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APPENDIX ONE:

List of International Organizations that Monitor Information Technology (IT) in the Electoral Process

INTERGOVERNMENTAL ORGANIZATIONS

Council of Europe's European Commission for Democracy through Law (Venice Commission):

<http://www.venice.coe.int/>

Since its creation, the Venice Commission has been active in the electoral field, in particular, through the adoption of opinions on draft electoral legislation. In 2004, the Council of Europe's Committee of Ministers adopted Recommendation Rec (2004)11 to member states on legal, operational and technical standards for e-voting.

European Commission:

http://ec.europa.eu/index_en.htm

Election observation plays a major role in the European Union's policy of promoting human rights and democratization throughout the world. In September 2000, the European Commission launched the CyberVote project to demonstrate fully verifiable on-line elections with voter privacy using fixed and mobile Internet terminals. In 2006, the European Commission published a report titled Methodological Guide to Electoral Assistance that, among other things, introduced the factors to consider when dealing with electoral technology.

International IDEA:

<http://www.idea.int/elections/index.cfm>

International IDEA provides support for making electoral administration more professional. It supports the design of professionally managed independent electoral processes which are tailored to local circumstances and engender public confidence in legitimate and credible elections and referenda. International IDEA has developed a three-day Electoral Assistance Training course for reorienting development agencies for long-term electoral planning. One aspect of the course focuses on introducing the cross-cutting issues and the factors to be considered when embracing technology for electoral processes.

Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR):

<http://www.osce.org/odihr-elections/>

The ODIHR deploys election observation missions to OSCE participating States to assess the implementation of OSCE commitments relating to elections. The Office also conducts technical-assistance projects and legislative reviews. With an increasing number of OSCE participating States using electronic technology in the electoral process, the organization has expanded its monitoring efforts to address these issues. For instance, an OSCE mission followed the use of remote voting by Internet during the 2007 Estonian Parliamentary elections, which was the first countrywide use of the Internet as a voting method in an OSCE participating State.

Organization of American States (OAS):

<http://www.oas.org/>

In many of the region's elections, the OAS acts as an international observer, working with the Member States to strengthen the democratic process and promote fairness and transparency. With Member States increasingly using electronic technology, and as part of the Plan of Action of Quebec City handed down by the Third Summit of the Americas, the OAS Heads of State and Government created the Inter-American Electoral Technology Program (PITE), which focuses the inter-American system on the holding of elections that are more modern, transparent and efficient throughout the hemisphere. The program covers such areas as service to voters, automating electoral procedures and adopting information technology.

NONGOVERNMENTAL ORGANIZATIONS**The Carter Center:**

<http://www.cartercenter.org/>

The Carter Center observers analyze election laws, assess voter education and registration processes and evaluate fairness in campaigns. Of particular note, the Carter Center sent a medium term observer group to assess preparations, including the use of new automated voting and fingerprint machines for Venezuela's 2004

Presidential referendum. The Carter Center organized a meeting in Atlanta, Georgia, in November 2006 that discussed approaches to observing electronic voting technologies.

IFES:

<http://www.ifes.org/>

IFES provides countries with the technical advice and tools they need to run democratic elections. For instance, IFES designed a program in Information Technology training which includes training in Windows NT and in Visual Basic for the Nigerian Election Commission (INEC) in 1999. In addition, IFES assisted and trained INEC in software design to manage a voter registry with 60 million records.

National Democratic Institute for International Affairs (NDI):

<http://www.ndi.org/>

The National Democratic Institute for International Affairs (NDI) is a nonprofit organization working to strengthen and expand democracy worldwide. Since 1987, NDI has supported nonpartisan domestic election monitors and political parties in safeguarding the electoral process and advocating for democratic reform in more than 90 countries. In addition, NDI has observed more than 100 elections in over 50 countries, before, during and after election day. Included in these efforts is promoting understanding of the need for transparency, fairness and accountability, including verification of the integrity of electronic technologies in elections. NDI has produced over 300 documents to assist these efforts, including this Guide on Monitoring Electronic Technologies in Election Processes and other guides and handbooks on election monitoring.

APPENDIX TWO:

Organizations and Agencies Working Towards Standardization in Information Technology

International Organization for Standardization (ISO):

<http://www.iso.org/>

ISO is a network of the national standards institutes of 154 countries, on the basis of one member per country, with a Central Secretariat in Geneva, Switzerland, that coordinates the system. It is a non-governmental organization and its members are not, as is the case in the United Nations system, delegations of national governments. Nevertheless, ISO occupies a special position between the public and private sectors. This is because, on the one hand, many of its member institutes are part of the governmental structure of their countries, or are mandated by their government. On the other hand, other members have their roots uniquely in the private sector, having been set up by national partnerships of industry associations. Therefore, ISO is able to act as a bridging organization in which a consensus can be reached on solutions that meet both the requirements of business and the broader needs of society, such as the needs of stakeholder groups like consumers and users.

Institute of Electrical and Electronics Engineers (IEEE):

<http://www.ieee.org/>

The IEEE, a non-profit organization, is a professional association for the advancement of technology. Through its global membership, the IEEE is a leading authority on areas ranging from aerospace systems, computers and telecommunications to biomedical engineering, electric power and consumer electronics among others. Members rely on the IEEE as a source of technical and professional information, resources and services. To foster an interest in the engineering profession, the IEEE also serves student members in colleges and universities around the world. Other important constituencies include prospective members and organizations that purchase IEEE products and participate in conferences or other IEEE programs.

Organization for the Advancement of Structured Information Standards (OASIS):

<http://www.oasis-open.org/>

OASIS is a nonprofit consortium that drives the development, convergence and adoption of open standards for the global information society. The consortium produces more Web services standards than any other organization along with standards for security, e-business, and standardization efforts in the public sector and for application-specific markets. Founded in 1993, OASIS has more than 5,000 participants representing over 600 organizations and individual members in 100 countries.

The Consortium hosts two widely respected information portals on XML and Web services standards, Cover Pages and XML.org. OASIS Member Sections include CGM Open, IDtrust, LegalXML, Open CSA and SGML Open.

National Institute of Standards and Technology (NIST):

<http://www.nist.gov/>

From automated teller machines and atomic clocks to mammograms and semiconductors, innumerable products and services rely in some way on technology, measurement, and standards provided by the National Institute of Standards and Technology. Founded in 1901, NIST is a non-regulatory federal agency within the U.S. Commerce Department's Technology Administration. NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve the quality of life.

