THE ROLE OF LAWYERS IN ELECTION OVERSIGHT TO ENSURE FREE AND FAIR PROCESSES

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OVERVIEW

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> HISTORY AND EVOLUTION
> LIST OF ELECTION MISSIONS
> GRENADA, EL SALVADOR, GUYANA
> VENICE COMMISSION
> LEGAL ANALYST/SPECIALIST

HISTORY AND EVOLUTION

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The 1857 plebiscite in Moldavia and Wallachia (current Romania) that was monitored by most of the major European powers was the first monitored election

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During the 1960s, less than 10% of elections were monitored.

Election observation activities have expanded significantly following the end of the Cold War, along with the development of international standards on the conduct of democratic elections and the process of monitoring elections by both international and domestic observing organizations.

By the 2000s, about 80% of all elections were observed.

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HIGH	MEDIUM	LOW
OSCE/ODIHR	African Union International Organization of the Francophonie Arab League	Commonwealth of Independent States
European Union Parliament	Inter-American Union of Electoral Bodies	Southern African Development Community
Parliamentary Assembly of the Council of Europe	International Organization of the Francophonie	The Electoral Commissions Forum of SADC Countries
OSCE Parliamentary Assembly	Economic Community of West African States	Shanghai Cooperation Organisation Organization of Islamic Cooperation
Organization of American States		
Carter Center		
The Commonwealth		
National Democratic Institute		
Electoral Institute for Sustainable Democracy in Africa		Bush, Sarah Sunn; Cottiero, Christina; Prather, Lauren (2024).
International Republican Institute		The Review of International Organizations.
European Union		





GRENADA (JULY 2008)

- OAS Assistant Secretary General, Amb Albert Ramdin, administered an electoral observer mission with meticulous organization and military precision. Comprising 37 observers, the July 2008 Grenada mission was the largest of the three conducted by the OAS in Grenada so far.
- The election observed in Grenada was for the most part in compliance with the principles of legitimacy and transparency ensuring the integrity, impartiality and fairness of the election process.
- The OAS EOM serves to keep the pulse on democracy and to recommend measures to further strengthen the electoral process.

GRENADA JULY 2008

- More financial and human resources to the election office to implement voter education initiatives
- More collaboration between political parties
- Efforts to promote greater female participation in the political arena
- Legal organization of political parties
- Regulations on campaign financing
- A professional, independent electoral office regarding authority, mandate, finance and equipment.
- Good governance through legislation
- Effective implementation of legislation to help the elections office in improving the areas identified in the report (proposal from the new PM)

EL SALVADOR (March 2009)

- The Electoral Observation Mission (EOM) of the Organization of American States (OAS) in El Salvador, was led by the lawyer and former Bolivian Foreign Minister Gustavo Fernández Saavedra, designated by the Secretary General of the hemispheric institution, José Miguel Insulza.
- On March 15, Mauricio Funes, candidate of the party Frente Farabundo Martí para la Liberación Nacional (FMLN), won the presidential elections with 1,354,000 votes, (51.32 per cent), as opposed to the 1,284,588 votes (48.68 per cent) obtained by the candidate of the party Alianza Republicana Nacionalista (ARENA)

The Chief of Mission stressed that, during the electoral process, the Salvadorian authorities applied "in great part" the recommendations made by the OAS observers. However, he also highlighted that "some things must be corrected" to further improve the Salvadorian electoral

system.

EL SALVADOR (March 2009)

Fernández advised El Salvador to

Study changing in the "home vote" for a "resident vote", after a test in the Department of Cuscatlán offered "widely favorable results".

The census to be polished

*Enact legislation about electoral propaganda, "because there is a lack of regulation about it and an asymmetric access to the media by the political parties."

Start a debate about the composition of the Supreme Electoral Court.

GUYANA (Nov. 2011)

- The Chief of the Electoral Observation Mission (EOM) of the Organization of American States (OAS) in Guyana, Professor Gordon Shirley, highlighted to the Permanent Council "the significant efforts made by the Guyanese Electoral Commission (GECOM) to improve procedures and execute an overall inclusive and clean electoral process," and commended "the high level of training and dedication exhibited by GECOM staff in the polling centers."
- The report of the Electoral Observation Mission (EOM) that accompanied the general and regional elections held on November 28, 2011.

