

assure *effective governance* by inhibiting a proliferation of parties has also been used to justify restricting party registration. This justification, however, must be applied with considerable care in a country emerging from a nondemocratic past, where the establishment of new political parties or independent candidates is a goal of the electoral exercise.

When monitoring party and candidate registration, you should try to identify any arbitrary or discriminatory application of the law; evidence of such administration indicates a violation of international norms. Improper administration includes instances where candidates are not given adequate notice of the deadlines or the procedures required to apply for candidacy or cases where the requirements (such as collecting signatures or paying a deposit) are unreasonably arduous or discriminatory. Also, when applications for candidacy are rejected, you should examine the appeals process to determine whether there are adequate provisions for a hearing and independent review.



### Election Campaign

During the election campaign period, partisanship is pervasive as each electoral contestant competes to ensure his or her own victory. Such partisanship often produces robust competition that is typical of a healthy democracy. Sometimes, however, the competition results in abuse and injustice which, in the pre-election period, may have a substantial or even decisive effect on the outcome of an election. A failure to define and enforce the parameters of competition can result in conduct that is contrary to a fair and genuine election. Therefore, you should seriously consider monitoring the campaign period.

This section discusses how to monitor three broad aspects of the election campaign: (1) resources; (2) intimidation; and (3) enforcement and independent review. Media access and media coverage, extremely influential factors in a campaign, are addressed in the following

section.<sup>36</sup> The *General Principles and Issues* subsection identifies major issues and activities inherent in the election campaign as they relate to the internationally recognized freedoms of expression, association, assembly and movement. It also reviews the standards by which these issues should be analyzed. Suggestions on how to collect and analyze information are provided in the following subsection entitled *Specific Monitoring Techniques*.

**GENERAL PRINCIPLES AND ISSUES** Often, in order to conduct a comprehensive evaluation of an election process, you must assess whether the process has provided a “*level playing field*” and an opportunity for a *genuine* and/or *meaningful* expression of the will of the electorate.

The level playing field metaphor is used to describe a process that protects equal treatment and fair opportunity. It is evaluated by considering, among other issues:

- 1 the degree to which competitors are afforded equitable access to resources (e.g., finances and material resources, media access and news coverage); and
- 2 the effective compliance with, enforcement of and review of the election law (especially in terms of non-discrimination and good-faith application).

The terms “*genuine*” and “*meaningful*” are standards used to evaluate other essential components in the campaign period, including:

- 1 the freedom and capacity candidates have to convey their programs to the voters;
- 2 the adequacy of the voters’ understanding about the process (e.g., how to register, where to vote, how to mark a ballot, etc.) and the substantive issues subject to the vote; and
- 3 the freedom voters perceive they have to choose and express, independent of anyone else’s wishes and in full secrecy, their preference at the ballot box.

<sup>36</sup> See Section T, *Media*. For further discussion on related pre-election period activities see also Section P, *Election System*, Section Q, *Civic and Voter Education*, and Section R., *Registration of Voters, Political Parties and Candidates*.

### Resources

Both the administrators and the competitors in an election need resources. If certain resources are not available in adequate and equitable proportions, an election's fairness may be called into question.

The most valuable resource during an election is *time*. Election officials need time to: choose an election system; organize logistics; train and deploy officials and security forces; ensure a minimum level of voter education; develop a voter registry or other means of verifying voter eligibility; register candidates; prepare and distribute materials; accept, count and tabulate votes and announce results; and review complaints.

Political contestants (e.g., parties, candidates, competing sides in a referendum or plebiscite) need time in order to: develop an organizational structure and message; nominate and train candidates; collect financial and material resources; train and deploy supporters; conduct campaigns and promote voter education and participation; and organize an effective monitoring operation.<sup>37</sup>

Another valuable election resource is *money*. Often referred to in the election context as *finance* or *campaign finance*, money is needed to: pay salaries; establish offices; purchase media time or space; produce campaign materials; provide transportation, communication and other campaign support; distribute voter education materials; etc.<sup>38</sup> Resources (including labor, commodities or media access) that are contributed, without compensation, to a campaign are equally valuable.

Many election systems regulate campaign finance by dividing it into two categories: *contributions* (money coming in) and *expenditures* (money going out).

The amount and the sources of individual contributions are often restricted. (See *Illustration 20*)

Campaign expenditures can also be regulated, although with the exception of criminal uses, most countries place fewer restrictions on expenditures than on contributions.

