

**CENTRE FOR HUMAN RIGHTS**  
Geneva



**PROFESSIONAL TRAINING SERIES No. 2**

# **Human Rights and Elections**

*A Handbook on the  
Legal, Technical and Human Rights Aspects of Elections*



**UNITED NATIONS**  
New York and Geneva, 1994

## NOTE

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

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Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, assistance provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections, is of particular importance.

*Vienna Declaration and Programme of Action  
(Part II, para. 67)*



## FOREWORD

The United Nations Centre for Human Rights is pleased to offer this handbook on human rights and elections as the second in its series of professional training publications. This publication is unique in its comprehensive presentation of standards and issues relating to the conduct of free and fair elections. As such, we hope that it will prove to be a useful and practical tool for Governments, non-governmental organizations, teachers and individuals involved in elections.

The Centre for Human Rights has been involved in electoral assistance, through its programme of advisory services and technical assistance, since 1990. Since that time, the Centre has provided electoral assistance to Romania (1990-1992), Albania (1991), Lesotho (1991-1993), Eritrea (1992), Angola (1992), Cambodia (1992), Malawi (1992-1993) and South Africa (1993). In addition, the Centre has prepared guidelines for analysis of electoral laws and procedures, developed draft guidelines for human rights assessment of requests for electoral assistance, and carried out a number of public information activities relating to human rights and elections.

The Centre's interest in elections is based upon the realization that elections themselves are human rights events: first, because they give voice to the political will of the people involved; and secondly, because, to be truly free and fair consistent with international standards, they must be conducted in an atmosphere which is respectful of basic human rights. It should be seen as axiomatic that free and fair elections involve far more than ballot boxes, voter registers and campaign posters.

Electoral assistance activities for the Centre represent a single point on a continuum of the democratization process, and the Centre is prepared to follow up its involvement in elections with other forms of assistance which may be crucial to post-electoral democratic consolidation and a sustainable democratization process. Thus, in following up its electoral assistance activities with countries, the Centre takes the opportunity to inform those States of further assistance for democratic transition available under the programme of advisory services and technical assistance.

The Centre enjoys close substantial cooperation with the United Nations Electoral Assistance Unit and the United Nations Development Programme in this area, and its role in electoral assistance has been enhanced by those relationships. Electoral assistance, for the United Nations, is a truly system-wide endeavour, tapping the complementary expertise and capacities of several organs of the United Nations family.

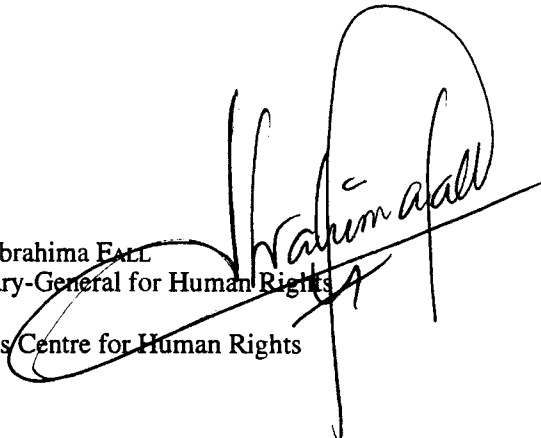
The recent increase in demand for electoral assistance from the United Nations has been reflected both in requests from States themselves and in the recommendations of the World Conference on Human Rights, which, in the Vienna Declaration and Programme of Action, called for assistance to be provided at the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections. The publication of this handbook is one means by which the Centre seeks to respond to this clear demand from the international community.

This handbook was prepared by the staff of the Centre for Human Rights and has benefited from review and commentary by a number of our partners in the electoral field. Useful comments on earlier drafts were received from both the Electoral Assistance Unit and the United Nations Development Programme. In addition, the Centre organized a meeting of experts to review the handbook at Geneva from 28 to 30 April 1993. Experts in human rights and elections from each of the world's regions and from some leading non-governmental organizations in the field offered valuable recommendations which further guided the drafting process. The Centre is accordingly grateful for the input of each of those experts, including Mr. Fakhruddin Ahmed (Bangladesh); Mr. Felipe Gonzalez-Roura (Argentina); Mr. Alioune Badarra

Sene (Senegal); Mr. Mirsolov Sevlieski (Bulgaria); Mr. Anders Johnson (Inter-Parliamentary Union); and Mr. Malamine Kourouma (International Commission of Jurists).

Ibrahima FALL  
Assistant Secretary-General for Human Rights

United Nations Centre for Human Rights

A large, stylized handwritten signature in black ink, appearing to read 'Ibrahima Fall', is written over the typed name and title. The signature is fluid and cursive, with a large loop at the top and a long vertical stroke extending downwards.

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## ABBREVIATIONS

OAU	Organization of African Unity
UNDP	United Nations Development Programme
UNITAR	United Nations Institute for Training and Research

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## NOTE CONCERNING QUOTATIONS

In quotations, words or passages in italics followed by an asterisk were not italicized in the original text.

**INTERNATIONAL INSTRUMENTS**  
**cited in the present handbook**

ABBREVIATION

*Compilation*     *Human Rights: A Compilation of International Instruments*, vol. I (2 parts), *Universal Instruments* (United Nations publication, Sales No. E.94.XIV.1); vol. II, *Regional Instruments* (to be issued).

*Source*

UNIVERSAL INSTRUMENTS

<i>International Bill of Human Rights:</i> Universal Declaration of Human Rights	General Assembly resolution 217 A (III) of 10 December 1948; <i>Compilation</i> , vol. I, p. 1.
International Covenant on Economic, Social and Cultural Rights	General Assembly resolution 2200 A (XXI) of 16 December 1966, annex; <i>Compilation</i> , vol. I, p. 8.
International Covenant on Civil and Political Rights	General Assembly resolution 2200 A (XXI) of 16 December 1966, annex; <i>Compilation</i> , vol. I, p. 20.
Optional Protocol to the International Covenant on Civil and Political Rights	General Assembly resolution 2200 A (XXI) of 16 December 1966, annex; <i>Compilation</i> , vol. I, p. 41.
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	General Assembly resolution 44/128 of 15 December 1989, annex; <i>Compilation</i> , vol. I, p. 46.
Convention on the Political Rights of Women	General Assembly resolution 640 (VII) of 20 December 1952, annex; <i>Compilation</i> , vol. I, p. 164.
Declaration on the Granting of Independence to Colonial Countries and Peoples	General Assembly resolution 1514 (XV) of 14 December 1960; <i>Compilation</i> , vol. I, p. 55.

Source

International Convention on the Elimination of All Forms of Racial Discrimination	General Assembly resolution 2106 A (XX) of 21 December 1965, annex; <i>Compilation</i> , vol. I, p. 66.
Declaration on the Elimination of Discrimination against Women	General Assembly resolution 2263 (XXII) of 7 November 1967; <i>Compilation</i> , vol. I, p. 145.
Proclamation of Teheran	<i>Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968</i> (United Nations publication, Sales No. E.68.XIV.2), chap. II; <i>Compilation</i> , vol. I, p. 51.
Declaration on Social Progress and Development	General Assembly resolution 2542 (XXIV) of 11 December 1969; <i>Compilation</i> , vol. I, p. 497.
International Convention on the Suppression and Punishment of the Crime of Apartheid	General Assembly resolution 3068 (XXVIII) of 30 November 1973, annex; <i>Compilation</i> , vol. I, p. 80.
Code of Conduct for Law Enforcement Officials	General Assembly resolution 34/169 of 17 December 1979, annex; <i>Compilation</i> , vol. I, p. 312.
Convention on the Elimination of All Forms of Discrimination against Women	General Assembly resolution 34/180 of 18 December 1979, annex; <i>Compilation</i> , vol. I, p. 150.
Vienna Declaration and Programme of Action	Adopted by the World Conference on Human Rights, Vienna, 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

REGIONAL INSTRUMENTS

Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950)	United Nations, <i>Treaty Series</i> , vol. 213, p. 221; <i>Compilation</i> , vol. II.
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*Source*

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|---|---|
| Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Paris, 20 March 1952) | United Nations, <i>Treaty Series</i> , vol. 213, p. 221; <i>Compilation</i> , vol. II.  |
| American Convention on Human Rights (“Pact of San José, Costa Rica”) (San José, 22 November 1969)                   | United Nations, <i>Treaty Series</i> , vol. 1144, p. 123; <i>Compilation</i> , vol. II. |
| African Charter on Human and Peoples’ Rights (Nairobi, 26 June 1981)  | OAU, document CAB/LEG/67/3/Rev.5; <i>Compilation</i> , vol. II.                         |

## INTRODUCTION

1. Taking part in the conduct of public affairs is a basic human right increasingly prized by people throughout the world. Humankind, at different times in its history and with varying degrees of success, has sought ways of involving individuals in community decisions. Today, taking part in government is recognized as a basic human right in every region of the world.

2. Universally, the right to take part in government is proclaimed and guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and is recognized in many other treaties and declarations. Regionally, the African, European and American human rights systems have recognized this fundamental right, with reinforcement from meetings such as the Arusha Conference on popular participation in Africa in February 1990. The recently intensified worldwide struggle of people for free and fair elections—often at great personal risk—demonstrates how important this right has become to individuals everywhere. Countries and peoples across the globe have recognized that free and fair elections are a crucial point on the continuum of democratization and an imperative means of giving voice to the will of the people, which is the basis of governmental authority itself.