United States Election Assistance Commission (EAC):

<http://www.eac.gov/>

The EAC was established by the Help America Vote Act of 2002 (HAVA). Central to its role, the Commission serves as a national clearinghouse and resource for information and review of procedures with respect to the administration of Federal elections. According to the text of HAVA, the law was enacted to establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration

standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes. Among other things, HAVA requires the EAC to:

- Generate technical guidance on the administration of federal elections.
- Produce voluntary voting systems guidelines.
- Research and report on matters that affect the administration of federal elections.
- Provide grants for election technology development and for pilot programs to test election technology.
- Develop a national program for the testing, certification, and decertification of voting systems.

APPENDIX THREE:

International Human Rights Provisions Supporting Transparency in the Electoral Process through Freedom of Information and Expression

INTERNATIONAL TREATIES AND UN DOCUMENTS

Universal Declaration of Human Rights

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

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 to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this 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.

International Covenant on Civil and Political Rights

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance

with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
 - a. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - b. To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - c. To ensure that the competent authorities shall enforce such remedies when granted.

Article 19

1. Everyone should have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expressions; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary
 - a. For respect of the rights or reputations of others;
 - b. For the protection of national security or of public order (ordre public), or of public health or morals.

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

Article 5

In compliance with the fundamental obligations laid down in Article 2 of this Convention, 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:

...

- c. Political rights, in particular the rights 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;
- d. Other civil rights, in particular;

...

- viii. The right to freedom of opinion and expression... .

Convention on the Elimination of All Forms of Discrimination Against Women

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.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Convention on the Political Rights of Women

Article I

Women shall be entitled to vote in all elections on equal terms with men without any discrimination.

Article II

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

Article III

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

UN Convention Against Corruption

Article 10

Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 13

Participation of society

- (1) Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
 - (b) Ensuring that the public has effective access to information;
 - (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
 - (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
 - (i) For respect of the rights or reputations of others;
 - (ii) For the protection of national security or order public or of public health or morals.
- (2) Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

REGIONAL INSTRUMENTS: AFRICAN UNION

African Charter on Human and Peoples' Rights

Article 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
(ACHPR - PW)(2003)

Article 9 Right to Participation in the Political and Decision-Making Process

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:
 - (a) women participate without any discrimination in all elections;
 - (b) women are represented equally at all levels with men in all electoral processes;
2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

African Charter on Democracy, Elections and Governance¹*Article 2*

The objectives of the Charter are to:

...

3. Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments;

...

¹ Not yet entered into force.

10. Promote the establishment of necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;

...

13. Promote best practices in the management of elections for purposes of political stability and good governance.

Article 3

State parties shall implement this Charter in accordance with the following principles:

...

4. Holding of regular, transparent, free and fair elections;

...

8. Transparency and fairness in the management of public affairs;

...

Article 12

State parties undertake to implement programmes and carry out activities designed to promote democratic principles and practices as well as consolidate a culture of democracy and peace.

To this end, State Parties shall:

1. Promote good governance by ensuring transparent and accountable administration.
2. Strengthen political institutions to entrench a culture of democracy and peace.
3. Create conducive conditions for civil society organizations to exist and operate within the law.
4. Integrate civic education in their educational curricula and develop appropriate programmes and activities.

Article 27

In order to advance political, economic and social governance, State Parties shall commit themselves to:

...

2. Fostering popular participation and partnership with civil society organizations;

...

7. Promoting freedom of expression, in particular freedom of the press and fostering a professional media;

**Declaration of Principles on Freedom of Expression in
Africa, African Commission on Human and
Peoples' Rights, 32nd Session**

Principle IV, Freedom of Information:

1. Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.
2. The right to information shall be guaranteed by law in accordance with the following principles: everyone has the right to access information held by public bodies; everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right ...

**REGIONAL INSTRUMENTS: ORGANIZATION
OF AMERICAN STATES**

American Convention on Human Rights

Article 13. Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other media of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but

shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others;
or
- b. the protection of national security, public order, or public health or morals.

Article 23. Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

American Declaration of the Rights and Duties of Man

Article IV.

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

Article XX.

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

...

It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.

Inter-American Democratic Charter

Article 4

Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.

Inter-American Convention on the Granting of Political Rights to Women

Article 1

The High Contracting Parties agree that the right to vote and to be elected to

Declaration of Principles on Freedom of Expression

Approved by the Inter-American Commission
on Human Rights
(108th regular session)

RECOGNIZING the need to protect freedom of expression effectively in the Americas, the Inter-American Commission on Human Rights, in support of the Special Rapporteur for Freedom of Expression, adopts the following Declaration of Principles:

PRINCIPLES

1. Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.
2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

...

4. Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

...

10. Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest...

REGIONAL INSTRUMENTS: EUROPEAN UNION

Charter of Fundamental Rights of the European Union

Article 11 Freedom of Expression and Information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12 Freedom of Assembly and of Association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters,
2. Political parties at Union level contribute to expressing the political will of the citizens of the 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.

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.

REGIONAL INSTRUMENTS: COUNCIL OF EUROPE

European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are proscribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Protocol (No. 1) to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms

Article 3

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.

Framework Convention for the Protection of National Minorities

Article 4

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 9

1. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in [...] public affairs, in particular those affecting them.

European Charter of Local Self-Government

Article 3 Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Code of Good Practice in Electoral Matters (Venice Commission)

3.2.2.3. Mechanical and electronic voting methods

42. Several countries are already using, or are preparing to introduce mechanical and electronic voting methods. The advantage of these methods becomes apparent when a number of elections are taking place at the same time, even though certain precautions are needed to minimise the risk of fraud, for example by enabling the voter to check his or her vote immediately after casting it. Clearly, with this kind of voting, it is important to ensure that ballot papers are designed in such a way as to avoid confusion. In order to facilitate verification and a recount of votes in the event of an appeal, it may also be provided that a machine could print votes onto ballot papers; these would be placed in a sealed container where they cannot be viewed. Whatever means used should ensure the confidentiality of voting.
43. Electronic voting methods must be secure and reliable. They are secure if the system can withstand deliberate attack; they are reliable if they can function on their own, irrespective of any shortcomings in the hardware or software. Furthermore, the elector must be able to obtain confirmation of his or her vote and, if necessary, correct it without the secrecy of the ballot being in any way violated.

44. Furthermore, the system's transparency must be guaranteed in the sense that it must be possible to check that it is functioning properly.