Campaign finance regulations often require candidates or their political parties to maintain



Under the federal campaign laws of the United States, an individual can contribute no more than \$1,000 per candidate per election. No contribution may be made by one individual in the name of another. Also, the amount of contributions allowed from political party campaign committees and other organizations is limited. However, there is no limit on the amount that a candidate may contribute from his or her personal funds to his or her campaign.

and disclose financial records. Where such requirements exist, they commonly seek information about the source of the contribution (or object of the expenditure), and the amount and the date of the transaction. If you intend to monitor campaign finance, you should attempt to determine if the financial reports are complete, accurate and issued according to the prescribed deadlines. You can also monitor how the governing authority is enforcing the campaign finance regulations. On this matter, it is important that you evaluate whether candidates are being treated equally and the degree to which the law is being administered in a timely fashion.

Another possible object of monitoring is the distribution of campaign resources by the government. In some cases, governments automatically grant each registered electoral contestant resources such as offices, telephones and money for use in the election campaign. You might initially consider whether resources are distributed equitably and in a timely manner and whether these resources are adequate to conduct a fair campaign. Funds may be distributed equally to contestants or may be distributed based upon some criteria, such as the amount of money independently collected or the number of signatures the contestant has independently collected. In these situations, you should analyze:

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<sup>37</sup> See Section P, *Election System*, for suggestions of how to assess the election calendar and monitor levels of administrative preparedness.

<sup>38</sup> Section Q, *Civic and Voter Education* offers recommendations about how to monitor the adequacy of voter education.

- 1 whether the criteria are objective and clearly defined;
- 2 whether the criteria are reasonable and fair;
- 3 whether the criteria are administered similarly for all contestants; and
- 4 whether the resources are distributed in amounts and at times that do not unfairly disadvantage any contestants. (See Illustration 21.)

Many election systems attempt to limit the use of government property and the activity of government employees. Monitoring how these *perquisites of government* are used represents yet another important task. In a democracy, it is the generally accepted rule that government property and civil servants' salaries are paid for, and belong to, all the inhabitants of the country on an equal basis.<sup>39</sup> Thus, government vehicles, office space

and telecommunications should not be used for partisan purposes unless equitable access is provided to other contestants. Similarly, guidelines should strive to ensure that government-controlled media only provides news coverage of government activities and government officials that are truly newsworthy.<sup>40</sup>

Moreover, government officials directly involved in administering elections (e.g., election commissioners, voting station officials, judges and security forces) have a special obligation to maintain *impartiality*. In light of the actual and the psychological impact of their conduct on the electorate, these officials should conduct their activities in such a way that their impartiality cannot reasonably be doubted. Other government employees, those who are not directly involved in election administration, should not use their official authority or influence to interfere with the election process. No government official should participate in partisan activity while on duty. If these standards are not established by domestic law or regulation, you may want to consider advocating their adoption in an electoral reform program.

The use of patronage, public works and similar programs for electoral advantage represents another area of potentially improper governmental action. While it is difficult to identify and measure the effects of manipulating job creation, anti-poverty and similar programs to create an electoral advantage, you might consider documenting whether government officials who administer such programs are providing benefits in the name of a political party rather than in the name of the government. It is also possible to document the initiation of public works projects in exchange for support at the ballot box, particularly where such projects are awarded during or just prior to the election period. Accurate and objective documentation and analysis of such actions can illustrate their potential or even likely effects on election results.

#### *Intimidation and Coercion*

The importance of impartial behavior increases in situations where the ruling party or the military has played a dominant role in government and might unfairly influence



Illustration 21

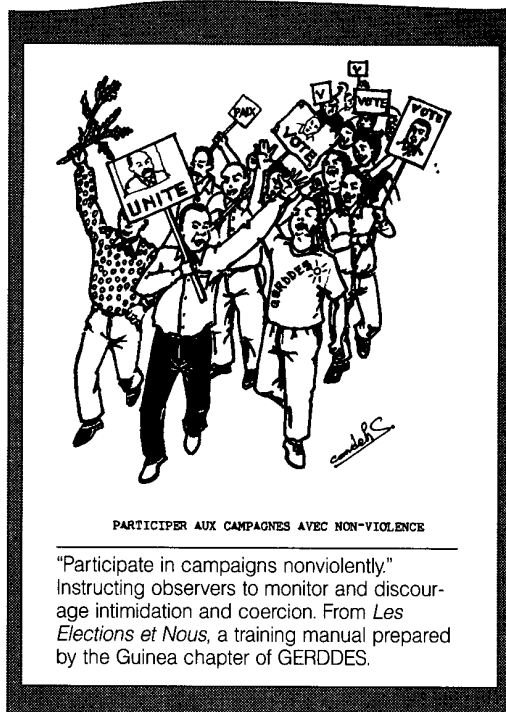
During the March 1994 elections in Kazakhstan, the law provided that all campaigns would receive financing, in equal portions, exclusively from the government. The law prohibited candidates from supplementing the state allotment by raising funds from other sources.

