

PART 3

Monitoring the Pre-Election Phase

- P. Election System
- Q. Civic and Voter Education
- R. Registration of Voters, Political Parties and Candidates
- S. Election Campaign
- T. Media



Election System

The system used to determine who wins and who loses in an election (i.e., seat allocation methods, including proportional representation, majoritarian, mixed, etc.) is one of the most significant aspects of an election. The seat allocation method influences the political process and the government that will emerge. The structure and rules (sometimes called the *election framework*) by which the election system is implemented, enforced and reviewed have an equally important impact.

With regard to the election system, monitors should consider, early in the process, developing a plan to:

- 1 assess the election system as it is designed in the abstract (i.e., as it is theoretically supposed to operate according to written laws and regulations);
- 2 evaluate the election system as it operates, in practice; and
- 3 advocate improvements, as appropriate, through legislative and/or regulatory amendments to the system.

This section provides a framework for discussing points 1 and 3 above. Suggestions about how to evaluate the election system as it operates in practice are treated in *Sections Q.-X.*

You should begin an assessment of an election system by studying the relevant laws and regulations in your country. These domestic laws can be found in your country's constitution, statutory provisions (e.g., election law, political party law, media law, criminal code and rules of procedure, etc.) and legal judgments. These laws generally contain the rules that govern:

- 1 seat allocation;
- 2 designation of election administrators;
- 3 delimitation of election districts;
- 4 registration of voters;
- 5 registration of political parties and their candidates;
- 6 campaign practices, including use of the media, financing of campaigns and utilization of state resources;
- 7 balloting and counting procedures;
- 8 processing and reviewing complaints and appealing judgments; and
- 9 election monitoring.

Assign a small team in your organization to read these rules and, if necessary, request further explanation and interpretation from lawyers or responsible government officials.

Once you have analyzed the structure and rules, consider whether the election system, as it is designed in the abstract, is likely to produce a legitimate process. First, evaluate whether the election scheme is reasonable from a logistical standpoint. For example, list all of the deadlines in the election calendar and determine if the voters can be registered, election materials can be printed and delivered, the officials trained, and the campaign completed in the time allowed.

Next, compare the election law provisions with the legal norms of the local jurisdiction. For example, if there is a provision restricting political rallies, does this restriction violate any provisions of the country's constitution?

Also compare these provisions with internationally accepted standards. You can find selected provisions of the major human rights instruments enumerated in Appendix I. International standards may also be found in the official judgments or resolutions made by the international governmental organizations and by domestic courts of various countries.

From your analysis, you may conclude that legal or regulatory reform is appropriate in order to enhance the fairness and transparency of the electoral process. You may also decide to convene a roundtable conference or seminar with government officials and/or political party representatives to discuss potential electoral reforms, discussed further in the sub-section on advocacy, below.

GENERAL PRINCIPLES AND ISSUES Article 21 of the Universal Declaration of Human Rights, a common starting point for discussing international standards for evaluating elections, states in relevant part:

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- (1) Everyone has the right to take part in the government of his [or her] country directly or through freely chosen representatives

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- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote

There is no universal rule defining how these broad international standards apply to individual assessments of a given election. Nonetheless, one commonly used approach identifies, in the abstract, minimum conditions that satisfy the principles of a free, fair and genuine election. The book, *Guidelines for International Election Observing*,³¹ offers a concise enumeration of such minimum conditions:

- [1] no unreasonable restrictions are imposed on parties or voters;
- [2] participants (representing the government, the military, the political parties and others) respect the rights of free expression, free association, and free assembly for a period adequate to allow political organizing and campaigning, and to inform citizens about the candidates and the issues;
- [3] adequate guarantees of a secret vote and freedom from intimidation are provided; and
- [4] the integrity of the balloting and counting processes is secured.

