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THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

SUBMISSION ON THE DRAFT GUIDELINES

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Introduction

The Carter Center (TCC) strongly supports the Office of the High Commissioner for Human Rights' (OHCHR) initiative to produce concise and action-oriented guidelines on the effective implementation of the right to participate in public affairs as established in Human Rights Council Resolution 33/22 (hereafter Draft Guidelines).

The right to participate in public affairs, is codified in international law in article 21 of the Universal Declaration of Human Rights (UDHR), article 25 of the International Covenant on Civil and Political Rights (ICCPR), as well as in articles of other international treaties such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), and the Convention on the Rights of Persons with Disabilities (CRPD). These articles lay out the key elements of the right to participate in public affairs, including not only those relevant to genuine elections, but also to the myriad of other ways that citizens can and should participate in the governance of their country.

While these obligations clearly exist in international law, the implementation of the obligations varies globally, and increasingly we see that policies and practices in many States undermine the ability of citizens to freely participate. In addition, as societies and technologies evolve, the ways and means that citizens use to participate also evolves.

The Carter Center recognizes that the right to participate is broad and wide ranging and includes many different aspects and issues that will be difficult to address within the framework of the guidelines. TCC therefore suggests that the guidelines focus on the following main elements (which are elaborated below), which could be further discussed in the regional consultations:

- *Definition of the right to participate in public affairs:* While rooted in the provisions of art. 25 of the ICCPR and General Comment 25 of the Human Rights Committee (CCPR), the guidelines also should consider the broad range of aspects and issues involved in political participation and articulate, where possible, how the right to participate should be promoted and protected.
- *Key considerations in establishing an enabling environment for the right to participate in public affairs:* The Carter Center suggests that the Draft Guidelines consider the following cross-cutting themes regarding the right to participate in public affairs.
 - Restrictions on the right to participate in law and practice
 - Citizenship
 - The Right to Participate and Social, Economic and Cultural Rights
 - Inclusion and non-discrimination: Women's participation; Ethnic and Minority Participation; Participation of Youth; Participation of Indigenous Persons; Participation by Persons with Disabilities
 - Respect for freedom of assembly, association, and expression
 - Transparency and Access to Information
 - The importance of a functioning and impartial judicial processes
 - Effectively protecting and advancing the right to participate in periods of instability or conflict.

For more information about the right to participate in public affairs, with specific reference to electoral processes, please see [The Carter Center's Election Obligations and Standards Handbook](#).

Definition of the Right to Participate in Public Affairs

Article 25 of the ICCPR codifies the right to participate in public affairs. This article was further elaborated by the Human Rights Committee in General Comment 25, where they took a broad interpretation of the right to participate in public affairs, to include the right of citizens to participate:

- Directly by voting in referenda, by being elected, or presumably by participating in other means of direct democracy.
- Through freely chosen representatives that are elected according to international election obligations and standards;
- Through consultative processes;
- Through debate and dialogue;
- Individually and with others; and
- By establishing and joining organizations, including civil society organizations, unions and political parties; and through equal access to public service positions, including employment in public positions.

In addition, in paragraph 5 of the same General Comment, the Committee defines the conduct of public affairs as “a broad concept that relates to the exercise of political power. It covers all aspects of public administration and formulation and implementation of policy at international, national, regional and local levels.”

The right to participate in public affairs cannot be fully enjoyed without respect for other mutually enforcing rights and freedoms, most specifically freedom of assembly and association and freedom of expression, freedom of movement, and access to information.

Finally, the committee notes that governments that are selected by citizens must be free to govern, but must be held accountable to the people whose will they represent.

Key Considerations

Given the broad nature of the right to participate in public affairs, TCC suggests that the Draft Guidelines might focus less on detailed and very specific suggestions regarding the implementation of the right to participate in public affairs and instead consider several cross-cutting issues that are applicable to the different facets of the right, and without which, meaningful implementation of the right would be impossible. While not an exhaustive list, we believe that the issues outlined below merit further discussion during the consultation process for the development of the guidelines.

Restrictions on the Right to Participate in Public Affairs – Law v. Practice

The right to participate in public affairs, like other rights enshrined in the ICCPR, will be best protected in contexts where the rule of law prevails and there is a clear legislative framework. As the Human Rights Committee established in paragraph 4, any restrictions on the right to participate and the exercise of political rights should be based on objective, reasonable and non-discriminatory criteria. Further, such restrictions should only be applied in exceptional circumstances.

