



Office for Democratic Institutions and Human Rights

**OSCE SUPPLEMENTARY HUMAN DIMENSION MEETING
15-16 July 2004 Hofburg, Vienna**

OSCE/ODIHR DISCUSSION PAPER

**ELECTION PRINCIPLES
AND EXISTING OSCE COMMITMENTS FOR DEMOCRATIC
ELECTIONS**



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I. INTRODUCTION

The sustained and concerted efforts of the participating States concerning the Human Dimension of the Helsinki process led to the adoption in 1990 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (commonly known as the Copenhagen Document). In the Copenhagen Document, the participating States stated:

They recognize that pluralist democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law. (Preamble)

The Copenhagen Document presents a wide-ranging set of commitments of the participating States for fostering democratic processes, ensuring human rights and fundamental freedoms and establishing the rule of law. In this context the Copenhagen Document sets forth explicit commitments for organizing democratic elections as “those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings”. (Paragraph 5) The Copenhagen Document thereby recognizes that elections cannot be separated from the broader context of democratic institutions and processes in a society and are integral to achieving and maintaining democratic governance. It affirms that genuine elections are critical to achieving democratic governance, by stating:

“The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes...” (Paragraph 6)

Paragraph 7 of the Copenhagen Document states nine specific commitments to ensure that the will of the people serves as the basis of the authority of government in a participating State. Paragraph 8 of the Copenhagen Document states that “participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking

place.”

Pursuant to Paragraph 8 of the Copenhagen Document, and in accordance with its mandate, the ODIHR has deployed over 10,000 international observers to more than 100 elections over the last decade. During this period the ODIHR has developed extensive and valuable knowledge of how election-related commitments from the Copenhagen Document have been implemented in OSCE participating States. The ODIHR utilized this expertise to produce in 2003 a Progress Report - *Existing Commitments for Democratic Elections in OSCE Participating States*. The 2003 progress report was considered by the OSCE Ministerial Council and the Council, in Decision No. 5/03 (2 December 2003), concluded:

Welcoming the document “Existing Commitments for Democratic Elections in OSCE Participating States: A Progress Report” (ODIHR.GAL/39/03), which was prepared by the ODIHR and submitted to the participating states in June 2003,

Recognizing in particular the need for confidence by the electorate in the entire process, for transparency of election procedures, and for accountability on the part of authorities conducting elections..., [the Ministerial Council]

Tasks the Permanent Council, drawing on expertise from the ODIHR, to consider the need for additional commitments on elections, supplementing existing ones, and report to the next Ministerial Council.

This discussion paper has been prepared in view of the forthcoming July 2004 OSCE Supplementary Human Dimension Meeting and in light of Ministerial Council Decision No. 5/03. It discusses election principles, existing OSCE commitments, future challenges for democratic elections in the OSCE region, and considers the possible need for additional commitments among the participating States concerning elections.¹

The ODIHR experience has shown that there are issues related to electoral processes that are problematic in some OSCE participating States, particularly in the areas of establishing impartial and effective election administration, realizing universal and equal suffrage, and ensuring genuine electoral competition. Future challenges are evident as new issues related to referenda and “recall” elections, electronic voting and counting technology and the development of election standards by other international organizations, among others, are emerging. While these areas are complex and do not present a complete list of challenges in the electoral area of the human dimension, the principal issues point toward the distinct possibility for additional commitments concerning furthering universal and equal suffrage, acknowledging the need for transparency in election related processes, establishing accountability for electoral authorities and competitors, and as an overarching issue recognizing that maintaining public confidence in electoral processes is a requisite for the people to express their will concerning who is to have the authority and legitimacy to govern in a credible

¹ This discussion paper draws from *Existing Commitments for Democratic Elections in OSCE Participating States: A Progress Report*. Several individuals contributed to the *Existing Commitments* document. Their contributions are acknowledged at page 3 of that document.

and effective manner.

In line with Ministerial Council Decision No. 5/03, this paper therefore presents the discussion under the umbrella of four fundamental pillars for democratic elections: public confidence, universal and equal suffrage, transparency, and accountability.

II. PUBLIC CONFIDENCE IN ELECTIONS

A. HUMAN DIMENSION OF ELECTIONS

Elections cannot be assessed solely by examining the technical aspects of their conduct. Broader considerations, such as political climate, media freedoms, and the rule of law, including legal mechanisms for the enforcement of civil and political rights, must be taken into account, if elections are to be understood within the context of the Copenhagen Document.²

Ministerial Council Decision No. 5/03 recognizes the “particular need for confidence by the electorate in the entire [electoral] process”. This recognition emphasizes the critical importance of the will of the people in establishing the authority and legitimacy of their government. The people’s will cannot be expressed in a credible and convincing manner where a lack of public confidence in electoral processes constitutes one of the reasons for citizens to abstain from participating, which is *de facto* disenfranchisement, or where lack of confidence in the integrity of election processes compromises genuine and informed choice at the ballot box.

