter registration, citizens have the ‘right’ to vote and the ‘duty’ to check that they are registered.

In most voter registration systems, the registers are open during specific periods enabling citizens to become registered or to check their inscriptions. After this

period is over, a preliminary voter register is compiled. A 'claims period' follows, where citizens can lodge complaints about inaccuracies in the register, or seek to be registered before registers are closed and the voter register is finalised.

Voter Registration in Guyana

By the early 1990's, after almost 30 years of rigged elections, many Guyanan citizens had lost confidence in the electoral process and had become politically apathetic. The Electoral Assistance Bureau (EAB), an NGO specialising in electoral issues, sought to reinvigorate political processes by encouraging public participation in elections. In Guyana, citizens are responsible to ensure they are able to vote by registering before the election. EAB adopted the following strategy to inform the public and encourage them to register to vote:

- Extensive use of the mass media, especially public radio stations. In Guyana, more people listen to the radio than watch television or read newspapers;
- Enlisting the support of civic groups including: religious organisations (Christian, Hindu and Muslim), the trade unions, social welfare organisations and sports organisations. In rural or remote areas, it was best to work through village councils;
- Once the registration period had begun, distributing large numbers of pamphlets and placing posters in public places in cities, towns, villages, giving basic information on how to register and if possible, where to register; and,
- Setting up information 'hot-lines' in the main towns and cities with good telephone networks.

While this programme was effective in increasing the number of voters registered, and improved the universality of the vote, EAB was aware that after years of manipulation, voter registers were inaccurate because of the inclusion of pre-existing duplicate registrations, fictitious voters (so-called 'ghost' voters), deceased persons and voters that had moved residence or were registered in the wrong election district. Some voters were in possession of a slip confirming their registration, but were wrongly omitted from the list.

Auditing Preliminary Voter Register

In addition to the programme to encourage potential voters to register, it was necessary to check the accuracy of voter lists to assess the scale of the existing problem. With financial and material support from local businesses and international donors, EAB conducted an audit of the preliminary voter register. The aim was to evaluate the overall accuracy of the register and identify which problems were the most significant. This was the first time that this type of audit had been conducted in Guyana.

In Guyana, the Election Commission (EC) is responsible for compiling and maintaining the voter register.²⁴ The EC of the time was politicised and initially suspicious about the proposed activity. EAB stressed that the organisation did not seek to impinge on the EC's statutory responsibilities, but rather it wished to co-operate with the authorities to improve the accuracy of the voter registration records. Eventually, the EC recognised that the public would have more confidence in the election process if an open, transparent and that professional audit were conducted by an independent election 'watchdog' organisation.

Importantly, the EC granted EAB access to the preliminary voter lists in paper and electronic form. Clearly, it would not have been possible to verify the accuracy of each entry. Therefore, the electronic version of the register was used to generate a 'sample' of entries to check. It was important that this sample was 'representative' of the country as a whole, because a badly selected sample could have distorted the results of the audit.²⁵ Factors that should be taken into consideration when selecting the sample include:

- The percentage of the population living in urban, rural and interior regions;
- The ethnic composition of the country, for example, Guyana has two large communities, one of East Indian the other of African descent; and
- The type of electoral system used, for example if a country is divided into election constituencies, include entries from as many different constituencies as possible, while ensuring that the sample reflects differences in the number of voters in each constituency.

As a rule, the number of entries selected from each 'category' (for example, voters residing in urban and rural areas) should be kept in proportion to their share of the total population. The total size of the sample is also an important consideration.²⁶ EAB was confident that the audit would reveal if particular categories of voters had been excluded, or if the voter registers had been 'padded' with fictitious entries. EAB obtained from the State Statistical Bureau data on the size and ethnic composition of the population in each of Guyana's ten regions. This data was compared to the voter registration data.

After the sample was generated, EAB compared the entries that formed part of the sample (taken from the electronic version of the register) with the corresponding entries in the hard copy. This ensured that our sample contained entries that appeared in both versions of the register. The sample was now ready to be checked against the real situation 'on the ground' (the field test).

Conducting Fieldwork

Teams of fieldworkers from all Guyana's communities were selected and trained to carry out the field test. The training emphasised the purpose of the audit – to gather information enabling an assessment to be made on the accuracy of voter

registers. Fieldworkers were instructed never to ask whether the person was going to vote or for whom he or she would vote. EAB was careful in selecting fieldworkers without political links. Most worked in the area of their residence, enabling them to draw on their local knowledge. To ensure the integrity of the research, we deployed fieldworkers in two-person teams, chosen at random. EAB issued an identity card to all fieldworkers.

The sample was subdivided into sections based on geographical areas. Data sheets were used to record information on each entry, including: the name of the voter as inscribed in the preliminary voter register, his/her identification number, his/her address and date of birth.²⁷ Citizens were asked only those questions included in the data sheet. Fieldworkers' main task was to locate the addresses of the sample entries and conduct a brief interview, establishing if the person was registered to vote. If a positive answer was given, he/she was asked for their identification number and the interview ended. If a voter stated that they were not registered, the field worker would ask if he/she had ever been registered.

Once data had been gathered on all sample entries in a particular geographical area, the data sheets were returned to EAB for processing and analysis. As with all data collection, a certain percentage of data sheets contained indecipherable information. These were set aside to verify the data with the particular field worker concerned. It was important that field check and analysis of data was completed quickly. This enabled EAB to present the findings to the EC before the end of the claims period and allowed the EC sufficient time to respond to the findings.

In 1991, our analysis concentrated on the number of persons included in the preliminary voter register who were not found during the field check (excluding those known to have migrated within Guyana). Internal migrants' registration entries were checked to find out if they were also registered in their new area of residence. Some 35 percent of the entries were inaccurate. The main problems arose because of the inclusion of deceased persons and a large number of persons not known at a particular address. Clearly, the voter register was unacceptably inaccurate and action was required.

EAB recommended to the political parties and the Carter Centre that the existing voter register should be scrapped and the process begun again from scratch, coupled with a new public information programme on the need for all citizens to register to vote. This was done, even though it necessitated postponing the elections for one year.

A second audit of the preliminary register was undertaken in 1992, employing the same methodology. This revealed errors amounting to only 3–5 percent. No voter registers are 100 percent accurate, and this level of accuracy was certainly within acceptable limits. The auditing process was repeated on the final voter register, and only 3 percent of entries were found to be inaccurate. Since then, studies have revealed “an inaccuracy range” of between 3 and 5 percent.²⁸

Overall, EAB's contribution to the election process has been threefold:

- Providing an independent external support system to the Elections Commission. EAB shared much of its data with the Commission, not only regarding voter registration but also from its independent tabulation of election results;
- Notwithstanding the unjust criticisms of some contesting parties, EAB's work has led to improved voter registers and thus strengthened voter confidence in the electoral process.
- Lastly, from 1991 to 2001, EAB has trained a cadre of volunteers, ranging from field workers, election observers and data programmers, many of whom now work with the Elections Commission. In general, this has improved the professionalism, the impartiality and independence of the Commission.

Conclusions

EAB drew a number of conclusions from its work and its relations with other stakeholders. In order to gain the trust of the public and parties, fieldworkers must be politically impartial. Volunteers should be screened to make sure that party activists do not undertake the work. Appropriate in-house training, coordination and support must be provided. While it is important to retain the independence of the organisation, it is important to establish a good working relationship with the body charged with conducting the election, in this case the Elections Commission. When EAB's findings revealed deficiencies in the voter registers, the EAB was notified before the information was made public.

Where a programme requires a high level of technical expertise, wide ranging consultation should take place and the best methodology identified and employed. The data gathered should be verified fully and presented accurately and as simply as possible. It is important to communicate the nature of programmes and monitoring results to political parties. In addition, keep the media and the public informed of ongoing activities and findings.

23. In this text, a 'voter list' is defined as an extract of a larger voter register (held at national, regional or constituency level). It corresponds to a particular territorial or electoral unit.

24. Responsibility for compiling and maintaining voter registration records is tasked to different bodies in different countries.

25. It is recommended that a monitoring organisation conducting this type of survey enlist the assistance of social scientists with experience in conducting statistical surveys.

26. The size of the sample should be no less than 0.3 percent of the total number registered voters, if meaningful conclusions are to be drawn.

27. EAB found that many persons are not well known by their formal name (as it appeared in the register), but by a nickname. This constituted a major problem and led EAB to recommend to the EC that registration entries should include a column headed 'also known as'.

28. In 1997, once again EAB conducted an audit of the preliminary voter register using a 0.3 percent sample. The EC carried out its own survey using a 0.6 percent sample. The results were remarkably similar.

7. Registration of Political Parties and Candidates

FEMA, Bangladesh

Political parties are integral to a pluralistic democracy. The freedom of association and the right to stand for elections are fundamental universal human rights. Consequently, the right of individuals to form political parties should be restricted only in exceptional circumstances and only on justifiable and reasonable grounds. In a pluralistic society, all political interests are able to compete on a more-or-less equal basis. Preventing parties or candidates from participating in an election limits voters' electoral choice and can diminish the 'genuineness' of the election contest. This type of restriction can result in a meaningless election process. Once elected, candidates should enjoy secure tenure and retain mandates, unless terminated according to legal and democratic principles. It is generally accepted, especially in majoritarian electoral systems that the ownership of parliamentary mandates rests with the candidate rather than the sponsoring party.

In many countries, a Law on Political Parties (or similar) regulates party registration and activity. To contest an election, often parties and candidate are required to register with the competent body, for example the Central Election Commission, some time in advance of the election. Frequently, the applicable legislation requires that parties or candidates pay a financial deposit or demonstrate certain minimum levels of potential support, for example by submitting a specified number of signatures.²⁹ These and other criteria, for example that candidates have reached a certain age and have been resident in the country for a period, are considered reasonable. Other restrictions are more controversial, for example the ability to speak a certain language fluently.

The Registration of Parties in Bangladesh

The Fair Election Monitoring Alliance (FEMA) was established in 1995 as a politically neutral watchdog organisation. Since then, it has observed all local and national elections, including the deployment of over 66,000 election observers for the 2001 parliamentary election. In addition, FEMA monitors candidate registration and has been advocating the reform of electoral legislation and the adoption of a Law on Political Parties.

Despite several attempts to regulate the activity of political parties, unlike other countries, Bangladesh does not have a Law on Political Parties and Political Associations. Currently, party registration is not mandatory and Parliament has appeared unwilling to regulate the issue effectively.

The first attempt to regulate parties was made in 1962, before the independence of Bangladesh was achieved. This law was never applied. After independence, Bangladesh endured a period of Martial Law, during which (in July 1976) a regulation on political parties was adopted. This prohibited the formation of political parties that engaged in any activity that was considered prejudicial to the independence, sovereignty, integrity or security of Bangladesh. This regulation also provided that every political party should, before it operates or commences its activity, submit to the government a variety of documents including: the Party's Constitution (stipulating the aims and objectives of the party); a description of its organisational structure at all levels; data on the sources of its funds; an annual audit of its accounts; and information on affiliated or associated organisations. Parties were not permitted to commence their activities before being approved by the government. In 1978, President Ziaur Rahman promulgated "the Political Parties Ordinance". However, neither of these acts was enforced, and on the eve of the February 1979 elections, both were annulled, enabling all parties to contest the elections.

In the run-up to the October 2001 parliamentary election, at the instigation of the Election Commission and based on recommendations made by FEMA, the caretaker government made a number of amendments to the election law (The Representation of the People Order, 1972), including adopting a provision for the registration of political parties. However, party registration was not made compulsory. Instead, those parties that registered with the Election Commission were entitled to certain privileges, including to: have sole use of a designated party symbol; receive a copy of the voter register at half its cost; appear in the state-owned media during the election campaign (according to principals and guidelines prescribed by the Election Commission); and the right to consult the Election Commission on any matter relating to the holding of the parliamentary elections. Parties were required to submit a copy of the Party's Constitution, containing an article to the effect that the party shall bear true faith and allegiance to the Constitution of the Peoples Republic of Bangladesh, and that it shall uphold the country's sovereignty, unity and integrity. In addition, parties were required to pay a registration fee to the Election Commission. Because the law did not oblige parties to register, the major parties decided not to do so.

FEMA's Proposal to Adopt a Law on Political Parties

FEMA continues to lobby for the adoption in Bangladesh of a Law on Political Parties. The organisation believes that such a law is necessary to ensure that parties

are accountable for their actions before an independent and impartial body, and that parties conduct their activities transparently, particularly as regards campaign financing. Inter alia, FEMA has recommended that the law provide for the:

- Compulsory registration of all the political parties with the Election Commission;
- Requirement that parties notify the Election Commission of their senior functionaries;
- Circumstances in which the registration of a political party can be withheld, suspended or revoked (for example, exceeding expenditure limits, using funds from an unknown or un-attributed source, and engaging in electoral fraud);
- Circumstances in which a candidate can be disqualified from contesting the election (for example advocating or participating in election-related violence);
- Compulsory maintenance and audit of party accounts, including full information on all donations.

Registration of Candidates

Bangladesh uses the ‘first-past-the-post’ majoritarian electoral system – where individual candidates are registered in separate, single-mandate election constituencies with the top-scoring candidate being elected.³⁰ A candidate elected on a party ticket retains the parliamentary mandate provided that he/she: is not expelled from the party, does not resign from the party, or does not vote against the party in Parliament.

After an election is called, the Election Commission announces the deadline for nominating candidates, the period for scrutinising nomination papers and the deadline for candidate withdrawal. In Bangladesh, candidate registration is relatively straightforward. All candidates must be citizens of Bangladesh, aged at least 25 years, and be proposed and ‘seconded’ by two electors from the electoral constituency in which the candidate wishes to stand. All candidates are required to pay a financial deposit of Taka 10,000 (approximately 125) and submit a statement confirming their consent to seek registration as a candidate. Among other factors, persons are disqualified from contesting an election if he/she: is declared by a competent court to be of unsound mind; is an un-discharged insolvent; is a citizen of another state or acknowledges allegiance to a foreign power; has been convicted of certain criminal offences or sentenced to a term of imprisonment of not less than two years (unless a period of five years has elapsed since his/her release); is actively serving the state in certain capacities (e.g. as a military officer or judge); or is a person whose election was declared void due to corrupt and illegal practices or for exceeding campaign spending limits. Candidates whose nominations are rejected may appeal the decision to the Election Commission, whose decision is final. If, after the withdrawal of candidates, only one candidate remains, he/she is declared elected (uncontested).

Monitoring Candidate Registration

FEMA monitors the candidate registration process as closely as possible. However, the organisation's task is complicated because the law does not grant election observers the right to be present when the scrutiny of nomination papers takes place. Nevertheless, observers receive information on the process without difficulty. A lack of access to observe the process could be more problematical in other circumstances, for example in countries whose legislation requires candidates and parties to submit signatures to support nominations.

Although the registration of a party or candidate is not complicated in Bangladesh, elsewhere a wide variety of significant problems can occur in party and candidate registration. In extreme cases, these problems can affect the nature of the election as a contest. Hence it is important that domestic observer organisations follow party and candidate registration issues closely. Outside the Bangladesh context, the most significant types of problem that can occur include:

- Failing to regulate the process of party registration;
- Placing unreasonable legal restrictions on parties and candidates possibility to stand for office;
- Failing to allow independent candidates to stand for election;
- Adopting unclear legislation, for example concerning procedures to verify supporting signatures;
- Requiring an excessive number of supporting signatures;
- Requiring an unreasonably high financial deposit;
- Applying the legal provisions selectively or inconsistently such that the contestants are not treated equally;
- Rejecting candidates for minor technical errors in their nomination papers;³¹
- Offering illegal inducements to support the nomination of candidates;
- Falsifying supporting signatures; and,
- Failing to provide an impartial and effective means of legal redress for a genuine candidate whose nomination was rejected on dubious grounds.

29. In general, the number of signatures required should not be in excess of one percent of the number of registered voters. Usually financial deposits are returnable where a candidate or party secures a certain percentage of the vote.

30. Bangladesh has 300 election constituencies.

31. In general, out of respect for the principle of 'proportionality', parties and candidates should not be denied the right to participate in an election for minor procedural deficiencies in their nomination or registration papers. The principle of proportionality provides that a 'sanction' should be proportionate to the 'offence'. Denying a party or candidate the right to stand for election for minor shortcomings in election registration papers can compromise this principle. If a party is denied registration or a party or candidate is prevented from contesting an election, the right to lodge an appeal with the highest judicial body should be permitted.

8. Observing and Reporting on the Electoral Campaign

Developing a Long-Term Approach to Election Observation CVU, Ukraine

The Committee of Voters of Ukraine (CVU) was established in 1994 as a non-partisan, civil society initiative to monitor elections.³² Experience gained by a wide variety of international and national observer groups, including CVU, has shown that observing election events only on Election Day provides an insufficient basis to make an informed assessment of whether an election process meets international standards for democratic elections.³³ Events during the pre-election period, particularly in the campaign, can have a significant affect on the course of an election long before polling day.