GUYANA (Nov. 2011)

- The Report underscores as a positive aspect of the campaign period the GECOM's efforts to adopt Codes of Conduct for both political parties and media and the reopening of the GECOM's Media Monitoring Unit.
- In terms of campaign financing, the report noted the positive steps toward creating accountability for party spending.
- However it also recognizes the lack of regulation for campaign contributions.
- * It highlighted and the access to media and campaign financing.
- * The report states that the campaign "was characterized by a perception of limited differentiation between the state and the governing party."

GUYANA (Nov. 2011)

The Mission, composed of 25 observers, also reported the discontent that prevailed two weeks after the electoral results. The mission considers it essential that significant actions are carried out by GECOM prior to future elections to instill greater credibility of its actions.

- In presenting the recommendations, Professor Shirley referred to
- the need to employ mechanisms to guarantee more equitable access to media and political financing;
- The inclusion of a requirement for disclosure of campaign expenditures prior to the elections; a
- A review of options for proportional party access to advertising time
- The incorporation of technical criteria and to establish mechanisms that guarantee GECOM's plurality.
- The Chief of Mission also recommended the determination and adherence "to timely and standardized procedures for the electoral process," and invited the GECOM to address the challenges observed in the tabulation procedures and to work diligently to develop additional transparency mechanisms.

GUYANA (Nov. 2020)

PRE-ELECTORAL CONTEXT

The environment in Guyana prior to the elections was complex following the no-confidence motion brought by the opposition People's Progressive Party / Civic (PPP/C) against the A Partnership for National Unity/Alliance for Change (APNU/AFC) coalition Government in late 2018. The passage of the motion, on December 21, 2018, triggered Article 106 (7) of Guyana's Constitution, which stipulates that if the Government is defeated in a vote of confidence, elections must be held within three months or within a longer period of time approved by a vote of at least two-thirds of the elected members of the National Assembly.

GUYANA (Nov. 2020)

- Litigation regarding the validity of the no-confidence motion extended this period to June 18, 2019, when the Caribbean Court of Justice (CCJ), Guyana's final appellate court, declared that the motion of no confidence in the Government was valid.
- The CCJ's further determination that the appointment of then Chairman of the Guyana Election Commission (GECOM), Justice (Ret'd) James Patterson, was not in compliance with the Constitution, further extended the interval while a new Chair was identified and sworn.
- By the time President David Granger announced the elections on September 25, 2019, nine months had elapsed. The Mission notes the concern expressed by the OAS General Secretariat on the issue at the time.

GUYANA(NOV 2020)

ELECTORAL JUSTICE

- Following an election, a person complaining of an unfair election or the commission of election offences may, within 28 days, file an election petition before the High Court. The jurisdiction of the Election Court is special and exclusive in the determination of questions regarding elections. It is a parliamentary jurisdiction that is assigned to the judiciary by the Constitution and the Legislature.
- While there was no time limit for the determination of an election petition, it should be dealt with expeditiously. Some parties complained about the length of time it takes to determine election petitions. For example, an election petition filed by the People's Progressive Party/Civic (PPP/C) following the 2015 election, was still awaiting a ruling by the High Court. The Mission therefore recommends:
- As far as practicable every endeavor should be made on the part of the High Court to establish an appropriate time-frame for the determination of an election petition.

GUYANA 2020 - CARTER CENTER

✤ There is an urgent need to consolidate legislation related to elections and review provisions to ensure greater clarity and precision.

★ A lack of clarity in Guyana's legal framework contributed to numerous challenges that caused delays and undermined public confidence including the legal battle over residency requirements for voter registration, the controversies over disqualification of candidates, the lack of procedures to implement the "joinder" of three parties, discussions around the implementation of the right to vote for prisoners, and the derailment of tabulation in Region 4 in March 2020.

✤ Strengthening and consolidating the legal framework for elections would help to remove ambiguity and create greater legal clarity that could support smoother electoral processes in the future.

VENICE COMMISSION - LEGAL OPINION

European Commission for Democracy through Law (Venice Commission)

By letter of 4 March 2024, the Secretary General of the Organization of American States (OAS), Mr Luis Almagro, requested the opinion of the Venice Commission on three questions related to the work of election observers. The opinion of the Venice Commission is sought on three key issues:

 First, on the fundamental civil and political rights defended by international and non-partisan citizen observers as human rights defenders;

Second, on the international instruments that safeguard these electoral observers in their work

Third, on the normative elements that states can incorporate into their national legislation to ensure appropriate protections for both non-partisan citizen observers and international observers. More precisely, the question are as follows:

• Given that international and non-partisan citizen observers are Human Rights Defenders, what are the fundamental civil and political rights that they defend?