B. ELECTIONS AT REASONABLE INTERVALS IN AN ATMOSPHERE CONDUCTIVE FOR GENUINE ELECTIONS

Paragraph 7.1 of the Copenhagen Document fosters public confidence in elections as it requires OSCE participating States to “hold free elections at reasonable intervals, as established by law”.³ Public confidence is enhanced when citizens know that there will be genuine competition and meaningful debate of competing political ideas “at reasonable intervals” via the conduct of elections. A democratic election amounts to much more than balloting on election day and includes processes for robust political

² For example, Paragraph 5 of the Copenhagen Document lists several specific components necessary for the fair enforcement of legal rights and respect for the rule of law. Although Paragraph 5 is not limited to elections, its general principles encourage public confidence in elections. Paragraph 5 underscores the importance of an independent judiciary and the establishment of legal processes to ensure the availability of effective legal remedies for violations of human rights, all of which are essential to achieving genuine elections.

³ Paragraph 24 of the Copenhagen Document states that participating States will ensure the exercise of human rights and fundamental freedoms set out in the Document free of restrictions except those provided by law, and those restrictions must be consistent with international obligations, must not be abused or applied in an arbitrary manner, but must be applied in a way to ensure the effective exercise of rights and freedoms.

discourse and an electoral environment that fosters genuine competition among candidates and political parties.

Paragraph 7.2 of the Copenhagen Document also fosters public confidence as it requires “all seats in at least one chamber of the national legislature to be freely contested in a popular vote”. Public confidence in government and the election process, however, can be enhanced even more where a participating State holds direct elections for primary legislative and representative bodies at all levels of government. This can bolster public confidence, as citizens know that all legislative institutions are accountable to the electorate.

Genuine competition and meaningful debate of competing political ideas are important to creating public confidence in elections. This is recognized by Paragraph 7.7 of the Copenhagen Document, which requires OSCE participating States to “ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution.”⁴

Throughout the campaign and voting process, a participating State has a duty both to prevent intimidation of voters and candidates by others and to act impartially. Intimidation can have an insidious effect on candidates and voters alike, particularly when perpetrated by the state or its representatives. Not only must a state refrain from intimidation and interference, it must take all necessary actions to prevent intimidation and interference by state or private actors. This requires participating States to take affirmative action, either through criminal or administrative proceedings, to protect the integrity of the electoral processes and hold state and private actors strictly liable for violations.

This commitment also obliges participating States to create conditions that permit political parties and candidates to freely present their programs. Implicit in this commitment is the obligation that States inform or educate voters about the electoral system and voting processes, as the failure to educate the electorate on these issues can prevent the meaningful exercise of suffrage rights. Some OSCE participating States, however, have not implemented this element of the commitment.

State authorities should provide basic voter information and support broader civic education programs relating to elections. For countries with state owned or controlled media, it would be in accordance with best practices for those channels of communication to be used to deliver voter information programs. A related best practice is that state-sponsored voter information programs should be delivered to

⁴ Although the intent of this commitment might appear to be obvious, its scope is broader than generally applied in the OSCE region. This includes the obligations to protect the integrity of the electoral processes, hold persons strictly liable for violations of the law, and to provide voter education and public information about electoral processes. Paragraph 7.7 is also relevant for the right of universal and equal suffrage.

national or linguistic minorities, in areas where they are concentrated, in their own language.

III. RIGHT TO UNIVERSAL AND EQUAL SUFFRAGE

Paragraph 7.3 of the Copenhagen Document requires OSCE participating States to “guarantee universal and equal suffrage to adult citizens.” This is not simply limited to granting the right to vote to citizens, but also requires the consideration of other issues that impact upon this fundamental right.

A. NON-DISCRIMINATION

Paragraph 7.3 of the Copenhagen Document creates the obligation of a participating State to ensure that every citizen of eligible age has the right of suffrage and that every person who has the right of suffrage is permitted to exercise his/her suffrage right in a non-discriminatory manner on the basis of equal treatment before the law and equal protection of the law.⁵ Application of this principle requires that a person, who has the right of suffrage, be permitted to exercise his/her suffrage right without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

B. FACILITATION OF THE PARTICIPATION OF WOMEN, INCLUSION OF MINORITIES, AND ACCESS FOR DISABLED PERSONS

Paragraph 7.3 of the Copenhagen Document commits participating States to “guarantee universal and equal suffrage to all adult citizens”. This requires positive action on the part of States to facilitate the participation of women, inclusion of minorities, access for disabled persons, and other groups that experience barriers to participation in elections.

Women, minorities, and disabled persons have historically experienced discrimination and face greater challenges in fulfilling the right of suffrage. Particular consideration is also due to other groups that may have low participation in electoral processes, such as young people who only recently gained the right to vote.. Positive actions toward groups that suffer discrimination should include removing obstacles to full participation in election-related processes and measures to promote the effective exercise of election-related rights, including among other things standing for elected office, registering to vote, and receiving information needed to make a free and informed electoral choice.

⁵ See Copenhagen Document Paragraph 5.9: “all persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”.

C. PARTICIPATION OF WOMEN

In addition to the Copenhagen Document commitments, Paragraphs 40 through 40.13 of the OSCE’s 1991 Moscow Document expressly recognize the need for participating States to facilitate the participation of women in government. Paragraph 23 of the 1999 Istanbul Declaration states: “The full and equal exercise by women of their human rights is essential to achieve a more peaceful, prosperous and democratic OSCE area. We are committed to making equality between men and women an integral part of our policies, both at the level of our States and within the Organization.”

Women often face barriers to fair and effective political participation and representation due to generalized discrimination, including with respect to their participation in public life. In some OSCE participating States, the election-related rights of women are contravened by de facto barriers to standing for office, violations of ballot secrecy and undue influence connected with the practices of group, family, and proxy voting.

