



# PROMOTING LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS



An NDI Guide for Developing Election Laws  
and Law Commentaries

*Patrick Merloe*

# Promoting Legal Frameworks for Democratic Elections

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and Law Commentaries

Patrick Merloe

NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDI)

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## ABOUT NDI

The National Democratic Institute for International Affairs (NDI) is a nonprofit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices and institutions. NDI works with democrats in every region of the world to build political and civic organizations, safeguard elections, and promote citizen participation, openness and accountability in government.

Democracy depends on legislatures that represent citizens and oversee the executive, independent judiciaries that safeguard the rule of law, political parties that are open and accountable, and elections in which voters freely choose their representatives in government. Acting as a catalyst for democratic development, NDI bolsters the institutions and processes that allow democracy to flourish.

**Build Political and Civic Organizations:** NDI helps build the stable, broad-based and well-organized institutions that form the foundation of a strong civic culture. Democracy depends on these mediating institutions—the voice of an informed citizenry, which link citizens to their government and to one another by providing avenues for participation in public policy.

**Safeguard Elections:** NDI promotes open and democratic elections. Political parties and governments have asked NDI to study electoral codes and to recommend improvements. The Institute also provides technical assistance for political parties and civic groups to conduct voter education campaigns and to organize election monitoring programs. NDI plays a leading role in international election observation and was an initiator and co-drafter of the Declaration of Principles for International Election Observation. The Institute has organized international delegations to monitor elections in dozens of countries, helping to ensure that polling results reflect the will of the people.

**Promote Openness and Accountability:** NDI responds to requests from leaders of government, parliament, political parties and civic groups seeking advice on matters from legislative procedures to constituent service to the balance of civil-military relations in a democracy. NDI works to build legislatures and local governments that are professional, accountable, open and responsive to their citizens.

International cooperation is key to promoting democracy effectively and efficiently. It also conveys a deeper message to new and emerging democracies that while autocracies are inherently isolated and fearful of the outside world, democracies can count on international allies and an active support system. Headquartered in Washington D.C., with field offices in every region of the world, NDI complements the skills of its staff by enlisting volunteer experts from around the world, many of whom are veterans of democratic struggles in their own countries and share valuable perspectives on democratic development.

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## ACKNOWLEDGEMENTS

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This Guide was prepared by the National Democratic Institute (NDI) to assist political parties, civic organizations, legal activists and others concerned with developing legal frameworks for democratic elections. The Guide reflects nearly 25 years of NDI experience in more than 90 countries around the globe in their efforts to ensure electoral integrity, popular participation and democratic governance.

The Institute has been called upon to provide commentaries on the development of electoral frameworks, including examples as diverse as: the 1989 Roundtable negotiations that led to the transfer of power in Czechoslovakia; the 1991 negotiations concerning Senegal's electoral code; the CODESA negotiations that brought about multi-racial elections in South Africa; the framework for elections following the 1994 return to civilian government in Haiti; the 1995 proposed Palestinian Council election law; and the 1998 frameworks proposed for elections in Indonesia and Bosnia and Herzegovina. NDI also has offered recommendations on legal frameworks as part of over 150 international election observer delegations that examined election-day, pre-election and post-election developments. NDI election law commentaries and election observation statements are available at <http://www.ndi.org/globalp/elections/elections.asp>.

The Institute recognizes that questions concerning passage of laws and their implementation are matters that relate to national sovereignty. NDI, therefore, places emphasis on working in support of local civic and political activists, legal experts, legislators and electoral and other governmental officials as they develop legal frameworks for elections. The Institute has supported election law development efforts of local actors in its programs and has provided assistance to political parties and civic organizations concerning election law development in more than 40 countries.

NDI also cooperates with the efforts of other international organizations in promoting electoral integrity. The Institute, along with the United Nations Electoral Assistance Division (UNEAD) and The Carter Center (TCC), was a convener of the process that led to the *Declaration of Principles for International Election Observation*, now endorsed by 32 international organizations, which continue to interact concerning issues relating to assessing the character of elections. NDI also collaborates on the development of international principles for democratic elections with the UNEAD, the Organization of American States (OAS), the Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the European Commission (EC), the Council of Europe's Venice Commission, Southern Africa Development Community Parliamentary Forum (SADC-PF), International IDEA, and other intergovernmental organizations, non-governmental groups and regional associations of domestic election monitors and parliamentarians.

The Institute admires the efforts of political and civic activists, electoral officials, legislators and legal experts who are seeking to advance legal frameworks for democratic elections. This is a complicated task that requires an open and inclusive political process, for its outcome directly affects the compact between the citizens of a country, in whom sovereignty resides, and those who seek the authority to exercise the powers of government.

While there are many permutations and combinations of the various elements that make up electoral frameworks, building broad dialogue and political consensus among citizens and electoral contestants concerning the rules for competing for power are critical to developing confidence in election processes and governments that result from elections.

NDI recognizes those who have promoted democratic electoral frameworks in their countries and have sought outside advice on this subject. The Institute expresses its deep gratitude to the many experts – politicians, legislative drafters, legal scholars and political rights activists from many countries – who have contributed their time to improve NDI's contributions to analysis, commentaries and recommendations concerning legal frameworks for democratic elections. They are too numerous to name, though their contributions have been and remain invaluable.

This Guide was written by Patrick Merloe, NDI Senior Associate and Director of Electoral Programs. Sections of the Guide were reviewed by: Hrair Balian, USA (The Carter Center, formerly with OSCE/ODIHR); Sandra Coliver, USA (Open Society Justice Initiative); Andrew Ellis, UK (International IDEA); Matthew Frumin, USA (NDI Senior Advisor, formerly with the law firm of Steptoe & Johnson); Rafael Lopez-Pintor, Spain (IFES, formerly with the Universidad Autónoma de Madrid); Gerald Mitchell, UK (OSCE/ODIHR); David A. Marcello, USA (International Legislative Drafting Institute); Armando Martinez-Valdes, Panama (UN Electoral Assistance Division); Lawrence M. Nobel, USA (law firm of Skadden Arps, formerly General Council to the US Federal Election Commission); Simon Osborn, UK (Electoral Reform International Services); Jessie V. Pilgrim, USA (comparative election law expert); Donald J. Simon, USA (the law firm of Sonosky, Chambers, Sachse, Endreson & Perry, formerly General Counsel to Common Cause); and Felix Ulloa, El Salvador (NDI Resident Director in Morocco). NDI is grateful to each of these experts for providing their comments; the Institute, however, is responsible for any errors or shortcomings that may be presented in the Guide. Joseph A. Scrofano, former NDI legal intern, provided invaluable research assistance in the development of Sections Two and Appendix Four of the Guide. Tara R. Gingerich, formerly with the law firm of Steptoe & Johnson, and Ann Colville Murphy, former NDI Elections Legal Advisor, provided important contributions to Section Four and research assistance for Appendix Four of the Guide. Working on the production of the Guide were: Richard Klein, NDI Senior Advisor, Linda Patterson, former NDI Program Officer; Julia Brothers, NDI Program Officer; Laura Grace, NDI Senior Program Assistant; and Elizabeth Owerbach and Sarah Saperstein, NDI interns. Layout of the Guide was produced by Marc Rechdane, Resident Graphic Designer, in NDI's Beirut office.

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NDI hopes that this Guide will make a contribution to those seeking to develop frameworks for democratic elections. The Institute recognizes that sound electoral frameworks are a necessary but insufficient precondition for democratic elections. Ultimately, political will is essential to ensuring that laws are implemented properly and in ways that promote citizen confidence in elections and their outcomes. Readers of the Guide are encouraged to contact NDI with any comments, suggestions or requests.

**Kenneth Wollack**  
President, NDI



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## HOW TO USE THIS GUIDE

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This Guide is designed to assist political parties, candidate support groups, civil society organizations and legal activists in assessing electoral related laws and developing commentaries, recommendations and advocacy for advancing legal frameworks for democratic elections. It also can be used by journalists and others seeking to understand issues concerning electoral laws and their implementation.

While the Guide is designed for use by domestic constituencies interested in promoting electoral integrity, it can also be used by the international community in assessing electoral laws and promoting democratic elections, including, for example, international election observation missions, rule of law and legislative strengthening initiatives and the donor community.

The Guide provides a variety of tools arranged by sections. Not all of the sections need to be used at the same time, nor do they necessarily serve the same purposes.

Section One notes rationales for why parties, candidates, civic groups and others should analyze and then defend or seek to change certain provisions of legal frameworks for elections. It also notes why it is important to go beyond analysis and advocacy concerning legal frameworks and engage in monitoring implementation of the frameworks.

Section Two provides a systematic description of the underlying international human rights law principles for democratic elections and the normative process that is affecting state practice and citizen expectations in this area. Reviewing carefully the principles of inclusiveness, transparency and accountability as the sources for developing public confidence, the section provides the necessary grounding for analysis and advocacy concerning legal frameworks for democratic elections, as well as monitoring their implementation.

Section Three reviews basic issues in developing legal frameworks for democratic elections. It provides an overview and general guidance for law and regulation drafters and commenters on legal frameworks. This Section provides brief discussions of key points in addressing elements of the legal framework. Those analyzing or drafting legal frameworks should also review carefully the materials presented in Section Four of the Guide.

Section Four presents a checklist that addresses 16 common elements of legal frameworks for elections, goals that each element should accomplish in promoting democratic elections, a number of criteria to evaluate in analyzing whether the framework meets those goals and a number of questions to consider in determining whether the framework promotes democratic practices. It is a tool for understanding whether a legal framework provides a sound foundation for democratic elections and for identifying areas that should be improved.

The Guide also includes a list of places where NDI has provided commentaries on electoral laws and a list of places where parties and civil society organizations have developed such commentaries in part with NDI assistance. They appear as Appendices One and Two, respectively. They may help in identifying countries with similar traditions or framework issues for further inquiry by the reader.

Appendix Three sets out relevant provisions from international human rights instruments, which provide the underpinnings for legal frameworks for democratic elections. These provisions are important for developing national legislation, advocacy and judicial and regulatory deliberations.

Appendix Four presents relevant rulings by international human rights tribunals and other international bodies that decide actions brought to them concerning election related rights. The case citations are followed by brief annotations. This allows legal advocates to identify specific decisions and juridical trends that could have an impact on particular cases that they might lodge before domestic administrative and judicial forums and international tribunals.

In addition, the Guide includes a list of published resource materials that could be useful to those pursuing the promotion of legal frameworks for democratic elections, electoral integrity and democratic governance beyond elections. This list appears in Appendix Five of the Guide.

## SECTION ONE

# Introduction to Promoting Legal Frameworks for Democratic Elections

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Establishing the “rules of the game” for elections should be a vital concern to political parties, candidates and citizens alike. Democratic elections serve to settle fairly and peacefully the competition among those seeking to exercise governmental powers as representatives of the people. Democratic elections also serve as the means for citizens to express freely their will as to who shall have the authority and legitimacy to wield the reins of government as their representatives. It is thus in the direct and immediate interests of electoral contestants – political parties and candidates – and of the population as a whole – citizens and their associations – to ensure that the rules for electoral competition, as well as the way those rules are enforced, guarantee that a genuine democratic election takes place.

## **ELECTIONS AND CONFLICT MANAGEMENT**

In societies emerging from widespread violent conflict, peace negotiations almost always include scheduling elections. The antagonists may come to see elections as the means to settle who will occupy governmental offices, but to agree to put down arms, demobilize and turn to the ballot box instead of bullets they also must believe that the rules for the competition will provide a genuine chance to achieve their goals. The parties to the negotiations therefore should understand at least the essential elements of legal frameworks in order to arrive at agreements they value and at consequent political processes in which they have confidence. The framework for competition also must provide effective means for the contestants to seek redress for violations of the rules in order to ensure that they do not resort to violence to settle scores or return to open conflict. These are key factors for achieving a sustainable peace.

Facilitators and mediators of peace negotiations also must understand legal frameworks for elections in order to exercise responsibly their roles as honest brokers of agreements and processes that flow from them.

To mitigate conflict the antagonists must believe elections will provide a genuine chance for them to compete fairly for power.

Inclusion of citizen representatives in peace negotiations, where possible and in appropriate roles, provides additional perspectives on peace building and honors the precept that sovereignty belongs to and flows from the people. They too must grasp the substance of legal frameworks surrounding elections. Practice also demonstrates that citizens must understand the elements of legal frameworks in order to develop public confidence in an election and its related political process. Such confidence transfers to governments that result from democratic elections. This improves the potentials for peace and stability.

A discussion of the role of elections in managing conflicts over who will exercise governmental power and the potential for elections to exacerbate tendencies toward using violence in that rivalry are beyond the scope of this Guide. Nonetheless, practice demonstrates that employing inclusiveness, transparency and accountability promotes confidence and reduces potentials for violence in elections. It is particularly important to embrace these principles when developing legal frameworks for elections in conflict vulnerable societies.

### **POLITICAL PARTIES' INTERESTS IN LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS**

Democratic political parties and candidates seek to win elections in order to manage governmental institutions in ways that advance public policies and allocate resources to achieve policy objectives. They contest elections by aggregating the votes of citizens who somehow believe that the policy objectives benefit their interests and/or those of society at large. To compete effectively, parties, candidates and those supporting or opposing referenda and other ballot initiatives must know the rules for competition – the legal framework for elections – including the avenues for seeking redress if the rules protecting their rights are violated.

Knowing the rules, however, is not enough. The electoral contestants must analyze the legal framework to determine whether the rules actually ensure a genuine chance to compete fairly. Political parties and other electoral contestants should be prepared to advance initiatives to defend and maintain elements of the legal framework that they deem essential for fairness, as well as to advocate for modifying the legal framework in order to remove impediments to fairness and to improve their chances of winning office.

This requires knowing how the legal framework for elections can be changed, both substantively and procedurally. A thorough understanding of the principles for democratic elections is required along with knowledge about various elements of the legal framework, how those elements can differ and the ways they can be put together to promote efficiency and integrity of election processes.

Knowing how legislative changes can be achieved through parliamentary procedures and how administrative rules can be modified is essential. Just as important is understanding what forces can be rallied to support either maintaining or changing elements of the legal framework.

This requires a keen sense of coalition building in legislative and regulatory processes and mobilization of civic organizations and citizens interested in participating in governmental and public affairs concerning electoral frameworks.

**Establishing Expert Teams:**

Party leaders and candidates must be knowledgeable about legal frameworks for elections, and practice demonstrates that it is necessary for them to establish expert teams that can provide analysis and advice concerning legal frameworks.

Party expertise has to encompass a number of elements: 1) constitutional provisions concerning the nature and type of electoral system (e.g., parliamentary or presidential or hybrids of the two systems and the corresponding offices to be elected; the type of proportional or plurality/majoritarian or mixed systems to employ; periodic timing of elections and terms of office; levels or tiers of elections, such as national, provincial and local); 2) constitutional and legislative provisions concerning civil and political rights relating to elections (e.g., concerning the rights to vote and to be elected, political expression, access to information, peaceful assembly and movement, equal protection of law); 3) legislative and administrative provisions concerning: party legal recognition and party/candidate ballot qualification; voter registration procedures; standards and means for delimitation of election districts; qualifications, powers and means for selecting members of election management bodies; access to media for electoral contestants; campaigning issues; party and candidate financing; party, candidate, citizen and election observer access to polling stations and voting, counting and tabulation procedures; and access to and functioning of electoral complaints and appeals procedures.

**Monitoring Implementation of Legal Provisions:**

Parties need to be able to analyze legislation and regulations and advocate for appropriate provisions on each of these subjects. They also have to be able to monitor implementation of provisions and take steps to ensure that they are enforced effectively and impartially.

Assembling expert teams solely at the leadership or party headquarters level therefore is insufficient. Parties must develop expertise at intermediate and local levels as well, if they are to ensure that the legal framework for democratic elections is properly implemented.

For example, drawing boundaries for election districts that respect equal suffrage, by including approximately the same number of citizens for each elected representative, and drawing boundaries that do not improperly discriminate against minority populations and do not discriminate on the basis of political opinion are not simply abstract considerations. Parties must be able to consolidate systematically knowledge of local conditions in light of legal provisions for delimitation of election districts. Similar types of knowledge are needed to ensure proper location of polling stations so that citizens gain an equal and genuine opportunity to vote. Party activists must know requirements for voter registration and procedures for checking the accuracy of voter registries, as well as for correcting them. Numerous other examples could

Parties need to be able to analyze legislation and regulations and advocate for appropriate provisions.

be cited illustrating the importance of developing expert teams at intermediate and local party levels that are linked to headquarters teams.

Building capacities to implement legal frameworks for democratic elections requires internal education and the establishment of local expertise on framework issues by making use of linkages among party expert teams.

Safeguarding the integrity of election day voting, counting and vote tabulation procedures requires local party and candidate activists to possess clear knowledge of the legal framework in order to: prevent fraud and irregularities; fix problems on the spot and prevent development of major legal issues; and ensure that party and candidate poll-watchers capture appropriate and sufficient information concerning problems. Safeguarding electoral integrity also requires an effective communication structure so that a party or candidate can retrieve accurate and sufficient information needed to file timely complaints that meet burdens of proof in order to seek effective redress.

Party and candidate expert teams are needed to evaluate such information to determine how to inform the public about electoral problems as well as to employ complaint processes and seek redress. In addition, once a decision is taken to file electoral complaints before administrative bodies and/or courts, legal representatives must be fully versed in proper procedures for pursuing remedies, including timing, burdens of proof, types of remedies to be sought and techniques for effective argument of the case, as well as appeal procedures. While these factors are beyond the scope of this Guide, they cannot be underestimated. Pursuing effective remedies, including before available international tribunals when domestic channels are exhausted, is a critical part of promoting legal frameworks for democratic elections. This element of legal frameworks crosses over to training of lawyers and administrative bodies that review electoral complaints, as well as ensuring a well trained, independent judiciary.

Establishing political party or candidate expert teams concerning legal frameworks for democratic elections reinforces party structures, including linkages between the headquarters and party branches, requires rapid communication systems and integrated decision-making, encompasses internal education and training that reaches all the way to frontline activists and complements efforts to garner and protect votes. Building capacities concerning legal frameworks not only contributes to improving legislative and regulatory provisions and improving coalition building for legislative and regulatory advocacy, it reinforces basic elements of party building and helps ensure electoral victory.

### **CIVIL SOCIETY'S INTERESTS IN LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS**

Elections are organized to determine accurately and honestly the people's will concerning who shall occupy governmental office for a periodic term. Referenda and other ballot initiatives are organized to determine accurately and honestly the people's will concerning the

issue presented for their vote. In both types of elections, how the people's will is determined has a crucial effect on whether their will is fully ascertained and honored. How the people's will is measured depends on the legal framework for elections and how that framework is implemented.

Citizens and civic society organizations therefore need to be knowledgeable about legal frameworks, engage in their development and monitor their implementation.

Democratic legislative and regulatory processes present opportunities for individual citizens to review existing legal frameworks and comment on proposed changes, as well as to suggest modifications. In order to ensure that citizens are guaranteed their right to vote and have a genuine opportunity to exercise that right, and for citizens to ensure that they are presented with a full range of electoral choices and the ability to make an informed choice among them, they must be aware of legal framework issues and the processes surrounding their formulation and execution. Learning about those processes requires a degree of direct investigation, though most citizens become aware of such matters through the media and civic organizations.

Journalists and other representatives of the media therefore have a responsibility to become knowledgeable about legal frameworks for democratic elections and to inform the population about related issues that deserve public attention and debate. This could range from fairness of requirements in candidate qualification to whether the use of electronic electoral technologies allows for appropriate verification of their accuracy and timely remedies of any related problems. A wide range of issues is presented by the various elements of an overall election process and framework provisions concerning them. Specialists, such as political scientists, law professors and information technology experts can contribute to the public debate about these issues, particularly if the media and civic organizations make use of their expertise and publicize their views.

Civil society organizations – including election monitoring organizations, human rights groups, lawyers associations, technology expert organizations, “think tanks,” civic education groups and others – play particularly important roles in analyzing legal frameworks for elections, offering recommendations for improving them and monitoring the processes surrounding them.

#### **Participation in Legislative and Regulatory Processes:**

Civil society organizations (CSOs) can play vital roles in developing, safeguarding and improving legal frameworks for democratic elections, if they establish relationships and take on advocacy roles with political parties, parliamentary groups and members, election management bodies and others responsible for administering electoral processes. Political parties and candidates create electoral integrity as they balance each other in their drive to win elections and project their views of the public interest for achieving genuinely democratic elections. CSOs can bring to the public policy arena comparative knowledge concerning legal frameworks and can advocate impartially for appropriate provisions and implementation that serves the public interest, as they can

Citizens need to be knowledgeable about legal frameworks, engage in their development and monitor their implementation.

Knowing procedures, gathering required information and making effective legal arguments are part of CSO responsibilities.

best envision it. CSOs thereby assume the responsibility of articulating fairly the public's interest and the responsibility for developing the expertise and resolve to faithfully protect that interest.

CSOs sometimes initiate public debate about whether a country should change or maintain basic components of the electoral system, such as presidential versus parliamentary systems and proportional representation versus plurality/majoritarian systems. Such debate is critical when a referendum on such issues could be placed before the citizenry or when such issues could be addressed by legislative action. CSOs also need to understand legislative and administrative processes to monitor the introduction of potential changes in legal frameworks and to advance their own initiatives for improving electoral frameworks.

Effective advocacy for maintaining or improving elements of legal frameworks for democratic elections requires skills at coalition building that can bring about legislative and/or regulatory action. Such coalition building requires relationships with those who can introduce or defend against legislative and regulatory changes. It also requires mobilizing other CSOs and citizens to support policy advocacy positions.

#### **Monitoring Implementation of Legal Frameworks:**

An adage often repeated in the electoral arena is that it is possible to conduct a credible election under a weak or even bad legal framework, if those with governmental power have the will to do so – and it is extremely difficult to conduct a credible election, even under a strong legal framework for democratic elections, if those with governmental power intend otherwise. Civil society therefore has a responsibility to organize itself to monitor implementation of legal frameworks to ensure that credible elections take place and to expose the facts when elections lack credibility. Knowledge of legal frameworks is essential to accurately making that distinction.

Leaders of CSOs concerned with protecting civil and political rights, ensuring electoral integrity and promoting citizen participation in elections and broader public affairs have to develop expertise concerning legal frameworks for democratic elections. Like political parties, such CSOs need to develop expert groups at their headquarters, intermediate and grassroots levels and develop effective communication mechanisms among them. Education, training, accurate monitoring of various elements of the election process, information gathering and reporting on findings and recommendations for improving legal frameworks and electoral practice depend on developing such expertise.

Where legal frameworks permit individual citizens to file complaints and/or petitions before administrative or judicial tribunals to seek redress for violations of electoral related rights, CSOs concerned with electoral integrity may take on a special responsibility of informing and even assisting citizens in complaint and appeals processes. Whether seeking to correct faulty entries on voter registries, provide access to polling stations for persons with physical challenges, ensure that citizens are allowed to cast ballots or challenge other faults in the electoral process, CSOs must develop expertise in the substance of legal frameworks and administrative and judicial procedures.

Where CSOs are provided standing to file complaints and legal challenges concerning election processes, their responsibilities for knowing legal frameworks are increased. Knowing procedures, gathering information that meets burdens of proof and making effective legal arguments become part of those responsibilities. In addition, CSOs should learn about requirements for filing petitions before international tribunals where their governments are parties to treaties or international agreements that provide such jurisdiction.

Interface with political parties, electoral authorities, the media and others, including interested members of the international community, is an important part of gathering accurate information and imparting credible findings and recommendations about the legal frameworks and their implementation. This is an integral component of promoting legal frameworks for democratic elections.

### **THE INTERNATIONAL COMMUNITY'S ROLE IN PROMOTING LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS**

Citizens possess an internationally recognized fundamental right to genuine elections. Countries both create and accept international obligations to organize democratic elections by entering into treaties and other agreements. Intergovernmental organizations and certain international nongovernmental organizations and associations concern themselves with promoting democratic election, as well as broader human rights and democratic development. These organizations are often requested by governments, political parties and/or citizen groups to assess the character of their national election processes and offer recommendations and assistance in promoting genuine elections. This includes addressing legal frameworks for democratic elections.

While intergovernmental organizations typically require an invitation or request from member governments before they can engage in such matters, international nongovernmental organizations usually do not require a governmental request or invitation. Foreign governments frequently offer bilateral assistance in promoting legal frameworks for democratic elections and other matters concerning democratic development. International news media also make assessments concerning the nature of electoral processes in various countries.

Those involved in each of these types of international engagements should be knowledgeable about legal frameworks for democratic elections and about issues concerning implementation of legal frameworks. Whether making direct assessments of electoral laws, regulations and related framework issues, engaging in international election observation, which must address legal frameworks in an overall approach, assisting political party or civil society development or helping legislatures to strengthen their role in governance – addressing legal frameworks for democratic elections is an important task.

All activities by international actors concerned with promoting legal frameworks for democratic elections and related democratic development need to conform to ethical standards that respect sovereignty,

which belongs to and flows from the people of a country, by: 1) basing activities on international law – particularly the normative processes developing in international human rights law; 2) understanding that activities must serve the interests of the people of the country, rather than the interests of those who may be presently in power, who may be seeking it or other private interests; 3) employing best practices and lessons learned in offering knowledge, techniques and advice so that domestic actors can make the best decisions; and 4) ensuring transparency in the activities so that citizens may have trust and confidence that those receiving assistance are being empowered to act in the public's interest and those providing it are acting in accordance with international principles.

### **THE RELATIONSHIPS AMONG LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS AND OTHER LEGAL SUBJECTS**

Out of necessity, this Guide focuses primarily on election laws and related framework issues. Nonetheless, a significant number of other laws and legal issues are interrelated with more narrowly defined election law and regulatory matters.

Among the laws and regulations that can affect electoral integrity are those concerning: registration of political parties and party financing; news and other mass communications media; nongovernmental organizations; establishment of citizenship; rights of refugees and internally displaced persons; population census requirements; political neutrality of civil servants, including government employees, law enforcement personnel, judges and prosecutors, and military personnel; political neutrality in the use of state resources; access to information; administrative law procedures; civil and criminal codes and procedures; and other matters. It is impossible to address all of these broader framework subjects in one Guide. It is important, however, to note that they all have potential impact on electoral integrity.

The key principles based in international human rights law that are essential to organizing democratic elections also provide important guidance when addressing these broader framework subjects. Inclusiveness, transparency and accountability are relevant to these subjects and contribute to legal frameworks and protections that comport with the rule of law and democratic governance.

## SECTION TWO

# Human Rights – The Basis for Inclusiveness, Transparency, Accountability and Public Confidence in Elections\*

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Elections belong to the people. Principles for democratic elections are usually traced to the precept that citizens have the right to take part in government and in the conduct of public affairs of their countries. This precept is enshrined in Article 21 of the Universal Declaration of Human Rights (Universal Declaration) and Article 25 of the International Covenant on Civil and Political Rights (ICCPR), as well as in other international human rights instruments.<sup>1</sup>

These threshold concepts embody the understanding that sovereignty belongs to and flows from the people of a country, stated in the Universal Declaration as: “The will of the people shall be the basis of the authority of government....”<sup>2</sup> Article 25 of the ICCPR requires that every citizen therefore must be provided “the right and the opportunity,” without discrimination based on distinctions such as race, gender, religion, language, property or political or other opinion and without unreasonable restrictions “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....”<sup>3</sup>

Elections therefore are organized explicitly to ascertain and honor the people’s will as to who should occupy elected office and govern in the people’s interest. This illustrates the collective character of the right to genuine elections, while international human rights instruments principally address individual rights in the electoral context.<sup>4</sup> The collective element of the right to genuine elections goes to the essence of sovereignty

Elections are organized explicitly to ascertain and honor the people’s will as to who should occupy elected office.

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belonging to the people, who have the right to self-determination, including the right to freely determine their political status and freely pursue their economic, social and cultural development through participation in government and public affairs, directly or through their freely chosen representatives.<sup>5</sup>

International principles for democratic elections have been increasingly recognized in recent years. State acceptance of principles concerning democratic elections is evidenced by assent to treaties, declarations and other international instruments,<sup>6</sup> by decisions in international legal fora<sup>7</sup> and by what is now a general practice of inviting election observers from intergovernmental and nongovernmental organizations that base their activities on respect for and promotion of international human rights.<sup>8</sup> Recognition is also evidenced by publications of highly respected institutions<sup>9</sup> and publicists<sup>10</sup> in the field.<sup>11</sup> In effect, state practice demonstrates consensual participation in a process of normative development, where electoral processes are assessed based on principles that reflect internationally recognized human rights and fundamental freedoms.<sup>12</sup>

While universal and equal suffrage, exercised through the rights to vote and to be elected, may be subjected to reasonable restrictions, for elections to be “genuine” the franchise must be extended broadly. Reasonable restrictions on the exercise of electoral related rights must be imposed only in good faith and be necessary in order for governments to meet their obligations to respect and ensure electoral related rights.<sup>13</sup> Other legal principles contained in internationally recognized rights reinforce this point, including the right to equality before the law, equal protection of the law and the provision of effective remedies required to redress violations of rights.<sup>14</sup>

Similarly, for elections to be genuinely democratic, other internationally recognized human rights must also be broadly exercised in the electoral context, without discrimination or unreasonable restrictions, including:

- The right to associate into political organizations (such as political parties, candidate support organizations or groups favoring or opposing referenda propositions);<sup>15</sup>
- The right to peacefully assemble for meetings, rallies and to otherwise demonstrate support for electoral competitors;<sup>16</sup>
- The right to move freely to build electoral support;<sup>17</sup>
- The right to be free of the threat of violence or other coercion, while making political choices or exercising political expression;<sup>18</sup>
- The right to hold political opinions without interference;<sup>19</sup> and
- The right to freedom of political expression, including the freedom to seek, receive and impart information and ideas in order to develop informed choices required for “the free expression of the will of the electors.”<sup>20</sup>

Each of these rights is also applicable for citizens who choose to associate and act in community to promote electoral integrity, through organizations that conduct nonpartisan domestic election monitoring, popular education about electoral related rights, activities to encourage participation in election processes and similar actions relating to the rights to vote and to be elected.<sup>21</sup> The actions of such groups depend upon and simultaneously reinforce the principles discussed in

this Section - inclusiveness, transparency and accountability, which provide the bases for public confidence in elections.

## DEMOCRATIC ELECTIONS REQUIRE INCLUSIVENESS

The interrelationships between and among the right to genuine elections and other internationally recognized civil and political rights illustrates that democratic elections must be inclusive both for citizens who want to exercise their right to vote and for those who seek to be elected. An anti-discrimination norm obliges states to provide inclusiveness in electoral processes. The norm against discrimination takes the force of a principle for democratic elections as the requirements for universal and equal suffrage combine with the general prohibition against discrimination, the rights to equality before the law and equal protection of the law and the right to remedies that effectively redress rights violations. Provisions concerning all of these concepts are found in international human rights instruments.<sup>22</sup>

The principle of inclusiveness is a central consideration in the choice of a country's electoral system.<sup>23</sup> While there are numerous types of electoral systems and possible combinations of systems, to be democratic, the principle of the authority of government deriving from the will of the citizens - expressed through universal and equal suffrage - is a prerequisite that must be respected.<sup>24</sup> The principle of inclusiveness also applies to the development of the combination of laws that make up the legal framework for election processes.<sup>25</sup> The decision making process concerning the structure, composition and powers of election administration also must be a subject of inclusiveness, because that governmental body has to demonstrate that it is free of discrimination towards the electors and the electoral competitors and that it is capable of "guaranteeing" that the free expression of the will of the electors will be accurately recorded and honored.<sup>26</sup>

### Ensuring the Right and Opportunity to Vote:

In addition to avoiding unnecessary restrictions, the inclusiveness principle requires countries to identify factors that impede citizens from exercising the right to vote and to take positive measures to overcome those factors. Positive obligations are based on governments' responsibility to provide an opportunity, as well as a right, to vote without discrimination or unreasonable restrictions.

