



Office for Democratic Institutions and Human Rights

FRANCE

PRESIDENTIAL ELECTION

22 April and 6 May 2007

OSCE/ODIHR Election Assessment Mission Report



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I. EXECUTIVE SUMMARY

In response to an invitation from the Ministry of Foreign Affairs of France, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) for the presidential election conducted in two rounds on 22 April and 6 May 2007.

The presidential election reflected the long tradition of conducting democratic elections in France. The election was held in a competitive environment which provided overall equitable conditions for the candidates. The process enjoyed a high level of public confidence. The interest of voters in the election was reflected in the turnout rate of nearly 84 per cent.

The election campaign was notable for its focus on the issues, such as employment, pension reform, social services, and immigration, which were intensely discussed by the candidates. A live television debate between the two final contestants in the second round, Ms. Royal (*Parti Socialiste*), and Mr. Sarkozy (*Union pour un Mouvement Populaire*), drew some 20 million viewers and focused on a wide range of political issues. As a result of the campaign, voters had the opportunity to make their choice in an informed environment.

Although the electronic media initially focused primarily on these two perceived frontrunners, their coverage became more equitable following a warning from the media regulatory agency. The media, on the whole, performed their function in a professional manner, as did the media regulatory agency. However, the regulations for media coverage of the campaign appeared to be overly complex and had the potential to interfere with the editorial policies of individual media outlets.

The electoral legislation forms a solid framework for the conduct of democratic elections. The legislation provides for considerable control over the process by a number of official bodies. In the context of France, this appeared to provide a level field for candidates without limiting their ability to convey their messages to the electorate. Some aspects of the legislation, however, could benefit from further review.

Overall, the administration of these elections was of a high calibre. The preparations for the elections were well planned and implemented. There was a significant level of civic participation in the process, especially during the counting of the votes, where a large number of citizens were involved, including young people.

Electronic voting has been gradually introduced on a limited basis, with the choice to use it at the discretion of the respective municipality. In the presidential elections, approximately three per cent of the voters cast their ballot with electronic voting machines. However, transparency should be improved in order to enhance confidence in the electronic voting method, including through certification, auditing, and the introduction of a Voter Verifiable Paper Audit Trail (VVPAT).

Several groups have become more active in providing increased information on voter registration and general electoral issues to the *gens du voyage* (travellers). However, a three year requirement of attachment to a specific commune still exists in order for them to register to vote. This time period should be standardized to match the requirement for all other French citizens.

While international observation is not explicitly recognized in the election legislation, members of the OSCE/ODIHR EAM were granted access to the process, including voting and counting. In order to be fully consistent with the 1990 Copenhagen Document, election legislation should be amended to explicitly permit international and domestic non-partisan observation.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Ministry of Foreign Affairs of France, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) from 17 April to 8 May 2007 to observe the presidential elections. The OSCE/ODIHR EAM, headed by Ms. Loren Wells, consisted of eleven election experts from ten OSCE participating States. The OSCE/ODIHR EAM was based in Paris and paid visits to Epernay, Lille, Lyon, Marseille, Reims and several municipalities surrounding Paris. The OSCE/ODIHR EAM met with officials responsible for administering the election as well as with official bodies responsible for controlling the election, representatives of candidates, the media and civil society organizations, in order to form an overview of the electoral process and of specific legislative and administrative issues.

In line with standard OSCE/ODIHR practice, the deployment of an OSCE/ODIHR EAM does not envisage any systematic or comprehensive observation of voting and counting procedures. Although OSCE/ODIHR EAM members visited polling stations on election day, this was on a limited basis.

The OSCE/ODIHR previously conducted an Election Assessment Mission for the presidential election in France in 2002.¹

The OSCE/ODIHR wishes to express its appreciation to the Ministry of Foreign Affairs, the Ministry of Interior, the *Conseil constitutionnel*, and other interlocutors for their cooperation during the course of the OSCE/ODIHR EAM.

III. BACKGROUND

France is a semi-presidential republic with a clear separation of powers between the legislative, executive and judicial branches. The regime is formally parliamentary, in that the government is accountable to the National Assembly. Executive power is exercised by a popularly elected president and a prime minister, appointed by the president, who heads the government. Since the beginning of the Fifth Republic in 1958, the role of the presidency in

¹ The report from the 2002 mission is available at www.osce.org/documents/odihr/2002/06/1428_en.pdf

the institutional framework has been augmented vis-à-vis that of the Parliament and the prime minister. The legislative structure is bicameral, with a lower house, the National Assembly, elected by popular vote for a five-year term, and an upper house, the Senate, whose members are indirectly elected for six year terms. Starting with the 2002 presidential elections, the term in office of the president was shortened from seven to five years, and the election is now held in the same year as election to the National Assembly.

France is divided into 26 administrative regions, of which 22 are in metropolitan France and four are abroad (Guadeloupe, Martinique, Guyane, and Réunion).² These regions are further divided into 100 *départements*.³ Government appointed *préfets* represent the State authority in each *département*. *Départements* are subdivided into 342 *arrondissements* (districts) and 4,039 cantons. Each *département* is administered by a *Conseil général* or General Council. The lowest administrative unit is the *commune* (municipality), which generally encompasses approximately 1,500 people and is roughly the size of the average polling station; there are 36,685 such *communes* in France. Three urban *communes* (Paris, Lyon, and Marseille) are further divided into municipal *arrondissements*. In addition, France has six overseas collectivities⁴ (*collectivité d'outre-mer*), New Caledonia and the French Southern Territories whose qualified residents also vote in the election.

The political spectrum in France has been marked by a distinction between the left and the right, with the *Parti Socialiste* (PS) most prominent on the centre left of the spectrum and the *Union pour un Mouvement Populaire* (UMP), the successor of President Jacques Chirac's *Rassemblement pour la République* (RPR), currently leading the centre right. These tendencies were illustrated during the presidential election, with the two second-round contestants, Ms. Ségolène Royal and Mr. Nicolas Sarkozy, coming from these two parties. Another candidate, Mr. Francois Bayrou, ran against the traditional left/right distinction, and placed third in the first round. A number of candidates from other political parties ranging from far left to far right also actively participated in the campaign.

IV. LEGAL FRAMEWORK

A. OVERVIEW

The Constitution establishes that the president shall be elected to a five-year term by direct universal suffrage with an absolute majority of the valid votes. If a majority is not obtained in the first round, a second round takes place on the fourteenth day following the first round ballot; the two candidates receiving the most votes in the first round compete in the second round vote. According to constitutional provisions, the election of a new president is held within 20 to 35 days before the expiry of the current president's term.

The legal framework for presidential elections is complex and includes the Law on the Election of the President of the Republic, the Electoral Code, and other laws concerning

² *Institut national de la statistique et des études économiques (INSEE, National Institute for Statistical and Economic Studies)*, www.insee.fr/fr/ffc/chifcle_fiche.asp?ref_id=CMRSOS01208&tab_id=468

³ There are 96 departments in metropolitan France and four overseas departments, coterminous with the regions abroad.

⁴ French Polynesia, Mayotte, Saint-Pierre and Miquelon, Saint-Barthélemy, Saint-Martin and Wallis and Futuna.

voting abroad, opinion polling, and freedom of the electronic media. In addition, there are decrees issued by the Council of Ministers on the registration of candidates, the electoral campaign, and the voting process. In October 2006, the Ministry of Interior also issued a *circulaire* (instruction) for election officials; although not legally binding, it was generally adhered to.

