



Strasbourg, 11 December 2024

CDL-AD(2024)039

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPORT

ON

ELECTION OBSERVERS AS HUMAN RIGHTS DEFENDERS

**Approved by the Council for Democratic Elections
at its 81st meeting (Venice, 5 December 2024) and
adopted by the Venice Commission at its 141st Plenary Session
(Venice, 6-7 December 2024)**

On the basis of comments by

Mr Oliver KASK (Substitute member, Estonia)
Ms Katharina PABEL (Substitute member, Austria)
Mr Pere VILANOVA TRIAS (Member, Andorra)
Mr Jan Erik HELGESEN (Former member, Expert, Norway)
**Ms Janine M. OTÁLORA MALASSIS (Former substitute member,
Expert, Mexico)**

Opinion co-funded
by the European Union



Table of Contents

I.	Introduction	3
II.	Are election observers human rights defenders?.....	3
A.	Introduction	3
B.	The notion of human rights defender	4
C.	Election observation as a task of human rights defenders	6
D.	Election observers as human rights defenders: the rights that they defend	8
1.	Political rights: the right to vote and to stand for election	9
2.	Fundamental rights directly related to political rights	10
3.	Other fundamental rights	11
III.	Protecting election observers	13
A.	Changing challenges in an evolving context	13
B.	The international instruments that protect electoral observers as they do their work as human rights defenders.....	15
1.	The international standards that protect electoral observers.....	15
2.	The added value of qualifying election observers as human rights defenders ...	18
C.	Guidelines for national regulations: acknowledging and ensuring that the relevant protections are secured for and applied to election observers	21
1.	The rights and freedoms of election observers	21
2.	The duties of the State and election administrations.....	24
IV.	Conclusion	25

I. Introduction

1. 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.

2. 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; and 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?

3. Mr Oliver Kask, Ms Katharina Pabel, Mr Pere Vilanova Trias, Mr Jan Erik Helgesen, and Ms Janine M. Otálora Malassis acted as rapporteurs for this report.

4. This report was drafted on the basis of comments by the rapporteurs. It was approved by the Council for Democratic Elections at its 81st meeting (Venice, 5 December 2024) and adopted by the Venice Commission at its 141st Plenary Session (Venice, 6-7 December 2024).

II. Are election observers human rights defenders?

A. Introduction

5. The Secretary General of the OAS, in his letter, highlights that election observers contribute to the promotion of political and civil rights, and as such they have been recognised by the United Nations (UN) Special Rapporteurs as human rights defenders.¹ Despite their instrumental role, the OAS has noted that observation missions face increasing obstacles to carry out their work, spanning from burdensome accreditation requirements to harassment and intimidation, including attempts to discredit them. The letter notes the lack of knowledge about the international standards that protect electoral observers as they do their work as human rights defenders.

6. The Venice Commission notes that electoral observation missions are linked from their origin to the protection of fundamental rights, and the methodology of election observers is usually aimed at assessing States' compliance with their international obligations and standards.²

¹ Clément Nyaletossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Mary Lawlor, Special Rapporteur on the situation of human rights defenders, [The Situation of Election Observers as Human Rights Defenders](#).

² See, for example, the election observation methodologies of the European Union (EU), the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), and the Organization of American States (OAS). In the case of the EU, the Handbook for European Union Election Observation (third edition) underline "the core principles upon which EU election observation is built – a long-term approach, encompassing all aspects of an electoral process, *grounded in international human rights law* [emphasis added]", p. 11. In the case of the ODIHR, the stated aim of the Election Observation Handbook (sixth edition) is to elaborate the process by which elections in OSCE participating States are assessed for their compliance with the Organization's election-related commitments based on a long-term, comprehensive, consistent and systematic election observation. In the case of the OAS, the Resolution on Human Rights and Democracy – Electoral Monitoring, of 1989, notes "that the basis for the observation of electoral processes is to contribute and consolidate systems that are genuinely democratic and participatory, *based on respect for human rights* [emphasis added]." See the General Secretariat of the Organization of American States (GS/OAS), Manual for OAS Election Observation Missions, page 12.

7. The universal and regional systems for the protection of human rights have highlighted the importance of the work of electoral observers as human rights defenders in protecting democracy and the rule of law.

8. The UN have stressed the critical contribution of election observation in two different statements. In 2022, UN Special Rapporteurs argued “that election observers are human rights defenders and civil society actors” and that “States should therefore enable independent and impartial election observation by all monitors, including from abroad.”³ In a joint statement dated 30 April 2024, they also called to ensure that “human rights defenders and civil society actors at large can perform their legitimate work in the context of elections, including monitoring and reporting on electoral-related violations and abuses, free from intimidation, retaliation and undue restrictions, including “foreign agents” laws to limit access to resources.”⁴

9. Shortly after, the Foreign-Policy Chief of the European Union (EU) also argued “that electoral observers deserve very well the title of “human rights defenders” because, at the end, it is what they do: to defend a basic human right which is to choose your government freely through processes which are well organised and can be evaluated from outside.”⁵

10. On 23 May 2024, the Inter-American Commission on Human Rights (IACHR) issued a resolution identifying human rights defenders as those who carry out activities that promote or seek “the realization of human rights and fundamental freedoms recognized at the national or international level.”⁶ According to this resolution, those engaged in electoral observation contribute to the protection of civil rights –such as freedom of association and expression, the right to access information, and to receive equal treatment before the law– which are internationally recognised as human rights. Therefore, according to the IACHR resolution, electoral observers are human rights defenders, and the States have the obligation to create the legal and factual conditions for them to carry out their observation functions free of intimidation.

B. The notion of human rights defender

11. According to the UN nomenclature, the term “human rights defender” is used to describe people who, individually or with others, act to promote or protect human rights in a peaceful manner. According to the information of the UN Special Rapporteur on human rights defenders, there is no specific definition of who is or can be a human rights defender.⁷

12. In 1998, the UN General Assembly adopted the Declaration on human rights defenders.⁸ The UN Declaration refers to human rights defenders as “individuals, groups and associations [...]”

³ Clément Nyaletossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Mary Lawlor, Special Rapporteur on the situation of human rights defenders, [The Situation of Election Observers as Human Rights Defenders](#).

⁴ Clément Nyaletossi Voule, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; Mary Lawlor, Special Rapporteur on the situation of human rights defenders; Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Margaret Satterthwaite, Special Rapporteur on the Independence of Judges and Lawyers; Attiya Waris, Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; and Ben Saul, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, [Electoral year 2024: UN experts call for strengthening democracy and reversing global erosion of human rights](#).

⁵ Josep Borrell, International Election Observation: [Speech by High Representative/Vice-President Josep Borrell at the Annual meeting of the Declaration of Principles for International Election Observation](#).

⁶ Inter-American Commission on Human Rights (IACHR), [Resolution 01/2024](#), Las personas observadoras electorales como defensoras de derechos humanos [only available in Spanish].

⁷ UN Special Rapporteur on human rights defenders, About human rights defenders. Available at: <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders>

⁸ UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#).

contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.”⁹ Most international organisations also rely on this approach.¹⁰

13. In the case of the Council of Europe, the Committee of Ministers adopted in 2008 the Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities.¹¹ Whereas this Declaration of the Committee of Ministers does not provide a definition of human rights defenders, the Committee of Ministers recalls the UN Declaration on human rights defenders.¹² In 2018, the Committee of Ministers did define human rights defenders as “anyone who, individually or with others, acts to protect or promote human rights, regardless of his/her profession or other status, and that national human rights institutions (NHRIs) and civil society organisations working for the protection and promotion of human rights are human rights defenders.”¹³ In turn, the Parliamentary Assembly of the Council of Europe (PACE) has resorted to an even broader definition of human rights defenders as “those who work for the rights of others.”¹⁴

14. Human rights defenders are therefore identified above all by what they do: their actions, put into context.

15. The work of human rights defenders includes collecting and disseminating information on violations of human rights and awareness raising; supporting victims of human rights violations; acting to secure accountability and to end impunity; supporting better governance and government policy; contributing to the implementation of human rights treaties; and human rights education and training.

16. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection, and realisation of economic, social, and cultural rights. As a human rights defender, a person can act to address any human right on behalf of individuals or groups. The majority of human rights defenders work at the local or national level. However, some defenders act at the regional or international level.

17. This broad concept of human rights defenders comprises persons within NGOs and intergovernmental organisations, but also government officials, civil servants, lawyers, journalists, or members of the private sector.¹⁵ Human rights defenders conduct their work either through professional activities (paid or voluntary) or through personal commitment in a non-professional context.

18. The first question that should be therefore answered is whether and why election observers can be considered human rights defenders.

⁹ UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#), see the Preamble.

¹⁰ This broad understanding of who is a human rights defender is also shared by the OAS and the EU. See, among others, the [Resolution AG/RES. 1842 \(XXXII-O/02\)](#) of the General Assembly of the Organization of American States on Human Rights Defenders in the Americas: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas, adopted at the fourth plenary session held on June 4, 2002 or the [EU Guidelines on Human Rights Defenders](#) adopted by the Council of the EU in 2004, and revised in 2008.

¹¹ Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#).

¹² Additionally, the Declaration also takes into account the EU Guidelines. Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#).

¹³ Committee of Ministers of the Council of Europe, [Recommendation CM/Rec\(2018\)11](#) on the need to strengthen the protection and promotion of civil society space in Europe.