Positive obligations are illustrated clearly when considering electoral related rights provided in the ICCPR. The requirement to provide a genuine opportunity to exercise electoral related rights combines with the ICCPR's general character of creating immediate obligations for states that are parties to the treaty.<sup>27</sup> Governments therefore should take steps to educate people about their electoral related rights and remove barriers to participation for those traditionally underrepresented in election processes and participation in government and public affairs, such as women, minorities (including those who communicate in minority languages), citizens who do not read or write and those with physical challenges and disabilities.<sup>28</sup>

The inclusiveness principle is the guiding force for the process of devel-

An anti-discrimination norm obliges states to provide inclusiveness in the electoral process.

oping a registry of voters.<sup>29</sup> The primary purposes of developing a voter registry are: on the one hand, to maximize the opportunity for eligible citizens to vote, by pre-screening them and reducing election day bureaucracy, thus promoting universal suffrage; and, on the other hand, to limit the possibilities for ineligible people to vote and to limit possibilities for illegal multiple voting, thus protecting equal suffrage by preventing dilution of the weight of legally cast ballots.<sup>30</sup>

Restrictions on the right and opportunity to vote must be limited generally to requirements concerning citizenship, residency and minimum age (usually the age of majority) or to smaller categories of citizens relating to mental incapacity, criminal record or present service in the military or police.<sup>31</sup> The trend concerning the latter categories is to broaden the franchise, for example, by requiring a court proceeding to determine that a person does not have the capacity to make an informed electoral choice, by allowing military and police personnel to vote and by limiting restrictions on the voting rights of those convicted of crimes in accordance with the principle of proportionality of punishment to the nature of the crime.<sup>32</sup>

A voter registration process, for example, must present a genuine opportunity for citizens to appear on the registry on a nondiscriminatory basis, including a reasonable chance to inspect and correct the voter registry before elections take place. Likewise, the location of polling stations and supplies provided them must offer citizens a genuine and equivalent opportunity to cast their votes. Governments also must inform citizens sufficiently about these and other matters relating to the right to vote (and to be elected) so that opportunities presented by law can be realized in practice.<sup>33</sup>

#### **Ensuring the Right and Opportunity to Be Elected:**

The principle of inclusiveness also applies to those who seek to exercise their right to be elected. Legal recognition of political parties must not be unreasonably restrictive, nor may access to the ballot be unreasonably restricted for political parties and candidates competing for election.<sup>34</sup>

Candidature requirements, for example, concerning minimum age or educational levels, residence, descent or criminal record must be based on reasonable and justifiable criteria, as should provisions relating to the doctrine of incompatibility of offices.<sup>35</sup> Requirements for collection of signatures for legal recognition or ballot qualification, deposits or fees and the timing of filing deadlines for qualifying for inclusion on the ballot must not be overly burdensome or discriminatory.<sup>36</sup> Likewise, the application of acceptable requirements for legal recognition, access to the ballot and other rules may not be enforced by election authorities in a manner that is arbitrary or discriminatory or that creates barriers to inclusiveness of those seeking to be elected.<sup>37</sup>

A failure to apply the principle of inclusiveness to those seeking to be elected not only abridges the rights of would-be candidates. The right to vote includes the right to choose among those who seek to represent the electors.<sup>38</sup> Elections in which voters go to the polls, even in large numbers, when candidates and political parties have been unjustly denied the opportunity to appear on the ballot or where they are denied a full opportunity to appeal for votes may be electoral exercises, but they are not genuine, democratic elections.<sup>39</sup>

Fair electoral competition is also based on the principle of inclusiveness. Electoral competitors must not be subject to legal or administrative obstacles to appealing for the support of the electors.<sup>40</sup> This applies to the exercise of the rights of association, assembly, movement and expression, which are necessary for conducting a campaign to garner electoral support.<sup>41</sup>

Electoral competitors also must be able to enjoy freedom from violence, intimidation, coercion and retribution for their electoral efforts, just as citizens must be free from these factors when making their electoral choices.<sup>42</sup> Fair electoral competition requires equality before the law, equal protection of the law and provision of effective remedies for violation of the rights of electoral competitors. This applies to governmental agencies and officials well beyond election authorities, including the police, prosecutors, courts, administrative law bodies, government employees and even government controlled mass media and authorities empowered to address fairness and conduct of private media, as well as to those charged with overseeing requirements concerning campaign finance.<sup>43</sup>

Universal and equal suffrage, therefore, have multiple applications when the conditions for suffrage are considered in the context of the right to vote and to seek election. The prohibition against unreasonable restrictions – which is consistent with the principle of good-faith adherence to obligations to respect and ensure the exercise of internationally recognized human rights – combines with the anti-discrimination norm to demand inclusiveness toward electors and electoral competitors alike.

## DEMOCRATIC ELECTIONS REQUIRE TRANSPARENCY

Transparency is a byword in any discussion of democratic elections,<sup>44</sup> yet the bases for claims that election processes must be transparent are not often explored.<sup>45</sup> It may be argued that transparency is implied in other election related rights. Indeed, it is impossible to imagine how citizens could take part in government and public affairs, as provided, for example, in Article 21 of the Universal Declaration and Article 25 of the ICCPR, unless the processes surrounding government and public affairs are open to public knowledge and scrutiny. More specifically, it is not possible to know whether the right to be elected and the right to vote are being ensured by governments unless electoral processes are “transparent.”<sup>46</sup>

The principle of transparency in democratic elections is not predicated solely on such deductions, though they lead logically to the proposition that the transparency principle is identifiable in the penumbra of electoral related rights found in treaty obligations and other state commitments concerning genuine elections. The principle of transparency, nonetheless, is more directly based on internationally recognized human rights and fundamental freedoms.

The basis for the requirement for transparency in electoral processes is the freedom to seek, receive and impart information, which is integral to the right to freedom of expression.<sup>47</sup> The freedom to seek, receive and impart information takes on a powerful role in society, when it is

The basis for transparency is the freedom to seek, receive and impart information which is integral to freedom of expression.

The right to information is central to whether electors and electoral contestants are able to vote and to be elected.

exercised in the context of elections. In fact, the rights to vote and to be elected cannot be exercised without also exercising the freedom to seek, receive and impart information – if an election is to be genuine. While a person or a political party could theoretically seek to be elected and not seek to impart any information to the electors, and while a citizen could theoretically go to the polls without ever seeking or receiving information about the electoral competitors, such propositions are ludicrous.

The will of the people provides the basis for the authority of government, and in turn the government must guarantee the free expression of the will of the voters through genuine elections.<sup>48</sup> The right to seek, receive and impart information concerns the right of the electors to gain and share knowledge and opinions necessary to form their will regarding the electoral competitors, whether they are candidates, political parties or those supporting or opposing propositions put forth in referenda. It also concerns the freedom of the news media to cover issues they deem to be significant to the public debate surrounding elections.

The right to seek, receive and impart information is central to whether the electors and electoral contestants are able to pursue the “opportunity” as well as the rights to vote and to be elected.<sup>49</sup> In this respect, electors and electoral contestants must be provided with information about electoral procedures so that they may exercise their rights. The right to seek, receive and impart also encompasses information concerning the integrity of electoral processes. Such information concerns whether all elements of the overall process needed to realize universal and equal suffrage, including guaranteeing a secret ballot and an honest count, are being established effectively and honored.

**Information Concerning Electoral Contestants:**

Governments should ensure that no legal or administrative obstacles impede efforts of electoral contestants to provide information to citizens as part of their campaigns to gain support (or for the contestants to seek or receive information about citizen attitudes regarding election related issues).<sup>50</sup> Governments likewise should ensure that no legal or administrative obstacles impede efforts of citizens to seek, receive and impart information that might assist their decision making about electoral choices.<sup>51</sup>

These obligations include access to the mass communications media (such as newspapers, radio, television and the Internet), use of the mail service, telephone services and distribution by hand of flyers and other printed materials.<sup>52</sup> Government controlled media have an obligation not to discriminate politically concerning electoral candidates and have an affirmative obligation to provide fair access for them to address the public with their appeals for electoral support; governments also have an obligation to take steps to ensure nondiscrimination concerning treatment of electoral contestants by private media.<sup>53</sup>

**Information Concerning the Exercise of Electoral Rights:**

Providing the electorate and those seeking to be elected with sufficient, timely information about how, when, where and other requirements for candidate qualification, voter registration, voting and other electoral matters (whether referred to as “voter education” or by a broader

term) is essential to ensuring the opportunity to freely exercise electoral rights.<sup>54</sup> Positive obligations discussed above under “Ensuring the Right and Opportunity to Vote” apply in this respect.

Leaving prospective voters and electoral contestants in an information vacuum – without accurate information needed to exercise their rights – may, by omission, constitute an unreasonable restriction on the exercise of electoral related rights. Governmental obligations to provide information concerning the exercise of electoral related rights fall generally to election authorities, although, this activity should also be taken up by state controlled media, and electoral competitors and nonpartisan citizen organizations may also seek to provide this type of information to the public.<sup>55</sup> In the case of electoral contestants and citizen organizations, governments are obliged to ensure that there are no unnecessary restrictions on their disseminating such information.

#### **Information about Electoral Processes:**

Rhetoric about transparency in election administration is common, and the commitment of many electoral officials to the principle of transparency is strong.<sup>56</sup> Application of the right to seek, receive and impart information about administrative elements of the election process, however, is not a simple matter.

A number of interests interface when transparency in election processes is considered, including efficiency in organizing elections, privacy interests of citizens (particularly concerning voter registration information) and proprietary interests of companies that supply and service electoral materials. Balancing of interests when approaching such issues should start with the recognition that the will of the people is the basis of the authority of government and that elections are organized precisely to ascertain and honor that will.<sup>57</sup> The interests of citizens, both as electors and as electoral competitors, in knowing that the processes surrounding elections are accurate and honest therefore should receive the paramount position when balancing of interests is required.

Other interests can and must be accommodated, but administrative convenience (even the need for administrative effectiveness), privacy or proprietary rights cannot be allowed to eclipse citizens' rights to information about election processes.<sup>58</sup> Since sovereignty belongs to the citizens of a country, and the authority of government derives from the will of citizens expressed in genuine elections, information concerning how a government meets its obligation to organize an election process that honors the electorate's will belongs to the citizens as well. Governments therefore have an affirmative obligation to provide electors and electoral contestants with information about the workings of electoral processes.

This obligation is established in international jurisprudence. It is clearly established, for example, that member states of the Organization of American States (OAS) have an affirmative obligation to provide government held information to their citizens under the freedom to seek, receive and impart information and ideas, which is protected by the American Convention on Human Rights (American Convention).<sup>59</sup> The Inter-American Court of Human Rights stated in *Marcel Claude Reyes, et al. v.*

*Chile*<sup>60</sup> that a state's actions "should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can question, investigate and consider whether public functions are being performed adequately."<sup>61</sup> The case held directly that denial of a request by a nongovernmental organization for information concerning an environmental matter of public interest violated the right to seek, receive and impart information provided in Article 13 of the American Convention, and the reasoning in Marcel Claude Reyes should carry over to the electoral context with equal force.

The European Court of Human Rights has not yet ruled that state parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) have an affirmative obligation to provide citizens with access to government held information under the Convention's Article 10 right to seek, receive and impart information and ideas.<sup>62</sup> However, the court recognized, in its admissibility decision in *Sdruzeni Jijoceske Matky v. Czech Republic*,<sup>63</sup> an independent Article 10 right to receive documents held by governmental authorities, which was violated by refusing a nongovernmental organization's request for information concerning the design and construction of a nuclear power station, when the group was a party in an administrative proceeding concerning the station's environmental impact and sought the information to help prove its claim.

The European Court of Human Rights is presently considering the right to seek and receive information in the electoral context, in the pending case of *Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia*.<sup>64</sup> In that case, an Armenian nongovernmental organization is seeking redress for the failure of election authorities to provide requested information concerning the authority's decision making processes and information concerning campaign contributions and expenses of certain political parties. The case presents an opportunity for the court to recognize the importance of electoral transparency in explicit terms.

The principle of transparency is central when considering the ever widening role of electronic technologies in election processes. Whether electronic technologies are employed in delimitation of election districts, development of voter registries, recording and tabulating votes or other sensitive matters, the technology employed, in addition to benefits from its use, poses the risk of negating transparency. The rights of electoral contestants, citizen organizations that monitor and promote electoral integrity and the news media to see into, scrutinize and understand the accuracy and efficacy of such technologies is critical to genuine elections.

The impact of technologies, such as electronic voting and creation of voter registry databases, illustrates the importance of access to election processes by electoral contestants and citizens (through election monitoring groups and the news media, as well as through direct citizen involvement). Their involvement must begin at the early stages of formulating public policies about whether to employ such technologies, the requirements for technology design, procurement criteria, testing and certification processes and the means of providing effective remedies should problems develop in the use of electronic electoral technologies.<sup>65</sup>

**Election Monitoring and Observation:**

State practice almost universally demonstrates acceptance that electoral contestants have a right to be present in polling stations on election day to witness and verify the integrity of voting, counting and results tabulation procedures. Best practices are increasingly expanding this example of the transparency principle to accepting the presence of party and candidate agents in all elements of election processes, such as during voter registration, printing of ballots, and packaging and distribution of sensitive election materials.<sup>66</sup>

State practice also demonstrates a growing acceptance of the right of citizens to participate in public affairs and to seek and receive information about election processes through the activities of nonpartisan domestic election monitoring organizations, including accrediting them to be present in polling stations and to witness other election processes.<sup>67</sup> Both domestic and international news media commonly play roles as election monitors. International election observation also is largely accepted through state practice as further demonstration of the transparency principle in elections.<sup>68</sup> International organizations have defined a body of methodologies for international election observation that are premised on the principle of transparency.<sup>69</sup>

The transparency principle, like the principle of inclusiveness, has a multidimensional role in ensuring that elections are genuinely democratic. This is another example of the inseparability of the right to genuine elections from the exercise of other internationally recognized civil and political rights.

**DEMOCRATIC ELECTIONS REQUIRE ACCOUNTABILITY**

Elections are a principal mechanism through which citizens hold accountable those who occupy elected office. The requirement that elections be periodic is at the heart of creating governmental accountability to the citizenry.<sup>70</sup> All international human rights instruments that address electoral matters require that elections be periodic.<sup>71</sup>

While elections create an accountability mechanism, there must also be accountability within election processes, if elections are to be genuine. The accountability principle helps to realize electoral inclusiveness required by the rights to universal and equal suffrage for prospective voters and electoral contestants. The accountability principle is also linked to the principle of transparency, which is needed to understand how officials are conducting public affairs and thereby hold them answerable for their actions or inactions.

The principle of accountability in election processes includes several facets. Among them are: the need to provide effective remedies to citizens for violations of electoral related rights; the need to create administrative accountability for those organizing elections and those conducting governmental activities related to elections; and the need to bring to account those who conduct criminal acts that affect electoral related rights.<sup>72</sup>

While elections create an accountability mechanism, there must also be accountability within the election process.

**Effective Redress for Violation of Electoral Rights:**

The legal framework for elections must establish effective means of redress for those whose claim that their electoral related rights have been abridged.<sup>73</sup> This includes mechanisms that provide appropriate remedies in an administrative context and through judicial processes. Such procedures must provide for a fair hearing by a competent tribunal and access to an appeals process.<sup>74</sup>

Electoral complaint mechanisms and legal challenges concerning electoral outcomes receive considerable public attention, particularly when the remedy applied is a recount or reelection.<sup>75</sup> Nonetheless, effective redress procedures are required for all elements of electoral processes, from delimiting electoral districts, to legal recognition as a political party, to party or candidate qualification for the ballot, to ballot design, to inclusion on voter registries and other matters.<sup>76</sup>

To be effective, any remedy must address the harm created by the violation of electoral rights and cure the harm in a timely manner. Moreover, to be effective, remedies granted by administrative processes and judicial procedures must be enforced by competent authorities or else they are simply hollow gestures.<sup>77</sup>

While even technical issues take on a sensitive nature in the electoral context, redress concerning them can be pursued properly through administrative procedures, while judicial review (either in the first instance or by appeal) must be available for redress concerning violations of fundamental rights and freedoms. The distinction can best be illustrated by example. If a political party or candidate is assigned an improper place on a ballot (depending on the applicable system of allocating ballot positions, such as alphabetical order or lottery assignment), an administrative process should be able to provide an effective remedy. If the party or candidate is denied a place on the ballot by the governmental authorities, then a judicial review would be required to ensure protection of the right to be elected. If a person's name is misspelled or other information is inaccurate on the voter registry or the person's voter identification card, an administrative procedure should be sufficient to remedy the problem. However, if the person's name is omitted from the voter registry or the error would likely result in disenfranchisement on election day, then a judicial process should be available to protect the right to vote.

A critical element in providing effective remedies in the electoral context is timeliness. In many instances accountability requires that time be of the essence. For example, if a party or candidate does not receive legal recognition or is denied a place on the ballot, every day that passes could cause irreparable harm to the opportunity to be elected. If news media carry a defamatory story or advertisement concerning an electoral contestant, a correction or right of reply may only be effective if it is provided immediately, even if it is given the same prominence as the offending coverage. These examples demonstrate that a variety of mechanisms, some with expedited procedures, are needed if an electoral process is to protect electoral related rights and be accountable for abuses and deficiencies.<sup>78</sup>

It is often difficult to separate the accountability principle from the principle of transparency in the electoral context. The needs for timeliness and for transparency are clearly illustrated, for example, in the case of providing effective remedies where electronic voting technologies are employed.

Where votes are recorded solely on an electronic device, with no paper record, and circumstances seem to justify a recount, it may be impossible to determine whether the technology performed properly without extensive computer forensic examinations. Such examinations may take extended periods and may not satisfy standards for reliability of evidence in judicial or administrative proceedings. In such an instance, a reelection could be the only remedy, though holding another election is not likely to replicate the conditions of the first, and the outcome could differ from the will of those who voted in the original election. In this case, the lack of transparency into the voting process negates the possibility for timeliness and effective remedies.

If a paper record is available, a question may arise as to whether the paper or the electronic recording is the actual (or more acceptable) expression of the voters' will.<sup>79</sup> Should computer forensic examinations be required of the electronic record, they may not provide a timely or sufficiently reliable basis upon which to determine who should be declared the winner. In that case the paper record would be the best evidence, even if the electronic record technically was the first imprint of the voters' choices. This illustrates the interrelationship among transparency, timeliness and accountability.

#### **Administrative Accountability Measures for Government Bodies and Officials:**

There must also be administrative accountability measures through which election management bodies (EMBs) and other governmental agencies concerned with electoral processes account for their performance. These measures should address ensuring integrity in electoral processes, which includes administrative actions to provide universal and equal suffrage and to accurately record and honor the electors' will. The measures should include addressing financial responsibilities and discipline of officials who abridge citizens' electoral rights or whose failure to appropriately discharge their duties harms the electoral process.

Such accountability measures take a variety of forms.<sup>80</sup> Holding regular consultations with electoral contestants and others concerned with electoral integrity provides a means to present information and answer concerns and complaints. Conducting various forms of audits by independent sources and internal reviews by special committees and auditors general also develops accountability, particularly where there are public reports of such activities. Allowing electoral contestants, nonpartisan election monitors and the news media to attend sessions of the national election management body (usually called the Central Election Commission or a similar title) and subsidiary bodies when policies are being formulated provides a means for creating accountability. Personnel disciplinary procedures require measures to protect privacy interests, while reporting on the existence of such procedures, the number of times they are invoked and the numbers of persons penalized or dismissed contribute appreciably to accountability.

Legislative oversight through committee hearings about the efficacy and integrity of administering electoral processes by EMBs and other government entities that affect matters concerning electoral related rights (such as police, prosecutors, media oversight bodies, the military and others that often support electoral authorities) can be critical accountability mechanisms. Such hearings can address whether election administration is performing in an effective and impartial manner, whether state resources and protections are being applied impartially and whether electoral procedures provide effective redress. The work of budget and public accounts committees of the legislature, as well as public accounting and government integrity offices set up by legislatures, also can be vital accountability mechanisms.

**Criminal Liability for Violating Electoral Rights:**

Accountability in elections requires the application of criminal law and procedures, including providing due legal process and full rights protections, to those who commit electoral fraud or other criminal acts that abridge electoral rights.<sup>81</sup> Criminal liability plays an important role in bringing perpetrators of electoral crimes to account for their actions and in deterring potential wrong doers, whether they might be manipulators of electoral systems through rigging voter lists, stuffing ballots boxes, hacking electronic technologies or conducting politically motivated coercion, from vote-buying to violence. This is particularly important in countries where there has been a culture of impunity for violations of civil and political rights.

The accountability principle applies to the role of the police in investigating criminal acts that violate electoral related rights.<sup>82</sup> Whether the police pursue impartially and effectively their duty to enforce the law is a matter of particular concern. The antidiscrimination norm requires that political opinion not be a factor in whether someone is subjected to investigation or arrest, as well as to whether persons are overlooked because they support those holding political power or attacked those holding unpopular political positions. Internal review commissions, civilian review panels, government sponsored human rights institutions (such as ombudsmen offices and human rights commissions) and legislative oversight can help ensure impartial and effective police action in the electoral context.

The accountability principle also applies to prosecutorial action and inaction.<sup>83</sup> Bringing to trial those who commit election related crimes is the duty of prosecutors. Criminal laws, including provisions of the electoral law that address criminal matters, should clearly define crimes and the standards to be used by prosecutors in bringing criminal proceedings, particularly delineating the conditions for prosecutorial discretion. This is important for establishing political impartiality and efficacy in prosecution of election related crimes. Prosecutors should be required to report on the number of election related cases being pursued, their progress and how many are brought to trial. This can have an important impact on accountability.

Court proceedings for criminal cases concerning electoral related rights must be open to public. In addition to ensuring protections for those accused of crimes, open proceedings assure the public that courts are holding accountable those who commit such crimes. Open

proceedings also provide a means for assessing the manner in which electoral related cases are handled, which can enhance judicial accountability. The attention needed in order to provide proper and expedited judicial procedures in electoral related cases can also contribute to developing capacities that are more broadly helpful to judicial functioning.

## **PUBLIC CONFIDENCE IS ESSENTIAL TO DEMOCRATIC ELECTIONS**

Public confidence in an election process is – in essence – the degree of trust that citizens deem is warranted in governmental authorities' capacity to ensure that electoral rights are respected and the will of the electors is accurately determined and honored.

In this light, the inclusiveness principle, the transparency principle and the accountability principle come together to illuminate the indispensable role of public confidence in democratic elections. Each of these principles feeds public confidence in elections, and, to the degree that these principles are deficient, public confidence in elections – and in the government that results from elections – diminishes.

### **Assent of the Electoral Competitors:**

Public confidence, like universal and equal suffrage, relates to those who seek to be elected as well as to the electors. Should those who seek to occupy governmental office and to wield the powers of government concerning people, national wealth and resources lose confidence in elections as the best means to attain their goal, they could turn to non-democratic ways of gaining power.

An essential role of elections in any society is to settle peacefully the competition for political power.<sup>84</sup> Election processes therefore must be inclusive, be transparent and provide effective redress, thus guaranteeing a real opportunity to exercise the right to be elected. These elements are necessary to win and maintain the confidence of the electoral competitors as a basis for their assent to compete within the legal framework and respect the electoral rights of others. This helps to reinforce elections as a means of mitigating potentials for violence and managing political conflict.<sup>85</sup>

While it is essential to gain the confidence of those seeking to be elected, it would be mistaken to assume that it is sufficient to gain the buy-in of electoral competitors and to proceed to the polls as if elections were principally to serve their interests. Those who seek to be elected lack authority unless it is based on the free expression of the electors' will, and the strength of that authority depends significantly upon whether citizens have confidence in the electoral process. In order to gain the benefits of public confidence, electoral competitors should take measures to convince the public that, while competing vigorously, the competitors will take effective steps to ensure electoral integrity.

Demonstrating capacities to monitor election processes and to seek redress through complaint mechanisms is an element of showing the public that the competitors are acting to reinforce electoral integrity and thus to build public confidence in elections. Parties and candidate

The principles of inclusiveness, transparency and accountability come together as the base for public confidence in elections.

support organizations also can do much to build public confidence in the electoral process by agreeing publicly to abide by the laws and a code of conduct.<sup>86</sup>

Codes of electoral conduct that are negotiated among the electoral competitors, sometimes done with the participation or facilitation by EMBs and/or civil society organizations, that include a public ceremony announcing the agreement and that contain a procedure to convene signatories to air grievances about breaches of the code's provisions can play important confidence building roles in election processes.<sup>87</sup> Electoral competitors should include instruction about the provisions of the code of conduct in training programs for their activists and institute internal accountability procedures that address the code of conduct and relevant laws. Publication of such actions can enhance public confidence building.

**Citizen Confidence in Election Processes:**

Elections are the vehicle through which citizens express their will, but citizens may decline to participate in election processes unless they are confident that they can exercise their right to vote free from coercion and retribution for their political choices. Secrecy of the ballot therefore is fundamental to public confidence, because it ensures protection against retribution and thus encourages free expression of the electors' will.<sup>88</sup>

Electoral authorities, governmental leaders, electoral contestants, the news media and citizen groups all play important roles in establishing or diminishing public confidence in elections, because their actions and their messages contribute, among other things, to trust or distrust in ballot secrecy. Voting and counting procedures must meticulously safeguard secrecy of the vote, including addressing concerns that may result from introduction of electronic technologies that could link electronic voter registries and electronic recording of votes (either literally or by comparison of time stamps in registries and on voting machines).<sup>89</sup> Voter education by electoral authorities and various other sources is central to reinforcing that the ballot will be secret. Voter education on this point should be sophisticated enough to address popular concerns about the type of voting and counting processes that are being used and should make clear that anyone who attempts to violate secret balloting will be held criminally liable.

The public also must have confidence that the election process will be impartially and effectively implemented in order for citizens to develop the trust required to participate in – and legitimize – an election. Steps therefore must be taken not only to correctly administer election processes but to ensure that they are free from the perception of partisanship.<sup>90</sup>

A critical element in establishing and maintaining public confidence concerns perceptions of the ability of electoral authorities to perform their duties impartially and effectively. The composition of EMBs and the leadership of EMBs are at the core of this matter. While there are several methods of composing EMBs that have proven to be successful in organizing democratic elections, the trust of the electoral competitors and confidence of the public depends largely upon whether there is a sufficient participation and buy-in (respecting the principles of inclu-

siveness and transparency) in choosing EMB members and EMB leadership.<sup>91</sup> If the electoral contestants are satisfied at the outset that the EMB is composed in a manner that ensures impartiality and effectiveness, there is a significant advantage in establishing public confidence in the election process. Evaluation of EMB performance as the process unfolds will then be a matter of maintaining or losing confidence, rather than working to establish it.<sup>92</sup>

Authorities must realize that elections are more than technical matters and that electoral processes are part of a compact between citizens and the government that represents them. Elections demonstrate how a government treats and respects citizens through a wide range of institutions and processes, as demonstrated above in this Section. Actions by governmental authorities concerned with electoral matters at national and local levels that reach out to and include constituencies with interests in electoral integrity – such as organizing public meetings, consultations, liaison committees, press conferences and similar actions – build public confidence. The degree of transparency in election administration will also have a large impact on how impartiality is perceived.

One of the most important ways that electoral authorities can establish and maintain public confidence is through welcoming and accrediting representatives of the electoral competitors, nonpartisan election monitoring organizations, news media and even international election observers. Inclusiveness, transparency and accountability can all be reinforced by the activities of these electoral actors, and their reports on the election process, if credible, contribute to building the appropriate degree of public trust in elections.<sup>93</sup> At the same time, this factor presents a major responsibility for these actors to conduct their activities impartially and professionally.

Citizen organizations, the news media, EMBs and others also play broad roles in voter education and mobilization of citizen participation in election processes. Beyond informing citizens about where, when and how to exercise their right to vote through voter registration and going to the polls on election day, activities that address why it is important to vote and civic education about the nature of representative, democratic governance contribute to public confidence levels. Such activities need not require that citizens simply listen passively. Community forums, debates, broadcast media, call-in shows and interactive on-line programs, whether organized by citizen groups, media outlets, EMBs or others, provide information needed for electors to make informed voting decisions. These activities also help to create an environment in which electors and those seeking to be elected will likely gain increased confidence in the integrity of the election process.

Perceptions of fairness in electoral competition also have significant effects on public confidence. Maintaining state impartiality is an important element in perceptions of electoral fairness. This concerns actions of state institutions far beyond EMBs. Fairness in media coverage of electoral contestants not only affects how electors might exercise their choices at the ballot box, but public perceptions of unfairness undermine confidence in the electoral process. The roles of campaign and political party finance also are important, not just in determining the

resources that electoral competitors may be able to expend, but also in perceptions concerning fairness of the electoral system.

The subject of public confidence is multifaceted. Some elements are relatively nebulous, but specific obligations of governmental authorities and of the electoral competitors can be identified and placed into the principles of inclusiveness, transparency and accountability that are central to electoral integrity. Actions can be planned and carried out to address public expectations for performance and thereby establish and maintain public confidence that an election process is genuine.

## CONCLUSION

The right to genuine democratic elections includes an important collective element and involves a wide range of internationally recognized human rights and fundamental freedoms. State practice demonstrates a developing normative process concerning electoral related rights. The anti-discrimination norm that emerges from the combination of the general prohibition against discrimination found in international human rights instruments and the instruments' provisions recognizing universal and equal suffrage, equality before the law, equal protection of the law and the right to effective remedies underpins electoral related rights. These rights interrelate through the principles of inclusiveness, transparency and accountability in the electoral context. The degree that these principles are upheld through the legal framework and in practice, by a broad array of governmental institutions and electoral actors, provides the basis for public confidence in elections and in the governments that result from them.

These points are captured in Article 21 of the Universal Declaration, which states that "the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections...." The provisions of the ICCPR make clear that governments have affirmative obligations in "guaranteeing the free expression of the will of the electors." Normative development concerning elections, hopefully, will continue and further ensure that typical practice respects and promotes electoral related rights. The consequences of that further development should provide authority and legitimacy for those who will seek office through elections and should enhance possibilities for democratic governance that honors the people's right to pursue their economic, social and cultural development through participation in government and public affairs, directly and through freely chosen representatives.

## ENDNOTES

<sup>1</sup> See, e.g., Universal Declaration of Human Rights art. 21, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 1<sup>st</sup> plen. Mtg., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter Universal Declaration]; International Covenant on Civil and Political Rights art. 25, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; International Convention on the Elimination of All Forms of Racial Discrimination art. 5, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter Convention on Elimination of Racial Discrimination]; Convention on the Elimination of All Forms of Discrimination Against Women art. 7, G.A. Res. 34/180, (Dec. 18, 1979), U.N. GOAR Supp. (No. 46) at 193, U.N. Doc. a/RES/34/180, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter Convention on Elimination of Discrimination Against Women]; African Charter on Human and Peoples' Rights art. 13(1), June 26, 1981, Organization of African Unity (OAU) Doc. CAB/LEG/67/3/Rev. 5, 21 I.L.M. 59 [hereinafter ACHPR]; American Convention on Human Rights art. 23, November 22, 1969, 1144 U.N.T.S. 123 (entered into force July 18, 1978) [hereinafter ACHR]; First Protocol to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, March 20, 1952, 213 U.N.T.S. 262 [hereinafter ECHR]; Conference on Security and Co-operation in Europe (OSCE), Document of the Copenhagen Meeting of the Conference on the Human Dimension art. 6, June 29, 1990, 29 I.L.M. 1305 (1990) [hereinafter Copenhagen Document]; Arab Charter on Human Rights (1994) art. 19; Southern African Development Community (SADC) Guidelines Governing Democratic Elections (2004); Inter-American Democratic Charter, adopted by the OAS General Assembly on Sept. 11, 2001, Lima Peru.

The Universal Declaration, as a UN General Assembly resolution does not create legal obligations *per se*, though it is applicable to all UN member states and has become a normative instrument that *de facto* obliges states to respect the rights it recognizes. It may be seen as an authoritative explanation of human rights obligations provided by UN Charter arts. 55 and 56 and in some respects as customary law, though electoral provisions in art. 21 of the Universal Declaration thus far have not been considered as customary law. The ICCPR creates legal obligations between and among the 160 countries that are states parties to the treaty. Another 5 countries have signed the ICCPR but have not completed ratification. The only non-signatory countries to the ICCPR that are frequently discussed in the electoral context are Burma (Myanmar), Cuba, Fiji, Oman, Pakistan (which has recently signed but not yet ratified), Qatar, Saudi Arabia, Singapore and United Arab Emirates. A list of states parties and signatories to the ICCPR is available at [http://www.unhchr.ch/html/menu3/b/treaty5\\_esp.htm](http://www.unhchr.ch/html/menu3/b/treaty5_esp.htm); a list of non-states parties is available at "International Covenant on Civil and Political Rights," Wikipedia (11/27/07) [http://en.wikipedia.org/wiki/International\\_Covenant\\_on\\_Civil\\_and\\_Political\\_Rights](http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights).

