

# **AMERICAN BAR ASSOCIATION CENTRAL AND EAST EUROPEAN LAW INITIATIVE (CEELI)**

## **CEELI EXECUTIVE BOARD**

Max M. Kampelman; Fried, Frank, Harris, Shriver and Jacobson  
Matthew F. McHugh; Counsellor to the President of the World Bank  
Abner J. Mikva; U.S. Court of Appeals for the District of Columbia  
Sandra Day O'Connor; Justice of the U.S. Supreme Court  
Homer E. Moyer, Jr.; Miller and Chevalier (Chairman)  
Talbot "Sandy" D'Alemberte; Steel, Hector & Davis

## **CEELI STAFF**

### **Director's Office**

Mark S. Ellis, Executive Director  
Andrea Cates, Assistant to the Director

### **Commercial Law Prom-am/Rule of Law Program for Central and Eastern Europe**

Michael C. Diedring, Director, Commercial Law  
Program and CEELI Deputy Director  
Valerie Pellegrini, Director, Rule of Law Program  
John Brandolino, Senior Project Coordinator  
Lisa Dickieson, Senior Project Coordinator  
Nnamdi Ezera, Senior Project Coordinator

### **Liaisons/Legal Specialists**

Kamala Mohammed, Director  
Renee Willams, Administrative Assistant

### **Sister Law School Program**

Kim Parker, Director

### **Legal Assessments/Concept Papers**

John C. Knechtle, Director  
Kathy Vitz, Administrative Assistant

### **New Independent States of the Former Soviet Union (NIS) Program**

Malcolm Russell-Einhorn, Director  
Kyra A. Buchko, Associate Director  
Michael Gray, Associate Director  
Thomas Didato, Program Assistant  
Sandy Waniewski, Program Assistant  
Tammy Johnson, Administrative Assistant

### **Research and Special Projects**

Angela Conway, Director  
Karim Guen, Associate Director

### **Finance and Administration**

Peter Agnew, Director  
June Park, Grants Manager

## **CEELI Co-Founders**

Talbot "Sandy" D'Alemberte and Homer E. Moyer, Jr.

## **Central and East European Law Initiative (CEELI)**

**Suite 200 South  
1800 M Street, N.W.  
Washington, D.C. 20036-4886  
Telephone: (202) 331-2619  
Telecopier: (202) 862-8533**

## Table of Contents

I.	INTRODUCTION .....	1
II.	STRUCTURE OF THE ELECTORAL SYSTEM .....	2
A.	Consensus of Election Participants .....	2
B.	Enactment of Election Laws .....	2
C.	Establishing Election Administration Authorities .....	3
D.	Rule-making and Administrative Duties of the Commission .....	5
E.	Adjudicative Processes .....	8
III.	ELEMENTS OF THE PRE-ELECTION PROCESS .....	9
A.	Funding Parties and Campaigns: Financial and Material .....	10
B.	Voter Registration .....	11
C.	Registration of Political Parties and Candidates .....	12
D.	Educating Voters .....	13
1.	The Media .....	14
2.	Government/Central Election Commission Responsibilities .....	15
3.	The Responsibilities of Civic Groups .....	15
4.	Domestic and International Observers .....	16
IV.	ELECTION DAY AND POST-ELECTION PROCEDURES .....	17
A.	Election Day Procedures .....	17
B.	Certification of Election Results by Authorities. ....	19
APPENDIX A:	“How to Build and Maintain a Democratic Party System” by Ralph M. Goldman	

## I. INTRODUCTION

Elections are major events in democratic nations. They can be meaningless or even disruptive if they lack the protection of established constitutional provisions and political institutions to ensure their fairness. Without assured freedom of association, free speech, and a complete renunciation of the use of violence in the conduct of competitive politics, elections cannot serve their purpose as instruments of popular sovereignty in the selection of public leaders and the adoption of public policies.

Election laws can play a vital role in democratic elections, but laws alone cannot ensure free and fair voting. Modifications to laws concerning political parties, the media, and political party financing must be coupled with changes in the civil code and constitution to implement a democratic electoral system. This concept paper discusses a number of suggested provisions for democratic electoral laws and provides an outline for establishing a democratic election structure. The paper is not a comprehensive discourse on “how to write an election law.” It does, however, provide a basis for discussions among various political participants on the creation of a new electoral system.

Systems for both voter representation and political parties are necessary for a democratic electoral process. Arrangements for voter representation and the “rules of the game” for competitive party politics are very complex topics that cannot be adequately treated here. Briefly, the design of a system of voter representation is a problem of dividing up total state sovereignty into smaller units to be shared and dispersed in several ways:

- a . as components of a federal system of government;
- b . as separated powers whereby responsibilities and prerogatives are assigned to different branches of government;
- c . as voting rights universally shared by all adult citizens.

A decision must be made on whether to use the single-member winner-take-all system, a system of proportional representation, or a combination of the two systems. The advantages and disadvantages of each system are well-known. Recent experience has prompted several proportional representation countries (e.g., Italy and France) to change their system to the winner-take-all approach. Many transitional countries in recent years have adopted a mixed proportional and direct election system. In systems utilizing districts, the drawing of district boundaries is an important aspect of the electoral process and, in fact, is a science unto itself. Although “districting” is not covered in this paper, there are a variety of international examples from which to refer on these matters.

