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UN Department of Political Affairs (UN system focal point for electoral assistance): Input for the OHCHR draft guidelines on the effective implementation of the right to participate in public affairs

1. On behalf of the Under-Secretary-General for Political Affairs who, under a framework established by the General Assembly in 1991, serves as the UN system-wide focal point for electoral assistance, the UN Electoral Assistance Division offers the following input to help OHCHR prepare, at the request of the Human Right Council (resolution 33/22), “concise and action-oriented draft guidelines as a set of orientations for States on the effective implementation of the right to participate in public affairs.” It focuses on the right to vote and to be elected.

2. This input is based on the extensive experience of the UN system in helping Member States meet their obligations under international law – including article 25 of the international Covenant on Civil and Political Rights (ICCPR) – and to conduct credible elections. It reflects advice regularly provided to national authorities by UN assistance providers on the implementation of the right to political participation. It also draws on observations of the UN Secretary-General in his biennial reports to the General Assembly on elections (most recently: UN document A/70/306).

Some general reflections

3. UN engagement with Member States on elections is based on the Universal Declaration of Human Rights, the ICCPR, and other relevant conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women. This includes the general comments of the respective committees established under those conventions. It is also based on General Assembly resolutions on the subject of democracy and elections, in which the Assembly has repeatedly reaffirmed that, while democracies share common features, “there is no single model of democracy” and that “democracy does not belong to any country or region”.

4. The human rights-based foundation above is supplemented at the regional level by numerous instruments of a legal nature, by political commitments, and by compilations of non-binding guidelines or good practices. There is also a vast body of secondary literature from academic and non-governmental sources suggesting ways to interpret and implement these norms. Such materials can be a useful to explore good practices, depending on the circumstances of the State.

5. The aim of the present contribution is not to repeat or interpret the existing normative framework or the body of non-binding guidance. Rather, this input supplements this extensive material by emphasizing the *context* in which elections take place, since this, too, has a profound impact on the effective implementation of the right to political participation.

6. The Universal Declaration of Human Rights speaks not only of processes but of outcomes: “The will of the people shall be the basis of the authority of government”. Elections are the mechanism by which this will is to be expressed, and in which citizens’ right to political participation is exercised. The process is not an end in itself. A genuine election is ultimately one in which the outcome reflects the freely expressed choice of the people. But it is not enough that an electoral process produces such an outcome: citizens must have confidence that this outcome indeed reflects their will, in order for it to be accepted. This confidence is in turn determined by factors that go beyond the quality of the electoral process itself, or compliance with international obligations, or the

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effective performance of the electoral management body: it is also shaped by the broader political and economic context.

7. In the experience of the UN, measures that tend to enhance trust and confidence include: lowering the political and economic stakes involved in winning or losing an election; broad political consultation on the rules of the game; the appointment of electoral authorities that are - and are seen to be - honest, impartial and capable; transparency in electoral administration; state neutrality; inclusiveness, especially of politically marginalized groups, including minorities and persons with disabilities; and efforts to enhance the political participation of women and youth.

8. Examining the context helps focus attention on some of the *obstacles* that Member States and their citizens often face in the effective implementation of their right to political participation. These can arise out of: intimidation, insecurity and violence; lack of candidates' commitment to a credible and fraud-free process; the rejection of a credible process or its outcomes by the losing party or candidate; discrimination and deliberate exclusion; the denial or restriction of other human rights related to democratic processes, like freedom of speech; and strategic decisions by parties or candidates to boycott or disengage from a political process.

Proposed input to guidelines for Member States

9. Any UN-formulated guidelines for Member States on electoral matters should take into account the principle that there is no "one size fits all" model or solution. A comprehensive analysis of the national context combined with a thorough assessment of needs should guide the type of advice that is provided. Furthermore, while the UN advises States on the implementation of their international and regional commitments with respect to elections, the UN should generally not be prescriptive. And while some UN entities have a mandate to comment on the adherence to particular rights and obligations during an election, it is not for the UN to comment on or assess the validity of an election or its outcome, in the absence of a specific mandate from UN legislative organs.

10. With these caveats, the following are considerations that Member States may wish to apply in implementing their citizens' right to political participation. (As noted, these supplement the well-established normative framework, including well-known principles such as independence and neutrality in electoral management, transparency, and so on). These are not all goals that can be attained by regulation alone; some require a change in awareness or in conduct on the part of authorities and leaders, and will often depend on political will.

- a) **Mitigate zero-sum dynamics and exclusionary politics, well before an election.** For elections to enjoy broad trust, they should not lead to a situation in which the winner gains all or most of the benefits. A stronger basis for acceptance is a political system which adheres to the rule of law and human rights, and in which even defeated candidates have an incentive to participate and to continue to participate. This may involve longer-term reforms of the political and economic system to reduce extremely high-stakes and exclusionary politics; strengthening the system of checks and balances in government; introducing mechanisms for the protection and promotion of human rights for all; guaranteeing a genuine role for the opposition; looking at ways in which national resources are distributed; tackling corruption and other systemic, long-standing and unresolved political, social or economic grievances; and generally creating an environment conducive to a meaningful election.