This list can be expanded to include broad principles that are essential to an election's legitimacy. These principles include:

- [5] *non-discrimination* in the treatment of political contestants, voter eligibility and other political rights;
- [6] *due process*, including legislative, regulatory and judicial procedures that provide notice, hearings and appeals, that protect against arbitrary or biased rulings and that provide an effective remedy for the abridgement of protected rights; and
- [7] *good faith efforts to ensure the integrity and credibility* of the electoral process, including

³¹ L. Garber, *Guidelines for International Election Observing* (The International Human Rights Law Group, Washington, D.C.: 1990), at p. 18. See also, G. Goodwin-Gill, *Free and Fair Elections: International Law and Practice* (The Inter-Parliamentary Union, Geneva: 1994); and *Professional Training Series #2: Human Rights and Elections*, (The United Nations Centre for Human Rights, Geneva: 1994).

assurances that there is *transparency* in the process and that voters understand their rights, the choices being presented and the voting procedures.

Election systems should not violate any of these fundamental principles. In particular, the principle of non-discrimination requires that every vote should carry approximately equivalent value. The maxim “one person, one vote” should be guaranteed by provisions that recognize the universality of the right to vote and that ensure each vote carries approximately the same value. For example, regarding universality of the franchise you should evaluate whether the election law limits electoral participation on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property ownership, birth or other status.³²

The framework of the election system should be designed to assure that the election is credibly implemented or administered and that the public has confidence in the system. To achieve this objective, an election system must have a mechanism for appointing election officials that will administer the elections with *impartiality* and *independence*. Where impartiality is in doubt, the system should provide other mechanisms to bolster the credibility of the process.

Allocating *balanced representation* of diverse political interests to election commissions and review bodies is one commonly used remedy where impartiality is in question. Another, complementary solution involves creating a system of *checks and balances* whereby the election commission is subject to review by independent legislative, judicial and/or monitoring bodies. The degree to which an election process is open to review by monitors is called the *level of transparency*. A system that is characterized by a high level of transparency creates strong incentives for election officials to administer the process fairly and, more important, fosters confidence among the voters and contestants. You should review the level of transparency as well as the issues of impartiality, independence, balanced representation and checks and balances when evaluating the design of an election system.

Guarantees of *due process* are also essential to ensuring an election process that is fairly administered. For every significant aspect of an election process, the election system should provide procedures, in the election code, in other laws, or in regulations that offer the ingredients of due process. These include:

- [1] *notice* of important deadlines, of procedures to register as a candidate or voter, of procedures for voting, of changes in the law, and other important matters;
- [2] *a hearing*, or opportunity to be heard, in order to present views, arguments or important facts before an administrative ruling or adoption of election regulations;
- [3] *an opportunity for independent review* of important rulings or decisions, including established criteria, standards and procedures that govern appeals and ensure timely rulings; and
- [4] *an effective remedy* for redressing any abridgement of political, participatory or electoral rights.

ADVOCACY Your election monitoring group's contribution to the electoral process will be limited if your country's legal framework is so flawed that it precludes the possibility of competitive, meaningful and transparent elections. Thus, if your scrutiny of the election system identifies significant defects, you should advocate changes with the government, the legislature or the election administrators. For example, laws authorizing domestic monitors to enter voting and counting stations and to be given access to other important stages of the election process are important to your efforts. (See *Illustration 19 and Appendix I*.)

The ability of your monitoring group to influence the design and operation of the election system may require recruiting lawyers, public policy advocates, election experts and others who have access to decisionmakers in the government. Mobilizing public opinion on the subject—through the media, rallies and letter-writing

³² See Article 2, *Universal Declaration of Human Rights* and Article 2, *International Covenant on Civil and Political Rights* in Appendix I. See also Section R., *Registration of Voters, Political Parties and Candidates*.

campaigns—is another important means for initiating change.

You should try to list your concerns about the election law in order of priority. Prioritizing your concerns helps you avoid expending resources on insignificant issues and will enable you to develop specific strategies. Draw distinctions between flaws that are so serious they will prevent a meaningful election and other issues where the imperfections will not materially affect the outcome.



