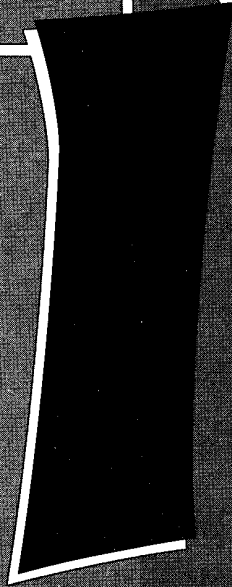


APPENDIX



Legal Provisions for
Elections and Monitoring

LEGAL PROVISIONS FOR ELECTIONS AND MONITORING

EXCERPTS OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

During this century intergovernmental organizations such as the United Nations, the Organization of American States, the Organization of African Unity and the Organization (formerly the Conference) on Security and Cooperation in Europe have memorialized in writing the principles of their member states with regard to fundamental human rights. The resulting declarations, charters, conventions and covenants are referred to as *instruments*.

Member states that have chosen to sign these instruments undertake to respect and support the minimum standards enumerated therein. The excerpts in this appendix focus on provisions that are relevant to conducting, participating in and monitoring elections. For example, basic principles of equal treatment (nondiscrimination), freedom of speech and freedom of association appear throughout. Similarly, most of the instruments expressly recognize the universal right of people to participate in their government by casting a secret vote. Some instruments, acknowledging the trend of recent years, extend this right of participation to those who would monitor the electoral process. (See especially, Article 8, *Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension*, Conference on Security and Cooperation in Europe.) As an observer, you should determine which of these instruments your government has agreed to uphold.

Familiarity with the provisions in these instruments is often helpful when advocating reforms, defending observers' rights, or evaluating the election process. Obviously, if your government has signed a particular instrument you may rely on the provisions of the instrument as legal authority. However, you may find the provisions useful even if your government is not a signatory to a specific instrument. The fact that these instruments claim multinational origins supports the position that the principles they contain are, to some degree, universal and therefore may be applicable in your country.

SAMPLE PROVISIONS FOR DOMESTIC MONITORS

This part of the appendix presents two samples of laws relevant to domestic election observers. The first, an unofficial translation of *Article 51 of the 1992 Law on Local Elections* in Romania, provides a good example of a legal provision that expressly conveys to nonpartisan, nongovernment domestic organizations the right to monitor the electoral process. Does the election law in your country contain such a provision?

The second, a *Code of Conduct for Observers*, is a regulatory provision designed and approved by the election commission in South Africa pursuant to the 1993 Independent Electoral Commission Act. During South Africa's 1994 elections, the election law strongly upheld the rights of nonpartisan domestic groups (as well as political party pollwatchers). This regulation illustrates how observers, in return, were expected to conduct themselves in a manner that would ensure the integrity of their activities and, more broadly, of the overall electoral process. This regulation is exemplary in that the specific prescriptions of the regulation (e.g., to maintain impartiality, to display identification, to conform with the laws, etc.) in no way attempt to inhibit observers' access to the electoral process or the ability of observers to conduct and publicize a thorough assessment.

EXCERPTS OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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UNIVERSAL DECLARATION OF HUMAN RIGHTS*Article 2*

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

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

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 21

- (1) Everyone has the right to take part in the government of his country, directly or through freely chose representatives.
- (2) Everyone has the right of 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 this jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, 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 freedom 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 to 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.

EXCERPTS OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

*page 2 of 6**Article 25*

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

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

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, color, 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

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN*Article 7*

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

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

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.

EXCERPTS OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS*Article 13*

- (1) Every citizen shall have the right to freely participate in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

AFRICAN CHARTER FOR POPULAR PARTICIPATION IN DEVELOPMENT AND TRANSFORMATION
(ARUSHA 1990)

-
7. We affirm that nations cannot be built without the popular support and full participation of the people.
8. We, therefore, have no doubt that at the heart of Africa's development objectives must lie the ultimate and overriding goal of human-centered development that ensures the overall well-being of the people through sustained improvement in their living standards and the full and effective participation of the people in charting their development policies, programmes and processes and contributing to their realization.
9. We are convinced that to achieve the above object will require a re-direction of resources to emphasize self-reliance on the one hand, and, on the other hand, to empower the people to determine the direction and content of development.
10. In our sincere view, popular participation is both a means and an end. As an instrument of development, popular participation provides the driving force for collective commitment for the determination of people-based development processes and willingness by the people to undertake sacrifices and expend their social energies for its execution. As an end in itself, popular participation is the fundamental right of the people to fully and effectively participate in the determination of the decisions which affect their lives at all levels and at all times.
11. We believe strongly that popular participation is, in essence, the empowerment of the people to effectively involve themselves in creating the structures and in designing policies and programmes that serve the interests of all as well as to effectively contribute to the development process and share equitably in its benefits. Therefore, there must be an opening up of the political process to accommodate freedom of opinions, tolerate differences, accept consensus on issues as well as ensure the effective participation of the people and their organizations and associations. This requires the State and the international community, to create the necessary conditions for such an empowerment and facilitate effective popular participation in societal and economic life. This requires that the political system evolve to allow for democracy and full participation by all sections of our societies.
12. It is the consensus of this conference that the attainment of women's full participation must be given highest priority by society as a whole and African Governments in particular. . . .
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17. We believe that for people to participate meaningfully in their self-development, their freedom to express themselves and their freedom from fear must be guaranteed. This can only be assured through the extension and protection of people's basic human rights.
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24. We proclaim the urgent necessity to involve the people in monitoring popular participation in Africa.

EXCERPTS OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN

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 XXXII. It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.

Article XXXIV. . . . It is likewise his duty to hold any public office to which he may be elected by popular vote in the state of which he is a national.

Article XXXVIII. It is the duty of every person to refrain from taking part in political activities that, according to law, are reserved exclusively to the citizens of the state in which he is an alien.

AMERICAN CONVENTION ON HUMAN RIGHTS

Article 23

- (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.

DOCUMENT OF THE 1990 COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION

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 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.

....