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PROVIDING A SOUND LEGISLATIVE FRAMEWORK AIMED AT PREVENTING ELECTORAL VIOLENCE, IMPROVING ELECTION MONITORING AND ENSURING THE SMOOTH TRANSITION OF POWER

FIRST STANDING COMMITTEE ON PEACE AND INTERNATIONAL SECURITY

DRAFT REPORTS

Members will find attached the two reports presented by Mr. Jesudasu Seelam (India) and Mr. Willias Madzimure (Zimbabwe), co-Rapporteurs.

At this stage, the co-Rapporteurs have preferred to submit separate reports in order to provide the broadest possible view of the topic at hand, thereby placing at the disposal of Members extensive information for the panel discussion to be held during the 123rd Assembly.

**PROVIDING A SOUND LEGISLATIVE FRAMEWORK AIMED AT PREVENTING
ELECTORAL VIOLENCE, IMPROVING ELECTION MONITORING AND
ENSURING THE SMOOTH TRANSITION OF POWER**

***Draft report submitted by
Mr. Jesudasu Seelam (India), co-Rapporteur***

Democracy and elections

1. The pace of global democratic expansion has accelerated significantly in the past few decades. The political events in countries such as Afghanistan, Georgia, Iraq, Lebanon, Palestine and Ukraine are signs of yet another wave of democratization, underpinned by a vigilant and engaged citizenry seeking sound democratic rules of electoral competition.
2. Elections are the sine qua non of democracy. By allowing citizens to choose the manner in which they are governed, elections form the basis of all democratic institutions and practices. The inherent right of the people to participate in the governance of the country stems from the Universal Declaration of Human Rights, Article 21(3) of which provides that "the will of the people shall be the basis of the authority of government...".
3. Democracy, in the course of its evolution, has proven to be the most feasible form of government and election is the cornerstone of the democratic process. Strong and effective political and electoral institutions increase the likelihood of a peaceful post-electoral transition of power. The electoral process is thus a viable means of transferring power, which renounces violence and the arbitrary means of succeeding to power. To make democracy vibrant, societies must foster a democratic culture and promote the rule of law, both of which govern societal behaviour between and during the elections and restrain those who might be tempted to undermine electoral processes.

Electoral violence and related issues

Causes of electoral violence

4. Electoral violence is an attempt, directly or indirectly, to undermine, delay or influence the electoral process, thereby affecting the political stakeholders. Some actors exhibit a lack of faith in the democratic process and use violence in their attempt to manipulate the outcome of the elections to achieve their personal ends. The past experience of some emerging democracies shows that political stakeholders resort to means beyond the established norms and use aggression and violence to achieve their political objectives when the electoral process is perceived to be unresponsive and illegitimate. Electoral violence, at times, is also used by some as a new tactic in the political competition.
5. Post-election violence is not a result purely of the electoral process per se, but a manifestation of underlying political and societal issues. The socio-economic divisions and disparities in society, fuelled by weak governing institutions, are the main contributing factors to election-related violence, particularly in post-conflict countries. In fact, political violence is more likely to occur in a country transiting from war to democracy. However, the root causes of election-related violence are found in systemic, long-standing and unaddressed grievances.

6. Lack of adequate power-sharing arrangements and a weak State structure also spark off violence in societies that are highly heterogeneous and full of disparities. In some countries, politics along religious, sectarian or ethnic lines fuels violence, where political leaders and others use hate speeches or inflammatory political rhetoric against other minority or ethnic groups. The worst kind of situation arises when some political parties or groups in a society fear loss or exclusion after the election. They then resort to violence either to prevent their exclusion or to obstruct the successful conduct of elections. These are some of the common potential factors, which, singularly or in combination, trigger violence during the election cycle.

7. In recent years, electoral violence has been widespread, affecting countries at all stages of democratic development. From disruptions during the registration process, campaigning or polling to disapproval at the election outcome, candidates and electorates are obstructed in their participation in the election process. This, in fact, has been undermining the very legitimacy of the electoral process, thereby eroding the democratic system. If electoral violence is not tackled in its entirety, it can lead to a negation of the harmonious working of democratic institutions in a country. Managing such violence is, therefore, imperative for strengthening the very edifice of democracy and for building a society based on the rule of law, accountability and transparency.