Democratic political party systems must be based on the basic principles that all political parties are treated equally under the law (and in practice) and that the power of incumbency is limited. Political party issues are explored further in the section on Elements of the Pre-Election Process (Section III, subsections A & C).

This concept paper on election law will discuss three important elements of the democratic election process: the structure of the electoral system the pre-election process, and election day procedures.

## **II. STRUCTURE OF THE ELECTORAL SYSTEM**

The first section of this paper addresses major issues related to establishing a structure for elections. It is important to note that the structural requirements for regional and local elections often differ from the structure for legislative or presidential elections at the national level. Where appropriate, the authors have taken these differences into account; however, this paper was written primarily to address issues related to elections at the national level.

### **A. Consensus of Election Participants**

Generally, the structure of an electoral system should be based on the consensus of the participants who will be involved in the system, including the electorate, the ruling and opposition political parties, political and other minorities, academicians, jurists, media representatives, and civic organizations. Many of the final characteristics of the election authorities will be shaped entirely by the consensus reached by these participants in the political system. It is important to remember that the size of election commissions, representation on the commissions, and the right for non-commission members to observe commission activities at all levels are fundamental components of fair elections in a democracy.

Many countries making the transition from single-party to multi-party elections have great difficulty in differentiating between the rights and responsibilities of the established government in the election process and the rights and responsibilities of the election authorities in the democratic process. In democratic systems throughout the world, reaching an equitable balance between government and election authority involvement is delicate.

Where the use of state-owned media and state financing of political parties in the electoral process is concerned, the distribution of these resources should rest with the neutral, multipartisan election authorities. State institutions must honestly implement the mandates of the election authorities, which should be regulated by the democratic central election authorities.

### **B. Enactment of Election Laws**

Election laws are enacted by legislative bodies in a democracy. The drafting of such laws usually occurs in one of two ways. First, a roundtable of political party leaders, academicians, civic group leaders, jurists, and other interested parties may discuss all controversial issues related to the proposed law and then present a draft version to the legislature. Alternatively, the drafting process for the law may be assigned to a standing or ad hoc committee of the legislature, usually on the assumption that a variety of political viewpoints, including major party interests, will be represented on such a committee.

In seeking to integrate a diversity of opinions on the election law, very often a roundtable will be the best procedure for all political participants in the elections to air differing ideas and viewpoints on the substantive components of the proposed election law. Seeking consensus among political parties not only gives elections greater credibility to all participating parties, but will also give the competing parties a greater sense of “ownership” of the election law; therefore, a greater desire to support its provisions. In addition, given the technical nature of an election law, the roundtable should welcome input from executive departments, academics, foreign experts, and civic groups. Once roundtable participants reach a conclusion on the contents of the draft election law, the draft should be presented to the parliament or legislature for consideration. A legislative committee should then review the draft, including a process of public hearings, and finally recommend a draft for passage by the legislative body. However, if this is a consensus document, the parliament should limit changes in the substance of the law when voting on its adoption.

If the decision is taken to allow a legislative committee alone to draft the election law, the period for commentary on the draft by political parties, civic organizations, academics, and foreign experts should be formalized, giving these individuals input into the substance of the law. The period of hearings by the legislative committee should be extended. If this process is not accompanied by the participation of outside groups with varying interests, the election law may greatly favor incumbent individuals and parties.

### **C. Establishing Election Administration Authorities**

Elections that are truly competitive, open, and fair require “refereeing” by an objective body, usually a Central Election Commission, complemented by two layers of subsidiary commissions. A balance between political interests on election commissions is achieved by establishing the composition in the election law itself. In multiparty systems, arriving at a balance between political parties requires addressing the following set of questions: which political parties will be represented? How will minor parties be included? What should be the size of the commission? How may this balance be duplicated in the subordinate local units of the commission?

The central, or national, election commission should have representatives of all major political parties as full commissioners. In many countries, after commissioners are nominated, the new body elects the chairman from the commission’s members. In order to increase confidence in the electoral process, an individual who previously served as the Chairman of the Central Election Commission should not ordinarily be reappointed after the first multiparty elections.

If there are more than ten active political parties, several options are available for selecting the central election body. The parliament (or chief executive) can direct the commission to break into smaller working groups, with perhaps five members dealing with provincial election commissions, five with voter registration, five with campaign financing, five with election day training, and so on. In some countries, political parties with a predetermined number of members

will be eligible for positions on the election commissions, providing that there is a mix of political ideology.

Terms of Central Election Commission members can vary from one year to a span of eight to ten years. Determinations on the term limits of commissioners should be made based on a consensus of the major political parties, keeping in mind that it is often advisable to serve for one election cycle (for example from one parliamentary election through the next). The Central Election Commission should be a standing body. Civic organizations and domestic and international observers should have access to all deliberations of the Central Election Commission. In some countries, representatives of civic organizations are included as full-fledged members of the central commission.

