

Democracy & Elections: Standards for Elections

Aims

- To understand the basic principles of the right to participation
- To understand the basic principles of international electoral standards
- To understand the methodology to assess an electoral process using international standards

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20 April 2007

“The electoral process complied in general with international standards...”

Preliminary Statement

EU EOM to Venezuela – 2006 presidential elections

Observers shun Bangladeshi vote

The United Nations and European Union have said they are suspending election observer missions in Bangladesh. The EU said conditions for a credible vote did not exist and its observers would leave Bangladesh...

BBC Report – 11 January 2007

“The elections...were free and fair”

**Head of the International EOM
Serbia 2007 parliamentary elections**

Basis for EOM Assessment of an Electoral Process

Compliance with

Compliance with

**National Legislative
and Regulatory
Framework**

Compliance with

**International
Standards**

What are “International Standards” ?

They represent a common understanding of what democratic elections should or should not be

International Law
on Human & Political
Rights

International Best Practice
on
Democratic Elections

⇒ International Customary Law

⇒ International Treaties

⇒ Regional Treaties

⇒ Declarations &
Political Commitments

⇒ Experience from democratic
elections elsewhere

International Customary Law

Universal Declaration of Human Rights (1948)

- Article 21** (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives
- (2) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be held by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

International Customary Law

Universal Declaration of Human Rights

Article 19 Everyone has the right to freedom of opinion and expression

Article 20 Everyone has the right to peaceful assembly and association.

International Treaty Standards

International Covenant on Civil & Political Rights

Article 25 Every citizen shall have the right and the opportunity
... without unreasonable restrictions:

- (a) to take part in the conduct of public affairs,
directly or through freely chosen representatives
- (b) to vote and to be elected at genuine periodic
elections which shall be by universal and equal
suffrage and shall be held by secret ballot,
guaranteeing the free expression of the will of the
electors

International Treaty Standards

International Covenant on Civil & Political Rights

Article 19 Everyone shall have the right to freedom of expression

Article 21 The right of peaceful assembly shall be recognised

Article 22 Everyone shall have the right to freedom of association with others

Other International Treaties & Declarations

International Convention on the Elimination of Racial Discrimination

Convention on the Elimination of All Forms of Discrimination Against Women

Convention on the Rights of Persons With Disabilities

Universal Declaration of Human Rights

Regional Treaties

African Charter on Human and People's Rights

American Convention on Human Rights

European Convention for the Protection of Human Rights
and Fundamental Freedoms

Regional Declarations & Political Commitments

Arab Charter on Human Rights

Cairo Declaration on Human Rights in Islam

Harare Commonwealth Declaration

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

Legal Status of International Standards

⇒ International Customary Law

Binding on all States

⇒ International Treaties

Binding on all Signatories

⇒ Regional Treaties

Binding on all Signatories

⇒ Declarations & Political Commitments

Persuasive on all Supporting States

“Enforceability” of International Standards

ICCPR

- Requirement on signatories to report compliance
- Establishes the UN Human Rights Committee
 - ⇒ Supervisory Body to assess compliance
 - ⇒ Issues General Comments offering its interpretation of ICCPR provisions
 - ⇒ Receives and considers individual complaints of alleged non-compliance
(e.g. *Debrezseny v. Netherlands*; *Ignatane v, Latvia*)

UN Human Rights Committee

General Comment No. 25:

**The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25)
(1996)**

“Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.”

International Standards

“The Essentials”

UNDR Art 21(2)

The **will of the people** shall be the basis of the authority of government; this will shall be expressed in **periodic** and **genuine elections** which shall be held by **universal** and **equal suffrage** and shall be held by **secret vote** or by equivalent free voting procedures.

