

European Union Election Observation Mission to Indonesia 2004





EUROPEAN UNION ELECTION OBSERVATION MISSION TO INDONESIA 2004

Final Report

Final Report Table of Contents

Introduction and Acknowledgements		5
SECTION I		
1.	Executive Summary and Recommendations 1.1 Executive Summary 1.2 Recommendations	7 7 8
	CTION II itical Overview	12
2.	Historical and Statistical Background 2.1. Short Overview of Indonesian History since 1945 2.2. Statistical Data (Population and Territory) 2.3. The 1999 Election	12 12 13 14
3.	 The Political Landscape 3.1. General Overview and Major Ideologies 3.2. Political Dimension of the 2004 Elections 3.3. Overview and Analysis of the 2004 Results 3.4. Security Situation during the 2004 Elections 	14 14 15 16
	CTION III gal and Institutional Framework	18
4.	The Legal Framework 4.1. Relevant Legislation 4.2. Institutional and administrative framework 4.3. Nanggroe Aceh Darussalam (NAD)	18 18 19
	 4.4. Papua Election Administration 5.1. The Legal Foundation 5.2. The General Election Commission 5.3. The KPU Territorial Structure 5.4. The KPU Secretariat 5.5. Training of Electoral Staff 5.6. Assessment 	20 21 21 21 21 22 23
6.	 The Election Supervisory Committee (PANWASLU) 6.1. Mandate 6.2. Relationship with the KPU 6.3. Assessment 	24 25 25 2 <i>6</i>
7.	Voter Registration 7.1. Introduction 7.2. Legislative Reference 7.3. Methodology 7.4. Voter Registration Eligibility Criteria 7.5. Assessment	26 26 26 27 27 27
8.	 The Elected Institutions and Systems of Representation 8.1. Introduction 8.2. System of Representation for DPR, Provincial DPRDs and Regency/City DPRDs 8.3. System of Representation for DPD 8.4. System of Representation for the election of the President and Vice-President 	28 28 28 29
9.	The Right to Stand and The Right to Vote	31

	9.1. Overview	31
	9.2. The "Gus Dur" Case	31
10.	Political Party Registration and Nomination of Candidates	32
	10.1. Overview	32
	10.2. The Nomination of candidate and their verification	33
	10.3. The Nomination process for presidential and vice presidential candidates	34
11.	Gender Issues related to the 2004 Elections	35 35
	11.1. Background	36
12	11.2. Fatwa Against Megawati Accreditation of party/candidate witnesses and observers	36
	Election complaints mechanisms	37
	Voter education	38
	Electoral Campaign Rules	39
	15.1. Legislative Elections	39
	15.2. Presidential Elections	39
	15.3. Campaign Finance – 'Money Politics'	40
	Electronic Count	41
17.	Media Monitoring	42
	17.1. Methodology	42
	17.2. Background	42
	17.3. Legal Framework 17.4. National Broadcasting Commission (KPI)	42 43
	17.4. National broadcasting commission (Ki 1)	43
SE	CTION IV	
	Legislative Elections	44
18.	The Pre-Election Phase	44
	18.1. Election environment and campaign	44
	18.2. Interference by state officials, use of state resources and vote buying	45
10	18.3. Administrative and Logistical Preparations	45
19.	Election Day, 5 April 2004 19.1. Opening	46 46
	19.2. Polling	46
	19.3. Closing and Counting	47
	19.4. Role of party agents and domestic observers	48
	19.5. General Assessment	48
20.	Aggregation of Results	48
	20.1. Aggregation of results at the PPS and PPK level	48
	20.2. Aggregation of results at the National level	49
	Election Petitions and complaints	49
22.	Media Monitoring Results for the Legislative Elections	50
	22.1. Television22.2. Radio Monitoring Results	50 51
	22.3. Newspaper Monitoring Results	51
	22.4. Assessment	52
SE	CTION V	
The	Presidential Elections	53
23.	The Pre-Election Phase	53
	23.1. Election environment and campaign for the first round	53
	23.1.1. Interference by state administration, use of state resources and vote buying	53
	23.1.2. Administrative and Logistical preparations	54
	23.2. Pre-election environment and campaign for the second round	54
	23.2.1. Neutrality of state administration, misuse of public resources and	- •
	money politics	55

24. Election Day, 5 July 2004 24.1. Opening	56 56
24.2. Polling	56
24.3. Closing and Counting	56
24.4. The "Al Zaytun" case	57
25. Election Day, 20 September 2004	58
25.1. Opening	58
25.2. Polling	58
25.3. Closing and Counting	58
25.4. General Assessment	59
26. Aggregation of Results	59
26.1. Aggregation of results for the first round	59
26.2. National aggregation of results for the first round	59
26.3. Aggregation of results for the second round	59
26.3.1. Aggregation of results at the PPS and PPK level	59 40
26.3.2. Final Aggregation stages at the national level	60 60
27. Challenges and complaints28. Media Monitoring Results for the Presidential Elections	61
28.1. First Round Presidential Elections	61
28.1.1. Television	61
28.1.2. Radio	61
28.1.3. Newspaper	62
28.2. Second Round Presidential Election	62
20121 Godona Nodina Productinal Election	02
ANNEXES	
 Profiles of Political Parties Election Administration Organizational Charts Number of Eligible Voters for All Elections Overview of Legislative Elections Results DPR Overview of Legislative Elections Results DPD Women Elected to DPR Comparison Table Results of Presidential Elections, First Round Results of Presidential Elections, Second Round List of UNDP Grantees for Voter Education Activities Brief Overview of Media Monitored Consolidated Statistics of Opening Procedures Consolidated Statistics of Polling Procedures Consolidated Statistics of Closing Procedures Consolidated Statistics of Results Aggregation EU EOM Preliminary Statement on Legislative Elections EU EOM Preliminary Statement on First Round of Presidential Election EU EOM Preliminary Statement on Second Round of Presidential Election EU EOM Preliminary Statement on Second Round of Presidential Election 	

55

23.2.2. The Timika Case

Introduction and Acknowledgements

Following an invitation from the National Election Commission of Indonesia (KPU), the European Union deployed an Election Observation Mission (EU EOM) to Indonesia to observe the Legislative and Presidential Elections. The decision to deploy the EU EOM was taken following an Exploratory Mission carried out in October 2003 and reflected the ongoing interest of the European Union in Indonesia. This was the second Election Observation Mission carried out by the EU in Indonesia, after the observation of the General Elections in 1999.

Mr. Glyn Ford (UK), a Member of the European Parliament and member of the European Parliament's Foreign Affairs, Human Rights, Common Security and Defence Policy Committee, was appointed as Chief Observer of the EU EOM in Indonesia.

In addition to the Chief Observer, the EU EOM had a core team of experts: Deputy Chief Observer, Oskar Lehner (Austria); Election Expert, Domenico Tuccinardi (Italy), Legal Experts, Alexis Michel (France) and Renata Tardioli (Italy); Country Expert, Frank Feulner (Germany); Media Expert, Gillian McCormack (United Kingdom); Press Officer, Sarah Fradgley (United Kingdom); LTO Coordinator, Fabio Bargiacchi (Italy); LTO Coordinator Assistants Michel Paternotre (Belgium) and Rosie Rahamim (United Kingdom); Operations Expert, Scipion du Chatenet (France); Operations Expert Assistant, Alessandro Parziale (Italy); and Security Adviser, Robert Berneheim (Sweden).¹

The International Organisation for Migration (IOM) was the Service Provider, responsible for providing logistical and administrative support to the EU EOM. The purpose of the EU Election Observation Mission to Indonesia, as well as that of other EU EOMs around the world, is to provide support for the development of a country's democratic institutions and procedures, and to assist partner countries in their objective to hold elections of a high standard.

The key objectives of the Election Observation Mission were to conduct a comprehensive analysis of the electoral process and to offer an impartial and informed assessment of the elections. In addition, through the presence of observers, the mission sought to strengthen the confidence of voters to participate freely. In its conclusions, the mission was guided by seven criteria on democratic elections.

In order to apply the same standards for election observation, the European Union adopted the following election assessment criteria in 2000:

- The degree of impartiality shown by the Election Administration;
- The degree of freedom of political parties and candidates to assemble and express their views;
- The fairness of access to state resources made available for the election;
- The degree of access for political parties and candidates to the media, in particular the state media;
- The universal franchise afforded to voters;
- Any other issue which concerns the democratic nature of the election (e.g. campaign violence, rule of law, legislative framework);
- The conduct of polling and counting of votes.

Regular meetings were held throughout the country with election officials, political parties, candidates, other observer groups, national and international non-governmental organisations and the media at the national, provincial and village levels. The EU EOM also held weekly meetings with representatives of the EU Member States in Indonesia.

¹ Michel Paternotre was LTO Assistant for the Indonesian Legislative Elections. For the Presidential Elections, Alessandro Parziale moved from Operations to LTO Coordination. Frank Feulner left the Mission after the first round of the Presidential Elections. Renata Tardioli took over from Alexis Michel as Legal Expert for the second round of the Presidential Elections.

During the campaign for the 5 April Legislative Elections, the EU EOM deployed 231 observers to follow the process in all 32 provinces. Initially, there were delays in receiving permission for EU observers to be deployed to Nanggroe Aceh Darussalam (NAD), Maluku, North Maluku and Papua, with the result that it was only possible to conduct short-term observation in these provinces. There was also a small delay in receiving permission to visit these areas during the first round Presidential Elections. For the second round, EU EOM observers were deployed without delay to those areas. For the first round of the Presidential Elections on 5 July, the EU EOM deployed 232 LTOs and STOs, and for the second round on 20 September, 224 observers were deployed. EU EOM observers covered all 32 provinces for each round.

The EU EOM wishes to thank the Government of Indonesia, the General Election Commission of Indonesia and all subordinate committees, the political parties and civil society organisations in Indonesia as well as representatives of the EU Member States in the country for their cooperation and assistance throughout the course of the observation. The EU EOM would also like to thank all domestic and international observer organisations, in particular the Carter Centre, for their excellent cooperation. Special thanks are due to the EC Delegation in Indonesia for its support during all phases of the mission. The EU EOM is also grateful for the assistance and information service provided by the International Foundation for Election Systems (IFES).

This final report presents the findings of the EU EOM covering the process of prior to and following the General Legislative and Presidential Elections in 2004 and contains a number or recommendations for future elections. The report and its conclusions remain the sole responsibility of the EU EOM.

SECTION I

1. Executive Summary and Recommendations

1.1. Executive Summary

- Indonesia's Legislative Elections on 5 April were the world's largest and most complex election ever held on a single day and the Presidential Elections held in two rounds on 5 July and 20 September were the first ever direct elections of a president in Indonesia's history.
- 2. The entire electoral process was conducted largely in line with democratic standards. However, some unnecessary restrictions of the right to vote and stand were still in place. Public confidence was facilitated by the clear-cut nature of the results.
- 3. The success of the 2004 election cycle, only the second democratic elections in Indonesia since the end of the authoritarian regime in 1998/99, shows the consolidation of democratic institutions and processes in Indonesia. The peaceful atmosphere and the first ever successful transition of power from a democratically elected administration to another were historic.
- 4. The legal framework provides for democratic elections although the regulations on political party registration and participation in the elections were unusually restrictive.
- 5. Universal suffrage was not fully implemented. Members of the armed forces and the police did not have the right to vote and former members of the Indonesian Communist Party (PKI) were not allowed to stand. During the first round of the Presidential Elections, one prominent candidate was denied registration due to his health, which was contrary to international standards.
- 6. The KPU generally managed its difficult task well and maintained the trust of all election participants through its unbiased conduct of the elections.
- 7. The media played a meaningful role throughout the whole election process in informing the voters about the elections, although state television was biased in favour of the incumbent. The regulations for media coverage of the elections were in general adequate and KPU-sponsored presidential dialogues broadcast on TV and radio were an innovative contribution to the campaign.
- 8. While Golkar largely maintained its 1999 vote in the Legislative Elections the Indonesian Democratic Party of Struggle (PDI-P) lost significant ground. Two newly emerging parties, the Prosperous Justice Party (PKS) and the Democrat Party (PD), which put clean government and the fight against corruption at the centre of their campaigns, gained significantly, at the expense of the old established parties and gave momentum to the Democrat leader Susilo Bambang Yudhoyono's run for the presidency.
- 9. Of the five candidate pairs contesting the Presidential Elections, Susilo Bambang Yudhoyono/Jusuf Kalla and Megawati Soekarnoputri/Hasyim Muzadi won first and second place respectively. Susilo Bambang Yudhoyono was the decisive winner of the second round.
- 10. The voter turnout during the 2004 elections decreased successively from 84% to 78% to 76% (estimates), but still remained very high compared with other countries.
- 11. The number of domestic observers initially covered nearly 50% of the polling stations but halved from one election to the next. Parties and candidate witnesses played an

increasingly vital role with regard to the transparency of polling, counting and results aggregation.

- 12. During the Legislative Elections, the KPU successfully managed the enormously challenging task of delivering more than 600 million ballot papers in 2,286 variations to over half million polling stations. 148 million voters were entitled to vote for the two houses of parliament (DPR, DPRD) as well as the provincial and regency councils with close to 350,000 candidates running for office. Some procedural shortcomings and isolated cases of fraud did not affect the integrity of the result.
- 13. The very high threshold set for the direct elections of candidates under the new Open List System made the process overcomplicated and costly, and failed to facilitate the direct election of candidates
- 14. The first round of the Presidential Elections was put in jeopardy by a serious technical hitch. Tens of millions of voters had unintentionally spoilt their ballot papers by double-punching them. The KPU addressed the problem sensibly by declaring them valid, ordering a recount in areas where counting had been completed. It was rightly backed in this action by the courts.
- 15. After a limited campaign period of only three days (14-16 September) the second round Presidential Elections were carried out in an impartial and transparent manner, despite some residual procedural shortcomings.
- 16. On the three Election Days a number of recurrent procedural shortcomings were identified, for example a failure to use the voter registers properly and lax implementation of checking and inking fingers. Counting at the polling stations was conducted in an orderly and transparent manner.
- 17. In spite of a very successful voter registration process in 2003, the maintenance and update of the voter lists between the various elections was not uniformly conducted from province to province and opened up room to potential abuses and manipulations.
- 18. The official manual aggregation of results over five levels was conducted rather slowly (30 days for the Legislative Elections). Nevertheless an unofficial electronic count and the public display of a nation-wide breakdown of the incoming results from polling stations provided credibility and transparency.
- 19. The provisions on financial disclosure and campaign expenditure for political parties and candidates were not properly implemented and lacked effective and proportional sanctions

1.2. Recommendations

Right to Stand

- The current level of educational requirements for candidates excludes a large portion of the population and effectively discriminates against women and indigenous minorities. No education requirements should be necessary to be a candidate for Regency/City DPRD Elections and consideration should be given to lowering them for other non-Presidential Elections.
- 2. The right to stand should be immediately extended to former members of the Indonesian Communist Party (PKI) and related organisations for all elections.
- 3. Health requirements for presidential candidates should be abolished. However, the health status of candidates should be independently assessed and made public.

Participation of Political Parties and Candidates to Elections

4. The restrictive requirements for the registration of political parties set forth in Law 31/2002 on Political Parties should be significantly lowered.

- 5. The requirements for political parties to participate in future Legislative Elections should be lowered. All parties should be allowed to stand again in the electoral districts where they have won seats in previous elections. At a minimum, consideration should also be given to maintaining the thresholds applied for the 2004 elections.
- 6. The current threshold set for the direct elections of candidates under the Open List system should be lowered. Provisions should be introduced to enable the highest scoring candidates in a given electoral district to be elected.
- 7. The envisaged threshold of 15% of the DPR seats or the 20% of the DPR valid votes as a requirement for the nomination of candidate pairs in future Presidential Elections is too high. Consideration should be given to either keeping it at the present level or increasing it to a maximum of 5%.

Electoral Campaign

- 8. Guidelines and regulations on the obligations and rights of presidential incumbents during electoral campaigns should be further strengthened. Consideration should be given to introducing similar regulations for other incumbents at lower levels.
- 9. For the second round of Presidential Elections, provisions for a full campaign period should be enacted.
- 10. Regulations on party and candidate finances should be introduced. An effective investigative and auditing mechanism to review party and candidate donations and campaign expenditure should be implemented. Effective and proportionate sanctions for violations of financial provisions should be enacted, and thresholds on campaign expenditure should be set.

Challenges and Complaints on Election-Related Disputes

- 11. The mechanisms for adjudicating electoral violations and election-related complaints should be revised. Election stakeholders should be granted the right to appeal KPU decisions.
- 12. An independent judicial body, ideally within the existing judicial structure, should be mandated to adjudicate such cases. Alternatively, consideration should be given to the creation of "ad hoc" election tribunal.

Legal Framework

- 13. The existing electoral laws should be revised in order to remove inconsistencies, ambiguities and repetitions. Preferably, the different election laws should be unified in a single electoral code containing both general provisions and separate chapters for each level of election.
- 14. The KPU regulations should be compiled into a single comprehensive text for future elections.

Election Administration

15. The current electoral calendar should be reorganised for logistical reasons and in the light of the anticipated elections for Heads of Provinces and Regency/Cities. Preferably, consideration should be given to staggering the elections with a two-year interval. One possibility could be to schedule National Legislative and Presidential Elections in one year and all other lower level elections in a different year. Alternatively, the elections could be staggered by dividing them between Legislative ones and Presidential/Heads of Provinces and Regency/City Elections.

- 16. Immediate steps should be taken to implement a permanent and centralised voter register. The maintenance of the voter register should not be devolved to the provincial KPU, but remain under the control of the central KPU.
- 17. National elections should be funded exclusively by the central state budget.
- 18. Adequate attention should be paid to the establishment within the KPU of a department for the training and professional development of election officials at all levels. Supervisory mechanisms to monitor and review staff performance and alleged malpractice should be put in place, as well as to ensure the enforcement of the KPU's binding authority over its lower tiers.
- 19. Proper attention should be paid to voter education in planning future electoral budgets. Priority should be given to concerted and longer-term efforts with larger involvement of grass-roots local organisations.
- 20. Apart from the essential task of safeguarding the integrity and consistency of the election process, Provincial KPUs should be given responsibility for the implementation of the elections at their own level and below.
- 21. Ballot paper design should be made simpler and more user-friendly. Serial numbering and security features should be introduced at least for national election ballots.
- 22. Procedures should be designed to improve and expedite the manual aggregation of results and their publication. Efforts should be continued and enhanced to develop programmes for the electronic tabulation of results.

Polling Stations

- 23. The overall number of polling stations should be reduced by increasing the number of voters per polling stations. A national average of 600 voters per polling station would be ideal, where feasible.
- 24. Uniform procedures for ensuring payment of polling station officials should be enacted.
- 25. Posting of election results at all levels should be enforced.
- 26. Polling stations should only be established in places accessible to the general public and where the KPU can exercise its authority.

Media

- 27. The Indonesian Broadcasting Commission (KPI) should have the authority and the means to effectively regulate electronic media activity during elections.
- 28. The state broadcast media must be impartial and unbiased during the election period and remain free from political interference.

- 29. Provisions should be established for a standard amount of free time to be allocated to parties and presidential candidate pairs by state and commercial broadcast media during elections.
- 30. Media should provide free slots for voter education during prime time.

Identified Areas for Further International Electoral Assistance

- Assistance to the KPU in strategic electoral planning and budgeting.
- Assistance in fostering the professional development of election officials and in setting up a permanent training department.
- Assistance to establish a new elections complaints mechanism.
- Assistance to domestic observers programmes.
- Assistance to political parties for training programmes for party witnesses.

SECTION II Political Overview

2. Historical and Statistical Background

2.1. Short Overview of Indonesian History since 1945

The Republic of Indonesia was proclaimed independent on 17 August 1945 and a constitution was drafted. The first president was Soekarno, appointed by the Indonesian Independence Preparation Committee (PPKI), consisting of Indonesian members and previously set up by the Japanese occupiers. When British troops came to Indonesia the same year to take over control of the archipelago from the surrendering Japanese troops and return it to the Dutch colonial regime, a five-year long independence war broke out. Under pressure from the United Nations, the Dutch accepted the independence of Indonesia in December 1949. President Soekarno was successful in uniting the country and organising the first elections in 1955.

Around 30 parties and political groups participated in the 1955 elections for the House of Representatives (DPR) with 257 members and the Constituent Assembly with 514 members. The absence of a threshold resulted in a politically fractured parliament with four parties gaining more than 10% and another 24 parties holding between one and eight seats. The largest parliamentary factions were the Indonesian National Party (PNI), Masyumi, Nahdlatul Ulama (NU), and the Indonesian Communist Party (PKI). However, this experience with parliamentary democracy did not last long. During the ensuing years, amidst economic and political chaos and various separatist revolts in Sumatra and Sulawesi, President Soekarno disbanded the 1955 parliament, formed a new DPR and National Assembly (MPR) with appointed members, and strengthened the executive. Ruling by presidential decrees, the political period became known as "guided democracy".

In the mid-1960s, Soekarno conducted a policy of confrontation with Indonesia's neighbour Malaysia (the so-called *Konfrontasi*), left the United Nations, and had himself appointed as president for life by the parliament. Leaning more and more towards the Indonesian Communist Party for political support, he lost both the confidence of wide parts of the population and of the military. In 1965, an alleged Communist putsch by some army generals was prevented ("Incident of 30 September") and the country saw the rise to power of General Soeharto. The period saw the massacre of between one to possibly three million suspected Communists by the military. In 1968, the National Assembly removed President Soekarno and elected General Soeharto as new president. Using the system of indirect presidential elections by the National Assembly through the assistance of appointed members, Soeharto secured six re-elections in 1971, 1977, 1982, 1987, 1992, and 1997 respectively. During the time of his so-called "New Order" regime, as opposed to Soekarno's "Old Order", Indonesia experienced economic growth and the development from an import to an export-oriented economy. The country became independent from rice imports, and its illiteracy and poverty rates began to fall.