Recommendation Rec (2004)11 of the Committee of Ministers to Member States on Legal, Operational and Technical Standards for E-voting

(Adopted by the Committee of Ministers on 30 September 2004 at the 898th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and promoting the ideals and principles, which are their common heritage;

Reaffirming its belief that representative and direct democracy are part of that common heritage and are the basis of the participation of citizens in political life at the level of the European Union and at national, regional and local levels;

Respecting the obligations and commitments as undertaken within existing international instruments and documents, such as:

- the Universal Declaration on Human Rights;
- the International Covenant on Civil and Political Rights;
- the United Nations Convention on the Elimination of All Forms of Racial Discrimination;
- the United Nations Convention on the Elimination of All Forms of Discrimination against Women;
- the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), in particular its Protocol No. 1 (ETS No. 9);
- the European Charter of Local Self-Government (ETS No. 122);
- the Convention on Cybercrime (ETS No. 185);
- the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108);

- Committee of Ministers Recommendation No. R (99) 5 on the protection of privacy on the Internet;
- the document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE;
- the Charter of Fundamental Rights of the European Union;
- the Code of Good Practice in Electoral Matters, adopted by the Council for democratic elections of the Council of Europe and the European Commission for Democracy through Law;

Bearing in mind that the right to vote is one of the primary foundations of democracy, and that, consequently, e-voting system procedures shall comply with the principles of democratic elections and referendums;

Recognising that as new information and communication technologies are increasingly being used in day-to-day life, member states need to take account of these developments in their democratic practice;

Noting that participation in elections and referendums at local, regional and national levels in some member states is characterised by low, and in some cases steadily decreasing, turnouts;

Noting that some member states are already using, or are considering using e-voting for a number of purposes, including:

- enabling voters to cast their votes from a place other than the polling station in their voting district;
- facilitating the casting of the vote by the voter;
- facilitating the participation in elections and referendums of all those who are entitled to vote, and particularly of citizens residing or staying abroad;
- widening access to the voting process for voters with disabilities or those having other difficulties in being physically present at a polling station and using the devices available there;
- increasing voter turnout by providing additional voting channels;

- bringing voting in line with new developments in society and the increasing use of new technologies as a medium for communication and civic engagement in pursuit of democracy;
- reducing, over time, the overall cost to the electoral authorities of conducting an election or referendum;
- delivering voting results reliably and more quickly; and
- providing the electorate with a better service, by offering a variety of voting channels;

Aware of concerns about certain security and reliability problems possibly inherent in specific e-voting systems;

Conscious, therefore, that only those e-voting systems which are secure, reliable, efficient, technically robust, open to independent verification and easily accessible to voters will build the public confidence which is a pre-requisite for holding e-voting,

Recommends that the governments of member states, where they are already using, or are considering using, e-voting comply, subject to paragraph iv. below, with paragraphs i. to iii. below, and the standards and requirements on the legal, operational and technical aspects of e-voting, as set out in the Appendices to the present Recommendation:

- i. e-voting shall respect all the principles of democratic elections and referendums. E-voting shall be as reliable and secure as democratic elections and referendums which do not involve the use of electronic means. This general principle encompasses all electoral matters, whether mentioned or not in the Appendices;
- ii. the interconnection between the legal, operational and technical aspects of e-voting, as set out in the Appendices, has to be taken into account when applying the Recommendation;
- iii. member states should consider reviewing their relevant domestic legislation in the light of this Recommendation;
- iv. the principles and provisions contained in the Appendices to this Recommendation do not, however, require individual member states to change their own domestic voting procedures which may exist at the time of the

adoption of this Recommendation, and which can be maintained by those member states when e-voting is used, as long as these domestic voting procedures comply with all the principles of democratic elections and referendums;

- v. in order to provide the Council of Europe with a basis for possible further action on e-voting within two years after the adoption of this Recommendation, the Committee of Ministers recommends that member states:
- keep under review their policy on, and experience of, e-voting, and in particular the implementation of the provisions of this Recommendation; and
 - report to the Council of Europe Secretariat the results of their reviews, who will forward them to member states and follow up the issue of e-voting.

In this Recommendation the following terms are used with the following meanings:

- authentication: the provision of assurance of the claimed identity of a person or data;
- ballot: the legally recognised means by which the voter can express his or her choice of voting option;
- candidate: a voting option consisting of a person and/or a group of persons and/or a political party;
- casting of the vote: entering the vote in the ballot box;
- e-election or e-referendum: a political election or referendum in which electronic means are used in one or more stages;
- electronic ballot box: the electronic means by which the votes are stored pending being counted;
- e-voting: an e-election or e-referendum that involves the use of electronic means in at least the casting of the vote;
- remote e-voting: e-voting where the casting of the vote is done by a device not controlled by an election official;

- sealing: protecting information so that it cannot be used or interpreted without the help of other information or means available only to specific persons or authorities;
- vote: the expression of the choice of voting option;
- voter: a person who is entitled to cast a vote in a particular election or referendum;
- voting channel: the way by which the voter can cast a vote;
- voting options: the range of possibilities from which a choice can be made through the casting of the vote in an election or referendum;
- voters' register: a list of persons entitled to vote (electors)...

REGIONAL INSTRUMENTS: ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE COMMITMENTS

Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension (Copenhagen Document of the OSCE)

[The participating States] recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.

...

In order to strengthen respect for, and enjoyment of, human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character, the participating States agree on the following:

...

(3) They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

...

(5) They solemnly declare that among those elements of inherent dignity and of the equal and inalienable rights of all human beings are the following:

(5.1) - free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;

(5.10) - everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

(6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes.

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will:

(7.1) - hold free elections at reasonable intervals, as established by law;

(7.5) - respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) - 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 before the law and by the authorities;

(7.8) - 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;

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for

States in which elections are taking place. They therefore invite observers from any other CSCE [now OSCE] participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

(9) The participating States reaffirm that

(9.1) - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright....

...

(10) In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to:

(10.1) - respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;

...

(10.3) - ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups;

(10.4) - allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.

...

(24) The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

In addition to the provisions of these international human rights instruments, which create obligations for the states that are parties to the documents, there are a number of other significant declarations and documents of associations of states and of the associations of the legislative branches of governments. Included among those that are directly relevant to democratic elections are the following: The Harare Declaration of the Commonwealth of Nations; Documents of the Summit Meetings of the Organization of Security and Cooperation in Europe subsequent to the 1990 Copenhagen Document; the 2001 Norms and Standards for Elections in the SADC Region adopted by the Southern Africa Development Council Parliamentary Forum; and the 1994 Declaration on Criteria for Free and Fair Elections of the Inter-Parliamentary Union.

APPENDIX FOUR:

International Human Rights Tribunals

United Nations Human Rights Committee: States that have signed the First Optional Protocol to the International Covenant on Civil and Political Rights have agreed to allow persons within the Member State to obtain an opinion from the Committee regarding violations of that Covenant. For those countries, the Human Rights Committee can thus function as a mechanism for the international redress of human rights abuses.

European Commission of Human Rights: In addition to alleged breaches of the Convention for the Protection of Human Rights and Fundamental Freedoms referred by State Parties to the Convention, the Commission may receive petitions from any person, NGO or group of individuals claiming to be a victim of a violation by a State Party that has accepted the jurisdiction of the Commission to receive such petitions.