3. Of course, democracy involves more than periodic elections. In 1991, the Secretary-General of the United Nations stated in this regard:

Elections in and of themselves do not constitute democracy. They are not an end but a step, albeit an important and often essential one, on the path towards the democratization of societies and the realization of the right to take part in the governance of one's country as enunciated in major international human rights instruments. It would be unfortunate to confuse the end with the means and to forget that democracy implies far more than the mere act of periodically casting a vote, but covers the entire process of participation by citizens in the political life of their country.<sup>1</sup>

4. In addition to being a human right in itself, the right of citizens to take part in the conduct of public affairs, particularly through elections, requires, to be exercised meaningfully, the enjoyment of a number of other internationally protected rights. Among these are the rights to freedom of opinion, expression and association,

<sup>1</sup> See the report of the Secretary-General, A/46/609 and Corr.1, para. 76.

and the rights to peaceful assembly and freedom from fear and intimidation. All these rights, including the right to take part in government, must be open to equal enjoyment without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Finally, a democratic Government—with the assurance of free and fair elections—is itself an essential element in the full enjoyment of a wide range of human rights. In 1991, the General Assembly of the United Nations stressed that

periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights.<sup>2</sup>

5. Furthermore, the requirements of political democracy cannot be isolated from other important factors in the life of a country. Support for democratization processes must go much further. In 1990, the Secretary-General of the United Nations cautioned:

... we cannot be unmindful of the fact that, while democracy is a necessary condition for the recognition of basic human rights, it is not in itself sufficient to ensure the actual enjoyment of those rights. Indeed, genuine political democracy has little chance to survive, and stability is bound to prove elusive, without social justice. Such justice to be consolidated needs the help of those who can rightly encourage it, though too often, they abandon it just after it has been brought about.<sup>3</sup>

6. In order to hold free and fair elections, countries sometimes seek international assistance in fulfilling international human rights standards, and in establishing and strengthening the necessary legal, technical and physical infrastructures. This handbook will explore the basic international human rights principles relating to free and fair elections and the right to take part in government. It will describe how the United Nations, including the Centre for Human Rights, helps countries in applying those principles to the legal, technical and human rights aspects of elections.

<sup>2</sup> General Assembly resolution 46/137 of 17 December 1991, para. 3.

<sup>3</sup> See the statement by the Secretary-General at the Paris meeting of the Conference on Security and Cooperation in Europe, Press Release SG/SM/1155 (19 November 1990).

## I. UNITED NATIONS INVOLVEMENT IN ELECTIONS: AN OVERVIEW

7. The United Nations, through its various subsidiary bodies, has been involved in the conduct of national elections, plebiscites and referenda since its inception. United Nations activity in the field of elections began with the official observation of the Korean elections of 1948. Since then, such activity has continued unabated as a fundamental component of the Organization's decolonization, conflict-resolution and human rights programmes.

8. The beneficiaries of these efforts have included the peoples of some 30 Trust and Non-Self-Governing Territories, from Togoland in 1956 to the Palau Trust Territory of the Pacific Islands in 1990. They have also included independent States involved in international conflicts, and others seeking to resolve internal strife democratically and to broaden human rights. Thus various levels of United Nations involvement have contributed to the free and fair conduct of popular consultations in Namibia (1989), Nicaragua (1990), Haiti (1990), Cambodia (1991-1993), Angola (1992), Romania (1990-1992), Albania (1991), Lesotho (1991-1992), Malawi (1993) and a host of other countries and territories.

9. With the end of the cold war and the emergence of a global trend towards democratization, renewed interest in standards for free and fair elections has become evident. Against this background, the international community has increased its efforts to enhance the effectiveness of the principle of free and fair elections and to provide assistance to countries seeking to conduct them.

10. In order to facilitate the United Nations' increasing involvement in elections, the Secretary-General, pursuant to General Assembly resolution 46/137, designated the Under-Secretary-General, Department of Political Affairs, to be the focal point for electoral assistance. The Electoral Assistance Unit (EAU) was established in order to assist the focal point with the coordination of all United Nations electoral activities. EAU plays a central role in the processing of requests for assistance, and all requests for electoral assistance are channelled through it. When such a request is received, EAU, in conjunction with the United Nations Development Programme (UNDP), the United Nations Centre for Human Rights and other relevant United Nations actors, will usually conduct a needs-assessment mission to determine the type of assistance required and provide support for the initial stages of project development. As soon as a project or mission becomes operational, implementation becomes the full responsibility of the relevant implementing organizations, although EAU support and coordination within the system continues throughout the process.

11. United Nations involvement in elections begins, in most cases, with a formal request by a Government

for assistance. The request will be followed by the fielding of a needs-assessment mission to the country concerned. That mission will carefully examine, in consultation with the Government, political parties, non-governmental organizations and others, all relevant infrastructural, legal, political, material, financial and human rights needs associated with the conduct of elections. The report emanating from the mission will form the basis for United Nations involvement.

12. The varying levels of United Nations involvement in elections can be divided into several categories.<sup>4</sup> The first is United Nations organization and conduct of elections. In this situation, the United Nations organizes virtually every aspect of the electoral process. The second category is United Nations supervision of elections. This includes the certification of a Special Representative of the Secretary-General confirming the validity of certain crucial aspects of the electoral process. The third type of United Nations involvement is a verification mission in which the electoral process is organized and administered by a national organ and the United Nations is asked to give its opinion as to the freedom and fairness of the electoral process.

13. These three types of United Nations involvement are usually undertaken in the context of large-scale peace-keeping missions. All are undertaken only in exceptional circumstances which meet certain strict criteria for United Nations involvement. In particular, all the following five elements must be present:

(a) A formal request has been received from the State concerned;

(b) Broad public support exists for United Nations involvement;

(c) Sufficient advance time remains for comprehensive United Nations involvement;

(d) There exists a clear international dimension to the situation;

(e) A favourable decision has been rendered by an authoritative body of the United Nations (i.e. the General Assembly or the Security Council).<sup>5</sup>

14. In cases where some of these criteria have not been fulfilled, especially in cases where the missing criterion is the absence of sufficient lead time to undertake a comprehensive mission, the United Nations may decide to respond in one of two ways. The first is to organize a mission to follow the electoral process closely and report to the Secretary-General on its results. In some cases, the Centre for Human Rights or EAU may

<sup>4</sup> See the report of the Secretary-General, A/47/668 and Corr.1, para. 63.

<sup>5</sup> *Ibid.*, para. 53.

provide specialized staff to assist in the mission. The second response is to coordinate and support international observers affiliated with other organizations. Neither of these responses can be categorized as a comprehensive supervisory mission and they do not include any express pronouncement on the freedom and fairness of the electoral process. They do, however, provide a certain level of United Nations presence that can strengthen public confidence in the electoral process and enhance the quality of the electoral exercise.<sup>6</sup>

15. Another type of United Nations involvement is technical assistance with the material, infrastructural, legal and human rights aspects of elections. The provision of technical assistance clearly falls within the existing mandates of UNDP, the Centre for Human Rights and the United Nations Department for Development Support and Management Services. As a result, no new mandate is required for cases involving exclusively technical assistance. Advisory services and technical assistance in the legal, technical and human rights aspects of democratic elections do not include any United Nations involvement in the conduct of elections, nor do they have an observation component. As such, they can often be granted swiftly at a Government's request, without the need for consideration by a political decision-making body of the United Nations.

16. Thus UNDP, the Centre for Human Rights and the United Nations Department for Development Support and Management Services provide advice and assistance on a wide variety of electoral matters, includ-

ing advice on crucial issues of human rights, organization of registration processes, identification of citizens through more adequate documentation, computerization of electoral rolls, strengthening of the operation of electoral administration, establishment of institutions for handling adjudications and grievances, electronic electoral data processing, vote-counting technologies, legal and logistic assistance, civic and voter education, radio communications and public information. Finally, if needed, large-scale technical cooperation programmes can be implemented for these purposes.

17. United Nations human rights standards relating to elections are broad in nature and thus may be achieved through a wide variety of political systems. United Nations electoral assistance does not seek to impose any given political model. Rather, it is based upon a realization that there is no single political system or electoral methodology which is appropriate for all peoples and States. While comparative examples provide useful guidance for the construction of democratic institutions that both respond to domestic concerns and conform to international human rights norms, the best formulation for each jurisdiction will ultimately be that shaped by the particular needs, aspirations and historical realities of the people involved, taken within the framework of international standards.

18. Finally, United Nations activity in these areas is conducted in conformity with the basic principles of the sovereign equality of States and respect for their territorial integrity and political independence, as enunciated in the Charter of the United Nations. Accordingly, assistance activities are carried out only where requested by the national authorities and supported by the people of the country concerned.

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<sup>6</sup> Ibid., paras. 61-62.

## II. UNITED NATIONS HUMAN RIGHTS STANDARDS REGARDING ELECTIONS IN GENERAL

### A. Basic standards

19. International standards on elections involve three central rights: the right to take part in government; the right to vote and to be elected; and the right to equal access to public service. The Universal Declaration of Human Rights further states that the will of the people shall be the basis of the authority of government. The relevant standards read as follows:

#### Universal Declaration of Human Rights

##### Article 21

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

#### International Covenant on Civil and Political Rights

##### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

20. Annex I to this handbook sets out the texts of the basic international human rights standards relating to elections.

21. United Nations human rights bodies have given more precision to these international norms. In 1962, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted the Draft General Principles on Freedom and Non-discrimination on the Matter of Political Rights,<sup>7</sup> which shed some light on the meaning of the terms used in the Universal Declaration. Most recently, in 1989, the Commission on Human Rights adopted a Framework for Future Efforts at Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections.<sup>8</sup>

<sup>7</sup> See annex II below.

<sup>8</sup> See annex III below.

### B. Non-discrimination

22. Both the Universal Declaration of Human Rights (art. 2) and the International Covenant on Civil and Political Rights (art. 2) provide that the enjoyment of the rights listed shall be without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

23. Other international declarations and treaties provide for the equal enjoyment by women of these rights, and outlaw discrimination on the basis of race.<sup>9</sup>

### C. Self-determination

24. The notion of democratic elections may be said to be rooted in the fundamental concept of self-determination. This basic right is recognized in the Charter of the United Nations (Art. 1, para. 2) and in article 1 common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Charter further emphasizes the importance of self-determination in regard to Non-Self-Governing and Trust Territories (Arts. 73 (b) and 76 (b)). Thus, while elections are not the sole means that peoples have employed in the expression and exercise of their right to self-determination, their historical role in that regard is clear.