However, the regime became more rigid as well, with restrictions on freedom of speech and the suppression of other rights. From the 1970s onward, Soeharto established an authoritarian regime, based on Golkar as his political machine and using the power of the military, which became heavily involved in politics. His family developed tight links to the business community. Corruption, collusion and nepotism, known by their Indonesian acronym KKN, became widespread in economic and political life. Development became largely financed by credit. During the Asian financial crisis 1997, the country was plunged first into economic then political upheaval. Students demonstrated and riots over rising prices broke out. After 32 years in power, in May 1998, President Soeharto resigned and his loyal Vice-President Bacharuddin Jusuf Habibie became president, promising political reform and new elections. Under his leadership, freedom of speech was granted and restrictive political laws were abolished. He

agreed to a United Nations sponsored referendum on the future of East Timor, which had been annexed by Indonesia in 1975. East Timor held a referendum on independence in 1999, after which it declared independence from Indonesia.

During the 1999 elections (the first free elections since 1955), the Indonesian Democratic Party of Struggle (PDI-P) of Megawati Soekarnoputri, daughter of the first President, became the largest party. The National Assembly, however, elected Abdurrahman Wahid (popularly known as Gus Dur) of the National Awakening Party (PKB) as the new president. Under Wahid, who had close links with civil society, civilian and religious rights were included in the constitution and the political system and state institutions were reformed. The National Police was separated from the Armed Forces and a process to place both under civilian authority began. However, Wahid had to face increasing opposition in Parliament and in the media. In 2001, on the grounds of his alleged involvement in not very well substantiated corruption scandals he was ousted by parliament and Vice-President Megawati moved up to become president.

With a majority for her party in parliament, the Megawati government implemented the 1999 law on regional autonomy, granting legislative powers to provincial governments and a large share of the profits from natural resources to the provinces. A government sponsored ceasefire agreement was signed with the independence movement in Aceh, the Free Aceh Movement (GAM), in December 2002. However, after six months the peace talks broke down, Indonesia declared martial law in Aceh, and a military operation began. The renewed fighting in Aceh since has caused more than 2,000 casualties, most of them civilians. The status of martial law in Aceh was changed to that of "civil emergency" in May 2004, but no significant change in administration has occurred.

The separatist struggle in Indonesia's most Eastern province Papua, which was formally incorporated into Indonesia in 1969 after a so-called "Act of Free Choice", continues, with sporadic fighting between the military and the Free Papua Movement (OPM).

In early 1999, violent conflict erupted between Christians and Muslims in Ambon (Mollucas) and Ternate (North Mollucas)¹. Only in 2001, with the declaration of civil emergency and the arrival of new troops, did the violence decline, but the reconciliation efforts of the 2002 peace conference attended by community leaders have been slow in coming.

Under Megawati, the Indonesian currency stabilised and the economy began to grow. But foreign investment did not pick up and in 2002 the official unemployment rate reached 9.1% (ADB data 2003), with the unofficial rate much higher. In October 2002, the tourist island of Bali was hit by a terrorist attack on two nightclubs, killing more than 200 Indonesians and foreigners. A second bomb attack on the Marriott Hotel in Jakarta took place in March 2003. The attacks were thought to have been carried out by the same terrorist network, *Jemaah Islamiyah* (JI), which is believed to have links to Al Qaeda. The attacks had a huge impact on the country's tourism industry and on Indonesia's image in the world. Despite this, the internal political debate and issues in the 2004 elections, concentrated mainly on domestic problems like unemployment, job creation, corruption, education, and social security.

2.2. Statistical Data (Population and Territory)

The Indonesian archipelago covers an area of 1,890,754 km², over more than 13,000 islands, the largest ones being Sumatra, Kalimantan (Borneo), Java, Sulawesi (Celebes) and the Western part of Papua. Indonesia's population of 206 million people² lives mainly on Java (58%), Sumatra (21%) and Sulawesi (7%). Around 35% of the population are urban dwellers and 65% live in rural areas. Indonesia is the largest Muslim nation with 87% of the population Muslim, 10% Christian, 2% Hindu (mainly living on Bali and parts of Lombok) and 1% Buddhist. There are more than 250 ethnic groups. The Javanese, at around 45%, are the

¹ Thousands of people were reported to be killed throughout the province and around half a million became refugees (Source www.fact-index.com)

² 2002 census by the Indonesian Institute of Statistics (BPS)

largest ethnic group, followed by the Sundanese (14%), Madurese (7%) and Minangkabau (3%). Other larger ethnic groups include Acehnese, Batak, Balinese, and Bugis. Largest among the non-indigenous groups are the ethnic Chinese with 3% of the population.

Indonesia is rich in natural resources and benefits from its export of oil and gas. However, more than 40% of the country's workforce is engaged in the agriculture sector, producing rubber, palm oil, sugar, coffee, tea, tobacco and spices. The industrial sector produces textiles, electronics, cement, fertilizer, and food. Indonesia takes the 111th position on the Human Development Index by the United Nations Development Programme (UNDP), with 7.5% of the population living below US\$1 a day and 52.4% below US\$2 a day.³

2.3. The 1999 Elections

The Parliamentary Elections of 7 June 1999 were widely viewed by domestic and international observers as a clear step forward in Indonesia's democratic transition. These elections are referred to as the first free and competitive elections since 1955. Despite all that, the 1999 elections did not mark a meaningful change from former practice in terms of election administration, and were characterised by widespread administrative inefficiency as well as a lack of transparency and accountability.⁴

The elections were won by the PDI-P with 33.7% of the national vote. Golkar, the party of former President Soeharto, came in second with 22.4%, followed by the newcomer party PKB of Abdurrahman Wahid with 12.6%. The United Development Party (PPP) reached 10.7%, the National Mandate Party (PAN) 7.1% and the Crescent and Star Party (PBB) 1.9% of the vote respectively. The announcement of the final results and the allocation of seats to political parties were delayed repeatedly after arguments and misunderstandings over unclear regulations (especially on the seats allocation procedures) and complicated results and aggregation forms. The ambiguous events that led to the final announcement of the results, together with the overall unhappy experiment of a government-controlled General Election Commission (despite the presence of party representatives in it), insufficient funding, inadequate legislation, and above all, the general discontent amongst the public over the lack of influence that the will of the voters exerted on the selection of the party candidates eventually elected to legislative positions triggered a reform process that led to the passage of four constitutional amendments.

3. The Political Landscape

3.1. General overview and major ideologies

During the development of the Indonesian political system since 1945, political parties experienced different periods of freedom and restrictions. Following independence, new freedom of association was allowed for the formation of new parties, many with roots in trader associations, Muslim organisations, or nationalist groups. The strongest parties became the Indonesian Nationalist Party (PNI), the Indonesian Communist Party (PKI), and the Islamic Masyumi Party. President Soekarno supported the transition to liberal parliamentarianism during the 1950s, giving the parliament more legislative powers. However, this period, with its relatively free 1955 parliamentary elections, was short-lived.

With President Soeharto's rise to power, the so-called "New Order" regime was established. The economy boomed, but a very limited slice of the Indonesian society benefited from that. In 1973, the freedom to form new parties was curbed and the then existing political parties were forced to merge into the "nationalist" Indonesian Democratic Party (PDI) and the "Islamic"

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³ UNDP Human Development Index 2004

⁴ See International Foundation for Election Systems (IFES), *Republic of Indonesia: Report on the 7 June 1999 Parliamentary General Election and Recommendations for Electoral Reform*, page 1 (Washington, D.C., February 2000).

United Development Party (PPP). Soeharto himself worked to develop his support vehicle of "functional groups" *Golongan Karya* or Golkar. Throughout the New Order (1971-1998), the three officially recognised parties served as little more than legitimising agencies in the weak national parliament. Although six Legislative Elections were held under Soeharto's rule, they were not free and open. Moreover, the president made frequent use of his powers and ruled directly by presidential decree, bypassing parliament altogether. It is only with the *Reformasi* era, beginning in 1998, that the restrictive regulations on political parties were dropped and party development restarted. Almost 200 new parties were founded and 48 participated in the first elections of the post-Soeharto era. The elections of 1999 and 2004 gave the public a renewed chance to participate in politics through legitimate multi-party elections.

In today's political party landscape, nationalist politics is the main basis for the successor parties of former President Soekarno's Indonesian National Party (PNI), namely Megawati Soekarnoputri's Indonesian Democratic Party of Struggle (PDI-P) and the parties of her two sisters, the Marhaenism Indonesian National Party PNI-M) and the Pioneers' Party (PP) respectively.⁵

At the other end of the spectrum are the Islamic parties, with the United Development Party (PPP) of Hamzah Haz as the most experienced. Advocating peacefully for the implementation of Islamic law and an Islamic state are the Crescent and Star Party (PBB) and the Prosperous Justice Party (PKS).⁶ The space in the middle is filled by more or less secular parties, which are open to members and voters of different faiths but often maintain some strong nationalistic features. The most prominent parties of this group are the reformed Golkar Party, led by Akbar Tandjung; the National Awakening Party (PKB), of co-founder and former President Abdurrahman Wahid; and the National Mandate Party (PAN) of Amien Rais.

3.2. Political dimension of the 2004 elections

The political significance of the 2004 elections is in many respects even bigger than the one commonly attached to the 1999 elections. In a period of less than five years, Indonesia has undergone fundamental constitutional changes that have dramatically transformed its institutional framework and the entire structure of the state. The political model that should result as a consequence of these changes is one very close to a classic 'presidential' system. The system established by the 1945 Constitution, even though normally described as presidential, was not in fact a conventional one for two main reasons, the indirect election of the president and the subordination of this office to legislative confidence.

The changes resulted in a new set of laws enacted between 2002 and the first half of 2003 leaving the election stakeholders and, more importantly, the election administration with very limited time to digest and implement them all. The organisation of three electoral events for a population of around 150 million eligible voters, within less than a year of the completion of the legal framework and only three months between the Legislative and Presidential Elections represented an enormous and unprecedented challenge for any democracy, especially an emerging one like Indonesia.

Last but not least, these were the first elections where the military no longer had reserved seats in the legislative elected bodies.

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⁵ Other nationalist parties focusing also on the unity of the nation and independence are the Freedom Bull National Party (PNBK), the Freedom Party (PM), and the Democrat Party (PD), which was established by lecturer, retired military and police members. The successor party of the New Order Indonesian Democratic Party (PDI) also falls into this category.

⁶ Fighting against moral decay and corruption are the Indonesian Nahdlatul Community Party (PPNUI) and the Reform Star Party (PBR), founded by former members of the PPP under the leadership of Kyai Haji Zainudin Muhammad Zein .

3.3. Overview and analysis of the 2004 results

The counting of the votes for the National House of Representatives (DPR) started as a headto-head race between Megawati's PDI-P and Akbar Tandjung's Golkar. According to the official results, Golkar won the elections with 21.58% of the national vote, a result largely in line with the 1999 elections. The election translated into a clear loss for the PDI-P, which came in at second place with 18.53% of the vote, down 15 points from 1999. The PDI-P suffered losses as a result of the slow progress made in overcoming the economic crisis and improving the lives of ordinary Indonesians. Compared to the results of 1999, the PDI-P lost votes in every province, while Golkar lost ground in 20 provinces but made gains in 12 others. The other parties of the former five largest parties in the parliament largely retained their 1999 results. The PKB gained 10.6% (1999: 12.6%), the PPP won 8.2% (10.7%), and PAN 6.4% (7.1%). Smaller and newer parties emerged strongly in the 2004 elections at the expense of the older more established parties. The Democrat Party (PD) with 7.5% of the vote benefited both from disappointed PDI-P supporters and from the popularity of Susilo Bambang Yudhoyono, the party's presidential candidate. This result put the party into fifth place. This retired general gained popularity by quitting the cabinet during the Legislative Election campaign after an argument with Megawati's husband. The renamed Prosperous Justice Party (PKS) gained 7.3% of the vote (up from only 1.4% in 1999) following a campaign commitment to root out corruption, collusion and nepotism.

On the provincial level, the trend for seats in the Provincial Houses of Representatives (DPRD) was very similar to the national level, with many former PDI-P supporters having shifted their preference away from the party. Overall, the new, less proportional, district system seems to have damaged the established parties that have few, but very large localised strongholds, compared to parties with a more widespread base of support. In this respect Golkar managed to control its losses much better than PDI-P.

The direct vote for the newly elected Regional Representative's Council (DPD) contributed to diminish the influence of the political parties on the vote. The 128 first new members had to organise their own campaigning and party support, relying on their own popularity and funding.

The first direct presidential elections were a historical moment for Indonesia, as previously the People's Consultative Assembly (MPR) was responsible for selecting the president. The first round of the Presidential Elections took place on 5 July 2004. Five candidate pairs participated: Wiranto/Solahuddin Wahid (Golkar), Megawati Soekarnoputri/Hasyim Muzadi (PDI-P), Amien Rais/Siswono Yudohusodo (PAN), Susilo Bambang Yudoyono/Jusuf Kalla (PD), Hamzah Haz/Agum Gumelar (PPP). Yudhoyono came out the winner with 33.6%, Megawati came second with 26.6%, Wiranto third with 22.2%, Rais with 14.7% and Haz with 3%.

Following the first round results, on 19 August 2004, a National Coalition was formed by the PDI-P, Golkar, PPP and PDS to support the re-election of Megawati. The parties within the National Coalition had gained between them over 50% of the votes for the national assembly and therefore had the possibility of capitalising on this to secure Megawati's victory. However, it proved unable to galvanise party support as it had anticipated, with Indonesian voters opting instead for a change from the Megawati leadership, with which they had become disillusioned. As predicted by all the opinion polls in the run up to the elections, the second round of Presidential Elections on 20 September resulted in a clear victory for Yudhoyono with 60.62% of the vote, defeating Megawati, who received 39.38% of the vote. The elections were peaceful, with high voter participation, indicating the great value placed by Indonesians on the democratic process.

3.4. Security situation during the 2004 elections

The level of violence in the 2004 election cycle was very low. The political parties as well as their activists and supporters followed the campaign regulations and the campaign schedules,

Section II

which were highly restrictive, in order to avoid clashes between their party supporters. The security forces kept a low profile over the whole period.

There were 21 cases of election-related violence, with two people killed and 23 injured. Two of the injured were shot at a polling station in Aceh Province before opening on Election Day. There were no reported cases of election-related violence during the two rounds of the Presidential Elections.

At the end of April the city of Ambon (Maluku) suffered an outbreak of "sectarian" violence and unrest during and following a march of independence supporters through the city, on the anniversary of the establishment of the unofficial Republic of the South Mouccas. Several days of fighting left 40 dead, over 200 injured and more than 200 houses torched, including the offices of UNHCR, Médecins Sans Frontières (MSF) and Save the Children. However, this incident was related to ongoing problems in the area rather than being linked to the elections this year.

On 9 September a powerful car bomb exploded in front of the Australian Embassy in the Kuningan area, Central Jakarta. Ten people were killed and over 180 injured. According to police reports a lone suicide bomber has been identified and bombing is thought again to be the work of the Al Qaeda-linked terror group Jemaah Islamiyah (JI). There was a wave of bomb threats all over the country during the weeks after the attack.

⁷ There were various forms of speculation about the possible motive for the bombing – that it was either designed to destabilise Indonesia in the run up to the elections, or to affect the upcoming Australian elections - however no group officially took responsibility for the action.

SECTION III Legal and Institutional Framework

4. The Legal Framework

4.1. Relevant Legislation

The 2004 election cycle took place under an amended Constitution.⁸ The new electoral laws enacted in accordance with the constitutional changes introduced after the first democratic elections of 1999 strengthened the political reforms that followed the fall of the Soeharto regime. The four Constitutional Amendments instituted a new elected legislative chamber, the Regional Representatives' Council (DPD), which together with the Peoples' Representative Council (DPR) now forms the National Parliament (MPR); introduced direct elections for the president and vice-president (replacing the previous indirect election by the MPR); amended the existing elected legislative assemblies at the national, provincial and city level; established a new Constitutional Court (CC) and a permanent and independent national election commission.

The current legal framework governing the 2004 elections is composed of the following legal instruments:

- the Constitution of the Republic of Indonesia adopted in 1945 as amended by the First Amendment of 1999, the Second Amendment of 2000, the Third Amendment of 2001 and the Fourth Amendment of 2002;
- the Law on the General Elections of the Peoples' Representative Council at the national, provincial and regency/city level and Regional Representative Councils 12/2003 of 18 February 2003 (hereinafter Law 12/2003);
- the Law on the Structure and Composition of the MPR, DPR, DPD and DPRDs 22/2003 of 31 July 2003;
- the Law on the General Election of the President and the Vice-President, 23/2003 of 8
 July 2003 (hereinafter Law 23/2003);
- the Law on Political Parties 31/2002;
- the Broadcast Law 32/2002;
- the Law on the Constitutional Court 24/2003 of 6 August 2003;
- the Decrees and circulars of the General Election Commission (KPU) (Approx. 140);
- the Decrees of PANWASLU Election Supervisory Commission (PANWASLU) (Approx. 12);
- the Presidential Decree (Approx. nine including Decree 67/2002 on The Appointment of the KPU and its Secretariat; and Decree 54/2003 on Organisational Structure and Working Procedures of the KPU).

Decrees have the force of law but are subordinate to the electoral laws of Indonesia.

The current legal framework is adequate for the conduct of democratic elections. The establishment of such a framework in time to allow the organization of two extremely complex electoral cycles within the year 2004 is a remarkable political achievement. The body of laws, despite containing some repetitions, are quite consistent in detailing the different provisions. Ideally, the different electoral laws should be unified in a single electoral code containing at the beginning general and common provisions (including fundamental principles, suffrage, voter registration) and single chapters for legislative elections, presidential elections and local elections.

⁸ The Constitution is based on five fundamental principles, the so-called "Pancasila": faith in one God, humanism, nationalism, democracy and social justice.

4.2. Institutional and administrative framework

Indonesia is a republic with a president, a vice-president and a bicameral parliament with legislative powers. The president is the head of state and the head of government. According to the Constitution the president, in exercising his/her duties shall be assisted by a vicepresident and by ministers of state. The term for president and vice-president is five-years with the possibility of standing for a second term.

Following the constitutional amendments of 2002, the president and vice-president are elected directly. The 2002 constitutional amendments also changed the composition of the MPR. Currently the legislative body is composed of the People's Representative Council (DPR) and the Regional Representative's Council (DPD) representing the 32 provinces in the Parliament. The DPD can participate in legislating over issues related to regional autonomy, centre/region relationships and natural resource management. It may also oversee the implementation of laws on budget management, tax, education and religious issues.

Indonesia is a unitary state composed of 32 provinces⁹ and sub-divided into regencies (kabupaten) and municipalities/cities (kota). Each level enjoys autonomy with the exception of matters that are within the competence of the central government according to Art. 18 (5) of the Constitution. Provinces and regencies/cities shall elect their representatives to the Provincial (DPRD-1) and Regencies/Cities Assemblies (DPRD-2). Law 22/1999 establishing provisions for the direct election of provinces and regencies/cities representatives is under discussion in the newly elected DPR.

The independence of judicial power is provided for in Art. 24 of the Constitution and is implemented by the Supreme Court and judicial bodies underneath (i.e. District Courts, Religious Affairs Courts, Military Courts, State Administrative Courts). The newly enacted law on the Constitutional Court (24/03) establishes the jurisdiction of the Court to adjudicate cases on the constitutionality of a law, on the result of the elections and on impeachment of the president.

4.3. Nanggroe Aceh Darussalam (NAD)

On 19 May 2003 the Indonesian Government declared the war-torn province of Nanggroe Aceh Darussalam (NAD) under a state of emergency and placed it under martial law, putting the military commander in control of the province. Among other things the military took control over movement of people to and from NAD, the flow of goods in and out NAD, communication facilities and mail, meetings and public facilities, as well as state-owned companies. One year later on 18 May 2004, the emergency status was downgraded to a state of civil emergency. The most notable change was the transfer of power from the military commander to the civil governor.

EU observers needed a special permit ("Blue Book") to access NAD. For the Legislative Elections the permit was granted at such a late stage (2 April) and observation was subject to such severe restrictions¹⁰ that the EU EOM declared in its Preliminary Statement that it was not possible "to draw any conclusions as to the validity or otherwise of the overall conduct of the elections in this province".

During the two rounds of Presidential Elections, EU observers were allowed to access NAD at an earlier stage and experienced a degree of freedom of movement that made observation possible. Apart from allegations that the freedom to vote or not to vote was not provided for in all areas of NAD, reports of EU observers deployed to NAD did not differ from what observers

⁹ On 22 September 2004, the DPR passed a bill establishing West Sulawesi as a new province, bring the umber of

provinces to 33. See also paragraph 4.4 below.

10 Observation was only allowed in towns, only between 08:00 and 18:00 hours and only with the presence of police officers escorting the observers (Communiqué of the Regional Martial Law Administration, No. 07/III/PDMD -NAD/2004).

saw in other parts of the country. In the first round of the Presidential Elections, Amien Rais (PAN), a candidate not linked to those in power, won the highest number of votes in NAD. Although fighting between the military and GAM continued to cause casualties, with the exception of one election-related shooting during the Legislative Elections, there were only minor episodes of election-related violence.¹¹

4.4. Papua

Under the Habibie Administration, Law 45/1999 split the province of Papua (then Irian Jaya) into three provinces, Central Irian Jaya, West Irian Jaya, and East Irian Jaya. This law was never fully implemented. Later on, under pressure from the Papuan indigenous people, and following research conducted by a group of academics, the DPR shifted direction and approved the Law on Special Autonomy for Papua No. 21/2002. This law guaranteed special rights that were highly welcomed by the indigenous Papuans. This special law should have priority over all previous legislation on the matter. However, the central government has since then opposed its implementation on the grounds that it does not have priority over Law 45/1999 and that both laws should be equally implemented, starting from the one passed first. The matter was further complicated by a Presidential Instruction (INPRES) 1/2003 issued by Megawati on 27 January 2003, which commanded the formation of the provinces of West Irian Jaya and Central Irian Jaya. The State Administrative Court annulled INPRES 1/2003 on 14 June 2004. Another case was brought before the Constitutional Court by the Irian Jaya DPRD over the constitutionality of Law 45/1999, the resolution of which has been delayed several times.