<sup>2</sup> Art. 21(2), Universal Declaration, *supra* note 1; see para. 6, Copenhagen Document, *supra* note 1 ("The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis for the authority and legitimacy of government. ...").

<sup>3</sup> Art. 25, ICCPR, *supra* note 1. The conduct of public affairs, referred to in art. 25(a) of the ICCPR, as interpreted by the UN Human Rights Committee in its role of providing guidance to states parties to the ICCPR, is a broad concept relating to the exercise of political power through legislative, executive and administrative processes, including the formulation and implementation of policy. Paras. 5 & 8, General Comment No. 25: *The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25)*: . 12/07/96; CCPR/C/21/Rev.1/Add.7 (General Comments) [herein after General Comment 25], available at <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?OpenDocument>.

<sup>4</sup> There is an interrelationship between the collective character of the right to genuine elections and individual electoral related rights. Art. 1(1) of the ICCPR states: "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 1 constitutes Part I of the ICCPR and concerns a right that belongs to "peoples." Part II of the ICCPR, beginning with article 2, concerns individual rights. The right to self-determination recognized in art. 1(1) is often exercised through an independence plebiscite or referendum, which is a type of election, and the individual rights of article 25 and other electoral related rights come into play. In addition, art. 25's right to participate, directly or indirectly through freely chosen representatives, in the public affairs of a country is informed by the content of article 1. That participation is, among other things, to allow citizens to pursue economic, social and cultural development. This helps to define the content of democratic governance that results from the exercise of electoral related rights. Appreciating the relationship should not lead to confusing collective and individual rights. For discussion of the emergence of the rights to democratic governance and role of participatory rights see Thomas Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992) [hereinafter *Emerging Right to Democratic Governance*]; Gregory Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L. 537 (1992) [hereinafter *Right to Political Participation in International Law*].

<sup>5</sup> See *supra* note 4. Art. 1(1), ICCPR, *supra* note 4, pertains directly to independence initiatives of non-self-governing and trust territories, such as the independence referenda held in Montenegro in 2006 and Timor-Leste in 1999. See *Right to Democratic Governance*, *supra* note 4, at 58-59.

<sup>6</sup> See, e.g., the international human rights instruments, *supra* note 1.

<sup>7</sup> See, e.g., United Nations Human Rights Committee views in *Altesor v. Uruguay*, Communication No. R.2/10 (10 March 1977), U.N. Doc. Supp. No. 40 (A/37/40) at 122 (1982) (meeting of 29 Mar. 1982) (*inter alia*, art. 25 electoral related rights violated because of 15 year ban from voting or being elected under domestic law), available at <http://www.law.wits.ac.za/humanrts/undocs/session37/2-10.htm>; European Court of Human Rights decision in *Labita v. Italy*, E.H.R.L.R. 2000, 6, 666-669 (26772/94) E.C.H.R. (Art. 3 of Protocol 1 electoral related rights violated because of removal from voter registry under accusation of collusion with the Mafia and person was acquitted of charges) available at <http://www.echr.coe.int/Eng/Press/2000/Apr/Labita%20jud%20epress%20.htm>; Inter-American Court of Human Rights decision in the *Case of Yatama v. Nicaragua*, Judgement of June 23, 2005 (*inter alia*, art. 23 electoral related rights violated by undue restriction in electoral law, regulated in a discriminatory manner, prevented candidates from an indigenous political party from appearance on the ballot; court noted close relationship to voters rights by depriving them of options in the election) [hereinafter *Yatama v. Nicaragua*], available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_127\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_127_ing.doc).

<sup>8</sup> See *Declaration of Principles for International Election Observation*, Commemorated October 27, 2005, at the United Nations, and endorsed by 32 intergovernmental and nongovernmental organizations, available at [www.access-democracy.org/library/1923\\_declaration\\_102705.pdf](http://www.access-democracy.org/library/1923_declaration_102705.pdf) [hereinafter *Declaration of Principles*].

<sup>9</sup> See, e.g., COMPENDIUM OF INTERNATIONAL STANDARDS FOR ELECTIONS (NEEDS, European Commission 2007) [hereinafter *Compendium*] (providing an authoritative description of the elements of electoral standards, matrices of countries' international obligations concerning elections and a comprehensive collection of international

instruments) available at <http://www.needs-network.org/publications.html>); Southern African Development Community Parliamentary Forum, *Norms and Standards for Elections in the SADC Region* (2001), available at [http://aceproject.org/ero-en/regions/africa/regional-resources-africa/sadcpf\\_electionnormsstandards.pdf/view](http://aceproject.org/ero-en/regions/africa/regional-resources-africa/sadcpf_electionnormsstandards.pdf/view); The European Commission on Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report* (2002), available at [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.pdf); Existing Commitments for Democratic Elections in OSCE Participating States, OSCE Office for Democratic Institutions and Human Rights (ODIHR) (2003) [hereinafter Existing OSCE Commitments], available at [http://www.osce.org/documents/odhr/2003/10/772\\_en.pdf](http://www.osce.org/documents/odhr/2003/10/772_en.pdf); Office of the United Nations High Commissioner for Human Rights, *Human Rights and Elections*, UN Professional Training Series No. 2, available at <http://www.ohchr.org/english/about/publications/docs/hrelections.pdf>; Organization of American States, *A Manual for OAS Electoral Observation Missions* (October 2007), available from OAS Department for Cooperation and Electoral Missions; Inter-Parliamentary Union, *Declaration on Criteria for Free and Fair Elections* (1994), available at <http://www.ipu.org/english/structure/cnldocs/154-free.htm>.

<sup>10</sup> See, e.g., GUY S. GOODWIN-GILL, *FREE AND FAIR ELECTIONS: INTERNATIONAL LAW AND PRACTICE* 160-67 (Inter-Parliamentary Union 2006); Emerging Right to Democratic Governance, *supra* note 3; Right to Political Participation in International Law, *supra* note 3; Gregory Fox, *Election Monitoring: The International Legal Setting*, 19 *Wis. Int'l L.J.* 295 (2001); Elizabeth F. DeFeis, *Elections – A Global Right?*, 19 *Wis. Int'l L.J.* 321 (2001); Jørgen Elklit & Andrew Reynolds, *A Framework for Systematic Study of Election Quality*, 12:2 *DEMOCRATIZATION* 147 (2005). The author of this Guide addressed many of these concepts in Patrick Merloe, *Democratic Elections: Human Rights, Public Confidence and Fair Competition* (a compilation of two papers presented in *African Election Administrators Colloquium*, published by United Nations, African American Institute, IFES and NDI 1994), available at [http://www.accessdemocracy.org/library/005\\_ww\\_demelections.pdf](http://www.accessdemocracy.org/library/005_ww_demelections.pdf).

<sup>11</sup> The sources described *supra* notes 6-10, are somewhat analogous to the sources of international law set forth in Article 38 of the Statute of the International Court of Justice: "1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." In each of the areas discussed *supra* there is evidence of the development of a normative process concerning electoral related rights.

<sup>12</sup> While principles for democratic elections have not reached the level of international custom, the factors described above evidence an ongoing normative process. For a discussion of state participation in processes of normative development, see Ellen Hey, *State Consent to a Process of Normative Development and Ensuing Problems*, in *TEACHING INTERNATIONAL LAW* (Martinus Nijhoff Publishers; Leiden 2003).

<sup>13</sup> The Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF. 39/27 (1969) 63 *A.L.I.J.* 875 (1969) (entered into force, Jan. 27, 1980), provides at article 26 that: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Article 27 of that treaty states that: "A party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty." Article 25 of the ICCPR, *supra* note 1, requires that the rights set forth may

not be subjected to "unreasonable restrictions," and the UN Human Rights Committee has interpreted this to mean that any restrictions must be based on objective and reasonable criteria that protect the franchise. See General Comment 25, *supra* note 3, at paras. 4, 10-11, & 13-16. The Copenhagen Document, *supra* note 1, at paragraph 24 creates a commitment of the OSCE participating States to ensure that any restrictions on rights "are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights [recognized in the Document] are ensured." Paragraph 24 commits OSCE participating States to not impose any restrictions "except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with other commitments, in particular the Universal Declaration of Human Rights..." While the Copenhagen Document is not a treaty, para. 24 creates a good faith commitment for the 56 OSCE participating states.

<sup>14</sup> E.g., arts. 7 & 8, Universal Declaration, *supra* note 1; arts. 2 & 26 ICCPR, *supra* note 1.

<sup>15</sup> See, e.g., art. 20, Universal Declaration and art. 22, ICCPR, *supra* note 1; paras. 8, 12 & 26, General Comment 25, *supra* note 3; paras. 7.5 & 7.6, Copenhagen Document, *supra* note 1.

<sup>16</sup> E.g., art. 20, Universal Declaration and art. 21, ICCPR, *supra* note 1; paras. 8 & 12, General Comment 25, *supra* note 3; para. 7.7, Copenhagen Document, *supra* note 1.

<sup>17</sup> E.g., art. 13, Universal Declaration and art. 12, ICCPR, *supra* note 1; para. 12, General Comment 25, *supra* note 3; para. 7.7 Copenhagen Document, *supra* note 1.

<sup>18</sup> E.g., arts. 3, 7 & 21(1) Universal Declaration and arts. 9, 17 & 25, ICCPR, *supra* note 1; paras. 11 & 19, General Comment 25, *supra* note 3; para. 7.7, Copenhagen Document, *supra* note 1.

<sup>19</sup> E.g., art. 19, Universal Declaration and art. 19 ICCPR, *supra* note 1; paras. 8, 12, 19 & 25 General Comment 25, *supra* note 3; para. 9.1 Copenhagen Document, *supra* note 1.

<sup>20</sup> E.g., arts. 19 & 21, Universal Declaration and arts. 19 & 25, ICCPR, *supra* note 1; paras. 8, 12 & 25 General Comment 25, *supra* note 3; para. 9.1 Copenhagen Document, *supra* note 1.

<sup>21</sup> The rights to association, peaceful assembly, movement, holding opinions, expression and freedom from violence and coercion play important roles in the exercise of the rights to participate in government and public affairs within and beyond the electoral context. Those who act to promote and protect human rights, including electoral related rights, through peaceful and non-violent means, are often referred to as human rights defenders. These people uncover rights violations, subject them to public scrutiny and press for those responsible to be accountable. The United Nations has taken a number of actions to protect the rights of such persons, which highlights the importance for governments to ensure the rights of those who act to protect and promote electoral related rights. See, e.g., 56/163. *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, General Assembly Res. A/RES/56/163 (20 Feb. 2002) available at <http://www.unhcr.ch/huridocda/huridoca.nsf/FramePage/SRHRdefenders%20En?OpenDocument&Start=1&Count=15&Expand=1>.

<sup>22</sup> The anti-discrimination norm is evidenced by provisions of numerous international human rights documents. E.g., the human rights instruments *supra* note 1: arts. 2 (general non-discrimination provision), 7 (equality before the law and equal protection of the law) & 8 (effective remedies) of the Universal Declaration; arts. 2 (general non-discrimination provision and effective remedies), 3 (equal right of men and women to enjoyment of human rights), 26 (equality before the law, equal protection of the law, requirement of states to prohibit discrimination and provide equal protection against discrimination) ICCPR; Convention on Elimination of Racial Discrimination; Convention on Elimination of Discrimination Against Women; arts. 2 (general non-discrimination provision), art. 3 (equality before the law and equal protection of the law) ACHPR; arts. 1 (general non-discrimination provision), 24 (equal protection of the law), 25 (judicial recourse and remedies) ACHR; arts. 13 (effective remedy), 14 (general non-discrimination provision) ECHR. There also is a general United Nations Charter obligation to promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. Articles 55 & 56, Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. No. 993 (entered into force Oct. 24, 1945). The UN Human Rights Committee, in its capacity of interpreting provisions of the ICCPR as guidance to states parties, issues General Comments on the ICCPR. In General Comment 18, para. 1, the Committee states: "Non-discrimination, together with equality before the law and equal protection of the law without and discrimination, constitute a basic and general principle relating to the protection of human rights." *General Comment 18, Non-discrimination*:. 10/11/89 [hereinafter General Comment 18], available at <http://www.unhchr.ch/tbs/doc.nsf/0/3888b0541f8501c9c12563ed004b8d0e?Opendocument>.

<sup>23</sup> The choice of an electoral system should be a central focus for respecting the right to participate in government and public affairs, through including in deliberations about this vital issue those who associate in order to regularly seek elected office (political parties) as well as including citizen input to such deliberations, and ultimately by citizens making the decision about their electoral system through referendum. The discussion of this issue, however, is more germane to discourse about democratic governance, which is beyond the purview of this Guide.

<sup>24</sup> See ELECTORAL SYSTEMS AND DEMOCRACY (Larry Diamond & Marc Plattner, eds.; Johns Hopkins Univ. Press; Baltimore 2006); THE INTERNATIONAL IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN (Stockholm 1997) [hereinafter Electoral System Design]; ELECTORAL SYSTEMS IN COMPARATIVE PERSPECTIVE: THEIR IMPACT ON WOMEN AND MINORITIES (Wilma Rule & Joseph Zimmerman, eds.; Greenwood Press; Westport, CT 1994). When an absolute monarchy (e.g., Swaziland) or a military government (e.g., Pakistan) holds elections for a legislative body to which the monarch or military grants limited powers, the electoral exercise would only create limited legitimacy, depending in part on the degree to which the election process respects the principles discussed in this Section and depending on the nature of the powers granted to the legislature, while the authority for those elected would derive from the degree of public confidence earned through the election process. The governmental system would still not be democratic nor would the elections qualify as genuinely democratic elections, though they could be meaningful to some extent in the country's context, depending on a variety of factors. Consideration of such issues is beyond the purview of this Guide.

<sup>25</sup> For a general review of issues to consider and types of laws concerning the legal framework for elections, see OSCE ODIHR, GUIDELINES FOR REVIEWING LEGAL FRAMEWORKS FOR ELECTIONS (WARSAW 2002); INTERNATIONAL IDEA, INTERNATIONAL ELECTORAL STANDARDS: GUIDELINES FOR REVIEWING THE LEGAL FRAMEWORK OF ELECTIONS, (Stockholm 2003); Patrick Merloe, PROMOTING LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS: AN NDI GUIDE

(Forthcoming 2008) [hereinafter Promoting Legal Frameworks]. While requirements for democratic legislative processes is beyond the purview of this Guide, involving the public, including electoral competitors, prospective voters and other elements of civil society, in development of legal frameworks for elections is consistent with respecting the right to participate in government and public affairs. See *supra* note 8; para. 5, General Comment 25, *supra* note 3.

<sup>26</sup> See para. 20, General Comment 25, *supra* note 3; para. 7.4 Copenhagen Document, *supra* note 1; ELECTORAL MANAGEMENT DESIGN: THE INTERNATIONAL IDEA HANDBOOK (Stockholm 2006) [hereinafter Electoral Management Design]. Rafael Lopez-Pintor, *Electoral Management Bodies as Institutions of Governance* (UNDP; New York 2000) [hereinafter EMBs as Institutions of Governance]. Impartiality and effectiveness of electoral management bodies (EMBs) is a threshold matter for democratic elections; accomplishing these essential elements is a complex task. Involving the public and political competitors in a policy making process concerning EMBs is consistent with respect for the right to participate in public affairs. See para. 5, General Comment 25, *supra* note 3.

<sup>27</sup> Article 2(1) of the ICCPR provides that: "Every State Party to the present Covenant undertakes to respect and to ensure that all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant..." Article 25 confines its recognition of electoral related rights to citizens. Art. 2(2) provides that: "Where not already provided for by existing legislative or other measures. Each State Party to the present Covenant undertakes to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant." The UN Human Rights Committee has interpreted these provisions to create immediate obligations to refrain from violating recognized rights (i.e., negative obligations) and to take steps to ensure respect for and exercise of the rights (i.e. positive obligations). The positive obligations include protection against acts by private persons and entities (as well as governmental actors) and that states adopt legislative, judicial, administrative, educative and other measures to ensure enjoyment of the rights and freedoms recognized in the ICCPR. The Committee has also stated that the obligations created by the ICCPR are binding on all branches of government of the states parties (executive, legislative and judicial), as well as public, governmental authorities at all levels of government (national, regional and local), which would apply to electoral authorities and all governmental bodies that play a role in respecting and ensuring electoral related rights. See, UN Human Rights Committee paras. 3-7, *General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant*: . 26/05/2004. CCPR/23/C/21/Rev.1/Add.12 (General Comments) [hereinafter General Comment 31], available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.21.Rev.1.Add.13.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.21.Rev.1.Add.13.En?Opendocument).

<sup>28</sup> See General Comment 25, *supra* note 3, at paras. 11 (voter registration efforts and voter education), 12 (positive measures to overcome specific difficulties to exercise of electoral related rights, such as illiteracy, language barriers, minority languages, poverty and impediments to freedom of movement); General Comment 31, *supra* note 27, at para. 7 (raise levels of public awareness of rights); UN Human Rights Committee, *General Comment 28, Equality of rights between men and women* (article 3), U.N. Doc. CCPR/21/Rev.1/Add.12 (2000) [hereinafter General Comment 28], para. 3 (remove obstacles to equal enjoyment of rights, educate the population, adjust legislation), available at <http://www.unhchr.ch/tbs/doc.nsf/0/13b02776122d4838802568b900360e80?Opendocument>. For discussion of measures that can be taken to enhance national minorities' participation in elections see OSCE ODIHR, *GUIDELINES TO ASSIST NATIONAL MINORITY PARTICIPATION IN THE ELECTORAL PROCESS* (Warsaw 2001) and to enhance women's participation in elections see OSCE ODIHR, *HANDBOOK FOR MONITORING WOMEN'S PARTICIPATION IN ELECTIONS* (Warsaw 2004).

<sup>29</sup> See paras. 10 & 11, General Comment 25, *supra* note 3. For a general discussion of the three major voter registration methods (individual initiated, periodic and compulsory registration) and challenges concerning inclusiveness in registration processes, see RICHARD KLEIN AND PATRICK MERLOE, BUILDING CONFIDENCE IN THE VOTER REGISTRATION PROCESS: AN NDI MONITORING GUIDE FOR POLITICAL PARTIES AND CIVIC ORGANIZATIONS (2001) [hereinafter Building Confidence in Voter Registration], at 1-18.

<sup>30</sup> See generally, William Kimberling, *A Rational Approach to Evaluating Voter Registration*, REGISTERING VOTERS: COMPARATIVE PERSPECTIVES (John C. Courtney, ed. Center for International Affairs, Harvard University; Cambridge, Massachusetts 1991).

<sup>31</sup> See, Building Confidence in Voter Registration, *supra* note 29, at 7-18.

<sup>32</sup> *Id.*, *supra* note 31; para. 14 General Comment 25, *supra* note 3; para. 6, General Comment 31, *supra* note 27. Voting by citizens living outside a country's territory and voting by non-citizens in sub-national elections are specialized topics beyond the scope of this Section.

<sup>33</sup> Paras. 11-12, General Comment 25, *supra* note 3. While the issue of voter turnout and efforts to promote it are beyond the purview of this Guide, see generally INTERNATIONAL IDEA, ENGAGING THE ELECTORATE: INITIATIVES TO PROMOTE VOTER TURNOUT FROM AROUND THE WORLD (Stockholm 2006).

<sup>34</sup> E.g., art. 25 ICCPR; paras. 15-17, General Comment 25, *supra* note 3; paras. 7.5-7.6, Copenhagen Document, *supra* note 1.

<sup>35</sup> Paras. 15-16, General Comment 25, *supra* note 3. Seeking or holding certain elected offices may be incompatible with holding other offices (such as, those in the judiciary or military or civil service), because of inherent conflicts of interest. The doctrine of incompatibility of offices, nonetheless, should provide practical means for a person to resolve the real or potential conflicts of interest (e.g., stepping down from office at a reasonable point before an election or upon nomination or qualification as a candidate).

<sup>36</sup> Paras. 15-16, General Comment 25, *supra* note 3.

<sup>37</sup> See OSCE ODIHR, *Restrictions on Political Parties in the Election Process: OSCE Human Dimension Background Paper 7* (October 1998); see also Yatama v. Nicaragua, *supra* note 7, at para. 229.

<sup>38</sup> See para. 15, General Comment 25, *supra* note 3; see also Yatama v. Nicaragua, *supra* note 7, at para. 226.

<sup>39</sup> See art. 25, ICCPR, *supra* note 1 ("Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions ... (b) To vote and to be elected...."); paras. 7.5-7.8 Copenhagen Document, *supra* note 1.

<sup>40</sup> See paras. 7.6-7.8, Copenhagen Document, *supra* note 2 (participating States must provide political parties and candidates "with the legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities..." and must "ensure that the law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence not intimidation bars the parties and the candidates from free presenting their views and qualifications..." and provide that "no legal or administrative obstacle stands in the way of unimpeded access to the media on a nondiscriminatory basis....").

<sup>41</sup> See paras. 25-26, General Comment 25, *supra* note 3.

<sup>42</sup> See *supra* notes 12-17 & 33.

<sup>43</sup> See paras. 19, 20, 25 & 26, General Comment 25, *supra* note 3; paras. 7-9 & 15, General Comment 31, *supra* note 28; paras. 7.5-7.8, Copenhagen Document, *supra* note 1; SANDRA COLIVER AND PATRICK MERLOE, GUIDELINES FOR ELECTION BROADCASTING IN TRANSITIONAL DEMOCRACIES (Article 19; London 1994) [hereinafter Guidelines for Election Broadcasting], at 69-70, 77-90; ORGANIZATION OF AMERICAN STATES & INTERNATIONAL IDEA, FUNDING POLITICAL PARTIES AND ELECTION CAMPAIGNS IN THE AMERICAS (Steve Griner and Daniel Zavatto, Eds.; Stockholm 2005); IFES, *Program on Money and Politics*, available at <http://www.moneyandpolitics.net>.

<sup>44</sup> E.g., "Transparency is the term for a clear and open process, which is understandable and accountable to the electorate.... Transparency is essential to the electoral process because it eliminates the appearance of impropriety and limits the possibility of electoral fraud...." in Association of Central and Eastern European Election Officials, International Foundation for Election Systems, Central Election Commission of the Russian Federation, *Transparency in Election Administration* (undated) [hereinafter Transparency in Electoral Administration], at 2, available at [aceproject.org/ero-en/topics/voter-registration/vrx\\_o005.pdf](http://aceproject.org/ero-en/topics/voter-registration/vrx_o005.pdf); "[E]lection management is founded on basic, but fundamental, guiding principles; independence, impartiality, integrity, transparency, efficiency, and service orientation." *Guiding Principles of Electoral Management*, in ACE Project (undated) [hereinafter Guiding Principles], available at <http://aceproject.org/ace-en/topics/em/em20>; Electoral System Design, *supra* note 26, at 24.

"Transparent: (1a): having the property of transmitting light without appreciable scattering so that bodies lying beyond are entirely visible... (2a) free from pretense or deceit...." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (1986). "Transparency, as used in the humanities implies openness, communication, and accountability. It is a metaphorical extension of the meaning used in the physical sciences: a "transparent" object is one that can be seen through. Transparency is introduced as a means of holding public officials accountable and fighting corruption. ..." Transparency (humanities), Wikipedia (11/29/07) available at [http://en.wikipedia.org/wiki/Transparency\\_\(humanities\)](http://en.wikipedia.org/wiki/Transparency_(humanities)).

<sup>45</sup> While it is difficult to demonstrate the non-discussion of a subject, a review of documents relating to electoral standards makes this point readily apparent. See, e.g., *supra* note 9, Compendium; Existing OSCE Commitments and other documents cited.

<sup>46</sup> Article 2(1) of the ICCPR, *supra* note 1, provides that: "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...." This creates an immediate and affirmative obligation for governments. Article 25 of the ICCPR speaks specifically to "citizens" regarding countries' affirmative obligation to respect and ensure rights. See *supra* note 27 & accompanying text.

<sup>47</sup> E.g., art. 10, Universal Declaration, art. 19 ICCPR, art. 9, ACHPR, art. 13, ACHR, art. 10 ECHR para. 10.1 Copenhagen Document, *supra* note 1.

<sup>48</sup> This formulation is an immediate juxtaposition of language from art. 21(3) of the Universal Declaration and art. 25(b) of the ICCPR, *supra* note 1. See para. 6, Copenhagen Document, *supra* note 1.

<sup>49</sup> Art. 25 of the ICCPR, *supra* Note 1, provides every citizen with 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... To vote and to be elected at genuine periodic elections... guaranteeing the free expression of the will of the electors...".

<sup>50</sup> See para. 7.8, Copenhagen Document, *supra* note 1. para. 25, General Comment 25, *supra* note 3; Guidelines for Election Broadcasting, *supra* note 43, at 69.

<sup>51</sup> *E.g.*, *supra* note 1; art. 19, Universal Declaration, art. 19 ICCPR, art. 13 ADHR and art. 10 ECHR.

<sup>52</sup> See para. 7.8, Copenhagen Document, *supra* note 1. para. 25, General Comment 25, *supra* note 3; Guidelines for Election Broadcasting, *supra* note 43, at 69.

<sup>53</sup> Guidelines for Election Broadcasting, *supra* note 43, at 69-70, (duty of government media to inform the public about matters relevant to elections, duty of balance and impartiality), 77 (replies and corrections), 78-90 (news coverage and direct access for electoral contestants), 94-97 (complaint mechanisms and judicial review; referenda); Existing OSCE Commitments, *supra* note 9, at 19-20.

<sup>54</sup> See para. 11, General Comment 25, *supra* note 3 ("Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.").

<sup>55</sup> See Electoral Management Design, *supra* note 26, at 67; Guidelines for Election Broadcasting, *supra* note 43, at 91-92.

<sup>56</sup> See, *e.g.*, Transparency in Electoral Administration, *supra* note 44.

<sup>57</sup> *E.g.*, provisions of international instruments *supra* note 1, including art. 21, Universal Declaration and art 25, ICCPR.

<sup>58</sup> Transparency applies to a range of electoral activities, including, among others: drafting or modifying electoral laws and regulations; selecting electoral administrators, from the highest bodies down to the polling sites; delimiting election districts; qualifying of parties and candidates for the ballot; establishing the mechanism for voter qualification, such as a voter registry; training election officials; setting up and running information technology systems; designing, producing and distributing ballots and other sensitive electoral materials; establishing polling sites; conducting voting, counting and results tabulation procedures; conducting electoral complaint mechanisms and judicial reviews of electoral challenges; announcing official election results; and certifying winning contestants.

<sup>59</sup> Article 13, ADHR, *supra* note 1. All 35 independent countries of the Western Hemisphere are members of the OAS; Cuba's membership is in suspension, but the remaining 34 participate actively in the Organization. The OAS member states have taken specific actions to affirm their positive obligations concerning the right to seek, receive and impart information. See, *e.g.*, OAS General Assembly Resolutions AG/RES. 2252 (XXXVI-O/06) of June 6, 2006, on "Access to Public Information: Strengthening Democracy," second operative paragraph; AG/RES. 2288 (XXXVII-O/07) of June 5, 2007, on "Access to Public Information: Strengthening Democracy;" Inter-American Commission on Human Rights Declaration of Principles on Freedom of Expression, para. 4, states that:

"Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies." Available at <http://www.iachr.org/declaration.htm>.

<sup>60</sup> *Marcel Claude Reyes, et al. v Chile*, Case No. 12.108 (09/19/06), Inter-American Court of Human Rights [hereinafter Marcel Claude Reyes], available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_151\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc).

<sup>61</sup> *Id.*, at para. 86.

<sup>62</sup> See *supra* note 1. The ECHR has as High Contracting Parties 47 countries spanning Europe that make up the Council of Europe (CoE); the status of one CoE applicant country, Belarus, is suspended "due to its lack of respect to human rights and democratic principles," while the 47 participate actively in the COE. See About the Council of Europe, available at [http://www.coe.int/T/e/Com/about\\_coe](http://www.coe.int/T/e/Com/about_coe).

<sup>63</sup> *Sdruzeni Jijoceske Matky v. Czech Republic* (07/10/06), (App. No. 19101/03) European Court of Human Rights, available at <http://hudoc.echr.coe.int>.

<sup>64</sup> *Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia* (decision pending), (App. No. 11721/04) European Court of Human Rights. The Council of Europe is presently considering the first international instrument on access to government held documents, the Draft European Convention on Access to Official Documents (state of progress of the work at the end of the 15<sup>th</sup> meeting of the DH-S-AC, 3 - 6 July 2007), available at <http://www.access-info.org/data/File/Draft%20Convention%20as%20at%206%20July%202007.doc>. The text of the Convention, upon final adoption and should it enter into force, would have a significant impact on state obligations in the area and consequently on the jurisprudence of the European Court of Human Rights. Access to information about electoral processes also is reinforced by article 42 of the European Union's Charter of Fundamental Rights (Dec. 7, 2000), which provides a right of access to documents held by EU institutions to citizens of EU states; though not legally binding it can be invoked by courts in EU member states.

<sup>65</sup> See VLADIMIR PRAN AND PATRICK MERLOE, MONITORING ELECTRONIC TECHNOLOGIES IN ELECTORAL PROCESSES (NDI 2007) [hereinafter Monitoring Electronic Technologies].

<sup>66</sup> See Transparency in Electoral Administration, *supra* note 44.

<sup>67</sup> Paragraph 8 of the Copenhagen Document, *supra* note 1, recognizes the importance of domestic election observers, as well as international election observers, and OSCE participating states commit to invite such observers to witness their national elections, as well as "facilitate similar access for election proceedings held below the national level." Paragraph 20 of General Comment 25, *supra* note 3, provides that security of ballot boxes (more broadly speaking, the vote) "must be guaranteed" and the "vote should be counted in the presence of candidates or their agents." It further provides that: "There should be independent scrutiny of the voting process ... so that electors have confidence...." Nonpartisan domestic election monitors fulfill this independent role, as do international election observers, who typically deploy fewer observers than domestic monitors. For a listing of over 65 countries where nonpartisan domestic election observation takes place, see Appendix 1B, MELISSA ESTOK, NEIL NEVITTE & GLENN COWAN, THE QUICK COUNT AND ELECTION OBSERVATION (NDI 2002) [hereinafter The Quick Count and Election Observation].

<sup>68</sup> See ERIC BJORN LUND, BEYOND FREE AND FAIR: MONITORING ELECTIONS AND BUILDING DEMOCRACY (Woodrow Wilson Center Press 2004) at Appendix, pp. 311-26 (approximately 100 countries appear in a partial list of those that allow international election observation).

<sup>69</sup> See Declaration of Principles for International Election Observation, *supra* note 8.

<sup>70</sup> See paras. 7&9, General Comment 25, *supra* note 3. "Account: [3] to furnish a justifying analysis or a detailed explanation of ones financial credits and debits or of the discharge of any of one's responsibilities...." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED (1986). "Accountability is a concept in ethics with several meanings. It is often used synonymously with such concepts as answerability, enforcement, responsibility, blameworthiness, liability and other terms associated with the expectation of account-giving. As an aspect of governance, it has been central to discussions related to problems in both the public and private (corporation) worlds. ... In leadership roles, accountability is the acknowledgment and assumption of responsibility for actions... encompassing the obligation to report, explain and be answerable for resulting consequences." Accountability, Wikipedia (11/29/07), available at a. <http://en.wikipedia.org/wiki/Accountability>; citing Sterling Harwood, "Accountability," in John K. Roth, ed., *Ethics: Ready Reference* (Salem Press, 1994), reprinted in Sterling Harwood, ed., *Business as Ethical and Business as Usual* (Wadsworth Publishing Co., 1996).

<sup>71</sup> See *supra* note 1. Non-periodic accountability mechanism applicable to those holding elected office, such as recall and impeachment, are beyond the scope of this Guide.

