

## 12. Balloting

*The legal framework should ensure that polling stations are accessible, that there is accurate recording of ballots and that the secrecy of the ballot is guaranteed.*

### **Secrecy of the ballot**

The international standard for a democratic election requires that votes be cast by secret ballot or by other equivalent free, secret voting procedure.

The provisions in the legal framework regulating control and security of the ballot, as well as the provisions governing the casting of a ballot at the polling station, should ensure ballot security, while at the same time ensuring that no individual ballot can be identified as having been marked by a specific voter. Ballot secrecy is an effective counter to vote-buying, to voter intimidation and to other undue influences. No member of a polling station committee or any other person, except during the counting of ballots, should be allowed to see a voter's marked ballot. Obviously, this prohibition does

not apply to a person legally authorized to assist a blind voter or a voter requiring assistance due to physical infirmity or illiteracy in certain cases. However, a member of a polling station committee should not handle or control the voter's marked ballot before it is placed in the ballot box.

The principle of secrecy of the ballot requires election legislation to ensure that secret voting is not only a right on the part of the voter but an absolute obligation. The tear-off part of the ballot should not bear any serial number, while the counterfoil might have these numbers for control purposes. The practice of family voting -- where the head of a family casts ballots on behalf of the other members of the family -- should not be condoned. Similarly, proxy voting is another practice to be discouraged. Legislation should make it clear that every voter's ballot must be marked and cast individually and secretly.

### ***Voting procedures***

When reviewing the legal framework all provisions regulating the voting process should be carefully examined. These should ensure that voters are adequately identified and that other mechanisms are in place to prevent fraudulent or double voting. However, voting procedures should not be so cumbersome or complicated as to hinder the voting process. Voting provisions should require that all ballots and voting materials be adequately safeguarded before, during and after voting.

The legal framework should be flexible enough to allow for technological innovations to be applied to various aspects of balloting and counting, for example, utilizing electronic voting machines for recording and counting of ballots. Such wide flexibility might be regulated by requiring that certain types of approval be obtained before adopting them.

The legal framework for elections should prohibit the presence of unauthorized persons in polling stations. This can usefully be coupled with a provision for police officers only to enter polling stations either to vote or when officially requested to restore order. In the latter event, police should enter polling stations only if authorized by the person in charge of the polling station, and should be required to leave as soon as order is restored.

The legal framework for elections may provide for other methods of voting, such as voting by mail or mobile voting. These types of voting may be available to a single individual, such as a person who is abroad on business; to a class of voters, such as diplomats, police, the military or other security forces; or to an entire community, such as persons displaced due to the outbreak of war. In the case of mobile voting, it may be available to a single housebound, incapacitated voter or to an entire community, as, for instance, in a hospital or other institution. In all cases adequate mechanisms must be provided to prevent the abuse of such methods of voting.

Election laws may contain special provisions to facilitate voting by persons who are physically disabled, those in hospital or in prisons, those who are out of the country or who cannot come to the polling station for other valid reasons. Such provisions must not be discriminatory and must be applied uniformly to all similarly-placed voters.

It is common and acceptable for the electoral framework to provide for members of the military and the police to be able to exercise the right to vote while on active duty. Although protecting the right to vote of a member of the military or the police is appropriate, the provisions must be written carefully to avoid abuse.

It is not unusual for the legal framework for elections to permit special polling stations to be set up within military units located in remote areas far from any centre of population. While such a provision may be unavoidable, it should be accompanied by an express provision that this is strictly exceptional and that, wherever possible, members of the military and the police should vote in advance polls. Otherwise on polling day those not on duty should vote in ordinary civilian polling stations where they reside, without bearing arms and without wearing uniform.

Some or all of these groups may be the subject of provisions which include: bringing the ballot box to the voter or "mobile voting"; voting by mail for security forces and other persons outside the country such as refugees, and advanced polling. The voter accommodation principle is commendable. However, related provisions may be written in such a manner that they are not subject to abuse and fraud. To minimize this possibility and to safeguard

the integrity of the special voting activities, the legal framework should include the following:

- There must be a process to clearly identify voters eligible to use alternative voting provisions and to prevent double voting.
- Special voting provisions should only be applied in well-defined situations, e.g., in cases where it is not physically possible for the voter to travel to a regular polling station to vote; however, some jurisdictions might provide exceptions to this for special reasons, for example, allowing a large section of its voters to vote by mail.
- Representatives of parties and candidates as well as election observers should be permitted to monitor special voting stations.
- The number of ballot papers with serial numbers and other security features used and the number later returned, should be formally and transparently recorded.
- The number of ballot papers issued should correspond with the number of requests received, plus a specified small number of extra ballots to allow for voters who may spoil their ballot paper.
- The names and number of requesting voters who have used or are using the special provisions should be recorded in polling-station and other protocols in order to avoid double voting and to identify particular areas where the proportion of votes cast is unusually high, which may point to the occurrence of fraud.

### ***Balancing voter convenience with safeguards against fraud***

Accommodating voters' needs must be carefully balanced against safeguarding against voting fraud. If not drafted carefully, a provision accommodating the needs of a special group of voters, by establishing exceptional voting procedures, can be abused by persons attempting to vote more than once or who do not meet the legal requirements for the exceptional voting procedure. Such provisions must provide sufficient safeguards to prevent abuse and fraud when alternative methods of voting are permitted.

## ***Checklist***

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- Does the legal framework guarantee that votes are cast by secret ballot? Are there adequate prohibitions against "family voting"?
- Does the legal framework for elections require that voters be adequately identified prior to receiving a ballot?
- Does the legal framework contain sufficient provisions for the security of all ballots and voting materials before, during and after voting?
- Does the legal framework provide alternative methods of voting for specific persons or special categories of person?
- Does the legal framework contain sufficient safeguards to prevent fraudulent or double voting?
- Does the legal framework prevent a person from using an alternative method and the regular process to vote twice in the same election?
- Does the legal framework prohibit the routine entry of police or other armed forces into polling stations except when they enter to vote or when they are specifically authorized by the person in charge of polling station to restore order?