This dispute is perceived by many groups of indigenous Papuans as a political move from the central government to avoid recognising Papua's special autonomy and retain economic control over its significant natural resources. In addition, it has caused major confusion and inconsistencies in political life as well as in the election administration structure in Papua. In legal terms, the dispute revolves around the nature of "Lex Specialis" of Law 21/2001 and its priority over other national laws, including the Election Laws 12/2003 and 23/2001 and Law 31/2002 on Political Parties. The non-resolution of this central issue is the cause of a number of other conflicts on several election-related matters. For example, Art. 28 of Law 21/2001 allow the formation of local political parties, whilst Law 31/2002 stipulates a set of specific preconditions for participating in the elections. 15 Another conflict is exemplified by the legal notice filed by the "Defence Team for the Autonomy of Papua" to annul KPU Decree No. 672/2003 establishing West Irian Jaya as a provincial electoral district for the Legislative Elections. 16 The most recent example is KPU Decree 55/2004 enacted on 24 May 2004 that established the provincial KPU for West Irian Jaya, also seen in contradiction with Law 21/2001. The current existence of two provincial election commissions in Papua (one in Jayapura, for Irian Jaya and one in Manukwari for West Irian Jaya) is a situation not contemplated by either Law 45/1999 or Law 21/2001.

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¹¹ The number of invalid ballots for the second round of the Presidential Elections appears to be considerably higher than the national average (4,41 against 1,4%)

¹² The policy promoted by Law 45/99 is known as "Pemekaran", and was rejected by different indigenous communities in Papua, culminating in large demonstrations in front of the governors' building in Jayapura on 14-15 October 1999.

¹³ The basic structure of the Law 21/2001 is that the Papua province is given a general legislative and executive competence from which several areas are excluded for retention by the Central Government.

¹⁴ The ruling 17/G.TUN/2004/PTUN stated that although the Parliament enacted Law no.45/1999, it has subsequently issued Law No.21/2001. Also among the court's argument was that the government had issued a Decree of the Minster of Finance No.548/KMK.07/2003, which made reference to the province of 'Papua' rather than 'West Irian Jaya'. The court also remarked that the Government is not being consistent in issuing the decree.

¹⁵ See Chapter VII

¹⁶ This can also be viewed against Law 12/2003, which determines that provinces having a number of population up to one million people shall be allocated with 35 seats (West Irian Jaya is allocated 44 seats despite having a population of around 560 thousand people.

5. Election Administration

5.1. The Legal Foundations

Art. 22 E (5) of the Constitution determines that elections must be organised by a permanent and independent election management body, and devolves the power to define and describe the prerogatives of this institution to further ordinary legislation. Chapter IV of Law 12/2003 on Legislative Elections lays down the main characteristics, duties and authorities of this body and of its provincial and local offices. Law 23/2003 on Presidential Elections directly refers to Law 12/2003 in detailing the specific duties of the election management body with reference to presidential elections.

5.2. The General Election Commission

The Indonesian election management body is the General Election Commission (*Komisi Pemilihan Umum*, hereinafter referred to as KPU). The current KPU should be composed of 11 members¹⁷ with equal voting rights, including the Chair and Deputy Chair. The former body that organised the 1999 Legislative Elections, also called the KPU, was composed of five representatives of the government and one representative of each of the 48 political parties that contested the elections (53 representatives in total). In that composition, the parties' representatives, despite their large number, had an equal voting strength to the government representatives.

The current KPU is the first Indonesian electoral management body appointed after the passage of Law 04/2000 on Amendments to Election Law 03/1999. The amendments to Law 03/1999 were adopted by parliament in a plenary session (MPR) as a response to the critical evaluation of the previous semi-partisan nature of the KPU. These amendments laid out a new composition and appointment process for the KPU, clearly establishing its nature as a neutral and independent institution.¹⁸

The appointment process was completed by the president on 10 April 2001, ¹⁹ and was reported to be quite transparent despite the limited nature of the original list of candidates. All commissioners have a sound academic background, and seven of them had some previous experience of election monitoring and social activism with Indonesian NGOs. Substantial financial independence was also given to the KPU after the amendments of Law 03/1999. The funding now is channelled directly from the Ministry of Finance and the yearly budget proposal is submitted by the KPU directly to parliament.

The KPU's main responsibilities include, but are not limited to: conducting and coordinating all stages of the election process; determining which political parties and candidates are eligible to compete in elections; drawing electoral district boundaries; determining the number of seats per district and certifying and announcing the results of the elections.

5.3. The KPU territorial structure

The KPU is organised hierarchically with permanent structures at the central, provincial and regency/city levels. Throughout this election year, the institution maintained a permanent workforce of half a million employees, not including polling station staff.²⁰

¹⁷ Two members resigned in April 2003 and have not been replaced since.

¹⁸ This received a proper constitutional blessing only at a later stage with the Third Constitutional Amendment, passed in November 2001. According to the new appointment process, the President of Indonesia proposes to a DPR "ad hoc" committee (Committee for Home, Legal and Political Affairs) at least 22 candidates for membership of the KPU. The 11 candidates were then selected by the DPR committee and approved by the DPR in plenary sessions and finally appointed by Presidential Decree (70/2001).

¹⁹ See Presidential Decree 70/2001. It is not clear in this decree if the president has the power to dismiss members of the KPU, at any time and for any reason. Replacements would presumably require DPR approval.
²⁰ See Annex II

Below the regency/city level, the election administration institutions have a temporary nature and draw their human resources from other local administration institutions. Law 12/2003 requires that KPU members at national, provincial and regency/city levels be employed full-time, and not simultaneously hold any other position in the civil service (including teaching positions at state universities). The Provincial KPUs are composed of five members each appointed by the central KPU. Similarly, each Regency/City KPUs is composed of five members appointed by the respective Provincial KPU. The selection process for Provincial and Regental KPU members is regulated in great detail in KPU Decree 68/2003. Despite this considerable field structure, very limited powers are devolved to the provincial and regency/city chapters. In this instance this was partially due to their late establishment, as their appointment process was carried out between March and June 2003. The majority of the field election officials had only been in office for an average of 9-10 months by the time they conducted their first elections on 5 April.

The lower tiers of the election administration are regulated in KPU Decree 172/2003. The Subdistrict Election Committees (PPKs) have a maximum term of eight months, as they can be appointed not earlier than six months before the elections and remain on duty for no more than two months after the elections. However, the temporal proximity of the two electoral cycles made it possible for them to remain in office for a total of 11 months.²¹

The Village Organising Election Committees (PPSs) can be established not earlier than six months prior to elections and can remain on duty for no longer than a month after the elections (Art.14 KPU Decree 172/2003). Like for the PPKs, the temporal proximity of the two electoral cycles practically extended their appointment to an 11-month stretch. The PPSs are composed of three members and are appointed by the PPK, upon the recommendation of the Head of the Village.

The polling station committees (KPPS) are composed of seven members on average, and are appointed by the PPS for a maximum period of duty of one month.

5.4. The KPU Secretariat

All levels of the election administration are supported by secretariats composed of staff with positions comparable to those in the civil service. After the 1999 elections, the National Secretariat of the KPU underwent some serious structural changes in two different stages, 2001 and 2003. The Secretary-General of the National General Secretariat is the chief executive officer and also the head of all the provincial and regency/city secretariats. The National KPU appoints the Secretary General from a shortlist of three candidates proposed by the Minister of Home Affairs.

The General Secretariat is divided into 10 departments called bureaus.²² The entire permanent staffs at the central level amount to around 500 people. Each Provincial KPU is supported by a Secretariat headed by a Provincial Secretary, responsible operationally to the Provincial KPU but subordinate and responsible administratively to the National Secretary General. Each Provincial KPU is composed of only three sections that cover the functions carried by different bureaus at the national level. The Regency/City KPUs have a similar structure, with a Regental Secretary that answers to the Secretary General through the Provincial Secretary. The number of secretariat positions per bureau and per sections is rigidly defined in Presidential Decree 54/2003. This creates a certain lack of flexibility in moving staff from one bureau to another and in hiring new personnel for certain specific functions when such need arises. Any change in the structure would in fact require an amendment of the Presidential Decree.²³

²¹ The PPKs are composed of five members and are appointed by the Regency/City KPU among a shortlist of 10 candidates selected by the regent/mayor.

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²² See Annex II

²³ The KPU managed somehow to get around these impediments by hiring experts and consultants through the Functional Positions Group, envisaged in KPU Decree 622/2003

The lower levels of the election administration are also supported by secretariats that, given the temporary nature of the PPK and PPS, cannot be permanent. The secretariat staff is drawn directly from other local administration institutions and temporarily allocated to the local election management bodies by the regent/mayor, or at the Village level, by the head of the Village.

5.5. Training of electoral staff

The training and professional development of electoral officers and Secretariat staff is one of the most daunting tasks that the KPU had to face. Even so, this crucial activity was not acknowledged by the KPU as a clear priority. This was reflected in the absence of a bureau in the Secretariat specifically devoted to training and professional development. The money allocated in the original KPU budget to training activities was negligible, and there was a reliance on anticipated assistance from international donors. The width and variety of tasks of the new election management body, the inexperience of the newly appointed officials, ²⁴ and the magnitude of the changes in the electoral system should have compelled a different strategy.

For the Legislative Elections, the support of international donors, mainly the UNDP (the EU contributed €7 million to the UNDP election programme, with €2 million targeted for training purposes.), IFES and the Australian Election Commission (AEC) helped overcome this dramatic vacuum and put together a well-designed training programme for polling officials. Time constraints and the novelty of the election administration made the implementation of a cascade training system impossible, and preference was rightly given to a horizontal indirect approach, with the extensive use of self-training modules supported by visual and written tools. However, the lack of adequate training surfaced dramatically during the filling in of the results forms and the tabulation process, the election officials.

The quality of the training improved for the first round of Presidential Elections: more effective training techniques were introduced, the quality of materials and forms considerably improved and more time was devoted to procedures that proved to be problematic during the Legislative Elections, such as counting, form completion and results aggregation. Nevertheless, the lack of funds and difficulties in the distribution of training materials remained a hindrance to a more effective implementation. The insufficient allocation of funds remained a disappointing feature of the second round.

5.6. Assessment

Overall, the KPU managed a challenge of gigantic proportions extremely well, bearing enormous pressure and often enduring unfair and severe criticism. Despite the extremely short amount of time between the enactment of the new electoral framework and the elections, it managed to register around 150 million people, draw more than 2,200 new electoral districts, produce and distribute more than a billion ballot papers, run the world's most complex single day electoral event and two rounds of the first ever presidential elections in the country. It firmly established itself as a responsible and neutral institution, capable of organising and ensuring an historic transition of power.

From an organisational point of view, major progress has been made since 1999. The key change was to have made the Secretariat both operationally and administratively accountable

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²⁴ Many regental and sub-district election commissions (and their relevant secretariats) were appointed only in the last 8-10 months prior to the elections, with basically no time left for induction courses or proper training, and thrown immediately in the preparations of the process.

²⁵ Election officials in the field were open to EU EOM observers about their lack of technical preparation and of their desire for proper training.

to the National KPU.²⁶ The issuance of proper regulations and the development of procedures (although not uniformly implemented) represented another major step forward, as well as the enactment of the code of conduct. The direct handling of the budget by the KPU was also instrumental for the guarantee of effectiveness and independence.

However, there are many areas where improvements are needed. Administrative inefficiency and lack of accountability, even though far less evident than in 1999, 27 remained a feature in this process as well.²⁸ Despite the increased transparency and widely perceived neutrality of the electoral administrators at all levels, the KPU modus operandi remained cumbersome and lacking in transparency. The KPU should take further steps to make its activities and decisionmaking mechanisms more transparent and open to scrutiny, including allowing observers and political parties into its sessions.

The limited amount of time between the internal restructuring of the administration and the elections dictated the emergence of practices different from those envisaged.²⁹ The fact the each of the KPU members had a sort of functional portfolio³⁰ on specific sections of the process has favoured the emergence of other informal hierarchies and the development of lines of communications different from the ones originally envisaged. For example, the Secretary General, even though officially the chief executive officer responsible solely to the KPU plenary through the Chair, was often by-passed by commissioners who would give orders directly to the Secretariat Bureau Chiefs. Very often, the exigencies of implementing decisions in an accelerated fashion determined the most effective way to communicate orders down the chain and execute tasks. While this helped the process to move forward, it was detrimental to the uniformity and consistency of the process.

In future, KPU members should interfere less with daily operations and take a more detached approach to departmental issues in favour of a more global vision of the process.

6. The Election Supervisory Committee (PANWASLU)

The Election Supervisory Body (Panitia Pengawas Pemilu, generally referred to as PANWASLU) represents a rather unique feature for election management structures. It is an "ad hoc" institution appointed by the national KPU for the duration of the entire electoral process and established as a semi-independent structure. The legal basis for this institution is found in Article 17 (11) of Law 12/2003; Chapter XIV of the same law defines all its main functions. The institution in its current structure was established by the KPU with Decree 88/2003, which also describes the manner of appointment and regulates its main functions for the Legislative and Presidential Elections. Its funding comes from the KPU budget, and the KPU decides on the allocation of resources to various PANWASLU's activities. The provincial administrations are also supposed to contribute to the overall budget allocated to PANWASLU.

The institution is composed of a central office with nine members, including the Chairman and Deputy Chairman, with a 22 member Secretariat. PANWASLU members are drawn from the ranks of the state police, the attorney general's office, higher education institution, public figures and the media. The territorial structure resembles that of the KPU, with offices at the provincial, regental and sub-district levels. The central PANWASLU appoints the provincial PANWASLU, which in turn appoints the regental offices that appoint the sub-district ones. The provincial and regental chapters have a maximum seven members, whilst the sub-district chapters have a maximum five, supported by small secretariats. The length of the appointment

²⁶ The elimination of the previous dualism by which the Secretariat was operationally responsible to the KPU but administratively responsible to the Ministry of Home Affairs created immediately a different perception in terms of neutrality, effectiveness and independence of the institution.

²⁷ See IFES Report on the 7 June 1999 Parliamentary General Election and Recommendations for Electoral Reform,

page 1 (Washington, D.C., February 2000).

²⁸ The KPU had to go back to parliament in August 2004 to request a substantial budget extension of Rp. 516,000 billion, and a number of election officials were dismissed on grounds of malpractice throughout 2004.

²⁹ See KPU Decree 622/2003

³⁰ See Annex II

of PANWASLU officials spans from the beginning of the voter registration period until one month after the completion of the election process.

6.1. Mandate

After the 1999 Legislative Elections, PANWASLU's mandate underwent major changes. The most important criticism that emerged after the 1999 elections concerned its unclear role and authority, especially in relation to the KPU, and the lack of procedures relating to its operations and handling of complaints. The changes, reflected in Law 12/2003, partially clarified the mandate and helped improve the performance of the institution. According to Chapter XIV of Law 12/2003, the three functions currently assigned to PANWASLU are the following:

- 1) the supervision of all stages of the electoral process,
- 2) the settlement of disputes arising among election participants and
- 3) receiving and passing on to the appropriate institutions reports of violations of election laws and regulations. (See the Challenges and Complaints Chapter).

Reports of violations of election laws should be submitted to PANWASLU. Those entitled to report on violations are: eligible voters, election observers and election participants. PANWASLU officials must analyse the report within seven days and decide whether to transfer it to another body. In addressing a case PANWASLU must first seek to reach a consensus with the parties concerned. If a consensus cannot be reached it must offer an alternative solution, and if this fails, PANWASLU can make a 'final and binding decision' on the case. PANWASLU must issue a decision within 14 days of the date of receipt of the report. As a result, PANWASLU may issue a decision 21 days after the date on which the violation occurred, at a time when several stages of the electoral process (such as the campaign period) may already be over.

6.2. Relationship with the KPU

The problematic KPU - PANWASLU relationship was one of the main features of the 2004 election year. The root of the problem lay in the different understanding developed by the KPU and PANWASLU over the nature and scope of PANWASLU's mandate. The KPU, as the body that established and appointed PANWASLU, defined PANWASLU as one of its subordinate branches. It was supported in this view by the provisions of Art. 121 of Law 12/2003, which state that PANWASLU is responsible to the KPU. On the other hand, PANWASLU senior officials were of the opinion that Art. 3 (1) of KPU Decree 88/2003 guaranteed PANWASLU full independence. This was a view based on previous practice, as well as the powers exercised by a similar institution during the Soeharto era.

The relationship with the KPU remained constructive for the first part of the process, but deteriorated with the approach of the Legislative Elections, finally becoming confrontational after PANWASLU publicised its Preliminary Report on election violations for the Legislative Elections without prior submission to the KPU.³¹ The decision to curtail PANWASLU's powers was taken after the first round of the Presidential Elections.

With Decree 42/04, the KPU restricted PANWASLU's powers in dealing with disputes that involved the KPU and obliged it to submit its findings for KPU review prior to publishing.³² The restriction of PANWASLU's functions corresponded to an increased KPU awareness in dealing

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³¹ The report was particularly critical of the KPU performance in two areas: a) the difficulty experienced by PANWASLU officials in obtaining requested information from KPU officials at the Regency/City and Sub-district level, and b) what it perceived as inaction on the KPU's part with regard to the problems and alleged fraud signalled to it by PANWASLU. The KPU, on the other hand, thought that PANWASLU often failed to properly investigate the merit of alleged violations prior to publishing them.

prior to publicising them.

32 PANWASLU submitted a complaint to the Supreme Court against the draft KPU Decree 42/2004 on 14 June 2004 as preventive measure. The Supreme Court rejected the case for lack of competence on adjudicating on a document with no legal nature yet. After the issuing of the decree PANWASLU filed another complaint to the Supreme Court that as of today has not yet been ruled upon.

with staff problems and administrative violations and did not in practice hamper the process. However, it was inappropriate to restrict PANWASLU's functions at such a late stage in the process, and could have opened up the potential for manipulations as it diminished control over KPU performance, especially in the field.

6.3. Assessment

The role played by PANWASLU, despite the structural shortcomings and its unclear mandate, was overall positive. For the Legislative Elections, it performed satisfactorily, showing considerable improvement compared to 1999. However, a certain inability in prioritizing issues of concern emerged. Its level of activities decreased for the Presidential Elections. Its semi-judicial and semi-independent nature is at the root of many problems in implementing its functions. In particular, its mandate to supervise all the electoral activities, without the resources and the technical knowledge to do so, led to confrontation with KPU officials.

PANWASLU played a key role in increasing the transparency of the process. However, the lack of clarity over its mandate and problems with election administration officials in the field overshadowed its performance.

A careful analysis of the role and functions of PANWASLU is needed. A modern and efficient election management body cannot devolve supervisory powers to a different institution, but should be able to deal with them alone. Nevertheless, there must be a mechanism to provide checks and balances to counter the enormous powers vested in the KPU. This should be possible through the institution of a fully independent and judicial body mandated to adjudicate election-related disputes.

7. Voter Registration

7.1. Introduction

The establishment of a register of voters is one of the cornerstones of any credible electoral process. The quality of the voter register is arguably the most immediate and visible factor for the observers and the public to evaluate the integrity and the inclusiveness of an electoral process. Voter registration is the responsibility of both the voter and the electoral management body. In Indonesia, the system for voter registration is in the midst of a transition and could be described at the moment as a "semi-passive" one. Until the 1999 elections, voter registration was still an active and "ad hoc" process by which the citizens were obliged to go to the village registration office and enter their names manually in the Village Register of Voters, at the time and manner prescribed by the PPS and with some form of supervision by the Sub-district Election Committees (PPK). The voter eligibility criteria changed several times, election-day voter registration was allowed, and there was no control mechanism to prevent double registration.

7.2. Legislative reference

The idea of adopting a permanent, preferably computerised system of voter registration was largely accepted in principle by all the stakeholders in the discussions that followed the 1999 elections, but was never fully acknowledged by the legislature and inserted in the electoral laws. In fact, the language of the 2000 amendments to Election Law 3/1999 remained vague on the issue, delegating to the KPU the authority to decide on voter registration methods. The new legal framework enacted in 2003 placed voter registration clearly under the responsibility of the central KPU. The principles of the new system were then laid out in KPU Decree 235/2002 on Voter Registration and Continuous Collection of Population Data. Law 12/2003 simply replicated the generic language used in the previous electoral law of 1999.

7.3. Methodology

The KPU, in cooperation with the Department of Home Affairs (*Depdagri*), tasked the Central Statistics Bureau (BPS) with the technical design and field implementation of the registration project. The overall objective was to develop a population database that could be updated without the need to conduct new "ad hoc" voter registration campaigns. The method chosen for the first nationwide data collection activity was a door-to-door canvassing enumeration exercise that took place between April and May 2003, implemented by BPS officials. Around 250,000 analysts collected data on Optical Character Recognition (OCR) forms. Each form was sufficient to collect data on about four family members.³³ In order to ensure that data were collected accurately, specific geographic units called 'census blocks' were used.³⁴

7.4. Voter Registration eligibility criteria

Every citizen of Indonesia who is 17 by Election Day, who does not suffer from any mental disorder, and did not have his/her voting rights revoked by a court decision, is eligible to register to vote. There are also some exceptional provisions that allow those who are married or have been married before being 17 to register.³⁵ The only accepted proof of voter registration in a polling station is the voter card. The general rule on voter eligibility was originally defined in Art. 2 of KPU Decree 01/2004, which stated that voters can only vote if they appear in the voter lists and only in the polling station they are assigned to.³⁶ The issue was then addressed in KPU Decree 37/2004, where a more precise definition of the categories of eligible voters was provided.³⁷ Laws 12 /2003 and 23/2003 guarantee the right to register and vote to Indonesian citizens residing abroad. The system of registration and voting is in person and there are no provisions for by-mail voting.³⁸ Overseas voters registered at specific locations identified by the Overseas Election Committees³⁹ and voted in special overseas polling stations, most commonly in embassies or consular offices.

7.5. Assessment

The 2003 nationwide voter registration exercise was an important step forward and was conducted very professionally, even though the goal of establishing a centralised voter register was not reached. The method of collecting data using the BPS as an implementing agency, with the consequent choice of registering voters using a typical census-style technique, proved to be an important strategic decision given the very limited time available. The voter lists for the Legislative Elections were overall of a high quality.