Preventing electoral violence

8. Various strategies are used by governments to manage and prevent electoral violence during elections. However, the notion of violence-free elections is encapsulated in the term “free and fair elections”, serving as a benchmark for determining the legitimacy of elections. The United Nations holds as pre-eminent free and fair elections in any form of democratic governance. It strongly believes that people are less likely to resort to violence to resolve their differences or to make their voice heard if they can participate in free and open elections.

9. To promote free and fair elections, the United Nations Development Programme (UNDP) has been offering strategic electoral assistance to States at various levels of the election process. Bearing in mind the larger interest involved in encouraging violence-free participation in elections, other international development agencies must also support the efforts of individual countries aimed at effecting legal reforms, putting in place independent and permanent electoral management bodies, setting up systems for planning, monitoring and budgeting in relation to elections, and promoting voter and civic education.

Administration of electoral process

10. An independent and impartially administered electoral process is a prerequisite for the conduct of free and fair elections in any country. In established democracies, however, national and local government officials handle election administration. It is, therefore, imperative for emerging democracies to establish and promote independent and impartial election management bodies to manage the electoral process effectively so as to ensure that violence-free and peaceful elections pave the way for the smooth transfer of power.

11. As a supreme election management body, the institution of an independent and permanent electoral commission has now been widely accepted. Impartial election administration by an electoral commission can restore the confidence and trust of the electorate. The Election Commission of India, the Independent Electoral Commission in South Africa and the National Election Commission in Poland are a few examples of national-level electoral machineries responsible for conducting free and fair elections. In situations where electoral commissions have failed to fulfil their responsibilities, the significance of the independent election commissions has been highlighted, time and again, in the reports of various observation missions, such as the reports of the Commonwealth Observer Groups. Therefore, countries not equipped with national-level independent electoral machineries must strive hard to institutionalize their election administration along the lines of those in established democracies.

The question of improving election monitoring

12. Election monitoring ensures legitimacy of the electoral process, protects and promotes human rights, and encourages political participation of the people. It deters fraud and corruption, boosts public confidence, enhances citizen involvement, and strengthens the role of non-governmental organizations (NGOs) in the political landscape of the country.

13. Both domestic and international monitoring and evaluation of elections have become fairly routine nowadays. UN General Assembly Resolution 64/155, adopted on 18 December 2009, acknowledges the importance of international election observation and its contribution to the mitigation of potential election-related violence. Furthermore, international observers have repeatedly stressed that the presence of observers - foreign or domestic - ensures voter-confidence and helps improve the electoral process. In their reports, international election observers have frequently made suggestions and advised how to contain ongoing electoral violence by determining its causes and directing resources towards conflict management or resolution. They have also suggested conflict-prevention capacity-building strategies for electoral stakeholders so as to reduce future electoral breakdowns.

14. NGOs, the international community and the media, among other actors, play a significant role in the election monitoring process by providing the necessary logistical and information back-up. In fact, monitoring by domestic and international election observers provides sufficient ground for assessment of the election process, the election system and election laws and regulations, which further paves the way for the formulation of corrective legislative measures.

Ensuring a smooth transition of power

15. The smooth and periodic transfer of power is the very essence of a successful political system. A mature political system facilitates, encourages and ensures healthy political competition and a peaceful transition of power. Since the transition of power implies a change in leadership, it poses challenges to political stability. However, democracy minimizes such challenges by the holding of regular elections for transparent power transfers, which helps both the winners and the losers accept the result of the elections.

16. Elections alone, however, do not guarantee the peaceful transfer of power and democratic rule. The smooth transition of power in a democracy further requires respect for the rule of law, transparent political and electoral institutions, a strong civil society and a vigilant media, in addition to the support of an active citizenry. While respect for the rule of law entails protection and promotion of fundamental civil rights, liberties and justice and compliance with the procedural norms in a society, strong and effective political institutions provide democracy with the requisite resilience to withstand potential conflicts in society. Similarly, accountability, transparency, responsiveness and efficiency in the working of public institutions help build political legitimacy for the democracy, which diminishes the likelihood of violence and conflict, and helps along a smooth and peaceful transition of power. As far as civil society organizations (CSOs) are concerned, they help citizens articulate their grievances and participate in the governance of the country. Providing checks and balances on government powers and promoting democratic values, CSOs significantly contribute to the smooth transfer of power after the elections.

17. With the mushrooming of print and electronic media and the communication revolution, the press, the fourth estate of the State, warrants special attention. The media, by keeping obstructive elements in check, provides new avenues to the people to voice their opinions and dissent, thereby leading to a consolidation of democracy and contributing to the smooth transition of power after elections.