Illustration 19

In Romania, before the September 1992 national elections, a lobbying campaign by volunteers of several nonpartisan groups, coupled with expressions of concern from the international community, helped convince the legislature to adopt legal provisions enabling domestic monitors to enter voting stations.

By contrast, as noted earlier, nonpartisan monitors in Yemen were effectively barred from most voting stations on election day and instead could only evaluate the elections based on interviews conducted outside of the voting stations.

Voters receive information about their democratic rights and about elections through civic education generally and voter education more specifically. The national election commission, certain government ministries, government-controlled media, the political parties and civic organizations typically assume responsibility for providing voter education.

The cumulative effect of all voter education in an election should be evaluated by the degree to which pertinent information is reasonably available to all eligible voters in a form they can comprehend, and in a timely fashion (i.e., allowing a reasonable time for the audience to make use of the information). You should also attempt to assess whether this information adequately discusses essential facts, procedures, rights and issues.

There are no fast and simple methods by which to make these evaluations. To do so, you need to determine the level of voter understanding about the election. You must also determine whether their lack of understanding is of such a pervasive or profound nature that the election results might not reflect the true will of the people. Lack of voter understanding may be manifested by an unusually low level of voter participation or by a large number of improperly cast ballots (also called *null* or *spoiled ballots*). A *public opinion survey*, which collects information from a representative cross-section of the voting population, is a technique you may use to make these determinations.

You may find that the cumulative impact of existing voter education programs is inadequate. This deficiency often occurs because governments and election commissions lack the resources or commitment to implement impartial voter education programs or because their existing communications about voter education are ineffective or misleading. Another common explanation is that governments fail to allow enough time in the election schedule for the development and execution of voter education programs.

In these circumstances, your domestic monitoring group may conduct its own voter education program. If you consider conducting a



Civic and Voter Education

One measure of an election's legitimacy is the degree to which the electorate is adequately informed about:

- 1 voter rights and obligations;
- 2 dates and procedures of the election;
- 3 the range of options (e.g., policies, parties or candidates, etc.) from which voters can choose; and
- 4 the significance of these choices.

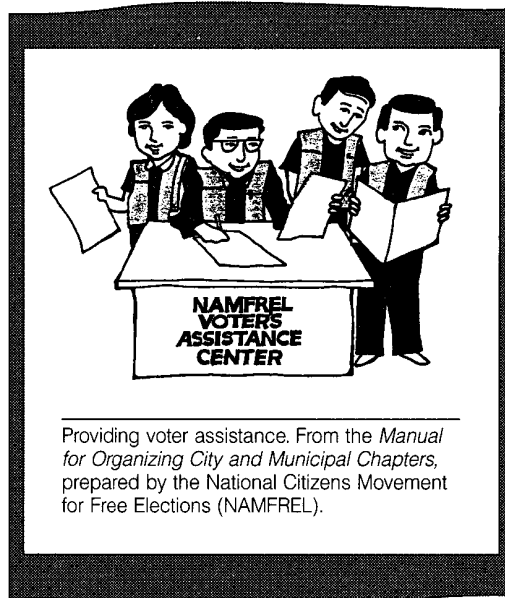
more comprehensive voter education program, you should also consider how it relates to your monitoring objectives. Specifically, to what extent will a voter education program take resources (financial, personnel and time) away from your monitoring efforts? Which activity is more important to the support of the democratic system in your country? For which activity are you better suited? Are other organizations planning to conduct voter education programs, and how will your programs complement or conflict with one another? Will your involvement as a provider of voter education create a *conflict of interest* that diminishes your ability to evaluate the election process objectively?

