FOURTH INTERNATIONAL MEETING ON THE IMPLEMENTATION OF THE DECLARATION OF PRINCIPLES FOR INTERNATIONAL ELECTION OBSERVATION

Warsaw, Poland, 10-11 September 2009

Summary of Proceedings

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SUMMARY OF PROCEEDINGS

I.   INTRODUCTION

Representatives of organizations involved in election observation gathered in Warsaw, Poland on 10 and 11 September 2009 for the Fourth International Meeting on the Declaration of Principles for International Election Observation. The meeting was organized by the OSCE/ODIHR. The topic of the meeting was 'Promoting Electoral Integrity Through Credible Election Observation'. Participants took part in five sessions, including case studies of recent elections and discussion of other recent electoral events, how to strengthen observation methodology and promote improvement of elections, post-election day observation, how to address challenges to the credibility of election observation and moving the Declaration of Principles forward. Participants shared experiences and practices through session presentations and participation in working groups. Discussions were held under the Chatham House Rule, enabling free-flowing discussion. At the conclusion of the meeting, The Carter Center offered to host the Fifth International Implementation Meeting in late 2010.

II.   WELCOME AND OPENING REMARKS

Following welcoming remarks by Douglas Wake, First Deputy Director of the OSCE/ODIHR, the Head of the OSCE/ODIHR Election Department, Nicolas Kaczorowski, made introductory remarks on 'Promoting Electoral Integrity Through Credible Election Observation' and the challenges observers face. He stressed the importance of the Declaration of Principles as a standard-setting document that sets out fundamental principles for international election observation. He noted that the Declaration unites those involved in election observation across the world who share the same ideals and belief in election observation as a means of protecting and promoting democratic values, the rule of law and human rights.

He noted challenges to the credibility of observers as a specific concern. Building credibility is a long process that can suffer from even minor mistakes. He outlined the main elements of credible election observation:

- sound, comprehensive and consistent methodology
- impartial, depoliticized and consistent assessments based on international standards and domestic legislation as well as on fact-based observations
- ability to deliver well-grounded assessments with one voice
- transparency in observation work
- professional and neutral observers
- strict adherence to the code of conduct for observers.

Criticism levelled at election observers is not a new phenomenon. In recent years, the OSCE/ODIHR has been criticized by a few OSCE participating States for being too critical,

but has also been questioned by others for becoming too cautious in its assessments. Mr. Kaczorowski posed several questions for discussion among the participants:

- Does this criticism indicate trends in election observation that we should be worried about or does it indicate fundamental problems in our methodology? Is it justified?
- Are assessments of some elections made too hastily?
- Have efforts to organise fraud become more sophisticated? Does the current methodology adequately detect fraudulent activities?
- Does pressure from authorities influence observer organizations in their assessments?
- How did involvement in the Afghan elections affect the credibility of international observers? Could international observers be accused of engaging in observation for political considerations rather than to assess an election against international standards?

Denis Kadima, Executive Director of EISA, briefed participants on the main conclusions and recommendations from the Third International Meeting that took place in Maputo in 2008:

- To discuss how the mandates of organizations affect the role that the Declaration plays in their work.
- To consider how to use the Declaration to build more bridges among observer organizations and election practitioners.
- To develop a version of the Declaration for domestic organizations or extending membership in some capacity to increase partnership with these organizations.
- To work to sensitize political parties, media, and electoral commissions to the role of the Declaration. This may help decrease media reliance on observers with questionable credibility and increase focus on observers who uphold agreed upon standards.
- To develop a 'network of support' among observer organizations to present a united front when one or more organizations are facing an obstacle to their work. This could include the issuance of joint statements on the importance of impartial election observation and the political situation in a respective country.
- To seek to include more organizations in the Declaration group as endorsers.
- To support organizations in better mainstreaming gender into their reporting, increasing focus on this issue in observer trainings, and sensitizing them to understanding the ethnographic issues related to women's participation.
- To consider submitting observation reports to the UN Human Rights Committee and other treaty monitoring committees as part of the regular periodic reports by countries to these bodies. The use of regional structures (courts and human rights bodies) could be a means of increasing the connection between EOMs and human right monitors.
- To develop a 'database of election reports', potentially hosted by ACE.
- To increase training for domestic observers, especially since domestic observers assess parts of the process for which international organizations are rarely present.
- To increase co-ordination among observer groups, including through the utilization of previous observer reports in countries of interest, as well as the tracking of recommendations of other observation and domestic monitoring organizations.
- To increase focus on post-election follow up, including assessing whether recommendations have been addressed (i.e. EISA's Electoral Barometer, which tracks and publicly reports on whether or not previous recommendations have been implemented), or through legal reviews and electoral dispute resolution assessments.

