



Office for Democratic Institutions and Human Rights

THE NETHERLANDS

PARLIAMENTARY ELECTIONS

22 November 2006

OSCE/ODIHR Election Assessment Mission Report



Warsaw
12 March 2007

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I. EXECUTIVE SUMMARY

In response to an invitation from the Delegation of the Kingdom of the Netherlands to the Organization for Security and Co-operation in Europe, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) for the 22 November 2006 parliamentary elections in the Netherlands.

The Netherlands has a long tradition of conducting democratic elections, as was demonstrated by these parliamentary elections. This practice was underscored by an overall high level of public confidence. The electoral system of proportional representation encourages political diversity and plurality, offering voters a wide and genuine choice. Turnout was reported at 80.35 percent.

The campaign took place in a competitive atmosphere. Largely unregulated, professional and diverse media provided extensive coverage of a broad range of views, at times with a greater focus on personalities rather than issues. Political party and campaign funding are currently unregulated, and regulation is being contemplated by the government.

The legal framework provides a sound basis for democratic elections. It may, however, be timely to review and consolidate the principal instrument for elections, the Elections Act, inter alia, to embrace in primary legislation voting by electronic machine.

Electronic voting has become the method of balloting for 90 percent or more of the electorate. This method of voting is to be reviewed by a committee, as promised by the government following public doubts that arose in the pre-electoral period concerning the integrity of new voting technologies.

The elections were administered by the election administration in an efficient and professional manner. The electoral authorities have undertaken further efforts to enable voters to exercise their right to vote, including the establishing of additional polling stations in places of easy public access, and provisions for internet voting for voters abroad.

The EAM noted the widespread use of proxy voting, which apparently contributes to some 10 percent of the overall turnout. It may be timely to review this practice.

The Ministry of the Interior and Kingdom Relations has considerable executive authority over the conduct and delivery of elections, including the appointment of the election administration. In seeking further improvement to the system of election administration in the Netherlands, consideration could be given to enhancing the role of the Electoral Council.

II. INTRODUCTION

In response to an invitation from the Delegation of the Kingdom of the Netherlands to the Organization for Security and Co-operation in Europe, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) for the 22 November 2006 elections to the House of Representatives (Tweede Kamer), the Lower House of Parliament (the House).

The EAM was deployed from 13 to 25 November 2006. It was led by Mr. Julian Peel Yates, and consisted of nine election experts from eight OSCE participating States. In addition to experts based in The Hague, the EAM deployed teams to Groningen and Eindhoven, and paid visits to Amsterdam, Rotterdam and Utrecht.

The EAM had an extensive series of meetings with government representatives, election officials, political parties, and representatives of the media and civil society in order to form an overview of the electoral process and of specific legislative and administrative issues. In line with OSCE/ODIHR methodology, the deployment of the OSCE/ODIHR EAM did not encompass systematic or comprehensive observation of election day procedures.

III. BACKGROUND

Since 1814, the Kingdom of Netherlands has been a hereditary constitutional monarchy with a parliamentary system of government. Queen Beatrix has been the Head of State since 30 April 1980. The Kingdom consists of the Netherlands, comprising 12 provinces, and territories in the Caribbean (the Netherlands Antilles and Aruba) which constitute a single realm¹. The total population is some 16 million. The official language is Dutch.

The executive branch of government of the Netherlands is exercised by the Council of Ministers appointed and dismissed by the monarch through a royal decree. The Council of Ministers, headed by the Prime Minister, is required to have majority support in parliament.

The Netherlands has a long tradition of conducting democratic elections, commanding an overall high level of public confidence. The Parliament is bicameral and known as the States General (Staten Generaal). The upper chamber, the Senate (Eerste Kamer or First Chamber), comprises 75 members indirectly elected by 12 provincial assemblies. The lower chamber, the House (Tweede Kamer or Second Chamber), consists of 150 members, directly elected for a four year term through a system of proportional representation in a single nationwide constituency without a threshold, little amended after its introduction in 1917. There were 10 parties in total represented in the House prior to these elections.

¹ The EUROPA World Year Book 2002, Volume II; Europa Publications, Taylor & Francis Group; London and New York, 2002, p.2914.

Significant attempts to reform the electoral system were made during the term of the outgoing House, but failed to achieve majority parliamentary support. The prospective reforms were driven primarily by the smallest party in the governing coalition, Democrats 66 (D66), which sought to exploit its pivotal position to strengthen the link between the electorate and their representatives through the introduction of a mixed proportional and first past the post district system.

The largest party of the coalition, the centre-right Christian Democratic Appeal (CDA), together with its other coalition partner, the liberal People's Party for Freedom and Democracy (VVD), had agreed to consider electoral reform as the condition for D66 support in 2003. The coalition was formed against the background of a perceived gap between political representatives and the general public in the aftermath of the 2002 electoral success of the List Pim Fortuyn.

In June 2006 the Prime Minister, Mr. Jan Peter Balkenende, offered the resignation of his government following the withdrawal of support from the coalition by D66. A new Council of Ministers continued in office in a caretaker capacity pending the dissolution of the House by royal decree in accordance with Article 64 of the Constitution, and the setting of the date of 22 November for elections. The dissolution would otherwise have been due to take place in April 2007 under standing legal provisions, with elections in May.

By incremental steps, in recent years, electronic voting had been introduced in municipalities covering some 98 percent of the electorate. In the run-up to the current elections, before the campaign had begun, the traditional high level of public confidence in the voting process was challenged by a citizens' group 'We do not trust voting computers'.

This group raised concerns about the integrity of the electronic voting machines in use in the overwhelming majority of municipalities in the Netherlands. They demonstrated that it was technically feasible, in certain circumstances, to intercept radiation from the machines in such a manner as to undermine the secrecy of the ballot, and complained of inadequate security protection for the machines, and their vulnerability to manipulation.

The government responded to these concerns with a swift and comprehensive series of proposed actions and security measures to limit the risks indicated. Parliament endorsed the actions, requesting that the government establish an external committee after the elections to make recommendations on possible additional measures for the provincial assembly elections due in March 2007.

IV. LEGISLATIVE FRAMEWORK

A. OVERVIEW

The legal framework governing elections in the Netherlands is multi-layered and complex. The current Charter of the Kingdom of the Netherlands, adopted in 1954, with subsequent amendments, contains fundamental provisions concerning elections to the representative assemblies in the Netherlands, the Netherlands Antilles and

Aruba². These constituent entities of the Kingdom have broad competence and discretion to regulate electoral matters in their respective legislation.

The Constitution of the Netherlands³ enshrines the principles of universal and equal suffrage. The Constitution also contains provision for the proportional electoral system and sets out the criteria for active and passive electoral rights⁴. Pursuant to Article 59 of the Constitution, all specific issues pertaining to the right to vote and to elections in general are regulated by Act of Parliament.

The current Elections Act was adopted in 1989 and was largely revised and amended in 1998 and 2005. It governs elections at all levels in the Netherlands⁵. However, the Elections Act does not cover all aspects of the electoral process. It provides for detailed regulation of voting with paper ballots⁶, leaving beyond its scope other methods of voting (for details please see below ‘Legal Regulation of the Existing Methods of Voting’).

A further primary law governing elections is the Online Voting Experiments Act which entered into force in December 2003. It contains interim rules for experiments conducted with new facilities enabling voters to vote in any polling station of their choice within their municipality of residence, and enabling voters abroad to cast their votes ‘with the help of information and communication technology, in a manner other than by post’⁷. The Act is of an interim nature and will expire on 1 January 2008. It is expected that it will by then be replaced by “permanent” law.