¹⁴ Parliamentary Assembly of the Council of Europe, [Report Doc. 13943 \(2016\)](#), Strengthening the protection and role of human rights defenders in Council of Europe member States, para 4, and Parliamentary Assembly of the Council of Europe, [Resolution 2225 \(2018\)](#), Protecting human rights defenders in Council of Europe member States, para. 1.

¹⁵ UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#). See also PACE, [Protecting human rights defenders in Council of Europe member States Resolution 2225 \(2018\)](#), para. 1.

C. Election observation as a task of human rights defenders

19. According to the Venice Commission's Code of Good Practice in Electoral Matters (the Code), election observation is a condition for implementing the principles of the European electoral heritage.¹⁶ The explanatory report to the Code stresses that observation plays an important role as it provides evidence of whether the electoral process has been regular or not.¹⁷

20. Election observation is conducted by various individuals or organisations. Depending on its structure, role, and function, election observation can be classified into different types of election observation. Election observation can be carried out by individual citizens, by associations or by non-governmental organisations (NGOs). Observers can be either national individuals or associations, or individuals or associations from abroad, such as national parliaments and parliaments of international organisations or intergovernmental organisations. Typically, those election observations are done on a voluntary basis by the individuals or associations. More specifically, the Code and its explanatory report identify three different types of observers: partisan national observers, non-partisan national observers, and international (non-partisan) observers.¹⁸ In practice, however, the terms 'domestic observers' and 'citizen observers' are often used interchangeably with 'national observers.'

21. Election observation can thus be carried out by delegates of political parties, in the case of national observers, and non-partisan observers, be they national or foreign persons. In some countries, those observers have specific tasks foreseen in the law.

22. According to the Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations, endorsed by the Venice Commission at its 91st Plenary Session in 2012,

“Non-partisan election observation and monitoring by citizen organizations is the mobilization of citizens in a politically neutral, impartial and non-discriminatory manner to exercise their right of participation in public affairs by witnessing and reporting on electoral developments through: independent, systematic and comprehensive evaluation of legal frameworks, institutions, processes and the political environment related to elections; impartial, accurate and timely analysis of findings; the characterization of the findings based on the highest ethical standards for impartiality and accuracy; the offering of appropriate recommendations for obtaining genuine democratic elections; and advocating for improvements in legal frameworks for elections, their implementation through electoral related administration and removal of impediments to full citizen participation in electoral and political processes.”¹⁹

23. If national legislation allows election observation by individuals, associations, or party representatives, the law assigns them specific duties and responsibilities. Typically, these observers ensure oversight of the electoral process by being present and monitoring its conduct. If such election observation is not explicitly provided for in the national legislation, observers may still rely on the general right to attend certain parts of the electoral process to observe it.

24. International observers are entrusted with the responsibility of promoting and safeguarding international democratic principles. In this case, the observation is conducted by a group of international independent observers sent by an international or foreign organisation on a formal invitation by the authorities. They monitor the electoral process based on international standards

¹⁶ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, guideline II.3.2.

¹⁷ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Explanatory report to Code of Good Practice in Electoral Matters, para. 86.

¹⁸ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Explanatory Report to Code of Good Practice in Electoral Matters, para. 87.

¹⁹ Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations, available as [CDL-AD\(2012\)018](#), para. 4.

and the national legislation of the host country. The parameters of the mission (e.g., the observers' unrestricted access to the election premises, the accessibility of all stages of the electoral process, etc.) may be agreed upon in a memorandum of understanding or similar document between the governmental and/or electoral authorities and the organisation sending the international observers.²⁰ The organisations commit themselves to neutrality and objectivity when monitoring the electoral process.

25. The relevant principles of international election observation are laid down in the Declaration of Principles for International Election Observation and the accompanying Code of Conduct for International Election Observers, developed in 2005, which has been endorsed by several intergovernmental and international nongovernmental organisations, including the Venice Commission.²¹ This Declaration provides an internationally recognised methodology for election observation. According to the Declaration of Principles for International Election Observation, gathering systematic, comprehensive, and accurate information concerning the laws, processes and institutions promotes the achievement of democratic elections, including respect for human rights and the rule of law. Hence, international observers assess elections in the light of international principles and domestic law, "while recognizing that it is the people of a country who ultimately determine credibility and legitimacy of an election process."²²

26. National and international election observers may cooperate closely.²³ International election observation missions prioritise establishing contact with national observers, particularly to monitor developments before and after their deployment. Likewise, international observers support citizen observers, especially if they encounter difficulties, including violence. However, while maintaining a collaborative relationship, international and citizen observers operate independently, and the scope of their observation varies, with international missions not always assuming responsibility for statements made by national observers.

27. Electoral observers monitor the electoral process by their mere presence, improving its transparency. Election observers often follow a recognised methodology for election monitoring, usually more so in the case of international organisations. This includes the legal assessment of the national legislation against international standards and the assessment of the implementation of the national and international legal requirements during the electoral process. Additionally, they conduct a structured observation by collecting specific data while guided by questionnaires. This enables the analysis of the electoral process and the comparability with prior electoral cycles and/or electoral processes in other countries.²⁴ The observation includes all stages of the

²⁰ See the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, available as [CDL-AD\(2005\)036](#), para. 12. However, the basis for international election observation is not always found in such agreements. In the case of the Parliamentary Assembly of the Council of Europe, for example, the [Guidelines for the observation of elections by the Parliamentary Assembly of the Council of Europe](#), adopted by the PACE's Bureau in 2019, specify that "[o]bservation of parliamentary and presidential elections as well as of referenda in an applicant state or a state under the monitoring procedure, or post-monitoring dialogue, and parliamentary elections in states where the parliament enjoys special guest status or partner for democracy status, is an inalienable right of the Assembly" (para. 2). In the case of the ODIHR, the mandate to observe elections derives from Paragraph 8 of the 1990 Copenhagen Document which includes a standing invitation from all participating States to all other participating States, as well as to appropriate private institutions and organizations, to observe their national election proceedings. In subsequent decisions, participating States also endeavoured in subsequent decisions to facilitate similar access for observers to elections below the national level.

²¹ Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, available as [CDL-AD\(2005\)036](#).

²² Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, available as [CDL-AD\(2005\)036](#), page 3.

²³ See, in this regard, the [Communiqué on Benefits of Co-operation between International and Non-Partisan Citizen Election Observer Organizations](#), launched 08 December 2022.

²⁴ In case of the ODIHR, and the comprehensive methodology, equally used for all participating States, it bases its observation on, each election is assessed separately for compliance with international standards, and elections are not compared with prior cycles or other countries. In this case, election observation activities follow all key aspects of an electoral process, their compliance with OSCE commitments, other international standards for democratic elections, as well as with national legislation. The ODIHR also offers concrete recommendations for possible improvements.

electoral process (campaigning, media, political parties, the election process itself, the electoral dispute resolutions, etc.) and concludes with a comprehensive reporting.

28. To sum up, election observation involves monitoring and evaluating the electoral process comprehensively, with the goal of improving it. Both international and national observers play a positive role in enhancing the protection and enjoyment of human rights within the context of the electoral process, namely those of voters, candidates, as well as other public authorities and civil society actors (including the media, journalists, other election observers, or even the election administration and the judiciary). Both international and domestic observer groups defend these rights by collecting and disseminating information on violations and, in so doing, contribute to the implementation of human rights treaties. Additionally, non-partisan citizen observers may also do so through human rights education and training, by supporting better governance and government policy, acting to secure accountability and to end impunity, or supporting victims of human rights violations.

29. As established by the Declaration of Principles for International Election Observation,

“genuine democratic elections cannot be achieved unless a wide range of other human rights and fundamental freedoms can be exercised on an ongoing basis without discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including among others disabilities, and without arbitrary and unreasonable restrictions. They, like other human rights and democracy more broadly, cannot be achieved without the protections of the rule of law.”²⁵

30. Likewise, the Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations stresses that:

“Non-partisan election observation and monitoring by citizen organizations seeks to cooperate with election management bodies and other governmental authorities related to election processes and makes observations, assessments and findings based on the national legal framework and obligations concerning democratic elections that are set forth in international human rights instruments, as well as standards, principles and commitments presented in international and regional charters, conventions, declarations and other such documents.”²⁶

31. Accordingly, electoral observers can be qualified as human rights defenders. Under the broad concept of human rights defenders shared by the UN and the Council of Europe, election observers are human rights defenders, and therefore they should also enjoy their rights recognised in international standards, irrespective of their status in national law or their involvement in a domestic or an international election observation mission.

D. Election observers as human rights defenders: the rights that they defend

32. As explained above, election observation is about assessing to which degree a State complies with international human rights law in organising and running elections, and it is therefore grounded in the international human rights obligations voluntarily adopted by the States. Election observers contribute to the enjoyment of human rights in the context of elections, and they can be thus considered human rights defenders. Considering that international and non-partisan citizen observers are human rights defenders, it becomes essential to identify the fundamental rights they work to protect.

33. According to the UN Special Rapporteurs’ Statement on the Situation of Election Observers as Human Rights Defenders, the work of electoral observers “focuses on civil and political rights,

²⁵ Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, available as [CDL-AD\(2005\)036](#).