For an election to be democratic – among other factors – parties and candidates should be free to communicate their political messages to voters on an equal legal basis and without undue obstruction. Parties should enjoy this freedom at all times, but during a campaign it is particularly important. In turn, voters should be able to make their electoral choices freely. While it is expected that parties and candidates will seek to gain a political advantage over their rivals and influence voters, CVU monitors if their activities or those of their supporters exceed legal or ethical limits or reduce the ‘fairness’ of the campaign. The types of problems encountered during the pre-election period include:

- Using publicly owned property as ‘campaign resources’, e.g. offices in public buildings;
- Election-related violence against the person and property;
- Offering voters payment or goods to vote in a particular way;
- Inadequate controls on campaign contributions and spending;

- Failing to respect candidates' and voters' fundamental rights and freedoms, e.g. pressuring or intimidating citizens to support a particular party or candidate or face negative consequences;
- Discrimination for or against a party or candidate by state authorities, e.g. failing to grant venues for campaign events or doing so on unequal terms;
- Impeding or obstructing campaign events;
- Overt political bias in the state media; and,
- Inflammatory campaign speech that incites hatred or advocates discrimination.

Observation Methodology

To monitor the pre-election period and campaign effectively, CVU conducts observation activities over an extended period at national and regional level. The organisation has established a network of local branches, which operate on a permanent basis. Prior to the parliamentary elections of 2002, CVU began its pre-election monitoring at national and regional level eight months before Election Day. As the campaign intensified, CVU deployed additional Long-Term Observers (LTOs).

CVU adapts its observation methodology according to specific factors, for example the type of election; campaigns for presidential, parliamentary and local elections are likely to be very different contests. Prior to beginning its observation activity, CVU convenes a policy committee to discuss these factors, review reports on previous campaigns and assess which, if any, amendments to electoral or related legislation are relevant to LTOs' work. This helped set priorities and provided focus for the observation effort. To ensure that CVU does not miss important electoral events, an electoral calendar is extrapolated from the election legislation. This is used to prepare a schedule of monitoring activities.

Deploying regional level observers well before the start of the campaign enables CVU to gather information on the pre-election context and to issue a public report to coincide with the start of the official campaign period. While it may be possible to draw accurate conclusions without having LTOs working at regional level, their activity enables CVU to gain first-hand information and verify events and incidents. However, regional or district-level observers require logistical and financial support.

The Role of Long-Term Observers

The Ukrainian election law does not permit non-partisan civic organisations to receive accreditation as election observers – this right is granted only to the representatives of the parties. However, journalists are allowed to have access to election-related information. Therefore, all CVU observers – whether Long-Term Observers or short-term 'poll watchers' – are accredited as journalists for the newspaper "*Tochka*

Zoru” (Point of View), published by the organisation. This enables them to attend all events, meet with election commissions, candidates, and to file requests for relevant information.

LTOs’ work is not restricted to assessing the equality of campaign conditions. All major aspects of an election process are covered including:

- The candidate nomination and registration process;
- The collection of supporting signatures required for candidate registration;
- The formation and work of election commissions;
- Respect for suffrage rights, including citizens residing abroad and the accuracy of voter lists;
- Candidates’ access to media and the media’s portrayal of parties’ and candidates campaigns;
- The transparency and legitimacy of election campaign funding;
- The adjudication of electoral disputes by local election commissions and district courts; and,
- The role of local state authorities and local-governments in the process;

Many of these issues can, directly or indirectly, affect the pre-election environment, parties’ confidence in the process or influence their campaigns. LTOs’ research may include following local election-related news items, visiting the local offices of political parties, observing campaign events, meeting public institutions, monitoring election commissions or attending their working sessions.

CVU deploys observers in the region of his/her permanent residence. Usually the observer knows well many of the persons with whom they will have contact. As CVU is operating permanently, it selects LTOs that are available on a full-time basis or at least for several months. These persons are often engaged in CVU’s activities between elections, for example, in its programme to monitor political party development in Ukraine. Having recruited LTOs, it is important that they receive comprehensive training on their tasks and the observer Code of Conduct. CVU appoints a Project Manager to manage the training programme, developing observation procedures and co-ordinating LTO activity.

The observer training is wide-ranging and among other issues covers: the purpose of election observation; international electoral standards and the domestic legal provisions; their status, rights and responsibilities; their role and tasks; campaign monitoring techniques; reporting and communication requirements; and the type of violations that they may encounter. The training uses a variety of methods, including role playing and problem solving, and covers how LTOs should present themselves in meetings with political parties, the media, state authorities, courts and election commissions.

Reporting

CVU does not use specific forms for data collection. However, observers are required to use specially designed reporting templates, one for each stage of the pre-election period. Reports are submitted every 2–4 weeks. When violations are reported, observers are requested to include all relevant details, for example what was the incident, who was involved, when and where did it take place.

LTO reports are the basis on which CVU makes its interim public reports and statements. Sometimes, parties or journalists may present unverified information or rumour as facts or make generalised statements without giving specific examples to support the allegations. During training, CVU emphasises the importance of checking the accuracy of information received from secondary sources, for example a political party or the media, and the need for LTOs to verify and substantiate all the information reported.

Information useful to observers includes copies of relevant documents or official written or verbal responses to questions. The main method of verifying the accuracy of a piece of information is to interview personally those that were directly affected or present, when an incident took place. Transcripts of their testimony can be made to record the information. If a violation is reported, the LTO should establish if a formal complaint has been filed; for example, if a campaign stand is attacked, was this reported to the police, and if so, what action was taken? A particular problem faced by CVU is the reluctance of those who have suffered intimidation to come forward or to have their names included in a public report. Therefore, LTOs are asked to respect confidentiality issues.

Observer reports are analysed by a ‘think tank’ composed of lawyers, sociologists, media and political experts. If an organisation has a presence across the country, it may be possible to detect differences in the nature of the campaign in particular geographical areas. CVU only releases information that has been verified by its observers. Publishing unverified and inaccurate information would jeopardise the organisation’s credibility. The reports describe events that have taken place during the reporting period; assess their influence on the election process; provide a breakdown of violations recorded (according to their type); set out major conclusions and offer a variety of recommendations aimed at improving the process.³⁴

Reports are distributed to mass media outlets, election commissions, government ministries, candidates, and international organisations, other observer groups, and are posted on CVU’s website.³⁵ This ensures that they receive publicity, and the key actors in the process are aware of their contents. It is important to distribute reports not only in the capital, but also in the regions, enabling key actors and LTOs to be aware of developments in the country as a whole.

Issuing reports can serve as an early warning that problems in the process are apparent. However, reporting on a process while it is ongoing needs to be care-

fully considered, as reports can be used and misused by political parties in their campaigns. If a report is assessed as favouring the interests of one party or another, it may affect an organisation's reputation for impartiality.

32. From 1994, CVU has observed all national elections. Its other activities include: public information and education campaigns, advocating improvements in election-related legislation, analysing election-related legislation, organising a network of Citizens' Advisory Bureaus and supporting community development programs. CVU has offices in more than 200 towns and cities of Ukraine.

33. As Ukraine is a member of the OSCE, CVU pays particular attention to provisions of the Copenhagen Document of 1990, to which all OSCE Participating States subscribe.

34. Recommendations are aimed at a variety of electoral subjects including election commissions, candidates, and parties' campaign headquarters, state authorities and the media. Some recommendations seek to encourage the police and prosecutor's office to deal with shortcomings immediately, e.g. criminal acts during the campaign. In the longer term, some problems may be resolved amending the legislation. Consequently, CVU pays special attention to developing recommendations on improving the legal framework and forwards these to the Parliament.

35. In addition to its general reports, CVU places information on the course of the election campaign and details of electoral violations on its website: www.polit.com.ua every day.

Monitoring and Reporting Election Violence CDU, Kenya

Background

From 1982 to 1991, the Constitution of Kenya proscribed opposition parties. Thus, *de jure* the Kenya African National Union (KANU) was the sole political party and could rule without facing formal political challenge. Regrettably, after the 1991 Constitutional amendment that allowed for multi-party politics, Kenya's general elections have been marred by widespread violence and procedural malpractice. This has markedly reduced voters' freedom of choice and damaged the credibility of the electoral processes.

Forms of election violence prevalent in Kenya were erroneously dubbed 'land' or 'tribal' clashes. In fact, the root of the violence was political. It was sponsored by the state and targeted against communities opposed to the ruling party (Quarterly Human Rights Report, 2001, KHRC, 1998). According to the Kenya Human Rights Commission, between 1991 and 2001, this type of violence claimed over 4000 lives and displaced over 600,000 people countrywide. The main perpetrators were prominent KANU figures, some with ministerial positions and some individual politicians who funded private militia and party 'youth-wingers' to harass and intimidate rivals. Two Commissions were mandated to investigate the clashes.³⁶ Both found the violence to be politically motivated and recommended the prosecution of named persons. However, the senior position of the alleged instigators *de facto* gave them protection from prosecution and no action was taken.

The Role of Civil Society in Monitoring Electoral Violence

Kenyan civil society organisations firmly believed that they could play a constructive role in drawing attention to political violence and thereby reduce the number of incidents. On this premise, the Central Depository Unit (CDU) was founded as a public trust in August 2001 by six Kenyan non-governmental organisations, to receive, compile, analyse and disseminate information on election-related violence in the run-up to the December 2002 general elections.³⁷ The CDU had a number of objectives including to:

- Provide an early warning indicator;
- Lessen impunity for violent acts;

- Support advocacy activities aimed at preventing violence: and,
- Secure an appropriate political response to violence.

Clearly, it was important for CDU to determine if reported violence was actually ‘election-related’ rather than ‘general’ violence that simply coincided with an election period. Therefore, before beginning to document and report on electoral violence, a working definition was needed. The trustee organisations agreed to define ‘election-related violence’ as: “any acts of violence that are intended to, or result in influencing electoral choices or electoral outcomes”. If the motivation for the incident was to influence electoral choices or curtail legitimate electoral activities, the violence was certainly “election-related”. However, CDU also considered violence election-related if it had a direct or indirect, intentional or unintentional effect on the election outcome. For instance, if endemic phenomena such as inter-ethnic conflict escalated or acts of banditry took place during the campaign period with the effect that communities were displaced or disenfranchised by losing their voting cards (as happened in Trans Mara District), then the violence was considered ‘election-related’.

CDU developed a typology of violence and employed specific terms for all violent acts, for example, arson, assault or torture, and for deeds that while not strictly “acts of violence” lessened political freedom or could ignite latent hostilities, for example, hate speech, intimidation and targeted economic repression leading to displacement. To ensure that the information gathered and reported was standardised, comprehensive and comparable, a checklist (questionnaire) was designed for use by monitors.

CDU recruited, trained and deployed over 100 monitors to 74 of Kenya’s 210 electoral constituencies. Monitors from one of CDU’s trustee organisations tested the checklist in trial conditions to ensure its effectiveness. The monitors, being members of their respective communities, were expected to be constantly vigilant for violent incidents, not merely available to monitor campaign meetings. Although the checklist included standard questions, monitors were also able to include narrative reports and testimony given by witnesses and victims. Completed checklists were collated and analysed.

CDU’s report on the elections (*Ghasia Watch 2002*) shows that the period of party nominations, the two-month campaign period and the actual election period were the most violent. In total, between January and December 2002, election-related violence claimed 325 lives, an average of 6 deaths per week. While these figures are dramatically lower than the previous two multiparty elections, they remain unacceptably high, seriously challenging the freeness and fairness of the electoral process. Field monitors reported 225 separate incidents, separated into five categories: assault (120 cases); inter-ethnic clashes (31 cases); forcible disrup-

tion of campaign meetings (28 cases); threats, intimidation and hate speech (24 cases); and “political thuggery” or, violent actions of militia groups allied to particular parties or candidates (22 cases). The police were responsible for half of the forcible disruptions at campaign meetings. Elsewhere, they neither prevented or stopped the mayhem nor arrested the perpetrators. Additionally, they were accused of complicity in acts of political thuggery and apathetic in their response. Few arrests were made among the infamous *Mungiki* militia, which had expressed allegiance to certain senior KANU politicians.³⁸

Lessons Learned

While CDU was a new organisation, its trustees had already gained election observation and policy advocacy experience. This helped to avoid “reinventing the wheel”. Furthermore, as the trustee organisations had reputations pre-existing the establishment of CDU, they were able to confer credibility on the programme. This was extremely useful in building productive relations with the Electoral Commission, other NGOs, the police and the public.

The timing of operations was an important consideration. CDU began its activity in January 2002, almost a year before the elections took place on 27 December 2002. This allowed time for the proper recruitment and training of field monitors and to develop systems to collect, analyse and report information. Consideration must also be given to the scale of operations. Preferably, the organisation should have a presence throughout the country. While CDU was able to have a positive impact on the electoral process and draw attention to the issue of election-related violence, it is clear that its effectiveness would have been greater had it been able to operate throughout the country. If an organisation is unable to deploy observers to all corners of the country, it can compensate by developing alternative methodologies; e.g. in areas where CDU did not have a monitor, it compiled data from secondary sources, particularly the print and electronic media, which had countrywide coverage.

Gaining a high level of visibility, being assertive and constructively engaged were crucially important factors in the success of the programme. CDU made regular statements to the press, participated in press conferences and radio programmes and issued reports frequently. These were distributed to all stakeholders in the election process. CDU ensured that the launch of its quarterly reports was a media event to which all stakeholders mentioned were invited. These events also provided an opportunity for discourse on election violence and how it should be dealt with. The importance of active networking with the institutions involved in the conduct of elections cannot be overstated. While efforts to influence policy-makers may be resisted or provoke an antagonistic response, CDU recognised that advocacy work must be sustained if the structural weaknesses of key state institutions are

to be addressed. Significantly, state structures appeared unable or unwilling to manage political competition or prevent it from escalating into violence. As such, it not only interfered with electoral democracy but also increased the temptation to seek extralegal methods of conflict resolution, thereby creating a vicious cycle.

Monitoring election violence is not free of risk and can trigger harassment from government officials or the local power elite. In addition, there is a danger that monitors could be caught up in violent incidents. Because a wide variety of NGOs were involved in the initiative and visibility of CDU, the organisation had a degree of protection against harassment. CDU monitors were members of the communities in which they were monitors, with most being teachers, clergy or holding other positions of influence, thereby enhancing the credibility and impartiality of their work, which also offered a degree of protection. However, it is important that monitors are made aware of the hazards and are given proper training in security precautions. Due care must be taken by monitors not to invite antagonism and not to overly expose him/herself and family to danger. Communication should also be constant between the central office and the field in order to improve monitors' security.

It was important to develop a sound methodology and to distinguish between election and non-election related violence. The type of incidents recorded should be properly categorised, and events verified and corroborated. Care needs to be taken to ensure that confidentiality of sources is respected, particularly where the subject is vulnerable or wish their identity not to be disclosed.

It is not easy to accurately measure the effect of violence on an election result. Similarly, it is not easy to measure the impact of CDU's work on the election process. The Election Commission of Kenya stated that the organisation's work augmented and complemented its own efforts to deal with election-related violence by providing reliable information and statistics. In addition, the trustee organisations and the field monitors believe that the programme did deter violence, particularly planned violence, by drawing attention to the problem and challenging the culture of impunity. To be an effective early warning alarm, the findings need to be circulated quickly and widely and pressure needs to be exerted on policy-makers to respect the "rule of law".

36. The *Akiwumi* Judicial Commission and the *Kiliku* Parliamentary Select Committee.

37. The six CDU trustee NGO were: the Kenya Human Rights Commission, Tawasal Foundation, League of Kenya Women Voters, Center for Governance and Development, National Council of Churches of Kenya and, the Center for Conflict Resolution.

38. CDU "credits" this militia with 13 acts of election-related violence that caused at least 30 fatalities, left scores injured and destroyed property worth millions of shillings.

Monitoring Respect for Campaign Finance Regulations Poder Ciudadano, Argentina

*Poder Ciudadano*³⁹ (PC) is an NGO founded in 1989. It promotes civic awareness, access to information, transparency, and the participation of citizens in public affairs. In 1997, PC initiated a pilot study of electoral campaign expenses in Argentina, focussing on the parliamentary election in the districts with the largest populations: the city of Buenos Aires and Buenos Aires province. At this time, campaign finance issues lacked transparency – no specific legal act existed, and the election law did not oblige parties and candidates to disclose information about donors and donations. However, suspicions existed that public funds were diverted to finance election campaigns.

Even though no law was in force to regulate the issue, PC developed a methodology to measure campaign expenditures. Two specialist audit companies were commissioned to estimate the total market cost of parties' campaign advertisements in the main print and electronic media and billboards. The methodology took account of the possibility that parties received discounts. The value of free campaign spots (provided by the Ministry of the Interior) was subtracted from the estimated expenditure. Costs associated with holding campaign rallies and political events were added so that an estimate for parties' total expenditure could be made.