### D. Political participation

25. A number of international instruments, while not specifically mentioning elections, do reflect the principal concerns underlying the concept of democratic elections. These are expressed variously as the right of peoples freely to determine their political status;<sup>10</sup> the right of all elements of society to active participation in defining and achieving development goals;<sup>11</sup> and the right of all people to participate in the political life of their country.<sup>12</sup> The role of these rights in the achieve-

<sup>9</sup> See annex I.B below.

<sup>10</sup> Declaration on the Granting of Independence to Colonial Countries and Peoples, art. 2; International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, common art. 1.

<sup>11</sup> Declaration on Social Progress and Development, art. 5 (c).

<sup>12</sup> This right of participation is enshrined in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights. It is repeated, in essence, in article 5 of the Proclamation of Teheran; article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination; article II (c) of the International Convention on the Suppression and Punishment of the Crime of Apartheid; and article 7 of the Convention on the Elimination of All Forms of Discrimination against Women.



ment of independence by colonial countries is framed in the Declaration on the Granting of Independence to Colonial Countries and Peoples (art. 5), which provides that the freely expressed will and desire of the people shall guide the transfer of governmental power to them.<sup>13</sup>

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<sup>13</sup> Excerpts from the relevant international instruments appear in annex I below.

## **E. Other basic human rights**

26. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other international human rights instruments protect a number of basic human rights the enjoyment of which is crucial to a meaningful electoral process. Of particular importance for periods of elections are freedom of expression, of information, of assembly, of association and of movement, as well as general freedom from intimidation. Each of these is addressed in chapter III below.

### III. INTERNATIONAL CRITERIA REVIEWED IN DETAIL

27. International human rights standards contain a number of fundamental criteria for free and fair elections. This chapter will review those criteria in detail.

#### A. Free elections

##### 1. *The will of the people*

28. The Universal Declaration of Human Rights provides that everyone has the right to take part in the government of his country, directly or through *freely chosen* representatives (art. 21). The International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights state that, by virtue of their right to self-determination, all peoples have the right *freely* to determine their political status (common art. 1). This right is echoed in the Declaration on the Granting of Independence to Colonial Countries and Peoples (art. 5), which also provides that the *freely* expressed will and desire of the people is to guide the transfer of power to them.

29. The Charter of the United Nations reflects identical concerns, particularly in regard to Trust and Non-Self-Governing Territories. The Charter mandates assistance to peoples in Non-Self-Governing Territories in the development of *free* political institutions (Art. 73 (b)). As regards Trust Territories, the Charter established as a basic objective of the Trusteeship System the promotion of self-government in such Territories, based, *inter alia*, upon the *freely* expressed wishes of the peoples concerned (Art. 76 (b)). While expressly addressing Trust and Non-Self-Governing Territories, these notions of freedom have survived as guiding principles in the work of the Organization in the field of elections, which is now principally directed to assisting independent States.

##### 2. *Assuring freedom*

30. International instruments for the promotion and protection of human rights within the United Nations system are thus replete with admonitions that popular political participation must be "free". While such instruments do not (indeed, could not) describe a particular methodology for ensuring such freedom, its essence is clear. To be free, participation in elections must be conducted in an atmosphere characterized by the absence of intimidation and the presence of a wide range of fundamental human rights. To that end, obstacles to full participation must be removed and the citizenry must be confident that no personal harm will befall them as a result of their participation. The particular formula for assuring such an atmosphere is set out, article by article, in the International Bill of Human Rights.

##### 3. *Prerequisite rights*

31. While each of the rights enunciated in the Universal Declaration, and elaborated upon in the two International Covenants, will contribute to the required atmosphere, some of those rights take on additional importance for election purposes. Worthy of individual mention in this regard are the rights to free opinion, free expression, information, assembly and association, independent judicial procedures, and protection from discrimination. Political propaganda, voter education activities, political meetings and rallies, and partisan organizations are all common elements of the electoral process, and each must operate without unreasonable interference for the conduct of elections to be free.

32. Similarly, judicial procedures must be insulated from corruption and partisan influence if they are to accommodate the necessary electoral functions of hearing petitions, objections and complaints. Furthermore, elections cannot be fair if equal participation is not assured through non-discriminatory measures. Finally, laws in force which might have the effect of discouraging political participation should be repealed or suspended. The prevailing atmosphere should be one of respect for human rights and fundamental freedoms, and should be characterized by an absence of intimidating factors. Respect for a wide range of human rights, as enumerated in the Universal Declaration and the two International Covenants, is crucial to the conduct of free and fair elections.

##### (a) *Freedom of opinion*

33. The rights to free opinion, free expression and information are protected by article 19 of the International Covenant on Civil and Political Rights, which reads:

##### *Article 19*

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

34. The right to freedom of opinion is guaranteed in paragraph 1 of article 19. This right is absolute and cannot be restricted or interfered with in any manner.<sup>14</sup> The unconditional freedom to hold a political opinion is imperative in the context of elections, since the authentic assertion of popular will is impossible in an environment where such freedom is absent or restricted in any way.

(b) *Freedom of expression and information*

35. The rights to freedom of expression and information are guaranteed in paragraph 2 of article 19. In terms of content, every form of subjective idea or opinion capable of transmission is protected by this article. Furthermore, while the scope of the article is not confined to one medium of expression (it includes cultural, artistic and other forms of expression), its importance for political expression should be evident.<sup>15</sup> The electoral process is a mechanism whose very purpose is the expression of the political will of the people. The right to express partisan ideas must, therefore, be firmly guarded during election periods.

36. The right to freedom of expression is, however, partially limited by paragraph 3 of article 19. Nevertheless, in order to avail itself of the limiting factors enumerated in paragraph 3, a State cannot merely assert that it was necessary to restrict freedom of expression for reasons of national security or for any of the other specified reasons.<sup>16</sup> In other words, the limitations were not included in the article to provide States with an excuse for placing restrictions upon free expression. Any impediment to free expression must be provided by law and be necessary in order to protect one of the purposes cited in the article. In reviewing such cases, the Human Rights Committee has held that a State under review must provide concrete evidence, including details of alleged charges and copies of court proceedings, that there was indeed a genuine and serious threat to national security or public order.<sup>17</sup> Limitations on a State's ability to avail itself of paragraph 3 are of paramount importance in the context of elections, where the dissemination of all information must be permitted to the maximum extent possible in order to ensure that the electorate is fully informed. Without a well-informed electorate, it is impossible to guarantee that elections genuinely reflect the will of the people.

<sup>14</sup> See United Nations Centre for Human Rights and UNITAR, *Manual on Human Rights Reporting under Six Major International Human Rights Instruments* (Sales No. E.91.XIV.1), p. 109, commentary on article 19 of the International Covenant on Civil and Political Rights.

<sup>15</sup> See the decision of the Human Rights Committee in *John Balandyne and Elizabeth Davidson, and Gordon McIntyre v. Canada* (359/1989 and 385/1989) (CCPR/C/47/D/359/1989 and 385/1989/Rev.1).

<sup>16</sup> See *Alba Pietrarola v. Uruguay* (44/1979), *Human Rights Committee, Selected Decisions under the Optional Protocol, International Covenant on Civil and Political Rights (Second to Sixteenth Sessions)* (United Nations publication, Sales No. E.84.XIV.2) (hereinafter referred to as *Selected Decisions . . .*, vol. 1), p. 79, para. 15.

<sup>17</sup> *Ibid.*

37. With regard to protection of public morals, States are afforded a bigger margin of discretion. This is due to the absence of any universally applicable common standard.<sup>18</sup> However, this should not pose a threat during election periods, since peaceful political participation, in any fair reading, cannot be said to jeopardize public morals.

38. Especially important, however, is a State's increased power to regulate expression when the activity or expression in question seeks to destroy other rights recognized in the International Covenant on Civil and Political Rights.<sup>19</sup> For example, it is permissible for States to regulate speech advocating national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>20</sup> It is similarly permissible for States to regulate the activities of political parties whose policies conflict with any of the human rights enumerated in the Covenant.<sup>21</sup> Restraints upon activities of this nature are, in fact, vital during an election period in order to ensure that the political environment is free of any forces that may seek to intimidate the electorate or any political actors, or to violate the fundamental rights of any group.

39. In short, unless all persons feel free to express themselves and are, in fact, able to disseminate, without fear, all legitimate political information into the national dialogue, there can be no guarantee that elections are a true manifestation of the will of the people.

40. The requirements of freedom of expression and information will, of course, have important implications for fair media access and responsible media use as well. These implications are discussed in section D.5 (An informed choice) and chapter IV, section I (Media access and regulation), below.

(c) *Freedom of assembly*

41. The right of peaceful assembly is guaranteed by article 21 of the International Covenant on Civil and Political Rights, which reads:

*Article 21*

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

<sup>18</sup> See *Leo Hertzberg et al. v. Finland* (61/1979), *Selected Decisions . . .*, vol. 1, p. 124.

<sup>19</sup> See article 5, para. 1, of the Covenant.

<sup>20</sup> Article 20, para. 2, of the International Covenant on Civil and Political Rights requires that any expression of this nature be prohibited by law. See *J. R. T. and the W. G. Party v. Canada* (104/1981), *Selected Decisions of the Human Rights Committee under the Optional Protocol, International Covenant on Civil and Political Rights, Volume 2, Seventeenth to Thirty-second Sessions (October 1982-April 1988)* (United Nations publication, Sales No. E.89.XIV.1) (hereinafter referred to as *Selected Decisions . . .*, vol. 2), p. 25.

<sup>21</sup> See *M. A. v. Italy* (117/1981), *Selected Decisions . . .*, vol. 2, p. 31.

