

Introduction

Elections provide an opportunity to test and strengthen a wide range of institutions and processes in a transitional democracy. Genuine elections provide the means for the people of a country to express their political will, which the Universal Declaration of Human Rights and every other major international human rights instrument recognize as the basis for the authority of government. Genuine elections are both a right and an avenue to promote and protect the exercise of other rights and freedoms. Elections therefore must be approached in the context of a country's broader democratic transition. They should not be isolated nor overemphasized as singular events, but taken as an inseparable part of the political process of a country.

In effect, elections provide a way to measure how a government treats its people. For an election to be genuine:

- § The electorate must be free and must *believe* that it is free to make political choices, without intimidation, bribery, undue influence and fear of retribution for their vote.
- § The electorate must be adequately informed about the electoral contestants in order to make a genuine choice.
- § The electorate must believe that its choices will be accurately recorded and respected.
- § Citizens must believe that they are free to exercise their rights of political expression, association, assembly and movement to assist those they support for office.
- § Those seeking to compete peacefully for political power must be free to associate into political parties and to gain access to the ballot without political discrimination.
- § The political parties must agree about the basic rules for electoral competition B the "legal framework" for elections.

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- § Political contestants must, in fact, be given a fair chance of reaching the voters and winning their support B that is, a reasonably “level playing field.”
- § Political contestants and the electorate must be able to count on electoral administration to be both impartial and effective.
- § The news media must be free to gather and impart information about the political contestants and issues of political import.
- § The government-controlled media must provide a vehicle for the political contestants to speak to the electorate and must be required to cover all political contestants accurately, fairly and in an equitable fashion, while private media must be strongly encouraged to act ethically and in accordance with guidelines for proper election-related coverage.
- § Citizen organizations must be able to participate in the electoral process to help educate other citizens about the importance of the elections and must be free to monitor every aspect of the electoral process.
- § The due process of law and equal protection of the law must be available to provide appropriate, immediate and effective remedies for citizens and electoral contestants in order to guarantee the integrity of the electoral process and the peaceful resolution of complaints.

These 12 points are not exhaustive, but they illustrate some of the ways in which fundamental rights and freedoms of expression, association, assembly, movement, security from violence and intimidation and nondiscrimination come to life in the electoral context. Just as important, they highlight that it is not enough to meet bare minimum legal standards to organize genuine elections, but that the political contestants and the general public must develop confidence in the electoral process. The degree of that confidence will greatly influence how the public perceives the legitimacy of the government that results from an election.

Of course, democratic elections need not be perfect, but the greater the failure to meet these measures, the less likely it will be that an election could be considered “free and fair,” or, more precisely, a genuinely democratic election.

Accomplishments in the Field of International Electoral Observation

Discussions of approaches to electoral observation often begin with Larry Garber=s book, *Guidelines for International Election Observing*, produced by the International Human Rights Law Group, just before he joined NDI. This study set forth a number of propositions that now are accepted into international practice. It is generally agreed, for example, that: international delegations should not arrive the day before and leave the day after an election; delegations should include persons with a range of relevant skills; and observers should be selected who have a reputation for independence, impartiality and objectiveness. A number of other generally accepted practices have evolved over the last decade, such as: organizing delegations that are large enough to develop a picture of what happened nationally in an election; observation missions should begin as early as feasible during the pre-election period and

continue to cover post election processes; and observers must be free to witness all aspects of the election process, go where they please and speak to whomever they want, as long as they do not hinder electoral officials from performing their tasks. Over the last few years these and more points were included on election observation methodologies released by the Organization for Security and Cooperation in Europe=s Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Council of Europe, Organization of American States (OAS) and others.

Also, in the last few years it has been accepted by the UN, OAS, OSCE and other organizations that domestic nonpartisan observer efforts are an integral part of electoral observation. More importantly, the practice of nonpartisan domestic election monitoring has spread around the globe. In the last year, major mobilizations of nonpartisan election monitors took place, for example, in Azerbaijan, Cambodia, Jamaica, Nigeria and Slovakia and are underway for the upcoming elections in Indonesia B to name only a few.

