

SECTION THREE

Developing Legal Frameworks That Promote Democratic Elections

Every law is a reflection of the balance of political power at the moment it is passed. The same is true in varying degrees of regulations promulgated to interpret and guide implementation of the law, depending on who drafts the regulations and the processes for issuing them. Recognizing these factors is important in promoting democratic legal frameworks. This is particularly true when developing a legal framework for democratic elections, because elections provide the definitive means for the population to exercise its right to periodically rebalance the distribution of political power.

The process by which legal frameworks are developed therefore is vitally important to achieving democratic elections. The principles of inclusiveness, transparency and accountability, which help to ensure fairness and promote public confidence, should be fundamental elements of the process for developing the legal framework, just as they must be imbedded in the substance of the framework itself. The process by which the legal framework is developed reflects the political will to establish democratic governance, of which elections are a part, or the likelihood that elections may be used as a means to govern in a less than democratic manner.

DEMOCRATIC PROCEDURES FOR DEVELOPING THE LEGAL FRAMEWORK

It is important to recognize that the process of developing the legal framework is not simply a matter of reaching an agreement among those parties that hold power at a given moment, or even among a broader circle of those who would like to compete for it through elections. Political parties should engage in dialogue about the elements of the legal framework for elections and, at a minimum, must convince a legislative majority to enact or amend electoral related laws. However, democratic elections are not likely to be achieved where one party holding a majority of seats in parliament decides behind closed doors what the legal framework for elections will be, nor are democratic

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elections likely where two parties holding a required majority collaborate privately. The interests of all those who would seek to be elected, as well as the electorate's interests in ensuring genuine elections, must be reflected in a legal framework, if genuinely democratic elections are to be achieved. Practice demonstrates that the process for developing the legal framework must provide an opportunity for all prospective electoral contestants and the public to participate and directly express their interests, so that the framework may be based on open dialogue and broad agreement.

There are a variety of mechanisms for reaching agreements on the rules for electoral competition. Legislative caucuses of the political party groups and independent legislators negotiate about the elements of the legal framework for elections. Parties negotiate outside the legislature on an ad hoc basis or as part of formal negotiations, such as a peace or reconciliation process, national roundtables or conferences and other fora. Extra-parliamentary parties can be brought into such negotiations as can representatives of civil society, and community forums can be organized to inform and involve interested citizens. Such steps can be particularly important when rules for elections are to be addressed.

Legislative and Regulatory Calendars:

When electoral related laws are to be developed or modified through regular legislative procedures, publishing the legislative calendar well in advance is important for providing extra-parliamentary political parties, civil society organizations and individual citizens an opportunity to prepare and represent their interests in the process. Surprise legislative maneuvers to gain an electoral advantage may provide a tactical advantage for certain interests, but they subvert the democratic character of elections and undermine the legitimacy of those who are elected to office.

Experience also demonstrates that it is inappropriate to make major or significant modifications of electoral related laws too close to an election date. Stability and predictability in the rules of the game are important for maintaining fairness in electoral competition and for building and maintaining public confidence in election processes. If political parties, candidates and/or civil society groups desire to modify the legal framework for elections, they should conduct their analysis of the framework and begin their advocacy efforts well in advance of upcoming elections. This is both a matter of strategic planning and of inclusiveness exercised by those who have the power to set legislative and regulatory calendars.

While the legal framework should be stable in the months preceding elections, conducting timely assessments of the strengths and weaknesses of election processes once they are completed, drawing lessons learned from the electoral experience and tackling needs for improvements in the legal framework are also important parts of properly developing legal frameworks for democratic elections. Taking actions after elections are concluded to improve the legal framework provides an important opportunity for those who win office to demonstrate their commitment to inclusiveness, transparency and accountability and thus to strengthen democratic governance.

Public Knowledge and Input:

Publishing drafts of proposed electoral related laws and modifications of laws is also important for inclusiveness, transparency and accountability, and for developing fairness and public confidence in the democratic character of elections. This allows analysis and advocacy by those with interests in elections and electoral integrity.

