

**TECHNICAL NOTE  
UNIVERSAL SUFFRAGE**

**Prepared by  
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**Summary**

The present technical note aims at informing debates in South East Asia on the question of universal suffrage by setting out relevant international human rights norms and standards.

Universal suffrage is a requisite of genuine elections, and is required by international human rights law as essential to ensure that elections reflect the will of the people. Universal suffrage requirements concern both the right to vote and the right to stand for election. While these rights can be limited, restrictions should be based on objective and reasonable criteria.

As regards the right to stand for election, the jurisprudence of the United Nations Human Rights Committee provides several examples of restrictions that have been considered unreasonable or discriminatory. The existence of unreasonable or discriminatory restrictions on the right to stand for election violates the requirement to universal suffrage.

**Background**

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights state that, by virtue of their right to self-determination, all peoples have the right to freely determine their political status.<sup>1</sup> Three central rights are key in this regard: the right to take part in the conduct of public affairs, directly or through freely chosen representatives; the right to vote and to be elected; and the right to equal access to public service.<sup>2</sup>

As regards the right to vote and to be elected, both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide that these rights should be exercised through periodic and genuine elections, which shall be by universal and equal suffrage.

Both the Universal Declaration of Human Rights (art. 2) and the International Covenant on Civil and Political Rights (art. 2) provide that the enjoyment of the rights guaranteed in those instruments shall be

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<sup>1</sup> Common art. 1.

<sup>2</sup> UDHR, art. 21 and ICCPR, art. 25. Please note the different terminology used by these instruments.

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.

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 25, International Covenant on Civil and Political Rights*

### **Genuine elections**

Elections must be genuine, as required both by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Genuineness comprises of two broad aspects:

- a procedural aspect, that includes the guarantees of periodicity, equality and universality of suffrage, and secrecy of the ballot;
- a results aspect, which defines genuine elections as those that reflect the free expression of the will of the electors.

Sham elections or those that are restricted so they do not include the principal policy making offices for election cannot be considered genuine. Neither are elections that do not offer a real choice to the electorate to choose between candidates. Only elections that meet the requirements of international law and which reflect the free expression of the will of the electorate can be considered to be “genuine”.

“Genuine democratic elections are central for maintaining peace and stability, and they provide the mandate for democratic governance.”

*Declaration of Principles for International Election Observation (2005)*

## Universal Suffrage

Universal suffrage is required by international human rights law<sup>3</sup> and is essential for ensuring that elections reflect the will of the people. Universal suffrage requirements are two-fold:

- Right and opportunity to vote: States must guarantee that the broadest pool of voters be allowed to cast ballots. The right to vote must be as inclusive as possible in terms of eligibility criteria.
- Right and opportunity to be elected: States must ensure that all citizens are able to stand for election without unreasonable limitations. The effective implementation of the right and opportunity to stand for election ensures that persons entitled to vote have a free choice of candidates.<sup>4</sup>

Further to the overarching human rights principle of non-discrimination, the right and opportunity to vote and to stand for election cannot depend on or be subject to limitations of a discriminatory nature. For example, with respect to persons with disabilities, States must ensure that they can participate effectively and fully exercise their right to vote and be elected.<sup>5</sup> States are to presume that persons with disabilities have the capacity to vote and exercise choices, and they must ensure that all aspects of voting in an election are made accessible to all citizens with disabilities.<sup>6</sup>

## Restrictions

Under international law, restrictions to the rights to vote and to stand for election may not be unreasonable or discriminatory. The United Nations Human Rights Committee elaborated on this requirement in a General Comment on Article 25 of the International Covenant on Civil and Political Rights, when it affirmed that “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.”

<sup>7</sup> The Committee also underlined that these protections must extend to the right of direct participation:

Where a mode of direct participation by citizens is established, no distinction should be

<sup>3</sup> UDHR, art. 21; ICCPR art. 25. *See also* OAS, American Convention on Human Rights, art. 23(b); CIS, Convention on Human Rights, art. 29(b); AU, African Charter on Democracy, Elections and Governance, art. 4(2); OAS, Inter-American Democratic Charter, art. 3; OSCE, Copenhagen Document, para. 7.3.

<sup>4</sup> CCPR General Comment 25, para 15. *See also* Nowak Commentary on ICCPR, p. 575.

<sup>5</sup> Convention on the Rights of Persons with Disabilities, art. 29.