ICCPR Art 25

Every citizen shall have the right and the opportunity (b) **to vote** and **to be elected** at **genuine periodic elections** which shall be by **universal** and **equal suffrage** and shall be held by **secret ballot**, guaranteeing the **free expression of the will of the electors**

International Standards “The Essentials”

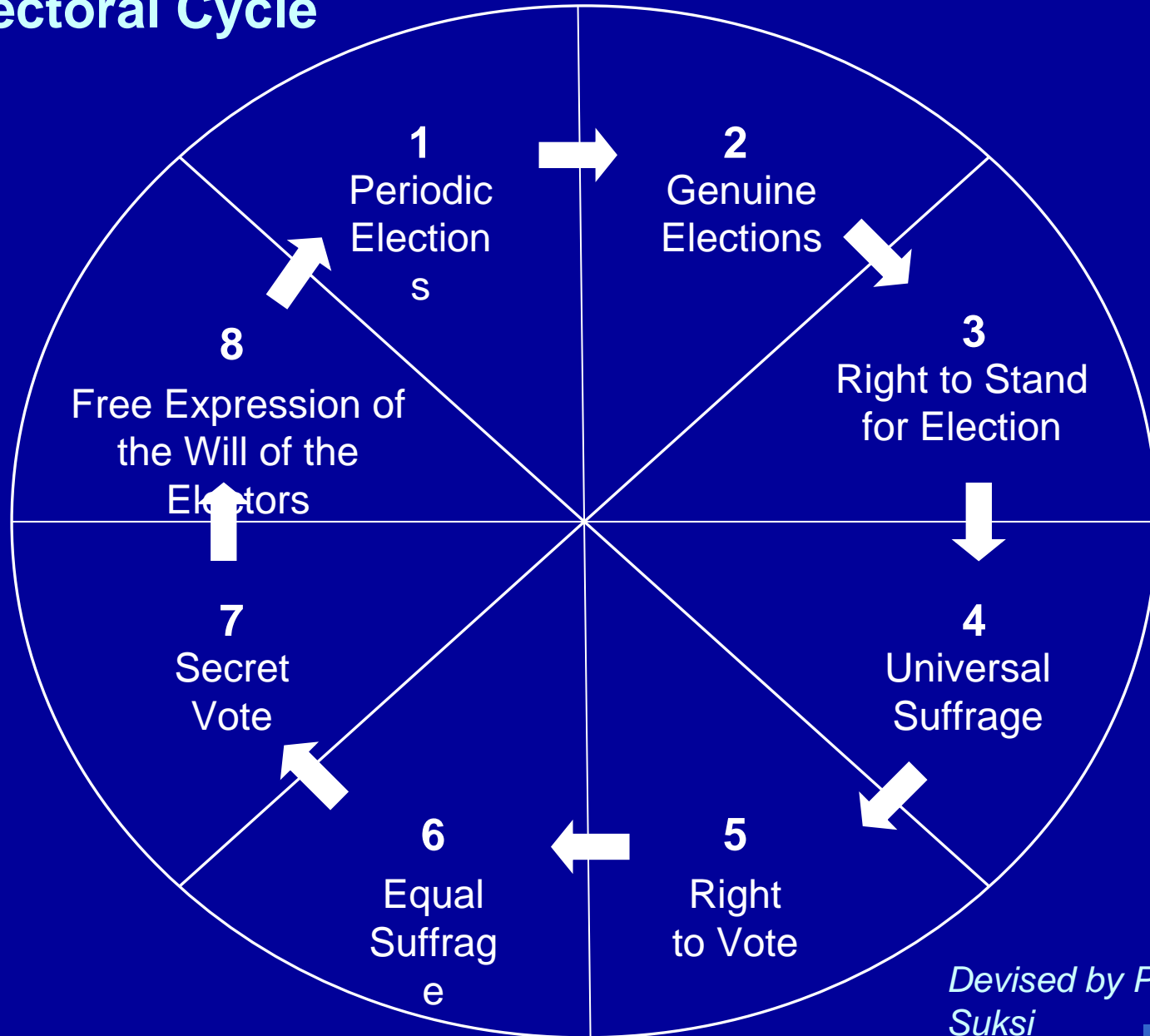
UNDR Art 21(2)