Need for a sound legislative framework

18. Violence is a law-and-order problem that can occur anywhere at any time, and as such, elections are no exception. Stringent electoral laws and strict adherence to the rules are, therefore, fundamental to combat and reduce election-related violence. The Representation of the People Act, 1951, in India, is an umbrella legislation in this field, which helped the electoral machineries in the country successfully conduct 15 general elections, in addition to a number of elections to the state legislatures and local bodies since 1952. This bears testimony to the fact that legal and statutory measures are the most effective tools to protect and promote the civil and political rights of individuals on the one hand, and to curb violence in society, in general, and during elections, in particular, on the other. This highlights the need for all democracies to have a sound legislative framework aimed at preventing electoral violence and improving election monitoring so as to ensure the smooth transfer of power after elections. In this regard, it is imperative for democracies across the world to share their experiences individually and through forums such as the IPU and other international organizations working for the furtherance of democracy. All democracies need to put in place comprehensive legislation focusing specifically on the following:

- (a) Ensure that political parties and candidates conduct their election campaigns according to enacted laws and agreed norms, the electoral and administrative machinery functions in a non-partisan manner, the poll is conducted according to prescribed procedures, and the counting is done in a smooth, business-like manner;
- (b) Define the mandates of political parties, CSOs, international monitoring and observer missions and security agencies in managing and preventing electoral violence;
- (c) Provide for an independent, fair, expeditious and accessible dispute settlement mechanism to address electoral disputes during the election cycle or after the election results;

- (d) Provide for technical assistance from appropriate agencies in order to enhance the standards and capacity-building of election management bodies, election courts, political parties, related NGOs and the media;
- (e) Devise measures aimed at strengthening of the role of the opposition, facilitating constructive dialogue and the dissemination of information between stakeholders and building public trust and confidence in the electoral system.

19. The IPU's Declaration on Criteria for Free and Fair Elections, adopted in 1994, is a landmark instrument in our consistent efforts to bring democratic values into the forefront of the international agenda. The Declaration urges States to take the necessary legislative measures for the conduct of violence-free elections.

20. Elections produce accountability when they are held regularly and in a free and fair manner. Promoting best practices and standards in election administration, nation-States must focus individually and collectively on the legal, procedural and educational dimensions of the electoral process and strive to establish a viable electoral infrastructure and develop institutional capabilities for the conduct of successful elections. By identifying the motives, victims and perpetrators of electoral violence, programme responses can be developed to reduce and prevent violence and conflict during elections. Affected countries need to devise legal and institutional mechanisms as a basis for deterring electoral violence. Existing election legislation also needs to be enhanced in order to put an end to electoral conflict and violence.

DRAFT REPORT

submitted by Mr. Willias Madzimore (Zimbabwe), co-Rapporteur

"The experience of democracy is like the experience of life itself – always changing, infinite in its variety, sometimes turbulent, and all the more valuable for having been tested by adversity."

(President Jimmy Carter's speech to the Parliament of India, 2 June 1978)

Introduction

1. The electoral process is part of a larger practice called democracy. In a democracy, elections are the means by which people make choices about who should represent them and which policies they prefer. Where democracy is practised fully, elections give birth to a legitimate government. The ascendance to power of a government so formed is characterized by a smooth handover and takeover of power to govern.

2. The assumption is that the process does not leave scars, fractured limbs, dead bodies and a polarized society. The success of an election hinges not only on the fulfilment of the right of every citizen to vote or to be elected, but also on the fulfilment of all their other rights. In an election, tension is inevitable and perhaps desirable to that extent that it brings out the best in the contending parties or individuals. But it can also bring out the worst. Elections can spark violence in countries where contestants do not abide by the rules or accept the outcome as the legitimate expression of the will of the people. Where democracy has taken root, the whole process is subject to a transparency test through an open invitation to observers and monitors to play their oversight role and give the results their seal of approval or disapproval as the case may be.

3. Elections are not the sole cause of pre- or post-election violence. Often, elections provide people with an opportunity to express other grievances. These include political contestation, resource-sharing, social justice, ethnic rivalry and marginalization, religious differences or other real or perceived malaise.

4. While transitional mechanisms in mature democracies are well defined and are used to manage a smooth handover and takeover of power, the same cannot be said of the majority of fledgling democracies and post-conflict States. In such States, the process is undertaken to try and manage contested election results.