These two laws are supplemented by secondary legislation. Voting with electronic voting machines is regulated by the Elections Decree of 19 October 1989 Establishing New Regulations for Implementing the Elections Act. In addition to electronic voting, the Elections Decree regulates some minor aspects of voting with paper ballots that are not covered by the Elections Act.

The Elections Act and the Elections Decree grant the Ministry of the Interior and Kingdom Relations (‘MoIKR’) broad powers for organizing and conducting elections. Accordingly, subsequent ministerial regulations play an important role in the overall legal framework for elections. These include the Regulation on Conditions for Approval of Voting Machines (1997) and the Circular from the Minister for Government Reform and Kingdom Relations⁸ and the Electoral Council of 22

² Article 46 of the Charter.

³ The current Constitution dates back to 1814. Most recently it was revised and amended in 1983, 1989 and 2002.

⁴ Articles 4, 53, 54, 56 and 57.

⁵ These are: elections to the Lower and Upper Houses of the States General, elections to provincial and municipal councils, and to the European Parliament. Of these, only the elections to the Upper House of the States General are indirect.

⁶ This method of voting is now used to a very limited extent (approximately 2 percent in municipal elections in 2006, and some 10 percent when Amsterdam and some other municipalities returned to paper balloting for the current elections).

⁷ The Act mentions voting by internet and by telephone. However, in the current elections only voting by internet took place.

⁸ There are two ministers in the MoIKR, one of the Interior and Kingdom Relations and the other of Government Reform and Kingdom Relations.

September 2006 to the municipal executives and other authorities, which ensure security of voting machines, as well as requirements for their storage and use.

The MoIKR also establishes, by its ministerial orders, various model forms required for the preparation and conduct of elections⁹. Further relevant legislation relating to elections includes, *inter alia*, the General Administrative Law Act, the Aliens Act 2000, the Public Assemblies Act, the Media Act and the Penal Code.

It is noteworthy that many aspects of the electoral process rest solely on a basis of democratic tradition and an overall high level of public confidence, without formal legal regulation. This includes the founding, activities and funding of political parties, the conduct of the pre-election campaign, as well as campaign financing.

Political party and campaign funding are currently unregulated; regulation is being contemplated by the government and is both appropriate and desirable.

B. ELECTORAL SYSTEM

Members of the House are elected through a proportional list system without a threshold. The Netherlands is divided into 19 electoral districts. This division is purely technical, and all votes cast for candidates in each district are added together in the process of tabulation of results at the national level. Parliamentary seats are allocated, for the entire entity, proportionally to the votes cast for the respective electoral subjects on the basis of the quota¹⁰ method, with subsequent allocation of possible residual seats through the method of d'Hondt. Only those lists that have received at least as many votes as the value of the electoral quota are eligible for allocation of seats.

Furthermore, the electoral system is characterized by a strong majoritarian element, as each voter votes for a particular candidate. It is only through the candidate of choice that a vote is attributed to the respective electoral subject. Thus, voters' choices could prevail over political parties' personnel policies as reflected by the order of the names on the respective candidates' lists.

Once the number of seats allocated to each candidate list has been determined as outlined above, the names of the elected candidates are specified in accordance with the numbers of votes cast for each candidate. This procedure begins from the top of the list and moves down until the party's entitlement to seats is filled. However, a candidate who obtains at least 25 percent of the electoral quotient is declared elected automatically regardless of his or her number on the list. The reordered list remains valid between elections and is used to fill possible vacancies in the House. Any elected candidate who subsequently becomes a member of the Council of Ministers

⁹ Pursuant to the Elections Act, the Ministry establishes by its orders such model forms as those for voter registration requests, registers of names of political groupings, lists of candidates, declaration of support by voters, declaration of candidates' consent to run for elections, proof of registration of deposit payment, official reports by election commissions, voter registration cards, instructions for voters at polling sites, and ballot papers.

¹⁰ The electoral quota is determined as the quotient of the total number of valid votes cast for all lists (please see the Annex) and the number of seats that have to be allocated. For the 22 November elections, the electoral quota was $9,838,683/150 = 65,591 + 33/150$.

must resign his or her seat, to be filled in line with the order of the possibly reordered candidate list of the same party.

A party may have up to 30 names on its list on the ballot, or twice the number of its incumbent representatives in parliament if greater, up to a maximum of 80. The candidate lists of the competing political parties appear on the ballot in sequence according to the size of their party representation in the House prior to the election. The ballot order for parties not represented in parliament is determined by lot.

C. RESTRICTIONS ON SUFFRAGE

For elections to the House, suffrage is granted to all Dutch nationals who have reached the age of 18, with the single reservation below. The Elections Act¹¹ envisages two possibilities for ineligibility. First, if there is a final court decision disqualifying an individual from voting¹² and second, if a person has been recognised as lacking legal capacity.

There is a special restriction on the suffrage applicable to Dutch nationals residing in the Netherlands Antilles or Aruba. They are not entitled to vote in Dutch parliamentary elections unless they have resided in the Netherlands for at least 10 years, or are Dutch public servants, or a spouse, partner or child of a Dutch public servant and form part of the same household as that person.

This restriction is rooted in the Charter of the Kingdom of the Netherlands, according to which ‘the representative assemblies shall be elected by Netherlands nationals who are residents of the respective entities, and it is at the discretion of the relevant entity to decide whether Dutch nationals who are not residents of the respective entity should be granted the right to vote in such elections.

This issue raised some controversy, as a case was brought before the Council of State by a Dutch national residing in Aruba claiming discrimination. The Council of State rejected the complaint. It ruled that Dutch nationals residing in the Netherlands Antilles or Aruba already have the opportunity to influence ‘Kingdom laws’ applicable to them through participation in elections to their entity’s parliament and therefore they could not claim to be deprived of their right to influence legislation. Those voters meeting the special conditions effectively enjoy a dual suffrage.

Although the right to vote may be subject to a residence requirement, it should be applied in an equitable and non-discriminatory manner.

Consideration might be given to seeking a more inclusive approach by reviewing the length of the residency requirement, more closely in line with the principle of universal suffrage, a matter within the discretion of the country¹³ concerned¹⁴.

¹¹ Section B5, para 1.

¹² With regard to the 22 November 2006 elections, there was not a single person disqualified from voting under this provision.

¹³ In the context of a member State of the Council of Europe.

¹⁴ European Commission for Democracy through Law (Council of Europe’s Venice Commission), Opinion no. 190/2002, Code of Good Practice in Electoral Matters, 1.1.c.

D. RIGHT TO STAND FOR ELECTIONS

An unusual feature of the Dutch electoral framework is that whilst the law provides a customary minimum age requirement of 18 years to vote and be entitled to become a member of the States General¹⁵, there is no such restriction on the right to stand for election. There are therefore no legal impediments to preclude a person below 18 from running in the elections. As a result, there have been instances when minors were registered as candidates, who, if elected, remain on a 'reserve list' and assume the right to membership of the assembly on reaching the age of 18.

E. LEGAL REGULATION OF THE EXISTING METHODS OF VOTING

There is a range of voting methods currently in use for voters in the Netherlands. While such diversity may have been introduced to enhance voter participation, it requires regulation by different methods by separate legal instruments of differing nature and status.

Voting is possible either in a polling station relating to one's place of residence, or elsewhere ('remote voting')¹⁶. Both options can be implemented either with a ballot paper and pencil, or electronically by voting machine¹⁷.