42. In order to merit the protection of article 21, an assembly must be peaceful. As long as an assembly is conducted in a non-violent manner, it may be disrupted only in accordance with the strict limitations cited in the article. Once again, there must be a genuine need in order for a State to avail itself of the permissible restrictions. In addition, the restrictions are allowed only if they are "in conformity" with the law. In other words, no agent of the State may arbitrarily interfere with a peaceful assembly. Rather, he must be authorized by law to do so, and the laws in question must respect the international standards set out above.

43. Any restrictions on the right of assembly may not go beyond the need to protect the public interests listed and the least restrictive means must be employed.<sup>22</sup> Furthermore, it should be noted that State authorities have a duty to protect the demonstrators themselves. The right of assembly must be respected, since public demonstrations and political rallies are an integral part of the election process and provide an effective mechanism for the public dissemination of political information.

(d) *Freedom of association*

44. Article 22 of the International Covenant on Civil and Political Rights guarantees the right to freedom of association with others. This right has a broad scope and clearly includes the right to form and participate in political organizations. The right to freedom of association is very closely related to the right to freedom of assembly recognized in article 21 of the Covenant. Accordingly, paragraph 2 of article 22 permits the same categories of limitations as do articles 19 and 21 (national security, public safety, public order (*ordre public*), the protection of public health or morals, or the protection of the rights and freedoms of others). Article 22 also requires procedural safeguards similar to those required in article 21, namely that any restrictions be prescribed by law and be necessary in a democratic society for the protection of public interests.<sup>23</sup>

45. In addition, the scope of article 22 is limited by article 5.<sup>24</sup> In other words, the right to freedom of association cannot be interpreted as including any activity that would infringe upon any of the other rights cited in the Covenant. As with the right to freedom of assembly, it is vital that the right to freedom of association be respected, since the ability to form and join political

<sup>22</sup> See *Manual on Human Rights Reporting* . . . (see footnote 14 above), pp. 110-111, commentary on article 21 of the International Covenant on Civil and Political Rights.

<sup>23</sup> *Ibid.*, p. 111, commentary on article 22 of the International Covenant on Civil and Political Rights.

<sup>24</sup> Article 5, para. 1, of the Covenant reads:

"1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

See *M. A. v. Italy* (117/1981), *Selected Decisions* . . . , vol. 2, p. 33, para. 13.3.

organizations is one of the most important means by which people can participate in the democratic process.

(e) *Independent judiciary*

46. Related to the protection of these prerequisite rights is the importance of a fully functioning, independent judiciary. The judiciary is the principal national body charged with the protection of the rule of law, both during and between election periods. Additionally, in order to ensure the existence of effective avenues through which people can express objections and complaints regarding the election process, it is necessary to guarantee a judiciary that is totally unconstrained by any partisan influence or control. The following are some of the basic principles on the independence of the judiciary:

(a) Judicial independence must be guaranteed in the Constitution or other law of the country;

(b) Judicial impartiality must be guaranteed without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect;

(c) The judiciary must have exclusive authority to determine competence to adjudicate;

(d) Judicial decisions shall not be subject to revision. This principle should be without prejudice to judicial review of lower court decisions and mitigation or commutation by competent authorities of sentences imposed by the judiciary in accordance with the law;

(e) The judiciary must be entitled and required to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected;

(f) States are required to provide adequate resources to enable proper functioning of the judiciary.<sup>25</sup>

47. These principles provide a safety mechanism ensuring that the rule of law, rather than any politician or external body, controls the conduct of elections. A judiciary functioning under these principles serves both the important cause of peaceful dispute resolution and that of protecting the process from bias or fraud. The judicial role, of course, complements, and does not replace, the function of independent electoral bodies.

(f) *Principle of non-discrimination*

48. Finally, the principle of non-discrimination must be respected so that all persons are ensured equal access to participation in the election process. The right to freedom from discrimination is guaranteed by the Universal Declaration of Human Rights (arts. 2 and 7). The right is further defined by articles 2 (1), 3 and 26 of the International Covenant on Civil and Political Rights, which read:

<sup>25</sup> See the Basic Principles on the Independence of the Judiciary, *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2. The Basic Principles were endorsed by the General Assembly in resolutions 40/32 and 40/146 of 29 November and 13 December 1985, respectively.

### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

...

### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

49. Under article 26 of the Covenant, a State has both a positive duty legally to prevent discrimination and a negative duty to refrain from discriminating. There are no enumerated limitations on these principles. Certain types of positive measures are, however, permissible if they are of a remedial nature, implemented in order to correct past discrimination.<sup>26</sup>

50. Impermissible discrimination can never be rationalized even if it is proposed in order to protect national security.<sup>27</sup> In fact, a law that does not meet international standards for equal protection cannot be justified even if the law would be otherwise justifiable were it not for the discriminatory element.<sup>28</sup> In addition, article 26 requires equal protection under the law in all areas where a State party legislates regardless of whether or not the legislation involves areas expressly protected in the Covenant.<sup>29</sup>

51. During an election period, the importance of an atmosphere free from discrimination cannot be overstated. All persons must be afforded equal access to all electoral events. Furthermore, an environment in which discrimination is tolerated facilitates intimidation and

<sup>26</sup> In the *Rubén D. Stalla Costa v. Uruguay* case (198/1985) (*Selected Decisions* . . . , vol. 2, p. 221), the Human Rights Committee held that an act giving preference for public service positions to persons whose employment was terminated by the former military Government did not violate article 25 (c) of the Covenant, because of its remedial nature.

<sup>27</sup> For measures which shall not be considered discriminatory, see Principle XI of the Draft General Principles on Freedom and Non-discrimination in the Matter of Political Rights (see annex II below).

<sup>28</sup> See *S. Aumeeruddy-Cziffra et al. v. Mauritius* (35/1978), *Selected Decisions* . . . , vol. 1, p. 67. This communication involved a Mauritian immigration statute that applied to alien husbands of Mauritian women but not to alien wives of Mauritian men. The Government of Mauritius had tried to justify the statute on national security grounds, basically asserting that alien men were more likely than alien women to be a threat to national security. Violations of articles 2 (1), 3 and 26 of the Covenant were found.

<sup>29</sup> See *S. W. M. Broeks v. the Netherlands* (172/1984), *Selected Decisions* . . . , vol. 2, p. 196; *L. G. Danning v. the Netherlands* (180/1984), *ibid.*, p. 205; and *F. H. Zwaan-de Vries v. the Netherlands* (182/1984), *ibid.*, p. 209.

manipulation of the electorate. Neither of these can be permitted if elections are to be free.

### (g) States of emergency<sup>30</sup>

52. Periods of democratic transition often follow national emergencies, both declared and unofficial. Because emergency or other exceptional legislation restricting fundamental rights will be generally inconsistent with the conduct of free elections, States preparing for elections should carefully review such laws with a view to their repeal or suspension during the campaign period. Indeed, any law in force that restricts ordinary enjoyment of free expression, information, assembly, association, etc. must be seen as incompatible with the conduct of free and fair elections.

53. In every case, States should adopt legislation that carefully and clearly defines the extent to which the constitutional order may be altered in the event of an emergency situation. States of emergency should be declared only in conformity with the law and be authorized only in the event of a public emergency which threatens the life of the nation, where measures compatible with the Constitution and laws in force are plainly inadequate to address the situation.

54. Relevant international standards further require that a state of emergency be officially proclaimed before any exceptional measures are put into place. Any such measures must be strictly required by the exigencies of the situation, and must not be inconsistent with other requirements under international law. Nor may such measures discriminate solely on the basis of race, colour, sex, language, religion or social origin.

55. Additionally, under the international standards, no derogation is permissible with regard to the right to life; the prohibition on torture and other cruel, inhuman or degrading treatment or punishment; the prohibition on slavery, the slave trade, and practices similar to slavery; or the prohibition on imprisonment for failure to fulfil a contractual obligation.

56. Nor, even during states of emergency, may anyone be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed. Nor may a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender must benefit from the lighter penalty.

57. Also non-derogable is the right of everyone to be recognized as a person before the law. Finally, the right of everyone to freedom of thought, conscience and religion may not be derogated from. Each of these prin-

<sup>30</sup> See the draft guidelines for the development of legislation on states of emergency, submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-third session (E/CN.4/Sub.2/1991/28/Rev.1, annex I).

ciples should find expression in the highest law of the country.

58. In addition, consideration should be given to the informative work of the United Nations Special Rapporteur on human rights and states of emergency. Among the recommendations made by the Special Rapporteur are the following: an independent and fully functioning judiciary must be protected; nothing done pursuant to a state of emergency should diminish the jurisdiction of the courts to review the legality of the state of emergency or their jurisdiction over legal actions to protect any rights whose effectiveness is not affected by the declaration of emergency. Furthermore, existing national legislatures may not be dissolved during a state of emergency and all members of the legislature must enjoy the privileges and immunities necessary for the exercise of their mandates.

59. Also, according to the work of the Special Rapporteur, when the state of emergency has terminated, all possible efforts should be made to restore to those whose rights have been adversely affected by measures taken pursuant to the emergency full enjoyment of their rights, including the right to participate in the political process and compensation for injuries suffered.

60. Moreover, no person should be subject to any form of discrimination by reason of his or her involvement in any activity or expression which was rendered illegal by the state of emergency. In addition, nothing done pursuant to the declaration of emergency should restrict the right of a person who considers that he or she has suffered a violation of a legally recognized right during the state of emergency to seek redress before the courts once the emergency has ceased. This includes the right to a prompt decision on his or her claim. In every case, States should be vigilant to ensure that no lingering negative effects on political participation survive the termination of the state of emergency.