Employing mechanisms for public input into the legislative process is crucial as well. Allowing written public comments and suggestions for alternative provisions is an important element in providing inclusiveness. Publicly posting such submissions on an Internet website and by other means is important, because it allows the public and prospective electoral competitors to evaluate alternative provisions for the legal framework and reassures the public that the process is accepting input.

Conducting public legislative hearings on proposed electoral laws and their possible modifications also informs the public. Hearings should permit those in the legislative minority (or opposition) to air concerns about proposed electoral related provisions and to offer alternatives. Hearings that also permit public input through oral and written testimony increase inclusiveness in the process of developing legal frameworks for democratic elections. Holding hearings in public sessions, broadcasting them on radio and television and making them available via the Internet increases transparency and can contribute significantly to public confidence in the process.

Public forums, which are less formal than hearings, can be held in the legislature's facilities and even at venues around the country to help inform the public and gain input on the legal framework. Such steps are particularly valuable when new legal frameworks for elections are being developed and when major changes to the framework are under consideration, such as changing the electoral system, or if there are proposed major changes in the balance of legislative and executive powers within the system of elected offices.

Similar methods of addressing inclusiveness, transparency and accountability are required for ensuring fairness and promoting public confidence in promulgating regulations for interpreting and implementing electoral related laws. Countries employ differing administrative law constructs and use different devices to regulate these matters, such as formal regulations or by-laws, orders from governmental executive offices and administrative bodies that are under them or that are independent agencies (such as EMBs), or various types of instructions from higher to subordinate administrative entities.

Providing notice of consideration of regulations, publishing draft regulations, allowing the public to submit oral and written comments and suggested modifications, and holding hearings and public forums play important roles on broad framework issues. Even more narrow rules or instructions on seemingly mundane issues should be published and made easily accessible to electoral contestants and interested citizens, so that the public can develop confidence that the legal framework is inclusive, transparent and accountable.

Constitutional, Legislative and Regulatory Drafting:

While a comprehensive discussion of standard rules for constitutional, legislative and regulatory drafting are beyond the scope of this Guide, a few considerations are important to emphasize. The text of the legal framework for democratic elections should be consistent with constitutional provisions and international principles, which may be applicable through the country's international obligations. National legal doctrine will determine the method for resolving inconsistencies, if any, between the constitution and applicable international obligations.

For example, some countries require through constitutional provisions that international treaty obligations are automatically part of national law, and some countries say that such international obligations are determinative where domestic law conflicts with the international obligations, while other countries hold that international obligations only have domestic effect when the national legislature acts to provide such effect.

Consistency of Legal Provisions. Legal framework drafters should also ensure that the constitution, laws and regulations concerning elections are consistent with one another. Law and regulation drafters should ensure that election related laws and regulations are internally consistent in their use of terms. Providing a section in the law and in regulations that sets forth definitions of terms can be useful in identifying and avoiding inconsistencies. In addition, the framework for elections should be considered against international principles and practice to identify and address any significant omissions that may appear in the nation's legal framework.

A number of other laws are likely to be linked to or part of the legal framework for democratic elections as well. They may include laws on: legal recognition of political parties and organizations; party and/or election campaign financing; registration of nongovernmental organizations (including domestic nonpartisan election monitoring organizations); media ownership, licensing and activities; access to government held information; election administration; standards relating to qualification and use of electronic information and communication technologies; administrative law and procedure; civil procedure; and criminal law and procedure. A review for inconsistencies should also cover such laws.

Though it could be a time consuming process, acting to remove inconsistencies in such laws will prevent conflicts of laws and related legal complications during the election period that could compromise delivery of effective remedies through electoral complaint processes. Rules and mechanisms for resolving conflicts of laws also should be reviewed to ensure that provisions concerning electoral related rights and administration are treated as controlling law except where constitutional provisions are concerned.

Clear and Plain Language. Electoral related laws and regulations also should be reviewed by drafters to remove ambiguities wherever possible. Providing a definition of terms section can help reduce ambiguities, however, ambiguity can be produced in the text by using a defined term in an unusual manner. A careful review of the text to remove ambiguities, as well as inconsistencies, before a law or regulation is finalized and put into effect is a valuable practice, because it can

prevent confusion and disputes concerning framework provisions.