Periodic elections
Genuine elections
Universal suffrage
Equal suffrage
Secret vote

ICCPR Art 25

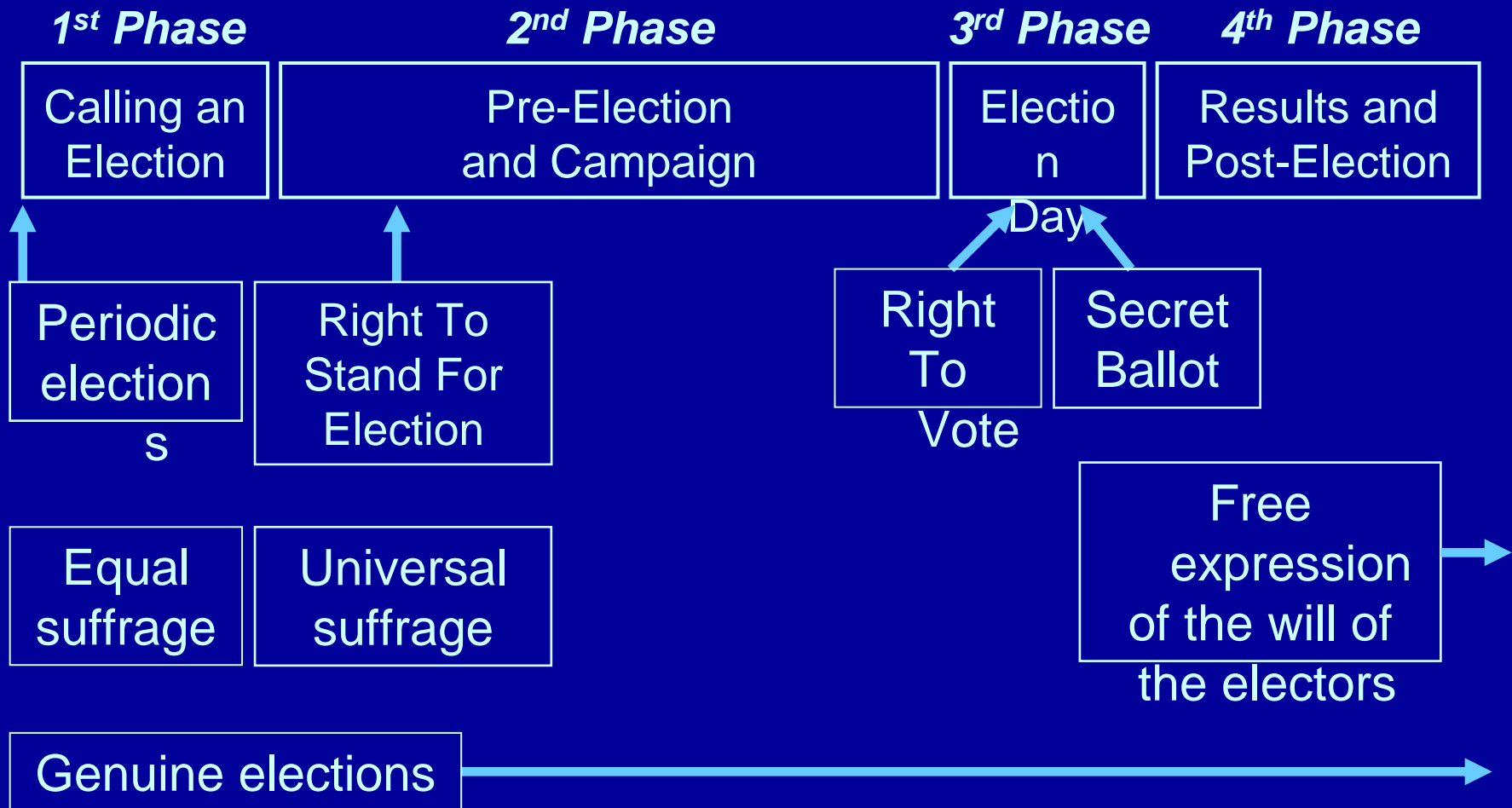
Right to vote
Right to be elected
Genuine elections
Periodic elections
Universal suffrage
Equal suffrage
Secret ballot
Free expression of the
will of the electors