European Court of Human Rights: The Court's mission is to enforce the Convention for the Protection of Human Rights and Fundamental Freedoms, by ruling over complaints against human rights violations committed by States Parties, and brought to the Court either by other States Parties or by individuals subject to the jurisdiction of a State Party.

Inter-American Commission on Human Rights: The Commission reviews human rights petitions based on the OAS Charter, the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

Inter-American Court of Human Rights: The Court receives human rights cases submitted to it by States Parties to the American Convention on Human Rights (ACHR) and the Inter-American Human Rights Commission. Member States of the Organization of American States and certain organs of the OAS may consult the Court regarding the interpretation of the ACHR or of other treaties concerning the protection of human rights in the American states.

UNITED NATIONS HUMAN RIGHTS COMMITTEE

Analysis

The United Nations Human Rights Committee oversees compliance of State Parties to the International Covenant on Civil and Political Rights as well as considers claims under the provisions of the First Optional Protocol to the Covenant. The Committee issues General Comments to help clarify provisions of the Covenant and obligations of State Parties to it. The Committee's General Comment 10 relates to

the freedom of expression, including the right to seek, receive and impart information under Article 19 of the Covenant, and its General Comment 25 relates to the right to participate in public affairs, including the rights to vote and be elected in genuine elections. A number of claims under the First Optional Protocol have related to one or other of the Articles but not to the interface of the two.

The Committee has made clear in General Comment 25 that any conditions (restrictions) that State Parties apply to the rights covered in Article 25 of the Covenant must be based on objective and reasonable criteria. The Article itself states that the rights must be enjoyed without any bases of discrimination noted in Article 2, including political opinion, and without unreasonable restrictions. The Committee also stated in General Comment 25 (paragraph 20) that "votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting processes and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of votes."

The views of the Committee have held that restrictions of Article 19 rights that meet a legitimate objective pursuant to Article 19 may violate the rights protected if they are not demonstrated to be "necessary" to achieve that purpose (*Mukong v. Cameroon*) and that Article 19 rights may not be frustrated where their exercise does not threaten public order, national security or the rights and reputation of others (*Velichkin v. Belarus*).

It is likely therefore that the Commission would support a proposition that State Parties to the Covenant must allow access to electronic technologies that are used to register and count votes, as well as technologies that are central to the exercise of the franchise, such as those used in voter registration and other processes vital to the right to vote and to be elected. Independent verification of technologies also would be consistent with the Committee's reasoning.

Jurisprudence

Schetko v. Belarus

(CCPR/C/87/D/1009/2001, 87th Session (8/8/06)) available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that, while freedom of expression is not absolute, when a State Party imposes sanctions against citizens distributing leaflets encouraging voters to boycott parliamentary elections, such action constitutes an infringement of the authors' right to freedom of speech pursuant to Article 19.

Bodro ić v. Serbia

(CCPR/C/85/D/1180/2003, 85th Session (1/26/06)) available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that the conviction of a Serbian journalist for criminal insult against a prominent public and political figure violated Article 19 insofar as the punishment disproportionately restricted the author's ability to participate in the public debate necessary for a democratic society.

Velichkin v. Belarus

(CCPR/C/85/D/1022/2001, 85th Session (11/23/05)) available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that the Belorussian government violated Article 19 when it arrested, held, and fined a citizen who stood on a street corner passing out copies of the Universal Declaration of Human Rights. The Committee further noted that, irrespective of its domestic legal qualification, the state's actions constituted a "de facto limitation of the author's" Article 19 right to impart information because his activities did not threaten public order, national security or the rights and reputation of others.

Jong-Cheol v. Republic of Korea

(CCPR/C/84/D/968/2001, 84th Session (8/23/05)) available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that a Korean election law barring the publication of polling results 23 days prior to the presidential election does not violate Article 19 as it serves a legitimate aim-to provide the public with a limited period of reflection-and does not punish disproportionately to that aim.

Svetik v. Belarus

(CCPR/C/81/D/927/2000, 81st Session (8/25/04)), available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that punishing a call to boycott a particular election, whether criminally or administratively, violates Article 19, despite the fact that the punishment is provided by law, because it is neither necessary for the respect of the rights and reputation of others nor for the protection of national security or public order.

Laptsevich v. Belarus

(CCPR/C/68/D/780/1997, 68th Session (4/13/00)), available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that arresting a citizen for passing out leaflets violates Article 19 when the State Party can show no compelling justification to protect national security, public order or the respect of the rights and reputations of others.

Guthier v. Canada

(CCPR/C/65/D/633/1995, 65th Session (5/5/99)), available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that the right to take part in the conduct of public affairs pursuant to Article 25 read together with Article 19 implies that citizens should have wide access to information and the opportunity to impart that information about elected bodies and their members.

Park v. Republic of Korea

(CCPR/C/64/D/628/1995, 64th Session (11/3/98)), available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that for a State Party to claim the protection of national security as a justification for infringing upon a citizen's Article 19 right to free expression, it must specify the "precise nature" of the threat to its national security.

Auayom et al v. Togo

(CCPR/C/57/D/423/1990, 57th Session (8/19/96)), available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that the freedom of information and expression are the cornerstones in any free and democratic society. As a result, the Togolese government's imprisonment of a university professor for possessing material critical of the regime's economic, foreign and domestic policy violated Article 19.

Miha v. Equatorial Guinea

(CCPR/C/51/D/414/1990, 51st Session (8/10/94)), available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that when a State Party detains a citizen solely or primarily because of the author's membership in a political party in opposition to the regime in power, it violates the right to free expression protected by Article 19.

Mukong v. Cameroon

(CCPR/C/51/D/458/1991, 51st Session (8/10/94)), available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for proposition that while attempting to safeguard national unity under difficult political circumstances constitutes a legitimate objective pursuant to Article 19, oppressing advocates of multi-party democracy, democratic principles, and human rights is not "necessary" to achieve that legitimate purpose.

Kalenga v. Zambia

(CCPR/C/48/D/326/1988, 48th Session (8/2/93)), available at <http://www.unhchr.ch/tbs/doc.nsf>

This case stands for the proposition that when a State Party arrests a citizen for promoting campaigns and protests against government policy, it violates Article 19's protection of freedom of speech.

EUROPEAN COURT OF HUMAN RIGHTS**Analysis**

The European Court of Human Rights (Court) analyzes potential violations of the right to "receive and impart information" under two scenarios. First, the Court determines whether the government has interfered with this right. If the Court determines that the government has not interfered with the right to "receive and impart information" but instead has failed to take positive action to provide individuals with information, the Court interprets Article 10 narrowly. The Court adheres to the general rule that Article 10 prohibits State Parties from interfering with the dissemination of information while not imposing a positive obligation on the government to collect and disseminate information on its own initiative.