Our study revealed that the three parties that received the most votes spent 92 percent of their total campaign expenditures on publicity, mainly TV advertisements. After subtracting the value of public funds used to finance parties' campaigns from estimated expenditure, PC was able to calculate the total amount of money parties would have needed to raise to fund their campaigns. Four of the five top scoring parties spent more money than they received from the state. In some cases the differences were huge; for example, the *Partido Justicialista* (PJ), which received most votes, would have needed an extra US\$ 10 million. However, the project could not determine the origin of these parties' additional funds.

While, PC was aware that the data was not completely accurate – partly because the media did not provide information on the actual advertisement rates charged to parties – the project gathered enough information to gain a good idea of campaign expenditure patterns. The study proved that using only modest technical and financial resources, civil society organisations could become involved in this issue, which at first appears technical, but is in fact political. PC was able to shed light on the

lack of transparency in political funding, identify problematic areas and initiate a public debate. The project also raised questions concerning what are the rights and responsibilities of candidates, political parties, mass media companies, the private sector and administrative and regulatory governmental institutions.

The 1999 Presidential Election: A Step Forward

In 1999, the project was repeated with a new component: the Transparency Agreement (TA). The three candidates considered as the most important presidential contestants committed themselves publicly to reveal to PC on a monthly basis the amount of their expenses and to abide by the minimum standards of transparency demanded by the public.⁴⁰ Nothing similar had been attempted before. The fact that the main candidates were willing to involve an NGO in the electoral process by guaranteeing access to information on their campaign budgets changed the relations between civil society and the political world.

In 1999, PC had greater access to financial information than previously and had generally good relations with parties' campaign teams. However, differences remained in the total expenditures declared to PC and sums paid to candidates from public funds. Unfortunately, the main candidates supplied PC with incomplete information and, once again, PC was unable to identify with certainty the origin of campaign funds. Importantly, PC could not verify if the amounts declared were accurate.

The experiences in 1997 and 1999 encouraged PC to continue advocating for campaign finance reform. While the Transparency Agreement was an important innovation and had improved the transparency of the process, there was still much to be done, particularly regarding the regulatory framework.

Adopting a Legal Framework

PC's activity contributed to the 2002 decision by Congress to adopt the "Law on Funding of Political Parties and Electoral Campaigns". During the parliamentary debate, PC was mentioned extensively and was consulted on the content of the legislation. Many of its recommendations were incorporated in the law's provisions, including:

- Obliging parties to appoint persons with accountability for political and financial issues;
- Requiring that parties open unique bank accounts with the *Banco de la Nación Argentina* or official provincial banks, from which all campaign expenditure must be drawn;
- Establishing parties' responsibility to document and evidence expenditure;
- Setting limits on individual, private or corporate donations;
- Establishing a limit on total campaign expenditure;
- Prohibiting certain types of donation, e.g. anonymous donations;

- Prohibiting donations from certain categories of person or legal entities, e.g. donations made from abroad or from public corporations that provide services to the state; and,
- Establishing the responsibility of parties to prepare pre- and post-election financial reports.

The new legislation charged the Federal Justice system with responsibility for controlling campaign expenditure and verifying parties' accounts. Changes to the National Election Code included: limiting the duration of a presidential campaign to 90 days, permitting television to carry campaign publicity for a fixed period beginning 32 days before the elections, and banning any governmental or official event that could be interpreted as campaigning.⁴¹ The National Election Commission (NEC) played a generally constructive role. It decreed that federal judges with electoral competence must publish parties' financial reports on the Internet and designed a standard financial reporting template to be used by parties.

Clearly, the adoption of the law was a significant development. However, the law has some shortcomings. While it contains clear penalties for non-compliance, it fails to include sufficient provision to enforce the regulations. Penalties are economic or administrative rather than criminal, and sanctions are not applied in proportion to the severity of the case, with minor infractions and major violations receiving the same penalty. Unfortunately, the former President, Eduardo Duhalde, vetoed clauses strengthening public access to information – clauses and requirements that a national newspaper was obliged to publish information on parties' official campaign expenditure reports.

The April 2003 Presidential Election

Poder Ciudadano continued to monitor campaign finance issues. However, with the adoption of the new law, the methodology was modified, for example, there was no longer a need for the Transparency Agreement. As part of its campaign "Illuminating the Voting Booth", PC assessed the application of the new law and parties' respect for its provisions. The analysis focused on monitoring the actions and decisions of the NEC, political parties, the Ministry of the Interior (which allocates public funds to parties and sets broadcasting schedules for free campaign slots) and the Federal Justice system.

In general, PC was able to access information from most interlocutors without difficulty. However, some parties delayed submitting their financial data and/or failed to furnish the Federal Justice system with all the information required. By mid-2004, the processing and control of candidates' campaign expense accounts was still incomplete. It is only after this is done that the Justice system can decide if parties have broken the regulations and apply appropriate sanctions.

According to information available to PC, some parties' accounts contain irregularities, for example significant differences between preliminary estimates of expenditure and actual expenses declared two months after the election. However, it is not possible to make firm conclusions on these issues as it is not possible for PC to know with certainty if the discrepancies result from a lack of familiarity with new provisions or represent an attempt to distort information. The discrepancy between the major candidates' claimed expenditure on publicity and data gathered by PC through its monitoring activity is a greater concern. PC's monitoring revealed that the Ministry of Interior's delay in releasing public funds to cover campaign costs could have affected the smaller parties ability to run their campaigns. The NEC found other discrepancies and inaccuracies in parties financial reports, including: incomplete information about donors; differences between the size of donations declared in parties first and second reports; and discrepancies between the parties' and donors claims on the size of specific donations.

The Remaining Challenges

The previous challenge was to ensure that law regulates campaign-funding issues, and that the regulators have sufficient resources and the technical ability to complete their tasks. The next reform should promote suspending the Ministry of Interior's campaign-related functions, and to either strengthen the authority of the NEC or reconstitute the Commission as an independent electoral agency. The most serious violations of campaign finance provisions should be made criminal offences. In terms of the legal responsibility for violations, the relationship between a political party and its candidate requires clarification. Finally, parties require assistance to develop the technical skills necessary to meet the requirements of the new law, to ensure that errors and omissions do not generate unnecessary suspicion. This is important if parties are to recapture their public standing.

39. Transparency International, Argentina.

40. The three most important candidates were: Fernando de la Rúa (Alianza UCR – Frepaso), Eduardo Duhalde (Partido Justicialista) and Domingo Cavallo (Acción por la República).

41. The fixing of a campaign period is important if campaign expenses are to be accounted for accurately.

Monitoring the Use of State Resources During an Election Campaign PPPR, Sri Lanka

The misuse of state-owned property by parties and candidates during election periods is a significant problem, because it creates unequal conditions and thereby lessens the fairness of the contest. Furthermore, it may be symptomatic of a deeper problem where incumbents are unable to distinguish between ‘the party’, which is temporarily in office, and ‘the state’, which exists as a continuous and separate entity.

The Constitution of Sri Lanka specifically obliges citizens to “preserve public property and combat misuse of public resources”. However, in practice it is almost impossible for individuals to discharge this duty and regrettably, Sri Lankan elections have always been marred by the misuse of publicly owned resources by candidates and public officials during the campaign. Some civil society organisations felt that action was required to tackle the misuse of publicly owned resources and set out systematically monitoring the phenomenon.

Individuals and organisations with an interest in the issue were identified, and an action programme was developed. To improve the organisation of the monitoring and raise public consciousness of the initiative, the Programme for Protection of Public Resources (PPPR) was established with some limited financial assistance. Initially, the PPPR was part of a local NGO, the Institute of Human Rights (IHR). Later it became a joint project of Transparency International Sri Lanka and IHR in collaboration with the Center for Monitoring of Election Violence.⁴²

There was a consensus within PPPR that it should attempt to monitor all the various ways in which public resources can be abused during an election campaign. However, designing the programme proved challenging, because nothing similar had been attempted previously. After serious deliberations, PPPR decided upon a ‘name and shame’ campaign, whereby those who illegitimately benefited from public resources would be named publicly in the reports. PPPR decided that it was necessary to lobby the law enforcement authorities to fulfil their responsibilities and prevent the abuse of publicly owned resources. For clarity and to ensure the consistency of the methodology, PPPR included in its definition of public resources:

- Public finance intended to be used for public purposes;
- Public buildings, including official residences and offices of the President, Prime Minister, Ministers, public servants and employees of statutory bodies;⁴³
- Vehicles and aircraft belonging to state institutions and statutory bodies;
- Resources and facilities under the management and control of public institutions;
- Employees of statutory boards and other public institutions;
- Personnel of the Armed Forces and the Police and their assets; and,
- Any other category of public resources.

Examples of the type of abuse noted during previous Sri Lankan elections included:

- Propaganda directly or indirectly benefiting a party paid for at the expense of a public resource;
- Use of all categories of public resources for the benefit of political parties, candidates and important political figures, rather than these being used for their intended purpose;
- A political or campaign function masquerading as an official function or duty;
- Improper use and political monopolisation of print and electronic state media institutions.

Problems noted by observer groups in other countries include:

- Pressurising public employees to support a particular party or candidate, or making regular employment in public institutions dependant upon political affiliation;
- Free or preferential use of an official state office or building as a campaign office;
- Interference in the election administration by government employees; and,
- Granting the use of public spaces for campaign events to particular parties in a selective or discriminatory manner.

Source information was gathered ‘directly’ from the public, political parties, and by making investigations in selected public institutions. Data was also gathered ‘indirectly’ through monitoring electronic and print media and receiving information through the Centre for Monitoring Election Violence (another election-monitoring NGO). Additionally, a survey of state media outlets was carried out with the assistance of media experts to find out whether publicly owned media was being misused for the benefit of incumbents.

Clearly, PPPR could not present information that had not been verified; to do so and be in error would have undermined the programme's credibility. However, verifying the accuracy of the information remained a great challenge. To assist its efforts, PPPR hired private investigators and formed a team under the Director of Investigation, who was a retired senior police officer. Other members of the team also had previous experience in police work as well as investigating bribery and corruption allegations and public audit activities. The identity of investigators was kept confidential to ensure their effectiveness and safety.

Through rigorous independent investigations, PPPR was able to verify instances of the types of abuse listed above. However, some information was 'totally unverifiable' even if it appeared credible, some was 'verifiable' but only partly accurate, while other information was easily verifiable and accurate and therefore usable in our public reports. However, PPPR took great care to ensure that the confidentiality of sources was properly protected. The findings were communicated to the public and media through press releases, public discussions and meetings with a carefully selected network of journalists. The public discussions were lively events; many suggestions were made about how civil society could take action on the issue.

PPPR also informed the election authorities of its activities and findings, including violations of the law. Under Sri Lankan law, Secretaries to Ministries (in their capacity as Chief Accounting Officers) are responsible for protecting state property. Therefore, PPPR also presented evidence of abuse that had taken place to the Secretaries of the respective Ministry and other officials, including the heads of statutory bodies. When there was a large volume of good data, it was shared with the police. This resulted in the detention of several government vehicles that had been used for political activity.

PPPR knew that its work was not without risk and anticipated many challenges, ranging from physical threats to legal challenges. Regarding the latter, PPPR was mindful throughout the project that Common Law considers that disclosures made in the public interest are a legitimate defence in a libel case, where the statements are accurate. To its surprise, however, PPPR did not receive even a single threat or legal challenge.

The main problem faced was that Sri Lanka does not have a Freedom of Information Act. This meant that whistleblowers took a risk in divulging information concerning abuses of public property. Many persons were reluctant to speak directly to PPPR for fear of reprisals or disciplinary action. However, overall the project was a success. Thanks to the professionalism and dedication of the investigators valuable information was gathered and public confidence maintained. The 'name and shame' campaign and the efforts to prompt the authorities to take action demonstrated to those who misused public property that they would be held to account. In fact, this served as a strong deterrent, and large-scale abuses were minimised.

The programme also fixed in the mind of political figures the need to keep party and state functions separate, helped produce a more even field for campaigning, and thereby improved the “integrity” of the election.

42. PPPR’s final report on its activities in uncovering the misuse of State resources is available at www.tisirilanka.org/reports.

43. Statutory bodies are public institutions or corporations established under a statute. They include all categories of autonomous institutions of the government funded by the state but managed by a board that is appointed by a minister, e.g. The Petroleum Corporation or Sri Lanka Broadcasting Corporation. Sri Lanka has over 200 such statutory bodies.

9. Monitoring the Media During an Election Campaign

MEMO 98, Slovakia

Standard Rights, Freedoms and Responsibilities Regarding Media during an Election

No democracy can function without a truly independent media, which serves as a forum to exchange political opinion and stimulate public debate. As the public's principle source of information, the media should cover public affairs objectively. During an election, the media is indispensable in offering voters information on the various party and candidate platforms. This enables voters to make a qualified decision on their choice of political representation. Where the media allows all election contestants to communicate their messages and provides balanced information on matters of political importance, it also plays an important role in creating fair campaign conditions.

The freedom of the media constitutes a fundamental prerequisite to exercise the Freedom of Expression.⁴⁴ However, in many countries the freedom of the media is restricted by law or in fact. Independent-minded media may be harassed or intimidated and journalists may be forced to exercise 'self-censorship'. However, while journalists are conferred a degree of protection by well-established rights, they also have a responsibility to follow certain ethical principles, including accuracy and honesty in their reporting, objectivity and balance in their coverage of political issues, and enabling citizens to realise the right to receive information.⁴⁵ It is particularly important for the state media to provide balanced political coverage, since they are publicly funded. However, in many countries state-owned media are little more than mouthpieces for incumbents. Particular problems may arise where politicians or businesspersons with political aspirations own media outlets.

During an election, media monitoring is an effective tool to assess the fairness of the pre-election campaign and to gather information on the environment in which it is conducted. Media monitoring can make an assessment whether:

- The media is fulfilling its obligations as set out in the applicable legislation, e.g. the election law;

- Parties and candidates receive sufficient airtime to convey their political messages and voters receive adequate information to enable them to make a well-informed electoral choice;
- The media is biased in its reporting on political issues, parties and candidates; and,
- The freedom and independence of the media are respected.

Background to the Slovak Parliamentary Elections, 1998

In Slovakia, television is clearly the main source of information. In 1991, after the collapse of Communism and the establishment of Slovakia as an independent country, the state-run media were transformed into 'public service' media, supervised by external councils elected in the Slovak parliament. However, after the Movement for a Democratic Slovakia (HZDS) won the 1994 parliamentary elections, the members of these councils were appointed exclusively from among representatives of the then ruling coalition.

During the 1990s, an increasing number of media were established. In 1996, *Markiza* became the first privately owned TV broadcaster in Slovakia. By 1997, it had achieved the largest audience share (60–64 percent), surpassing the ratings of the publicly funded Slovak Television (STV).

As late as January 1998, public opinion polls indicated that around 40 percent of citizens did not expect upcoming parliamentary elections to be free and fair. Fears existed that the increasingly authoritarian government, led by Prime Minister Vladimir Meciar, intended to hold on to power at any cost. The government was well aware that one of the biggest threats to its power would come from the increasingly influential independent media. Harassment and intimidation of journalists, including the use of violence, physical attacks, verbal threats and editorial censorship, had become systematic. Journalists did not receive adequate training and professional standards in the media were low.

Only four months before the election, significant changes to the election law were adopted. Some of these contradicted the Slovak Constitution and international human rights instruments.⁴⁶ Restrictions were placed on the private media's coverage of the campaign. Parties were only allowed to campaign on public television or radio. Privately owned electronic media was prevented from broadcasting comprehensive political information. Due to vagueness in some provisions of the election law, a number of license holders were uncertain of the ground rules and exercised self-censorship for fear of antagonising the authorities.

MEMO 98 – a Slovak Initiative

MEMO 98 was established in June 1998 (with the support of the US-based National Democratic Institute for International Affairs), to systematically monitor the

media in the run-up to the parliamentary election and assess the fairness of the campaign in the media. MEMO 98 sought to:

- Provide media, political contestants, the international community and citizens with benchmarks to judge the fairness of the campaign;
- Gather accurate information on the political balance of mass media's campaign coverage, and assess if voters received fair and balanced political and election-related information;
- Document and publicise restrictions on the media, intimidation and harassment of journalists and highlight citizen's rights to receive unbiased information;
- Raise public awareness of media issues and encourage journalists to observe professional standards of reporting in the broadcast and print media; and,
- Campaign for changes to legislation that limited the independence and freedom of the media.

MEMO 98 monitored two television stations and five daily newspapers. Thirty-five monitors were recruited and trained to analyse and assess the content of the media. Initially, monitors were trained by Columbia University (USA) according to an established methodology. Over time, MEMO 98's methodology has developed further.

Establishing Monitoring Criteria

Before beginning to monitor the media, it is necessary to evaluate the relevant legislation to assess if the freedom of the media is respected in law, and if the election/campaign legislation provides an adequate regulatory framework to ensure a fair campaign. It is also important to become familiar with the role, work and competencies of bodies charged with overseeing the media, for example a Broadcasting Council or the Election Commission. Consideration should be given to making recommendations on the legislation well in advance of an election. As well as assessing the applicable legal provisions, it is important to assess the correctness of their application and adherence to international media standards. Attention should be paid to the impartiality and effectiveness of bodies charged with dealing with media-related disputes.

