

# 2004 Elections in the Republic of Indonesia: Looking Back and Looking Forward

## *Priorities for Democratic Renewal*

*December 2005*

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This report was made possible through support provided by the Office of Democracy and Governance, Indonesia Mission, U.S. Agency for International Development, under the terms of Associate Agreement Number: 497-A-00-03-0023-00 under Leader Agreement Number: DGC-A-00-01-0004-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of the U.S. Agency for International Development.



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## I. INTRODUCTION

In 2004, Indonesia completed a series of national elections that demonstrated the country's rapid democratic development since the collapse of the Suharto regime in May 1998. IFES has engaged in a broad range of election assistance activities since August 1998 to support Indonesia's remarkable emergence as a robust democracy. In close collaboration with Indonesian and international partners, IFES has provided

- Strategic analysis and advice for electoral and legal reform;
- Technical assistance for drafting of election laws, administrative procedures and implementing regulations;
- Technical advice and assistance to the General Elections Commission (KPU) and subordinate election management bodies on all aspects of election administration, including procedural *best practices*;
- Information, international perspective and creative suggestions for development of electoral systems and voting mechanisms uniquely suited to Indonesia's political and social circumstances;
- Development of a sophisticated GIS database and mapping capacity for the KPU, successfully used for delineation of over 2000 electoral districts for DPR and DPRD elections and for graphic presentation of election results;
- Support for planning and implementation of election official training programs and materials, in cooperation with other international donors;
- Technical advice and assistance in developing systems for dissemination of information and unofficial election results by the KPU, including support for the KPU website;
- Leadership in addressing the need for greater representation of women in Indonesian political party leadership and in election to public offices;
- Assistance in developing and implementing official voter education and information campaigns targeting the general electorate, groups with special needs, and other election stakeholders;
- Establishment and support of a network of Local Community Forums (LCF's) to bring together local NGOs, particularly for voter education seminars and media programs;
- Sponsorship and production of historic candidate debates during presidential and legislative elections;
- Policy focus and analysis on issues of political finance regulation and electoral complaint adjudication; and
- Cooperation with the new Constitutional Court in preparing for and carrying out its responsibilities for resolving election disputes.

IFES' work in Indonesia during the past seven years provides IFES a unique and expert perspective on 2004's historic elections. This experience also conveys a responsibility to review the problems and opportunities for democratic renewal as Indonesia moves forward.

Past problems resulting from a compressed calendar for preparations for elections can be avoided. Revisions to the political laws and preliminary logistical groundwork (such as for voter registration) should occur in Indonesia within the next two years. Moreover, the process for replacement of members of the General Elections Commission (KPU), scheduled to take place next April pursuant to the existing election law, bears even greater significance due to recent allegations of corruption directed at members and staff of KPU.

As in all democracies, the need to prepare for the next election quickly follows the last election. It is time to take a look back at Indonesia's general elections of 2004 and draw some conclusions about the performance of the electoral framework, election institutions, and electoral participants. It is not too early to draw upon a review of the 2004 elections in order to consider needed improvements in the electoral process for 2009 general elections in Indonesia.

## II. BACKGROUND

The conduct of general elections in Indonesia in 2004 culminated a process of democratic reform and development since the fall of the Suharto regime in 1998 and the elections of 1999. That process began with the installation of a newly independent and nonpartisan General Elections Commission (KPU) in April 2001. Major changes to the framework of Indonesia's government were adopted in 1999 – 2002 by the People's Consultative Assembly (MPR) through amendments to the Constitution of the Republic of Indonesia of 1945 (including guarantees of direct elections of the president and vice president and of a national, permanent and independent general election commission). The People's Representative Assembly (DPR) adopted new laws governing political parties, legislative elections and presidential elections in late 2002 through mid-2003.

Many international observers have noted the extraordinary scope and complexity of Indonesia's 2004 general elections. Nationwide elections were conducted on three voting days over a six-month period:

- On 5 April 2004, legislative elections involved voting for three levels of representative assemblies in multi-member electoral districts (DPR-RI, DPRD-Province, and DPRD-Regency/City) and voting for four representatives per province for the new national upper house, the DPD (Regional Representative Council).
- First-ever direct presidential elections were conducted through a two-round majoritarian system: a first round involving five presidential/vice presidential *candidate pairs* on 5 July 2004, and a second round with the top two candidate pairs on 20 September 2004.

Indonesia's April 2004 legislative elections were regarded as the world's largest and most complicated democratic elections ever held on one day: nearly 150 million registered voters; over 580,000 polling stations; four million election officials; and 660 million ballots. Twenty-four political parties and 448,705 candidates competed in over 2000 newly-formed electoral districts to elect more than 15,000 representatives.

Based on their performance in the legislative elections, six political parties (or coalitions) qualified to nominate candidates for president and vice president (PKB's presidential candidate, former president Abdurrahman Wahid, was then disqualified from running for failure to pass a medical fitness test). The presidential elections were somewhat less complex (one election with one ballot paper across the entire country in each round), but still logistically challenging – and a new experience for Indonesian voters.

Considering their daunting task, election officials must be credited with having done an outstanding job in implementing Indonesia's 2004 general elections. However, all three stages of the 2004 general election process involved technical difficulties and procedural irregularities. These problems included the following (discussed further in this report):

- Incomplete or inaccurate voter registration
- Late production/distribution of ballots, voter ID cards and other voting materials
- Failure to check for evidence of indelible ink on voters' fingers before ballot papers were issued
- Voting and vote counting irregularities
- Confusion in completing tabulation sheets by polling station officials (KPPS) in legislative elections
- Double-punching of ballots in the first round presidential election, leading to confusion about valid and invalid ballots
- Early poll closing in the second round presidential election, potentially disenfranchising voters

Other concerns were related to management and operations of the election bodies: an inadequate election budget for the KPU; lack of an efficient, streamlined and independent Secretariat that reports directly to the KPU; late changes to the election procedures and instructions; an understaffed and under-funded training program in the KPU; and design, checking and printing of the ballots.

These types of problems are not unusual in conducting elections in emerging democracies, and are understandable under the extraordinary circumstances of Indonesia's 2004 general elections. The three stages of general elections were conducted peacefully, on schedule, and most importantly with the general acceptance of the public. The election campaigns were competitive and dynamic, some new political parties gained political support, and a new president was elected and took office. The elections also received near-universal endorsement by electoral participants, civil society and international observers as free, fair, and legitimate.

### **III. LEGAL FRAMEWORK FOR ELECTIONS**

The first post-Suharto general elections were conducted in June 1999 under an election law adopted in January 1999 by the outgoing "New Order" People's Representative Assembly (DPR). Not surprisingly, Indonesia's political leaders and activists wanted a fresh start for the electoral framework for 2004 general elections, and never seriously considered using the prior election law as a basis for revisions.

Instead, two rounds of working groups (drafting committees) were used to develop laws on political parties and on general elections. The first round, working in late 2001 and early 2002, involved a committee of academics named by the Ministry of Home Affairs and Regional Autonomy. That committee produced an overly-ambitious, impractical and internally inconsistent electoral framework (including complicated voting systems), which ultimately met substantial criticism during a public *socialization* tour.

Learning its lesson too well, the ministry retrenched to a second round of drafting through internal working groups that operated behind closed doors and with little

outside input. Draft laws governing political parties, general (legislative) and presidential elections were submitted by the government to the DPR from mid-2002 until early 2003.

Deliberation of the drafts proceeded through the traditional legislative process within Commission Two of the DPR. Commission Two held public hearings and received public inputs early in each deliberation. For each law, a special DPR *Pansus* sub-committee composed of representatives of the political party factions was formed, and ultimately a smaller DPR *Panja* working group negotiated the difficult final issues. Transparency and opportunity for public input declined through these later and more crucial stages of legislative deliberation. Eventually, DPR approved Law No. 31 of 2002 on Political Parties in November 2002, Law No. 12 of 2003 on General (Legislative) Elections in February 2003, and Law No. 23 of 2003 on the Election of President and Vice President in July 2003.

### ***IFES Involvement***

IFES provided comparative information and analysis for every stage of legislative drafting whenever Indonesian policy-makers were receptive to such assistance. IFES gave inputs and comprehensive reviews for the draft laws developed by the first (and public) round of working groups, and provided information to advisors to the Ministry of Home Affairs throughout the second (internal) round of drafting. During DPR consideration of the draft laws, IFES encouraged public hearings by Commission Two and offered information and analysis to DPR members of all political party factions. IFES also collaborated with civil society organizations to focus on particular issues (such as independence of the KPU, political finance regulation, and electoral complaint adjudication) throughout the process of legislative deliberation of the political party and election laws, including sponsoring of seminars and publishing of informational reports.

### ***Analysis & Recommendations***

The electoral laws approved by DPR to govern 2004 general elections in Indonesia were significantly better than those used for 1999 elections. (Specific areas needing improvement are discussed later in this report). The current legal framework for holding general elections, although imperfect, satisfied the needs of Indonesia's citizenry in 2004 and generally meets international standards. Indonesia successfully conducted general elections in 2004, and is in the midst of conducting local elections across the archipelago. Thus, Indonesia does not need to start over on a legal framework for elections or to create a wholly new draft law for 2009.

Instead, Indonesia needs its elected representatives in the DPR to conduct legislative review and deliberation regarding the framework for elections through a participatory and transparent process. Presumably that review will include public hearings, and will be facilitated through the traditional process of deliberation by a *Pansus* special committee and *Panja* working group. The legal framework for elections is the people's business, however, and the public's interest deserves more than a preliminary hearing.

- *The DPR's legislative process for review and revision of electoral laws should be open to public scrutiny and inputs at all stages.*

- *Political parties, civil society, academia and the general public should be encouraged to join in a vigorous debate about a broad range of electoral issues.*
- *Revision of the electoral framework should be aimed at making the political laws governing elections integrated, coherent and complete. The relevant political laws should be considered as a whole; in particular, inconsistencies between the political party law and the general election laws should be reconciled.*

The legal framework for elections should be revised and improved to address several specific issues:

- *The KPU is currently responsible for allocating national DPR seats among provinces according to confusing and internally contradictory standards. Allocation of national DPR seats to provinces should be determined by the general (parliamentary) election law according to each province's population (consistent with one-person/one-vote/one-value principles). This determination can be made explicitly in the law or delegated to the KPU according to clear criteria that insulate the KPU from political pressure.*
- *Unambiguous standards for delineation of electoral districts (districting) by KPU for DPR/DPD elections should be stipulated in the general (parliamentary) election law. These standards should be consistent with one-person/one-vote/one-value principles, and favor compact and contiguous districts that respect ethnic, cultural, linguistic, economic and other "community of interest" considerations. (See discussion below of electoral district system.)*
- *Guaranteeing genuine independence of the KPU requires that the election laws (or a separate law) grant independent financial and management authority to the KPU, combined with stricter requirements for transparency and accountability. (See discussion below of KPU structure and operations.)*
- *Full responsibility for implementing voter registration should be returned to the KPU. (See discussion below of KPU structure and operations.)*
- *The legal framework should be improved to contain the same level of detailed voting and counting integrity controls as found in most modern electoral laws and regulations. (See discussion below of voting and counting procedures.)*
- *The election law should relax the rules regarding campaign activity outside the official campaign period to permit more limited or personal forms of voter contact (such as distribution of literature, small group meetings, and candidate door-to-door visits) as soon as candidates are certified—in contrast to paid media advertising or mass rallies that can continue to be limited to the official campaign period.*
- *Legal requirements for political finance reporting by political parties and candidates should be supported by enforcement provisions that include serious administrative sanctions for failure to submit financial reports. (See discussion below of political finance regulation and disclosure requirements.)*

Prior to 2004, Indonesians serving in the military or national police did not have the right to vote in elections, but were represented in the DPR/MPR through a reserved bloc of appointed seats. The laws governing the 2004 general elections eliminated these reserved seats in legislative assemblies and nominally granted members of the National Armed Forces (TNI) and the Indonesian Police Force (PoLRI) the right to vote, but specifically proscribed the exercise of those rights in the 2004 elections. This suspension of voting rights for members of the military and police will presumably not be extended to the 2009 elections.

- *The election laws will need to be revised to include appropriate procedures and safeguards with regard to voting and vote counting for military and police personnel.*

The general goal should be to make a good election system better, and to improve, refine and strengthen Indonesia's new democracy. The remainder of this report is intended to encourage this process and to offer specific recommendations for democratic renewal.

#### **IV. ELECTION ADMINISTRATION – STRUCTURE AND OPERATIONS**

##### **KPU MEMBERSHIP**

As a result of the lessons learned in 1999 a new presidential decree was issued in early 2000 significantly changing the structure and membership of the KPU. The decree required an independent and nonpartisan KPU to be formed (previously the KPU membership comprised representatives from the then forty-eight political parties and five government representatives). In terms of Law No.4 dated 7 June 2000, members were required to meet the following qualifications:

- Physically and mentally sound
- Eligibility to vote and to be elected
- Having strong commitment to democracy and justice
- Strong personal integrity, honest and fair
- Sufficiently knowledgeable about political party affairs, election methods, and possessing leadership competence
- Not serving as a member or executive in any political party
- Not actively serving in either a political or structural position in the civil service

Suitable persons were identified to fill the eleven vacancies and an independent candidate nomination committee, appointed by the Ministry of Home Affairs, reduced the list to twenty-two in late September 2000. DPR Commission Two then managed the selection process in two parts – first, an administrative test which checked that candidates met the formal qualification criteria and had the ability to serve on the KPU; and second, a *fit and proper* test which focused on the candidate's integrity, competence and suitability. Following a rigorous hearing process DPR Commission Two voted on the candidates.

Note: IFES, in conjunction with local partner Centre for Electoral Reform (CETRO), sought public submissions on fit and proper test criteria and received a significant number of responses (816 in all). A survey on the candidates, addressing key electoral management and integrity issues, was



later undertaken with results being issued to the media by CETRO in the form of press releases. It is difficult to tell whether this information assisted or in any way influenced the criteria subsequently used by DPR Commission Two in its deliberations, however it was a useful process to undertake to gauge public opinion.

DPR Commission Two members ranked each candidate against a standard evaluation sheet with the eleven highest ranked candidates being selected and ratified by a DPR plenary session without any significant further debate. The eleven successful KPU members were formally appointed on 9 April 2001, and took their oath/pledge before President KH Abdurrahman Wahid on 24 April 2001. Considering the way public officials are appointed in many countries, this was a very robust appointment procedure. It clearly demonstrated a transparent and justifiable process and there was general acceptance of the selections made. The term of office for all members expires after five years - April 2006.

Despite many difficult situations prior to, during, and after the three electoral events held in 2004, the KPU managed to resist pressures being exerted on them by outside influences, and to stay true to the principles of an independent institution.

#### **KPU SECRETARIAT**

The KPU is supported by a Secretariat. The primary functions of the Secretariat were broadly set out in KPU Decree No. 622 of 2003:

- a. Design the election timetable and develop a budget.
- b. Provide technical services for the conduct of the election.
- c. Provide administration, personnel and financial services.
- d. Formulate and produce draft laws and regulations, legal assistance, and advice on dispute resolution.
- e. Provide public information services.
- f. Manage electoral data and information.
- g. Manage logistics and distribution of goods and services.
- h. Ensure cooperation among institutions.
- i. Compose formal reports on the KPU's activity and financial status.

The decree also set up ten bureaus for the Secretariat. Five covered operational areas such as Planning, Personnel and Human Resources, Finance, Legal, and General Affairs, and five covered technical election areas such as Public Information, Information and Technology, Logistics and Distribution, Technical Implementation, and Monitoring.