For the Presidential Elections, the process of updating the voter lists was managed less effectively and raised concern. In particular, the system of entrusting the Village Election Committee rather than the BPS with the task of updating the lists, 40 while effective in terms of data-gathering, proved to be highly inadequate in assuring the quality of the data, detecting

³⁸ See KPU Decree 624/2003

³³ The main pieces of information collected were the names and addresses of the residents, the parents' names, place and date of birth, birth certificate number, marital status and number of marriage certificate, gender, education, status in the family, occupation, religion, blood type and citizenship status, disabilities.

³⁴ Every village is divided into census blocks. The technique was instrumental in preventing the omission of registrants or multiple registrations within the same village.

³⁵ The other exception concerns the members of the National Armed Forces (TNI) and Police Force, who are not permitted to exercise their voting rights for the 2004 elections.

⁶ The exceptions regulated in Art. 4 and 5 of Decree 01/2004 watered down this general rule and were interpreted inconsistently by the same KPU and especially by many sub-district election commissions opening up a potentially dangerous loophole in the system.

⁷ Art. 2 and 6

³⁹ The Overseas Election Committee were established by the KPU in each representative office of the Republic of Indonesia overseas. For the Legislative Elections, overseas voters were entitled to vote only for the DPR, and were assigned to two electoral districts only. The first one for the voters residing in Singapore and Malaysia, DKI Jakarta I with 12 allocated seats in the DPR, and the second one, DKI Jakarta II, for the voters residing in all the other countries with 9 allocated seats in the DPR.

 $^{^{\}rm 40}$ Art.12.2 of KPU Decree 28/2004 to which the EU originally contributed with €3 million .

duplicates and deleting deceased voters from the lists. In addition, the updating of the lists continued well beyond the set deadline, and the inability of the KPU to ensure that provincial offices enforced its regulations caused significant delays and some problems with the distribution and public display of the voter lists at the polling station level, opening up the potential for manipulation and abuses. ⁴¹ This trend continued also in the second round, demonstrating that the continuous update of the voter register for elections so closely scheduled does require a central and computerised voter registration system.

8. The Elected Institutions and Systems of Representation

8.1. Introduction

The novelty of the legislative framework governing the elections, and the links envisaged within it between the legislative and presidential electoral cycles made the entire process a unique event. The 5 April 2004 Legislative Elections were the biggest and most complex single-day elections organised in the world to date and the Presidential Elections were the first direct elections ever held for the presidency in Indonesia.

In the Legislative Elections, each voter was called on to express a preference, on four different ballot papers, for the following four different institutions:

- 1) People's Representative Council (also referred to as House of Representatives) at the national level (DPR),
- 2) Regional Representative's Council at the national level (DPD),
- 3) Regional People's Representative Councils at the provincial level (Provincial DPRDs) and
- 4) Regional People's Representative Councils at the Regency/City level (Regency/City DPRDs).

The DPR is made of 550 members elected in 69 multi-member districts, whilst the DPD has 128 members, four for each of the 32 provinces. The 32 Provincial DPRDs have 211 multi-member districts, and the 440 Regency/City DPRDs 1745. Each district elected in general between three and 12 members, with an average election magnitude of 6.5. In brief, the Indonesian citizens cast their ballots for three different levels of elections, and four electoral races at the same time. 2,286 different ballot types had to be printed, for a total of around 660,000,000 ballot papers. In effect, 2,286 different electoral races were held in the same day.

In the Presidential Elections, the first round of which was held only three months after the Legislative Elections, the entire country was a single electoral district and the voters were called on to express their preference between five candidate pairs shown on a single ballot paper.

8.2. System of Representation for DPR, Provincial DPRDs and Regency/City DPRDs

Law 12/2003 on General Elections introduced significant changes in the electoral system. While the basic choice remained one of a proportional nature, the confused and cumbersome experiment attempted in 1999 of introducing an element of majority system within a substantially proportional system was abandoned in favour of an Open List Proportional Representation (Open Lists). The ballots for the above mentioned institutions therefore contained, apart from the names and symbols of the parties certified to contest the elections, the names of the certified candidates for each party. Voters had the possibility to indicate the one candidate of their choice within the already chosen party's list.

In terms of seat allocation procedure, this change meant that seats are not to be immediately allocated among the winning parties in accordance with the candidates' ranking order on their respective lists, or as it was the case in 1999, according to the party performance in the

⁴¹ A typical example of these abuses is represented by the events that took place in Al Zaytun. See Chapter 24

electoral districts identified with each specific candidate. Candidates theoretically had the possibility to win seats directly, even if ranked very low on their own party lists, in case they reach directly the threshold set in the Law to win a direct seat. However, the threshold for the candidates is set as equal to the specific electoral district quota that each party needs to reach in order to win a seat.⁴² The main rationale of the Open List system is to increase the accountability of the delegates towards their electors, by offering the voters the opportunity to vote directly for the candidates of their choice, outside the directions imposed by the parties' hierarchies. However, some specific restrictions put in place by Law 12/2003 considerably limit the ability of the candidates to be elected directly:

- 1) The threshold set forth in Art 108 for a candidate to be directly elected is very high. It is actually equal to the quota established by the same Law to allocate a seat to a party. This is highly unusual in Open List elections.
- 2) The second restriction is set forth in the counting procedures. Art 93 declares a ballot to be invalid if only the candidate's box is marked, and not the party one. It can be argued that this provision does not take the voters' will into due consideration, and certainly goes against the spirit of the Open List.
- 3) Lack of residency requirements. The candidates do not need to be registered in the electoral district they are running for.

The Open List system introduced an important element of transparency and accountability in the political system: the party leaderships were forced in many cases to place their most popular candidates at the top of their lists, and few candidates came out to the fore and campaigned directly for their election. However, the final results for the DPR show that in 71% of the cases the Open List system had no impact on the elections of the candidates, who, given their ranking in their respective party lists, would have been elected in any case. Moreover, in 29% of the cases the highest-scoring candidate in an electoral district failed to get elected. There are no statistics available yet for the provincial and Regency/City DPRDs, but it appears evident that the enormously more complex logistical machinery that had to be put in place for legislative elections with the Open List system generated almost the same results as if a closed list ballot system had been used.

8.3. System of Representation for the DPD

The creation of a second elected legislative chamber at the national level, the DPD, had the main scope to balance and monitor the legislative powers of the DPR and probably pave the way towards a fully-fledged bicameral system. The DPD is composed of 128 members, with an equal number of elected representatives (four) from each province. From a technical point of view, the main peculiarity of this new institution is represented by the choice of the Single Non-Transferable Vote (SNTV) as its system of representation.

The SNTV is perhaps the simplest system of representation for voter and electoral administrators. The first four highest scoring candidates from each Province are directly elected to DPD. There are however, two other requirements imposed on candidates that make the choice of the SNTV peculiar. The first one is the so called "no-party affiliation" clause. However, there is no clear prohibition in the campaign finance regulations to prevent parties from funding DPD candidates. If the rationale was to promote the participation in the legislative process of individuals representing regional interests rather than the political parties'

⁴² The seat allocation process can be divided into three different phases: A) determination of the quota, B) allocation of seats to winning parties and within that, allocation of seats to individual candidates, C) eventual allocation of remaining seats with the Largest Remainder formula.

⁴³ There are only two candidates who managed to be directly elected by reaching the set threshold. However, they would have been elected in any case with a closed system as they were ranked first in their respective party lists.

⁴⁴ Law 12/2003 prohibits in fact the candidacy of anyone who has been on a party board in the past four years, even

⁴⁴ Law 12/2003 prohibits in fact the candidacy of anyone who has been on a party board in the past four years, even though for the 2004 elections only, the length of the no party affiliation clause was cut down to three months prior to the enactment of Law 12/2003.

ones, the full achievement of this purpose might be reached only at the next round of elections when the detachment of the future DPD candidates from the parties' machinery is accomplished. For these elections, it proved to be relatively easy for former high-ranking party veterans to contest the DPD elections masked as independents.

The second requirement is that of residency. Indonesian citizens can stand as DPD candidates only in the province where they are registered to vote. While this requirement is by itself quite normal and generally used in many other countries, including those using the SNTV, in Indonesia it is solely applied for the DPD and not for the other institutions. Every candidate must be resident and registered to vote within the relevant province for at least three years or have been a resident for ten years since the age of 17.

The overall impression is that the stakeholders have not yet come to appreciate the peculiarities of the SNTV system. Strategic nominations and careful voter management techniques from large parties could have yielded larger advantages to better-organised interest groups. Instead, candidates supported by large parties won fewer seats than they might have. This favoured the election of some civil society-backed candidates who managed to win a seat with relatively limited percentages of valid votes. This represents a positive element of diversity and change in the system.

8.4. System of representation for the election of the President and Vice-President

The system chosen for the direct election of the president and vice-president is the majoritarian Two-Round System (TRS). The presidential and vice-presidential candidates are nominated together by a party/coalition and run together in a so-called presidential ticket, which in the Indonesian legal framework is often referred to as "candidate pair". The TRS is probably the most popular system in the world for presidential elections, even in countries with an established proportional tradition for parliamentarian elections. For countries governed by presidential regimes, the TRS is in fact regarded as the best way to avoid a candidate being elected president with only a minority of votes. The system basically demands a second round if no candidate wins the required majority in the first round.

The Indonesian TRS formula of required majority introduces an element of proportionality aimed at ensuring adequate popular support from the vast and variegated provinces that make Indonesia. The second round takes place if after the first round there is no candidate pair with an absolute majority of the valid votes (50%+1) and at least 20% of the valid votes in at least 50% of the provinces. The second round is a straight runoff (decided by simple national majority) between the two highest-scoring candidate pairs of the first round.

A significant theoretical benefit of presidential elections with TRS is the possibility given to voters to have a second choice for their chosen candidate, or even the possibility to change their minds on their favoured choice between the first and the second round enabling the parties and the electorate to react to changes in the political landscape that might have occurred in the meantime. However, this was hampered by the very restrictive campaign rules for the second round. Overall, the TRS proved to be well suited to Indonesia, and its peculiar features (e.g. the creation of more transparent alliances and the facilitation of more open and meaningful confrontation between the contesting candidates) should be further reinforced for future elections.

⁴⁵ See Chapter 15 of this report.

9. The Right to Stand and the Right to Vote

9.1. Overview

The present legal framework guarantees the respect of fundamental freedoms including general principles of direct, free and fair elections enshrined in the Constitution (Art; 22 E), Law 12/2003 on Legislative Elections (Art.2) and Law 23/2003 on Presidential elections (Art. 2). The fundamental rights to elect and be elected are also guaranteed. The general criteria for voter eligibility are spelled out in Art. 13-14 of Law 12/2003 and Art. 7-8 of Law 23/2003.

These requirements are generally in line with internationally accepted standards. A peculiarity of the country is the voting age, established at 17 years, with also specific exceptions for those who are married or have been married before being 17. This seems to reflect a reality in the country especially in remote areas where the marriage age is low.

Art. 145 of Law 12/2003 and Art. 102 of Law 23/2003 contain a ban for members of the armed forces and the police to vote during the 2004 elections. Even though the ban can be seen as a consequence of the political compromise that brought about the end of the authoritarian regime backed by the military, and was widely accepted by the army and police forces as a sign of their neutrality and commitment to democratic transition, in practice the provision deprived almost half a million Indonesians of the right to vote and should be removed for the next elections.

As for the right to stand, Art 60-64 of Law 12/2003 provides for general requirements for candidacy such as age, nationality and education. Members of the army or the police must resign from their posts in order to compete. Art. 60 (g) sets forth a prohibition on the right to stand in the Legislative Elections for former members of the Indonesian Communist Party (PKI) or people connected with the "Movement of the 30 September 1965". The same provision is repeated in Art. 6 of Law 23/2003. This prohibition is disproportionate and discriminatory and against internationally recognised standards. The Constitutional Court has made the first step towards the removal of this ban⁴⁶ by declaring the unconstitutionality of Art 60 of Law 12/2003. However, a similar provision still stands in Law 23/2003 for the Presidential Elections. Another excluded category, reflected in both laws, is related to citizens that have been imprisoned with a final court decision for treason or with a sentence punishable with five or more years, or those who have been declared bankrupt.

The provisions of Art 60 of Law 12/2003 set forth educational requirements (high-school diploma) for becoming a candidate for the DPR and Provincial and Regency/City DPRD that were not present in the 1999 elections. While such a requirement is acceptable for the DPR, it can be viewed as discriminatory for Provincial and Regency/City DPRDs. For the Presidential Elections the educational requirements are laid out in Art. 6.18 of Law 23/2003, which requests a high school diploma or its equivalent.

9.2. The "Gus Dur" Case

Article 6(d) of Law 23/2003 provides for health requirements for candidates, stating that the president and vice-president shall be physically and mentally able to perform their duties and obligations required by their presidential and vice-presidential status⁴⁷.

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⁴⁶ The case was submitted to the Constitutional Court on 15 October 2003 and ruled upon on 24 February 2004. The petitioners were members of the civil organisation Institution for Legal Assistance (LBH) and members of the Institution for the Struggle for the Rehabilitation of New Order Regime Victims. The court upheld the petition to annul Art. 60 (g), but this had no impact on the Legislative Elections of 5 April as it came out when the nomination of candidates was almost finalised.

candidates was almost finalised.

47 Gus Dur (in his capacity as PKB Chairman) lodged a first challenge to the Constitutional Court on 19 April, before the nomination period for candidate pair opened, questioning the constitutionality of Art 6 (d) of law 23/2003. The case was dismissed.

The KPU then enacted Decree 31/2004 with more restrictive health requirements to become a candidate. As a result, it rejected the candidate pair formed by Abdurrahman Wahid (hereinafter referred as Gus Dur) and Marwa Daud Ibrahim, as Gus Dur failed to meet the requirement of more than 50% sight, introduced by Decree 31/2004.

Following Gus Dur's disqualification, his party, the PKB, filed three challenges to PANWASLU⁴⁸ and one with the Supreme Court to demand the postponement of the execution of the KPU Decree on the presidential nominations. ⁴⁹ The Supreme Court rejected the petition based on lack of competence, avoiding therefore what could have been a difficult decision. In the petition Gus Dur claimed that article 6 of Law 23, setting out the requirements for running in the 2004 presidential elections, were contrary to the constitutional rights to "equally develop society, nation and country, by participating as presidential and/or vice presidential candidate in the presidential election, which constitute a right guaranteed under the 1945 Constitution."

Provisions related to the health conditions of candidates like the ones contained in Decree 31/2004 are unusual in international practice. The disqualification of Gus Dur, preventing a partially blind person from standing in the Presidential Elections, based on the necessity of eyesight for the office, is discriminatory and goes against the democratic principle of freedom of choice of voters, as well as violating the human rights of the disabled. It would be advisable that steps are undertaken in order to remove this discriminatory provision.

10. Political Party Registration and Nomination of Candidates

10.1. Overview

Law 31/2002 on Political Parties and Law 12/2003 on Legislative Elections contain a particularly stringent set of prerequisites to determine the participation of political parties in the electoral process and register for the Legislative Elections. The first set of prerequisites is enshrined in Law 31/2002, and only those parties that are already recognised under this law can then become "electoral participants" and be eligible to register for the Legislative Elections. According to Article 2, a political party must be registered with the Ministry of Justice and be established through a notarial deed in accordance with the relevant constitutional provisions. In order to be registered with the Ministry of Justice, a party must have executive boards in at least 50% of the total number of provinces, in 50% of the total number of regencies/cities in each of such provinces, and 25% of the number of the sub-districts in each of such regency/city. The validation of the political party as a legal entity has to be confirmed by the Ministry of Justice no later than 30 days after the receipt of the party's registration.

Art. 7 of Election Law 12/2003 further restricts the right to become an electoral participant by setting, for those parties that already meet the criteria set forth by Law 31/2002, an additional set of requirements based on the number and geographical distribution of party branches. ⁵⁰ A third element of restriction is contained in Art. 9 of Law 12/2003, whereby a party, in order to be eligible to register for future elections, must obtain at least 3% of the number of seats in the DPR and at least 4% of the number of seats in the Provincial DPRDs, of at least one half of the total number of seats in the Regency/City DPRDs of at least one half of the total number of

⁴⁸ PANWASLU rejected the first two petitions on the basis that the seven-day deadline for submitting complaints had expired. In the third petition, Gus Dur asked PANWASLU to allow him to be added to the candidate list provided for by Decree 36/04. PANWASLU rejected the petition stating that it had no authority to grant the petitioner's request as this is only within the KPU's competence. The decision further stated that the KPU did not use its full authority to examine the physical ability of Gus Dur and that the KPU quoted non-existing legal provisions.

⁴⁹ In addition, Gus Dur filed a civil suit against the KPU, the Ministry of Health and the Indonesian Doctors' Association (IDI) on grounds of defamation, stating that his reputation was damaged as a result of his exclusion.

⁵⁰ An example of these further restrictions is the need to have a complete board of administrators in at least two thirds of the number of provinces, in at least two thirds of the number of regencies/cities within such provinces, and at least 1,000 members or 1/1,000 of the total number of residents as members in each place where a party has a steering board.

regencies/cities in Indonesia.⁵¹ There is no provision in the law for the participation of independent candidates.

For the DPD, the right to register as a candidate is open only to those individuals who can show a specified minimum number of supporters in their relevant province. The number of support signatures required depends on the population size of each province.

The combination of the provisions contained in Law 12/2003 and Political Party Law 31/2002 created a system that in its complexity must be viewed as highly discriminatory. The stringent requirements hamper the emergence of regionally-based political parties, whilst tending to disproportionately favour those political parties that have the resources and financial capacity to settle branches throughout Indonesia. This can also be viewed as contradicting one of the main stated objectives of electoral reform, which was to enhance local participation and local instances and establish geographical links between the candidates and their electorate.

10.2. The nomination of candidates and their verification

Chapter VII of Election Law 12/2003 sets forth the main criteria for the verification of the applications for candidacy for the DPR and DPRDs and delegates the issuing of further regulations to the KPU. The registration and verification process for parties as electoral participants is regulated in KPU Decree 105/2003, and Decree 675/2003 spells out the verification procedures for candidates' application to the DPR and DPRDs. The mechanism envisaged by these regulations is detailed and transparent, even though no real thought was given to the amount of work and time required for its proper and uniform implementation throughout Indonesia.

The regulations, apart from their detailed requirements, were issued quite late (December 2003) and the parties struggled to digest and comply with their provisions. Each party could nominate candidates for up to 120% of the total seats assigned to each electoral district. Nominations had to be presented to the relevant level of the election administration (DPR and DPD at the central KPU level, Provincial DPRDs at the Provincial KPUs and Regency/City DPRDs at the Regency/City KPUs). Candidates could be nominated only for one elected body and only in one electoral district. There was also a recommendation (already contained in the Law) for political parties to nominate at least 30% women candidates in each electoral district.

For the DPD, candidates must have lived in the province in which they stand for candidacy for at least three consecutive years prior to nomination or for a cumulative period of ten years since they were 17. They must have the support, evidenced by a number of signatures related to the provincial population, of a specified number of the population of the province.

The relevant KPU level carried out the verification process, with a review possible by the national KPU, the decisions of which are final. During the verification process, a large degree of flexibility was exhibited by the KPU in extending the deadlines given to parties, by which it implicitly acknowledged that the requirements set forth were particularly severe. The original deadline for registration was 6 January 2004, but this was moved several times to allow improperly filled out candidate applications to be corrected and missing documentations to be submitted. This was also due to the inability of the KPU to properly verify in a timely manner the enormous number of applications.⁵²

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⁵¹ For the 2004 Legislative Elections the severity of this provision was slightly mitigated by Art. 142 of Law 12/2003, whereby a participating political party was considered to be one that in the 1999 Legislative Elections had received at least 2% or more of the number of seats in the DPR or at least 3% of the number of seats in the Provincial DPRDs or Regency/City DPRDs spread throughout at least a half of the number of provinces and a half of the number of regencies/cities throughout Indonesia.

⁵² At the time of writing, there are no official KPU figures available on the number of candidates and the number of applications. EUEOM estimates that at least 350,000 candidates' applications for the three levels of legislative elections were filed.

The verification process of candidates' applications was an enormous challenge for the KPU.⁵³ It proved to be a disorganised and extremely time-consuming exercise. The unforeseen difficulties of the Open List system markedly contributed to the confusion, and the delays in the finalisation of the candidates' lists impacted severely on the timeline for the ballot production. The KPU decision to exert flexibility and extend timelines in the verification process was a sensible one, but highlighted a lack of planning and understanding of the mechanisms of the Open Lists. The discriminatory education requirements set forth for candidates' applications especially for the Provincial and the Regency/City DPRDs caused confusion and resulted in an extremely chaotic and not uniformly implemented verification process. This was confirmed by the allegations of a high number of forged education certificates unveiled by PANWASLU⁵⁴ and by the cases that it brought before the District Courts.⁵⁵

10.3. The nomination process for presidential and vice-presidential candidates

Chapter VI of Law 23/2003 deals with the nomination process of presidential and vice-presidential candidates' ticket (candidate pairs). Art 101 states that the candidate pairs' applications must be submitted by parties or coalitions of parties that have achieved either 3% of seats or 5% of the valid votes in the DPR elections. In the 2009 elections this threshold will increase to 15% of seats or 20% of the DPR votes. This appears to be too high and will result in an extremely limited number of candidates. For example, President Yudhoyono himself would not have been able to stand if such threshold had been applied for the past presidential elections.

Even though the nomination of a candidate pair must be submitted by a party or a coalition, the candidates do not necessarily have to belong to the party or one of the parties that form the coalition. A party/coalition may only nominate one candidate pair, and coalitions of parties may be created for the sole purpose of nominating a candidate pair.

The candidate pairs that contested the Presidential Elections could be nominated only after the final results of the Legislative Elections had been announced. The submission of candidatures was therefore open from 6 to 13 May 2004. On 22 May 2004 with Decree 36/04, the KPU announced the names of the eligible candidate pairs. Five candidate pairs qualified to participate in the 5 July elections, while the PKB nominated candidate pair Wahid/Ibrahim was rejected on health grounds. Fig. 12 The presidential Elections could be nominated only after the final results of the submission of candidatures was therefore open from 6 to 13 May 2004. On 22 May 2004 with Decree 36/04, the KPU announced the names of the eligible candidate pairs. Five candidate pairs qualified to participate in the 5 July elections, while the PKB nominated candidate pair Wahid/Ibrahim was rejected on health grounds.

