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(VENICE COMMISSION)

DRAFT REPORT
ON THE TIME LINE AND AN INVENTORY OF POLITICAL CRITERIA
FOR ASSESSING AN ELECTION

on the basis of contributions by
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**This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

I. European standard-setting documents and relevant publications

1. The existing European texts referring to the right to free elections are either very general, or, mostly, not legally binding. They are more a political or legal declaration than a precise body of legislation spelling out all details of what a free democratic election is. While serving the specific purposes of the authors of those documents perfectly well, they are not particularly helpful when it comes to such an applied art as election observation, which is, certainly, not a precise science. On the other hand, the ever expanding case law of the European Court for Human Rights has of late been building a new reality in this field. Recommendations and codes of good practices, elaborated by the Venice Commission further elaborate standards for democratic elections.

2. With election observation emerging as an important area of activities of many international organisations and institutions, not least, due to the enlargement process, the need to come up with credible criteria for assessing an election is increasingly becoming the order of the day.

3. The Interparliamentary Union undertook to summarise the existing experience in election observation on a global scale, not least the criteria to assess an election. Later on, in cooperation with the United Nations, as well as a host of international think-tanks and NGOs, such as the Carter Center, the National Democratic Institute, IFES, to name but a few, a document, entitled Declaration of Principles for International Election Observers and Code of Conduct for International Observers was produced and endorsed, on 27 October 2005, by 21 international governmental and non-governmental organisations, institutions and agencies engaged in election observation. PACE Bureau endorsed that document at its meeting of 7 October 2005.

4. The first Protocol (1952) to the European Convention on Human Rights in its Article 3 makes a direct reference to the right to free elections – albeit in a most general manner – ‘the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature’. Furthermore, a narrow interpretation of this provision could lead to the conclusion that it only refers, on a national level, to parliamentary elections. The case law of the European Court for human Rights provides an in-depth and detailed interpretation of the broad principle established by the Convention making the relevant provision more focused and case-orientated.

5. The standard-setting election-related document of the OSCE is the Document of the Copenhagen Meeting of the Conference on the Humanitarian Dimension of the CSCE (1990), generally known as the Copenhagen Document. It provides a more elaborate, albeit not exhaustive, list of election related rights of individuals, and obligations of a State. While speaking of a free and fair expression of the will of the people, the Document does not actually spell out specific criteria to assess, how freely that will was expressed. Furthermore, the Document is only politically, but not legally binding, as it was not subject to the ratification procedure.

6. At the request of the OSCE participating States, the OSCE ODIHR produced, in 1996, an Election observation handbook (the Bluebook) which is being regularly updated. While a very detailed and highly useful document, containing detailed assessment criteria, the Handbook was never formally debated or put to vote in the OSCE Permanent Council, allowing some critics of the book to degrade its status and refer to it as an internal working document of the ODIHR on whose text there is no formal agreement of the OSCE participating States. Even so, the criteria in the Handbook are broadly regarded as a sound basis for assessing an election and widely used by international observers, including those from PACE. It is therefore not the purpose of this report to revisit those criteria or to reinvent the wheel, but rather to establish an

assessment time line and to come up with a broad political definition of what a democratic, free and fair election is. Criteria to assess an election should be based on the underlying principles of a democratic election.

II. Elections as a process

7. An election is not a one-off exercise. It is a continuous process involving several stages, all of which need to be analysed if one were to assess an election.

8. Long before the election day, the process starts with the elaboration of electoral legislation. The quality of that legislation is a major, although by far, not the singular criterion, to assess an election.

9. In a democratic society, elections belong to the people. They are organised to ascertain and honour the people's will as to who should occupy elected office. Principles for democratic elections are traced to the precept that citizens have the right to take part in government and in the conduct of public affairs. On a global scale, this precept is enshrined in Article 21 of the Universal Declaration of Human Rights and Article 25 of the International Covenant of Civil and Political Rights. Sound electoral legislation is a *conditio sine qua non* for putting that precept into practice.

10. While electoral legislation is not something cast in stone, it should not be subject to never-ending changes. Having the rules of the game change immediately before or during the game is not conducive to a democratic election. The Code of good practice in electoral matters (CDL-AD(2002)023rev, item II.2.B states that 'the fundamental elements of electoral law...should not be open to amendment less than one year ahead of an election, or should be written in a constitution or at a level higher than ordinary law.' In an Interpretative Declaration on the Stability of the electoral law (CDL-AD(2005)043) this provision is further clarified, 'In general, any reform of electoral legislation to be applied during an election should occur early enough for it to be really applicable to an election.'