In the Carter Center’s experience, laws, policies and procedures that are not, on their face, intended to limit citizen’s rights to participate may nonetheless do so in effect. Examples of such laws or regulations include laws that, *prima facie* are intended to prevent “foreign interference” in the political affairs of the state, but in effect prevent citizens, operating in civil society organizations, from fund-raising to enable their work. This practice is particularly prevalent in political contexts in which civil society and the

government have an antagonistic relationship. The guidelines might highlight good practices that create an enabling environment for the right to participate in public affairs.

Citizenship

The right to participate in public affairs is unusual in that it is limited to citizens (as opposed to anyone within the jurisdiction of the state). In General Comment 25, paragraph 3, the Human Rights Committee highlights the need for legal provisions to provide a clear definition of citizenship. Further, CERD's General Recommendation 30 establishes that requirements for obtaining citizenship should not be overly restrictive nor discriminatory.

Drawing on TCC's experience in election observation worldwide, we wish to highlight the critical importance of fully implementing the right to participate for all citizens, and to ensure citizenship rights and the acquisition of citizenship is not overly restrictive.

In addition, States need to take effective steps to ensure access to the documentation that serves as proof of citizenship. In particular, the following are key considerations related to appropriate documentation:

- States should ensure proactive registration of births – including of those that are not born in hospitals;
- States should ensure access to / provision of legal documentation for identification;
- Emphasis should be placed on women, minorities and indigenous persons and others living in remote areas, given the greater obstacles they often face; and
- States should consider alternative means of facilitating participation when onerous barriers to documentation exist.

The Right to Participate and Economic, Social and Cultural Rights

The enjoyment of the right to participate in public affairs, unlike many other civil and political rights, can be determined to some extent by the degree to which social, economic and cultural rights are fulfilled and protected. TCC encourages consideration of the ways that issues such as the right to education, and conditions for working people (including working mothers) may impact the right to participate in public affairs for all citizens.

Inclusion and Non-Discrimination

Article 25 (1) of the ICCPR makes explicit the importance of non-discriminatory practices in the context of the right to participate in public affairs. This requires that the State refrain from discrimination itself, prevent discrimination by others, and in some cases take additional measures to ensure full participation of the citizenry. While specific obligations exist for States to take temporary special measures to promote equality for particular groups of citizens (e.g. women, specific minority groups and persons with disabilities), TCC believes that the right to participate is best fulfilled when States proactively encourage participation from the broadest pool of eligible citizens (and when the acquisition of citizenship itself is not overly restrictive or discriminatory). The following issues might be considered during the regional consultation process, as well as in the Draft Guidelines:

Women's Participation: International law states that States should take special measures to ensure equal participation of women in public affairs. Over time, much emphasis has been placed on the importance and role of quotas. While quotas are an important tool for increasing women's participation, other methods can also be effective – these include training programs for female candidates and elected officials; adjustments to campaign finance regulations that level the playing field for female candidates; engagement with civil society organizations active on women's issues; affirmative policies to promote equal employment of women in government, including in leadership positions; and maternal health programs that support women's participation in the public and the private sphere. Finally, it is critical

that greater and more consistent efforts be made to collect gender disaggregated data to enable better understanding of the factors, cultural, social and political, that impact women's participation in public affairs, as well as resistance to it.

Ethnic and Minority Participation: States should take temporary special measures to encourage equal participation of racial minorities. Similar to discussions regarding women's participation, emphasis has been placed on the role of quotas in ensuring full participation of minorities in public affairs. In addition to quotas, additional measures are often required such as training and capacity building programs for minority candidates and elected officials; affirmative employment policies to promote equal employment of minorities in government and official institutions, including in leadership positions; and provision of materials and information in minority languages. In addition, technical aspects of elections, referenda and other participatory processes, such as the process of boundary delimitation, can have a determining impact on the ability of minorities to participate and be represented in their government.

Participation of Youth: The participation of youth in public affairs is important in all societies, and is critical to ensuring the future sustainability of democratic practices. Although youth represent a growing segment of the population in many countries, especially in the developing world, their effective participation is hindered in many cases by a lack of education including about human rights and key principles of public affairs and participation, including elections. TCC hopes that the consultations and Draft Guidelines will include consideration of the challenges and obstacles to youth participation, and possible steps that can increase their effective inclusion and participation.