The election process is strictly regulated and monitored by different institutions and bodies, including the *Conseil constitutionnel* (Constitutional Council), the *Commission nationale de contrôle de la campagne en vue de l'élection présidentielle* (CNCCEP, the National Electoral Campaign Control Commission), and the *Conseil supérieur de l'audiovisuel* (CSA, the broadcasting authority). Following each election, the *Conseil constitutionnel*, the CNCCEP, and the CSA publish reports that include recommendations for changes to the election process. In response to recommendations made by these bodies after the 2002 presidential elections, there were several amendments to the legal framework. These included:

- An expanded election calendar allowing more time between the registration of candidates and the start of the official campaign;
- An extended period for the collection of signatures for candidate registration (one week);
- Provision for the *Commission nationale de contrôle des comptes de campagne et des financements politiques* (CNCCFP) to decide on the validity of candidates' campaign finance reports (the *Conseil constitutionnel* previously had this role);
- The change of voting day for certain overseas departments and territories from Sunday to Saturday, in order to ensure that election results were announced only after the closure of all polling stations.

B. PROXY VOTING

Voters in France have wide access to voting by proxy. Any voter who applies to the relevant authorities and states that he/she is unable to vote at the polling station where he/she is registered on the grounds that he or she will be absent as a result of professional obligations, health, education or holiday has the right to vote by proxy. The voter does not need to prove his/her absence, but must sign a "declaration of honour" attesting to the absence. As no special polling stations are established for the military, prison inmates or hospitalised voters, many of these persons can vote only by proxy.

A voter can apply to vote by proxy at any time until the day before the election. The person appointed as the proxy voter must be registered to vote in the same *commune* as the principal, although not necessarily in the same polling station. The empowerment of a proxy is, as a rule, valid for only one election; for the presidential elections, the voter could nominate a proxy for one or both rounds of the elections. However, a voter may also nominate a proxy for the duration of one year. A proxy's entitlement may be revoked at any time, election day included, by the voter who issued it.

According to figures provided by the *Conseil constitutionnel*, some three million proxy votes were cast in the 2007 presidential elections, up from two million previously.

It would be useful to consider a review of the regulation and practice of proxy voting, in order to further enhance consistency with the principles of the equality and secrecy of the ballot, in line with paragraph 7.4 of the 1990 OSCE Copenhagen Document.

C. VOTING OF PRISONERS

Prison inmates, whether convicted or not, have the right to vote unless their rights have been suspended by a court sentence. Such rights cannot be revoked for more than ten years, depending on the nature of the crime.

As no polling stations are established in prisons and as there is no provision for voting by mail, prisoners who wish to vote can only vote by proxy (unless provided leave). This means that they cannot vote by secret ballot. In addition, as a prisoner's primary address is the place of detention, the *commune* of the prison would normally be the place of registration.⁵ In order to vote, prisoners have to identify a registered voter in the same *commune* to act as proxy, which may be difficult to do in cases where a prisoner is incarcerated outside the *commune* of previous residence.

Consideration should be given to establishing a means for voting by eligible prison inmates that would enable them to cast their votes in secret.

V. ELECTION ADMINISTRATION

There are a number of major institutions that play a key role in the administration of the presidential elections. While some have specific responsibilities for presidential elections, others play a role as part of their ongoing mandate. The election administration as a whole enjoys a high level of public confidence.

The *Conseil constitutionnel*, a body with judicial and consultative powers, is the main institution responsible for general oversight of the electoral process. The *Conseil constitutionnel* is composed of nine appointed members, as well as former Presidents of France. Three members of the *Conseil constitutionnel*, including its President, are appointed by the President of France. Three members are appointed by the President of the Senate and by the President of the National Assembly, respectively. The term of office is nine years and is not renewable. One third of the members are replaced every three years.

In terms of the presidential elections, the *Conseil constitutionnel* ensures the regularity of the election, hears complaints, and announces the results of the vote.⁶ In addition, the *Conseil constitutionnel* is consulted by the government on the organization of the elections and determines the list of candidates.⁷ If the *Conseil constitutionnel* finds irregularities that could impact the results of the vote, results may be declared invalid at the relevant level.⁸ There are no provisions for recounts.

⁵ In some cases, prisoners may remain registered at their previous residence.

⁶ Article 58 of the Constitution.

⁷ www.conseil-constitutionnel.fr/langues/anglais/ang.htm

⁸ For presidential elections, there is one nationwide constituency, and repeat elections are held only if the overall result has been influenced by irregularities; in such cases, the final nationwide result will be declared invalid. The result of a single polling station or other subordinate level may be declared invalid if the irregularity may have influenced the result at that level. There are no separate repeat elections.

On election day, 1,400 magistrates working under the authority of the *Cour de cassation* (the highest court in the French judiciary) are tasked with ensuring the regularity of the vote by visiting polling places and verifying that the Electoral Code is being applied and that all necessary materials have been delivered. The *Conseil constitutionnel* receives reports from the magistrates of any occurrences in polling stations that should be brought to its attention. In addition, the President of the *Cour de cassation* provides a report to the *Conseil constitutionnel* of incidents that have come to its attention.

The Ministry of Interior is charged with the technical and logistical preparations for the election. The Ministry issues operational instructions on legal and organizational matters to the *préfectures*, which in turn co-ordinate the work of the *mairies* (city councils). The *mairies*, responsible for the local or town administration, manage the work of the approximately 65,000 polling stations. It is these offices which furnish electoral materials to the polling stations.

The Ministry of Interior is responsible for the compilation of the results after the close of the polls. The results from each polling station are delivered to the *commune* or *mairie*, then sent to the respective *préfectures*, and then transmitted to the Ministry, which co-ordinates the release of results to the media and the public.

Election administration for the approximately 1.6 million voters living in the French departments and territories overseas is carried out by the respective *préfectures* and *mairies*, overseen by the *Secrétariat d'Etat chargé de l'Outre-mer* (Secretary of State in charge of overseas territories, Ministry of Interior). These arrangements are complicated due to the remoteness of some of these areas and the time difference with continental France. During the first round of the 2002 presidential election, results from continental France were made public while polling stations abroad were still open; as a result, this raised concerns that the equality of the vote may have been jeopardized and that voters might have been influenced. In 2006, the Assembly changed the law to permit voting abroad on Saturday, so that citizens in these places could vote prior to citizens in continental France.

The Ministry of Foreign Affairs is charged with informing voters living abroad about the elections, through France's diplomatic representations. They also serve a co-ordination function, receiving information on voter registration from diplomatic representations and transmitting this information to the *Institut National de la Statistique et des Etudes Economiques* (National Institute for Statistics and Economic Studies or INSEE), which in turn informs the *mairies* in order to avoid possible multiple registrations in the lists. In total, 346,310 citizens voted at embassies and consulates abroad.

VI. VOTER REGISTRATION

A. OVERVIEW

French citizens over the age of 18 on the day of election have the right to vote, unless this right has been suspended by a sentence of the court.⁹ Voter registration in France is currently in a state of transition from an active to a passive system. Although previously it was at the

⁹ Electoral Code, Art. L2.

discretion of every citizen to decide whether or not to register to vote, since the passing of new legislation in 2006, all citizens with voting rights are now obligated to register to vote, although there are no sanctions in cases of non-compliance.