#### 4. *Secret ballot*

61. A long-recognized mechanism for insulating the voting process from intimidation is that of the secret ballot. The requirement that elections be held by secret ballot originates in the Universal Declaration of Human Rights, which provides that elections “shall be held by secret vote or by equivalent free voting procedures” (art. 21, para. 3). The International Covenant on Civil and Political Rights goes further by requiring, conclusively, that elections shall be held “by secret ballot” (art. 25 (b)). This standard derives from the international community’s conviction that, to be truly free, procedures must guarantee that the content of one’s vote be absolutely privileged. This requirement involves everything from the design of ballots and voting compartments to legal provisions establishing that no one shall be compelled by any legal or governmental authority to disclose the content of his or her vote.<sup>31</sup> The secrecy of the ballot

<sup>31</sup> See Principle VI of the Draft General Principles on Freedom and Non-discrimination in the Matter of Political Rights (see annex II below).

should also be the focus of voter-education efforts, so that the public will be confident in these protections.

#### 5. *The essence of free elections*

62. The ultimate indication of whether elections are “free” is the extent to which they facilitate the full expression of the political will of the people concerned. It is, after all, this will which, according to the Universal Declaration (art. 21, para. 3), is the very basis of legitimate governmental authority.

#### B. Fair elections

63. The requirement that elections be fair is also an easily identifiable international norm. Any measures which could have the effect of circumscribing or frustrating the will of the people would, of course, violate the Universal Declaration of Human Rights (art. 21, para. 3) and render elections unfair.

##### 1. *Equal, universal and non-discriminatory suffrage*

64. The element of fairness has found direct expression in a broad selection of human rights instruments promulgated since the Universal Declaration of Human Rights. Many of these provisions focus on who must be permitted to participate in elections. Accordingly, both the Universal Declaration (arts. 2 and 21 (3)) and the International Covenant on Civil and Political Rights (arts. 2 and 25 (b)) provide that suffrage must be non-discriminatory, equal and universal. Universal suffrage requires that the broadest reasonable pool of voters is guaranteed participatory rights. According to the 1962 Draft General Principles on Freedom and Non-discrimination on the Matter of Political Rights adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities,<sup>32</sup> when elections or consultations are held by direct vote, there shall be a general election roll, and every eligible national shall be included in that roll (Principle V (c)).

65. Reasonable requirements are usually limited to minimum age, nationality and mental capacity. The work of the Human Rights Committee provides a good deal of guidance on the limits of reasonable restrictions. In the course of their deliberations, as mandated by the International Covenant on Civil and Political Rights, members of the Committee have noted that the following limitations on voting rights are not permissible:

- (a) economic requirements, based on receipt of public assistance, ownership of property, or income;<sup>33</sup>
- (b) excessive residency requirements;<sup>34</sup>
- (c) restrictions on voting by naturalized citizens;<sup>35</sup>

<sup>32</sup> See annex II below.

<sup>33</sup> See CCPR/C/SR.161 (1979) and corrigendum; and CCPR/C/SR.251 (1980) and corrigendum.

<sup>34</sup> The Committee expressly found a seven-year residency requirement to be excessive (see CCPR/C/SR.265 (1981) and corrigendum).

<sup>35</sup> See CCPR/C/SR.597 (1985) and corrigendum.

(d) language requirements;<sup>36</sup>

(e) literacy requirements;<sup>37</sup>

(f) excessive limitations on the voting rights of convicted criminals.<sup>38</sup>

In addition, while limitations are allowed for persons convicted of electoral offences, such restrictions must be limited in time.<sup>39</sup>

## 2. *Non-discrimination and positive measures*

66. The International Convention on the Elimination of All Forms of Racial Discrimination prohibits any racial discrimination affecting the right to vote or to stand for election, and expressly calls for universal and equal suffrage (art. 5 (c)). Three other instruments prohibit discrimination against women, or their exclusion from the political process. These are the Declaration on the Elimination of Discrimination against Women (art. 4), the Convention on the Elimination of All Forms of Discrimination against Women (art. 7) and the Convention on the Political Rights of Women (arts. I-III). Finally, as regards fair and equal access to participation, the International Convention on the Suppression and Punishment of the Crime of Apartheid prohibits legislative and other measures calculated to prevent a racial group or groups from participation in the political life of the country (art. II (c)).

67. Certain measures of a positive nature taken in relation to elections are not considered discriminatory if they fulfil special requirements. In Principle XI of the 1962 Draft General Principles,<sup>40</sup> the Sub-Commission on Prevention of Discrimination and Protection of Minorities stated that the following measures prescribed by law or regulation would not be considered discriminatory:

(a) reasonable requirements for the exercise of the right to vote or the right of access to elective public office;

(b) reasonable qualifications for appointment to public office which stem from the nature of the duties of the office;

(c) measures establishing a reasonable period which must elapse before naturalized persons may exercise their political rights, provided that they are combined with a liberal naturalization policy;

...

In addition, Principle XI permits special measures taken to ensure: (a) the adequate representation of an element of the population of a country whose members are prevented by political, economic, religious, social, historical or cultural conditions from enjoying equality with the rest of the population in the matter of political rights; (b) the balanced representation of the different elements of the population of a country. All such measures are to be continued only for as long as there is need for them, and only to the extent that they are necessary.

<sup>36</sup> See CCPR/C/SR.161 (1979) and corrigendum.

<sup>37</sup> See CCPR/C/SR.118 (1978) and corrigendum.

<sup>38</sup> See CCPR/C/SR.711 (1987) and corrigendum.

<sup>39</sup> See CCPR/C/SR.724 (1987) and corrigendum.

<sup>40</sup> See annex II below.

## 3. *One person, one vote*

68. Universal suffrage is, of course, only one element of fairness. Another is the concept of equal suffrage. This is the idea traditionally expressed as "one person, one vote". Constituency delimitation, registration or polling procedures designed to dilute or discount the votes of particular individuals, groups or geographic areas are unacceptable in the light of the international norm of equality of suffrage. In short, each vote must carry equal weight in order to satisfy the element of fairness.

69. The 1962 Draft General Principles<sup>41</sup> expressly provide that each vote shall have the same weight and that electoral districts shall be established on an equitable basis, to ensure that the results accurately and completely reflect the will of all the voters (Principle V (a) and (b)).

## 4. *Legal and technical assurances*

70. Lastly, ensuring the fairness of elections requires a number of technical and legal measures designed effectively to protect the process from bias, fraud or manipulation. Such measures include, *inter alia*, provisions for objective administration structures, for outlawing and punishing corrupt practices, for the presence of observers and for fair media access by all parties and candidates. Further examples are provided in chapter IV below.

## C. *Periodicity and the electoral time-frame*

### 1. *Periodicity*

71. The requirement that elections be held periodically is expressly stated in both the Universal Declaration of Human Rights (art. 21, para. 3) and the International Covenant on Civil and Political Rights (art. 25 (b)). The importance of this provision should not be minimized. Once-only elections (for instance, at the time of a country's gaining independence, or of its transition from an authoritarian regime) will not suffice for international human rights purposes. Rather, this provision makes clear the requirement of a sustained democratic order, continually answerable to the will of the people.

72. While no particular schedule of periodicity is set by the instruments, general limitations on discretion are discernible. At the very least, elections must be held often enough to ensure that governmental authority continues to reflect the will of the people, which, as already noted, is the basis of governmental legitimacy.

### 2. *Postponing elections*

73. Postponement of scheduled elections necessitated by public emergency may be permitted in certain limited circumstances, but only if and to the extent

<sup>41</sup> *Ibid.*

strictly required by the exigencies of the situation (see paras. 52 *et seq.* on states of emergency). Any such extraordinary measures must comply with all the rigid international standards for such derogations and must not threaten democracy itself.<sup>42</sup> Indeed, the Universal Declaration itself proclaims that any limitations on the rights and freedoms contained therein must be for the purpose of “meeting the just requirements of morality, public order and the general welfare in a democratic society\*” (art. 29, para. 2). Accordingly, the interruption of periodicity will, in all but the most exceptional circumstances, violate international standards.

74. The Human Rights Committee has made several rulings concerning the compatibility of certain security measures with the International Covenant on Civil and Political Rights, particularly under article 25, which proscribes “unreasonable restrictions” on the enjoyment of political rights. In *Jorge Landinelli Silva et al. v. Uruguay* (34/1978), the Committee saw no grounds for the contention that such measures were necessary to restore peace and order and stated that “the Government . . . has failed to show that the interdiction of any kind of political dissent is required in order to deal with the alleged emergency situation and pave the way back to political freedom”.<sup>43</sup>

### 3. *The electoral calendar*

75. Each time elections are scheduled, the dates set out in the electoral calendar for each phase of the process must allow adequate time for effective campaigning and public information efforts, for voters to inform themselves, and for the necessary administrative, legal, training and logistic arrangements to be made. The electoral calendar should itself be publicized as part of civic information activities, in the interests of transparency and of securing public understanding and confidence in the process.

## D. **Genuine elections**

### 1. *Genuine procedures*

76. Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide that elections must be “genuine”. In effect, this concept incorporates each of the other elements discussed in this handbook. The *travaux préparatoires* of the Covenant indicate that the framers of the instrument saw this requirement as comprising two broad elements. The first was procedural, and included the guarantees of periodicity, equality and universality of suffrage, and secrecy of the ballot.<sup>44</sup> The second was outcome-oriented, and defined genuine elections as those which reflected the free expression of the will of the electors.<sup>45</sup>

<sup>42</sup> See article 4 of the International Covenant on Civil and Political Rights.

<sup>43</sup> *Selected Decisions . . .*, vol. 1, p. 66, para. 8.4.

<sup>44</sup> See, for example, *Official Records of the General Assembly, Sixteenth Session, Third Committee*, 1096th and 1097th meetings.

<sup>45</sup> *Ibid.*, 1096th meeting.

### 2. *Genuine effects*

77. Thus genuine elections are those which reveal and give effect to the freely expressed will of the people. Sham elections designed temporarily to quell internal dissent or to distract international scrutiny obviously do not meet international standards. Nor do restricted elections, which do not include the nation’s principal policy-making offices. Rather, elections must be calculated to bring about the transfer of power to prevailing candidates in accordance with a prearranged formula which is acceptable to the people, whether by plurality, majority or super-majority. It is for the people themselves, through elected or representative transitional bodies, to determine whether this will be accomplished through a majoritarian framework (so-called single-member constituency or “first past the post” systems), through proportional representation (party-list voting), or through some other election system.