For some time IFES had been advocating a change to the organizational structure of the KPU to better meet the needs of the organization. In the IFES report *Election Administration – An Opportunity for Electoral Reform*, dated 30 January 2002, IFES recommended that the organizational structure would be more efficient if it eliminated the role of deputy secretary general and substituted this with two assistant secretaries general, one for Election Operations and one for Corporate Administration and Support. The number of bureaus could be reduced from ten to nine. Under the assistant secretary general, Election Operations, there would be four bureaus:

- a. Election Operations and Logistics
- b. Legal and External Liaison

- c. Information and Public Education Services
- d. Political Party Regulations

And under the assistant secretary general, Corporate Administration and Support, there would be five bureaus:

- a. Organizational Management and Training
- b. Computer and Communications Systems
- c. Physical and Financial Asset Management
- d. Administrative Support Services
- e. Monitoring and Evaluation

In a presentation to the KPU in May 2002, IFES again recommended that the organizational structure should be flatter, linked more closely to the KPU's strategic plan objectives, be more outward looking (service delivery focused), and identify clear accountabilities and expectations.

The Secretariat's organizational structure was prescribed in Presidential KPU Decree No. 54 of 2003, dated July 2003. It confirmed the position of deputy secretary general and retained the same overall number of bureaus, although there were some changes as can be seen from the table below:

<b>Original Bureau Title</b>	<b>Bureau Title – Presidential Decree No. 54 of 2003</b>
Planning	Planning
Legal	Legal
Public Information	Public Participation and Relations
Finance	Finance
General	General
Security	(included in General)
Procurement	Logistics and Distribution
Transportation	(included in Logistics and Distribution)
Supervisory	Supervision
Data Processing and Information Control	Data and Information Management
	Employment
	Election Implementation Technical

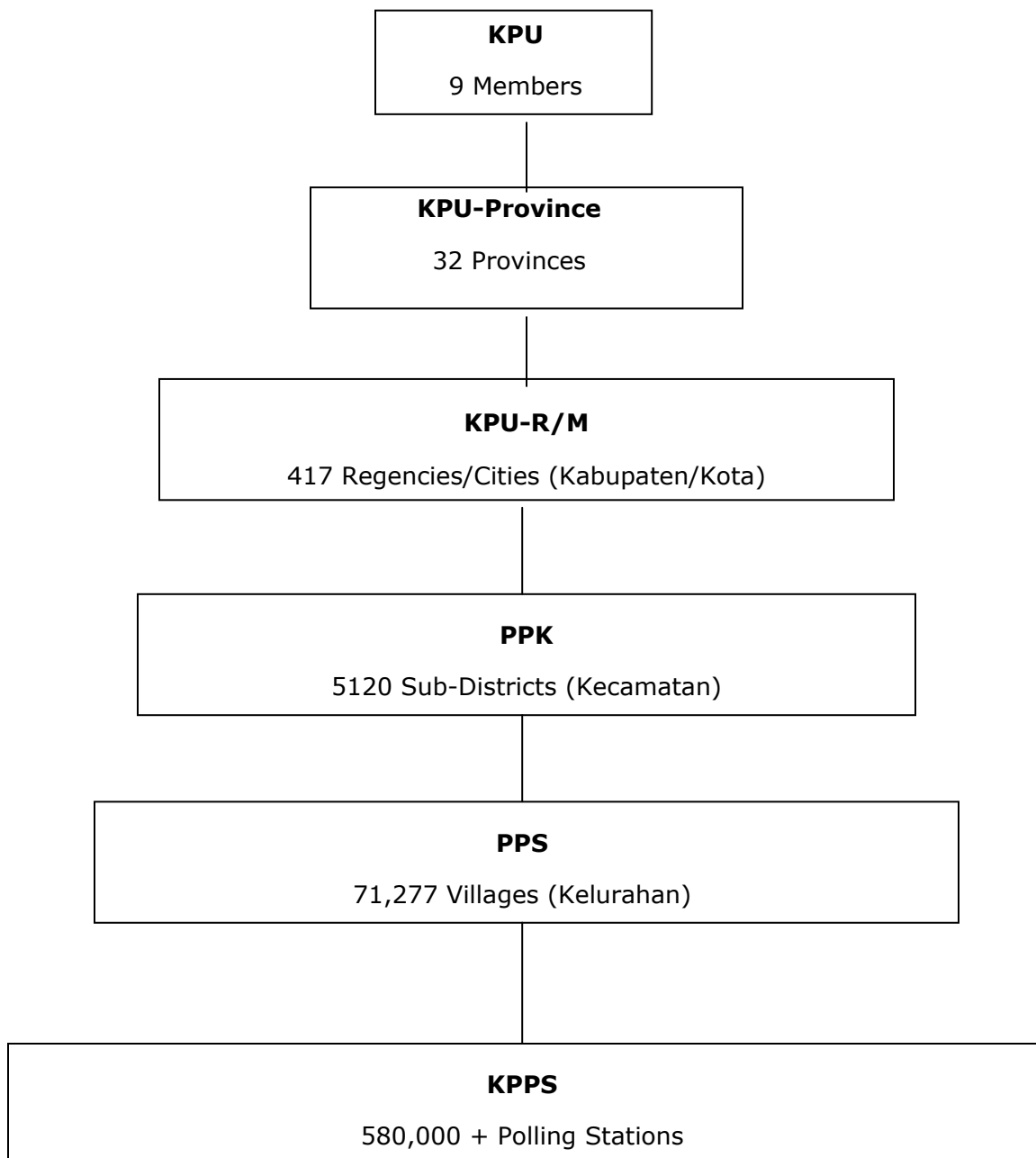
## **STAFFING**

Staff numbers at all levels of the KPU, as at 5 July 2004, totalled 5,708,509. A distribution breakdown of the numbers is set out below, to the level above polling station:

<b>Staffing</b>	<b>Central</b>	<b>Provincial</b>	<b>Regency /City</b>	<b>Sub-District</b>	<b>Village</b>
Chair	1	32	417	5,120	71,277
Members	8	128	1,668	20,480	142,554
Secretariat	496	896	9,591	20,480	213,831
<b>Total</b>	<b>505</b>	<b>1,056</b>	<b>11,676</b>	<b>46,080</b>	<b>427,662</b>

The chart below shows the nationwide election management structure.

### Structure of the Indonesian Election Administration



## ELECTION FUNDING AND FINANCIAL MANAGEMENT

IFES liaised closely with the KPU on financial management issues and assisted the KPU with the refinement of a number of draft budget models. After extensive discussion between the KPU and the Ministry of Finance the KPU budgets for the calendar years ended 31 December 2002/3/4 were finalized as follows:

<b>Legislative Elections</b>	<b>Year Ended 12/31/02 Rp</b>	<b>Year Ended 12/31/03 Rp</b>	<b>Year Ended 12/31/04 Rp</b>
<b>Personnel</b>	753,207,300	3,194,018,000	18,236,075,127
<b>Equipment</b>	1,167,096,691	289,120,545,322	966,820,990,454
<b>Operational Costs</b>	34,311,191,620	636,209,083,071	642,012,957,348
<b>Panwas</b>		88,108,501,000	125,415,131,000
<b>Lower Level Election Management Bodies</b>		557,304,795,000	2,245,738,251,266
<b>Total</b>	<b>36,231,495,611</b>	<b>1,573,936,942,393</b>	<b>3,998,223,405,195 (approx. US\$404m)</b>

\* includes 172 billion rupiah (Rp) for *Panwas*

# includes Rp 900 billion for *Panwas*

<b>Presidential Elections</b>	<b>Year Ended 12/31/02</b>	<b>Year Ended 12/31/ 03</b>	<b>Year Ended 12/31/04 Rp</b>
<b>Personnel</b>			
<b>Equipment</b>			36,205,817,504
<b>Operational Costs</b>			14,051,062,900
<b>Panwas</b>			
<b>Lower Level Election Management Bodies</b>			267,352,302,381
<b>Total</b>			<b>317,609,182,785 (approx. US\$32m)</b>

Budgets were reasonably well managed but it was evident that without significant levels of donor funding the three electoral events held in 2004 would not have been

conducted to the same level of quality and integrity. The KPU's funding was insufficient and it was indeed fortunate that donors were able to assist.

The KPU frequently experienced high levels of frustration with the lengthy delays in getting financial approvals from the Ministry of Finance, on some occasions leading them to defer purchases and defer contract negotiations. For the KPU to have full control and responsibility over election planning it needs to have approved adequate funding in sufficient time.

### **CODE OF ETHICS**

The KPU developed a code of ethics for election officials, noting in the introduction that it applied to all members and all staff involved in elections at all levels. The code, promulgated under KPU Decree No. 564 of 2003, was largely drawn from a number of international publications on the subject and identified the following ethical principles:

- Authority is based on the law.
- Be nonpartisan and neutral.
- Act transparently
- Be accountable and have no conflict of interest.
- Be accurate.
- Serve electors and act professionally.

Many polling officials did not sign up to the code of ethics, largely due to being unaware that it existed and that it was mandatory to do so. In future the KPU needs to ensure the code is more widely publicized, that all officials are made aware it is mandatory to sign, and that adequate time is given to read and understand the requirements.

### **INFORMATION TECHNOLOGY**

As there was no policy on the use of or development of information systems (IS) or information technology (IT) at the KPU, and there was no unit at the KPU responsible for the development of these areas, an external expert group was commissioned by the KPU to develop an overall IT strategy. The strategy became known as the Grand Design. The strategy outlined in the Grand Design was identified as follows:

- Development of an architectural plan of an information system which would support the administration of the KPU Secretariat based on *open* technology which relies on networks, with modular structures, so they can be gradually implemented from the bottom-up according to the availability of financial and human resources.
- Development of the standard framework, as well as guidelines, for an automated system for administration of the general election which is able to utilize available data resources in cooperation with other related institutions.
- Installation of technology which complements equipment and systems previously used by KPU officials to improve productivity, as well as their ability to make maximum use of the technology available.
- Establishment of an information technology system in accordance with the needs of the management and the staff of the Secretariat.

- In the short term, develop programs to enable IT users to make maximum use of data that is currently available.

With these significant aims it is unfortunate that the KPU was not able to make a great deal of progress with its IT development. Only in the year of the election was there any real increase in the use of technology, most notably for the collection and dissemination of election results. Over time, some of the KPU members and a limited number of Secretariat staff gradually made use of email facilities, as well as basic applications such as MS Word and Excel, but as the majority of staff had no access to a PC the benefits of automation in many areas were not realized. It is hoped that the time between elections will be utilized to purchase equipment and to train staff in the use of basic software.

### **KPU WEBSITE**

IFES commenced its operational tasks in relation to the development of a website for the KPU in June 2002. IFES provided direction, development and expert advice for two months culminating in the official launch of the KPU website, [www.kpu.go.id](http://www.kpu.go.id), on August 28, 2002.

Throughout 2003 and 2004 IFES provided comprehensive training to the KPU staff who were assigned to learn journalistic and website management and design techniques. It was an extremely busy time for the KPU, and due to the amount of data which was accumulating at a rapid rate it was necessary to upgrade the website server space rental with PT Telkom. The website was eventually migrated to the KPU's own server in March 2004. The format and content of the website grew significantly in the lead up to and during the three electoral events in 2004, with the number of website hits reaching one million by early 2004, and two million by late 2004. In addition to maintaining the website and keeping the KPU news up to date there were many website enquiries. After discussions with the KPU, IFES assisted with the preparation of more than 2,300 responses to general email enquiries for election-related information.

IFES worked hard to build the capacity and skill of designated KPU staff in website management. After more than two years of direct assistance IFES and the KPU agreed there would be a reduced level of input provided through 31 December 2004. From 1 January 2005 the KPU agreed to take full responsibility.

There is no doubt that the KPU website has become a key source of information for the media and the public alike. Feedback received by IFES and by the KPU shows that the website is well used because it is up to date, relevant, and provides accurate and comprehensive daily information on the KPU's activities.

Ongoing work on the KPU website is important if the KPU wishes to retain it as a primary means of communication to the media, and through them to the public at large. The information contained on the website is excellent but needs constant updating to ensure it stays current and useful to the media and the public, as well as political parties, NGOs, CSOs, election analysts and other government institutions. Website design is moving at a fast rate and the KPU needs to keep up with these advances in technology.

## **CORRUPTION ALLEGATIONS**

According to officials from the Corruption Eradication Commission (KPK), an accumulation of complaints from the public led the Commission to establish, in December 2004, an investigation into corrupt procurement practices at the KPU. Working with the National Audit Commission (PPK), a team was established to seek evidence of bribery of KPU personnel by service and commodities suppliers, which the KPU had worked with through the period to April 2005. In the course of gathering evidence for this investigation, a "crime theory" was developed by the KPK team, and investigators had identified kickback payments by suppliers to a KPU official.

Meanwhile another PPK audit had been working on a performance audit of the KPU regarding the conduct of the 2004 legislative and presidential elections. An attempt was made by a KPU commissioner and deputy secretary general to bribe a member of this audit team (who had reported the initial approach to his superiors) to ensure that the audit report was favorable. This attempt was secretly photographed and recorded, and triggered a raid on the KPU offices by the KPK team. That raid recovered significant and unexplained amounts of rupiah and US dollars and travelers checks, together with signed receipts for rupiah payments from a "tactical fund", and a list of where the US dollars had come from and for whom the payments were intended. This list indicated that all KPU members were involved, and this and the receipts also implicated officials of the Ministry of Finance and PPK, and a member of the DPR (the Budget Commission chairman). Rupiah had been used for smaller payments, US dollars for larger sums; more than \$150,000 was recovered. Subsequently it emerged that suppliers responsible for postal and insurance services, ballot boxes and ballot papers, among others, had made illegal payments to KPU. Where it appeared that the supplier had initiated the bribery it was anticipated that the companies and/or their officials would face criminal charges. The payments identified were considered to be only a small part of a systematic network of bribery.

As of the writing of this report, the KPU member and official whose actions had been caught in the "sting" have now been convicted and received custodial sentences of thirty-one and thirty months respectively. The KPU chairman and a number of the other commissioners, and some senior Secretariat officials are currently detained and awaiting trial. An investigation is ongoing of four commissioners against whom no evidence had been found to date. Further evidence might emerge in pending court cases, and investigation continues regarding the wider network of corrupt officials.

Meanwhile, the KPU has attempted to provide advice, including model regulations, to KPUDs at the province and regency/city levels during the conduct of local elections for administrative heads. The four remaining members of the KPU are reportedly planning to present recommendations to DPR for revisions to the existing electoral laws, and a new law on the status and functions of KPU itself, in late 2005. They also intend to provide recommendations to the incoming members of the KPU on the restructuring of the KPU Secretariat and a revised system of human resource management.

The ongoing corruption scandal regarding members of the KPU and top staff in the KPU Secretariat is a tragedy for the individuals involved, many of whom IFES personnel knew and worked closely with during the election period. It is also a tragedy for the KPU as an institution, which has had its reputation severely

blackened, its achievements in the 2004 elections disregarded, and its continuing independence threatened. Although the KPU has been discredited, indications are that voters still believe the elections were free and fair with legitimate results. The reputation of the KPU in the scandal has not transferred to the 2004 election process or results.

### ***Analysis and Recommendations***

The KPU corruption scandal has encouraged considerable discussion and debate regarding the future of the KPU, and many proposals to revise its composition and appointment methods have surfaced. IFES believes the current problems only make more urgent the need for the KPU to remain genuinely independent and nonpartisan in its approach. Disappointment with the present KPU should not lead to backtracking on the positive reforms intended by its establishment.

This situation should instead place the emphasis on transparency and accountability of the institution, and provide the impetus for a complete internal overhaul of the operations of the KPU. Out of this scandal should emerge a reformed and transformed commission and Secretariat.