III.   SESSION ONE: CASE STUDIES OF RECENT ELECTIONS

This session examined cases that posed particular challenges to the credibility for international election observation as well as cases where international observation contributed significantly to promoting electoral integrity.

The **first case study** was on **Moldova's** 2009 April and July parliamentary elections. Violent protests followed the first elections, and constitutional requirements triggered the holding of the second elections. Both presented significant challenges to election observation. Issues that arose included the credibility of the OSCE/ODIHR as well as observation in general and the case of ENEMO, whose work was hindered substantially by the Moldovan authorities.

During the second elections, ENEMO faced bureaucratic obstacles including difficulties with being invited to observe the elections and accreditation, with about half of ENEMO's observers not being accredited. The authorities questioned ENEMO's reputation, suggesting that members face legal issues in their own countries. ENEMO observers were detained, arrested and in some cases deported. Under these circumstances ENEMO decided to cancel its observation mission.

There was no action in support of ENEMO from other observer organizations that are endorsers of the Declaration. Participants therefore discussed what responses could be possible when a government selects which organization can or cannot observe an election as in the case of ENEMO in Moldova. It was suggested that observer organizations should mention in their reports cases of relevant endorsers of the Declaration not being invited to observe a specific election or being obstructed in their observation activities. It was also suggested that observer organizations in the OSCE region could have regular co-ordination meetings during an election to discuss issues, similar to the meetings that take place in other regions.

The OSCE/ODIHR deployed full election observation missions for both elections in Moldova. During both missions, the OSCE/ODIHR co-operated with parliamentary partners. After the first election, the OSCE/ODIHR and its parliamentary partners issued an overall positive statement of preliminary findings and conclusions. However, the mission was criticized for its overall positive assessment of the process in the preliminary statement despite reports of misuse of administrative resources, problems with voter registration and intimidation, and problems with the counting process surfacing after election day. The criticism was mostly directed at the OSCE/ODIHR, including by prominent observers from the delegation of the European Parliament, and for comments made by parliamentarians rather than by OSCE/ODIHR.

Participants identified several issues to consider: that some states have developed methods of controlling and circumventing the work of observers; that this leads to the question whether there is room for improvement of observation methodology; that the credibility of observers was sometimes questioned by those, even in the international community, who did not like the election results, without understanding that observers do not assess elections based on their outcome; and finally, that observers should not be blamed for bad elections. It is the responsibility of the country/ state to ensure the conduct of democratic and good elections.

The following additional questions were raised: are there sufficient STOs to make conclusions about the counting process? Should there be fewer missions but with more STOs? How can

observers better deal with the context of an election, especially where there have been efforts to undermine and divide the opposition, intimidate voters, or restrict basic democratic rights well in advance of observers' arrival in the country?

On the negotiations that take place between the partners in an observation mission, i.e. OSCE/ODIHR, OSCE PA, PACE and EP, participants noted that these can sometimes be difficult but generally lead to a joint statement agreed to by all. Sometimes there are problems with the oral statements delivered at the press conference which can be controversial. It is also important to discuss methodology and co-operation outside the framework of election observation missions but rather at a specific meeting.

The **second case study** focused on **Malawi's** 2009 presidential and national assembly elections. These elections are an example of the positive contributions that international election observation missions can make to mitigating potentials for violence and building public confidence. The observation efforts in Malawi also serve as an example how communication and co-ordination among observation groups can contribute to further enhancing these positive effects.