Once the Court determines that a State Party has interfered with this right, it must determine whether the interference is consistent with Article 10. To determine whether a State Party's interference with an applicant's right to "receive and impart information and ideas" is consistent with Article 10, the Court uses a three-part test based on section 2. Section 2 provides exceptions to section 1 for restrictions that "are prescribed by law and are necessary in a democratic society." First, the Court examines whether relevant domestic law mandates such a restriction on the right to receive and impart information. Second, the Court determines whether the restriction is proportionate to a legitimate aim pursued. Finally, the Court analyzes whether the restriction is "necessary in a democratic society," which implies the existence of a "pressing social need" that justifies the restriction.

While the issue is currently pending before the court (Please see *Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia*), Article 10 likely protects the right of domestic monitoring organizations and political competitors to verify the integrity of electronic technology in elections. First, activities such as parallel vote tabulations (PVTs) and conducting voter database audits do not "impose a positive obligation" on states to collect and disseminate information on its own accord, *Guerra and Others v. Italy*, nor does it implicate matters of national security. *Sîrbu and Others v. Moldova*. Therefore, if governments impose restrictions on the collection and dissemination of this type of information, the Court would likely apply the three part test to determine whether the restrictions "are prescribed by law and are necessary in a democratic society."

Even if the relevant domestic law prohibits access to electoral information, such laws would likely fail the remaining two prongs of the three part test. First, denying the public access to information concerning electoral transparency does not serve a "legitimate aim." In effect, denying political contestants and/or nonpartisan domestic monitoring groups access to election information subverts rather than serves a "legitimate aim." Electoral transparency is essential to fulfilling the letter of Article 10. Even if a State Party successfully articulated a "legitimate aim" for such restriction on information, imposing restrictions that undermine transparency in the electoral process is not "necessary in a democratic society" because there is no "pressing social need" that justifies restricting such information. *Radio ABC v. Austria*. Protection of intellectual property and other legitimate private interests therefore would have to be narrowly tailored in order to provide transparency to a maximum practicable extent.

Jurisprudence

**Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia
(decision pending),**
(App. No. 11721/04)

This case addresses whether the alleged failure of an Armenian election authority to provide a domestic election monitoring organization information related to its decision-making processes, as well as campaign contribution data and information about the expenses of certain political parties violates Article 10.

Radio Twist, A.S. v. Slovakia (12/19/06),

(App. No. 62202/00) available at <http://hudoc.echr.coe.int>

This case stands for the proposition that allowing a civil action against a radio company for broadcasting a taped recording of a private telephone conversation between two high ranking government officials obtained illegally by a third party constituted a violation of Article 10. The Court held that the interference with the company's right to impart information was neither a pressing social need nor proportionate to the legitimate aim pursued and, therefore, not within the exceptions articulated in Article 10(2).

Sdruci Jihoceské Matky v. Czech Republic (07/10/06),

(App. No. 19101/03) available at <http://hudoc.echr.coe.int>

This case stands for the proposition that the refusal by the Czech authorities to grant an NGO access to administrative documents relating to a nuclear power station in Temelin interferes with the right to receive information held by public authorities as guaranteed by Article 10.

Roche v. United Kingdom (10/19/05),

(App. No. 32555/96) available at <http://hudoc.echr.coe.int>

This case reaffirms the proposition that while Article 10 prohibits governments from restricting the dissemination of information, it does not create a positive obligation to disseminate information on its own motion. The Court found that the British government had satisfied its obligation under Article 10 by releasing the applicant's medical records concerning his exposure to mustard gas testing as a former Royal Engineer upon request and that it had no positive obligation to do so on its own accord.

Sîrbu and Others v. Moldova (6/15/04),

(Apps. No. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01, 73973/01) available at <http://hudoc.echr.coe.int>

This case stands for the proposition that while governments may not restrict information from a person that others may impart to her, they do not possess positive obligations to disclose to the public any secret documents or information concerning its military, intelligence service or police force as it falls within the exception concerning the interests of national security in Article 10(2). The Court held the Article 10 claim inadmissible since the applicants sought information classified secret within the Ministry of Defence, Ministry of National Security, and Ministry of Internal Affairs.

Guerra and Others v. Italy (2/19/98),

(App. No. 14967/89) available at <http://hudoc.echr.coe.int>

This case affirms the proposition that Article 10 prohibits government interference with the dissemination of information on matters of public interest but found no violation of Article 10 when applicants alleged the failure of the competent authorities to provide information about the inherent risk and how to proceed in the event of a major accident in a nearby high-risk chemical factory. The Court held that while states must not interfere with the dissemination of information, Article 10 does not impose a positive obligation on the state to collect and disseminate information on its own initiative.

Gaskin v. United Kingdom (7/7/89),

(App. No. 10454/83) available at <http://hudoc.echr.coe.int>

This case stands for the proposition that Article 10 does not prohibit governments from partially restricting access to a former ward of the state's case-file held by a local social authority relating to his period in care by the Liverpool City Council following the death of his mother when the wider public interest in maintaining an effective child care system by protecting the confidentiality of third parties, such as doctors, police officers, and foster parents, overrides the applicant's private interest. However, the Court held that in restricting such information, the United Kingdom violated Article 8, which protects "the right to respect for his private and family life."

Leander v. Sweden (3/26/81),

(App. No. 9248/81) available at <http://hudoc.echr.coe.int>

This case stands for the proposition that while Article 10 prohibits governments from restricting information that others may be willing to impart to an individual, it does not confer upon a former Swedish Communist Party member the right to obtain information from a police registry that caused the government to deem him a "security risk" and subsequently exclude him from an employment position within Sweden's national security apparatus. The Court invoked the "national security" exception under section 2 of Article 10.

INTER-AMERICAN COMMISSION AND COURT OF HUMAN RIGHTS

Analysis

Article 13 of the American Convention for Human Rights (ACHR) supports the right of election monitoring organizations to verify the integrity of elections. Article 13 provides for the right to freedom of thought and expression as well as the right to seek, receive and impart information and ideas of all kinds.

The Inter-American system has recognized an explicit right of access to government information within the right to "seek, receive, and impart information." In *Claude Reyes et al v. Chile*,¹ the Inter-American Court of Human Rights (Court) ruled broadly in favor of a "right to access" and it imposed upon OAS Member States a "positive obligation" to "disclose public information so as to encourage democratic debate and control by civil society." *Claude Reyes v. Chile* (36) Therefore, the Inter-American Court would likely find that access to government held electoral information—such as voter registry lists, vote tabulations, and the issues related to the use of electronic technologies made available under Article 13 of the ACHR.