The media environment should be monitored continuously. Cases of interference in the media should be noted, and particular attention should be given to gross infringements on the freedom of the media, for example, intimidation and harassment of journalists; violence directed at journalists or media outlets; the arrest and detention of journalists; the unwarranted closure of media outlets; and unjustified lawsuits being brought against media outlets or journalists. Other indirect forms of harassment include: continuous inspections by state agencies; selective alloca-

tion of licenses; closure of transmission facilities; and the disruption of vital supplies (e.g. newsprint). Other considerations regarding the freedom of media include whether:

- The state media is free to play an impartial, fair and objective role in the campaign;
- Incumbent parties/candidates interfere in the state media or monopolise its political content;
- Any direct or indirect censorship is imposed; and,
- Media or journalists are penalised or harassed simply for broadcasting/publishing items that are critical of the government.

In many countries, state run media fail to provide balanced campaign coverage. Frequently, candidates are also members of the government and misuse their official position to generate additional coverage during an election campaign. Sometimes, the media covers events not for their information value, but to portray incumbents in positive light. On occasion, they also present the government's rivals in a negative light. Therefore, the media should be systematically monitored to establish if bias is occurring (in favour of or against particular parties/candidates) and to assess the independence and freedom of the media. The media can play a positive role during an election in raising public awareness. Hence, monitors should also assess if the public are receiving sufficient and diverse political information. Conversely, the media can play a negative role and monitors should assess the tone of the campaign, noting instances of potentially slanderous speech, hate speech, incitements to violence etc.

Developing a Media Monitoring Methodology

Before starting operations, decisions must be taken on which outlets should be monitored and to what extent. Factors that may be relevant in the selection process include: the significance of the media in terms of its broadcast range and audience figures; if specific legal requirements apply to particular media; if the ownership of a media outlet could be relevant, for example, if it is owned by a candidate. Surveys of the media and public opinion polls can help inform the selection. It will also be necessary to decide on whether to monitor regional or local media as well as national level outlets.

Regarding television and radio (the electronic media), the monitoring organisation should consider whether it is necessary to monitor the whole of prime time coverage (18.00–24.00) or just the prime time newscasts. Even if there are insufficient resources to monitor all media types, it may be necessary to prioritise the most significant media, for example television or radio over print media. Where possible, it is preferable to monitor over a long period, for example, beginning one

or two months before the beginning of the official campaign period. Not all programmes have a political or electoral content. Therefore, it is necessary to identify which programmes will be analysed. In the electronic media, these are likely to include: prime time news broadcasts, current affairs and other analytical programs as well as political debates.

Monitoring should include a quantitative aspect and a qualitative aspect.⁴⁷ Special attention should be given to monitoring of the state media. Depending on the type of election (e.g. presidential or parliamentary) it is necessary to identify the 'relevant subjects' for which airtime and newspaper space will be monitored. These include: the president, the government, political parties, candidates, regional governors/mayors and election commissions.

Quantitative analysis measures the total amount of space and time allocated by the media to previously selected "subjects" (e.g. candidates) or topics (e.g. elections). To monitor the broadcast media (television), monitors use stopwatches, or the VCR's timer, to measure the subjects' 'direct appearance time'. Additionally, monitors record separately each instance where a subject is mentioned indirectly (e.g. by a news presenter or political opponent). These are termed 'references'. In the print media, the space dedicated to political subjects is measured in square centimetres (cm²).

Qualitative analysis evaluates whether the media's coverage of monitored subjects is positive, negative or neutral.⁴⁸ To do this, an evaluation mark is attributed to the coverage. The evaluation scale consists of 5 grades ranging from 1 (very positive coverage) to 5 (very negative coverage). Negative coverage usually includes negative connotations, allegations levelled against a monitored subject or one-sided criticism. Grade 3 is a 'neutral mark', with the coverage being solely factual, without positive or negative comments. Where the media covers events in a fair and objective manner and offers (more or less) equal time or space to all subjects to present their views, the coverage is considered 'balanced'.

Memo 98's media monitors were trained to analyse both electronic and print media. They completed special monitoring forms, which were used to produce statistics. The forms were checked and the data entered into the monitoring database to produce aggregate results. The monitoring forms are stored, so that if the monitoring results are questioned, they can be re-checked. To safeguard the political impartiality of the project, media monitors must sign a 'Code of Conduct' according to which they pledge to remain objective, fair and non-partisan throughout the entire monitoring period. To eliminate any elements of subjectivity from the qualitative analysis, two monitors analyse the same news item independently. In case of a differing evaluation of a particular item, the whole monitoring team would evaluate the item before making a final decision regarding its 'tone' (positive, negative or neutral).

Media monitors should verify if the media are allocating free campaign airtime and paid political advertisements (if the law provides for these). In addition, it is important to assess the level of public information slots on electoral issues, for example encouraging citizens to register to vote, or on the voting procedures. Similarly, in the print media, monitors should distinguish between political items (including space given to electoral and campaign issues) and other news items. It is also advisable to monitor readers' letters and editorial pieces. As for the electronic media, monitors should verify if free space is allocated according to law, the volume of paid campaign advertisements, and public service information. If the law provides for a "campaign silence period" before an election, where no campaigning may take place, respect for this provision can also be undertaken.

The Experience of MEMO 98

MEMO 98's media monitoring programme for the 1998 parliamentary elections began 3 months before Election Day. The organisation released its monitoring reports on a regular basis. They were distributed to the public, the media, political parties, licensing bodies, international observers, and others. The media reported the findings widely. By applying proven methods for media monitoring, MEMO 98 was able to provide information not available from any other source. The data was indispensable in analysing the nature of Slovakia's election process.

MEMO 98's monitoring revealed that STV, contrary to its public mandate to provide balanced and objective coverage, clearly and openly supported the ruling powers and had become the unashamed mouthpiece of the government. This was extremely significant, because STV's news broadcasts were the only televised news source that covered the entire country.⁴⁹ In its news and current affairs programmes, STV clearly favoured the ruling powers and allocated them 69 percent of the coverage, which was overwhelmingly positive or neutral in tone.⁵⁰ Conversely, the opposition parties received significantly less airtime (17 percent), and the tone was overwhelmingly negative.

STV's prime time news program was selective in providing information. Topics were chosen not for their information value, but solely to portray the HZDS in a positive light or the opposition in a negative light. Information was repeated frequently in order to take root in citizens' consciousness. Often the channel appealed to viewers' emotions rather than their reason, for example, by appealing to their loyalty, patriotism, or sense of vulnerability. In its final pre-election report, MEMO 98 wrote: "*The results from the final weeks of media monitoring prior to the elections reveal continuing and disturbing problems in news coverage of political events, especially on STV. This situation has made it very difficult for Slovaks to get accurate and unbiased information about important questions necessary to make informed choices*

when voting. STV is particularly irresponsible in the way that it presents the news to Slovak citizens”.

MEMO 98 was among the most successful of the many projects established in the run-up to the 1998 parliamentary election. However, it was a big challenge to continue the organisation’s work after the election. To do so, MEMO 98 transformed itself into a civic organisation. Over time it has become one of the most respected NGOs in Slovakia, and a wide spectrum of political parties and the public largely accept its findings. Since 1998, MEMO has been monitoring the Slovak media continuously and has conducted more than 30 different projects aimed at improving respect for the freedom of speech and information. In 1999, MEMO was approached by OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) to provide media monitors on its international election observation missions.⁵¹

New Initiatives

Given the absence of effective media regulations, in 2002, MEMO 98 drafted a *Code of Conduct for the Media and Political Contestants*. This was based on international standards and best practices for the media during elections.⁵² By signing the Code, political parties and the media made a commitment to contribute to the holding of free and fair elections in 2002. All the registered political parties and the majority of media outlets signed the Code. While it was not a legally binding document, most signatories followed its provisions. The existence of the Code increased the interest of the public in the elections and improved the transparency of the election process. Breaches of the Code were assessed by an independent panel of media experts as well as by MEMO staff. During the course of the 2002 election, MEMO released five reports, several press releases, one preliminary and one final report to highlight the main offenders of the Code. These were distributed widely and reported upon by the national and local media.

44. “Freedom of the press and media are among the basic prerequisites for truly democratic and civil societies. In the Helsinki Final Act, we have pledged ourselves to respect this principle.” (OSCE, Lisbon Document – Summit Declaration, 3 December 1996)

45. Access to “information” is a fundamental right as highlighted by the case law of the European Court of Human Rights relating to Article 10 of the European Convention on Human Rights and recognised under Article 9 of the European Convention on Transfrontier Television. “Citizens have the right to demand that the information supplied by journalists be conveyed truthfully, in the case of news, and honestly, in the case of opinions, without outside interference by either the public authorities or the private sector.” Council of Europe Resolution (1003) on the Ethics of Journalism (1993).

46. After the elections, the Constitutional Court of the Slovak Republic found eight articles of the Parliamentary Election Code to be in conflict with the Slovak Constitution.

47. Some aspects of the media's coverage cannot be evaluated in quantitative or qualitative terms. Therefore, MEMO 98 established the category of "media effects" as a term for coverage where an attempt was made to manipulate public opinion by running items that do not meet the basic standards of objective journalism, for example stories that lack relevance, exactness, transparency, accuracy, timeliness or clarity.

48. An evaluation mark is also attached to all monitored subjects to receive information on how the subject was portrayed.

49. The HZDS achieved the best election results in regions where the private media's news broadcasts were not received.

50. Over an eight-week monitoring period, some 52 percent was allocated to the government and 16 percent to the HZDS.

51. Since then, MEMO 98 staff has taken part in election and media related projects in more than 15 countries working on projects for a variety of organisations including OSCE/ODIHR, United Nations, Pro Media, International Foundation for Election Systems, and the National Democratic Institute.

52. Council of Europe, Board of Ministers, Recommendation No. R (99) 15; Parliamentary Assembly of the Council of Europe, Resolution 1003 on Ethic of Journalism; OSCE Copenhagen Document (1990); Article 19 "Guidelines for Election Broadcasting".

10. Gender Analysis of the Tanzania Elections 2000

EISA, South Africa

The Electoral Institute of Southern Africa (EISA) was established in 1996 as a non-profit, non-partisan organisation seeking to strengthen electoral processes, democratic governance, human rights and democratic values in the Southern African Development Community (SADC) region and beyond. EISA promotes genuine election processes and democratic governance through research, capacity building, advocacy and other targeted interventions.⁵³

Women and Elections

Research has shown that in SADC countries women do not always participate in elections on an equal basis with men, despite the legal provisions that support gender equality and the ratification of relevant international agreements. However, in general, inadequate attention has been paid to this issue.

EISA has a broad experience of deploying observer missions throughout the SADC region, and has incorporated gender issues into its analysis of the election process and assessment of whether an election is free and fair. In October 2000, EISA sent an Electoral Observer Mission (EOM) to Tanzania with the specific task of studying the electoral process from a gender perspective.⁵⁴ The EOM was deployed to improve the understanding of women's electoral experiences, and to identify the obstacles and difficulties they confront. The EOM paid special attention to gender equality during all stages of the electoral process, including the administration of the election and voting procedures.

International Agreements

In 1997, SADC States committed themselves to “ensuring the equal representation of women and men in the decision-making of member states and SADC structures ... and the achievement of at least thirty percent target of women in political and decision-making structures by year 2005”⁵⁵. This re-emphasises the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), of which the elimination of discrimination against women in public and political life is an integral part. Article 7 requires that all States party to the agreement take measures to

ensure the right of women to vote in all elections; to hold public office; to participate in the formulation and implementation of government policy; and to participate in public, political and non-governmental organisations.

Analysing the Electoral Framework

The starting point for any election observation operation is an analysis of the relevant legislation. Therefore, prior to deploying the EOM to Tanzania, EISA analysed the Constitution and Electoral Law in Tanzania and Zanzibar from a gender perspective, and attempted to place the legal provisions within their socio-cultural context.

Tanzania uses a first-past-the-post (FPTP) majoritarian electoral system. Generally, this system is unfavourable to women candidates. The SADC countries that have done most to reach the target of 30 percent parliamentary representation for women – South Africa, Mozambique and Namibia – all have an election system based on proportional representation. While Tanzanian law provides a 20 percent quota of reserved seats for women at the national level and 25 percent at local level, there are no obligations on parties to field female candidates. Consequently, women face difficulties in securing party nominations to contest constituency seats. Women-only shortlists or quotas (that ensure the inclusion of women on party lists) have been put forward as effective mechanisms for guaranteeing representation of women.⁵⁶

The Tanzania Gender Networking Programme (TGNP), with whom EISA worked closely during the EOM, undertook a review of the 1985 Election Act from a gender perspective. It identified a number of deficiencies in the legislation, most glaringly a failure to use ‘gender sensitive’ language in the legal text. No provisions existed to address the sexual harassment of women candidates and gender discrimination of women in party structures. These issues were reported as serious problems in the context of Tanzania and discouraged women from standing for election. The large majority of National Electoral Commission (NEC) members were male, and its members were insufficiently aware of gender issues in the electoral process.

A Gender Monitoring Methodology

An election process provided an excellent opportunity to assess if the principles contained in CEDAW and the SADC Declaration were being respected. However, as with any other form of election observation, a methodology must first be developed. Our objective was to measure ‘gender equality’ and obstacles to women’s full participation during the entire electoral cycle. EISA compiled a ‘Gender Checklist for Free and Fair Elections’ to be used during the EOM to Tanzania. The checklist provided data that enabled an assessment of gender equality at every stage of the election, and set out conditions necessary to enhance the participation of women in elections and create an environment of gender equality. The follow-

ing is an extract of the checklist relating to conditions considered necessary to ensure gender equality in the voter registration process. If conditions exist, observers fill in the “tick box” on the left.

- The right of women to an effective, impartial and non-discriminatory procedure for registration of voters
- The stipulation of clear criteria for the registration of voters: inter alia, age, identification, citizenship or permanent residence. These criteria must guarantee the right to vote in the same way to men and women
- The guarantee of registration stations that are easily accessible

In addition to respect for women’s right to vote as equals, the checklist included other indicators related to the exercise of fundamental rights and freedoms – the right to stand for public office, the right to express political opinions and the right to freedoms of association, assembly and movement. The checklist provided data necessary to form an assessment not only of respect for these rights in law, but whether rights could be realised in practice, and if not, why this was so. In addition, an assessment was made of whether gender issues had been taken into account in the following aspects of the election:

- Voter education/information programmes;
- The conduct of political parties and training for women candidates;
- Access to and use of media by women candidates;
- Articulation of gender issues in the election campaign; and,
- The voting process, including the secrecy of the ballot;

The EOM assessed if gender equality principles were included in the voter education/information programme, whether the information provided explained complex electoral processes in a manner that would be understood by illiterate voters (the majority of whom are women), and whether workshops were held at suitable times and venues for women. This last point is important, as it could, *de facto*, lessen women’s access to information.

Election observers also analysed the composition and conduct of electoral commissions and the effect of their decisions. As mentioned previously, the assessment looked not only at the legal provisions, but also at the context in which the election was taking place. When assessing women’s right to express political opinions, the team verified if there was any *de facto* interference or restriction in

women's exercising this right. Similarly, if parties discriminate against women when selecting candidates, the possibility of women exercising their right to equal participation in public life is diminished.

Observing the Election Process

Observing elections is a consultative and participatory process. EISA therefore decided on the following strategy:

- Establishing effective communication with the NEC during the course of the electoral process;
- Building contacts with political parties to obtain information on the selection of candidates and the participation of women within the party;
- Developing strong and cooperative relationships with other observer missions;
- Publishing a report on the EOM's findings on gender equality in the election process; and,
- Continuing to raise awareness of gender issues by conducting projects in non-election periods.

The EOM met with a variety of electoral stakeholders in the capital and at local level, including the NEC, political parties, civil society organisations, academics and international observer groups. EISA observers attended training sessions for electoral officials and gathered information on the training of women candidates.⁵⁷ The effectiveness of voter education programmes was examined, including the methods used to convey information to voters and voters' understanding of election procedures.

The number of female candidates fielded by each party in a region was recorded, and the constraints women faced when running as candidates were researched. These ranged from a 'lack of self-confidence' to patriarchal attitudes of parties and male candidates. The most serious obstacle was the lack of financial assistance to run an election campaign. EISA's partner organisation, TGNP, urged the media to provide effective coverage of women candidates. Particular problems included the media's tendency to portray women candidates using stereotypes and sensationalised reports of political intimidation and violence, which discourages women from participating as voters and candidates.

On Election Day, each of EISA's four observer teams focussed their activity on: ascertaining the proportion of women voters; establishing the gender composition of polling boards; assessing women's awareness of voting procedures when arriving at polling stations; assessing the level of assistance given to the elderly and women with children; and verifying respect for the secrecy of the vote.

Women were found to comprise 49.2 percent of the registered voters, and were highly visible on both polling day and at pre-election rallies. At the latter, however, their role was largely confined to singing and dancing, rather than participating as speakers. More extensive voter education was required, particularly in more illiterate rural and urban areas, to broaden participation in the process. This deficiency was also highlighted by the voting process, which was overly time consuming because polling staff had to explain the voting procedure to many voters, most frequently to elderly and women.