Using language in the elements of the legal framework for democratic elections that electoral contestants and the general population will easily and clearly understand is another important part of drafting. While there is some debate internationally on the advisability of using so-called “plain language,” there is agreement that – to be effective – legal frameworks must be easily and clearly understood.

Level of Detail. Another drafting challenge concerns the level of detail required to address appropriately the various aspects of legal frameworks for democratic elections. Practice demonstrates that the answer differs somewhat depending on the substance of the framework element that is being addressed and whether it is being addressed at the constitutional, legislative or regulatory drafting level. The constitution should address in significant detail: issues relating to the structure of government (e.g., types of presidential or parliamentary systems); definition of proportional, plurality/majoritarian or mixed electoral systems; descriptions of elected offices and their powers; eligibility requirements for being elected and to vote; requirements for recognition of citizenship if it is required to qualify for being elected or to vote; the types of civil and political rights and freedoms to be protected and promoted; and the conditions under which an election may be called as well as who has the authority to call the election. Description of the nature, powers, composition, qualifications, appointment, terms, basis for removal of EMB members and the EMB chair may also be appropriate for the constitution.

Most elements of the legal framework for democratic elections will be addressed in significant detail within election related laws, particularly in the primary election law or comprehensive election code. While election laws and codes contain a significant level of detail, the legal framework must anticipate that not all questions will be addressed in the law itself. The law must therefore provide for the promulgation of regulations to guide interpretation and implementation of the law by election officials and others involved in the election process. This may include a formal regulatory rulemaking process and/or procedures for informing electoral contestants and the public about proposed regulations (such as in the form of rules, by-laws, orders, instructions or similar administrative actions) and providing for their input and participation in the process of issuing such regulations.

While, for example, the constitution may require equality before the law, equal protection of the law, due process of law, process before a competent and independent tribunal, provision of effective remedies, and universal accountability before the law, the electoral law must give these precepts grounding in the electoral context, and regulations should provide even more specifics about various complaint mechanisms, remedies and accountability mechanisms, including enforcement provisions. In combination, these levels of description of the legal framework for democratic elections must address each element of the election process.

Language should be used in the legal framework that electoral contestants and the general public will easily and clearly understand.

ELEMENTS OF FRAMEWORKS FOR DEMOCRATIC ELECTIONS

There are a number of elements that typically appear in legal frameworks for democratic elections. They may be divided or labeled somewhat differently, though the categories outlined below provide an overview of the various election processes. Please see Section Four of this Guide, which suggests goals that each element of the framework should pursue, criteria for evaluating whether the element achieves the goals and detailed questions to consider in analyzing whether the corresponding framework provisions promote fair, democratic electoral practices. The brief review provided below is intended to highlight key aspects of legal frameworks needed when addressing various election processes, while Section Four provides a more detailed basis to conduct a review and questions to consider when developing a legal framework for democratic elections.

Recognition of Rights and Description of Governmental Structure and the Electoral System:

As noted previously, the constitution and electoral laws should recognize as fundamental the right to genuine democratic elections and electoral related rights. They should define clearly and in detail the features of the country's governmental structure and electoral system. This requires definition of the:

- Constitutional and legal protections for civil and political rights related to genuine democratic elections;
- Type of presidential or parliamentary system or hybrid of the two, indicating offices to be elected;
- Unicameral or bicameral legislative system at national and sub-national levels of government, as well as description of the executive branch of government below the national level;
- Levels or tiers of government and corresponding electoral systems for intermediate and local governments;
- Requirements, if any, for minimum voter turnout for an election to be deemed valid;
- Requirements, if any, for legally compulsory voting;
- Type of proportional, plurality/majoritarian, other or mixed electoral systems, and the specific method for allocating seats, including "electoral quotient" and how to calculate "remainders" in proportionate systems, and methods where preferences or transfer of votes are employed;
- Definitions of the minimum percentage of votes ("thresholds") required, if any, for award of seats;
- Type of voting procedures for open, closed or other types of lists, if a party list system is adopted;
- Use of single or multiple member electoral districts;
- Requirements for demarcation of electoral boundaries and the acceptable ratios of persons to elected representative;
- Special mandates or election system requirements concerning electing women or members of minorities;
- Requirements for timing of elections;
- Specifications if referenda and other ballot initiatives are allowed, including who may initiate them, what body determines

whether they qualify for the ballot, the qualification requirements, and the timing of placing the issue to a vote; and

- Specifications for changing any of these provisions in the constitution and law.