<sup>72</sup> This Section considers domestic remedies, however, redress concerning electoral related rights may also be pursued in international legal fora, such as the European Commission of Human Rights and European Court of Human Rights (for those from countries that are parties to the ECHR), Inter-American Commission on Human Rights and Inter-American Court of Human Rights (for persons from countries that are parties to the ACHR) and the UN Human Rights Committee (for persons from countries that recognizes the competence of the Committee to receive individual communications the First Optional Protocol to the ICCPR). See, e.g., *supra* notes 7, 60 & 63-64. Promoting Legal Frameworks, *supra* note 25, will present an annotated set of citations of cases before these international fora that concern electoral related rights.

<sup>73</sup> E.g., art. 2(3) of the ICCPR provides: "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 and 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 [or her] right thereto determined by competent judicial, administrative or legislative authorities, or by any other authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that competent authorities shall enforce such remedies when granted."

<sup>74</sup> *Id.*, art 2(3)(c); see BARRY WEINBERG, RESOLUTION OF ELECTION DISPUTES: LEGAL PRINCIPLES THAT CONTROL ELECTION CHALLENGES (IFES 2006) [hereinafter Resolution of Electoral Disputes]; *Resolving Election Disputes in the OSCE Arena: Towards a Standard Election Dispute Monitoring System* (OSCE ODIHR 2000) [hereinafter Resolving Electoral Disputes].

<sup>75</sup> See *infra* Chapters 9 & 10; *Symposium: Evolving International Standards Pertaining to the Resolution of Election Disputes, Panel II*, 57 ADMIN. L. R. 3 (2005), at 869-901.

<sup>76</sup> See Resolution of Election Disputes, *supra* note 74; Resolving Election Disputes, *supra* note 74.

<sup>77</sup> See art. 2(3)(c), *supra* note 63, paras. 8, 15-19, General Comment 31, *supra* note 27.

<sup>78</sup> See Resolution of Election Disputes, *supra* note 74.

<sup>79</sup> With Direct Recording Electronic (DRE) systems, a voter uses a touch screen or keyboard to electronically record a choice, while a paper record (sometimes called a voter verified paper audit trail) can be produced as evidence of the choice. The electronic impression technically comes first, and the paper record may or may not present an accurate representation of that choice. At the present time, the problems associated with the electronic record so outnumber the potential problems with creating an accurate paper record of the voter's choice that a paper trail is a prerequisite though not a magic solution, to integrity and accountability in the voting process where DREs are used. Optical Mark Recognition (OMR) systems scan choices recorded on paper ballots, and the paper remains as evidence of the voter's choice. Digital pens create an electronic record, with a ball reading microscopic dots on specialized paper, while leaving ink on the paper, thus simultaneously creating an electronic and paper record of the voter's choice. The basic question to ask when approaching electronic technologies in election processes is whether there is sufficient transparency to identify problems and provide effective remedies. For a general description of electronic technologies employed in voter registration and voting processes and issues presented for monitoring and accountability, see *Monitoring Electronic Technologies in Election Processes*, *supra* note 65.

<sup>80</sup> See *Electoral Management Design*, at Chapter 9, *supra* note 26; EMB as *Institutions of Governance*, *supra* note 26.

<sup>81</sup> See Paragraph 8, General Comment 31, *supra* note 27.

<sup>82</sup> See para. 15, General Comment 31, *supra* note 27.

<sup>83</sup> See *id.*

<sup>84</sup> See Declaration of Principles, *supra* note 8.

<sup>85</sup> See *POSTCONFLICT ELECTIONS, DEMOCRATIZATION & INTERNATIONAL ASSISTANCE* (Krishna Kumar, ed., Lynne Rienner Publishers, London 1998); William Maley, *Democratic Governance and Post-Conflict Transitions*, 6 *CHI. J. INT'L L.* 683, 689-91 (2006).

<sup>86</sup> See GUY GOODWIN-GILL, *CODES OF CONDUCT FOR ELECTIONS* (Inter-Parliamentary Union, Geneva 1998).

<sup>87</sup> See International IDEA, *Code of Conduct for Political Parties Campaigning in Democratic Elections* (Stockholm 1999), at 8-13.

<sup>88</sup> See para. 20, General Comment 25, *supra* note 3.

<sup>89</sup> See para. 20, General Comment 25, *supra* note 3; *Monitoring Electronic Technologies*, *supra* note 65, at 59-60.

<sup>90</sup> Existing OSCE Commitments, *supra* note 9, at 57.

<sup>91</sup> See *Electoral Management Design*, *supra* note 26, at Chapter 4 - Composition, Roles and Functioning of an EMB.

<sup>92</sup> See *supra* "Administrative Accountability Measures for Government Bodies and Officials," at pp. 11-12.

<sup>93</sup> The roles of agents of the electoral competitors are addressed *supra* in this Section at "Assent of the Electoral Competitors." Issues related to the activities of the news media are discussed in *Guidelines for Election Broadcasting*, *supra* note 43. The role of nonpartisan domestic election monitors is addressed in *HOW DOMESTIC ORGANIZATIONS MONITOR ELECTIONS: AN A TO Z GUIDE* (NDI 1995); *The Quick Count and Election Observation*, *supra* note 67; *Handbook for Domestic Election Observers* (OSCE ODIHR 2003); *The Work of Domestic Election Observation Groups Around the World* (ERIS, London Undated), available at <http://www.needs-network.org/pdfs/Promoting-and-Defending-Democracy.pdf>. International election observation is described in *Principles for International Election Observation*, *supra* note 8.

## SECTION THREE

# Developing Legal Frameworks That Promote Democratic Elections

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Every law is a reflection of the balance of political power at the moment it is passed. The same is true in varying degrees of regulations promulgated to interpret and guide implementation of the law, depending on who drafts the regulations and the processes for issuing them. Recognizing these factors is important in promoting democratic legal frameworks. This is particularly true when developing a legal framework for democratic elections, because elections provide the definitive means for the population to exercise its right to periodically rebalance the distribution of political power.

The process by which legal frameworks are developed therefore is vitally important to achieving democratic elections. The principles of inclusiveness, transparency and accountability, which help to ensure fairness and promote public confidence, should be fundamental elements of the process for developing the legal framework, just as they must be imbedded in the substance of the framework itself. The process by which the legal framework is developed reflects the political will to establish democratic governance, of which elections are a part, or the likelihood that elections may be used as a means to govern in a less than democratic manner.

## **DEMOCRATIC PROCEDURES FOR DEVELOPING THE LEGAL FRAMEWORK**

It is important to recognize that the process of developing the legal framework is not simply a matter of reaching an agreement among those parties that hold power at a given moment, or even among a broader circle of those who would like to compete for it through elections. Political parties should engage in dialogue about the elements of the legal framework for elections and, at a minimum, must convince a legislative majority to enact or amend electoral related laws. However, democratic elections are not likely to be achieved where one party holding a majority of seats in parliament decides behind closed doors what the legal framework for elections will be, nor are democratic

Elections provide the definitive means for the population to periodically rebalance the distribution of political power.

The process by which the legal framework is developed reflects the degree of political will to establish democratic governance.

elections likely where two parties holding a required majority collaborate privately. The interests of all those who would seek to be elected, as well as the electorate's interests in ensuring genuine elections, must be reflected in a legal framework, if genuinely democratic elections are to be achieved. Practice demonstrates that the process for developing the legal framework must provide an opportunity for all prospective electoral contestants and the public to participate and directly express their interests, so that the framework may be based on open dialogue and broad agreement.

There are a variety of mechanisms for reaching agreements on the rules for electoral competition. Legislative caucuses of the political party groups and independent legislators negotiate about the elements of the legal framework for elections. Parties negotiate outside the legislature on an ad hoc basis or as part of formal negotiations, such as a peace or reconciliation process, national roundtables or conferences and other fora. Extra-parliamentary parties can be brought into such negotiations as can representatives of civil society, and community forums can be organized to inform and involve interested citizens. Such steps can be particularly important when rules for elections are to be addressed.

#### **Legislative and Regulatory Calendars:**

When electoral related laws are to be developed or modified through regular legislative procedures, publishing the legislative calendar well in advance is important for providing extra-parliamentary political parties, civil society organizations and individual citizens an opportunity to prepare and represent their interests in the process. Surprise legislative maneuvers to gain an electoral advantage may provide a tactical advantage for certain interests, but they subvert the democratic character of elections and undermine the legitimacy of those who are elected to office.

Experience also demonstrates that it is inappropriate to make major or significant modifications of electoral related laws too close to an election date. Stability and predictability in the rules of the game are important for maintaining fairness in electoral competition and for building and maintaining public confidence in election processes. If political parties, candidates and/or civil society groups desire to modify the legal framework for elections, they should conduct their analysis of the framework and begin their advocacy efforts well in advance of upcoming elections. This is both a matter of strategic planning and of inclusiveness exercised by those who have the power to set legislative and regulatory calendars.

While the legal framework should be stable in the months preceding elections, conducting timely assessments of the strengths and weaknesses of election processes once they are completed, drawing lessons learned from the electoral experience and tackling needs for improvements in the legal framework are also important parts of properly developing legal frameworks for democratic elections. Taking actions after elections are concluded to improve the legal framework provides an important opportunity for those who win office to demonstrate their commitment to inclusiveness, transparency and accountability and thus to strengthen democratic governance.

**Public Knowledge and Input:**

Publishing drafts of proposed electoral related laws and modifications of laws is also important for inclusiveness, transparency and accountability, and for developing fairness and public confidence in the democratic character of elections. This allows analysis and advocacy by those with interests in elections and electoral integrity.

Employing mechanisms for public input into the legislative process is crucial as well. Allowing written public comments and suggestions for alternative provisions is an important element in providing inclusiveness. Publicly posting such submissions on an Internet website and by other means is important, because it allows the public and prospective electoral competitors to evaluate alternative provisions for the legal framework and reassures the public that the process is accepting input.

Conducting public legislative hearings on proposed electoral laws and their possible modifications also informs the public. Hearings should permit those in the legislative minority (or opposition) to air concerns about proposed electoral related provisions and to offer alternatives. Hearings that also permit public input through oral and written testimony increase inclusiveness in the process of developing legal frameworks for democratic elections. Holding hearings in public sessions, broadcasting them on radio and television and making them available via the Internet increases transparency and can contribute significantly to public confidence in the process.

Public forums, which are less formal than hearings, can be held in the legislature's facilities and even at venues around the country to help inform the public and gain input on the legal framework. Such steps are particularly valuable when new legal frameworks for elections are being developed and when major changes to the framework are under consideration, such as changing the electoral system, or if there are proposed major changes in the balance of legislative and executive powers within the system of elected offices.

Similar methods of addressing inclusiveness, transparency and accountability are required for ensuring fairness and promoting public confidence in promulgating regulations for interpreting and implementing electoral related laws. Countries employ differing administrative law constructs and use different devices to regulate these matters, such as formal regulations or by-laws, orders from governmental executive offices and administrative bodies that are under them or that are independent agencies (such as EMBs), or various types of instructions from higher to subordinate administrative entities.

Providing notice of consideration of regulations, publishing draft regulations, allowing the public to submit oral and written comments and suggested modifications, and holding hearings and public forums play important roles on broad framework issues. Even more narrow rules or instructions on seemingly mundane issues should be published and made easily accessible to electoral contestants and interested citizens, so that the public can develop confidence that the legal framework is inclusive, transparent and accountable.

**Constitutional, Legislative and Regulatory Drafting:**

While a comprehensive discussion of standard rules for constitutional, legislative and regulatory drafting are beyond the scope of this Guide, a few considerations are important to emphasize. The text of the legal framework for democratic elections should be consistent with constitutional provisions and international principles, which may be applicable through the country's international obligations. National legal doctrine will determine the method for resolving inconsistencies, if any, between the constitution and applicable international obligations.

For example, some countries require through constitutional provisions that international treaty obligations are automatically part of national law, and some countries say that such international obligations are determinative where domestic law conflicts with the international obligations, while other countries hold that international obligations only have domestic effect when the national legislature acts to provide such effect.

**Consistency of Legal Provisions.** Legal framework drafters should also ensure that the constitution, laws and regulations concerning elections are consistent with one another. Law and regulation drafters should ensure that election related laws and regulations are internally consistent in their use of terms. Providing a section in the law and in regulations that sets forth definitions of terms can be useful in identifying and avoiding inconsistencies. In addition, the framework for elections should be considered against international principles and practice to identify and address any significant omissions that may appear in the nation's legal framework.

A number of other laws are likely to be linked to or part of the legal framework for democratic elections as well. They may include laws on: legal recognition of political parties and organizations; party and/or election campaign financing; registration of nongovernmental organizations (including domestic nonpartisan election monitoring organizations); media ownership, licensing and activities; access to government held information; election administration; standards relating to qualification and use of electronic information and communication technologies; administrative law and procedure; civil procedure; and criminal law and procedure. A review for inconsistencies should also cover such laws.

Though it could be a time consuming process, acting to remove inconsistencies in such laws will prevent conflicts of laws and related legal complications during the election period that could compromise delivery of effective remedies through electoral complaint processes. Rules and mechanisms for resolving conflicts of laws also should be reviewed to ensure that provisions concerning electoral related rights and administration are treated as controlling law except where constitutional provisions are concerned.

**Clear and Plain Language.** Electoral related laws and regulations also should be reviewed by drafters to remove ambiguities wherever possible. Providing a definition of terms section can help reduce ambiguities, however, ambiguity can be produced in the text by using a defined term in an unusual manner. A careful review of the text to remove ambiguities, as well as inconsistencies, before a law or regulation is finalized and put into effect is a valuable practice, because it can

prevent confusion and disputes concerning framework provisions.

Using language in the elements of the legal framework for democratic elections that electoral contestants and the general population will easily and clearly understand is another important part of drafting. While there is some debate internationally on the advisability of using so-called “plain language,” there is agreement that – to be effective – legal frameworks must be easily and clearly understood.

**Level of Detail.** Another drafting challenge concerns the level of detail required to address appropriately the various aspects of legal frameworks for democratic elections. Practice demonstrates that the answer differs somewhat depending on the substance of the framework element that is being addressed and whether it is being addressed at the constitutional, legislative or regulatory drafting level. The constitution should address in significant detail: issues relating to the structure of government (e.g., types of presidential or parliamentary systems); definition of proportional, plurality/majoritarian or mixed electoral systems; descriptions of elected offices and their powers; eligibility requirements for being elected and to vote; requirements for recognition of citizenship if it is required to qualify for being elected or to vote; the types of civil and political rights and freedoms to be protected and promoted; and the conditions under which an election may be called as well as who has the authority to call the election. Description of the nature, powers, composition, qualifications, appointment, terms, basis for removal of EMB members and the EMB chair may also be appropriate for the constitution.

Most elements of the legal framework for democratic elections will be addressed in significant detail within election related laws, particularly in the primary election law or comprehensive election code. While election laws and codes contain a significant level of detail, the legal framework must anticipate that not all questions will be addressed in the law itself. The law must therefore provide for the promulgation of regulations to guide interpretation and implementation of the law by election officials and others involved in the election process. This may include a formal regulatory rulemaking process and/or procedures for informing electoral contestants and the public about proposed regulations (such as in the form of rules, by-laws, orders, instructions or similar administrative actions) and providing for their input and participation in the process of issuing such regulations.

While, for example, the constitution may require equality before the law, equal protection of the law, due process of law, process before a competent and independent tribunal, provision of effective remedies, and universal accountability before the law, the electoral law must give these precepts grounding in the electoral context, and regulations should provide even more specifics about various complaint mechanisms, remedies and accountability mechanisms, including enforcement provisions. In combination, these levels of description of the legal framework for democratic elections must address each element of the election process.

Language should be used in the legal framework that electoral contestants and the general public will easily and clearly understand.

## ELEMENTS OF FRAMEWORKS FOR DEMOCRATIC ELECTIONS

There are a number of elements that typically appear in legal frameworks for democratic elections. They may be divided or labeled somewhat differently, though the categories outlined below provide an overview of the various election processes. Please see Section Four of this Guide, which suggests goals that each element of the framework should pursue, criteria for evaluating whether the element achieves the goals and detailed questions to consider in analyzing whether the corresponding framework provisions promote fair, democratic electoral practices. The brief review provided below is intended to highlight key aspects of legal frameworks needed when addressing various election processes, while Section Four provides a more detailed basis to conduct a review and questions to consider when developing a legal framework for democratic elections.

### **Recognition of Rights and Description of Governmental Structure and the Electoral System:**

As noted previously, the constitution and electoral laws should recognize as fundamental the right to genuine democratic elections and electoral related rights. They should define clearly and in detail the features of the country's governmental structure and electoral system. This requires definition of the:

- Constitutional and legal protections for civil and political rights related to genuine democratic elections;
- Type of presidential or parliamentary system or hybrid of the two, indicating offices to be elected;
- Unicameral or bicameral legislative system at national and sub-national levels of government, as well as description of the executive branch of government below the national level;
- Levels or tiers of government and corresponding electoral systems for intermediate and local governments;
- Requirements, if any, for minimum voter turnout for an election to be deemed valid;
- Requirements, if any, for legally compulsory voting;
- Type of proportional, plurality/majoritarian, other or mixed electoral systems, and the specific method for allocating seats, including "electoral quotient" and how to calculate "remainders" in proportionate systems, and methods where preferences or transfer of votes are employed;
- Definitions of the minimum percentage of votes ("thresholds") required, if any, for award of seats;
- Type of voting procedures for open, closed or other types of lists, if a party list system is adopted;
- Use of single or multiple member electoral districts;
- Requirements for demarcation of electoral boundaries and the acceptable ratios of persons to elected representative;
- Special mandates or election system requirements concerning electing women or members of minorities;
- Requirements for timing of elections;
- Specifications if referenda and other ballot initiatives are allowed, including who may initiate them, what body determines

whether they qualify for the ballot, the qualification requirements, and the timing of placing the issue to a vote; and

- Specifications for changing any of these provisions in the constitution and law.

These provisions all form part of a compact between the people and their representatives. While countries that are in an early phase of adopting democratic governance may need to adjust these elements, frequent changes in the structures of government and electoral systems can produce instability and a lack of public trust. Changes in these matters therefore should be undertaken cautiously and with broad public involvement, open dialogue and inclusiveness in building agreement for significant modifications.

#### **Election Districts:**

Equal suffrage requires that the weight of each person's vote be essentially the same. This has particular significance when developing the legal framework for delimiting election districts. If there is a significant difference between election districts in the ratios of persons to representative, then the votes of persons in the districts are not equal. While there are some differences among long-established democracies concerning the acceptable variance between election districts in this ratio, the differences are small.

Equal suffrage also requires that every citizen's vote should have equal weight irrespective of distinctions such as race, color, gender, language, religion, political or other opinion, national or social origin, property, birth or other status. Demarcation of election district boundaries therefore may not be drawn in ways that divide minority communities and thus reduce their voting power. The legal framework also is required to prohibit discrimination in drawing electoral boundaries in order to disempower constituencies based on political opinion (commonly referred to as "gerrymandering").

Defining criteria for demarcating electoral boundaries must be combined with developing mechanisms to ensure that boundaries are then properly drawn. This not only requires setting up a body to draw the boundaries that is likely to be impartial and competent, but also to provide a process that is transparent, inclusive of interested constituencies and accountable to the public. These elements can be successfully included whether the demarcation is conducted by a legislative entity, special commission, EMB or other body.

#### **Election Management Body (EMB) and Election Administration:**

Legal framework provisions concerning the body charged with the responsibility of organizing democratic elections are sensitive and complex. The EMB must be impartial and competent, and it must be perceived to be both by the electoral contestants and the public. The process for developing this portion of the legal framework should have the buy-in of as many of the prospective electoral contestants as possible, while maintaining required standards for performance of the EMB. This is a matter of establishing public trust in the EMB as it comes into being, which provides a critical advantage over working to establish public confidence if suspicions exist from the outset.

The EMB must be impartial and competent, and must be perceived to be both by the contestants and the public.

While there are several ways to define the process of appointment of EMB members and selection of the EMB chairperson, the most important elements are inclusiveness of electoral competitors and transparency in the process. For example, once the qualifications of the EMB members and chairperson are defined, a supermajority vote to confirm or appoint the members, which includes support of governing and opposition parties, is one such method. Defining differing constituencies that provide political balance and allowing each to appoint or nominate a number of EMB members is another such method. Whether these or other methods are employed, an inclusive method that is appropriate to the national circumstances should be provided.

Selection of the EMB chairperson can be by a supermajority vote by the legislature or by the EMB members themselves or even appointment by the head of state with supermajority confirmation or appointment from a list of candidates provided by the legislature to the head of state that is derived from an inclusive method. It is also vital to carefully define the appointment of subordinate election administration bodies at intermediate and local levels and their lines of responsibilities to the EMB in terms that promote transparency and confidence of electoral contestants and the public.

One generally accepted indicator of an EMB's impartiality is its being insulated from partisan political pressures. Standing as an independent body, rather than being part of a government ministry, has proven to be a successful approach, though there are examples (particularly in long-established democracies) where impartial action has been conducted by electoral bodies that are part of ministries. Having a budget allocation provided directly from the national legislature, with accountability to the legislature, has proven to be a critical measure to ensure effectiveness, impartiality and public confidence in EMBs.

Making sufficient resources available to the EMB, financial and otherwise, including assigning personnel and requiring assistance from other governmental agencies is another important provision to include in the legal framework. Safeguards must be included to ensure that all such officials maintain political impartiality and that the EMB is responsible for their activities. These factors point to the need for the EMB to be provided with capacities for training electoral officials and mechanisms for holding electoral officials accountable for proper discharge of their responsibilities. These elements of the legal framework contribute to the sustainability of democratic election administration.

Powers of EMBs vary among countries, with some providing almost all electoral related functions to the EMB, while others charge the EMB with the core duties of organizing the election day and immediately related activities and allocate to other bodies functions relating to election boundary delimitation, political party registration and financing, media conduct over the election period and other matters. Providing transparency and accountability mechanisms for all such bodies is central to establishing inclusiveness and confidence of the electoral contestants and the public.

**Monitoring by Parties, Candidates, Referenda and Ballot Initiative Groups, Domestic Nonpartisan Election Monitors, News Media, and International Election Observers:**

The legal framework is key to ensuring that all elements of the election process are open to monitoring by political parties, candidates, groups supporting referenda and other ballot initiatives, domestic nonpartisan election monitoring organizations, news media and international organizations. In turn, providing for this type of transparency is crucial for ensuring inclusiveness, accountability and the resulting sense of fairness among electoral contestants and public confidence.

Political parties and candidates have vested interests in protecting their rights to seek election. Traditionally, legal frameworks have allowed their representatives into election facilities, including polling sites and counting centers, to witness voting, ballot counting and vote tabulation processes. Legal frameworks also recognize the right for such representatives to monitor many other processes, including, for example, drawing election districts, voter registration processes, as well as ballot production and distribution. As the checklist presented in Section Four demonstrates, legal frameworks should open all electoral procedures to such representatives to observe, raise concerns, request that problems be addressed and gather information that may be used to seek redress through complaint mechanisms.

When referenda or other ballot initiatives are presented to the electorate, parties and citizen groups take political positions supporting and opposing them. They therefore assume direct interests in the electoral outcome concerning such ballot measures and should be allowed access to all relevant elements of the election process.

Across the globe, nonpartisan domestic election monitoring organizations have developed to protect and promote the right to genuine democratic elections. This activity is an expression of the right of association, the right of citizens to participate in government and public affairs and the right to seek and impart information. The legal framework, therefore, also should provide access to such monitors, as it does for representatives of electoral contestants, though the framework may vary on whether to provide status to such monitors to raise concerns with election officials at polling stations and other facilities.

News media play a vital role in providing information to citizens so that they can understand the character of election processes and establish the warranted degree of public confidence in them. Media representatives also are exercising the right to seek and impart information about the election, and the legal framework should provide access for them to all elements of the process.

International election observers can play an important role in assessing the character of elections and making recommendations to promote democratic elections. While international observers do not have standing as citizens to observe elections, many countries have commitments under international organizations to permit such observers, and there is a widespread state practice allowing them. Legal frameworks therefore

The legal framework is key to ensuring that all elements of the election process are open to monitoring.

should provide for the presence of international election observers to witness all elements of the election process.

**Voter Registration and Voter Lists:**

Voter registration serves to guarantee that all eligible voters can exercise the right to vote and that illegal voting is prevented. This ensures against disenfranchisement and against diluting the weight of each person's legitimate vote, thus supporting equal suffrage. It also helps to streamline election day voting procedures by pre-screening prospective voters.

The legal framework therefore must cover a significant number of provisions concerning:

- Voter eligibility, including procedures for denying the franchise to some persons based on acceptable criteria concerning inability to make free and informed choices, or denial of political rights due to criminal conviction, and including procedures for restoring voting eligibility;
- Processes for creation of the voter registry, whether by citizens taking steps to register, government conducting enumerations or transferring information from civil population registries;
- Procedures for citizens, political parties, candidates and civic organizations to review the preliminary voter registry, verify its accuracy and seek corrections;
- Procedures for inspecting the final voter registry and seeking corrections;
- Processes for challenging the eligibility of a voter on election day; and
- Processes, if any, for seeking enfranchisement on election day, including exercising the right to vote and to have a challenged or provisional ballot included in the official election results.

As with other elements of the election process, providing transparency procedures – including monitoring of the process by electoral contestants, domestic nonpartisan election monitors, news media and international observers – as well as complaint procedures and effective remedies must be part of the legal framework concerning voter registration and voter lists.

**Voter Education:**

Elections cannot be genuinely democratic unless voters understand the differences among the electoral contestants so that they can cast an informed vote. Voters must also know when, where and how to register to vote, as well as when, where and how to vote. The legal framework therefore must include provisions for the EMB's responsibilities for conducting voter education, which should include information on electoral contestants, voter registration and voting procedures (including ballot secrecy) through educational guides or other means.

The framework should also mandate that military personnel be provided voter education information. It should require that such voter information state that superior officers and noncommissioned officers may not attempt to influence how military personnel vote. The framework

also should require that there must be safeguards to protect the secret ballot for military voters. Similar information should be made available to all incarcerated persons who have the right to vote.

Government owned and controlled news media should be required to cooperate with the EMB in providing voter education information to the public. The legal framework may also require independent public media and privately owned media to cooperate in providing voter education information, if that is done under conditions that are not overly burdensome to their financial and other private interests.

The legal framework should also provide that citizen organizations are free to conduct voter education as long as it accurately describes the positions of electoral contestants and accurately describes voter registration and voting procedures.

#### **Legal Recognition and Status of Political Parties:**

The legal framework must provide, on a nondiscriminatory basis and without undue restrictions, provisions concerning the legal recognition and continuation of the legal status of political parties and other political organizations, such as candidate support groups and groups supporting or opposing referenda and other ballot initiatives. The recognition of political organizations as legal entities, with the right to seek elected office or to influence citizen choices on referenda and other ballot initiatives, is fundamental to democratic elections.

Requirements for legal recognition of political parties may be set forth constitutionally. If this is done, it is usually done in general terms. Whether or not the constitution explicitly provides for legal recognition of political parties and other political organizations, the details for party registration and legal recognition are almost always provided for by law. While several models can be identified concerning types of political party laws, many take one of two basic approaches:

- A minimal requirements approach, with legal recognition granted as a matter of administrative routine upon submission of the party's name, symbol, officers, charter and perhaps a small list of members; and
- A more rigorous approach, with added requirements for evidence of a large number of members and/or supporters (e.g., through submission of signatures), perhaps with a minimum geographical distribution in the country, a party manifesto and a significant registration fee.

The legal framework may address certain aspects of the internal functioning of political parties (such as requiring that they must employ internal democracy) or candidate selection, if it is done by convention or by primaries. The framework may also address disclosure concerning party financing.

#### **Ballot Qualification:**

The legal framework must provide clear procedures for qualifying parties, candidates, referenda and other initiatives for the ballot. The pro-

The legal framework must provide recognition of political parties and other political organizations.

visions may not be discriminatory, overly burdensome or unduly restrictive, though they should ensure that only qualified parties, candidates and appropriately worded referenda and initiatives appear on the ballot.

Ballot qualification provisions often include submission of a specified number of signatures. The requirements must be realistic given the timeframe for collecting signatures and national conditions. One problem to avoid is restricting citizens to signing only one petition for ballot qualification. This unfairly affects the rights of voters and of electoral contestants, because voters often see the requirement as committing their vote and thus a violation of secret voting, and the process opens them to potential intimidation should they be hesitant to sign a petition. Electoral candidates cannot be expected to know whether a person signed other petitions, even though a candidate's ballot qualification efforts could be harmed if the signature is invalidated.

Procedures for verifying signatures must be nondiscriminatory, and the framework should include safeguards against arbitrary application of the procedures. The provisions also should include transparency mechanisms for representatives of the electoral contestants, referenda and ballot initiative groups, domestic nonpartisan election monitors, news media and international observers.

#### **Election Campaigning:**

The legal framework for democratic elections must ensure fair conditions for electoral contestants, sometimes referred to as a level playing field. There are numerous facets that the framework must address, including procedures to facilitate violence free and intimidation free conditions for the electoral contestants to:

- Organize and train campaigners;
- Move from town to town and from door to door and use public spaces to seek votes;
- Hold meetings, rallies, marches and other means of peaceful assembly to garner and demonstrate electoral support;
- Make use of mass communications tools, such as the postal services, telephones, instant messaging and Internet; and
- Reach prospective voters via print and broadcast news media to appeal for votes.

Just as important, the legal framework must also ensure that prospective voters are free from violence, intimidation and fear of retribution for exercising freely the right to vote, so that they may participate in an election campaign in order to seek and receive information about the electoral contestants.

The legal framework must require political impartiality of all government officials in the exercise of their duties, including issuing of permits for campaign activities and providing facilities for such activities. It must require that government resources not be used for electoral advantage of any party, candidate or group supporting or opposing referenda or other ballot initiatives. The framework also must provide requirements for election officials and law enforcement personnel to honor equal protection of the law and provide effective remedies in securing proper election campaign conditions.

**Campaign Resources:**

Where the legal framework provides campaign resources to political contestants, it must do so on a nondiscriminatory basis that sets equitable treatment for all contestants. If funding is provided, categories may be established concerning the main electoral contestants and lesser contestants. Categories must be based on clear and objective criteria, for example the number of votes and/or seats won in the prior elections. The framework must also contain safeguards against arbitrary or discriminatory application of the criteria. Where non-financial support is provided, such as offices or printed materials, the basis must also be equitable, and safeguards must be provided to prevent arbitrary and/or discriminatory application of the criteria for support.

When private contributions for electoral campaigning are permitted, the legal framework must provide equal requirements concerning contestants for elected office and for groups supporting or opposing referenda and/or other ballot initiatives. Any campaign expenditure limitations also must have equal application.

Disclosure requirements, which in order to be effective must require timely and public disclosure, must have equal application. Enforcement mechanisms should be included that also provide due process protections and safeguards to ensure nondiscriminatory application.

**Media:**

A legal framework for democratic elections must address several issues related to the media: protections for the media to exercise freedom of expression in the electoral context; providing electoral contestants with a genuine opportunity to communicate their electoral messages to the public; and providing the electorate with accurate information upon which to make decisions about voting choices.

The first set of provisions should prohibit government officials from placing any pressures on the media to favor or harm the interests of any electoral contestant. Direct threats against owners, publishers, editors and journalists concerning personal safety and security of family or of property and concerning threats of prosecution or civil suits should also be prohibited.

The legal framework also must provide for unpaid direct access for electoral contestants to provide messages seeking electoral support via government owned or controlled media. Independent public media and privately owned media may also be required to provide unpaid access to electoral contestants as long as the provisions are not overly burdensome. Where paid political advertisements are permitted, the legal framework must require that it be done on a nondiscriminatory basis.

The legal framework also must require that government owned or controlled media provide accurate, balanced and equitable news coverage of electoral contestants (parties, candidates and groups supporting or opposing referenda and/or other ballot initiatives). It should provide guidelines on these matters for independent public media and privately owned media. The framework should also provide mechanisms to ensure effective remedies for violations of electoral rights by the media.

Where the legal framework provides campaign resources, it must do so on a non-discriminatory basis.

Honest determination of the people's will depends on the provisions for counting, tabulation and announcement of results.

