

Legal background of the election observation mission

International agreements on elections

1. United Nations

Universal Declaration of Human Rights (Article 21.)

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

The United Nations International Covenant on Civil and Political Rights (Article 25.)

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- c) To have access, on general terms of equality, to public service in his country.

International Convention on the Elimination of All Forms of Racial Discrimination

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service

Convention on the Elimination of All Forms of Discrimination against Women (PART II Article 7.)

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3. – Right to free elections)

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

2. European Union

Treaty Establishing the European Community (PART TWO Article 19.)

Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State.

Charter of Fundamental Rights of the European Union (Article 39.)

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Charter of Fundamental Rights of the European Union (Article 40.)

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Declaration of Principles for International Election Observation (27th October 2005.)

International election observation, which focuses on civil and political rights, is part of international human rights monitoring and must be conducted on the basis of the highest standards for impartiality concerning national political competitors and must be free from any bilateral or multilateral considerations that could conflict with impartiality.

International election observation has the potential to enhance the integrity of election processes, by deterring and exposing irregularities and fraud and by providing recommendations for improving electoral processes.

International election observation plays an important role in providing accurate and impartial assessments about the nature of electoral processes.

International election observation is the systematic, comprehensive and accurate gathering of information concerning the laws, processes and institutions related to the conduct of elections and other factors concerning the overall electoral environment.

International election observation should, when possible, offer recommendations for improving the integrity and effectiveness of electoral and related processes, while not interfering in and thus hindering such processes.

International election observation is conducted for the benefit of the people of the country holding the elections and for the benefit of the international community. It is process oriented, not concerned with any particular electoral result, and is concerned with results only to the degree that they are reported honestly and accurately in a transparent and timely manner.

International election observation must be conducted with respect for the sovereignty of the country holding elections and with respect for the human rights of the people of the country.

An organization should not send an international election observation mission to a country under conditions that make it likely that its presence will be interpreted as giving legitimacy to a clearly undemocratic electoral process, and international election observation missions in any such circumstance should make public statements to ensure that their presence does not imply such legitimacy.

An international election observation mission therefore should not be organized unless the country holding the election takes the following actions:

- Issues an invitation in advance of elections to allow analysis of all of the processes that are important to organizing genuine democratic elections.
- Guarantees unimpeded access of the international election observer mission to all stages of the election process
- Guarantees freedom of movement of the international election observer mission
- Guarantees full, country-wide accreditation

This Declaration and the accompanying Code of Conduct for International Election Observers are intended to be technical documents that do not require action by the political bodies of endorsing organizations though such actions are welcome.

Code of Conduct for International Election Observers (27th October 2005.)

International election observation is conducted in order to provide an impartial and accurate assessment of the nature of election processes for the benefit of the population of the country where the election is held and for the benefit of the international community while it ensures the integrity of international election observation.

- Respect Sovereignty and International Human Rights
- Respect the Laws of the Country and the Authority of Electoral Bodies
- Respect the Integrity of the International Election Observation Mission
- Maintain Strict Political Impartiality at All Times
- Do Not Obstruct Election Processes
- Provide Appropriate Identification
- Maintain Accuracy of Observations and Professionalism in Drawing Conclusions
- Refrain from Making Comments to the Public or the Media before the Mission Speaks
- Cooperate with Other Election Observers
- Maintain Proper Personal Behavior

Implementation of the Communication on Election Assistance and Observation (19th December 2003.)

The purpose of this working document is to review how the Communication has been implemented since its adoption in 2000 and what has been achieved subsequently (2000–2003). All observation missions are required to operate according to a standard methodology.

***3. The Organization for Security and Co-operation in Europe
Office for Democratic Institutions and Human Rights – Principles for election observation***

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE

The participating States express their conviction that:

- free elections that will be held at reasonable intervals
- a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;
- ensure universal and equal rights to vote
- respect the right of citizens to be voted on
- respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment

- ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;
- provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;
- ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;
- ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires

Budapest Summit Declaration

The ODIHR has the mandate to observe elections before, during and after polling day. The ODIHR's enhanced mandate for long-term observation is the result of an increasing realisation that election observation is not a one-day event. An informed assessment of an election process cannot be made on the basis of election day observations only. When evaluating an election process, observers must therefore take into account the entire election cycle, from the media, the registration of voters and candidates, through the campaign, the final voting and counting stages, the public declaration of results, and the instalment into office of those elected.

Lisbon Summit Declaration

Emphasizes that electoral fraud as a violation of human rights continues to endanger stability in the OSCE region. We are committed to continuing to address these problems.

Istanbul Summit Declaration

We reaffirm our obligation to conduct free and fair elections in accordance with OSCE commitments. We recognize the assistance the ODIHR can provide to participating States in developing and implementing electoral legislation in line with the principles and commitments of the OSCE. We are committed to secure the full right of persons belonging to minorities to vote and to facilitate the right of refugees to participate in elections held in their countries of origin. State Parties pledge to ensure fair competition among candidates as well as parties, including through their access to the media and respect for the right of assembly.