EISA co-ordinated an observation effort for these elections, including 10 observers from different African countries who were deployed to Malawi for 10 days. The observers looked at the following aspects of the election process: legal framework, media, campaign, voter registration, voting and counting process, conflict management, and co-operation between international and domestic observers. To minimize tension, multi-party liaison committees were established. Two post-election reviews took place to follow up on the recommendations made by the observer mission.

The EU deployed an EOM to observe the Malawi elections which, overall, took place in a peaceful environment. The mission concluded that there were issues with regards to the legal framework and media regulations. The Commonwealth also observed these elections, led by a high-profile head of mission which was helpful in gaining high-level access.

Other problems noted by international observers related to the abuse of incumbency, voter registration, and lack of organization in the election administration. The slow processing of results and the adjudication of complaints by courts were also of concern to observers, particularly because of their potential to lead to violence. The presence of international observers such as from the EU and the African Union was considered important to help prevent violence.

The co-ordination in Malawi between international observer groups as well as with the diplomatic community was good but lacking between domestic observer groups as well as between international and domestic observers. There were regular meetings, and observers came to the same conclusions and spoke with one voice. Participants proposed that such co-ordination and co-operation could continue once an election observation is over. Observer groups could for example co-ordinate follow-up visits.

The **third case study** looked at the elections in **Afghanistan** in August 2009. The elections in Afghanistan presented a challenge to international observer organizations due to the exceptionally difficult security situation, which also complicated the conduct of elections. The discussion explored lessons learned for future similar undertakings. The main questions raised were whether such elections should be observed by endorsing organizations of the Declaration and whether such observation undermined the principles of the Declaration.

Several organizations observed the Afghan elections, including the EU, NDI, and Democracy International. The EU mission included 24 analysts, 52 LTOs deployed in 8 regions and 45 STOs recruited from the resident diplomatic community. Despite initial concerns about the ability of LTOs to conduct their work, they were able to gather useful information, relying heavily on second hand information, provided mostly by the domestic observer group FEFA. The elections were not in line with international standards, despite the EU chief observer being quoted as calling the elections 'free and fair'. Democracy International deployed a mission with some 60 observers, including a core team and LTOs who were deployed across the country. NDI deployed a mission which included a core team, four teams of international LTOs plus national LTOs. On election day NDI relied on national STOs. OSCE/ODIHR deployed an election support team to Afghanistan with the mandate to support international and national actors rather than to observe the election process.

The observation of the Afghan elections highlighted how a difficult security environment influences observation methodology. Some organizations adopted new, innovative models of observation missions such as joint missions with domestic observers. The structure of the mission and the method of information-gathering had to be considered carefully in these circumstances. It was easier for national observers to gather information, while international observers could process and analyze the information. This division of labour maintained impartiality in the analysis of information but the challenge remained in ensuring impartiality in gathering the information. Another question discussed was whether observation should be used as a tool in an open conflict since the Declaration states that observation is a civilian activity.

Participants concluded that despite all the problems and challenges faced during observation of the Afghan elections the international community had an important role in Afghanistan. However, it was also admitted that the activities conducted were not truly election observation. In similar cases in the future, observation groups could refer to the Declaration to explain that observation is not the best tool in such a conflict situation and that, for example, the provision of technical assistance might be more appropriate.

IV.   SESSION TWO: STRENGTHENING OBSERVATION METHODOLOGY AND PROMOTING ELECTORAL IMPROVEMENT

This session examined how observer organizations approach observation of various forms of malpractice and assess its impact on an overall election process. Participants also discussed ways in which the methodology may be strengthened, including effective promotion of implementation of recommendations. To facilitate the discussion, participants split into three working groups:

1) Politically Motivated Violence, Intimidation and Vote-buying
2) Use and Abuse of State/ Administrative Resources
3) Monitoring and Promoting Follow-Up to Recommendations

Working Group 1 (Politically Motivated Violence, Intimidation, Vote-buying) identified three main issues as essential prerequisites for addressing politically motivated violence, intimidation and vote buying effectively:

- The need for clear definitions of the terms "politically motivated violence", "intimidation" and "vote buying";
- The need for a framework and methodology in measuring violence, intimidation and vote buying;
- The need for a clearer understanding of what might be a "threshold" of political violence, intimidation and vote buying beyond which elections could not be considered as in accordance with democratic principles and international obligations.