The use of the 'Gender Checklist' was particularly helpful in providing an analytical framework for the gathering of data. The EOM concluded that more consideration needs to be given to voting by the elderly, by pregnant women, and women with children so that they do not have to wait in long queues to cast their votes. Electoral staff must be aware of the discrimination faced by women and trained to ensure its prevention. Steps need to be taken to increase the number of women appointed as electoral staff. This should ensure their proper representation and facilitate greater attention to gender in the process. While the training of women candidates went some way to preparing them for the election contest, it could have been more comprehensive and incorporated campaigning techniques, public speaking and fundraising skills.

Conclusions

Agreements, such as the 1997 SADC Gender and Development Declaration, and initiatives, such as the introduction of quotas for women candidates and parliamentarians, have shown some states' willingness to place gender parity and women's representation onto the political agenda. Indeed, governments and legislatures have the greatest potential to progress gender issues further. However, legislative reform must be accompanied by a social acceptance of the principle that gender parity should exist within state institutions. Undoubtedly, decisions taken at a national level can speed up this process, and the visibility and representation of women in decision-making bodies themselves can, in turn, impact on society's perceptions of the role that women have to play in public affairs.

Patriarchal attitudes still predominate in many societies. These are present in party structures and deter women from entering politics. Parties fail to encourage women to be candidates, and choose an insufficient number of women candidates. Those that become candidates often receive little financial support from their parties, lessening their ability to campaign effectively. Often, the media's presentation of women candidates is chauvinistic, and many women face the problem of being regarded firstly as a women and secondly as a candidate. Implementing a system of reserved seats for women can help raise the number of women in parliament. In Tanzania, a quota system resulted in the election of 61 women in the

280-seat assembly (21.8 percent). However, only 12 women (6.6 percent) were elected in the 181 constituency seats. The remainder were beneficiaries of the reserved seats set aside for women. This highlights the problem faced by women in securing party nominations to contest constituencies.

Civic organisations such as the TGNP have already drawn attention to flaws and inadequacies in the electoral process and electoral law in Tanzania. These and similar initiatives have kept gender and women's representation issues on the policy agenda. This is particularly important during a period when electoral legislation is being reviewed. Political parties have a crucial role to play in the advancement of women in public life. However, many are not fully conversant with the need to adopt internal rules, so that women do not face discrimination and are more often selected as candidates.

While it may be vital to establish fair and equal rules, it is just as important that gender issues receive consideration during the planning of an election, for example, in voter education programmes, deciding appointments to election commissions or making polling arrangements. Civil society has an important role to play in this regard. A comprehensive observation of an election process can make a valuable contribution through elaborating recommendations for policy-makers and implementing bodies.⁵⁸

53. It provides technical assistance and advice to SADC countries in a wide range of areas, including reform of electoral systems; election monitoring and observation; enhancing the institutional capacity of election management bodies; strengthening of political parties, parliaments and other democratic institutions. In addition to its headquarters in Johannesburg, EISA has field offices in Kinshasa (Democratic Republic of Congo), Luanda (Angola) and Maputo (Mozambique).

54. The mission was composed of a seven-person team, from EISA's research department, other civil society organisations and private consultancy companies within SADC. Their findings are included in the "Tanzania Gender Observer Mission Report" (2001), published by EISA.

55. *Gender and Development: A Declaration by Heads of State or Government of SADC*, 1997.

56. In South Africa, the African National Congress adopted a 33.3 percent quota for women on their party lists. However, this was a voluntarily decision which has not been adopted by other parties. The increase in women's representation in parliament (currently 32.8 percent, following the 2004 election) is mostly attributable to the ruling party's quota.

57. Several months prior to the election, in collaboration with the British Council and Tanzania Media Women's Association (TAMWA), TGNP conducted workshops specifically geared at building campaign skills and gender analysis skills of political aspirants.

58. In 2003, in conjunction with the Electoral Commissions Forum of SADC, EISA published the "Principles for Election Management, Monitoring and Observation (PEMMO) in the SADC Region". Amongst other issues, the document highlights aspects of the election process, where gender issues must be taken into consideration.

11. Observing on Election Day: Voting and Counting

The Role of Observers on Election Day NAMFREL, The Philippines

Background

Former President Ferdinand Marcos assumed power in 1965, and following the declaration of Martial Law in 1972, he ruled as a dictator. President Marcos controlled the entire government apparatus; the Parliament (*Batasan Pambansa*) lacked any real independence; the judiciary was corrupt; and the regime's associates owned the main media. The regime closed any press that criticised the government and imprisoned its journalists.

The public had begun to lose faith in elections as a means of bringing about political change. President Marcos appointed all members of the Commission on Elections (COMELEC). The electoral legislation did not provide for a 'level playing field', and presidential decrees curtailed free speech and assembly. Because of their experiences during the farcical election of 1978, political parties and civil society were torn over whether to boycott future contests. However, while they were aware that their participation would give the process a degree of legitimacy that it did not deserve, their response was mostly passive.

Prior to the 1984 election, election monitoring had only been conducted by loose formations of civic groups or at a local level. A number of civic leaders recognised the importance of monitoring the 1984 election on a more systematic basis. A meeting of NGOs was convened, to discuss the idea of establishing a watchdog organisation. This meeting provided the impetus to found the National Citizens' Movement for Free Elections (NAMFREL) in November 1983. It was the first organisation established as a permanent, countrywide election-monitoring organisation. Its leadership was already well known and respected for their efforts to establish democratic governance.⁵⁹ Over time the organisation has

grown and diversified. This chapter concentrates on NAMFREL's early experiences of monitoring elections in 1984 and 1986.⁶⁰

Creating an Organisational Structure

A governing body (the National Council) and a secretariat were created. Additionally, several committees were formed at all levels, such as the Recruitment Committee – to recruit and screen volunteers,⁶¹ and the Finance Committee – to raise funds and determine logistical requirements. Other structures included “Operation Quick Count” (OQC) to undertake a parallel tabulation of the election results, and the Media and Spokesperson Bureaus. Approximately 20 provincial convenors were appointed to work with civic, religious, professional, business, labour, educational, youth, and other non-partisan organisations with the aim of forming up to 59 provincial chapters. However, a number of challenges needed to be overcome before the organisation could function effectively.

Some civil society organisations believed that conditions for a genuine democratic election did not exist and campaigned actively for an election boycott. Some even tried to convince NAMFREL to disband. Instead, NAMFREL worked to improve the electoral conditions, for example by lobbying for reform of the election legislation. Somewhat surprisingly, prior to the 1984 election, Parliament did adopt reforms including: providing for a general registration of voters (to improve the accuracy of the voter list); instituting the use of indelible ink to mark voters (to prevent multiple voting); granting all parties and candidates equal access to the media; repealing presidential decrees curtailing the freedom of speech and assembly; confining all military personnel to barracks on Election Day (except when voting or on regular duty), and restricting the presence of local officials in polling places except when voting. These reforms encouraged the opposition parties, and they took the decision to participate in the elections.

Nevertheless, other significant legislative, financial and logistical challenges had to be overcome. At the time NAMFREL was founded, the election law did provide for election observation by non-partisan groups. Fortunately, the COMELEC decided that this activity was permissible and accredited the organisation to observe the 1984 election.⁶² However, time was short and funding was a problem, since its accreditation did not allow NAMFREL to receive funds from foreign entities. NAMFREL sought and received donations, both financial and in kind, from concerned Filipino citizens, organisations and businesses. Setting up a communications system in a country with so many islands was enormously difficult in 1984, particularly as the regime's associates owned most of the telecommunications companies.

Preparing to Monitor an Election

NAMFREL's activities are not restricted to election periods, and it has a number of programmes running at any one time. When an election is due, operations are scaled up, local chapters and committees are reactivated and vacancies filled. The number of staff working in the secretariat rises from a regular staff of eight to as many as sixty or more. A National Assembly is convened approximately three months before the election, with all Provincial, City Chairs and Vice Chairs (about 400 participants) gathering for the two-day meeting to plan for the upcoming election observation and set priorities.

The organisation monitors the entire electoral cycle, including the campaign period, and implements a number of projects, including providing voter education information, sponsoring candidate forums and debates. It works in co-operation with government agencies such as the Department of Education and the National Police, monitors the activities of the COMELEC, e.g. printing ballots and protocols, tests the potency of the indelible ink, and even scrutinizes appointments to the COMELEC. However, this chapter concentrates on observing proceedings on Election Day.

The Philippines has some 86,000 polling stations, and NAMFREL recruits up to 500,000 volunteers from across the country to perform a variety of observation and support tasks. Poll watching (observing the process at a polling place) is the most common volunteer function. Poll watchers work in shifts, monitoring the process from before voting begins to after the votes have been counted. However, volunteers support NAMFREL in other ways, for instance, working on 'food brigades', providing transportation, operating communication facilities, or entering data. In addition to monitoring voting and counting, NAMFREL establishes 'Voters' Assistance Points' in all voting centres. These are staffed by volunteers who assist voters to locate their precincts, give information on procedures to first-time and disabled voters, answer questions and receive complaints.

All volunteers undergo a general orientation on NAMFREL's objectives and activities. Afterwards, they are trained for specific tasks, for example, poll watching, the quick count or conducting voter education. Manuals are provided for each activity. Initially, headquarters staff conducted training, but over time local chapters have developed the skills necessary to do this effectively, although the quality and content is monitored. Training poll watchers is intensive and time-consuming. Among other things, training covers the legal provisions dealing with precincts (polling places), voting centres (places housing a number of precincts), the Board of Election Inspectors (hereafter: polling board), poll watchers, voting and counting procedures and election offences. In addition, volunteers receive information on the types of election violations noted by poll watchers in previous elections, for example:

- Assuming the identity of another person and casting a vote in his/her name;
- Vote buying and vote selling;
- Delaying the delivery of polling material, so that polling cannot take place or begins late;
- Theft or destruction of ballots or election returns;
- Stealing, or defacing voter lists posted outside the precincts;
- Threatening the Board of Election Inspectors (BEI) to influence their decision-making; and,
- Substituting votes with fake or previously prepared ballots.

Poll watchers must be adequately prepared for their tasks. In addition to training, two weeks before Election Day they are provided with a copy of the voter list in the assigned precinct – this can help spot ‘flying voters’ (persons voting many times at different polling stations). NAMFREL also gives poll watchers information on the history of polling at the precinct and, where necessary, a local security assessment prepared by the Security Committee.

As a non-partisan organisation, NAMFREL is concerned with the integrity of the electoral process and not the advancement of a particular party or candidate. On joining the organisation, all volunteers must sign a “Pledge of Commitment” to promote NAMFREL’s non-partisan objectives. This is the overriding principle in the volunteers’ Code of Conduct, and the recruitment committee is tasked to ensure adherence.⁶³

NAMFREL performs its tasks independently of foreign or other local observer groups. However, it extends assistance to international observer groups, for example by holding briefings on the political and electoral environment, the nature of the campaign, or specific areas of concern. Similar briefings are given to the diplomatic corps and foreign media. Over the years, it has had contact with foreign organisations including the National Democratic Institute (NDI), International Foundation for Election Systems (IFES) and the International Republican Institute (IRI). Additionally, it has assisted NGOs from emerging or recently restored democracies interested in setting up their own election observation groups, by allowing them to observe its activities and by sending trainers to share its experiences and practices.

Observing in Special Situations

Before each election, NAMFREL makes a pre-election assessment on the political environment in the different areas of the country. Poll watching can contain risks to volunteers’ personal safety, and local chapters must put in place security arrangements to minimise the risk. Critical areas or so-called ‘hot spots’ are identified and

special procedures arranged. In certain situations, based on the principle of strength and safety in numbers, NAMFREL deploys brigades of volunteers (numbering up to 20 strong) who peacefully assemble at voting centres, holding vigil to prevent persons intimidating voters. They remain in place until the last vote is counted. In the early years, NAMFREL did not recruit public sector employees, since they are more vulnerable to intimidation and employment pressure.

A roving team of volunteers with radio communications (mobile phones now) tours the town to assess the atmosphere and check if any illegal election-related activities are taking place, e.g. campaigning. This team also serves as NAMFREL's liaison with the local COMELEC and informs them of any complaints received or violations, so that they may take the appropriate action.

In 1986, some politicians used hired thugs to disrupt the process and commit electoral violations. NAMFREL deployed 'special' observers to areas where trouble was expected. They included nuns, priests, seminarians, elderly women and even the physically handicapped. These observers became known as 'NAMFREL Marines'. Even the most hardened criminal would think twice before attacking a man of the cloth or an elderly woman. Nevertheless, over the years, many volunteers have been intimidated, threatened, ejected or forced to leave precincts. During the 1984 and 1986 elections, 158 sustained injuries. In twenty years, nine volunteers have been killed.

Observing the Voting Process

NAMFREL deploys poll watchers to locations in which they are registered as voters and usually the precinct where they actually vote. The reason is simple: the law does not require voters to prove their identity unless challenged. Being drawn from the local community, volunteers can usually identify and thereby deter flying voters. Poll watchers begin work at 6 a.m., even before the opening of a precinct. Each is given an identification card, which also serves as their accreditation card. Poll watchers should also have in their possession a poll watching manual, cameras (if they have one), candles or torches and calculators. They verify the quantity and serial numbers of the ballots and election returns (official forms of the election results, also known as protocols) and check that all material has been received and is properly sealed. In addition, poll watchers should check that all campaign material has been removed, whether the ballot box is empty before it is sealed, that the polling layout allows voters to mark their ballots in secret, and that only authorised persons are present.

Poll watchers do not merely observe proceedings. They have the legal right to intervene or file a protest to the polling board (Board of Election Inspectors) against an irregularity or violation of the law. In the Philippines, polls close at 15.00 hrs. Volunteers must be exceptionally vigilant during the period before closing, as it

is during this time that serious violations are most likely to occur. During previous elections, in addition to the type of violations mentioned above, protests have been lodged where:

- Voters try to duplicate the information he/she wrote on a ballot paper e.g. using carbon paper, as a means to prove for whom they had voted;
- A polling board chairperson fails to validate ballots (by signing their reverse) or voters fail to sign (or mark with a thumbprint) that they have received a ballot;
- Persons whose names do not appear on the voter list are allowed to vote;
- The secrecy of the vote is compromised, for example, when a voter shows his/her marked ballot to a third party;
- Voters whose fingers are already stained with ink are allowed to vote; and,
- Voters are allowed to leave the precinct without having their fingers stained with ink.

In the Philippines, voters write the names of candidates onto ballots. A ballot may contain space for up to 32 names, from the President down to candidates for municipal level offices. Voters receive only one ballot paper and only one ballot box is used. All polling takes place in precincts, and there is no use of a mobile ballot box as in some other countries. Voting is not allowed in military bases, police camps, prisons or buildings owned by the religious organisations. Proxy voting is not permitted, and tendered ballots are not used. Recently, absentee voting was passed into law, but only for Filipinos residing overseas in three specific countries. Other voters abroad must vote in embassies or consulates.⁶⁴

Observing the Counting Process

After voting has finished and the precinct is closed, the polling board prepares to count the ballots. Counting is done at the precinct, unless otherwise ordered by the COMELEC for security reasons. It is open to the public. If space is limited and all observers cannot be accommodated to observe counting, the COMELEC ruled that preference should be given to party representatives and NAMFREL.

Poll watchers verify if all the procedures are completed correctly, before the ballots are counted. Firstly, the polling board should reconcile and record the number of voters who participated, and the number of received, used, and unused ballots. The unused ballots should then be destroyed having first recorded the serial numbers. The polling board then opens the ballot box and counts the number of ballots, without unfolding them, to determine whether there are 'excess ballots' (compared to the number of voters having participated). The polling board chairperson then unfolds the ballots one by one to find out whether there are any 'invalid votes'. The valid votes are then separated into piles of 100 for counting.

Monitoring the count can be time-consuming and strenuous. Sometimes the process lasts until the next day. Therefore, NAMFREL relieves the poll watcher who monitored voting with a fresh volunteer. S/he positions her/himself behind the polling board chairperson so that the ballot can be viewed. The volunteer monitors that only those names (votes) that are written on the ballots are announced. S/he must be vigilant that the ballots are not substituted, and that votes are counted properly. The secretary of the polling board records the votes on a tally sheet, and the poll clerk inscribes the results in the election return. Poll watchers verify that the election returns are an accurate reflection of the vote count.

When all the ballots are counted, poll watchers check that the addition of votes received by each candidate equals the number of voters having cast ballots. No alterations to the election return should be made after the results are announced. The election return is compiled in seven copies, all of which must be signed (and marked with a thumbprint) by the polling board. These are then sealed in envelopes. The numbered copies of the election return are distributed to the higher level of the election administration (the City/Municipal Board of Canvassers), the Congress (parliament), the COMELEC, the dominant majority party and the dominant minority party (as determined by the COMELEC) and NAMFREL. The seventh copy is deposited in the ballot box. A courier transfers NAMFREL's copy to the organisations municipal-level headquarters, where the data is included in the parallel vote tabulation (Operation Quick Count).