The necessity of monitoring the pre-election period as well as election day have been accepted in the last few years. Long-term observers are a standard part of assessment methodologies of the UN, OAS, ODIHR, EU and other monitoring organizations. How far in advance of the election and what numbers of long term observers too often remain open issues. Media monitoring by Reporters Without Borders, Pavia Institute, The European Institute for the Media and others is a major advance in international pre-election monitoring. How far in advance of election day the monitoring starts remains an issue. Also, media monitoring suffers in some cases because reports are not issued until after election day, which limits pre-election assessments and possibilities for encouraging improvements in media behavior leading to elections.

In additional, there has been a great deal of discussion among those concerned with election monitoring about: the importance of developing a professional approach to electoral assessments; elaboration of international standards and best practices for democratic elections; and taking steps to ensure that standards are applied without discrimination among countries.

Challenges Presented to the International Community in Electoral Assessments

While the advances in electoral monitoring are pronounced, shortcomings remain, and critical challenges face this field of activity. As election monitoring has advanced, autocrats have become more sophisticated in their attempts at electoral manipulation. In addition to democratic transitions marked by real shifts of power from old structures and systems to new ones, many transitional democracies are holding their second and third sets of elections, which provide different electoral contexts and problems. New transitions now are often marked by those in power managing a process rather than being swept aside by tides of reform, which can create questions about the genuineness of the transition. As elections have attracted more attention, pressure has been applied to monitoring efforts to shade findings to suit bilateral and multilateral diplomatic interests. These and other matters pose specific issues for consideration.

When approaching a monitoring mission, it is important to consider the general type of election process that is taking place. For the purposes of this paper, it is possible to speak of five types of election contexts:

- 1) Post-conflict elections, that is elections following civil war or other pronounced conflicts;
- 2) Breakthrough elections, where there is a power shift from the old regime toward a new, democratic system;
- 3) Consolidation or continuing transition elections;
- 4) Elections in back-sliding countries that made democratic progress but are moving in a negative direction democratically; and
- 5) Elections taking place as part of managed transitions, where the old power-holders are moving to elections as part of a reform process.

Election monitoring has functions in each of these contexts, including, among others: legitimizing genuine election processes; building public confidence and participation in democratic elections; identifying significant irregularities and electoral fraud and/or deterring such developments; contributing to conflict management by encouraging peaceful resolution of disputes; catalyzing the democratic reform process by making recommendations for improving election and political processes; and informing the international community of human rights conditions B particularly concerning civil and political rights that surround election processes.

1) Giving Proper Weight to Pre-election and Post-election Processes

While most international and domestic election monitoring efforts recognize the importance of pre-election and post-election developments, there is not a consensus about how much weight to assign to each in an overall electoral assessment.

An accurate and complete assessment of any election must take into account all aspects of the electoral process. These include:

- A) the conditions set up by the election law;
- B) the pre-election period before and during the campaign;
- C) the voting process;
- D) the counting process;
- E) the tabulation and announcement of results;
- F) the investigation and resolution of complaints; and
- G) the seating of electoral winners.

Fundamental flaws can develop in any one of these elements, which can affect the outcome of the election or cast doubt over the legitimacy of the entire election process. At the same time smaller

problems can be identified that should be noted but which would not bring the entire process into doubt. It is necessary to review all of these elements carefully B including the qualitative nature of the problems and their magnitude B in order to properly characterize an election. It is therefore not possible to simply apply a formalistic checklist when evaluating an election.

1.1) Over-Emphasis on Election Day. Usually, only voting and counting processes are conducted on election-day, yet the vast majority of election observers B both international and domestic B are mobilized to witness these processes. This tends to over-emphasize the importance of election-day processes in an electoral assessment. Autocrats know this and increasingly attempt to manipulate other elements of the electoral process so that election day seems more-or-less normal. This is done, at least in part, with the intent of securing an overly positive finding by election observers.

Electoral observation therefore must take further steps to monitor other elements of the election process and must ensure that these elements receive adequate weight, so that impressions gained through short-term observation do not overwhelm the electoral assessment. Otherwise, incorrect characterizations of elections B particularly in the few days immediately following the election day B are possible. Strides have been made in media monitoring, but monitoring of other critical pre-election factors must be advanced, including analysis of the legal framework for elections; delimitation of election districts; legal recognition of parties and ballot access; freedom to campaign; verification of voter registries, monitoring threats against voters and vote-buying; and party and campaign financing, among others.