These issues would require further exploration and scrutiny.

Working Group 2 (Use and Abuse of State/ Administrative Resources) discussion centred on exploring definitions and cases of abuse of state and administrative resources. General aspects of the issues were discussed but also specific examples including:

- Use of public offices as campaign headquarters;
- Usage of vehicles and planes for campaign travel;
- Participation of state / public employees in campaigning, and others.

During the discussion the need for a common definition of "state resources" and clear distinction between its use and abuse emerged. Examples from Latin America have shown that abuse of state and administrative resources most often takes place in the absence of provisions and regulations in the countries' electoral legislation. Therefore, the participants recommended that the electoral legal framework should provide a clear definition of what constitutes state and administrative resources, and be very explicit on the terms of their use during elections.

The participants also discussed how these issues could be tied to international standards. They proposed in particular to use the following:

- Equal opportunities/ level playing field (UN Declaration of Human Rights or the International Covenant on Civil and Political Rights)
- Separation between state and political party (OSCE Commitments)
- Council of Europe standards
- UN Convention on Corruption

Working Group 3 (Monitoring and Promoting Follow-up to Recommendations) summarized its debates and discussions in the following recommendations:

- EOMs should actively engage election stakeholders in activities, including follow-up;
- EOM recommendations should not be overly prescriptive, but, at the same time, strive to present issues that need to be addressed in a clear and concise manner;
- Information exchange and sharing amongst organizations conducting election observation is of utmost importance in planning and co-ordinating follow up activities.
- Timing of follow up is equally important, and should be carefully considered by the implementing agency / organization.

The above recommendations were illustrated by OSCE/ODIHR's and EU's approaches to a follow up. Particularly, OSCE/ODIHR's Election Department is addressing the issue of more effective and efficient follow up through examination of past EOM reports and assessment of the progress made; enhanced synergies between the different OSCE/ODIHR departments; improvement of communication and exchange of information with OSCE field offices; acting

as a facilitator and engaging other institutions in a follow up when ODIHR resources and possibilities are limited.

The EU introduced a two-fold follow up to its EOMs in 2007: (1) a debriefing session is conducted for the respective EU field office at the end of the EOM, and (2) the Chief Observer returns to the country two months after an election to meet EMBs, civil society organizations, and other stakeholders in order to discuss EOM recommendations and possible follow-up activities.

The Carter Center may scrutinize the issue of follow up in a greater detail and consider setting up a formal working group of interested stakeholders for further exploration of this issue.

This session concluded with a presentation of Long-Term Observation Project by Douglas Rowland (International Election Monitors Institute - IEMI). This project proposes to change the role of LTOs by starting observation about 12 months before election day but not having a permanent presence in the country. Rather, it envisions to send election monitoring missions to three African nations at least four times for one week periods each before election day. All aspects of the campaigning process should be observed and all findings should be reported. The target countries are Nigeria, Liberia, and Sierra Leone.

V.   SESSION THREE: POST-ELECTION DAY OBSERVATION

This session focused on the observation electoral dispute resolution and observation in cases of post-election conflict or serious human rights abuses, including post-election retribution. The OSCE participating States identified electoral fraud as a threat to stability and security during their 1996 summit in Lisbon. A number of recent elections have shown that fraud or the perception of fraud can generate violent protests.

Participants noted that the post-election period presents high risks for the integrity of an election process, especially if there are delays in making results public or if there are significant challenges to the results. Contested results can lead to violence affecting human rights and democratic development. The question was raised how observer organizations can respond systematically to post-election challenges and emergency situations. While participants agreed that it is important to follow early warning signs of violence, there was recognition that it is challenging for an EOM to observe assemblies and demonstrations or to investigate arrests and detentions of activists.