Poll watchers accompany the polling board when they deliver the ballot box, the election return, and other materials to the higher level of the election administration. S/he should be alert to the possibility that the return could be switched or tampered with. The overall election results are tabulated in a three-stage process. At the municipal/city level, precinct election returns are added together and reported in a city/municipal 'Certificate of Canvass' (city/municipal-level result). These are transferred to provincial capitals where results are aggregated to form a Provincial 'Certificate of Canvass' (provincial-level result).

Volunteers collect canvasses at all levels. Unfortunately, it is often during the transfer of precinct level election returns and the tabulation of city/municipal-level and provincial-level results that large-scale irregularities occur, either by altering, stealing or substituting the results. In the past, NAMFREL's original copy has been very useful to candidates affected by such acts. In practically all elections, NAMFREL documents have been used as evidence in electoral claims.

Reporting Findings

Poll watchers provide information on the conduct of the poll, using special two-part incident report forms. These cover a variety of issues, including delays or interruptions in voting, failure to supply election materials and irregularities or viola-

tions during the voting. The first part of the form provides space to give details of the incident, e.g. what happened, who was involved and where and when it took place. The second part indicates any action taken by the volunteer and a recommendation on subsequent action to be taken by NAMFREL or the COMELEC. Periodically, chairpersons of local NAMFREL chapters visit all precincts to collect reports. In addition, the brigade volunteers report on events taking place at voting centres, such as the presence of unauthorised persons, unlawful campaigning, or intimidation of voters.

NAMFREL has established a set of criteria to assess an electoral process. Poll watchers are asked to classify the process as ‘Desired’ (Credible), ‘Tolerable’ (Questionable), ‘Intolerable’ (Highly Questionable) or ‘Abusive’ (Failure). A desired situation is one where the conduct of the electoral process is considered free, fair, orderly, and honest. A tolerable situation is characterised by isolated reports of suspected and actual violations of the electoral rules, which tend to lessen the freeness, fairness, order, and honesty of elections. However, the scale and nature of reported irregularities and violence are kept within certain ‘tolerable’ limits. An intolerable situation is one where the criteria of free, fair, orderly, and honest elections are clearly violated. An abusive situation is one where the criteria of free, fair, orderly, and honest elections are blatantly discarded.

In cases where an incident report contains unclear information, a senior volunteer verifies the facts. Where a report details a very serious incident, a ‘special operations group’ from the province – or in extreme cases the national headquarters – visits the area to verify the report, for instance, the failure to conduct polling in a particular place due to violence or intimidation, or when a NAMFREL volunteer has been harmed.

NAMFREL’s local chapters send periodic reports to its National Media Bureau, which on Election Day is located in the ‘Tabulation Centre’. The centre has special booths, where the major media stations can air live reports and receive copies of NAMFREL’s press releases. To ensure that its activities are transparent, NAMFREL provides space for up to three accredited representatives of each political party to observe its activities. On Election Day, NAMFREL holds approximately four press conferences. During the first, which is normally about two hours after the close of polls, it presents data on the reports received from local chapters. Three senior staff members are designated Spokespersons (the National Chairman, the Secretary General and the Deputy Secretary General) and all are available for media interviews. After all information has been received and analysed, a final report is made public. This is usually two to three weeks after the election.⁶⁵

Operation Quick Count (OQC)

The manual counting and canvassing of votes is a lengthy process, and the law does not allow COMELEC to release partial results. Meanwhile, the public is hungry for information on the results. NAMFREL conducts “Operation Quick Count” (OQC) to have an accurate and timely indication of the results and deter the manipulation of official results. It is permitted to release quick count results publicly. The activity is conducted by NAMFREL in parallel with the official tabulation process. The election returns collected from each precinct across the country provide the source data for the quick count. During the 1986 presidential election, NAMFREL gathered and tabulated results from more than 80 percent of the precincts. Its results showed Corazon Aquino leading over Ferdinand Marcos, whereas the official COMELEC results gave a Marcos victory. Significantly, the public accepted NAMFREL’s results as the more accurate.

Election returns that contain errors are not included in the quick count, for instance, those where the number of votes cast in a precinct is greater than the number of registered voters. Other irregularities with election returns have included: cases where the number of votes (in figures) and the number of votes (in words) do not match, where the return is not signed by the polling board, or where unauthorised alterations have been made to the election return. The initial results of the quick count are released four hours after the polls close. At this time, only a relatively small percentage of results have been aggregated, usually about 3 percent. This figure usually rises to 15 percent by the following day. Depending on the election, it has taken between five to twelve days to complete the operation. The QC results are made public on NAMFREL’s website.⁶⁶ The quick count results are not official. Those are prepared by the COMELEC, which places the official results on its website.

The Effectiveness of NAMFREL’s Work

Under martial law, Filipinos had low expectations that elections could be free and fair. Nevertheless, citizens supported NAMFREL because they wanted to bring political change in a peaceful and democratic manner. At the time, recruiting 500,000 volunteers seemed an almost unrealisable ambition. However, the organisation was greatly encouraged by the enthusiasm shown by volunteers, which demonstrated that even in very difficult conditions, an active civil society could serve as a bulwark against undemocratic acts. The presence of poll watchers in all voting centres encouraged citizens to participate as voters, thereby greatly increasing turnout. Volunteers were able to spot violations and were courageous in challenging these.

Over time, the quality of the election process has improved. Balloting is more orderly and largely free of the type of cheating committed in the past. Most disputes at precinct level are now resolved peacefully. NAMFREL now enjoys a

94 percent public awareness level, higher than many national candidates, and it is now regarded as part of the 'electoral furniture'. For more than ten years, it has advocated for the modernisation and automation of the electoral process. Recently, a law was adopted that makes manual counting and canvassing redundant. NAMFREL's mission statement is "Honesty in Election, Honesty in Government." Looking forward, NAMFREL will pursue with vigour the goal of good governance.

59. José S. Concepcion, the driving force behind NAMFREL, led a campaign against the adoption of the 1973 Constitution which gave Marcos absolute powers, an activity that resulted in his arrest and imprisonment.

60. Since 1984, NAMFREL has monitored nine elections, one plebiscite and a number of local by-elections.

61. However, to this day, volunteers chose their leaders and officers by consensus.

62. After the Marcos regime was toppled, Congress (which replaced the *Batasan Pambansa*) amended the Election Law to allow "the duly accredited citizens arm of the Commission to appoint a watcher in every polling place." (Section 180)

63. Any interested party may file a complaint with the Election Commission against any volunteer who displays partisan behaviour, which can result in the cancelling of their accreditation. In twenty years, NAMFREL has received only three complaints.

64. NAMFREL formed 11 International Chapters to observe voting abroad.

65. In fact, the law mandates NAMFREL to submit a report to the COMELEC within thirty days after the election. The report contains the final assessment of the electoral process and results.

66. www.namfrel.org

Conducting a Parallel Vote Tabulation ISFED, Georgia

Since Georgia gained independence in 1991, multiparty elections have been held. However, they have been marred by many serious violations including the forging of election results, which in some cases had a significant effect on the overall election outcome. This type of fraud occurred at polling stations after the vote count, at the intermediate-level District Election Commissions (DECs) and even at the Central Election Commission (CEC). Ballot stuffing during the voting phase was also a serious problem. The CEC accepted implausible results without question, including instances of polling stations with over 100 percent turnout, and complaints were summarily dismissed. Consequently, in the run-up to the 2003 parliamentary elections, public confidence in the election process was very low.

The International Society for Fair Elections and Democracy (ISFED) is one of Georgia's largest non-governmental organisations and has been monitoring elections and referenda since 1995. In 2003, ISFED decided to conduct a Parallel Vote Tabulation (PVT) for the upcoming parliamentary elections.⁶⁷ As its name suggests, a PVT is an attempt to tabulate the results in parallel to the official tabulation of results by the election administration. In this manner it is possible to ascertain if the results are genuine, or if they have been manipulated and, if so, in which manner. This was the case in the 2003 parliamentary elections in Georgia.

A PVT can be based on complete or partial results. In addition to predicting the results, a PVT can also provide an accurate estimate of the voter turnout. To conduct a PVT, observers report the election results from the polling stations where they have been continuously observing the process on Election Day. These are then added together to form an aggregate result.

In general, organisations conducting a PVT should already be experienced in monitoring elections. Preferably it should not be conducted in isolation, but as part of a broad election-monitoring programme that covers the pre-election period as well as the actual Election Day. In monitoring the pre-election period, the organisation gains insight into the nature of the process in all election districts. In addition, the organisation is likely to have already established its public profile through its regular reporting on issues such as the voter and candidate registration process and the nature of the campaign. Establishing the organisation's professionalism and credibility are vital, if the public is to be asked subsequently

to accept the PVT results as reliable and accurate. Monitoring the pre-election period also reaffirms that events on Election Day are not the only important elements in a democratic election.

On Election Day, in addition to conducting a PVT, the organisation should continue to monitor the conduct of the process. The results of the PVT should be analysed in the context of irregularities that may have occurred in the polling stations before the official vote count. These irregularities could subvert the integrity of the results, even if votes were counted correctly at the polling station, by for example so-called “ballot stuffing” or the refusal to allow eligible voters to cast their votes.

Why Conduct a Parallel Vote Tabulation?

A PVT can have a deterrent as well as detective function. The operation should be highly publicised in advance of the election and conducted in a transparent manner by a credible, non-partisan and independent organisation. The project should be promoted in the media to increase public awareness that manipulation of the electoral results will be detected. This informs the election administration, the government, political parties and other groups that the election results are being closely monitored. In countries where the public lacks confidence in the election administration, but the PVT and official results coincide, a PVT can strengthen public confidence in the official results.⁶⁸ Informing the public in advance of an election that a PVT will be conducted may also improve confidence and increase voter participation in the election. This can create a virtuous circle – it is harder to manipulate an election, which has a genuinely high turnout and a politically engaged civil society.

Sometimes official results can take days or even weeks to be publicly announced. A PVT can forecast returns in a timely fashion. Depending on the country, PVT results can be given sometimes only hours after votes are counted or the day following the election. However, in large countries or where communications are difficult more time may be required.

Gathering information on voter turnout can also detect fraud. Information on turnout, provided by observers, can be compared to official information on turnout, as inflation of the turnout can endanger both the integrity of the election and accuracy of the PVT results. A comparison should be undertaken not only for national level turnout data but also for individual regions or districts to determine discrepancies, for example, whether the official turnout data has been inflated in areas where one party enjoys more support, or whether it has been reduced artificially in areas where other parties enjoy more support. The calculation of turnout data is sometimes referred to as Parallel Turnout Tabulation (PTT).

Conducting a PVT requires that an election monitoring organisation develops good organisational skills. This can have benefits beyond elections.

PVT Methodology for Georgia's 2 November 2003 Elections

Georgia has a mixed electoral system. Deputies are elected from party lists with mandates allocated, using proportional representation (150 seats), and from single mandate constituencies of varying size (85 seats). Only parties receiving votes equalling 7 percent or more of the participating voters are awarded mandates. For a variety of reasons, ISFED conducted a PVT only for the proportional part of the election.

ISFED's PVT preparations began three months before Election Day, while its initial planning began long before. As the 2003 elections were the first time ISFED had conducted a PVT, an international expert from National Democratic Institute (NDI) provided full-time advice and assistance with the development and implementation of the project, including: training for the Project Coordinator and ISFED's management; setting up an IT system and determining software specifications; testing the software; training for the software programmer; developing the reporting system and designing reporting forms; training monitors, telephone operators and data entry operators; and advice on presenting the PVT data.

If a PVT is based on a sample of polling station results, to ensure that the PVT is accurate, it is important to include results from a relatively large number of polling stations. This should result in a low margin of error and a high degree of confidence in the PVT results, providing that the sample is 'representative' of the country as a whole. In November 2003, ISFED used a sample from 549 of the 2,700 polling stations established in Georgia, giving a sample size of just over 20 percent. In each polling station designated as a 'PVT station', observers monitored the voting and counting processes, recorded key information on standardized forms, and reported findings to a central data collection centre. ISFED's sample was relatively large for several reasons relating, among other things, to the country's demographic composition, experiences of fraud in previous elections and difficulties gaining access to polling stations in some areas.

The PVT project included 550 observers and 75 district coordinators in the field: a PVT expert; a PVT Coordinator; a computer programmer at the data collection centre; 15 telephone operators receiving observers' calls; and 10 computer operators entering data into the database. Almost all of the PVT observers had mobile phones to report results and violations. One week before Election Day, ISFED conducted a simulation exercise to test the PVT reporting system. During the simulation, all observers at the polling stations designated as PVT stations checked the communications and called the PVT centre.

The computer software had to fulfil two functions: data entry and data processing. The program had the ability to identify and generate a list of the polling station

results that had data errors, for example in the mathematical logic. Where these errors existed, the data was double-checked with the observer who had reported the results. The PVT software was able to automatically separate out results from polling stations where incidents or violations had occurred, before deciding whether to include the results. During the data analysis phase, the results from polling stations, where major violations had taken place (during the voting or counting phase), were separated from the results where no violations or minor violations were reported. This was necessary to preserve the integrity of the PVT results.

In addition to the PVT project, ISFED also received reports of major incidents from observers monitoring the process in polling stations that were not included in the PVT sample. The data gathered by these observers was a vital complement to the PVT data, informing the organisation on the general quality of the voting and counting processes. In addition, it provided specific information on the type of irregularities and violations that occurred and a clear picture of the quality of polling in particular localities, regions and nationally. Such factors must be placed into a proper context in observation statements and reports.

Challenges to Conducting a PVT

ISFED encountered and overcame many challenges in conducting the PVT project. Receiving sufficient funds was of vital importance. Successful fundraising enabled the organisation to deploy reliable monitors to many remote areas of Georgia.⁶⁹ In order to deploy observers to all polling stations included in the sample, ISFED also cooperated with other Georgian NGOs, such as the Georgian Young Lawyers Association (GYLA).⁷⁰ In some situations, this enabled two observers to observe simultaneously at one polling place, which was more effective than having a single observer. Additionally, the international community deployed over 600 international observers, mostly through the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). These observers helped to reinforce the right of ISFED and other domestic observers to monitor the process.

However, a number of problems specific to Georgia made the deployment of observers difficult. The country's public transportation system is underdeveloped, and many polling stations are in mountainous or remote areas and were difficult to access, particularly as most observers did not have their own transportation. Some of the monitors were deployed in regions other than their home areas. Due to the variety of languages spoken in Georgia, at times, this created difficulties in communication.⁷¹ Every effort was made to recruit reliable observers (even in remote places), but this was not always possible.

In previous elections, some observers were threatened or ordered to fill out forms inaccurately by a chairman of an election commission or the police. For the November elections, ISFED advised its observers to act in a professional and friend-

ly manner towards the election commission members in order to prevent problems. Unfortunately, however, several ISFED observers were assaulted and some were illegally arrested for several days.

ISFED's reporting method relied heavily on the use of GSM mobile phones, which did not operate in some areas. ISFED solved this problem by instructing observers not to call in their voting turnout report, if it meant they had to leave their polling station for more than 15 minutes. The return of documents from such a large number of observers was also a challenge. These documents included voter turnout forms, copies of complaints, PVT forms, incident report forms and copies of official results protocols. Where fraud was detected at a polling station, official copies of the protocols had to be submitted to court in Tbilisi in order to substantiate claims of the irregularities. Experience gained during previous elections enabled ISFED to create a reliable transportation system that anticipated governmental and police obstructions.

ISFED was well aware that certain regions in Georgia had particular reputations for serious electoral violations, including the manipulation of results. In these regions, monitors received additional instructions on how to interact with government officials, members of the election commissions and other observers, and what to do if problems occurred.

Reporting the PVT Results

The findings of non-partisan Georgian and international observer groups showed a significant disenfranchisement of voters on Election Day, due in significant part to inaccuracies and irregularities in the voter lists. Opposition parties claimed that the disenfranchisement had a disproportionate impact in the areas where they drew electoral support, and hence the disenfranchisement of voters favoured the ruling parties. Observation analysis did not reach conclusions on this point but noted that disenfranchisement could have affected the election results. Observers also reported significant incidences of intimidation, ballot box stuffing, and most importantly, altering of election results at polling stations and at DEC's, as well as other major irregularities. Major violations were particularly evident in two regions.

ISFED gathered its PVT data through direct observations of the voting, counting and tabulation processes on Election Day. Observers reported voter turnout three times during the day, at 13:00 hrs, 17:00 hrs and at the close of polls at 20:00 hrs. Polling station results were reported when the counting procedure was finished, which was usually after midnight due to the lengthy counting process. Altogether, 449 out of 549 observers reported in a timely manner; the rest were unable to report due to communication problems.

Given the uncertainty in the political environment, ISFED determined that it was important to release its findings as soon as possible. The PVT results were

announced at a press conference, on 3 November 2003, the day following the election. ISFED hoped that the announcement of PVT results would help deter fraud in the official tabulation process. The public awaited the announcement of official election results with great interest. However, there was increasing concern that these results were being manipulated.