While this arrangement initially appeared fair, in practice it gave a significant advantage to incumbent and other well-known candidates since the amount of funds each candidate received, while equally distributed, was very small and was entirely controlled by the government. Candidates who were not previously well-known to the voters were unable to achieve the level of recognition already enjoyed by their incumbent competitors.

The 1990 Bulgarian elections provide another example of problems arising from unfair government distribution of resources. In that instance, the incumbent Bulgarian Socialist Party (BSP) began a vigorous campaign using resources it inherited from its predecessor, the Communist Party. Meanwhile, the newly formed opposition parties had to rely on resources provided by the government. These parties lost precious time before they could begin campaigning because of the government's long delays in providing offices, telephones and other vital resources.

<sup>39</sup> See Article 21, Paragraph (2), *Universal Declaration of Human Rights* in Appendix I.

<sup>40</sup> See Section I, *Media*, for a discussion of how to monitor the media.



participation in the election by means of intimidation or coercion. Intimidation and coercion—whether perpetrated by the armed forces, government officials, paramilitary groups or supporters of a political party—produce psychological and sociological effects constituting a deterrent to free voting. Where such a phenomenon exists, only the most aggressive reassurances coupled with direct protective measures by a government can overcome the fear people feel.

Since the presence and reports of impartial domestic and international observers can be an effective deterrent against intimidation, coercion and breaches of impartiality, you should consider monitoring the activities of those who might potentially cause intimidation during the pre-election period. Where problems have already occurred, monitors should request or initiate administrative and/or judicial remedies.

The effects of intimidation and coercion are not easy to measure. If you systematically investigate, measure and record allegations, however, it is possible to ascertain who has perpetrated such acts and whether they have deterred or prevented:

- 1 candidates from campaigning;
- 2 voters from registering;
- 3 voters from casting their ballots;
- 4 voters from casting their ballots according to their personal preference; or
- 5 election officials from enforcing the electoral law.

There are several manifestations of intimidation and coercion that are relevant for your monitoring, including:

- 1 *physical violence*, which includes murder, kidnapping, torture, drive-by shootings, bombings, beatings, assaults and damage to property;
- 2 *threats of physical violence*, including the mere presence of security or paramilitary forces in sensitive environments (e.g., political rallies, registration tables, voting stations, counting centers, etc.) that unreasonably intimidate sectors of the population;
- 3 *cultural or social pressures* that the election system addresses inadequately (such as those felt by women or minority groups in certain societies);
- 4 *threats of financial hardship*, including loss of employment, loss of land or housing subsidies or other financial benefits for failing to vote in accordance with the wishes of their employer or a government functionary;
- 5 *other abuses of authority*, such as acts designed to demonstrate a candidate's inability to protect the well-being of his or her supporters or secure basic infrastructural amenities (e.g., cutting telephone or electricity lines); and
- 6 *deliberate failure to protect* political contestants, campaigners and/or prospective voters against any of the foregoing.

For purposes of evaluating intimidation, you should attempt to measure the relative impact of any irregularity or abuse to determine its magnitude and its potential effect. You may find it helpful to classify irregularities or abuses in varying degrees of seriousness, such as: (a) minor; (b) significant, but not likely to affect the outcome of the vote; or

(c) serious, materially affecting the outcome of the election. You might also try to determine whether the problem was the product of an innocent mistake or an intentional, willful act. Consideration should also be given as to whether the problems disproportionately affected a particular party. Remember that your findings should be objective, accurate and, to the extent possible, verifiable.