There is no unified voter register at the state level. Voter registers are compiled at the local level and updated annually. Voter registration is now done automatically for most French citizens when they turn 18.¹⁰ Voters who change their residence, and persons who have not been automatically registered to vote, must actively register with the relevant *mairie*. One issue raised with the OSCE/ODIHR EAM is that the new provisions are not always applied equally; some *mairies*, for instance, understand that 18 year-olds must still apply with them to register.

Applications and amendments are received by the *mairies* throughout the year, but from 1 September of each year a commission is formed to review and process the changes. Preliminary lists are published on 10 January of each year. Any registration requests presented after the end of the year are not processed until the following September, except for certain categories of voters.¹¹ A complaint and appeals process runs from January until the end of February and the final lists are posted on 1 March each year.¹²

The INSEE plays an important role in checking for possible multiple registrations and informing the *mairies* of those who have moved out of their jurisdiction in order that they are removed from the previous list.¹³ In addition, the INSEE also serves as an intermediary in the registration of French citizens living abroad. Since 2006, those registering at French diplomatic representations abroad are now also automatically registered to vote there and are struck from the voter list where they were last registered. Election officials in Paris and Lyon informed the OSCE/ODIHR EAM that there were a number of cases of voters living abroad who had been unaware that they had been struck from the lists in their original place of residence. In such cases, as in any other cases involving registration, voters had the right to appeal to the courts and, in certain cases, were allowed to vote on election day.¹⁴

According to official statistics, the number of registered voters for the first round of presidential elections was 44,472,834. The INSEE advised that more than 4,800,000 changes to the voter lists had been processed prior to these elections, with an additional 40,000 entries that they did not have the time and manpower to address prior to election day.

Increased public awareness campaigns about regulations regarding voter registration could be useful for both voters and local election administrators.

¹⁰ This pre-registration is done at a compulsory military service day exercise.

¹¹ These categories include public administration personnel whose residence has changed due to duty transfers, military personnel who have completed their duties, citizens who have acquired French nationality by naturalization, and those who become eligible to vote after the end of the year.

¹² Electoral cards are also sent out to voters at this time. They are not compulsory for voting but aid the polling station commission in locating the person in the voter lists on election day.

¹³ However, the voter lists kept by each individual *mairie* are considered as primary, and voting takes place on the basis of those locally kept lists.

¹⁴ As a rule, decisions concerning registration may be appealed by the voter to the *tribunal d'instance* and by the *préfet* to the *tribunal administratif*. Decisions must be handed down within ten days and can be appealed to the *Cour de cassation* or the *Conseil d'État*, respectively. A voter can also turn to the *tribunal d'instance* on election day.

B. GENS DU VOYAGE

Following the 2002 presidential elections, there has been an increased engagement on the part of NGOs regarding the registration of *gens du voyage* (travellers).¹⁵ The term *gens du voyage* describes a general category of people who perform itinerant labour. The term does not refer to a particular ethnic group, but encompasses disparate groups of people including Roma and others. According to the 1969 law, *gens du voyage* should have a *rattachement* (attachment) of at least three years to a *commune* in order to register on the voter list in that location.¹⁶

On the basis of the attachment, an individual receives a *livret de circulation* (circulation book) or *carnet de circulation* (circulation card), serving as a type of identification document. These documents are issued by the *préfecture* of the *commune* to which the individual is attached.¹⁷ Although *gens du voyage* can register to vote with these documents, they cannot necessarily use them as identification to vote on election day, as they are not listed in the Ministry of Interior decree of 16 October 2006. According to Ministry representatives, these categories of documents were not mentioned in the decree due to an error, but stressed that *gens du voyage* would be allowed to vote and could use them as identification at the discretion of the polling station president. Polling station presidents met by the OSCE/ODIHR EAM did not have a uniform understanding regarding the validity of these documents as identification.

During this election, NGOs seemed to be active in carrying out voter registration and awareness campaigns for the *gens du voyage*. For instance, in Lyon, NGOs actively promoted their registration as voters and carried out a get-out-the-vote campaign for *gens du voyage* prior to election day. In Massy, the OSCE/ODIHR EAM met with *gens du voyage* representatives, who stated that they had received their electoral cards and requisite candidate materials and expressed interest in voting in the upcoming election, some for the first time.

One NGO representing *gens du voyage* sent an open letter to all presidential candidates regarding the problems faced by the group. One candidate publicly responded that there was a need to simplify the voter registration procedure for the *gens du voyage* and to reduce the attachment requirements. Some NGO interlocutors also informed the OSCE/ODIHR EAM that *gens du voyage* lack sufficient knowledge about the electoral process. In this respect, programmes such as those undertaken by the Ministry of Social Affairs, which support NGOs in their voter outreach work to this group, may also be helpful.

A *Commission nationale consultative* (National Consultative Commission) for the *Gens du Voyage* has been established to look at various issues related to this group and can play an important role in improving their participation in the election process. The Commission, chaired by a Senator, includes members of public authorities and representatives of the *gens du voyage*. Although the *Commission* was without a chair from 2002 to 2006, it has now

¹⁵ Voter registration of *gens du voyage* is regulated by Law 69-3 from 3 January 1969, which supplements Article 11 of the Electoral Code.

¹⁶ The law also establishes a maximum quota of three per cent for the number of *gens du voyage* that may be 'attached' to a given *commune* of less than 5,000 inhabitants. Any number 'attached' above this quota is at the discretion of the *mairie*.

¹⁷ A *livret* is generally issued to the owner of an itinerant business, but may also be issued to business associates. A *carnet* is issued to individuals who are employed in itinerant forms of labour or who have no employment. The *carnet* must also be stamped every three months by the administrative authorities (in practice, by the police).

resumed its activities. The *Commission* sent a letter to the Ministry of Interior requesting that the Ministry draft legal amendments that would rescind the three year attachment requirement for *gens du voyage* voter registration.

The fact that a category of adult citizens must wait three years in order to be eligible to register to vote is unsatisfactory and challenges the principle of universal and equal suffrage to adult citizens.

The authorities should consider ways of guaranteeing universal and equal voting rights for all eligible French citizens, including the gens du voyage.

VII. ELECTRONIC VOTING

A. BACKGROUND

Since 1969, the Electoral Code has permitted the use of voting machines,¹⁸ and mechanical devices (i.e., not computerized) were used in elections in some locations for several years. After several pilot programmes, electronic voting machines were officially used for the first time in regional and cantonal elections in 2004. For the 2007 presidential election, 83 cities used electronic voting. This affected approximately 1.5 million voters or three per cent of the electorate.