Background

5. Early elections in many countries were held to stake claim to a constitutional democracy and as an obligation to gain international legitimacy. The winner was known well before the votes were cast because of the absence of opposing views. Very few people participated in the elections. The country's history and struggles that brought about self-determination and new political dispensations unified the people. The parties that led such processes became the institutions whose mandate to govern could not be challenged. This created dictatorships and, subsequently, opposition. The emergency of opposition politics has since changed the political and electoral landscape.

6. Opposition to the status quo has brought about a fierce contestation of power. Governments in power always respond through propaganda and the use of force. Opposition party leaders are often labelled opportunists, sell-outs, traitors or agents of imperialist governments. The alienation of parties and people through propaganda has taken a heavy toll on most countries, unravelling social cohesion, fanning the flames of political and electoral violence, and smothering innovation and debate among the country's populace.

7. The challenge facing countries that have denied their people democratic space to express themselves is the prospect of political and armed conflicts. Elections held under such conditions have always come with high stakes. Any means possible to preserve power is used ostensibly to protect sovereignty and the gains of independence. In such countries, civic education is non-existent.

8. Election violence has characterized many elections in countries where the status quo has resisted change. In the majority of cases, violence has been used successfully to circumvent the will of the people. The 2007 elections in Kenya and the 2008 poll in Zimbabwe are cases in point. The two countries are now run by coalition governments. These were formed after the elections failed to produce outright winners according to the constitutional provisions and as a way to stop post-election violence. In Britain in 2010, the party that got the majority vote was given the opportunity to form a coalition government with a party of its choice. This took no more than a week after the general elections. In Kenya and Zimbabwe, the process to form governments took between three and 11 months respectively and ultimately, the losing candidates remained in charge. A number of people had to pay with their lives before the governments of national unity could be formed.

9. The above-mentioned cases reveal the weaknesses in the legislative framework to manage elections. In this regard, what has hampered democracy in a number of nations is the absence of sound electoral laws, election management systems, transparency, and poor transitional mechanisms.

Elections and electoral violence

Causes of election violence

10. Election violence as a form of political violence is sparked by a number of political, social and economic differences and undercurrents in society. Some of these are:

- (a) Determination by ruling parties under siege from opposition parties to hang on to power;
- (b) Use of partisan State institutions against opposition parties;
- (c) Violent street demonstrations, arson and destruction of property by the opposition (usually to counter State-instigated violence);
- (d) Boycott of elections by the opposition in protest over an uneven playing field;
- (e) Deep ethnic and regional divisions, particularly in developing countries;
- (f) Politicization of communal or ethnic, tribal and religious identities;
- (g) Cost of losing an election or zero-sum politics;
- (h) Militarization of the society by the ruling parties and/or parties that have influence over the security institutions;
- (i) Reliance on mobilized and militarized youths as a means of maintaining political dominance;
- (j) Holding elections in conditions of instability and political fragility, particularly in a post-conflict context;
- (k) Corruption as a means of winning elections.

11. Elections the world over are becoming more and more viciously contested, with equally contested outcomes. Outcomes are repeatedly failing to produce outright or clear winners. This can be attributed to the deepening of democracy. Similarly, violence as a means of retaining or gaining political power is increasingly being used in other parts of the world, in particular in Africa.

12. It therefore becomes crucial that the conditions for a free and fair election be emphasized and that the legislative framework governing elections be strengthened. Structures are needed that would stabilize political competition and manage the fusers of ethnicity, religious differences and regionalism and enhance transparency and impartiality and the predictability of electoral governance and administration.

13. Governments use sovereignty to avoid scrutiny during elections. Election observers are handpicked from friendly nations and monitors are not allowed to freely monitor the process.

Legislative framework

Electoral systems as a cause of electoral violence

14. Electoral systems determine how power is allocated among electoral winners. There are a number of electoral systems in the world, the most common of which are first-past-the-post, proportional representation and a hybrid system consisting of the first two. While no one system can be considered the best, proportional representation can come in handy when dealing with post-conflict situations. In Zimbabwe in 1980, it was used to end the war of independence and in South Africa and Northern Ireland, proportional systems were key components of the process of bringing an end to political violence.

15. The hybrid system can be effectively used to determine the allocation of political power. Political, ethnic, tribal and religious communities are represented through constituency and ward-based elections while the minorities' share in the communities' representation is determined by the proportion of votes obtained by each party contesting the elections. The president, as an individual, is elected by the whole country.