The Electoral Cycle



Devised by Prof. Markku Suksi

International Standards during an Electoral Process





NOT TO BE CONFUSED WITH

International Best Practice

“...practices relating to the administration of an election that, by the extent of their use in international electoral processes, are recognised as ensuring that international standards can be achieved.”

Draft Matrix for the Methodological Use of International Standards in the assessments of an EU EOM

Area of Assessment	Universal Principles	International Standards	International Best Practice
Election Administration	<i>Genuine elections</i>	<p>The election is conducted fairly, impartially and in accordance with the law by an election administration that is independent from the contestants in the election.</p> <p>(HRC GC para. 20)</p>	<p>An election administration should:</p> <ul style="list-style-type: none"> • act in a transparent and inclusive manner; • consist of members who are non-partisan or represent a balance of the different partisan groups in an election; • ensure that all election officials are trained in their role and responsibilities; • be accountable for its conduct of the election.

1. Periodic Elections

- ☐ Are there elections taking place?
- ☐ There should be a certain period of time after which elections must take place to ensure the accountability of elected representatives for the exercise of the powers vested in them.
- ☐ Elections must be held at intervals which are not unduly long and which are fixed in law to ensure the authority of government continues to be based on the will of electors.
- ☐ There should be clear procedures for calling elections.

2. Genuine Elections

- A genuine election presumes a real contest.
- There is full enjoyment of fundamental freedoms and political rights related to elections: freedom of expression, freedom of association, freedom of assembly, freedom of movement.
- The electoral process is supervised by an independent election administration to ensure that the election is conducted fairly, impartially and in accordance with laws.
- There are opportunities for independent scrutiny and access to judicial review so that electors have confidence in the electoral process.
- There is a legal framework and electors are fully informed of their rights.

3. Right to Stand for Election

- ☐ Voters have a free choice of candidates; all candidates have equal right to stand.
- ☐ Any restrictions on the right to stand (e.g. minimum age) must be justifiable on objective and reasonable criteria.
- ☐ Any exclusion of groups should not be based on unreasonable or discriminatory grounds (e.g. education, residence or political affiliation).
- ☐ No candidate should suffer discrimination or disadvantage because of their candidacy.
- ☐ Conditions on the nomination of candidates (registration period, fees, signatures etc) should be reasonable.
- ☐ Issues arising to women and minorities.

4. Universal Suffrage

- ☐ All citizens should have the right to vote guaranteed by law.
- ☐ Any restrictions on the right to vote (e.g. minimum age, residency requirements) must be reasonable.
- ☐ If convicted criminals are suspended from voting, their suspension must be proportionate to the offence. Detainees who are not convicted should not be excluded from voting.
- ☐ Restrictions based on e.g. physical disability, literacy, educational or property requirements are unreasonable.
- ☐ The authorities must take effective measures to ensure all eligible voters are able to exercise that right through unobstructed voter registration and voter education.
- ☐ Voter registration must be accurate and hold public confidence.

5. Equal Suffrage

- ☐ Voters should have an equal number of votes available (“one man, one vote”).
- ☐ The vote of one elector should be equal to the vote of another.
- ☐ Electoral boundaries and the method of allocating votes should not distort or discrimination or unreasonably exclude or restrict the right of citizens to choose their representatives.

BUT

- ☐ No particular electoral system can be imposed.
- ☐ Issues arising from affirmative action for seats reserved for women candidates and/or minorities.

6. The Right to Vote

- Eligible voters must be able to exercise the right to vote through freedom of expression, assembly and association.
- States must provide all means to ensure enjoyment of the right of the vote and must take positive action to overcome factors which impede that right.