Because of the need for technical knowledge, technical staff should be retained for a duration of six to eight years, while individual commission members may be replaced more frequently. To provide continuity of experience and case knowledge, commission members' terms are usually overlapping. Permanent appointments are to be avoided in order to prevent bureaucracy, corrupting relationships, and excessively stubborn partisanship. Given the impossibility of total personal objectivity and the extreme interest of political parties in the fairness of elections, candidates for commission membership should be nominated exclusively by eligible political parties, endorsed by the nation's chief executive, and approved by a special majority of the legislature.

Funding of the commission's activities will depend on the nation's executive budget and legislative appropriations. There is sufficient funding experience in other nations from which to draw reasonable budget estimates. Funding will normally depend on the range of duties assigned to the commission by the election law. The number, duties, and funding of administrative commissions subordinate to the central commission may be controversial.

Election commissions subordinate and responsible to the central commission will be necessary if administration of the election law is to be comprehensive and effective. These commissions should also include members of the major political parties fielding candidates within its jurisdiction. These subordinate commissions should be at least one echelon below the national level (e.g., states, provinces, regions, or similar political units). Creation of subordinate commissions at levels below these may depend upon the size of the jurisdictions' populations, and may raise issues of bureaucratization and cost. Subordinate commissions (referred to hereafter as provincial commissions) should imitate the political and technical balance sought in the central commission, with local political parties playing a major role. However, in the interest of legal and administrative uniformity and in response to national funding requirements, the endorsement of nominations are best left with the national chief executive and the confirmation of appointments left to the national legislature. Provincial commissions may need special short-term funding for election observation teams in the field during elections.

Polling stations are locations temporarily used by temporary election personnel. Their administration may be handled by a small multipartisan election committee. A polling station can

be securely and fairly administered by an election committee consisting of a single temporary appointee chosen by the provincial commission, representatives of at least two political parties, and representatives of at least two civic organizations. The names and affiliations of all members of local election committees should be registered with the provincial and central election commissions at least two months before election day.

#### **D. Rule-making and Administrative Duties of the Commission**

Election commissions and election committees at all levels will be operating under the provisions of a national election law. From the outset it will fall to the central election commission to interpret and execute the law. It may be expected that, over time, the election law will be modified in response to local, provincial, and national experience. A legislative committee is the normal forum for receiving the reports and recommendations of the central commission.

The central commission will analyze all duties outlined under the election law, begin acting on the responsibilities allocated to it, and establish provincial election commissions. Because the responsibility for registering candidates usually falls to the central election authorities in some fashion, providing for these procedures is normally a preliminary activity for the central authorities. Likewise, liaison with the national media will likely be an early preoccupation for the authorities.

The central commission should be responsible, under the election law, for setting national rules of campaign practice and election procedure, standards of performance, assignment of specific administrative duties to provincial commissions and local election committees, and procedures for dealing with complaints and grievances. Other responsibilities of the central commission include:

- a. Standardizing ballot formats and procedures for listing names on the ballot;
- b. Standardizing political party financial reports and procedures for submitting these reports;
- c. Establishing guidelines for selecting, staffing, and securing polling places;
- d. Establishing internal organizational procedures for personnel actions, financial transactions and accounting, the purchase and inventory of equipment and materials, etc., all of which must be subject to legislative oversight;
- e. Preparing voter education pamphlets and other materials describing voting rights, polling procedures, complaint procedures, and similar guides to citizen participation in the election process, as well as certifying nonpartisan civic education groups to implement additional civic education drives;

- f. Designing and conducting training seminars for election commissioners and committee members, staffs, political party officials, and members of the media;
- g. Prescribing standards for essential decision making by election administrators, for example, the certification of party and candidate eligibility to appear on the ballot, criteria for voiding ballots, essential actions in ballot counting and ballot security, and other judgments that are pertinent to the fairness and honesty of the election.

The Central Election Commission should establish standards for the application of the law on a uniform basis throughout the nation. The role of local officials in election administration will vary from country to country. Generally, participation on the level of local government in election administration depends upon a country's customs, size, and availability of modern equipment such as computers, telephones, and facsimile machines. At the same time, the desire for fair and even election administration dictates that provincial governments should take actions or decisions based on the clearly stated requirements of central election authorities.

Some responsibilities frequently allocated to provincial election commissions include:

- a. Organizing subordinate commissions and accrediting their representatives; supplying ballots, voter registration lists and other election materials; and confirming election results for polling stations under their jurisdiction;
- b. Disseminating directives from the Central Election Commission to subordinate commissions;
- c. Organizing the registration of potential voters;
- d. Reporting to central election authorities on election-related actions within their locales;
- e. Training election workers;
- f. Overseeing political parties' access to local media;
- g. Insuring election security.

Provincial election commissions should be expected to carry out the major tasks of election law *implementation*. Actual responsibility for *interpretation* of the election law and related procedures should by and large be the responsibility of central election authorities.

In most countries, polling location officials and authorities are subservient to the provincial commission; in other countries, where traditional regional boundaries encompass large numbers of voters, another layer of election authority (e.g., cities or districts) will also exist.



These matters are dictated by both the level of officials being elected and traditional levels of election authority.

As with central election authorities, provincial commissions should adopt rules to allow for open, public meetings. Political parties and civic organizations must have the opportunity to have representatives present at meetings of the election commissions.