²⁶ Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations, available as [CDL-AD\(2012\)018](#).

including the rights to vote and to stand for election, the rights to political affiliation and freedom of association, the right to access information, the freedom of the media and the freedom of expression, to the freedom of peaceful assembly, of movement, of security of the person, and to equal protection of the law for prospective voters and those seeking to be elected, as well as access to effective remedies when electoral related rights are violated.”²⁷

34. The Venice Commission’s Report on the timeline and inventory of political criteria for assessing an election provides a list of human rights which must be safeguarded in the electoral context: the right to equality and non-discrimination; the right to associate into political organisations, such as political parties, candidate support organisations or groups favouring or opposing referenda propositions; the right to assemble peacefully for meetings, rallies and to otherwise demonstrate support for electoral competitors in locations easily accessible to the general public; the right to move freely, inter alia, to build electoral support; the right to be free of the threat of violence or other forms of coercion, while making political choices or exercising political expression; the right to hold political opinions without interference; the right to freedom of political expression, including the freedom to seek, receive and impart information and ideas in order to develop informed choices required for the free expression of the will of the electors; the right to equitable access to public media in the electoral context; and the right to an effective remedy for the violation of protected rights.²⁸

35. The human rights that election observers defend can be approached from the perspective of direct and indirect protection. Observers directly protect the right to vote and to stand for election, as well as the related civil and political rights. Indirectly, election observers also protect other fundamental rights, including socioeconomic rights. These fundamental rights that they defend can be classified into three groups: on a first layer, the most direct rights election observers protect are the political rights to vote and to be elected; on a second layer, other fundamental civic and political rights; and, lastly, on a third layer, the rights they have a collateral impact on: from the rights to life, liberty, and security to socioeconomic rights. The specific context in which election observers monitor the conduct of electoral processes will affect the specific human rights that they defend. The three next sections specify with more detail each of these layers of rights.

1. Political rights: the right to vote and to stand for election

36. According to the Universal Declaration of Human Rights (UDHR), “[e]veryone has the right to take part in the government of his country, directly or through freely chosen representatives.”²⁹ Furthermore, “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”³⁰ Therefore, the rights that are primarily and directly protected by electoral observers are the right to vote and to be elected.

37. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) establishes that “[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”³¹

38. Regional instruments also enshrine the right to vote and to stand for election: for example, Article 3 of the First Additional Protocol to the Convention for the Protection of Human Rights and

²⁷ Clément Nyaletossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Mary Lawlor, Special Rapporteur on the situation of human rights defenders, [The Situation of Election Observers as Human Rights Defenders](#).

²⁸ Venice Commission, [CDL-AD\(2010\)037](#), Report on the timeline and inventory of political criteria for assessing an election, para. 27.

²⁹ UN General Assembly, UDHR, Article 21.

³⁰ UN General Assembly, UDHR, Article 28.

³¹ ICCPR, Article 25. See also Human Rights Committee, CCPR [General Comment No. 25: Article 25](#) (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service.

Fundamental Freedoms (European Convention on Human Rights, ECHR) and Articles XX and XXXII of the Pact of San José (American Convention of Human Rights, ACHR).

39. Election observers monitor the equal enjoyment of these rights by everyone, including women, minorities, and other vulnerable groups.

40. Full and equal participation of women in politics is a human right and a measure of democratic integrity.³² The comprehensive international framework for the protection of human rights, within universal and regional systems, encourages states to adopt effective measures to guarantee that men and women are able to fully exercise their political rights under equal conditions. As a result, international guidelines have been drafted to include the assessment of electoral observers on gender inclusion, parity, and a special emphasis has been made on violence against women during elections.³³

41. Regarding minorities and other marginalised groups –such as indigenous peoples and communities, ethnic, linguistic, and religious minorities, persons with disabilities, displaced persons, etc.– electoral observers monitor the availability of voter information and education, equal opportunities to participate, and representation in elections. This includes the provision of specific measures for guaranteeing the exercise of political rights of these groups, including the right to vote and the right to be elected.³⁴

2. Fundamental rights directly related to political rights

42. In order to effectively exercise the political rights, a number of fundamental rights and freedoms must be guaranteed. As a second layer of the rights electoral observers protect, the following can encompass civil liberties that are crucial for the exercise of free and fair elections, and which have been recognised previously by the Code of Good Practice in Electoral Matters drafted by the Venice Commission:³⁵

43. Freedom of assembly and association: The right of peaceful assembly includes “the right to hold meetings, sit-ins, strikes, rallies, events, or protests, both offline and online. The right to freedom of association involves the right of individuals to interact and organize among themselves to collectively express, promote, pursue, and defend common interests.”³⁶ Both rights, enshrined in Article 20 of the UDHR, Article 22 of the ICCPR, Article 11 of the ECHR, and Article 16 of the ACHR, are fundamental rights in a democratic society.

44. Freedom of expression is a fundamental human right, enshrined in Article 19 of the UDHR, Art. 19.2 of the ICCPR, Article 10 of the ECHR, Article 13 of the ACHR, as well as in other international and national frameworks. It is defined as the freedom to “seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”³⁷ Freedom of expression is one of the foundations of a democratic and pluralistic society, as a key precondition for informed public participation. Freedom of expression is the cornerstone of fair and peaceful campaigning, ensuring candidates and parties can compete openly and democratically. Discussing the candidates and their programmes contributes to the public’s right to receive information and strengthens voters’ ability to make informed choices between candidates for office.³⁸

³² See, for example, Venice Commission, Declaration on Women’s Participation in Elections ([CDL-AD\(2006\)020](#))

³³ For example, the OAS has created the [Manual for Incorporating a Gender Perspective into OAS Electoral Observation Missions](#). The OSCE/ODHIR published the [Handbook for monitoring women’s participation in elections](#).

³⁴ See, for example, Venice Commission, Revised interpretative declaration to the code of good practice in electoral matters on the participation of people with disabilities in elections ([CDL-AD\(2011\)045](#)).

³⁵ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters.

³⁶ Available at: <https://www.ohchr.org/en/topic/freedom-assembly-and-association>.

³⁷ Article 19.2 of the ICCPR

³⁸ ECtHR, *Kudeshkina v. Russia*, 26.02.2009, no. 29492/05, para. 87 and ECtHR, *Orlovskaya Iskra v. Russia*, 21.02.2017, no. 42911/08, para. 130.

45. The right to access to information is defined as the “general right of the public to have access to information of public interest from a variety of sources, and the right of the media to access information.”³⁹ The right of access to information is a specific manifestation of the freedom of expression, and it is crucial for the consolidation, functioning and preservation of democratic systems of government, as it is a tool for participation in, oversight and transparency of public affairs.

46. Freedom of movement is defined as the right of people “lawfully within the territory of a State shall, within that territory, [will] have the right to liberty of movement and freedom to choose his residence [to] move freely within that territory and choose their residence there.”⁴⁰ Freedom of movement is vital for ensuring equal access to the electoral process, for example by enabling candidates to reach out to different groups of the electorate. When there are undue restrictions to the freedom of movement, elections will be hardly free and fair.

47. The right to freedom from discrimination means that the right to political participation must be enjoyed equally by all and without distinction or discrimination of any kind (e.g., based on race, colour, sex, sexual orientation and gender identity, language, religion, political or other opinion, national or social origin, birth or other status).⁴¹ An environment in which discrimination is tolerated facilitates intimidation and manipulation of the electorate, which cannot be permitted if elections are to be free and fair. The authorities have both a negative obligation to refrain from discriminating and positive one to prevent discrimination. Certain types of positive measures are, however, permissible if they are of a remedial nature in view of correcting past discrimination (for example, setting a quota for women) and do not amount to discrimination.⁴²

48. Whereas the Code does not specifically mention the right to access to court and effective remedy, an effective system of appeal is a procedural guarantee for implementing the principles of Europe’s electoral heritage.⁴³ As noted in the Guidelines on an internationally recognised status of election observers, it is not unusual to observe the process of complaints, or disputes, and appeals.⁴⁴ In fact, for electoral law provisions to hold meaningful effect, non-compliance must be subject to challenge before an appropriate appellate body.⁴⁵ By monitoring these procedures, election observers contribute to reporting on the adequate remedy in case of electoral violations.

3. Other fundamental rights

49. All human rights are interlinked. The indivisibility of all human rights has been recognised in the Vienna Declaration on Human Rights,⁴⁶ in the European Social Charter,⁴⁷ and in global initiatives such as the UN’s 2030 Agenda for Sustainable Development.⁴⁸ Hence, the right to vote and stand for election has a collateral impact on the exercise of other rights, covering from civil and political rights to socioeconomic rights and to the rights of specific groups.⁴⁹

³⁹ This right is enshrined in the UDHR (Article 19), the ICCPR (Article 19.2), the ECHR (Article 10), and the ACHR (Article 13).

⁴⁰ Article 2 of Protocol No. 4 to the ECHR, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto. This right is also included in article 13 of the UDHR.

⁴¹ This right is enshrined, as a prohibition of discrimination, in art. 14 of the ECHR.

⁴² See the above-mentioned Venice Commission, Declaration on Women’s Participation in Elections ([CDL-AD\(2006\)020](#)); and Venice Commission, Revised interpretative declaration to the code of good practice in electoral matters on the participation of people with disabilities in elections ([CDL-AD\(2011\)045](#)).

⁴³ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, guideline II.3.3.

⁴⁴ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para. 21.iv)

⁴⁵ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Explanatory report Code of Good Practice in Electoral Matters, para. 92.

⁴⁶ UN, Vienna Declaration and Programme of Action, 25 June 1993.

⁴⁷ Council of Europe, European Social Charter (revised) (ETS No. 163).

⁴⁸ UN, the 2030 Agenda for Sustainable Development.

⁴⁹ The UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#), affirms the duties of each State to “ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice” and to “promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights”, Articles 2 and 14.