The candidature of retired general Wiranto raised international concerns related to his alleged responsibility in the violation of human rights committed in East Timor in 1999 following the UN-sponsored independence vote.⁵⁸

⁵³ The total number of candidates for the DPR was 7,756 and for the DPD 940. The figures for the DPRDs are not available at the time of writing.

⁵⁴ As of 6 October, 304 cases were reported/discovered by PANWASLU and investigated.

⁵⁵ According to PANWASLU, out of the 304, 54 were referred to the District Courts. In 11 cases forgeries were found. 28 cases are still pending before the District Courts and two before the High Court. 98 cases are still being investigated by the police. The remainder are still with PANWASLU.

⁵⁶ The five nominated candidate pairs were: incumbent president Megawati Soekarnoputri/Hasyim Muzadi nominated by PDI-P, Wiranto/Solahuddin Wahid, nominated by Golkar, Susilo Bambang Yudhoyono/Jusuf Kalla, nominated or supported by PD, PBB and PKPI, Amien Rais/Siswono Yudohusodo, nominated or supported by PAN, PBR, PPIB, PPDI, PBSD, PSI, PNBK and PNI Marhaenisme, Hamzah Haz/Agum Gumelar, nominated by PPP.

⁵⁸ Wiranto indicted on 24 February 2000 by the UN Deputy General Prosecutor for Serious Crimes of the Dili District Court in East Timor. The indictment stated that under international law, Wiranto was responsible for crimes against humanity for failing to punish or prevent crimes committed by his subordinates or those acting under his control in the period before and after the 1999 popular consultation in East Timor. On 11 April 2000, the Indonesian Minister of Foreign Affairs dismissed the court's decision on the grounds that the UN-backed Dili tribunal had no international jurisdiction.

11. Gender Issues Related to the 2004 Elections

11.1. Background

In the 1999 elections, 9.2% of those elected to the national parliament (DPR RI) were women, with women's representation in the provincial assemblies reaching just 5.2%. Following these results, there was a concern particularly among civil society organisations and activists about the under-representation of Indonesian women in the legislature and debates were held throughout 2001 and 2002. The debates concentrated on a patriarchal analysis of Indonesian society and political life, describing a view of women as housewives rather than citizens, and a consequent unwillingness within political parties to include a women's agenda. From May to December 2002, the Women's Caucus in parliament and the Women's Caucus made up of members of political parties and women's activists lobbied for an electoral law that would require parties to nominate at least 30% women candidates, and have their names placed in alternate order.

The consequence of this was the inclusion of articles within Law 31/2002 on Political Parties (Article 13) and Law 12/2003 (Article 65) that called on political parties to give consideration to a minimum of 30% women's representation without concretely setting forth a compulsory quota. They also call on parties to give due regard to gender equality and justice. Out of the 24 political parties registered for the 2004 elections, eight did not reach the 30% quota for women as candidates. Among these were the most established parties, such as Golkar (28.3%), PDI-P (28.3%), PPP (22.3%) and PBB (23.8%). The PKS had the highest proportion of women as legislative candidates with 40.3%. The Centre for Electoral Reform (CETRO) developed a programme aimed at promoting 25 women legislative candidates in order to overcome their lack of a political network. The 2004 legislative elections led to 11.8% women candidates elected, from nine parties - despite the legal recommendations and civil society efforts, an increase of just 2.6% on the 1999 elections.

For the Legislative Elections, there were 2,507 women candidates (32.3%). Out of this number, only 242 (9.7%) were ranked first on their respective party list. Another 421 (16.8%) women were ranked second on their party's candidate list. The remainder were in the so-called 'shoes position' or lower ranks. Some women candidates complained that Law 12/2003 was not effective because it did not oblige political parties to place women in protected positions, pointing out that women low in the lists would not have a good chance of being elected, especially when the areas they represented are not within the stronghold of the party. Given the very high thresholds for being directly elected, there were also cases where women candidates were the highest scoring ones in their list but did not win any the seats.⁵⁹

27 women were also elected to the DPD, out of 83 candidates (8.83% of the total number of candidates). They make up 21.9 % of the assembly. Almost one third of the provinces do not have any woman DPD member. 60 The SNTV and the no party affiliation clause facilitated their election. Most of the women who were elected belong to noble families or are former bureaucrats, from the business sector, or were leaders of civil and religious organisations.

Women voters made up 52% of the eligible voters. The problems women face in rural areas are mainly related to poor education and a strong social system that encourages women to see their role as based in the home. However, the phenomenon of family voting where female members of family are represented by the man as the head of the family in casting their votes on Election Day did not widely occur. Even so, some women's groups called for a more specific

⁵⁹ Some examples of this were: Nurul Arifin, Golkar's third candidate on the list of West Java 6 electoral district in which she won 81,566 votes whilst the first candidate Ade Komaruddin was elected with 61,491 votes; Eva K. Sundari, the third candidate on the list of PDI-P for East Java 5, and Maria Ulfah of PKB's second candidate for West Java 7 had the same experience.

⁶⁰ West Sumatra, West Java, East Java, NTB, NTT, South Kalimantan, South Sulawesi, South East Sulawesi and Gorontalo.

targeting of women voters to raise political awareness of women through voter education programmes.

11.2. Fatwa Against Megawati

A fatwa, or instruction, against electing a women president was issued by senior clerics of the East java chapter of Nahdlatul Ulama (NU) in Pasuruan, East Java on 3 June 2004. NU is the largest Muslim organisation in the country with a reported 40 million members. Ironically, its chairperson, Hasyim Muzadi, ran as vice-presidential candidate to Megawati. The meeting in Pasuruan was attended, among others, by Solahuddin Wahid, vice-presidential candidate to Golkar's Wiranto and also brother of former president Abdurrahman Wahid who was replaced by Megawati.

This was not the first time Megawati become the subject of such a fatwa. In 1999, certain clerics and politicians, including Hamzah Haz (who later became Megawati's Vice-President in office), stated that a woman should not be president. In 1999, one of the presumed reasons supposed for Megawati losing the presidency in the People's Consultative Assembly (MPR), was the fatwa against a woman president, thought to be purely political in nature. Many commentators also saw the religious decree issued against Megawati during the 2004 elections as similarly politically motivated.⁶¹ In this case, the fatwa was not thought to have had a detrimental effect on Megawati's campaign.

12. Accreditation of party/candidate witnesses and observers

Provisions for national and international observers are contained in both Law 12/2003 (Art. 86/87) and Law 23/2003 (Art. 135/136). In addition, KPU Decree 104/04, along with the attached Code of Ethics, describes the accreditation procedures, rights, obligations and principles for observers. 'Technical Guidelines for the Registration of Election Observers' were also issued by the KPU to further regulate the accreditation procedures.

The provisions for observers are generally in line with international standards and practice, allowing free access of observers throughout Indonesia to observe all stages of the electoral process, including pre-electoral activities (Art. 6 Decree 104). However, the Memorandum of Understanding (MoU) signed between the EU and the Government of Indonesia specified that observation in certain areas required prior notification or permission. This was explained as being security related, in case of unrest in certain parts of the country in the run up to the elections.

Two additional provisions - namely the right to assist voters in formulating reports to election supervisors, and the obligation to submit findings to the KPU before their release to the media, are quite unusual. The former is against the principle of neutrality spelled out in both the KPU and EU Codes of Conduct. In practice, these provisions did not generally interfere with the impartiality of observers, nor did they result in a curtailment of the assessment of their findings. However, the obligation to submit findings to the KPU prior to their public release led to one disproportionate measure taken by the same KPU against a domestic monitoring group. The KPU refused in fact to grant the Independent Election Observation Committee (KIPP) the accreditation to observe the Presidential Elections, after the monitoring group failed to submit its observation findings on the Legislative Elections to the KPU prior to their publication.

In addition, the Technical Guidelines specify that observer applications should include personal details and information about individual experience in election observation. These provisions were interpreted extensively by the KPU, which asked observers to submit their CVs in order to

⁶¹ President Megawati was the only woman among the five candidates contesting the presidential elections. PKB Deputy Chairman Mahfud MD declared shortly after the Pasuruan meeting that the message issued by the 12 clerics was not a 'fatwa', but merely a statement of opinion. This position was also taken by Abdurrahman Wahid, who is the head of the advisory body *Dewan Syuro* of the PKB. The PKB is the party that was essentially founded by the NU and which is therefore seen as its formal political representation.

be accredited. The request was included in the MoU that the EU signed with the Indonesian government.

Another issue caused some confusion and initial apprehension during the Legislative Elections. According to the Attachment 3 and 4 to the KPU Decree 01/2004 on Voting and Counting, the observers' movement in the polling stations was to be restricted behind a rope. However this rarely represented a problem and was annulled for the Presidential Elections. The provision was contrary to internationally accepted standards.

According to the laws, party and candidate witnesses were allowed full participation in all stages of polling and counting. Witnesses had to produce a letter of authorisation from their campaign team. There could be a maximum of two witnesses per party/candidate per polling station, with one serving as substitute. The laws emphasised the importance of witnesses by providing for a recount if for some reason the vote count had been closed to witnesses.

13. Election complaints mechanisms

PANWASLU, the KPU, the Courts and the Constitutional Court are the bodies mandated to deal with election-related disputes. The complaints system for the Legislative Elections mirrors the one for Presidential and Vice-Presidential Elections.

The first instance of authority is PANWASLU, which is entitled to deal with disputes that are neither criminal (to be transferred to criminal courts for investigation) nor administrative (to be transferred to the KPU). For administrative violations, PANWASLU is not entitled to issue sanctions, which are the sole responsibility of the KPU. However, the law does not define what constitutes an administrative violation. In practice, PANWASLU dealt mainly with disputes arising from campaigning.

While some lower level election commissions (Provincial and Regency/City KPUs) are obliged to "receive and process complaints", this is neither expressly stated for the national KPU nor for its lowest tiers. PANWASLU may only transfer complaints to the corresponding KPU level (e.g. Regency PANWASLU to Regency KPU). The competence to adjudicate disputes lies with every KPU tier, although higher KPU tiers may review the actions of the subordinate branches. The decisions of the central KPU are final and binding.

The current system primarily lacks a clear division of competence between the KPU and PANWASLU. Moreover, the KPU is not bound by any timelines in reviewing lower tier decisions. The management of the complaints system should be systematised and made more transparent for aggrieved parties and observers. It would be advisable for the KPU to develop internal complaints procedures. These weaknesses highlighted the need for an independent judicial body to adjudicate election-related complaints. This body could be an "ad hoc" structure, such as an Election Tribunal, or a separate branch of the existing judicial system.

The Law on the Constitutional Court (CC) 24/2003, describes the competence of the CC to handle appeals regarding the election results. Complaints may be submitted by candidates of DPR, DPRD, DPDs and by candidate pairs. According to Art. 74, parties or candidates must submit their appeal within three days of the national declaration of results by the KPU. In the appeal, the appellant must clearly state the type of error in counting, the polling stations affected and the correct results according to the appellant (Art. 75). The CC must issue a decision within 14 days from the notification of the appeal for the Presidential Elections and within 30 days for the Legislative Elections (Art. 78). The decisions of the CC are binding and final.

37

⁶² The elucidation of Art.130 of Law 12/2003 specifies that: 'Administrative violations means violations of provisions and requirements as defined in this law.'

If the appeal is accepted, the CC may annul the KPU count and must declare the correct results itself without ordering a recount from the KPU (Art 77. Item 3). This unusual procedure places a heavy burden on the plaintiff, who has to produce precise calculations and the location of polling stations involved.

14. Voter Education

The KPU is mandated by law to organise and support voter education activities. 63 Like training, voter education activities were not adequately funded in the initial KPU budget. International funds covered the great majority of the design and implementation costs, under the auspices of the Election Assistance Programme of the UNDP. For any given electoral event, the UNDP granted donations to a number of NGOs 64 (selected in coordination with the KPU) from the UNDP trust fund (out of the $\mathbf{\xi}7$ million that the EU contributed to the UNDP trust fund, $\mathbf{\xi}3$ million were earmarked for voter education).

The project was mainly targeted at covering the period preceding the Legislative Elections. Funding was directly disbursed by the UNDP in accordance with the implementation schedule of the respective NGOs programme.

The majority of the voter education initiatives had been already concluded before the deployment of the EU EOM.⁶⁵ However, levels of voter awareness varied significantly from area to area, even within the same province, and were reportedly strongly influenced by the effectiveness of the different initiatives conducted at the local level by NGOs and the KPU. The main source of information for voters was the mass media, and this remained a clear feature throughout the observation period. One of the main criticisms reported to EU EOM observers was on the impact of voter education within rural areas, where the general level of education was seen as an inhibiting factor in understanding the changes in the electoral system. The role played by parties and candidates in this process was generally positive, even though they tended to use their voter education initiatives for campaigning purposes.⁶⁶

Observation during the Presidential Elections revealed a marked decrease in voter education activities in comparison with the Legislative Elections. This is for the large part a direct consequence of reduced funding of NGOs, which previously carried out such activities.⁶⁷ The issue of access to information for non-Bahasa speaking Indonesians was raised in connection to certain initiatives.⁶⁸

The impact of voter education activities was mixed. The figures of invalid ballots published by KPU (8,81%) for the Legislative Elections⁶⁹ showed that the level of understanding of the procedures by the voters was quite satisfactory given the complexity of that electoral event. The debacle of the double-punched ballots during the first round of the Presidential Elections put into question the overall awareness of the electorate on how to vote. Although voter education was not the only factor involved, the issue highlighted the need for continued and more targeted efforts in this field.

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⁶³ Art 26 Law 12/2003 and Art.11 of 23/2003, and further regulated in KPU decree 623/2003.

⁶⁴ See Annex IX Many of the selected NGOs also operated as KPU partners at the local level to help the voters familiarise themselves with voting and counting procedures.

⁶⁵ The EU EOM focused its field observation on the means, the effectiveness of the programmes and the definition of the target groups.

⁶⁶ A typical case was observed on 25 of March in Bukittingi (West Sumatra) where a KPU voter education event was jointly conducted by KPU officials and a Golkar candidate. Another case was observed in Riau, where the NGO Riau Mandiri used dummy ballot papers showing only the picture of its chairman, a candidate for a DPD seat. In Semarang (Central Java) the KPU conducted a joint session with a DPD candidate.

⁶⁷ Despite this, the KPU, religious organisations and some prominent local NGOs carried out workshops targeting community and religious leaders or specific sectors of society, including women, teachers, and journalists. Separate sessions for first-time voters were also organised. These events were in addition to the sessions held by campaign teams to demonstrate to voters how to punch ballots for their candidate.

⁶⁸ Lombok and North Maluku

⁶⁹ This is an average for all the four level of elections. The percentage of invalid ballots was probably higher for the DPD elections, where the absence of party symbols might have confused voters.

15. **Electoral Campaign Rules**

15.1. Legislative Elections

Campaign rules⁷⁰ for the Legislative Elections provided for a three-week campaign period (11 March - 1 April 2004) followed by three days of campaign silence. Various forms of campaigning were permitted (e.g. outdoor rallies, indoor meetings, distribution of campaign material, dissemination through print and electronic media, placement of display material at public places) in order to facilitate the electoral participants (political parties and candidates) to inform the voter about their "vision, mission and programme". The provisions contain equal access clauses regarding media,71 access to public places, and prohibitions for state officials (down to village chiefs) to be involved in campaigning. Despite the detailed regulations, 72 the framework provided political parties and candidates with adequate opportunities to address the electorate.

15.2. Presidential Elections

Campaign rules for the first round of the Presidential Elections⁷³ were similar to the Legislative Elections and contained adequate provisions for campaigning. They allowed for a 30-day campaign period, followed by a three-day campaign silence prior to Election Day. In order to minimise the risk of clashes between supporters of different candidate pairs, the country was divided in five zones in which each candidate pair had the exclusive right to campaign for a period of six days. Public dialogues between the candidate pairs, broadcast live on all major TV channels, were the first of their kind in Indonesia.

For the second round of the Presidential Elections, campaign activities were limited to three days. The unusual formulation of Art. 35 of Law 23/2003 caused concern among stakeholders in general as well as lengthy negotiations between the candidate pairs and the KPU over its applicability to the second round.

As a result, the KPU issued a belated decree⁷⁵ further limiting electoral campaigning to a threeday period of 'refinement of the vision, mission and working programme' of the candidates. and restricted the type of activities that could take place. ⁷⁶ The core of the campaign activities was constituted by three public dialogues on TV organised by the KPU, in which the two candidates discussed separately with two different panels of experts (approved by the candidates) on previously selected topics. The late issuance of the regulations led to ambiguity over how the candidates should maintain their visibility and access to voters in the pre-election period, and opened up the possibility for candidates to campaign unofficially.

The provisions were highly restrictive, especially for a two-round electoral system. Voters' ability to be informed was hampered as a result, especially considering that two and a half months had elapsed between the first and the second round of the elections and that 40% of the voters in the first round voted for a candidate who did not stand in the second round. The three-day campaign rule was highly unusual for two-round elections prevented the candidates from adequately addressing the electorate and in practice favoured the incumbent.

⁷⁰ Art 71-77 Law 12/2003 on General Elections for the members of the DPR. DPD, Provincial DPRD, Regency/City DPRD; KPU Decree 701/2003 on Campaigning for the Elections of DPR.

⁷¹ See Chapter 17

⁷² Examples of this were rallies limited to between 09:00 – 16:00 hours, campaign display items must be distanced at least 50 cm away from that of another electoral participant, a ban on negative campaigning.

⁷³ Art. 35-42 Law 23/2003, KPU Decree 35/2004 on the campaign for the General Election of the President and Vice-President.

⁷⁴ Item 9 of Art. 35 which specifically mentions campaigning during the runoff election, states that the two candidate pairs 'may improve their vision, mission and programme, under the regulation and facilitation of the KPU'. The KPU is mandated with the responsibility of determining the procedures and timetable for conducting the election campaign 'taking into account proposals from the candidate pairs'.

⁷⁵ KPU Decree No. 48/2004 was issued on 8 September 2004, 12 days before election day.

⁷⁶ The main activities permitted were candidate dialogues, speeches on radio/TV, dissemination through electronic and print media, distribution of campaign materials, indoor meetings. No outdoor rallies were allowed.

Art. 33 and 34 of KPU Decree 35/2004 addressed the issue of incumbent officials as candidates for the first round, requiring them to take leave when campaigning and prohibiting the use of state facilities. However, the law fell short of providing adequate provisions to prevent those in power from drawing political advantage from their official public appearances during the pre-election period.

15.3. Campaign Finance - 'Money Politics'

The financial provisions governing the Legislative⁷⁷ and the Presidential Elections⁷⁸ are quite similar. Political parties and candidate pairs are obliged to open a special account for campaign funds into which campaign donations have to be paid and from which expenditures for campaign activities have to be financed.⁷⁹ Election participants and candidate pairs were obliged to send a campaign fund report to the KPU within a certain period of time after Election Day (60 days and three days respectively). Public accountants selected by the submitting party then conducted an audit, the results of which were publicly announced by the KPU. However, the regulations elaborated by the KPU⁸⁰ did not adequately build on the provisions of the law. The main weaknesses were the lack of appropriate auditing and investigative procedures, as well as enforcement mechanisms. The KPU neglected the implementation of this important aspect of the process, admittedly due to time and financial constraints.

The sanctions foreseen in the law (criminal sanctions or disqualification from standing) for violating these provisions are neither adequate nor practical. During the first round of the Presidential Elections both runoff contenders received contributions from sources whose identity was not clear and failed to return them within the legally requested period. The only sanction applicable in this case – disqualification of the candidates - was impossible to implement. A differentiated system of penalties would be more appropriate.

The relaxed approach by the KPU, together with the lack of appropriate sanctions probably encouraged a certain laxity in meeting the provisions on the part of many candidate pairs. Although the EU EOM did not focus on observing this part of the process, it took note of various reports of specialist domestic NGOs, which highlighted a number of serious problems, such as fictitious individual and company addresses, difficulties in tracing donations for less than Rp 5 million (€455), and double donations from companies that used subsidiaries.

There are several provisions in the law prohibiting vote buying and the matter was somewhat over-regulated for the Legislative Elections, during which it was prohibited to 'make promises and/or give money or gifts to influence voters'. 82 This restrictive regulation was toned down for the Presidential Elections.

The EU EOM received reports that in a number of cases participants at mass rallies or motorcycle parades received money for their attendance (some of them making it a 'profession', joining in rallies of various different political parties). Future legislation might take

⁷⁷ Art 78-80 Law 12/2003 and KPU Decree 30/2004 on Guidance for the Audit of Financial Reports of Political Parties and the audit of campaign fund reports of General Election Contestant; Art 9 and 17-19 Political Party Law (12/2003).
⁷⁸ Art. 43-45 Law 23/2003 and KPU Decree 30/2004.

⁷⁹ Individuals can donate up to Rp. 100,000,000 (€9,100) and private legal entities up to Rp. 750,000,000 (€68,200). Contributions beyond Rp. 5,000,000 (€455) have to be reported to the KPU. It is forbidden to accept donations from abroad, from state enterprises or from contributors whose identity is not clear.

⁸⁰ KPU Decree 30/2004 does not contain any specific guidance or standards on how to present and disclose the received funds and on what kind of donor's data is mandatory (for example there was no obligation to indicate the donors' names and addresses) in the disclosure forms. The reports submitted by the candidate pairs varied therefore significantly in the format, standard and manner of disclosing the information. Other standard provisions that are missing in the mentioned decree are the following: request of candidates statement of truth, tendering mechanism to select the public accounting firms, the auditors' professional evaluation of the candidate pair's reports.

⁸¹ Compare the various reports on this issue of Transparency International Indonesia (TI), Independent Election Observation Committee (KIPP), Indonesia Corruption Watch (ICW), Indonesian Forum for Budget Transparency (FITRA), Indonesia Procurement watch (IPW), Forum of Concerned Society for Indonesian Parliament (FORMAPPI).

⁸² Art 39 KPU Decree 701/2003 on Campaigning for the Elections of DPR.

up the issue of 'reimbursement of transport costs', in order to prevent it being used to hide the donation of money to rally participants.