The work of the provincial commissions is likely to attract the frequent and close attention of local political parties, particularly regarding matters of patronage and election results. The best defense for commission activities and decisions is an open door to all sides and an open process in the performance of duties. Periodic public meetings or hearings sponsored by the provincial commissions that are well-documented by the local media will enhance the trust of the populace in the commissions and help reveal unanticipated difficulties. The Central Election Commission should require the submission of minutes of all provincial and local public meetings or hearings, particularly in the formative years of the new election system.

It is inevitable that local political parties will endeavor to derive job, supplier, and facilities patronage from the process of election administration. Official policies regarding fairness in these matters should be formulated early to prevent corruption and avoid controversy. Staffing rules will undoubtedly have to reconcile formal educational requirements with informal partisan, ethnic, and similar considerations. Contracts for supplies are best kept open for competitive bids. Facilities for the election can be provided on a cost-free basis, usually in schools, civic centers, and similar public places.

In addition to their responsibilities in the actual administration of the voting process, polling station commissions are normally responsible for the initial counting of ballots. In order to confirm the results, however, the next level of the provincial commission will frequently recount ballots, or at the very least, carefully review election materials and protocols. Again, these requirements should be outlined in the election laws.

A further area over which provincial commissions may have significant jurisdiction is election day security. The limits of provincial jurisdiction over both ballot transport security and security at polling stations should be dictated by the election law. During the election law drafting process, the competing political parties should reach agreement on the level of police involvement in ballot security. In many open election processes, the police and army are totally excluded from involvement. Police in uniform are forbidden from being within a prescribed distance from polling stations, and ballot transfers (both the distribution of the ballots prior to the voting and the collection of ballots following the voting) are completed by the commission, usually with representatives of *different* political parties and upon the consent of the polling station commission as a whole.

The role of local *government* officials should be limited to areas where the local government institutions have discrete authority, including:

- a. Ensuring open access for all competing political parties to local media outlets;
- b. Completing the voter registration process;
- c. Ensuring local police act within the confines established by the election law;
- d. Providing accommodation and technical support to provincial and subordinate election commissions.

Establishing an election structure for local election processes may be somewhat different. Because the results of local elections will have more direct consequences in the provinces, local governments and local election officials will be given a greater degree of autonomy in making interpretations of the election law. This is not to say that local elections should be administered at the sole discretion of local officials, for central election authority is paramount to ensuring the uniform application of the election law throughout the nation.

### **E. Adjudicative Processes**

Complaints, grievances, and breaches of the legal and administrative requirements of the election law must be dealt with promptly and expeditiously if confidence in the election system is to be won and maintained. There tends to be a greater number of breaches of the law in first-time elections due to an absence of familiarity with the process. These violations must diminish over time in order to establish confidence in an election process.

Modern technology such as computerized vote counting, telephones, and facsimile machines make the speed of responding to questions involving the election law more efficient, but may also raise levels of suspicion and distrust in the process. Unfortunately, such technology is often not available at or near polling stations, particularly those stations in remote or rural regions. It is precisely in these remote places that election violence and fraud usually occur. Civic groups and international observation teams have been particularly successful in discouraging such breaches by their presence. Their use of portable radio and facsimile equipment to make reports to central commissions, national legislative committees, and the international media prevents such breaches in the democratic voting process. Parallel vote counts by civic groups will also raise public confidence in the electoral process.

The greatest number of complaints in the election process will often arise out of the registration of potential voters and candidates, actions which precede election day. Further, most elections, even in countries with a lengthy history of democratic elections, have complaints about the use of the media and the distribution of campaign finances. Early in the election cycle, authorities must deal with all of these complaints in an expedient manner in order to raise popular confidence in the election law and the electoral process.

In elections, there can be many causes for disputes and breaches of the election law at local polling stations and in provincial election commissions. Examples of such problems include:

physical violence, threats and other forms of duress, erroneous vote counts, delays in service to the voters, ballots tampered with or damaged, inadequate security of ballot boxes and other equipment, invalid registration information and voter identification, lack of voter privacy, incompatible personalities of election officials, and poor judgment by the local election committee. These problems must be resolved immediately at the place of their occurrence or recorded with sufficient detail and confirmation to be acceptable later as evidence in a court of law. Neither resolution nor record-making may be easy or satisfactory to all parties concerned with an issue in dispute. Nonetheless, this is where and when the adjudicative process begins to allow protection of the democratic election.

The election committee at the polling station will usually be the first to hear or read of a complaint. The complainant may be one or more voters, one or more members of the election committee, an observation team, or a member of the media. The local appointee of the provincial commission should be responsible for receiving and making a record of every complaint. This record should be signed by its recorder and confirmed by the signature of one other member of the election committee. The matter should be resolved by correction of the activity in dispute at the polling station or by a majority decision of the members of the provincial election committee. This information on the resolution of the dispute should be included in a report sent to the Central Election Commission. Copies of these reports should be submitted immediately by the fastest available means to the provincial election commission and to the central commission. As the election system matures and confidence in its administrators grows, it may be expected that most complaints will be expediently resolved at the polling station.