On election day itself measures are needed to better ensure that an adequate cross-section of polling stations are observed, to provide an accurate picture of the nationwide election process. This must include developing links to credible domestic actors, including the political contestants, domestic nonpartisan election monitors and news media. While maintaining impartiality and independent judgment, international monitors should gain information from credible sources across the country, who can see far more than international observers and who may be able to conduct verification procedures, such as independent, parallel vote tabulations (discussed below) that provide rapid reports from random samples of polling stations over the course of the election day on voting, counting and tabulation procedures.

1.2) Rush to Issue Statements. Most observer efforts issue “preliminary statements” within 48 or 72 hours of the closing of the polls. In fact, the drive of delegations to “catch the news cycle” is pushing them to issue earlier and earlier statements. This is unfortunate, because it introduces a major risk of incorrectly characterizing an election process. Manipulations may occur in the addition of the vote count, thus producing fraudulent results. Electoral complaints and challenges may be ignored, defeating the rule of law and genuine elections.

Many times one or two additional days reveal these critical problems, by then preliminary statements usually have been issued, international journalists have moved on, and the international

observer missions have closed their offices.

The decision to issue a preliminary statement should be made only after a thorough review of all factors known at that point. Preliminary statements whenever issued should proclaim boldly their limitations, such as noting early in the statement that tabulation and announcement of results are not complete, electoral complaints, if any, have not been resolved and other important immediate post-election factors need to be considered; therefore a final characterization of the election is impossible at that time. It should be stressed that further preliminary statements may be issued as immediate post-election developments warrant and that a final report on the election process will be forthcoming.

In addition, journalists have to become better sensitized about how to cover an election, including interviewing nonpartisan domestic election monitors, providing balanced coverage of political contestants, being aware of the political effects of the timing of stories and providing proper post-election follow-up. Part of election observation therefore should include developing interaction with the news media on these and other points.

1.3) The Imperative of Post-Election Monitoring: Many times immediate post-election developments are at least as sensitive and important as pre-election conditions and election-day processes. The international community and domestic election monitors do not adequately address the post-election period. In fact, this is perhaps the weakest link in election monitoring. International organizations often close their observation missions within a few days of the election day, before electoral events are settled. At best, a skeleton staff of tired long-term observers is left behind. They usually are not well-trained in post-election investigation and fact-finding. Nonpartisan domestic observers rarely plan for immediate-post election monitoring, and they too are worn out by the electoral pace. Political parties also are often ill-prepared for documenting electoral abuses and seeking redress against them in the post-election period. These weaknesses are not lost on autocrats.

International and domestic monitors too often fail to develop sufficient links with the electoral contestants so that the contestants provide monitors with copies of challenges and complaints lodged. Observers usually are denied or do not know how to gain access to the underlying documentation needed in the post-election period to verify whether electoral fraud was committed. They also may not have experience in monitoring post-election demonstrations or documenting retribution taken against political opponents.

International organizations should train long-term observers in specific post-election monitoring activities and should make plans to remain in-country for a minimum of three-to-six weeks following an election and longer where needed. Post-election monitoring should include the possibilities for post-election assessment delegations to review conditions, issue post-election statements and offer recommendations. Domestic election monitors should be encouraged to take steps to carry out effective post-election monitoring as well.

1.4) Ensuring the Integrity of Election Monitoring: It is necessary to take precautions at each step of election monitoring to ensure that the mission is not compromised by conflicts of interests of monitoring organizations or of individual monitors. It is particularly important to insulate the observation from bilateral and multilateral political interests or diplomatic considerations. Such considerations are crucial for various actors in the international community, but the election assessment must be made professionally and in accordance with impartially applied international standards. Diplomatic considerations become important after the assessment, because the international community as a whole is responsible for appropriate positive consequences for countries holding genuine elections and for providing negative consequences for countries that stage non-democratic elections.

2) “One Voice” Versus “Pluralism or Harmonization” of Election Monitoring Activities

A great deal of discussion has taken place recently among international election monitoring organizations about the advantages and disadvantages of the international community speaking about an election process with one unified voice. The main advantage cited for this proposition is that it would deprive autocrats of the ability to point to differing characterizations of an election by international actors. Of course, it can be confusing when recognized international observer groups characterize an election process very differently, particularly if the groups are associated with the same organization or observation effort, but the need to avoid such confusion among organizations and within organizations should not be used to remove the voices of different organizations.