6. The Right to Vote

□ These measures include difficulties such as illiteracy, language barriers, poverty or impediments to freedom of movement.

□ Electoral information and materials should be available in minority languages. Photographs and symbols should be adopted to ensure illiterate voters have adequate information.

7. Secret Ballot

- ☐ Voters must be guaranteed the right to cast their vote in secret. Authorities must take measures to ensure the secrecy of the vote.
- ☐ Voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted.
- ☐ Assistance to the disabled, blind or illiterate should be independent.
- ☐ Voters must be informed of the guarantee to vote in secret.

8. Free Expression of the Will of the Voters

- ☐ Voters must be free to vote without undue influence or coercion of any kind which may distort or inhibit the free expression of the voter's will.
- ☐ Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.
- ☐ Voters should be protected from any unlawful or arbitrary interference with the voting process.
- ☐ Free choice should not be undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate.

8. Free Expression of the Will of the Voters

- ☐ The results of elections should be respected and implemented
- ☐ The security of ballot boxes (and election materials) must be guaranteed.
- ☐ Votes should be counted in the presence of candidates or their agents.
- ☐ Votes should be counted and recorded accurately and honestly.
- ☐ Elected persons must be able to take up their elected positions.

Other Essential Elements For Elections

- The free communication of information and ideas through a free press and other media able to comment on public issues without censorship or restraint and able to inform public opinion (*Freedom of Expression and Opinion*).
- The right to form and join organizations and associations concerned with political and public affairs, especially political parties. (*Freedom of Association*)
- The right to non-discrimination on grounds of race and gender (CEDR and CEDAW)

Other Essential Elements For Elections

- ☐ Public confidence in the credibility of the electoral process.
- ☐ Transparency of the electoral process, including: openness of administration; access to full information; prompt publication of all decisions and results.
- ☐ Equitable access to, and balanced use of, State resources, and the neutrality of State institutions.

International Best Practice For Democratic Elections

- International Best Practice is not a 'standard' but demonstrate a means of achieving international standards.
- Care must be taken in proposing what is 'best practice': States have a sovereign right to determine what practices they will use. 'Best practices' can be expensive or complex.
- Many countries share common electoral traits; many more have differences.
- But clear 'best practices' have emerged for democratic elections... *for example*

International Best Practice For Democratic Elections

Examples

- ☐ Election administration should be as open as possible to meet and consult with candidates.
- ☐ Election administrations should be professional.
- ☐ There should be clear campaign regulations.
- ☐ Political parties should be provided with equitable levels of free airtime on public media.
- ☐ Voters should be required to show proof of identification.
- ☐ Full election results should be published promptly to the lowest level. They should be available for inspection.

Use of International Standards By EOMs

- Assessments needed by Core Team, LTOs and STOs
- Requires long-term observation of the full electoral cycle, especially campaign period and post-election.
- Based on direct observations and meetings with all kinds of election stakeholders.
- Requires a disciplined and consistent methodology of observation, tasking and reporting.
- Looking at the wider electoral environment. Assessments are made within a political and international context.
- Flexibility is assessing the 'grey zone'...

The 'Grey' Zone

Standards not met	Standards partly met	Standards almost met	Standards generally met	Standards always met
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Mitigating factors

- ☐ difficult infrastructure
- ☐ issues of poverty and cost
- ☐ post-conflict election
- ☐ 'first/second' election
- ☐ isolated or 'one off' problems
- ☐ level of confidence in system
- ☐ openness and transparency
- ☐ willingness to accept problem
- ☐ independent and inclusive
- ☐ peaceful
- ☐ good faith

Aggravating factors

- ☐ no external cause
- ☐ 'established' election
- ☐ repetition of problem
- ☐ collection of problems
- ☐ no confidence in system
- ☐ secrecy and exclusion
- ☐ refusal to accept problem
- ☐ governmental interference
- ☐ coercion and violence
- ☐ deliberate political action
- ☐ dishonesty