Each complaint or grievance not immediately resolved by correction or by a vote of the election committee must become the subject of an appeal to the provincial and central election commissions. As soon as the day after the election, the election committee must compile a complete report on each violation of the election law, taking testimony from witnesses when possible and gathering physical evidence when appropriate by statute. The senior judge of a local court should be available to observe and advise this record-making process. The judge's comments should emphasize that the case may eventually be appealed from the central commission to an appropriate national court where rules of evidence are quite demanding.

Time and political authority are of the essence. Each phase of the adjudicative process should have a strict time limit for decision, for example, a few days for the election committee, two weeks for the provincial commission, three weeks for the central commission, and a month for court action. Rules of evidence and standards of assessment should apply at all levels, although informality is likely to prevail at the lower levels of the appeals hierarchy.

### **III. ELEMENTS OF THE PRE-ELECTION PROCESS**

Although most politicians are constantly "on the campaign trail," the official pre-election process begins after the election law is complete, the required election authorities are established, and the election date is officially announced. During this period, the most contentious issues frequently facing the election process are: financing of political parties, voter registration and

education, candidate registration, and access to the media. Inevitably, a variety of issues will arise related to each area, and the manner in which election authorities address the problems will illustrate honesty and goodwill on the part of election officials.

Significant elements of the pre-election process should be set out in either the election law or related legislation. Political party financing and access to the media are two controversial issues most often addressed in discussions of the election law. Because these are normally individual pieces of legislation, they are only addressed in a cursory manner within this concept paper. The greatest number of individual complaints prior to election day will arise from the voter registration process, and these complaints must be acted upon in an expedient manner in order to maintain the public perception of an legitimate electoral process.

The following section outlines some options for election authorities to consider with respect to drafting this important component of the electoral process. No matter how well-organized the administration of an election may be, public confidence in the overall process begins with the announcement of an election day. These popular perceptions will define whether an election is widely considered legitimate.

#### **A. Funding Parties and Campaigns: Financial and Material Support**

There are a variety of options for the democratic financing of political parties and their activities. Some countries require the political parties to operate using entirely private financing. In many transitional societies, however, sufficient private financing often does not exist, and many important non-financial campaign resources are held by the state, including, but not limited to, access to the media and the use of office space. Therefore, some form of state financing for political parties should be adopted and may include:

- a. Actual transfers of state funds to the political parties based on some objective criteria;
- b. Distribution of free time on stateowned media outlets;
- c. Use of state resources, including office space, postal facilities, and vehicles or free public transportation.

Central election authorities should have oversight mechanisms to ensure the political parties are observing financing regulations.

Often, both financial resources and free media access are distributed in proportion to the number of signatures required to either establish a political party or to place a candidate on the ballot. Other options for determining the level of political party financing include an objective estimate of the number of members of a political party, or, in second and subsequent elections, funding levels may be determined by the party's previous election results. Generally, the latter two options are not recommended for first-time elections.

Options for state financing may include an equal distribution of electronic media, where each competing political party draws lots for time (hour) allocation. Funding may be limited to free public transportation (or free petrol), free office accommodations both in the center and in the provinces, and funding for a certain number of local staff members, equipment, and supplies. Any requirements beyond these amounts would have to be raised from nongovernmental sources. Determination of the number of headquarters eligible for support could be made on the basis of a formula that includes such data as the number of elections in which the party has received some minimum percentage of the vote, the adequacy with which headquarters staff render required reports, and other measurable factors. Separate amounts could also be specifically allocated for nonpartisan civic education activities and for specific types of campaign expenses (e.g., the printing of a certain number of campaign brochures prior to election day).

The objective is to give financial support to legitimate parties for purposes that are observable, measurable, and accountable, in amounts that are limited but reasonable, without regard to incumbency or opposition status. Anything more is up to the parties themselves. In addition, financial support may be withdrawn for violations. Breaches of ethical campaign practice, properly adjudicated, could bring an end to the governmental financial support of a party.

In competitive party politics, fame, money, organization, and votes should be considered legitimate campaign resources and sources of influence *if and only if* employed in a manner open to public disclosure. The complete and timely reporting of campaign contributions and expenditures is of paramount importance if a free and fair election. is to follow.

## **B. Voter Registration**

Although reluctantly acknowledged and cautiously employed in many democracies, citizen identification in modern times is not difficult. Identification numbers, internal passports, taxpayer identification numbers, and social security numbers may be widely used by democratic governments to provide access to services and rights, including the right to vote. Each number usually includes a name, place and date of birth, gender, citizenship status, and other personal information. In addition, in many post-communist societies, ample information on the location of an individual's residence is included in this information. Therefore, many transitional countries adopt a practice of making this information available for potential voters to *confirm* the accuracy of the information in the public documents for voting purposes.

Where computer technology is available, voter registration and record-keeping is simplified. As a consequence, registration of voters in advance of political elections (with convenient procedures for updating residence and party affiliation), is becoming commonplace with such technology.

Voter registration procedures must be aware of the concerns of ethnic minorities and other cultural sub-groups, especially where large minority regions exist. An illustrative case is seen in the former Yugoslav Republic of Macedonia and the Kosovo Province of Yugoslavia, where

ethnic minorities boycotted recent censuses, and as a result, voting records based on these censuses were inaccurate. Keeping these possibilities in mind will insure greater public confidence in the electoral process.