50. In this regard, a clear example of socioeconomic rights monitored by election observers are literacy and education levels.⁵⁰ For example, the election observation methodology of the EU notes that “[v]oter education initiatives are of particular importance in countries with a limited democratic tradition and/or low levels of literacy.”⁵¹ Other socioeconomic aspects may also be assessed in regard to its impact in elections, such as poverty or economic inequality.⁵²

51. Election observers also protect the most fundamental human rights, including the rights to life, liberty, and security. A recent study by the Working Group on Enforced or Involuntary Disappearances has emphasised the role of election monitoring in deterring violence suffered by different stakeholders, such as political opponents, persons with specific mandates and responsibilities related to the election process, journalists, and even individuals not involved in politics in any way.⁵³ The Working Group thus considers the presence of oversight mechanisms significant to their potential to prevent enforced disappearances in elections, among other forms of electoral violence.⁵⁴

52. The Working Group has noted that enforced disappearances in the context of elections have targeted almost all segments of society.⁵⁵ For example, the Group has learned from members of civil society organisations with electoral monitoring functions, other members of national or international election monitoring bodies, and those who provide assistance which have been victims of enforced disappearances.⁵⁶ Enforced disappearances have also targeted human rights defenders.⁵⁷

53. To sum up through their activities, electoral observers defend civil and political rights including the rights to freedom of association, assembly, expression, access to information, and non-discrimination, as well as access to court and effective remedy. Election observation may also have a collateral impact on other rights, such as the rights to life, liberty, and security as well as socioeconomic rights.

54. In turn, these rights may be exercised by national (non-partisan citizen) observers throughout all processes related to elections, from voters’ registration, party and candidate registration to the functioning of electoral technologies, voting day, and declaration of validity of elections. The mission of international election observation missions includes to evaluate and report on whether domestic non-partisan election observers are able to conduct their activities without undue restrictions or interference.

⁵⁰ The right to education is enshrined in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), whereas Article 18 (4) of the ICCPR guarantees educational freedom. The right is also enshrined in Article 2 of Protocol No. 1 of the ECHR.

⁵¹ See EU, Handbook for European Union Election Observation (third edition), page 53. The Handbook also noted the positive obligation to adopt “[p]ositive measures [...] to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively”, page 54.

⁵² According to the EU methodology, these are possible root causes of electoral violence. See EU, Handbook for European Union Election Observation (third edition), page 76.

⁵³ UN Working Group on Enforced or Involuntary Disappearances, [Report on Enforced disappearances and elections](#), paras 23 and 57.

⁵⁴ UN Working Group on Enforced or Involuntary Disappearances, [Report on Enforced disappearances and elections](#), para. 57

⁵⁵ UN Working Group on Enforced or Involuntary Disappearances, [Report on Enforced disappearances and elections](#), para 59.

⁵⁶ UN Working Group on Enforced or Involuntary Disappearances, [Report on Enforced disappearances and elections](#), para 23.

⁵⁷ UN Working Group on Enforced or Involuntary Disappearances, [Report on Enforced disappearances and elections](#), para 25. In contrast, a 2010 [Report of the Special Rapporteur on extrajudicial, summary, and arbitrary executions, Philp Alston, on Election-related violence and killings](#) noted election monitors as targets and victims of election-related violence and killings, but only included human rights defenders in a list of victims of election-related killings. UN Human Rights Council, [Report of the Special Rapporteur on extrajudicial, summary, and arbitrary executions, Philp Alston, on Election-related violence and killings](#), paras 22 and 42.

III. Protecting election observers

A. Changing challenges in an evolving context

55. In light of the key contribution made by election observers to the conduct of democratic elections, it should not come as a surprise that efforts to strengthen their oversight role have been stepping up. For example, following the end of World War II, the first electoral missions were deployed by the UN and the OAS (with its first mission to Costa Rica in 1962).⁵⁸

56. Despite the important contribution of election observers to the conduct of democratic elections, their work often encounters important obstacles. For instance, the UN Special Rapporteurs have reported on “a significant escalation in the severity and scale of attacks against them, ranging from harassment, false accusation, defamation and threats; to infringement of their right to free movement, detention, expulsion and physical violence. Some have even been killed while carrying out their work.”⁵⁹

57. The IACHR has noted that, despite its importance in society, the defence of human rights is one of the most dangerous activities in the Americas. The IACHR thus resolved to urge States to refrain from undertaking actions that arbitrarily interfere with the work of observers, including taking reprisals for their activities.⁶⁰

58. These challenges cannot be understood as isolated from a global trend towards democratic backsliding, which in the case of election observation poses several dilemmas, and goes hand in hand with the weakening of the commitment to a rules-based system founded on the basic concepts of rule of law, transparency, and accountability.⁶¹ For example, autocratic trends mean that fewer countries now accept international observation of their elections, often because of the relevance and impact of the findings of election observation missions and the nature of the reforms recommended in their reports.⁶²

59. Countries are becoming less keen on being observed by outsiders and even by their own citizens or civil society.⁶³ One form of deterrence of electoral observation is the increase in accreditation requisites or denial to observe elections. States are less willing to invite international organisations to observe and they increasingly restrict access, the issuance of visas, and accreditations.⁶⁴ On the other side, few citizen observer organisations have developed in states with long established traditions of holding democratic elections.⁶⁵

⁵⁸ Organization of American States, [OAS: 50 Years Observing Elections in the Americas](#), page 2.

⁵⁹ Clément Nyaletossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Mary Lawlor, [Special Rapporteur on the situation of human rights defenders, The Situation of Election Observers as Human Rights Defenders](#).

⁶⁰ Inter-American Commission on Human Rights (IACHR), [Resolution 01/2024](#), Las personas observadoras electorales como defensoras de derechos humanos [only available in Spanish], para. 3.

⁶¹ Martin-Rozumilowicz, Beata (2024) “EU Election Observation: Future Challenges and Possible Methodological Responses”, at Ken Godfrey (ed) et al. [The Future of European Electoral Support](#). European Democracy Hub, page 11.

⁶² Godfrey, Ken (2024) “Introduction”, at Ken Godfrey (ed) et al. [The Future of European Electoral Support](#). European Democracy Hub, page 8.

⁶³ Godfrey, Ken (2024) “Introduction”, at Ken Godfrey (ed) et al. [The Future of European Electoral Support](#). European Democracy Hub, page 4.

⁶⁴ Martin-Rozumilowicz, Beata (2024) “EU Election Observation: Future Challenges and Possible Methodological Responses”, at Ken Godfrey (ed) et al. [The Future of European Electoral Support](#). European Democracy Hub, page 11.

⁶⁵ Lidauer, Michael and Rabitsch, Armin (2024) “Election Observation inside the European Union: a Void to be Filled”, at Ken Godfrey (ed) et al. [The Future of European Electoral Support](#). European Democracy Hub, page 20. According to a study of 32 countries conducted in 2017 by Michael Lidauer, Armin Rabitsch, and Iris O’Rourke, 27 of the studied countries had not fully considered or implemented the OSCE/ODIHR recommendation for accreditation and status of legal observers: 16 countries had no legal regulation for international observers, and 23 had no legal regulation for citizen election observers. Lidauer, Michael, Rabitsch, Armin, & O’Rourke, Iris (2017). Mapping Legislation for Citizen and International Election Observation in Europe: A Comparative Analysis on the basis of OSCE/ODIHR Reports. *Nordic Journal of Human Rights*, 35(4), pages 360–374.

60. There are still countries where international observation is not envisaged in the national legislation, as it may be considered as foreign intervention on domestic affairs. To comply with international standards, these countries have incorporated a variant of the international observers, creating a new subcategory of international monitors which is usually referred to as “international or foreign visitors programme”. This subgroup within the international observers poses additional challenges, as it is not recognised in the national legislation as international observers. Their work is therefore more limited and so are the rights they are entitled to.

61. Another obstacle to the work of election observers has been the adoption and enforcement of unduly restrictive legal measures such as “foreign agents” and “foreign influence” laws that undermine the work of independent civil society organisations, including in the context of elections. According to UN experts, “[t]hese measures, adopted ostensibly to preserve national sovereignty, contribute to the stigmatization of civil society and media organizations, especially those working on promoting democracy and human rights or working on election monitoring.”⁶⁶

62. Similarly, some governments have sponsored inauthentic election observation (also called government-friendly or “zombie” observers) as a way to discredit the work and findings of legitimate and impartial election observers. The updated Report on electoral law and electoral administration in Europe notes “a worrying policy of selectively inviting government-friendly international observers and of selectively accrediting government-friendly domestic observers with the aim to legitimise elections which fall short of democratic standards.”⁶⁷ They also engage in pre-selecting those observers that are accredited from international organisations, or limiting where they can be deployed.

63. The advent of new technologies has also impacted elections and the work of election observers, with rapidly changing scenarios in digital communications, social media platforms, information disorder, cybersecurity, generative artificial intelligence, and money in politics (including corruption and abuse of state resources).⁶⁸ Observers struggle to keep up with the pace of technological innovations and with new methods of interference in electoral processes.⁶⁹

64. Likewise, observation mission reports are increasingly challenged, as well as the credibility of observers, including through intimidation and physical violence.⁷⁰ Intimidation of observers and issues with physical security are on the surge, which also has collateral effects, as it increases

⁶⁶ Clément Nyaletsossi Voule, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; Mary Lawlor, Special Rapporteur on the situation of human rights defenders; Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Margaret Satterthwaite, Special Rapporteur on the Independence of Judges and Lawyers; Attiya Waris, Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; and Ben Saul, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, [Electoral year 2024: UN experts call for strengthening democracy and reversing global erosion of human rights](#).