78. The transfer of power to the winners must be both committed to by the ruling and opposing parties and the subject of legal provisions for its implementation. In other words, elections must be subject only to the rule of law, and not to the whim of the existing Government or of any single party. It is also important to note that the elected authorities must be able in fact to exercise the power conferred on them by law.

### 3. *A real choice*

79. Genuine elections also offer an actual choice to the electorate. While this presupposes no particular political system, real popular input must be institutionally accommodated. Both the Universal Declaration and the International Covenant on Civil and Political Rights prohibit discrimination on the basis of “political or other opinion” in the enjoyment of the right to take part in government, the right of freedom of association and the right of assembly. Political pluralism is seen today as an essential element in providing a real choice to the electors, and the Human Rights Committee gives importance to this in its consideration of reports submitted by States parties to the Covenant.

80. Already in 1962, the Draft General Principles on Freedom and Non-discrimination in the Matter of Political Rights adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities<sup>46</sup> had stated (Principle VIII):

(a) Every voter shall be free to vote for the candidate or list of candidates he prefers in any election to public office, and shall not be compelled to vote for any specified candidate or list of candidates.

...

(d) Full freedom shall be ensured for the peaceful expression of political opposition, and also for the organization and free functioning of political parties and the right to present candidates for election.

81. Political pluralism also requires that parties be able to function effectively. To that end, legal protection for their full participation should be in place and electoral legislation should provide for fair and transparent

<sup>46</sup> See annex II below.



funding of political campaigns (which may include some form of public financing).

#### 4. *Equal access to public service*

82. A system which respects certain related political rights offers the best framework for ensuring that voters are presented with a real choice. In particular, international standards for unrestricted access to public service serve these ends. The Universal Declaration provides that everyone has the right to equal access to public service (art. 21). Unreasonable restrictions on candidature would be inconsistent with this right, while at the same time interfering with the people's right to choose. The International Covenant on Civil and Political Rights elaborates further on this standard, providing that every citizen has the right to be elected to public office and to have access, on general terms of equality, to public service in his country (art. 25 (b) and (c)).

83. The rights to access to public service and to stand for election, like the right to vote, do not tolerate discrimination based upon race, gender, religion or other such arbitrary classifications. Certain requirements for public office are allowed by the Covenant, but these are limited to reasonable bases, such as minimum age and mental capacity. Records of discussions held during the drafting of these provisions are clear on this interpretation.<sup>47</sup>

84. Racial restrictions on access to public service are prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (c)) and by the International Convention on the Suppression and Punishment of the Crime of Apartheid (art. II (c)). Gender discrimination in this regard is prohibited by the Declaration on the Elimination of Discrimination against Women (art. 4 (a) and (c)), the Convention on the Elimination of All Forms of Discrimination against Women (art. 7 (a) and (b)) and the Convention on the Political Rights of Women (arts. II and III). The combined application of the above provisions establishes the broadest reasonable pool of candidates for election, thereby yielding assurances of genuine choice for voters and of the individual rights of candidates to stand for election and to enter public service.

85. The Human Rights Committee has recognized that some countries have permissible legislative penalties depriving violators of certain political rights. However, in *Alba Pietrarroia v. Uruguay* (44/1979), the Committee made reference to the principle of proportionality in examining the degree of deprivation and stated that a measure as harsh as the deprivation of all political rights for a period of 15 years would have to be specifically justified.<sup>48</sup>

86. The Committee has also examined the scope of the right to specific representation in *Grand Chief Don-*

*ald Marshall, et al. (Mikmaq people) v. Canada* (205/1986).<sup>49</sup> In its decision, the Committee stated that article 25 (a) of the International Covenant on Civil and Political Rights could not be interpreted as providing for an unconditional right to choose the modalities of participation in the conduct of public affairs, and that "It is for the legal and constitutional system of the State party to provide for the modalities of such participation".<sup>50</sup> This is a useful general principle with regard to political participation, indicating the importance of respect for the legal principles of a particular State. It should be noted, however, that this case involved a constitutional process, and not elections as such. With regard to elections, far more international guidance has evolved.

#### 5. *An informed choice*

87. Implicit in the concept of free choice is that of an informed choice. As has been seen, if elections are to be genuine, they must reflect the political will of the people. Voters can neither formulate nor express that will without access to information about the candidates, the parties and the process. Well-organized, non-partisan voter information programmes and unhindered distribution of political propaganda are therefore critical elements of genuine elections.

88. Non-partisan civic education should aim to inform voters as to the "who, what, when, where and how" of registration and voting. It should also help to inform the public on issues such as why they should participate, and what guarantees are in place to protect their right to participate confidently in the process.

89. Voter information should be accessible to all members of society, regardless of their language or level of literacy. As such, voter education materials should be multimedia and multilingual, and culturally appropriate for various social groups.

90. Civic education activities should also include specially targeted training for certain professional groups, in order to prepare them for their respective roles in the electoral process. These may include such groups as registration and polling officials, police and security personnel, the media, political parties, etc.

91. Access to the mass media should also be guaranteed to political parties and candidates, and such access should be fairly distributed. Fair media access implies not only allocation of broadcast time or print space to all parties and candidates, but also fairness in the placement or timing of such access (i.e. prime-time versus late-night broadcasts, or front-page versus back-page publication).

92. In addition, use of the media for campaign purposes should be responsible in terms of content, such that no party makes statements which are false, slander-

<sup>47</sup> See, for example, the summary records of the 363rd to 367th meetings of the Commission on Human Rights, held at its ninth session, in 1953 (E/CN.4/SR.363-E/CN.4/SR.367).

<sup>48</sup> *Selected Decisions* . . . , vol. 1, p. 79, para. 16.

<sup>49</sup> See *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40)*, annex IX, sect. A.

<sup>50</sup> *Ibid.*, paras. 5.4-5.5.

ous or racist, or which constitute incitement to violence. Nor should unrealistic or disingenuous promises be made, nor false expectations be fostered by partisan use of the mass media. Further information on media access and regulation is provided in chapter IV below.

## 6. *Legal and technical issues*

93. Finally, it is important to note that securing the genuine quality of elections goes beyond merely declaring a policy of broad access to public office and announcing adherence to international standards. It also necessitates a number of technical and legal measures at the level of practical implementation. Many of these issues are highlighted in chapter IV below. This is an area where advisory services and technical assistance can play a vital role.

### E. Other requirements

#### 1. *The role of police and security forces*

94. Police and security forces play a dual role in an election setting. Effective administration of justice during an election period requires a balancing between, on the one hand, the need for electoral security and maintenance of order, and, on the other hand, the importance of non-interference with rights and the existence of an environment free of intimidation. The Code of Conduct for Law Enforcement Officials adopted by the General Assembly in 1979 imposes a duty of service to the community upon all officers of the law (art. 1). This notion necessarily requires that security forces strive to ensure that all citizens benefit from elections that are administratively sound and free of any disruptive forces which seek to undermine the free expression of popular will.

95. Similarly, the Code of Conduct provides that "law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons" (art. 2). This includes not only the human right to take part in elections, but all human rights. Police agencies that do not respect fundamental human rights have the potential to create an intimidating atmosphere that will inhibit the electorate and thereby subvert the genuineness of the election's outcome.

96. In addition, the Code of Conduct requires law enforcement officials to "rigorously oppose and combat" any act of corruption (art. 7). This clearly includes a duty to prevent attempts at election fraud, personation,

bribery, intimidation or any other acts that may frustrate the authenticity of election results. The Code also provides that law enforcement officials "shall not commit any act of corruption" (art. 7). This is of extreme importance given the negative historical role that police and security forces have played in the election process in some countries. In order to ensure that security forces remain impartial, the role of police in providing security for elections should be subordinate to that of the polling officers.

97. In every case, any police presence at places of registration or polling should be discreet, professional and disciplined. In general, this requires that police and security personnel be posted in the minimum number necessary to ensure security in a given location. They should never be positioned in such a way as to impede legitimate access, intimidate voters or discourage them from participating.

#### 2. *The role of observers*

98. The Framework for Future Efforts at Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections, adopted by the Commission on Human Rights in 1989,<sup>51</sup> states: "National institutions should ensure universal and equal suffrage, as well as impartial administration" (sect. III). This may require that the host country "invite observers or seek advisory services. Either or both may be available from regional organizations or from the United Nations system" (sect. IV). The use of election observers can provide an effective means of verifying the genuineness of the election outcome. In addition, the presence of observers will decrease the likelihood of intimidation or fraud. Furthermore, neutral, objective observers can instill confidence in the electorate and thereby increase not only their willingness to participate in the process, but also their ability freely to express their political will in the ballot booth without fear of reprisal.

99. In order to maximize the benefits that non-partisan observers can contribute, they should be legally afforded free movement and access to all electoral events and should be protected from harm and from interference with their official duties. In addition, it is important that there be a sufficient number of observers to ensure that their presence is widely known about and recognized by the electorate.

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<sup>51</sup> See annex III below.

## IV. COMMON ELEMENTS OF ELECTORAL LAWS AND PROCEDURES

100. The approach of the United Nations in providing advisory services and technical assistance for democratic elections is best characterized as practical. The goal of such cooperation is to assist States in conducting elections which are free and fair, which occur in an atmosphere respectful of human rights norms and which are accepted as legitimate by all sectors of society. To these ends, advisory services and technical assistance focus on the detail of legal, technical and human rights aspects of democratic elections. These basic elements are set out in the national constitutions and legislation of most States, ensuring that elections are conducted under the rule of law. They include the following areas for attention.