In November 2003, the Ministry of Interior issued a legal document on “Technical Requirements for Certifying Voting Machines”. The document contains general principles for voting machines, a description of the certification procedures, and 114 technical requirements for certification of voting machines. According to this document, voting machines may only be used for automating the voting and counting processes. This includes casting the vote, tabulating results in the polling station and transferring results for centralized aggregation. Voter identification and signing the voter list may not be part of the automatic procedure, but must be done manually. One of the requirements is that machines should not produce paper ballots, which has been interpreted as a requirement not to produce a “Voter Verifiable Paper Audit Trail” (VVPAT).¹⁹

Two companies, *Bureau Veritas* and *Ceten-Apave*, can certify voting machines.²⁰ Electronic voting machines of three suppliers were certified: NEDAP ESF1 (used in 68 cities), ES&S iVotronic (8 cities), and INDRA “Point&Vote Plus” (7 cities). The ES&S and INDRA machines have touchscreen systems, while the NEDAP user interface is based on mechanical buttons and a small alphanumeric display. The INDRA voting machine is based on a standard PC platform and the Windows XP operating system. The NEDAP and iVotronic voting machines consist of proprietary hardware running firmware stored in EPROM

¹⁸ Electoral Code, Art. 57-1.

¹⁹ In VVPAT system, e-voting machines produce a print version of the e-ballot (“paper trail”) which can be inspected and accepted by the voter, and stored separately by the voting authorities. These paper trails can be used whenever a manual recount is demanded, increasing accountability, transparency and confidence.

²⁰ *Bureau Veritas* and *Ceten-Apave* are French-based, international private companies that offer, among other services, technical testing and certification.

modules.²¹ None of the three voting machines have open source software. As the machines do not produce a VVPAT, there is no possibility for a meaningful recount of results.

There was little public awareness of electronic voting issues in 2004, when electronic voting machines were introduced. A few months before the 2007 presidential elections, a heightened public debate took place driven by computer activists, in particular the NGO *Ordinateurs-de-vote*.²² The public discussion, including several legal challenges to electronic voting, prompted some political parties to call for suspending its use in the elections, including the Socialist Party, the Communist Party, and the Green Party. The *Conseil constitutionnel* issued a communiqué on 29 March as a reminder that the use of voting machines is permitted under the Constitution.

The decision to use electronic voting belongs to each *commune* (municipality) with the approval of the relevant *préfecture*. According to the Ministry of Interior, the stated intentions for *communes* to introduce electronic voting were modernizing the electoral procedure, economic savings in human resource costs due to the reduction of time in counting the votes, improved accessibility for voters with disabilities, and the supposed ecological benefits in not using paper ballots.

Following the first round of the presidential election, four municipalities decided to return to a paper ballot system and not to continue using their voting machines. These municipalities did not express concern about the performance of the voting machines, but rather that high voter turnout created complications and delays in the voting procedures. After the second round, the *Conseil constitutionnel* stated that the electronic voting process had improved over the first round. However, it noted that many voters were not comfortable with the electronic voting process.²³

B. CERTIFICATION AND AUDITS

In the absence of a VVPAT, the transparency of the electronic voting process relies entirely upon the certification and audit processes. The vendors choose which of the two certification agencies will evaluate their system and pay for the procedure. To protect industrial property, all three suppliers keep the technical details confidential, including the source codes.

While the 114 conditions for certification are public, the certification process used in France to ensure that voting machines comply with the requirements is non-transparent. Full access to the system being certified is only provided to the certification companies,²⁴ and the certification reports are only made available to the Ministry of Interior, which makes the final decision as to whether a given voting machine can be used. The certification reports are not made available to political parties, candidates, or observers.²⁵

²¹ “Erasable Programmable Read-Only Memory”. Information in this type of memory cannot be modified by the computer/voting machine itself but only with external hardware devices.

²² A petition against electronic voting had gathered 84,808 signatures as of 9 May 2007.

²³ “Conclusions on the second round and proclamation decision,” *Conseil constitutionnel*, 10 May 2007, www.conseil-constitutionnel.fr/dossier/presidentielles/2007/documents/tour2/bilan.htm

²⁴ In addition to the commercial certification companies, the *Direction centrale de la sécurité des systèmes d'information*, attached to the *Secrétariat général de la défense nationale*, was also provided with several voting machines.

²⁵ In the case of ES&S voting machines, some city councils were permitted to read but not keep the certification report.

The Ministry of Interior informed the OSCE/ODIHR EAM that according to a 26 January 2006 recommendation by the *Commission d'accès aux documents administratifs*, an official consultative board, the certification reports could not be provided to the public on the grounds that industrial secrecy and the proper implementation of the elections could be compromised. The *Commission* had given this recommendation in response to a citizen request to the Ministry of Interior for access to the reports.

However, as a consequence of a complaint in Vaucresson, the Ministry of Interior released an extract from the *Bureau Veritas* certification report on the NEDAP machines in a court proceeding. This extract contained the assessment of the NEDAP machines on a few of the 114 points. The extract indicated that the NEDAP machines did not fully comply with some criteria but that the discrepancies were minor. This raised concerns that the certification companies have too much discretion in determining the acceptable amount of variance in meeting each certification criteria and in determining whether some criteria are relevant at all.

The certification process covers the machines and the internal management procedures of the suppliers, including the information that they give to the local authorities, but does not cover the security and management standards used by local authorities. The vendors are required to provide general guidelines to their clients, but the implementation depends largely upon the local authorities. There did not appear to be detailed procedures in place for ensuring the integrity of the machines once in the possession of the local authorities. Every two years after certification, the certifying body must conduct a review of the supplier's documentation, production procedures, and examples of the electronic voting machine, but does not audit the machines that were purchased by the municipalities.

C. VOTER INFORMATION

The minimum legal requirement for informing voters about electronic voting is an information folder sent to them, showing screenshots of all the steps of the electronic voting process. Under the paper ballot system, each voter receives each of the paper ballots in advance of election day, and the screenshot is considered to be the most similar solution for electronic voting. On their own initiative, municipalities provided further information (e.g., demonstration machines, public test systems, etc.), but few appeared to use other channels, such as local websites. Moreover, in some cases, the information for voters was not accurate. In apparent attempts to minimize potential concerns, some materials, such as those in Colombes and Châtenay-Malabry, stated that the voting machines did not contain computer devices.

D. FURTHER DEVELOPMENTS

As the use of electronic voting may be continued or considered for introduction in other localities, this topic should always be accompanied by broad public discussion and debate. The OSCE/ODIHR EAM recommends that additional measures be taken in order to further strengthen accountability, transparency and public confidence:

The transparency of the certification process should be enhanced, including access by local authorities, political parties, observers, and relevant civil society groups to certification reports.

Audits should be conducted at various stages of the process to ensure that adequate security procedures are being followed by local authorities.

Legislation and regulations for electronic voting machines should include provisions requiring Voter Verified Paper Audit Trails (VVPAT) or an equivalent verification procedure. The legislation should provide for meaningful post-election recounts and audits of results.²⁶

Usability of voting machines should be improved, and more extensive voter education efforts should be conducted.²⁷

VIII. CANDIDATE REGISTRATION

To stand as a candidate for the presidency, a French citizen must have the right to vote, must be at least 23 years of age, and must not have had his or her right to be elected suspended. Each candidate must also present a property declaration. A potential candidate must also be sponsored by at least 500 elected officials²⁸ (*parrains* or sponsors) from elected bodies across metropolitan and overseas France. The sponsors must come from at least 30 different districts, departments or overseas collectives in France with a maximum of one tenth of the *parrains* coming from any one district. The support for a candidate must be registered on a standard form which must be signed by the sponsor. Each *parrain*, as an individual, can only support one candidate, and signatures may not be rescinded. There are more than 47,000 elected positions that can provide support for a candidate, but since a number of elected officials hold multiple positions, the actual number of *parrains* is closer to 43,000.

