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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REPORT
ON FIGURE BASED MANAGEMENT OF POSSIBLE ELECTION FRAUD

Adopted by the Council for Democratic Elections at its 35th meeting (Venice, 16 December 2010) and by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010)

on the basis of comments by Mr Nikolai VULCHANOV (Expert, Bulgaria) Mr Anders ERIKSSON (Expert, Sweden)

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I. Foreword

1. After the Council for Democratic Elections had shown interest in studying the possibility of detecting possible electoral frauds through statistical methods, two experts, Messrs Nikolai Vulchanov and Anders Eriksson, were asked to draft a report on the issue.

2. This report was drafted with a view to comment specifically on aspects of an election process which involve possibilities for election fraud based on the manipulation of figures. The presentation attempted to address separately detection of possible avenues for manipulation of numerical results and prevention of possible fraud.

3. A specific emphasis was placed on transparency as a key tool to combat possibilities for fraud. Transparency relates to written law, sublegal acts of the election administration at all levels and its performance during the election process.

4. The report touches upon frequent allegations of voter registration fraud, aspects of the vote count which may have been left unclear by the legal framework and good practice to avoid abuse of ambiguities of the law.

5. The text was drafted with the intention to represent a standalone reading. This led to a presentation which is somewhat longer, in particular as regards alleged voter registration fraud. Quantitative analysis of the media coverage of an election, electronic voting and campaign funding were not included in the text. Alternative voting arrangements such as voting abroad are not treated in detail.

6. An attempt was made to distinguish between several applications of statistics related to the conduct of elections and the standard arithmetical operations used to determine the election outcome. This resulted in a brief introduction to relevant aspects of statistics and their implementation.

7. This report was adopted by the Council for Democratic Elections at its 35th meeting (Venice, 16 December 2010) and by the Venice Commission at its 85th session (Venice, 17-18 December 2010).

II. Introduction

A. Background

8. An election is a formal decision-making process by which a population chooses an individual to hold public office.[1] To elect means "to choose or make a decision", rather than expressing an opinion or attitude. Elections by popular vote[2] are conducted on the basis of universal and equal suffrage, with individual choices remaining secret.

[1] Elections have been the usual mechanism by which modern representative democracy operates since the 17th century. Sometimes other forms of ballot such as the referendum are referred to as elections. See Encyclopoedia Britannica Online, available at http://www.britannica.com/EBchecked/topic/182308/election.

[2] A democratic election involves a genuine competition where voters are able to make an informed choice between distinct alternatives competing on a level playing field. This is impossible without true respect for a broad range of fundamental civil and political rights, including freedom of expression, association and assembly; Election Observation: A Decade of Monitoring Elections; OSCE ODIHR, 2005; available at http://www.osce.org/publications/odihr/2005/11/17148_478_en.pdf. Please see also Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), II.1, available at http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.pdf.

9. While an election is a public process, its conduct has a clear objective - to determine public office holders who have won sufficient portion of popular choices as required by law - which must be achieved through a finite number of "steps". Therefore, the successful completion of an election depends on the correct implementation of a number of simple mathematical procedures processing figures reflecting voters' choices. Narrow margins between competing alternatives test the robustness of any set of electoral rules.

10. Choices must be clear so that they could be counted and transformed into the right office holders accurately, regardless of the size of the margins between electoral competitors. In States with government based on representative democracy and established traditions to conduct elections overall in line with key international standards for democratic elections choices are positive: a voter chooses one of those candidates and/or political parties which compete in the election.

11. At times, one observes a tendency to ignore those formal aspects of the electoral process which are expressed by figures. Unambiguous definitions of terms and procedures in written law are a guarantee that voters' choices will be transformed into the right public office holders. Any ambiguity in the legal framework, regarding the transformation of votes to seats, carries a risk that even an election which has been conducted overall in line with the principles of democracy, such as respect for fundamental civil and political rights, may collapse due to difficulties to determine the outcome.

12. An example[3] for such ambiguity is a legal provision, which stipulates that in order for an election to be valid at least half of the registered voters should "participate in the election". The ambiguity involved in this example is the failure to specify the meaning of the words "participate in the election. Furthermore the quality of the voters list can have an impact on this matter

13. This ambiguity represents an obstacle to determine, through simple counting, whether the number of voters who "participated" was equal or more than half of the registered voters and consequently, whether the election was valid. A late interpretation of what is "participation" may have a serious impact on the election outcome, in particular if the voter turnout is close to 50 percent, and may lead to political implications.

B. Inexperience and Fraud

14. In the broadest sense, a fraud[4] is an intentional deception made for personal gain or to damage another individual. In a general election context, fraud could be any action running contrary to the legal framework that intends to provide undue gains to specific electoral contestants. In the discussion below, fraud achieved through intentional manipulation with results related figures will be discussed.

15. The source of inexperience and/or fraud should be sought first in the legal framework. Ambiguities and/or lacunae in written law are conducive to fraud, although they can be a result of lack of electoral experience, rather than intentions for malfeasance.

16. The implementation of the legal framework has a special role in the conduct of genuine and honest elections. First, it is difficult to imagine a "perfect" law and therefore those who implement the law will usually have to interpret some of its provisions. Second, while it is

[3] While this example, Section C.3.2 "Turnout Threshold: Who Participated?", as well as others, will be discussed in more detail, it is clear that the importance of ambiguities becomes obvious predominantly if the margin between the legal requirement and the result is narrow.

[4] E.g., http://en.wikipedia.org/wiki/Fraud; in general; fraud is a crime and a civil law violation, although the specific legal definition varies by legal jurisdiction. Another way to formulate the meaning of the word "fraud" is "A deception deliberately practiced in order to secure unfair or unlawful gain"; http://www.thefreedictionary.com/fraud.

difficult to conduct digital based fraud in the context of a comprehensive and unambiguous written law, this is not impossible. Finally, minor human errors cannot be fully excluded.

17. Ambiguities in written law may be a result of lack of electoral experience or legal drafting skills, in particular during periods of political transition from an authoritarian regime to democratic form of governance. However, if advice to remove possible ambiguities in the legal framework is systematically ignored, questions may arise with regard to the nature of intentions to keep such ambiguities, as they are generally conducive for fraud.

18. If ambiguities remain in the legal framework, generally, the election administration would be expected to clarify them. As this may amount to determining the outcome of the election, in particular if clarifications are provided after the vote, such responsibility may test the limits of the authority of the election administration.

19. Generally, international (including European) standards for democratic elections do not provide for specific antifraud measures. Rather, standards emphasise on respect for fundamental civil and political rights, and provide general guidance for establishment of sanctions for possible fraudulent activities as well as legal remedies for complainants against alleged fraud.

C. Enfranchisement and Integrity

20. Ensuring possibility for all eligible voters to vote (enfranchisement) and fraud prevention (integrity) are two complementary objectives in the conduct of an election, often subject to heated debates including during electoral campaigns.

21. Enfranchisement efforts have resulted in the introduction of various procedures allowing voters to vote prior to election day (early voting) and/or to vote away from the polling station where voters would usually be allocated to vote (absentee voting which can take place in a controlled or uncontrolled environment, see also paragraph 69 ff below).

22. There are numerous ways to organise early and/or absentee voting, which are generally referred to as alternative voting arrangements. Alternative voting arrangements require additional resources, which are at times substantial. It is therefore rare that all measures implemented to ensure the integrity of the election with voting on election day in the "right" polling station, are also implemented with alternative voting arrangements. Sometimes this is not possible, e.g. voting in "controlled" environment, or it is difficult to implement in practice, e.g. the conduct of early voting in each polling station where voting will take place on election day.[5]

D. Role of Statistics

a. Basics

23. Statistics is a science pertaining to the collection, analysis, interpretation, explanation, and presentation of data. According to some, statistics is a separate science of mathematical nature, according to others, it is branch of mathematics. Statistics is rooted in empirical science. It is focused on applications[6] and provides tools for prediction and forecasting using accumulated data and models.