The KPU needs to continue to work on refining and improving its election procedures to build on the gains made in 2004. While the three elections conducted in 2004 were managed well, there is still a lot of room for improvement. Much has been written on the management of the three elections - it is vital that the KPU learns the lessons and implements the required changes to meet the growing level of public expectation.

IFES makes the following recommendations:

- *Appointment of KPU members should again receive careful consideration by the DPR and government; over time, terms of office of KPU members should be staggered so that all members do not come to the end of their terms at once.*
- *Responsibility for all aspects of the conduct of all levels of elections in Indonesia should be clearly assigned to KPU. All implementing regulations for conducting elections should be subject to consultation with and approval by the KPU prior to their introduction.*
- *The organizational structure should be flatter, linked more closely to the KPU's strategic plan objectives, be more outward looking (service delivery focused), and identify clear accountabilities and expectations.*
- *The KPU should be transparent in its administrative and financial management, and serve as a model for transparency in administrative practices in Indonesia, including the following:*
  - *A transparent appointment system for senior personnel of the Secretariat*
  - *A remuneration structure for members and staff to appropriately reflect the level of responsibility involved*



- *A human resources management system to reflect current best practices with respect to recruitment on merit and performance-related remuneration*
- *The KPU should finally be given real control over its own personnel, and the capacity to hold subordinate election commissions accountable, as follows:*
  - *Determining its own management structure and lines of responsibility to reflect the specific institutional requirements of an election management body*
  - *Retaining its role in the appointment of provincial KPUDs, and having supervisory powers over these bodies, to provide a clear chain of command, direction and support in conduct of national elections; similarly, KPUD-Province should have supervisory powers in relation to KPUD-Regency/City, providing the same chain of command for provincial and local elections*
- *The KPU Secretariat should determine its management structure and appoint directly its senior Secretariat staff, and have the right to eject other staff assigned to the Secretariat by other ministries.*
- *Staff seconded to work with KPUD-Province and KPUD-Regency/City should be required to adhere to an appropriate code of conduct.*
- *KPU should be required to submit an annual report to DPR detailing activities and expenditures.*
- *Submission and acceptance of budgets and funding should be made available to KPU and KPUDs in a timely and reliable manner. Multi-year financial plans should be prepared and approved in good time for effective election planning to take place.*

## **V. ELECTION ADMINISTRATION – CONDUCTING ELECTIONS**

### **VOTER REGISTRATION**

Indonesian citizens who are aged seventeen years and above or are/have been married are eligible to register to vote. The law also states that in order to be registered voters must be clearly not suffering from a mental disorder, not have had their voting rights revoked by a final court decision, not be registered for more than one location, and not be an active member of the Indonesian Armed Forces (TNI) or State Police of the Republic of Indonesia (POLRI).

The compilation of an accurate electoral roll, with such a large and widespread population, was a massive task for the KPU. Assistance was sought from the Bureau of Population and Statistics (BPS) for the nationwide “door-knock.” (BPS needed to undertake a quality assurance audit of its earlier census so a population head count was a useful opportunity to carry this out.) This door-knock task became known as Voter Registration and Continuous Collection of Population Data – P4B. Other population related data collected by BPS was not provided to the KPU.

BPS employed around 370,000 staff for P4B – around 5,000 regional instructors, 70,000 field supervisors and district technical coordinators, and around 296,000 field registration staff. These were largely local government and village officials, schoolteachers and students. The data was collected onto scannable forms over a period of six weeks between 15 March and 29 April 2003.

Data was captured using scanners and optical character recognition (OCR) software. BPS processed the population data/voter registration forms in forty-five locations throughout Indonesia, using ninety-two Kodak 3500D OCR scanners. The scanners used Accra imaging software. The double sided forms, each with two personal datasets per side (a total of 102 data fields per sheet) were scanned with one pass. While the scanners had a maximum throughput of sixty sheets per minute, BPS slowed the machines to half that speed to increase accuracy and reliability – each scanner processed around 16,000 sheets per nine-hour day. The total load across the forty-five centers was around 76 million sheets. Data was processed in three stages:

- Manual pre-processing from May to July 2003
- Scanning of registration forms
- Verification, validation and amendment of ASCII files derived from the scanned data

The data collection process for more than 150 million voters was a significant undertaking. BPS largely managed the project on its own, with limited input from the KPU. Despite a minor slippage in its timeline, BPS performed creditably. The data was formally handed over to the KPU in February 2004.

IFES held regular meetings with BPS during the data collection and data processing phases. It became clear that the KPU was not fully aware of the complexity, the methodology or the tight timeframes surrounding the data capture project, and there was very little interest shown by KPU management in most of the stages of P4B. BPS expressed concern that the KPU's only involvement was to review manuals and let tenders for printing the data collection forms.

### **ACCURACY OF THE VOTER REGISTER**

Despite a number of reports that the voter register was not in good shape, comparatively speaking there were very few complaints about the accuracy of the electoral roll. The process followed by the KPU of making provisional voter registers available at village level for public scrutiny provided the opportunity for errors and omissions to be identified and remedied. There was some concern that the KPU's socialization campaign during this period could have been better as anecdotal evidence suggests the percentage of people actually taking the time to check their details was very small.

Every registered voter was to have been provided with an identity card (see below) and based on feedback and observation it appeared that the great majority received their card before the electoral events.



The final number of voters on the register for each of the three electoral events was as follows:

Electoral Event	Registered Voters	Voter Turnout
Legislative Election	148,000,369	124,456,680 (84%)
Presidential Election – First Round	155,048,803	121,293,844 (78%)
Presidential Election – Second Round	153,317,615	116,662,705 (76%)

While registration (and voting) is not compulsory in Indonesia there was still a high level of interest from eligible voters to get enrolled, and subsequently to vote.

### CONTINUOUS VOTER REGISTRATION

The KPU has expressed a desire to maintain a continuous voter registration system in the future. This is not as easy as it might sound, particularly for Indonesia where infrastructure and communication difficulties are present in so many areas. The experience of most countries that effectively manage continuous voter registration systems indicates a need to have proactive measures in place to maintain the accuracy of these registers. Examples of such measures may be regular door to door data verification programs, change of address notification mechanisms, data matching from other sources, or use of data provided to government bodies for other purposes. The KPU has not yet announced any plans for maintaining a continuous voter register but a belief that the public can be relied upon to update their own details is misguided.

### PROCUREMENT POLICIES

The KPU's purchasing policies must comply with and follow the guidelines set out in the relevant government decrees, and must adhere to the stated basic principles of efficiency, effectiveness, competitiveness, transparency, fairness and accountability. The three different methods of procurement are open tender (public tender process); direct selection (tenders only from suppliers who can meet the qualifications for

supply); and direct pointing (urgent procurement, subject to approval of a minister or chief of the non-department or institution).

The great majority of the KPU's purchases were made through the open tender and direct selection processes. Due to the occasional need to meet exceedingly tight timeframes some were made through direct pointing.

### **ELECTION LOGISTICS**

For the legislative elections held in April 2004 the logistical issues facing the new KPU were significant. Just a few of those challenges were -

- more than 580,000 polling stations (TPS) to equip correctly, each managing a maximum of 300 voters;
- over 660 million ballot papers to securely print and distribute;
- nearly 2.4 million ballot boxes to manufacture and distribute; and
- facilities for over 150 million voters, of whom approximately 90% were likely to turn out to vote.

The distribution of ballot boxes, ballot papers, ink, training booklets, voting compartments, envelopes, forms, etc. to more than 580,000 polling stations for the legislative election across 13,000 widely spread out islands, and in some cases almost inaccessible areas, was exceedingly difficult to manage. The KPU came in for frequent media criticism about this issue, mostly concerning supplies not reaching certain areas in the times originally specified. However, most supplies reached the right locations, in the right quantities, and at the right time. Supplies distribution was better managed in the two rounds of the presidential elections, proving the adage that practice makes perfect.

The ability of Indonesian authorities to mobilize significant numbers of personnel and resources to ensure these deliveries were completed on time was impressive. It was also pleasing to see *the whole of government interest* in making sure staff, buildings and equipment were provided for the electoral events to take place.

### **BALLOT BOXES**

The KPU undertook a lengthy selection process in relation to the procurement of ballot boxes. A large number of companies took part in the pre-qualification procedure and manufactured samples in various sizes, styles and material for the KPU to consider. (Samples were provided in aluminum, steel, plastic, wood, fabric, and even some as plastic bags with a plastic fitting at the top). For the more than 2.4 million ballot boxes required, the unit prices ranged from Rp 50,000 (US\$5) to Rp 270,000 (US\$27) each. The KPU evaluated these samples and made a decision to seek detailed tender specifications and prices from suppliers who could manufacture large quantities of ballot boxes in aluminum.

There was a significant amount of criticism, largely from the media, that the selected type of ballot box was too expensive at Rp 150,000 (US\$15) each. The KPU responded by arguing that ballot boxes manufactured in aluminium would last a long time and would not only be suitable for the legislative and two rounds of the presidential elections, but also for local government and future electoral events. The KPU also noted that the selected design of ballot box could be collapsed to make storage reasonably easy between electoral events.

## **VOTING COMPARTMENTS**

The voting compartments used during the electoral events were funded by the Japan International Cooperation Agency (JICA). The foldable aluminum compartments were used in the great majority of polling stations across Indonesia, but with limited success. There were two main problems in their design. First, they were far too small. Voters found them difficult to use, especially when voting in the legislative elections with very large ballot papers. Some voters were seen trying to shuffle the ballot paper around inside the voting compartments to get it into the right position – some even appearing to give up in desperation and simply punching the paper in a place where it was easiest to do so. The second problem was their flimsy construction. Many compartments were observed collapsing around the voter, particularly when used on tables that were uneven or at many of the outdoor polling stations when the wind was only of average strength.

## **BALLOT PAPERS**

Many issues arose in relation to ballot papers. The design, checking and printing of such large quantities was a significant and difficult task by any standard, let alone their distribution to more than 580,000 polling stations in time for voting. This was particularly evident for the legislative elections on 5 April where ballot papers were printed on very large paper.

It was alleged that some of the printers contracted by the KPU were simply under-resourced for the job they had quoted for, some in terms of paper supplies and equipment limitations, some in terms of human resources for the setting up, printing and checking tasks. Nearing election day for the legislative election, the KPU was under constant and extreme pressure to explain the delivery delays. While there were a number of contributing factors the primary reason appeared to revolve around the time it was taking to manually fold the millions of ballot papers. (The media reported that former president Megawati Soekarnoputri had apparently suggested the ballot papers remain in their flat sheet printed size, and that voters be asked to fold them after voting and before placing them in the ballot boxes. That was rejected.)

The KPU met on a daily basis to discuss the situation regarding the slow production and delivery of ballot papers to polling stations, issuing daily press releases. While it is true that polling stations in many areas did not receive their supplies of ballot papers until three days before voting day, there were only anecdotal stories of a small number of stations not receiving their supplies at all.

## **INDELIBLE INK**

Some two million cups of indelible ink were needed for the three electoral events in 2004. A total of eight companies submitted bids to the KPU and two were ultimately selected to provide the required quantities.

The ink appeared to work well in most locations. However, in some there were allegations that the ink was not indelible, and did not remain on the voters' fingers after being dipped in the cup. In response to those allegations the KPU advised that staff at some polling stations had watered down the ink to make it last further as they felt they were supplied with an insufficient quantity to last for all voters.

## **VOTING AND COUNTING**

Some months prior to election day, one of IFES' partners, CETRO, managed three separate voting simulations – one for first-time voters in a number of local high schools around Jakarta; a local village; and another for first-time voters at a local pesantren (school for Muslim studies). A number of issues arose during the simulations, all of which were conveyed to the KPU for their information and action. A time study of the actual voting process was also undertaken by IFES, and forwarded to CETRO and the KPU for their information. It was disappointing that the KPU did not take part in these simulations as this form of process testing is the best means of examining how the procedures work in a live situation. It also very clearly identifies what works well and what doesn't.

It is not clear whether this feedback influenced the KPU thinking on the voting process because there were few changes between the draft and final KPU decree on voting and vote counting.

A number of guidelines were fixed in the decree for the actual voting process. Some of these are set out below:

- Each polling station serves a maximum of 300 voters.
- Voting hours were 7 A.M. to 1 P.M. (although for the second round of the presidential election polling stations could close earlier if all voters had voted).
- Voters must be on the voter register for the polling station, and have a valid voters card and an invitation to vote at the polling station (the latter two were not mandatory).
- Voters cast their vote by punching the ballot paper with a nail.
- Five different sizes of ballots were needed for DPR/DPRDs, ranging from 40 x 40 cm, to a double sheet of 63 x 80.5 cm paper
- One voting compartment was required for every fifty voters in a polling station.
- Four ballot boxes were needed for the legislative elections – one each for DPR, DPRD-Province, DPRD-Regency/City and DPD ballot papers.
- Up to seven staff worked in each polling station, plus two security guards.
- Some out-of-area voting was permitted as long as voters gave fourteen days' notice in writing or were public service workers, if they showed their voter ID card.
- Authorized party agents and accredited observers may be permitted in a polling station. The KPU issued instructions to restrict observers' access during the legislative elections - access was not permitted inside the polling station. This was vigorously argued by all international and national monitors. Even though the KPU held firm on its denial of access, in practice few observers experienced any problems and were permitted access to most parts of the polling station.
- Counting took place in each polling station immediately after voting closed.
- Official results were compiled manually and amalgamated through every level of election management: polling station to PPS, to PPK, to regency/city KPU, to provincial KPU, and finally to the national KPU.
- Quick results from the computerized result system were unofficial.
- Rules were defined and circulated on valid and invalid voting.

## **ELECTION OBSERVATION**

IFES provided a significant level of assistance to the KPU in relation to election observation. The KPU requested IFES' advice on how it might develop guidelines for election observation, including the design of workable registration and accreditation procedures for international and national monitors. A number of meetings were held to discuss and identify procedures that should be included in a KPU decree on election observation, and on-the-job training was provided by IFES for the first wave of applications from international and national monitors.

## **POLLING DAY - LEGISLATIVE ELECTION**

The KPU registered a total of 314,429 national monitors and 518 international monitors, including IFES observers, for the legislative elections held on Monday, 5 April 2004.

IFES deployed thirteen teams (thirty observers) to observe the elections, covering Jakarta, Medan, Bukittinggi, Garut and Tasikmalaya, Semarang, Malang, Bali, Lombok, Batam, Samarinda, Manado, and Makassar. An opportunity was also taken to observe proceedings at the Indonesian embassy in Singapore.

IFES used an observer checklist that focused more on a review of election administration processes rather than one which many other observer organizations used to determine whether the election could be considered free and fair. IFES opted to use this approach as it had been working closely with the KPU during the period leading up to the election, and did not think it was appropriate to then sit in judgment on whether the election was free and fair.

A review of the checklists completed by IFES observers revealed a generally well run election in most respects; however many areas were identified where the KPU could improve its election management procedures. The following recommendations were made and discussed with the KPU in the IFES election observation report:

- Finalize voting and vote counting instructions for the presidential election as early as possible and convey them to the KPPS staff well before election day. The late issue of voting and vote counting instructions in the legislative election led to confusion.
- Develop, approve, produce and print training materials and distribute to all PPK/PPS/KPPS by 15 June 2004.
- Increase the percentage of women working as KPPS members.
- Stress the importance of security of ballot papers at all times.
- Stress the importance of ensuring that party witnesses do not touch ballot papers, unless it is to closely check the punch mark on a ballot paper during the counting process, and only then under the supervision of the KPPS chair.
- Do not permit people to vote if they are not registered.
- Improve secrecy of the ballot during the voting process by locating voting compartments in such a way that voters do not have to walk behind other voters completing their ballot papers.
- Stress the importance to all KPPS officials of checking fingers for the presence of ink, before an intending voter is allowed to enter the polling station.
- Review opening of the poll procedures to minimize time taken before voters are permitted to vote.