Candidates had three weeks from the announcement of the elections to collect the required signatures. Announcement of the elections one week earlier than in 2002 allowed potential candidates more time to collect signatures. When elections were called on 22 February, more than forty persons declared their intention to stand. Twelve persons presented their documents to the *Conseil constitutionnel*, and all twelve were officially registered as candidates on 19 March.²⁹ On 24 March, a random sample of the names of 500 *parrains* for each candidate was published in the Official Gazette.

The *parrainage* system of demonstrating support was the subject of a public debate. Some interlocutors told the OSCE/ODIHR EAM that the system favours political forces that already have representation in public office and that some potential candidates faced difficulty in

²⁶ Council of Europe's standards on e-voting require that (1) Art.107: The audit system shall provide the ability to cross-check and verify the correct operation of the e-voting system and the accuracy of the result, to detect voter fraud and to prove that all counted votes are authentic and that all votes have been counted; and (2) Art. 108: The audit system shall provide the ability to verify that an e-election or e-referendum has complied with the applicable legal provisions, the aim being to verify that the results are an accurate representation of the authentic votes. See "Legal, Operational And Technical Standards For E-Voting" Recommendation Rec(2004)11 adopted by the Committee of Ministers of the Council of Europe on 30 September 2004 and explanatory memorandum, available at www.coe.int/t/e/integrated_projects/democracy/02_activities/02_e-voting

²⁷ See also Section XIV, Election Day.

²⁸ The elected officials include those from the French Parliament, the European Parliament, regional and local councils, elected bodies of overseas units, mayors and others.

²⁹ None of the candidates who had the support of at least 500 *parrains* were rejected.

collecting the sufficient number of signatures despite having significant public support. Other interlocutors stated that the number of signatures required can permit too many candidates to register, noting that campaign financing from the state budget provides incentives for candidate registration.³⁰

Some potential sponsors stated in the media that they had been approached by numerous candidates and some claimed that they were pressured by either candidates or their own party to give or refuse their support for certain candidates. The Mayor of Noron-la-Poterie publicly auctioned his support, and potential candidate Mr. Rachid Nekkaz paid 1,550 Euro for the *parrainage*. Mr. Nekkaz, who was denied registration as he collected only 13 signatures, lodged a complaint at the *Conseil constitutionnel* in which he claimed that he had not been able to collect the 500 signatures due to pressure on potential sponsors not to support him. On 22 March, the *Conseil constitutionnel* rejected the claim, deciding that even if such pressure had existed, 'it would not have had an impact upon the legality of the registration process.'

The publication of the names of *parrains* was also an issue. The law provides that the *Conseil constitutionnel* should publish the names of 500 sponsors for each candidate. For the 2002 elections, the names of all *parrains* were made public, up to and beyond the 500 required. After the 2002 elections, the *Conseil constitutionnel* recommended that the legislation be amended to require the public display of all names in support of each candidate. As the Parliament did not amend the legislation in this respect, the *Conseil constitutionnel* considered that it did not have a mandate to publish more than 500 names per candidate.

One view expressed to the OSCE/ODIHR EAM was that all names of those providing signatures be made public. In this view, publishing some names and not others put sponsors in an unequal situation. Another view was that names of *parrains* should not be published at all in order to avoid potential pressure on them.

The OSCE/ODIHR EAM notes that public debate over the system of *parrainage* continues. In the context of France, the system of candidate registration appears sufficiently inclusive to provide voters with a wide choice of political options and provides potential candidates with equitable opportunities.

However, given that the sponsors of candidates are elected public officials, consideration could be given to further enhance transparency of candidate registration by publication of the names of all those who provide their signatures on behalf of a potential candidate.

IX. ELECTION CAMPAIGN AND CAMPAIGN FINANCING

The presidential campaign in France drew a considerable amount of public interest and took place in an environment of open debate and discussion. The campaign was marked by attention to substantive discussion of political issues and topics, especially those of national concern such as education, pensions and employment. The campaign culminated in a live

³⁰ After the 2002 elections, the *Conseil constitutionnel* recommended that the legislator could consider tightening the existing requirements if it considered that the increased number of candidates created inconveniences for the organization and control of the election process. The Parliament did not change the requirement.

televised debate between the two second round candidates with an estimated 20 million viewers. During the debate that lasted over two hours, the candidates addressed a wide array of issues in a comprehensive manner.

The campaign formats tended to be balanced between media appearances and traditional political rallying and street canvassing. Due to provisions that disallow paid media advertising during the official campaign, which ran from 9 to 21 April, candidates drew on more traditional forms of campaigning, but also utilized new campaigning technologies, including web blogs, internet polls, and SMS campaigning.

By law, the electoral campaign commences on the second Monday two weeks prior to the first round election date and ends at midnight the day prior to election day.³¹ For the second round, the campaign re-opened following the official publication of the first round results on 27 April and ran until midnight of the day prior to the second round election day on 6 May. These provisions only affect the campaign means that are provided to each candidate by the state, namely free media coverage, posting of candidate posters, and distribution of information.³² Public meetings and rallies can take place at any time, with the exception of the silence period. None of the candidate representatives met by the OSCE/ODIHR EAM raised issues in this regard.

The law also establishes a principle of equal treatment of all candidates by the State during the campaign. To monitor the campaign and ensure equal treatment, a *Commission nationale de contrôle de la campagne en vue de l'élection présidentielle (CNCCEP*, National Presidential Electoral Campaign Control Commission) was established. The *CNCCEP* is a five-member commission presided over by the Vice President of the *Conseil d'État* and exists only for the presidential election. The *CNCCEP* works closely with the *Conseil supérieur de l'audiovisuel*, which regulates and monitors the conduct of the campaign in the media; with the *Commission nationale de contrôle des comptes de campagne et des financements politiques (CNCCFP)*, which monitors and approves the financial accounts of the candidates' campaigns; with the *Commission des sondages*, which monitors opinion polls; as well as with the *Conseil constitutionnel* and with the ministries involved in the conduct of the elections.

The *CNCCEP* monitors the campaign process, including the conditions in which public meetings are held and the campaign materials of each candidate. Candidates must submit all campaign materials to the *CNCCEP* before these are distributed in order to verify that they do not contain information or images which would violate the law or be misleading to the electorate. The *CNCCEP* addressed one issue in this regard. One candidate, Mr. Schivardi, asserted in his programme that he was "*le candidat des maires de France*" (the candidate of all the mayors of France) and a request was made that he change his campaign materials to reflect that he was "*le candidat de maires de France*" (the candidate of mayors of France). This occasioned considerable expense for the candidate. A legal proceeding ensued, but a decision was made in favour of the *CNCCEP* by the *Conseil constitutionnel*.

Campaign posters must have the same content throughout France and may only be placed in locations designated by local authorities. There are 105 local *Commissions locales de contrôle* who carry out monitoring of the campaign at the local level under the direction of the

³¹ The day before election day is considered as a silence period.

³² All candidates have an equal right to place posters in front of polling stations. The posters must be placed on designated stands in the order established by the *Conseil constitutionnel*.