To combat discrimination in representation, participating States should strive to establish electoral systems that facilitate full equality of men and women so that both may fully realize their guaranteed rights to electoral and public participation in the governing of their country either directly or by freely choosing representatives. When voter registration systems require citizens to register and/or to verify the accuracy of the voter registry or voter lists, the places and times for registration should be established that maximize the ease for women to register as well as men. Factors that obstruct women’s participation as candidates, voters, election officials and election monitors also should be removed. In addition, active efforts to eliminate all forms of non-personal voting should be taken.

E. INCLUSION OF MINORITIES

Minorities, including ethnic, linguistic, national, racial, and religious minorities, have faced discrimination as well. Positive steps to facilitate their participation and authentic representation, and a commensurate political will to support such steps, are also appropriate. In addition to the possibility of promoting representation of minority candidates through the respective party lists of established parties in proportional systems, this can be accomplished through various other active measures, such as (1) developing electoral systems that remove barriers to the potential for minorities to win elected offices; (2) developing election systems that enhance the potential for minorities to gain office, for an example with a formula for allocation of mandates that is favourable to smaller parties.

Participation can be facilitated through providing voter education and all written materials concerning candidate nominations, voter registration, polling place location, ballots and/or other election materials in both the official language(s) and the language(s) of minorities;

If adequate representation for national minorities cannot be obtained through elements of the electoral system or in similar ways, minority representation can be enhanced directly through special voting arrangements, such as a minimum number of reserved mandates for a national minority. Positive measures are considered not to violate the principle of equal suffrage if they are adopted for a legitimate remedial purpose or to enhance the participation of minorities in national political life; they should not contravene efforts to assure equal representation.

F. ACCESS FOR DISABLED VOTERS

Discrimination, ignorance, poverty, and neglect all contribute to the political and electoral disenfranchisement of persons with disabilities. Some of the best practices to address this problem include assistance to disabled voters to reach the polling station and cast their ballots in a dignified manner that preserves the secrecy of the ballot and prevents undue influence on the voter, and application of special voting methods. In addition, the authorities responsible for civic education and voter information should consider the needs of special voters in designing and carrying out these programs.

Summary

In summary, participating States should ensure that all individuals are permitted to fully participate in elections on a non-discriminatory basis and take affirmative measures to provide more effective representation for women, inclusion of minorities, and access for disabled persons.

Ensuring the effective opportunity to exercise suffrage rights also required reaching all segments of the population and encouraging them to participate in electoral processes. Special measures may be needed to reach those who have recently come of voting age or other identifiable groups. Guaranteeing universal and equal suffrage requires an active approach, it is an obligation of governments of all the participating States.

G. ESTABLISHMENT OF CONSTITUENCIES

The manner in which constituencies are established also impacts upon the right of universal and equal suffrage. The delineation of constituencies must preserve the equality of voting rights by providing approximately the same ratio of voters to elected representative for each constituency. Also, districts may not be drawn in a manner that discriminates against ethnic, linguistic, racial, or religious minorities by dividing them in order to dilute their ability to win representation. Existing administrative divisions or other relevant factors (including of a historical, demographic, or geographical nature) may be reflected in election constituencies, provided the design of the constituencies is consistent with the equality of voting and fair representation for different groups in society. When necessary, redrawing of election constituencies should occur according to a predictable timetable and through a method prescribed by law and reflect reliable census or voter registration data. Redistricting should also be performed well in advance of elections, be based on

transparent proposals, and allow for public information and participation.

In addition to boundary discrepancies posing a potential challenge to universal and equal suffrage, it should also be mentioned that the election system itself could also raise the potential for an imbalance in the weighting of votes, and therefore an imbalance in suffrage rights. For example, in a mixed election system, in which a high number of candidates are elected according to a majority system, and a small number of candidates according to the national proportional formula, the proportional seats in parliament will represent a much larger number of voters than the majority seats.

H. FORFEITURE OF SUFFRAGE RIGHTS

The ODIHR has observed that the right to universal and equal suffrage has been impermissibly infringed upon in the legislation in some participating States. Criminal, administrative, and electoral codes have created severe provisions that require the forfeiture of suffrage rights for minor legal violations, and in some cases permanently. Secondly, some laws have denied the right of suffrage to persons charged with a crime and awaiting trial, but who have not yet been convicted. This is contrary to Paragraph 5.19 of the Copenhagen Document, which provides that everyone is presumed innocent until proved guilty according to law and to rules on universal suffrage. In addition, the proportionality principle should be considered first and foremost when the potential of forfeiture of suffrage rights is at stake.

It is not uncommon for the legal framework in a participating State to provide for the forfeiture of suffrage rights based on a criminal conviction, regardless of the nature of the underlying crime. The denial of suffrage due to a conviction for violations in the criminal code is a questionable exercise of state power, and needs to be considered with great caution. Denial of suffrage should occur only where a person has been convicted of committing a crime of such a serious nature that forfeiture of political rights is indeed proportionate to the crime committed. The forfeiture should be for an established period of time, likewise proportionate, and restoration of political rights should occur automatically after the expiration of this period of time. As noted in Paragraph 24 of the Copenhagen Document, “Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law”.