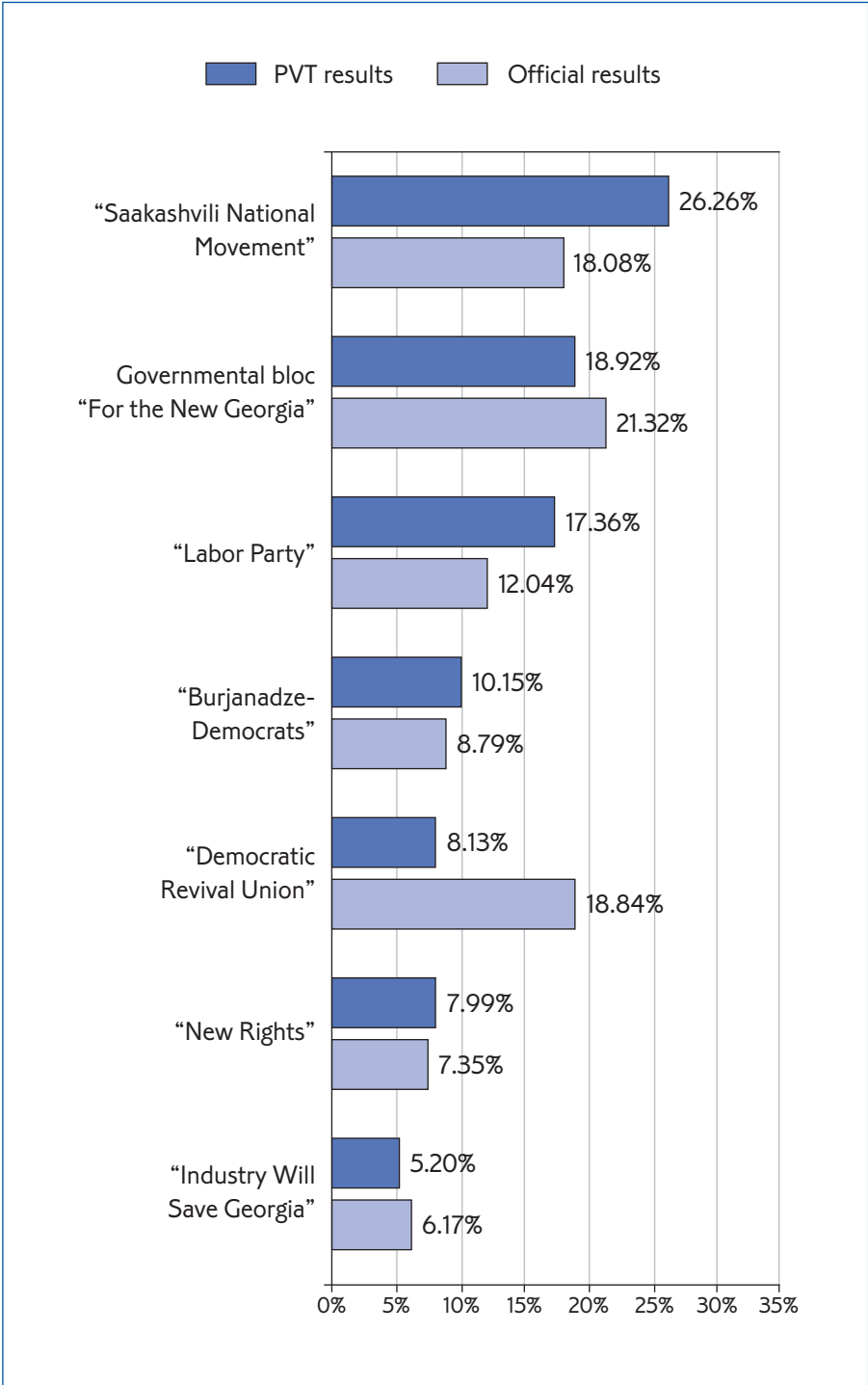
On 3 November, the CEC began releasing partial preliminary results. On 7 November, political tensions rose when the CEC included implausible results from two regions (Adjara and Kvemo Kartli) in the preliminary results. This significantly affected the overall election result. Leading figures in the opposition urged citizens to come to Tbilisi to defend the integrity of the elections. During this period, the PVT results were cited often, and ISFED's leadership made frequent appearances in the media, providing the public with verified information on the conduct of the poll. However, eighteen days after the election, the CEC announced the final official election results, which ratified the fraud. A comparison of the PVT results and the official results immediately shows the disparities, see diagram on page 98.

Based on global experience, the PVT margin of error should be no greater than ± 1 percent. However, despite using well-established methodology, ISFED estimated that the margin of error for the 2003 elections was closer to ± 2 percent. This problem arose as a relatively large number of results had to be excluded from the sample because of election fraud. This also led to variations in the margin of error for specific parties.

The difference between the official results and the PVT provided the basis for annulling the official results. On 19 November, ISFED filed the challenge to the Supreme Court of Georgia, claiming that widespread election fraud had taken place and that the election results should be annulled. GYLA and two major oppositional parties provided third party testimony on the type of violations seen by their observers.

On 22 November, the peaceful demonstrations, which had gained in size and momentum, culminated in demonstrators entering Parliament to prevent the convening of a new parliament that had been elected based on fraudulent election results. On 23 November, the "Rose Revolution" reached its climax with the resignation of President Eduard Shevardnadze.

On 25 November, the Supreme Court of Georgia annulled the official election results for the 'proportional part' of the parliamentary election, after which new parliamentary elections as well as an early presidential election were called. This illustrates the importance of the comprehensive and rapid collection of accurate, verifiable data, not just as a means of informing the public about the nature of the election process, but also to provide the basis for seeking remedial action through bringing a legal challenge.



On 4 January 2004, Mikhail Saakashvili was elected as Georgia's new president, and on 28 March 2004, fresh parliamentary elections were held. Both election processes were much improved compared to previous contests. Since the November 2003 elections, ISFED has conducted two more PVTs, both of which were successful. ISFED and other civic and political actors now can reflect on the lessons learned, on the need for electoral reform, on the role of civil society, and how to develop responsive and accountable governance in Georgia.

67. ISFED used methodology developed in other countries and received technical assistance from the National Democratic Institute for International Affairs (NDI).

68. There are numerous examples of PVTs having this effect, including, among others, in Indonesia in 1999 and 2004, in Mexico in 1994 and 2000, in Nicaragua in 1990, 1996 and 2001 and in Bulgaria in 1990.

69. Donors for November 2, 2003 elections included USAID, UNDP, the British Embassy, the British Council and the Soros Foundation.

70. See Chapter 12.2.

71. Georgia has concentrated minority populations of Azeri and Armenian speakers.

12. Monitoring Election Disputes and Filing Election Complaints

The Adjudication of Election Disputes LDC, Nigeria

An election can be regarded as a three-phase process: the pre-election period, the Election Day or days, and the post-election period. A number of important events take place during each of these phases. During the pre-election period, parties and candidates are registered, voter lists are prepared and parties mount their election campaigns. On Election Day, electors cast their votes and the votes are counted. After the election, the results are tabulated and announced. Disputes, complaints and conflicts can arise during each of these periods. The impartial and effective adjudication of these by the courts, administrative bodies, public prosecutor and law enforcement bodies is of critical importance in a country governed by the rule of law.

From independence, virtually every Nigerian election has been strongly contested. On numerous occasions, the judiciary has issued controversial and questionable rulings on electoral cases. The failure to resolve election disputes satisfactorily has had profound consequences and caused political instability, which following the elections of 1964, 1979, 1983 and 1993 culminated in the seizure of power by the military. In June 1993, the military nullified the elections (widely believed to have been won by Chief MKO Abiola) on the pretext that the judiciary had issued conflicting decisions that affected the election outcome. The judiciary's handling of election disputes during the 1997 local government elections was poor. Its performance did not improve during the 1999 or 2003 elections. These were characterised by allegations of widespread fraud and manipulation throughout the electoral process.

The Legal Defence Centre (LDC), a Nigerian NGO, was founded in 1996. LDC is dedicated to promoting the rule of law and the administration of justice.

During the 1999 and 2003 general elections, LDC systematically documented a wide array of election disputes and monitored – with their effective and just resolution – the performance of those charged. LDC’s work included:

- Gathering information on the nature and volume of election disputes;
- Categorising election disputes according to issue and geographical distribution;
- Analysing the legal framework and assessing if its implementation provided a proper regulatory framework for resolving election disputes effectively;
- Assessing the ease with which claimants could access justice and the transparency of legal hearings;
- Assessing the independence, efficiency and impartiality of the election administration and election tribunals and their respect for legal procedure and the provisions of the Election Act;
- Evaluating the environment in which justice was administered; and,
- Conducting research on the level of popular confidence in the election administration and the courts.

A variety of methods were used, including reviewing the applicable legislation, observing court cases and the sessions of the election administration, quantitative and qualitative analysis of the data gathered and information gathered during interviews.

In 1999, LDC deployed staff throughout the country to interview, using questionnaires, individuals and groups associated with lodging and arguing election claims, for example, candidates, political parties, ordinary citizens and lawyers. Additionally, the project personnel visited tribunal venues⁷², appeal courts, electoral commission offices and the Ministries of Justice at state and federal levels. Media reports were also considered in preparing reports. Fortunately, LDC was able to obtain court judgements and tribunal decisions. It was relatively easy to collate the information quickly, because at that time the law set deadlines for the submitting and ruling on election disputes. However, the new Electoral Act (adopted in 2002), dispensed with deadlines to complete legal proceedings. Consequently, after the 2003 elections, the courts took over one year to issue their judgements on several important election petitions. As a result, LDC was unable to complete its assessment.

A wide variety of election disputes were recorded by LDC during the 1999 and 2003 elections, including inter- and intra-party conflicts; complaints about the registration of candidates; decisions of election commissions and the media’s coverage of the campaign; and allegations that violations occurred during the voting and counting processes. Many of these disputes were the subject of formal legal challenges. The following case studies illustrate the type of problems noted by LDC

in the legal framework for resolving election disputes and in the handling of formal complaints by election tribunals.

The Electoral Act

The elections of 1998/99 marked a transition from a military regime to a civilian administration.⁷³ The legislation regulating the election was drafted and adopted by the outgoing military regime without input from any political or civilian group. Many decrees and important legal acts were published late.⁷⁴ This created an uncertain electoral framework. Prior to the election, no opportunity existed to challenge the electoral decisions of the military. However, the tribunals were flooded with petitions after the election.

After the election of a civilian administration, all the military's electoral decrees had been repealed. The Electoral Act (adopted in 2001) regulated the administration and conduct of the 2003 elections. The act contained a number of significant flaws and became deeply controversial by the adoption of a late amendment, allowing the National Assembly to extend or curtail the mandates of elected officials at local and state level. Following a legal challenge by the Government of Abia State⁷⁵, the Supreme Court found that, with a few exceptions, the National Assembly did not have the authority to increase or otherwise alter the tenure of office of elected bodies and advised the National Assembly to review the act. In April 2002, a new Electoral Act was passed. While the controversial clause was omitted, it contained provisions that were no less contentious and was subject to innumerable legal challenges.⁷⁶

Registration of Political Parties

In the 1999 general election, 26 parties sought registration as election subjects. Only nine were allowed to compete in the December 1998 council elections. However, it was difficult for parties to challenge their rejection as election subjects since the relevant military decrees were shrouded in secrecy. The council elections were significant because only those parties that contested the elections and met a variety of unreasonable criteria were registered to contest the upcoming general election. The unreasonable conditions included, *inter alia*, the establishment of offices in 24 of the 36 states and gaining at least 10 percent of the vote (subsequently reduced to 5 percent) in the same number of states. These conditions were intended to discourage the participation of parties based on ethnic issues. Controversially, it was decided that only three parties, the Alliance for Democracy (AD), All People's Party (APP) and People's Democratic Party (PDP), met these conditions.

In 2003, notwithstanding some serious flaws, the legal framework can be considered a significant improvement compared to the military decrees of 1998/99. The 1999 Constitution set out the conditions for the formation of political parties

and the 2002 Electoral Act regulated the registration of political parties as election subjects by the Election Commission (INEC). However, the INEC disregarded the legislation and laid down additional conditions for the registration of parties, which severely restricted parties' ability to participate in the election. Indeed, only three of 33 parties and political associations that applied for registration were approved. Five parties lodged legal challenges against the INEC. In a landmark ruling, the Supreme Court found the INEC had exceeded its powers and annulled the additional INEC conditions. This ruling led to the registration of 30 political parties, under new INEC guidelines.

Voter Registration

While universal suffrage is guaranteed by the Constitution, some politicians have manipulated the voter registration process in their favour by trying to ensure that groups of citizens supporting rival parties and candidates are omitted from the voter lists. Inevitably, voter registration became a hotly disputed issue. In 1998/99, the issue was contentious, but many people more readily accepted flaws in the process because of the transitional nature of the election. In contrast, in the run-up to the 2003 elections, numerous complaints were made, the most significant of which was filed in court five weeks before the election by the National Democratic Party (NDP). The NDP claimed that by calling the election for 12 and 19 April, the INEC had acted illegally and unconstitutionally, because the time before the election was insufficient to meet the legal requirement that the voter registers be concluded 60 days prior to an election. The Federal High Court issued its ruling only 24 hours before the election was due to take place. This stated that the Constitution overrides the provisions of the Electoral Act and therefore the elections would take place.

Other Pre-Election Disputes

Every aspect of the electoral process was divisive, and controversies raged among the political class, the INEC, and civil society groups on issues as diverse as party primaries, the media, parties' campaign tactics, campaign finance, and the role and influence of traditional rulers in the electoral process. Most of these complaints were settled in administrative bodies rather than the courts.

Until recently, the state and federal governments largely controlled the media. In 1999, no one was surprised by the military's control over the airwaves and few complaints were lodged. By 2003, although the government's monopoly of the media had been loosened and licenses had been granted to many private print and electronic media outlets, problems remained. Currently, many private media are controlled by a narrow range of political interests, who are beneficiaries of military rule and close to the power elite. Other political groups received very little

airtime in the mainstream media, and the National Broadcasting Commission (NBC) received a series of petitions complaining of the media's skewed coverage. Although the NBC issued directives and warnings to some media, no sanctions were issued. In 1998/99 and 2003, all complaints were lodged with the NBC, rather than the courts.

Under Nigerian law, all candidates must represent a party, and independent candidates are not allowed to stand for election. Parties are obliged to organise primary elections to select candidates. These are usually keenly contested. However, in 2003 many parties disregarded the results of the primary elections, and party leaders chose which person would stand on the party ticket. Many of the candidates who won primaries but were denied the opportunity to stand as a candidate in the general election appealed to court. In one high profile case, the Supreme Court ruled that the nomination of a candidate for election is a political matter, solely within the discretion of the party. Similar rulings occurred across the country, raising obvious questions over the rationale for holding primary elections, if it is legitimate to ignore their outcome.

Post-Election Disputes

Flaws in the legislation, parties' attempts to circumvent the law and the general lack of transparency in the conduct of the elections have bred a deep mistrust between the political parties. Therefore, it is unsurprising that many petitions were filed after the 1998/99 and 2003 elections. Some of the flaws in the 1998/99 elections can be attributed to the military's control of the process. Election tribunals for the 1998 local elections were only established a few days before the deadline for filing legal petitions. Of the 1,169 petitions filed, over 80 percent were unsuccessful with most being summarily dismissed for procedural reasons. This trend continued during the hearings that ruled on the state-level and federal-level elections of 1999.

In the run-up to the 2003 elections, many people believed the judicial situation would improve, because the elections were to be organised under a civilian administration. The local elections were mired in controversy and did not even take place according to schedule. Unfortunately, the elections that did take place (state-level and federal-level elections) were marred by serious violations of the law, including open rigging of the vote, violence, and unimagined forms of electoral fraud on a wide scale. LDC recorded 930 post-election petitions, compared to 239 for the corresponding elections in 1999. The most common complaints concerned: voting by persons not on the voter list; preventing those whose names were on the list from voting; under age voting; stuffing pre-marked ballots into ballot boxes; intimidation of voters by armed militias and soldiers; violence; collusion between INEC officials and parties in perpetrating fraud; using unauthorised persons to conduct polling; and using traditional rulers and village heads

to pressure citizens to vote for a particular candidate. Some tribunals were unable to cope with the huge volume of petitions, and a number were still hearing cases over a year after the elections. In some states multiple tribunals had to be established. The failure to stipulate meaningful deadlines for the adjudication of formal complaints and appeals is the most significant shortcoming of the 2002 Electoral Act.

Appeal Processes

In Nigeria, original jurisdiction in electoral matters is vested in Election Tribunals. In most elections the Court of Appeal, whose decisions are final, may hear appeals against the rulings of Election Tribunals. However, in a presidential election, the Court of Appeal is the 'court of first instance' and the Supreme Court is the 'court of last resort'. In 1998/99, due to the extremely late issuance of election decrees by the military regime, many lawyers were unfamiliar with the appeal procedures and a large number of petitions were filed with the wrong court.