The Elections Act provides for the traditional method of paper balloting. Voting by electronic machine, which has incrementally become the majority method of voting, is not regulated in primary legislation¹⁸. The legal basis of such voting is confined to the Elections Decree of 1989, the Regulation on Approval of Voting Machines of 1997 and the Ministerial Circular on Security of Use and Storage of Voting Machines of 2006'. Its regulation at the level of secondary legislation can be explained by the wish to allow flexibility in terms of facilitating amendment to keep abreast of technological advance. The Elections Act regulates voting by post, whilst the Online Voting Experiments Act provides for voting via the internet. The interim nature of the latter recognises the need for trial and cost effectiveness evaluation before any introduction nationwide.

Though the reasons are clear for the existing variable structure of regulation of the different methods of voting, it would appear to be useful to review and consolidate the legal provisions by amendments to primary legislation, whilst still allowing developing technologies to be regulated by secondary legislation.

F. PROXY VOTING

There is a long established tradition of proxy voting in the Netherlands, commanding a high level of public support, based largely on trust rather than legal regulation¹⁹. The Elections Act provides for proxy voting when 'a voter does not expect to be able to

¹⁵ Art 56 of the Constitution.

¹⁶ Voting by post or via the internet is permitted only for Dutch voters residing abroad.

¹⁷ The method is chosen by the municipality concerned, not the voter.

¹⁸ With the exception of minimum requirements in Sect J 33, para 2 of the Elections Act.

¹⁹ Voting 'by authorization' was introduced in the Netherlands in 1928.

vote²⁰, permitting the authorization of another voter to cast a vote on his or her behalf.

A voter may only cast up to two proxy votes, and must vote himself or herself. Military personnel serving abroad usually have to vote by proxy, and proxy voting is the only option for those in prison not on day release. As a mark of serious concern, cases of fraud with proxy voting have been proven in past municipal elections. The EAM was informed by the MoIKR that proxy voting appears customarily to account for between 10 percent and 20 percent of overall turnout in elections.

It would be useful to consider a review of the regulation and practice of proxy voting, in order to further enhance consistency with the principles of the equality and secrecy of the ballot, in line with paragraph 7.4 of the 1990 OSCE Copenhagen Document.

G. CAMPAIGN FUNDING

The Netherlands' legislation is silent on campaign funding, although preparatory work is underway to introduce some legal regulation in this regard. It is also envisaged that there should be an independent body, probably the Electoral Council (see below) to have responsibility for the control of funding of political parties.

In order to ensure transparency of campaign funding, consideration should be given to introducing legal requirements that oblige political parties and independent candidates to disclose the size and sources of campaign funds received.

V. ELECTION ADMINISTRATION

A. OVERVIEW

The framework for elections in the Netherlands provides for several levels of election administration, including the MoIKR, the Electoral Council, the Credentials Committee of the House, 19 principal electoral district committees, the mayor (burgemeester) and municipal executive, municipal electoral councils, and polling station committees. Electoral officials must be ready to administer elections at short notice.

The overall system for managing elections is decentralised, giving local administrations substantial discretion as to how elections are conducted in their municipalities. There is thus considerable diversity, enhanced by voting process experiments permitted by law. Whilst voters acting in sufficient time could arrange to vote in any municipality, 303 of the 458 municipalities in the current elections allowed voters to vote at any polling station within the municipal boundary without prior notice.

The MoIKR oversees the overall conduct of elections at national level. It establishes the regulations for the various voting experiments permitted by law, such as the remote voting programme for domestic voters, and voting via the internet for those

²⁰ Sect L 1 of the Elections Act.

abroad. The MoIKR oversees the setting of standards for all electronic voting machines, their testing, certification and decertification, and the promulgation of the rules and procedures for their use. The MoIKR also has the authority to appoint the electoral committees in the 19 principal electoral districts, in addition to the 458 mayors, the heads of local government administration, each of whom serve a 6 year term and who are ex officio the chairs of their local municipal electoral committees.

It is the responsibility of the municipal executives to administer elections in their jurisdictions, both local and national, to maintain at municipal level computerized voter registers, and to send by mail to every registered voter a voter registration card, which the voter is required to present for polling. The municipal executive decides what method is to be used for polling, and the location of polling stations.

Each of the 19 districts has a Principal Electoral Committee (PEC) consisting of 5 members and 3 alternates who serve a 4 year term. The mayor of the main municipality of the district is chairman of the PEC, and the members are often appointed following recommendation by the mayor or his staff to the MoIKR, which has the power of appointment and dismissal. Beneath the district level are the individual municipalities, whose municipal executives appoint the members of each polling station electoral committee, consisting of a chair and 2 members, together with sufficient alternates. In most cases, it appears that staff are civil servants who work for the municipality and who receive training before each election. Each polling station tends to average some 1200 voters. The OSCE/ODIHR EAM noted some variation in practices among polling station committees in the same municipality²¹.

It could be useful that the PEC and/or the municipalities provide additional training to polling stations personnel to ensure uniformity of action in conformity with guidelines.

The PEC registers candidates' lists for the district, each of which must be supported by a statement of at least 30 voters residing in the district. Supporting signatures are not required from parties represented in parliament. Provisions allow parties elected in the previous parliament, and running with the same list in all districts, to register centrally with the Electoral Council. For the current elections 24 political groups or parties registered candidate lists countrywide. The total number of candidates throughout the country was 683. A party may submit different lists in different districts, so the lists between districts are not necessarily identical. No reports of denial of registration of lists were received by the EAM.

After polling, the municipalities submit details of votes cast to the PEC, which determines the votes for each candidate and the total for each party, and announces the results at 10 a.m. at a public meeting on the second day following polling. An official report is sent the same day to the Electoral Council.

B. ELECTORAL COUNCIL

The Elections Act of 1989 provides for the Electoral Council ('EC'), a central electoral body based in The Hague. The EC is a committee of 7 experienced members

²¹ E.g. in stamping or not stamping used voter cards as 'not useable' (onbruikbaar).

appointed by the government for terms up to 12 years, with representation for major political parties, although there is no legal requirement to this effect. The EC acts as a Central Electoral Commission for elections to the House. The EC acts as an advisory body on elections to the government and parliament, and may provide advice to municipalities, parties and public on electoral reform. The EC meets on average once a month, in meetings that are closed to the public.

The EC has responsibility to determine if political parties seeking to offer candidates have full legal capacity. The EC has the ultimate authority to decide on eligibility, and on occasion has rejected a party name on the grounds of its similarity to another. The EC also numbers candidate lists. Its other principal function regarding elections to the House is to receive the vote protocols from each of the electoral districts, and within 5 days of polling to announce the results. Protocols from each polling station are not made public by the EC. There is no right of appeal against decisions of the EC regarding results, the final validation of which is made by the Credentials Committee of the House.

To promote more transparency and further encourage public interest and involvement in its work, the EC could hold public hearings on reform issues, and permit some form of observation of the process of its deliberations.

The EC budget is approximately 1 million euros, and it has a limited capacity to contracted research. There have been initiatives to task the EC with the responsibility to regulate party funding, and it has been suggested that the EC should have overall authority for certifying and validating voting machines.

In seeking possible further improvement to the system of election administration in the Netherlands, consideration could be given to enhancing the role of the EC, and its utility as a clearing house for best practices, with a view to further enhancing independence, transparency and accountability in the delivery of elections.

C. PARLIAMENTARY COMMITTEE OF CREDENTIALS

The Parliamentary Committee of Credentials (CC) is a committee of 3 parliamentarians appointed by the House which recommends to parliament the certification of those elected to the House and to the European Parliament. The CC has 2 permanent and up to 35 temporary staff, and reviews the protocols from the 19 districts and 10,000 polling stations to check for accuracy and completeness. The CC verifies the qualifications of those elected against constitutional and legal requirements, including age and nationality. It may recommend to parliament a recount, or repeat voting. It can make recommendations to the MoIKR for improvements to voting

VI. ELECTRONIC VOTING

A. OVERVIEW

Electronic voting was first introduced in the Netherlands in the early 1990s. In the current elections two distinct electronic voting technologies were used: direct

recording electronic (DREs) voting machines covering some 90 percent of the electorate, and internet voting for some 20,000 voters abroad who registered to vote by internet.