I. VOTER REGISTRATION

A problem in the OSCE region is the denial of suffrage due to inadequate provisions for the registration of voters and accuracy of lists of voters. From the individual’s right to vote follows a duty of participating States to guarantee effective exercise of that right through the registration of voters. The right to vote is of diminished value if a person has been or can be unduly omitted from the voters list or if inaccuracy in the list makes fraudulent voting easier. Voter lists should be current, accurate, complete, and easily accessible for inspection by qualified voters and electoral contestants with a legitimate reason to access them. A procedure must be in place to provide for the proper registration of a voter who has been or can be unduly omitted from the list, whose details are recorded incorrectly, or who has reached the legal age for

registration after publication of the list. Likewise, procedures must be in place to allow objections to the presence and calls for the removal of entries on the voter lists of persons who have died, are underage, or are otherwise ineligible to vote.

The best practice for voter registration is the maintenance of permanent lists that are periodically updated, at a minimum of once a year. Voters should be fully informed of their ability to check the accuracy of their registration. If the authorities fail to make requested corrections, the individual should have the ability to seek further review, including by a court. Regardless of the system used for creating and maintaining a voter list, it is necessary for the system to be transparent and open to verification by voters, political contestants, and election observers. Voters also have a responsibility to play an active role in the voter registration process, and to respond to official registration procedures, whether they be passive or active procedures.

J. METHODS OF VOTING

Universal and equal suffrage requires, as reflected by Paragraph 7.4 of the Copenhagen Document, that OSCE participating States “ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public.”

Family voting, group voting, and proxy voting are not uncommon practices in some participating States. Secrecy of the ballot is compromised by such practices, and they open the possibility for one person to assert his/her will multiple times over others. Fraudulent counting of the votes and dishonest reporting of the results are also not uncommon in some participating States. Although these areas are certainly impacted by the degree of “political will” exhibited by relevant State actors in elections, it is suggested that these fraudulent practices can be reduced if appropriate safeguards are employed.

Alternative voting procedures should be established to ensure that the ill, elderly, and others who cannot attend a regular polling station have the opportunity to exercise suffrage rights.⁶ However, any alternative voting procedure must be carefully regulated with legal provisions that balance the need for facilitating voting with the need for protection of the integrity of election results. All forms of voting must be subject to the general principles of transparency and observation.

Where electronic voting and counting systems are introduced, they should only be intended to facilitate the speed of the process and diminish the paper flow, however they should preserve all traditional features and options available according to the conventional voting procedure. It is not acceptable to introduce technological systems which, in effect, will impose new requirements or limitations of a technical nature on voters that could impact upon the exercise of their right to vote.

In relation to electronic voting, several safeguards must be in place. These safeguards must ensure that voters and political competitors can seek and receive effective

⁶ This may include absentee, postal, early, mobile, and out of country voting.

remedies to redress violations of suffrage rights. The law therefore must require that any electronic system for voting and counting be able to produce a record with manual audit capacity so that an electoral contestant and/or voters can challenge results or request a recount of the votes. This requires a permanent paper record that can be used for recounts and for challenging the electronic results, because no system is failsafe and secure from error, tampering, and hardware or software problems.

An electronic system must also provide a voter with the opportunity to change a vote that has been cast for the wrong candidate or political party. A voter who receives a paper ballot has the opportunity to return an incorrectly marked ballot to the polling station commission, which places the ballot with the “spoiled ballots”, and gives the voter a new ballot. Similarly, the electronic voter must have an opportunity to change an electronic vote or correct an error in the vote before the vote is recorded. This may only be done effectively with the printing of a permanent paper record that the voter is able to see before confirming the vote.

The law must provide the opportunity to challenge results; the “evidence” that should be provided is the permanent paper record produced during the electronic voting. Similarly, the law must provide the opportunity for a recount of ballots based on the permanent paper record produced during the voting. Due to the importance of public confidence in elections and the significant requirements necessary to ensure the integrity of election results when electronic systems are used, States should exercise great caution before adopting such systems and ensure that all safeguards are in place, including the requirement for the contemporaneous production of a permanent paper record with manual audit capacity.

Regardless of the method of voting used, an electoral commission’s results protocols must be given to each political party agent or observer who requests a copy, should be posted for public viewing, and must provide sufficient details on all categories of ballots with a summary table of results broken down to the polling station level so that all results can be traced from the lowest level of voting through the final tabulations. This degree of detail is necessary to enable observers to track results and locate specifically where fraud has occurred if the numbers are unlawfully changed during the tabulation processes.

K. ESTABLISHMENT OF RESULTS

The national election authority should announce preliminary results as soon as possible after the close of polling. The national election authority should also be required to publish, in a timely manner, official results that can be appealed. Finally, after any changes or additions required (for instance arising from appeals) are finalised, a last publication may also be desirable immediately after the results are declared, and upon the exhaustion of all appeals.

The publication of official results must be in the form of tables with all forms of protocols with all details, which enables all interested parties to audit the outcome of the elections from polling stations, through intermediate levels, to the national

election authority level. The tables should include the number of voters in each polling station who used alternative voting procedures (*e.g.*, mobile voting) in order to identify particular areas where the proportion of votes cast using alternative voting procedures is unusually high, which may point to fraud.