[5] For standards aiming at avoiding electoral fraud in alternative voting arrangements, see Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I.3.2.iii-vi.

[6] These include a wide variety of disciplines including natural and social sciences, governance, economics and finance.

24. These introductory words underscore the qualitative difference between the methods and objectives of statistics and the mathematical tools used to achieve the objective of an election - to determine the individuals who will hold public office through a finite number of mathematical operations on the numbers of votes expressing voters' choices.

25. Inferential statistics is an appropriate tool to attempt a prediction of an election outcome on the basis of an appropriate collection of current voters' preferences expressed prior to or during an election. However, statistics and counting of votes have not much in common; the allocation of seats to competing parties and/or candidates in the context of a proportional system for representation has nothing to do with statistics.

26. Election related applications of statistics include predictions of political attitudes from public opinion polls and exit polls, and predictions for the election outcome through partial parallel vote tabulation. In addition, statistics provides for estimates for the size of the population, or segments thereof, between two national population censuses, often used for determining boundaries of electoral constituencies. Moreover, election studies are used to gain insights of the background factors as for example voting behaviour.

27. Unlike the counting of the votes in an election, all statistical outputs are characterized by some estimated margin of error.[7] The reliability of this error estimate and its size can be determined with the design methods of statistics and depends on certain properties of the finite data set, or the sample, used to calculate the statistical outputs.

28. The sample is a manageable subset of the set of all existing data relevant to a particular problem. For example, the population of a State is large and it would not be practical to ask each citizen of his or her opinion on a specific issue. However, there are methods which provide guidance on selecting a number of citizens, say 1,500, and have a good measure of assurances that the opinion expressed by the sampled citizens will be close to the opinion of the entire population.

29. The extension of the output from the sample on the entire set of data is usually referred to as extrapolation. If the sample satisfies the above mentioned condition, it is called representative; otherwise the sample will be biased or unrepresentative. Due to the general instability of extrapolation,[8] the selection of the sample is the most sensitive phase in the statistical processing of data.

30. A random or probability sample is representative at least if the response rate is 100 %.[9] A sample is random if the probability that any individual data from the entire set being selected for inclusion in the sample is exactly the same as the probability for inclusion of any other individual data of the entire set. Random samples include simple random samples, systematic random samples, stratified random samples, and cluster random samples. Examples for nonrandom samples, which may not be strictly representative but may nevertheless be usefully informative and easy to produce, include convenience samples, judgment samples, purposive samples, etc.[10] Today also 'access-panels' are often used (Internet – without sampling at all) and not based on a random sample.

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[7] The margin of error is also called "confidence interval". It is usually provided in plus/minus percentage points; some useful information of practical value is available at : http://www.surveysystem.com/sscalc.htm.

[8] As a mathematical operation, extrapolation is considered unstable in the sense that small changes in the sample may result in large changes in the sample output.

[9] This assertion follows from the law of the large numbers, a key rule in probability theory. According to this law, the average of the results obtained from a large number of trials should be close to the expected value, and will tend to become closer as more trials are performed. In the above context, a trial is the recording the opinion of a citizen from the entire set.

[10] Please see Section IV.2.6 "Parallel Vote Tabulation".

b. Public Opinion Polls and Exit Polls

31. Both public opinion polls and exit polls aim to predict election outcomes on the basis of assessment of the opinion (preference, attitude) of voters, or respondents, included in the respective representative samples of the voting population. While public opinion polls are conducted prior to election day, exit polls are conducted on election day. Consequently, these polls cover different segments of the voting age population, but well designed opinion polls cover the same segment of the population as the general election studies.

32. Samples for public opinion polls represent the opinions of the entire voting population and attempt to establish estimates of the turnout and political preferences of those voters who have indicated an intention to vote. Samples for exit polls include voters who have already voted and subsequently aim to predict the election outcome.

33. In both cases, samples of a few thousands of voters or less are compiled to predict the attitudes of voting populations of tens of millions. Error margins for credible research are usually some plus or minus two-three percent. Returning to the example of a minimum participation legal requirement, it becomes obvious that if the sample prediction is close to this requirement, it would not be too informative because the legal requirement is within the margin or error. This brings one back to the challenges related to narrow margins. A factor to consider is also non-sampling errors, which is of course important when the margins are narrow.

34. Public opinion polls and exit polls are useful tools to inject a measure of predictability in the pre-electoral environment and election day. Under the assumption that the respective samples have been compiled in line with the rules of statistics, the accuracy of such prediction depends both in the implementation of the polls by the personnel who conducts the interviews with the respondents and on the truthful answers of the respondents.

35. Results from credible public opinion polls and exit polls, which are based on representative samples, are usually published together with information about the sample used to obtain them. Such information includes the size of the sample (number of respondents) and the margin of error of the results. In addition, the agency that has conducted the poll, the agency which has ordered the poll and the source for its funding are also identified.

36. However, public opinion polls and exit polls can also be abused as they could serve as campaign tools and/or tools for fraudulent manipulation of electoral attitudes. Therefore, a number of States have adopted legal restrictions for publication of results of public opinion polls in the close run-up to election day and of exit polls.

E. Equal Opportunities and Manipulation of Choices

37. The establishment of a “level playing field” for all election competitors is an inherent feature for elections to be conducted in line with international standards for democratic elections (such as Article 25 of the International Covenant on Civil and Political Rights and Article 3 of the First Additional Protocol to the European Convention on Human Rights).

38. Conversely, if a (group of) competitor(s) enjoys privileges in the campaign coverage by the media (in particular, by the public ones) or uses unlimited campaign resources of unclear origin in an unaccountable manner, such an election would not comply with international standards and good practice. This is particularly relevant to abuse of administrative resources, such as public funds and the power of law enforcement.[11]

[11] On equality of opportunity, see *e.g.* Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I.2.3.

39. In the course of the campaign, choices can also be manipulated by "engineered" opinion polls which systematically predict a victory for a specific competitor, most often - the incumbents, but fail to provide any information on the methodology used to assess public opinion. Good practice is to give at least the source, sampling method and questions when an opinion poll is published.

40. Exit polls can be abused in a similar manner, as they can have a strong impact on voters' choices if published prior to the completing of voting on election day, or may attempt to influence expectations on results. Good practice is not to publish the figures before the poll is closed.

III. Detection of possibilities for fraud

A. Background

41. In order to identify possibilities for figure based fraud it would be necessary to analyse carefully the legal framework including available sublegal acts issued by the election administration to clarify possible ambiguities or lacunae. Such analysis would also support capacity to address correctly possible allegation for fraud.

42. This includes allegations for voter registration fraud, which requires substantial knowledge about the voter registration system in place.

43. In addition, if identification of possible fraud should be conducted in the close vicinity of election day, there might be a need to raise such issues in interviews with representatives of the election administration, electoral contestants and other election stakeholders.

44. The analysis of the legal framework should specifically emphasise on transparency in order to establish whether the legal framework upholds transparency of the entire process – the best tool to combat fraud.

B. Voter Registration

a. Introduction

45. Allegations for voter registration[12] fraud often accompany elections, even in States with established traditions to hold elections in line with international standards. Allegations usually refer to:

(a) Too many voter entries included in the polling station voter lists due to inclusion of entries of non-existing voters, deceased voters, voters residing abroad and/or voters included in the lists more than once (multiple entries);
(b) Too few voters included in the voter lists, resulting in disenfranchisement of eligible voters through omission from the voter lists,
(c) Too many voters added to the voter lists on election day, especially if on unclear grounds; and

[12] A "voter register" means the set of records of all voters eligible to vote in a concrete election. The term "register" refers to a territorial and/or administrative unit which generally includes more than one polling station. The term "record" includes all personal data for an individual voter which is sufficient to distinguish the voter in question from all other voters. A population register is defined similarly but it includes the records of all citizens in the respective area. A "voter list", as opposed to a voter register, means the set of entries of all eligible voters, who will cast their ballots in the same polling station if they choose to vote. The term "entry" usually includes only part of the record, sufficient for voter identification in the polling station on election day in line with the legal provisions. Typically, both the record and the entry can be considered consisting of two components – one for the personal data and the second one for a (geographical) location related to the residence of the person or the polling station where he or she should vote.