The 2006 ruling in *Claude Reyes et al v. Chile* consolidated the trend towards the expansive view of "freedom of information" that the Inter-American Commission on Human Rights (Commission) had developed over time. The Commission noted that Article 13 is "intended to protect and promote access to information, ideas, and expression of all types, and thus, strengthen the operation of pluralist democracy." In *Baruch Ivcher Bronstein v. Peru* the Commission determined that an OAS Member State violates an individual's right to freedom of expression if that individual is not free to express his own ideas and opinions and is not free to seek and receive information and ideas of all kinds. (Please also see *Francisco Martorell v. Chile*).

The Commission regards freedom of expression as having an "individual and social dimension." As the Commission noted in *Alejandra Marcela Matus Acuna ET AL. v. Chile*, when restrictions on expression occur, the Member State party violates both the individual rights and the collective rights of society as a whole to receive the information. Under Article 13, the State may not restrict information from individuals, unless the restriction is "prescribed by law and necessary for a legitimate aim." (Please see also *Victor Manuel Oropeza v. Mexico*).

¹ Please see case annotations below concerning all decisions noted in the analysis.

The Commission has also stated that disseminating information and knowledge and fostering freedom of expression is "an essential pillar of democratic society and a fundamental condition for progress and the personal development of each individual," and society as a whole. (Please see *Baruch Ivcher Bronstein v. Peru*).

Article 23 of the ACHR provides individuals with the right to free and fair elections. Political contestants and domestic monitoring groups may argue that verifying the integrity of electronic technology in elections is soundly within Article 13's purpose of receiving and imparting information and strengthens the underlying principles of Article 23. Thus, coupled with the ACHR's Article 23 right to free and fair elections, Article 13 requires access to information and provides individuals with the right to determine the integrity of elections through a transparent electoral process.

Jurisprudence

Inter-American Court

Marcel Claude Reyes, et al. v. Chile (09/19/06)²

This case stands for the proposition that Article 13 protects citizens' fundamental right to access information. The Court further noted that State Parties possess a positive obligation to disclose government held information, when disclosing such information benefits the public interest, and the burden of proof rests on the State Party to show that any restrictions conform with the Inter-American standards of free expression.

López Álvarez v. Honduras (02/01/06)

This case stands for the proposition that the expression and dissemination of thoughts and ideas "are indivisible." Therefore, when a State Party restricts the possibilities of spreading information, it in fact limits the right to express oneself freely and violates Article 13.

² The Chilean Constitutional Court (Court) followed this ruling subsequently in *Casas Cordero et al v. the National Customs Service* (08/16/07) in holding that the Chilean constitution protects the right of access to information as an integral part of the broader right to freedom of expression. The Court came to this conclusion despite the fact that the constitution does not explicitly articulate such a right. In this case, the Court struck down a statutory provision that provided government officials with excessive discretion to withhold information from the public.

Ricardo Canese v. Paraguay (08/31/04)

This case stands for the proposition that State Parties must take extra efforts to protect the exercise of freedom of expression in the political debate that precedes elections. The Court further noted that the expression of different opinions presented throughout the campaign nourishes the formation of the collective will of the people in that the free exchange of ideas and information is necessary in a democratic society.

Baruch Ivcher Bronstein v. Peru (02/06/01)

This case stands for the proposition that by separating Mr. Ivcher from the control of Channel 2 and excluding the journalists from reporting, the Peruvian government not only restricted their right to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, thus limiting their freedom to exercise political options and develop fully in a democratic society.

Olmedo Bustos et el. v. Chile ("The Last Temptation of Christ" Case) (02/05/01)

This case stands for the proposition that Article 13 protects the right and the freedom to express their own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds. The Court further noted that, as a result, freedom of expression has both an individual and a social dimension. First, it requires that State Parties abstain from arbitrarily limiting or impeding expression. In that sense, it is an individual right. Its second aspect, freedom of expression, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.

Inter-American Commission**Nicolas Estiverne v. Haiti (3/24/88),**

Case 9855, Resolution No. 20/88 available at
<http://www.cidh.org/annualrep/87.88eng/haiti9855.htm>

This case stands for the proposition that the declaration of the complainant as persona non grata by the Haitian government and the subsequent barring of his candidacy violated Article 13 (freedom of thought and expression), Article 20 (right to nationality), Article 22 (freedom of movement and residence), Article 23 (right to participate in government) and Article 25 (right to judicial protection) of the ACHR.

GLOSSARY

Audit Trail—Please see Paper Record

Black Box Voting—A term used to refer to the practice of recording votes using a Direct Recording Electronic (DRE) system that does not provide a subsequent paper record of the voter's action.

Candidate Agent—Please see Political Party Agent.

Certification—A process of approving voting equipment for use by determining that the equipment meets a number of pre-approved standards. Certification should be performed by an independent certification authority.

Certification Body—An independent organization that oversees certification of election-related technologies.

Civil Registries—A list of all national citizens maintained by the government. Civil registries are sometimes used as the basis of a voter list, however, they may not contain all information relevant to the voting process.

Controlled Environment—A voting environment that meets the following criteria:

- Representatives of political contestants, nonpartisan domestic election monitoring organizations and other appropriately authorized persons are physically present, and are able to access and observe the environment.
- Election officials are present, in charge of the process and have legal responsibilities and powers to ensure the accuracy and integrity of the electoral process.
- Access (whether physical or virtual) to the environment, including the technological devices, is secured and controlled, and is regulated by a process that is independently auditable and verifiable.

Data Migration—The transfer of data from one database, such as a civil registry, to another, such as a voter database.

Database Accountability—A database design requirement that directs the database to keep records of changes, deletions and insertions for review purposes.

Database Design Requirements—Standards set by the election authorities that inform the specifications used by programmers to build the database.

Database Exports—Electronic versions of some or all of the records in a database intended to be used by another database and thus not "usable" by people.

Database Product (or Report)—An output of a database containing a compilation of information available in a variety of formats intended for the end user.

Denial of Service Attack (DoS Attack)—An attempt to make a computer or computer service inaccessible to its intended users by flooding it with illegitimate requests that overwhelm it, rendering regular use impossible.

Digital Pen—An input device that creates an electronic record while simultaneously marking specialized paper. The device recognizes and records the movement of the pen's point and at the same time leaves an ink trail on the paper. The paper contains microscopic dot patterns that allow the digital pen to recognize the position of the mark on the digital paper. Data stored in the pen can then be uploaded to a computer and software transforms the data into text.

Direct Data Capture (DDC) Device—A device that allows on-the-spot entry of information in an electronic format. This data can be transmitted immediately or at a later date from the device to a centralized repository. DDCs can be used to enter and store voter information during the voter registration process.