L. THE RIGHT TO BE A CANDIDATE

Paragraph 7.5 of the Copenhagen Document protects the right to be a candidate, which is a component of the right to universal and equal suffrage. Paragraph 7.5 requires that OSCE participating States “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”

This commitment is usually interpreted to require that the law provide the opportunity for “independent candidates” to seek elected office. However, the spirit of the commitment is broader. Regrettably, this commitment is violated in some OSCE participating States, where the legal framework prohibits the candidacy of an individual based on employment, religious affiliation, or economic or social status. It is also violated where the legal framework creates requirements for ballot access or mandate allocation that have an unjustified discriminatory impact on some candidates or political parties. It is the practice in some States in the OSCE region to prohibit overt discrimination against candidates and political parties, but to implement legal provisions that result in *de facto* discrimination against candidates and political parties from certain societal groups.

Ballot access for a particular election is usually granted when a political party, coalition, bloc, or independent candidate meets one of the following requirements: (1) payment of a monetary deposit, refundable upon receiving a certain number or percentage of votes, (2) collection of a minimum number of signatures of registered voters, or (3) allocation of a mandate or obtaining a minimum percentage of the votes in the last election. Regardless of the procedures available for registration, registration should not be tied to irrelevant requirements unrelated to the issue of whether a political party or independent candidate has sufficient support to be placed on the ballot.

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

M. EQUAL CONDITIONS AND TREATMENT UNDER THE LAW FOR CANDIDATES AND PARTIES

The right to universal and equal suffrage requires consideration of legal provisions regulating the establishment and conduct of political parties, as many voters exercise the right to be a candidate through sponsorship by a political party. This issue is

addressed by Paragraph 7.6 of the Copenhagen Document, which requires OSCE participating States to “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.”

This commitment requires that a State create a “level playing field” for electoral contestants. However, even taking into account the recognized advantages of incumbency, the reality in some participating States is that no “level” playing field is created for electoral competition. As a result, some candidates and political parties simply have no realistic opportunity to win an electoral contest.

When State resources are made available for electoral contestants, they should be made available to all contestants under equal conditions so that contestants have equal opportunity to compete in elections. This can include direct state subsidies, the use of specified state resources, access to government-owned buildings for public meetings, and access to government-owned or supported media outlets. All state resources should be made available on the basis of objective and clearly defined criteria which are reasonable and fair, administered similarly for all electoral contestants, and distributed in amounts and at times that do not unfairly give advantage or disadvantage to a contestant. All state funding for electoral campaigns must be timely provided before the election campaign begins and under equal conditions. However, where state funding of political parties is provided, it should not be limited to the campaign period as political parties serve important societal purposes in the development of opinions and ideas and the exchange of information outside of an election campaign period.

Further, it is the obligation of governing parties and state officials not to abuse state resources, both human and material, for electoral advantage. In a democracy, it is a generally accepted principle that state property is to be used in the public interests. Thus, government vehicles, office space, and telecommunications should not be used for partisan purposes. Moreover, public officials directly involved in administering elections (*e.g.*, election commissioners, polling-station officials, judges, and security forces) have a special obligation to maintain impartiality. Other public employees who are not directly involved in the election administration should not use their authority or influence to interfere with the election process. Nor should public employees or military personnel be pressured to vote for a certain political party or candidate. Such activities undermine the possibility for a democratic election. However, the law should not prohibit state employees from campaigning on their own time when they are not at work.

The question whether a government authority crosses the line separating permissible conduct (legitimate government functions) from impermissible conduct (electioneering or campaigning) is often one of context. Thus, government authorities should exercise extreme care during elections and make every effort to refrain from any action that would undermine public confidence in the elections.

The right to universal and equal suffrage also encompasses the right to fair and non-

discriminatory access to media. This is recognized by Paragraph 7.8 of the Copenhagen Document, which requires participating States to “provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.” Although the intent of this commitment is clear, implementation has proved to be problematic in some participating States.

Bias in the media during election campaigns is a common occurrence observed in ODIHR election observation missions. Bias in state-owned or controlled media generally favours incumbent governments. Bias in private media generally favours the particular party with which the owner or editor is associated. Although bias in private media is more difficult to address, certain issues such as advertising costs in private media can and should be addressed.

State-owned media, whether print or electronic, has the responsibility to provide balanced and impartial information to the electorate. There must be equal and fair access to State owned media, as well as balanced coverage of candidates and political parties. Access and coverage must be measured not only in quantity, but also in quality of coverage dedicated to candidates, political parties, the election administration, and other relevant subjects in news programs and reports.

The standard of equal treatment and access to media is seriously undermined if state-owned media favour a political party or candidate in news coverage, political coverage, forums, or editorials. Biased or unequal coverage or treatment by all forms of state media should be prohibited, and the authorities should be required to act immediately upon any violation. Expedited complaint procedures and specific remedies should be provided to correct the effects of biased and unfair amounts of coverage in State media.

Political parties and candidates must have non-discriminatory, unimpeded access to all media, as well as equal treatment by media owned or controlled by the state. This covers all forms of media, including radio, television, newspapers, magazines, and evolving forms of communication such as the Internet. The free time provided by the state media during election periods should be allotted under an established formula that can be applied objectively. Examples of objective application include laws or regulations that specify: (1) the percentage of broadcast time to be distributed to political parties and candidates according to the number of seats they hold in parliament or the results of recent elections; or (2) the percentage to be distributed to political parties and candidates, including extra-parliamentary parties, on an equal basis, regardless of parliamentary strength. It is also desirable that the amount of broadcast time distributed on an equal basis be sufficient to enable all political parties and candidates to compete effectively in the elections and for voters to gain sufficiently accurate information upon which to make informed political choices.