(d) Manipulation of electoral constituency borders to favour the incumbents on the basis of incorrect numbers of population and/or registered voters.

46. Generally, verification of voter registration fraud allegations or detection of fraud is a challenge as it requires substantive resources and knowledge about the methodology of functioning of the system for voter or population registration which may be complicated.[13]

47. Addressing allegations for voter registration fraud requires official information about the number of registered voters, at all administrative levels, in the close run-up to an election. Often, provision of this information by the authorities is a legal requirement. The lack of such information only feeds into the allegations. The issue becomes acute, in particular, in the case of narrow margins in the announced results as well as in public opinion or exit polls' predictions, and/or the announced results.

48. Official information about the number of registered voters is easily available in States where decennial population censuses[14] have been conducted regularly and where there exists an operational and well maintained register of the population.[15] Subject to these two conditions, the register of the voting age population is an extract of the population register and the number of the voting age population can be crosschecked with statistical information from the censuses with a view to verify the total figures.[16]

49. In the absence of population registers, population statistics remains the only source of population data. However, the reliability of such data diminishes if population censuses have not been regularly or recently conducted. Often, in such circumstances, voter registration operations are being conducted in the run up to elections. The resulting figures for the numbers of registered voters strongly depend on the methodology of the voter registration exercise, in particular whether there is a link between the identity of a voter and the location where he or she will be able to vote, as such link would minimise possibilities for multiple registration. It is especially problematic in post war situations and in countries in transition, when there is a large number of IDPs or of voters who have left the country and are living in a neighbouring country.

50. In rare circumstances, e.g. when the announced number of the voters who voted exceeds available statistical estimates for the number of the voting age population, allegations for inflated voter lists should be taken seriously.

b. Voter Registration and Census Figures Do Not Match

51. There is often temptation to raise allegations of voter registration fraud on the basis of mismatch between census and registration data about the number of registered voters. To assess such allegations, it is useful to outline a comparison between a population census and population registration, with a view to underscore the caution needed to address possible (and likely) discrepancies between registration and census figures for numbers of registered voters.

52. A population census yields a picture of the demographic situation, within a State, at a particular point of time. Such picture would be accurate only at the time it was produced although it could provide rich information on developing tendencies if compared to its

[13] For example, *Case Study on Voter Register*, Republic of Montenegro, Federal Republic of Yugoslavia, 30 May 2002, http://www.osce.org/documents/odihr/2002/05/1322_en.pdf.
[14] The term "census" should be understood as enumeration of the population.
[15] "Guidelines on Population Registration", OSCE/ODIHR, Warsaw, 2009, available at http://www.osce.org/publications/odihr/2009/10/40454_1363_en.pdf.
[16] This is possible both at the State level and the level of the administrative units in the absence of a State wide register. However, in the latter case there is still a chance for multiple registrations across administrative unit borders.

predecessors. Censuses are conducted periodically, usually every ten years, in a limited time frame and they capture all persons on the ground.[17]

53. Registration of the population is the result of a one time effort of collecting documented personal data on vital life events[18] of the citizens[19] for multi purpose use under strict rules for protection of personal data. The conduct of a credible registration effort requires extensive planning[20] and may take years if not decades.

54. Voter registration is based on a clear and well understood link between the identity of a citizen and a location, most often the place of residence, to which the citizen is traditionally related and where he or she exercises his or her constitutional rights and delivers his or her civil responsibilities. Efficient registration requires regular update and maintenance of the personal data reflecting new vital life events and changes of address.

55. There are certain similarities between a population census and a registration of the population which could lead to confusion.[21] However, for voter registration purposes, census data[22] should be taken with a measure of caution, as the methodologies differ. It is possible, by statistical calculations based on census data, to produce an estimate for the proportion of voting age citizens among the population for any jurisdiction and compare it with the official number of registered voters there. If statistical annual birth and death rates are used to assess how numbers of registered voters change through the years, one should recall that usually first time voters were born 18 or more years before they became voters.

56. It is much less likely to evaluate the inclusiveness of the voter register with regard to ethnicity, religion and mother tongue. The UN recommendations only allow, but do not oblige, States to collect information on ethnicity, religion and mother language. However, population registers might not include such information in order to prevent possible unequal treatment of citizens.

c. Errors in the Voter Lists

57. Allegations for voter registration fraud often refer to entries of deceased or non-existent persons on the voter lists, omission of entries of voters and/or multiple entries. Credible assessment of such allegations requires detailed knowledge about the rules and procedures for voter/population registration, and residence and address registration.

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[17] In the years between two censuses, the changes of the demographic picture are being accounted for with the instruments of statistics or, in States with advanced infrastructure, by extracting statistical information from the existing and continuously maintained population registers.

[18] Such as birth, death, acquiring or loosing citizenship, marriage and divorce.

[19] Legally residing foreigners may also be registered under separate rules.

[20] A registration exercise is preceded by careful planning of how vital life events will be recorded, where will the original documents registering such events be stored and which institutions will be formally informed of the occurrence of any such event. For example, a birth is usually recorded by a birth certificate but a divorce is recorded by a decision of a court of law. In another example, assume that a person was born in municipality A, had registered permanent residence in municipality B (location of residence) and passed away in municipality C (location where the vital life event occurred). That would often mean that the original of the person's birth certificate was deposited in municipality A. However, the registration rules should clearly state whether the original of the death certificate should be deposited in municipality B or municipality C, and whether a copy of the death certificate should be sent to each of the other two municipalities.

[21] UN recommendations for population censuses indicate that in the presence of credible registers of the population, enumeration would be possible on the bases of such records and the usual door-to-door interviews with citizens would not be necessary; please see "Principles and Recommendations for Population and Housing Censuses" (Revision 1), United Nations, New York, 1997; http://unstats.un.org/unsd/publication/SeriesM/SeriesM_67rev1E.pdf

[22] While a census is usually devoid of personal identification, census data generally include information about age, gender and citizenship; it could also include information about ethnicity, religion and mother language. Such information is used for administrative planning, public service delivery and administrative boundary delimitation.

58. Good practice for compilation of voter lists requires that each eligible voter is included in one voter list. However, voter registration, as any other human activity, is not fully protected from unintentional error. Therefore, a judgement whether a voter registration fraud allegation is well grounded is sensitive and time consuming. Errors in the voter lists may exist, but they are not necessarily an indicator for fraud. Moreover, the accuracy of the voter lists depends also on whether citizens report current changes in their personal data and residence in a timely and comprehensive manner. Minor human administrative mistakes should not be seen as a manipulation of the voters register.

59. Practitioners tend to distinguish between minor and serious errors in the voter lists errors, frequently relying on the rational treatment of errors by polling stations officials. Such expectations may be reasonable in an environment characterised by confidence overall. However, there are circumstances where a voter could be refused a ballot on election day and disenfranchised, due to a single typographic error in the voter list entry that creates a difference between the entry and the respective data in the voter's identity document.

60. On the other hand, there may be serious errors in the voter lists including:
(a) Failure to add a record with a likely consequence that a voter will be disenfranchised;
(b) Failure to delete a record with a likely consequence that there will be allegations for "dead souls" on the voter lists and an impact on meeting possible turnout requirements;
(c) Failure to transfer a record with a likely consequence that the voter will not find his or her entry on the voter list in the polling station where he or she turns out to vote; in the best case scenario, such voter will be informed where his or her "new" polling station is, but he or she could end up being disenfranchised as well; and
(d) Failure to introduce a correction, a suppression or reinstatement of an entry with a likely consequence similar to cases (c), (b) and (a), respectively.