⁶⁷ Venice Commission, [CDL-AD\(2020\)023](#), Report on electoral law and electoral administration in Europe - Synthesis study on recurrent challenges and problematic issues, para. 190.

⁶⁸ Martin-Rozumilowicz, Beata (2024) “EU Election Observation: Future Challenges and Possible Methodological Responses”, at Ken Godfrey (ed) et al. [The Future of European Electoral Support](#), European Democracy Hub, page 11. In a similar way, Michael Lidauer and Armin Rabitsch have stressed new trends such as “increased online advertisement for election campaigns as well as threats to electoral integrity including unsubstantiated allegations of fraud to diminish trust in the election administration, cyber-security threats to electoral infrastructure, and mal-intentioned foreign disinformation activities”. Lidauer, Michael and Rabitsch, Armin (2024) “Election Observation inside the European Union: a Void to be Filled”, at Ken Godfrey (ed) et al. [The Future of European Electoral Support](#), European Democracy Hub, page 20.

⁶⁹ Martin-Rozumilowicz, Beata (2024) “EU Election Observation: Future Challenges and Possible Methodological Responses”, at Ken Godfrey (ed) et al. [The Future of European Electoral Support](#), European Democracy Hub, page 11. According to the OSCE/ODIHR, the use of ICT in election processes has become an increasingly and relevant point of interest for election observation missions, partly due to concerns related to “a lack of broad public consensus for its introduction or continued use, insufficient legal and procedural frameworks, numerous high-profile attacks on systems, equipment or software failures, and disinformation campaigns that have damaged public confidence.” See OSCE/ODIHR, Handbook for the Observation of Information and Communication Technologies (ICT) in Elections, page 8.

⁷⁰ Godfrey, Ken (2024) “Introduction”, at Ken Godfrey (ed) et al. [The Future of European Electoral Support](#), European Democracy Hub, page 4.

the costs of the missions or may generate auto-censorship from the observers.⁷¹ For example, the above-mentioned report by the UN's Working Group on Enforced or Involuntary Disappearances identifies several measures taken by States to undermine election oversight:

“Such measures range from ousting non-governmental organizations engaged in election monitoring shortly before elections, enforced disappearances of observers as a tactic to undercut independent monitoring and control narrative around elections, providing limited or completely cutting the access to independent observers. The Working Group stresses that such measures not only undermine the integrity of the electoral process but also fail to respect mechanisms with a crucial role in preventing enforced disappearances and other forms of electoral violence.”⁷²

B. The international instruments that protect electoral observers as they do their work as human rights defenders

65. Effective measures must be in place to protect election observers from the growing threats they face. States should recognise the need for and ensure the implementation of appropriate safeguards for both non-partisan citizen observers and international observers, incorporating these protections into their national legislative frameworks. These frameworks should provide two key sorts of protections for election observers: first, the guarantees set out in international election standards, which outline their rights and responsibilities during election observation missions; and second, the safeguards included in international agreements for human rights defenders, which build on and support the first.

1. The international standards that protect electoral observers

66. Several international instruments enshrine the role of, and the protections for, election observers. As already mentioned, these include the United Nations' Universal Declaration on Human Rights,⁷³ the International Covenant on Civil and Political Rights,⁷⁴ and, more specifically, the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers;⁷⁵ the Venice Commission of the Council of Europe's Code of Good Practice in Electoral Matters;⁷⁶ the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe (CSCE);⁷⁷ the African Charter on Democracy, Elections and Governance;⁷⁸ the Southern African Development Community (SADC)'s Principles and Guidelines Governing Democratic Elections;⁷⁹ or the Protocol on Democracy and Good Governance of the Economic Community of West African States (ECOWAS).⁸⁰

67. OSCE participating States have recognised the importance of democratic elections as a foundation of freedom, justice and peace and committed to free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their

⁷¹ Martin-Rozumiłowicz, Beata (2024) “EU Election Observation: Future Challenges and Possible Methodological Responses”, at Ken Godfrey (ed) et al. [The Future of European Electoral Support](#). European Democracy Hub, page 11.

⁷² UN Working Group on Enforced or Involuntary Disappearances, [Report on Enforced disappearances and elections](#), para 59.

⁷³ UN, UDHR, Article 21.

⁷⁴ UN, ICCPR, Article 25.

⁷⁵ Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, available as [CDL-AD\(2005\)036](#).

⁷⁶ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, II.3.2.

⁷⁷ OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, commitment num. 8.

⁷⁸ African Union, African Charter on Democracy, Elections and Governance, Articles 19, 12, and 22.

⁷⁹ Southern African Development Community (SADC), Principles and Guidelines Governing Democratic Elections.

⁸⁰ Economic Community of West African States (ECOWAS), Protocol on Democracy and Good Governance.

representatives.⁸¹ Through the 1990 Copenhagen Document, OSCE participating states said they “consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place” and committed to “invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law”.⁸²

68. In the case of the European Union, the European Commission’s Recommendation (EU) 2023/2829 of 12 December 2023 on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament highlights election observation as an ‘efficient way to engage citizens with the electoral process and improve public trust in elections’.⁸³ Furthermore, the Recommendation stresses that impartial and independent election observation fosters the transparency of electoral processes, supports voter engagement and participation, and promotes free, fair, and resilient electoral processes.⁸⁴

69. Even if election observation is not specifically mentioned within the scope of Article 3 of the Additional Protocol to the ECHR, the European Court of Human Rights (ECtHR) has addressed the issue of election observation in at least two cases. In *Davydov and Others v. Russia* the Court referred to the provisions of the Code of Good Practice on Electoral Matters related to the observation of elections, as well as those of the Explanatory Report.⁸⁵ It found that “frequent and widespread absence of observers and voting members from the opposition parties at the crucial stage of ascertaining the election results contributes to the well-foundedness of the [...] allegations of unfairness.”⁸⁶ In *Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia*, the Court noted that “[t]he right of access to election-related documents enjoyed by the applicant organisation in the context of the parliamentary election therefore constituted a part of a wider public function performed by election observers which pursued the aim of ensuring the publicity of an election and thereby contributing to its proper conduct and outcome.”⁸⁷

70. Under the umbrella of the ECHR, the Committee of Ministers has adopted different recommendations in the field of elections which also provide guidance on the importance of and guarantees for election observation. One example is Recommendation CM/Rec(2022)12 of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns.⁸⁸ The Recommendation enshrines the right of election observers to access and scrutinise archives held by political actors and online platforms⁸⁹ as well as data on campaign spending and donations.⁹⁰ According to these provisions, they should be kept in an open and machine-readable format and be accessible in real time.

71. As the bodies in charge of conducting election observation in the Council of Europe, the Parliamentary Assembly of the Council of Europe and the Congress of Local and Regional

⁸¹ OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, paras 3 and 5.1.

⁸² OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, para. 8.

⁸³ European Union, European Commission Recommendation (EU) 2023/2829 of 12 December 2023 on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament, recital 27.

⁸⁴ European Union, European Commission Recommendation (EU) 2023/2829 of 12 December 2023 on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament, recital 27.

⁸⁵ ECtHR, *Davydov and Others v. Russia*, 30.05.2017, no. 75947/11, paras 196 and 283-284.

⁸⁶ ECtHR, *Davydov and Others v. Russia*, 30.05.2017, no. 75947/11, para. 303.

⁸⁷ ECtHR, *Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia*, 14.04.2009, no. 11721/04, para 28.

⁸⁸ Committee of Ministers of the Council of Europe, [Recommendation CM/Rec\(2022\)12](#) on electoral communication and media coverage of election campaigns.

⁸⁹ Committee of Ministers of the Council of Europe, [Recommendation CM/Rec\(2022\)12](#) on electoral communication and media coverage of election campaigns, para. 2.4.

⁹⁰ Committee of Ministers of the Council of Europe, [Recommendation CM/Rec\(2022\)12](#) on electoral communication and media coverage of election campaigns, para. 3.4.

Authorities (Congress) have also adopted relevant documents.⁹¹ For example, the Parliamentary Assembly adopted Resolution 1897 (2012) on Ensuring greater democracy in elections, which calls for authorising the presence of national observers, including from civil society, in all member States, as well as for facilitating the presence of international observers.⁹²

72. The Venice Commission's reference document for the conduct of democratic elections, the Code of Good Practice in Electoral Matters, identifies election observation as a procedural guarantee.⁹³ The provisions in the Code were later complemented with a Report and Guidelines on an internationally recognised status of election observers.⁹⁴ The Report identifies existing international texts and standards related to the rights and duties of the election observers. It also focuses on the provisions in domestic electoral legislations regarding these rights and duties. In turn, the Guidelines provide a list of rights and duties of election observers and identify areas of assessment.