### A. Election administration

101. Provisions of the law should ensure that an objective, unbiased, independent and effective administrative structure is in place. This entails careful attention to provisions for appointment, remuneration, duties, powers, qualifications and reporting structure of electoral staff. At all levels, staff must be insulated from bias and political pressure. A single line of ultimate authority should be established. These concerns remain important regardless of the type of administration selected. Thus some States will adopt a hierarchy headed by a Chief Electoral Officer, while others will opt for an Electoral Commission with fair partisan representation, recognized neutrality, or a combination of both.

102. Whatever the structure, legal guarantees should be in place to insulate electoral administration from bias or corruption. Adequate advance training is imperative for all election officials. All electoral activities, including the decision-making process, the legal process and the organization of events, should be conducted in a wholly transparent manner.

### B. Constituency delimitation

103. The process of identification of electoral districts and boundaries should respect the international norm of equal suffrage. Such delimitation should not be designed to dilute or discount the votes of any particular groups or areas.

104. Fair constituency-delimitation procedures will take into account a range of information, including available census data, territorial integrity, geographical distribution, topography, and so on. Polling stations should be distributed so as to guarantee equal access within each constituency.

### C. Registration of electors

105. If advance registration of voters is proposed, the process must be carefully constructed to ensure fairness and effectiveness of provisions concerning elector qualifications, residence requirements, election lists and registers, and the means provided for challenging those documents. Election lists should be available to interested parties. If no registration is to take place in advance of polling, alternative measures for preventing double-voting (for example, the use of indelible ink) and voting by unqualified persons must be put in place.

106. Disqualifying factors must not represent impermissible discrimination and should be limited, so as to provide the maximum reasonable enfranchisement of the people. Procedures should accommodate broad participation and should not create unnecessary technical barriers to participation by otherwise qualified persons. For instance, advance registration should be allowed for those who will reach the minimum voting age by election day, but after the close of registration. Suspension of registration should occur as closely as possible to election day, so as to provide the greatest opportunity for electors to register.

### D. Nominations, parties and candidates

107. Electoral laws and procedures should guard against unfair advantage being bestowed upon Government-supported candidates. Provisions concerning candidate qualifications must be clear and must not discriminate against women or particular racial or ethnic groups. Disqualifications should be subject to independent review.

108. Political parties should not face unreasonable restrictions on participation or campaigning. There should be protection under the law for party names and symbols. Procedures for designation of party agents, for nomination time and place requirements and for campaign financing should be clearly established by law. In addition, the electoral calendar should provide adequate time for campaigning and public information efforts.

### E. Polling, tabulation and reporting

109. To be successfully conducted, free and fair elections should be guided by detailed provisions regarding the form of ballots, the design of ballot boxes and voting compartments, and the manner of polling. These provisions should protect the process from fraudulent practices and respect the secrecy of the vote.

110. Ballots should be worded with absolute clarity and be identical in all languages. Ballot form should also take into account various levels of literacy in the country. Proxy and absentee voting provisions should be designed to encourage the broadest possible participation, without compromising electoral security. Voters with special needs, including the disabled, the elderly, students, conscripts, workers (including migrant workers out of the country), foreign-service personnel and prisoners who have retained voting rights, should be accommodated.

111. Sufficient quantities of voting materials must be available at each polling place. Polling personnel will require clear guidance in admitting and identifying qualified voters. Permissible questions to be put to voters at polling places should be expressly set out by statute, to prevent voter intimidation, abuse of discretion, or discriminatory application. The attendance of observers should be provided for.

112. Counting should be open to official observation by concerned parties. All issued, unissued and damaged ballot papers must be systematically accounted for. The processes for counting votes, verification, reporting of results and retention of official materials must be secure and fair. Re-count procedures should be available in case of questionable results. Finally, alternative, independent verification procedures, such as parallel vote tabulation, can be a valuable measure contributing to public confidence in, and acceptance of, the outcome of polling.

#### **F. Complaints, petitions and appeals**

113. The right to challenge election results and for aggrieved parties to seek redress should be provided by law. The petition process should set out the scope of available review, procedures for its initiation and the powers of the independent judicial body charged with such review. Multiple levels of review, where appropriate, should be described as well.

114. The effect of irregularities on the outcome of elections must be established by law. Anyone alleging a denial of their individual voting or other political rights must have access to independent review and redress.

#### **G. Respect for fundamental human rights**

115. Guarantees of free speech, opinion, information, assembly, movement and association take on greater significance during elections. The prevailing atmosphere should be one of respect for human rights and fundamental freedoms and be characterized by an absence of intimidating factors.

116. Laws in force which might have the effect of discouraging political participation should be repealed or suspended. Emergency or other exceptional legislation restricting fundamental rights should be repealed or suspended. Exceptional measures must not be imposed un-

less strictly required by the exigencies of the situation, and must not be calculated to corrupt or unnecessarily delay the political process.

117. Respect for a wide range of human rights, as enumerated in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, is crucial to the conduct of free and fair elections.

#### **H. Offences, penalties and maintenance of order**

118. The national electoral law must also protect the political process from corruption, official misfeasance, obstruction, undue influence, personation, bribery, treating, intimidation and all other forms of illegal and corrupt practice. Prosecutions, procedures and penalties must respect international standards for human rights in the administration of justice.

119. Decisions regarding the maintenance of peace and order at polling places should be made by balancing concern for security against the potential intimidating effect of a police, security or military presence. Polling officers should be delegated the authority to maintain order at polling places. Civil and criminal liability should be imposed for acts of misfeasance, nonfeasance and malfeasance by election officials.

#### **I. Media access and regulation**

120. Arrangements for fair media access by candidates and parties are an important focus of electoral law. This is especially evident where the major information media are government-controlled. Media regulations should provide for safeguards against political censorship, unfair government advantage and unequal access during the campaign period.

121. Fair media access implies not only equality of time and space allotted, but also attention to the hour of broadcasting (i.e. prime-time versus late broadcasting) and the placement of printed advertisements (i.e. front page versus back page). Fair media use implies responsibility on the part of all persons or parties delivering messages or imparting information via the mass media (i.e. truthfulness, professionalism and abstaining from false promises or the building of false expectations).

122. A valuable mechanism for assuring fair and responsible broadcasting during election periods is an independent body charged with monitoring political broadcasts, broadcast civic education programmes and allocation of time to various political parties, as well as receiving and acting upon complaints regarding media access, fairness and responsibility. This function might be discharged by representative transitional bodies, by the electoral administration, or by a separately constituted media commission.

123. Securing responsible electoral broadcasting and publication in the media can, in part, be served by agreement on a code of conduct for the media. Such

codes may be preferable as a method of media regulation (i.e. self-regulation) to legislative or governmental action, which might raise the issue of impermissible censorship and interference with the human rights of freedom of information and expression.

#### **J. Public information and voter education**

124. Funding and administration should be provided for objective, non-partisan voter education and information campaigns. Such civic education is especially critical for populations with little or no experience with democratic elections. The public should be well informed as to where, when and how to vote, as well as to why voting is important. They must be confident in the integrity of the process and in their right to participate in it.

125. Literature should be widely available and should be published in the various national languages to help ensure the meaningful participation of all eligible voters. Multimedia methods should be employed to provide effective civic education to people with various levels of literacy. Voter education campaigns should extend throughout the territory of the country, including to rural and outlying areas.

#### **K. Observation and verification**

126. The observation and verification of election preparations, voting and counting by representatives of political parties and candidates should be widely provided for in election legislation. In addition, the presence of non-partisan election observers from national non-governmental organizations and international organizations can help secure public confidence in the electoral process.

127. If observers are to be invited, their presence must be expressly permitted by the electoral laws and procedures, and their role should be clearly described in

public information materials. Whether drawn from the United Nations system, from regional intergovernmental organizations, from non-governmental organizations or from official missions from other States, observers should be afforded free movement and access and be protected from harm or interference with their official duties.

128. It is important to allow for a sufficient number of observers to ensure their presence at an adequate number of polling places and election events. Effective, independent coordination of observer activities enhances their positive value. The meaningful involvement of observers also requires their presence from the beginning of the process, their adequate training and measures to ensure that they are informed as to the local culture.

#### **L. Legal authority and structure**

129. Guarantees for the fundamental right of periodic free and fair elections with universal, equal and non-discriminatory suffrage and secret balloting, and for the right to be elected and to have access to the public service on equal terms, should be enshrined in the Constitution or other high organic law of the State.

130. The legal authority for the rights of free expression, opinion, information, assembly and association should also rest in the highest law of the land. Statutory language should be clear, concise and adequately specific, in order to forestall potential abuse of discretion, discriminatory application, or impingement upon the rights of free expression or full participation. Such language should also be gender-neutral, to encourage participation by women, and should be translated into the languages of all voting groups.

131. Subsidiary legislation, including clear and detailed regulations and administrative instructions, should also be promulgated and should respect these general requirements.

## CONCLUSION

132. While this handbook is by no means an exhaustive compendium of electoral issues, it does provide some notion of the fundamental elements of modern democratic elections and the complexity of their conduct. United Nations advisory services and technical assistance, including those provided by the Centre for Human Rights, UNDP, the Electoral Assistance Unit and other United Nations agencies, draw upon the experience of the Organization's staff, collections of electoral laws from various jurisdictions, rosters of experts and a network of non-governmental organizations and institutions to assist Governments in the legal, technical and human rights aspects of assuring the basic right of free and fair elections. At the same time, the United Nations remains cognizant of the fact that periods of elections often provide unique opportunities for countries to consider broader issues of democracy and human rights, and accordingly stands ready to assist in that process.

## ANNEXES

### Annex I

#### INTERNATIONAL HUMAN RIGHTS STANDARDS RELATING TO ELECTIONS

##### A. The right to take part in government

###### 1. UNIVERSAL DECLARATION OF HUMAN RIGHTS

###### Article 21

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

###### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

###### 2. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

###### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

###### Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

##### B. Equality and non-discrimination

###### 1. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

###### Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

(c) Political rights, in particular the rights to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

...