61. In addition to the above mentioned errors of consequence, there are also the so-called "groups of multiple records".[23] This term reflects a situation where, in a register, there is more than one record of one and the same citizen. For example, a simple replacement of one single symbol of the existing record with another symbol in the process of maintenance of the register, in particular in computerised registers, means that a new record may have been created.

62. If two or more of the records are identical to the last symbol, they are *exact multiple records*. What it is more likely to happen is that there is a group of records differing by one or several symbols, or even entire elements in the personal data, which upon careful inspection imply a likelihood that all or some records of the group pertain to one and the same citizen. In this case, one refers to them as *possible multiple records* as the group of records requires inspection to establish whether more than one record of the group pertains to one and the same citizen.

63. Groups of possible multiple entries could appear within one single polling station, when they could be identified by visual inspection. However, it is possible that one entry of the group is in one polling station voter list, while another one is in another polling station and visual inspection is not possible. Similarly, one entry could be in a polling station within one local government unit, while another entry could appear in a polling station located in another local government unit.

64. Even in the simplest case of groups of possible multiple entries, or even exact multiple entries, visually identified in polling station voter lists, a careful analysis is needed to (a)

[23] While it is more common to have a group of two records, called generally "duplicates", groups containing more than two records could also be identified, in particular in the early stages of compilation of a State-wide computerised register. The qualifier "multiple" is used to denote the general case of two or more records in the group.

establish whether the entries within the group pertain to the same voter and (b) identify which record of the group is the correct[24] one. Such analysis requires the involvement of the authorities that maintain the respective population register archives, as they are those responsible for the accuracy of the data.

65. Groups of possible multiple records can emerge as a result of a range of circumstances, from simple typographic errors, to software bugs, to irresponsible attitude of officials, to lack of respect for legal and administrative provisions by citizens and to lack of proper communication between institutions.

66. Updating[25] of voter registers and lists requires special and continuous care to protect them from errors, regardless of the type of administrative system of registration[26] and whether the register is maintained in a hard copy or it is a computerised one. The existence of a centralised computerised register limits however the possibilities of manipulation.

67. The existence of a State wide register could be a particularly useful tool to identify groups of possible multiple records as such register would include all eligible voters in the State, and by local government units. Therefore, a State-wide register is also a safeguard against inclusion of possible multiple entries in the polling stations voter lists. To make full use of such tool, one needs a methodology for search of groups of possible multiple records, as well as a methodology how to analyse the groups and identify the correct record of the group.

d. Voters Abroad and In-Country Voter Lists

68. Modalities[27] to enfranchise eligible voters residing temporarily abroad vary broadly, as there are no explicit international standards beyond those that regulate the conventional conduct of democratic elections. Arrangements for voting abroad have to strike a balance between extending the franchise to eligible voters and ensuring the integrity and transparency of the vote.

69. It is frequent practice that voters residing "temporarily" abroad are included in the in-country voter lists on a regular basis. On occasion this is enshrined even in the constitution. In States

[24] Generally, the term "correct" implies that the information in each field of the record corresponds to the latest updates documented by the responsible authorities.

[25] The update of a record or an entry means replacement of part of the information with new information. For example, if a change of a family name and/or residence occurs as a result of marriage, the update of the respective record would include replacement of the "old" family name and residence with the "new" ones, both in the record and the entry. Such an update will affect the register by updating the record, although the number of records in the register will not change. However, the effect on the voter lists may be different if there is a change of residence; in the case of change of address which falls in the area of a polling station different from the pre-marriage one. Then, there will be a deletion of the "old" entry from the voter list of the "old" polling station and an addition of the "new" entry to the voter lists of the "new" polling station.

[26] Administrative systems for registration of voters vary, but usually they can be referred to as either "active" or "passive" systems. In the context of active systems, voters are required to state to the relevant authorities their intention to vote for each election or otherwise take affirmative steps to make sure that their names will be included on the voter lists. Passive systems are characterized by "automatic" inclusion of voters' entries in the voter lists on the basis of population and voter registers that are maintained and updated on a regular basis.

[27] Usually, alternative voting arrangements for voters abroad include (a) voting by mail on the basis of voter registers at home; (b) setting up polling stations at diplomatic representations of the State conducting elections in the State hosting these diplomatic offices, or (c) voting via internet. Some participating States allow for setting up additional polling stations in localities abroad where there are diaspora communities. Whether in diplomatic offices or in a broader range of polling stations, voting abroad is organised on the basis of a bilateral agreement between the State conducting elections and the State where voting could take place. Some States do not allow voting abroad at all, while others allow their citizens residing abroad to vote abroad a few days before the polls in-country in order to facilitate transport and processing of cast ballots. If polling station voter lists are based on registered residence, voters residing abroad can vote in their respective polling stations at home like all other voters in-country, if they return home for election day. On the issue of out-of-country voting, see in particular the ongoing study by the Venice Commission, and documents CDL-EL(2010)013rev and 014rev.

where there are concerns with regard to the accuracy of the voter lists inclusion of voters residing abroad in the in-country voter lists has sometimes been a compounding factor regardless of whether or not this is justified.

70. A number of States do not provide, or provide only limited venues, for voting of eligible voters who reside abroad for different periods of time. While this may have different impacts on voter registration, it certainly limits the voting rights of such individuals. In the framework of "passive" systems, the entries of voters abroad generally remain on the voter lists of their State of citizenship because this is their right, in particular if legal provisions condition the right to cast a ballot on being included in the polling station voter list. However, this may give rise to allegations for abuse of such voter lists on the assumption that in-country voters, who know the personal details of those abroad, could vote more than once.

71. States that allow their voters to vote abroad, sometimes require voters to register in the diplomatic representations in advance with a view to suppress their records and/or entries at home in order to avoid possible inflation of the total number of registered voters and allegations for abuse. For election systems that include turnout requirements this approach could be justified although it may create additional difficulties for voters abroad.

72. Other States take an alternative approach allowing for election day registration of voters when they come to the polling stations in the diplomatic representations to vote. In such cases, voters voting abroad who may be regularly registered in their home voter lists create a new, possibly second, entry leading to inflation of the total number of registered voters. *Post factum*, the relevant authority should check whether there have been attempts for abuse by comparing the in-country voter lists with the out-of-country ones.

e. Election Day Registration

73. In some States, legislation requires that voter registration is completed for some period of time before election day after which the voter register is closed and updates of records are not permitted any more.[28] In others States or jurisdictions, updates are permitted even on election day subject to specific conditions.

74. The rationale to close the voter register appears to stems from considerations for transparency.[29] Once the voter registration is completed, often in parallel with the period for public scrutiny, it is possible to announce, ahead of election day, the numbers of registered voters both State-wide, by local government units and by polling stations.

75. Closure of the register could be considered as enhancing the overall transparency of the election process. However, closure of voter registration may cause a degree of disadvantage to eligible voters, in particular in environments where there are an increasing number of initiatives to enhance participation through various alternative voting arrangements. The possibility for updating the voter lists on election day, may be considered as an enfranchisement mechanism. However, this may be ill-suited to the organisational needs on which democracies are based. In any event, registration of voters on election day at polling stations should be avoided.[30]

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[28] In a number of States, after closure of the voter register, addition of records or other updates is possible only after a decision of a court of law.

[29] From a technological point of view, closure of the register means that there will be some period of time for registration officials to analyze officials' and voters' suggestions for updates to the preliminary voter lists. Suggested updates that are considered relevant will then be introduced into the preliminary voter lists, in order to produce the final voter lists and deliver them to polling stations in a timely manner.

[30] Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I.1.2.iv and par. 7 of the explanatory report.

76. Where updates to voter lists are permitted on election day, the law still provides for a cut-off date for officials to receive requests for updates in order to allow them to produce the final voter lists on time. However, such legislation allows polling station officials to introduce changes in the final voter lists on election day, should an eligible voter appear in the polling station and provide specific evidence of his or her eligibility to vote in that particular polling station.