- Improve access to the polling stations for the disabled.
- Improve counting procedures to eliminate unnecessary duplication, reducing time for KPPS officials.
- Provide training to PPS and KPPS staff, including simulations wherever possible, on the completion of all documents used for recording ballot count data in the TPS.
- Clarify and maintain consistency in statements by KPU offices at all levels on the rules for valid/invalid votes.

### **PRESIDENTIAL ELECTION – ROUND ONE**

A total of 162,274 national monitors and 577 international monitors observed the first round of the presidential elections held on Monday, 5 July 2004. In keeping with the commitment to observe the election administration process, IFES deployed fifteen teams (thirty-four observers) throughout Indonesia for the first round of the presidential election. Polling procedures were closely observed in a total of 158 TPS's.

A review of all the checklists received from the IFES observer teams again revealed a well conducted election in most respects. However, as noted in the IFES report following the legislative elections, there were a number of areas where the KPU could still improve its performance. Issues such as the late advice to allow double-punched ballots caused major problems for many TPS's and higher level election management officials. Of particular concern were the inconsistent procedures applied in respect of recounting invalid ballot papers – some PPS/PPK observed chose only to recount invalid ballot papers if they were of *sufficient* numbers – and what was sufficient varied from TPS to TPS. Another concern was that, despite instructions to the contrary, very few TPS staff checked whether intending voters had any ink on their fingers before ballot papers were issued. The quality of the ink was also variable. In some locations it was indelible and did its job effectively, in others observers noted it could easily be wiped off after being applied, leaving no trace of the ink whatsoever. Contrary to instructions, polling stations in one or two areas had set up separate ballot boxes for male and female voters, and in other areas there was inadequate secrecy for the voter because people were permitted to stand behind and very close to the voting compartments.

The following recommendations were made and discussed with the KPU:

- Avoid confusion at PPK/PPS/KPPS level by ensuring there are no late changes to the voting and counting process.
- Empower KPPS staff to remove campaign materials from the vicinity of the TPS prior to the commencement of voting.
- Direct KPPS chairs to conduct opening procedures more effectively.
- Ensure secrecy of the ballot is improved by locating voting compartments in such a way that voters do not have to walk behind other voters completing their ballot papers, and that they are not placed closely alongside one another.
- Stress the importance of security of ballot papers at all times.
- Ensure that voter registers are prepared and used as required in all TPS's. The voter registers appeared to be more professionally compiled when BPS undertook the role for the legislative elections in April. The KPU might like to consider using BPS data again for the second round.



- The voter register for the second round should not just take account of new registrations. Every attempt should also be made to clean the register by deleting persons who have passed away or have shifted to another area.
- Ensure the indelible ink is of a high standard and stress again the importance of checking the fingers of intending voters for the presence of ink.
- Stress that voters who are not registered are not permitted to vote.
- Unless the KPU issues strict procedures governing its implementation, home voting by voters unable to attend a TPS should be specifically barred by KPU decree.
- Increase the percentage of women working as KPPS members.
- Empower KPPS member six to check that each folded ballot paper contains the KPPS chair's signature before the folded ballot paper is placed in the ballot box. IFES observations have shown that the KPPS chair is too busy to perform this task for every voter.
- Stress the importance of ensuring that witnesses for candidate pairs do not touch ballot papers, unless it is to closely check the punch mark on a ballot paper during the counting process, and only then under the supervision of the KPPS chair.
- Improve access to the TPS for the disabled by providing locations which afford good access for wheelchairs and the elderly, where possible.
- The layout of the ballot paper for the second-round presidential election should be designed in such a way as to avoid the possibility of double punching.

## **PRESIDENTIAL ELECTION – ROUND TWO**

A total of 77,070 national monitors and 524 international monitors observed the second round of the presidential election held on Monday, 20 September 2004. IFES deployed fourteen teams (thirty-one observers) to undertake election observation in ten selected provinces. Observations were conducted at a total of 135 polling stations around Indonesia.

The second round of the presidential election was the third electoral event to be held in just five months. Although voter turnout was lower than for the previous two electoral events, registered Indonesian citizens still turned out in good numbers to vote. While a number of administrative matters did not go as well as planned, the second round of the presidential election was once again conducted to a very good standard and the KPU is to be congratulated for its achievements.

IFES observers noted that most TPS's visited opened at or near 7 A.M. and all had sufficient quantities of election supplies (ballot papers, ballot boxes, ink, forms, etc.) even in the more remote areas. All KPPS officials carried out their tasks professionally and generally in accordance with the procedures. Counting and recapitulation procedures were generally carried out to a high standard.

The two key areas of concern were the variable closing hours for polling stations (a number of TPS's closed before the allowable time of 11:30 A.M., potentially disenfranchising voters) and, once again, fingers of intending voters were not checked before eligible voters were issued with ballot papers inside the TPS.

The following recommendations were made and discussed with the KPU:

- Avoid confusion at PPK/PPS/KPPS level by ensuring there is a common start and finish time in all TPS's.
- Empower KPPS staff to remove campaign materials from the vicinity of the TPS prior to the commencement of voting.
- Ensure secrecy of the ballot is improved by locating voting compartments in such a way that voters do not have to walk behind other voters completing their ballot papers, that they are not placed closely alongside one another, and that they are placed in areas where others cannot look from behind.
- Ensure that voter registers are prepared and used as required in all TPS's.
- Update the voter register with new eligible voters and clean it on a regular basis by deleting persons who have passed away or shifted to another area.
- Stress the importance of checking the fingers of intending voters for the presence of ink.
- Stress that voters who are not registered are not permitted to vote.
- Increase the percentage of women working as KPPS members.
- Empower KPPS member six to check that each folded ballot paper contains the KPPS chair's signature before the folded ballot paper is placed in the ballot box. IFES observations have shown that the KPPS chair is too busy to perform this task for every voter.
- Stress the importance of ensuring that witnesses for candidate pairs do not touch ballot papers, unless it is to closely check the punch mark on a ballot paper during the counting process, and only then under the supervision of the KPPS chair.
- Improve access to the TPS for the disabled by providing locations which afford good access for wheelchairs and the elderly, where possible.

The IFES views on election observation were, not unexpectedly, very similar to the views of other election observation missions. The KPU has indicated it will take account of the views of national and international observer groups as part of its comprehensive review of the 2004 elections, and expressed a particular appreciation for the IFES contribution which it was keen to use as lessons learned for future electoral events in Indonesia.

### **ACCESS FOR THE DISABLED**

Although no accurate figures exist on the number of persons with disabilities in Indonesia, estimates range from a low of around 2% to a high of near 8% of the total population. This represents a significant figure - 4.3 to 17.2 million people.

In early 2002 a group representing various disabled persons' organizations in Indonesia, formed a committee (eventually to become known as the Committee for Citizens with Disabilities – Access to Elections 2004 (CCD-AE)) to try and ensure people with disabilities had full and equal access to the electoral process. The group considered that the 1999 elections did not afford them equal access and reports vary about the extent to which some people with a disability may have been disenfranchised.

IFES provided a significant amount of assistance to CCD-AE, including strategic advice, funding for conferences and workshops, supply of materials, funding for socialization activities, development of funding proposals, preparation of draft decrees for the KPU to consider, advice on voter registration and voting procedures, lobbying, research, etc.

Indonesia's new election law was passed in February 2003. In general terms CCD-AE was satisfied the law covered its concerns but wanted to make sure the KPU would actually implement procedures to make the law more than merely an *intent*. CCD-AE was not satisfied that the KPU had done all it could. It held a media conference before the election to explain concerns about inadequate access to the voting process and the lack of secrecy many disabled would have to deal with when they vote. After the elections CCD-AE acknowledged the efforts of the KPU to do better (e.g., Braille templates for the blind were provided in a small number of polling stations). CCD-AE will continue to lobby for greater access in the future.

### **Analysis and Recommendations**

- *Responsibility for compilation and maintenance of voter registers throughout Indonesia should be returned to (and accepted by) the national KPU. The voter registers were compiled in early 2004 and as such will now be somewhat out of date. The KPU needs to give consideration as to how it might commence updating these registers as this will be a lengthy process and the next election is not that far away.*
- *A transparent procurement system needs to be implemented. One option is to base it on prequalification through evaluation and approval of contractors to create a supplier database by category, subject to regular review and updating.*
- *Simulations are an excellent way to test ideas and procedures. The KPU should be more open to undertaking simulations and to conduct focus groups with the public on the voting process.*
- *The legal framework does not contain the same level of detailed voting and counting integrity controls as do most modern electoral laws/regulations. These should be instituted.*
- *Equipment must be practical and easy to use by the voting public. For example, voting compartments need to take account of the size of the ballot papers. The KPU should take every opportunity it can to test the equipment before it is used in polling stations.*
- *The code of ethics needs to be well publicized and ideally should form part of the training package for all staff.*
- *The KPU should continue to evaluate and consider using IT equipment at all levels, particularly where it can reduce the significant time and effort spent by staff on repetitive tasks.*

## **VI. ELECTION ADMINISTRATION – ELECTION OFFICIAL TRAINING**

One of the biggest logistical challenges for Indonesia's general elections in 2004 – and a clear indicator of their complexity – was the need to appoint and train millions of election officials to implement three stages of national elections under new election systems and procedures.

Law No. 12 of 2003 on General Elections establishes the national KPU and provides for an election commission structure that also includes permanent election management bodies composed of five members in each of Indonesia's 32 provinces and more than 400 regencies/cities. For the election period itself, temporary election management bodies were appointed at the sub-district (*kecamatan*) level (over 25,000 election officials), village level (over 200,000 election officials), and polling station level (nearly four million election officials in more than 580,000 polling stations [plus almost one million security guards for polling stations]).

The task of appointing and training these huge numbers of election officials was squeezed into a short time frame. The legislative election law itself was not approved until February 2003, a little more than a year before the 2004 legislative elections were to be held. The national KPU quickly began the process of establishing subordinate election management bodies and appointing election officials.

The international donor community, including IFES, recognized the urgency and scope of the training challenge and encouraged the KPU to make it a priority at the earliest stages of election preparations. The KPU, however, was slow to recognize the importance of this problem and to give it sufficient attention in planning and resource allocation. The lack of commitment to training by the KPU exacerbated (and was perhaps a consequence of) the lack of experience in administering elections of the KPU members themselves. Some of the staff assigned by the Ministry of Home Affairs and Regional Autonomy to work at the KPU had some prior experience in conducting elections. But no one had worked in an environment of an independent election commission, and no one was familiar with implementing the new voting systems and procedures for the 2004 general elections. Indeed, procedures for conducting the elections were to be elaborated by the KPU itself through implementing regulations for the new election laws that were drafted and issued by the KPU over the course of the next year, and which included some KPU decrees and decisions about voting and vote counting procedures very late in the process.

As described below, the international partners, including IFES, agreed in August 2003 to pool their collective expertise and resources to develop a common plan for assistance in training Indonesian election officials. This plan sought to provide the most comprehensive, integrated and efficient training that time and resources would permit. The KPU soon began to collaborate with three international donors, as described below, in carrying out this program. The KPU assigned responsibility to a KPU member for supervising and coordinating the KPU's role in training, established a KPU training committee to review plans and provide inputs for training curricula and materials, and designated a two-person training unit from their staff. Also, the KPU ultimately assumed the substantial costs of paying training allowances to election officials who attended training sessions.

Training program plans were initially directed at four audiences through four broad programs:

- Election Management, for provincial and regency/city KPUD members
- Election Operations, for KPU/KPUD Secretariat staff at national, provincial and regency/city levels
- Election Operations II, for sub-district (*kecamatan*) and village-level election officials (PPK and PPS)
- Election Day Procedures, for polling station election officials (KPPS)

As noted in the final report on support for 2004 Indonesian general elections of the United Nations Development Program (UNDP)<sup>1</sup>:

The training was an integrated program whereby the KPU and all three organizations developed a common training strategy for each election and used common methodologies and training materials. Each organization assisted a specific geographic area to avoid duplication of efforts and funding. ...

Training for the legislative elections used a centralized approach with trainer-of-trainers and a cascade system. This was hard to manage and a decentralized approach was adopted for the presidential elections. KPUD's were provided with financing from the Programme to run their own training programs and provinces with specific problems were targeted for more hands-on technical assistance by the AEC/IFES/UNDP.

### **IFES Involvement**

IFES had the smallest monetary contribution to the training assistance program of the three international donors. IFES maximized resources by concentrating on training coordination, and focusing on planning and implementation of training election officials at the provincial and regency/city levels.

The United Nations Development Program (UNDP) was the largest international donor for election official training programs, and served as the conduit for several foreign country donors. UNDP focused on developing training materials for election officials at the polling station level. Training of poll workers was targeted at 15% of the nearly four million polling site officials; the rest were self-trained through UNDP products (through manuals and videos) or, in some places, were the beneficiaries of training by village or kecamatan officials.

The training video produced by UNDP served as a means to train polling site election officials without holding formal training sessions. (Reportedly 80% of poll workers said they had seen the video.) Also, the video was widely aired on Indonesian television, which provided key information for Indonesian citizens to understand the election process and to further encourage election integrity. This video technique was based on the groundbreaking IFES/KPU video for poll worker training and voter education for Indonesia's 1999 elections.

As the second largest donor, the AEC was able to hire a contingent of core trainers for training provincial and regency/city election officials, and later advised these levels on training subordinate election commission members.

### **Analysis & Recommendations**

The training of election officials for Indonesia's 2004 general elections was a monumental task that was met only minimally. International donor assistance helped achieve an adequate level of training in some places or at some levels, but this effort was constrained by the national KPU's basic lack of planning and resources, and lack of ongoing substantive and logistical cooperation with international partners. From IFES' perspective, the members of election

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<sup>1</sup> *Program Evaluation Final Report*, United Nations Development Program, Sue Nelson & Lia Juliani, Jakarta, Indonesia, 30 October 2004, p. 12.

commissions at provincial and regency/city levels showed far more appreciation for the value of training, and were generally good partners in implementation.

Training for election officials is a responsibility of the national KPU, and should be a planning and budget priority in the KPU's preparations for 2009 elections. Further international donor support for election official training programs in Indonesia should be conditional upon a commitment by the KPU (and the government of Indonesia) to accept this responsibility and make a fair commitment of attention and budget resources for such programs.

- *Training should be viewed as an ongoing and long term effort for the KPU and permanent subordinate election commissions at the provincial and regency/city levels. Training programs are more effective and efficient if organized and implemented through a cascading structure of training units from the KPU level through each level of election commission.*
- *The Training Unit within the KPU should be given sufficient resources and staff to begin building professional expertise among KPU members and their secretariats, and to develop strategies and plans for programs to train temporary election officials prior to 2009 elections.*
- *The training programs for election officials that were implemented in Indonesia's 2004 general elections established a foundation of training policies and procedures, and created model curricula and materials. These elements should be reviewed and utilized by the KPU to build training programs for the 2009 elections, rather than starting from scratch, and to maintain consistency in training curricula and training materials.*

## **VII. VOTING SYSTEMS AND ELECTORAL DISTRICTS**

In 2004, over the course of three separate election days, Indonesian voters were presented with six different ballots utilizing three different types of voting systems. Two different forms of *first-past-the-post* voting were used for electing the president/vice president and for electing members of the new Regional Representative Assembly (DPD). A proportional representation system utilizing new multi-member electoral districts and with (at least superficially) an *open-list* candidate voting feature was used for electing DPR/DPRD representatives.