In a sense, all of your training and information-sharing can and should be considered valuable voter education. The knowledge the electorate gains about voting and monitoring as a result of your nationwide workshops, newsletters, public service announcements and news coverage helps voters to better understand their rights and the election process. Thus, you should not underestimate the value of your contribution, through the development of a monitoring operation, to the civic education of your fellow citizens.



VOTER REGISTRATION Election systems require criteria and a mechanism for identifying eligible voters and preventing ineligible persons from voting. The mechanism is also used to guarantee the “one person, one vote” principle by preventing people from voting more than once or from voting in the wrong location.

The universal right “to take part in” government is directly affected by the eligibility/voter registration process. Specifically, since establishing a potential voter’s eligibility is often a prerequisite to voting, you should evaluate the process by which eligibility is determined, paying special attention to whether significant segments



of the population are being *disenfranchised* (prevented from voting) by:

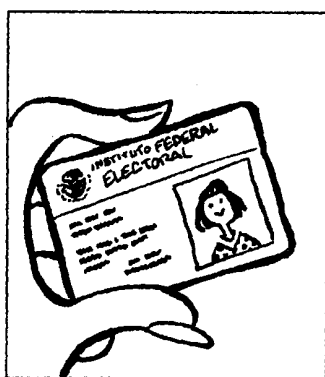
- 1] *unreasonable criteria* restricting eligibility, such as the use of distinctions based on race, color, gender, religion, nationality, ethnic origin, social group, past political affiliations, literacy, property ownership and ability to pay. Reasonable restrictions have included distinctions based on age, citizenship, residency and mental competence;
- 2] *inadequate voter education* about how potential voters may establish their eligibility;
- 3] *failure to respect other guarantees of procedural due process*, especially where there are no provisions for monitoring the process, verifying the registry’s accuracy or challenging rulings; and
- 4] *intimidation* that prevents or inhibits eligible citizens from learning about or engaging in the process.

The registration period offers an excellent opportunity to mobilize volunteers and assign them specific duties. These duties may include initiating a voter education campaign, monitoring the

conduct of government officials and political party supporters, and implementing a system to process complaints. Also, since the voter registration process is highly decentralized (often administered at local voting stations and municipal offices), it is analogous to the voting and counting processes. Therefore, by monitoring voter registration your staff and volunteers can gain first-hand experience directly relevant to their election-day plans.

First, you must research the system your country uses to determine voter eligibility. Various systems include:

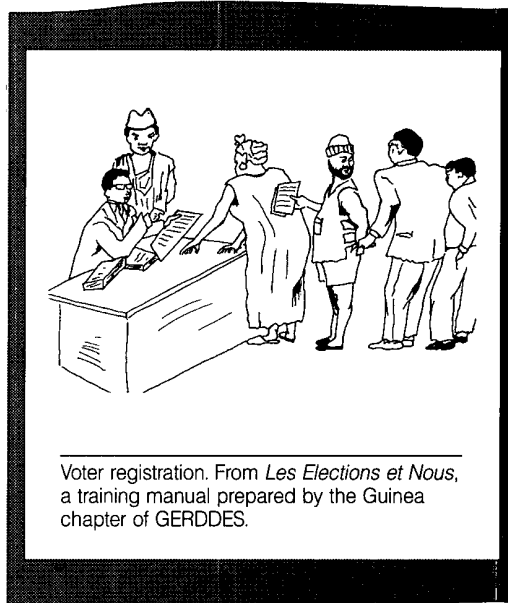
- 1 no registration—voters establish their identity and eligibility at the voting site, on election day, by showing officials acceptable forms of identification (e.g., national identity card, driver's license, passport, residence card, military service card, etc.);



Identification card. From the *Manual del Ciudadano*, 1994 training guide prepared by the Council for Democracy in Mexico.

- 2 census registration or other national registry—government officials search birth records and census data (e.g., name, age and address) to generate a voter registry; or

- 3 inscription (often called “registration”)—at a prescribed time and location (usually a municipal government building or the registrant's residence), prospective voters establish their identity and eligibility to designated officials to have their names inscribed on a registration list.



