

5. The right to elect and to be elected

The legal framework should ensure that all eligible citizens are guaranteed the right to universal and equal suffrage as well as the right to contest elections without any discrimination.

Formal constitutional or statutory recognition of a citizen's right to vote, and to run for public office, is common to democratic states and plays both a substantive and a confidence-building role. These rights are often subject to certain qualifications insofar as most states make them subject to citizenship, age and residency requirements. Those reviewing the legal framework of a country need to look carefully behind the veil of such restrictions to check for any possible hidden intent. For example, where a citizen convicted of treason cannot vote, in the context of a spate of such convictions only against leaders of the opposition by an apparently "packed" court, the genuineness of such a qualification becomes questionable. The denial of suffrage rights for long-past political crimes would be equally open to question. Even seemingly simple and clear rules such as disqualification for "mental incapacity" may require examination.

Access to voting can be as important as substantive rights, because a right which cannot be exercised is a right denied. For example, where voters are not provided with accessible voting facilities or where the identification of a voter at the polling station is overly complex, this effectively deprives an elector of the right to vote. Where disproportionately large deposits are required for nomination, this effectively can deprive poor candidates of the ability to freely contest an election. Frequently, facilities for voting are not afforded to expatriate citizens, though this restriction must be weighed against a consideration of the capacity of, for example, a poor country to provide the facility. On the other hand, depending on the economic and technological development of a country, providing voting access to citizens by allowing voting by mail or via the Internet might be considered.

Universal and equal suffrage

One clear international standard which must be provided for is the guarantee of universal and equal suffrage to each adult citizen. The right to be elected as a member of the legislature or other provincial or local body, as well as the right to be elected president, may require an age beyond the age of majority, but must be guaranteed to all citizens of that age without discrimination.

Non-discrimination

The legal framework must ensure that every citizen above a certain age has the right of suffrage and that every person who has the right of suffrage is allowed to exercise that right in a non-discriminatory manner on the basis of equal treatment before the law. No discrimination on account of race, colour, sex, language, religion, political or other opinion, association with a national minority, property, birth or other status should be allowed to deprive an otherwise eligible citizen of the right to vote or the right to contest an election.

Scrutiny of restrictions on suffrage

The legal framework should clearly state the circumstances under which a person's suffrage rights may be curtailed or suspended, in what manner or to what degree. Any limitation or restriction on the right to elect or be elected is justifiable only by exceptional circumstances or according to accepted principles. Different jurisdictions have taken different approaches to the issue of giving voting rights to convicts: these range from a total ban on registering as a voter for any person convicted of any offence, to restricting these rights in cases where the conviction is for certain identified offences (of moral turpitude, for example) with a defined term of sentence, to imposing no restrictions at all on convicts. The principle of natural justice requires that any class of citizens disqualified from voting be known in advance. Such disqualifications should be clearly laid down in the legal framework and not be subject to the arbitrary discretion of an institution or a person. Scrutiny and caution are required since the right of suffrage is a fundamental human right.

Checklist

- Are all citizens of the age of majority guaranteed the right of universal and equal suffrage?
- Does the legal framework ensure that suffrage rights are exercised in a non-discriminatory manner on the basis of equal treatment before the law?
- Are there any limitations or restrictions on the right of suffrage and, if so, are they clearly justified by exceptional circumstances or based on recognized norms?