Paid political advertising in private media also presents an issue of access and equal treatment. When paid political advertising is allowed, there should be a guarantee of open access and equal treatment with respect to the ability of election contestants to sponsor private political advertising. Paid political advertising can be an important

means for political parties and candidates to present their messages to the electorate. Measures to ensure non-discriminatory access for paid political advertisements are necessary, and there should be limits on the amounts of time purchased by any one party to ensure a more level playing field. Further, paid political advertising should be identified as such in order to ensure that voters are aware that the advertisement is not news, but is a paid advertisement.

The media, when publishing the results of opinion polls, should be required to disclose basic information about the polls so that voters can weigh the qualitative nature of the results. At a minimum, the following matters must be disclosed: (1) name of the organization which administered the poll, (2) name of the organization or person who paid for the poll, (3) methodology used for the poll, (4) size of the poll sample, (5) statistical margin of error, and (6) date(s) of the polling interviews. It is also preferable to consider prohibiting the publication of opinion polls within the days immediately before an election.

N. TERM OF OFFICE

The right to universal and equal suffrage is not limited to the right to cast a ballot or to be listed as a candidate on a ballot. The right of suffrage includes the guarantee that an elected candidate is permitted to fulfil the candidate’s term of office. Paragraph 7.9 of the Copenhagen Document requires OSCE participating States to “ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.”

This commitment has been an issue in elections observed by the ODIHR as the legal frameworks in some participating States provide the opportunity to circumvent the will of the electorate by allowing political parties to retain strict control of an elected candidate’s mandate and empowering political parties or state bodies to withdraw an elected candidate’s mandate. Such provisions are usually quite clear violations of this commitment, as is the practice in the absence of legal provisions.

The mandate of a candidate who has won election should not be withheld or withdrawn by any state body (including executive agency, election authority, legislative body, court, or other body) except as required or authorized by law *and* where it is established that the candidate is not qualified to receive the mandate (for example, due to citizenship or incompatibility with other public responsibilities). If such factors had been known, they would have been the basis of denying candidate registration, rather than denying a mandate after election. Also of concern is the situation in which a party may seek the denial or removal of a mandate from a victorious candidate on its list on the grounds that the candidate has voluntarily left the party. In this case, it is unjustifiable for States - even those employing “closed-list” election systems - to view the parties or other nominating organizations as controlling the mandates awarded to their lists. Denial or withdrawal of a mandate after elections has been a problem in some participating States. In the most serious cases, individual candidates or even an entire list of candidates put forward by a

political party have been denied mandates or had them withdrawn subsequently, despite having won election.

Another issue that has arisen in some states is the matter of coerced resignations where a candidate is pressured to resign. In fact, it has been observed that some candidates have been forced to sign resignation papers even before they are elected. In these situations, the political party keeps the resignation papers and uses the threat of providing the resignation papers to the appropriate body as effective pressure to ensure that the candidate votes as instructed by the political party. This is contrary to democratic principles and every effort should be taken by states to eliminate this practice.

A related issue is the one of extension or termination of the term of office through referenda elections. This issue has arisen in some participating States in the context of both legislative and executive branch elections. The term of office of an elected institution, whether legislative or executive, should not be terminated or extended through referenda elections. The Copenhagen Document recognizes that genuine democratic elections, at reasonable intervals, require robust political discourse and an electoral environment that fosters genuine competition among candidates and political parties. Holding a referenda election to terminate or extend a term of office, in disregard of the legal term provided by the law, is contrary to the spirit of the Copenhagen Document and democratic principles.

Similarly, a recall election directed at a specific office holder requires that minimum safeguards for such an election are in place to prevent the undemocratic and arbitrary removal of an elected official by a disgruntled group of voters, who may represent a minority of the registered voters within the constituency. The possibility to recall an elected candidate must be carefully balanced against the need for orderly election processes that respect the democratic principle of majority rule.

IV. TRANSPARENCY IN ELECTION PROCEDURES

A. OBSERVATION OF ELECTIONS

Transparency of the election processes is fundamental to democratic elections. It provides a critical basis for establishing public confidence, including confidence of electoral competitors. It is also essential for the effective exercise of the rights to redress and effective remedies. This is expressly recognized in Paragraph 8 of the Copenhagen Document:

The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to

facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

This commitment is a primary one establishing transparency in elections and supporting the rights of observers in elections. Observers from international and domestic organizations that are involved in election observation or human rights activities should be permitted effective access to all election proceedings and should receive credentials for this purpose sufficiently in advance of elections in order to enable them to organize their activities effectively. This is an extremely important commitment as transparency is a fundamental cornerstone for democratic elections.

The ODIHR election observation experience establishes that the rights of domestic observers are often ignored, limited, hindered, obstructed, and abused in order to prevent the documentation of fraudulent election activities. Such practices are contrary to OSCE commitments and damage public confidence in elections. National legislation of a participating State must be clear that domestic observation cannot be prohibited or obstructed. Further, the opportunity to observe must be available to representatives of the media and political party and candidate agents, as well as international and domestic observers. However, the law should make a clear distinction between partisan and non-partisan observers.