Parties and election commissions are the most logical agencies for promoting initial registrations, confirming the accuracy of voter registries, and encouraging citizens to keep their voting status current. It is almost immaterial whether the registration comes from government records (such as tax or social security files), in person, by mail, or if technology permits, telephone. Competing parties and professional election commissioners will all be motivated to keep the registries accurate.

The test of the registration system usually comes when the voter appears at the polling place on election day. Simple identification procedures have been devised in many countries. Where there are internal passports or other identification cards, the identification can be instantaneous, unless there is widespread identification card fraud. Otherwise, the election official need only ask a few questions: Address? Age? A parent's first name? The voter's signature on the registry may be compared to a previous signature while the voter is recording his or her vote in the present election. On election day, identity cards should be stamped following the casting of a vote in order to hinder multiple, fraudulent voting.

In some countries making the transition to democracy, legislatures may determine the need to create an entirely new voter registration list. This can occur for a variety of reasons, particularly the desire to accommodate the wishes of opposition parties and ethnic minorities.

### **C. Registration of Political Parties and Candidates**

The ability of political parties and individual candidates to register for participation in an election process regardless of ideology is the foundation of democratic elections.

In most countries, political party registration occurs only once, according to the political party laws. When a new party seeks registration, most frequently the leaders must present documentation to either the Ministry of Justice or the Central Election Commission (if the Commission is a permanent entity). Generally, political party laws govern the process of registering candidates. Although a discussion of political party laws is beyond the purview of this paper, it is important to remember that once a political party meets the criteria for registration, the official registration process should move forward in an expedient manner, and the new political party has all the rights and obligations of any other registered political party.

In all countries, one right of an officially registered party is to present candidates for public office. Under most systems, candidates are registered within the first half of the election process. For example, if elections are scheduled in three months, political parties are obliged to have candidates registered within six weeks. In many countries, the registration of candidates offers the opportunity for a political party to access public funds and material resources (e.g., media, office space, transportation allowances, and equipment).

As with other components of an election, the candidate registration process is a subject which should be carefully outlined in the election law. In smaller countries with ample access to transportation, political parties very often register their candidates only with national level election officials. The situation can be different in larger countries, as the pro forma nature of candidate registration (where a standardized set of documents can be easily obtained, completed by the political parties, presented to the provincial election commission, and certified by the commission) is an election law activity which can be easily completed by regional authorities.

Several general principles should guide the establishment of candidate registration procedures. First, candidate registration should take place after the announcement of an election date, but long enough before election day to allow the parties to organize themselves to present candidates and organize a campaign. Second, the candidate registration process should require the use of standardized forms which are not bureaucratically cumbersome and are readily available to the political parties' leadership. Standard registration forms often require: petitions signed by a percentage of eligible voters in the region; names, dates of birth, profession, and residence of candidates; a copy of the political party registration materials; and a statement of presentation of candidates by the political party leadership. Next, once submitted, the certifying authorities should be given a period of time to confirm candidate information, and to inform the political parties of the certification. The period should not be longer than one week. Fourth, if a candidate is denied certification by the authorities, a clear process of appellate adjudication should be outlined in the election law. If national level authorities (either the Ministry of Justice or Central Election Commission) are responsible for candidate certification, then the courts should be responsible for adjudicating these complaints. When provincial commissions confirm candidacies, then lower courts will often be responsible for the adjudication process. Finally, in addition to registering candidates from political parties, a process should be instituted by which independent candidates can be registered. This process should, as closely as possible, mirror the process used for political parties to register their candidates.

#### **D. Educating Voters**

An educated electorate is a fundamental part of the democratic electoral process. Although some voters are politically astute and, even in the absence of voter education drives, will become informed on candidates and the electoral process, the majority of potential voters will not follow politics on a daily basis. As election day nears, most voters will educate themselves by becoming more interested in the political parties, candidates, and issues. However, many voters will not take such an interest. Particularly with these disinterested voters, formal voter education campaigns can play an important role. Voter education can augment understanding of the election process and candidates, deter potential intimidation, and insure voter confidence in the electoral process.

Transitional elections are a great challenge for election administrators and political parties, because voters are unfamiliar with the nuances of pluralistic politics and election regulations which are often quite different from the past. Together, these factors can cause voter confusion and, in some cases, lead to low voter turnout. The most effective means of counteracting these

obstacles is through a coordinated process of voter education sponsored by government, political parties, and non-governmental organizations.

Furthermore, a well-educated electorate will be less likely to succumb to the fear and threats of intimidation which are often associated with transitional elections. The greater percentage of the public that understands or is involved in the election process, the less likely the chance for election day fraud. Therefore, it is the goal of most transitional governments to encourage non-partisan, civic education organizations to educate potential voters about the electoral process.

In most countries, voter education is conducted through mass (i.e., electronic) media, newspapers, and through voter outreach campaigns sponsored by non-partisan civic organizations.