• What are the international instruments that protect these electoral observers as they do their work as HRDs?

• What normative elements can states include in their national legislative framework to acknowledge and ensure that the relevant protections are secured for and applied to both non-partisan citizen observers and international observers?

VENICE COMMISSION

***** Kosovo (Feb 2025): Representatives of the Venice Commission provided legal support to the election observation delegation of the Parliamentary Assembly of the Council of Europe (PACE) at the occasion of the elections to the Assembly of Kosovo of 9 February 2025. The delegation participated in briefings before and after the elections, and observed the opening, voting and counting processes.

* Republic of Moldavia Nov 2024): A delegation of the Venice Commission, including Ms Veronika Bílková, Vice-President of the Venice Commission and member in respect of Czechia, accompanied the election observation delegation of the Parliamentary Assembly of the Council of Europe to advise on the legal framework during the 2nd round of the presidential elections in the Republic of Moldova on 3 November 2024. The delegation observed the opening, voting and counting processes of the election.

VENICE COMMISION

★ Republic of Moldovia (Oct 2024): The Venice Commission has issued several opinions on Moldova's electoral framework, most recently on the new Electoral Code and a pilot initiative on postal voting. Joint opinions have also been adopted on the 2023 amendments to the Electoral Code regarding the ineligibility of individuals linked to political parties declared unconstitutional as well as a joint amicus curiae brief for the Constitutional Court. In preparation for these electoral events, the Venice Commission, in collaboration with the Central Election Commission of the Republic of Moldova, co-organised a webinar focusing on campaign financing and media coverage of the election and referendum. The webinar attracted over 70 participants, including representatives from the CEC and district electoral councils.

✤ Georgia (Oct 2024): Representatives of the Venice Commission provided legal support to the election observation delegation of the Parliamentary ssembly of the Council of Europe (PACE) at the occasion of the parliamentary elections of 26 October 2024 in Georgia. The delegation participated in briefings before and after the elections, and observed the opening, voting and counting processes. The Venice Commission has issued several opinions on Georgia's electoral framework,

VENICE COMMISSION

★ Mexico (May-June, 2024): A delegation of the Venice Commission travelled to Mexico City in the framework of the 2024 federal electoral process of Mexico. The Venice Commission delegation participated both in the Electoral Justice Forum for Foreign Visitors organised by the Electoral Tribunal of the Federal Judiciary (TEPJF) on 28 and 29 May 2024, and in the Foreign Visitors Program organised by the National Electoral Institute (INE) and the TEPJF from 30 May to 2 June 2024. Representatives of the Venice Commission accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegation to advise it on the legal framework for the presidential elections (first round on 24 Avril and second round on 8 May 2024), and for the parliamentary elections of 8 May 2024 in North Macedonia. The delegation participated in joint briefings with other international organisations, before and after the elections, and observed the opening, voting and counting processes.

✤ North Macedonia (April, 2024): Representatives of the Venice Commission accompanied the Parliamentary Assembly of the Council of Europe (PACE) election observation delegation to advise it on the legal framework for the presidential elections (first round on 24 Avril and second round on 8 May 2024), and for the parliamentary elections of 8 May 2024 in North Macedonia. The delegation participated in joint briefings with other international organisations, before and after the elections, and observed the opening, voting and counting processes.

VENICE COMMISSION

Armenia (March 2024): A delegation of the Venice Commission travelled to Armenia and had an exchange of views with state authorities and other stakeholders in order to follow up on the joint opinion of the Venice Commission and the OSCE/ODIHR on the draft amendments to the Electoral Code and related legislation of Armenia, which the Commission adopted in October 2023. The delegation met with representatives of the following institutions:

- The Ministry of Justice, including the Deputy Minister of Justice,
- The Central Election Commission (CEC)
- The Standing Committee on State and Legal Affairs of the Parliament
- The Corruption Prevention Commission

• Political parties, state authorities, IFES, USAID and the civil society, in the framework of an electoral reform workshop organised by IFES, USAID and the Council of Europe Office in Yerevan.