### ***IFES Involvement***

As discussed earlier, IFES provided comparative information and advice about electoral issues to Indonesian policy-makers throughout the process of development of Indonesia's laws governing 2004 elections – from the earliest stages of advising working groups formed by the Ministry of Home Affairs and Regional Autonomy through DPR approval of the general (legislative) and presidential election laws. IFES' help included analysis of voting systems and guidelines for delineation of electoral districts. Moreover, IFES initiated development of a sophisticated GIS database and mapping capacity that was successfully used by the KPU for delineation of electoral districts for DPR and DPRD elections and for graphic presentation of election results on its website.

## **VOTING MECHANISM AND BALLOTS**

Following tradition, balloting in Indonesia was conducted by voters using a nail-like punching device to punch through the name/symbol/picture of the voter's preference for parties and/or candidates.

In legislative elections held on 5 April, voters were given four ballots. The three ballots for representative assemblies (national DPR, DPRD-province, and DPRD-regency/city) were of identical format. Voters punched the name or symbol of the political party they preferred, and were given the option of then voting for one person on the candidate list of the party for which they had voted. The fourth ballot was for DPD, for which the voter could punch for one candidate.

Similarly, in each of two rounds for direct election of the president and vice president, voters were asked to punch the candidate pair they supported (one among five choices of candidate pairs on 5 July; one among two choices of candidate pairs in the run-off on 20 September).

Some voters actually had their paper tear as they attempted to push the nail through the ballot. Voting compartment contained a soft pad that voters would position the ballot paper over so the nail could be punched through easily. Some voters, out of frustration with having no soft pad or with the difficulty of manipulating the ballot paper inside the voting compartment (with the large ballot papers used in the legislative elections) held the paper in the air and pushed the nail through. A number of voters tore the paper but did not ask for another.

### ***Analysis & Recommendations***

The punching mechanism is a crude form of expressing a vote. This method has an inherent disadvantage of being hard to see by observers during the counting process, allowing the chairman of the polling site or other election officials announcing each vote an opportunity for fraud or interpretation. It also carries a heightened risk of spoiled ballots, both by voter mistake and (as in the first-round presidential election) as a consequence of poor ballot design. Nevertheless, this method has the benefit of simplicity and cultural familiarity.

Voting mechanisms will undoubtedly be seriously discussed in planning for Indonesia's 2009 elections. There is already enthusiasm for leaping past other forms of marking ballots to higher technology methods. Some observers have suggested moving toward computer screen style voting. Such methods could conceivably be employed in some places in the long term. But introducing new technologies across the vast archipelago of Indonesia – into simple polling sites in remote villages – would demand a monumental infusion of financial support for equipment, materiel and training of officials. And all new technologies carry their own risks of logistical complications and fraudulent manipulation. At the very least, it is unimaginable that expensive new methods could be introduced while maintaining the extraordinarily high number of polling sites employed in 2004.

- *New voting technologies should continue to be studied on an experimental basis. As a transitional step, consideration should be given to changing the voting mechanism to another simple form of marking ballots (such as marker pens) in 2009 elections rather than nail-punch voting.*

As discussed above, poor ballot design for the first-round presidential elections resulted in a near catastrophe over the question of validity of double-punched ballots. Some confusion among voters and election officials also arose during the April legislative elections regarding validity of DPR/DPRD ballots marked for more than one candidate or for a candidate of a political party other than the party preference. (Ultimately, the number of spoiled ballots was about seven percent, which is rather high by international standards.) In both cases, the KPU had observed several voting simulations sponsored by civil society groups prior to election day that should have alerted the KPU to potential problems.

- *More careful attention should be given to the practical implications of ballot design and requirements for ballot validity, from the legislative drafting stage to implementation by the KPU, and further emphasis upon these issues should be given in voter education materials and advertising.*

### **DIRECT PRESIDENTIAL ELECTION**

For the first time in Indonesia's history, the voters directly elected the president and vice president in 2004. The voting system itself was relatively simple and similar to elections for executive office in many other democracies: two-round elections, with the second round a run-off between the top two vote-getters in the first round.

Presidential/vice presidential tickets of five political parties competed in the first round. These parties were qualified to nominate candidate pairs for president/vice president on the basis of their votes/seats obtained in April legislative elections. A sixth party that qualified to nominate candidates (PKB) had its proposed candidate for president (Abdurrahman "Gus Dur" Wahid) disqualified by the KPU for failing a medical fitness examination.

The first round voting was held on 5 July 2004. The candidate pair of H. Susilo Bambang Yudhoyono and Drs. H. Muhammad Jusuf Kalla came in first with 33.6% and the candidate pair of Hj. Megawati Soekarno Putri and KH. Ahmad Hasyim Muzadi came in second with 26.6%, and thus qualified for the second round. The second round voting was held on 20 September 2004. The Yudhoyono team came in first with nearly 61% of the vote. President Yudhoyono was sworn in on 20 October 2004.

### **Analysis & Recommendations**

The medical fitness requirement for candidates in the presidential election law in 2004 is not a voting system issue. But it should be noted that its application to Gus Dur in 2004 was both intended and clearly controversial. The requirement smacks of discrimination against the physically disabled as well as opens the door to manipulation in the future. It should be dropped or more narrowly drawn in revisions to the law governing presidential elections in 2009.

With regard to voting system issues, the question of which political parties qualify to nominate candidates for presidential elections is significant. Law No. 23 of 2003 on Election of the President and Vice President included a transitional provision in Article 101 providing that a political party or coalition of political parties was qualified to nominate a candidate pair for presidential elections if it had obtained at least 3% of



the number of seats in the national DPR or 5% of valid votes in the DPR election of 2004. For 2009, the transitional provision will not apply; the requirements of Article 5(4) will raise the qualification threshold for political parties or coalitions of political parties to 15% of DPR seats or 20% of valid votes for DPR in the preceding legislative election.

In the 2004 elections for DPR, only Golkar and PDI-P obtained more than 15% of DPR seats (23 and 19.82%, respectively) and only Golkar obtained more than 20% of the total valid votes (21.58%). Obviously, results for political parties competing in DPR elections in 2009 will likely be quite different from the 2004 elections. Moreover, the law permits coalitions of political parties to nominate candidates. Nevertheless, this issue is almost certain to be contentious during the DPR's review and revision of the presidential election law. The much higher threshold for qualification would almost certainly reduce the number of competing candidate pairs in the first round of presidential elections, but that is an outcome policy-makers are entitled to favor.

Finally, presidential elections raise the same issue of internal democracy for political parties in nominating their candidates as legislative elections. In the 2004 elections, the Golkar party pursued a high profile strategy of a nominating convention composed of delegates elected by local party branches. Vigorous campaigns were conducted by potential nominees, and the convention produced a surprise nominee (former General Wiranto) that appeared to be a popular choice with the party's membership. All political parties should be encouraged to make their process of nominating candidates for elective office (and for party leadership positions) more participatory and transparent.

### **ELECTION OF REGIONAL REPRESENTATIVES**

Voting for the new Regional Representative Assembly (DPD) during April general elections utilized a voting system called Single Nontransferable Vote (SNTV). Four DPD representatives were elected from each province. The entire province served as the electoral district. Each voter was permitted to vote for one candidate only. The four candidates obtaining the four highest vote totals gained the DPD seats for the province. DPD elections were nominally nonpartisan; ballots showed no political party affiliation for the candidates.

More than 900 candidates qualified to compete for 128 DPD seats. Thus, the number of candidates per province averaged nearly 30, and several provinces had 40 or more DPD candidates competing for the province's four seats. Not surprisingly, more than 60% of winning DPD candidates obtained less than 10% of the total DPD vote in their province – often far less than 10%. A DPD candidate in one province, Yogyakarta, obtained more than 40% of the vote and another in Riau Islands received over 35%. But those were unusual exceptions. Most provinces had the top four candidates' results in a fairly tight range from mid-to-upper 'teen percentages down to mid-to-upper single digits.

### **Analysis & Recommendations**

Election experts often note that SNTV systems offer opportunities for alliances of candidates to develop strategies for spreading the vote among themselves to maximize their collective chance of winning. Such a strategy requires determining

the ideal number of candidates for their alliance and an effective way to encourage their supporters to split their votes fairly evenly among the allied candidates. This effort is quite risky in execution unless the alliance is relatively popular and backed by a strong political organization. It particularly poses a dilemma for a candidate in the alliance who perceives himself or herself as most likely to win the most votes individually (which, in politics, is what most candidates think).

In any event, the 2004 DPD election campaign yielded no anecdotal evidence to suggest such alliances or strategies were employed. Indeed, many political parties or nonpartisan organizations explicitly or implicitly supported more than one DPD candidate in various provinces, but seemed to do so without regard to the likelihood of splitting the vote (which could undermine their most favored candidates), rather than in any strategic effort to spread out the vote. It is possible more ambitious strategies could be pursued in subsequent DPD voting if the SNTV system is retained.

SNTV systems stand in contrast to *transferable vote* systems or other forms of ordinal (rank order) voting systems. Such systems are quite complicated for both voter education and for vote counting, and would not likely be adopted in Indonesia. Another approach would simply be to permit voters to choose two (or three or four) DPD candidates to fill the four seats, so as to give voters the ability to express more than one preference. That approach would have the main disadvantage of showing far more votes cast for DPD than actual number of voters (in contrast to the DPR/DPRD elections) and perhaps cause confusion after the election.

#### **ELECTION OF REPRESENTATIVES TO DPR/DPRD – ELECTORAL DISTRICTS**

One of the most significant innovations of the 2004 general elections in Indonesia was voting for representatives in legislative assemblies (DPR/DPRD) at national, provincial, and regency/city levels based upon proportional representation in new multi-member electoral districts.

Article 46(1) of Law No. 12 of 2003 on General Elections instructs the General Elections Commission (KPU) to form electoral districts from political sub-units or combinations thereof.<sup>2</sup> For national DPR-RI and for DPRD-Province, electoral districts are formed from regencies or cities (*kabupaten/kota*) or combinations thereof; for DPRD-Regency/City, electoral districts are formed from sub-districts (*kecamatan*) or combinations thereof. Smaller districts with fewer seats aided voter familiarity with candidates, to facilitate Indonesia's new open-list voting for DPR/DPRD candidates (see below).

Article 46(2) provides that the *district magnitude* of these new electoral districts (representatives to be elected per district) is between three and twelve. The KPU

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<sup>2</sup> Previously, as in 1999 elections, voting for these assemblies in Indonesia used the entire political unit as the electoral district. For example, the entire province served as one electoral district for the legislative assembly in that province (and as one district for national DPR), and the entire regency or city served as one electoral district for the legislative assembly in that regency or city. Each political party participating in the election submitted a single candidate list for the entire province or regency/city (which was quite long in more populated areas), and seats were awarded to successful parties based upon their share of the entire vote in the province or regency/city.

decided to form districts of between six and twelve representatives whenever possible to provide greater proportionality in awarding seats to political parties, to facilitate better representation of women, and to simplify the task of districting (delineating electoral district boundaries). The KPU determined 69 electoral districts for national DPR, 211 electoral districts for DPRD-Province in 32 provinces, and 1745 electoral districts for DPRD-Regency/City in more than 400 regencies and cities. To view the electoral districts for DPR in Indonesia's provinces, see <http://kpu.go.id/peta/petadpr.php>.

Twenty-four political parties were found qualified by the KPU to compete in DPR/DPRD elections based upon sufficiency of their organizational and membership strength. Contrary to most experts' expectations, the new system with smaller electoral districts – fewer seats distributed per district (smaller district magnitude) – did not drastically reduce the number of political parties gaining seats in legislative assemblies in 2004. In the national DPR, seventeen parties gained representation, with ten parties gaining eleven or more seats (in contrast to 21 political parties [out of 48 competing parties] gaining seats in 1999 general elections under the old PR system). (See [www.kpu.go.id](http://www.kpu.go.id) for the complete 2004 election results.)

As noted above, the Golkar party received the largest share of votes (21.58%) and DPR seats (23%). However, the collective share of seats obtained by the six major political parties from the 1999 elections declined from more than 90% of DPR seats after 1999 elections to less than 75% of DPR seats after 2004 elections. That was largely due to the relatively poor showing of PDI-P in 2004 legislative elections, and led to the success of two new political parties, Yudhoyono's Democratic Party (7.45% of the vote) and the Prosperous Justice Party (PKS) (7.34% of the vote). It should also be noted that the three political parties that only gained one seat in the DPR still obtained an average of more than a million votes each.<sup>3</sup>

### **Analysis & Recommendations**

The choice of electoral system for DPR/DPRD has been a constant focus of debate in Indonesia since the start of the *Reformasi* period in 1998. The June 1999 general elections were held under the old system of proportional representation using entire provinces and kabupaten/kota as the electoral districts for their respective legislative assemblies (and provinces as DPR districts). Many academics, commentators and civil society organizations argued then, and continue to argue to this day, for adoption of a single-member district system for Indonesia's representative assemblies rather than proportional representation (which necessarily requires multi-member electoral districts to permit distributing seats to parties according to their share of the vote).

Advocates of single-member district systems generally contend that such systems provide a closer connection between voters and their single representative and afford better accountability of officeholders. Opponents of using a single-member district system in Indonesia generally argue that any representation/accountability advantages of such systems are exaggerated. In the Indonesian context, they would be outweighed both by the technical difficulty of drawing fair and sensible boundaries for such districts (maintaining *one-person/one-vote/one-value* standards) and by the

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<sup>3</sup> By comparison, in 2004 presidential elections in the USA, independent candidate Ralph Nader obtained less than a half million votes.

lack of diverse representation resulting from winner-take-all outcomes in each electoral district.

Adoption of the new multi-member district system for Indonesia's 2004 legislative elections was intended to provide more localized electoral districts for electing members of DPR/DPRD. These districts were more numerous, smaller geographically and elected fewer representatives per district, yet the electoral districts maintained reasonable proportionality in awarding seats to political parties.

Indeed, the innovation in 2004 of new multi-member electoral districts below the province or regency/city (kabupaten/kota) level for DPR/DPRD elections has gone somewhat unnoticed and unappreciated. That seems to have resulted precisely because the system fit the political culture of Indonesia, and its implementation by election officials and political participants was so smooth. There were few complaints and only a little adjustment needed to the electoral districts proposed by the KPU. Political parties adapted to their obligation to form candidate lists on the basis of electoral districts that were often formed by combinations of kabupaten/kota or kecamatan. Party and candidate strategies for winning popular support appear to have also adapted to the political realities of new constituencies. Seats were properly allocated to successful parties on the basis of proportional representation in these new and generally smaller (but more numerous) electoral districts.

The 2004 general elections saw the emergence of new parties (including one that nominated the successful presidential candidate) and the lessening of support for the previously dominant old parties. Since the election, political party factions have grouped into two main coalitions in the national DPR (with some swing elements) in a uniquely and characteristically Indonesian way. It seems the electoral system and the resulting multi-party political system well represents and well serves the diversity of Indonesia. IFES considers Indonesia to be not only a success story as an Islamic democracy, but also a success story as a multi-party democracy.

Thus, IFES has generally sided with the opponents of single-member electoral districts for Indonesia. Indonesians appear to want a range of choices in elections. The number of parties will almost certainly decline over time, but that is a natural process that should not be forced by radical change that would constrict choice and discourage competition. If desired and practicable, the multi-member electoral district system that was utilized in 2004 elections for DPR/DPRD could be adapted to aim for somewhat smaller districts electing somewhat fewer representatives (e.g., three to nine members rather than six to twelve).