77. Permissible updates on election day would generally include corrections to and additions of entries in the final voter lists. Possible correction may be based on concrete information from the identity documents of the voter, who is eligible to vote in the particular polling station and who has established that some of his personal data are misspelled in the voter list. An addition of an entry may be permitted if the voter has evidence, such as an identification document, an absentee voting certificate or decision of a court of law, to prove that his current address is in the specific polling station area.

78. The list compiled from the additions of entries on voters on election day is called often a *supplementary* voter list to indicate that these entries were added to the voter list on election day. Transparency requires that the number of entries on the supplementary voter list is recorded in the polling station protocol in a separate line, so that figures for the numbers of registered voters before and on election day were independently available.

79. Deletions on election day are unusual, unless they are made by voters themselves. in particular if request for deletions are made by persons other than the voters themselves. In a rare practice, some States allow party agents or other stakeholders to challenge voters' eligibility to vote in specific polling stations during voting hours. If a challenge is successful, it amounts to a deletion of an entry provided the challenged voter has had an entry on the polling station voter list.

80. In a few States, there is a legal requirement to crosscheck the voter lists State-wide, after the election, in order to establish whether supplementary voter lists have been abused by multiple voting.

C. Voter Participation

a. Introduction

81. Elections are about voters making choices to determine who will hold public office(s), for the term of office(s) ahead. Voters' choices are expressed by votes, usually "for" a party and/or a candidate as this is the way how voters take responsibility for their choice(s). Rarely, arguments are made that voters' choices should not be limited to positive ones, and that voting "against" or "abstention" are also legitimate choices.[31] However, counting of such choices in an election by popular vote becomes difficult and at times impossible, defeating the entire objective of holding elections.[32]

[31] In parliamentary debates, where members of parliament are allowed to vote "for", abstain and vote *"against"*, it is the votes *"for"* that count to approve a decision. If votes *"for"* do not prevail, the draft decision can be amended and put to vote again. This applies *mutatis mutandis* to referendums. However, this is not the case with elections, especially by popular vote.

[32] As an example, consider a first-past-the-post election contested by a popular but controversial candidate A, a candidate B who is not widely popular but those who know him or her strongly approve of him or her and a third candidate C who is also well known but attracts neutral attitudes. Assume that the voting rule is that each voter must vote for each candidate showing a positive or negative or neutral choice. Assume that candidate A receives 100 positive votes, 80 negative votes and 0 neutral vote, candidate B receives 40 positive votes, 0 negative vote and 140 neutral votes, and candidate C receives 0 positive vote 1 negative vote and 179 neutral votes. It seems unlikely to devise a rational rule to determine the winner taking into account all the votes counted, because candidate A with the most positive votes has also most negative votes, while candidate B with minimum negative votes has much less positive votes than A and candidate C with most neutral votes has not received a single positive vote.

82. If the choice of a voter is clear the vote is valid, otherwise the vote is invalid as it does not allow for identification of the choice made. It is the valid votes which are counted in order to determine which party and/or candidate has won a sufficient number of votes in order to win the contested public office.

83. Votes are cast through ballots (mostly on paper, more rarely in electronic form). Often, ballots represent specially designed pieces of paper listing all contenders and provided to each voter who mark their choice on the ballot and cast the marked ballot in the ballot box; in this case, one ballot corresponds to one vote. Alternatively, voters are given sets of ballots, one for each contender; the voter chooses one ballot of the set, places the chosen ballot in an envelope and casts it in the ballot box; in this case, one vote corresponds to the contents of one envelope. In addition, some new voting technologies utilise the so-called electronic ballots. It is important to distinguish between votes and ballots, because there are cases in which the voter has several votes.

84. Distinction between votes and ballots may occur when voters are required to insert their ballot(s) in an envelope, which is then inserted in the ballot box to complete the act of voting. In this case, one vote corresponds to the contents of one envelope found in the ballot box, rather than to one ballot.[33] In order to streamline the vote count, the law should include provisions outlining the distinction between votes and ballots.

85. Notwithstanding, negative and abstention choices have been included in written law on a limited number of occasions. In one example, blank ballots have been determined by law to represent valid votes. [34] In another example, voters are granted the option to vote “against all” candidates and/or parties,[35] although the law does not specify whether votes “against all” are valid or invalid. This has an impact on thresholds and/or the calculation of the absolute majority.

86. In both examples, the underlying argument is that such votes express choices, although one could safely argue that they express attitudes rather than choices. In addition, the result of such arrangements is that they have the potential to render counting of the vote obscure and affect only the number of voters who voted.

87. Thresholds are numerical parameters, used to determine the validity of an election or, more often, which of the electoral contestants are eligible to participate in the allocation of the seats and who of them would get seat(s). In the case of narrow margins, ambiguous legal provisions related to the calculation of the threshold could be used to manipulate electoral outcomes.

88. Threshold values are provided by the legal framework, either directly or indirectly. Usually, turnout and eligibility thresholds are provided directly and are expressed in percentages from the registered voters or the votes cast, respectively.

89. On occasion, in the context of regional systems for proportional representation, the eligibility threshold is determined at the level of an electoral constituency, rather than at national

[33] In some voting systems, separate ballots are prepared for each individual party and/or candidate. Voters are asked to choose a ballot corresponding to their choice of a party and/or candidate, insert their ballot(s) in an envelope and then insert the envelope in the ballot box. If the voter has inserted two or more identical ballots, the vote (the contents of the envelope) remains valid; if the envelope contains two or more ballots for more than one party and/or candidate, the vote is invalid.

[34] E.g. in the Kingdoms of Spain and Netherlands, although in both cases the legal frameworks clearly indicate that seat allocation is conducted on the basis of the valid votes cast for parties and candidates.

[35] Examples include Ukraine, Belarus, and Kyrgyzstan.

level. Then, one should also take into consideration the so-called natural threshold[36] which impacts on the seat allocation. Creating electoral constituencies which return only a few mandates could be perceived as a mechanism to eliminate some of the competing parties/candidate (lists) from the seat allocation.[37]

90. The implementation of thresholds in determining the election outcome requires that their values – numbers of registered voters who voted or votes cast – are explicitly calculated after the tabulation of the vote is completed. The opposite, calculating the percentage of the registered voters who voted or the percentage of votes cast for a party or candidate, most often will involve rounding and in the case of narrow margins provoke disputes that can otherwise be avoided.

b. Turnout Threshold: Who Participated?

91. Some States have chosen to introduce in legislation a requirement that a given percentage of the registered voters, T_1, "participate" in the election for the election to be valid.[38] If the percentage of participation is less than the turnout threshold T_1, the election is considered invalid and has to be repeated.[39]

92. Assuming that the meaning of "participation" is clear, the good practice is first to determine, as a result of the tabulation of the vote, how many voters, P, participated in total. Then determine how many voters constitute the legally required minimum participation, N_{T1}, by multiplying the total number of registered voters N by T_1. If $P \geq N_{T1}$, the turnout threshold requirement will be satisfied and the election will be valid.

93. There are several possible interpretations of the word "participate" which differ by the result of "participation". These include:

(a) The voter entered the polling station and his or entry was marked as voted on the voter lists; the number of voters who participated will be determined by the number of marks (a tick or a signature) on the voter list;

(b) The voter entered the polling station and his or her entry was marked as voted on the voter lists after receiving a ballot; the number of voters who participated will be determined by the number of ballots handed to voters; or

(c) The voter entered the polling station and his or her entry was marked as voted on the voter lists after inserting his or her voted ballot in the ballot box; the number of voters who participated will be determined by the number of ballots found in the ballot box after the closure of the polls.

The counting of these quantities may yield different values for the number of voters who "participated".