The 2002 Electoral Act contains very specific procedures to challenge an election result. While the legislation gives the courts the authority to nullify election results, very few did so. Virtually all applied a legal provision which states "An election shall not be liable to be invalidated by reason of non-compliance with provisions of the Act if it appears to the Election Tribunal or court that the election was conducted substantially in accordance with the principles of the [Election] Act and that the non-compliance did not affect substantially the result of the election". This provision granted the tribunals and courts almost unlimited discretion to decide on the meaning of the word 'substantially'.

Other Channels to Resolve Disputes

Notwithstanding the possibility of seeking legal redress through judicial institutions, candidates and political parties often resort to other means. Legal and illegal methods are used including: fining claims with administrative bodies (for example, the INEC, the NBC, or a Party's Board of Trustees); reporting cases to law enforcement agencies (for example the police, who should investigate a claim and if there are grounds, the public prosecutor should take the case forward); calling for mass public demonstration; or even resorting to violence. Regrettably, in Nigeria a lack of confidence in the judiciary is often cited as an excuse for extra-legal means of seeking resolution of a dispute. In 2003, the practice of awarding party candidacies to persons that lost primary elections caused deep resentment and on occasions led to violence.

Conclusions

LDC's work in monitoring and evaluating mechanisms designed to resolve election disputes gave the organisation a deep insight into the failings of the legal framework and the process of dispensing justice. LDC has been advocating the reform of the 2002 Electoral Act to ensure respect for established international election standards. Our key recommendations concerning election disputes included: the need to guarantee the independence and impartiality of the election administration, Election Tribunals and the courts; the INEC should respond more effectively to complaints lodged on Election Day to reduce the number of petitions filed after the elections; the judiciary should enjoy better facilities, more funds and enhanced remuneration; and investigations should be made into allegations of corruption among electoral and judicial officials. Those found guilty of the charges should be considered unfit to hold office.

72. In Nigeria, first-instance jurisdiction in electoral matters is vested in Election Tribunals.

73. Local elections were held in December 1998. In 1999, state-level elections and national-level parliamentary and presidential elections were held. In 2003, state and federal level elections were held although local elections, originally due in 2002, were finally held in 2004.

74. The 1999 Constitution was promulgated only two days before the handover to the civilian administration.

75. Nigeria is a federal republic comprising 36 states.

76. These included a challenge brought by the Independent Election Commission (INEC) on the Constitutionality of Section 15, which granted authority to the National Assembly to set the date of elections. The Federal High Court ruled in INEC's favour, granting the Commission the power to set election dates. An appeal lodged by the National Assembly was not resolved before the 2003 elections were held.

Responding to Election Violations GYLA, Georgia

Since independence (1990), Georgia has held 12 national and local elections, none of which has met international electoral standards. Indeed, until the so-called ‘Rose Revolution’ of November 2003, the quality of election processes was deteriorating.⁷⁷ State structures controlled all channels of authority, and Georgian electoral institutions lacked any real independence. In general, parties and citizens’ enthusiasm varied from election to election depending on the degree of political competition. While some parties were vocal in their claims that election results were manipulated, many lacked the organisation and understanding necessary to seek legal redress or challenge disputed results effectively. Thus, over time the role of the civil society sector became ever more significant.

The Georgian Young Lawyers Association (GYLA) was founded in 1994. The organisation is politically neutral and is eager to be seen as such. All of GYLA’s 800 members are either graduate lawyers or law students. The organisation takes a long-term perspective and is permanently engaged on electoral issues, for example by assisting Parliament in drafting electoral legislation. Its principal electoral concerns focus on improving the integrity of the process and promoting the rule of law, rather than advancing any political interest. Since 1999, GYLA has included election observation among its programme activities but does not specialise in this activity.

GYLA does not attempt to send observers to all election districts. Instead, it works in close cooperation with other observer organisations, focussing on specific geographical regions and election issues, for example checking if inaccuracies in voter lists were exploited to cast multiple votes at different polling stations. By virtue of their legal training and knowledge of the election law, GYLA’s election observers can be regarded as ‘high quality’ observers. For the November 2003 parliamentary elections, 250 observers were deployed to areas with a high risk of both election fraud and violence. In addition, GYLA provides expertise and legal aid to all parties; brings election-related cases to court; monitors other court cases; provides training on the election law to parties and NGOs; supports the freedom of the media through training journalists; and regularly publishes election-related case law studies.

Preparing to Observe

The Georgian election legislation confers rights to observers, including the authority to lodge formal complaints with the electoral authorities. This may not be the case in every country. Where observers enjoy this right and the organisation plans to use the law to challenge election violations, it is vital that their observers have the right skills and are adequately prepared, enabling them to submit formal complaints that meet the legal requirements. Unfortunately, sometimes this is not the case and as a result violations go unpunished, because either a legal claim was not filed correctly or the observer did not collect the documentary or testimonial evidence necessary to substantiate the claim. Observers do not necessarily need to be lawyers, but it is essential that they have a good knowledge of correct polling procedures, their legal rights, and how, when and where formal complaints should be filed (in the event that a serious violation has occurred). Hence, it is crucially important that observers are properly trained. Other mechanisms can be developed to ensure observers are adequately prepared to challenge electoral violations. These include:

- Designing ‘complaint sheets’ that correspond to all the legal requirements for submitting formal complaints and can be completed by the observer;
- Providing observers with the copies of the relevant laws and preferably a user-friendly summary of the legal provisions, detailing precisely how to submit a complaint for each type of violation, the deadlines for its submission and which body has jurisdiction to receive it;
- Establishing a call centre, staffed by lawyers who are available to assist and advise observers in submitting complaints on a 24-hour basis; and,
- Creating a legal team at central level that can file legal claims in the post-election period.

Filing Complaints

A formal complaint should be as specific as possible and include at a minimum the basic relevant information: when and where did the incident or violation occur; what was its nature, what was the scale of the violation; what was the response from polling officials; who were the perpetrators; who witnessed the event and who is submitting the complaint? Before submitting a formal complaint, the paperwork should be checked to ensure that all details have been included. It is always better to write everything that was observed and attach all material evidence, rather than to summarise an event and omit an important piece of information. Then the complaint should be submitted according to the correct complaint submission procedures, which may vary from election to election and country to country.

Timing is an important factor, and tight deadlines often apply to the lodging of formal complaints. According to Georgian law, all complaints about the voting process must be submitted to a polling board before 20.00 hours (the time of closing the polling station) on the day of the election. If this deadline is missed, it is certain that no judicial body will consider the complaint at a later stage. For other complaints, the period may be 2 to 3 days after a decision was taken. Depending on the applicable legislation, the timeframe for submitting complaints may count weekends as working days.

It is extremely important to lodge a complaint or appeal to the correct judicial body. Depending on a country's legislation, this may be a higher-level election commission or a court. The nature of the violation may be a key factor; for example, while a polling board may rule in the first instance on a complaint about the voting process, a higher-level commission may have jurisdiction to hear a complaint concerning the accuracy of the election results at that polling station. Similarly, a district level court may rule on the legality of a decision taken by a District Election Commission⁷⁸ (DEC), while a higher-level Appeal Court or an Administrative Court may rule on the legality of a CEC decision. If a complaint or an appeal is filed to the wrong body, it will be dismissed and valuable time will have been lost, and possibly with it the opportunity to mount a legal challenge, regardless of the weight of evidence and strength of the legal arguments. This has occurred many times in Georgia.

Even where legal procedures for filing complaints are followed correctly, a successful legal challenge is not guaranteed. Operating effectively in countries with a poor respect for the rule of law, or a judiciary that lacks professionalism, impartiality or independence, is particularly constraining. In these situations, it is even more important that an organisation has a strong legal capacity, and it is even more necessary to bring cases to court. In this way the judicial system can be tested, and where found wanting, exposed.

Perseverance is also an important factor. A case may be lost at a lower court of election commission, but won at an appeal court, where the professionalism of judges may be better. Therefore, it is necessary to be prepared for a long and intense process, and have the stamina to take a good case through all the appeal stages.

In any election, violations of the law may take place. However, it is not feasible to file a legal challenge for each, and an organisation may have to select particular cases to take to court. When GYLA decided against litigation, the organisation still reacted to the violation through issuing statements and reports, which documented and condemned illegal activity. This action enhanced its public profile and credibility.

Overcoming Obstacles

In some instances, GYLA was able to prove irregularities to the local election commissions and action was taken. Elsewhere it proved more difficult, as many polling boards were unwilling to accept and register its official written complaints. According to Georgian election legislation, claims that an electoral violation has taken place must be submitted formally at the polling station level. A case can only be accepted as admissible in court, if a precinct commission did not address an official complaint. Without registration of its complaints by a precinct commission, GYLA could not prove that it informed the appropriate authorities of the violation. Therefore, GYLA had to rapidly improvise a different approach. Observers were instructed that wherever polling boards refused to accept complaints, the names of witnesses should be collected (i.e. those willing to testify about both the electoral violation itself and the inaction of the polling board) and where possible, statements taken.

On other occasions, observers collected evidence of illegal voting to support legal claims, for instance, multiple identity documents issued illegally by the local administration to the same person; the names of internally displaced persons⁷⁹ (IDPs) who had voted on multiple occasions at different polling stations; and the names of voters who had produced invalid identity documents when voting. Later, GYLA used witness statements and a variety of other hard evidence to mount successful legal challenges. In many cases, this led to the annulment of polling station results.

It is not always possible to get concrete evidence for each violation and all types of election fraud. However, several methods can be used to indicate that fraud took place. One of the simplest is to analyse individual polling stations results. Polling station results where 100 percent or more of registered voters cast ballots are highly dubious, especially where there are a multitude of such results.

Sometimes fraud takes place after the vote count has been completed. Therefore, it is important that observers receive a copy of the results sheet (protocol) from the polling board. Later, these can be checked against official results. Often alterations to protocols have been made crudely and are obvious. These protocols often lack signatures, have been completed in pencil, fail to balance properly or have figures overwritten. In Georgian law, these are all violations. In such cases, it may be possible to bring a legal challenge.

GYLA's Experience of Appealing Election Results

GYLA has experience of winning and losing election-related court cases. Sometimes the organisation won cases that it thought would be difficult. Conversely, cases that should have been straightforward were lost, or had to be dropped, for reasons not related to the strength of the arguments or evidence.

In November 2003, GYLA worked in close cooperation with the International Society for Fair Elections and Democracy (ISFED), an NGO specialising in election observation.⁸⁰ GYLA's observers were deployed to two of Georgia's regions with particular reputations for election fraud: the Autonomous Republic of Adjara, and Kvemo (lower) Kartli. In Adjara, one of its observers was arrested for complaining about electoral violations. Fearing for the security of its other observers, all were withdrawn from Adjara. GYLA appealed the results of two of Adjara's six election districts. These cases were lost in the Adjara District Courts. With one of its observers in police detention, GYLA decided not to risk his security further by appealing to the Supreme Court, even if there was a high chance that the appeal would be successful.

Prior to the Rose Revolution, which followed the November 2003 election, an appeal was lodged with the Supreme Court to annul the result of the proportional election contest, which accounts for 150 seats in the 235-member Parliament.⁸¹ Because GYLA's observers had to be withdrawn from Adjara at short notice, they had little material evidence of the serious irregularities that had taken place there. However, during the case they served as witnesses and recounted their observations. The evidence presented to the Court by election observers and other witnesses led the court to annul the election results for the proportional contest.

The results of the majoritarian contests were harder to dispute, because the results of each had to be challenged individually. Nevertheless, GYLA lodged a variety of legal challenges through both the election administration and the courts concerning violations that took place in Kvemo Kartli region. Complaints about false polling station results were filed with DECs, who rejected GYLA's claims. Appeals were then lodged with the CEC, which were also lost. However, GYLA had also filed cases in the local district courts and thereby had another legal channel to challenge the results. The claims requested the courts to annul election results for three election districts and a large number of polling stations in two other districts. While GYLA was not surprised to lose all of these cases, it was able to appeal the courts' decisions at the Appeal Court in Tbilisi. GYLA requested the court to combine the complaints into three separate claims. This was accepted, and each case was assigned to a separate panel of judges. The first case was ruled inadmissible, with the court deciding that election observers were not a party whose interests were affected, regardless of whether the election results were falsified! The following case was extremely important, as the declared winner had engaged in a wide array of violations since the campaign began and GYLA had strong evidence of fraud. Fortunately, the panel of judges selected to hear this case had good reputations and annulled a number of precincts necessary to invalidate this election result. However, when the election in this district was repeated, again serious violations occurred. Once again, GYLA appealed. This

time, while the local court cancelled some polling station results, the number was insufficient to invalidate the result.

Following the annulment of the results for the proportional part of the parliamentary election, the contest was repeated in March 2004. The election was certainly an improvement over previous contests, but a number of violations did take place. While GYLA lost a number of legal challenges, approximately three-quarters of its claims were successful.

77. Since the Rose Revolution, three elections have been held in quick succession, none of which were perfect, but the processes have been much more transparent and the results more credible, if one-sided.

78. Georgia has a three-tiered election administration. At the top of the pyramid stands the Central Election Commission (CEC). Below the CEC, 75 District Election Commissions are established who, in turn, supervise the polling boards that organise the voting.

79. Following the violent conflict of the early 1990s, Georgia has a sizeable number of internally displaced persons.

80. See Chapter 11.

81. See Chapter 11.

13. Concluding Remarks and Lessons Learned

This handbook highlights the breadth of election monitoring activities undertaken by domestic election observer organisations. In addition to a number of achievements and successes domestic observers can justifiably claim, a number of challenges remain.

It should be noted that in recent years, election laws have been amended to create a legal base for domestic non-partisan election observers to conduct their activity. The recognition of this right constitutes significant progress. In some cases, election observers are given a special status, for example the Philippines, where NAMFREL is legally obliged to submit a report to the Central Election Commission (COMELEC), or Georgia, where election observers are legally entitled to lodge formal complaints on election violations.

It is vitally important that election observation organisations enjoy the respect and confidence of the public. Therefore, it is advisable to recruit persons with a high profile to lead the organisation. Indeed, well-known and highly respected individuals may automatically bring visibility and legitimacy to the project.

Frequently, domestic election observers have benefited from sharing their experiences with other organisations, particularly from exchanges between organisations that confront the same challenges. Often it is not necessary to ‘reinvent the wheel’. Lessons can be learned from other election observer groups and mistakes avoided. Working as a coalition can bring rewards – with each organisation lending to the project a variety of asset including expert knowledge, human resources or organisational structure.

Many organisations cannot function effectively without financial, technical and political support, often from external sources such as USAID, NDI and the European Union. Economic support from national business sectors and individual donors can also be vitally important in ensuring an organisation’s sustainability.

Strategic and operational planning should be started well ahead of elections. It is important that the work of the election administration and the judiciary is monitored effectively and that observers follow events during the election campaign to assess its fairness and respect for citizens’ and candidates’ fundamental free-

doms. The compilation of voter registers is significant, because it can affect citizens' fundamental right to universal and equal suffrage and, where inaccuracies exist, distort the election contest. The tabulation of results after the election is a critically important period, which should be monitored closely. Even if the scope of activities should be as broad as possible, organisations should not, as a rule, try to undertake too many new projects simultaneously.

In most circumstances, it is preferable to recruit volunteers at the grassroots level. This ensures observers are familiar with the environment in which they will work, and that costs associated with their deployment will be kept to a minimum.

Monitors must be non-partisan and must be seen to be non-partisan. Observers are usually required to abide by a Code of Conduct or sign a pledge to this effect. A Code of Conduct should also set out the main rights and duties of observers, which are usually based on neutrality and objectivity.

It is crucial that election observation is based on well-tested methodology. Observers will require training in their tasks and in the purpose and objectives of election observation – well-prepared observers are more likely to detect and deter election violations. Highly specialised methodology and training are required for certain activities, for example, media monitoring, monitoring campaign expenditure and monitoring the adjudication of election disputes. In other circumstances the 'cascade' training method has served domestic observers well in a variety of situations.

It is important that observer organisations develop a high visibility. This serves as a deterrent to those that might seek to manipulate the process and also serves to reassure voters. Therefore, it is advisable to develop a media strategy, which may include appointing a spokesperson for the organisation, periodic public appearances and timely statements on sensitive issues.

Monitoring organisations need always to consider the desirability of observing an election process. In certain circumstances, it may not always be wise, for example if a process is fundamentally flawed well before polling takes place. In other situations, specific approaches may be required, for example where security concerns exist.

New challenges to election monitoring include the emergence of electronic voting. Election observation organisations will need to develop new methodologies to respond to these innovations. This may necessitate the recruitment of computer specialists and the establishment of new oversight rights, for example for observers to check the software programmes used and data transmission systems.

Patience and perseverance are required. Just as an election is not a one-day event, it may take many years for the organisation to achieve its objectives. Having identified shortcomings in an election process, organisations should develop strategies to advocate for positive change during non-election periods. The experience of GONG in Croatia and Poder Ciudadano in Argentina bear testament to the success that can be achieved in the long term.

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