CNCCEP. In order to protect their independence, they do not report to the *préfecture* but directly to the *CNCCEP*.

A. CAMPAIGN FINANCE

For the first time, the *CNCCFP* controlled the campaign financing and spending in a presidential election.³³ Since its creation in 1990, the *CNCCFP* has overseen the campaign accounts of candidates seeking election by direct universal suffrage, within municipalities of 9,000 or more inhabitants, and has determined the amount of reimbursement from the state budget. This has included European, legislative, regional, cantonal, municipal, provincial and territorial (overseas) elections.

The *Conseil constitutionnel*, in its report following the 2002 presidential election, recommended the transfer of the responsibility for the review of the campaign accounts for all candidates to the *CNCCFP*, a function previously held by the *Conseil constitutionnel*. New legislation to this effect was passed on 5 April 2006.

For the first round of the 2007 presidential elections, the campaign spending limit was 16,166,000 Euro, while the total limit for the two candidates reaching the second round was 21,594,000 Euro. Candidates may receive campaign donations from individuals and from political parties. Donations from individuals are limited to 4,600 Euro per person, while donations to political parties are limited to 7,500 Euro per party per person. Acceptance of donations from legal entities is prohibited. Candidates who obtain at least five per cent of the vote in the first round are eligible to receive reimbursement for their campaign expenses up to 8,083,000 Euro. Those who do not pass the five per cent threshold may be reimbursed up to 808,300 Euro. Some costs are directly covered by the State, for example, TV spots.

In order to receive a partial refund of campaign expenditures, a candidate must submit a post-election report to the *CNCCFP* for the year prior to the election. If accounts are not submitted on time or if the report is not approved, campaign expenses are not reimbursed. For presidential elections, this is the only enforcement mechanism available should a candidate spend more than the established limits.³⁴ If irregularities do not lead to the rejection of an account, the *CNCCFP* may still accept the account, but may choose to levy fines from a candidate's reimbursement, dependant on the number of irregularities and their severity. Candidates for presidential election may contest the *CNCCFP*'s decisions by appealing to the *Conseil constitutionnel*.

The *CNCCFP* developed a new accounting model and instructions on its usage for the information of presidential candidates and their financial agents, providing details on the rules which would be applied in terms of campaign financing. This documentation was approved by the *Conseil constitutionnel* and officially published in May 2006.

³³ The nine members of the *CNCCFP* are appointed for a renewable term of five years. The members are all retired magistrates: three from the *Conseil d'État*, three from the *Cour de cassation* and three from the *Cour des comptes* (Revenue Court).

³⁴ For elections other than presidential elections, if the *CNCCFP* concludes that there are irregularities or discrepancies, the campaign reimbursement can be withheld, and if elected, the candidate could be removed from office. If not elected, the candidate could be prevented from standing for office again for one year (Electoral Code, Art. L118-3).

The process for controlling campaign finances appeared to function effectively. The *CNCCFP*, as well as some candidate representatives, noted that more clarity is needed in defining what should be included as campaign expenses and what should be excluded, given that the control period starts one year before the presidential election is held.

X. MEDIA

Freedom of expression and information are fundamental rights in France, enshrined in the Constitution. Print media are unregulated with respect to the conduct of presidential elections, except for a prohibition on paid advertisement. Electronic media, both public and private, are bound by strict rules for coverage of the election campaign, as established by the *Conseil supérieur de l'audiovisuel* (CSA), based on the principles of “equity” and “equality”.

The CSA is an independent administrative authority created in 1989 and composed of nine members; three members are appointed by the President of France, three members by the President of the Senate, and three by the President of the National Assembly. Each CSA member is appointed for a six year non-renewable period and one third of its membership is reappointed every two years. Members of the CSA may not serve in any other professional capacity, including elected posts.

One function of the CSA is to issue recommendations and instructions to the media prior to and during the official election campaign. It works in close co-operation with other institutions that have a monitoring role in the elections, including the *CNCCEP*. On 7 November, the CSA approved specific rules for electronic media³⁵ regarding the treatment of candidates and the coverage of the presidential electoral campaign. The CSA divided the pre-election period into three different phases, commencing on 1 December:

- a) The preliminary phase of the campaign ran from 1 December until the day before the *Conseil constitutionnel* published the list of registered candidates (on 19 March). This phase was regulated by the principle of *equity* for broadcast and speaking time, and followed criteria of political representation and the capacity to conduct an active campaign;
- b) The intermediate phase started from the moment the list of registered candidates was officially announced and ended the day before the beginning of official campaign. During this period, radio stations and television channels were to offer *equitable* broadcast time and *equal* speaking time to all registered candidates and their supporters. This intermediate period was new for this election campaign – in previous elections there were only two phases;
- c) The official campaign, which started on April 9, two weeks prior to the election, and ended at midnight the day before election day. During these two weeks, the media had to provide all candidates and their supporters with *equal* direct speech time and *equal* time with regard to coverage in news and other programmes.

The CSA monitored a number of electronic media, all with national coverage and reaching about 80 per cent of the population. These included public channels France 2, France 3 and the private channels Canal+ and M6. Radio stations and other media outlets, including local

³⁵ Except for those TV and radio stations that broadcast only through the internet.

media, were required to provide information regarding the implementation of the rules, following a self-declaration approach. After receiving the reports, the CSA evaluated their compliance with the rules.

The CSA has the authority to intervene if rules are not respected. It can issue written warnings, which can include a recommendation to correct the observed problem. If the radio or TV channel continues to violate the rules, the CSA may decide to impose financial sanctions. During the presidential election campaign, the CSA issued warnings to TV5 and FR24 for not respecting instructions on campaign coverage.

The CSA may also receive complaints from candidates, potential candidates and other citizens regarding the conduct of the media. For this election, mostly during the first phase of the campaign, complaints were filed by potential candidates. After 19 March, the number of complaints received by the CSA declined. During the pre-electoral period, Mr. Bayrou had drawn attention to the “excessive bipolarization” of media coverage that focused on coverage of Ms. Royal and Mr. Sarkozy. According to the CSA, the situation improved after the CSA intervened, and the media thereafter ensured a more equitable coverage of the campaign.

Paid advertisement for candidates is prohibited, but each television broadcaster must provide a set amount of time for each candidate to broadcast pre-recorded election spots.³⁶ The broadcast order is decided by the drawing of lots. The CSA is responsible for providing equipment and technical staff for recording these spots in order to ensure equal opportunities for all candidates.

Following a decision of the CSA from 20 March, the public channel France 3 was selected to produce campaign broadcasts and to coordinate the different phases of the official campaign.³⁷ France 3 provided all candidates with the equal technical support necessary to take part in the official radio and television campaign. In response to previous criticism that these spots were uninteresting and did not facilitate voter participation, spots were no longer required to be filmed in a studio and candidates could provide their own material (up to 50 per cent of the 45 minutes of airtime). As required by the rules, all videos were subtitled and candidates could require sign language to be included. The CSA did not interfere with the content of the spots but verified that no violations of rules had taken place, particularly the use of proscribed symbols for election campaigning, such as the flag of France.