In both cases, votes are tabulated by computer systems, making it difficult to audit the tabulation. Each system incorporates elements that are understood by a limited number of experts, and a number of these elements are not available for public scrutiny.

B. DIRECT RECORDING ELECTRONIC VOTING MACHINES

DREs are produced by the company *Nedap of Groenlo* and have become the most widely used system in the Netherlands. Some 8290 machines of the model ES3B have been sold or leased to Dutch municipalities. All machines currently in use run on firmware²² certified for use in 2002. In addition, 364 Nedap ESN machines were used, providing audio headphones so that people with impaired sight can vote without assistance.

In order to vote, a voter touches the spot on the surface of the machine labelled for a particular candidate, which is interpreted by the machine as a tentative vote for that candidate. The surface is touch sensitive and covered by a ballot label²³. To confirm the vote, which is displayed on a small screen, the voter pushes a large red button, at which time the vote is ultimately incorporated into the results. At the close of polling, the machine prints out vote totals from a small internal printer, on a long strip of paper which becomes the official record of results for the polling station. From the time ballots are cast until the moment the paper is printed, the ballots only exist in electronic form within the machine. During this time, there is no way in which an observer can verify that the votes inside the machine are not being altered.

The designs of the Nedap machines are proprietary, seen only by Nedap and Brightsight (formerly TNO), a testing laboratory that certifies the systems for the government. The citizens' group 'We do not trust voting computers', based in Amsterdam, demonstrated in early October that despite the lack of public information about the system, it is possible for technically capable individuals to understand enough about it, in order to make it behave fraudulently, altering votes between the time they were cast and the official record is printed.

The government response to this challenge to public confidence was swift and largely appropriate. The weaknesses documented by this Amsterdam group were independently confirmed by the state security service. Safeguards were introduced, notably the substitution of read-only memory (PROM) for erasable memory (EPROM) for the firmware sealing of the hardware compartment, and various procedural measures for the safekeeping of the machines.

²² The term *firmware* refers to control software installed in read-only memory within a computer system. As such, in contrast to other software, it is difficult to alter. The distinction between firmware and software becomes vague when erasable programmable read-only memory (EPROM) or flash memory are used, since they allow alteration.

²³ The term *ballot label* refers to an image of the conventional ballot, with representation of the parties and candidates on the touch-sensitive surface of the DRE screen.

A second DRE system, built by the company SDU, was to be used in the elections, but the government banned its use following testing by the security service.

Both the Nedap and SDU machines were found to be susceptible to “Tempest” problems²⁴, allowing a remote observer with appropriate equipment to determine how voters were voting. For the Nedap machines, a simple measure²⁵ was sufficient to solve the problem. In the case of SDU machines, no similar short-term solution was found. As a result, the use of the machines was banned in 35 municipalities, less than a month before the elections. Some of these municipalities, including Amsterdam, returned to paper ballots, whilst others switched to Nedap machines.

In the context of introducing new voting technologies, the issues of transparency and observability remain a priority. The Nedap and SDU machines are based on proprietary firmware, and voters, election officials and observers cannot examine their operation. There is no possibility for a meaningful recount. Although the firmware in the Nedap machines is inspected by Brightsight, it is not possible to check that the firmware in any particular machine is the authorized firmware. Whilst some municipalities do perform a degree of pre-election testing, such tests are not mandatory, and there is no parallel testing²⁶.

The OSCE/ODIHR EAM found in discussion amongst developers of electronic voting systems in the Netherlands, that there was a general acknowledgement of the technical competence and responsible approach of the citizens’ group ‘We do not trust voting computers’ in their criticisms of electronic voting.

C. INTERNET VOTING

As an experiment and alternative to postal voting for voters abroad, the government opted for these elections to use an internet voting system known as RIES (Rijnland Internet Election System). A total of 19,815 valid ballots were cast in this way. The system was developed for the Rijnland District Water Board elections in 2004.

Voters abroad opting to use RIES must register their request no later than 4 weeks before the elections. They then receive by post an instruction booklet and a sealed authorization code. The booklet directs voters to the RIES website, where the authorization code is used to begin voting up to 4 days before the elections. After voting, each voter is given a “technical vote” so that voters can verify on the web, after the closure of polls, that their votes were counted. This technical vote does not disclose for whom the voter voted, but it can be decoded by the state to reveal the vote. After the polls close, the codebook relating technical votes to candidates’ names is published, along with all the technical votes received. Thus anyone who cares to download these may independently count the votes.

²⁴ Electromagnetic emissions, due to time-varying current flowing in electrical or electronic circuits, propagated outward from the source. If time variations of the source current are related in any way to the information content of the signals, it may be possible to reconstruct the original data by analysis of such unintentional emissions.

²⁵ The elimination of diacritical marks.

²⁶ *Parallel testing* involves testing of random voting machines after they have been configured for an election, to simulate as far as possible the workload typical for a real polling station.

Most of the RIES technology is publicly available. If a voter, however, discloses his authorization code and his technical vote, anyone can determine his/her actual vote by simply trying all the candidate identities until a match is obtained. To prevent this, the RIES booklet suggests that voters destroy their authorization codes after use. The designers of RIES have effectively opted to surrender protection against coercion of a voter in favour of greater transparency. It is important to note that this feature is inherent in many internet voting systems and in most postal voting, where voters can surrender secrecy by simply allowing observation of their actions whilst voting.

The security of RIES also requires that the list of authorization codes be destroyed after they are printed and sealed for posting, but this step conflicts with the legal provision that if a voter's code is lost, he or she can request a replacement. This requires that it be possible to invalidate codes that have been issued, and that spare codes are held in reserve. It would appear to be possible to cancel certain votes or issue additional authorizations to favoured voters. It is difficult to prove either that this sensitive code information has been destroyed, or not improperly copied. The detailed specification for the invalidation mechanism that has been adopted has been deemed security sensitive and classified confidential.

The security of RIES also relies on the safe storage of the codebook until polls close. RIES contains transparency mechanisms to prevent any possible unauthorised changing of the codebook after all the technical votes have been received. It is difficult for an observer to ascertain the theoretical possibility that the custodian has not released the codebook, or borrowed codes to produce possible unauthorised interference.

The EAM found broad consensus amongst both developers and critics of electronic voting that RIES would not be a suitable system for the possible expansion of internet voting to the general population if this is to be considered.

Development of an open source version of RIES, free of proprietary issues and secret components, should be encouraged.

D. FURTHER DEVELOPMENTS

Currently, in the Netherlands, electronic voting is overwhelmingly the preferred method, and it has broad public support based on a high degree of trust in government and the electoral authorities.²⁷ Whilst there have been no suggestions that trust at any level has been abused, the OSCE/ODIHR EAM believes that there is now a timely opportunity to further enhance transparency of implementation of new voting technologies, and public confidence, in an increasingly questioning and sceptical public environment. In particular:

Electronic voting systems should be monitored by an independent entity distinct from the authorities responsible for conducting elections. Such an entity should have broad

²⁷ Thus, *BrightSight* is trusted to certify the correctness of proprietary electronic voting systems, the government is trusted to ensure that no tampering takes place, and RIES custodians of key security information are trusted to hold it properly and to destroy it promptly.

technical expertise, and should be also responsible both for formulating and reviewing voting system standards.