73. The first Report on electoral law and electoral administration in Europe also stressed the role played by electoral observation in ensuring transparency in elections, focusing on the approval and accreditation of observers by electoral commissions as well as on areas of assessment.⁹⁵ The Report on the timeline and inventory of political criteria for assessing an election noted that "State practice also demonstrates growing acceptance of the right of citizens to participate in public affairs and to seek and receive information about the election process through the activities of domestic non-partisan observers, as well as international observers."⁹⁶ At the same time, it concluded that "State's unwillingness to invite international election observers is a criterion in itself and should give rise to serious concerns."⁹⁷ The updated Report on electoral law and electoral administration in Europe focuses on the approval and accreditation of observers by electoral administration bodies, on issues with government-friendly observers, as well as on areas of assessment, including challenges related to the introduction of new technologies and the growing impact of digital media.⁹⁸

74. According to the Code, "[b]oth national and international observers should be given the widest possible opportunity to participate in an election exercise."⁹⁹ Furthermore, "[o]bservation [...] must include the registration period of candidates and, if necessary, of electors, as well as the electoral campaign. It must make it possible to determine whether irregularities occurred before, during or after the elections. It must always be possible during vote counting."¹⁰⁰ The Code also highlights that the law should specify the places where observers are not entitled to be present¹⁰¹ and that observation "should cover respect by the authorities of their duty of neutrality."¹⁰²

75. The Guidelines on an internationally recognised status of election observers provide a list of rights and duties for observers.¹⁰³ This can be a starting point for the development of national

⁹¹ A list of key texts adopted by the PACE in the field of elections for the period 2003-2022 can be found online. Available at: <https://assembly.coe.int/LifeRay/APCE/pdf/Elections/FundamentalTexts-EN.pdf>.

⁹² Parliamentary Assembly of the Council of Europe, [Resolution 1897 \(2012\)](#), Ensuring greater democracy in elections, para 8.2.3. See also the Report to the Resolution, paras 126-133 and 176.

⁹³ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, guideline II.3.2.

⁹⁴ Venice Commission, [CDL-AD\(2009\)020rev](#), Report on an internationally recognised status of election observers and Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers.

⁹⁵ Venice Commission, [CDL-AD\(2006\)018](#), Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic, paras 122-127.

⁹⁶ Venice Commission, [CDL-AD\(2010\)037](#), Report on the timeline and inventory of political criteria for assessing an election, para. 38.

⁹⁷ Venice Commission, [CDL-AD\(2010\)037](#), Report on the timeline and inventory of political criteria for assessing an election, para. 50.

⁹⁸ Venice Commission, [CDL-AD\(2020\)023](#), Report on electoral law and electoral administration in Europe - Synthesis study on recurrent challenges and problematic issues, paras 188-191.

⁹⁹ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, guideline II.3.2.a.

¹⁰⁰ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, guideline II.3.2.b.

¹⁰¹ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, guideline II.3.2.c.

¹⁰² Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, guideline II.3.2.d.

¹⁰³ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers.

regulations, including national legislative frameworks, that are conducive to protect and secure the work of election observers.

76. It is essential to emphasise that election observers fulfil a public function, with their rights and responsibilities deriving from this role rather than being attributed to them as individuals.¹⁰⁴ Likewise, election observation entails a series of duties and obligations. The status of election observer implies a strict respect for the legal framework of the country holding the elections, and the principle of impartiality and non-interference.¹⁰⁵ In this regard, election observers must adhere to the national laws and regulations of the country in which they operate.¹⁰⁶ They should avoid obstructing or interfering with any aspect of the electoral process and must remain politically impartial.¹⁰⁷ International election observers must not display personal bias or preferences on politically or electorally significant issues, refrain from engaging in any political or partisan activities, and ensure they have no conflicts of interest.¹⁰⁸ At all times, election observers must uphold the principle of strict impartiality and avoid expressing support for any participant or party.

2. The added value of qualifying election observers as human rights defenders

77. The UN Declaration on human rights defenders provides for the support and protection of human rights defenders in the context of their work, and it outlines some specific duties of States and the responsibilities of everyone with regard to defending human rights.¹⁰⁹ As a resolution by the General Assembly, the Declaration is not legally binding. Nevertheless, the adoption of the Declaration by the General Assembly by consensus represents a strong commitment by States to its implementation. Moreover, in some parts, the Declaration comprises and highlights rights enshrined in legally binding treaties.

78. In their Declaration, the Committee of Ministers deplored and condemned the attacks on and violations of the rights of human rights defenders and called member states to create an environment conducive to their work.¹¹⁰ The Declaration calls on member states to protect create an environment conducive to the work of human rights and defenders and, in so doing, identifies a series of rights that human rights defenders possess.¹¹¹

79. Based on these instruments, human rights defenders enjoy the following rights:

- To seek the protection and realization of human rights at the national and international levels;¹¹²
- To conduct human rights work individually and in association with others;¹¹³

¹⁰⁴ Regarding the nature of election observation as a public function, see the above-mentioned case at the ECtHR, *Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia*, 14.04.2009, no. 11721/04, para 28.

¹⁰⁵ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para. 2.8.

¹⁰⁶ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para. 2.2.

¹⁰⁷ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para. 2.3

¹⁰⁸ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para 2.4.

¹⁰⁹ UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#).

¹¹⁰ Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#), preamble, paras 1 and 2.

¹¹¹ Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#).

¹¹² Article 1 of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#) and para 2.i) of the Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#).

¹¹³ Article 2.1 of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#) and para 2.i) of the Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#).

- To form associations and non-governmental organizations;¹¹⁴
- To meet or assemble peacefully;¹¹⁵
- To seek, obtain, receive and hold information relating to human rights;¹¹⁶
- To benefit from an effective remedy;¹¹⁷
- To develop and discuss new human rights ideas and principles and to advocate their acceptance;¹¹⁸
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights;¹¹⁹
- To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;¹²⁰
- To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;¹²¹
- To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;¹²²
- To unhindered access to and communication with non-governmental and intergovernmental organizations;¹²³
- To the lawful exercise of the occupation or profession of human rights defender;¹²⁴
- To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights;¹²⁵
- To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).¹²⁶

80. States also have several key responsibilities to uphold human rights. They must protect, promote, and implement all human rights, ensuring that individuals within their jurisdiction can fully enjoy their social, economic, political, and other freedoms. To achieve this, States should adopt necessary legislative and administrative measures and provide effective remedies for

¹¹⁴ Article 5.b of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#) and para 2.vi) of the Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#).

¹¹⁵ Article 5.a of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#) and para 2.vi) of the Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#).

¹¹⁶ Article 6.a of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#) and para 2.vi) of the Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#).

¹¹⁷ Article 9.1 of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#) and para 2.iii) of the Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#).

¹¹⁸ Article 7 of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

¹¹⁹ Article 8.2 of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

¹²⁰ Article 9.2 of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

¹²¹ Article 9.3.c of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

¹²² Article 9.3.b of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

¹²³ Article 5.c of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

¹²⁴ Article 11 of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

¹²⁵ Article 12.3 of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

¹²⁶ Article 13 of the UN General Assembly, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

victims of rights violations. Additionally, they are tasked with conducting prompt, impartial investigations into alleged violations and safeguarding individuals from violence, discrimination, or retaliation for exercising their rights. States also play a role in fostering public understanding of human rights, supporting the establishment of independent national human rights institutions, and promoting human rights education at all levels of formal and professional training.

81. There are additional instruments other than the legal standards and obligations that protect the work of human rights defenders. In the case of the Council of Europe, for example, these include the procedures and the activities of the Parliamentary Assembly,¹²⁷ those of the Commissioner for Human Rights,¹²⁸ or the procedure for investigating alleged reprisals against human rights defenders at the Secretary General's Private Office.¹²⁹

82. As explained above, election observers can be considered a specialised category of human rights defenders due to their tasks and objectives. They carry out their work with the aim of defending and promoting human rights in connection with elections. The Venice Commission is of the view that the rights granted to human rights defenders under these instruments can indeed provide important support for this objective.

83. The right to seek, obtain, receive, and hold information, which in the case of election observation must relate to the entire election process, is of particular importance for the work of election observers.¹³⁰ The right to attend public hearings, proceedings, and trials in order to assess their compliance with national law and international human rights obligations can also be particularly relevant in connection with election observation. In concrete terms, this means that election observers must be granted unhindered access to the public parts of the election process.

84. Notwithstanding the foregoing, the qualification of election observers as human rights defenders should not be to the detriment of their special status, duties, and obligations. In contrast to human rights defenders, election observers commit to remain neutral and objective, and to uphold the principle of non-interference. This well-established status of election observation should not be thwarted by reference to their qualification as human rights defenders. Therefore, those rights of which human rights defenders, as such, enjoy should also be recognised to election observers to the extent that they are compatible with the specific

¹²⁷ For example, the PACE's General rapporteur on the situation of human rights defenders is mandated to intervene in matters relating to cases of intimidation of, and reprisals against, human rights defenders as well as of serious impediments to their work in Council of Europe member States and other European States. They shall report periodically, at least annually, to PACE Committee on Legal Affairs and Human Rights on information collected and any action taken. See the latest [information note](#) (18 October 2023) on "The Situation of human rights defenders and whistleblowers in Europe" by General Rapporteur Emanuelis Zingeris (Lithuania, EPP/CD).

¹²⁸ The [Report](#) on the 2022 round-table on "Human Rights Defenders in the Council of Europe area in times of crisis" states that (paras 2 and 3):

"Throughout the years, the institution of the Commissioner has bolstered its action to support and protect human rights defenders in the Council of Europe area by using the full spectrum of the tools provided by its mandate. This includes regular meetings with them, reporting on their situation, acting on the information they provide and cooperating with other stakeholders. The Commissioner and her predecessors have, on numerous occasions, intervened with the competent authorities of member states in urgent situations when the safety or the working environment of human rights defenders has been seriously compromised. The Commissioner has also intervened as a third party before the European Court of Human Rights in cases where actions or omissions of respondent states violate the rights and liberties of human rights defenders and civil society organisations. Furthermore, following the amendments to the Rules for the supervision of the execution of the Court's judgments that were introduced in 2017, the Commissioner can address "Rule 9" communications to the Committee of Ministers in cases related to the situation of human rights defenders. The Commissioner and her Office maintain regular contact and exchanges with a wide range of human rights defenders, considering them natural partners of the Council of Europe, including in the form of round-tables. This enables the Commissioner to remain alert concerning various trends that may affect them and to better target her efforts to promote their safety and an enabling environment for their activities."