Different opinions exist on the necessity of a strict regulation of media conduct during the electoral period. The CSA has modified its rules over the years in line with the changes in legal provisions and in the media sector, but the development of new media has underscored the continuing need to update regulations. The internet, for instance, falls outside the remit of the CSA, and there are no specific rules for internet during the electoral campaign, except for a prohibition of publishing new items on websites during the silence period.³⁸

³⁶ A total of 45 minutes per candidate per broadcaster, divided into spots of different length.

³⁷ France 3 is the only media outlet in the country having production capacity. Private media use private production companies to produce their programmes.

³⁸ The *CNCCEP* issued a press advisory on 13 April, calling attention to rules for websites on during the silence period. All election-related information and interactive items on websites were required to remain unchanged from the start of the silence period until the close of polls.

The main criticism of the three phases approach came from the media, as journalists expressed concerns about the effects on the quality of their programmes and the interference the CSA might have on editorial policy and, consequently, the threat this represents to the freedom of the media.

After the first round of elections, there was a degree of controversy regarding the possibility of Canal+ broadcasting a TV debate between a candidate, Ms. Royal, and Mr. Bayrou, who had come third in the first round and was no longer a candidate. The cancellation of the debate only a few hours later by Canal+ engendered speculation of alleged pressure on the media and undue interference from the CSA. Mr. Bayrou publicly denounced pressure on the media by Mr. Sarkozy. In a press release, the CSA denied these allegations and stressed the importance of editorial responsibility in the media, while reminding them to respect the principle of equality. The debate was finally organised by BFM TV (digital terrestrial TV) and Radio Monte Carlo media group and broadcast on 28 April.

Despite this issue, there did not appear to be major problems related to media coverage of the campaign, and voters had access to a wide variety of views. The CSA appeared to have been careful in supervising the conduct of the media during the three month election period and contributed to ensuring a respect for the equal treatment of candidates as well as for freedom of information. Nevertheless, the CSA has recognized the complexity of the rules and stated that it would welcome a simplification.

Consideration should be given to simplifying the rules for media coverage to provide greater latitude for electronic media to broadcast in line with their editorial policies.

The legislation sets minimum requirements for the publication of opinion polls and provides for a *Commission des sondages* (Commission on Opinion Polls) to monitor opinion polls in order to ensure compliance. The *Commission* is composed of nine members appointed from the *Conseil d'Etat*, the *Cour de cassation*, and the *Cour des comptes*. When an opinion poll is to be published, notification documentation is sent to the *Commission* for its review. The *Commission* verifies whether the opinion poll provides a quantitative indication of the opinion of a population by using a representative sampling of that population. The *Commission* does not intervene prior to publication of a poll but requests a correction if necessary.

The *Commission* has no remit over internet polls, but it advises the public that internet polls do not necessarily meet the requirements set by the law and should, therefore, be taken with some caution. The law forbids the publication of any opinion polls during the campaign silence period and on election day.

XI. COMPLAINTS AND APPEALS

French legislation provides a complex system for filing complaints and appeals concerning election-related issues. However, voters and other interested parties have wide access to challenge all steps of the electoral process.

Prior to or after the election, any citizen can appeal to the *tribunal administratif* (Administrative Tribunal) to claim a breach of personal liberty. Some cases were filed with the tribunals, most notably concerning electronic voting. There were at least five complaints

regarding differences between the machines deployed and those certified and compliance of the machines with the technical requirements. None of the complaints were upheld; however, in one case, the extracts from a certification report on one type of voting machine were submitted to the court as evidence (see Electronic Voting Section).

Questions concerning candidates' rights are referred to the *Conseil constitutionnel*, which checks the validity of the applications and issues a decision. As its decisions cannot be appealed, the *Conseil constitutionnel* is the first and the last instance body for the registration of candidates. Although there were no challenges to the *Conseil constitutionnel*'s decision on candidate registration in these elections, it should be noted that there is a lack of a clear appeal mechanism for issues pertaining to candidate registration.

Consideration could be given to establishing a clear appeal mechanism to first instance decisions of the Conseil constitutionnel on registration and other relevant election issues.

On election day, any voter or candidate representative complaints regarding the process in a particular polling station are entered into the poll record and reach the *Conseil constitutionnel* together with the results. These complaints serve as part of the documentation for assessing the constitutionality of the elections. They are not decided individually but may serve to invalidate the results in a particular polling station. In addition, any voter can challenge the validity of the vote, as reflected in the poll record, and directly appeal to the *Conseil constitutionnel* on the validity of the results. The *Conseil constitutionnel* noted in its decisions on results after the first and second rounds that it had considered complaints registered by voters in the poll records, as well as reports from magistrates, in annulling the results of some polling stations. The Conseil also noted that the number of voter complaints was low.³⁹

XII. PARTICIPATION OF WOMEN

The level of women's participation in public life in France is high and many women have leading roles in government institutions, political parties and NGOs. Nevertheless, some interlocutors indicated that constant attention needs to be given to this issue in order for women to continue to be involved in democratic processes, and to further enhance their role.

During this presidential election, four out of twelve candidates were women. One of the two candidates to reach the second round was female. In addition, women were active in the campaigns of a number of candidates. After his inauguration, President Sarkozy appointed a government in which seven of the fifteen ministers were women.

XIII. ELECTION OBSERVATION

Several provisions are aimed at securing the transparency of the election processes. All candidates may appoint a member (*assesseur*) to the polling station. In addition, each candidate can appoint delegates who can be present at all times in one polling station or circulate among several. Voters present at a polling station during the voting process are

³⁹ “Bilan synthétique des deux tours de l'élection présidentielle de 2007”, *Conseil constitutionnel*. Available at www.conseil-constitutionnel.fr/dossier/presidentielles/2007/documents/synthese.htm
See also Section XV, Announcement of Final Results.

permitted to observe, although their right to stay before and after having cast their own vote is not directly regulated in the legislation.

Voters are invited to participate actively in the vote count, which takes place in each polling station. Polling station committees randomly invite voters during the course of the election day. As there are no provisions that would prevent or restrict organised domestic or international election observation, it appears that in practice such access is at the discretion of the electoral administration.

Election legislation should be amended to allow for the presence of international and domestic non-partisan observers, in line with the 1990 OSCE Copenhagen Document.

XIV. ELECTION DAY

A. VOTING

Consistent with its methodology, the OSCE/ODIHR EAM did not observe election day proceedings in a systematic or comprehensive manner. Nevertheless, the OSCE/ODIHR EAM did visit a limited number of polling stations during the two rounds of the election in Paris and surrounding municipalities, Lille, Lyon, Marseille, Epernay, and Reims.

Polling took place in some 65,000 polling stations throughout France and its overseas areas. Polls were generally open from 8:00 to 18:00; however, large communes could apply to remain open until 20:00.

In general, the voting process appeared to be very well organized in the polling stations visited, and procedures were followed in a generally uniform manner. The voting procedure with paper ballots is secure against potential malfeasance. Although the size of the polling stations was fairly equal, with approximately 1000 registered voters, the number of staff varied from the minimum of four up to twelve. None of the polling officials complained about understaffing. However, some polling stations became crowded and there were queues, especially in the morning.

In the system of voting, each candidate's name is printed on a separate ballot. The voter takes an assortment of ballots, chooses a ballot in secret, places it in an envelope, and then deposits the envelope in a transparent ballot box. Voters discard any remaining ballots. The envelopes, rather than the ballots, are considered sensitive documents and are accounted for.