- *Indonesian policy-makers should be very cautious before changing to a single-member district electoral system, and should instead consider retaining and refining the multi-member electoral district system used in 2004 elections for DPR/DPRD.*

Moreover, the new electoral system for DPR/DPRD is not only useful for conducting elections. After the election, this system has provided opportunities for improving governance in Indonesia. Although it may not go as far as single-member districts, the new system offers a mechanism to form closer connections between elected representatives and their constituents and to enhance political accountability of the legislative bodies. To achieve that objective, however, this system will require support in order to be understood by the public and to function effectively.

- *Indonesia's citizens need to be encouraged to recognize that a particular group of legislators – from various political parties – represent their particular electoral district. And legislators need to be encouraged to identify their own interests by the local interests of their constituents, rather than by their political party faction in the legislature as a whole.*

### **ELECTION OF REPRESENTATIVES TO DPR/DPRD – OPEN-LIST VOTING**

In proportional representation (PR) voting systems, each political party submits a candidate list before the election for each electoral district in which that party is competing. Seats won by each party (based on their share of the vote) are assigned to candidates on their list. In a *closed-list* system, the rank order by which candidates on the list are assigned seats won by their party is decided in advance of the election by the political party (and the list, or at least the full list, is usually not on the ballot). In an *open-list system*, each competing political party's candidate list is on the ballot, voters are permitted to cast a vote for a candidate (usually one) on the list of the party that they prefer, and the order in which candidates are assigned seats won by their party is determined by the order of voter preferences for the candidates on that list.

During the consideration of the draft general (legislative) election law in early 2003, the DPR had been strongly encouraged by civil society organizations and other reform activists to adopt an open-list feature for the proportional representation system for electing representatives to DPR/DPRD. Most observers viewed adoption of such a system as unlikely; political party leaders had indicated their opposition to any system under which they would lose control of assigning seats to candidates and which would encourage intra-party competition among their candidates. An open-list feature was accepted late in legislative deliberation, however, but with a major caveat.

The election law provides that a seat will be assigned to a candidate on the political party list based upon voters' preferences IF the number of valid votes received by the candidate is equal to or exceeds the *quota* of votes needed by a political party to win a seat in that electoral district under the proportional representation system. The method to determine the quota for seats used in Indonesia in 2004 is known as a Hare quota (a quota is called *BPP* in Indonesia). The quota equals the number of valid votes in the electoral district divided by the number of representatives to be elected from that district. Absent reaching a full quota, the voters' preferences for candidates would not change the operation of the rank order determined by the party before the election, as in closed-list PR systems, nor otherwise affect the assignment of seats.

A quota for determining party seats in an electoral district under a PR system is an enormous number of votes. Parties themselves rarely received more than one or two quotas of votes in the electoral districts used in 2004 elections (and many seats were awarded to parties that did not even reach a quota, instead receiving seats based on the *largest remainder* method). The likelihood of a candidate on a list of candidates receiving a full quota of votes from those marking preferences for candidates was remote, particularly for candidates not promoted heavily by the party leadership.

Not surprisingly, only two candidates for DPR were reported to have reached a full quota in their electoral districts, and they would have received their seats anyway by virtue of being on the top of their party's candidate list. In several instances, DPR candidates winning the most votes on their candidate list were not assigned seats won by their party. Preferences of voters made no difference in the assigning of seats to candidates by political parties.<sup>4</sup>

Thus, Indonesia's 2004 elections for DPR/DPRD ostensibly used an open-list system of proportional representation. Candidate lists appeared on the ballot for each political party competing in each electoral district for DPR, DPRD-Province and DPRD-Regency/City. Voters were allowed to choose one candidate on the list of the party for which they had marked their preference. These votes for candidates were tabulated. However, voter preferences had almost no impact on the assignment of seats to candidates, because the election law contained a "catch".

### ***Analysis & Recommendations***

The inclusion of the BPP quota qualification on open-list voting turned the system into a sham for Indonesia's 2004 elections for DPR/DPRD. Considerable hype surrounded implementation of voting for candidates. Voters were led to believe their expression of a candidate preference would be more than a meaningless gesture. Moreover, it was an expensive sham, considering the enormous cost and logistical complexity of printing and distributing 2000 different ballots across Indonesia to match candidate lists to each electoral district for DPR/DPRD, and also the process of tabulating these candidate votes.

Eliminating the BPP quota requirement for DPR/DPRD seat assignment is perhaps the single most needed reform in Indonesia's election laws. Adoption of a genuine open-list voting system – where voters' choices from a party's candidate lists determine the assignment of candidates to that party's seats in the legislative assembly – would be a crucial step forward in democratic reform and accountability in Indonesia.

- *The law on general (legislative) elections should be revised to eliminate the requirement that a candidate for DPR/DPRD obtain a quota (BPP) of votes in order for voters' preferences to determine the assignment of seats. Seats for DPR/DPRD won by political parties in electoral districts should be distributed to candidates on the parties' candidate lists based solely upon the preferences of voters in a true open-list PR system.*

However, the value of moving to a genuine open-list system would be undermined by continuing control by political party leaders and elites (particularly from national levels) over the candidate nomination process. A more participatory approach to choosing candidates would serve the interests of *internal democracy* for parties and likely improve the quality of candidates on party lists. Moreover, this reform would also diminish opportunities for "money politics," the buying of seats, and buying of rank order position on candidate lists that was rampant under the candidate selection process in 2004.

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<sup>4</sup> Data for candidate preferences for DPRD-Province and for DPRD-Regency/City were simply not recorded at the national level by KPU. Thus, it is not possible to analyze or generalize about the impact of voter preferences on assignment of seats in those elections, but it is unlikely many candidates were assigned seats based upon obtaining a full quota of votes.

## **VIII. VOTER INFORMATION PROGRAMS AND ACTIVITIES**

### **BACKGROUND**

The 2004 elections presented multiple challenges for the strategy and conduct of voter information activities. IFES public opinion surveys indicated that potential voters would turn out for the election but they had little understanding of the electoral process. A 2003 national public opinion survey of citizens of voting age indicated that 59% were aware of the KPU, but only 5% had heard or read a lot about the commission. While almost two-thirds of the respondents thought the 2004 elections would be free and fair, the new paradigms of the electoral process presented a challenge. Most Indonesians knew their next president would be chosen in a direct election by the people but few understood how the candidates would be nominated and fewer knew there could be a second-round election for selection of the president. Only 25% of respondents had heard of the new legislative body, DPD, and fewer knew its functions and responsibilities.

None of the members of the KPU or senior members of the Secretariat had previous professional experience in planning, organizing and managing a national multimedia campaign of the magnitude and scope required to support the 2004 elections. A major obstacle to the ability to plan and conduct a comprehensive and effective voter information program was the lack of sufficient funding by the DPR for KPU operations. While a combination of factors contributed to the initial problems of implementing voting information programs and activities, insufficient funding forced the KPU to consider developing voter information programs in-house with limited resources.

As the KPU struggled with supporting legislative funding requests, the reality was that the legislature did not comprehend fully the financial requirements to conduct the complex elections mandated by the new laws. Too frequently, the 1999 elections were used as a benchmark for comparative analysis for funding. This was further exacerbated by the fact that the international community provided more funding support for the 1999 elections than would be available for 2004, and this was not factored sufficiently into the requirements.

Thus, the KPU was forced to work within the budget limitations and to utilize resources from the international community as they became available. Voter information and education activities initially did not receive the support required for an effective information campaign in a country the size of Indonesia with the impediments of being an archipelago with serious infrastructure and communication limitations in some areas.

### **VOTER REGISTRATION**

As the KPU undertook the voter information and education campaign for registration of voters, it quickly became apparent that funding limitations and use of in-house resources could not produce a timely and effective information campaign. The initial voter information materials for the registration process were produced internally by the KPU with little assistance from other organizations. While these KPU materials were used effectively, the KPU did not have the internal capacity to sustain a national multimedia campaign. The funding for information activities pertaining to the registration process was not adequate. The KPU asked IFES to assist with

technical expertise; UNDP provided additional funding for the production of radio and television spot announcements and KPU paid for the air time.

### **ELECTION VOTER INFORMATION STRATEGY**

A mascot, featuring a cartoon-like ballot box, and slogan, *Milih Langsung* (Direct Vote), were developed for the national media campaign. The key theme was *Suaramu Menentukan Nasibmu* (Your Voice Determines Your Fate). The campaign was designed to take into account the critical areas and issues of the time:

- Lack of knowledge and credibility in the new political system
- Balloting procedures
- Violence
- *Golput* or non-voters
- Representation of women

The overarching goal was to contribute to the effective organization of peaceful, democratic and credible elections with the highest participation of voters. The key to achieving this goal was to provide sufficient information to voters and the general public so that they understood the electoral processes, the political institutions involved, balloting and vote counting procedures, and that this would be done in a peaceful, orderly, transparent, fair and democratic manner.

Because of the complexities of conducting national mass media campaigns in Indonesia and the limited funding, there was no margin for communication errors or time to recover from missed opportunities. Therefore all materials produced were pre-tested through focus groups representing the target audiences.

### **KPU PARTNERSHIPS**

In order to make the most effective use of available funding and resources, informal partnerships were formed with the media and NGOs and other interested private sector organizations. While most media and organizations were interested in participating, the key was to insure a common and accurate message was being delivered to the public in a timely manner. Partnerships or cooperative arrangements were also established with specialized media such as MTV and radio stations targeting select audiences. This expanded access to the voter information messages for first-time voters, young adults, women and potentially marginalized voters.

With the broadcast media having the dominant position of communicating information to the public in Indonesia, special attention was given to existing public affairs and news programs that had a known audience. By driving the flow of information, content could be controlled indirectly without imposing directives on the media. This included public and media appearances by KPU members, conducting press briefings, and simplifying access to election information. In some cases, IFES conducted informal training of media personalities through special briefings on the electoral process and background information on comparative electoral processes in other countries. Similar briefings and personal meetings were held for editors of newspapers and magazines. An informed and educated media increases exponentially the ability to communicate information to the public in the most cost effective manner.



## **NATIONAL TABULATION AND MEDIA CENTER (NTMC)**

With financial assistance from the UNDP and technical advice and assistance from IFES, the KPU operated a National Tabulation and Media Center to report the results of the elections to the media and the public. The challenge of tabulating the results of the largest and most complex elections ever held in one day strained the technical resources available in-country. While difficulties were encountered and eventually overcome during the legislative elections, adjustments were made to improve the capabilities of the system for the presidential elections.

### ***IFES Involvement***

The difficulty encountered with the voter registration information campaign caused the KPU to reevaluate its internal capabilities and how to use its assets more effectively. IFES assisted the KPU in developing specifications for advertising agencies to help design and conduct the multimedia national voter information campaigns for the legislative and presidential elections. IFES also assisted in developing specifications for public relations companies to aid in managing and operating the media center for the KPU.

There was also a need to improve the KPU's internal communications, particularly between the headquarters and the KPUDs. IFES helped the KPU develop an internal newsletter and provided the initial staff support for training and capacity building of the KPU public affairs staff to sustain and continue the newsletter. IFES also helped the KPU design a website that could be used for both internal and external communications and provided the technical support and training of KPU staff to sustain operations of the website. IFES organized a series of training workshops for KPUDs in seven provinces on public relations concepts with tips on working with the media and setting up a local media center.

IFES provided local voter information and education support for provincial and regency/city KPUDs by facilitating 188 voter information workshops in seventeen provinces—Nanggroe Aceh Darussalam, North Sumatra, West Sumatra, South Sumatra, Riau, Banten, West Java, DI Yogyakarta, Central Java, East Java, East Kalimantan, South Sulawesi, North Sulawesi, Bali, West Nusa Tenggara, East Nusa Tenggara, and Papua.

IFES worked with the Local Consultative Forums (LCFs) in the regions to organize the workshops, on behalf of regional KPUDs. The LCFs consulted with the KPUDs to gain their endorsement of workshop topics, speakers, and contents.

IFES initiated a series of eighteen public opinion tracking surveys to evaluate the public's understanding of the election process, to assist the KPU in planning voter information and education campaign strategies, and to determine the impact of the voter education campaigns. The surveys were conducted between December 2003 and October 2004. The data was released to the public and interested NGOs through press briefings by the KPU and posting on the KPU website. The survey results can also be found at [www.ifes.org](http://www.ifes.org).

An integral part of voter information and education activities requires research and monitoring of what organizations are doing in the media so that the KPU would be able to direct its limited resources where needed. IFES monitored information placed

by the KPU, Panwas (state-sponsored election supervisory committees), political parties, political candidates, and other organizations between the period of January and September 2004.

In December 2003, the cumulative negative press reports in both electronic and print media about the KPU were beginning to impact public opinion about the integrity of the election process and the capability of the KPU to conduct the elections. It was clear the positive achievements of the KPU were not understood and were not reaching the public. IFES arranged a press and international community briefing so the KPU could review its achievements and explain its readiness for the 2004 elections. Guests were also able to watch and interact with displays of a polling station, a registration scanning and data entry and editing unit, a computer based results tabulation system, and voter education materials. For many of the opinion leaders present, this was the first time they had seen these key KPU operational processes. The success of this event marked a turning point in the media's perception of the capabilities and credibility of the KPU. Numerous positive editorials were published in the days after this event.

IFES provided support for six political debate programs, the first such debates in Indonesia. They were conducted by the KPU during the period 27 March through 1 April 2004. Each program was ninety minutes and featured four different political parties. The success of the KPU-sponsored debates for the political parties prior to the legislative elections provided the foundation for historic debates/dialogues for presidential and vice presidential candidates for the first and second presidential election rounds. The objective was to offer all candidates an opportunity to use mass media in a neutral venue sponsored by the KPU, to inform and educate the public and potential voters of their vision, work plans, and platforms for the future of Indonesia.

### ***Analysis and Recommendations***

- *It is rare that sufficient funds are made available to conduct a comprehensive, effective, official voter information program. Consideration should be given to requiring support from all media for KPU-sponsored voter information and education programs. This could be accomplished without limiting sale of commercial air time/space in the media. If, thirty-five days before the election, each station were to cut newscasts and existing public affairs programs by thirty seconds and allocate that time at no cost to the KPU for voter information, the number of commercial minutes would not be affected and the KPU would have access to quality air time for its voter information activities.*
- *Starting six months before an electoral event (registration, election, etc.), the KPU should host a meeting of all NGOs planning to conduct voter information or education campaigns so that their activities can be coordinated. The KPU should outline its plans for voter information and education, including themes, materials and briefings on current research showing potential voters' understanding of the electoral process, and highlight those areas that might need special attention. While mass media campaigns should be conducted, local and regional programs and activities should not be overlooked, and should be an integral part of an overall voter information activity.*

- *The KPU set excellent precedents with regard to candidate dialogues/debates. These should be institutionalized and gradually adjusted to meet international guidelines for the conduct of such activities.*
- *The KPU should institutionalize the practice of using an advertising agency or experienced practitioner to plan and develop the official national campaign for voter information. The same practice should be followed to obtain support from an experienced public relations (PR) company for operation of a media center and related functions. The solicitations for ad agency and PR support should be handled in an open competitive process.*
- *The KPU should consider including as an integral part of its voter information activities a contract for public opinion research and evaluation to track and monitor the results of the voter information activities and to remain abreast of public opinion and knowledge as it pertains to the elections. This activity should be nonpartisan and its data and results should be made public.*

## **IX. POLITICAL FINANCE REGULATION AND PUBLIC DISCLOSURE**

The political laws governing 2004 general elections in Indonesia contained provisions restricting political funds and requiring financial reporting of political parties and candidates. These provisions evolved in part from approval of the political party law in November 2002 to approval of the presidential election law in July 2003. So, the later provisions were somewhat clearer and more comprehensive, and the party law simply became more outmoded and inconsistent.