## **1. The Media**

The media has the single most important role in educating the electorate. At the same time, malignant actions on the part of the media can distract from the legitimacy of an election process. Such damaging actions to the election process include giving an unfair advantage to one ideology, political party, or candidate over others by biased reporting or increased coverage of one party over another. There may be only one media source providing election information to voters. As a result, governments have a special responsibility toward establishing fair media laws to protect against abuses in an election.<sup>1</sup>

In most Western countries, public and private media sources exist, taking the form of newspapers, radio stations, and television stations. In some cases these sources of media are governed by national laws. In transitional countries private mass media sources only occasionally exist, often as a result of financing difficulties. Frequently, the only non-government media are political party newspapers. In the absence of a wide range of private media, the challenge is to establish a fair set of rules for the operation of the media during the campaign and to provide a means of enforcing these rules.

Electronic media outlets can provide election-related information in several ways. During daily news broadcasts, election-related events, for example rallies and speeches by major candidates, can be thoroughly covered. Media laws should require equal news coverage for all “major” candidates, and the determination of these “major” candidates should be made through objective, written criteria. Most countries provide the opportunity for candidates and political party leaders to conduct debates broadcast by the media on important campaign issues. These

---

<sup>1</sup>According to the June 1990 Documents of the Copenhagen Meeting of the Conference on Security and Cooperation in Europe, all signatory states agree to: “provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a nondiscriminatory basis for all political groupings and individuals wishing to participate in the process.” (Paragraph 7.8)



debates provide an important aspect of voter education, and as a result, should be encouraged and facilitated by election authorities.<sup>2</sup>

Newspapers serve an equally important purpose in voter education. Newspapers can include information on deadlines for voter registration, candidate listings, polling station locations, and general stories about technical aspects of the elections. The geographic boundaries of voting districts are often published along with statistics on the populations of the district and other information useful to the voting population.

## **2. Government/Central Election Commission Responsibilities**

In educating the electorate, the government (usually through the central election commission) has the responsibility for educating voters about the election process. Government-sponsored voter education drives can take many forms.

Election authorities can prepare informational pamphlets for direct distribution to households or mass mailings (when infrastructure permits) prior to election day to explain the election and voting procedures. Such pamphlets can also explain in a non-partisan manner the programs and goals of political parties.<sup>3</sup>

In the republics of the former Yugoslavia, all eligible voters are issued “invitations” to vote, either through the postal service or by hand delivery. These invitations explain the date of the elections, the positions to be filled, and the location of an individual’s polling station.<sup>4</sup>

Pamphlets can include an illustration of the polling station, discussions of the secrecy of the vote, and an explanation on the process of receiving and casting ballots for a candidate or party.

## **3. The Responsibilities of Civic Groups**

In exercising their obligation to educate the electorate, election authorities in many countries rely entirely on nonpartisan civic education groups. Many examples of these groups

---

<sup>2</sup>In many countries, including those in Western Europe and the United States, candidates and political parties are permitted to purchase broadcast time from television or radio in order to air commercials. The candidates or political parties choose the time of day for the commercial, and pay accordingly; the content of the commercials is subject to few legal restrictions.

<sup>3</sup>When issuing information on political party programs, election authorities often ask the political parties to prepare the text for their entry, instead of preparing the text themselves, therefore alleviating concern over the potential partisan nature of the entries.

<sup>4</sup>On election day these “invitations” are surrendered by the voter in order to obtain ballots, and as a result serve as a separate check on voter identification.

exist around the world, and they have repeatedly demonstrated their ability to complement the electoral process in elections throughout the world.

Experience with successful civic education groups has lead to some consistent themes, which include:

- a. Members of the group may not belong to any political party, and as a whole, the group does not support one political ideology over others;
- b. The group is given state funds to produce voter education pamphlets and brochures and to distribute this information (including funds for transportation, printing, office space, staff salaries, etc.);
- c. Students can organize the civic education groups in many instances;
- d. There are no bureaucratic impediments to registering either the group itself or its individual members. Like the candidate registration process, registration of civic education groups should be a pro forma process.

#### **4. Domestic and International Observers**

Both domestic and international observers can play an important role in the outcome of the electoral process.

Domestic observers can enhance the confidence of voters in several manners: through the prevention of fraud at the ballot box, through greater access to information because of their familiarity with the local language and customs, and through their ability to impartially monitor the election for violations of the election law from start to finish (e.g., from the announcement of an election date through the announcement of election results). In democratic elections throughout the world, some form of domestic election observation is encouraged and is very often outlined in the electoral law.

Normally, nonpartisan organizations are authorized by election authorities for the purpose of overseeing the election process on a neutral basis. These organizations will compile lists of individuals to observe the election process in the various regions. Regional observers usually receive credentials from provincial election commissions, and any requirement for the registration of these observers should be limited to basic biographical information and perhaps a statement from the individual that he or she is not a member of any political party active in the elections to be observed.

Domestic observers should be granted liberal access to the activities and deliberations of election commissions at all levels, and this access should be similar to that of the election commissioners themselves. Furthermore, domestic observers must have the right to freely observe

activities at the polling stations on election day, from the distribution of voting materials through ballot counting.