These provisions all form part of a compact between the people and their representatives. While countries that are in an early phase of adopting democratic governance may need to adjust these elements, frequent changes in the structures of government and electoral systems can produce instability and a lack of public trust. Changes in these matters therefore should be undertaken cautiously and with broad public involvement, open dialogue and inclusiveness in building agreement for significant modifications.

Election Districts:

Equal suffrage requires that the weight of each person's vote be essentially the same. This has particular significance when developing the legal framework for delimiting election districts. If there is a significant difference between election districts in the ratios of persons to representative, then the votes of persons in the districts are not equal. While there are some differences among long-established democracies concerning the acceptable variance between election districts in this ratio, the differences are small.

Equal suffrage also requires that every citizen's vote should have equal weight irrespective of distinctions such as race, color, gender, language, religion, political or other opinion, national or social origin, property, birth or other status. Demarcation of election district boundaries therefore may not be drawn in ways that divide minority communities and thus reduce their voting power. The legal framework also is required to prohibit discrimination in drawing electoral boundaries in order to disempower constituencies based on political opinion (commonly referred to as "gerrymandering").

Defining criteria for demarcating electoral boundaries must be combined with developing mechanisms to ensure that boundaries are then properly drawn. This not only requires setting up a body to draw the boundaries that is likely to be impartial and competent, but also to provide a process that is transparent, inclusive of interested constituencies and accountable to the public. These elements can be successfully included whether the demarcation is conducted by a legislative entity, special commission, EMB or other body.

Election Management Body (EMB) and Election Administration:

Legal framework provisions concerning the body charged with the responsibility of organizing democratic elections are sensitive and complex. The EMB must be impartial and competent, and it must be perceived to be both by the electoral contestants and the public. The process for developing this portion of the legal framework should have the buy-in of as many of the prospective electoral contestants as possible, while maintaining required standards for performance of the EMB. This is a matter of establishing public trust in the EMB as it comes into being, which provides a critical advantage over working to establish public confidence if suspicions exist from the outset.

The EMB must be impartial and competent, and must be perceived to be both by the contestants and the public.

While there are several ways to define the process of appointment of EMB members and selection of the EMB chairperson, the most important elements are inclusiveness of electoral competitors and transparency in the process. For example, once the qualifications of the EMB members and chairperson are defined, a supermajority vote to confirm or appoint the members, which includes support of governing and opposition parties, is one such method. Defining differing constituencies that provide political balance and allowing each to appoint or nominate a number of EMB members is another such method. Whether these or other methods are employed, an inclusive method that is appropriate to the national circumstances should be provided.

Selection of the EMB chairperson can be by a supermajority vote by the legislature or by the EMB members themselves or even appointment by the head of state with supermajority confirmation or appointment from a list of candidates provided by the legislature to the head of state that is derived from an inclusive method. It is also vital to carefully define the appointment of subordinate election administration bodies at intermediate and local levels and their lines of responsibilities to the EMB in terms that promote transparency and confidence of electoral contestants and the public.

One generally accepted indicator of an EMB's impartiality is its being insulated from partisan political pressures. Standing as an independent body, rather than being part of a government ministry, has proven to be a successful approach, though there are examples (particularly in long-established democracies) where impartial action has been conducted by electoral bodies that are part of ministries. Having a budget allocation provided directly from the national legislature, with accountability to the legislature, has proven to be a critical measure to ensure effectiveness, impartiality and public confidence in EMBs.