Participation of Indigenous Peoples: Discussion regarding the participation of indigenous peoples in public affairs often focuses on self-determination, and community-based decision making processes. There is less focus on the impediments that indigenous peoples' may face to participating in public affairs at the national, regional and international levels. Barriers may include the long-distances that people must travel to vote if they live in more remote areas, or lack of services in indigenous languages. TCC hopes that the consultations and Draft Guidelines will include consideration of the right of indigenous peoples to participate in public affairs.

Participation by Persons with Disabilities: The CRPD, as well as the Committee on the Rights of Persons with Disabilities has outlined the imperative for and some means of facilitating participation by persons with disabilities (physical and psycho-social). In the experience of TCC, one of the greatest inhibitors to the full participation of persons with disabilities, but among the most difficult to overcome, is stigma. Campaigns to overcome stigma, and highlight the contributions of persons with disabilities can have a positive impact on the ability of citizens with disabilities to participate in public affairs.

Respect for Freedom of Assembly, Association and Expression

In General Comment 25, the Human Rights Committee makes explicit the relationship between the right to participate in public affairs, and the freedoms of assembly, association and expression. This relationship is complex and multi-faceted, and so, drawing on our experience we highlight a few key issues that we hope will be considered during the consultations and in the Draft Guidelines:

- While *party and organizational registration* can be an important means of regulating the activities of organizations for the public good, they can also stifle the right to participate in public affairs. As part of a commitment to creating an enabling environment for the right to participate in public affairs, States should seek a balance that errs on the side of protecting the right to participate.
- *The role of the media* in ensuring that citizens are able to express their views, but also receive balanced and factual information about policy issues, local, national and international affairs, and the workings of their government and representatives, is well understood. However, it remains the case

that individual journalists and media outlets are the targets of harassment, intimidation and censorship in many parts of the world, and that this can have a chilling effect on the right to participate of many citizens. At the same time, the full impact of the emergence of “fake news” on the right to participate remains unclear. Overall, we hope that the Guidelines will encourage States, civil society and others to redouble their efforts to create safe environments for credible journalism, and to develop mechanisms to help citizens identify “fake news” sources and content.

- The right to participate in public affairs can also be impacted by the rules and regulations of political parties and the other organizations through which citizens exercise their right. TCC encourages consideration of the responsibilities and obligations of political parties and other organizations, including to strengthen internal democratic practices, to ensure the full enjoyment of the right to participate in public affairs by all citizens.

Transparency and Access to Information

Enshrined in Articles 19 of both the UDHR and the ICCPR, the right of access to information improves governance and lives, making public administration more transparent and accountable and enabling citizens to understand policies, help determine public priorities, and use information to ensure the exercise of their other human rights, including the rights to education, employment, and a safe environment. As in other areas, women, minorities, indigenous peoples’ and those living in extreme poverty may experience greater or additional barriers to accessing information that inhibit their ability to participate fully in public affairs.

More than 100 countries have passed information laws. However, many of them are failing to fully and effectively implement their laws, and at present there are few objective means of analyzing and addressing this critical problem. The Carter Center’s Access to Information Program supports governments to self-assess the implementation of their access to information laws, including assessing leadership, rules, procedures, resources, and training to help governments identify concrete, fixable problems that prevent citizens from accessing information to which they have a right.

The importance of functioning and impartial remedy processes

ICCPR article 2 (3) establishes that the right to remedy is essential to the enjoyment of all rights, including the right to participate in public affairs. Given the broad definition of the right to participate in public affairs, a range of different remedies may be required, but necessary to all is that an independent and impartial judiciary exists and functions. In TCC’s experience, the provision of the right to remedy during the electoral process places additional burdens on administrative and judicial processes because of the time-bound nature of election events. In addition, there is often a lack of clarity and public information about electoral dispute mechanisms to ensure remedies, including the processes and timelines within which to access them.

Effectively advancing the right to participate in periods of instability or conflict.

Article 4 of the ICCPR recognizes that States may be required to derogate civil and political rights in a time of public emergency that threatens the life of the nation. The rights and freedoms protected by articles 19, 21, 22 and 25 are not non-derogable according to the ICCPR. While this is understandable in the context of genuine states of emergency, it is incumbent upon States to limit States of emergency, and to find ways to facilitate the fundamental rights of citizens to participate in public affairs, particularly during times of upheaval and turmoil. During the consultation, TCC hopes that discussion will turn to the protection of the right to participate in periods of instability or conflict and the re-instatement of the right after the period of instability, as well as the use of states of emergency as a means to suppress and curtail the participation of citizens in public affairs.