EUROPEAN UNION: ELECTION OBSERVATION AND DEMOCRACY SUPPORT LEGAL ANALYST

*Application for the Legal Analyst Training in European Union Election Observation Missions

Brussels, 17 - 20 September 2024

*Election Observation and Democracy Support (EODS III), a project funded by the European Commission, organised a training for the position of Legal Analyst (LA) in European Union Election Observation Missions (EU EOMs) from Tuesday 17 until Friday 20 September 2024.

*The training took place at EODS offices (first floor, rue de la Loi 82, Brussels), aimed at providing participants with knowledge and tools to work as LA in EU EOMs.

Training information- A maximum of 12 participants from EU Member States was selected for the training.

COMMONWEALTH PARLIAMENTARY ASSOCIATION/UK:LEGAL ANALYST

- Together with the Political/Campaign Analyst, the Election/Legal Analyst does the following"
- Tracks election-related complaints and appeals and attends court cases when necessary.
- Provides advice to the Head of Mission and observers
- Organises briefings and de-briefings and drafts the preliminary and final reports (including recommendations).
- Is the focal point for relations with the election management body, civil society organisations and the judiciary.

COMMONWEALTH PARLIAMENTARY ASSOCIATION/UK:LEGAL ANALYST

CPA UK utilises networks and partnerships cultivated across and beyond the Commonwealth to assist in running its missions. As a parliamentary organisation CPA UK brings together experienced parliamentarians, specialist NGOs and other related professionals to conduct high quality and comprehensive EOMs. The Election/Legal Analyst is

*Responsible for assessing the work of election management bodies, voter registration and the procedures for voting, counting and tabulation of results.

*S/he leads the preparation of observer report forms and analysis of statistics.

*The Election/Legal Analyst is also responsible for assessing compliance of the legal framework for elections and its implementation with international obligations, commitments and standards for democratic elections and domestic legislation.

MANUAL FOR OAS ELECTORAL OBSERVATION MISSIONS LEGAL SPECIALIST

Legal Specialist This specialist should be knowledgeable about the legal framework of the electoral process, taking into account the host country's constitution, election law, and other relevant legal instruments such as regulations and resolutions issued by the electoral authority. This specialist preferably will be a lawyer with the Department of Legal Services. His or her duties include the following:

- a. Prepare a work plan and present it to the Deputy Chief of Mission the day after arriving at mission headquarters.
- b. At the request of the OAS/EOM leadership, participate in OAS/EOM meetings.
- c. Hold meetings with electoral officials and the various political actors to understand how they interpret the law and the electoral process.
- d. Analyze election law and any modifications made to it during the electoral process and, along with the other OAS/EOM specialists, advise the mission leadership about potential problems, inconsistencies, or gaps in election law, taking into account the interpretations of the electoral authorities and other political actors.
- e. e. Participate in the training of regional coordinators and international observers.

MANUAL FOR OAS ELECTORAL OBSERVATION MISSIONS LEGAL SPECIALIST

f. Assist the OAS/EOM with regard to any legal problems related to the operation of the OAS/EOM that may arise in the course of its activities, taking into account the legal structure of the GS/OAS and national laws.

g. Systematize the complaints received during the OAS/EOM.

h. Coordinate the OAS/EOM leadership's presentation of the complaints to the electoral authorities of the host country.

i. Systematize the complaints received during the OAS/EOM. h. Coordinate the OAS/EOM leadership's presentation of the complaints to the electoral authorities of the host country.

j. Prepare a final report with all the information relevant to the duties of the legal specialist during the course of the OAS/EOM, including any complaints lodged and any recommendations that may be necessary.

k. When requested by the DECO Director, work with DECO specialists to monitor complaints lodged with the host country's electoral authorities.

1. Be familiar with this manual.

m. Sign and comply with the Code of Conduct for International Election Observers. m. Perform any other duties assigned by the DECO Director

CONCLUSIONS

While it is not necessary for electoral observers to be lawyers, these play an important role as defenders of democracy and human rights.

Moreover, as legal analysts/specialists lawyers are critical to the electoral missions as detailed above.

As noted with the Venice Commission, recent trends indicate that their role is increasing as democracy comes under threat in domestic jurisdictions around the globe.