'Money politics' was an issue in the political debate and remained a feature of all the electoral campaigns. However, in general too much attention was paid to allegations of vote-buying and other minor infractions, rather than to the forms of "money politics" with the potential to have greater impact on the democratic process, such as the possible bribing of election officials and the alleged role of corruption in determining government positions. Compared with the prominence vote buying received in public discussion, only a small number of cases were proven.

16. Electronic Count

The official method for aggregating the results is still the manual one, whereby the election commissions at every level verify and control the figures from the lower level and enter them manually in a hard copy form that is then sealed and hand-delivered to the next higher level. The KPU, rather late in the process, decided to invest considerable resources in an informal electronic count of the votes. The electronic count, by definition preliminary in its nature, was aimed at increasing transparency and confidence in the process and at offering all stakeholders a reliable orientation on what the final outcome of the elections would be. The exercise was based on a simple concept, with a simplified results sheet that had to be filled in at the polling station level, delivered directly by phone or any other possible means at the PPK level, where it was to be data-entered and transmitted immediately to the central level for a preliminary check and subsequent immediate publication to the media. To facilitate this, the well laid-out KPU Media Tabulation Centre played an important role in the dissemination of information and put media, political parties and observers in the best position to receive and transmit it.

For the Legislative Elections, the exercise was plagued by a number of technical glitches and software problems connected to the complexity of the results to be calculated and to the fact that the data-entry personnel had undergone no previous training. The confusion that arose between this operation and the official aggregation process caused the loss and wrong delivery of thousands of aggregation forms.

For the Presidential Elections, the lessons learnt were put to good use and the operation was implemented in a much more efficient fashion. However, a number of parties and candidates teams were critical, citing concerns that such preliminary results could be deceptive or even influence officials working in the official manual aggregation process. For the second round, the KPU rightly resisted pressure from a number of political parties and some candidates⁸³ to abandon the use of the electronic count. The conduct of the operation proved to be of a very high standard⁸⁴ and the results were displayed in a very reader-friendly format.

The electronic count turned out to be an important instrument for the enhancement of transparency and accountability of the entire electoral process, especially taking into account the very lengthy procedures for manual aggregation.⁸⁵ It helped the stakeholders to follow all stages of the results aggregation process and identify potential areas of concern. In particular, the efforts made in publishing the preliminary results broken down to the polling station level were remarkable, and set an important precedent in terms of transparency and accountability. The only concern related to the need to make more transparent and observable the software design and data validation processes. It is hoped that the many lessons learnt could now be capitalised on to set up an electronic system of results aggregation that will eventually replace the manual tallying.

⁸³ Ruling on the Wiranto case, the Constitutional Court also expressed the opinion that it would be advisable for the KPU to leave this exercise to others. Page 71 of the Wiranto Ruling.

⁸⁴ The night of 20 September already more than 150,000 polling station results were entered and displayed on www.tnp.kpu.go.id

85 For the Legislative Elections, the manual vote count took one month.

17. Media Monitoring

17.1. Methodology

The EU EOM monitored media coverage of elections in order to assess whether political parties and candidates gained fair access to the media, whether the media and the authorities abided by the rules and regulations covering their conduct during the campaign – based on the standards set in Indonesian law, and whether it was possible for the public to gather sufficient information via the media to assist them to make a decision on Election Day.

Six Indonesian media monitors were trained in a quantitative and qualitative methodology measuring the time, space and tone devoted to the political parties and candidates in a cross-section of the Indonesian national media. The team monitored the television stations *TVRI*, *RCTI*, *SCTV*, *Indosiar* and *Metro TV*, the radio stations *RRI* (national) and *68H* and six daily newspapers: *Kompas*, *Republika*, *Media Indonesia*, *Indo Pos*, *Koran Tempo* and *Pos Kota*.

The broadcast media were monitored from 7 March until 20 September 2004, recorded on a daily basis during prime time, and coded according to the amount of time devoted to the political parties and candidates as well as a qualitative assessment of the tone of the coverage. Newspapers were also monitored between 7 March and 20 September 2004 and measured to show the amount of space in centimetres squared devoted to the political parties and candidates, as well as an assessment of the tone of their coverage. Detailed media monitoring results for each election period are available on the EU EOM website at www.id.eueom.org.

17.2. Background

The Indonesian media landscape is diverse, after a massive proliferation of electronic and print media followed the deregulation and freeing up of the media after the Soeharto era. There are 11 national TV companies (and approximately 40 TV companies in the regions), the most wideranging of which is the state channel TVRI. The state channel has 395 transmitters and a coverage area of between 80-85% of the population. The reach of commercial television stations is around 70-75%, but mainly in urban areas. There are approximately 2,000 radio stations throughout Indonesia and over 700 newspapers and magazines. The precise number is difficult to determine, since there is no national system of registration or licensing for broadcast media. Media concentration is also an issue, with at least five of the national commercial television companies owned by the same group of companies. Ratings indicate that where there is access to both private and state media, people prefer to use the commercial media for information and entertainment.

An IFES Public Opinion Survey of 2003 showed the most important means of receiving information according to respondents was television – with 83% saying they got their news from TV, while only 8% relied on radio and 3% on newspapers.

17.3. Legal Framework

The 1945 Constitution protects the rights of citizens to "express written and oral opinions" but has no specific provisions for freedom of the press.⁸⁷ The existing Press Law, which legislates for the right of citizens to make a clarification or rebuttal of information appearing in the print media, is often bypassed in favour of the Criminal Code, which allows for heavy sanctions. A recent example is the defamation suit brought against *Tempo* magazine, where the editor was found guilty and sentenced to one year in prison.⁸⁸ Although there is still the chance to appeal,

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 $^{^{\}rm 86}$ For a brief overview of the monitored media, see Annex X

⁸⁷ Chapter Xa, Article 28

⁸⁸ Tempo itself, two Tempo journalists, and the editor were sued in 2004 by Indonesian businessman Tomy Winata for allegedly defaming him in an article published in 2003 about a fire that destroyed Jakarta's largest textile market. Tempo's editor Bambang Harymurti was found guilty by the Jakarta Central District Court in September 2004.

such sanctions are inappropriate and do not correspond to the means envisaged in the Press Law for media accountability.

The Broadcast Law, passed at the end of 2002 after many years of debate, sets the framework within which the broadcast media may operate, allowing for freedom of expression and the freedom to obtain information, based on the 1945 Constitution and the tenants of *Pancasila*. Controversially however, the law also allows for criminal sanctions against the media. ⁸⁹ The violation of Article 36.5, for example, on "slander, instigation, misleading information and/or lies", may lead to up to five years imprisonment and/or a fine of a maximum Rp 10 billion ($\in 1$ m).

During the Legislative Elections, the media were regulated by Law 12/2003, which directs them to provide "equal opportunities to each electoral participant to deliver the theme and contents of their electoral campaign", as well as by KPU Decision 701 and a Joint Decree of the KPU and the Indonesian Broadcast Commission (KPI) 12/2004. These documents regulated the way in which participants could campaign and the amount of time and space the media should give to the participants. The Joint Decree instructed the broadcast media to provide five minutes of free time during the electoral campaign to each of the political parties participating in the elections and set a cap on the duration of number of political advertisements. There was no provision on how the media should behave during the three-day campaign silence.

For the Presidential and Vice-Presidential Elections, the media were regulated by Law 23/2003, which holds similar provisions to Law 12/2003. The KPU did not issue a joint decree with the KPI for the Presidential Elections, and set very general rules on the amount of coverage that should be allocated to the candidates, providing for "Presidential Dialogues" to be shown on the national broadcast media. The KPU regulations for the second round also included provision for a separate dialogue for the candidates (but no debate after there was an objection from the Megawati-Hasyim side) to be shown on national broadcast media. The three-day rule restricted media access for both candidates, but effectively benefited the incumbent, who was still able to achieve wide media coverage for her activities.

17.4. National Broadcasting Commission

The National Broadcasting Commission (KPI) was established by Presidential Decree 267/M on 26 December 2003. It has nine members, six of whom were formerly media academics, one from the state-funded television company TVRI, a freelance writer and the head of a non-governmental organisation that conducts media research. Despite the establishment of the KPI, the legal decrees for its foundation and the Broadcast Law of 2002 are incomplete instruments for the regulation of the media. The KPI is unable to issue broadcast licenses to existing or new media companies and has no legal instrument to issue sanctions against media not complying with the regulations on election coverage. The KPI issued guidelines for the media to cover the elections, but instituted procedures rather late in the election period for dealing with complaints, and had effectively no facilities with which to do so. Plagued by problems of funding and troubled relations with the Ministry of Communication and Information as well as private broadcasting associations, it played no decisive role in these elections.

⁹¹ Not more than 10 per day each.

⁸⁹ Articles 57, 58

⁹⁰ Not more than 30 seconds for television and not more than 60 seconds for radio.

SECTION IV The Legislative Elections

18. The Pre-Election Phase

18.1. Election environment and campaign

The electoral campaign was generally conducted in a peaceful and orderly manner, with very few reported cases of violence. The organisation of campaign events scheduled by the KPU in coordination with the security forces ensured a secure and pluralistic context for the organisation of party rallies.⁹²

Most of the parties conducted rallies⁹³ as well as systematic door-to-door campaigns, which proved to be the favoured means of campaigning for small parties. The number of cancelled rallies rose significantly after the first two weeks, even for the large parties like Golkar or PDI-P, which concentrated their efforts on the organisation of provincial scale events. The ability to attract the largest crowds appeared to be the main priority of rally organisers. As a consequence, form was often given priority over content. ⁹⁴ The 'hunt' for electoral gadgets, the distribution of small amounts of money for transportation and the perspective of free entertainment were often the main incentives for many attendants.

Speeches were generally standard, concentrating on education, economy, the fight against corruption, implementation of religious principles etc., and were rarely supported by programmatic descriptions. This levelling of the political discourse affected all parties to different degrees, with clearly ideologically oriented parties as PKS or PBB delivering in general more politically structured speeches than the secular ones, which rather privileged a catch-all strategy. Additionally, political party codes of conduct were negotiated at the provincial level under KPU supervision. These agreements, even though they played a positive role in avoiding tensions related to negative campaigning, might have restrained the capacity of parties and candidates to expose more clearly ideological content. DPD candidates tended to focus on more local issues where changes were most likely to impact upon the electorate's lives, such as local construction or traditional sectors of employment such as fishing.

Many observed rallies, especially in provincial capitals, were clearly promoting the expected future party presidential candidate, who was either present or represented by a prominent national figure, rather than the local DPR candidates.

On several occasions during meetings with EU observers, KPU and PANWASLU staff questioned to what extent Article 78 (4) of Law 12/2003 on electoral funding was being respected by the parties and candidates. There was also a question mark over the KPU and PANWASLU's ability to enforce these provisions, especially on critical aspects such as the publication of donations, considering the lack of available means of control and the nature of the contributions, which often constituted of goods and services (transportation, electoral gadgets, etc).

For the DPD candidates and the important candidates from the large parties, door-to-door campaigning remained their fundamental approach to reaching the electorate. However, especially in rural areas, the ability to influence voters depended largely on the degree of organisation and regional development of parties and candidates, as well as on their financial

⁹² Specific regulations have been put in places in several areas in order to adapt to particular situations as in Banjarmarsin (South Kalimantan) where, referring to the clashes that started in May 1997 after the Friday prayer, no campaign was allowed on Fridays.

⁹³ The findings are based on the observation of 166 rallies during the period of deployment of the long-term observers (from March 15th to April 2nd, first day of the "Cooling off" period).

⁹⁴ An indicator of this lack of interest is the number of cases where a significant part of the attendance was reported leaving the gathering when the political part of the rally was beginning.

means. DPD candidates focused on low-cost methods, such as the distribution of badges, stickers and pamphlets, as well as holding dialogue sessions with the local communities.⁹⁵

18.2. Interference by state officials, use of state resources and vote buying

Involvements of state officials in campaigning as well as misuse of state resources were reported to PANWASLU. 96 However, though illegal, many types of violations listed were less serious than alleged (e.g. use of official cars for campaigning, hosting of gatherings in public buildings or residences). 97 More worrisome were the allegations of pressure and/or intimidation of voters, civil servants or local authorities, in order to force them to support a party or specific candidates. 98

Vote-buying and money politics remained an underlying theme of the campaign, although to a lesser extent than in 1999. Various forms of vote buying were reported, such as the distribution of money and goods. These practices were the most commonly reported violations before and after the elections, even if they led to few formal complaints and criminal procedures. ⁹⁹ The impact of these practices could not be determined. However, even if the influence of money in rural areas is disputed, there are few doubts that, especially in urban areas, voters developed cynical attitudes towards money politics that seriously reduced the effect of vote buying. All parties endorsed the idea of 'anti-corruption' and this was a major campaign theme, therefore an excessive manifestation of money politics might have been seen as counter-productive.

18.3. Administrative and Logistical Preparations

In general, election officials were considered by most observers to be impartial and competent. Provincial levels of the KPU were often bypassed in the distribution process, causing inefficiency, delays and resentment for not being given much responsibility. The work of the lower levels of the KPU structure was clearly hampered by the centralisation of the procurement and distribution process of the election materials.

Inconsistencies in the interpretation of the regulations, especially regarding the status of voters who were not recorded on the voter lists and manner of production and distribution of voter cards, were directly observed. Additions and corrections to the voter lists took place in the weeks preceding the elections without a uniform method of carrying out these last minute revisions. There was widespread concern that the rush for the delivery of the material would lead to several delayed elections.

⁹⁵ Most of the allegations of vote buying reported to EU EOM observers, as well as distributions of cash or goods, direct or indirect pressure on voters by local authorities and administration officials, out of schedule campaigning and nonrespect of the cooling off period, were related to this particular kind of campaigning exercise, but they were very rarely substantiated by filed complaints and/or supported by hard evidence.

⁹⁶ See Chapter 21

⁹⁷A case that generated debate was the possibility offered to President Megawati to conduct a PDI-P rally at the Petrai Kencana stadium of Banjarmarsin, despite an inter-party agreement not to use it as a venue for the duration of the campaign.

⁹⁸ Serious allegations were brought to the attention of EU observers in the provinces of West Sumatra, North Sulawesi, South East Sulawesi, Banten, Central Java. However, these practices were difficult to substantiate in the absence of direct testimony and PANWASLU officials were unable to investigate in the absence of formal complaints.

⁹⁹ Examples of directly observed cases were the distribution of 50.000 Rupiahs banknotes to attendants during a Golkar rally in Marisa, District of Pohutawo (Gorontalo), on the 18th of March; distribution of sugar packs by PPP in the district of Sangau, West Kalimantan, on the eve on Election Day; distribution of Golkar vouchers valid for 1 kg sugar pack in Jakarta, distribution of envelopes with various amount of cash by PDI-P, PKPB and PKB candidates in Yogyakarta.

¹⁰⁰ There were few reports stating the opposite: e.g. from Central Java and in Banten and the situation varied considerably from a province to another: some provincial KPU seemed to keep a close control of the situation (South East Sulawesi) while others are reported to have a loose control over the operations (Mollucas, East Kalimantan, South Sulawesi).

19. Election Day, 5 April 2004¹⁰¹

On Election Day the EU EOM consisted of 231 observers including 16 locally recruited STOs recruited from among the EU member states embassies' staff. Observer teams were deployed throughout all provinces: 42 teams in Java, 28 in Sumatra, 14 in Sulawesi, 10 in Kalimantan, four in Maluku, three in Bali as well as in Nusa Tenggara Barat, two in Papua and two in Nusa Tenggara Timur. The teams observed the polling stations' opening in 170 polling stations, the polling in 1,244 and the closing and counting in 142 polling stations. After that, STOs (until their redeployment to Jakarta on 7 April) and LTOs continued the observation of the aggregation of results at the village and sub-district level. The turnout was 84%.

19.1. Opening

The overall impression of the opening procedures was that the process was orderly and transparent. Polling station staffs were enthusiastic and conscientious. The level of understanding of the very peculiar opening procedures amongst polling station staff and political party witnesses was assessed as from good to very good in 79% of polling stations visited.

The majority of polling stations opened on time despite the absence of some election materials in some areas, such as forms, seals and ballot box locks. In some isolated instances this lack of material delayed the beginning of polling. Despite the reallocation of materials, in a small number of cases it was not possible to undertake any polling and the elections were held at a later date. The ceremonial procedures and the process of counting the ballots resulted in voters often not beginning to cast their ballots until up to an hour later. However, this did not negatively impact on the election process by effectively shortening the length of time available for polling as the overwhelming majority of voters turned out at the polling stations before midday. Some 'short-cuts' were taken which later impacted on the length of the counting process. This includes the failure to count the ballot papers that was to cause later delays during the counting process when staff tried to reconcile the number of cast ballots.

19.2. Polling

Polling took place in an orderly and peaceful manner with few very isolated reports of violence or intimidation. Voters turned out in a large number, although less than anticipated. Polling station staff carried out their duties impartially. The basic polling procedures were for the large part followed correctly although a large variety of interpretations of certain aspects of the process (such as methods of identification of voters, use of voter cards, methods of checking the voter lists, interpretation of the categories of voters allowed to vote in a polling station different from the one they were originally assigned to) were observed. In particular, it was observed that last minute instructions issued by the KPU did not necessarily filter down to the polling officials. However, none of the reported shortcomings impacted on the ability of the electorate to cast their votes according to their will.

Observers from all provinces reported that polling officials were sometimes lax in checking votes for ink prior to voting. In 41% of polling stations visited this was reported to be the case. Observers reported in 31 cases ballot boxes with the tops off, apparently due to the fact that the slit was too small for the ballots to be put through. 102

Voter cards and letters of invitation were generally presented at the polling stations by voters. There were isolated instances of non-use of voter lists, either because missing or because deemed unnecessary¹⁰³ by the polling station chairs. However, in some areas a high number of voters were also reported to have voted without their voter cards, and in some cases they were observed to vote with the registration receipt.¹⁰⁴ Quite often the rationale behind persons

¹⁰⁴ Jambi, Yogyakarta

¹⁰¹ See Annex XI, XII, XIII for the EU EOM statistical observation findings.

¹⁰² North Sumatra, Riau

¹⁰³ Jambi, Jakarta, Bogor

being able to vote without a proper identification lied in the fact that polling station staff knew the large majority of persons on the voter lists.

Concerns were raised over the extent to which the secrecy of the vote was being ensured as breaches of secrecy were reported in 17% of polling stations observed by the EU EOM. However, this was mainly attributed to the sheer size of the ballot papers in relation to the polling booth or that polling officials were observed as assisting voters folding their ballots in a way that revealed their intentions. Serious breaches of the secrecy of the vote were observed in cases where the bed-ridden voted in hospital or when prisoners cast their votes in detention centres.

Few voters were observed as asking for assistance in polling stations and observers assessed the voters' understanding of the procedures to be very good or good in 89% of the cases. Confusion was observed in those electoral districts where the voters had to use a ballot consisting of two separate sheets for one election. 105 This resulted in a substantially higher proportion of invalid ballots. 106

The logistical difficulties experienced in the run-up to Election Day impacted upon the process to varying degrees. There were several reports of wrong ballots being delivered to polling stations.¹⁰⁷ The national KPU solution to this problem was to allow the allocation of these votes to the party effectively marked on the ballots, wherever all the parties present in the polling stations agreed. Despite the common sense perceived in this decision, a number of voters were practically disenfranchised by a decision in clear conflict with the provisions of Law 12/2003. However, this instruction was not uniformly implemented and in some areas these ballots were deemed invalid or voters were simply recalled to vote again with the correct ballots.

19.3. Closing and Counting

Throughout Indonesia most voters had already cast their ballots well before the scheduled closing time at 13:00. It was observed that in some polling stations the procedures were violated in various ways - by beginning the count before 13:00¹⁰⁸ and after opening late, extending their hours. 109

The count was conducted in a peaceful manner, 110 although it was clear that the polling staff found this part of the day the most difficult. The most often observed breaches of regulations related to the implementation of the procedures designed to ensure the transparency of the count, such as a failure to record the results simultaneously on the large and small tally sheets. Often the large tally sheet was the only one used and the data was then copied to the smaller sheets or to an improvised sheet if the original one was missing. The errors made had to be then rectified at the PPS or PPK level. Observers also reported instances of results not being announced in the polling stations. There were no major challenges to the conduct of the process from party witnesses. The most time-consuming part of the process was reported to be the completion of the forms after the count. It appeared evident to observers that there was a gap in the training on this aspect of the process and that polling station staff were not familiar with the forms. This, as well as fatigue, were deemed to be factors explaining why in almost half of the observed polling stations the counting process lasted longer than eight hours. In a number of cases party witnesses left before the end and before signing or obtaining a copy of the official results sheet forms.

boxes, ballots and other materials were moved without adequate control.

 $^{^{105}}$ This was observed in Jakarta, Bengkulu, Bali, Central Kalimantan and NTB

¹⁰⁶ This was observed in Jakarta, Bengkulu, Bali, Central Kalimantan and NTB

¹⁰⁷ N. Moluccas, Central java, Jakarta, West Sumatra, Riau, Jambi, Yogyakarta

¹⁰⁸As witnessed in Jambi, West Java, NTB, NTT, South Sulawesi and Papua. This was also reported to the team in North Moluccas

¹⁰⁹ Not observed anywhere but reported from many areas of Papua

¹¹⁰ In some areas of Jakarta the rainy weather prompted the relocation of some of the outdoor polling stations for the counting phase. The resulting chaotic situation opened up the possibility for interference with the process whilst ballot

19.4. Role of party agents and domestic observers

Political party witnesses and domestic observers played a role in ensuring the transparency of the Election Day process although the number of domestic observers' present was less than anticipated. Political party witnesses representing a wide range of political parties were present in 98% of polling stations visited during election-day.

Domestic observers were present in 47% polling stations visited during polling but this figure increased to 60% for the count. This seems to suggest that they concentrated their resources on this part of the process, including a parallel vote count. Forum Rector and JPPR deployed the largest number of observers seen by the EU EOM. PANWASLU supervisors were observed in only 18% of polling stations visited.¹¹¹

19.5. General Assessment

Despite feverish pre-election speculation that the elections would be delayed for logistical reasons, polling was conducted in the vast majority of polling stations on 5 April 2004. This remains the most important achievement. However, it is clear that the last minute changes to procedures caused confusion and did not allow for uniform implementation in all polling stations. Furthermore, many procedures were complicated and ambiguous and therefore not uniformly implemented. A number of local solutions were put in place to address local problems, and it appears that many of the logistical shortcomings were overcome with the help and flexibility of the local administrations (which often mobilised all resources available and put them at the disposal of the local election commissions) and the great enthusiasm and support of the population.