Making sufficient resources available to the EMB, financial and otherwise, including assigning personnel and requiring assistance from other governmental agencies is another important provision to include in the legal framework. Safeguards must be included to ensure that all such officials maintain political impartiality and that the EMB is responsible for their activities. These factors point to the need for the EMB to be provided with capacities for training electoral officials and mechanisms for holding electoral officials accountable for proper discharge of their responsibilities. These elements of the legal framework contribute to the sustainability of democratic election administration.

Powers of EMBs vary among countries, with some providing almost all electoral related functions to the EMB, while others charge the EMB with the core duties of organizing the election day and immediately related activities and allocate to other bodies functions relating to election boundary delimitation, political party registration and financing, media conduct over the election period and other matters. Providing transparency and accountability mechanisms for all such bodies is central to establishing inclusiveness and confidence of the electoral contestants and the public.

Monitoring by Parties, Candidates, Referenda and Ballot Initiative Groups, Domestic Nonpartisan Election Monitors, News Media, and International Election Observers:

The legal framework is key to ensuring that all elements of the election process are open to monitoring by political parties, candidates, groups supporting referenda and other ballot initiatives, domestic nonpartisan election monitoring organizations, news media and international organizations. In turn, providing for this type of transparency is crucial for ensuring inclusiveness, accountability and the resulting sense of fairness among electoral contestants and public confidence.

Political parties and candidates have vested interests in protecting their rights to seek election. Traditionally, legal frameworks have allowed their representatives into election facilities, including polling sites and counting centers, to witness voting, ballot counting and vote tabulation processes. Legal frameworks also recognize the right for such representatives to monitor many other processes, including, for example, drawing election districts, voter registration processes, as well as ballot production and distribution. As the checklist presented in Section Four demonstrates, legal frameworks should open all electoral procedures to such representatives to observe, raise concerns, request that problems be addressed and gather information that may be used to seek redress through complaint mechanisms.

When referenda or other ballot initiatives are presented to the electorate, parties and citizen groups take political positions supporting and opposing them. They therefore assume direct interests in the electoral outcome concerning such ballot measures and should be allowed access to all relevant elements of the election process.

Across the globe, nonpartisan domestic election monitoring organizations have developed to protect and promote the right to genuine democratic elections. This activity is an expression of the right of association, the right of citizens to participate in government and public affairs and the right to seek and impart information. The legal framework, therefore, also should provide access to such monitors, as it does for representatives of electoral contestants, though the framework may vary on whether to provide status to such monitors to raise concerns with election officials at polling stations and other facilities.

News media play a vital role in providing information to citizens so that they can understand the character of election processes and establish the warranted degree of public confidence in them. Media representatives also are exercising the right to seek and impart information about the election, and the legal framework should provide access for them to all elements of the process.

International election observers can play an important role in assessing the character of elections and making recommendations to promote democratic elections. While international observers do not have standing as citizens to observe elections, many countries have commitments under international organizations to permit such observers, and there is a widespread state practice allowing them. Legal frameworks therefore

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should provide for the presence of international election observers to witness all elements of the election process.

Voter Registration and Voter Lists:

Voter registration serves to guarantee that all eligible voters can exercise the right to vote and that illegal voting is prevented. This ensures against disenfranchisement and against diluting the weight of each person's legitimate vote, thus supporting equal suffrage. It also helps to streamline election day voting procedures by pre-screening prospective voters.

The legal framework therefore must cover a significant number of provisions concerning:

- Voter eligibility, including procedures for denying the franchise to some persons based on acceptable criteria concerning inability to make free and informed choices, or denial of political rights due to criminal conviction, and including procedures for restoring voting eligibility;
- Processes for creation of the voter registry, whether by citizens taking steps to register, government conducting enumerations or transferring information from civil population registries;
- Procedures for citizens, political parties, candidates and civic organizations to review the preliminary voter registry, verify its accuracy and seek corrections;
- Procedures for inspecting the final voter registry and seeking corrections;
- Processes for challenging the eligibility of a voter on election day; and
- Processes, if any, for seeking enfranchisement on election day, including exercising the right to vote and to have a challenged or provisional ballot included in the official election results.