<sup>6</sup> Committee on the Rights of Persons with Disabilities, concluding observations: Australia, CRPD/C/AUS/CO/1, paras. 51–52. *See also* concluding observations: Hungary, CRPD/C/HUN/CO/1, paras. 45-46; concluding observations: China, CRPD/C/CHN/CO/1, paras. 45-46.

<sup>7</sup> CCPR General Comment 25.

made between citizens as regards their participation on the grounds mentioned in Article 2, paragraph 1 [race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status], and no unreasonable restrictions should be imposed.

*UN Human Rights Committee, General comment 25, para.6.*

As the Committee has made clear, a free choice of candidates without unreasonable or discriminatory restrictions on their candidature, such as their political affiliation, must be guaranteed by States in order to discharge their obligations under the Covenant:

The effective implementation of the right and 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 ... 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. ...

*Human Rights Committee, General Comment 25, para. 15.*

Other examples of unreasonable or discriminatory restrictions on the right to stand for election include those based on birth or other status,<sup>8</sup> criminal convictions,<sup>9</sup> economic circumstances or property ownership,<sup>10</sup> literacy,<sup>11</sup> excessive residency requirements,<sup>12</sup> language,<sup>13</sup> mental, intellectual, or psychosocial disability,<sup>14</sup> national or social origin,<sup>15</sup> naturalized citizenship,<sup>16</sup> party membership,<sup>17</sup> physical disability,<sup>18</sup> race,<sup>19</sup> political opinion or affiliation,<sup>20</sup> religion,<sup>21</sup> sex,<sup>22</sup> sexual orientation or

<sup>8</sup> ICCPR, arts. 2 and 25.

<sup>9</sup> Both restrictions based on criminal convictions where those restrictions are disproportionate to the severity of the crime, and blanket disenfranchisement provisions. OAS, ACHR art. 23; CCPR General Comment 25, para. 14; CCPR Concluding Observations on the U.K. (2008), para. 28.

<sup>10</sup> CCPR, General Comment 25, para. 10; UN Human Rights and Elections, para. 65.

<sup>11</sup> CCPR, General Comment 25, para. 10.

<sup>12</sup> *Id.*; see also OAS, ACHR art. 23.

<sup>13</sup> ICCPR, art. 2.

<sup>14</sup> Restrictions that are disproportionate or have no reasonable or objective relationship to the person's ability to vote. CCPR Concluding Observations on Belize (2013), para. 24.

<sup>15</sup> ICCPR, arts. 2 and 25.

<sup>16</sup> ICCPR, art. 25(b); CCPR General Comment 25, para. 3 ("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.")

<sup>17</sup> CCPR, General Comment 25, para. 17.

<sup>18</sup> CRPD, art. 29.

gender identity,<sup>23</sup> and status as an internally displaced person.<sup>24</sup> The Human Rights Committee jurisprudence shows that the concept of “functional constituencies”, which gives undue weight to the views of the business community, can be considered discrimination based on property and functions.<sup>25</sup> Further, States should ensure that reasonable restrictions do not disproportionately impact minority groups.<sup>26</sup>

The existence of any such unreasonable or discriminatory restrictions on the right to stand for election would violate the principle of universal suffrage. The UN Human Rights Committee has asked States that fall short of these standards to have a clear and detailed plan to correct the failure, and implement that plan as a matter of priority for all future elections<sup>27</sup>.

The jurisprudence of the United Nations Human Rights Committee provides useful guidance on whether the right to stand for election is restricted in an unreasonable or discriminatory manner. The list below contains some examples:

- Does the law exclude from election persons who do not belong to one of the State party’s “constituent peoples”?<sup>28</sup>
- Is there a language requirement to stand for elections?<sup>29</sup>
- Does the law exclude from election persons who do not belong to one of the officially-recognized religious denominations?<sup>30</sup>
- Are there onerous requirements for registration in election campaigns, or does the law require that candidates for election be approved by a government body?<sup>31</sup>

<sup>19</sup> ICCPR, arts. 2 and 25.

<sup>20</sup> *Bwalya v Zambia*, Comm. No. 314/1988; *Leonid Sudalenko v. Belarus*, Comm. No. 1354/2005, UN Doc. CCPR/C/100/D/1354/2005 (2010); *Gorji Dinka v Cameroon*, Comm. No 1134/2002, UN Doc. CCPR/C/83/D/1134/2002

<sup>21</sup> ICCPR, arts. 2 and 25

<sup>22</sup> *Id.*

<sup>23</sup> EU Charter on Fundamental Rights, art. 21(2); CCPR, *Toonen v. Australia* (1994); CESCR, General Comment 20, para. 32.