Real or perceived electoral manipulation

16. Where elections are perceived to have been manipulated, the outcomes are often contested. The contestants feel cheated and unjustifiably excluded from power. Claims of a fraudulent vote can be made deliberately by losers to attract sympathy and/or to spark violence. However, the question remains: how does the nation deal with the perception? How could a political party, a candidate or supporters of political party claim that the elections were fraudulent when they were not?

17. The reasons that give rise to election disputes and violence are as follows:

- (a) High stakes - in some countries, winning public office provides a livelihood not just for an individual but for an entire clan, faction or ethnic group. It is a guarantee of protection against prosecution for corruption and other offences.
- (b) Close outcomes and zero-sums politics - when margins of victory are too close, allegations of fraud will lead to frustration, violent demonstrations and violence. This also occurs when a political party feels that there is little or no benefit to sitting on the opposition benches or when political parties and groups in society fear loss in elections and feel excluded from the politics of the country.

The election process as a means of reducing the chances of electoral violence

18. An effective and credible election process can reduce the chances of an election outcome being contested. However, deep-rooted grievances can still ignite simmering political tensions. Therefore, a credible process alone may not be the answer. The following elements can reduce the potential for election violence:

- (a) A highly consultative process in establishing an election management body that ensures trust and confidence in the fairness, impartiality and competence of the running of the election. Such a body and its independence can be guaranteed in the constitution. Only recently, the process failed in Afghanistan, but successes were registered in Liberia (2005), Sierra Leone (2007) and Ghana (2008).
- (b) A stakeholder consultative approach ensures that all participants in an election take ownership of the process and ultimately become jointly responsible for it. Stakeholders must be involved in the development and passage of election legislation. Cases in point were the elections held in Bangladesh and the Maldives in 2008, where the processes were highly consultative and transparent.
- (c) A level playing field - all participants in an election process must feel that the legal framework provide a level playing field, respect for human rights and freedoms and is inclusive and fair to all. Intervention by the authorities should be avoided as this will allow mistrust to creep in. Candidate and party registration must be open. Campaigns must be open and access to media equal among participants. Security forces should behave in a professional manner.
- (d) Eligibility of voters - the voters' roll may not be perfect but every effort should be made to ensure that the wider public has confidence in its accuracy. The conditions for a voter to be registered should be simple so as to avoid allegations of discrimination and exclusion.
- (e) Transparency at all stages of the election process - public confidence can be gained through the management body's timely publication of decisions and swift announcement and display of the results. Results should be broken down to their lowest level e.g. the polling-station level. The ballot must always be secret.
- (f) A fair, credible and accessible dispute settlement mechanism - after all has been said and done, the wider public and all stakeholders have the right to an effective remedy in cases where their political rights have been infringed upon or denied. This process, if allowed and observed in a timely and transparent manner, can reduce the risk of resorting to violence as a means of settling disputes.

Election observation and monitoring

19. Preventing election-related violence requires a holistic approach to enhancing the legislative framework that governs and manages elections. The presence of regional and international observer missions in the country before, during and after elections reduces the likelihood of an outbreak of violence. The decision to send such teams is necessary in post-war and post-violence situations. The international community, through United Nations security bodies, should determine which situations warrant observer missions. The IPU for its part could analyse elections among its Members.

20. Regional communities can contribute effectively by ensuring that guidelines for holding free and fair elections are developed. The African Union has a Charter on Democracy, Elections and Governance while the Southern African Development Community has Principles and Guidelines Governing Democratic Elections. These declarations form the basis of observer missions to monitor elections in Member States. Many countries would like to hold credible elections. However, they lack the capacity to technically manage the process. This gives rise to the need for election monitors. Election monitors are technocrats and in cases where their services have been accepted by the country holding elections, the results have been credible. Election observation should not be optional and selective by the government in power. All stakeholders in an election should be consulted in the process of inviting and accrediting monitors and observers.

Transitional mechanisms

21. The key result area of any election is the smooth transfer of power to the winner.

22. The clarity of provisions in the constitution providing for the orderly transition from the old government to the new one depends on the level of democracy in the respective State. A solid constitution must stipulate when the term of office of the president and parliament ends and by which date the next election will be held. It must clearly state under what circumstances the parliament can be dissolved and the head of State or government should stand down.

23. To avoid any doubt, the period between the announcement of election results and the inauguration of the new leader and government should be enshrined in the constitution. The process should incorporate healing and reconciliation in order for peace to be sustained.

24. In conclusion, while it is important to take all measures to perfect election systems, if there is no political will, these efforts will bear no results.