¹²⁹ The procedure, published in December 2018 and revised in 2019, seeks to determine the accuracy of an allegation and define follow-up action, considering whether a reprisal, or risk of reprisal, meets a minimum level of severity. More details can be found online at: <https://www.coe.int/en/web/secretary-general/procedure-human-rights-defenders>.

¹³⁰ See the above-mentioned cases: ECtHR, *Davydov and Others v. Russia*, 30.05.2017, no. 75947/11, para. 303, and ECtHR, *Geragun Khorhurd Patgamavorakan Akumb v. Armenia*, 14.04.2009, no. 11721/04, para 28.

rights and duties - *in primis* the duty of impartiality and neutrality - which are inherent in the status of election observers and set out in their specific mandate. The status of election observers is *lex specialis* to the status of human rights defenders.

85. The status of human rights defenders thus provides additional guarantees to election observers, provided that they do not contradict or jeopardise their public function.

C. Guidelines for national regulations: acknowledging and ensuring that the relevant protections are secured for and applied to election observers

86. Taking into account the above-mentioned complementary protection provided to election observers, which stems from international electoral standards and those on human rights defenders, states should adopt the necessary provisions in national legislation to provide sufficient possibilities to observe elections. However, and because election observers must strictly respect the principle of impartiality and non-interference in their work, not all the rights that human rights observers enjoy may be recognised to them. Distinctions in the rights that are recognised to, respectively, international observers and to domestic non-partisan observers are also justified.

87. Since the question from the OAS pertains solely to non-partisan citizen observers and international observers, the scope of the response is limited accordingly. However, this should in no way be interpreted as implying that partisan citizen observers are not equally entitled to these rights.

88. In the case of international election observers, the invitation extended by the host state to the international election observers and the memorandum of understanding (if available) regularly result in a number of specific rights and obligations. These ensure that the work of the election observers can be carried out effectively. It is therefore important that any improvements international election observers may benefit from, as human rights defenders, is also found in the system of agreements between the host state and the international election observer organisation. If such memorandum of understanding is missing, the same guidelines should apply to both national nonpartisan and international observers. Due consideration must also be given to additional protections under general international law. As foreigners, international election observers enjoy the general consular protections under the Vienna Convention on Consular Relations, namely the right to consular access as well as information on this right.¹³¹ As experts on mission, they may enjoy additional privileges and immunities under international law.¹³²

89. At least the following issues should be addressed in the legislation:

1. The rights and freedoms of election observers

a. Rights proper to electoral processes

90. Because election observers are human rights defenders, they have, first and foremost, the right to protect and realise human rights, at the national and international levels. Therefore, all

¹³¹ Article 36 of the Vienna Convention on Consular Relations (VCCR). On this article, see also International Court of Justice (ICJ), *LaGrand (Germany v. US)*, 27 June 2001, para. 74 et passim; ICJ, *Avena and Other Mexican Nationals (Mexico v. US)*, of 31 March 2004, para. 63 et passim; ICJ, *Jadhav (India v. Pakistan)*, 17 Jul. 2019, para. 89 (no exception for alleged espionage), paras 106-110 (consular information), and para. 119 (access).

¹³² See, generally, Convention on Special Missions of 8 December 1969, UNTS 1400, p. 231 (for observers sent by States); for officials sent by the Council of Europe, see General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949, ETS No. 2, Art. 18, 20. For experts on mission sent by the UN, see ICJ, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion of 29 April 1999, paras 38-43 on Art. VI Sections 22-23 of the Convention of the Privileges and Immunities of the United Nations; ICJ, *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, Advisory Opinion, paras 40-52. For other organizations, different protections may apply.

states should foresee in their national legislation the possibility for international and citizen non-partisan observers. By extension, the exercise of the occupation or profession of election observer as human rights defender should also be foreseen in the law. The full scope of rights and responsibilities of observers should also be defined in the law.

91. Accreditations should be delivered to both international and national election observers, based on clear criteria.¹³³ International election observation organisations should be invited to observe elections.¹³⁴ In case of refusal of accreditation, the right to an effective system of appeal should be provided to domestic observers.¹³⁵ Requirements for registration should not be overly formalistic. Formalistic rules may hinder civic organisations or individual observers to act. The wider the opportunity to observe elections, the easier it is for any interested person to act as an observer. A sufficient presence of election observers in all polling stations strongly increases the trust in the electoral processes and helps avoiding any possible violation during the election day. As a high number of observers may hinder the electoral processes in some of the polling stations and a variety of organisations may lead to a highly polarised assessment of the elections, confusing the public, the EMBs have to take care that the NGOs with most numbered observers and especially international organisations like the Council of Europe, the OSCE/ODIHR, the OAS, etc. are not limited in their work. Observers should in no case be refused registration due to a high number of observers. There are some countries which do not require registration of observers at all. This is a possible solution which still may depend on the political culture, but may also lead to confusion and possible overcrowding in polling stations. Each organisation should also be able to decide on the modalities for their observation.¹³⁶

92. The conduct of elections should be transparent, and observation of the whole electoral process at any level made possible, be it national, regional, local, etc.¹³⁷ National legislation should provide as a principle the transparency of electoral procedures. This enables better access to any information related to the electoral processes if this issue is not regulated in more detail. Some sensitive information should be restricted, such as any information protected by the secrecy of the vote.¹³⁸ Likewise, restrictions can be envisaged in case there is a high risk of foreign influence or possible cyberattacks. The legislation should make it as clear as possible how far observers may get information on these matters. Where observers' access to such information is restricted, independent auditing should be foreseen. The conclusions of such audits should be accessible to the observers.

93. Electoral observers should have unimpeded access to all persons concerned with the electoral process.¹³⁹ Election observers have the right to participate in meetings of the election administration. Observers should have the possibility to follow the meetings of EMBs at all levels to assess the independence of these institutions and their activities. If the number of observers eager to participate in the meetings of an EMB make their participation unfeasible in practice, the meetings should be made accessible online. Meetings should be called, and agendas made public, timely. Election observers should also be able to follow complaints and appeals

¹³³ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para. 1.4.

¹³⁴ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para. 1.2.

¹³⁵ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para. 1.4.c.

¹³⁶ In order to ensure effective, credible and professional observation ODIHR should be able to decide on a specific type of election-related activity based on the assessment of the needs, and determine the number of observers necessary to provide for broad, balanced geographic coverage in order to conduct comprehensive and meaningful observation, as well as be able to issue reports about the process.

¹³⁷ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, respectively, paras 1.3, and 1.5.

¹³⁸ See the Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, guideline I.4. See also Venice Commission, [CDL-AD\(2016\)028](#), Interpretative declaration to the Code of Good Practice on Electoral Matters on the publication of lists of voters having participated in elections.

¹³⁹ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, respectively, paras 1.5 and 1.6.

procedures, including by attending court hearings and meeting with different interlocutors (law enforcement, prosecutors, judiciary, etc.).

94. The rules on the role of observers during voting and counting procedures should be clearly set out in the electoral legislation. In addition to the stage of observers' registration, their rights may be undermined specifically during voting procedures and counting. It is crucial to foresee the role of observers on election day. Observer rights' protection includes clear rules on the proceedings in polling stations. A clear and comprehensive legislation can substantially enhance their protection because it avoids possible conflicts between them and either authorities, contestants, or voters. Legislation can foresee where in the polling stations observers may be located, but their rights –mainly watching the process both inside and outside the polling stations as well as the right to request clarifications from the election commissions– should be made explicit.

95. Regulatory frameworks for the observation of elections outside polling stations, such as in houses, in prisons, hospitals, nurseries, and similar institutions should be sufficiently detailed for election observation to be meaningful. It is especially important to regulate the rights of observers to be present in polling stations that are not open to the public. The legislation should provide the conditions in which observers may attend polling premises in prisons, hospitals, and nurseries, while balancing the public interest in limiting the number of observers in these polling stations. Any restrictions to observation should be by law and proportional.¹⁴⁰

b. Fundamental rights and freedoms

96. All election observers should benefit, within their specific mandate and in line with their respective duties and obligations, from the right to freedom of expression, freedom of speech, and freedom to issue public statements and reports, as well as to hold press conferences. This rights also include the right to access to information.

97. Freedom of expression, freedom of speech, and freedom to issue public statements and reports, as well as to hold press conferences.¹⁴¹ Observers must have the right to make conclusions of their observations and analysis public. Media freedom and freedom of speech have to be protected in national legislation for the observation to be meaningful. However, election observers as individuals must avoid any comments in the media and should decline requests for interviews.¹⁴²

98. The right to access to information. To assess possible shortcomings during election campaign, including misuse of administrative resources, partiality in the monitoring of campaign finances by the EMBs, and to assess the overall work of the election administration, observers should have a wide access to any public information and documents (e.g. protocols) of the EMBs, statistical data of civil registers, and party financing reports. These data enable observer organisations to stem valid and reasonable conclusions. Special norms should address the issue when and by how far observers may get access to personal data in the voters' lists.¹⁴³

99. As human rights defenders, national election observers also benefit from the right to freedom of association, the right to report on irregularities, and the right to file complaints and appeals. Ensuring these rights allows them to meaningfully conduct their work.

¹⁴⁰ Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para. 1.5.ii.

¹⁴¹ See also Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para. 1.7.

