

1. The bases of internationally recognized electoral standards

Primary sources

The primary sources for the international standards set forth in these guidelines are various international, regional and UN declarations and conventions on human rights and other relevant legal documents. The more important of these instruments include the following:

- The 1948 Universal Declaration of Human Rights;
- The 1966 International Covenant on Civil and Political Rights;
- The 1950 European Convention (together with its Protocols) for the Protection of Human Rights and Fundamental Freedoms;
- The 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Co-operation in Europe (CSCE);
- The 1948 American Declaration of the Rights and Duties of Man;
- The 1969 American Convention on Human Rights; and
- The 1981 African Charter on Human and People's Rights.

The formal applicability of such standards to a particular country will depend upon its international undertakings in relation to such documents. In any case it is hoped that the overall normative guidance they provide will nevertheless foster the promotion of, and support for, these international standards. The other instruments and relevant texts are included in Annex 1 (see page 95).

When a country's legal framework is being reviewed and it is a signatory to an international treaty or convention, the provisions of such a treaty or convention incorporating electoral standards are directly applicable and might even have a constitutional or a legal status therein. Other UN instruments to which the country is not a party, or which lack strictly binding force, may be seen as incorporating electoral standards of a strong persuasive value for that country.

Supplementary sources

A review of a country's legal framework should also consider the following:

- Final reports of various election observation missions (international and domestic) where they are available;
- The requirements of any international instruments to which the country is a party, which impact on the election law; and
- Model codes of conduct addressing election issues developed by international, governmental or non-governmental organizations (NGOs). Annex 3 includes examples of such model codes (see page 111).

General approach

It is important to assess to what degree the country's legal framework for elections complies with international electoral standards. This will provide a set of constructive suggestions for corrections, improvements and possible best practices to strengthen the legislation. At the same time, another country's particular system or practice of legislation should not be considered to be ideal or directly transferable.

A country has discretion in its choice of an appropriate electoral system. However, such discretion in choosing an electoral system is not unlimited and should be consistent with international standards. Given the past tendency of many countries to adopt electoral systems which applied during their colonial periods or for other historical reasons, the review of a country's legal framework could usefully reflect on current cultural, political, social or other factors and realities. A question to pose is: Which is the electoral system most likely to promote democratic elections today?

A meaningful review of a country's legal framework requires more than an examination of the relevant instruments' texts. An assessment is of little value, no matter how thorough the review, if comments, recommendations and advice are not given in an appropriate and constructive manner. Even if it delivers direct and serious criticisms an assessment should be phrased to reflect the delicacy of the task at hand.

When reviewing a country's legal framework, all related legislation (such as the constitution, civil and criminal codes, nationality and citizenship laws, laws relating to the media etc.) need to be consulted and analysed to ensure that they do not conflict with one another and that they do meet international standards.

Accurate translations

It is critically important that, wherever necessary, accurate translations of all laws reviewed are available. Sometimes a recommendation, comment or criticism can arise from a text that may have been unofficially or erroneously translated. This constitutes a significant challenge when reviewing a translated text and should be highlighted in the assessment report.

Prioritizing recommendations

If recommendations are put forward they should be prioritized to distinguish what is required under international standards from what is more generally desirable, as it is likely that not all recommendations will be acted upon.

Recommendations should be carefully worded to indicate both their importance and their priority. (For example : "it would be advantageous if...", "it is strongly recommended that ...", "it is essential to...", etc.). Recommendations which will enhance the credibility of, and public confidence in, the elections -- such as legal provisions which enhance transparency -- should be given a high priority.

Rationalizing recommendations

It is important to explain why a particular recommendation is being made. Some promote conformity with an internationally-recognized electoral standard, a particular international commitment or a particular human right. Other recommendations are made simply to make the legislation more coherent or effective, such as recommendations on addressing particular contradictions or gaps in the laws under review. The internationally-accepted norms and standards discussed in these Guidelines are designed to enhance the credibility of, and public confidence in, elections and to provide increased legitimacy.

Finer detail: laws or regulations

It may be appropriate to incorporate some of the finer detail -- such as voting procedures -- into regulations adopted by government bodies or by electoral management bodies (EMBs), rather than to include it in the electoral law itself. Fundamental issues that should be addressed in the primary electoral legislative frameworks (the electoral law and the constitution) include:

- Qualification to register as a voter, together with any restrictions on such right, if any;
- Qualification for and restrictions on candidacy;
- Rules governing seat allocation;
- Qualification on terms of office;
- Methods of filling casual vacancies;
- Removal of mandates;
- The secrecy of the vote; and
- Election management.