Voter registration. From *Les Elections et Nous*, a training manual prepared by the Guinea chapter of GERDDES.

Next, you should identify problems that occur, or are likely to occur, in the execution of voter registration. Below is a partial checklist of common problems associated with voter registration:

- 1 procedures that cause unreasonable difficulty for certain sectors of the population to register or obtain the identification card necessary for voting, including: limiting hours or days for registration; placing registration sites at inconvenient locations; levying fees; conducting literacy exams; or subjecting registrants to unfairly burdensome procedures such as presenting multiple identification cards or photographs, making multiple visits to the registration site, etc.;

- [2] *inappropriate conduct* of registration officials, committed either intentionally or accidentally, including: intimidating registrants; rejecting or deleting eligible voters; accepting ineligible registrants; fraudulently altering or improperly maintaining the list; failing to distribute voter's cards (also called *registration cards* or *identification cards*); etc.;
 - [3] *inaccurate lists*, such as lists: that include the names of individuals who have died or left the constituency, fictitious individuals, or registrants who are listed more than once or are otherwise ineligible; that fail to include the names of eligible individuals who have properly applied to register; or that record registrant's names in ways making it impractical to locate them on the lists; and
 - [4] failure to assure *transparency* in the registration process, as evidenced by restrictive regulations or recalcitrant officials who prevent monitors from analyzing the process in a timely manner.
- [3] compare voter lists from previous elections with the current list to identify statistical anomalies (e.g., extreme changes in the number of registrants for one political party or in one region);
 - [4] review the lists, visually or by computer, to determine duplicate registrations and the registration of ineligible voters; and
 - [5] provide training and civic education to others about how to conduct techniques 1-4, above.

The first, second and the fifth techniques require considerable time and personnel, but they also afford the best opportunity to develop and test a national network. The third and fourth techniques can be accomplished in the central headquarters, without deploying any personnel to the field. In some countries the central election authority provides a computerized registration list to political parties or observers so they can independently verify the accuracy of the lists.

There are other good reasons to monitor the registration process. In addition to causing problems on election day, inaccurate voter lists may also affect adversely other aspects of the election process. For example, in many countries political parties develop their campaign strategy using registration data. Also, constituency boundaries and the number of seats assigned to each constituency are influenced by census and registration information. The location of polling sites and the distribution plan for ballots are similarly determined by information collected during the registration process.

Below are some techniques you may use to evaluate the registration process:

- [1] deploy volunteers to monitor the registration activities throughout the country, particularly in areas where your research indicates that there is a high probability of problems;
- [2] verify the accuracy of the information on the voter lists (e.g., by selecting a statistically significant sample of names and then

POLITICAL PARTY AND CANDIDATE

REGISTRATION The issues involved in the processes of *registering* (also sometimes referred to as *accrediting* or *determining eligibility* of) political parties and candidates are similar to those for voters. Of paramount concern is the right "to take part in the conduct of public affairs, directly or through freely chosen representatives, and to be elected at genuine, periodic elections."³³ This right lies at the root of determining whether an election provides a meaningful opportunity for candidates to present competing options and for voters to choose among them.

Restrictions on who can form a party and who can compete in elections for government office are considered reasonable if they do not unjustly discriminate.³⁴ Historically, only certain types of limits have met this test. For example, concerns about *security* are one commonly cited justification for denying participation to specific political parties or candidates.³⁵ The desire to

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³³ Article 25, *International Covenant on Civil and Political Rights* in Appendix I.

³⁴ See, e.g., Article 24, *Document of the Copenhagen Meeting of the Conference on the Human Condition* of the OSCE in Appendix I.

³⁵ The international standard of proportionality, however, generally holds that a ban on a party's electoral participation is justified only against those who espouse violence to overthrow the government or undermine the territorial integrity of a state. See also, *Ibid*.