Apart from the lack of uniform polling procedures, there were evident gaps in the training of polling station staff that emerged most notably in the implementation of the counting procedures. The filling in of the results forms in particular was evaluated as very poor and was arguably at the root of many of the delays that followed later in the recapitulation process. Confusion was observed in the delivery of the forms from one level to another, especially confusion between the quick count result sheets and the official Vote and Count Results forms. None of the observed shortcomings, though they could potentially have been used to undermine the integrity of the process, seem to have been used to do so, and therefore they did not have an impact on the results.

20. Aggregation of Results

The manual aggregation of election results is defined in Indonesia as recapitulation. This part of the process is traditionally the most difficult to observe, and the usual objective restraints due to the limited time and resources available were further compounded by the extreme slowness and lack of technical preparation shown by election officials in completing the process and by the specific logistic challenges of aggregating the results in a country like Indonesia, which inter alia, requires the recapitulation at five different levels (village, sub-district, regency/city, provincial and national) for the DPD and four (the provincial level is skipped) for the DPR and DPRDs.

20.1. Aggregation of results at the PPS and PPK level 112

For the Legislative Elections, as in 1999, the last stage of the process proved to be the most confused and the least transparent. The lack of training on the aggregation procedures was

¹¹¹ This can be partly explained by the fact that PANWASLU supervisors were observed as mainly mobile. However, it still appears to clash with the previously stated intent to cover all polling stations.

¹¹² See Annex XIV for detailed statistical findings

evident to EU EOM observers. 113 A level of underestimation of the complexity of the forms and of the sensitivity of the process was noticed. Excessive time was granted to local election officials to complete their level of aggregation, and not enough safeguards were put in place to guarantee the political party and candidate witnesses' rights to follow all stages of the process. The aggregated results were rarely displayed, and the cumbersome procedures often not implemented.

As in the counting, the filling in of the aggregation forms was reported to be rather problematic and a clear lack of knowledge in filling in the form emerged together with a certain election fatigue. A complicating factor was the poor quality of the official results forms from the polling stations, a problem that prompted many recounts and rechecks at the higher levels and was at the root of many disputes. Party witnesses were present in 59% of cases but domestic observers were only present in 19% and PANWASLU supervisors in 20%. The PPK was reported to be the most preferred forum for parties and other election stakeholders to negotiate and agree on the various inconsistencies and inaccuracies that emerged.

A number of frauds and malpractices related to the aggregation of results were reported to EU EOM observers only upon their return to observe the Presidential Elections. In the province of Jambi, gross mistakes in counting and frauds in the aggregation of results emerged at the PPK level from various sub-districts but were not adequately dealt with by the higher KPU tiers. In Aceh and North Sumatra other clear cases of frauds were reported. This led on some occasions to the belated dismissal of the election officials involved.

The only serious case of alleged fraud was observed in the city of Bitung, North Sulawesi Province. 114 After various complaints and long negotiations, a verification team composed of Provincial PANWASLU, provincial KPU and the Police started a recount in Bitung to assess whether a re-election should take place. The outcome of this verification was that in five polling stations the results were found to be incorrect and a new aggregation of results took place. However, a re-election was not deemed necessary and all parties accepted the decision.

20.2. Aggregation of results at the national level

At the national level, 115 the Recapitulation Room facilities were properly arranged. The information provided to parties was well organised and reader-friendly so as to enable all present to follow all the various stages of the working sessions. However, despite the significant efforts that the KPU made for this final activity, the nature of the exercise appeared to be rather different from a proper aggregation of results and raised certain concerns in terms of real transparency. These problems could have been easily dismissed with a different interpretation of the rules of procedures. What were presented were actually the consolidated results of the aggregation exercise, not the real process of results aggregation, which took place behind closed doors. The time afforded to party witnesses to file a complaint seemed very limited. The system placed the parties in a weak position and effectively impacted on their ability to challenge the results. None of the problems that occurred appeared to have an impact on the results, however they might have been exploited to influence them. The final results were announced on the last possible day (5 May).

Election Petitions and Complaints 21.

According to PANWASLU statistics, there were a total of 5,238 complaints for the Legislative Elections, out of which 434 were of a criminal nature, 3,964 administrative and 840 were resolved by PANWASLU. However, the great majority of the violations were related to minor

 $^{^{113}}$ The STOs were able to observe the first stages of the aggregation of results in more than 150 cases, and LTOs observed the recapitulation until 16 April, both at the PPS and PPK level.

¹¹⁴ A coalition of all parties, including Golkar (FORKAP) claimed that PDI-P party chair and Mayor of Bitung put pressure on village leaders and to the same KPU to alter the results before the elections and during the aggregation of results.

The aggregation of the results at the national level was observed by the Election Expert

cases of 'money politics' such as distribution of food, watches, umbrellas, vitamins and fertilizers, use of state resources, falsification of educational documents.

The Constitutional Court (CC) received 273 challenges to the final results grouped into 44 pleas submitted by 23 political parties and 21 DPD candidates. The pleas included more than one case, as each case concerned a different electoral district. In addition, 183 challenges were not considered due to failure to meet procedural requirements and lack of relevance for the CC. Out of the 252 accepted cases, 31 concerned the DPR elections, 39 the Provincial DPRD Elections and 192 related to the Regency/City DPRD Elections. Thirty-eight of these challenges were upheld by the CC and resulted in changes in the final allocation of seats. For the DPD, out of 21 pleas filed, the CC granted two and rejected the other 19 cases. However, in only one case did the CC decision lead to a different result.

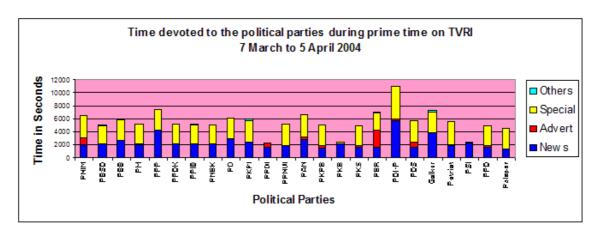
The CC concluded its hearings on 18 June, well before the deadline of 22 June 2004. The Court rejected or dismissed approximately half of the cases submitted on the grounds of lack evidence.

In the immediate aftermath of the Legislative Elections, PANWASLU announced that it had recorded electoral violations at 499 polling stations and re-polling was to be conducted on 25 April 2004. The worst affected provinces were Papua (201 polling stations), followed by East Java (68 polling stations) and Maluku and North Maluku (31 polling stations). PANWASLU also recommended recounts to be conducted in 1,855 polling stations. In the event, the KPU took up the recommendation only in 1,299 polling stations.

22. Media Monitoring Results for the Legislative Elections

22.1. Television

State television company *TVRI*'s coverage of the political parties was fairly even, devoting slightly more time to Megawati's party, the PDI-P, in news and special election programmes than to the other parties. However the amount of extra time was not unusually high and the tone devoted to all of the parties was neutral.



The television companies *RCTI* and *SCTV*, both commercially successful, devoted time in their news programmes to the more active and newsworthy political parties: the PDI-P, Golkar, PKB, PAN, PD and PPP. The commercial channel *Indosiar* has the highest ratings in Indonesia, yet carried very little news for the campaign period. It has no evening news programme and although it did have a special news programme dedicated to the elections, this was shown at

¹¹⁶ 24 challenges were filed by the PKS, 22 by PPP, 20 by PAN, 17 by PNBK, 16 by Partai Demokrat, 13 by Golkar, 12 by Partai Pelopor, 11 by PDI-P, 12 by PBSD, 12 by PDS, 10 by PBR, 11 by PKB, 9 by PBB, 8 by PKPB, 9 by PATriot, 7 by PKPI, 9 by PIB, 7 by PNI Marhaenisme, 5 by PPD, 4 by Merdeka, 3by PPDI, 1 b PPDK, and 10 by PSI.

15:00 on weekdays, when viewing figures were likely to be low. *Indosiar* also showed five-minute "Campaign Dialogues" outlining the vision and mission of most of the contesting parties. On *RCTI*, *SCTV* and *Indosiar*, the PKS was the most active advertiser during prime time. The privately owned *Metro TV* company devoted most of its coverage to the PDI-P and the Golkar Party but treated the parties in a neutral way. *Metro TV* was reprimanded by the Indonesian Broadcasting Commission (KPI) for devoting an excessive amount of time to the campaigning of its owner Surya Paloh, who received almost 10% more coverage than Megawati.

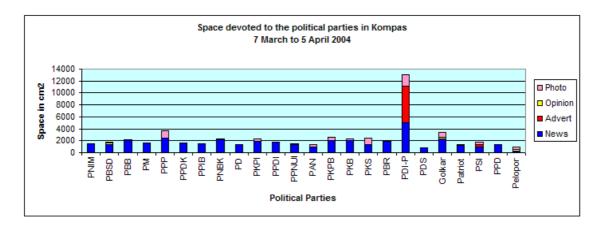
Television played an important role both for voter education and for election staff training during the campaign period. However, the vast majority of such programming and advertising was paid for by the KPU through international donor contributions.

22.2. Radio Monitoring Results

National state radio company *Radio Republik Indonesia* (RRI) devoted the most time during the elections to PAN, with its leader Amien Rais on equal footing for amount of time as Megawati. The private radio news agency *Radio 68H* (founded by ISAI) gave greater time to the PDI-P and Golkar, however coverage of Amien Rais was greater than that devoted to President Megawati. The tone of coverage towards the parties was neutral on both radio companies monitored. There was more criticism heard on *Radio 68H*, particularly towards the largest parties PDI-P and Golkar, however this generally came in the form of opinion pieces, with listeners invited to express their views. Both radio companies also carried voter education and training adverts.

22.3. Newspaper Monitoring Results

Indonesia's largest daily *Kompas* devoted the most time in articles to the PDI-P, which was by far the most prominent advertiser in the newspaper. The tone of its coverage, however, was neutral.



Indo Pos devoted the greatest amount of space to the PDI-P, followed by Golkar, PKB, PPP, PBB, PKPB and PAN. There was some negative tone devoted to the PDI-P, PKB, PKPB and PBB. Small amounts of positive coverage were noted towards Golkar and some of the smaller parties like PDS, PM and PKPI (however this was a percentage of a small amount of article space). Republika had a tendency to be slightly critical of the PDI-P and favourable towards PKB, PPP and PAN. Small amounts of negative coverage were also registered towards PNIM and PKPI. Media Indonesia gave fair coverage to the political parties in a neutral tone but devoted a disproportionate amount of space to the activities of its owner. Pos Kota, a popular tabloid owned by former Minister of Information and former Chairman of the Golkar Party Harmoko, devoted the most space to the PDI-P and Golkar, largely in a neutral tone. Koran Tempo devoted the most space in the election period to the PDI-P, followed by Golkar, PKB, PKPB and PKS. The tone devoted to the parties was some what varied, with some small amounts of

critical and positive coverage registered towards PAN, PKS and Golkar and very small amounts of positive coverage registered towards PDI-P, PKB and PPIB. However mainly the coverage of the parties was neutral.

The newspapers *Koran Tempo, Republika, Kompas* and *Indo Pos* carried significant amounts of voter education information. *Media Indonesia* and *Pos Kota* carried none.

22.4. Assessment

National media coverage of the political parties during the Legislative Elections was generally fair and impartial. All 24 parties were covered by most of the electronic and print media monitored by the EU EOM. Although there were minor violations of the rules on political advertising, with some parties and candidates receiving more time than the Election Law and Indonesian Broadcasting Commission allowed, in general the spirit of the law with regard to impartiality was respected. Only the national commercial channel *Metro TV* and the newspaper *Media Indonesia* showed bias, in this case towards their owner, a prominent Golkar party member. In general however, the media could have played a stronger role as guardian of the public interest, by challenging the parties to elaborate their programmes more clearly, in order to assist the voters in the important process of making an informed democratic choice.

Most media monitored played a significant role in disseminating voter education. *Metro TV* showed the most voter education programmes and adverts during prime time, followed by the state-funded *TVRI*. Most TV and radio stations monitored produced special election information programmes and the national newspapers monitored also included useful sections on the election process. Nevertheless, broadcasters charged the KPU commercial rates to show voter education and training programmes and could have demonstrated greater civic responsibility by reducing their rates for public service initiatives.

SECTION V The Presidential Elections

23. The Pre-Election Phase

23.1. Election environment and campaign for the first round

As during the Legislative Elections, the campaign period was peaceful with very few reports of election-related violence. The campaign period itself was marked by indifference on the part of the electorate, although the turnout on Election Day was still high.

In general there was less campaigning, less participation and less motivation on the part of party members to participate in the election campaign. The reduced campaign activities can partly be explained by a shortfall in financial resources available. All campaign teams remarked that funds were not reaching down to the lower levels of the campaign team hierarchy. There was a shift away from the use of large-scale rallies. There were only some large-scale events reminiscent of the Legislative Elections across Java, for example when one of the candidates came to town. Visits to Eastern Indonesia were less frequently carried out.

With a need to focus on more cost-effective methods of campaigning, campaign teams focused on door-to-door campaigning and the targeting of community and religious leaders thought to exercise influence over the electorate. Activists concentrated on organising indoor events, dialogues and joint prayer sessions, often held outside the official schedule. In East Java, Wiranto-Wahid and Mega-Hasyim emphasised the importance of the cleric network. Strategies included joining routine prayer sessions of the NU and organising special prayer sessions. Additionally, *Warung Wiranto* sprang up throughout Indonesia, selling food, t-shirts and key rings. In very remote areas there was no evidence of election campaigning at all. Here, local leaders were thought to exercise a large influence on the electorate's choice of candidate and there were suggestions that village leaders were being bought off in return for guaranteeing the delivery of the village's votes for that candidate.

There was less enthusiasm amongst candidate supporters and the party cadre than during the Legislative Elections, when activists often felt a connection with candidates who were from the area. The presidential candidates were instead remote figures who rarely visited the area. In some cases local party structures failed to follow the choices of national headquarters or there was a muted response from the political parties towards the campaign teams. In some cases this was because the success teams were perceived as a camouflage for political parties, which discouraged the participation of students and intellectuals and motivated them to work within alternative structures. In some areas there were allegations that these shadow teams dealt with irregular activities such as money politics and black PR campaigns.

The silence period was generally respected but the number of campaign materials still visible on Election Day was significantly higher than during the Legislative Elections that indicates that campaign teams were not thorough in removing materials.

23.1.1. Interference by state administration, use of state resources and vote buying

There have been many allegations related to Megawati abusing her position as incumbent president. The overlapping between her duties as incumbent president and her candidate role was evident, sometimes even on the same day. During the days of campaign silence immediately preceding the election she made several appearances as head of state in Central Java that could be seen as campaigning.

With the campaign teams concentrating on persuading influential leaders of the merits of their candidates, it is not surprising that Regents (Bupati) and Heads of Sub-districts (Camat) would

become involved. Money politics in the context of alleged vote buying remained a much-used phrase. However, as was the case during the Legislative Elections, there was scant proof to substantiate the claims. Contrary to the experience of the Legislative Elections, where local candidates could afford to buy votes on a local scale, such an operation for the Presidential Elections would have been an enormous logistical and economic undertaking.

23.1.2. Administrative and logistical preparations

KPU staff at all levels was conspicuously under less pressure than during the Legislative Elections. However, fewer financial resources became an issue of concern. The timeframe and budget allocated to the KPU did not reflect the reality of conditions in more remote areas such as Moluccas and Papua, where transportation is both more restricted and more expensive. General dissatisfaction with the remuneration system was evident, sometimes solved ad hoc by funds from local government, but often leading to more drastic situations. Observers came across examples of KPU members openly displaying their affiliation to one candidate in Jakarta and Papua, staff seemingly unaware of the importance of being perceived as impartial. There was a lack of uniformity over the issuance of voter cards, even within provinces. In some areas the temporary voter cards issued for the Legislative Elections were reused. In others, new ones were issued valid for both rounds of the Presidential Elections or for the first round only.

23.2. Pre-election environment and campaign for the second round

The second round of the Presidential Elections was by far the most low-key of the election cycle. The KPU rules limiting campaigning to a three-day period severely restricted opportunity before this period but even during the official campaign period activities were limited. The exception to this was Jakarta where both candidate pairs held large public events.

Whilst on the surface it seemed that no campaigning was actually taking place, there was a flurry of unofficial campaigning. Both candidate pairs toured the country promoting themselves at various events. This included ceremonies to mark anniversaries or openings, 119 meetings with religious and community leaders, 120 medical check-ups, 121 and sports or cultural events. 122 The inauguration of the National Coalition at the local level provided an opportunity for publicity with high profile political figures from PDI-P and Golkar making appearances across the country.

Door-to-door canvassing and the distribution of low cost campaign materials (postcards and leaflets) was reported in many provinces. The 'Indonesia Success' contest reached the furthest corners of Indonesia. Campaigning for Megawati-Hasyim was also conducted under the 'National Coalition' banner. As was the case during the first round of the Presidential Elections, black campaign material was distributed throughout the country. There was widespread distribution of the pamphlet outlining '10 reasons not to vote for SBY', ¹²⁴ as well as the sending of text messages discrediting Yudhoyono.

There were several breaches of the campaign silence. The most high profile of these events was the mass prayer session held outside Megawati's residence in Jakarta on the eve of

¹²² Jakarta, Ambon, Yogyakarta, Banda Aceh and East Java

¹¹⁷ EU EOM observers witnessed a few instances of vote-buying, including the finding of money in a rice bag donated by the Wiranto-Wahid team to voters in West Java, and the distribution of scarves, also in West Java.

¹¹⁸ Cases of kidnapping of ballot boxes by KPPS members in West Kalimantan were reported, threats of going on strike on Election Day and the establishment of "ghost" polling stations in many provinces.

¹¹⁹ Jakarta, East Java, NTT, South Kalimantan, Central Java and Ambon

¹²⁰ Central Java, East Java, Bali, NTB, West Sumatra, Lampung, Banten, and West Papua

¹²¹ Yogyakarta, Ambon

¹²³ Yogyakarta, Bali, Riau, North Sulawesi, South Sulawesi, Banga Belitung, Papua, South Kalimantan and NTB . More specifically, in Papua there were allegations that money was being distributed door-to-door. In West Java there was widespread distribution of "Mega" envelopes with cash.

¹²⁴ West Java, East Java, Bali, Palu, Palembang and NTT

Election Day. 125 In East Java, observers saw leaflets being distributed in Sampang implying that people could not be considered good Muslims unless they voted for Megawati-Hasyim. In NTB, postcards of Megawati with children were distributed. In Bogor, West Java, SMS messages asking recipients not to vote for Megawati were sent.

23.2.1. Neutrality of state administration, misuse of public resources and money politics

There were several reported incidents of voter intimidation. One issue was the pressure exerted on plantation workers. In Jambi and East Java, observers were informed by plantation workers that members of their family had been instructed to vote for Megawati-Hasyim or risk losing their jobs or homes. In West Sumatra, KIPP¹²⁶ alleged that pressure was put on workers to vote for Megawati-Haysim in return for bonus payments.

There was an increase in the reported number of cases where employees of state-owned companies were encouraged to vote for a particular candidate. Allegations were reported on systematic intimidation by local government and Regents pressurising local government officials or villagers for donations or votes for the Megawati-Hasyim team. In South Sulawesi, PANWASLU began investigating allegations that 150 *Kepala* (Heads) and *Lurahs* (Village Chiefs) received a substantial payment to visit the Megawati-Hasyim campaign office in Jakarta. In Jambi, the deputy mayor was also the head of the Megawati-Hasyim campaign team and he did not seek permission to take leave from his post. In NTT, numerous local officials attended the ceremony declaring the National Coalition. In Lampung, there were allegations that the governor and *Bupati* put pressure on civil servants.

There were also reports of religious leaders calling on voters to cast their ballots for one candidate or another during weekly prayer meetings in Jambi.

There were reports calling into question the neutrality of the police. In Yogyakarta, Megawati campaign material was found in the city police office. In Banten, the Yudhoyono team reported to observers that police cars were allegedly used to distribute food and canvass for Megawati-Haysim.

There were numerous allegations of the misuse of state resources including the donation of cars and motorcycles to village chiefs from the government.

23.2.2. The Timika Case

EU EOM observers were denied access to electoral activities in the Freeport-owned area of Timika, Regency of Mimika, province of Papua. After requesting access to the Freeport-owned area of Mimika, permission was only granted late on the evening of the elections and observers were asked to report to the KPU in Mimika by 05:00 the following morning. The conditions set down were that the observers would be escorted to a polling station selected by the Freeport authorities and after observing there would have to leave the compound. This represents an

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¹²⁵ The event was attended by 3,000 supporters, many of whom had been bussed in. Prayers were permeated with calls for participants to go and vote for Megawati-Hasyim.

¹²⁶ Domestic monitoring organisation, "Komite Independen Pemantau Pemilu"

¹²⁷ In East Java a meeting was convened for BNI Bank employees who were allegedly given 50,000 Rupiah in an envelope with the picture and number of Megawati-Hasyim on it. In Jambi it was reported that meetings had been held with 16 state-owned enterprises, including Mandiri Bank, Merpati Airlines and Mandala Airlines during which the audience was informed of the achievements of Megawati and were encouraged to vote for her. In East Java and Lampung it was reported that factory workers were called to a meeting and encouraged to vote for Megawati-Hasyim. There were reports of high-ranking officers campaigning for Megawati in North Sumatra and North Sulawesi. In Central Java the prominence of ex-military personnel in Yudhoyono's campaign teams was thought to exercise influence over family members of serving personnel through youth and spousal organisations. In East Java the KPU and PANWASLU reported that in three military compounds family of military personnel were threatened with the loss of their accommodation if they did not vote for Megawati-Hasyim. In Banda Aceh there were allegations that the TNI was actively persuading voters to vote for Yudhoyono.