There should be routine testing of voting machines before elections, and randomly selected machines should be subject to testing by an entity other than local election authorities. Mechanisms should be considered to verify that voting machines, as used on election day, are configured with the approved firmware and ballot definition.

In order to enhance public confidence in DRE voting machines, and to provide for meaningful audits and recounts, legislation regulating use of such systems should include provisions for a Voter Verified Paper Audit Trails (VVPAT) or an equivalent verification procedure.²⁸ Software dependent vote recording mechanisms which do not permit an independent check on their operation should be phased out.

Voting system standards should not permit the use of systems which depend for their security on the secrecy of any part of their technical specifications. Reliance on proprietary systems should be reduced, where neither citizens, nor electoral officials, nor observers can determine how they operate.

VII. CAMPAIGN

The election campaign was generally characterized by a tradition of open debate and fair-minded competition amongst candidates. It was widely considered that the campaign environment for these elections was more vibrant than recent previous campaigns. But it also exhibited a trend towards a media driven democratic environment, where politics and entertainment are increasingly intermingled, and traditional forms of campaigning such as rallies and street canvassing are on the decline. There was a notable absence of incidents of personal insults, in keeping with national custom that disapproves of excessively personal attacks on political competitors, both by politicians and the media.

Campaign funding is not regulated. Historically, there has been little interest in the business community in making political donations. The subsidies parties receive from the state budget are modest (15 million Euros per annum based on seats in parliament).

Influenced in large part by the role of the media, the campaign was substantially personality driven, and tended to be dominated by simple slogans. This was accentuated by the nature of most television debates, which included cheering

²⁸ Council of Europe's standards on e-voting require that (1) Art.107: The audit system shall provide the ability to cross-check and verify the correct operation of the e-voting system and the accuracy of the result, to detect voter fraud and to prove that all counted votes are authentic and that all votes have been counted; and (2) Art. 108: The audit system shall provide the ability to verify that an e-election or e-referendum has complied with the applicable legal provisions, the aim being to verify that the results are an accurate representation of the authentic votes. *See also* "Legal, Operational And Technical Standards For E-Voting" Recommendation Rec(2004)11 adopted by the Committee of Ministers of the Council of Europe on 30 September 2004 and explanatory memorandum, available at [www.coe.int/t/e/integrated_projects/democracy/02_activities/02_e-voting/01_recommendation/Rec\(2004\).](http://www.coe.int/t/e/integrated_projects/democracy/02_activities/02_e-voting/01_recommendation/Rec(2004).)

supporters for each debater, and short speaking slots for the candidates. One of the consequences of limited funding available for political parties is that parties have come to depend largely for exposure on general news and entertainment programs.

In terms of substance, the campaign was driven by domestic social and economic issues such as growth, poverty, ageing and social security. The environment, the wars in Iraq and Afghanistan and the future of the EU were largely absent from debate.

Immigration and integration were not principal factors in the current campaign. Generally, politicians tried to avoid these sensitive issues. However, there were statements by the Minister for Integration, and VVD candidate, Rita Verdonk, emphasising difficulties on integration some days before the election.

Additionally, after the Dutch parliament had adopted a resolution to declare the 1915 deportations and murders of Armenians in the Ottoman Empire 'genocide', the CDA and the PvdA urged their candidates of Turkish origin to declare publicly their agreement with this qualification, or lose candidacy. A number of candidates who refused were expelled from both lists.

There are no limits or restrictions on campaigning before or even on election day. Consequently, television debates were conducted until the eve of the election, followed by appearances by politicians on talk-shows until the early hours. Campaign activities continued during election day and the first post-electoral debate among key party leaders on public television took place only hours after the close of the polls.

Previously maintained gentlemen's agreements banning campaigning during election day seem to have eroded, and could be more formally regulated.

VIII. MEDIA

The media in the Netherlands are characterized by a long tradition of free expression and diversity of opinion. There is a strong feeling amongst the public against overregulation of the sector, and a high level of ethical standards and professionalism is found among journalists. Generally, media in the Netherlands is vibrant and pluralistic, and allows the electorate to be duly informed of the political process.

A. REGULATORY FRAMEWORK

The Dutch Media Authority, the Commissariat for the Media (Commissariaat voor de Media), is tasked with a variety of functions specified in the Dutch Media Act.²⁹ The activities of the Commissariat focus on both public service and commercial broadcasters and on cable operators. Founded in 1988, the Commissariat is an independent administrative body situated in Hilversum. Its three commissioners are each appointed by the Queen upon recommendation by the Ministry of Culture. The

²⁹ The Dutch Media Act is available in English at the *Commissariaat's* website: <http://www.cvdm.nl/pages/english.asp?m=a&>

Commissariat includes divisions for Broadcasting Time and Cable Issues; Program Supervision; Legal Affairs; and Financial Supervision.³⁰

A recent report showed that media in the Netherlands are increasingly owned by a smaller number of consortia.³¹ It is, however, often stressed by media interlocutors that this concentration of ownership has little if any influence on editorial independence which has a strong tradition in the Netherlands.

One of the main functions of the Commissariat during elections is the allocation of free airtime to political parties on a fair and equitable basis.³² The Commissariat carries out media monitoring, although not specifically focusing on elections or the campaign. Each party which fields candidates in all 19 electoral districts receives a share of free airtime of 20 minutes on radio and 18³³ minutes on television during the two weeks preceding the election. As primetime slots are significantly more valuable for parties than other slots, they are allocated by lot. This allocation is in addition to the free airtime political parties represented in parliament have throughout the year.

This regulatory framework is limited to transmissions by cable and air, but does not extend to public broadcasters, or for example, via the internet. Commercial advertising is not regulated. Furthermore, the media act states that political messages in regular programs are not to be seen as advertisement.

For journalists, a Press Council (*Raad voor de journalistiek*) provides a self-regulatory ethics board, which hears complaints. The Council is charged with the examination of complaints against violations of good journalistic practice. It used to be a disciplinary council, but now serves as a council of opinion. The Press Council can no longer impose a sentence on a journalist; nor can it assure the complainant of financial compensation. Nevertheless, its opinions are published.³⁴

B. MEDIA LANDSCAPE

The Netherlands has a rather unique landscape of public broadcasting with a total of 23 national public broadcasters and a large variety of regional and local public broadcasters. In addition to the general state broadcasters, *MaxTV* is addressed to senior citizens, *VPRO* to secular liberals, *BNN* to youth, *TROS* to families, *Avro* to Liberals, *KRO* to Catholics, *Vara* to Socialists, *AO* to Protestants, and so on. Jews, Muslims, Hindus and Buddhists also have their own public broadcasters.³⁵ These broadcasters must have a minimum membership of 50,000 to qualify for the status of public broadcasters and receive state subsidies.³⁶ Only the public (state) broadcasters *NOS* and *NPS* do not function according to the model of membership-supported

³⁰ The *Commissariat* has no authority over commercial broadcasters. In particular, RTL, a program watched by many in the Netherlands, does not fall under the Dutch Media Act.

³¹ The report, '*Mediaconcentratie in Beeld: Concentratie en Pluriformiteit van de Nederlandse Media 2005*', November 2006, is available at www.mediamonitor.nl

³² This is regulated in Media Act Art. 39g.

³³ Six time slots, three minutes each.

³⁴ See: www.rvdj.nl

³⁵ Given the fact that Muslim votes are equivalent to at least 8 seats in parliament, the Muslim public broadcaster organized a separate political TV debate focusing on Muslim issues.