As with other elements of the election process, providing transparency procedures – including monitoring of the process by electoral contestants, domestic nonpartisan election monitors, news media and international observers – as well as complaint procedures and effective remedies must be part of the legal framework concerning voter registration and voter lists.

Voter Education:

Elections cannot be genuinely democratic unless voters understand the differences among the electoral contestants so that they can cast an informed vote. Voters must also know when, where and how to register to vote, as well as when, where and how to vote. The legal framework therefore must include provisions for the EMB's responsibilities for conducting voter education, which should include information on electoral contestants, voter registration and voting procedures (including ballot secrecy) through educational guides or other means.

The framework should also mandate that military personnel be provided voter education information. It should require that such voter information state that superior officers and noncommissioned officers may not attempt to influence how military personnel vote. The framework

also should require that there must be safeguards to protect the secret ballot for military voters. Similar information should be made available to all incarcerated persons who have the right to vote.

Government owned and controlled news media should be required to cooperate with the EMB in providing voter education information to the public. The legal framework may also require independent public media and privately owned media to cooperate in providing voter education information, if that is done under conditions that are not overly burdensome to their financial and other private interests.

The legal framework should also provide that citizen organizations are free to conduct voter education as long as it accurately describes the positions of electoral contestants and accurately describes voter registration and voting procedures.

Legal Recognition and Status of Political Parties:

The legal framework must provide, on a nondiscriminatory basis and without undue restrictions, provisions concerning the legal recognition and continuation of the legal status of political parties and other political organizations, such as candidate support groups and groups supporting or opposing referenda and other ballot initiatives. The recognition of political organizations as legal entities, with the right to seek elected office or to influence citizen choices on referenda and other ballot initiatives, is fundamental to democratic elections.

Requirements for legal recognition of political parties may be set forth constitutionally. If this is done, it is usually done in general terms. Whether or not the constitution explicitly provides for legal recognition of political parties and other political organizations, the details for party registration and legal recognition are almost always provided for by law. While several models can be identified concerning types of political party laws, many take one of two basic approaches:

- A minimal requirements approach, with legal recognition granted as a matter of administrative routine upon submission of the party's name, symbol, officers, charter and perhaps a small list of members; and
- A more rigorous approach, with added requirements for evidence of a large number of members and/or supporters (e.g., through submission of signatures), perhaps with a minimum geographical distribution in the country, a party manifesto and a significant registration fee.

The legal framework may address certain aspects of the internal functioning of political parties (such as requiring that they must employ internal democracy) or candidate selection, if it is done by convention or by primaries. The framework may also address disclosure concerning party financing.

Ballot Qualification:

The legal framework must provide clear procedures for qualifying parties, candidates, referenda and other initiatives for the ballot. The pro-

The legal framework must provide recognition of political parties and other political organizations.

visions may not be discriminatory, overly burdensome or unduly restrictive, though they should ensure that only qualified parties, candidates and appropriately worded referenda and initiatives appear on the ballot.

Ballot qualification provisions often include submission of a specified number of signatures. The requirements must be realistic given the timeframe for collecting signatures and national conditions. One problem to avoid is restricting citizens to signing only one petition for ballot qualification. This unfairly affects the rights of voters and of electoral contestants, because voters often see the requirement as committing their vote and thus a violation of secret voting, and the process opens them to potential intimidation should they be hesitant to sign a petition. Electoral candidates cannot be expected to know whether a person signed other petitions, even though a candidate's ballot qualification efforts could be harmed if the signature is invalidated.

Procedures for verifying signatures must be nondiscriminatory, and the framework should include safeguards against arbitrary application of the procedures. The provisions also should include transparency mechanisms for representatives of the electoral contestants, referenda and ballot initiative groups, domestic nonpartisan election monitors, news media and international observers.

Election Campaigning:

The legal framework for democratic elections must ensure fair conditions for electoral contestants, sometimes referred to as a level playing field. There are numerous facets that the framework must address, including procedures to facilitate violence free and intimidation free conditions for the electoral contestants to:

- Organize and train campaigners;
- Move from town to town and from door to door and use public spaces to seek votes;
- Hold meetings, rallies, marches and other means of peaceful assembly to garner and demonstrate electoral support;
- Make use of mass communications tools, such as the postal services, telephones, instant messaging and Internet; and
- Reach prospective voters via print and broadcast news media to appeal for votes.