94. With voter turnout close to T_1, often half of the registered voters or 50 percent, if the three figures differ, it will be possible that one of these figures is more than T_1, while another one exceeds it. This opens a door for a selective decision making with regard to the interpretation of

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[36] Natural thresholds are provided for indirectly, through the numbers of seats returned by multiseat electoral constituencies. In such constituencies, in order for a party to get a seat, the party has to receive a minimum number of votes called a *natural threshold*.

[37] For example, let the law provide that eligible for seat allocation are regional lists that have won at least three percent of the valid votes in the electoral constituency. However, if the constituency returns 3 mandates, the natural threshold will be between 25 and 33 percent. As a result, only those lists that have won at least one quarter of the vote in the constituency could hope to get a seat. If a list has won 10 percent of the vote in the constituency, it will still be unable to get a seat. Further analysis is provided by CDL-AD(2008)037, Comparative Report on thresholds and other features of electoral systems which bar parties from access to Parliament and CDL-AD(2010)007, Report on Thresholds and Other Features of Electoral Systems Which Bar Parties from Access to Parliament (II).

[38] The underlying argument is that a minimum participation in the election underscores its "legitimacy".

[39] Such legislation opens the possibility for an endless cycle of failed elections and invites electoral malfeasance.

"participation", in particular if such decision is taken after election day. Good practice would require that if a clarification is needed, it is made in the law.

95. As regards the issue of which interpretation of "participation" is the correct one, arguments can be made, both "for" and "against", for each of three interpretations. For example, while interpretation (c) would appear to be the objective one because the act of voting is completed after insertion of the voted ballot in the ballot box and because the ballots found in the box represent the most straightforward material evidence for "participation"; however, one could also argue that such interpretation "rubberstamps" possible ballot box stuffing.

c. Eligibility Threshold: Valid and Invalid Votes

96. Votes which have been declared technically invalid have to be taken into consideration when arguing for incongruity of the results.

97. When a voter's choice is clearly identifiable from the ballot found in the box, the vote marked on the ballot is considered valid. Otherwise the vote is considered invalid. Examples for invalid votes include cases where the voter has marked more than one party and/or candidate, when there is no or an unclear choice marked,[40] when the choice is marked on a ballot that is not a standard one, etc. In general, it is unlikely that all possibilities for casting an invalid vote are listed in an exhaustive manner.

98. Often, in the context of systems for proportional representation, legal provisions prescribe that eligible to get seats are only those parties, that have received at least T_2 per cent of the valid votes.[41] The quantity T_2 is called *eligibility* or *legal threshold*, which is usually defined in per cents in written law.

99. The good practice implies first to determine the total number of valid votes, V, cast for the different parties. Next, one determines how many votes, V_{T2}=V x T_2, constitute T_2 per cent of V. All parties that have won at least V_{T2} votes become eligible for participation in the seat allocation. Parties that have won less than V_{T2} votes are excluded from the seat allocation and the votes cast for them remain without representation.

100. Another example represents a provision stipulating that in order to be elected, a candidate must win "at least half of the votes cast". The absence of the adjective "valid" could imply that invalid votes should also be included. As a consequence, the number of votes necessary for a candidate to be elected will slightly increase due to the inclusion of invalid votes in the calculation. More importantly, invalid votes which do not express clear choices may have an undue impact on the election outcome, in particular if the leading candidate has won close to 50 percent of the valid votes.

101. Similar considerations apply to systems for proportional representation. The issue is that, in some States, the eligibility threshold is defined as a percentage of the votes, with the adjective "valid" missing. Except in the unlikely event that an election has been conducted

[40] Such ballots are often called "blank". In a few States, including established democracies, blank ballots are considered to express a choice and are considered valid.

[41] The size of the eligibility threshold is an indicator of the will of the legislator with regard to the balance between inclusiveness and stability of government, as it is generally assumed that higher eligibility thresholds produce more stable majorities. According to European traditions, usually $3 \leq T_2 \leq 5$. Eligibility thresholds can be applied both at national and/or at regional levels. There may be different thresholds for single parties, pre-electoral coalitions of two parties, three parties, etc. Usually, with the increase of the number of members of a coalition, the respective thresholds are also increased. For more details, see the study of the Venice Commission on thresholds, and in particular the reports on thresholds and other features of electoral systems which bar parties from access to Parliament (CDL-AD(2008)037 and CDL-AD(2010)007).

without a single invalid vote cast, the number of the sum of the valid and invalid votes will be more than the number of valid votes.

102. Therefore, the number of votes equal to the threshold value will be higher due to inclusion of the invalid votes in the calculation. As a result, a party that may have overcome the threshold percentage based on the valid votes, but has less votes then the threshold value determined on the basis of all votes will be excluded from the seat allocation. This would be due to taking into account invalid votes which do no express clear political choice.[42]

103. If the eligibility threshold is determined by written law as a percentage of the "votes cast", in principle, the election administration could clarify in a written and appealable decision that only the valid votes should be taken into account, leaving the final say to a court of law. However, such decision should be made in a timely manner to avoid perceptions of manipulation.

D. Vote Count and Tabulation[43]: Do Figures Match?

104. Counting of the votes cast by voters and their tabulation is a critical stage of an election process, which may mark a peak in possible political tension and even popular unrest in particular if confidence is in deficit. The usual practice is that votes are counted in the polling stations where they were cast, although on occasion they may be counted in specially established counting facilities.[44] The tabulation of the votes comprises the summation of the polling station results for the entire electoral constituency in order to determine the election winner(s).

105. Due to the importance of the count and tabulation, legislation should include clear and easily understood rules for their implementation. Ambiguities and lacuna in the legal framework are detrimental to the credible outcome of the election; should they exist in the law, relevant clarification should be made available by the authorities in a timely manner in order to protect the integrity of the entire process.

106. A credible vote count is based on a number of checks which are key to produce a credible output. It is at this late stage of the election where issues discussed above will surface. Open doors for fraud remain in the absence of legal requirements to check the vote count.

107. Important checks, equally applicable to polling station and electoral constituency level, include:

(a) The total number of votes cast should be equal to the sum of the valid votes and invalid votes.
(b) The total number of valid votes should be equal to the sum of the votes cast for all candidates or parties on the ballot.
(c) Should election day registration of voters be permitted, the total number of registered voters should be equal to the sum of the number of voters on the voter lists published prior to election day plus the number of voters on the supplementary voter lists.

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[42] Please see the OSCE/ODIHR Final Report on the 1999 parliamentary elections in Georgia, available at http://www.osce.org/documents/odihr/2000/02/1360_en.pdf. On page 25 the report states: "According article 54.6 of the law, the 7% threshold is to be determined on the basis of *votes cast*. The CEC interpreted this provision to mean voters who signed the voter registers. This is an extremely unusual interpretation of the law. The votes for the Labourist Party (140,595) were less than 7% of the *votes cast* (149,371), but more than 7% of the *valid votes* (140,212). Moreover, the CEC included in the total of *votes cast* those cast in constituencies and precincts where the vote was nullified due to serious irregularities." These figures were official, as was the interpretation of "votes cast", which included valid ballots, invalid ballots and those who signed the register but did not deposit a ballot.

[43] Tabulation can be referred to as aggregation or collation as well.

[44] Examples include the United Kingdom of Great Britain and Northern Ireland, where votes are counted in the administrative centres of the single seat electoral constituencies and Albania where votes are counted in special counting centres.

(d) Should one vote correspond to one ballot, the number of ballots delivered to a given polling station should be equal to the sum of the used and unused ballots (including spoiled ballots). The number of used ballots should be equal to the sum of the ballots found in the ballot box and the spoiled ballots. The number of the ballots found in the ballot box should be equal to the number of votes cast, i.e. the number of signatures/marks in the voter list.