Sometimes the effects of intimidation or coercion can be quantified (e.g., where a number of individuals testify their votes were coerced) or can be clearly defined (e.g., where certain political contestants are prevented from campaigning in a

particular geographic area). In other cases, quantifying the effect is difficult, such as when hundreds of voters, whose preferences are unknown, are scared away from the polls, or when certain candidates are prevented generally from campaigning as much as they would like.

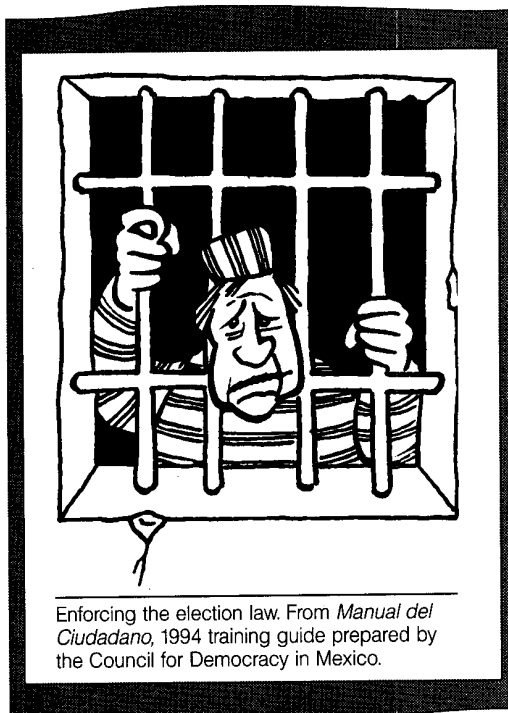
#### *Enforcement and The Review Process*

An important issue in the campaign period is the effectiveness of government officials, security forces and the judicial system in the *enforcement* of election laws. Law enforcement institutions have an affirmative obligation to take steps to prevent violations of the guiding principles of free expression, free association, free assembly, non-discrimination and due process and the attendant election laws.

Whenever there is reason to believe that these rights or laws have been violated, authorities should investigate and, where appropriate, prosecute. This obligation is heightened during an election period. Any omission, unequal treatment or abuse of authority by the body whose duty it is to enforce election laws poses a serious threat to an election's legitimacy and may cause voters to doubt that the system will protect their rights.

You should attempt to determine whether enforcement problems materially affect the election campaign and the election outcome. Your evaluation should attempt to determine if these problems have had a disproportionate effect on certain political contestants and, if so, whether the effect is significant. When evaluating the cause of enforcement problems you may find that ineffective enforcement is the result of unintentional oversights, inadequate resources or inexperience. While these factors do not excuse ineffective enforcement, your conclusions regarding fraudulent actions and your recommendations should take such findings into account.

The *review process* is designed to protect the integrity of the election system from improper administration and ineffective enforcement. The review process serves as an essential factor in guaranteeing fairness. It is often the final peaceful arbiter of disputes. It therefore should be monitored like all other major components of an election system. (See Definition 9)



Enforcing the election law. From *Manual del Ciudadano*, 1994 training guide prepared by the Council for Democracy in Mexico.

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## re•view proc•ess



Definition 9

The *review process* is the process for filing complaints and appeals to the central election authority or to other independent bodies (e.g., courts of law).

You should assess, as a preliminary issue, whether the authorities engaged in the review process are *independent*. Rule of law standards suggest that a credible review mechanism should be independent from the influence or control of the authority whose initial decision is being challenged. Therefore, after complaints are decided by an election commission or election official, in the first instance, a higher authority should be available to review appeals from that decision. The higher reviewing authority should be an appellate level court or similarly independent commission where fundamental rights and other significant issues are considered. Rulings should also be reviewable in a timely fashion, and in the first instance, as well as upon appeal, the reviewing body must be endowed with the power to order effective remedies. Useful indicators as to the level of independence in the review process include: the terms of tenure for members of the review authority; the degree of autonomy of the institution; and the supreme authority of its decisions.

A second issue is whether the review mechanism is *impartial*. Evidence of the following may suggest that impartiality is in question, and should therefore be a potential object of your monitoring:

- 1 the authority to select members of the review body does not provide for multiparty input and/or is not subject to checks and balances by independent institutions;
- 2 the ultimate composition of review bodies results in voting majorities loyal to one political party;
- 3 individual members who purport to be independent have ties to partisan interests (i.e., a review body drawn from members of the judiciary might be considered partisan if they were all appointed to their judicial positions by the same party or if the judiciary suffers from a reputation of not being independent); or
- 4 a significant number of members of the review body have conflicts of interest, either partisan or economic.