Just as important, the legal framework must also ensure that prospective voters are free from violence, intimidation and fear of retribution for exercising freely the right to vote, so that they may participate in an election campaign in order to seek and receive information about the electoral contestants.

The legal framework must require political impartiality of all government officials in the exercise of their duties, including issuing of permits for campaign activities and providing facilities for such activities. It must require that government resources not be used for electoral advantage of any party, candidate or group supporting or opposing referenda or other ballot initiatives. The framework also must provide requirements for election officials and law enforcement personnel to honor equal protection of the law and provide effective remedies in securing proper election campaign conditions.

Campaign Resources:

Where the legal framework provides campaign resources to political contestants, it must do so on a nondiscriminatory basis that sets equitable treatment for all contestants. If funding is provided, categories may be established concerning the main electoral contestants and lesser contestants. Categories must be based on clear and objective criteria, for example the number of votes and/or seats won in the prior elections. The framework must also contain safeguards against arbitrary or discriminatory application of the criteria. Where non-financial support is provided, such as offices or printed materials, the basis must also be equitable, and safeguards must be provided to prevent arbitrary and/or discriminatory application of the criteria for support.

When private contributions for electoral campaigning are permitted, the legal framework must provide equal requirements concerning contestants for elected office and for groups supporting or opposing referenda and/or other ballot initiatives. Any campaign expenditure limitations also must have equal application.

Disclosure requirements, which in order to be effective must require timely and public disclosure, must have equal application. Enforcement mechanisms should be included that also provide due process protections and safeguards to ensure nondiscriminatory application.

Media:

A legal framework for democratic elections must address several issues related to the media: protections for the media to exercise freedom of expression in the electoral context; providing electoral contestants with a genuine opportunity to communicate their electoral messages to the public; and providing the electorate with accurate information upon which to make decisions about voting choices.

The first set of provisions should prohibit government officials from placing any pressures on the media to favor or harm the interests of any electoral contestant. Direct threats against owners, publishers, editors and journalists concerning personal safety and security of family or of property and concerning threats of prosecution or civil suits should also be prohibited.

The legal framework also must provide for unpaid direct access for electoral contestants to provide messages seeking electoral support via government owned or controlled media. Independent public media and privately owned media may also be required to provide unpaid access to electoral contestants as long as the provisions are not overly burdensome. Where paid political advertisements are permitted, the legal framework must require that it be done on a nondiscriminatory basis.

The legal framework also must require that government owned or controlled media provide accurate, balanced and equitable news coverage of electoral contestants (parties, candidates and groups supporting or opposing referenda and/or other ballot initiatives). It should provide guidelines on these matters for independent public media and privately owned media. The framework should also provide mechanisms to ensure effective remedies for violations of electoral rights by the media.

Where the legal framework provides campaign resources, it must do so on a non-discriminatory basis.

Honest determination of the people's will depends on the provisions for counting, tabulation and announcement of results.

Voting:

The legal framework must address a myriad of issues to ensure a genuine opportunity to exercise the right to vote on the basis of equal and universal suffrage. These issues concern conditions outside the polling sites, as well as inside it, before, during and after voting takes place. The provisions must ensure, among other things, that:

- Violence, intimidation, vote buying and other forms of coercion are prohibited in and around polling sites;
- Security protocols are provided that guarantee voting integrity, including preventing ballot box stuffing and irregularities and fraud in electronic voting;
- Access is provided to polling sites on an equal basis for all voters, including women, minorities, younger and older voters and persons with physical challenges and disabilities;
- Polling sites are to receive election personnel, ballots, voting machines and other sensitive electoral materials on an equal basis, and prevent discrimination based on likely political support for certain electoral contestants by the population assigned to the polling site;
- Voter identification and related procedures that are nondiscriminatory concerning race, color, religion, language, national origin, other status or political or other opinion, that prevent disenfranchisement of eligible voters and avert illegal voting;
- Voting procedures guarantee secrecy of the ballot; and
- Transparency mechanisms allow effective monitoring by political parties, candidates, groups supporting and opposing referenda and other ballot initiatives, domestic nonpartisan election monitors, news media and international election observers.

