

## 13. Counting and tabulating votes

*The legal framework should ensure that all votes are counted and tabulated accurately, equally, fairly and transparently.*

### **General principles**

A fair, honest and transparent vote count is a cornerstone of democratic elections. This requires that votes be counted, tabulated and consolidated in the presence of the representatives of parties and candidates and election observers, and that the entire process by which a winner is determined is fully and completely open to public scrutiny.

The legal framework should provide for the presence of the representatives of parties and candidates and election observers during the counting, tabulation and consolidation of votes. The legal framework must clearly state the electoral formula that will be used to convert votes into legislative seats. Thresholds, quotas and all details of the electoral formula must be stated clearly and all possibilities, such as ties, withdrawals or death of a candidate,

must be addressed. The law must lay down clear criteria for determining valid and invalid ballots in all polling and counting stations across the jurisdiction. Rules for determining the validity of ballots to be counted should not be so stringent as to unreasonably result in disenfranchising a voter. The paramount principle should be that if the intention of the voter is clear, the ballot should be counted.

### ***Counting ballots***

Regardless of whether ballots are counted at the polling station or at a central counting location or at both places, the representatives of parties and candidates and election observers should be permitted to remain present on this occasion. As well as ensuring the presence of above all entities during the counting of ballots, the legal framework should provide safeguards where technology is used to count ballots. The legal framework must make possible the independent verification of the accuracy and soundness of hardware and software used for counting ballots. Whether manual, mechanical or electronic counting is used, overview procedures must be in place to ensure accuracy and reliability. The law must also allow objections to counting procedures, including objections to criteria used to determine the validity of ballots.

The legal framework for elections should clearly specify that the representatives of parties and candidates and election observers be given, as far as practicable, certified copies of tabulation and tally sheets. The law must also clearly specify what authorities, if any, are entitled to receive this information prior to certification of the election results by the central EMB.

### ***Tabulating results***

The legal framework should provide, in clear and objective language, the procedures for transferring the certified copies, results of counting, ballot papers and other election materials from polling stations and other, lower levels of EMBs to intermediate and higher EMBs for consolidation and safekeeping. The law should require that all consolidation of vote counts be available in

tables or similar format so that representatives of parties and candidates and observers may track the vote count of any polling station all the way up, through intermediate levels to the final consolidated results. The tabulation for any polling station should provide detailed information such as the number of ballots used and returned, the number of blank, spoiled and invalid ballots, and the number of votes for each political party or candidate. This information should be broken down for alternative methods of voting, such as voting by mail or mobile voting, where this can be done without compromising the secrecy of the ballot. This degree of detail is necessary to enable the representatives of parties and candidates and election observers to track results and locate specifically, if fraud has occurred, where the numbers have been unlawfully changed during the consolidation processes.

A strictly defined division of responsibility among various tiers of EMB and the state authorities is vital during the tallying process. Election legislation should underline the principle that only EMB members should be involved in this process. To ensure this it is also important that representatives of parties and candidates and election observers are given access to all stages of the process of counting, tabulating, consolidating and tallying results.

### ***Publication of counting, tabulation and consolidation of results***

Many times timely publication of the result of ballot count may turn out to be crucial for its acceptance by all contenders. Therefore the legal framework should provide for such timely publication of results. It should also clearly state whether the election authorities may announce partial or preliminary results prior to final certification. If results can be announced prior to final certification, the legal framework should clearly regulate the making of such announcements. Subject to restrictions regarding time zones, the media and party, candidate or other representatives should be free to publicize the poll results. It is normally the chair of the polling station committee, in the case of counting at the polling station level, or the director of elections at the higher level of the EMB, who announces the results of the count. It is acceptable in countries that spread across more than one time zone for there to be restrictions on the reporting of results before all polls have closed.

The legal framework should require that all relevant counting documents other than the ballots, such as election protocols, tabulation and tally sheets, and decisions determining or affecting election results, be publicly accessible. Such electoral documents should be publicly posted at all levels of election administration, including the polling station, municipal, and state EMB levels. Detailed tabulations of overall results, including the voting results in each polling station, should be posted at each election office. These detailed tabulations should also be published in state-owned or-controlled print media, in the official gazette and, wherever possible, on the website of the EMB as soon as the results are certified.

To prevent fraud, the legal framework should require public posting of ballot counts and tabulations at each level where the count or tabulation occurs. The possibility of fraud arises where an intermediate EMB is not required to publicly post the tallies and tabulations.

### ***Effective date of certified results***

The legal framework for elections should clearly specify the timing of the final certification of the election results, the process of final certification including public announcement and notification to candidates of their election, and the terms of office of elected candidates. Additionally, the law must be clear as to what circumstances require a recount or new election in any or all polling stations. The law must be clear as to who can request a recount or new election, the deadline for the request, all necessary procedures to make the request, the deadline for adjudicating on the request, and the date of and procedures that will govern a recount or new election. Where technology is to be used in counting or tabulating, the law must be clear as to what the recount would entail i.e., whether the data would be re-entered, a parallel manual count be conducted, etc.

The legal framework must provide for secure storage of all ballots and election materials until either the deadline for making legal challenges to the certified results has passed or, in case a legal challenge is made, the final adjudication of such a challenge is pronounced.

***Personal safety exception***

In extreme circumstances, publication of election results at the polling station level might jeopardize the safety of voters or polling station committee members in that community. This possibility exists where an election is held after civil conflict or in a society with deep-rooted conflict where tensions remain high. In such extreme circumstances the law may provide limited exceptions to these principles in order not to place voters at risk of personal harm.

### **Checklist**

---

- Does the legal framework ensure that the entire process for counting and tabulating votes is conducted in the presence of representatives of parties and candidates as well as election observers?
- Does the legal framework provide for independent verification of all hardware, software and other elements in the counting and tabulation processes where methods other than manual counting are used?
- Does the law require that all tabulations be available in a format that allows representatives of the parties and candidates and observers to track the vote count of each polling station all the way up, through intermediate levels to the final consolidated results?
- Does the law require that tabulations of results contain detailed information on results for all methods of voting other than where the secrecy of the ballot might be threatened?
- Does the law require public posting and publication in the print media of detailed results from the polling station level up to the central EMB?
- Does the law clearly specify the processes for final certification of election results and notification to candidates, and the tenure of office for elected candidates?
- Are all requirements and procedures for a recount of ballots clearly stated?
- Are all requirements and procedures for a new election clearly stated?