International observer delegations should coordinate closely their activities in order to share information, maximize observer coverage and exchange views on how to characterize the overall election process in their preliminary statements. Organizations may even send joint delegations where they decide that it would be advantageous to do so. Forcing all organizations into one observer mission or to issue one election statement, however, has critical shortcomings, including the following.

- § Combining delegations can lower the electoral assessment denominator to that of the least professional observer group, which undermines consistent and professional application of international standards.
- § Mismatching nongovernmental and intergovernmental organizations, each of which make important contributions to electoral assessments, reduces observation to individual input for the common statement and potentially silences nongovernmental voices.
- § The focus of the election assessment may be narrowed to events immediately surrounding election day, which undervalues pre-election developments and restricts post-election activities.
- § Governments holding elections invite friendly bilateral delegations and other friendly observers in order to ensure positive statements, which means that the “one voice” approach will not accomplish its goal, while it can reduce the impact of multiple similar statements from observer groups recognized for their experience, integrity and professionalism.

No delegation or organization therefore should accept the proposition B sometimes advanced by countries holding an election B that there is to be only one officially accredited delegation for an election or that one, unified statement must be issued on behalf of all international election observers. Experience has shown that countries which attempt to set up such restrictions usually do so as part of an effort to better control the findings of observers; such governments then attempt to exert political pressures on the observer mission, while “friendly” elements within the unified observer mission try to secure overly positive findings in the mission=s statements and reports.

When there is more than one delegation and more than one statement, experience demonstrates that the impartial, professional election monitoring organizations almost always make similar findings and reach similar conclusions. This provides for a “harmony” of statements, which can have a more powerful impact than a single report. Moreover, biased or unprofessional statements tend not to stand the test of scrutiny, and even though governments or losing parties may quote them to suit their own partisan purposes, respected news media and international institutions tend to pay attention to the statements from election monitoring organizations with established reputations for impartiality and professionalism.

3) Support for Domestic Election Monitoring

3.1) Nonpartisan Domestic Election Monitors. International monitoring of elections can make critical contributions to ensuring the integrity of an election process, to increasing public confidence in the process and to encouraging political contestants to enter and remain in the process. Nonetheless, international election monitoring has significant limitations. International monitors are limited in number and remain for relatively short periods of time. They often do not speak the language and may not know the culture well enough to identify a number of important problems.

Domestic election monitors speak the language, know the culture, may be mobilized in the thousands and can take on longer-term activities before and after an election. Moreover, domestic monitors remain in the country with a capacity to carry on election monitoring and related civic activities, which can strengthen citizen participation in governmental processes and improve governmental accountability.

There are three principal ways that international election monitors can relate to domestic election monitors.

- § Seek their information and cooperation to the degree they appear reliable.
- § Defend their right to monitor the election process, by supporting their legal recognition and accreditation to enter polling stations and to monitor each step of the election process.
- § Support their activities through providing technical assistance and funding.

Experience in assisting nonpartisan domestic election monitoring efforts in more that 45 countries

demonstrates that the international community should engage domestic election monitors in all three of these ways. Each country and nonpartisan effort has to be evaluated, not all are truly nonpartisan. Some

are actually government sponsored “nongovernmental organizations,” while others carry a clear opposition bias. The question for each is whether they can learn to function and be perceived to be functioning as impartial and professional efforts.

Nonpartisan domestic election monitors, usually with technical assistance from the international community, can build nationwide networks to report rapidly on a relatively large cross-section of polling stations to gain an accurate picture of the quality of the voting and counting processes, as well as to verify the accuracy of the official vote count. These efforts are usually referred to as parallel vote tabulations (PVTs) or sometimes as “quick counts.” PVTs are not exit polls but are done on the basis of an independent tabulation of actual election results. Most PVTs are done based on a random statistical sample of polling stations, which is sufficiently large to provide very low margins of error. Comprehensive reporting on all or virtually all polling stations then can be completed over a slightly more extended time. PVTs are important in deterring those who may seek to tamper with election results or in verifying official results for those who may be skeptical about the election process and, thus, can play a crucial role in building public confidence in democratic elections. A significant number of nonpartisan civic organizations have successfully conducted PVTs. Church-related organizations also have played important roles in conducting independent PVTs; for example, in Panama's 1989 elections the Catholic Church laity group conducted a PVT. PVTs also have been successfully conducted under the auspices of the UN and OAS.