The legal framework must provide the highest election official at the polling site (presiding officer, president or chairperson) with the authority to maintain order at the site and take steps to gain assistance concerning security or remedying any problems concerning the voting process. Those problems could concern absence of sufficient electoral officials to meet "quorum requirements" or to conduct proceedings, insufficient ballots for voter use, failures of voting machines, lack of ink to apply to voters' fingers to prevent multiple voting or other matters.

Vote Counting, Results Tabulation and Results Announcement:

Vote counting, transmission of results, results tabulation and announcement of results all require clear and specific provisions in the legal framework for democratic elections. Honest and accurate determination of the people's will concerning who shall occupy elected office depends on these provisions. The legal framework should ensure, among other things, that:

- Standard ballots, electronic voting machines and other sensitive electoral materials are secured prior to commencing the counting process, so that the count cannot be illegally affected;
- Ballots are opened in a manner that permits verification of their validity or ruling about invalidity;
- Rules for determining ballot validity honor the clear intent of the voter;
- Ballots are placed in a manner that allows verification that they

are being credited to the proper electoral contestant, including party, candidate, position supporting or opposing a referendum or ballot initiative;

- Counts of ballots credited to each electoral contestant and verification of the count is easily conducted;
- Vote tally sheets are easily viewed and verified, posted publicly and provided to representatives of parties, candidates and groups supporting or opposing referenda and other ballot initiatives, as well as domestic nonpartisan election monitoring organizations, news media and international election observers;
- Transparency mechanisms allow effective monitoring by electoral contestants, domestic nonpartisan election monitors, news media and international election observers, which includes verifying transmission of results by any medium and accompanying transport of ballots, tally sheets and other sensitive materials to intermediate and/or final results tabulation centers;
- Results tabulation and announcement procedures are secure so that the tabulation of results cannot be illegally affected;
- Vote tabulations are credited to electoral candidates in a manner that permits verification;
- Rulings on ballot validity, including procedures for ruling on challenged or provisional ballots, are easily observed and verified;
- Tally sheets at intermediate and final counting centers record disaggregated votes, as well as aggregated results tabulations, are easily verified, publicly posted and provided to representatives of political parties, candidates, groups supporting or opposing referenda or other ballot initiatives, domestic nonpartisan election monitors, news media and international election observers; and
- Tally sheets from intermediate and final counting centers are posted on the Internet and other public places at an early date.

Framework provisions should also address how representatives of electoral contestants may raise concerns and seek to redress problems during the counting, tabulation and results announcement processes.

Complaint Mechanisms:

The legal framework for democratic elections should state for each element of the election process a complaints procedure that provides due process, equality before the law, equal protection of the law, effective remedies for violations of electoral rights and accountability for those who commit violations. Each element of the election process has its particular qualities, and the nature of due process and types of remedies will differ to some degree among the elements.

- Delimitation of election districts requires remedies that equalize sufficiently the variance among ratios of population to representative in various election districts and/or move boundary lines so as not to disempower minorities or constituencies that support a particular political opinion;
- Voter registration requires remedies that correct disenfranchisement or that prevent voting by ineligible people;
- Party, candidate and ballot measure qualification require remedies that provide ballot access should requirements be met; and
- Each other element merits designing and providing remedies that suit the problems, up to and including ordering recounts and/or new elections.

The framework must also clearly provide procedural requirements for employing electoral complaint mechanisms. These must describe filing requirements, standing requirements, burdens of proof, rules of evidence, timetable for processing complaints, available remedies and appeals procedures. The framework must direct complainants to the proper forum for filing a petition with an administrative agency, court or legislative body and provide for the possibility of judicial review wherever fundamental rights are at stake.

The legal framework also should address criminal liability for violating electoral related rights and the effect that criminal investigations and prosecutions may have on administrative complaint processes or civil law proceedings.