11. Thus, for the purposes of this report, the timeline for assessing an election starts one year ahead of the vote.

12. The second stage starts with a date, when an election is called. That date, in normal circumstances involving regular elections, should be reasonably distant from the voting day to allow all political stake holders to prepare for an electoral race.

13. The third stage starts with the beginning of the electoral campaign.

14. The fourth stage is the voting day proper, and the vote counting.

15. The final stage is the declaration of results of an election.

16. The proposed assessment time line is designed to put into a clear perspective the application of the very detailed and elaborate election assessment criteria contained in the OSCE/ODIHR Election observation handbook.

III. Principles of a democratic election

17. A democratic election is a free and fair election, the one that is inclusive and based on universal and equal suffrage.

18. For an election to be democratic, other internationally recognised human rights must also be exercised in the electoral context, without discrimination and restrictions, including:

- The right to associate into political organisations (such as political parties, candidate support organisations or groups favouring or opposing referenda propositions);
- The right to peacefully assemble for meetings, rallies and to otherwise demonstrate support for electoral competitors;
- The right to move freely to build electoral support;
- The right to be free of the threat of violence or other coercion, while making political choices or exercising political expression;
- The right to hold political opinions without interference; and
- The right to freedom of political expression, including the freedom to seek, receive and impart information and ideas in order to develop informed choices required for the free expression of the will of the electors.

19. Generally, a free election is an election, where candidates can compete without any obstacles erected by the authorities, where the electorate has substantive options and a free access to information concerning those options.

20. A democratic election is not only a free election, it is also a fair election.

21. Even if an election is free, but the playing ground is not level for the players, if there is state interference resulting in inequality of chances for the runners in the electoral race, an election cannot be genuinely democratic.

22. Thus, a fair election is the one where the quality of the electoral process meets the spirit and the letter of established standards.

23. A democratic election is a transparent election. It is not possible to know whether the right to be elected and the right to vote are being ensured by governments unless electoral processes are transparent.

24. It may be argued that the transparency principle is identifiable in the penumbra of election-related rights found in treaty obligations and other state commitments concerning elections. Nonetheless, this principle is more directly based on internationally recognised human rights and fundamental freedoms.

25. The basis for transparency is the freedom to seek, receive and impart information which is integral to freedom of expression.

26. The right to information is central to whether electors and electoral contestants are able to vote and to be elected. A democratic process presupposes that information concerning electoral contestants, information concerning the exercise of electoral rights and information about electoral processes is freely available to the citizens.

27. State practice almost universally demonstrates acceptance that electoral contestants have a right to be present in polling stations on voting day to witness and verify the integrity of voting, counting and tabulation procedures.

28. State practice also demonstrates growing acceptance of the right of citizens to participate in public affairs and to seek and receive information about election process through the activities of domestic non-partisan observers, as well as international observers.

29. Democratic elections require accountability.

30. While, *per se*, elections create an accountability mechanism, there must also be accountability within the election process. The accountability principle helps to realise electoral inclusiveness required by the rights to universal and equal suffrage for prospective voters and electoral contestants.

31. The accountability principle is linked to the transparency principle, which is needed to understand how officials are conducting public affairs and thereby hold themselves answerable for their actions or inactions.

32. Accountability in electoral process is multifaceted and includes, *inter alia*, the need to provide effective remedies for violations of election-related rights; the need to create administrative accountability for those organising elections and those conducting governmental activities related to the election; and the need to bring to account those who conduct criminal acts that affect election-related rights.

33. A democratic election is the one public has confidence in.

34. Public confidence, like universal and equal suffrage, relates to electors and those seeking an election alike. Should those who seek to occupy public office lose confidence in elections as the best means to attain their goal, they could turn to non-democratic ways of gaining power.

35. The principles of inclusiveness, transparency and accountability come together as basis for public confidence in elections.

IV. Conclusions

36. Elections are more than technical matters. Electoral processes are part of a compact between citizens and the government that represents them. Elections are indicative of how a government treats and respects citizens through a wide range of institutions and processes.

37. In its turn, the quality of an election is derived from the quality of the process and generally reflects the level of democracy in a society.

38. An election is best politically judged on how fully the principles for a democratic election are observed and implemented in a state.

39. A State's openness to an international scrutiny of an electoral process bodes well for the prospects of a further fine-tuning of its democracy.

40. By contrast, a State unwillingness to invite international election observers is a criterion in itself and should give rise to serious concerns and be followed up by international institutions.