National legislation must not hinder the development of cross border relationships between observer groups. Paragraph 10.4 of the Copenhagen Document provides that participating States will “allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts, and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.” Additionally, Paragraph 24 of the Copenhagen Document provides:

The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured. Any restrictions on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

An election is a process that includes activities before and after elections. Effective election observation cannot be limited to observing the polling on the day of the election. Participating States should ensure that all observers have the right to inspect documents, attend meetings, and observe election activities at all levels, and to obtain copies of decisions, protocols, tabulations, minutes, and other electoral documents, at

all levels, during the entirety of the election processes, including processes before and after election day.

Observers should receive appropriate credentials a sufficient period of time prior to elections to enable them to organize their activities effectively. Observers should be given unimpeded access to all levels of election administration, effective access to other public offices with relevance to the election process, and the ability to meet with all political formations, the media, civil society, and voters.

An issue that should be addressed is the scope of elections encompassed by the commitments related to transparency. It should be made clear that the principles of transparency and observation apply to all elections, including referenda and recall elections.

B. CAMPAIGN FINANCE AND EXPENDITURES

Another issue that falls under the scope of transparency and presents a challenge for the future conduct of democratic elections is the role of money in democratic elections. This is an area that must be addressed to ensure electoral integrity and establish public confidence.

Issues surrounding campaign financing and expenditures are of increasing concern within and outside the OSCE region. Citizens want to and should know who is providing financial support to political parties and candidates, how much support is being given, and how this money is being spent. Further, reporting and disclosure creates transparency and accountability in campaign financing.

Legitimate limitations on campaign expenditures cannot be monitored or enforced without reporting and disclosure by candidates and parties. Best practices include periodic reporting at reasonable intervals; timely disclosure of all contributions received, the source of those contributions, and the amount and type (cash or in kind) of the contributions; and disclosure of expenditures made by an electoral contestant, the purpose of the expenditure, and the amount spent. Disclosure reports should be publicly available to ensure transparency, accountability, and public confidence in the integrity of the electoral process.

It is also desirable to require the publication of preliminary financial reports before election day so that voters can take this financial information into account when deciding for whom to cast their vote. A final financial report, preferably subject to accounting requirements, should be filed a relatively short time after elections. The reports should identify the categories and amounts of each contribution made to a candidate or political party.

Finally, sufficient enforcement mechanisms must be in place in order to hold accountable those who violate the law. Government authorities must have the power to sanction those individuals who disregard the law.

Participating States may impose legal limits on private contributions and overall campaign spending, as no political party, candidate, or individual should have the

opportunity to buy an election. The limits should be reasonable and should permit candidates and political parties sufficient expenditures to run an effective campaign. There should be limits on both individual contributions and total expenditures for a campaign.

V. ACCOUNTABILITY OF ELECTION AUTHORITIES

The ODIHR election observation experience has revealed that the accountable and transparent administration of elections, free from government interference, is a critical issue that has impeded democratic elections in some OSCE participating States. As a result, this has had a negative impact on the levels of public confidence in election authorities to impartially administer an election process. Further, the ODIHR election observation experience has revealed that the effective protection of electoral rights, both passive and active, is another area of concern that should be addressed to enhance the accountability of election authorities.

A. FORMATION AND FUNCTIONING OF ELECTION ADMINISTRATION

The administration of democratic elections requires public institutions to carry out the work of conducting the elections. There must be an election administration in place to see that ballots are printed, polling stations opened and properly staffed and operated, votes counted, and winners declared. In many countries, election administration responsibilities include managing voter registration processes and producing voter lists, conducting voter education, determining party and candidate qualification for the ballot, and many other matters. This is a critical area, as election administration institutions make important decisions that can determine the character of elections.

To ensure genuinely democratic elections, the election administration must perform its duties in a politically impartial and administratively effective manner. Additionally, political parties, candidates, and voters must have confidence in the administration of elections. Impartial and effective election administration can be accomplished by politically balanced bodies composed of members associated with parties who act to ensure the integrity of electoral processes, or composed of people who are respected non-party members.

In all cases, great care is required to develop qualification criteria and an appointment process that gain the broad support of electoral contestants and the public. The appointments to election administration positions at all levels should be made in a transparent manner, and appointees should be protected from removal, which should occur only for legal cause clearly stated in law.

Participating States should ensure that only qualified individuals are appointed to election administration and that they receive the necessary training to administer elections. Further, the election administration must at all times conduct meetings and make decisions in a manner that is transparent, professional, ethical, and efficient and that is conscious of the public's interest in and right to genuine democratic elections.

There are various models of election administration. A common model in the OSCE area is the Central (national) Election Commission, where the Central Election Commission is the primary institution responsible for the administration of elections. Among the other models are elections administered by a judicial body (electoral tribunal) or by a body of the executive branch of government.

Where the Central Election Commission model is used, it is crucial to develop an appointment process for the Central Election Commission that ensures confidence in the integrity and trustworthiness of this important election administration institution. The appointment process must not permit any manipulation by the executive or other branches of government or a specific political element. There will be little confidence in the general election administration unless there is a significant level of confidence in the Central Election Commission.

Election administration institutions must have, in addition to sufficient funding, other state support and cooperation to enable them to operate effectively. The independence of a national election authority can be enhanced when established on a permanent basis and provided with a regular budgetary allocation.

B. PROTECTION OF ELECTORAL RIGHTS

OSCE commitments require the rights to due process and substantive legal procedures to protect civil and political rights, which include the protection of electoral rights. The ODIHR election observation experience has shown that this is an important area where some OSCE participating States have not fared well. In particular, a notable problem exists with the possibility for delay and uncertainty in the establishment of election results due to the lack of sufficient legal provisions to protect electoral rights at all stages of the election processes. This undermines the commitment of Copenhagen Paragraph 7.9 to ensure that candidates who obtain the necessary number of votes are installed in office.