**Voting:**

The legal framework must address a myriad of issues to ensure a genuine opportunity to exercise the right to vote on the basis of equal and universal suffrage. These issues concern conditions outside the polling sites, as well as inside it, before, during and after voting takes place. The provisions must ensure, among other things, that:

- Violence, intimidation, vote buying and other forms of coercion are prohibited in and around polling sites;
- Security protocols are provided that guarantee voting integrity, including preventing ballot box stuffing and irregularities and fraud in electronic voting;
- Access is provided to polling sites on an equal basis for all voters, including women, minorities, younger and older voters and persons with physical challenges and disabilities;
- Polling sites are to receive election personnel, ballots, voting machines and other sensitive electoral materials on an equal basis, and prevent discrimination based on likely political support for certain electoral contestants by the population assigned to the polling site;
- Voter identification and related procedures that are nondiscriminatory concerning race, color, religion, language, national origin, other status or political or other opinion, that prevent disenfranchisement of eligible voters and avert illegal voting;
- Voting procedures guarantee secrecy of the ballot; and
- Transparency mechanisms allow effective monitoring by political parties, candidates, groups supporting and opposing referenda and other ballot initiatives, domestic nonpartisan election monitors, news media and international election observers.

The legal framework must provide the highest election official at the polling site (presiding officer, president or chairperson) with the authority to maintain order at the site and take steps to gain assistance concerning security or remedying any problems concerning the voting process. Those problems could concern absence of sufficient electoral officials to meet “quorum requirements” or to conduct proceedings, insufficient ballots for voter use, failures of voting machines, lack of ink to apply to voters' fingers to prevent multiple voting or other matters.

**Vote Counting, Results Tabulation and Results Announcement:**

Vote counting, transmission of results, results tabulation and announcement of results all require clear and specific provisions in the legal framework for democratic elections. Honest and accurate determination of the people's will concerning who shall occupy elected office depends on these provisions. The legal framework should ensure, among other things, that:

- Standard ballots, electronic voting machines and other sensitive electoral materials are secured prior to commencing the counting process, so that the count cannot be illegally affected;
- Ballots are opened in a manner that permits verification of their validity or ruling about invalidity;
- Rules for determining ballot validity honor the clear intent of the voter;
- Ballots are placed in a manner that allows verification that they

are being credited to the proper electoral contestant, including party, candidate, position supporting or opposing a referendum or ballot initiative;

- Counts of ballots credited to each electoral contestant and verification of the count is easily conducted;
- Vote tally sheets are easily viewed and verified, posted publicly and provided to representatives of parties, candidates and groups supporting or opposing referenda and other ballot initiatives, as well as domestic nonpartisan election monitoring organizations, news media and international election observers;
- Transparency mechanisms allow effective monitoring by electoral contestants, domestic nonpartisan election monitors, news media and international election observers, which includes verifying transmission of results by any medium and accompanying transport of ballots, tally sheets and other sensitive materials to intermediate and/or final results tabulation centers;
- Results tabulation and announcement procedures are secure so that the tabulation of results cannot be illegally affected;
- Vote tabulations are credited to electoral candidates in a manner that permits verification;
- Rulings on ballot validity, including procedures for ruling on challenged or provisional ballots, are easily observed and verified;
- Tally sheets at intermediate and final counting centers record disaggregated votes, as well as aggregated results tabulations, are easily verified, publicly posted and provided to representatives of political parties, candidates, groups supporting or opposing referenda or other ballot initiatives, domestic nonpartisan election monitors, news media and international election observers; and
- Tally sheets from intermediate and final counting centers are posted on the Internet and other public places at an early date.

Framework provisions should also address how representatives of electoral contestants may raise concerns and seek to redress problems during the counting, tabulation and results announcement processes.

### **Complaint Mechanisms:**

The legal framework for democratic elections should state for each element of the election process a complaints procedure that provides due process, equality before the law, equal protection of the law, effective remedies for violations of electoral rights and accountability for those who commit violations. Each element of the election process has its particular qualities, and the nature of due process and types of remedies will differ to some degree among the elements.

- Delimitation of election districts requires remedies that equalize sufficiently the variance among ratios of population to representative in various election districts and/or move boundary lines so as not to disempower minorities or constituencies that support a particular political opinion;
- Voter registration requires remedies that correct disenfranchisement or that prevent voting by ineligible people;
- Party, candidate and ballot measure qualification require remedies that provide ballot access should requirements be met; and
- Each other element merits designing and providing remedies that suit the problems, up to and including ordering recounts and/or new elections.

The framework must also clearly provide procedural requirements for employing electoral complaint mechanisms. These must describe filing requirements, standing requirements, burdens of proof, rules of evidence, timetable for processing complaints, available remedies and appeals procedures. The framework must direct complainants to the proper forum for filing a petition with an administrative agency, court or legislative body and provide for the possibility of judicial review wherever fundamental rights are at stake.

The legal framework also should address criminal liability for violating electoral related rights and the effect that criminal investigations and prosecutions may have on administrative complaint processes or civil law proceedings.

## SECTION FOUR

# Checklist for Evaluating a Legal Framework for Democratic Elections

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This checklist is designed to assist the review of election laws and proposed amendments to election laws, as well as the consideration of broader legal frameworks for democratic elections. It also can be used by those charged with legislative drafting. The principles of inclusiveness, transparency and accountability and the related concepts of electoral fairness and developing public confidence are imbedded in the checklist.

The checklist covers 16 headings. Under each heading goals are suggested for that element of the legal framework. A number of criteria or indicators are suggested to help determine whether that element achieves appropriate goals for promoting a democratic legal framework. In addition, 228 questions plus sub-questions are presented under the headings to guide analysis of the legal framework and to help determine if each element comports with principles and practices for democratic elections.

It must be emphasized that the checklist does not present a scoring system. Not all questions are applicable to any specific legal framework; specific weight cannot be assigned to each question or sub-question, and it is impossible to score a legal framework in order to determine whether it rates a particular "grade." All legal frameworks operate in a national context with political, cultural and social conditions that must be considered and dynamics that demonstrate political will to move decisively in a democratic direction or that indicate movement toward other forms of governance, even if incremental progress is made in the electoral arena.

It is important nonetheless to evaluate whether legal frameworks guarantee electoral related rights and promote democratic practice. This checklist presents considerations that contribute to understanding whether guarantees are present, and it helps to identify problematic elements in an electoral framework that should be addressed and improved.

### THE ELECTORAL SYSTEM

**Goal: Ensure that the people have genuine opportunities to participate in government, directly and/or through freely chosen representatives.**

Criteria or Indicators - The Legal Framework:

- Sets periodic nature of elections and tenure for elected office;
- Defines offices to be elected and their powers and responsibilities;
- Provides means for competitive elections, respecting the right to vote (i.e., to make a free and informed choice among rightful contestants for office) and the right to be elected;
- Limits all restrictions on the exercise of electoral related rights to exceptions that are necessary to protect rights, proportionate to the clear need to restrict and geared to ensure full exercise of rights; and
- Prohibits discrimination on the basis of race, color, gender, language, religion, national or social origin, property, birth or other status, physical challenges or disabilities or political or other opinion.

Questions to Consider:

1. Does the law recognize political parties as electoral competitors?
  - a. If so, do requirements for legal recognition meet international principles for inclusion and fairness?
2. Does the law allow non-party or independent candidates?
  - a. If so, do the requirements meet international principles for inclusion and fairness?
3. What form of representation is used? (Plurality/majority, proportional or mixed system)
  - a. How many seats are in the legislature?
  - b. How many seats are filled through the election law?
  - c. Are the seats elected on a staggered basis or all at once?
  - d. Is the legislature unicameral or bicameral?
  - e. If bicameral, are both houses elected or is one appointed and, if so, by whom?
  - f. Are there provisions for run-offs in the parliamentary system?
  - g. If a mixed system is used, how many seats are filled under each sub-system?
4. Does the law provide an explicit system for translating the number of votes into the number of seats won?
  - a. What system is used, including for the allocation of "remainders"?
5. Is there a threshold of votes required before a party can win any seats?
  - a. What is it, and how does it compare to international principles and practice?
6. Does the law require a minimum level of voter turnout for the election to be valid?
  - a. If yes, what is it, and how does it compare to international principles and practice?
7. Are there provisions for filling casual vacancies?
8. Does the electoral law provide for the appointment of some Members of Parliament by the President?

- a. If so, how many?
- b. Do they enjoy voting rights in Parliament?
9. Is the president elected directly or indirectly?
  - a. If indirectly, is the president elected by parliament or by another body or procedure?
  - b. If the president is elected indirectly, how does the system address equal suffrage issues?
  - c. Are there one or two rounds, or is it a preferential system?
10. On what basis can elections be called? (Regularly scheduled, extraordinary or special, or some other manner?)
11. Who has the power to call elections and under what conditions?

### STRUCTURE OF THE LEGAL FRAMEWORK

**Goals: Provide clarity, predictability and consistency with other electoral related laws and assure impartial application of legal provisions.**

Criteria or Indicators - The Legal Framework:

- Presents key elements of the legal framework for elections in an easy to find, consolidated place or cross-referenced places;
- Sets forth legal provisions in clear and understandable terms;
- Avoids conflicts of laws; and
- Incorporates international obligations and/or commitments concerning democratic elections.

Questions to Consider:

12. Which constitutional provisions are relevant to elections?
  - a. Is the electoral framework (law, decrees, regulations and by-laws) consistent with the constitution?
13. Does the constitution incorporate human rights and/or treaty obligations into the constitutional or legal framework of the country?
  - a. What legal effect do the country's international commitments and/or obligations have, and how would they impact the legal framework for elections? (E.g., is the doctrine of "direct effect" respected, or do international obligations have to be enacted separately into domestic law?)
  - b. Are there special mechanisms for women voting?
  - c. Are there guarantees that women will be elected to a certain number of offices? (E.g., through electoral quotas or mandating the number of women and/or where they are placed on party lists that appear on the ballot?)
  - d. Are there legal provisions ensuring voting rights and/or rights to be elected for minorities of various types? (E.g., according to race, national origin, language and/or religion?)
  - e. Are there legal provisions concerning potential voters of other statuses? (E.g., physical challenges or disabilities, refugees or internally displaced persons, young voters, persons convicted of crimes?)
  - f. Is the vote compulsory or non-compulsory?
  - g. Are there penalties for those who do not vote in compulsory systems?
  - h. If the vote is compulsory, what is the punishment, and does it meet criteria for proportionality and due process?

14. Is there a single law affecting all types of elections (i.e., presidential, legislative, local, etc.)?
15. Does the primary election law contain definitions of terms used in the law, apply them consistently and provide a means to resolve differences in those terms and terms used in other election related laws?
16. Is there a comprehensive electoral code encompassing all electoral related issues, and what additional laws make up the legal framework for elections? (E.g., laws defining parliamentary and other institutions and laws concerning political parties, mass communications media, non-governmental organizations [NGOs], penal and civil codes, laws on the use of government office and political activities of government employees, financial disclosure requirements, parliamentary rules of procedure on seating of winners, etc.?)
17. Are there clear cross-references between the different laws concerning electoral matters, and is there a mechanism to identify and eliminate conflicts of laws in the legislative and/or legal processes?
18. When there are questions of interpretation of electoral related laws, what entity has final authority? (E.g., the election commission, the supreme or constitutional court, the legislature, or another body?)
19. Does the law provide for the promulgation of election related regulations and/or other means to direct administrative preparations and other matters?
  - a. If so, what body has that power?
  - b. What process is required to issue such regulations or other instructions?
  - c. What body applies the regulations and provides redress for violations of them?
20. Who prosecutes violations of the electoral law?

### ELECTORAL DISTRICTS

**Goals: Ensure “equality of the vote” (equal suffrage), relating to the proportions of voters to representatives and ensure against discrimination in boundary delimitation.**

*Criteria or Indicators - The Legal Framework:*

- Defines the permissible ratio of citizens per elected representative in legislative chambers;
- Sets parameters that are consistent with international principles for deviations between electoral districts concerning the ratio of citizens to representative in legislative chambers;
- Provides the acceptable bases upon which electoral district boundaries may be drawn, in light of existing administrative divisions, geographic barriers and other factors; and
- Prohibits drawing of electoral boundaries in ways that divide populations and their voting power based on discrimination concerning race, color, language religion, national or social origin, or political or other opinion (sometimes referred to as gerrymandering).

Questions to Consider:

21. Are electoral districts established on a permanent basis (e.g., in accordance with the constitution), or can the district boundaries be changed?
  - a. If so, when are they changed? (E.g., prescribed periodic intervals, upon conducting a census or other ways?)
  - b. Is a partial boundary delimitation possible?
  - c. If so, under what circumstances?
22. What are the criteria upon which electoral districts are drawn? (E.g., size of population, size of electorate, effects of geographical constraints, administrative boundaries?)
23. Are there anti-discrimination provisions in the rules on delimiting electoral districts, such as preventing the division of communities on the basis of racial, linguistic or other characteristics?
  - a. If so, how do they compare to international principles?
24. Who has the authority to change the boundaries of electoral districts? (E.g., the legislature, the courts, a boundaries commission or other body?)
  - a. How are members of the boundary demarcation body chosen?
  - b. What are its powers?
25. Does the law require that the demarcation body consult with political parties and civic groups and/or provide for public comment?
  - a. If so, what process and level of involvement is required?
  - b. What consultation procedures exist on boundary revision proposals and drafts?
  - c. Do news media have access to the delimitation process?
26. Does the law establish a voter-per-representative ratio for election districts?
  - a. If so, what is it, and how does it compare to international principles?
27. Does the law establish acceptable variances in voter-per-representative ratios between districts?
  - a. If so, what are the acceptable variances, and how do they compare to international principles?
28. Is there a process by which the drawing or revision of an electoral district can be challenged?
  - a. If so, what are the challenge procedures?
  - b. Do they provide effective remedies?

**ELECTORAL MANAGEMENT BODY AND ADMINISTRATION**

**Goals: Ensure impartiality, effectiveness and transparency in election administration.**

Criteria or Indicators - The Legal Framework:

- Sets a clear mechanism for appointment to the election management body (EMB) of individuals whom the electoral contestants and the public believe are both impartial and competent to conduct genuinely democratic elections OR whom the political contestants and the public believe, in combination, will impartially and competently conduct democratic elections;

- *Sets a mechanism for appointment of election officials below the EMB whom the political contestants and the public believe will impartially and competently conduct democratic elections;*
- *Requires transparency in the conduct of all elements of the election process for the benefit of the public and electoral contestants;*
- *Provides accountability mechanisms for proper discharge of duties of electoral officials; and*
- *Provides mechanisms for regular and consistent communications with electoral contestants.*

Questions to Consider:

29. Is the body that is responsible for managing elections (EMB) part of a ministry, a free standing body under the executive branch, an independent body that is responsible to the legislature, a separate branch of government under the constitution, or other governmental form?
30. Under what guidelines or rules does the EMB work?
31. Is the EMB permanent or temporary?
  - a. If temporary, how far before scheduled elections is the EMB assembled?
  - b. Is the period of time provided sufficient for the EMB to effectively discharge its duties?
32. What is the exact composition of the EMB?
  - a. Does the composition guarantee the impartiality and competence of the EMB?
  - b. Does the EMB include independent experts, political party representatives, a mixture of the two or some other set of persons?
  - c. Does the law require that some EMB members or the EMB chair be a judge or lawyer?
  - d. If judges are required, who appoints judges to the bench?
  - e. Are there effective mechanisms for independence of the judiciary?
33. By what procedure are EMB members selected?
  - a. Appointed by political parties as party representatives?
  - b. Appointed by political parties as independent actors?
  - c. Appointed at the discretion of the executive?
  - d. Nominated by the executive and confirmed by the legislature?
  - e. By simple or super majority?
  - f. Nominated by political parties and then appointed by the executive?
  - g. Are any of the members appointed or nominated by civil society organizations?
  - h. If so, are the organizations nonpartisan?
34. How is the EMB chair selected?
35. Are there limits on the power of the chair?
36. Are all or some of its meetings open to the public?
37. Do political parties have access to the EMB's work?
  - a. What kind of access? (E.g., representatives on the EMB or by party representatives or agents to the EMB?)
38. Do domestic nonpartisan monitors have access to the EMB's work?
  - a. If so, what kind of access?
39. Do news media have access to the EMB?
  - a. If so, what kind of access?
40. What is the structure for regional or local EMBs?

- a. How are they established?
- b. How much power is delegated to the regional/local EMBs?
- 41. Does the EMB and its subordinate bodies have the powers to enlist needed support from other sectors of the government? (E.g., civil servants, teachers, security personnel, military?)
  - a. If so, are there safeguards concerning the impartiality of such people?
- 42. Are there mechanisms to ensure accountability of electoral officials in the discharge of their duties? (E.g., auditor general office, an ombudsman office, procedures for citizens to file complaints concerning the failures of officials to properly discharge their duties, internal personnel disciplinary procedures?)
  - a. Do these mechanisms provide for timely resolution of issues or complaints?
  - b. Do they meet minimum due process requirements?
  - c. Are there requirements to release public reports and statistics about such procedures and their operation?
- 43. Are safeguards for ballot security included in provisions concerning ballot design, review, printing, distribution and collection?
- 44. Are the timelines provided in the law and regulations concerning each element of the election process realistic in light of national conditions and the need for building and maintaining public confidence?
  - a. Are the timelines for each element of the election process consistent with one another?
  - b. Do the timelines concerning counting ballots, tabulation of results and announcement of winners meet needs for both accuracy and timeliness?
  - c. Do timelines for electoral complaints and appeals allow for timely resolution of electoral outcomes?
- 45. Do EMB members have immunity from prosecution?
  - a. If so, what types and for how long?
- 46. Are the actions of the EMB subject to challenge or legal review?
- 47. Can EMB members be removed from office?
  - a. If so, for what reasons and by whom?
- 48. Is there a budget for the EMB?
  - a. What governmental entity provides the budget (parliament, a ministry or other?)
  - b. If so, how much discretion does the EMB have over its spending?
  - c. Is there a special budget for elections?
  - d. To whom and how does the EMB account for its fiscal activities?
- 49. What is the breadth of the EMB power? (E.g., responsible only for mechanical administration, control over media access, prosecution of violations?)
- 50. Are the EMB and its subordinate electoral bodies required to provide transparency in their operations?
  - a. Are the EMB and its subordinate bodies required to conduct open public meetings?
  - b. If so, are all meetings public or only certain types of meetings (and which types)?
  - c. Are the records of electoral administration available as public documents that can be obtained through a regular process at the EMB or other body?

- d. Are the disaggregated vote tallies from the polling sites and intermediate tabulation centers made immediately available to the public as part of the vote tabulation process?
- e. Are ballots, voting machines and other sensitive materials available for public inspection before, during and after an election?
- f. Are adequate transparency measures provided for verification of the integrity of electronic electoral technologies?

### MONITORING

**Goal: Provide transparency for electoral competitors and the general population to establish the warranted degree of public confidence in the electoral process.**

*Criteria or Indicators - The Legal Framework:*

- Recognizes the right of citizens to seek, receive and impart information concerning all elements of the election process;
- Provides that representatives of parties, candidates and groups supporting and opposing referenda and other ballot initiatives have the right to be present, observe, raise concerns and seek redress concerning all elements of the election process;
- Provides that civil society organizations concerned with electoral integrity have the right, at a minimum, to be present and monitor all elements of the election process;
- Provides that news media have the right to be present and monitor all elements of the election process;
- Provides for the possibility of international election observers to be present and observe all elements of the election process; and
- Requires the accreditation for access to electoral related facilities of representatives of political parties, party candidates, and groups supporting or opposing referenda or other ballot initiatives, domestic nonpartisan election monitors from civil society organizations, media and international observers.

*Questions to Consider:*

51. Are representatives of parties, candidates, referenda and ballot initiative groups granted access to all elements of the election process? Including among others:
  - a. Printing and distribution of ballots and other sensitive electoral materials;
  - b. Polling site selection process;
  - c. Training programs for electoral officials;
  - d. Voter registration processes and verification of voter registries;
  - e. Ballot qualification review process;
  - f. Polling site operations, including voting and counting of ballots;
  - g. Tabulation of results at polling stations through district and all other counting centers until final results are determined;
  - h. Electoral complaints and appeals processes; and
  - i. All applications of electronic electoral technologies at policy formulation, decision making concerning design, testing and purchasing, as well as at training and use?

52. Are domestic nonpartisan election monitors recognized by law, regulation and/or any other means?
  - a. If so, are they provided access to all elements of the election process, including the processes listed in the previous question?
  - b. What is involved in the accreditation process?
  - c. Is accreditation required to be conducted in an effective and timely manner?
  - d. Is accreditation provided to organizations, which then accredit individuals under their mandate?
  - e. Is there a separate law on legal registration of nongovernmental organizations?
  - f. If so, does it contain any unreasonable restrictions that would hinder domestic election observation? (E.g., restrictions on receiving funding or assistance from international organizations?)
53. Are news media recognized in electoral law and/or regulations?
  - a. If so, are they provided access to all elements of the election process?
54. What is the accreditation process for news media?
55. Are international observers granted access to the election process?
  - a. If so, what is the accreditation process?
  - b. What is the scope of their access?
56. Are any restrictions placed on representatives of political parties, candidates, referenda and ballot initiative groups, domestic election monitoring organizations, news media and/or international election observers?
  - a. If so, what are the restrictions and do they correspond to constitutional regulations and international principles?
57. Does the law provide an opportunity for citizens to inspect the accuracy of the voter registry?
  - a. If so, are party and candidate representatives, civil society election observers, news media and international observers allowed to witness the process and/or inspect the registry?
58. Do the law or regulations require that a copy of polling station vote tally sheets be posted publicly for a period of several days following the polling process?
59. Do the law or regulations require that official copies of the vote tally sheets be provided to representatives of the political parties, candidates and ballot initiative groups at the polling stations, district or other intermediate tabulation centers and at the final vote tabulation center?
  - a. Are copies also to be provided to domestic nonpartisan election monitors, media representatives and international observers?
60. Do the law or regulations allow electoral contestants and/or civil society organizations to conduct voter registration audits?
61. Do the law or regulations allow parallel vote tabulations (PVTs or quick counts) and/or exit polls?
  - a. What conditions or restraints, if any, are placed on such activities, and how do they correspond to constitutional requirements and international principles?

### VOTER REGISTRATION AND VOTER LISTS

**Goals: Ensure eligible citizens a genuine opportunity to exercise the right to vote, prevent ineligible people from voting and block multiple voting.**

Criteria or Indicators - The Legal Framework:

- Sets clear criteria, consistent with international principles, for eligibility to vote;
- Provides a process for establishing identity and eligibility to vote that is easily used by members of the electorate and safeguards against fraud;
- Establishes a voter registration process that is accurate and inclusive of all eligible voters, including those first coming of age to vote;
- Sets forth an easily accessible process for citizens to check and correct the voter registry;
- Allows representatives of political parties, candidates, ballot initiative groups and civil society organizations to monitor the voter registration process and to verify the accuracy of the voter registry and its voter lists; and
- Produces voter lists that facilitate ease of voting, prevent disenfranchisement and avert illegal voting.

Questions to Consider:

62. What are the voter eligibility criteria set forth in the constitution, law and regulations?
  - a. Do the criteria fit international principles concerning limiting restrictions to age of majority, citizenship and residency?
  - b. Do the criteria address mental capacity?
  - c. If so, are they consistent with international principles to provide due process protections against overly restrictive limitations on the right to vote?
  - d. Do the criteria address voting rights of those in military service?
  - e. If so, are they consistent with international principles favoring extension of the right to vote?
  - f. Do the criteria address persons with criminal convictions?
  - g. If so, are they consistent with international principles concerning proportionality of restricting civil rights and the restoration of those rights?
  - h. Do the criteria address citizens who are outside of the country during the election period, refugees and internally displaced persons?
  - i. If so, are they consistent with international principles concerning the right to vote?
63. What type of process is used to create the voter registry?
  - a. Is voter registration citizen initiated (people going to registration centers)?
  - b. Is it state initiated (an enumeration process is conducted)?
  - c. Is it state created (the civil population registry is used to create the voter registry)?
  - d. Is it a mixed system? If so, what is the mix?

64. Is voter registration a continuous or periodic process?
  - a. If periodic, how long before the election does the voter registration start and end?
65. Do the legal provisions set a realistic timeframe for creating a voter registry and voter registration lists?
  - a. How long does the registration process last?
  - b. When is the registry closed to new entries?
  - c. When is the preliminary list made publicly available?
  - d. How long is the claims and objections period for citizens to check and correct entries in the voter registry?
  - e. When is the corrected registry made publicly available, and is there a chance for citizens and/or parties, candidates and election monitors to review it before the final voter lists are created?
  - f. When do the final voter registry and voter lists begin their journey to the polling sites, and does this process meet time requirements?
  - g. Can prospective voters be challenged on election day, and can the challenge be resolved in time for the citizen's vote to be counted?
66. Do the law and regulations provide for public education about the time, place and elements of the voter registration process?
67. How is identification of citizens verified during the registration process?
  - a. What evidence of qualification is required? (E.g., birth certificate, passport or other government issued identification, witnesses who swear under oath?)
  - b. Is the process of obtaining birth certificates and/or other government identification easily accomplished, or does it present a barrier to being included on the voter registry?
68. Do the law and regulations provide that the voter registration process be conducted in a manner that is easily accessible to all eligible citizens?
  - a. Are the locations required to be physically accessible?
  - b. Are they to be at sites that are easily reached by citizens?
  - c. Are the hours of operation to be conducive to all eligible people, including women, older people and those coming of age to vote since the last election?
69. Are voter identification cards issued?
  - a. If so, are they issued upon registration or at some other point in time?
  - b. Is the process of providing voter cards secure and efficient?
70. Where are the lists published? (E.g., an Internet website, newspapers, at schools or other neighborhood facilities, at a district office or city hall and/or other location?)
71. Is there any provision for supplementary registration after the final list is published?
72. Are citizens who reach voting age shortly before or on election day allowed to vote?
  - a. If so, are there separate provisions regarding their registration?
73. Does the law provide for registration at polling sites on election day or adding a person to a supplemental voter list on election day?
  - a. If so, how do such persons establish their eligibility?
  - b. What safeguards are there to prevent such persons from voting at multiple polling sites?

74. Does the law allow for voting by citizens not present in the country at the time of the election?
  - a. If so, what is the procedure? (Embassy voting, absentee ballots or other?)
  - b. What are the timetables to be entered into a corresponding voter list?
  - c. In what district are their votes registered? (E.g., their national home, the capitol, other place?)
75. If refugees and internally displaced persons are allowed to vote, are the procedures provided sufficient to ensure against disenfranchisement and against illegal voting?
76. Are voters given the opportunity to verify the accuracy of the voter registry and to correct errors?
  - a. Are such procedures clearly defined?
  - b. How broadly are the procedures publicized, in what medium and by whom?
  - c. How much time are voters given to make corrections to the registry?
  - d. Are electors or anyone else given the right to object to registrations believed to be wrong?
77. Do political parties, candidates and ballot initiative groups have the right to monitor the voter registration process?
  - a. If so, are the provisions adequate to verify the integrity of the process?
78. Are political parties, candidates and referenda and ballot initiative groups provided a copy of the voter registry to conduct verifications and/or to use in voter mobilization efforts?
  - a. If so, at what point in the voter registration process and how far before the election is this to happen?
79. Do domestic nonpartisan election monitors and/or the news media have the right to monitor the voter registration process?
  - a. If so, are the provisions adequate to verify the integrity of the process?
80. Do domestic nonpartisan monitors receive a copy of the voter registry for verification purposes and/or to use in voter mobilization efforts?
  - a. If so, when does this happen?
81. Are electoral contestants and/or nonpartisan domestic election monitors provided access to the voter registry to conduct voter registration audits?
82. Does the EMB enlist an independent source to conduct voter registration audits, and are the results made available to the public?
83. Is the voting list contained in an electronic registry?
  - a. If so, does the law provide transparency measures concerning the decision making process regarding the benefits of using such technology, the design requirements, the procurement process, the testing and the operation of electronic technologies in registering voters, compiling the voter registry and production of voter lists?
  - b. Are transparency provisions and other safeguards provided to ensure that electronic voter lists cannot be linked to electronic voting technologies or otherwise compromise secrecy of the ballot?

**VOTER EDUCATION**

**Goals: Ensure that the electorate is sufficiently informed about voter registration, voting choices and voting procedures to provide a genuine opportunity for exercising the right to vote and to make an informed choice among electoral contestants.**

Criteria or Indicators - The Legal Framework:

- Provides clear responsibilities to the EMB for conducting voter education activities;
- Allows electoral contestants and civil society organizations to conduct voter education without undue restrictions;
- Requires the military to allow voter education to reach its personnel; and
- Sets provisions concerning the roles of the news media in voter education.

Questions to Consider:

84. Does the law state who is responsible for and who else may conduct voter education?
  - a. If so, what is the responsibility of the EMB?
  - b. What is the responsibility of other government agencies?
  - c. Are there provisions that require the news media to conduct voter education?
  - d. Are there provisions that address the role of civil society organizations in conducting voter education?
  - e. If so, do they contain any unreasonable restrictions?
85. Do the law and regulations contain provisions for voter education concerning the voter registration process?
  - a. Concerning criteria for voter eligibility?
  - b. Concerning how to establish identity, eligibility and the processes to acquire necessary identification?
  - c. Concerning dates, times and places to register to vote, if a voter has to appear at a registration center?
  - d. Concerning the dates, times, types of information and the process by which enumerators will canvas the various locations, if the government is creating a registry based on an enumeration process?
  - e. Concerning the process by which the government will transfer voter data from the civil population registry to the voter registry?
  - f. Concerning whether there is a supplemental voter registration process and/or whether eligible voters can register on election day?
86. Do the law and regulations contain provisions for voter education concerning checking and correcting entries on the voter registry?
  - a. Concerning the dates, times and places to check and correct names?
  - b. Concerning the correction (sometimes called the claims and objections process) procedures? (E.g., correcting a voter's own information, objecting to the entry of persons a voter knows to be deceased, underage or otherwise ineligible; whether political parties, candidates, ballot initiative groups and/or other organizations may initiate a correction procedure?)

- c. Concerning reviewing the corrected voter registry or lists?
87. Do the law and regulations contain provisions concerning supplying the electorate with information about the political parties, candidates, referenda or other ballot initiatives and positions of groups that support or oppose them?
- Does the EMB have the responsibilities of producing and distributing a voter guide on these matters?
  - Are there provisions that require the news media to provide information on these matters? (E.g., requirements for the government controlled media and publicly funded media, requirements or guidelines for the privately owned media?)
  - Are there provisions requiring the military services to allow the political contestants to provide information to military personnel?
88. Do the law and regulations require voter education concerning where, when and how to vote, as well as concerning secrecy of the ballot?
- If so, what is the EMB's responsibility on these matters?
  - Are the military and any other governmental agencies required to distribute such information to their personnel?
  - Are the news media required to provide the public with information on these matters? (E.g., requirements for the government controlled media and publicly funded media, requirements or guidelines for the privately owned media?)

#### LEGAL RECOGNITION AND STATUS OF POLITICAL PARTIES

**Goals: Ensure freedom of political association and political pluralism.**

*Criteria or Indicators - The Legal Framework:*

- Sets rules that are consistent with international principles for legal recognition of political parties and other political organizations;
- Provides due process protections against undue restrictions and/or arbitrary application of legal provisions;
- Provides clear rules for disclosing financing and expenditures; and
- Establishes transparency in party recognition and legal status.

*Questions to Consider:*

89. Does the constitution contain provisions that pertain to political party formation, legal recognition and/or functioning?
- If so, what are they?
90. Is there a separate law on political parties and other political organizations? (E.g., candidate support groups and groups that support or oppose referenda or other ballot initiatives?)
- If so, is it consistent with constitutional provisions?
  - Does it contain provisions that affect the roles of parties in the electoral context?
  - If so, how, and do the provisions correspond with international principles?