¹⁴² See also Venice Commission, [CDL-AD\(2009\)059](#), Guidelines on an internationally recognised status of election observers, para. 2.5.

¹⁴³ Venice Commission, [CDL-AD\(2016\)028](#), Interpretative Declaration of the code of good practice in electoral matters on the publication of lists of voters having participated in elections.

100. Freedom of association. Organised national observation missions which have studied the problems arising in the preparation of election processes and are aware of the opinions of the different political parties and NGOs on the matter are better positioned to find out shortcomings in candidate registration, voter registration, campaign inequalities or misuse of administrative resources, or identify instances of election fraud. NGOs dedicated to advancing democracy and human rights should not face limitations on their capacities, including through restrictive laws on foreign funding.¹⁴⁴ If the observers' organisations are not functional, no comprehensive analysis based on the shortcomings of electoral processes can be made.

101. National election observers should have the right to file complaints and appeals, and to an effective remedy. Citizen observers should have the right to report on irregularities they have identified, about official policies and acts relating to human rights, and to file complaints and appeals on restrictions to exercise their monitoring efforts, and to seek effective remedy.¹⁴⁵ As human rights defenders, election observers in Council of Europe's member states should have effective access to the European Court of Human Rights and other human rights protection mechanisms in accordance with applicable procedures.¹⁴⁶

102. These rights may be exercised by election observers throughout all processes related to elections, from voters' registration, party and candidate registration to the functioning of electoral technologies, the voting day, the announcement of the results of elections and the resolution of electoral disputes. In the case of citizen observers, these protections should extend beyond the electoral process itself. International election observation missions should evaluate and report on whether domestic election observers are able to conduct their activities without undue restrictions or interference and should advocate for the right of citizens to conduct domestic election observation.¹⁴⁷

2. The duties of the State and election administrations

103. As mentioned above, under the UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, States undertook several duties.¹⁴⁸ The Committee of the Ministers of the Council of Europe also called member states to observe these duties in their Declaration on Council of Europe action to improve the protection of human rights

¹⁴⁴ See, for example, Venice Commission and OSCE/ODIHR, [CDL-AD\(2014\)046](#), Joint Guidelines on Freedom of Association, and Venice Commission, [CDL-AD\(2019\)002](#), Report on Funding of Associations. Likewise, see Venice Commission and OSCE/ODIHR, [CDL-AD\(2013\)030](#), Joint Interim Opinion on the Draft Law amending the Law on non-commercial organisations and other legislative acts of the Kyrgyz Republic; Venice Commission, [CDL-AD\(2014\)025](#), Russian Federation - Opinion on Federal Law N. 121-FZ on non-commercial organisations ("Law on Foreign Agents"); Venice Commission, [CDL-AD\(2017\)015](#), Hungary - Draft Law On the Transparency of Organisations Receiving Foreign Funds; Venice Commission and OSCE/ODIHR, [CDL-AD\(2023\)016](#), Joint Opinion on the draft law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations; Venice Commission, [CDL-AD\(2024\)020](#), Georgia – Urgent Opinion on the Law on Transparency of Foreign Influence; and Venice Commission, [CDL-AD\(2024\)033](#), Kyrgyzstan - Opinion on Law No. 72 of 2 April 2024 amending the Law "On Non-profit Organisations".

¹⁴⁵ The Venice Commission has identified these rights for domestic observers on several occasions. In Venice Commission, [CDL-AD\(2020\)025](#), Report on election dispute resolution, it noted that 12 countries provide explicitly the possibility for on-partisan election observers to contest a decision of an election commission and nine countries for non-governmental organisations (para. 63). For a specific example, see Venice Commission and OSCE/ODIHR, [CDL-AD\(2022\)036](#), Republic of Moldova - Joint opinion on the draft electoral code, para. 101. The Venice Commission has noted that electoral laws often provide the right for election observers to report possible inaccuracies or irregularities or to make suggestions, either on a record book that is part of the election material, or on the protocol of the election commission. These precious elements are factors among others that can be used in an electoral dispute, whoever has standing (preferably not the observers themselves). See Venice Commission, [CDL-AD\(2020\)025](#), Report on election dispute resolution, para. 65.

¹⁴⁶ See the Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#), para 2.vii).

¹⁴⁷ See Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations, available as [CDL-AD\(2012\)018](#), and Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, available as [CDL-AD\(2005\)036](#).

¹⁴⁸ UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

defenders and promote their activities.¹⁴⁹ These duties should be observed with regard to election observers.

104. Given the increasing challenges faced by election observers, it must be recalled that states have the fundamental duty to protect individuals, including human rights defenders, within their jurisdiction, regardless of whether the violations are committed by State or non-State actors, and whether these observers are domestic or international (and in the latter case, parliamentary or not).¹⁵⁰ This responsibility stems from the State's overarching obligation to safeguard all human rights, as outlined in Article 2 of the International Covenant on Civil and Political Rights. This article mandates States to ensure, without discrimination, that all individuals within their territory and jurisdiction enjoy the rights guaranteed by the Covenant.¹⁵¹ The Committee of Ministers of the Council of Europe has also called on member states to take effective measures to prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings.¹⁵²

105. States should also raise awareness on the importance of election observation. Training opportunities for election observers could also substantively contribute to building their knowledge and capacity on the protection of human rights, particularly when it is embedded in specific training on human rights. States should also ensure protection of election observers from manifestly unfounded or abusive court proceedings, so-called 'Strategic lawsuits against public participation', especially when they provide public statements and reports on elections. States should moreover facilitate the exchange of information and good practices among election observers.

106. Likewise, election management bodies have a duty to act impartially. Notwithstanding the foregoing, some cooperation between election organisers and observers may be envisaged in order for the observation to be efficient. In particular, election management bodies may be entrusted with receiving, considering, and making recommendations for the resolution of complaints by election observers about violations of their rights.¹⁵³ For instance, specific actions to support election observation could entail the organisation of dedicated meetings and consultations between national election networks and observers' groups, joint seminars on the assessment of elections and common initiatives aimed at raising awareness and developing policies on election observation to support the integrity, resilience, and democratic nature of elections.

IV. Conclusion

107. By letter of 4 March 2024, the Secretary General of the OAS requested the opinion of the Venice Commission on three questions related to the work of election observers as human rights defenders. The opinion of the Venice Commission is sought, 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; and third, on the normative elements that states can incorporate into their national

¹⁴⁹ Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#).

¹⁵⁰ United Nations Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekagya, [A/HRC/13/22](#), para. 42

¹⁵¹ United Nations, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekagya, [A/65/223](#), para. 30

¹⁵² Committee of Ministers of the Council of Europe, [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#), para. 2.iv)

¹⁵³ In the [Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities](#), the Committee of Ministers called member states to "consider giving or, where appropriate, strengthening competence and capacity to independent commissions, ombudspersons, or national human rights institutions to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights", para. 2.v).

legislation to ensure appropriate protections for both non-partisan citizen observers and international observers.

108. This Report has found that, in view to the broad concept of human rights defenders, shared by the United Nations and the Council of Europe, as “individuals, groups and associations [...] contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals,” electoral observers can be qualified as human rights defenders.

109. Electoral observers exercise a crucial role as human rights defenders by ensuring the respect for essential rights and freedoms. However, despite their significant contributions, both national and international observers face increasing obstacles in monitoring electoral processes worldwide. The difficulties they encounter include harassment, false accusations, defamation, threats, restrictions on free movement, detention, expulsion, and, in some cases, even physical violence.

110. As human rights defenders, electoral observers safeguard a broad range of fundamental rights. Primarily, they protect core political rights, such as the right to vote and to stand for election. Additionally, they uphold other essential rights and indirectly support broader rights as a secondary effect of their work. Some rights they protect are directly tied to the electoral process, while others, like socioeconomic rights, are protected indirectly. The fundamental rights that electoral observers defend can be classified into three groups or layers: on a first layer, the most direct rights election observers protect are the political rights to vote and to be elected; on a second layer, other fundamental civic and political rights (i.e., freedom of assembly and association; freedom of expression; the right to access to information; freedom of movement; the right to freedom from discrimination); right of access to court and to an effective remedy and, lastly, on a third layer, the rights they have a collateral impact on: from the rights to life, liberty, and security to socioeconomic rights.

111. Because election observers are human rights defenders, they benefit from the protection of two international regimes. On the one hand, there are the international standards that address specifically the protections and guarantees of election observation, which is a well-established public function. On the other hand, they are protected as human rights defenders. Election observers are therefore entitled to seek protection and advance human rights nationally and internationally, with adequate protection under national law, both independently and collaboratively; to the right to freedom of expression, and to access to information. Furthermore, non-partisan citizen observers also have the right to freedom of association and to peaceful assembly; to receive resources, including international funding, to carry out their work; as well as the right to access to effective remedies. However, the recognition of election observers as human rights defenders should under no circumstances result in jeopardising their special status or any specific duties and obligations associated with it.

112. States should include in their national legislative framework protections and guarantees of the rights of both national and international observers. These include, respectively, the accreditation and invitation procedures, protected by an effective system of appeal in the case of domestic observers; unimpeded access to all persons concerned with the electoral process; transparency; clear rules on how they can monitor voting and counting procedures; and a detailed regulatory framework for observation of elections outside polling stations, such as in houses, in prisons, hospitals, nurseries, and similar institutions. In turn, the fundamental rights of election observers should be respected as well, including freedom of expression and the right to access to information. According to the specific mandate of their election observation mission, and in line with their duties and obligations, they also have the freedom to issue public statements and reports, as well as to hold press conferences.