### Law No. 31 of 2002 on Political Parties

- Requires all political parties that are registered with the Ministry of Justice to prepare an annual financial report and submit this report to the KPU following an audit by a public accountant;
- Requires political parties to maintain a Special Election Campaign Fund Account and to submit an audited financial statement of this account to the KPU no later than six months following election day;
- Sets limitations upon contribution amounts that may be received by political parties from individual persons and from corporations or business entities.

### Law No. 12 of 2003 on General Elections

- Establishes a timetable under which electoral participants (political parties and DPD candidates) are required to submit campaign fund reports of receipts and expenditures for audit by a public accountant, for the audit to be completed, and for the results of the audit to be submitted to the KPU (cumulatively, reporting within ninety-seven days of the general election);
- Requires electoral participants to report information about contributions exceeding five million rupiah to the KPU, provincial KPU, or regency/city KPU; the election commissions are directed to publicize these contribution reports through the mass media;
- Sets limitations on contribution amounts that may be received by electoral participants from individual persons and from private entities.

### Law No. 23 of 2003 on Presidential Elections

- Requires electoral participants (presidential/vice presidential candidate pairs) to maintain a special account for campaign funds, and to submit campaign fund reports to the KPU no later than three days after election day; the KPU submits the campaign fund reports for audit to a public accountant and publicly announces the results of the audits (cumulatively, audit results announced within twenty-three days of the election);
- Requires electoral participants to report information about contributions exceeding five million rupiah to the KPU one day prior to the beginning of the campaign period and one day after; the KPU shall publicize these contribution reports through the mass media;
- Prohibits the use of, and requires the forfeiture and reporting of, contributions received from foreign sources, government or state-owned enterprises;
- Sets limitations upon contribution amounts that may be received by electoral participants from individual persons and from private entities.

The greatest flaw in this legal framework for political finance regulation and public disclosure was the lack of explicit administrative sanctions for failure to submit financial reports (but imposing draconian criminal sanctions for submitting false information in such reports). Moreover, the laws dispersed investigatory and enforcement responsibilities, with stronger powers given to the Ministry of Home Affairs and Regional Autonomy for more serious violations and lesser powers of administrative sanctions “by public reprimand” to KPU for less serious violations.

Implementing regulations for political finance provisions of these laws were provided in the KPU’s Decree No. 676 of 2003 and Decree No. 30 of 2004. These decrees included requirements that political finance reports be prepared in accordance with specified accounting procedures and systems, which the KPU had developed through collaboration with the Indonesian Accountants Association.

### **IFES Involvement**

Since the beginning of its program activities in Indonesia, IFES has strongly encouraged a focus on political finance regulation and public disclosure issues and has comprehensively examined development of the legal framework and implementation practices in this area. IFES produced six *Money and Politics* reports for Indonesia (available at [www.ifes.org](http://www.ifes.org)). The first of these reports, issued in December 1999, reviewed the very modest efforts at regulation and public disclosure of political finance in Indonesia’s 1999 legislative elections. The latest of these reports, issued in November 2004, examined implementation and enforcement of political finance rules and public disclosure of the financial reports of political parties and candidates in 2004 elections. The four *Money and Politics* reports issued from 2000 to 2003 were particularly aimed at encouraging improvements to the legal framework in this area through several stages of legislative and regulatory development, and each report included specific recommendations for consideration by policy-makers and civil society organizations.

IFES provided technical assistance to the KPU and supported the KPU’s partnership with the Indonesian Accountant’s Association in development of implementing regulations and guidelines for financial reporting. IFES has sponsored and participated in conferences and workshops in Indonesia that focused on political finance issues. IFES has also collaborated with civil society organizations –

particularly Transparency International—Indonesia and Indonesia Corruption Watch – that were actively involved in monitoring political finance reporting and enforcement of political finance regulations.

### ***Analysis & Recommendations***

No area of electoral policy and election administration in Indonesia more clearly illustrates the gap between formal requirements of the law and failed implementation than political finance regulation and public disclosure. As IFES observed in its *Money and Politics Report #6*,

Although the legal framework for political finance transparency in Indonesia was generally improved for 2004 elections, the findings of this report show that reporting obligations in these provisions were widely avoided by the political parties and electoral participants. This result is particularly discouraging given the serious effort by the General Elections Commission (KPU), in cooperation with the Indonesian Accountants Association, to develop clear implementing regulations and to provide detailed instructions and guidance for political parties and candidates. ... This result is not surprising, however, given the absence of meaningful sanctions in the relevant political laws for non-compliance with political finance reporting obligations.

As IFES' report describes,

- Only nine of the fifty political parties registered with the Ministry of Justice submitted an annual financial report for 2003 to the KPU (due in July 2004);
- Five of the ten political parties that received the most seats in national DPR balloting in 2004 failed to submit the annual financial report required by the political party law;
- No political party that was registered with the Ministry of Justice, but had not qualified to compete in April 2004 legislative elections, submitted an annual financial report pursuant to the political party law;
- Only thirteen of twenty-four political parties competing in April's legislative elections (parties qualified to nominate candidates for DPR/DPRD) submitted audited reports of campaign funds to the KPU that were required by the general election law;
- Six of sixteen political parties winning at least one seat in national DPR failed to submit the financial report on campaign funds to the KPU, including two of the ten political parties that received the most seats in national DPR;
- Only one DPD candidate in all of Indonesia, out of more than 900 candidates qualified to compete for 128 DPD seats (four per province), had submitted an audited financial report of campaign funds to national KPU at the time of IFES' inquiries in October 2004.

The result was better with respect to the July and September rounds of presidential elections. All candidate pairs (five in the first round of presidential elections, two in the second round) submitted their campaign fund reports to the KPU within the deadline of three days after voting day.<sup>5</sup> This higher level of compliance with reporting obligations was largely due to the obvious intensity of attention upon these national candidacies, and because the presidential election law had required the

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<sup>5</sup> However, no candidate pairs in either round submitted separate pre-campaign or post-campaign contribution reports regarding contributions exceeding five million rupiah; all candidate pairs included reports of contributions with their campaign fund reports.

candidate pairs to submit their financial reports to the KPU on a tight timeframe and provided for the KPU to itself hire and supervise the accountants who audited these reports. As IFES' report observed regarding the financial reports of the presidential tickets,

The audit reports contained numerous findings of technical errors and discrepancies in accounting practices and reporting of donors, but no serious problems that undermined the fundamental legitimacy of the campaign fund reports.

Thus, the legal framework for elections in Indonesia needs review and improvement, particularly with regard to key elements for enforcement:

- *Provisions in all political laws relating to political finance regulation, contribution limitations, reporting, public disclosure, and enforcement mechanisms should be made consistent and synchronized.*
- *Administrative sanctions for violations of financial reporting obligations should be expanded beyond mere public reprimand. Sanctions should be imposed for particular offenses relating to financial record-keeping and reporting, including:*
  - *Late filing of financial reports*
  - *Failure to file reports*
  - *Submitting false or incomplete information in reports*
  - *Inadequate record-keeping or failure to maintain supporting documentation*
  - *Failure by national political parties to provide or collect information from regional party committees or from DPR/DPRD candidates to facilitate consolidated financial records*
  - *Failure to conduct a professional and accurate audit of financial records (if responsibility to conduct audit remains with political parties and/or electoral participants rather than under the control of the KPU)*
  - *Obstruction or lack of cooperation by officials of political parties and/or electoral participants with financial audits or official investigations*
  - *Conducting political party or campaign activity with funds outside of the account for which official financial reports have been submitted*
- *Sanctions for such offenses should be reasonable and proportionate to the seriousness of the offenses, and should include both monetary fines and political penalties (such as forfeiture of the right of a political party to compete in the next elections).*
- *Responsibilities and legal duties of treasurers and other political party officers or campaign officials regarding financial administration, record-keeping, and financial reporting should be more clearly specified (and supported by appropriate penalties for noncompliance).*
- *The function of auditors and the content of financial reports to be submitted to the KPU (or other election commission level) should be clarified to prevent audits from serving as a filtering and obscuring mechanism rather than a positive influence upon political finance disclosure. Application of the model of the presidential law, in which financial reports are submitted to the KPU*

- and the KPU is responsible for hiring auditors, should be considered for all forms of political finance reporting.*
- *Campaign finance rules should more clearly define what types of activities are permitted or not permitted inside and outside of the official campaign period, and should make clear all campaigning activity is subject to legal regulation and financial reporting. Consideration should be given to relaxing some limitations upon campaigning so that more limited or personal forms of voter contact (such as distribution of literature, small group meetings, and candidate door-to-door [in contrast to paid media advertising or mass rallies]) is permitted after candidate nomination but before the official campaign period.*
  - *Campaign finance rules should specify that all contributions given to candidates for DPR/DPRD are considered contributions to the political party that nominated such candidates. Contributions given to DPR/DPRD candidates should be subject to the same prohibitions, limitations and – importantly – reporting requirements as specified under the election law for contributions given to electoral participants.*
  - *Political laws should be strengthened to ensure that individual persons or legal entities are correctly identified as contributors on political finance reports, by specifically prohibiting such persons or entities from*
    - *Receiving advance payments or reimbursements for such contributions from other persons or entities, or*
    - *Acting as an intermediary for a donor whose identity is not disclosed.*

Public disclosure of political finance activity of political parties and candidates is intended to provide important information to citizens about the sources of financial support and nature of campaign spending of electoral participants. It is also intended to facilitate monitoring and enforcement of potential violations of prohibitions and limitations related to political finance that are contained in the election laws (particularly as to sources and amounts of contributions made to electoral participants). Here too, more work should be done to improve appreciation and use of public disclosure policy in Indonesia:

- *Greater emphasis and enhanced resources should be devoted to providing facilities at the KPU for public examination and photocopying of political finance reports of political parties and electoral participants.*
- *Indonesian non-governmental organizations, such as Transparency International—Indonesia and Indonesia Corruption Watch, should continue their excellent research, analysis and socialization regarding issues of political finance regulation and disclosure. The NGO community should focus upon encouraging complete, timely and accurate financial reporting by political parties and electoral participants.*
- *Civic education programs should be conducted to inform the general public about rules regarding political finance and giving of contributions, and about criminal and administrative sanctions for violating political funding rules.*

IFES' *Money and Politics #5* was issued in September 2003, and focused on opportunities for sharpening the legal framework under the election laws for political finance regulation and disclosure through KPU implementing regulations. That report observed,

Improvements in the regulatory framework are a necessary precondition for promoting integrity and transparency in political finance in Indonesia. However, rules and procedures are ineffective without political and social commitment to implementation. To encourage compliance with the law, financial activity of political parties and other electoral participants must be effectively monitored by news media and civil society, and laws must be strongly enforced through KPU, Panwas, prosecutors and the courts.

Problems for political finance regulation and public disclosure of funding of political parties and candidates in Indonesia remain a matter of compliance and enforcement and, thus, of political will. The legal framework established for 2004 general elections provided a strong basis for a full and fair system of political finance regulation. This framework would benefit from some improvements, as suggested above. But the hard part for Indonesia will be overcoming cultural and political objections to transparency of funding, and a legacy of impunity for violating reporting requirements.

## **X. ELECTION COMPLAINT ADJUDICATION**

The 2004 general elections in Indonesia involved entirely new electoral systems and procedures in the legislative elections (including new electoral districts, open-list voting for candidates for DPR/DPRD, and voting for the new DPD "upper house"), as well as eighteen new political parties. The first-ever direct elections for president and vice president were then held in two rounds. These elections were remarkably competitive and dynamic, but took place in a peaceful environment.

Importantly, the results of the legislative and presidential elections received broad acceptance as fair and legitimate by the Indonesian people. This was in stark contrast to the protracted arguments about irregularities following 1999 legislative elections.

A key factor for legitimacy of elections is the process for adjudicating election complaints and resolving election-related disputes. In the 2004 elections in Indonesia, responsibility for this process was largely borne by two institutions. The first was the newly established but permanent Constitutional Court, whose jurisdiction includes "to resolve disputes involving the results of the general elections".<sup>6</sup> The second institution was a temporary but long-customary system of Election Supervisory Committees (*Panitia Pengawas Pemilihan*), known as Panwas, whose duties included processing of complaints and mediating of disputes.<sup>7</sup>

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<sup>6</sup> See: *Law No. 24 of 2003 on the Constitutional Court*, Article 10(1)(d).

<sup>7</sup> See: *Law No. 12 of 2003 on General Elections*, Articles 120 – 130, and *Law No. 23 of 2003 on Election of President and Vice President*, Articles 76 – 82.



## **CONSTITUTIONAL COURT**

Indonesia's Constitutional Court was established following the approval of the law on the Constitutional Court by the People's Representative Assembly (DPR) in August 2003. The creation of the court was mandated by amendments to the 1945 Constitution of the Republic of Indonesia in October 2001 which fundamentally changed the role and relationships of Indonesia's highest state institutions.

The Constitutional Court is composed of nine justices, three chosen each by the Supreme Court, the DPR and the president (formal appointment is made by the president). The court's chair and deputy chair are chosen by and from among the justices.

According to Article 10(1) of the law, the Constitutional Court has jurisdiction "of first and final instance" in reviewing the constitutionality of laws (judicial review), resolving disputes of constitutional authority between state institutions, deciding upon actions for the dissolution of political parties and, as noted above, resolving disputes involving the results of general elections.<sup>8</sup> The court also has an important fifth power, pursuant to Article 10(2), in deciding whether claims for the impeachment of the president and/or vice president proposed by the DPR have a basis in law.

In its first year, the Constitutional Court adjudicated seventeen cases of judicial review. These included controversial cases, such as a ruling on retroactive application of the law on terrorism and the lifting of a ban on political participation of former members of the outlawed Indonesian Communist Party (PKI). The court demonstrated a modern and reform-oriented approach to its job, and a commitment to transparency of its operations and to educating the public about constitutional rights and the court's role in protecting those rights.

In 2004, for the first time in Indonesia's history, political parties and candidates that participated in general elections had the opportunity to challenge the official election results announced by the KPU to the Constitutional Court. The court undertook extensive preparations to meet this challenging responsibility; as described below, IFES provided substantial assistance in this endeavor.

On 5 May 2004, the KPU announced official results of the April 5<sup>th</sup> legislative elections. Within the 72-hour time period permitted by the election law, 23 political parties (out of 24 parties competing in the election), and 21 DPD candidates, filed 291 disputes with the Constitutional Court challenging the KPU's election results (12

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<sup>8</sup> Importantly, not all disputes involving general elections fall within the jurisdiction of the Constitutional Court. Only those disputes that contest the quantitative results of the general elections conducted nationally by the KPU and that materially impact the outcome of the determination of winning electoral participants may be brought before the court. As discussed below, it is the responsibility of the Election Supervisory Committees (Panwas) to accept and preliminarily investigate complaints involving allegations of violations of the law. Panwas may then forward reports to the KPU (for administrative violations) or to police (for criminal violations). District courts are the first and final court for election-related offenses punishable by less than eighteen months imprisonment; for offenses punishable by more than eighteen months imprisonment, decisions of the district courts may be appealed to Indonesia's Supreme Court.

disputes were later withdrawn). The court divided into three panels of three judges to hear the cases and review evidence, and used field hearings and teleconferencing to enhance its capacity. The court appointed ad hoc substitute registrars to enable it to handle the disputed cases effectively. The court also established a comprehensive and effective mechanism for receipt of pleas from political parties and candidates.

All election results disputes were resolved by the Constitutional Court within the thirty working days stipulated by the general election law. (Most were dismissed for lack of sufficient proof.) These decisions resulted in two changes in the determination of winning DPD candidates, and thirty-eight changes in determination of seats won by political parties in legislative assemblies (four in national DPR, four in provincial DPRDs, and thirty in regency/city DPRDs). Despite the political sensitivity of these decisions, the court's objectivity and competence were not challenged by petitioners and the general public. The court's resolution of disputes over general election results proceeded peacefully, as had the election process itself.