91. What provisions are there in the election law and regulations that pertain to political parties and other political organizations?
  - a. Are they consistent with constitutional provisions?
  - b. Are they consistent with the political party law?
  - c. If not, which law controls?
  - d. Are they consistent with international principles?
92. What governmental body receives applications for legal recognition, and what body makes the decision on recognition?
93. What are the requirements for a party or other political organization to receive legal recognition?
  - a. What documentation must accompany an application?
  - b. Is there a time limit on how long an application may be considered before a decision is made?
  - c. On what grounds can an application be rejected under the law?
  - d. If the application is rejected, must reasons be presented in writing to the party or other political organization?
  - e. Do rejected parties and other political organizations have the opportunity to correct faulty applications?
  - f. Do they have the right to appeal rejections?
  - g. If so, what is the appeal procedure and timing?
94. Can a party's or other political organization's legal status be suspended or terminated?
  - a. If so, under what circumstances?
  - b. Who makes the determination?
  - c. What procedure is required?
  - d. Is there an appeals process?
  - e. How long can a suspension last?
  - f. What process is provided for reinstatement to full legal status?
95. Are there restrictions on the platforms of political parties and other political organizations?
  - a. If so, what are they?
  - b. Are they consistent with constitutional provisions?
  - c. Are they consistent with international principles for freedom of expression?
96. Do the laws contain provisions concerning the methods by which political parties select their candidates for elections?
  - a. Are primary elections required?
  - b. Are there provisions on selection of candidates by party conventions, caucuses or other means?
  - c. Are there requirements concerning women or minority candidates? (E.g., quotas, requirements for specific placement on party lists in proportional representation systems, separate voting for women and/or minority candidates?)
97. Do political parties and other political organizations receive government funds or other direct government support? (E.g., offices, telecommunications, transportation, etc.?)
  - a. If so, what are the requirements for receipt of funds or support?
  - b. Is the provision of such funding and support consistent with international principles concerning fairness and nondiscrimination?
98. Are political parties and other political organizations required to report income and expenditures?

- a. If so, when are reports due?
  - b. To whom are the reports due?
  - c. Is any of the information available publicly?
  - d. What penalties or other accountability measures are there to help enforce reporting and financing related requirements?
99. Do political parties and other political organizations have to meet certain requirements in order to compete in elections? (E.g., having received a threshold percentage of votes in a previous election, collection of signatures on petitions, minimum support indicated on opinion polls?)
    - a. If so, are these procedures consistent with international principles?
  100. Can the participation of parties and other political organizations in an election be terminated during the election campaign period?
    - a. If so, under what circumstances?
    - b. Is there an appeals process?
    - c. Are these procedures consistent with international principles?
  101. Are the procedures relating to political parties and other political organizations open to monitoring by representatives of the parties, organizations, domestic election monitoring, news media and international election observers?

#### BALLOT QUALIFICATION

**Goals: Ensure a genuine opportunity to exercise the right to be elected and apply proper criteria for candidacy and listing on the ballot.**

Criteria or Indicators - The Legal Framework:

- Sets clear criteria, consistent with international principles, for eligibility of political parties and candidates to stand for election to public office;
- Sets clear criteria, consistent with international principles, for qualification of referenda and other ballot initiatives to be presented at an election;
- Provides a ballot qualification process that is free from undue restrictions and arbitrary or discriminatory application; and
- Establishes a clear and realistic timeline for ballot qualification.

Questions to Consider:

102. What are the requirements set forth in the constitution and the election law concerning eligibility to seek elected offices?
  - a. Are they consistent with each other?
  - b. Are they consistent with international principles concerning the right to seek election and nondiscrimination?
103. Are there requirements in other laws that affect qualification to seek elected office? (E.g., the political party law, criminal law, bankruptcy law?)
  - a. Are they consistent with the constitution?
  - b. Are they consistent with the election law, and if not which law controls?
  - c. Are they consistent with international principles?

104. Who may nominate parties, candidates, referenda and ballot initiatives for the ballot? (E.g., parties must submit names of party candidates, and certain party officials must sign the application, self-nomination, nomination by a group of citizens?)
105. Does the law provide that citizens may challenge the qualification for the ballot of a party, candidate or referendum or other ballot initiative?
  - a. If so, what are the requirements for making a challenge?
  - b. What are the elements of the process for processing such challenges?
106. Does the law regulate how political parties may select candidates for the ballot and for election?
  - a. If so, are the requirements consistent with international principles?
107. Are non-party, independent candidates permitted to be listed on the ballot?
  - a. If so, what are the requirements?
  - b. Are they consistent with international principles concerning the right to seek election?
108. At what stage in the election process does application for listing on the ballot take place?
109. How long is the ballot qualification process open?
110. How long before the election are the final decisions for ballot qualification announced?
111. What are the elements of the ballot qualification process?
  - a. When the parties, candidates and referendum and ballot initiative groups apply for inclusion on the ballot, what materials do they have to submit?
  - b. Does the application require filing names and information about party leaders, candidate support group leaders or referendum and ballot initiative group leaders?
  - c. If so, is the information required overly burdensome or irrelevant to seeking election?
  - d. Is financial disclosure information required concerning the prospective candidate and that person's family members?
  - e. If so, are the requirements unreasonable?
  - f. Is a monetary deposit or fee required?
  - g. If so, does the fee present an overly burdensome barrier to seeking to be elected?
  - h. Are signatures required to demonstrate support for ballot qualification?
  - i. If so, how many?
112. If signatures demonstrating support for ballot qualification are required, are the requirements overly burdensome?
  - a. Are voters restricted to signing in support of ballot qualification of only one party or candidate, which is inconsistent with promoting pluralism and ballot secrecy and places an unfair burden on signature collectors to verify that persons only sign one ballot petition?
  - b. Do the number of signatures required, in light of timelines for signature collection and national conditions, create an undue burden?
  - c. If signatures must represent geographic or other diversity, are the requirements unreasonable?

113. What is the process for verifying the genuineness of signatures and their compliance with the law?
  - a. Who conducts this verification procedure?
  - b. Is the signature verification process realistic? (E.g., the timelines, number of persons and other resources assigned to the task and the methodologies are appropriate?)
  - c. Do the political parties, candidates and referenda and other ballot initiative groups have the right to observe the signature verification process?
  - d. Do domestic nonpartisan election monitors and news media have the right to monitor the signature verification process?
  - e. Do international election observers have the right to witness the signature verification process?
114. If signatures are ruled invalid, do the qualification procedures safeguard the party, candidate or initiative group affected?
  - a. If a signature is ruled invalid, do the valid signatures on the petition still count toward ballot qualification, or are they arbitrarily ruled invalid?
  - b. If a signature is ruled invalid, is there a way for the affected party, candidate or group to appeal the ruling?
  - c. If the number of signatures ruled invalid is high enough to cause the party, candidate or ballot initiative group to fail to meet ballot qualification requirements, is there an opportunity for them to submit additional signatures before the qualification process expires?
115. Are there any restrictions on platforms that would cause disqualification for being listed on the ballot? (E.g., advocating war or violence, succession, hatred based on race, color, ethnicity, gender, religion, political or other opinion or other status?)
  - a. If so, what are they?
  - b. Are they consistent with the constitution?
  - c. Are they consistent with international principles for restriction on political expression?
116. Does the law contain provisions concerning candidatures of women or specific population groups?
  - a. Are there quotas of women candidates, separate ballots for women candidates or requirements for the intervals at which women must appear on party lists?
  - b. If so, are the provisions consistent with international principles?
  - c. Are there quotas for minority group members, separate ballots for minority groups or other ballot requirements concerning qualification of candidates from minorities?
  - d. If so, are the provisions consistent with international principles?
117. What are the rules regarding candidate withdrawal?
  - a. When can a candidate withdraw from the ballot?
  - b. Must a candidate state reasons for the withdrawal? If so, what are the acceptable reasons?
  - c. Does anyone have the power to replace the candidate with another one, and if so who has that power?
118. Can a person be nominated as a candidate for more than one party?
119. Are there requirements for electoral coalitions or alliances, and how do they affect ballot qualification and appearances on the ballot?

120. Are candidates and/or parties assigned symbols to appear on the ballot?
  - a. If so, do the provisions limit possibilities for confusion of symbols?
  - b. How are symbols assigned?
  - c. When are symbols assigned?
  - d. Does the timing allow sufficient opportunity for campaigning for support?
121. Do candidates and/or parties have an opportunity to review sample ballots and seek corrections before their production?
  - a. If so, what is the procedure?
  - b. Who makes the final determination about ballot appearance?
122. What is the process for reviewing the wording of referenda and other ballot initiatives?
  - a. Who has the final authority to rule on the wording of referenda and other ballot initiatives?
  - b. Do citizens have the right to challenge the wording or the appearance of referenda and other initiatives on the ballot?
  - c. Do referendum and ballot initiative groups have the right to appeal rulings on ballot qualification and wording of referenda and other ballot initiatives?
123. Do political parties, candidates and referendum and other ballot initiative groups have the right to observe ballot production and distribution?
124. Do domestic nonpartisan election monitors and news media have the right to observe ballot production and distribution?
125. Are international election observers allowed to witness ballot production and distribution?

### ELECTION CAMPAIGN

**Goals: Ensure that those seeking election or supporting or opposing referenda and other ballot initiatives are free and have fair conditions to organize, impart information and seek electoral support, and ensure that citizens are able to learn about those who are seeking election and understand that they may make their electoral choices free from intimidation, threat of retribution and other forms of coercion.**

Criteria or Indicators - The Legal Framework:

- Requires political impartiality of electoral and other governmental officials concerning the use of government resources, use of government employees' time on their jobs, assigning permits and all other matters regarding campaigning activities by electoral competitors;
- Requires strict adherence to equality before the law and equal protection of the law in safeguarding the rights of electoral contestants and their supporters and in provision of effective remedies for violations of their rights;
- Sets requirements for respecting freedom of peaceful assembly, association, movement and political expression in relation to campaigning for electoral support; and
- Requires conditions where the electorate may seek and receive information from the electoral competitors and the electoral competitors may impart information and seek support of the electorate, all free from violence and any form of coercion.

Questions to Consider:

126. Do the law and regulations prohibit using government resources for the advantage of any electoral contestant?
  - a. If so, what are the penalties for violating this provision?
  - b. What are the provisions for enforcing the requirement?
  - c. Are there provisions requiring public reports on the application of these rules?
127. Is there a prohibition against candidates currently in the government using benefits of their positions for electoral gain?
  - a. If so, what are the penalties for violating this provision?
  - b. What are the provisions for enforcing the requirement?
  - c. Are there provisions requiring public reports on the application of these rules?
128. Do the law and regulations prohibit government officials, including military officers and police commanders, from pressuring or coercing subordinates to support, take actions on behalf of, or otherwise campaign for a particular political contestant?
  - a. If so, what are the penalties for violating this provision?
  - b. What are the provisions for enforcing the requirement?
  - c. Are there provisions requiring public reports on the application of these rules?
129. Do the law and regulations prohibit government employees from campaigning for any electoral contestant during the hours of their employment?
  - a. If so, what are the penalties for violating this requirement?
  - b. What are the provisions for enforcing this requirement?
  - c. Are there provisions requiring public reports on the application of these rules?
130. Do the law and regulations prohibit discrimination and arbitrary decisions in the assignment of permits and government facilities to assemble and to demonstrate support for electoral contestants?
  - a. Are there means for political contestants to appeal decisions concerning such matters?
  - b. Does the appeals process provide for timely rulings?
131. What is the length of the official election campaign period?
  - a. Is this set by the constitution, law or regulation?
  - b. Is campaigning for electoral support allowed before the beginning of the official campaign period?
  - c. If not, what are the penalties for campaigning, and are there provisions to ensure that they are fairly enforced?
  - d. Do such restrictions correspond to international principles for political expression?
  - e. Does the law require the campaign to end a certain number of days before election day?
  - f. If so, how many days, and what activities are prohibited?
  - g. Do such restrictions correspond to international principles for political expression?
132. Do the law and regulations contain prohibitions against anyone interfering with, disrupting or preventing campaign activities or using violence against any candidate, campaign activist or participant?
  - a. If so, what are the penalties?
  - b. What are the enforcement mechanisms of the EMB and other administrative bodies?

- c. If criminal prosecutions are taken concerning such matters, may administrative actions also go forward?
  - d. If members of political parties, candidate support groups or referendum and other ballot initiative groups are held to be responsible, are parties, party leaders, candidates and leaders of referendum and other ballot initiative groups also subject to penalties?
  - e. If so, do the penalties correspond with international principles?
133. Is there a code of conduct for the election campaign?
- a. If so, is it contained in the electoral law, or is it a voluntary code?
  - b. What issues does it address?
  - c. Does it apply to parties, candidates and referendum and other ballot initiative groups?
  - d. Do parties have to sign the code?
  - e. How is it enforced?
  - f. Does it contain a mechanism to raise grievances for violations of the code?
134. Do the law or regulations provide for government security teams to be assigned to any candidates?
- a. If so, are the provisions consistent with international principles for freedom of movement, political expression and nondiscrimination?
135. Are there restrictions on the printed, broadcast or Internet materials that political parties, candidates and referendum or other ballot initiative groups can distribute during the campaign?
- a. If so, what are they?
  - b. Do the restrictions correspond to international principles?
136. Are there restrictions on canvassing in public places? (E.g., government controlled parks, squares and arenas, schools, commercial shopping malls?)
- a. If so, do the restrictions correspond to international principles for restrictions of freedom of expression?
137. Are there restrictions on public meetings, demonstrations/rallies?
- a. If so, do the restrictions correspond to international principles for freedom of peaceful assembly, association and political expression?

### CAMPAIGN RESOURCES

**Goals: Ensure fair conditions for exercising the right to seek to be elected and provide the electorate with information that is relevant to making electoral choices.**

Criteria or Indicators - The Legal Framework:

- Provides for fair and equitable access to state owned or controlled facilities for election campaign activities;
- Provides for fair and equitable allocation of public financing for election campaigning, where public funds are made available;
- Sets clear rules and equal treatment of electoral competitors concerning private contributions for election campaigning, where such contributions are allowed; and
- Sets clear rules and equal treatment for electoral contestants concerning campaign expenditures, where such requirements are provided.

Questions to Consider:

138. Do the law and regulations include clear provisions stating that the allocation of all state controlled facilities for meetings, rallies and other campaign activities must be done on an equal basis among the electoral contestants?
139. Is public funding provided to electoral contestants for campaigning?
  - a. If so, is this done on the basis of equal funding or based on a fair and equitable formula that provides fair treatment?
  - b. Do such provisions correspond to international principles for nondiscrimination?
140. If private contributions are permitted to fund election campaigning, do the law and regulations provide for equal treatment of all electoral contestants?
141. Do the law and regulations limit private campaign contributions?
  - a. Do such limits apply to “in kind” contributions of supplies, materials and other matters?
  - b. What are the mechanisms for enforcing such limits?
  - c. Do the limitations correspond to international principles for campaign regulation of political expression?
142. Do the law and regulations provide that political parties, candidates and groups supporting or opposing referenda and other ballot initiatives must file reports disclosing campaign contributions and/or campaign expenditures?
  - a. If so, what types of information are required?
  - b. When and how often does such information have to be reported?
  - c. What government agency receives such reports?
  - d. Are reports made available to the public?
  - e. If so, how soon after they are filed and by what medium? (E.g., Internet posting, paper copy?)
  - f. What are the penalties for failure to file reports or filing incorrect or false reports?
  - g. How are the provisions enforced?

**MEDIA**

**Goals: Ensure fair and equitable treatment of the electoral contestants and help ensure the electorate receives sufficient, accurate information about the electoral contestants and about issues that are important to the election, so that voters may make an informed choice.**

Criteria or Indicators - The Legal Framework:

- Prohibits government officials from exerting pressures on the media to provide an advantage to any particular electoral contestant and prohibits retribution against journalists and media personnel for providing accurate and balanced coverage of electoral contestants and issues that are important in the electoral context;
- Sets requirements for unpaid access to government owned or controlled media on a fair and equitable basis for political parties, candidates and groups supporting or opposing referenda and other ballot initiatives;

- Sets requirements for purchase of paid political advertisements on an equal basis for all electoral contestants;
- Provides for equitable access by all electoral contestants to independent publically funded and privately funded media;
- Provides rules for accurate and balanced news coverage of all electoral contestants in government owned or controlled media;
- Provides guidelines for accurate and balanced news coverage of all electoral contestants on independent publically funded and private media; and
- Establishes mechanisms for electoral contestants to seek redress in the event their electoral rights are infringed by the media.

*Questions to Consider:*

143. Do the law and regulations prohibit government censorship of the media concerning any electoral related matters?
144. Do the law and regulations prohibit government officials from exerting any pressures against the media in order to obtain an advantage or to harm the interests of any of the electoral contestants?
  - a. Does the prohibition address offering or threatening to withhold government subsidies or advertisements, access to newsprint, broadcast licensing and similar matters?
  - b. Does it address threatening or initiating libel and criminal libel actions?
145. Are there provisions in the media law or other laws that cover such matters?
  - a. If so, are the provisions consistent with the constitution?
  - b. Are such provisions consistent with the election law?
  - c. If not, which law controls?
  - d. Are the provisions consistent with international principles concerning media freedoms?
146. Does the law limit media liabilities during an election campaign for re-publishing statements of electoral contestants?
147. Do the laws and regulations provide for access to government owned and controlled media for all electoral contestants?
  - a. If so, is the access provided on a fair and equitable basis?
  - b. If different categories of contestants are established and different amounts of time are provided to contestants in the categories, is the minimum amount of time provided sufficient for voters to understand the contestant's basic electoral platform?
  - c. If different categories of contestants are established, are there clear, objective and fair criteria for placing electoral contestants into different categories?
  - d. Do the criteria correspond to international principles for political expression and non-discrimination?
  - e. Do the rules provide the sides supporting and opposing referenda and other ballot initiatives sufficient access for voters to understand the pros and cons of the referendum and ballot issues?
  - f. Do the rules provide equal time for those supporting and opposing a referendum or other ballot initiative?
  - g. Do the laws and regulations provide a clear and fair method for assigning broadcast times and print space to the electoral contestants, including those supporting and opposing referenda and other ballot initiatives?

- h. Are the media times and space assigned convenient for voters to learn about the contestants?
- 148. Do the laws and regulations provide clear requirements for independent public media and private media to provide unpaid access to electoral contestants on a fair and equitable basis?
  - a. If so are rules for assigning access times or space consistent with international principles for political expression?
- 149. Do the laws and regulations provide for paid political advertisements?
  - a. If so, do they require that all electoral contestants must be charged the same fees for advertisements?
  - b. Do the laws and regulations require that the fees for political advertisements must not exceed normal commercial advertising rates?
- 150. Do the laws and regulations require that government owned or controlled media must provide accurate and equitable news coverage of all electoral contestants?
  - a. Do they require that activities of high government officials be counted as coverage of electoral contestants?
  - b. Do the rules include provisions concerning order of electoral contestants in broadcast coverage and placement in print media?
  - c. Do the rules include the lengths of coverage of the electoral contestants?
  - d. Do the rules address types of broadcast footage, size of photos, use of personal voice and direct quotes?
- 151. Do the laws and regulations require that government owned or controlled media make clear distinctions and separations between news coverage and editorial opinion?
- 152. Do the laws and regulations present clear guidelines on the foregoing issues concerning news coverage of electoral contestants that are applicable to independent publicly funded and privately funded media?
- 153. Do the laws and regulations address mechanisms for ensuring effective remedies if the rights of electoral contestants are violated by the news media? (E.g., expedited complaints process concerning implementation of media access rules, paid political advertising rules and rules concerning news coverage?)
  - a. If so, what entity considers such complaints and awards effective remedies?
  - b. Are the right to reply, corrections and retractions among the remedies available?
  - c. Can the EMB/regulatory body order government owned or controlled media to provide additional time to an electoral contestant to create more even amounts of access or coverage?
- 154. Do the laws and regulations address special electoral information activities, such as debates, town meetings and other forums?
  - a. If so, are there clear rules for ensuring fair and equitable treatment of the electoral contestants?
- 155. Do the laws and regulations address requirements for the media to broadcast or print voter education materials provided by the EMB or other sources?
- 156. Do the laws and regulations address reporting results of public opinion surveys?(E.g., disclosing who funded the survey, its dates, sample size, margin of error and confidence interval?)

- a. If so, do the rules correspond to international principles for freedom of expression?
157. Do the laws and regulations address coverage of election day processes, including voting, counting, tabulation, projections of results and official results?
- a. If so, do the rules correspond to international principles for freedom of expression?
158. Does the government officially recognize and credential certain reporters for access to government events and facilities?
- a. If so, how are credentials obtained, and are there safeguards in the credentialing process to prevent coercion to gain favorable coverage or damaging coverage of specific electoral contestants?
159. Are there self-regulatory associations of journalists and/or media owners?
- a. If so, do they provide a complaint mechanism and remedies that voters and electoral contestants can employ?

## VOTING

**Goals: Ensure that all eligible voters have a genuine opportunity to freely cast a secret ballot, illegal voting is prevented, the will of the voters is registered, fraud is prevented and transparency provides a basis for public confidence in the electoral process.**

### Criteria or Indicators - The Legal Framework:

- Establishes procedures to secure violence free, intimidation free and coercion free environments inside and around polling sites;
- Provides an equal and genuine opportunity to vote to women and men, minority and majority population groups, young and older people, illiterate people and people with physical challenges and disabilities;
- Sets identification and voting procedures that prevent disenfranchisement, illegal voting and ballot box stuffing or equivalent fraud in electronic technologies;
- Sets procedures to ensure the secret ballot;
- Establishes mechanisms to guarantee ballot security before, during and after voting takes place;
- Provides for the presence and unhindered access to all procedures - except secret balloting - for representatives of political parties, candidates, groups supporting and opposing referenda and ballot initiatives, domestic nonpartisan election monitors, news media and international election observers; and
- Establishes mechanisms to fix election day problems immediately and procedures concerning electoral complaints.

Questions to Consider:

160. Do the law and regulations provide a security framework for polling sites and surrounding areas on election day?
  - a. If so, who is in charge of the security arrangements outside the polls?
  - b. Do security arrangements for outside the polls address prevention of intimidation of voters, vote buying and other forms of coercion?
  - c. Who is in charge of security arrangements inside polling sites?
  - d. Are police and military prohibited from entering polling sites unless asked by electoral officials?
  - e. Once asked, who determines when they should leave?
  - f. Are unauthorized persons prohibited from entering and remaining inside polling sites?
161. Do the law and regulations provide criminal charges and penalties for electoral related violence, intimidation, coercion, vote buying, illegal voting, ballot box stuffing, ballot box stealing or destroying and other forms of fraud?
  - a. If so, what are the penalties?
162. Do the law and regulations provide that the chief electoral officer at a polling site has the power to control proceedings and remove anyone who disrupts or blocks the proceedings?
  - a. If so, are security personnel obliged to follow the electoral official's instructions and requests for assistance?
163. Does voting take place on a single day or over multiple days?
  - a. If polling is over multiple days, how many days?
  - b. What are the requirements for maintaining ballot security before, during and following voting day or days?
  - c. Are eligible people allowed to cast ballots by mail, by going early to a special facility, by mobile ballot box taken to sick and otherwise immobile voters or other special voting procedures?
  - d. What are the requirements for maintaining ballot security before, during and following such special voting procedures and for guaranteeing secrecy of the ballot?
  - e. Are there special polling sites for military personnel on bases and/or ships at sea, people in hospitals and/or persons in prisons?
  - f. What are the requirements for maintaining ballot security and secrecy of the ballot in such locations?
164. What are the voting hours?
  - a. Are they sufficient to allow all eligible citizens a genuine opportunity to vote?
165. What are the requirements for locating polling sites?
  - a. Do the requirements correspond to international principles against discrimination concerning women and minority groups?
166. Are polling sites required to be accessible to voters with physical challenges and disabilities?
167. How many voters are assigned to polling sites, and can the maximum number be easily processed in the number of hours provided and in light of national voter turnout times and rates?
168. What are the procedures for informing voters of their polling site and are they sufficient to adequately inform voters?
169. Are there provisions requiring voter education signs or directions at the polling site?

170. Does the ballot contain symbols for the electoral contestants so that illiterate people can easily identify their electoral choice and cast a secret ballot?
171. Are there special balloting procedures for blind people, so that they can make their electoral choice by secret ballot?
172. Does the law require that electoral officials account for all ballots before voting begins and demonstrate to all persons present that ballot boxes and voting machines contain no votes?
173. Do the law and regulations require election officials to maintain control over all unused and spoiled ballots, as well as control of the ballot boxes or voting machines, throughout and following the voting process and to account for all ballots originally provided to the polling site?
174. Do the law and regulations require election officials to reconcile the number of voters who cast ballots with the number who signed the voter list for the site?
175. Do the law and regulations require an action by polling site officials to validate a ballot before it is issued to a voter?
  - a. If so, is the procedure easily executed?
  - b. Is it likely to be free of partisan interference with voting procedures?
176. Do the law and regulations provide for use of electronic voting machines?
  - a. If so, is a voter verified paper audit trail required for each vote?
  - b. Is secrecy of the ballot ensured should voters request assistance in using the machines?
  - c. Must party representatives, candidates, groups supporting or opposing referenda and other ballot initiatives, as well as domestic nonpartisan observers be allowed to monitor the set up and activation of the electronic equipment and verification that it is properly running?
  - d. Do the law and regulations provide that such representatives be provided access to monitor the design, testing, certification, procurement, election official training and delivery phases of putting electronic technologies into place?
  - e. Are election officials required to follow clear and specific procedures during the voting process?
  - f. Are security procedures clearly set concerning the electronic technology?
  - g. Is polling day testing required of a random sample of electronic voting machines in a manner that protects security of the vote registered on the machines?
  - h. Are clear and secure troubleshooting procedures provided concerning the machines?
  - i. Are voters provided the alternative of using a paper ballot?
  - j. Must a sufficient number of paper ballots be on hand at the polling site in case they are needed if voting machines breakdown or malfunction?
177. Do the law and regulations provide clear and reasonable means for establishing a prospective voter's identity and eligibility to vote? (E.g., a voter registration card or other government issued identification or other document that establishes name, residence and other criteria?)
  - a. Are required identity documents easily available to all prospective voters in order to prevent disenfranchisement?

- b. Are the required identity documents a reliable means of preventing impersonation of eligible voters?
178. If a person establishes her or his identity but that person's name and other information is not on the official voter list, is there a method for the person to cast a ballot?
    - a. Can such persons apply to a court or election authority to establish eligibility and polling site assignment and return with a certification entitling the person to cast a regular ballot?
    - b. Are there procedures for such persons to cast provisional, challenged or tendered ballots and later validate its being included in the official results?
    - c. Do such procedures protect against disenfranchisement and illegal voting?
  179. Do the law and regulations provide clear procedures to protect casting a secret ballot?
    - a. Does the law require that a private place be provided to mark a ballot or indicate an electoral choice on a machine, where no one can see or otherwise determine how a person voted?
    - b. If electronic technologies are used in the election process, is it impossible to link the electronic voter book with the electronic voting machines to determine how persons voted, and is it impossible to otherwise identify how a person voted?
    - c. If sequential numbers appear on ballots and ballot counterfoils, is it impossible to trace how a person voted?
  180. Do the law and regulations provide procedures to guard the ballot box or voting machines in a way that secures the secret ballot, and guard against a person leaving the polling site with an unmarked ballot or ballots?
  181. Do the law and regulations establish procedures to prevent multiple voting? (E.g., requiring voters to sign the voter list, marking the person's voter registration card and/or placing ink on a voter's finger before she or he leaves the polling site?)
  182. Are there provisions defining the circumstances in which voting at a polling site can be adjourned or closed?
    - a. If so, what are they?
    - b. Who has the decision making authority?
    - c. Is there an appeals procedure and/or way to ensure extra hours are added to vote at the site?
  183. Do the law and regulations provide for representatives of the political parties, candidates and groups supporting or opposing referenda and other ballot initiatives to be present from the time the polling site prepares to open until it completes operations and closes?
    - a. If so, do they have the right to witness and monitor all procedures in the polling site?
    - b. Are they allowed to raise concerns and seek remedies on the spot?
    - c. Can they challenge the eligibility of a prospective voter?
    - d. Do challenge procedures safeguard against disenfranchisement of eligible voters?
    - e. Are the representatives allowed to file complaints and seek remedies before, during and/or after voting takes place?

184. Do the law and regulations provide for the presence of domestic nonpartisan election monitors?
  - a. If so, do they have the right to monitor all procedures in the polling site?
185. Do the law and regulations provide for the presence of news media in the polling sites?
  - a. If so, do they have the right to witness all procedures in the polling site?
186. Do the law and regulations provide for the presence of international election observers in the polling sites?
  - a. If so, do they allow them to witness all procedures that take place in the polling site?

### VOTE COUNTING

**Goals:** Ensure that the will of the voters is accurately and honestly counted, recorded and reflected in the official results, fraud is prevented and transparency procedures provide a basis for public confidence in the process.

*Criteria or Indicators - The Legal Framework:*

- Sets clear procedures to secure ballots and sensitive materials in preparation for ballot counting;
- Provides for counting in an open and transparent manner that allows verification by representatives of political parties, candidates, groups supporting and opposing referenda and other ballot initiatives, domestic nonpartisan election monitors, news media and international observers;
- Provides safeguards against improper rulings on ballot invalidity, crediting votes to the wrong electoral contestants, improper and/or inaccurate recording of voting results and improper and/or inaccurate transmission and consolidation of results;
- Safeguards the accurate reporting of results; and
- Provides mechanisms for lodging complaints about vote counting, tabulation and reporting of results, including challenges to electoral outcomes, and provides effective remedies.

*Questions to Consider:*

187. Are representatives of political parties, candidates, groups supporting or opposing referenda and other ballot initiatives, nonpartisan domestic election monitors, media and international observers permitted to observe all procedures concerning counting, recording, transmission of vote tallies and transportation of sensitive electoral materials, including ballots and electronic devices that recorded votes and voter turnout?
  - a. If so, are clear procedures provided to allow representatives of the electoral contestants, including those concerned with referenda and other ballot initiatives, to raise concerns about how procedures are implemented, challenge a ruling on ballot validity and/or the accuracy of the count, request recounts on the spot and/or file complaints and protests?

188. Do the law and regulations set clear procedures for ending the voting process and securing all sensitive materials, including unused ballots and all devices that allow votes to be electronically recorded?
189. When non-electronic paper ballots are used, do the law and regulations require that the ballot box be inspected for potential tampering before it is opened?
  - a. Are the contents of the ballot box required to be observed before ballots are removed?
  - b. Is it required that ballots be taken from the box in plain view?
  - c. Is it required that each ballot be ruled valid or invalid according to clear and specific rules that honor the clear intent of the voter?
  - d. Must rulings on ballot validity be made in a manner that allows representatives of electoral contestants, media and domestic and international election observers to see the basis of the ruling?
  - e. Must decisions concerning which electoral contestant was selected by the voter be made in a manner that allows representatives of electoral contestants, media and domestic and international election observers to see the basis of the ruling?
  - f. Must ballots be sorted for the count in a manner that clearly indicates which electoral contestant was chosen on the ballot?
  - g. Must the count of the ballots and scoring of votes for each electoral contestant be done in a manner that is easily monitored by those present?
  - h. Must documents that record the official vote count for the electoral contestants be verified and signed by more than one election official, and are representatives of the electoral contestants allowed to sign the tally sheets?
  - i. Must a certified copy of each tally sheet be posted at the polling site for a number of days in a manner that is accessible to the public?
  - j. Must certified copies of the tally sheets be provided to the representatives present of the political parties, candidates, groups supporting or opposing referenda and other ballot initiatives, and must copies be provided to representatives present of the media, domestic nonpartisan election observer organizations?
190. Do the law and regulations set clear procedures that prevent disenfranchisement and illegal voting when processing provisional, challenged or tendered ballots?
  - a. When and where are such ballots reviewed and by what process?
191. When optical scanned ballots are used, do the law and regulations require that the ballots be removed from the machines in plain sight and be sorted and verified against the count registered on the machine?
192. When electronic voting machines of any type are used, do the law and regulations provide clear procedures for reconciling the votes recorded on the machines with the official record of voter turnout at the polling site? (E.g., the number of people who signed the voter registry?)
193. When electronic voting machines of any type are used, do the law and regulations set clear procedures for removing electronic devices that recorded the votes, securing them in a tamperproof manner and transporting them in accordance with clear security procedures?