<sup>24</sup> E/CN.4/1998/53/Add.2, Guiding Principles on Internal Displacement, Principle 4.1.

<sup>25</sup> CCPR Concluding observations on the United Kingdom (Hong Kong) (1995), para. 19.

<sup>26</sup> CCPR, Concluding Observations on the USA (2006), para. 35.

<sup>27</sup> CCPR, Concluding Observations on Hong Kong, China (2013), para. 6.

<sup>28</sup> CCPR/C/BIH/CO/2, Bosnia and Herzegovina (2012).

<sup>29</sup> CCPR/CO/79/LVA Latvia (2003).

<sup>30</sup> CCPR/C/79/Add.78, Lebanon (1997).

<sup>31</sup> CCPR/C/IRN/CO/3, Islamic Republic of Iran (2011).

- Does the law distinguish between the rights of citizens by birth and naturalised citizens to elected office?<sup>32</sup>
- Regarding limitations on seeking election, are they allowed for persons convicted of electoral offenses? Are the restrictions limited in time? Are they proportionate to the offence committed?<sup>33</sup>
- Regardless of a state emergency, have members of certain political groups been deprived of the right to stand for elections?<sup>34</sup>
- Is there unequal application of the law, such that provisions in the relevant domestic law to restrict candidacy can be exploited to unreasonably restrict the rights protected by article 25? Is refusal to register a candidate not based on objective and reasonable criteria and therefore unlawful?<sup>35</sup>
- Is annulment of a candidacy pursuant to a review that was not based on objective criteria, and not demonstrated by the State to be procedurally correct?<sup>36</sup>
- Do disqualifications on the right to stand for elections meet the requirements of foreseeability and objectivity?<sup>37</sup>

### **Election-related rights**

Genuine elections require that, in addition to the right to vote and be elected and the right to take part in public affairs, a number of related human rights are in effective operation. These prerequisite rights include:

- Freedom from discrimination and equality before the law
- Freedom of expression
- Freedom of peaceful assembly
- Freedom of association
- Freedom of movement

Without being exhaustive, the list below provides a number of questions concerning these related rights that could be asked to assess the extent to which they are being respected in the context of elections.

<sup>32</sup> CERD/C/60/CO/11, Qatar (2002).

<sup>33</sup> CCPR/C/SR.724, Senegal (1987), *Dissanayake v Sri Lanka*, UN Doc CCPR/C/93/D/1373/2005

<sup>34</sup> *Jorge Landinelli Silva v. Uruguay*, Comm.No. R.8/34, UN Doc. Supp. No. 40 (A/36/40) at 130 (1981).

<sup>35</sup> *Leonid Sudalenko v. Belarus*, Comm. No. 1354/2005, UN Doc. CCPR/C/100/D/1354/2005 (2010).

<sup>36</sup> *Antonina Ignatane v. Latvia*, Comm. No. 884/1999, UN Doc. CCPR/C/72/D/884/1999 (2001).

<sup>37</sup> *Rolandas Paksas v Lithuania*, Comm. No. 2155/2012, UN Doc. CCPR/C/110/D/2155/2012 (2012)

- Were any political parties or candidates prevented, or in any form limited, from freely expressing their opinions and viewpoints in public?
- Were all political parties and candidates able to organize and conduct political meetings, rallies or demonstrations freely without interference or obstruction by the authorities or security forces?
- Were all political groups equally able to form political parties and were all citizens equally able to join the political party of their choice?
- Were any candidates, members of political parties, voters or others prevented, or in any form limited, from exercising their political rights and fundamental freedoms based on discriminatory grounds?
- Were all eligible individuals equally provided with the opportunity to enjoy their political rights as voters and/or candidates?
- Were discriminatory criteria or requirements applied for the registration of voters, candidates or political parties?
- Did any laws or practices result in indirect discrimination against candidates, members of political parties, voters or others?<sup>38</sup>

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<sup>38</sup> For more key aspects to monitor in the context of elections see *OHCHR Manual of Human Rights Monitoring, Ch. 23: Monitoring human rights in the context of elections.*