

OSCE REVIEW CONFERENCE

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Working Session 1: *Democratic institutions including Democratic elections, Democracy at the national, regional and local levels, as well as Citizenship and political rights*

Warsaw, 1 October 2010

Excellencies,

Ladies and Gentlemen,

Allow me to begin this first working session of the OSCE Review Conference on the Human Dimension by quoting Kofi Annan, the former Secretary General of the United Nations, who said in Warsaw 10 years ago that (quote) “While democracy is much more than free elections, it is also true that it cannot be less” (end of quote). This is a short but truthful summary of the legacy of the 1990 Copenhagen Document that makes democracy, human rights and the rule of law inter-related but also interdependent. None of these three concepts truly exist without the other. They need each other to flourish.

Election is more than a technical exercise, a formal undertaking. Much more is needed to make an election fully democratic. It takes genuine political pluralism, independent judiciary, effective institutional checks and balances such as a vibrant civil society and free media. This is another legacy of the Copenhagen Document that placed democratic elections in a much broader context of political pluralism, rule of law and respect for fundamental rights and freedoms. All these elements are indispensable to avoid what Kofi Annan calls “fig-leaf democracies.”

In June, participants in the Anniversary Conference of the Copenhagen Document noted that progress in holding democratic elections have been achieved in the last 20 years; however some backsliding have been noted in some parts of the OSCE as a number of

participating States continue to conduct elections not in conformity with election-related OSCE commitments.

In the short time available, I wish to review the commitments contained in paragraphs 6, 7 and 8 of the Copenhagen Document and emphasize areas where progress have been made in complying with OSCE commitments as well as underscore remaining challenges in holding democratic elections.

“Pluralistic democracy” and “pluralism with regard to political organizations” occupy a prominent place in the Copenhagen Document. OSCE States recognize that political pluralism is one of the pivotal elements of any functioning democracy where different policy options are presented to the electorate among which voters will choose from. Political pluralism has generally expanded in the OSCE area. However, there is a small number of States where voters continue not to have a genuine choice on election day. While fundamental constitutional commitments to pluralism exist in practically all participating States, in some cases, these are undermined in their implementation by both *de iure* and *de facto* obstacles.

Specific provisions of political party legislation, in particular those covering the registration as well as dissolution and/or deregistration of parties, have created obstacles for pluralism in some participating States. Pluralism requires “regularity and consistency” (Par. 2, Copenhagen 1990) in the impartial application of such legislative and regulatory frameworks for political parties. Clear and reasonable requirements for their registration and operation should not create excessive disincentives or obstacles to the formation and stable existence of political parties.

Paragraph 7.1 prescribes that participating States will “hold free elections at reasonable intervals”. Virtually all OSCE States hold elections on regular and periodic basis, albeit

not always fully free. Paragraph 7.2 prescribes that “all seats in at least one chamber of the national legislature to be freely contested in a popular vote”. Recently, some negative development has been noted in a couple of OSCE states where the lower chamber of parliament is not freely elected by popular vote, but includes a number of appointed deputies.

In paragraph 7.3, OSCE States committed to “ensure universal and equal suffrage to adult citizens.” The respect for the fundamental individual right to stand for public office has generally progressed in the OSCE region. Administrative hurdles to prevent or remove legitimate candidacy from the ballot seem to be less prevalent in the OSCE area. However some states’ legislation remains too restrictive as they go beyond acceptable restrictions applied to the right to stand for elections, such as citizenship, residency, age.

In some States, electoral legislation prevents citizens to stand for office based on a criminal conviction, but with no regard to the nature and seriousness of the underlying crime. 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 proportionate to the crime committed. Also, some laws deny the right of suffrage to persons in pre-trial detention. This is in contradiction of paragraph 5.19 of the Copenhagen Document, which provides that everyone is presumed innocent until proven guilty according to law.

The lack of respect for the principle of the equality of the vote is a frequent problem noted in OSCE/ODIHR observation reports. This principle is commonly known as “one person, one vote”. Practices such as a husband voting for his wife or, a voter turning up at the polling stations with passports for all family members and vote for them is in direct violation of the “one person, one vote principle”. Proxy voting where a voter receives a ballot on behalf of another voter and vote on his behalf also contradicts this core democratic principle.

Mechanisms in place for the registration of voters in some countries do not adequately ensure the guarantee of universal and equal suffrage for all adult citizens. Improper procedures at times prevent citizens with full voting rights from exercising them, while flaws in systems may open opportunities for multiple voting.

Closely linked to universal suffrage is paragraph 7.5 that stipulates that citizens have the right to “seek political or public office individually or as representatives of political parties or organizations, without discrimination”. Several OSCE states do not allow independent candidates to run for office as individuals but oblige candidates to be affiliated with a political party.

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Participating States committed to ensure “that votes are cast by secret ballot” (paragraph 7.4). Secrecy is at the core of democratic principles that protect voters against possible intimidation and undue influence on voters. The protection of the secrecy remains a serious concern in a large number of OSCE states. Family voting, multiple voting, open voting and proxy voting violate the absolute right to secrecy as a voter is not able to cast his vote in person, alone without disclosing his choice to someone else.