As outsiders to an election process, international observers can serve as an objective voice on the democratic administration and the fair conduct of an election. Over the past decade, teams of international observers have watched and reported on almost all major transitional elections around the world. Since the 1989 Copenhagen Meeting of the Conference on Security and Cooperation in Europe (CSCE), signatory states have agreed to facilitate the role of international observers for elections.

Generally, provisions in electoral laws governing international observers are confined to agreeing to accredit international observer teams and granting international observers access to all election activities.

Normally, international observers will be assisted by central election authorities. In some countries, the Central Election Commission will issue invitations upon request to the CSCE, multilateral organizations, parliamentary groups, and other interested nonpartisan groups who wish to observe the elections. In addition, the competing political parties should have the right to invite such groups to observe the elections, as well.

## **IV. ELECTION DAY AND POST-ELECTION PROCEDURES**

### **A. Election Day Procedures**

Although all election-related activities before election day itself will contribute to the public's perceptions concerning the legitimacy of the election process, it is especially important that election day activities be organized, efficient, and run as smoothly as possible to inspire confidence in the electorate. Initially, when instituting a democratic electoral system for the first time, there will be slight imperfections in its operations. Election law drafters and election administrators should ensure that as few imperfections exist as possible.

In order to limit voting-related problems, an outline of voting procedures should be an item clearly delineated by the election law. The central election authorities must also issue precise mandates on election day voting procedures as necessary, since election administrators at polling sites and potentially some provincial election commission officials will lack experience in election administration. An important responsibility of the central election authorities and provincial commissions is to provide training on election day procedures for those volunteers and officials involved in administering the election itself.

Within the election laws, the following areas should be addressed:

- a. **Specific opening and closing times for polling stations.** In summer months, most polling stations are open from 700-1900 hours, while in the winter months,

stations can be open from 900-2100 hours. Decisions will need to be made on the basis of shifts for workers and other local criteria.

- b. **Number of voters per polling station.** In most countries, an average polling station with between six and ten officials can accommodate no more than 1,000 voters. Various factors will influence the polling station numbers, including the number of ballots to be cast by each voter and the accuracy of the voter registries.
- c. **Secrecy of the ballot.** The desire for secrecy of voting ballots should be stated in the election law, as should the need for private voting booths. There should be an ample number of voting booths to ensure privacy and facilitate the efficiency of the voting process. For a polling station of 1,500 registered voters, four private voting booths are generally sufficient for the efficient casting of ballots. These numbers can change based on the number of ballots and general familiarity with the process.
- d. **Accommodating voting for those who cannot travel to the polling stations.** Voting by those who cannot physically cast a ballot at a polling station should be accommodated in the election law. Several members of the polling station election commission can travel to individuals' homes with a portable sealed ballot box and ballots allowing the person to vote from their home. Absentee voter procedures, which allow voters to cast their ballots when they are traveling or otherwise out of the jurisdiction during the election, may also be useful for the ill or hospitalized voter.
- e. **Military Voting Procedures:** Voting for military personnel can take place at polling stations with the general public or in special stations organized on military bases. If polling stations are organized on the bases, the elections should still be administered by civilians and provisions should be adopted to allow both international and domestic observers to watch the voting.
- f. **Responsibilities of polling station election officials.** Election officials at polling sites throughout the countryside have the responsibility for the local administration of the election. They also ensure voter confidence in the democratic process on election day. Because their responsibilities are crucial to an election, these officials should receive adequate training to assist in the electoral process. Their responsibilities should include: receiving ballots and other election materials from the provincial election commission; organizing the polling station, ballot boxes, voting booths, and ballots; maintaining order and preventing violence during the voting; processing voters; completing the required reports in order to record their work; closing the voting site at the designated time under the law; counting the results and recording the results on protocols; and relaying the results and returning the voting materials to the regional election commissions.

- g. **Processing Voters:** Voters will often arrive at the polling site at the same time and will be required to stand in line. In order to expedite the voting process, the polling station commission should be organized to accomplish a number of tasks. These tasks include: checking voters' identity cards with names on the voter registry, marking ballots, guiding voters to the voting booths, and marking identity cards (or other marking such as indelible ink on a finger to prevent fraud) following the casting of ballots. The ballot box should be centrally located to expedite the process.

## **B. Certification of Election Results by Authorities**

The most important aspect of any election is the central issue of whether the participants who voted in that election believe that the results were obtained freely and without coercion or interference by the state or any of the candidates participating in the election. If voters do not feel that the election was fair and open, the results of the election will continue to be a subject of criticism and skepticism. The single most important function for a central election authority is to assure voters that the results of an election were free of taint and that the election was conducted in a fair and open fashion. The role played by the central election authority in the certification of the election results cannot be underestimated or stressed enough. Without the authority's certification (and without the popular belief by the electorate that the election was free and fair) the result of the election will always be cast in doubt.

A "paper trail" of ballots and reports concerning the election should always exist from the polling station to the central commission. In order to accomplish such a trail, the polling station authorities, following the counting of ballots, should send all ballots and reports concerning the voting process (including reports of voter complaints) to the provincial commission. At the provincial level, additional record-keeping reports should be prepared, and while the provincial commission keeps the ballots, all complaints and reports on the electoral process should be sent to the Central Election Commission. Ballots and reports should be retained for at least a year in case further complaints arise.