108. Reasons for mismatches may vary from simple human error in the count to lack of sufficient training of counting officials, to intentional fraud. The key question, what happens if any of these checks is not satisfied, usually remains without clear answers in written law.[45]

109. If the law stipulates that if such a mismatch occurs, the "correct" figure is the sum of the valid votes cast for parties and candidates, that could encourage adding ballots for some of the candidates in order to satisfy the check; conversely, if the law stipulates that the "correct" figure is the total of all valid votes, a question arises what to do with the extra valid votes or alternatively, which votes should be disregarded in order to satisfy the check. It would appear that when the mismatch is identified, an appeal should be addressed to a court of law on a case by case basis.

E. Vote Count and Tabulation: Outright and Likely Fraud

110. While caution with raising allegation for election fraud conducted during the counting and tabulation of the votes always benefit from a measure of caution, in view of the sensitivity of this stage of the election process, there are specific situations which imply that outright or likely fraud has been conducted. Such situations have been reported on a number of occasions by election observers.[46]

111. It could happen that votes from polling stations that never opened on election day were officially reported and collated with the results from the electoral constituencies. In rare circumstances, the opposition has even covered up such fraud in order to ensure political or other benefits.

112. Another possible scenario arises when a difference between the contents of an official results protocol and a copy of that protocol is established. The case becomes even more suspicious if the copy has been certified by the respective election administration body. In rare occasions, there has been "funnelling" of the votes cast for one party towards the collated results of another party with the intention to allow for higher "hidden" majority in Parliament.

113. Finally, in some polling stations, results protocols may be identified that contain "implausible" figures, such as reported turnout close to 100 percent or votes for a particular party (usually the incumbents) that are close to 100 percent of all votes cast.

114. While in such cases fraud seems likely or even obvious, it is advisable to urgently bring these cases to the attention of the authorities, with a request for timely and transparent investigation. Any attempt of the authorities to ignore such information or delay and avoid an investigation can only fuel the suspicions for fraud.

[45] On occasion, election legislation specifies that if the mismatch is "large" (in percentage or absolute figures) and exceeds a specified threshold, there should be a recount or a repeat vote, Section D.3 "Recount and Repeat Voting". However, the inclusion of such threshold value seems artificial and may prevent to determine the outcome, in particular if margins between leading candidates are narrow.

[46] Examples are available at http://www.osce.org/odihr-elections/14207.html.

IV. Prevention of possible fraud

A. Background

115. Three aspects of an election process are key to prevention of possible figure based fraud – transparency of the process, accountability of all State official involved in the conduct of the election[47] and public confidence in the process. Transparency, accountability and public confidence are integral to each other.[48]

116. As an election is a public process it must be fully transparent. All election stakeholders and the public have to by fully informed about all election related developments in a timely manner. There is no place for confidential information in an election. The authorities, first and foremost the election administration, must make all efforts to ensure full transparency throughout the election process as a key fraud prevention measure.

117. The incumbents have to ensure that stakeholders are aware of the legal framework which must be published as early as possible, the election calendar, the registered candidates and those prospective candidates that were denied registration including with the reasons for denial of registration, the campaign rules including media coverage of the campaign and campaign finance, the numbers of registered voters including by polling stations, of the voting and counting rules and of the unfolding of the tabulation and the final results.[49]

118. The election administration has a special role in keeping stakeholders informed, as it is the body that "runs the show" including by providing clarifications on possible ambiguities and lacuna in the legal framework. Such information must be provided immediately when available, in a format that will allow possible complainants to address the courts.

119. If an election process is transparent and all state officials are accountable for their actions and inactions that affect the process, public confidence will be upheld.

B. Transparency

a. Performance of the Election Administration

120. Transparent and professional performance of the election administration is key to the conduct of a credible election. Rules of procedure of the election administration, such as the quorum for a meeting of an election commission be valid or the required majority to approve a decision should be publicly available. Here the context is that, on occasion, the law provides the quorum and/or the decision making majority is two thirds of the members. It is always useful to clarify how many members is two thirds, because this quantity is determined in line with the rules of integer arithmetics that are different from the conventional real one.[50]

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[47] Accountability also includes that proportional sanctions be imposed, in a timely manner, for possible violations of the law.

[48] There are no specific international standards that refer explicitly to transparency, accountability and public confidence, although if these three aspects are in place in an environment of respect for fundamental civil and political rights the election will most likely be held in line with international standards for democratic elections. The possibility to include transparency, accountability and public confidence as additional commitments to the 1990 OSCE Copenhagen Document was considered in Annex 1 to the 2006 OSCE/ODIHR Report "Common Responsibility: Commitments and Implementation" available at http://www.osce.org/documents/mcs/2006/12/22478_en.pdf.

[49] On the stability of electoral law, see the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), II.2.b; and the Interpretative Declaration on the Stability of the Electoral Law, (CDL-AD(2005)043).

[50] For example, let the top election administration body be composed of 25 members and the law provides that the quorum for a meeting to be valid is at least two thirds majority of all members and that the decision making majority is at least two thirds of those present at a particular meeting. Then the quorum is at least 17 members; with 17 and 18 members present the decision making majority is 12; with 19 – it is 13; with 20 and 21 – it is 14; with 22 – it is 15; with 23 and 24 – it is 16 and with all 25 – it is 17. Attention should be paid to the cases when

121. Each act of the election administration should be formally published, broadly available for information to election stakeholders and appealable in a court of law. Publicity can be ensured through the public media and by immediate posting on the Internet. Any possible clarifications of the legal framework issued by the election administration should be made in a timely manner, so that the "rules of the game" are publicly available prior to or at an early stage in order to avoid surprises for election stakeholders and allegations for manipulation and fraud.

b. Public Scrutiny of Voter Lists

122. Public scrutiny of the voter lists is fundamental to the transparency of voter registration, regardless of the particular registration system in use. Therefore, the law should include provisions that clarify the rights of election stakeholders including voters, contesting parties and candidates, and civil society groups to have access to information contained in the voter registers, the voter lists and the process of their compilation. The minimum standard for voter registration and maintenance of registers is the requirement of complete transparency.

123. Transparency requires that voter registers must be public documents readily available for inspection, without undue cost to the requester, particularly eligible voters for whom inspection should be free of charge if they are checking their own or their family members' records. Voter registers must be available at reasonable times and locations and for a sufficient period of time for voters to examine their personal data. The legal framework should clearly specify who may inspect, how the inspection will occur, and during what periods voter registers and voter lists are available for public scrutiny.

124. Transparency of voter registration and maintenance of voter registers should ensure that registration is easy for a person who has the right to vote, while at the same time ensuring accuracy to prevent the potential for fraudulent voting. The legal framework should clearly specify the method of establishing voter eligibility, including what documentation is required, so that the process is fully transparent, not subject to arbitrary decision, and can be publicly monitored.

125. The law should also specify whether voter registers can be made available to political parties, civil society groups or other specified election stakeholders if requested, and what would be the conditions for satisfaction of such requests including the format of the information, the timeline and the regulations for its use; in other countries, electoral registers are public.

126. In the run-up to an election, it is good practice to publish preliminary voter lists and display them in locations conveniently accessible to voters[51] for a prescribed period of time, for public scrutiny. During the period for public scrutiny, each voter who has noticed inaccuracies or errors in the preliminary voter lists has the opportunity to draw the attention of the responsible authority and request updates. The responsible authorities would consider and reflect, in the final voter lists, voters' suggestions and requests for updates provided they are supported by evidence as required by law.

127. The timetable established in the legal framework with regard to the public scrutiny period should reflect the following consideration:

- Announcements regarding the public scrutiny period and the deadline for registering or requesting updates are published with enough lead time for the public to respond;

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the number of those present would be 23, 20 and 17, when the result of the integer arithmetics calculations would be different from the "standard" rounding and lack of popular knowledge may tempt manipulation. It could also be a provision of a minimum members present, out of the 25.

[51] On occasion, in large urban areas, preliminary voter lists have been printed for each separate address in order to further facilitate public scrutiny.