194. When electronic voting is used, do the law and regulations require that a post-election verification procedure be conducted on a random sample of electronic voting machines, regardless of whether there is a challenge to the official results?
195. If vote tallies are transmitted electronically (e.g., by telephone, fax or Internet) from the polling site to a central vote tabulation center, do the law and regulations provide procedures that allow easy verification of the accurate transmission and recording of the tallies at the tabulation center?
196. Do the law and regulations allow for the conduct of parallel vote tabulations (PVTs or quick counts) and exit polls by political parties, candidates, groups supporting or opposing referenda or other ballot initiatives, media, domestic nonpartisan election monitors and international election observers?
  - a. If so, are there any restrictions on such activities, and do they correspond to international principles for freedom of expression?

### RESULTS TABULATION AND RESULTS ANNOUNCEMENT

**Goals: Ensure that the will of the voters is accurately and honestly tabulated, recorded and reflected in the official results, fraud is prevented and transparency procedures provide a basis for public confidence in the process.**

Criteria or Indicators - The Legal Framework:

- Provides for result tabulation and announcement in an open and transparent manner that allows verification by representatives of political parties, candidates, groups supporting and opposing referenda and other ballot initiatives, domestic nonpartisan election monitors, news media and international observers;
- Provides safeguards against improper rulings on ballot invalidity, crediting votes to the wrong electoral contestants, improper and/or inaccurate recording of voting results and improper and/or inaccurate transmission and consolidation of results;
- Safeguards the accurate reporting of results; and
- Provides mechanisms for lodging complaints about tabulation and reporting of results, including challenges to electoral outcomes, and provides for effective remedies.

Questions to Consider:

197. When standard paper ballots and/or electronic vote recording devices are moved from the polling site to a counting center, do the law and regulations set clear security procedures for their transport?
  - a. Must representatives of the parties, candidates, groups supporting or opposing referenda and other ballot initiatives be allowed to accompany the transport, and are media, domestic nonpartisan election monitors and international observers allowed to accompany the transport?

198. Do the law and regulations provide set procedures for election officials at centers for tabulation and reporting of overall results to follow in the receiving of vote count reports, recording them, making consolidated tabulations of votes, transmission of the tabulations to centralized levels for further tabulation and/or announcement of results, and storage or transportation of sensitive electoral materials, including ballots and electronic devices that recorded votes and voter turnout?
199. Do the law and regulations provide for the presence at centers for results tabulation and determination (at all intermediate and central levels) of representatives of parties, candidates, groups supporting and opposing referenda and other ballot initiatives, media, domestic nonpartisan election monitors and international election observers?
  - a. Are such representatives permitted to observe all procedures concerning receiving of vote count reports, recording them, making consolidated tabulations of votes, transmission of the tabulations to centralized levels for further tabulation and/or announcement of results, and storage or transportation of sensitive electoral materials, including ballots and electronic devices that recorded votes and voter turnout?
  - b. If so, are clear procedures provided to allow representatives of the electoral contestants, including those concerned with referenda and other ballot initiatives, to raise concerns about how procedures are implemented, challenge a ruling on ballot validity and/or the accuracy of the count, request recounts on the spot and/or file complaints and protests?
200. If provisional ballots are reviewed, determined to be valid and included in the vote tabulation at intermediate or central vote tabulation centers, do the law and regulations provide clear procedures that safeguard against disenfranchisement and illegal voting?
  - a. Do the law and regulations require that representatives of the parties, candidates, groups supporting or opposing referenda and other ballot initiatives be able to monitor the procedures and raise concerns and challenges?
  - b. Do the law and regulations require that domestic nonpartisan election monitors, media and international observers be able to witness the procedure?
201. Do the law and regulations require that a copy of all tally sheets, showing the vote numbers entered from all levels, starting with polling site and including all intermediate levels up to the aggregated totals for each vote tabulation center (i.e., disaggregated results as well as aggregated results) be displayed for public inspection?
  - a. Is it required that certified copies of such tally sheets be provided to representatives present from parties, candidates, groups supporting and opposing referenda and other ballot initiatives, and is it also required that certified copies be provided to representatives present of the media, domestic nonpartisan election monitoring organizations and international election observers?
  - b. Is it required that disaggregated and aggregated voting results be made available in a timely manner on an EMB Internet website?
202. Are partial official voting results required to be released to the public, and if so at what intervals?
203. Do the law and regulations set a clear and reasonable timeframe for the release of preliminary official voting results?

204. Do the law and regulations set clear bases and procedures for challenging voting results at the polling site level, intermediate vote tabulation center level and the final vote result tabulation level?
205. Are there provisions for preserving ballots and other sensitive electoral materials, including electronic devices upon which votes were registered, voter verified paper trails from electronic voting, and devices that sent, received and recorded electronic transmissions of voting results?
206. What are the procedures and timing for formal declaration of the results?
207. Is a date specified for the swearing in of winning candidates following the announcement of results?
  - a. If so, under what criteria can the swearing in of winning candidates be delayed?

### COMPLAINT MECHANISMS

**Goals: Ensure due process, equality before the law, equal protection of the law and effective remedies and promote public confidence in the impartiality and competence of administrative and judicial tribunals reviewing electoral complaints and challenges.**

*Criteria or Indicators - The Legal Framework:*

- Sets clear complaint procedures for all elements of the election process that address who has standing to file complaints or other legal actions, what administrative body or court has jurisdiction concerning the complaint or other legal action, what administrative law or judicial procedures apply, including rules for burdens of proof, presenting evidence and witnesses, the timelines for filing complaints or other legal actions, processing and ruling on them and for any appeals processes;
- Provides for timely resolution of electoral related complaints and other legal actions;
- Provides redress for electoral related complaints, including effective remedies and accountability for violators of electoral rights; and
- Includes transparency mechanisms that promote public confidence in the process.

*Questions to Consider:*

208. Do the law and regulations set clear procedures for the filing of electoral complaints, challenges or other legal actions concerning all elements of the election process? (E.g., delimitation of electoral districts, party legal recognition, ballot qualification, voter registration, provisions for campaign financing, access to and treatment by the news media, campaigning activities, voting, counting and tabulation processes and determination of election outcomes?)

209. Do the laws and regulations provide that such legal actions will be determined by a competent judicial, administrative or legislative body (e.g., legislative bodies often address delimitation of election districts) and that all matters concerning fundamental rights will be provided judicial review?
210. Do the procedures set forth in the law and regulations address who has standing to file in each type of complaint, which body has jurisdiction, what administrative law or court procedures apply, including filing requirements, burdens of proof, rules of evidence and timelines for processing the legal action and for appeals procedures?
211. Are such matters also addressed in the administrative law code, civil code and/or criminal code?
  - a. If so, are the provisions consistent?
  - b. If they are inconsistent, which law controls?
  - c. Are the provisions consistent with constitutional requirements?
  - d. Do the provisions correspond to international principles concerning due process of law, equality before the law and equal protection of the law?
212. Do the provisions of the law and regulations provide effective remedies for each type of electoral complaint, challenge or other legal action?
  - a. Does the remedy correct the harm and prevent further harm in the matter addressed, including timeliness of the remedy?
213. Do the law and regulations provide for effective enforcement of remedies?
  - a. What body is charged with enforcement, and does it have adequate powers and resources to enforce the remedy?
214. Do the law and regulations address whether only individuals responsible for violations of the election law and regulations can be held accountable, or can leaders of political parties, candidates, leaders of groups that support or oppose referenda and other ballot initiatives, editors and publishers of news media, leaders of domestic nonpartisan election monitoring organizations be held liable for actions of their personnel and/or activists?
  - a. If liability can pass beyond individual actors, what penalties may be applied?
  - b. Are they consistent with constitutional requirements?
  - c. Are they consistent with international principles for freedom of association, freedom of expression, and requirements for due process of law?
215. Are there special administrative bodies within the EMB or other government agencies to process electoral complaints?
  - a. If so, how are persons appointed to the bodies?
  - b. Are there adequate safeguards to ensure an impartial and competent resolution of the complaints?
216. Are there particular courts charged with processing electoral related cases?
  - a. If so, how are the judges appointed or selected?
  - b. Are there adequate safeguards to ensure impartial and competent resolutions of the complaints?

217. Does the EMB have the power to independently investigate and take action concerning violations of the election law and regulations?
  - a. If so, what body within the EMB has such power, and do its procedures correspond to international principles for due process of law?
218. Does the EMB have a process by which citizens and electoral contestants can file complaints concerning actions by electoral officials or other governmental officials that violate electoral related rights?
  - a. If so, do the procedures provide administrative penalties for those officials who are determined to be responsible?
  - b. Are due process rights of such officials protected by the procedures?
219. Does the EMB have an internal process by which it can identify actions by electoral officials or other governmental officials that violate electoral related rights?
  - a. If so, do the procedures provide administrative penalties for those officials who are determined to be responsible?
  - b. Are due process rights of such officials protected by the procedures?
220. Do the law and regulations provide clear procedures for appeals of decisions by administrative, judicial or legislative bodies concerning electoral related complaints?
  - a. Do the procedures clearly set requirements for where appeals are to be filed, the timing for filing appeals and for processing them, the bases on which appeals bodies may reverse prior rulings, and procedures for further appeals, if any, for each type of complaint concerning all elements of the electoral process?
221. Must electoral complaint proceedings be open to the complainant and the public?
222. Must decisions on electoral complaints and appeals provide reasons for the decisions?
  - a. Must decisions on electoral complaints and appeals be in writing?
  - b. Must decisions be published?
223. Are written complaints and answers to them part of a public record?
224. Do the law and regulations clearly specify under which conditions a recount or re-election may be ordered?
  - a. What body has jurisdiction concerning recounts and re-elections?
  - b. Are clear procedures set forth concerning standing, burdens of proof, rules of evidence and timelines for processing such legal challenges?
  - c. Do the law and regulations specify clear procedures for conducting recounts and re-elections when they are ordered?
  - d. Do the procedures for recounts and re-elections provide for the presence of representatives of political parties, candidates and groups supporting or opposing referenda and/or other ballot initiatives affected by recounts or re-elections, and do they provide for nonpartisan election monitors, media and international observers?
225. Do the constitution, law and regulations provide the specific conditions under which an election may be cancelled or postponed, in whole or in part?

- a. What body has the power to order the cancellation or postponement?
  - b. Is there a procedure to appeal or review that decision?
  - c. Do the provisions correspond to international principles concerning states of emergency and concerning interruptions of democratic processes?
226. Do the law and regulations define electoral related crimes?
- a. If so, are the provisions consistent with the criminal code?
  - b. If there are inconsistencies, which law controls?
  - c. What body is responsible for prosecuting electoral related crimes?
  - d. Do the procedures safeguard due process rights of persons accused in such proceedings?
227. Do the law or regulations provide for mediation or arbitration or other non-judicial means of dispute resolution?
- a. If so, how is the process initiated?
  - b. Who or what body presides over the process?
  - c. What types of matters can the process consider?
  - d. What types of dispute resolution steps can the process provide?
  - e. Is a public record of the proceedings provided?
228. Is there a voluntary code of conduct for the political parties, candidates and other electoral contestants?
- a. Does the code of conduct provide a mechanism for electoral contestants to raise grievances concerning violations of the code, the law and regulations and/or other matters?
  - b. If yes, how is the grievance mechanism triggered, and who facilitates or presides over it?
  - c. Does the grievance mechanism have character of facilitated dialogue, mediation or other means for resolving disputes or grievances?
  - d. Is a public record of the process provided?

# Appendices



APPENDIX ONE

Places Where NDI  
Has Offered  
Commentaries on or  
Analysis of the Legal  
Framework for  
Elections

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## PLACES WHERE NDI HAS OFFERED COMMENTARIES ON OR ANALYSIS OF THE LEGAL FRAMEWORK FOR ELECTIONS<sup>1</sup>

### Africa

Burundi  
Ethiopia  
The Gambia  
Mali  
Morocco  
Mozambique  
Nigeria  
Senegal  
South Africa  
Sudan  
Zimbabwe

### Asia

Afghanistan  
Bangladesh  
Cambodia  
East Timor  
Hong Kong  
Indonesia  
Nepal  
Pakistan  
Singapore

### Central Eastern Europe

Albania  
Bosnia and Herzegovina  
Macedonia  
Montenegro  
Romania  
Serbia  
Slovakia

### Eurasia

Azerbaijan  
Georgia  
Kazakhstan  
Kyrgyzstan  
Russian Federation  
Ukraine

### Latin America and the Caribbean

Dominican Republic  
Guyana  
Haiti  
Mexico  
Paraguay  
Peru  
Venezuela

### Middle East

Jordan  
Palestinian Territories  
Yemen

<sup>1</sup> There are a significant number of additional countries where NDI included analysis of the legal framework for elections and corresponding recommendations as part of the Institute's international election monitoring statements and reports. For copies of such statements, see [www.ndi.org](http://www.ndi.org) "Access Democracy" and "Electoral Programs."

APPENDIX TWO

# Places Where NDI Has Supported Efforts of Partner Organizations to Address the Legal Framework for Democratic Elections

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## PLACES WHERE NDI HAS SUPPORTED EFFORTS OF PARTNER ORGANIZATIONS TO ADDRESS THE LEGAL FRAMEWORK FOR DEMOCRATIC ELECTIONS

Armenia	It's Your Choice (IYC) Website: <a href="http://www.iyc.am">www.iyc.am</a> Email: <a href="mailto:iyc@arminco.com">iyc@arminco.com</a>
Afghanistan	Free and Fair Elections Foundation of Afghanistan (FEFA) Email: <a href="mailto:fefa@fefa.org.af">fefa@fefa.org.af</a>
Azerbaijan	For the Sake of Civil Society (FSCS)  Election Monitoring Center (EMC) Website: <a href="http://www.smm-az.org/">www.smm-az.org/</a> Email: <a href="mailto:emcaz2001@gmail.com">emcaz2001@gmail.com</a>
Bangladesh	Fair Election Monitoring Alliance (FEMA) Email: <a href="mailto:fema@hol-online.com">fema@hol-online.com</a>
Bosnia and Herzegovina	Centers for Civic Initiative (CCI) Website: <a href="http://www.ccibh.org">www.ccibh.org</a>
Bulgaria	Bulgarian Association for Fair Elections and Civil Rights (BAFECR)
Cambodia	Committee for Free and Fair Elections (COMFREL) Website: <a href="http://www.comfrel.org">www.comfrel.org</a> Email: <a href="mailto:comfrel@comfrel.org">comfrel@comfrel.org</a>  Coalition for Free and Fair Elections (COFFEL)  Neutral and Independent Committee for Fair Elections in Cambodia (NICFEC) Email: <a href="mailto:nicfec@wicam.com.kh">nicfec@wicam.com.kh</a>
Croatia	GONG Website: <a href="http://www.gong.hr">www.gong.hr</a> Email: <a href="mailto:gong@gong.hr">gong@gong.hr</a>
Dominican Republic	Participación Ciudadana (Citizen Participation) Website: <a href="http://www.pciudadana.com/index.html">www.pciudadana.com/index.html</a>
Egypt	Egyptian Organization for Human Rights (OEHR) Website: <a href="http://www.eohr.org.eg/">www.eohr.org.eg/</a>  The Independent Commission for Electoral Review (ICER)  Ibn Khaldun Center for Development Studies (ICDS)

Ethiopia	Ab-Bu-Gi-Da
Georgia	International Society for Fair Elections and Democracy (ISFED) Website: <a href="http://www.isfed.ge">www.isfed.ge</a> Email: <a href="mailto:info@isfed.ge">info@isfed.ge</a>
Guyana	Electoral Assistance Bureau (EAB) Website: <a href="http://www.eabguyana.org.gy">www.eabguyana.org.gy</a>
Indonesia	The Center for Electoral Reform (CETRO) Website: <a href="http://www.cetro.or.id">www.cetro.or.id</a>  LP3ES Website: <a href="http://www.lp3es.or.id">www.lp3es.or.id</a>  The Indonesian Parliamentary Center  Jurdil Aceh
Iraq	Election Information Network (EIN) Website: <a href="http://www.iraqiein.org">www.iraqiein.org</a>
Jordan	The National Center for Human Rights  Al Urdon Al Jedid Research Center  Al Hayat Center for Civil Society Development Website: <a href="http://www.hayatcenter.org">www.hayatcenter.org</a> Email: <a href="mailto:info@hayatcenter.org">info@hayatcenter.org</a>
Kosovo	Reforma
Lebanon	Lebanese Association for Democratic Elections (LADE)  Civil Campaign for Electoral Reform (CCER) Website: <a href="http://www.ccerlebanon.org">www.ccerlebanon.org</a>
Madagascar	Education des Citoyens (KMF/CNOE) Email: <a href="mailto:cnoe@moov.mg">cnoe@moov.mg</a>
Mexico	Alianza Civica (Civic Alliance) Website: <a href="http://www.alianzacivica.org.mx">www.alianzacivica.org.mx</a>
Montenegro	Association of Young Journalists of Montenegro (AMN)  Center for Democratic Transitions (CDT) Website: <a href="http://www.cdtmn.org">www.cdtmn.org</a> Email: <a href="mailto:cdtmn@t-com.me">cdtmn@t-com.me</a>
Nepal	National Election Observation Committee (NEOC) Website: <a href="http://www.neocnepal.org">www.neocnepal.org</a>

Nigeria	Transition Monitoring Group (TMG) Website: <a href="http://www.tmgnigeria.org">www.tmgnigeria.org</a>
	Nigeria Bar Association (NBA) Website: <a href="http://www.nigerianbar.org">www.nigerianbar.org</a> Email: <a href="mailto:nba@nigeriabar.org">nba@nigeriabar.org</a>
	Nigeria Labor Congress (NLC) Website: <a href="http://www.nlcng.org">www.nlcng.org</a>
	Trade Union Congress of Nigeria (TUC)
Peru	Transparencia (Transparency) Website: <a href="http://www.transparencia.org.pe">www.transparencia.org.pe</a>
Romania	Asociatia Pro Democratia (Pro-Democracy Association – APD) Website: <a href="http://www.apd.ro">www.apd.ro</a>
Russian Federation	Voice Coalition (GOLOS) Website: <a href="http://www.golos.org">www.golos.org</a> Email: <a href="mailto:golos@golos.org">golos@golos.org</a>
Serbia	CeSID (Serbian Center for Free Elections and Democracy) Website: <a href="http://www.cesid.org">www.cesid.org</a>
Slovakia	Obcianske Oko (Civic Eye) Website: <a href="http://www.obcianskeoko.sk">www.obcianskeoko.sk</a>
	MEMO'98 Website: <a href="http://www.memo98.sk">www.memo98.sk</a> Email: <a href="mailto:memo98@memo98.sk">memo98@memo98.sk</a>
Sri Lanka	Movement for Free and Fair Elections (MFFE)
	People's Action for Free and Fair Elections (PAFFREL) Website: <a href="http://www.paffrel.lk">www.paffrel.lk</a>
	Centre for the Monitoring of Election Violence (CMEV) Website: <a href="http://www.cpalanka.org/election_monitoring.html">www.cpalanka.org/election_monitoring.html</a>
Thailand	PollWatch
	People's Network for Elections in Thailand (PNET)
Ukraine	Committee of Voters of Ukraine (CVU) Website: <a href="http://www.cvu.org.ua">www.cvu.org.ua</a> Email: <a href="mailto:cvu@cvu.kiev.ua">cvu@cvu.kiev.ua</a>

Venezuela	Escuela de Vecinos de Venezuela (School of Neighbors – EVV)  Queremos Elegir (We Want to Choose) Website: <a href="http://www.queremoselegir.org/">www.queremoselegir.org/</a>
Yemen	Arab Democratic Institute (ADI)
Zambia	Committee for a Clean Campaign/Foundation for Democratic Process (FODEP) Website: <a href="http://www.fodep.org.zm">www.fodep.org.zm</a> Email: <a href="mailto:fodep@coppernet.zm">fodep@coppernet.zm</a>
Zimbabwe	Zimbabwe Election Support Network (ZESN) Website: <a href="http://www.zesn.org">www.zesn.org</a> Email: <a href="mailto:zesn@africaonline.co.zw">zesn@africaonline.co.zw</a>  Zimbabwe Lawyers for Human Rights Website: <a href="http://www.zlhr.org.zw">www.zlhr.org.zw</a> Email: <a href="mailto:zlhr@icon.co.zw">zlhr@icon.co.zw</a>



APPENDIX THREE

# International Human Rights Provisions on Democratic Elections

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**Universal Declaration of Human Rights***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.

*Article 3*

Everyone has the right to life, liberty and security of person.

*Article 7*

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

*Article 8*

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

*Article 13*

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

*Article 19*

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

*Article 20*

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

*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 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.

*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 12*

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

*Article 19*

1. Everyone should 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.

*Article 20*

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

*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.

*Article 22*

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

*Article 25<sup>1</sup>*

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 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.

<sup>1</sup> Please see below, General Comment 25 of the United Nations Human Rights Committee on Article 25 of the International Covenant on Civil and Political Rights.

## **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;
- d. Other civil rights, in particular:
  - ....
  - viii. The right to freedom of opinion and expression....

### *Article 6*

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

## **Convention on the Elimination of All Forms of Discrimination Against Women**

### *Article 3*

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

### *Article 4*

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

### *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.

*Article 8*

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

**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.

**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, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

*Article 3*

1. Every individual shall be equal before the law.

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

*Article 9*

1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.

*Article 10*

1. Every individual shall have the right to free association provided that he abides by the law.

2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

**Article 11**

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

**Article 12**

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

**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.

**American Convention on Human Rights**

*Article 13. Freedom of Thought and Expression*

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other media of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

*Article 14. Right of Reply*

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

*Article 15. Right of Assembly*

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

*Article 16. Freedom of Association*

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

*Article 22. Freedom of Movement and Residence*

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

*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.

*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.

**American Declaration of the Rights and Duties of Man**

*Article IV.*

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

*Article XX.*

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

*Article XXI.*

Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

*Article XXII.*

Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

**Inter-American Democratic Charter***Article 1*

The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.

....

*Article 3*

Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

**European Convention for the Protection of Human Rights and Fundamental Freedoms***Article 10*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are proscribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

*Article 11. Freedom of Assembly and Association*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

*Article 13. Right to an Effective Remedy*

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

*Article 14. Prohibition of Discrimination*

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.

### **Protocol (No. 1) to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms**

#### Article 3. Right to Free Elections

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.

### **Protocol (No. 4) to the [European] Convention for the Protection of Human Rights and Fundamental Freedoms**

#### *Article 2. Freedom of Movement*

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

### **European Charter of Local Self-Government**

#### *Article 3 – Concept of local self-government*

Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

### **Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension (the 1990 Copenhagen Document)**

....

[The participating States] recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.

....

In order to strengthen respect for, and enjoyment of, human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character, the participating States agree on the following:

....

(3) They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

....

(5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(5.1) - free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;

....

(5.10) - everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

(6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes.

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) - hold free elections at reasonable intervals, as established by law;

....

(7.5) - respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

(7.6) - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

....

(7.8) - provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE [now OSCE] participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

(9) The participating States reaffirm that

(9.1) - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright... .

(10) In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to

(10.1) - respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;

...

(10.3) - ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups;

(10.4) - allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.

(24) The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

**General Comment 25 of the United Nations Human Rights Committee on Article 25 of the International Covenant on Civil and Political Rights**

1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

2. The rights under article 25 are related to, but distinct from, the right of peoples to self determination. By virtue of the rights covered by article 1 (1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of individuals to participate in those processes which constitute the conduct of public affairs. Those rights, as individual rights, can give rise to claims under the first Optional Protocol.

3. In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State) article 25 protects the rights of "every citizen". State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.

4. Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

5. The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.

6. Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office. This right of direct participation is supported by paragraph (b). Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (b). Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government. Where a mode of direct participation by citizens is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2, paragraph 1, and no unreasonable restrictions should be imposed.

7. Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws which are in accordance with paragraph (b).

8. Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.

9. Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. Genuine periodic elections in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. Such elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors. The rights and obligations provided for in paragraph (b) should be guaranteed by law.

10. The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.

11. States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.

12. Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

13. State reports should describe the rules governing the right to vote, and the application of those rules in the period covered by the report. State reports should also describe factors which impede citizens from exercising the right to vote and the positive measures which have been adopted to overcome these factors.

14. In their reports, States parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.

15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.

16. Conditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory. If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions, (e.g., the judiciary, high-ranking military office, public service), measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b). The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures.

17. The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. Without prejudice to paragraph (1) of article 5 of the Covenant, political opinion may not be used as a ground to deprive any person of the right to stand for election.

18. State reports should describe the legal provisions which establish the conditions for holding elective public office, and any limitations and qualifications which apply to particular offices. Reports should describe conditions for nomination, e.g., age limits, and any other qualifications or restrictions. State reports should indicate whether there are restrictions which preclude persons in public-service positions (including positions in the police or armed services) from being elected to particular public offices. The legal grounds and procedures for the removal of elected office holders should be described.

19. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.

20. An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant. States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant. The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents. There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes. Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.

21. Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

22. State reports should indicate what measures they have adopted to guarantee genuine, free and periodic elections and how their electoral system or systems guarantee and give effect to the free expression of the will of the electors. Reports should describe the electoral system and explain how the different political views in the community are represented in elected bodies. Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law. The practical implementation of these guarantees in the period covered by the report should be explained.

23. Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensure that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

24. States reports should describe the conditions for access to public service positions, any restrictions which apply and the processes for appointment, promotion, suspension and dismissal or removal from office as well as the judicial or other review mechanisms which apply to these processes. Reports should also indicate how the requirement for equal access is met, and whether affirmative measures have been introduced and, if so, to what extent.

25. In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.

26. The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.

27. Having regard to the provision of article 5, paragraph 1, of the Covenant, any rights recognized and protected by article 25 may not be interpreted as implying a right to act or as validating any act aimed at the destruction or limitation of the rights and freedoms protected by the Covenant to a greater extent than what is provided for in the present Covenant.

### **ADDITIONAL INTERNATIONAL INSTRUMENTS THAT ARE IMPORTANT FOR DEMOCRATIC ELECTIONS**

In addition to the provisions of the international human rights instruments listed, there are a number of other declarations and documents of associations of states and of the associations of the legislative branches of governments that are important for democratic elections. Included among them are the following:

- African Charter on Democracy, Elections and Governance (2007, not yet entered into force);
- African Union (Organization of African Unity) Declaration on the Principles Governing Democratic Elections in Africa (2002);
- Arab Charter on Human Rights (1994, not yet entered into force);
- Declaration of Commonwealth Principles (1971) of the Commonwealth of Nations;
- The Harare Commonwealth Declaration (1991) of the Commonwealth of Nations;
- Millbrook Commonwealth Action Programme on the Harare Declaration (1995) of the Commonwealth of Nations;
- Edinburgh Communiqué (1997) of the Commonwealth of Nations;
- Convention on the Standards of Democratic Elections, Equal Rights and Freedoms of the Member States of the Commonwealth of Independent States (2002);
- Economic Community of West African States (ECOWAS) Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (2001);
- European Commission on Democracy through Law (Venice Commission) Code of Good Practice in Electoral Matters (2002);
- Charter of Fundamental Rights of the European Union (2000);
- Declaration on Criteria for Free and Fair Elections of the Inter-Parliamentary Union (1994);
- Cairo Declaration on Human Rights in Islam, Nineteenth Islamic Conference of Foreign Ministers (1990);
- Organization for Security and Cooperation in Europe (OSCE) Charter of Paris for a New Europe (1990);
- Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections (2004); and
- Norms and Standards for Elections in the SADC Region adopted by the Southern Africa Development Community Parliamentary Forum (2001).

In addition to international instruments, decisions of international human rights tribunals are important resources when developing legal frameworks for democratic elections. Appendix Four to this Guide provides briefly annotated citations to a number of cases decided by those tribunals that are relevant to democratic elections.

Resolutions of the United Nations General Assembly, reports to the General Assembly by the UN Secretary-General, protocols and resolutions of the OAS General Assembly and staff reports, handbooks and manuals of various international organizations are also relevant to developing legal frameworks for democratic elections. Selected resources from international organizations and scholars in the field that are relevant to democratic elections are listed for the reader's convenience in Appendix Five to this Guide.



APPENDIX FOUR

Annotated  
International Case  
Law Concerning  
Democratic Elections

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## ANNOTATED INTERNATIONAL CASE LAW CONCERNING EMOCRATIC ELECTIONS

### UNITED NATIONS SYSTEM

#### **United Nations Human Rights Committee**

The United Nations Human Rights Committee is established under the International Covenant on Civil and Political Rights (ICCPR or Covenant) to monitor implementation of the Covenant and the Protocols of the Covenant by the State parties to the ICCPR. The First Optional Protocol to the Covenant allows individuals to submit complaints to the Human Rights Committee against State parties that have ratified the Protocol for violations of rights recognized in the ICCPR. For an overview of the Human Rights Committee and the procedure for filing complaints, please see the websites listed below.

The Human Rights Committee publishes General Comments, which provide its interpretations of the articles of the Covenant. General Comment 25 was issued by the Human Rights Committee to interpret provisions of Article 25, which pertains largely to democratic elections. General Comment 25 is reproduced in Appendix Three of this Guide.

#### **Introduction to the Human Rights Committee**

<http://www.unhchr.ch/html/menu2/6/a/introhrc.htm>

#### **Overview of Procedure (for the HRC to consider individual complaints)**

<http://www.unhchr.ch/html/menu2/8/overcerd.htm>

#### ***UN Human Rights Committee Cases under the First Optional Protocol to the ICCPR that Are Relevant to Democratic Elections***

##### **Sinitsin v. Belarus**

CCPR/C/88/D/1047/2002, 88th Session (16/01/2007)

[http://www.bayefsky.com/doc/belarus\\_t5\\_iccpr\\_1047\\_2002.doc](http://www.bayefsky.com/doc/belarus_t5_iccpr_1047_2002.doc)

This case stands for the propositions that ICCPR Article 25's right to be elected and Article 2's requirement for provision of an effective remedy upon review by a competent authority were violated, when the Belarusian authorities disqualified signatures supporting the complainant's petition for nomination as a presidential candidate, declared the complainant's nomination invalid, and no effective remedy was available to the complainant nor was he able to challenge the rulings before an independent and impartial body.

##### **Gorji-Dinka v. Cameroon**

CCPR/C/83/D/1134/2002 (2005), 83rd Session (17/03/2005)

<http://www1.umn.edu/humanrts/undocs/1134-2002.html>

This case stands for the propositions that: the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds established by law, which are objective and reasonable; persons who are deprived of liberty by a government but who have not been convicted should not be excluded from exercising the right to vote; and persons who are otherwise eligible to stand for election should not be excluded by reason of political affiliation; therefore, the removal of the complainant's name from the voter register while he was detained but not convicted, and without other objective and reasonable grounds, violates Article 25 of the ICCPR.

**Svetik v. Belarus**

CCPR/C/81/D/927/2000, 81st Session (25/08/2004)

<http://www1.umn.edu/humanrts/undocs/html/927-2000.html>

This case stands for the proposition that Article 19 of the ICCPR is violated where person is summoned before a court and subjected to an administrative penalty (a fine) for signing a declaration published in a newspaper that in part appealed to citizens to not participate in the forthcoming local elections.

**Matyus v. Slovakia**

CCPR/C/75/D/923/2000, (22/07/2002)

[http://www.bayefsky.com/pdf/slovakia\\_t5\\_iccpr\\_923\\_2000.pdf](http://www.bayefsky.com/pdf/slovakia_t5_iccpr_923_2000.pdf)

This case stands for the proposition that where election districts for the same municipal council contain substantial differences between the number of inhabitants per elected representative, despite the election law requiring those districts to be proportional concerning the number of inhabitants and the State's constitution requiring equality of election rights, Article 25 of the ICCPR was violated.

**Gillot et al. v. France**

CCPR/C/75/D/932/2000, 75th Session (26/07/2000)

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/12769c97c02eee6ac1256c38002e171f?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/12769c97c02eee6ac1256c38002e171f?Opendocument)

This case stands for the propositions that where eligibility to vote pertains to referenda concerning self-determination of peoples, ICCPR Articles 1 and 25 must be considered together, and that a 10 year residency requirement for eligibility to vote in the referenda, which was based on an interest in ensuring that the referenda reflect the will of the population "concerned," is objective, not discriminatory in terms of ethnicity or national extraction and is proportional to the interest to be served. Therefore, no articles of the ICCPR were violated.