³⁶ An overview including ownership and management is provided by the *Commissariaat* on its website.

public broadcasters. Instead, they receive direct subsidies from the state. In 2005, public broadcasting had a television market share of 33.3 per cent, as well as 28.3 per cent of the radio market.

On television, three channels are available to public broadcasters (*Nederland 1, 2 and 3*), while on radio broadcasters have to share five channels. The Board of Directors of each of the three public broadcasting networks appoints a network coordinator, who is in charge of determining the allocation of slots on the channels. One consequence of such pluralism in the media is that campaigning politicians have to cover as many of the various programs as possible. Debates and political talk-shows are offered by a great variety of programs.

The commercial broadcasting media are vibrant and diverse. The Commissariat's website lists 618 television, radio and cable broadcasters.³⁷ A large diversity of media also exists in the print sector.³⁸ Significantly, newspapers distributed free of charge (*'gratis kranten'*) which are mainly available in public places such as train stations, maintain a 15 per cent share of the market. Generally, a trend in Dutch media is the growing cross-media diversification of the key actors in particular towards the internet and other new media, and the sharp competition among providers.

C. MEDIA IN ELECTIONS

Dutch television, radio and print media played the primary role in informing the electorate in the run-up to the elections. A large number of special publications and programs were devoted to the electoral contest, the candidates, and the political parties. Many papers ran detailed overviews of political platforms, and offered in-depth interviews with candidates. A number of newspapers also offered advice and encouragement to first-time voters. Many also made use of the internet for specific election related information.

The media do not ordinarily insert sensitive issues into the campaign by themselves, and politicians in the Netherlands are largely in a position to shape the agenda of public debate. While there is investigative journalism, no major scandals were disclosed by the media during this campaign.

During the electoral campaign, so-called internet "vote matchers" served as web voter choice advisories, and played a significant role. These websites aimed to provide advice for undecided voters to clarify their political preference and make a choice on the basis of simple questionnaires. Processing voters' answers to the questions included in the questionnaires resulted in advice to voters which parties or candidates would best correlate to their views.

These web-based tools were increasingly popular and consulted by voters who were undecided until the very last day. The Dutch Centre for Political Participation

³⁷ However, it should be noted that only a few networks are of national significance. In 2005, *RTL Nederland* held 23.5 per cent of the viewers market, and *SBS Broadcasting* another 17.1 per cent.

³⁸ Three media organizations together controlled almost three quarters of the daily newspaper market. These include the *Telegraaf* Media Group with 34.2 per cent, the *Koninklijke Wegener* with 22.2 per cent and the PCM Holding with 19.5 per cent.

(*Stemwijzer* of the *Instituut voor Publiek en Politiek*, IPP)³⁹ website was originally supported by the MoIKR. The website *Kieskompas*⁴⁰ was supported by the newspaper *Trouw* and the *Vrije Universiteit Amsterdam*. *Stemwijzer* reported that it had been visited, prior to election day, by some 4.8 million users.⁴¹ On election day itself, around 300,000 “vote match” advisories were issued.

Up to 20 such websites exist, and can provide different advice to voters based on the input of similar information. It is difficult to reduce a political platform into some 30 simplified questions which allow for ‘yes/no/don’t-know’ answers. These “vote matchers” have accordingly been labeled ‘infotainment’ by some commentators.

While political parties are not known to participate themselves in preparing the input for these “vote matchers”, a number of them were said to have presented their platforms in such a way as to convert them easily to questions and answers applicable to “vote matcher” formats. Several parties have expressed their discontent with the most popular “vote matchers”, as they felt that they gave an incorrect weighting to certain issues, or misrepresented the position of the parties.

The selection of politicians for participation in debates or talk-shows is left entirely to the various networks and programs. This leaves a large degree of discretion to the editorial boards of the networks, which can align themselves with prevailing poll figures, but can also choose participants and give exposure to politicians who are simply ‘good on television’ from an entertainment perspective. While unease about this has been expressed by several interlocutors, nobody has suggested compromising the editorial independence of the media.

Mainstream media (television and newspapers) made frequent references to opinion poll results and to the emerging phenomenon of “vote matchers”. During the two weeks before the election, an abundance of election related information of varying quality was available to voters, and some interlocutors complained about “over-exposure” to politicians and their electoral slogans.

IX. PARTICIPATION OF WOMEN

Since 1992, government in the Netherlands has launched a series of policy initiatives with qualified success to enhance the representation of women in politics. The first initiative of 1992 entitled ‘Women in politics and public service’ was followed by another one, in 1996 under the same title, which set a target of raising the percentage of female politicians in all decision making bodies by five percent in successive elections. The target was confirmed in 2000 in a policy document of the Ministry of Social Affairs ‘Emancipation Policy’ N 30420, setting goals for 2010, equal representation of men and women in assemblies at all levels. There were, however, no sanctions for parties when quotas were not met.

³⁹ www.stemwijzer.nl

⁴⁰ www.kieskompas.nl

⁴¹ In 2003, some 2.2 million users were registered.

The OSCE/ODIHR EAM was informed that reports from the parties put women's proportion of membership in the region of 30 to 40 percent or more. The percentage of representation of women on the lists of the major parties for the current elections to the House varied substantially.⁴²

In the composition of the outgoing House there were 58 women (38.6 percent). The proportion fell slightly to 55 (37 percent) in the results for the current elections⁴³. This indicated that women were generally placed on lists with realistic chances of being elected. Participation by women in politics from ethnic minorities, however, amongst the larger parties is below the national average.⁴⁴

If the stated goals of equality of representation are to be met, priority could be given to seeking ways to substantially increase political participation by women from national and ethnic minorities.

X. NATIONAL MINORITIES

The Frisian minority in the Netherlands inhabits the northern Friesland (*Fryslân*) province, where a majority of the population of some 630,000 considers itself Frisian. Linguistically, the Frisians are closely related to the majority population of the Netherlands, and the two languages, while distinct, are mutually understandable. In the provincial assembly of Friesland, Frisian can be spoken and is recorded. Regional media provide information in Frisian, which is also taught in schools.⁴⁵ The rights of the Frisian minority have been extended following the ratification⁴⁶ by the Netherlands of the Council of Europe's 1992 Charter for Regional or Minority Languages and have been laid out in an agreement between the Netherlands' government and the province of Friesland, as well as regular legislative acts.⁴⁷ The Frisian language is the only minority language enjoying such status.

There are no specific provisions to guarantee the political participation of Frisians in national or regional governments⁴⁸. In regional and local elections, the Friesland National Party (*Fryske Nasjonale Partij*), which strives for more autonomy for the

⁴² CDA had 37 percent female candidates, PvdA 49 percent, SP 34 percent, VVD 33 percent, GroenLinks 43 percent, Christian Union 35 percent and D66 28 percent. Of these only GroenLinks is led by a woman. PvdA ensured equality by placing a woman in every other slot on its list. Some parties did not include women candidates, in the case of one party with a strongly protestant ethos, on theological grounds.

⁴³ Percentages of women representatives elected from the leading parties were: CDA 30 percent, PvdA 49 percent, SP 36 percent, VVD 37 percent, GroenLinks 58 percent, Christian Union 34 percent, and D66 34 percent.

⁴⁴ Data provided by E-quality, an information centre for gender issues funded by the Ministry of Social Affairs, showed that CDA had 1.4 percent minority women candidates, PvdA 9 percent, SP 4 percent, VVD 4 percent, GroenLinks 13 percent, and D66 12.5 percent.

⁴⁵ According to 2001 figures of the provincial administration, over 90 percent of the province's inhabitants understand Frisian, almost three quarters are able to speak the language, 65 percent can read Frisian, but only 17 percent are able to write in Frisian. Source: Theo Brinkel, *The status of indigenous and minority people in the Netherlands*, Tilburg University. In 1996.