The OSCE/ODIHR gave examples of recent involvement in such situations. These included Georgia, where ODIHR together with the OSCE High Commissioner on National Minorities, examined human rights issues in areas affected by the August 2008 war, and Armenia, where ODIHR conducted an information-gathering visit after the post-election clashes and the state of emergency in spring 2008. This information-gathering visit led to a trial-monitoring project. In Belarus, the OSCE/ODIHR provided assistance to the OSCE field mission in looking into post-election human rights issues.

Participants discussed the possibility of a systematic approach to post-election human rights violations. Personnel involved in such activities would need to have relevant skills to monitor human rights issues, gather information and facts, assess concerns and compile findings and develop recommendations. In the case of such post-election activities it is of the utmost

importance not to jeopardize the political independence and impartiality of the election observers and to co-ordinate any activities with other organizations active in the country.

Participants further noted that any follow-up activity as well as responding to post-election situations require qualified and experienced staff, resources and budgets. They also agreed that it is important to observe complaints and appeals after an election and integrate these findings into the reporting of an observation mission. International organizations should co-operate more with domestic observers on follow-up as domestic observers can pursue and advocate what is recommended in the reports of an observation mission.

Participants agreed that recommendations should focus on technical improvements as well as broader, more political recommendations. It is important for observers to be aware of their obligations and limitations. Certain follow-up activities cannot be implemented by observer organizations, such as for example training of judges. It was also suggested that election assistance programmes should focus on broader areas than just providing assistance to election management bodies. They also recognized the need to build bridges between the community of observers and that of technical assistance providers in order to ensure an effective follow up to recommendations.

VI. SESSION FOUR: ADDRESSING CHALLENGES TO THE CREDIBILITY OF ELECTION OBSERVATION

This session focused on how challenges to credible election observation can be concretely addressed, including through training of observers, co-ordination and communication of post-election statements, and co-operation of signatory organizations.

At the beginning of the session Gillian McCormack of the NEEDS project outlined the following potential challenges to the credibility of election observation:

- Lack of transparency;
- Unprofessional conduct of election observers;
- Public mistrust;
- Different (and sometimes even contradictory) views of various international election observation groups on electoral exercise;
- Insufficient follow-up;
- Independence of EOM vs political pressure.

The NEEDS project strives to address these challenges by providing training for election observers. The NEEDS training is funded by the EU and is based on the BRIDGE course methodology. It includes training on observer transparency (communication skills, clear and concise reporting, good public information strategy); context (democratic progress, international commitments, Codes of Conduct); role plays and real-life scenarios for participants to resolve; and regular breaks, ice-breakers and energizers.

Following this presentation, participants discussed challenges to credibility of election observation in more detail. Particularly, three major groups of challenges were identified: conceptual, ethical and technical.

Often technical challenges draw most attention, whereas conceptual and ethical challenges remain largely unaddressed. Particularly, participants stressed the importance of maintaining transparency and impartiality of EOMs even under political pressure, as well as ethical obligations and accountability of organizations conducting election observation to their member states (in case of international organizations) and/or their mandate (in the case of organizations such as IFES, NDI, and others).

Furthermore, it was noted that various stakeholders – particularly the media – are often not fully aware of the mandate, goals, and objectives of election observation missions, as well as their limitations. Several approaches could be utilized to ensure that all stakeholders fully understand the nature of election observation, including organizing seminars and trainings for media about election observation, enhancing the capacity of political parties to understand various aspects of the electoral process, and training of EOM spokespersons on effective and professional presentation skills.

Last but not least, participants of the sessions suggested continuing to adapt election observation methodology and approach to the evolving environment in the electoral field. Specifically, the composition and size of an EOM team should reflect the particular needs and objectives of a mission including technical skills (e.g. inclusion of experts on electronic voting when needed, legal experts, etc.), and broader electoral expertise of the team members.