**Ignatane v. Latvia**

CCPR/C/72/D/884/1999, 72nd Session (31/07/01)

<http://www.unhcr.org/refworld/country,,HRC,,RUS,,3f588ef83,0.html>

This case stands for the proposition that a person struck from the list of candidates for election to city council on the basis of insufficient proficiency in the official state language suffered a violation of rights under Article 25 and Article 2 of the ICCPR.

**Paraga v. Croatia**

CCPR/C/71/D/727/1996, 71st Session (14/05/01)

<http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/43ca3525ebaeac5c1256a6c00282bd1?OpenDocument&Highlight=0,CCPR%2FC%2F71%2FD%2F727%2F1996>

This case stands for the proposition that a State party to the Optional Protocol to the ICCPR must provide effective remedies to a complainant who was denied timely trial and therefore the opportunity to stand as candidate for election.

**Debreczeny v. The Netherlands**

CCPR/C/53/D/500/1992, 53rd Session (04/04/95)

<http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/2dcdf9e50eb93c14802566e2003b534b?OpenDocument&Highlight=0,CCPR%2FC%2F53%2FD%2F500%2F1992>

This case stands for the proposition that Article 25 of the ICCPR is not an absolute right and restrictions of this right are allowed so long as they are not discriminatory or unreasonable.

**Altesor v. Uruguay**

CCPR/C/15/D/10/1977, 15th Session (29/03/82)

<http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/cad5b64ef38b37dfc1256ab5002970bb?OpenDocument&Highlight=0,CCPR%2FC%2F15%2FD%2F10%2F1977>

This case stands for the proposition that the Uruguayan Acta Institucional No. 4 of 1976 is incompatible with Article 25 of the ICCPR in that it maintains an unreasonable restriction on political rights (i.e., imprisonment of up to 15 years for "subversive association").

**Silva v. Uruguay**

CCPR/C/12/D/34/1978, 12<sup>th</sup> Session (08/04/81)

<http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/f10e81351f2b8152c1256ab20044fb61?OpenDocument&Highlight=0,CCPR%2FC%2F12%2FD%2F34%2F1978>

This case stands for the proposition that barring political groups from any political activity, including voting, for up to 15 years is an unreasonable restriction of rights enumerated under Article 25 of the ICCPR.

**THE AFRICAN SYSTEM*****The African Commission on Human and Peoples' Rights***

The African Commission on Human and Peoples' Rights is established under the African Charter on Human and Peoples' Rights (ACHPR or Banjul Charter) to protect and to promote human and peoples' rights and to interpret the ACHPR. Among the various responsibilities of the Commission is to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation. For an overview of the Commission and its procedures, please see the websites listed below.

**Introduction to the African Commission on Human and Peoples' Rights**

[http://www.achpr.org/english/\\_info/mandate\\_en.html](http://www.achpr.org/english/_info/mandate_en.html)

**Overview of Procedure**

[http://www.achpr.org/english/\\_info/rules\\_en.html](http://www.achpr.org/english/_info/rules_en.html)

***The African Court on Human and Peoples' Rights***

The African Court on Human and Peoples' Rights was established under the "Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights," which entered into force in 2004. The African Commission on Human and Peoples' Rights, a State party to the ACHPR that is lodging a complaint or a State party to the ACHPR against which a complaint has been lodged and African intergovernmental organizations may submit cases to the Court. For an overview of the Court and its procedures, please see the websites listed below.

**Introduction to the African Court on Human and Peoples' Rights**

[http://www.aict-ctia.org/courts\\_conti/achpr/achpr\\_home.html](http://www.aict-ctia.org/courts_conti/achpr/achpr_home.html)

**Overview of Procedure**

[http://www.achpr.org/english/\\_info/court\\_en.html](http://www.achpr.org/english/_info/court_en.html)

***African Commission on Human and Peoples' Rights Cases that Are Relevant to Democratic Elections******Modise v. Botswana, Case No. 97/03 (2000)***

<http://www1.umn.edu/humanrts/africa/comcases/97-93c.html>

This case stands for the proposition that ACHPR Article 13 (concerning the right to participate in government) is violated where a government denied citizenship to a person who was of that country's ancestry. The Commission noted that the complainant had founded an opposition political party and suffered a pattern of actions that appeared designed to hamper his political activity.

**THE EUROPEAN SYSTEM*****European Court of Human Rights***

The European Court of Human Rights (ECHR) is established under the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention or Convention) to monitor implementation of the Convention by the Contracting States. All 47 member countries of the Council of Europe are signatories to the Convention (Contracting States). Any individual may file an application with the ECHR, claiming that a Contracting State violated his or her rights recognized under the Convention. For an overview of the ECHR and procedures for filing applications to the Court, please see the websites listed below.

**Overview of the ECHR**

<http://www.echr.coe.int/ECHR/EN/Header/The+Court/The+Court/History+of+the+Court/>

**Instructions for Applications to the Court and Application**

<http://www.echr.coe.int/Notesfor%20guidanceApplicants/NoticeENG.pdf>

***ECHR Cases that Are Relevant to Democratic Elections*****Georgia Labor Party v. Georgia (8/7/08)**, (App. No. 9103/04)

<http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=71576&sessionId=4507150&skin=hudoc-en&attachment=true>

This case stands for the propositions that: a party, as well as an individual, may validly claim that its right to a free election under Article 3 of Protocol 1 of the ECHR was violated by state action; on balance, in the circumstances of Georgia's February 2004 "repeat" parliamentary elections, the introduction of a new voter registration system did not violate Article 3 of Protocol 1 of the ECHR; though election commissions at all levels lacked sufficient independence from outside political power, given the absence of any proof of acts of abuse or fraud committed by the commissions, no breach of the right to stand for election was established; the decision of the Central Election Commission to annul the election results in Georgia's Khulo and Kobuleti electoral districts was not made in a transparent and consistent manner, was done without any valid justification and resulted in de facto disenfranchisement of a significant section of the population, which violated the complainant party's right to stand for election under Article 3 of Protocol 1 of the ECHR.

**Yumak & Sadak v. Turkey (8/7/08)**, (App. No. 10226/03)

<http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=71601&sessionId=4507150&skin=hudoc-en&attachment=true>

This case stands for the proposition that Turkey's requirement that political parties receive at least 10 percent of the national vote in order to qualify for the distribution of any parliamentary seats (a 10 percent "threshold"), in the national circumstances does not violate Article 3 of Protocol 1 of the HCHR, though as a matter of policy the Court concurred with other organs of the Council of Europe that the threshold appears excessive and should be lowered.

**Russian Conservative Party of Entrepreneurs and Others v. Russia (11/1/07)**, (App. No. 55066/00, 55638/00)

<http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/233813e697620022c1256864005232b7771e3d4a4233cbc2c1257264003cd73b?OpenDocument>

This case stands for the proposition that where a party's entire list of candidates is refused registration because certain people on the list provided incorrect information on their application, and the subsequent involuntary "withdrawal" of such candidates was used as a basis for the lists' disqualification, and where a domestic court order to reinstate the list was reversed by supervisory review proceedings of a higher court, there is a departure from legal certainty and a disproportionate action in violation of Article 3 of Protocol 1 of the ECHR.

**Py v. France (11/01/05)**, (App. No. 66289/01)  
<http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/1d4d0dd240bfee7ec12568490035df05/855a8b88c60b23bfc1256f8500305d8f?OpenDocument>

This case stands for the proposition that a 10 year residency requirement imposed on voting eligibility in New Caledonia in advance of a self-determination referendum does not violate a resident's right to vote under Article 3 of Protocol 1 of the ECHR, even if the person is rendered ineligible to vote, because of the stated government interests in the particular circumstances.

**Hirst v. United Kingdom (6/10/05)**, (App. No. 74025/01)  
<http://www.echr.coe.int/Eng/Press/2005/Oct/GrandChamberJudgmentHirstvUK061005.htm>

This case stands for the proposition that a general, automatic and indiscriminate restriction stripping convicted prisoners of their right to vote, including a wide range of offenders and imposed sentences, is not proportionate to governmental interests and violates Article 3 of Protocol 1 of the ECHR.

**Melnichenko v. Ukraine (19/10/04)**, (App. 17707/02)  
<http://www.echr.coe.int/Eng/Press/2004/Oct/ChamberJudgmentMelnichenkovUkraine191004.htm>

This case stands for the proposition that denial of registration of a candidate for parliament, who had lived for five years outside the country and filed for candidacy on the basis of submitting his temporary "propiska" address in Ukraine, was a violation of Article 3 of Protocol 1 of the ECHR, when the law did not require habitual residence inside Ukraine and the candidate registration documents allowed use of temporary propiska addresses.

**Aziz v. Cyprus (22/6/04)**, (App. No. 69949/01)  
<http://www.echr.coe.int/eng/Press/2004/June/ChamberJudgmentAzizvCyprus220604.htm>

This case stands for the proposition that denial of inclusion on a Greek-Cypriot electoral roll of a Turkish-Cypriot living in Nicosia, a Greek-Cypriot territory, deprived him of any opportunity to express his opinion in the choice of members of the legislature in the place where he always lived. This violated Article 3 of Protocol 1 of the ECHR and did so on a discriminatory basis that violated Article 14 of the ECHR.

**Zadanoka v. Latvia (17/6/04)**, (App. No. 58278/00)

<http://www.echr.coe.int/Eng/Press/2004/June/ChamberJudgmentZdanokavLatvia.htm>

This case stands for the proposition that a permanent ban on standing for elected office placed by law on the complainant because of her prior activity with the Community Party of Latvia, which had been declared unconstitutional, was not proportional to the legitimate governmental aims presented, therefore the ban violated Article 3 of Protocol 1 of the ECHR.

**Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia (decision pending)**, (App. No. 11721/04)

In this case an Armenian nongovernmental election monitoring organization claims violations of its rights under the European Convention on Human Rights (ECHR) concerning the right to receive and impart information (Article 10), right to a fair trial (Article 6, section 1) and genuine elections (Protocol 1, article 3), because the Armenian Central Election Commission (CEC) refused its requests for copies of CEC decisions, minutes of CEC meetings and information concerning campaign contributions to electoral contestants.

**Podkolzina v. Latvia (5/8/02)**, (App. No. 46726/99)(In French)

<http://www.legislationline.org/legislation.php?tid=57&lid=1156&less=false>  
*English digest of the case available at:*  
<http://www.echr.coe.int/eng/Press/2002/apr/PR%20Podkolzina%2009042002E.htm>

This case stands for the proposition that Article 3 of Protocol 1 of the ECHR was violated where a prospective candidate for election to parliament, who had received a valid proficiency certificate in his use of the national language, was subjected to further examination before one individual with excessive discretionary authority, and was then ruled ineligible to stand for election. This was done in the absence of objective guarantees in the procedure lacked fairness and legal certainty.

**Labita v. Italy (6/4/00)**, (App. No. 26772/95)

<http://hudoc.echr.coe.int>

This case stands for the proposition that the subsequent disenfranchisement of political/voting rights of a complainant acquitted of charges of collusion with the Mafia violated Article 3 of Protocol 1 of the ECHR, though the court noted that the rights under the Convention are not absolute, and there is room for limitations on their application.

**Gaulieder v. The Slovak Republic (10/9/99)**, (App. No. 36909/97)

(Settled, stricken from list) <http://hudoc.echr.coe.int>

This case stands for the proposition that the elected member of the National Council of The Slovak Republic who resigned from the party on whose list he was elected and was subsequently barred from fulfilling his term in office, was barred in violation of Article 3, Protocol 1 of the ECHR, which guarantees the right to exercise office through the period for which one is elected.

**Rekvényi v. Hungary (20/5/99)**, (App. No. 25390/94)  
<http://hudoc.echr.coe.int>

This case stands for the proposition that an amendment to the Hungarian constitution that barred members of the military, police and security forces from joining political parties was not a violation of Article 10 of the ECHR. Given that the amendment did not amount to a total ban on political participation and freedom of expression, it was not held to be a disproportionate interference with these rights.

**Matthews v. The United Kingdom (18/2/99)**, (App. No. 24833/94)  
<http://hudoc.echr.coe.int>

This case stands for the proposition that the rights of a citizen who applied to vote in Gibraltar for European Parliament elections and who was subsequently denied the right to vote in those elections was the subject of a violation of Article 3 of Protocol 1 of the ECHR. Article 3 of Protocol 1 of ECHR applies to European Parliament just as it does to domestic representative bodies.

**Ahmed and Others v. The United Kingdom (2/9/98)**, (App. No. 22954/93) <http://hudoc.echr.coe.int>

This case stands for the proposition that statutes that limit involvement of certain categories of public officials in political activities were not in violation of Article 3 of Protocol 1 of the ECHR, because the statutes only applied to certain politically restricted posts from which officials were free to resign in order to stand as candidates.

**Bowman v. The United Kingdom (19/2/98)**, (App. No. 24839/94)  
<http://hudoc.echr.coe.int>

This case stands for the proposition that a domestic ruling against a citizen, who spent money distributing flyers on behalf of certain candidates in violation of the Election Act, was a violation of that citizen's right to freedom of expression under Article 10 of the ECHR. The Court ruled that the Election Act's provisions were an illegitimate attempt to 'level the playing field' and were disproportionate to the aim pursued.

**Gifonas and Others v. Greece (1/7/97)**, (App. Nos. 18747/91, 19376/92, 19379/92, 28208/95, 27755/95)  
<http://hudoc.echr.coe.int>

This case stands for the proposition that states are free to regulate candidate eligibility in certain circumstances and legislation that barred certain public officials (i.e., those with nationwide responsibilities) from candidacy was both coherent and non-arbitrary and therefore not a violation of Article 3 of Protocol 1 of the ECHR. The Court reiterated that the right to stand for election is not absolute and can and should be balanced against the interest of equality for all citizens.

**Mathieu-Mohin and Clerfayt v. Belgium (28/1/87)**, (App. No. 9267/81)  
<http://hudoc.echr.coe.int>

This case stands for the proposition that the division of Belgium into “language regions” and the subsequent assignment of different Members of Parliament into “language groups” is not in violation of Article 3 of Protocol 1 of the ECHR. The Court held that the system in question was not unreasonable in light of the Belgian political context and the effort to give voice to linguistic minorities.

## THE INTER-AMERICAN SYSTEM

### *The Inter-American Court of Human Rights*

The Inter-American Court of Human Rights is established under the American Convention on Human Rights (ACHR) and receives human rights cases submitted to it by States Parties to the ACHR and the Inter-American Human Rights Commission concerning alleged violations of rights recognized in the ACHR. Individuals do not have standing to lodge petitions before the Court. For an overview of the Court and its procedures, please see the websites listed below.

#### **Overview of the Inter-American Court of Human Rights**

<http://www.corteidh.or.cr/index.cfm?CFID=387936&CFTOKEN=66752465>

#### **Procedures of the Inter-American Court of Human Rights**

<http://www.cidh.oas.org/basicos/basic18.htm>

### ***Inter-American Court of Human Rights Cases that Are Relevant to Democratic Elections***

#### **Case Castaneda Gutman v. Mexico (6/8/08)**

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_184\\_esp.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_184_esp.doc)

This case stands for the proposition that the affirmative obligation created by Article 23 of the ACHR for states to ensure the right to be elected is not violated by a failure of the law to allow independent candidates, where individuals may exercise their right to be elected through political parties, as long as parties do not employ undue restrictions in candidate selection.

#### **Marcel Claude Reyes, et al. v. Chile (09/19/06)**

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_151\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc)

This case stands for the proposition that Article 13 protects citizens' fundamental right to access information. The Court further noted that State parties possess a positive obligation to disclose government held information, when disclosing such information benefits the public interest, and the burden of proof rests on the State party to show that any restrictions conform with the Inter-American standards of free expression.

**López Álvarez v. Honduras (1/2/06)**

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_141\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_141_ing.doc)

This case stands for the proposition that the expression and dissemination of thoughts and ideas "are indivisible." Therefore, when a State party restricts the possibilities of spreading information, it in fact limits the right to express oneself freely and violates Article 13.

**Yatama V. Nicaragua (23/06/2005)**

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_127\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_127_ing.doc)

This case stands for the propositions that: ACHR Article 23 (concerning electoral rights) and Article 24 (concerning equality before the law and equal protection of the law) were abridged by the state's Supreme Electoral Council (SEC) decisions not to approve the request to register candidates of an indigenous political party YATAMA, based on undue restrictions contained in the electoral law and discriminatory application of restrictions; and that decisions of the SEC concerning exclusion of the candidates were adopted in violation of Article 8 (concerning the right to a hearing before a competent, independent and impartial tribunal).

**Carpio-Nicolle et al. v. Guatemala (22/11/2004)**

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_117\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_117_ing.doc)

This case stands for the proposition that a state incurs international responsibility under the ACHR, including Article 23 (concerning the right to participate in government), where the extrajudicial execution of a journalist, who also was a politician, was politically motivated, state agents obstructed the investigation and the state failed to pursue the investigation with diligence, thus signifying total impunity for the crimes. The state is obliged therefore to provide damages to the survivors and take effective actions to investigate and punish the masterminds and perpetrators and publicize the actions that bring them to account.

**Ricardo Canese v. Paraguay (08/31/04)**

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_111\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_ing.doc)

This case stands for the proposition that State parties must take extra efforts to protect the exercise of freedom of expression in the political debate that precedes elections. The Court further noted that the expression of different opinions presented throughout the campaign nourishes the formation of the collective will of the people in that the free exchange of ideas and information is necessary in a democratic society.

**Baruch Ivcher Bronstein v. Peru (02/06/01)**

[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_84\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_84_ing.doc)

This case stands for the proposition that by separating Mr. Ivcher from the control of Channel 2 and excluding the journalists from reporting, the Peruvian government not only restricted their right to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, thus limiting their freedom to exercise political options and develop fully in a democratic society.

### ***The Inter-American Commission on Human Rights***

The Inter-American Commission on Human Rights (Inter-American Commission) is established under the American Convention on Human Rights (ACHR). Among its responsibilities are reviewing complaints of violations of rights recognized in the ACHR lodged by any person or group of persons or nongovernmental entity legally recognized by one or more member states of the Organization of American States (OAS). For an overview of the Commission and procedures for filing petitions before the Commission, please see the following websites.

#### **Overview of the Inter-American Commission on Human Rights**

<http://www.cidh.org/what.htm>

#### **Presenting Petitions on Human Rights Violations**

[https://www.cidh.oas.org/cidh\\_apps/instructions.asp?gc\\_language=E](https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=E)

#### ***Inter-American Commission Cases that Are Relevant to Democratic Elections***

**Walter Humberto Vásquez Vejarano v. Peru (4/13/00)**, Case 11.166, Report No. 48/00.

<http://www.cidh.oas.org/annualrep/99span/de%20fondo/peru11166.htm>

This case stands for the proposition that the removal of justices and magistrates in order to address supposed "national emergency of corruption" was in violation of Article 1 (respect and guarantee of rights of citizens), Article 8 (right to due process), Article 9 (right to legality and freedom from ex post facto laws), Article 23 (political rights), Article 24 (right to equality before the law) and Article 25 (right to judicial protection) of the ACHR.

**Andres Aylwin Azocar et al. v. Chile (12/27/99)**, Case 11.863, Report No. 137/99.

<http://www.cidh.oas.org/annualrep/99eng/Merits/Chile11.863.htm>

This case stands for the proposition that provisions guaranteeing a "senator for life" position thwart the expression of popular sovereignty and violate the essence of representative democracy in violation of Articles 23 and 24 of the ACHR, which guarantee the right to vote and to be elected under general conditions of equality.

**Clemente Ayala Torres et al. v. Mexico (4/13/99)**, Case 10.545, Report No. 48/99.

<http://www.cidh.org/annualrep/98eng/Merits/Mexico%2010545.htm>

This case stands for the proposition that kidnappings and murders of members of a political party in the State of Guerrero relating to elections there and the subsequent response of the state government were in violation of Article 8 (right to judicial guarantees) and Article 25 (right to judicial protection) of the ACHR.

**Efraín Ríos Montt v. Guatemala (10/12/93)**, Case 10.804, Report No. 30/93  
<http://www1.umn.edu/humanrts/cases/30%5E93gua.pdf>

This case stands for the proposition that declaring candidacy inadmissible of the leader and chief of any coup d'etat, armed revolution or similar movement that changes the constitutional order, and others who become head of government as a result of such actions does not constitute a violation of the rights recognized by the ACHR.

**Luis Felipe Bravo Mena v. Mexico (10/7/93)**, Case 10.956, Report No. 14/93.  
<http://www.cidh.oas.org/annualrep/93english/eng93ch3.htm>

This case stands for the proposition that the Inter-American Commission is competent to rule in any case in which the rights of individuals, political or otherwise, are being infringed. The case in question related to various allegations of electoral irregularities which the government of Mexico argued were solely within the purview of domestic remedial organs.

**National Action Party v. Mexico (2/22/91)**, Case 10.180, Resolution No. 8/91.  
<http://www.cidh.org/annualrep/90.91eng/mexico10.180.htm>

This case stands for the proposition that an electoral statute passed in Mexico that left the functioning of the election mechanism in the hands of the ruling party was in violation of Article 23 (right to exercise political rights), Article 25 (right to effective recourse) and Article 8 (right of access to independent tribunals) of the ACHR and that the government of Mexico must fulfill the obligation under the ACHR to correct the domestic law of the country to effectively guarantee the exercise of these rights.

**Mexico Election Decision (5/17/90)**, Cases 9768, 9780 and 9828, Resolution No. 01/90.  
<http://www.cidh.org/annualrep/89.90eng/mexico9768.htm>

These cases stand for the proposition that the Commission is competent to consider issues concerning elections of State parties to the ACHR and that the government of Mexico must fulfill the obligation under the ACHR to correct the domestic law of the country to effectively guarantee the exercise of the individual rights enumerated therein.

**Challenge to Election Law (Argentina, 9/13/88)** Case 10.109, Resolution No. 26/88.  
<http://www.cidh.org/annualrep/87.88eng/argentina10109.htm>

This case stands for the proposition that an electoral law that denied an independent candidate placement on the ballot was not in violation of Article 16 (right of association), Article 23 (political rights) or Article 24 (right of equality before the law) of the ACHR because the law did not specifically require party membership as a prerequisite for nomination as a party candidate. The Court held that all citizens therefore have the potential to be nominated, and no violations could be ascertained.

**Nicolas Estiverne v. Haiti (3/24/88)**, Case 9855, Resolution No. 20/88.  
<http://www.cidh.org/annualrep/87.88eng/haiti9855.htm>

This case stands for the proposition that the declaration of the complainant as persona non grata by the ruling government and the subsequent barring of his candidacy was in violation of Article 13 (freedom of thought and expression), Article 20 (right to nationality), Article 22 (freedom of movement and residence), Article 23 (right to participate in government) and Article 25 (right to judicial protection) of the ACHR.

APPENDIX FIVE

# Selected Resources on Promoting Legal Frameworks for Democratic Elections

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## SELECTED RESOURCES ON PROMOTING LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS

- Baubock, Rainer. "Expansive Citizenship—Voting Beyond Territory and Membership." *Political Science and Politics*. 38.4 (2005). 683-687.
- Bjornlund, Eric C. *Beyond Free and Fair: Monitoring Elections and Building Democracy*. Washington, D.C.: Woodrow Wilson Center Press, 2004.
- Blais, Andre, Louis Massicotte, and Antoine Yoshinaka. "Deciding Who Has the Right to Vote: a Comparative Analysis of Election Laws." *Electoral Studies*. 20.3 (2001). 41-62.
- Braden, E.M., and D. Cardwell, et. al. "Panel II: Emerging Principles Pertaining to the Resolution of Election Disputes." *Administrative Law Review*. 57.3. American Bar Association, 2005.
- Carothers, Thomas. "The Observers Observed." *Journal of Democracy*. 8.3 (1997). 17-31.
- Coliver, Sandra and Patrick Merloe. *Guidelines for Election Broadcasting in Transitional Democracies*. London: Article 19, 1994.
- Council on Governmental Ethics Laws (COGEL). *A Model Law for Campaign Finance, Ethics and Lobbying Regulation*. Locust Grove, VA: COGEL, 1991.
- Courtney, John C. "Introduction." *Registering Voters: Comparative Perspectives*. Ed. John C. Courtney. The Center for International Affairs. Cambridge, MA: Harvard UP, 1991. 1.
- Diamond, Larry, and Marc F. Plattner, eds. *Electoral Systems and Democracy*. Baltimore, MD: Johns Hopkins UP, 2006.
- Elklit, Jorgen, and Andrew Reynolds. "A Framework for Systematic Study of Election Quality." *Democratization*. 12.2 (2005). 147-162.
- Elklit, Jorgen, and Palle Svensson. "What Makes Elections Free and Fair?" *Journal of Democracy*. 8.3 (1997). 32-46.
- Estok, Melissa, Neil Nevitte, and Glenn Cowan. *The Quick Count and Election Observation: An NDI Handbook for Civic Organizations and Political Parties*. Washington, D.C.: National Democratic Institute for International Affairs, 2002.
- European Centre for Parliamentary Research and Documentation. *Electoral System Legislation. National Reports: Parts One and Two*. May 1993.
- European Commission and Network of Europeans for Electoral and Democracy Support (NEEDS) and the European Commission (EC). *Compendium of International Standards for Elections, 2<sup>nd</sup> Edition*. London and Brussels: NEEDS and EC.

- European Commission on Democracy through Law (Venice Commission). *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report*. 51<sup>st</sup> and 52<sup>nd</sup> Sessions. Venice: Venice Commission, 2002.
- . *Electoral Law and National Minorities: Draft Report prepared by the Secretariat*. Strasbourg: Council of Europe, 1999.
- . *Guidelines and Report on the Financing of Political Parties*. Strasbourg: Council of Europe, 2001.
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## SELECTED NDI PUBLICATIONS ON ELECTION MONITORING

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**Monitoring Electronic Technologies in Electoral Processes:** An NDI Guide for Political Parties and Civic Organizations, by Vladimir Pran and Patrick Merloe (2008). This guide aims to help political parties, civic organizations, election officials and others to better understand electoral technologies-including electronic voting and results tabulation, electronic voter registration and other applications. The guide explores potential challenges technologies may pose to electoral integrity, issues regarding whether to introduce electronic technologies and the need for electoral transparency and public confidence. It highlights practical steps in advocating for access to decision making, as well as monitoring the design, development, certification and testing, training, maintenance, security and other issues. It covers the types of expertise that are needed to monitor the use of electronic applications, and explores questions that cannot be adequately addressed in verifying the integrity of certain technologies under the current state of the art.

**The Quick Count and Election Observation:** An NDI Handbook for Civic Organizations and Political Parties, by Melissa Estok, Neil Nevitte and Glenn Cowan (2002). This handbook addresses the importance of developing systematic observation of vital election day processes, including the quality of voting, ballot counting and tabulation of election results, as well as the projection of electoral results with extremely narrow margins of error and high degrees of statistical confidence. It covers planning and organizational issues, recruiting and training, communications systems, developing a random statistical sample of polling stations for rapid and exacting analysis, analytical techniques and the considerations for the release of quick count findings. The handbook is designed for civic organizations but can easily be used by political parties. It also is designed for use by civic organizations that decide not to undertake projection of electoral results. As an organizer's guide, it reviews many of the issues covered by NDI's 1995 "A to Z" handbook.

**Media Monitoring to Promote Democratic Elections:** An NDI Handbook for Citizen Organizations, by Robert Norris and Patrick Merloe (2002). This handbook takes a step-by-step approach to media monitoring. It covers: the importance of determining who controls the media and the difference between state-controlled versus private and broadcast versus print media; issues to address in deciding what media and what subjects to monitor; planning and organization of a media monitoring project; monitoring methodology, including specific instructions for monitoring different types of media; and considerations for the presentation of findings and recommendations.

**Building Confidence in the Voter Registration Process:** An NDI Monitoring Guide for Political Parties and Civic Organizations, by Richard L. Klein and Patrick Merloe (2001). This voter registration monitoring guide addresses: the role of voter registration and the principle

types of voter registration systems; why it is important for political parties and civic organizations to monitor these systems; and specific techniques for monitoring processes for collecting names, creating a voter registry and polling station voter lists, correcting errors in the lists and use of the lists on election day.

**NDI Handbook on How Domestic Organizations Monitor Elections:** An A to Z Guide (1995). This handbook provides a comprehensive overview of how to organize a nonpartisan domestic election monitoring effort. It covers: planning and organizational issues; recruiting, training and logistical issues in building a communications network for reporting; various subjects to monitor in the pre-election, election day and post-election periods; and considerations for how the organization and skills developed through monitoring efforts can be applied to non-election activities. The guide is designed for election monitoring by civic organizations but can be used by political parties in designing their efforts to ensure electoral integrity and protect their vote.

*In addition to these materials, NDI has produced over 300 reports, papers and statements concerning ways in which to promote democratic elections generally and concerning the election process within specific countries. See NDI's website: [www.ndi.org](http://www.ndi.org) "Access Democracy" and "Global Programs/Elections and Political Processes" for more information about these and other NDI publications.*

## ABOUT THE AUTHOR

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Patrick Merloe is Senior Associate and Director of Electoral Programs at NDI. He joined the Institute in 1993 and has led or participated in over 140 NDI missions to more than 50 countries. His responsibilities at NDI include constitutional and electoral law programming concerning civil and political rights, assistance to nonpartisan domestic election monitoring organizations, support for political party efforts to ensure electoral integrity and international election observation. His experience encompasses a wide variety of programs, including in countries that are vulnerable to conflict and/or that are influenced by trends toward authoritarianism, as well as countries that are making substantial democratic progress.

Pat has produced over a dozen publications on elections, human rights and comparative law. He was one of the initiators and was the principal negotiator of the process that led to the *Declaration of Principles for International Election Observation*, launched at the United Nations in 2005 and now endorsed by 32 international organizations. He has worked with a number of international human rights organizations and, prior to joining NDI, was co-chair of the Bar Association of San Francisco's International Human Rights Law Committee. He practiced with the law firm of Heller Ehrman White & McAuliffe, taught international human rights law at the University of San Francisco School of Law and instructed at the University of Pennsylvania Law School.

Mr. Merloe received his Juris Doctor degree from the University of Pennsylvania, conducted graduate work in public policy analysis at the Institute for Policy Studies in Washington, DC, and completed his undergraduate education at Temple University. He has over 30 years of experience in promoting human rights, citizen empowerment and policy advocacy.

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WHY SHOULD POLITICAL PARTIES, CANDIDATES AND CITIZENS ANALYZE LEGAL FRAMEWORKS FOR ELECTIONS AND ADVOCATE FOR DEMOCRATIC IMPROVEMENTS?

Establishing the “rules of the game” for elections should be a vital concern to political parties, candidates and citizens alike. Rules and how they are implemented can greatly affect electoral outcomes.

To compete effectively, parties and candidates must know the rules for competition, including the avenues for seeking redress if the rules protecting their rights are violated.

HOW CAN INCLUSIVENESS, TRANSPARENCY & ACCOUNTABILITY BE INCORPORATED INTO LEGAL FRAMEWORKS FOR ELECTIONS?

Knowing the rules, however, is not enough. The electoral contestants need to analyze the legal framework to determine whether the rules actually ensure a genuine chance to compete fairly. Political parties and candidates should be prepared to defend elements of the legal framework that they deem essential for fairness, as well as to advocate for modifying the legal framework in order to remove impediments to fairness and to improve their chances of winning office.

WHAT ARE THE KEY CRITERIA FOR ANALYZING LEGAL FRAMEWORKS FOR ELECTIONS?

Citizen groups – including election monitoring organizations, human rights groups, lawyers associations, “think tanks” and others – play particularly important roles in analyzing legal frameworks for elections, offering recommendations for improving them and monitoring the processes surrounding them.

WHAT CONSIDERATIONS ARE NEEDED WHEN DRAFTING LEGAL FRAMEWORKS FOR DEMOCRATIC ELECTIONS?

Citizen groups can advocate impartially for appropriate provisions in the legal framework for elections and its proper implementation. Citizen groups thereby assume the responsibility of articulating fairly the public’s interest and the responsibility for developing the expertise and resolve to protect that interest.

WHAT ARE THE KEY INTERNATIONAL AGREEMENTS AND COURT CASES CONCERNING DEMOCRATIC ELECTIONS?

This Guide presents a number of tools to help political parties, candidates and citizens groups use international principles in determining whether electoral related laws provide a solid foundation for democratic elections, identifying where improvements are needed and advocating for democratic changes.

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