¹²⁸ Bali, NTT, West Java, Central Java and NTB

unacceptable violation of the observers' freedom of movement and violated the KPU provisions in this regard.

24. Election Day, 5 July 2004¹²⁹

Election Day was dominated by the dilemma over the validity of double-punched ballots (see below for details). The logistics and the election material was produced and delivered in a timely and appropriate manner. The turnout was 78%.

24.1. Opening

A large number of polling stations did not open at 07.00 as scheduled. In many cases it was because staff failed to show up on time or there was an absence of voters to witness the opening procedures. However, the long delays caused by logistical difficulties during the Legislative Elections did not reoccur. The oath ceremony was shorter than during the Legislative Elections. In general, opening procedures were followed correctly with the most common irregularity being a failure to count the ballots.

24.2. Polling

The polling process was smooth and fast. However, the overall assessment of the polling procedures made by observers was less positive than during the Legislative Elections. The main breach of procedures was with regard to the improper use of voter lists and voter cards. In some stations the lists were deliberately not used or were not available and voters were given a ballot on presentation of a voter card or invitation letter. In other cases the polling staff simply wrote down the name of people who came to vote on a separate list.

Other instances of shortcomings in the implementation of voting procedures related to checking voters for ink and properly inking their fingers after voting. Concerns were also raised about the quality of the ink, which was not as indelible as during the Legislative Elections. The polling stations were set out in a way that did not always provide for the secrecy of the vote. In Central Sulawesi, some polling committees used two ballot boxes with the intention of separating the votes from women and men. However, the overall assessment of the polling process was positive.

24.3. Closing and Counting

In several instances polling stations were closed before 13:00. This was especially true of the more rural areas where polling station staff knew that those who had not already voted would not turn up later in the day. Fewer problems were encountered in filling in the forms, due to simpler and better designed forms and more effective training.

During counting, it emerged that a very high number of voters had mistakenly punched their ballots twice. The phenomenon was observed by EU EOM observers in all 32 provinces and in more than one of the polling stations each team observed. The number of mistakenly double-punched ballots remained very difficult to ascertain, ¹³⁰ but a PANWASLU estimate placed it at around 40 million. This was an enormous setback for the KPU. The double punching of the ballots occurred because voters were not informed of the need to completely unfold the ballot papers before punching it with the nail. Voters, once they received the ballot and unfolded it behind the polling booth, punched the picture of their favourite candidate pair as soon as it became visible to them without completely unfolding the ballot, thus inadvertently perforating

¹²⁹ For detailed statistics on EU EOM observation findings, see Annex XI, XII and XIII.

¹³⁰ The invalidity rate in the polling stations visited ranged from 5% to 50%, with an average of 30%.

it in two different places. 131 A combination of badly assessed elements appeared to be the cause of this wide-spread problem. 132

The incident exemplified the KPU's inability to deal efficiently and promptly with practical problems. It also highlighted a certain relaxation and overconfidence within its ranks that emerged after the Legislative Elections. Last but not least, the phenomenon unveiled a larger civic and voter education gap in Indonesia, which the complexity and the attention paid to voter information for the Legislative Elections had somewhat hidden. The KPU decision to declare the double-punched ballots as valid was sensible and pragmatic, the only one possible given the circumstances. In addition, no sign of bias emerged from KPU officials in dealing with this problem. However, it took the KPU three different circulars, over the span of two days, to address the problem in its entirety. Reading the three circulars together, it shows clearly how the real nature and the extent of the problem was not immediately understood. The crucial legal issue raised by the KPU decision, was that the instructions issued with the circular letters violated Art 56 of Law 23/2003 on Presidential and Vice-Presidential Elections.

Recounts took place at different levels of the KPU depending on at what time the news about the decree filtered down to the lower levels of the election administration. In all cases, candidate witnesses were present for the recount and no serious concerns were raised. The recounting process took place at different levels (Polling Stations or PPS), at different times (on 5 or 6 July), with different methods (partial or complete recount) and by different people (by KPPS staff at the Polling Stations, by KPPS staff at the PPS under the supervision of the PPS staff, or by the PPS staff themselves, with or without the presence of the KPPS Chairman).

24.4. The "Al Zaytun" case

The central KPU annulled the results for all the polling stations within the precinct of the Islamic Boarding School (*Pesantren*) Ma'had Al Zaytun, City of Indramayu, West Java. The school included a total of 83 polling stations, all established within its walls and apparently reporting directly to the PPK, without any connection with the PPSs. The decision was made after receiving several allegations that the number of voters had risen from approximately 11,000 to approximately 24,000. The additional voters were simply added on handwritten lists and attached to the preliminary voters lists. The results of the vote showed a highly suspicious landslide victory for the Wiranto-Wahid ticket, with 24,794 (99,8 %) valid votes out of a total of 24,843 registered voters, only six votes for Megawati-Hasym, 16 for Yudhoyono-Kalla and 21 for Amien-Siswono, and a total of four invalid votes.

¹³¹ Under KPU instructions, the ballots were folded four times (generally the first time horizontally and then twice vertically) at the Regency or Sub-district levels before being distributed to the PPSs.

¹³² The possibility of voters accidentally double-punching ballot papers was identified as a risk during voting simulations by IFES training advisors, but failed to be effectively addressed by the KPU in advance of the elections. In fact on 1 July, a KPU press release announced that its travelling training and assessment team had discovered the existence of this problem through its simulations in occasion of training sessions for PPS and PPK staff and adequately dealt with it.
¹³³ Two circulars were issued on Election Day and one the day after, (KPU Circulars N° 1151, 1152 and 1154) containing instructions on how to deal with the "invalid" ballots that had been perforated twice and how and where to organize the recounts in case the polling station had already closed and the material delivered to Village or Sub-District Election Commission by the time the KPU instructions were received. The circulars instructed polling station, PPS and PPK staff on how to discriminate between ballots that should be recounted and ballots that should be set aside as invalid, based on whether the intention of the voter was clear and whether the ballots were originally horizontally folded or not.

¹³⁴ Art. 56 of Law 23/2003 describes in details when a vote is to be considered valid. From the provision of the Law it emerges that two or more punch-marks on a ballot are to be accepted as valid only if contained inside or on the margins of a candidate pairs' box. While such level of details in determining the validity of the ballots is quite unusual in an electoral law (it is generally left to regulations to describe the examples of valid and invalid ballots, and the law generally affirms only the principle that the voters' will must be respected as much as possible), Art. 56 leaves little room for differing interpretations. See Chapter 28 for the challenges raised by these events.

¹³⁵ On Election Day, PANWASLU officials reported to the STOs deployed to the Gatar Sub-district that 580 buses were seen arriving in the proximities of the Islamic Boarding School and bringing massive numbers of voters in the Boarding School. PANWAS officials also made a complete list of the busses that were seen arriving in the area. The candidates' witnesses of the Megawati-Hasym ticket also reported to the LTOs that they were not allowed to enter the Islamic Boarding School despite having turned up in time, and allegedly no other candidates' witnesses were allowed inside it.

The rerun took place on 25 July. ¹³⁶ This time only 39 polling stations were established, situated in a field opposite the complex. The decision had been taken by the PPS Chairman who stated that this was done in order 'not to disturb' the boarding school's activities. The set up was entirely transparent and the workings of the polling stations were open for all to see. However, not a single voter turned out. ¹³⁷

While it was difficult for the EU EOM team to find out more about the reasons for the total abstention (the school representatives declined to meet with the EU EOM team), it is clear that the religious leaders had issued unambiguous and strong instructions to the voters not to turn out. From the information previously gathered in the area, the perpetrators of the fraud were believed to be satisfied with the prominence that the case was given in the media. The events of Al Zaytun exemplified well the potential for manipulation and abuse opened up by the revised procedures for updating the voter registers for the Presidential Elections. ¹³⁸

25. Election Day, 20 September 2004¹³⁹

25.1. Opening

Like the Legislative and the first round of the Presidential Elections, a large number of polling stations did not open on time. This did not negatively affect the smooth running of the vote. In many cases late opening was due to the late arrival of witnesses, while in a very few others, it was because the polling staff did not show up on time. Essential material was present in the majority of polling stations, although in some of them the voter list was missing.

25.2. Polling

The late opening did not affect polling, which was conducted in an orderly and peaceful manner. The polling process was evaluated positively in 82% of polling stations visited and the impartiality of polling station officials was assessed highly. However, the voter lists proved to be a matter of serious concern. As in the first round, the voter lists were not always properly updated and most of the polling stations used lists from previous elections with hand-written updates. In many cases the voter list did not serve its purpose, since voters were not ticked off the list. Voter cards were not always requested from voters, who would sometimes show only an invitation letter or a document. In other cases, mainly in small villages, voters could cast their ballot without showing any document. Inking procedures were better implemented, and the quality of the ink considerably improved in comparison to the previous round. However, voters were not checked for ink in 54% of polling stations visited. The estimated voter turnout was 76%.

25.3. Closing and Counting

The majority of polling stations concluded counting in less than two hours. The process remained very transparent and was assessed slightly more positively than in the first round. However, KPU instructions on early closing (KPU Decree 46/2004) generated incorrect and inconsistent interpretations and opened the door to potential abuses and manipulation. In 14 provinces, some polling stations closed even earlier than allowed. Results were posted outside polling stations at only 30% of the sites visited.

¹³⁶ The EU EOM dispatched two members of the Core team to observe the proceedings

¹³⁷ PANWASLU informed the EU EOM team that the 'Extension Team' had tried to deliver the invitation letters to the complex the day before, 24 July, but the Director of the boarding school had refused to accept them on the grounds that the election had already taken place on 5 July.

¹³⁸ See Chapter 7

¹³⁹ For detailed statistics on observation findings see Annexes XI, XII and XIII.

¹⁴⁰ The lists were not found in 6% of the polling station observed. See Annex XII

¹⁴¹ The Al Zaytun directors boycotted the elections in their compound, claiming more voters than the official data. KPU decided to organise the elections outside the complex, as for the 25 July re-run. To avoid any tension, the polling staff was composed of KPU-trained boy scouts who acted rather professionally. The school sent its own uniformed and unaccredited observers to each polling site.

25.4. General assessment

The general environment on Election Day was peaceful and calm throughout the day. Some of the polling officers (mainly in the rural areas) showed that they had no actual understanding of the purpose of and the reasons behind many of the election procedures. In general, the safety mechanisms to prevent multiple voting were not uniformly applied. A drastic decrease of domestic observers was noted, partially compensated by the high presence of candidate witnesses. They were present in 94% of the visited stations, and in 73% of these cases witnesses from both candidates were present.

26. Aggregation of Results

26.1. Aggregation of results for the first round

The delayed counts and recounts that took place throughout the nation as a result of the KPU circular that validated the double-punched ballots made it difficult for EU EOM observers to follow the aggregation of results, and no meaningful statistics are available. However, no major incidents or irregularities were reported and the process went calmly and smoothly. The presence of PANWASLU and domestic observers was on a much smaller scale, as was the case during the whole of Election Day. Contrary to speculation, there were no reports of Wiranto/Wahid witnesses boycotting the recount, as they appeared to have accepted the KPU decision to declare the 'double punched' ballots as valid.

26.2. National aggregation of results for the first round

The national aggregation of results began only on Saturday 24 July, as the final aggregation from the provincial KPU chapters took longer than anticipated. The procedures laid out for this conclusive stage of the process remained highly ceremonial, but with some notable improvements compared to the Legislative Elections, especially in terms of transparency and accountability. Along with the candidate witnesses (represented by the campaign teams, often called 'Success Teams'), observers and media, the chairpersons of the provincial KPU chapters were made this time a key element of the process. They were asked to hand deliver the sealed official results to the central KPU during the ceremony, in full sight of candidates witnesses, observers and media. In a further step to increase transparency, it was also decided on the spot that the respective provincial KPU chairpersons would open and read out their own results in front of the audience, as well as the names of the candidate witnesses present at the provincial level.

Once read out, the provincial results were then aggregated in real time by KPU staff on two electronic forms in front of the audience. 142

26.3. Aggregation of results for the second round

Observers were only effectively able to observe the first level of the transmission and aggregation of results at the village (PPS) level. The process was assessed as being transparent and smooth. However, results forms were displayed in only 57% of cases and in only 51% of cases did the candidate witnesses sign and initial the forms.

26.3.1. Aggregation of results at the PPS and PPK level 143

The aggregation of results at village level was conducted smoothly and transparently and was completely within the timeframe set out by the KPU. The process was carried out in the

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¹⁴² The two electronic forms used in this stage included all the basic fields that were present in the hard copy recapitulation forms used at the lower levels. The first form included male and female votes cast, total cast votes, used ballots, spoilt ballots, additional ballots and unused ballots, plus number of Village Election Committees (PPS) Subdistrict Election Committees (PPK), Regency/City Election Commissions per each province. The second form included the breakdown of valid votes per candidate pair, the total valid votes and the total invalid votes.

¹⁴³ For detailed EUEOM statistical findings, see Annex XIV

presence of candidate witnesses in 86% of cases but the presence of domestic observers was again minimal. Although the candidate witnesses initialed the D1-PWP form in only 51% of cases and received a copy in only 57% of cases, observers reported that this was because they left before the completion of the process. Observers followed the process up to the PPK level and reported no major problems.

26.3.2. Final aggregation stages at the national level

The final stages of the process were conducted following the same procedures as for the first round, and the tallying room was also arranged with a similar lay out. The process run well, with very limited complaints. They were able to announce the results one day earlier than scheduled (on 4 October).

27. Challenges and complaints

During the first round of Presidential Elections a much smaller number of violations (4,398 in total) were reported in comparison to the Legislative Elections.

The prevailing form of criminal violations during the presidential campaign was the involvement of civil servants in campaigning activities, prohibited by Art. 39(4) and 40 of Law 23/03. Following the first round elections, two cases were brought before the Constitutional Court (CC) and the Supreme Court (SC).

The Golkar candidate pair Wiranto/Wahid submitted a petition to the CC on 29 July 2004 challenging the results of the first round of the Presidential Elections. The claim was that they had actually won 31,721,448 votes instead of 26,286,788, as announced. According to their calculations, they had outrun President Megawati by 152,344 votes. The petition alleged miscalculations, discrepancies between the electronic and the manual count and inconsistent decisions of polling staff with regard to double-punched ballots.

In its ruling on 9 August the CC rejected the case on grounds of lack of evidence, adding that the alleged irregularities were irrelevant for the final results. This was accepted calmly by the plaintiffs, who did not criticise the decision.

The Wiranto/Wahid team also filed a petition to the SC requesting the annulment of the KPU circular 1151/04 that validated the double-punched ballot papers. The case was based on the assumption that circular 1151 contradicted higher-ranking norms, specifically Art. 56 of Law 23/2003 and Art. 26 of KPU Decree 37/04 on Voting and Counting. The SC dismissed the petition on grounds of competence, as it stated that the KPU circular was an internal instruction and did not fall into the category of decrees that are subject to the SC reviewing powers. On the content of the challenge, the SC added, rather inaccurately, that the KPU circular did not contradict higher-ranking norms due to a loophole in Law 23/2003 and KPU Decree 37/2004 on what is an invalid ballot. The second part of this decision did not articulate adequately on the correct nature of the KPU decision, which was based on the need to safeguard the will of the voters.

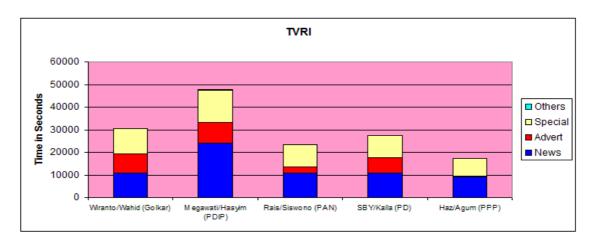
As for the second round of the Presidential Elections, the very brief campaign period prevented a proliferation of complaints but resulted in a variety of hidden campaigning activities that did not result in any complaints. The CC announced on 7 October that no complaints had been lodged in the three-day window granted by the law, and therefore confirmed that the final results as announced by the KPU were final and binding.

28. Media Monitoring Results for the Presidential Elections

28.1. First Round Presidential Elections

28.1.1. Television

TVRI, the Indonesian state television broadcaster, showed bias towards Megawati during the first round presidential election campaign. TVRI devoted nearly three times more coverage in news programmes to the incumbent than to any of the other candidates, who all received exactly equal quantities of news coverage. While the amount of time dedicated to the incumbent can be expected to be greater because of the need to cover official duties, the amount of time dedicated to the president was disproportionately large and frequently positive in tone.



All four commercial television companies monitored by the EU EOM devoted twice as much coverage overall to Megawati as to any other candidate. However this was mainly due to the frequency of advertising, with Megawati taking up two hours of prime time in adverts between 24 May and 5 July on *RCTI*, nearly three hours on *SCTV*, 1.5 hours on *Indosiar* and four hours on *Metro TV*. News coverage on *SCTV* and *RCTI* was fair and evenly distributed. *Metro TV* devoted almost equal news coverage to Megawati and Wiranto, with the three other candidate pairs receiving half as much time in news. *Metro TV*s daily 'Indonesia on the Move' programme was clearly designed to promote the president and was in contravention of Indonesian regulations on equal opportunity for all candidates and the use of blocked time for noncommercial purposes. In general, although the president dominated in terms of advertising, all television companies monitored did provide opportunities to the candidates to share their vision, mission and programmes with the public.

The presidential debates organised by the commercial media and the presidential dialogue organised by the KPU and broadcast on *TVRI*, *TV7*, *RRI* and *Radio 68H* were a positive and innovative contribution to the campaign.

28.1.2. Radio

Radio coverage of the presidential candidates during the election campaign showed clearly that Amien Rais devoted more attention to this medium than any other candidate, with a far higher incidence of advertising than the other candidates. During the parliamentary elections, the national state radio broadcaster *RRI* devoted nearly twice as much time to PAN as to any other party and coverage of its leader, Amien Rais, was equal to that of Megawati. Similarly, during the first round Presidential Elections, *RRI* devoted equal amounts of time to Rais and Megawati, although Rais had more advertising and special programming devoted to him than the president. The tone towards the candidates on *RRI* was mainly neutral, however the time devoted to Amien Rais and the quality of programming would seem to indicate a slight

preference. The commercial radio broadcaster *Radio 68H* gave the greatest amount of coverage to the incumbent president, although Amien Rais was the most frequent advertiser. Opinions expressed on *68H* were sometimes positive or critical towards the candidates – however the most frequently criticised candidate was Megawati.

28.1.3. Newspaper

Newspaper coverage of the candidates was fair and provided greater space to analysis and opinion on the campaigning than the electronic media. Although some newspapers tended to favour some candidates over others, the coverage of the campaign in the print media was diverse and pluralistic.

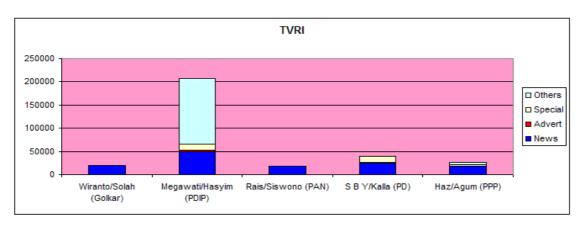
Journalists in the provinces reported some pressure to produce positive information about candidates who had purchased advertising and in some areas also reported intimidation by campaign organisers in response to critical reporting. The parties and candidates used a highly centralised method of campaigning, channelling their advertising and information campaigns through Jakarta advertising agencies and the national print and electronic networks, and often failing to take advantage of the opportunities provided by the regional media to access local audiences. In addition, there were several reports alluding to an increase in 'bogus' journalists, who allegedly tried to extort money from parties and candidates – promising positive articles for cash or threatening to write reports about corruption unless they were paid. After the first round Presidential Elections on 5 July, journalists' organisations staged demonstrations in Yogyakarta on 8 July and over the following week against the practice of bogus journalism.

28.2. Second Round Presidential Elections

In general the media played a positive role by disseminating information about the candidates and various election activities, and by highlighting possible campaign violations. However, the highly restrictive campaign regulations frequently led to efforts by both media and candidate teams to circumvent the rules through hidden and indirect candidate promotion or negative advertising.

The state television company *TVRI* showed a pronounced bias in favour of Megawati, devoting disproportionate amounts of coverage to positive reviews of her activities and achievements in office. Many examples of unequal treatment by *TVRI* were recorded, including the daily progovernment "Knitting Together for the Future", adverts for "Education Reform", paid for by the Ministry of National Education, showing children dyeing T-shirts red and painting the number "2" on them (the colour and number of the Megawati campaign), and anti-Yudhoyono adverts broadcast during the campaign silence.

The chart below shows the time devoted to Megawati/Hasyim and all the other present and former candidates during prime time from 14 July to 20 September. Megawati received over five times as much coverage as Yudhoyono, with 67% of news coverage to his 33%. Over 60% of her coverage on this channel was positive.



Commercial television companies, in particular SCTV and RCTI, provided more equitable access to the two candidates than the state channel, particularly in news - on average around 55% for Megawati and 45% for Yudhoyono. Metro TV began to show a bias in favour of Yudhoyono, in contrast to its performance during the first round, when it favoured Megawati. Metro TV also broadcast indirect adverts for both candidates in the form of 'testimonials' by third parties during the campaign silence.

Newspaper coverage of the candidates was generally balanced, with a variety of opinions expressed. Kompas newspaper showed a preference for Megawati, devoting twice as much coverage to her as to Yudhoyono, with a slightly positive tone. 144 The tabloid *Pos Kota* devoted more coverage to Yudhoyono than to Megawati, mainly due to large placements of advertising. Most other newspapers devoted slightly more coverage to the incumbent president than to Yudhoyono in a largely neutral tone but with both positive and negative views also expressed.

¹⁴⁴ EU EOM findings showed that the tone was mainly neutral towards both candidates, but that there was a slight positive tone towards Megawati and a slight negative tone towards Yudhoyono, indicating an editorial preference. Kompas conducted its own monitoring of the print media and did not agree with the findings of the EU EOM. It found that 12.8% of its coverage towards Megawati was positive while 3.5% was negative. For Yudhoyono it found that 8.8% of its coverage was positive while it categorised the negative coverage of Yudhoyono as 'low'. Kompas had the highest degree of neutral coverage compared to other newspapers.