The election system must provide effective mechanisms and remedies for the protection of electoral rights at all stages, including voter registration, political party and candidate registration, the allocation of state resources and access to media, campaign activities, and the vote, count, and declaration of results. Protection of the right to vote and to be elected is an essential element of a democratic election system. The rights to vote and to be elected are human rights, requiring effective remedies for their violation. Mechanisms adequate to protect suffrage and other electoral rights must be in place before, during, and after elections.

Proceedings on complaints and appeals, including within election administration and in the courts, must be transparent and accessible by the public. The legal framework should provide a clear, understandable, *singular*, hierarchical complaint and appeal process that defines the role of each level of election commission and each level of court. The last instance for a hearing should always rest with a court, regardless of the introduction of appeals of first or second instance within the election administration structures.

This process must identify which bodies act as fact-finding bodies of first instance and which bodies act as appellate review bodies. The authorities must publish full details concerning the handling of each complaint or appeal, including the decision of the dispute-resolution body and its justification. Of primary concern is that election complaints and appeals be considered in an expedited and effective manner that permits them to be resolved, within deadlines established by law, and without delay of the determination, announcement, and publication of results. In addition to public access and transparency, the results and reasons for decisions on complaints and appeals should be formally adopted, issued in written form, and announced publicly.

The protection of electoral rights is critical for the support of the four fundamental pillars for democratic elections: public confidence, universal and equal suffrage, transparency, and accountability. Thus, not only must there be mechanisms for effective remedies to protect electoral rights, there must also be sufficient criminal or administrative penalties to deter violations of the law and prevent injury to suffrage rights. However, care must be taken not to create a system where politically motivated and unsubstantiated charges are easily prosecuted against opponents.

C. COOPERATION AND IMPROVEMENT TO ENHANCE ACCOUNTABILITY

Paragraph 26 of the Copenhagen Document states that the OSCE participating States will “encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following: ... electoral legislation, administration and observation, ... political parties and their role in pluralistic societies” This commitment envisions ongoing cooperation and follow-up on election related issues, particularly those that emerge from the observation experience, to enhance the accountability of election authorities. This commitment is also relevant to new issues such as electronic voting and counting.

Among the functions of the ODIHR is to “facilitate contacts and the exchange of information on elections within participating States.” In that capacity, the ODIHR will “foster the implementation” of the election-related commitments contained in the Copenhagen Document, including compiling information on elections; facilitating arrangements for election observation; organizing proceedings on election practices and other democratic institutions; and considering the work of, and co-operating with, other organizations in this field.⁷ This requires the active involvement of the ODIHR in assessing legislation, making recommendations, providing other technical assistance, and following up on implementation issues after elections.

Further, Paragraph 25 of the Istanbul Declaration states that “[T]he representatives of

⁷ See OSCE, Charter of Paris for a New Europe, 1990, supplementary document to give effect to certain provisions contained in the Charter of Paris for a New Europe, “Institutional arrangements”, Part G (ODIHR substituted for former Office for Free Elections).

the participating States ... appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments, and we agree to follow up promptly ODIHR’s election assessments and recommendations.” This commitment creates a responsibility on the part of participating States to work actively to improve the legal framework and environment for democratic elections.

All of these principles embody the spirit of cooperation and improvement necessary for the “development of societies based on pluralistic democracy and the rule of law”, which are “prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation”.⁸ Further, these principles enhance the accountability of election authorities by requiring them to positively develop as necessary to meet the future challenges for democratic elections.

VI. CONCLUSION

This discussion paper has examined election principles, existing OSCE commitments, and the future challenges for democratic elections in the OSCE region.

Future challenges are evident as new issues related to referenda and recall elections, electronic voting and counting technology, and the development of election standards by other international organizations are emerging. Further, the ODIHR experience has revealed that there are areas of the electoral processes that are problematic in some participating States, particularly in the area of election administration. Other areas of concern include participation of women, inclusion of minorities, and access for the disabled in elections, as well as campaign financing and expenditures, and protection of electoral rights.

The examination of the issues discussed in this paper, as well as a comparison of the inventory of existing election-related norms, commitments, principles and “good practices” presented in the 2003 ODIHR progress report entitled “Existing Commitments for Democratic Elections in the OSCE Participating States”, contain the framework for a discussion on possible additional commitments on elections to supplement existing ones. An examination of the issues also underscores the need for a discussion on supplementary election-related commitments, particularly concerning: fostering public confidence as an essential element of organizing genuine democratic elections; realizing universal and equal suffrage by removing discrimination and encouraging the participation of women, inclusion of minorities, and access for disabled persons; and establishing accountability for electoral actors by redressing violations of election-related rights and freedoms through due process, equality of persons before the law and equal protection of law; transparency through the whole electoral process.

The ODIHR remains committed to offering all needed technical assistance to facilitate and foster public confidence, universal and equal suffrage, transparency, and

⁸ See Preamble of the Copenhagen Document.

accountability for democratic elections in the OSCE region, and to advise the Chairman in Office and the Permanent Council on issues emerging from the SHDM, including giving effective follow-up to election observation and continuing the examination of the need for possible additional election-related commitments.