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- b) **Pursue dialogue and consensus in setting the “rules of the game”.** The legal framework for an election, including the electoral system and the mechanism to resolve electoral disputes, should ideally be developed through an inclusive, transparent and participatory process. The adopted rules should reflect a broad political consensus – to strengthen the credibility of the outcome these rules will produce.
- c) **For electoral reforms, develop solutions that address the problem at hand and fit the context.** Successful and sustainable reform processes, including the introduction of technological innovations, start with identifying the electoral problems that are to be addressed (rather than, for example, first discussing solutions that may have worked elsewhere). Once there is broad agreement about the shortcomings or difficulties to be overcome, one can proceed to consider the feasibility of options, preferably again through a broadly consultative process. Such options should take into account a country’s political, legal, social and cultural circumstances – as well as financial sustainability.
- d) **Focus on inclusion and non-discrimination – and mitigate the politics of exclusion.** Inclusiveness – and the idea that individuals and groups should be given a voice in decisions affecting them – is essential to arriving at an outcome that reflects the will of the people and that enjoys broad legitimacy. Conversely, political grievances that rear their head around election time often revolve around exclusion and marginalization. Some groups – typically under-represented or marginalized ones – will need special consideration to enable their effective participation. These can include women, youth, minorities, persons with disabilities, migrants and refugees, as well as other populations vulnerable due to poverty or illiteracy. The global rate of elected *women* in parliament, for example, remains low (23%). Similarly, Member States should take the particular needs of *persons with disabilities* into consideration as candidates and voters, and, where practically and financially feasible, make special provisions for them.
- e) **Place a premium on responsible political leadership.** The overriding responsibility for a successful election lies with political leaders, from both government parties and the opposition. Leaders should publically commit themselves and their supporters to engage in proper, peaceful behaviour; to challenge results through legal means only; to accept final outcomes, as officially declared; and to be gracious in defeat and magnanimous in victory, including ensuring important political space for opposition. With respect to fraud, too, it is the candidates and leaders who need to take the lead in prevention efforts and in discouraging their supporters from committing malfeasance.
- f) **Focus on broad participation by political actors – rather than disengagement.** Something valuable is lost when political actors decide to withdraw from an electoral process; among other things, it means fewer options for citizens to participate and to have their voice heard, narrowing these down to protest and abstention. While there may be situations of such extreme manipulation or violence that meaningful engagement is compromised, in principle contestants should be encouraged to remain engaged in an electoral process they have joined, and be discouraged from alleging – without evidence – widespread misconduct, or from refusing to accept legitimate outcomes for political gain.
- g) **Strengthen both the performance and the perceptions of electoral authorities.** Election management bodies should not only be able to do their work effectively, and to do it free of political influence; they should be *perceived* as doing so. This they should strive to do by

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being open, transparent, and maximally consultative and informative with key contestants, civil society as well as the general public.

- h) Take informed decisions about the possible introduction of technology.** While new technologies can – at least numerically – increase political representation, the relationship of technology to the success of an election is not always straightforward. Comprehensive and consultative feasibility studies should be carried out before introducing technological solutions. New technology may be best introduced as a solution to problems that might hinder the credibility of the process or the acceptance of results, not as an end in itself.
- i) Anticipate emerging changes in electorates.** The biggest shifts in the field of elections are likely to come not from the tools or technologies we use to cast a vote, but from changes in our electorates: major demographic shifts resulting from aging populations, continued urbanization, and the challenges of migrant and refugee populations. Regional forms of cooperation and mutual assistance can be particularly useful here.

Electoral assistance

11. The UN has provided electoral assistance for several decades now, supporting Member States in the implementation of their obligations under the ICCPR as well as other relevant conventions and political commitments. Assistance is provided through a legal and institutional framework first adopted by the General Assembly 25 years ago. At present, the UN supports well over 60 Member States at their request.

12. Electoral assistance can be provided to a Member State only upon request, or based on a mandate from the Security Council or General Assembly. It is provided in conformity with the principle of the sovereign equality of States and the realization that there is no single electoral methodology or system that is appropriate for all countries.

13. Multiple UN entities are involved in electoral assistance. As noted above, the Under-Secretary-General for Political Affairs is the UN focal point for electoral assistance, with a leadership role in ensuring system-wide coherence and consistency, and in developing policy. The focal point is supported by the Electoral Assistance Division. Other UN entities include UNDP; DPKO; OHCHR; UNOPS; IOM; UN-Women; UNESCO; the UN Volunteers programme; the Peacebuilding Fund; and the UN Democracy Fund.

14. The UN provides a few basic types of electoral assistance, of which technical assistance is by far the most frequent. It covers legal, operational and logistic assistance to develop or improve electoral laws, processes and institutions. The focus is on strengthening electoral institutions, and helping in planning and conducting elections. Gender and human rights issues and implications are systematically considered in assistance provided by any part of the UN system.

15. It is through technical assistance and advice that the UN typically can have an impact on protecting the right to participation. For example, assistance and advice is often provided on:

- electoral laws and regulations (eg., advice on removing discriminatory provisions)
- electoral systems (eg., helping design systems that support the equality of votes)
- voter registration (eg., bringing about mechanisms that maximize the opportunity to vote)
- polling and counting (eg., advice on sound procedures to protect the secrecy of the vote)

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- civic/voter education (eg., helping increase participation through information campaigns)
- inclusive participation (eg., helping design measures for greater participation by women)
- finance regulatory environment (eg., developing mechanisms for levelling the playing field)
- candidate registration (eg., advice on ways to maximize the opportunity to run for office)
- dispute resolution (eg., assisting with complaints mechanisms so that grievances can be addressed and the outcome will reflect the will of the voters).

This is by no means an exhaustive list.