###### 2. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

###### Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

3. CONVENTION ON THE POLITICAL RIGHTS OF WOMEN

*Article I*

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.

*Article II*

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.

*Article III*

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

**C. The right to self-determination**

1. CHARTER OF THE UNITED NATIONS

*Article I*

The Purposes of the United Nations are:

...

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion; ...

...

*Article 73*

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

...

(b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular

circumstances of each territory and its peoples and their varying stages of advancement;

...

*Article 76*

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

...

(b) to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

(c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the interdependence of the peoples of the world; ...

...

2. DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES

*Article 2*

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*Article 5*

Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

3. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS and INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

*Common article 1*

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

...



## Annex II

### DRAFT GENERAL PRINCIPLES ON FREEDOM AND NON-DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS<sup>a</sup>

#### PREAMBLE

Whereas the peoples of the world in the Charter of the United Nations have proclaimed their determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to promote social progress and better standards of life in larger freedom,

Whereas the Charter sets forth, as one of the purposes of the United Nations, the promotion and encouragement of respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights, further elaborating the principle of non-discrimination, proclaims that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind, including political opinion, and provides that no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs,

Whereas, since the interests of the many are often disregarded when political power is in the hands of the few, the right of everyone to take part in the government of his country is the condition indispensable for the effective enjoyment by all of other human rights, including economic, social and cultural rights,

Whereas the exercise of political rights is directly linked to the existence of freedom of opinion and expression and freedom of peaceful assembly and association,

Whereas these rights can only be effectively guaranteed in a world in which the principles of the Charter, especially the principle of self-determination, and the principles enshrined in the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, shall have full application,

Now therefore the following general principles are proclaimed to ensure recognition of the right of everyone to take part in the government of his country and of other related political rights, and to prevent discrimination in the enjoyment of these rights:

#### I. *The right of all peoples to self-determination*

All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### II. *Political rights of nationals*

(a) Every national of a country is entitled within that country to full and equal political rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(b) No one shall be denied nationality, or deprived of nationality, as a means of denying him or depriving him of political rights.

(c) The age, length of residence and other conditions prescribed by law for the exercise of any particular political right shall be the same for all nationals of a country or inhabitants of a political unit, as the case may be.

<sup>a</sup> Annexed to resolution 1 (XIV) adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its fourteenth session, in 1962; see the report of the fourteenth session (E/CN.4/830-E/CN.4/Sub.2/218), para. 159.

#### III. *Freedom of opinion and association*

Freedom of opinion and expression and freedom of peaceful assembly and association are essential to the enjoyment of political rights. These freedoms, and the access to the facilities and means for their exercise, shall be ensured to all persons at all times.

#### IV. *Universality of suffrage*

Every national is entitled to vote in any national election, referendum or plebiscite held in his country, and in any such public consultation held in the political or administrative unit thereof in which he resides. The right to vote shall not be dependent upon literacy or any other educational qualifications.

#### V. *Equality of suffrage*

(a) Every national is entitled to vote in any election, or other public consultation for which he is eligible, on equal terms, and each vote shall have the same weight.

(b) When voting is conducted on the basis of electoral districts, the said districts shall be established on an equitable basis such as would make the results most accurately and completely reflect the will of all the voters.

(c) For any election or public consultation held by direct vote there shall be one general election roll, and every eligible national shall be included in that roll.

#### VI. *Secrecy of the vote*

(a) Every voter shall be able to vote in such a manner as not to involve disclosure of how he has voted or intends to vote.

(b) No voter shall be compelled to state, in any legal proceeding or otherwise, how he voted, or intends to vote, and no one shall attempt to obtain from any voter, directly or otherwise, information as to how he has voted or intends to vote.

#### VII. *Periodicity of elections*

Elections to all elective public offices shall be held at reasonable intervals, in order to ensure that the will of the people shall at all times be the basis of the authority of government.

#### VIII. *Genuine character of elections and other public consultations*

(a) Every voter shall be free to vote for the candidate or list of candidates he prefers in any election to public office, and shall not be compelled to vote for any specified candidate or list of candidates.

(b) Every voter shall be free to vote for or against any proposal submitted to a plebiscite, referendum, or other public consultation.

(c) The conduct of elections and other public consultations, including the preparation and periodic revision of the electoral roll, shall be supervised by authorities whose independence and impartiality are ensured and whose decisions are subject to appeal to the judicial authorities or other independent and impartial bodies.

(d) Full freedom shall be ensured for the peaceful expression of political opposition, and also for the organization and free functioning of political parties and the right to present candidates for election.

IX. *Access to elective public office*

(a) Every national shall be eligible on equal terms for election to any elective public office in his country or in any political or administrative unit thereof in which he resides.

(b) The extent to which this principle shall be applied to those whose election might result in a conflict between their duties or personal interests and the interests of the community as a whole shall be determined by law.

X. *Access to non-elective public office*

(a) Every national shall be eligible on equal terms to hold any non-elective public office in his country, or any political or administrative unit thereof in which he resides.

(b) The extent to which this principle shall be applied to those whose appointment or assignment to a non-elective public office might result in a conflict between their duties or personal interests and the interests of the community as a whole shall be determined by law.

(c) All appointments to the career civil service of a country shall be made on an objective and impartial basis.

XI. *Measures which shall not be considered discriminatory*

The following measures prescribed by law or regulation shall not be considered discriminatory:

(a) reasonable requirements for the exercise of the right to vote or the right of access to elective public office;

(b) reasonable qualifications for appointment to public office which stem from the nature of the duties of the office;

(c) measures establishing a reasonable period which must elapse before naturalized persons may exercise their political rights, provided that they are combined with a liberal naturalization policy;

(d) special measures taken to ensure:

- (i) the adequate representation of an element of the population of a country whose members are in fact prevented by political, economic, religious, social, historical or cultural conditions from enjoying equality with the rest of the population in the matter of political rights;
- (ii) the balanced representation of the different elements of the population of a country;

provided that such measures are continued only so long as there is need for them, and only to the extent that they are necessary.

XII. *Limitations*

The rights and freedoms proclaimed above shall in no case be exercised contrary to the purposes and principles of the United Nations. They shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of public order (*ordre public*), morality and the general welfare in a democratic society. Any limitation which may be imposed shall be consistent with the purposes and principles of the United Nations.

XIII. *Constitutional guarantee*

The rights and freedoms proclaimed above can best be guaranteed by embodiment in constitutions or other fundamental laws none of which should be subject to repeal or alteration by ordinary legislative procedure.

XIV. *Recourse to independent tribunals*

Any denial or violation of these rights and freedoms shall entitle the aggrieved person or persons to recourse to independent and impartial tribunals.

XV. *Application of principles*

These principles shall apply to all independent countries and to countries which are under alien domination.

## Annex III

### ENHANCING THE EFFECTIVENESS OF THE PRINCIPLE OF PERIODIC AND GENUINE ELECTIONS: FRAMEWORK FOR FUTURE EFFORTS<sup>a</sup>

#### I. THE WILL OF THE PEOPLE EXPRESSED THROUGH PERIODIC AND GENUINE ELECTIONS AS THE BASIS FOR THE AUTHORITY OF GOVERNMENT

- A. Universal and equal suffrage.
- B. The right to take part in the government of one's country, directly or through freely chosen representatives.
- C. The right to equal access to public service in one's country.
- D. The need for a secret vote or equivalent free voting procedures, guaranteeing the free expression of the will of the electors.
- E. The importance of the right to freedom of peaceful assembly.
- F. The importance of the right to freedom of association.
- G. The importance of the right to freedom of opinion and expression, including the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media.

- H. The right of citizens of a State to change their governmental system through appropriate constitutional means.

#### II. THE ACTIVITIES OF CANDIDATES FOR PUBLIC OFFICE

- A. Equal opportunity for all citizens to become candidates.
- B. The right of candidates to put forward their political views, individually and in cooperation with others.

#### III. OPERATIONAL ASPECTS: NATIONAL INSTITUTIONS

National institutions should ensure universal and equal suffrage, as well as impartial administration. There is particular need for independent supervision, appropriate voter registration, reliable balloting procedures and methods for preventing electoral fraud and resolving disputes.

#### IV. COOPERATIVE ACTIVITIES OF THE INTERNATIONAL COMMUNITY

The host country may wish to invite observers or seek advisory services. Either or both may be available from regional organizations or from the United Nations system.

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<sup>a</sup> Commission on Human Rights resolution 1989/51 of 7 March 1989, annex (*Official Records of the Economic and Social Council, 1989, Supplement No. 2 (E/1989/20)*, chap. II, sect. A).

## Annex IV

### RELEVANT PROVISIONS OF SELECTED REGIONAL HUMAN RIGHTS INSTRUMENTS

#### A. The right to take part in government

##### 1. AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

###### *Article 13*

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

##### 2. AMERICAN CONVENTION ON HUMAN RIGHTS

###### *Article 23. Right to participate in government*

1. Every citizen shall enjoy the following rights and opportunities:
  - (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
  - (b) To vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
  - (c) To have access, under general conditions of equality, to the public service of his country.
2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

##### 3. PROTOCOL NO. 1 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS<sup>a</sup>

###### *Article 3*

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

#### B. Equality and non-discrimination

##### 1. AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

###### *Article 2*

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

<sup>a</sup> Convention for the Protection of Human Rights and Fundamental Freedoms.

###### *Article 3*

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

##### 2. AMERICAN CONVENTION ON HUMAN RIGHTS

###### *Article 1. Obligation to respect rights*

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition.
2. For the purposes of this Convention, "person" means every human being.

###### *Article 24. Right to equal protection*

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

##### 3. EUROPEAN CONVENTION ON HUMAN RIGHTS<sup>a</sup>

###### *Article 14*

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### C. The right to self-determination

##### AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

###### *Article 19*

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

###### *Article 20*

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.