Direct Recording—The creation of an electronic voter record in the moment and at the location that the voter (or his or her proxy) submits data to the election officials in accordance with laws and regulations, for example, during voter registration.

Direct Recording Electronic (DRE) Systems—A voting technology that allows the voter to use a keyboard or touch-screen machine to indicate their choice and records that information in electronic format on that device. This is to be distinguished from systems that use a computer interface to print a scanable ballot and do not record voter choices. DRE systems may, however, produce a paper record.

Domestic Nonpartisan Election Monitor—Someone who, as part of a nonpartisan domestic monitoring organization, observes election-day activities and election-related processes to promote electoral integrity and ensure that the rights of voters are respected in the electoral process (sometimes called a "Domestic Observer").

Domestic Observer—Please see Domestic Nonpartisan Election Monitor.

Double Entry—A data entry technique where data is entered by two separate operators and compared for inconsistency. Double data entry is used to ensure quality of data.

Election Officials—National election administrators, regional election officers, voting-site officials and counting officials that administer all election-related processes.

Electoral Competitors—Political parties and candidates competing for elected office and organized groups supporting or opposing propositions presented in referendums.

Electronic Poll Books—An electronic voter list that may have additional functions and abilities, such as connection to a network or central voter database.

End-to-End Test—A test that conducts actual simulations of the complete voting process that will occur on election day.

Elections Markup Language (EML)—A standard for tagging and organizing election information in a way that can be exchanged among hardware, software and service providers, that are built to utilize the EML standard.

Environment—As used in this publication, the broad context or set of circumstances surrounding the use of electronic technologies.

Firmware—Instructions and data which are directly and semi-permanently programmed into the circuitry of an electronic device.

Flat Database—A simple database in which all information is in a single table. Flat databases are easily observed but not practical for managing large amounts of data.

Format of the Voter Record—The style of data organization that determines the possible operations that may be conducted using the database.

Functionality Test—A test that determines if the data entry interface design is appropriate and does not contribute to data entry errors.

Hardware—The mechanical, magnetic, electronic and electrical components making up a computer system. For example: hard discs; screens; keyboards; and wires.

Help America Vote Act (HAVA)—A U.S. law mandating federal standards for functionality, accessibility and security of voting.

Hot Audit—Please see Parallel Test.

Independent Testing Authority—Used in a limited manner in this Guide, to mean an organization that has been qualified by the U.S. Election Assistance Commission to test and/or certify voting equipment.

Indirect Recording—The creation of an electronic voter record at a later date and/or separate location using previously collected voter registration data.

Intellectual Property—A product of the intellect that has commercial value, such as software programming.

International Election Observation—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, combined with the impartial and professional analysis of such information and the drawing of conclusions and reporting about the character of electoral processes based on the highest standards for accuracy of information and impartiality of analysis. The elements of this activity are delineated in the "Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers" endorsed by over 30 international organizations and available at www.ndi.org.

International Election Observation Mission (or Delegation)—The organized efforts of intergovernmental and international nongovernmental organizations and associations to conduct international election observation.

International Election Observer—A foreign national individual, who as part of an international election mission or delegation engages in international election observation

International Organization for Standards—A prominent institution that develops standards for the information technology (IT) field.

Kiosk Voting—Internet voting that is conducted at any voting center within a voter's electoral district on designated computers that are controlled and monitored by election officials.

Load Test—A test to determine how well electronic equipment can perform under the level of usage that can be expected on election day.

Nonpartisan Domestic Election Monitoring Organization (or Group)—A domestic organization that, on the basis of political impartiality, monitors election processes to promote electoral integrity and ensure that the rights of voters are respected in the electoral process. Such an organization is comprised of nationals of the country where the voting is taking place and does not support or detract from any competitor in an election.

Nonpartisan Domestic Election Monitor (or Observer)—A national of a country who monitors election processes, including observing procedures inside polling places, as part of a nonpartisan domestic election monitoring organization.

Nonpartisan Domestic Election Observer Organization (or Group)—Please see Nonpartisan Domestic Election Monitoring Organization.

Optical Character Recognition (OCR) Devices—Machines that capture data by scanning and recognizing hand-written letters and numbers rather than pre-determined marks.

Optical Mark Recognition (OMR) Devices—Machines that capture data by scanning and recognizing a set of predetermined marks, such as filled-in circles or completing arrows that point to specific electoral competitors.

Paper Record—A printed record of the voter's electronic vote (sometimes called a Paper Trail, Audit Trail or Voter Verifiable Paper Audit Trail VVPAT).

Polling Day Test—Please see Parallel Test.

Paper Trail—Please see Paper Record.

Parallel Test—A test that is conducted on voting day in which actual voting equipment is excluded from the voting, isolated, tested and monitored. Parallel tests are designed to "convince" the machine that it is being used in an actual election environment to determine how it would behave in an actual election.

Pilot Test—A test of the electronic voting systems in an actual election environment in a limited number of locations. Unlike a parallel test, this equipment is actually used in conducting the election. During a pilot test voters may be given the option of using a paper ballot rather than the electronic voting equipment.

Political Contestants—Please see Electoral Contestants.

Political Party Agent—A partisan representative that observes election-day activities and election-related processes to ensure the rights of particular candidates and/or political parties are respected in the electoral process (sometimes called Scrutineers, Proxies, Party Poll Watchers).

Poll-Site Internet Voting—Internet voting that is conducted at a voter's polling-site on designated computers that are controlled and monitored by election officials.

Poll Watcher—Please see Political Party Agent.

Primary Key—Please see Unique Identifier.

Primary Voters List Database Data—Information on individual voters that is required by electoral law.

Proxies—Please see Political Party Agent

Punch Card System—A method of voting which requires voters to punch a hole in the paper ballot to indicate their choice.

Relational Database—A complex database intended to increase efficiency in computing and data manipulation processes in which sets of data are stored in different tables with relationships between each table.

Remote Internet Voting—Internet voting from any computer (for example, a home computer), rather than specific computers under the control of a polling authority, as in Poll-Site Internet Voting or Kiosk Voting.

Scrutineer—Please see Political Party Agent.

Secondary Voters List Database Data—Information that is not required by the legal framework but is useful in the overall administration of the electoral process. For example: assigned polling station; information on temporary residence; and assigned electoral district.

Security Test—A test that aims to expose the vulnerabilities of the voting systems from threats that come from outside the election authorities and from inside the election authorities.

Smart (Chip) Card—A card with a built-in microprocessor and memory used to store, provide and process information.

Smart Card Reader—A device that reads the data saved on a Smart (Chip) Card and serves to authenticate the identity of a voter.

Software—Written coded commands that tell a computer what tasks to perform.