Third, the review process should provide the same guarantees of due process discussed above concerning administration of elections.<sup>41</sup> Procedures for complaints, challenges and appeals should be expressly enumerated in the election law. In particular:

- 1 deadlines for filing complaints should be reasonable;
- 2 the opportunity to file should be available to interested political contestants and prospective voters;
- 3 the right to appeal important decisions should be available according to reasonable criteria and standards of review that are applied equally and consistently;
- 4 this appeal should be available in an independent court of law or other competent independent body with jurisdiction to hand down effective remedies;
- 5 decisions should be made in a timely manner so as to provide an effective remedy; and
- 6 decisions should be recorded and made public.

**SPECIFIC MONITORING TECHNIQUES** To meet the goals of detecting and deterring campaign problems, your strategy for monitoring should consider pursuing some or all of the following activities:

- 1 deploying monitors to sites where problems are likely to occur (e.g., campaign rallies);
- 2 preparing and distributing written materials and organizing workshops or similar programs for voters, party workers and candidates so they know their rights and obligations as well as how to seek remedies if their rights are violated;
- 3 offering your organization as a focal point to which citizens and political contestants may report electoral abuse;
- 4 submitting complaints concerning campaign abuses and/or assisting citizens in filing complaints, where appropriate;
- 5 monitoring the response of law enforcement or other authorities in preventing violence,

<sup>41</sup> See also Section P, *Election System*.

intimidation and coercion, investigating and prosecuting such abuses and providing effective remedies to those affected by such abuses; and

- 6 preparing and publishing reports describing the different types of campaign problems.

Monitors should be instructed to complete a standardized form in order to make the evaluation process more objective and to expedite compilation of information.<sup>42</sup> Emphasis must be placed on compiling accurate and verifiable information. The form should record the following:

- 1 the name, address and telephone number of the complaining person;
- 2 the name and/or position of the person responsible for the alleged abuse;
- 3 a brief description setting forth the nature of the complaint (e.g., intimidating candidates, misusing government resources, disrupting campaign meetings, etc.) and a summary of the circumstances surrounding the complaint (e.g., the date, time and location of relevant events);
- 4 the names of any witnesses and information about how they can be contacted; and
- 5 the status of the complaint or appeal, including the official response of responsible government authorities.

In addition, the form should provide space for the monitor to indicate the nature of the investigation conducted in response to the complaint and the date(s) of further contact with the complainant to gather more information or to report on the status of the investigation. Where an individual fears retribution for having filed the complaint, the complainant's identity should be kept confidential.

In situations where you decide to conduct your own investigation into a matter, you must exercise care. Fairness dictates that individuals accused of wrongdoing be offered the opportunity to explain their perspective on the controversy. The inquiry should be undertaken without prejudice. In many instances, placing emphasis on resolving the problem rather than assigning blame may be appropriate.

Often, the nature of an allegation will require you to consider whether official representatives—police, prosecutors, election or government officials—have responded to a specific complaint. In these circumstances, you should contact the appropriate officials, determine whether a complaint was filed, whether action was taken in response to the complaint, and other relevant information. Sometimes, the fact that you are making an inquiry will suffice to stimulate a more aggressive investigation by the government authorities. On the other hand, an official's failure to respond to a properly filed complaint may be an indication of the government's lack of commitment to prevent similar incidents.

You may decide to establish a team of lawyers and others to specialize in monitoring the complaint process. You may also ask such a team to assist citizens in filing complaints or even to file complaints, where appropriate, in the name of your organization. Again, care must be exercised if you choose to assist citizens in filing complaints or if you decide to file complaints in the name of your organization. Keep in mind that the process of pursuing complaints may be time consuming and resource intensive, and, in some countries, the courts are either too corrupt or too slow to provide effective remedies for election-related problems. In these situations reliance on the courts may divert your resources from other, more fruitful, activities.

Moreover, you should remember that elections are a political process. Thus, pursuing solutions through political channels may be the most appropriate and effective approach to correcting the problems you encounter. Therefore, you may want to consider taking your case to audiences such as the media, the political parties or the international community rather than turning solely to the legal complaint process.



**Media**

The media play an essential role in contributing to a fair election. In a transition setting, the

<sup>42</sup> See Appendix III for a sample incident report form.