- The public scrutiny period should be sufficiently long to allow voters and others to review lists and to request updates;
- There is enough time between the end of the public scrutiny period and the publication of the final registers for the processing of updates;
- There is sufficient time for judicial appeals regarding requests for updates that have been declined by the executive authorities (or deletions they have accepted), before publication of the final voter lists.

c. Appropriate Results Forms

128. In view of the importance of the vote count and subsequent tabulation of the vote, polling station results forms can be designed to minimise the possibility for both human error and fraud. Such forms should reflect all relevant figures obtained in the polling station vote count, including numbers of registered voters, separately on the regular and possible supplementary voter lists, number of voters who voted, number of ballots delivered and those used if relevant, numbers of used and spoiled ballots (all these figures must be recorded before opening the ballot boxes), and, after opening the boxes, numbers of ballots cast for the competing candidates and/or parties. All these figures should be written down in the results form, both in digits and in letters, immediately after the vote count is completed by the responsible election officials at the location where the count took place.

129. Such form should allow to check all relevant quantities in a reliable and exhaustive manner. In order to minimise human errors and/or possible fraud at the time of filling of polling station results forms after the vote count, a number of measures could be adopted including:

(a) Printing the "official" protocol forms on carbon back paper, so that all "official" forms are filled at the same time;
(b) Providing a "draft" protocol form, distinct from but of exactly the same format as the "official" one, where the polling officials can fill the figures, check them[52] and if error(s) are identified, polling officials could remove them before filling in the "official" form;
(c) In order to limit errors in the tabulation of polling station results, polling station protocol forms can be printed for each electoral constituency, so that the printed forms include the names of the candidates and/or parties registered to compete seats in the constituency printed in the same order for all polling stations in the constituency;
(d) Providing an official copy of the protocol form, of exactly the same format as the "official" one but on paper of different colour, to be issued, if requested, to party and/or candidate agents, after being signed by the responsible election official; and
(e) Providing an official copy of the protocol form, of exactly the same format as the "official" one but on paper of different colour, to be issued to domestic non-partisan observers, after being signed by the responsible election official. A special training for polling station commissions, party and/or candidate agents and domestic observers on filling protocol forms would be appropriate.

d. Timely and Comprehensive Reporting of Results

130. Timely and comprehensive reporting of results is key to transparency and fraud prevention. It keeps the public informed and promotes confidence in the process. The authorities should take all measures to ensure that available results at any point of the vote count and tabulation are immediately reported to the public, together with explanations of the validity of any figure so reported. Online reporting of polling station and higher level aggregated results is an excellent confidence building and fraud prevention measure, which requires mostly political will to implement.

[52] In the context of Section III.4 "Vote Count and Tabulation: Do Figures Match?".

131. The authorities should publish preliminary (provisional) and/or partial results, as well as final official results at the time such results are available. Reporting should be in a format which will permit party agents and domestic non-partisan observers to compare all their findings in a comprehensive manner. Official final results should be published by the authorities in a format which will allow interested parties and/or candidates to appeal official results to the courts. Good practice is that the election administration publishes the results by polling station. This gives the stakeholders a good opportunity to check the data, both at local level as well as aggregated data.

132. Electoral stakeholders, such as party and/or candidate representatives, and representatives of media and civil society groups involved in election observation, should have unimpeded access to the vote count and tabulation, and should be able to inform the public of their findings through the media even prior to public statements of the election administration.

e. Election Observers[53]

133. The presence of election observers, both non-partisan domestic, party observers and international, and party and civil society ones is considered as key to transparency of an election process as long as observers are granted by law unimpeded access to all stages of the process and to information in a timely manner. Any denial of information to election observers or intentionally delayed provision of information, such as certified copies of results protocols, could be considered as an attempt to limit transparency and even intent to commit fraud.

f. Parallel Vote Tabulation

134. Credible election observers and other civil society groups, as well as better resourced political parties, often attempt to predict election outcomes through parallel vote tabulation. This exercise comprises collection of copies of results forms, usually from the polling stations, and tabulation of the results in parallel with the election administration bodies.

135. Two types of parallel vote tabulation are practiced – full parallel vote tabulation based on collecting results forms from all polling stations and partial parallel vote tabulation based on collecting results forms from a representative sample[54] of polling stations.

136. Ideally, partial parallel vote tabulation predictions are based on representative samples of polling stations. However, the design of such sample requires significant amounts of information related to the demographic structure of the voting population and its political attitudes in recent elections in order to formulate the criteria for selection of polling stations to be included in the sample.

137. In the absence of such information, often in developing States or States undergoing political transition towards a democratic form of government, samples of convenience could be attempted. An example represents a sample including every tenth polling station, e.g. polling station 1, 11, 21, etc. However, in order for such sample to work, one needs to assign a number to each polling station. The resulting sample will include 10 percent of all polling stations. From a practical point of view, five percent samples (each twentieth polling station) have proved to work satisfactorily, with *a posteriori* error margin of less than one percent.

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[53] A number of international standards for democratic elections address this issue. Standards include the 2005 UN Declaration of Principles for International Election Observation available at http://www.accessdemocracy.org/files/1923_declaration_102705.pdf, the Venice Commission Guidelines on an Internationally Recognised Status of Election Observers available at http://www.venice.coe.int/docs/2009/CDL-AD(2009)059-e.pdf and Paragraph 8 of the 1990 OSCE Copenhagen Document available at http://www.osce.org/documents/odihr/1990/06/13992_en.pdf.

[54] Please see Section II.4.1 “Basics”.

138. One should also remember that sampling works in line with the law of large numbers. This means that sampling will work better if applied to the territory of a State rather than a territory of an electoral constituency. If the constituency is big it is possible to carry out a parallel vote tabulation. Further to that, in the presence of regionally strong parties, care should be taken to reflect that with a sufficient number of polling stations from the area where such a party is influential.

139. The accuracy of a parallel vote tabulation or partial parallel vote tabulation prediction depends on a series of additional factors. For example, if a parallel vote tabulation is attempted, it could happen that the polling stations in a concrete area delay the return of their results forms due to issues related to prior elements of the polling day process such as withdrawal of candidates. Thus, the early parallel vote tabulation predictions will be missing results from an entire area which could distort them considerably. Similar consideration would be valid for partial parallel vote tabulation. Reliable sampling methods can be used in order to avoid such problems.

C. Recount and Repeat Voting

140. Due to noticed or alleged human error or malfeasance during the vote count, some electoral contestants may require that votes cast are recounted or even that voting be repeated. The latter is usually a consequence of alleged or open manipulation of the voting process or situations when it is not possible to determine an election result.

141. Requests for recount and/or repeat voting can refer to individual polling stations, as well as entire electoral constituencies. Such requests are often related to election outcomes with narrow margins, with the belief that a recount or a repeat voting can impact on the outcome. Decisions on requests for recount or repeat voting are taken either by the electoral administration or the courts. No specific international standards for the recount of the votes or for repeat voting have been approved.

142. While satisfaction of requests for recount of the votes in individual polling stations do not pose direct threat on the integrity of the process, satisfaction of requests for repeat voting in individual polling stations or larger parts of electoral constituencies may open door to manipulation of results. This is due to potential circumstances such as undue pressure on voters which, in turn, may lead to low participation. In order to uphold the integrity of the election process and ensure that affected voters are treated equally, repeated voting should be called for the entire electoral constituency rather than for individual polling stations.

V. Conclusions

143. The following conclusions appear to hold:

- Detection and prevention of possible figure based fraud requires detailed analysis of the legal provisions that have an impact on the election results and outcome, in particular when voters' choices result in narrow margins ;
- Voter registration fraud requires significant resources; therefore issues related to potentially incorrect voter registration figures are more likely to arise from insufficient understanding of the system for voter registration and sloppy performance of the responsible authorities rather than due to intentional fraud;
- The most efficient methods to combat figure based election fraud stem from transparency of the electoral process; and
- Distinction should always be made between possible fraud and insufficient election administration experience; reasonable allegations for committed fraud should only be made after an in-depth analysis of the relevant circumstances.