Following July 5<sup>th</sup> first-round presidential elections, results announced by the KPU determined that the candidate pair for president/vice president nominated by the Golkar Party and led by former general Wiranto came in third in balloting and would not compete in the second-round election. The Wiranto team filed a petition with the Constitutional Court claiming that the official results had denied their ticket 5.4 million votes that would have earned his ticket second place. On 9 August, following several days of hearings that produced meager proof, the court unanimously rejected the petition.

Even before its role in resolving election disputes arising from the 2004 elections, but also as a result of that role, the Constitutional Court has earned a reputation for honesty, independence, professionalism and timely action. The court has become a model for judicial reform efforts in Indonesia.

### ***IFES Involvement***

As soon as the Constitutional Court was established, IFES offered to help the court meet its responsibility to resolve disputes involving the results of general elections. With IFES assistance, the court

- Conducted an internal workshop in February 2004 on "The Role of the Constitutional Court in Resolving Election Result Disputes Through a Transparent Adjudication Process;" this workshop helped the court's staff prepare administrative procedures and the case management systems for handling election results disputes;
- Developed and disseminated – in the form of an informational booklet – Constitutional Court Regulation No. 04/PMK/2004 on Guidelines for the Hearing of Disputes on Election Results (PMK 04) and Regulation No. 05/PMK/2004 on Procedures for Submitting Objections to 2004 Presidential General Election Results (PMK 05) to political parties and candidates, Election Supervisory Committees (Panwas), and election monitoring bodies;
- Developed an online case database to provide information to the public on election results disputes filed with the court by petitioners.

IFES provided onsite Indonesian legal experts to the Constitutional Court throughout the period of election results disputes resolution. IFES also assisted the court during this time with news media and public relations strategy and operations.

## **Analysis & Recommendations**

To strengthen the court's capacity to fulfill its duties and to enhance public appreciation for the court and the constitution the following measures are recommended:

- *Conduct a comprehensive assessment in order to evaluate the long-term technological, material, personnel, and training resources needed by the court.*
- *Assist the court's development of its internal framework; develop strategies and regulations in its substantive jurisdictional areas of resolving disputes between state institutions, and with its role in deciding actions for the dissolution of political parties.*
- *Develop an informational network for the court's decisions, including the providing of assistance in televising court proceedings.*
- *Aid in developing and implementing a public relations strategy, including civic education programs (in cooperation with the Ministry of Education) and public information programs through national and regional media campaigns. Develop these campaigns to specifically explain the role and function of the court and promote the court as a defender of Indonesia's constitution, and of a government system based on the constitutional rights of its citizens and constitutional checks and balances between state institutions.*
- *Build and develop capacity for research and analysis through specialized training by experts and ongoing in-house research programs.*
- *Support the publications of court decisions, especially in Bahasa Indonesia, and in other foreign languages in areas of international interest, such as cases of judicial review.*

## **PANWAS**

Indonesian elections have traditionally featured a unique institution known as Panwas – state-sponsored election supervisory committees that serve a monitoring, mediating and complaint facilitation function in the election process. The precise authority and powers of Panwas have been always been ambiguous, particularly as it lacked financial and management independence or enforcement powers. As noted in IFES/Indonesia's 1999 *Post-election Report*,

[U]nder the New Order, the institutional weakness of Panwas was exploited as a cover for tightly controlled and manipulated elections. Panwas provided an appearance of fair and neutral supervision in an election process that lacked genuinely independent election administration bodies, real and competitive political parties, active civil society monitoring, or independent news media.

As discussed below, the fundamental institutional weakness of Panwas continued to hamper its effectiveness in June 1999 elections. Despite significant efforts to strengthen Panwas' legal framework and improve its operations for the 2004 general elections, the effectiveness of Panwas remained questionable in these latest elections as well.

Under the election laws governing 2004 general elections, the national KPU is empowered to appoint the national level Election Supervisory Committee (Panwas); the KPU appointed the national Panwas in May 2003.<sup>9</sup> Panwas committees were then appointed in a hierarchical manner at the provincial, regency/city (kabupaten/kota), and sub-district (kecamatan) levels. The law aims for Panwas to broadly represent the community, and requires Panwas members to be drawn from among local civic leaders, civil society activists, academics and students, the media, police and prosecutors.

Panwas committees are given three principal duties and responsibilities: to supervise all stages of implementation of the election; to mediate disputes arising from the election; and to accept and process complaints alleging violations of the law.

The first responsibility of general supervision inevitably places Panwas in the position of questioning the decisions and actions of the election commissions (KPU/KPUDs) at each corresponding level of operation (particularly on issues such as candidate qualifications). Panwas has no direct powers to challenge or block election commission conduct, or to demand information or documents. Panwas essentially relies upon its moral authority and the same powers of persuasion and criticism as civil society election monitoring organizations (such as complaining to the news media) to get attention and encourage reconsideration by election commissions of their decisions and actions. This situation guarantees tension and conflicts between Panwas and KPU/KPUDs, as repeatedly occurred in 2004 (including at the national level). It is particularly awkward since Panwas is established, funded and administratively controlled by the KPU.

Panwas has more clearly defined powers in the second area of dispute mediation and resolution. Disputes may arise between competing political participants, particularly including complaints that do not allege violations of the law. The election laws provide a three stage process for dispute resolution. First, Panwas facilitates discussions between the disputing parties to hopefully reach a consensus. Second, if the first step fails to resolve the issue (or is declined by the parties), Panwas proposes alternative resolutions to the dispute for discussion. Third, if the second step fails, a plenary session of the Panwas issues a final and binding settlement upon the parties.

Panwas is reported to have successfully mediated over 1,000 disputes during the 2004 general elections. That is certainly of benefit to the political process, and the community representation within Panwas may well support such mediation and dispute resolution efforts in many places. But this dispute resolution function may not justify setting up and funding an entire Panwas apparatus throughout Indonesia.

In the third area, regarding complaints, Panwas reportedly forwarded more than 900 cases of allegations of criminal violations to district courts in the 2004 elections (as compared to only four cases in 1999). Panwas also referred more than 12,000 reports of administrative violations to the KPU for resolution.

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<sup>9</sup> Panwas members were to be appointed before election preparations began (although voter registration and other activities began in 2003 well before most Panwas committees were in place), and their terms of office end 30 days after the swearing in of the elected president.

Since Panwas has no adjudicative power to decide cases or punish those engaged in irregularities or crimes, Panwas' role in processing administrative and criminal complaints is murky and controversial. National Panwas itself was unsure of whether it is a depository for complaints, merely providing forms and making sure such forms are filled out properly before passing complaints along to the KPU/KPUDs or to police, or if Panwas has its own power to review, filter or investigate complaints. Ultimately, in practice, it appears that the level of engagement of Panwas committees in processing complaints varied widely, depending upon their resources and view of their responsibilities.

The election laws governing 2004 general elections in Indonesia actually reduced Panwas' powers from 1999 (such as authority to stop campaign activities of political parties or to require holding of repeat elections). The new laws were better, however, in describing Panwas' procedures for mediating disputes and receiving/processing complaints. Panwas itself adopted implementing regulations to more clearly structure its operations and to standardize its process for handling complaints (as well as establishing an automated case management system). These improvements to the legal framework made the work of the entire network of Panwas committees more consistent, transparent, efficient and effective.<sup>10</sup> But these steps could not change the fundamental fact that Panwas lacks genuine investigatory, adjudicative or enforcement powers.

### **IFES Involvement**

IFES has had a strong interest in examining and improving the institution of Panwas from the outset of its program in Indonesia. In advance of the June 1999 general elections, IFES' legal experts conferred with the team at the Supreme Court that worked on drafting implementing regulations for Panwas. IFES consulted with the national Panwas during its operations in the 1999 general elections. Following the elections, in September 1999, IFES cosponsored a conference with the faculty of the law school at the University of Indonesia to specifically review the performance of Panwas and discuss alternative approaches to election supervising, complaint adjudication and dispute resolution.

IFES continued to promote review and discussion of the role, authority and procedural framework for Panwas as the proposed drafts of laws to govern 2004 general elections were being considered by the DPR. In September 2002, IFES co-sponsored a Complaint Adjudication Roundtable with the newspaper *Kompas* to bring together former KPU and Panwas members, judges, lawyers, academics, NGO activists and other Indonesian experts to comprehensively consider issues related to Panwas. The steering committee developed a report following the roundtable that included specific recommendations for improving the election law. These proposals sought to clarify the authority of Panwas and to provide far more detail for procedures regarding Panwas' operations and the process for submitting of complaints and disputes to Panwas. The steering committee presented their recommendations in a meeting and press conference with the special committee

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<sup>10</sup> Fundamental structures and procedures of Panwas are set forth in six important decrees of the national Panwaslu that are available in PDF format on [www.ifes.org](http://www.ifes.org): Decree No. 08 on Job Description and Work Relationship of Panwas Committees; Decree No. 09 on Reporting Procedures; Decree No. 11 on Violation Classification; Decree No. 12 on Supervision Mechanism; Decree No. 13 on Dispute Resolution Mechanism; and Decree No. 26 on Administrative Sanctions.

(Pansus) of DPR Commission Two then deliberating the general election law. These recommendations had a substantial impact on improving the scope and specificity of the final law.

Immediately following the appointment of the national Panwas in May 2003, IFES began a program of advice and assistance. This assistance included

- providing of an on-site legal expert to develop a new and comprehensive case management system;
- development, printing and distribution of a *Buku Saku* handbook for Panwas members that was utilized throughout the country; and
- participating in the planning for Panwas training programs.

IFES collaborated with Indonesian and international partners to monitor the work of Panwas committees at all levels of operation.

### ***Analysis & Recommendations***

Indonesians are generally familiar and satisfied with the institution of Panwas.<sup>11</sup> Despite widespread complaints about its ineffectiveness, there appears to be a comfort level with Panwas' customary role – or perhaps a discomfort at imagining elections without a Panwas. Thus, the contribution to public perceptions of the legitimacy of elections made by Panwas cannot be quickly dismissed. And IFES' field reports suggest many Panwas members at all levels engage in diligent and sometimes courageous efforts to do their jobs and to improve the election process, despite a lack of resources and clear authority.

However, it is useful to review the observations made in IFES/Indonesia's 1999 *Post-election Report*:

Panwas' basic role and authority in the election process was unclear. Panwas is a supervisory body, but without administrative power. Panwas is also a quasi-adjudicative body, but without enforcement power. Panwas largely performed an advisory, mediating, or referral role – relying on *moral authority* that was dependent on each commission's energy, stature, and persuasion rather than decision-making or enforcement powers.

... Panwas lacked a clear mandate for its role in the election process in June 1999. The general supervisory and monitoring role of Panwas – which was not genuinely independent in past elections – seems anachronistic in a new political environment of competitive parties, stronger civil society monitoring, independent news media and, potentially, professional election administration.

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<sup>11</sup> According to the final wave of public opinion tracking surveys conducted by IFES in Indonesia during the 2004 general elections (results released on 19 October 2004) -

- Fifty-eight percent of Indonesians said they had heard at least a little about Panwas.
- More than 80% of those aware of Panwas thought that it will be effective in the supervision of elections, that it is honest, independent and impartial, and that it will be effective in handling elections violations and resolving disputes.
- When those aware of Panwas were asked whether they were satisfied with the body, 90% said they were satisfied and 10% said they were dissatisfied with the work of the body. Seventy-eight percent of those dissatisfied with Panwas say this is because the government was interfering in this body's work. Eleven percent of respondents were dissatisfied because they believed Panwas was not transparent.

For further information about IFES' survey results, see [www.ifes.org](http://www.ifes.org).

Unlike the general supervisory function, which seems outdated, the unfulfilled adjudicative role of Panwas remains vitally important to an effective election system. As the process of review continues, and the new DPR considers electoral law reform, at the top of the list of priorities should be a revised and strengthened institution for resolving complaints, disputes, and allegations of violations. Consideration should be given to dramatically revising the role and operations of Panwas, or to replacing it altogether.

These criticisms from the 1999 elections still apply, despite extensive efforts to help Panwas work more effectively and efficiently. Panwas' performance in Indonesia's 2004 general elections improved, but only marginally. There is a distinct futility to incrementally improving a fundamentally flawed concept. In 2004, we may have seen the best that Panwas can do without major changes in its legal authority and substantial increases in its funding. These enhancements are extremely unlikely to emerge in the next election laws.

Moreover, the changes in law and resources needed to make Panwas truly effective may not be worth fighting for. The establishing of an entire hierarchy of government sponsored supervisors parallel to the election management structure – with separate offices, staff and other infrastructure (though grossly underfinanced at each level currently) – is cumulatively expensive and would be more so with further reforms.

Therefore, IFES strongly urges Indonesian policy-makers to review the entire concept of a separate government-formed election supervisory body such as Panwas. Without serious review, and a willingness to consider major reforms, there is a likelihood that revised election laws will continue the legacy of a well-meaning but ineffective Panwas, though perhaps again marginally improved.

- *The authority, powers, and structure of Panwas under current law should be fully reviewed by the DPR in revising election laws for 2009. The very existence of a separate pyramid of Panwas committees should be reassessed.*
- *Consideration should be given to allocating the responsibilities of Panwas to other institutions or working through other means than separate supervisory committees. A better use of resources and greater specialty may be achieved by*
  - *More funding for salaries and support of election officials within the election management structure, coupled with far stricter requirements for transparency and accountability in these bodies;*
  - *Empowering specific personnel sitting on election management bodies (including full rights of attendance at election commission meetings and rights to documents) to serve as the entry point for complaints (with criminal complaints forwarded to police) and to serve as local mediators;*
  - *Better use of the hierarchy of election management bodies to hear administrative complaints regarding subordinate election commissions and serve as a route for appeals of decisions made below;*
  - *Identifying and training specific police personnel to investigate and process criminal complaints related to elections; and*

- *Encouraging and assisting civil society organizations to more fully assume responsibility for monitoring the entire election process, as in other democracies.*

## **XI. CONCLUSIONS**

International attention to Indonesia's ongoing need for democratic development is to some extent undermined by the very success of Indonesia's 2004 election process and by intervening events. The major focus of the international community has moved on to elections in newly emerging democracies or crisis spots. Democracy is already becoming normal in Indonesia: local elections (voting for executives at the provincial and regency/city levels) began in mid-2005 across the archipelago and are ongoing, while a stable (but still politically dynamic) atmosphere suffuses Indonesia's national politics. A peace agreement was reached in the long-troubled province of Aceh. And, of course, Indonesia has endured the devastating tsunami in northwest Sumatera in December 2004, as well as terrorist threats and violence, since the 2004 general elections.

With regard to political reform in Indonesia, IFES notes that the success of the 2004 general elections in the country should encourage an immediate but measured effort at review, revision and restructuring. The legacy of the 2004 elections and the present political environment in Indonesia do not warrant a starting over or radical changes to Indonesia's electoral system, institutions or process. At the same time, Indonesia's political elements and civil society (and international supporters) should be wary of the constant potential for backsliding in crucial areas of election policy and administration – especially as to the independence of election officials and transparency of political processes.

Thus, IFES offers this report and its recommendations to provide some perspective on the accomplishments of the 2004 legislative and presidential elections in Indonesia and to stimulate discussion about democratic renewal in advance of 2009 elections. As always, policy decisions about the key issues addressed in this report are the responsibility and prerogative of Indonesian policy-makers, who themselves must answer to the citizens of Indonesia. IFES, along with its many international and Indonesian partners, stands ready to assist and facilitate that decision-making process as may be requested.