Technical Requirement—Specification for election-related technologies that are developed by the electoral administration.

Touch Screen—A user interface where voters indicate choices by touching them on a computer screen rather than using a keyboard or mouse.

Uncontrolled Environment—A voting environment that exhibits one or more of the following characteristics:

- Representatives of political contestants, nonpartisan domestic election monitoring organizations and other appropriately authorized persons are not physically present, and/or are unable to access and observe the environment.
- Election officials are not present, are not in charge of the process or do not have legal responsibilities and powers to ensure the accuracy and integrity of the electoral process.
- Access (whether physical or virtual) to the environment, including the technological devices, is not secured and controlled, and is not regulated by a process that is independently auditable and verifiable.

Unique Identifier—An entry in a database that serves to unmistakably identify a record; a Voter ID number can be a unique identifier in a table of voters, if every voter has exactly one Voter ID, and every Voter ID matches exactly one voter (also called Primary Keys).

Usability Test—A test that determines how easily and intuitively a voter or polling official can operate a piece of equipment without confusion and mistakes.

Voter Database—A list of eligible voters that may contain personal information relevant to the voting process (for example, the voter's address).

Voter List—The list of eligible voters entitled to vote at a specific polling station, which can appear as an Electronic Poll Book or paper record.

Voter's Record—Information located within a database that relates to an individual voter.

Voter Registry—The national list of all eligible voters, which can take the form of one unified database or a compilation or series of databases from governmental subdivisions.

Voting Server—An electronic unit that records electronic votes at a specific polling station.

Voter Verifiable Paper Audit Trail (VVPAT)—Please see Paper Record.

SELECTED NDI PUBLICATIONS ON ELECTION MONITORING

NDI Handbook on How Domestic Organizations Monitor Elections: An A to Z Guide (1995). This handbook provides a comprehensive overview of how to organize a nonpartisan domestic election monitoring effort. It covers: planning and organizational issues; recruiting, training and logistical issues in building a communications network for reporting; various subjects to monitor in the pre-election, election day and post-election periods; and considerations for how the organization and skills developed through monitoring efforts can be applied to non-election activities. The Guide is designed for election monitoring by civic organizations but can be used by political parties in designing their efforts to ensure electoral integrity and protect their vote.

Building Confidence in the Voter Registration Process: An NDI Monitoring Guide for Political Parties and Civic Organizations, by Richard L. Klein and Patrick Merloe (2001). This voter registration monitoring guide addresses: the role of voter registration and the principle types of voter registration systems; why it is important for political parties and civic organizations to monitor these systems; and specific techniques for monitoring processes for collecting names, creating a voter registry and polling station voter lists, correcting errors in the lists and use of the lists on election day.

Media Monitoring to Promote Democratic Elections: An NDI Handbook for Citizen Organizations, by Robert Norris and Patrick Merloe (2002). This handbook takes a step-by-step approach to media monitoring. It covers: the importance of determining who controls the media and the difference between state-controlled versus private and broadcast versus print media; issues to address in deciding what media and what subjects to monitor; planning and organization of a media monitoring project; monitoring methodology, including specific instructions for monitoring different types of media; and considerations for the presentation of findings and recommendations.

The Quick Count and Election Observation: An NDI Handbook for Civic Organizations and Political Parties, by Melissa Estok, Neil Nevitte and Glenn Cowan (2002). This handbook addresses importance of developing systematic observation of vital election day processes, including the quality of voting, ballot counting and tabulation of election results, as well as the projection of electoral results with extremely narrow margins of error and high degrees of statistical confidence. It covers planning and organizational issues, recruiting and training, communications systems, developing a random statistical sample of polling stations for rapid and exacting analysis, analytical techniques and the considerations for the release of quick count findings. The handbook is designed for civic organizations but can easily be used by political parties. It also is designed for use by civic organizations that decide not to undertake projection of electoral results. As an organizer's guide, it reviews many of the issues covered by NDI's 1995 "A to Z" handbook.

Promoting Legal Frameworks for Democratic Elections: An NDI Guide for Developing Election Laws and Law Commentaries, by Patrick Merloe (forthcoming 2008). This Guide addresses the importance of developing legal frameworks that promote democratic elections; why it is important for political parties, civic organizations and others to analyze the strengths and weakness of existing and proposed laws affecting election processes; the importance of developing an open and inclusive political process to address those laws so that political competitors may agree on the "rules of the game" and the public can develop confidence in the process. The Guide presents the main issues to examine when evaluating the legal framework and over 300 questions to consider, as well as sources of international law on the subject and samples of NDI election law commentaries.

In addition to these materials, NDI has produced over 300 reports, papers and statements concerning ways in which to promote democratic elections generally and concerning the election process within specific countries. See NDI's website: www.ndi.org "Access Democracy" and "Global Programs/Elections and Political Processes" for more information about these and other NDI publications.

WHAT IS THE SIGNIFICANCE OF ELECTRONIC TECHNOLOGIES IN ELECTIONS?

Electronic technologies are increasingly important to election processes around the world. Without doubt they will be used ever more broadly in future elections, and the integrity of elections will increasingly depend on their proper functioning.

WHY SHOULD POLITICAL PARTIES AND NONPARTISAN CITIZEN GROUPS MONITOR THE ROLE OF ELECTRONIC ELECTORAL TECHNOLOGIES?

The introduction of electronic technologies into voting and election results tabulation is not a simple replacement of classic ballot boxes and ballot papers with electronic machines. It requires restructuring of electoral administration in practically every critical aspect and creates a whole new set of relations between election management bodies, certification bodies, vendors and various state institutions. Introducing electronic technologies into voter registration and other processes also creates important issues for electoral integrity. The reasons for introducing electronic technologies therefore must be clear and compelling, and the role of the technologies must be scrutinized.

WHAT IS THE BASIS UPON WHICH PARTIES AND CITIZEN GROUPS SHOULD ACCESS INFORMATION ABOUT AND DECISIONS CONCERNING WHETHER TO EMPLOY ELECTRONIC TECHNOLOGIES IN ELECTIONS?

Citizens have a fundamental right to genuine elections, manifested in the right to vote and to be elected, and citizens have a right to seek and impart information that informs the public concerning whether elections are genuine, somehow tainted or fraudulent. Monitoring elections is a matter of exercising fundamental rights that form part of the core of sovereignty, which ultimately belongs to and derives from the people of a country. All of these rights come into play when the role of electronic technologies in elections is evaluated.

National Democratic Institute for International Affairs

2030 M Street, N. W., Fifth Floor
Washington, D.C. 20036-3306, USA
Tel +1 202 728 5500
Fax +1 202 728 5520
E-mail contactndi@ndi.org
Website <http://www.ndi.org>