⁴⁶ For a more detailed overview, see *Frisian – The Frisian language in education in the Netherlands*, 3rd ed., Mercator Education, Leuwarden, 2001.

⁴⁷ See Brinkel, above.

region, currently holds 7 of 55 seats in the regional assembly. In the elections to the House, the Frisian National Party did not field candidates.⁴⁹ However, most political groups in Friesland support the protection of Frisian language and culture. For these elections, 18 parties competed in Friesland. Many parties included candidates of Frisian origin, and at present, some 6 members of the House and one member of the Senate belong to the Frisian minority.

In addition, a considerable number of the Dutch population have an immigrant background, and are thus distinguished from the *autochthonous* population of the Netherlands. These immigrants as well as their descendants, and people originating from the non-European parts of the Kingdom of the Netherlands (who are, formally speaking, not immigrants), form ethnic minority communities, and are often referred to as *allochtonen*.⁵⁰ Together, they constitute a section of Dutch society numbering about one and a half million.⁵¹

Geographically, the *allochtonen* live across the Netherlands, but reside in higher concentrations in the so-called *randstad*.⁵² A large number of the *allochtonen* possess Dutch citizenship, and many including former guest workers and their offspring, have been in the Netherlands for decades. Therefore, political participation both in the form of voting as well as through representation in municipal and regional bodies is common, and constitutes a visible sign of largely successful integration of such communities in wider society.

It is estimated that *allochtonen* or ethnic minority voters total more than a million.⁵³ The Government, in cooperation with the national association of minority organizations, sponsored a special get-out-the-vote campaign for immigrants.⁵⁴ However, voter turnout among those with an *allochtonen* background is lower than the national average, and turnout significantly differs among the various national groups. Politically, the *allochtonen* electorate does not form one electoral block, and it would appear that most *allochtonen* voters do not vote specifically for *allochtonen* candidates.⁵⁵ For the first time in national elections, a list with a particular *allochtonen* character participated as blank list 21.⁵⁶ That list competed in 8 of the 19 districts and received 5,000 votes, which was not sufficient for a seat.

⁴⁹ For national parliament elections, the Province of Friesland forms one of the 19 electoral districts.

⁵⁰ Statistics Netherlands (www.cbs.nl) uses the term *allochtoon* for a 'person with at least one parent born abroad, who lives in the Netherlands and is registered with a municipality'. Mostly, however, this term refers to non-Western *allochtonen* people originating from Africa, Latin America, Asia (except Indonesia and Japan) or Turkey.

⁵¹ The largest groups originate from Turkey (some 300,000), Morocco (some 250,000) and the Dutch Antilles as well as Surinam (some 300,000).

⁵² The larger cities in the west of the Netherlands.

⁵³ The Instituut voor Publiek and Politiek gives a figure of 1,120,000 non-western *allochtonen* voters (report of 30 November 2006). Two thirds of people of Turkish origin are estimated to possess Dutch citizenship. 98 percent of those are said to also have Turkish citizenship. Source: *Inspraakorgan Turken*.

⁵⁴ See also: www.minderheden.org

⁵⁵ *Allochtonen* elected candidates received a total of 274,351 preferential votes, while an estimate of 780,000 votes were cast by *allochtonen*. Source: IPP, 30 November.

⁵⁶ "*Islamdemokraten*", the group's name had been rejected by the EC, but it nevertheless campaigned under this name.

XI. CIVIL SOCIETY AND YOUTH PARTICIPATION

The Netherlands has a highly developed non governmental and civil societal sector. Although any voter can be an observer, presumably due to the overall high level of confidence, there is no organized NGO effort to observe elections. The law allows voters to observe voting, but rarely do individuals exercise such rights.

As noted above, the citizen's group 'We do not trust voting computers', in conjunction with the media, had a substantial impact on the pre-election environment, raising concerns about the security and integrity of electronic voting machines. The group informed the OSCE/ODIHR EAM that they would continue their campaign after the elections until their concerns were duly addressed.

A significant NGO focusing on youth involvement in politics, *Coolpolitics*, aimed to enhance civic participation of young people and their engagement in public life. This NGO ran a 'get out the vote campaign' aimed at the audience of 'The Box' television channel, and organized a debate focusing on issues of concern to young voters on MTV. The NGO estimated young voter turnout to be some 60 percent.

XII. POLLING

In line with standard OSCE/ODIHR practice, the EAM did not observe election day proceedings in a systematic or comprehensive manner. Nonetheless, the EAM visited a variety of polling stations in the areas of its deployment, in The Hague, Amsterdam, Rotterdam, Eindhoven and Groningen.

Separate procedures apply for domestic voters and those abroad. Domestic voters are required to present their voter cards⁵⁷ to vote in a polling station whether by paper ballot or electronic machine. Voters abroad are registered at the municipality of The Hague, and vote by post or internet according to their choices made at registration.

Polling took place in approximately 10,000 polling stations, from 7.30 a.m. to 9 p.m., and appeared well organized and well conducted in those polling stations visited. Voters are permitted to cast their ballot at any polling station within their municipality, which could have potentially been a challenge to predict how many voters may choose to vote at a particular polling station. However, there was flexibility built into the preparations by municipal authorities, to provide reserve ballot papers, voting machines and staff, and the system appeared to work effectively. Polling stations set up in railway stations or large shopping areas seemed a popular extension of the opportunity to vote. Polling hours in the latter were adjusted to match business hours.

Authorization of proxy voting is simple where both voter and proxy are registered at the same polling station or municipality if the latter permits. Both need to sign the back of the proxy's registration card. In other circumstances, authorization of a proxy vote is handled by the municipality upon written request. Voter cards of proxies are collected separately by polling station committees. Figures for proxy votes are entered

⁵⁷ Voter cards are issued by municipalities based on civil registers data.

in the polling station protocols, but not released afterwards by municipalities. According to the MoIKR, the proxy votes cast in previous elections have amounted to some 10-20 percent.

Transparency could be further enhanced through publication of the data related to proxy voting, as part of a possible review of relevant provisions.

In 34 out of 458 municipalities the vote was carried out by paper ballot. The remaining municipalities used electronic voting machines, one per polling station. The capacity of the memory cartridges in the machines is approximately 2,000 votes. The organization of polling allows more than 2,000 votes to be cast without problems.

Although any voter can be an observer, the OSCE/ODIHR EAM did not witness any domestic observation.

Turnout in the Netherlands was reported at 80.35 percent, varying by municipalities from 70.87 percent to 94.32 percent, including the contribution of proxy voting.

XIII. COUNTING AND TABULATION

Counting in polling stations with electronic voting machines takes place on-line. The totals are printed after the closure of polls and the print-out is then attached to the protocol. The print-out shows the number of votes obtained by each list, the votes cast for each candidate and the number of blank votes. The protocol also contains statistical data such as the numbers of voter cards and proxies. The total number of cards collected should equal the total number of votes recorded by the machine. The chairman of the polling station committee takes the protocol together with the remaining voting material to the municipal electoral committee. The memory cartridges are delivered to the municipality either by the committee chairman or are collected by municipal employees.

In the municipal headquarters the memory cartridges are read by a computer, and an automatic tabulation is done. If the cartridge is unreadable, results for the paper print-out are manually entered into the computer.⁵⁸ Additionally, tabulated results are checked in the respective municipality against the print-outs after election day.