An often presented issue is whether international election observer delegations should merge their efforts with domestic nonpartisan observers. Such observers have their own tasks to accomplish, and it is not likely that all local observers can be known in advance. For these reasons, it would seem the better course to consult with domestic nonpartisan observers in the capital and in all localities but to conduct international electoral observations independently.

In addition to NDI's pioneering work in this area, CAPEL (a Latin American organization) and ERIS (from the U.K.) have taken on support for such efforts. ODIHR is increasingly interested in providing such support, and the EU has done so on a number of occasions. In addition, NDI has been assisting the development of regional networks of nonpartisan domestic election observers in Africa, Asia, Latin America and the Caribbean and the Middle East. Such regional networks can augment the efforts of monitors in a country and assist new efforts as they emerge.

As an important source of information about the election process, international election observers should consult nonpartisan domestic election observers in all localities. Nonpartisan domestic election observing is an exercise of the rights of citizens to participate in governmental processes and to association and expression. The international community should defend and promote the exercise of

these rights by calling for appropriate legal recognition and accreditation of such organizations. As a cost-effective way to promote building a domestic capacity for ensuring the integrity of election processes and strengthening the role of civil society in transitional democracies, the international community should provide technical assistance and financial assistance to nonpartisan domestic election monitoring efforts.

3.2) Political Party Pollwatchers and Electoral Complaint Mechanisms. While the subject of assistance to political parties is beyond the scope of this paper, it would be negligent not to note that the ability of political parties to adequately defend their electoral rights by documenting complaints and making effective use of complaint mechanisms is central to a genuine election process. It is also central to the peaceful resolution of election-related conflicts, which in many countries have far-reaching implications.

Political parties need to build a capacity to document complaints and make use of electoral complaint mechanisms throughout the election process and through the deployment of well-trained pollwatchers on election day. The international community can advance the goal of ensuring the integrity of election processes, building public confidence and enhancing genuine political competition through democratic elections by supporting such activities.

International election monitoring missions should establish good lines of communication with the political parties and candidates as early in the election process as possible. This often can be done as part of initial assessments. One important aspect of this is gaining the views of the political contestants concerning the legal framework for the elections and their opinions of the reliability of the electoral complaint mechanisms, both through the election authorities and the courts. The political contestants should be encouraged to contact international observer missions to communicate the nature and status of their electoral complaints. Observer missions should, in turn, develop a stronger capacity to monitor complaint mechanisms before, during and especially after the elections.

In addition, international electoral assistance should draw upon rule of law programming and conduct training programs for election authorities, prosecutors and the courts about how to empanel judicial and quasi-judicial bodies to conduct expedited procedures and deliver appropriate, effective remedies need in the electoral context. As in other areas, such as civil society strengthening through nonpartisan election monitoring or encouraging proper media behavior in electoral coverage, elections can be used as a means to improve rule of law activities in emerging democracies.

Conclusion

It is hoped that this brief paper will encourage discussion of a few of the challenges facing electoral monitoring. It is meant as the beginning of discussion, rather than as the last word on any subject.

Election monitoring faces the combination of tasks of maintaining gains in methodologies over the last decade, particularly in monitoring election day processes, while pushing for improvements in pre-election and post-election monitoring of electoral and political processes. At the same time, vigilance is required to maintain the integrity of election monitoring. The monitoring process requires the consistent, impartial application of international standards, free from bilateral and multilateral diplomatic interests.

Once an evaluation of an election process has been made, governments, intergovernmental organizations and multilateral institutions should take note and take appropriate actions. While findings about a country=s election process are not the sole issues in international relations, they should be important factors. Positive incentives and consequences should follow democratic elections in transitional countries. The international community also should be prepared to provide negative consequences when elections are manipulated and a genuine democratic exercise is denied. A challenge facing international election monitors is remaining apart from such considerations while making electoral assessments but helping to ensure that bilateral and multilateral policy makers have clear and accurate information, so that they may take effective actions that encourage democratic development around the world.