VII. SESSION FIVE: MOVING THE DECLARATION OF PRINCIPLES FORWARD

During this session, participants discussed issues related to the Declaration of Principles identified in previous implementation meetings, including the involvement of outside organizations such as election commissions and domestic observer groups, more systematic exchange of good practice and lessons learned, peer review of reports, relationships with United Nations bodies and the possibility of having the Declaration mentioned in a UN General Assembly resolution.

Participants suggested that observer organizations should pursue the possibility of submitting observation reports to UN rapporteurs and monitoring bodies. It was mentioned that in its annual report on elections, the UN Secretary General addresses various themes such as elections and conflict as well as the issue of sustainability. The Secretary General has mentioned the Declaration of Principles in his report as well as the number of endorsers and has encouraged more organizations to endorse the Declaration. There is the possibility that language related to the Declaration could be included in a UN resolution.

Participants noted that endorsers of the Declaration are not formally accountable to other bodies or stakeholders. They encouraged more exchange among colleagues on the issues mentioned during this meeting and on the challenges observers face. Dialogue among peer organizations is of great value to address difficult and challenging issues.

Participants discussed the process of other organizations joining or endorsing the Declaration. It was noted that those that endorse are receiving a specific 'credential' by having joined other credible organizations that have previously endorsed the Declaration. However, it was noted that the endorsers are not forming an exclusive 'club' but a group of peers which would hold each other accountable according to the principles and baseline standards outlined in the Declaration. The implementation meetings are an opportunity to exercise peer pressure on

other organizations that may not always adhere to the standards and principles stipulated by the Declaration.

Participants also noted that the Declaration is an aspirational document that does not lose its credence even if some organizations do not follow it at all times. Attendees were reminded that the Declaration allows organization to deviate from the document if they are prepared to explain the reasons for such deviations.

Participants also discussed whether to promote the Declaration further by inviting organizations that have not yet endorsed the Declaration or by inviting outside groups such as donor organizations or media to future meetings. Especially when case studies are discussed, other panellists, including from the European Commission or other stakeholders could be included. However, some participants cautioned against inviting non-endorsing organizations, as this may result in limiting the scope of discussions or the freedom with which participants may speak.

Participants felt that it was necessary to make further efforts to get all endorsing organizations to attend the implementation meetings, especially the African Union.

During the Third Implementation Meeting the possibility of having a website for statements by endorsers, a list of endorsers and contact information for each endorsing organization was discussed. Participants agreed that this should be implemented and that the ACE project could possibly host such a website. This website could also include a calendar of elections where organizations could indicate where they are observing and provide links to their statements. Accessibility is essential for outreach but the value of the implementation meetings as key informal exercises of self-accountability should not be watered down.

Participants also proposed to have working groups between the annual implementation meetings on specific issues brought up in meetings, such as the issue of follow up activities to election observation.

VIII.   CLOSING REMARKS

At the closing session of the Fourth International Meeting on the Declaration of Principles, Ambassador Lenarčič, the Director of the OSCE/ODIHR, thanked all participants for their participation and contribution to the discussions. He particularly mentioned the election observation knowledge brought to the table and the willingness of all participants to discuss openly the difficult challenges to election observation as well as proposing possible solutions.

He referred to the sobering effect of discovering that the challenges are both external and internal, which points to a continued need for self-reflection about the abilities of election observation organizations and their limitations, as well as possibilities for improvement. He stressed the importance of the Declaration in this respect as a guiding document in decision-making about the type of missions to deploy, about use of resources, as well as improving methodology and deciding about follow-up activities.

Ambassador Lenarčič drew attention to the fact that despite the focus on electoral processes and individual rights, the work of election observers takes place in a political environment thus creating situations that are very challenging for observer organizations such as in

Afghanistan. The challenge is not to avoid such situations but to find the appropriate way to work in them.

He stressed that the discussions highlighted the need for continued action and offered the ODIHR's support to periodic working meetings on specific issues as proposed by the participants. He also highlighted the need to refer to good practice of endorsing organizations in other regions and to have more contact with other relevant endorsing organizations during the conduct of ODIHR's work.