Such practices challenge the ability of voter to keep their vote confidential and to cast it freely without external influence. Pressure, intimidation and undue influence over voters, such as vote-buying, violate the right of voters to make their choice freely as repeatedly prescribed by the Copenhagen Document. Vulnerable groups such as civil servants, women and national minorities, including Romas, are disproportionately affected by these unacceptable practices. The use of new voting technology, especially remote voting in an uncontrolled environment, such as internet voting, also raises issue with the secrecy of the vote. The awareness of the importance of this right to secrecy greatly varies from one OSCE State to another.

Providing equal campaign conditions for all electoral contestants lie at the heart of the Copenhagen Document. Contestants should be provided with “the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities” (paragraph 7.6). Furthermore, “political campaigning is to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars parties and candidates from freely presenting their views [...] and prevent voters from learning and discussing them.”

A free and fair electoral campaign cannot take place with the respect for fundamental freedoms, such as assembly, association and expression. In a number of participating States, the campaign environment is characterized by a lack of respect for these rights and freedoms. I will not go into more details as there will be a specific session dedicated to these essential attributes of democratic states.

A lack of equitable conditions during electoral campaign for all contestants is a common feature in several OSCE states. A number of states continue to see abuses of administrative resources by civil servants and other public officials for partisan purposes in favor of incumbents. This contributes to an uneven playing field between contestants and to the perception of a lack of separation between states and political party, a separation that is provided for in paragraph 5.4 of the Copenhagen Document.

A lack of general fairness is at times further compounded by a lack of pluralistic media and unequal access to the media in some OSCE states. In some instances, state-controlled media offer an extensive coverage of activities of governments and ruling parties regardless of the newsworthiness of official events. Additionally, the tone may be overwhelmingly positive and devoid of any critical distance. Conversely, opposition forces receive residual coverage that is not sufficient to make their views known to the electorate and to freely discuss their platforms. At times, opposition figures are portrayed in state controlled media in a very negative light. In such cases, the state or public

television do not ensure a fair, balance, diverse and objective coverage of the campaign, thus favoring incumbent parties or candidates and increasing unequal campaign conditions.

Paragraph 7.4 underscored that States will “ensure that votes are counted and reported honestly with the results made public.” Honest counting of votes and accurate tabulation of results are essential stages to ensure a true reflection of the will of the people that serves as “the basis of the authority and legitimacy of governments.” In these areas, concerns remain. In some States, ODIHR continues to note issues regarding honest counting and tabulation of results due to inexperience, lack of training or at times due to outright fraud and intention to manipulate the results.

Providing an effective mechanism for election disputes is crucial in order to ensure that individuals whose individual rights have been infringed upon receive timely remedies. Paragraph 5.10 of the Copenhagen Document prescribes that “everyone will have an effective means of redress against administrative decisions.” The Moscow Document (1991) further adds the need “to provide for judicial review of such decisions.”

A lack of timely and effective remedy remains an issue in many OSCE States. In some States, complaints are summarily dismissed without respect for due process such as providing sound legal reasoning or informing plaintiffs of their possibility to appeal. In others, there is no possibility for judicial reviews of decisions taken by administrative bodies such as election commissions. Another challenge is related to the fact that some critical aspects of an electoral process can not be appealed to either an administrative body or courts of law. Taken together, these limit the access to effective and timely remedy.

20 years ago, in a groundbreaking commitment, the OSCE participating States recognized that the “presence of observers can enhance the electoral process” and

committed to “invite observers”. Since then, All OSCE participating States, but a handful of exceptions, have routinely invited ODIHR to observe their elections. Furthermore, almost half of the participating states have facilitated access to elections below the national level, thus at times resulting in observation of local and regional elections.

However, some OSCE States continue not to provide for access of national and international observers to all phases of the election process either by law or in practice. Some states allow election observers without explicitly delineating their rights and responsibilities. This could lead to unequal treatment and biased decisions. Although progress have been noted, domestic observers remain susceptible to intimidation and pressure in a few participating States. This curtails their vital role in providing checks and balances and limits much needed transparency.

ODIHR continues to be committed to engage with OSCE participating States in order to discuss how to improve the conduct of elections through the formulation of targeted recommendations and through active, sustained and effective follow up activities. This cannot however happen without a commensurate political will to initiate meaningful electoral reforms. In the area of follow up, progress have been limited, are in fact hardly discernable. Much remains to be done to ensure that States promptly follow up on ODIHR recommendations in line with the commitment taken in Istanbul in 1999.

To conclude, I wish to remind ourselves of the preamble of the Copenhagen Document that unequivocally states that “participating States 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.”

The Anniversary Conference of the Copenhagen Document rightfully underlined that “there has been undisputable progress towards fulfilling the hopes and expectations that

found their expression in the Copenhagen Document. But this is not the case everywhere in the broader region covered by the OSCE. In some countries, transition processes have slowed down or even been reversed. Countries with longer democratic traditions have not been immune to setbacks either.”

Democracy is fragile; complacency is a direct threat to our democracies that need constant nurturing. The Secretary General of the United Nations in his report titled “In Larger Freedom: Towards Development, Security and Human Rights for all” warned that (quote) “commitments must be matched by performance and protecting democracy requires vigilance” (end of quote). Let these words guide our discussions.

Thank you.