In polling stations visited using paper ballots, most voters appeared to understand the voting process. However, some voters appeared unaware that they are required to take ballots for more than one candidate in order to avoid exposing their choice, and polling officials did not always remind voters to take multiple ballots. In some cases, the piles of ballots for different candidates were not of equal height, although candidate delegates were active in bringing this issue to the attention of polling officials.

It was rare in polling stations visited that voters were not able to find themselves in the voter lists or that they arrived without identification. But in some cases, voters who had resided abroad were not able to find themselves in the lists. Such voters were referred to Tribunals

(*tribunal d'instance*), tasked with issues arising on election day. Upon contacting the Ministry of Foreign Affairs, which liaised with diplomatic representations to check that such people had not voted abroad, the Tribunals generally decided in voters' favour and they were able to vote. Such instances were also noted in the poll record.

The OSCE/ODIHR EAM visited some polling stations in Reims, Epernay, and some suburbs of Paris in which electronic voting was used. Overall, instructions were available throughout election day in the form of posters or brochures. Polling station layout assured the secrecy of the electronic vote in those polling stations visited. During the first round, however, long waiting times were evident at some polling stations using electronic voting. This was in part due to the use of only one machine per polling station in some locations, but was also due to procedures used for checking identity and due to the unfamiliarity of some voters with the machines. For the second round, it appeared that changes made to the procedures reduced the waiting times.

As the law allows only one ballot box per polling station, and as a voting machine is equivalent to a ballot box, the *Conseil constitutionnel* stated that multiple machines could be considered as a single ballot box only if linked in an internal network. However, no clear instructions were issued on this point and implementation appeared variable. INDRA deployed two or even three machines per polling station in some cities (e.g., Reims, Le Perreux), which were not linked in a network.

Specific observations were also made with regard to the three types of machines used:

- a) **NEDAP** – The main usability problem detected was that several voters thought they had to press on the name of the candidate and not on the button below. The confirmation step was done on a small screen, and many citizens did not notice this fact, casting their vote immediately after the first selection.
- b) **INDRA** – Some voters required assistance with the machines, and in two cases, a polling official told the OSCE/ODIHR EAM that he had pressed the voting button for the voter because the voter did not understand the procedure. Some polling stations had a significant gap between the number of signatures and the number of votes cast (up to 48 votes). This indicated that a number of citizens had left the polling station before completing the voting process.
- c) **ES&S** – The ES&S machines also created a risk of non-finalized voting sessions, since the polling station president had to decide if a vote should be cancelled or confirmed if the voter left without completing the process. If the president cancelled the session, the final printout would include an “undervote” and no clear rules exist on how to include such data in the result protocols. In Issy-les-Moulineaux, the devices to assist disabled voters were covered over in order to avoid involuntary activation, although the technical requirements of the Ministry of Interior state that “devices for disabled people should not prevent the use of e-voting machines by the non-disabled”.

B. COUNTING AND TABULATION OF RESULTS

During the counting and tabulation procedures where observed, rules were generally adhered to and the process was fully transparent and conducted efficiently and smoothly. Voters, especially young voters, actively participated in the counting process, having been invited by polling officials from among those who came to the polling station on election day. For

polling stations using electronic voting, the counting process proceeded very quickly, with results available in less than one hour.

Some interlocutors, including the Chairman of the *Conseil constitutionnel*, informed the OSCE/ODIHR EAM that the use of electronic voting creates a significant change in French electoral culture, especially during the counting process. In this view, the involvement of citizen volunteers in the counting process is an important aspect of citizen participation in the election process as a whole. As the need for volunteers is eliminated with the use of voting machines, there is a corresponding reduction in the participation of voters in the process.

At the *mairie* level, staff received information about results, first by telephone and then in hard copy, and entered this information into computers which was later verified against the poll records. Results were immediately visible on public screens following the close of all polling stations.

At the *préfecture* level polling station protocols were double-checked. The work was carried out systematically and thoroughly in the limited number of *préfectures* visited by the OSCE/ODIHR EAM. The staff had detailed, written instructions about checking methods, and judges appointed to head special control teams at the *préfecture* were notified in case of any irregularities.

XV. ANNOUNCEMENT OF FINAL RESULTS

Following the first round of voting on 22 April, preliminary results were announced by the *Conseil constitutionnel* on 23 April and final results on 25 April (see Annex below). On 26 April, the *Conseil constitutionnel* announced that Nicolas Sarkozy and Ségolène Royal were the contestants for the second round. The *Conseil constitutionnel* invalidated first round election results in eight polling stations involving some 4,589 voters. Reasons for the invalidations included: absence of voting booths, ballots for one candidate put out late, poll records not made available to citizens, voters signing the voter list before voting, important discrepancies between numbers in the poll records and in the counting sheets.

Following the second round of voting, the *Conseil constitutionnel* announced the preliminary results on 7 May and the final results on 10 May. The results of two overseas polling stations were annulled. In one, this was on the grounds that identification documents were not asked from voters, in violation of article L60 of the Electoral Code. In the other, most of the voters had not signed the voter list, in violation of article L62-1 of the Electoral Code.

The *Conseil constitutionnel* also noted instances of minor irregularities in some polling stations which it did not consider significant enough to warrant annulation of the results but which nevertheless merited a warning to the mayors of the municipalities where such incidents occurred. These included refusal to open the polling station on time, toleration of open (not secret) voting, and refusal to allow voters to observe the counting process.⁴⁰

⁴⁰ Bilan synthétique des deux tours de l'élection présidentielle de 2007.

ANNEX: OFFICIAL RESULTS

First Round – 22 April 2007

Voters	Number	Percentage
Registered	44,472,834	100.00
Abstentions	7,218,592	16.23
Votes Cast	37,254,242	83.77

Blank or Invalid	534,846	1.44
Valid Votes	36,719,396	98.56

	Votes	Percentage
M. Olivier BESANCENOT (LCR)	1,498,581	4.08
Mme Marie-George BUFFET (PC)	707,268	1.93
M. Gérard SCHIVARDI (independent)	123,540	0.34
M. François BAYROU (UDF)	6,820,119	18.57
M. José BOVÉ (independent)	483,008	1.32
Mme Dominique VOYNET (LV)	576,666	1.57
M. Philippe de VILLIERS (MPF)	818,407	2.23
Mme Ségolène ROYAL (PS)	9,500,112	25.87
M. Frédéric NIHOUS (CPNT)	420,645	1.15
M. Jean-Marie LE PEN (FN)	3,834,530	10.44
Mme Arlette LAGUILLER (LO)	487,857	1.33
M. Nicolas SARKOZY (UMP)	11,448,663	31.18

Second Round – 6 May 2007

Voters	Number	Percentage
Registered	44,472,733	100.00
Abstentions	7,130,729	16.03
Votes Cast	37,342,004	83.97

Blank or Invalid	1,568,426	4.20
Valid Votes	35,773,578	95.80

	Votes	Percentage
M. Nicolas SARKOZY	18,983,138	53.06
Mme Ségolène ROYAL	16,790,440	46.94

Information of the Ministry of Interior at

www.interieur.gouv.fr/sections/a_votre_service/resultats-elections/PR2007/FE.html

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).