

## 15. Election observers

*To ensure transparency and to increase credibility, the legal framework should provide that election observers can observe all stages of election processes.*

A transparent election process is an international standard necessary to ensure democratic elections. The presence of domestic and international election observers in the evolving democracies tends to bring credibility and legitimacy to the election process being observed and serves to deter overt acts of electoral fraud, especially during the polling. However, certain mature democracies, where there is public trust in the impartiality and neutrality of the election administration, such observation of elections may not be provided.

Many legal frameworks provide for the presence of observers, both domestic and foreign, in addition to representatives of the media, political parties and candidates, to ensure transparency. Essentially, election observation means *the purposeful gathering of information regarding an electoral process, and making informed judgements on the conduct of such process on the basis of information collected, by persons who are not inherently authorized to intervene in the*

*process and whose involvement in mediation or technical assistance activities should not jeopardize their main observation responsibilities.*

### **Domestic election observers**

There is now an increasing trend to permit domestic election observation. Election observers from civil society groups (such as various church groups, women's and youth organizations, and NGOs) can play an important role, and should have the right to be accredited to observe. All facilities should be afforded to these domestic observers to carry out their assigned duties. Any laws regulating NGOs and public associations should be reviewed to ensure that they do not unreasonably obstruct acquisition of the necessary legal status and accreditation as domestic election observers. The legal framework should provide clear and objective criteria for registration and accreditation as an observer and be clear as to the authority accrediting observers, the requirements for obtaining observer status and the circumstances in which observer status can be revoked.

The law should provide clear and precise provisions establishing the rights of observers to inspect documents, attend meetings, observe election activities at all levels and at all times, including counting and tabulation, and to obtain relevant certified copies of documents at all levels. The law should also establish an expedited process for observers to obtain corrective relief when an election management body refuses to accredit an observer or observer group.

The legal framework must also be clear and precise concerning what a domestic observer may not do, for instance, interfere with voting, take a direct part in the voting or counting processes, or attempt to determine how a voter will vote or has voted. It should strike a balance between the rights of observers and the orderly administration of the election processes. But in no case should it hinder legitimate observation, "muzzle" observers, or prevent them from reporting or releasing information that has been obtained through their observations.

### ***International election observers***

International election observation is neither a right, nor as yet an recognized international standard. State sovereignty still requires that there should be a formal invitation to foreign election observers, and there may be more stringent requirements for accreditation of international as opposed to domestic election observers. However, regional and similar international agreements may require countries to open their elections to international observers (for example, in the Organization for Security and Co-operation in Europe (OSCE) countries); if this is the case the law must make appropriate provisions for observers. The law should also state when and by whom such election observers are to be invited.

International election observation may sometimes occur as part of a broader human rights observation process regarding minority rights or the rights of oppressed groups, without a formal invitation or accreditation.

### **Checklist**

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- Does the legal framework allow accredited election observers to observe all election processes?
- Does the legal framework provide clear and objective criteria for the accreditation requirements for election observers as well as providing a well-defined role?
- Does the legal framework provide clear criteria as to which governmental authority accredits election observers?
- Does the legal framework provide clear criteria and time-frames for applying for election accreditation?
- Does the legal framework provide clear criteria for the activities of election observers and as to when and under what circumstances election observer status can be revoked?
- Does the legal framework strike a balance between the activities of election observers and the orderly administration of elections?
- Are there any legal requirements that could be too onerous for election observers and serve to hinder legitimate observation?