The counting and tabulation in polling stations using paper ballots are conducted under similar rules, but take substantially longer. Polling station committees initially sort the votes cast by candidate list, and count the votes for each list. Invalid and blank ballots are counted separately. The ballots for a given list are subdivided by candidates' preferential votes and counted, and the totals entered in the protocol.

The aggregation of results in the PECs of the electoral districts is carried out on the second morning after the election, and the results passed to the EC. Three days later the EC establishes the election results for the entity based on the protocols from the PECs, and translates the votes into seats. All stages of the allocation process are well

⁵⁸ There were two such instances in Groningen.

documented, and posted on the internet. All meetings of the election administration bodies involved in the aggregation of results are public. The results by polling stations are announced only at municipal level.

In order to further enhance transparency, it could be useful to publish all election results by polling station in electronic form, including invalid votes, votes cast for each candidate, votes cast for no candidate and the number of proxy votes.

On election night, each municipality reports its unofficial totals to the Netherlands News Agency (ANP), which in turn makes them public and produces an unofficial distribution of seats in parliament. In these elections, there was a subsequent adjustment between the unofficial and subsequent official results, with the PvdA gaining one seat and the SP losing one, due to revised data for the municipalities of Eindhoven, Obdam and Sevenum, and the final results of voting abroad.⁵⁹

XIV. COMPLAINTS AND APPEALS

There is a strong tradition in Dutch legal culture of handling complaints informally. A so-called ‘notice of objection’ procedure implies internal review by the administration. In the electoral context, such a procedure is applicable in polling stations on election day, when voters may lodge a note of objection with the polling station committee.

The only official venue for seeking legal redress is the Administrative Jurisdiction Division of the Council of State, where complaints on a limited number of issues may be filed⁶⁰. The Council of State considers complaints as a first instance court, and its decisions are final. The cases are adjudicated by a panel of three judges, in expedited proceedings in a public hearing.

In these elections, the Council of State received 18 complaints, mostly on registration of names of political groups (11 cases) and validation of candidate lists (six cases). One case concerned the restriction of the suffrage of a Dutch national residing in Aruba.⁶¹ Most complaints were rejected as groundless. In five cases the complaints were dismissed as inadmissible because of the applicant’s failure to pay the court fee.

Certain electoral issues are explicitly excluded from the complaints’ process. According to the General Administrative Law Act, no complaints may be filed against orders ‘concerning the numbering of lists of candidates, the validity of electoral pacts,

⁵⁹ Human error explains the changes in two of the municipalities. The Sevenum results were entered as zeros in ANP, whilst only the results from one polling station in Obdam were transmitted to ANP instead of those from the whole municipality. The reason reported for the Eindhoven error was that municipal employees made a mistake by counting the results of one specific polling station twice, and omitting the data from another polling station. While the Eindhoven case indicates that the system of checking tabulated results against print-outs is working, it also indicates a flaw in the aggregation phase, because either the software did not warn of an improper entry, or its warning was too easily ignored.

⁶⁰ On voter registration, registration of a name for a political group, and validation of candidate lists.

⁶¹ Described in the Legal Framework section.

the conduct of voting, the counting of votes, and the determination of the result of elections of members of representative bodies'.⁶²

*It would be useful to review of the legal framework for electoral complaints, so as to provide possible complainants with opportunities to submit complaints concerning all aspects of the electoral process, to have their complaints heard by a competent administrative or judicial body, and to appeal to the relevant court, in line with broadly accepted practices.*⁶³

The Constitution vests in the House the final word in resolving election disputes and validating election results.⁶⁴ No judicial review of such decision is envisaged.

*Notwithstanding the established legal basis for the existing complaint procedure, the new parliament should consider measures to provide for impartial and timely resolution of electoral disputes, including the possibility of an appeal to a court.*⁶⁵

Legal provisions regulating the handling of election disputes are found in a variety of sections throughout the Elections Act and General Administrative Law Act, with numerous cross references.

It might therefore be useful to consider codification of all provisions relating to election disputes in the Elections Act.

XV. ACKNOWLEDGEMENTS

The OSCE/ODIHR wishes to express its appreciation to the Ministries of Foreign Affairs and the Ministry of Interior and Kingdom Relations for their assistance and support, as well as to the Electoral Council and all electoral authorities, organizations and individuals for their co-operation throughout the duration of the OSCE/ODIHR EAM. The OSCE/ODIHR stands ready to discuss any of the issues contained in this report in the context of a follow-up dialogue.

⁶² Section 8:5 (h) of the General Administrative Law Act.

⁶³ Para 10.3, page 23, Existing Commitments for Democratic Elections in OSCE participating States.

⁶⁴ Art. 58 of the Constitution.

⁶⁵ See CDL Guidelines II, 3.3a.

ANNEX

OFFICIAL RESULTS⁶⁶

The total number of registered voters for the 2006 elections to the House was 12,264,503. Of these, 9,854,998 participated in the elections, a turnout of 80.35 percent. Blank or invalid votes amounted to 16,315, while valid votes were 9,838,683. The votes and seats for the candidate lists are shown in the following table.

| Candidate Lists | List Number | Valid votes | Seats | +/- |
|---|-------------|-------------|-------|-----|
| Christen Democratisch Appèl (CDA) | 1 | 2,608,573 | 41 | -3 |
| Partij van de Arbeid (PvdA) | 2 | 2,085,077 | 33 | -9 |
| Socialistische Partij (SP) | 4 | 1,630,803 | 25 | +16 |
| VVD | 3 | 1,443,312 | 22 | -6 |
| Groep Wilders / Partij voor de Vrijheid | 13 | 579,490 | 9 | +9 |
| GroenLinks | 6 | 453,054 | 7 | -1 |
| ChristenUnie | 8 | 390,969 | 6 | +3 |
| Democraten 66 (D66) | 7 | 193,232 | 3 | -3 |
| Partij voor de Dieren | 11 | 179,988 | 2 | +2 |
| Staatkundig Gereformeerde Partij (SGP) | 9 | 153,266 | 2 | 0 |
| Fortuyn | 5 | 20,956 | 0 | -8 |
| Nederland Transparant | 10 | 2,318 | 0 | |
| EénNL | 12 | 62,829 | 0 | |
| [no name] | 14 | 2,181 | 0 | |
| PVN - Partij voor Nederland | 15 | 5,010 | 0 | |
| Continue Directe Democratie Partij (CDDP) | 16 | 559 | 0 | |
| Liberaal Democratische Partij | 17 | 2,276 | 0 | |
| VERENIGDE SENIOREN PARTIJ | 18 | 12,522 | 0 | |
| Ad Bos Collectief | 19 | 5,149 | 0 | |
| Groen Vrij Internet Partij | 20 | 2,297 | 0 | |
| [no name] | 21 | 4,339 | 0 | |
| Tamara's Open Partij | 22 | 114 | 0 | |
| SMP | 23 | 184 | 0 | |
| LRVP - het Zeteltje | 24 | 185 | 0 | |
| Total | | 9,838,683 | 150 | 0 |

Thus 10 parties entered the House. The last column labelled "+/-" indicates the deviation of the current number of seats compared to the numbers of seats allocated to the respective list for the term of the outgoing parliament elected in 2003.

The following figures for the vote abroad were reported: The number of voters who registered to vote abroad for the 22 November election was 32,126. The number of valid votes cast was 28,170, of which 19,929 were via the internet and the remaining ones were mailed by post.

⁶⁶

The final results site is: http://www.kiesraad.nl/tweede/virtuele_map/uitslag_van_de

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It coordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The ODIHR implements a number of targeted assistance programmes annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

Within the field of **tolerance** and **non-discrimination**, the ODIHR provides support to the participating States in implementing their OSCE commitments and in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihhr).