An International Normative Framework for Democratization

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An International Normative Framework
For Democratization

Introduction

The objective of this study is to suggest an international normative framework for democratization based on core elements generally shared in instruments of government commitments and relevant practices of intergovernmental organizations.

More than one hundred States are engaged in the practice of democracy in varying forms and degrees. Most intergovernmental organizations are carrying out programs and projects for the promotion of democracy and good governance. Non-governmental organizations by the hundreds around the world are devoted to human rights and democratization. Yet, the scope and content of the concept of democracy are understood in different ways in different contexts. Various priorities and emphases are attributed to democracy’s differing elements. For instance, many proponents consider that democracy—rule by the people—addresses primarily the relations within a nation state between the government and its people. Some proponents of democracy seek a democratic society based on respect for human rights, free elections and a multiparty system. Others stress the importance of economic well-being and social equality amongst the people. Still others look for popular participation in politics and the accountability of government officials. Another school views democracy as management tools for reconciling diverse interests, reducing conflicts and promoting harmony.

Different views have been expressed on whether the concept of democracy is relevant at the international level. Some have drawn connections with the long-held principles of international law of sovereign equality among nations and one-nation-one-vote. Others have stressed the practical and beneficial aspects of the concept itself: for instance, to reflect in financial projects the need of the people of the borrowing countries,¹ to improve inter-state consultations and decision-making processes to ensure equality, and to make intergovernmental organizations more representative and accountable in order to mirror the concerns of the less powerful.

Such diverse perspectives and viewpoints have enriched the understanding of the concept of democracy, but have also clouded its scope and content. It is difficult to ascertain the precise contemporary meaning of democracy. Diverse perspectives have also compounded the difficulty of identifying standards and comparing performances. In this environment, it is essential to establish for these purposes a standard of democracy that is generally acceptable. But how to ascertain this standard of democracy amongst the numerous sources of information? Since governments are policy makers as well as implementing agents, the most pragmatic approach is to base his standard on governments’ actual commitments to democracy of what they have promised and are prepared to implement, in conjunction with the relevant practices of intergovernmental organizations.

To this end, three types of governments’ commitment and institutional practices are relevant:

Important instruments of commitment have evolved at the governmental level in the fifteen years since thirteen new or restored democracies first met in 1988. Today, more than one hundred nations from all regions of the world participate in the conferences of such democracies. Series of summits \(^2\) and specialized conferences on democracy have been convened which have adopted important instruments reflecting government commitments. \(^3\) These instruments contain policies, principles, implementation measures and action plans for the promotion and consolidation of democracy. They bear witness to the participating governments’ individual and collective covenants on democracy and evince consensus reached in the community of democracies. As such, they not only represent governments’ promises and commitments but also constitute yardsticks for measuring performance and implementation.

The foundation treaties of many intergovernmental organizations contain norms and concepts germane to democracy and good governance \(^4\). The organizations themselves have developed relevant policies and launched extensive programs that demonstrate important institutional practices regarding implementation.

Basic civil liberties and freedoms are traditionally regarded as an integral part of democracy. The wide acceptance of multilateral instruments of human rights and freedoms around the world confirms their close relationship. \(^5\)

On the basis of a careful survey of the above-mentioned instruments of government commitments together relevant institutional practices, \(^6\) it is possible to extract and identify the commonly accepted core components of democracy by the community of states to constitute a normative framework of democracy. The contents of this normative framework are arranged under the headings of: constitution; the rule of law and independence of the judiciary; governance, citizen participation and inclusive policy; freedoms of thought, expression and association; economic growth, social cohesion and equality; civil society and non-governmental organizations; accountability and transparency. While these contents have their basis in the commitments of governments and institutional practices, it is necessary to add, elaborate and clarify some of the contents in order to fill gaps and to avoid ambiguities.

\(^{2}\) Instruments adopted by summits are as important as treaties and possess the same stature in international law, since the head of a state or government has full authority and competence in law to make commitments on behalf of the State concerned.


\(^{4}\) These institutions include: the United Nations, African Union, the Southern African Development Community, the Economic Community of West African States, the Organization of American States, the Council of Europe, the Commonwealth; European Union; Organization for Security and Co-operation in Europe, La Francophonie, the Portuguese Speaking Community.

\(^{5}\) These multilateral human rights treaties include: The Universal Declaration of Human Rights; The International Covenant on Civil and Political Rights (ICCPR); The International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child; American Convention on Human Rights; Inter-American Democratic Charter (IADC); European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); European Social Charter; African Charter on Human and Peoples’ Rights 1981 (the Banjul Charter).

\(^{6}\) Due to space limitation, this survey is not included here.
The Human Development Report 2002 notes that “...effective governance is central to human development, and lasting solutions need to ...be firmly grounded in democratic politics in the broadest sense. In other words, not democracy as practiced by any particular country or group of countries – but rather a set of principles and core values that allow people to gain power through participation while protecting them from arbitrary, unaccountable actions in their lives by governments, multinational corporations and other forces.”

It is hoped that the suggested framework may serve the basis for developing a set of universally shared principles and core values. Meanwhile this framework will provide a standard and measurement for performance for further democratization.

As will be seen, those essential elements are intended to achieve four basic objectives: (i) to enhance citizens’ participation in political activities and in social and economic development; (ii) to advance justice, legal order and respect for human rights; (iii) to improve accountability and transparency; (iv) to promote general agreement amongst diverse interest groups, while respecting minority concerns.

Further, the suggested normative framework goes beyond the traditional focus of civil liberty and political rights. The reality of life in many regions of the world demonstrates that effective participation in civil or political activities has to be combined with the ability of the population to maintain a minimal standard of living. If democracy is to be helpful to the people in these regions, it has to embrace cultural, economic and social aspects of life as well. These concerns are reflected in the governments’ commitment and institutional practices.

In a similar way, such issues as external debt, poverty, development and corruption have also become part of the components of the democratic framework in order to meet the needs of the developing countries. It may be contended that such additions serve only to dilute the essence of democracy. But if democracy is to be accepted on a universal basis, it must reflect concerns from different parts of the world.

The concept of democracy now means also democratization of intergovernmental relations. Both the instruments and practices of intergovernmental bodies confirm that democracy has a place in state relations (notably, sovereign equality and international cooperation), between states and international organizations (in setting conditions for loans and formulating projects for the benefit of the recipients), and between member states within an international organization (consultation, searching for consensus). This broadened concept at the international level pertains not only to procedure and process but also to substance in areas such as friendly relations between nations, solving global problems of economic, social, cultural and humanitarian nature, and the participation of NGOs.

All in all, this normative framework should be seriously considered if further democratization is the objective.
Almost every year, one elected government is overturned by military forces. In the Sub-Saharan region alone, national armies have intervened in political affairs in some 13 countries, or one in four of the nations in the region. During the past century, about 170 million people, mostly civilians, women and children were killed largely as a result of struggle for power.

The new or restored democracies are bound together by their choice for democracy. Many of the member governments of the Conference of New or Restored Democracies are still in transition. Some may be fragile and likely to be challenged by opposing factions. While some member governments may resort to their respective regional or language institutions for help, a quarter of the Conference’s member governments do not belong to any such groupings and would have no institution to turn to in case of need. The process of democratization could be greatly strengthened if like-minded democracies could be mobilized to provide support for member governments confronting unconstitutional challenges. Even for those States that have access to regional institutions, any additional support from the Conference can only further strengthen their effort. Threats to democracy are a serious matter and should be of general concern. A democratic government needs and certainly deserves all the support that it can get.

It is, therefore, important for the Conference on New or Restored Democracies to consider ways and means to strengthen its institution and to provide support to its member governments encountering internal unconstitutional challenges. To this end, this study contains two sets of recommendations for the consideration of the forthcoming Mongolia Conference of New or Restored Democracies in June 2003:

- Institutionalization of the Conference;
- Conference’s support to maintain the constitutional democracy of a member government.

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9 See Human Development Report 2002, p.6. According to the Report, 46 elected governments were forcibly overturned by authoritarian rule in the later half of last century. Since 1989, national armies have directly intervened in the political affairs of 13 Sub-Saharan countries, or about one in four of the region’s countries. p.6.
10 Ibid.
11 Ibid.
12 See infra, Chapter 1, Democracy Grounded in the Constitution.
13 The Security Council may be resorted to if there a threat to international peace and security but unconstitutional challenges may not fall within this category.
Chapter 1

Democracy Grounded in the Constitution\textsuperscript{14}

That democracy should be grounded in the Constitution is a common element running through most instruments of commitment. It implies three things: that the Constitution is the edict of governance, that the government derives its legitimacy from being constitutionally elected, and that measures of international support exist to uphold such legitimacy.

1. Edict of Governance

The Constitution is the source of authority upon which the whole nation is founded. It embodies a set of fundamental norms for determining relations between and interactions among the people and their government institutions. It prescribes a list of individual rights and liberties that are protected against the arbitrary exercise of state power. It assigns specific functions to different state organs or offices, delimiting their powers and defining their interrelationships. As the foundation and the supreme law of the land, the Constitution must be respected under all circumstances by the executive, the legislature and the judiciary, as well as by all the people of the state. All citizens and government institutions should pledge their loyalty to the Constitution.

A constitutional democracy should also include a system of regular and periodic elections with free choice of candidates, the opportunity to organize competing political parties, adult suffrage, and decision by majority vote. In addition, it should provide for an independent judiciary, safeguards for internationally recognized human rights and freedoms, and protective measures for women, children and minority groups. All state institutions including the police and the military should subordinate to the legally constituted civilian authority and respect the rule of law as embodied in the Constitution.

The respective responsibility and line of command of the military in dealing with external threats and the police in dealing with internal disturbance should be clearly

defined in the Constitution so as to promote accountability to reduce undue political involvement.

Constitutional power should be exercised through the people, the party system, the executive, the legislature, the judiciary, as well as civil society and all related institutions. The power is controlled, shared and distributed in such a way that each party is subjected to reciprocal checks. They are therefore bound to cooperate with each other in order to exercise political power.

The Constitution should entrust the legislature and judiciary with the power to hold the executive branch accountable. Mechanisms and procedures should be developed to implement that objective. Careful balance should always be maintained between effective scrutiny and the executive’s responsibility for taking initiative. Overzealous probing may result in inaction or more bureaucracy. Checks and balances must be maintained.

The legislature and judiciary in new or restored democracies may need professional lawyers, skilled staff, technicians, library or access to information to carry out their power of scrutiny. These resource constraints must be addressed.

2. Transfer of Power

The Constitution should prescribe a peaceful process for the change of government through a set of rules binding both on those who are in power as well as those who are seeking power. Under such rules, the existing government is assured reasonable security of offices and protection from forcible overthrow, but is barred from staying in power in violation of constitutional conditions or from using illegal means against political rivals. Concurrently, the personal security of those who are seeking power are guaranteed but they may not use force either and they are bound to follow legal procedures to gain office. They would be punished if they resort to force or any unconstitutional means to effect change of government.

3. Amendment of the Constitution

As the fundamental law of the nation, the Constitution requires certainty and stability and should not easily be altered. The rule of law is made a mockery if the Constitution can easily be changed to suit political need. But if too rigid, it loses the ability to change when real need arises. Amendment procedure should require a high majority. Certain constitutional principles (e.g. civilian authority over the military) should not be subject to amendment.

4. Public emergency

It is important to consider the conditions under which a state of public emergency may be justified. Under a state of emergency, some of the constitutionally guaranteed individual rights and freedoms (e.g. assembly or freedom of expression) may be suspended and the law enforcement agencies may have greater power to make arrest and detention.

A state of public emergency may obviously be used to subvert the democratic constitutional order, or undermine human rights and fundamental freedoms. Very
stringent conditions should apply to avoid abuse. Some of the basic requirements should include:

• public emergency should be restricted to the most exceptional and grave circumstances, limited in time, proclaimed officially and publicly, by a constitutionally empowered body, and in compliance with the established procedures, all of which should further be defined by law.
• the restriction must be consistent with a state’s international obligations and standards of international law.15
• no de facto imposition or continuation of a state of public emergency should be permitted inconsistent with the Constitution or the relevant rules of law.
• public emergency should be lifted as soon as possible and should not remain in force longer than strictly required by the exigencies of the situation.

No doubt, difficult issues of application and interpretation will be raised. An independent and impartial judiciary will come into play to adjudicate between the different interests.16

5. Measures to Support and Assist A Constitutional Government

Several regional organizations, language groups and international conferences have adopted procedures or mechanisms to support a member democracy that is threatened by unconstitutional moves.17

As will be seen, what constitutes a threat to democracy varies from institution to institution. Some types of procedures apply only to internal situations ranging from continuous disturbances and tensions (riots and acts of violence), internal armed conflicts (between governmental authorities and organized armed groups, or between such groups), to coup d’état. Other types of procedures go further to include external threats: cross border invasion, transnational organized crime and terrorism. Still other types of procedures address not only undemocratic means for acquiring power but also unconstitutional attempts by existing governments to maintain power. In general, institutions with larger membership are more likely to choose the first type. Regional or language groups are more inclined to select the second or third type, since the subject matter is closely related to the degree of integration of the organization.

Some institutions condemn unconstitutional acts and the effects are largely declaratory. Examples are the 1991 Moscow Declaration of the OSCE18, the Warsaw Declaration in 2000 of the Community of Democracies19 and the Cotonou Declaration of

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15 For instance under the International Covenant on Civil and Political Rights, such rights as the right to life, freedom of thought, and the prohibition of torture and slavery may not be suspended. (article 4).
16 See infra, Chapter 2.
18 In 2000, the Community of Democracies declared jointly “to cooperate to discourage and resist” the overthrow of a constitutionally elected government, and not to include in its membership those countries “where there is currently a disruption of constitutional rules or severe persistent erosion or lack of essential elements of democracy.” The Community members are to cooperate in order to face such “transnational challenges to democracy” as state-sponsored, cross-border and other forms of terrorism; organized crime; corruption; drug trafficking; illegal arms trafficking; trafficking in human beings and money laundering. How to strengthen the cooperation is not mentioned. Presumably, that is left for further consideration.
19 The OSCE participating states condemn any forces seeking to take power from a representative government. (See, Moscow Meeting 1991, OSCE, paragraph 17). In case of overthrow or attempted overthrow of a legitimately elected government by undemocratic
2001 of the Conference of New or Restored Democracies.\textsuperscript{20} Sometimes a list of measures is identified but each individual member decides for itself which measures, if any, should be taken.\textsuperscript{21} As will be seen in the following paragraphs, several institutions can prescribe concrete measures. In most cases, the procedures may only be triggered by the member government concerned. In other cases, the institution itself may take step to initiate an action.

A. Under the procedures of La Francophonie, the Community can take action upon an “evaluation of democratic practices in the community” by its Secretary-General.\textsuperscript{22} With the consent of the country, facilitators or observers may be sent to find solutions.

When there exists a “breakdown of democracy or massive human rights violations” in a member state and upon consultations, the Standing Council may convene a special session to (i) confirm the breakdown of democracy or the existence of massive human rights violations, (ii) issue public condemnation, or (iii) call for the re-establishment of the constitutional order or an immediate halt to such violations. On the basis of a mission report, the Council may also decide to apply any of the following sanctions:

- refuse to support nomination by the country to elective posts in international organizations;
- refuse to allow events or conferences of the Community to be held in that country;
- recommend non-issuance of visas to current national authorities and reduce inter-governmental contacts;
- suspend participation of current country representatives at meetings of the Community;
- suspend multilateral cooperation with that government or country;\textsuperscript{23}
- suspend automatically membership in the Community in the case of military coup d’état.

The Community may also seek cooperation from other international or regional organizations and to invite their participation in Community actions.

B. Under the Organization of American States, a member state may request assistance when it considers that “its democratic political institutional process or its means, the participating states support “vigorously the legitimate organs of that state, in accordance with the UN Charter.” The phrase seems to suggest that they would support any action that may be taken by the United Nations pursuant to the Charter. (The enforcement measures under Chapter VII may only be triggered in connection with the breach or threat to international peace or security. The focus may be different but could include situations referred to in the Moscow Declaration.).

\textsuperscript{20} In 2001, the Conference of New or Restored Democracies condemned any unconstitutional moves against democratic governments, which included “all military coups d’état, all forms of terrorism and violence against democratic, freely elected Governments, all undemocratic means of gaining, wielding and staying in power and all unconstitutional changes of government.” (see, Cotonou Declaration Peace, security, democracy and development (Cotonou), A/55/889).

\textsuperscript{21} In 2002, the Community outlined a series of measures that could be used by countries individually, together or as members of international or regional organizations to respond to violence against a democratic government, disruption of constitutional rule, persistent unconstitutional alteration of the democratic order, or support for terrorism.\textsuperscript{21} Such measures include: suspending bilateral relations, creating trained experts, developing systems for monitoring crises, and offering good offices to produce remedial measures. The decision lies essentially with each Community member.

\textsuperscript{22} The Bamako Declaration issued by the Symposium on the Practice s of Democracy, Rights and Freedoms in the French-speaking Community, November 2000, See A/55/731, paragraph 5. It seems that the term “democratic practices” would include an existing government trying to stay in power illegally beyond its constitutional terms. The decision lies essentially with each Community member.

\textsuperscript{23} Programs that directly benefit the civilian populations and those that are conducive to the re-establishment if democracy are however excluded from the suspension.
legitimate exercise of power is at risk.\(^24\) (Thus, a request from a member is required to trigger the procedure). With the consent of that government, visits or missions may be arranged to analyze the situation.\(^25\)

The Permanent Council may meet immediately to take the necessary diplomatic initiatives (e.g., good offices) to foster the restoration of democracy. The General Assembly may also be convened in a special session to adopt decisions it deems appropriate.

A member’s right to participate in the OAS may be suspended with immediate effect by a two-thirds affirmative votes of the member states, if the special session determines that there has been an “unconstitutional interruption of the democratic order.”\(^26\)

C. In 1999, the ECOWAS adopted a Mechanism to deal with “serious and massive violation of human rights and the rule of law,” and an overthrow or attempted overthrow of democratically elected government.\(^27\) As appropriate, a wide range of measures may be taken, including recourse to the Council of Elders, fact-finding missions, political and mediation missions or military intervention by the ECOWAS.

Under the ECOWAS Protocol, where the authority of a member government is absent or has been seriously eroded, the processes towards restoring political authority may be initiated through electoral assistance in cooperation with relevant regional and international organizations and in conjunction with the development of respect for human rights, and the enhancement of the rule of law and the judiciary.\(^28\)

D. In July 2002, the African Unity adopted the African Peer Review Mechanism (APRM) which is a self-monitoring oversight mechanism voluntarily acceded to by member States of the Union.\(^29\) The APRM consists of a group of eminent persons whose tasks are to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration. The Secretariat of this review body maintains database information on political and economic developments in all participating countries, proposes performance indicators and tracks performance of individual countries. The group conducts reviews relating to early signs of impending political or economic crisis in a member state.

The main task of the APRM is to encourage the government concerned to take corrective measures and to engage it in constructive dialogue. The participating Heads of State and Government may put the government concerned on notice of their collective intention to proceed with appropriate measures by a given date, to provide a further opportunity for addressing the identified shortcomings. Six months after consideration of

\(^{24}\) See articles 17-22, Inter-American Democratic Charter.

\(^{25}\) Its participation in the Permanent Council is not affected at this stage. See article 19, Inter-American Democratic Charter.

\(^{26}\) In the OAS, an unconstitutional interruption of the democratic order or an unconstitutional alteration of the constitutional regime constitutes “an insurmountable obstacle” to that government’s participation in OAS meetings.

\(^{27}\) The mechanism entitled the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security also applies to (a) aggression or conflict in any member State or threat thereof; (b) conflict between two or several Member States; (c) internal conflict that threatens to trigger a humanitarian disaster or that poses a serious threat to peace and security in the sub-region. See article 25, Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security adopted by the heads of State and Government of the Member States of the Economic Community of West African States (ECOWAS), done at Lome, 10 December 1999.


the situation, the report of the group is to be formally and publicly tabled in key regional and sub-regional structures.

In the light of the above, it seems timely that the Conference of New or Restored Democracies should consider whether special procedures should be introduced to provide support for its member governments threatened by unconstitutional challenges. To facilitate its consideration, Chapter 8 will examine the basic issues involved and suggest steps to be taken.30

Chapter 2
Rule of Law and Independence of The Judiciary

1. The Rule of Law and Democracy 31

The rule of law serves two important functions. It provides equal rights before the law and equal protection under the law for all citizens. At the same time, the rule of law is a constraint on all sectors of society and on the exercise of government power. This means that on the one hand, all government institutions are subject to the law; but conversely, the powers of such institutions must be respected. The implementation of the twin objectives assures regularity and consistency in the application and enforcement of law, resulting in legal certainty and stability.32

The rule of law is established and protected by the highest legal instrument of the land, i.e. the Constitution which, in turn, provides the operational framework. As an essential constitutive element of a democratic system of government, the rule of law is principally reinforced by the independent judiciary and a system of accountability and transparency.33

2. Respect for the system of law 34

The rule of law is not an abstract concept but a system of legal order for all sectors of society, which should not easily be changed except in accordance with the procedures provided for that purpose.

30 See infra, Chapter 8 section 2 .
31 Close relationship between the rule of law and democracy is firmly acknowledged in all summits and conference conclusions. A government’s commitment to the rule of law is also a necessary condition to membership in certain European organizations. See Declaration of Strasbourg Summit of the Heads of State and Government 1997 which states that “solemnly reaffirm our attachment to the fundamental principles of the Council of Europe - pluralist democracy, respect for human rights, the rule of law - and the commitment of our governments to comply fully with the requirements and meet the responsibilities arising from membership of our Organisation”.


33 See, chapter 7, infra.
The executive, the legislature, the judiciary and all the other institutions should uphold and function according to that system of law. The exercise of their respective powers should be consistent with the allocation and distribution set out in the Constitution and all subsequent laws applicable. Any differences between the institutions should be settled through consultations and recourse to constitutional means, including the judiciary.

The enjoyment and exercise of individual rights and freedoms entails obligations on the part of every individual and institution to uphold the system of law and to respect the allocation and distribution of powers among the various branches of government. All persons living within a nation-state must respect and carry out their legal obligations while exercising their rights. Rights and obligations are part and parcel in a system of law. The government must respect the rights of its citizens. But each citizen and government institution is also expected to comply with the law.

Any laws, rules and regulations issued pursuant to the Constitution should be made known before application and accessible to all persons. Differences of interpretation should be settled through appropriate judicial remedies (e.g. courts and tribunals).

There should be an effective framework of remedies to redress grievances or violations. This framework should be administered by an independent judiciary and assisted by professionally trained law enforcement and prosecutorial agencies.

The democratically elected government must be respected. Change of government must follow procedures set out in the constitution and any unconstitutional changes entail serious national as well international consequences.\(^{35}\)

The military, police and other security forces should act in accordance with the rule of law. As suggestions for improving their performance:

- they and their operations must respect human rights and due process as laid down in the Constitution;
- the elected representatives ought to have the final say on all key security matters;
- the legislature should have access to information with respect to financial resources of these forces and should have the power of scrutiny;
- high professional conduct should be established and required of these forces;
- responsibilities of the military and of the police should be separately and clearly defined in the law;
- independent governmental or public oversight and monitoring bodies should not automatically be excluded from matters relating to these forces;
- the judiciary should have the power to settle any differences that may arise between security institutions and other sectors.

3. Equal Protection under the Law

The rule of law begins with everyone’s right to be recognized as a legal person before the law. This juridical personality provides the legal basis for the entitlement and exercise of the individual rights and freedoms and for everyone’s equal protection under the law.

\(^{35}\) Several regional instruments, including that of the OAS, African Union and ECIWAS, set forth elaborate procedures to be followed in the case of unconstitutional change of government. See Chapter 1, supra.
Equal protection under the law means equality before the law for everyone with no distinction of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This system of protection should include:

- protection from acts of torture, cruel or degrading treatment or punishment; slavery and forced labor; arbitrary arrest or detention and arbitrary interference with privacy, and prohibition of racial or religious hatred;
- appropriate civil and administrative remedies to redress decisions or actions which adversely affect the quality of people’s life;
- the right to liberty and security of person and no arrest, custody or detention without a legal warrant issued pursuant to procedures established by law, and full respect for the detainee’s constitutional and other legal rights;
- entitlement to a fair and public hearing to be held promptly by an independent and impartial judge or tribunal in the determination of his/her rights and obligations and of any criminal charge against him/her;\(^\text{36}\)
- presumption of innocence unless proved guilty according to law in a court of law;
- minimum guarantees for the accused in case of criminal charges:
  - fair and public hearing or trial with publicly conducted proceedings;
  - to be brought before a judge or other duly authorized officials as promptly as possible and under no circumstances longer than permitted by law;
  - to be informed promptly, in a language which he/she understands and in detail, of the nature and cause of the accusation;
  - to have adequate time and facilities for the preparation of defense;
  - to defend in person or through legal counsel of his/her own choosing or to be given it free when the interests of justice so require;
  - to examine witnesses against him and to produce witnesses, experts or other persons on his/her behalf;
  - the right not to be compelled to be a witness against himself or to plead guilty;
  - the right to appeal to a higher court;
  - to have the free assistance of an interpreter or translator if he/she cannot understand or speak the language used in court.
- Judgment to be pronounced in the presence of the public and the press.\(^\text{37}\)

The resort to military tribunals for civil unrest should be carefully considered since in such case civilians would not be able to exercise their usual protection under the law (e.g., due process, defense counsel).

### 4. Criminal Justice

Criminal justice forms part of the rule of law and requires the observance of certain general criminal law principles, including:

\(^\text{36}\) For instance, under article 8 of the Pact of San Jose, the right of hearing covers any rights or obligations of a civil, labor, fiscal or any other nature.

\(^\text{37}\) Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) further specifies that unless for interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
• no one is charged with, tried for or convicted of an act or omission which did not constitute a legally punishable offence at the time he/she was committed;
• a confession of guilt by the accused under coercion is not valid under law;
• punishment is personal and can be imposed only on the offender;
• all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person.

In addition, criminal justice is closely linked to the independence of the judiciary and the effectiveness of public prosecutors and defense counsel. Efforts should be stepped up to combat organized crime, and transnational crime, and to foster new laws and international conventions, as well as procedures and mechanisms for combating these crimes. It is also necessary to adopt appropriate social and educational measures to rehabilitate children and young offenders of criminal law.

5. Independence of the Judiciary

The judiciary interprets the law, clarifies and determines the contents of individual rights and obligations as well as the competences and powers amongst the principal organs of the executive and the legislature. Its rulings on any of these issues are binding and have the force of law.

An independent, competent and impartial judiciary is likely to produce more efficient access to justice, security in business transactions, and citizen confidence in the rule of law. Some of the components necessary for achieving a high quality judiciary include:39

• independence from the executive and the legislature branches;
• respect and observance of its independence by all government institutions;40
• adequate financial and human resources and capabilities to respond to matters that are placed before it;
• compliance with the requirements of accountability and transparency;41
• fair judicial proceedings and respect for the rights of the parties;
• selection of judges on the basis of merits, judicial decisions based on facts and according to law, and the judge’s conduct consistent the dignity of their office and the impartiality and independence of the judiciary;
• regulating the judge’s terms of office, privileges and immunities, tenure and conditions of service, pensions and disciplines and publicizing them to ensure full respect;
• providing professional and technical trainings for law officers and other officials involved in administration of justice;

40 Progress Review and Recommendations, Third International Conference of the New or Restored Democracies on Democracy and Development held at Bucharest 1997, reproduced in General Assembly resolution A/52/334.
41 See, infra, Chapter 7, Accountability and Transparency to Sustain Open and Responsive Governance.
• developing transparent and efficient procedures permitting easy and timely access to justice by all persons, including alternative methods of conflict resolution and low-cost mechanism for low income persons;
• public education about the rule of law and the use of it efficiently and effectively; encouraging public or private initiatives and the participation of civil society in this regard;
• arranging meetings and discussions for justice ministers, supreme court justices, attorneys general, ombudsmen, law enforcement officials from different countries to promote discussion and cooperation.

6. Measures to Enhance the Rule of Law
Governments have also pledged themselves to take various measures for enhancing the rule of law, some of which are listed below:
• provide funds for studies on issues relating to the development of judicial institutions and their policy-making;\(^{42}\)
• develop best practices and recommendations on such pressing issues as reduction of pre-trial detainees, alternative forms of sentencing for minor crimes and prison conditions; development agencies and banks are invited to provide assistance;
• use internet-based networks to facilitate direct exchange of information on extradition and mutual legal assistance among law enforcement officers from different countries, and their identification of common problems in handling specific cases and issues in those areas;
• seek international support to strengthen judicial infrastructure and related training, teaching and education, and popular participation in the field of the rule of law and human rights;
• deepen cooperation between the offices and programs of the United Nations system to enhance coordination of assistance in human rights, democracy and the rule of law; set up a focal point for coordinating system-wide attention to human rights, democracy and the rule of law;
• strengthen the capacity of the regional organizations to respond to requests for assistance in entrenching the practices of democracy, accountable administration and the rule of law;
• collaborate and share experience with other governments in reforms of judicial and law enforcement;
• provide proper funding for institutions concerned with the administration of justice and encourage the international community to increase the level of their technical and financial assistance;
• request the United Nations to consider giving priority to programs of advisory services in promoting independent administration of justice;
• consider promoting mutual legal and judicial assistance in extraditions, delivery of documents and evidentiary materials, and witness protection arrangements.

7. International Perspective of the Rule of Law

\(^{42}\) For instance, the OAS has taken steps in setting up a regional study center.
International treaties and institutional practices have shown that the concept of rule of law is also applicable to relations between states and in intergovernmental organizations. Many of the following principles are reflected in the Charter of the United Nations:

- collective measures to prevent and remove threats to the peace, to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes;
- establishing conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained;
- friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples;
- international co-operation in solving international problems of an economic, social cultural or humanitarian charter, and in promoting and encouraging respect for human rights and for fundamental freedoms for all, including the right to development;
- invigoration of the rule of law in international as in national affairs, and strengthening the International Court of Justice in order to ensure justice and the rule of law in international affairs, and compliance by Member States with the decisions of the International Court of Justice;43
- Inseparable link between respect for the rule of law and protection of human rights;
- full adherence to the principle that commits states to refrain from the threat or use of force, in accordance with international law;
- immunity of civilian populations from military attacks;
- taking all feasible measures to ensure that children do not participate in armed conflict and to condemn the use of children by irregular forces.

43 United Nations Millennium Declaration, A/RES/55/2, II. Paragraph 9. According to article 94 each member undertakes to comply with the ICJ decision to which it is a party. Failure of compliance may be referred to the Security Council.
1. Governance and Citizen Participation

The Heads of State and Government at the Millennium Summit point to the foundation and legitimacy of a government when they declare:

“Democratic and participatory governance based on the will of the people best assures the rights that men and women live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice.”

Concomitantly, the people must conduct themselves in a responsible manner and within a framework that complies with the laws and procedures designed to facilitate the exercise of citizen participation.

Citizen participation in economic and political life helps to identify the real needs of the people and create conditions conducive to making decisions and policies that have the people’s support. Participatory governance thus facilitates political process, prepares the ground for socio-economic development and helps prevent conflicts from becoming violent. For these reasons, the right to participate in government and the judicial guarantees for the protection of that right are so fundamental that they may not be suspended by the government under any circumstance.

Democratic governance means citizen participation in all aspects of life, embracing civil and political as well as social and cultural features, including:

- participation in government and public affairs, directly or through freely chosen representatives or through civil society and organizations concerned with the public and political life;
- the right to cast his or her vote and to be elected in elections in which all citizens may take part and by secret ballot that guarantees the free expression of the will of the voters;

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45 United Nations Millennium Declaration, A/RES/55/2; Organization of American States, Articles 34, 45.

46 Millennium Declaration, United Nations resolution 55/2, December 1999.

47 Article 27, International Covenant on Civil and Political rights.

48 The International Covenant on Economic, Social and Cultural Rights (ICESCR), articles 13 and 15.
• access to adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications;
• access on the basis of equality to public service, medical care and social services;
• access to economic opportunities through employment or self employment and participating in the work force with favorable conditions of work and just remuneration;  
• access to education and training;
• taking part in cultural life and activities;
• participating in and benefiting from all community activities and rural development;
• the right to be in public places and to use transport, hotels, restaurants, cafés, theatres and parks;
• opportunities to represent their governments at the international level and to participate in the work of international organizations.

To maintain their authority and legitimacy, government institutions should be efficient, accountable and managed by able and qualified civil service free from corruption. Good governance also needs to build partnerships with the private sector, labor groups, political parties, and academic institutions. These groups should be encouraged to cooperate and participate in local, municipal, regional and national affairs. In this manner, public confidence in political systems will grow, which will in turn generate support and interest in public affairs.

2. Improving the Electoral Process

An effective election system is fundamental to citizen participation and good governance. The relevant government institutions should engage the legislature to prepare the legal framework for elections, the media to cover the process, the police to ensure an election environment without hindrances or intimidation, and the participation of civil society to generate public interest and to energize the electoral process. The election system should meet the following standards:
• independent and efficient election mechanisms for handling the conduct, supervision and verification of the electoral process impartially and promptly;
• transparent rules for counting and reporting the votes, and certifying, publicizing and implementing election results;
• ensuring that all persons eligible to participate in the elections are able to cast their vote freely, independently, and in the choice of their representatives;
• electoral processes conducted by credible, independent, and widely-recognized bodies, observable by foreign or domestic third parties;
• national or public funds to finance elections so as to reduce interest group influence;  

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50 See articles 8, 10 and 13 of the International Covenant on Economic, Social and Cultural Rights.

51 See next section.
• technologically reliable voting and counting facilities.

3. Addressing Serious Issues in Elections and Election Campaigns

Elections campaigns are costly and well-funded candidates are usually more likely to win. Corporation and special interest groups can easily influence political parties and candidates through their financial support. Funds derived from organized crime and drug trafficking may also be channeled to influence election results.

To tackle these problems and to reform an election system, legislative or administrative measures should be introduced to generate public funding for candidates and political campaigns, to set limits on campaign spending and contributions, to prohibit donations that may lend undue influence on the making of public policy, and to provide adequate procedures for handling denials or restrictions of rights. In addition, each candidate and political party, including the candidate and party forming the existing government, should:

• have equal right to seek, receive and impart information and to make an informed choice;
• be on equal footing to campaign;
• have the obligation to declare his/her financial status or interests;
• have equal access to the mass communications media;
• have equal protection of their lives and properties;
• accept the final result of the election;
• be encouraged to establish their own more stringent rules and regulations to govern receivable funds from external sources, and their use in campaigns.

4. Increasing activity at the local government level

Local government can increase popular participation in management, help shoulder the tasks of the central/provincial governments, and infuse community projects with local interest. They should therefore have adequate financial resources commensurate to their responsibilities, be able to determine their own internal administrative structures according to local needs, and have recourse to judicial remedies in case of dispute.

The participation of diverse groups in the processes of decision-making at the local and sub-regional level can also promote accountability and more adequate representation of local needs. Public hearings and open budget reviews can help local citizens to participate in decision-making, reinforce the accountability of local authorities, and bring about better delivery of public services.

5. Combating Corruption

Corruption, bribery and related practices in government and commercial transactions undermine the legitimacy of government institutions. Money and carrying favors can corrupt the oversight and investigating agencies, election processes and even the judiciary.52 A range of measures may be taken to reduce corruption:

• stringent codes of conduct for public officials;
• denial of access to laundering assets or proceeds from corruption;
• creating a positive framework for good government practices and public integrity;
• working with civil society organizations that are committed to fight against public and business corrupt practices;
• disclosing, investigating and punishing all those involved in acts of corruption;
• criminalizing payment of commissions and bribes to public officials;
• applying international treaties relating to corruption;
• giving senior public officials an option to disclose their personal assets and liabilities to the appropriate agency;
• open discussion to scrutinize public administration and to pursue structural and procedural reforms so as to make corruption deals difficult to hide from a vigilant public;
• deregulating and simplifying government procedures to reduce the opportunities for corruption;
• making bribery of foreign public officials punishable by effective criminal penalties under domestic law, combined with legal standards for public servants and national institutions;
• using ombudsmen or anti-corruption commissions to provide monitoring and enforcement measures.53

6. Inclusive Participation and Assisting the Weaker Groups54

The right of citizen participation should be inclusive for all men and women, minorities and the indigenous, to allow them all to take part on equal footing and without discrimination as to their race, sex, language or religion in all civil, cultural, economic, political or social aspects of their lives.55 Respect for ethnic, cultural and religious diversity can actually enrich citizen participation in public affairs.

Women make up at least half of the electorate in almost all countries and have attained the right to vote and hold office in almost all States. Equal participation of women and men in decision-making reflects therefore more accurately the composition of society, is a necessary condition to account for women’s interests, and is likely to strengthen democracy and its proper functioning. Commitment to gender concerns should thus be a factor in the selection of elected representatives.

States should therefore take positive measures to increase women’s skills and competitiveness in the open market and to remove any structural and attitudinal barriers.

There is also a need to improve the participation in social activities and initiatives of groups traditionally marginalized. For instance, the poor should be given access to productive resources, social safety and capital investments. Programs and activities should be developed for the education of children and youth as a means of ensuring the continuance of social justice. Participation by minorities in the decision-making process should also be promoted.

7. Democratic participation at the International level

Multilateral organizations and development banks are needed to provide technical and financial support for public participation in decision-making processes at local and municipal levels, and to assist in legislative and judicial processes, administration of justice, modernization of legislative bodies, simplification of government regulations and participation by community organizations in local democracy.

Good governance at the international level requires transparency in the financial, monetary and trading systems, which should be open, equitable, rule-based, predictable and non-discriminatory.

The new or restored democracies need to foster their programs of governance and civil society participation. Donor countries are encouraged to give high priority in resource allocation to such programs.
Freedoms of Thought, Expression and Association \(^{56}\)

Freedoms of thought, expression and association are recognized basic human rights and are also essential components of a democratic society.

1. Freedom of thought, conscience and religion

Every one has the right to freedom of thought, conscience and religion without distinction as to race, sex, language or religion.\(^ {57}\) This means freedom to adopt a religion or belief of one’s choice, and freedom to manifest one’s religion or belief in worship, observance, practice and teaching, either individually or in community with others and in public or private. Moreover, no one is subject to coercion that may impair his/her freedom to have a religion or belief of his/her choice.

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.\(^ {58}\)

2. Freedom of Expression and An Independent Media

Freedom of expression is a fundamental human right and an essential element of political discourse in any democratic society. Under this freedom, every person has the right to hold opinions and to seek, receive and impart information and ideas of all kinds through any media.\(^ {59}\) In application of this right, the media collect, report and disseminate information, news and opinions.

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\(^{56}\) Please see also infra, Chapter 6, Civil Society and NGOs.


\(^{58}\) The OECD States further agree to take the action necessary to ensure the freedom of the individual to profess and practice religion or belief acting in accordance with the dictates of his/her own conscience. These measures include: 1. ensuring the effective equality between believers and non-believers in all fields of civil, political, economic, social and cultural life; 2. fostering a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers; 3. granting to communities of believers legal status to establish and organize their places of worship or assembly, and receive funds; 4. giving and receiving religious education in their own language; 5. acquiring, possessing, and using sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief. The participating States also recognize that the exercise of the above-mentioned rights may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief. See OECD instrument, Copenhagen 1990.

\(^{59}\) This section is based on: the International Covenant on Civil and Political Rights (ICCPR), Article 19; the Universal Declaration of Human Rights (UDHR), Article 19; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 5; Santiago Summit of the Americas 1998; American Convention on Human Rights "Pact of San Jose", Costa Rica (San Jose), Article 13; Inter-American Democratic Charter (IADC), article 4; European Convention for the Protection of Human Rights and
The exercise of this freedom carries with it duties and responsibilities, and may thus be subject to such formalities and restrictions as are prescribed by law for such purposes as protecting national security, public health or morals, or the reputation or rights of others, or preventing disclosure of confidential information.60

Freedom of expression needs to be nurtured with quality education through trained teachers, education in civic values and individual rights and duties, and through the use of mass media and new information technologies. The public should have access to laws, regulations and procedures relating to human rights and fundamental freedoms. Instruments on the subject of democracy adopted by the heads of state and governments should be disseminated to the public and publicized as standards for application.

The exchange of information, books and instructional materials, academic and professional dialogues and conferences, scholarships, research grants, provision of expertise and advice, business and scientific contact are useful activities for sharing of information, ideas and expertise between individuals and groups. Assistance should also be provided to groups belonging to national, ethnic, religious or linguistic minorities to freely express, preserve and develop their identity without any discrimination.

An independent media can keep politics open and responsible through investigative reporting and disclosure of corruption and other irregularities, and contribute to a free and open society and accountable systems of governance. It can also serve as a forum for dialogue and debate on national and global affairs. To enable it to perform these functions, an independent media would need: 61

• access to individuals and economic, political and social groupings, without infringing upon other person’s rights or reputations;
• no legal or administrative obstacle in the way of news reporting and investigative reporting;
• equal access to information, material and facilities with no legal or regulatory impediments to such access;
• no barring of journalists from the legitimate exercise of their profession other than those strictly required by the exigencies of the situation;
• tracing missing journalists engaged in dangerous missions in areas of armed conflict and facilitate their return to their families;
• respect of the editorial independence of the media, including the right to withhold source of information.

Computer, satellite and cable television have provided the media (public or private, written or audio-visual) a greater freedom of expression ever than before and a

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60 Ibid.
powerful ability to shape values, attitudes and perceptions. In order to maintain their independence and responsibility, the media should:

- conduct themselves in conformity with the laws and regulations;\(^62\)
- represent the diversity of a multicultural society and project pluralistic, balanced and non-discriminatory images to the public;
- be accountable to the public, enforce norms of professional responsibility and ethical conduct \(^63\), and refuse to disseminate extreme violence or negative stereotypes of women and ethnic, social and other groups, or to be used to ferment hatred and ethnic tension;
- give all registered political parties equitable access to television and radio in terms of time and coverage during elections;
- play a role in fighting racial discrimination and related intolerance.

3. Freedom of Association and Peaceful Assembly \(^64\)

The rights of peaceful assembly and association are internationally recognized human rights and are basic constituent elements of democracy.\(^65\) On the basis of the instruments of commitment and relevant practices of intergovernmental organizations, the basic components of these rights are as follows:

- the right of every person to form, join and participate in their own political parties, civic groups, trade unions or other organizations with the necessary legal guarantees to allow them to operate freely on a basis of equal treatment before the law;
- no one may be compelled to join an association;
- workers and employers have the right to form organizations for the protection of their economic and social interests;
- citizens should be able to establish their own political parties or organizations, to seek political or public office, to compete with each other on a basis of equal treatment before the law, and to have access to the media on a non-discriminatory basis;
- these rights may only be subject to restrictions imposed in conformity with the law and in the interests of national security, public safety, public health, or the protection of the rights and freedoms of others.

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\(^{62}\) Ibid.

\(^{63}\) Ghana, for instance, has established an independent media commission whose main task is to maintain the “highest journalistic standards” in the mass media. See, Human Development Report 2002, at p.78.

\(^{64}\) This section is based on: the Universal Declaration of Human Rights (UDHR), Article 20; the International Covenant on Civil and Political Rights (ICCPR), articles 21, 22; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), article 5; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), article 7; Convention on the Rights of the Child, article 15; Charter of the Organization of American States, article 45; American Convention on Human Rights “Pact of San Jose”, Costa Rica (San Jose); articles 15 and 16; European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), article 11; European Social Charter, part I and article 5.

Chapter 5

Economic Growth, Social Cohesion and Equality

1. Better Standards of Life and Eradication of Poverty

Higher standards of living, faster economic growth, eradication of extreme poverty, social cohesion and equality are commonly-shared objectives of a democratic society. To make progress in these areas, concerted efforts are needed to bring about open economies, market access, investment flows, financial stability, human resources development, and access to technology.

A government’s political credibility should be based on its ability to improve the economic and social conditions of the people and its commitment to improve the people’s standard of living and to eradicate poverty. Such conditions and measures include:

- increased productivity in food, clothing and housing;
- available medical care and necessary social services to the people;
- opportunities for productive employment and sustainable livelihoods under adequate working conditions;
- equal access to economic opportunities and equal reward for work of equal value;
- reducing illiteracy and expanding education opportunities;
- creating a legal and regulatory framework conducive to sustained economic growth;
- giving greater support to small enterprises;
- initiating programs with family and community support and the participation of women and youth;
- developing human resources through education, training, health, culture, sport;
- sound economic management and market economy;

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67 These measures are formulated on the basis of substance found in the following documents: Arab Charter (AC), Article 30; United Nations Millennium Declaration, A/RES/55/2; General Assembly resolution A/55/96; “Pact of San Jose”, Costa Rica (San Jose), Article 26. Progressive Development; Inter-American Democratic Charter (IADC), article 16; Organization for Security and Cooperation in Europe – Copenhagen Document (OSCE), Copenhagen 1990; Helsinki Declaration of 1992, Lisbon Declaration, 1996; Fourth International Conference of New or Restored Democracies: the Cotonou Declaration Peace, security, democracy and development (Cotonou), A/55/889.
• creating a stable economic framework within which growth can be achieved;
• increasing bilateral and multilateral co-operation to raise living standards;
• facilitate the flow of multilateral trade on terms fair and equitable to both producer and consumer countries.

The Heads of State and Government declared at the Millennium that the right to development must be made a reality for the majority people who are living in extreme poverty.  

Effective measures particularly in mobilizing financial resources should be taken to assist the developing countries and economics in transition. These countries should also be able to participate in the formulation and implementation of such measures.

2. Social Cohesion and Equality

It is recognized that all peoples have the right of self-determination and by virtue of that right they freely determine their political status and freely pursue economic, social and cultural development. This right is applicable to peoples living within


71 Both the Covenants on Civil and political Rights and on Economic, Social and Cultural Rights provide categorically that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” The Organization for Security and Co-operation in Europe, Copenhagen Document states , inter alia, “The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States. By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development…”.
politically independent states as well as to those who are under colonial, dependent and non-self-governing territories.\textsuperscript{72} Special measures should be taken to promote the right of participation of the minority groups (women, youth and all ethnic and indigenous populations) in political, economic, social and cultural life based on equality and non-discrimination.\textsuperscript{73} A democratic society seeks to create social cohesion and equality for all citizens in every aspect of life from cultural, economic, social conditions to civil and political environment. Some segments of the populations are marginalized and unable to share fully in the benefits of democratization. There is a need to combat all forms of exclusion and ensure better protection for the weak members of society. This calls for social inclusion, alleviating the poor, removing gender prejudice, and harmonizing cultural, ethnic and religious differences.

The diversity that characterizes a country and its regions should be regarded as a source of great richness for the society and should constitute a cohesive factor that strengthens the social fabric and the development of a nation.

Social cohesion, equality and non-discrimination are not abstract notions. They can be brought about by concerted efforts in:

- practicing tolerance and compromise that underpin the democratic system;
- resolving peacefully conflicts at local and national level and avoiding the use of violence in addressing societal tensions and disagreements;
- enabling societies to retain their multi-cultural character;
- respect for different cultural heritage through education, the media and participation of young people in cultural activities;
- rejecting ethnic and religious hatred, violence and other forms of extremism;
- access for all to basic social services;
- access to quality education and primary health care;
- addressing the deep-seated causes of intolerance, hatred and ignorance of cultural diversity;
- intensifying co-operative work in intercommunity relations and equality of opportunities;
- combating social exclusion and extreme poverty;
- adhering to social standards embodied in international instruments;
- exchanging good practices and information between interested parties;
- carrying out the appropriate structural reforms;
- setting up specialized units to monitor, compare and handle issues linked to social cohesion;
- creating funds to promote social cohesion;
- encouraging dialogue and cooperation among government, trade unions and employer organizations;
- promoting the practice of dialogue at all levels, between citizens, between social partners, between political parties, and between the State and civil society;
- access to free primary education for all.

\textsuperscript{72} See, articles 73 to 91 of the UN charter and General Assembly resolutions1541 of 15 December 1960 and resolution 2625 of 12 December 1970.

\textsuperscript{73} See Chapter 3, supra.
Chapter 6

Participation of Civil Society and Non-Governmental Organizations

Civil society organizations have greatly increased and their attention has also shifted from observation of and representation in meetings to active participation in international negotiations and decision-making. Their activities have expanded from information gathering and organization of meetings to monitoring and oversight of performance. They use effective methods to advocate their objectives and to influence the decision-makers.

At the national level, the work of civil society in rural development and community services are well acknowledged and governments have also recognized the important contribution made by groups specialized in trade union rights, environment, religious tolerance, human rights, cultural diversity and national minorities.

At the international level, the work of non-governmental organizations perhaps most closely approximates the direct participation by "peoples" in international organizations. As "like-minded peoples", NGOs have played a significant role in the promotion of human rights, lobbying against global warming, campaigning for debt relief and AIDS patients, outlawing landmines and advocating the establishment of the International Criminal Court.

The legal basis to form, join and participate in public affairs in the form of civil society organizations stems from the right of association and freedoms of

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74 This Chapter is based on: International Conferences on New and Restored Democracies: Managua Declaration, paragraph 20, Plan of Action, paragraphs 6, 7 and recommendation, civil society; Bucharest Declaration, para. 21; Cotonou Declaration, recommendations of civil society; Community of Democracies, Warsaw Declaration; The Harare Commonwealth Declaration, 1991, paragraph 12; Declaration of Bamako adopted by La Francophonie, paragraph 17, Organization for Security and Co-operation in Europe: Vienna 1989, paragraph 26; Moscow 1991, paragraph 43; Copenhagen, article 30; Istanbul 1999, paragraph 27; Inter-American Democratic Charter, article 26; the Summits of the Americas: Miami Summit, 1994, paragraph 3; Santiago Summit, Declaration and Plan of Action, civil society; Quebec Summit, 2001, plan of action, paragraph 5.

75 In 1999, there were 25,000 registered NGOs. In year 2000, the number has increased to 37,000. Last year’s number was .... According to UNDP, NGOs in Nepal grew from 220 in 1990 to 1,200 in 1993; in Tunisia from 1,886 in 1988 to 5,186 in 1991. In 1996, it was reported that India had over 1 million non-profits groups and Brazil had 210,000. See Human Development Report 2002, p.102

76 A further significant development has been the initiatives to examine public spending and participate in budgeting on such subjects as schooling, water supply, energy and transport.

77 The UN Charter opens with the words "We the peoples of the United Nations..." though the members of the Organization are exclusively sovereign States.

78 For a brief description of the campaign strategy of these groups, see Human Development Report 2002, p.102-109.

79 The Coalition for an International Criminal Court (CICC) is supported by over one thousand NGOs and was formed to overcome the obstacles confronting the successful creation of an international criminal justice system and to fulfill needs that were clearly beyond the capacity of any single organization or group of organizations. Their programs include worldwide awareness-raising, direct dialogue with governments in capitals, preparation of pertinent technical analyses on all key issues, continuous production and dissemination of print and electronic information, formation of regional and thematic caucuses, outreach to ministers, parliamentarians and the general public and sponsoring persons from the developing countries to take part in the process. For good reasons, the Secretary-General of the United Nation has described such working relationship as a "new diplomacy" and a "powerful partnership for the future".
assembly and expression. All citizen, men or women, have the right to participate as equal partners in affairs affecting their lives and well-being and in the relevant decision-making processes. Civil society groups constitute an important element in the normative framework of democracy and governance.

The term civil society is generally understood to refer to those groups working primarily at the national level for the purpose of mobilizing support for public interests and includes charities, foundations and other non-profit institutions. The term is also used by some to include labor unions, cooperatives, and cultural, professional, business, neighborhood, and community associations. The term non-governmental organizations (NGOs) is usually understood to refer to those groups primarily active at the international level, though many of them have active national chapters. Under the United Nations system, NGOs refers to those which have consultative status (approximately 500) with the Economic and Social Council; they are observers at the UN meetings without a right to vote.

1. Functions of Civil Society Organizations

Civil society groups are most suited to perform the following functions:

Citizen involvement and group dynamics: as associations of concerned people working together for public interests, they can galvanize citizen involvement in government and raise the quality of participation in dealing with government. They employ contact, exchange of views, and open discussion to address common concerns, promote understanding, raise citizen awareness and respect for democratic values. Civil society groups can help put into practice tolerance, compromise and pluralism, qualities that underpin effective democratic systems, retain a society’s multi-cultural character and maintain stability and social cohesion.

The strengths of civil society organizations lie in their persuasive advocacy, expertise, and information dissemination capacities. They constitute fora to represent and air divergent views, encourage citizen participation, and enhance the formulation of public opinions.

Civil society groups can also help the governments to promote its accountability and transparency in decision-making. As a confidence-building measure, the OSCE governments accept the presence of representatives of non-governmental organizations and other interested persons at proceedings before courts and tribunals on matters of public concerns. By involving the NGOs and dealing with the relevant groups or institutions, government’s tasks in seeking the public opinions are made easier and more effective. Civil society enhances democratization and promotes inclusiveness in the development of policies.

Their ability to generate considerable influence and resources and organize citizens into groups are useful tools for disseminating government policies and

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80 This is, in general, subject to any conditions that may be attached thereto. For further elaboration see chapter …This relationship can also be clearly discerned in the OSCE, Copenhagen 1990, paragraph 10.3 and (32.6).
81 Article 45, OAS Charter. Miami Summit of the Americas 1994, Plan of Action. The terms civil society and non-governmental organizations are often used either conjunctively or inter-changeably to refer to civil organizations working for public interests whether or not at the national or international levels. More recently, the term civil society is used to include also NGOs. Sometimes, these terms encapsulate the private sector (including corporations), parliamentarians or local government officials.
82 OSCE Moscow, 1991.
83 Proceedings may only be held in camera in the circumstances prescribed by law and consistent with obligations under international law and international commitments. See OSCE, Copenhagen 1990, art. 12.
viewpoints to the public. When the groups cooperate amongst themselves and with
governments and the private sector, they can have considerable impact on economic,
political and social development.

**Effective networking:** through their internet, e-mail and telephone networks,
NGOs and civil society can mobilize thousands of concerned person from diverse groups
and different places almost instantly. They collect publications and news clippings, issue
press releases and newsletters, and arrange media interviews and broadcasts. They
compile large documentation and data and can generate powerful publicity.

**Expert advise:** as voluntary and broad-based special interest groups, some NGOs
memberships are technical or professional (e.g. lawyers, parliamentarians or engineers)
and some of them have developed a substantial degree of expertise in the area of their
interest. They can provide technical expert analysis on specific subjects, which are
particularly useful for small government delegations taking part in international
negotiation.

**Coalitions of NGOs:** groups working in the same field or on the same subject
have formed coalitions among themselves to pool their expertise and resources, to seek
consolidation of positions, and to reduce overlaps and waste. Such coalitions facilitate the
work of the governments and international organizations saving them from contacting the
institutions individually. Coalitions may also enforce discipline and self-regulation.

**Conflict prevention:** As conflicts and violence are sometimes related to
discontent, inability to air views or communications breakdown. Civil society
organizations provide an organized format to ventilate complaints and to facilitate
interactions. Interactions amongst tiers of grassroots and groups with diverse
backgrounds and from separate geographic areas promote multilateral negotiations and
encourage compromises of competing interests, thereby reducing the risk that disputes
will escalate into violence. Exchange of words is preferable to force. Community-based
and grassroots associations help identify problem areas, provide early warning and defuse
ethnic and religious tensions.

Visits and contacts between civil society groups from various countries promote
understanding among peoples and improve relationship between governments.

**Promoting international instruments:** NGOs and civil society can also contribute
to the implementation of international instruments. They may be invited to make
observations and to promote and disseminate the instruments. Governments can facilitate
direct contacts and communication among them, and take effective measures to facilitate
access to relevant information.

Citizen participation in public affairs should therefore be promoted. For many
new or restored democracies, activities should begin from the grassroots level addressing
basic community needs such as water supply, housing, food, and health care. With the
support of the government and of the private sector, an enabling environment can be
shaped to allow civil institutions to develop and to perform their functions freely.

2. A Legal Framework

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84 In the view of the OSCE participating states, institutions, organizations and persons can also contribute to implementing OSCE
instruments and provisions. A similar provision is also found in the Harare Declaration where NGOs were invited to participate in
implementing the Harare objectives.
Civil society groups are voluntary, non-profit and free associations of interested citizens. In most countries they are governed by the general law of association and are not often treated differently from other profit-seeking organizations. Few countries have special regulations devoted to the activities of non-profit or voluntary groups.

In most cases, civil society groups are self-regulatory and accountable to their respective governing boards or to the funding institutions. Some NGOs have imposed on themselves codes or standards of behavior or internal regulations. As they grow more influential and exercise greater powers of scrutiny, it seems appropriate that a special legal framework for non-profit civil society groups should be considered in order to promote citizens seeking to form, join and participate in organizations of their own choice and interest, and to make these groups accountable for their activities. Such a legal framework should deal with the following aspects:

- non-profit seeking;
- membership to be reflective of diversity of the society;
- encouraging citizens to form diverse institutions ranging from philanthropy and volunteers organizations, to mass media as well as citizens participation in public meetings and dialogues;
- participation in the decision-making process and in the political, economic and social development in the respective communities;
- dialogue and partnership with civil society and the public sector;
- making better use of input from NGOs by increasing government institutions’ capacity to receive, absorb and act on civil society input and advocacy, including the use of modern information and communications technologies;
- legal competence to seek and receive public and private funding and technical support;
- disclosure of their sources of funding;
- prohibition from disseminating hate speeches, child pornography, and racist propaganda.

Better coordination and cooperation with related civil organizations to improve efficiency, reduce waste and to avoid overlapping activities.

assistance from intergovernmental organizations and development banks if necessary.

special provisions for holding civil society groups and non-governmental organizations working at the international level formally accountable for their activities.

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85 Plan of action adopted by the Summit of the Americas held at Santiago, Chile in 1998. The United Nations General Assembly Resolution 55/96, Promoting and Consolidating Democracy, encourage governments to set up legal framework and necessary mechanisms for enabling the wide participation of all members of civil society in the promotion and consolidation of democracy.

86 International law prohibits organizations and their activities which promote and incite any forms of racial discrimination. Participation in such organizations or activities is an offence punishable by law. See, for instance, article 4 of the International Convention against all forms of Racial Discrimination. Racial discrimination includes: all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.

87 At present, the applicable rules in this regard relate mainly to accreditation of NGOs to international organizations. For instance, an NGO that wishes to be officially accredited to the United Nations system or to a UN sponsored conference must apply to an intergovernmental committee composed of representatives of States. They must declare their purposes, interest, organization, source of finance and publications. Their participation and conduct as observers are usually governed by the applicable rules of procedure. In general, they may speak, when invited, and distribute documents, but they cannot vote. Their accreditation may be revoked if it is so
Chapter 7

A System of Accountability and Transparency
To Sustain Open and Responsive Governance

According to the Human Development Report 2002, a set of principles and core values is needed to allow the governed to gain power through participation while protecting them from arbitrary, unaccountable exercise of state power. To this end, institutions and power at the national level should be structured and distributed in a way that “gives real voice and space to the people and creates mechanism through which the powerful can be held accountable” for their actions. And at the global level, international institutions and transnational coalitions are urged to operate “with the highest degree of transparency” and give developing countries “both a seat at the table and a meaningful say in decisions that affect them.”

The above statements echo the basic norm of a democratic system that governments should be accountable for their actions at all levels, their processes of decision-making should be transparent and the affected persons should have recourse to competent authority for his/her redress. On the basis of the common elements identified in the instruments of commitment, this Chapter suggests measures that may be taken to promote and sustain open and responsive governance.

1. Components of Effective Accountability and Transparency

A system of accountability and transparency should include the following components:

- the powers and functions of the government officials and institutions at all levels are clearly and simply set out in the relevant laws and regulations which should be enforceable and accessible to all interested persons and institutions;
- checks and balances are built into the system between the legislature, the judiciary and the executive;
- the implementing procedures are not secretive or bureaucratic;

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88 They should be required to declare their purpose and objective, line of commend and responsibility, peaceful nature of their activity, non-violent advocacy, transparent accounting and disclosure of financial sources, independent audit, method of operation, internal monitoring, and complaints procedure. Such kind of regulations might appear to be burdensome or bureaucratic, they can increase the credibility and strengthen the position of the civil society groups.

89 This Chapter is based on: Inter-American Democratic Charter, articles 4, 5, 6; the Summits of the Americas Declarations and Plans of Action, Miami Summit of the Americas 1994, Declaration and Plan of Action, paragraphs 3 and 5; Santiago Summit of the Americas 1998, Declaration and Plan of Action, civil Society; Quebec Summit of the Americas 2001, Declaration, paragraph 1; Organisation for Security and Co-operation in Europe (OSCE), Copenhagen 1990, paragraph 5; Moscow 1991, Paragraph 21.2 and 26; Budapest 1994, paragraphs 36 and 37; Istanbul 1999, paragraph 7; International Conferences on New and Restored Democracies: the Managua Declaration, sections III (j) and IV(9); Bucharest 1997 on "Progress Review and Recommendations, sections B, C and L; the Harare Commonwealth Declaration, 1991, paragraph 10; La Francophone, Declaration of Bamako, paragraph 4; Community of Democracies.

91 Ibid.
• government officials and institutions conduct their business in a responsible and transparent manner;
• the processes of decision-making are open and subject to scrutiny by the media and civil society groups;
• the public is able to pose questions, ask for answers, submit formal complaints, request administrative reviews and appeal for judicial decisions;
• if the officials fail to live up to their responsibilities, they would be punished (including criminal prosecution and penalty);  \(^93\)
• decisions of the civil service and the processes themselves can be challenged by the affected persons; the acts of any law enforcement agency can be appealed; disputes with government agencies can be adjudicated by courts and tribunals; officials and politicians are individually held accountable for their deeds;
• the corporations, banks and accounting firms should be subject to regulations and scrutiny.  \(^94\)

2. Setting up Specialized Oversight Bodies

The legislature is usually the main formal body that exercises continuous power of scrutiny on behalf of the general public over the government and its activities. Sometimes it may be necessary to set up additional oversight bodies to enforce government accountability. Practice shows that ombudsman, inspector general, auditor services and other oversight bodies may be set up to audit government expenditures, monitor human rights observance, supervise the conduct of elections, gain access to government information or inspect government services. Such entities should be independent and free from government control, and have specific power to investigate and report. \(^95\) In case of dispute, either the government or the oversight body should have recourse to the judiciary which should have the power to make a determination of the issues involved. Findings of those bodies should be reported, as appropriate, to an independent committee, the parliament or to a branch of the legislature.

3. Standards for Public Officials \(^96\)

Government officials are agents of the people and their tasks are to serve the public interest. Professional standards should be established to guide their conducts. The following should be taken into account in formulating such standards:
• government employees should act in accordance with the law and respect the rights of the public;
• they are accountable directly to the public or through the parliament or the court and tribunals;
• they should pledge themselves
  ○ not to abuse their power;
  ○ not to discriminate against or to give any preferential treatment to any group or individual;

\(^93\) Ibid.
\(^94\) See infra, sections 6, 7 and 8.
\(^95\) South Africa has Public Protector who is a high-level independent official subject only to the constitution and law. He or she has the power to investigate all areas of government and any body performing a public function (e.g. public utility and corporation).
\(^96\) See for instance General Assembly resolution 51/59, 12December 1996, Action against corruption and international cod of conduct for public officials.
not to use official authority, public money or property for their personal or family’s financial interest, gains or advancement;
not to engage in activities incompatible with their functions or duties;
not to solicit or receive directly or indirectly any gift or other favors that may influence their decision or the exercise their function.

The application of the standards should be subject to checks in order to hold the person in question to account. Procedures should also be provided to allow affected persons to launch a complaint or to appeal a decision.

4. Standards for Law Enforcement Officials
Law enforcement officials play an important role in the maintenance of law and order. There should be enforceable, legal standards to hold law enforcement officials accountable to their acts. Some of the basic components are suggested as follows:

• respect the law, uphold human rights and to protect the public from illegal acts;
• never resort to any act of torture or other cruel, inhumane or degrading treatment or punishment on persons under their custody;
• limit the use of force to strictly necessary circumstances and to the extent required for the performance of their duty;
• not to accept any bribery or commit any act of corruption;
• adequate compensation for their work;
• Translate the above into simple operating rules for compliance.

5. Encouraging Open and Public Discussions
Government offices are agents of the public and as such, should actively seek to establish the public needs and wants. They should explore different ways and processes to gather public opinions and views. Setting up hot-lines and websites and organizing public discussion of issues of concern at the local level open to the private sector, labor, political parties and academics can promote better understanding, encourage citizen involvement and reduce possible causes of discontent or grievances. These are also efficient ways to build community understanding of and legitimacy for government undertakings, thus making the government accountable and its decisions transparent to the citizen. Women, youth, and minorities should also be encouraged to take part. An experienced person should preside over the meeting to moderate the discussion and to avoid chaos.

Individuals are more willing to take part in public discussions if they feel secure in knowing that they face no pressure or reprisal because of their views.97

6. Making Relevant Information Accessible to the Public
The public, the media and civil society groups need information to air their views and to influence policies. Information such as budgets, forthcoming public meetings, revenue collections, executive decisions, and decisions of the legislative bodies should therefore be accessible to the public through publications or information communications

97 Ibid..
technology (ICT). Many governments are already using websites and other electronic fora to conduct citizen consultations or surveys.

How to handle information held on citizens and to give access to such information to interested parties with due respect to privacy and security interests are difficult issues and require further study.

7. Public Audit

The use of public funds should be audited by independent agencies. Clear and easy-to-implement rules and procedures should be developed to regulate the entire process: from preparation to presentation to auditing to oversight.

Oversight know-how regarding the collection, allocation and expenditure of public funds should be exchanged to increase effectiveness. Regional development banks should lend their assistance to such activities.

8. Accountable and Transparent Banking System

Effective banking supervision is critical to sound financial system and to combat corruption. There should be established sound reporting and disclosure standards for banks. Training should be given to bank supervisors to increase their knowledge and ability to devise and operate a sound system. The banking and securities market clearance and settlement procedures should be improved in order to facilitate the transparency and security of internal and cross-border transactions.

9. Corporate Accountability

Business corporations create jobs and generate economic growth. They are also powerful special interest groups influential in party politics, elections and decision-making. The basic issue is how to complement public interest with corporate influence. A range of measures may be considered: disclosure of corporate donations to candidates and political parties, setting various limits on donations (e.g. overall limit, per party limit, or specific purpose limit) or channeling corporate donations to a trust fund from which funds could be distributed to all candidates and political campaigns on the basis of their membership.

Many large and transnational corporations have modified their business practice or have set standards on labor, trade union, human rights or environment issues for compliance by their overseas subsidiaries. More voluntary action on equal pay, factory conditions, child labor should be encouraged.

In 1999, Secretary-General Kofi Annan proposed a Global Compact between the United Nations and the world business community. It calls on companies to embrace nine universal principles in the areas of human rights, labor standards and the environment. It brings companies together with the United Nations, international labor, NGOs, and other parties to foster partnerships and to build a more inclusive and equitable

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98 Item L, progress review and recommendations, Third International Conference of the New or Restored Democracies on Democracy and Development held at Bucharest, 1997. UN Resolution A/52/334. The Plan of action of the Quebec Summit of the Americas, 2001 suggests the such information should be published within time-limits established by national legislation at all levels of government.

99 Ibid.

100 See Human Development report 2002, UNDP, pp.66-68.
global marketplace. These nine principles of the Global Compact seem to provide a useful basis for the subject under consideration:

- support and respect of the protection of internationally proclaimed human rights;
- making sure not to be complicit in human rights abuses;
- upholding the freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all form of forced and compulsory labor;
- the effective abolition of child labor;
- the elimination of discrimination in respect of employment and occupation;
- support of a precautionary approach to environmental challenges;
- undertaking initiatives to promote greater environmental responsibility;
- encouraging the development and diffusion of environmentally friendly technologies.

10. Participatory Decision-Making in International Financial Institutions

Many developing countries are seeking greater participation in decision-making in the IMF and World Bank. They have asked for wider and better consultation, transparency in decision-making, modification of practice or an enlarged membership in the governing body in order to increase their participation in the work of these organizations and in projects relating to their trade and economic development.

They also suggest that the formulation and implementation of development and financial projects should involve the people of the country as much as possible, and that review or oversight bodies should be set up to ensure that the funding agencies operate in compliance with international standards and best practices in the real interest of the recipients.

Certain steps have been taken in this direction. For instance, the World Bank’s Inspection Panel was created to rule on action taken by the Bank which might affect people’s environmental rights. The IMF has also introduced the Poverty Reduction Strategies which require the participation of a wide range of stakeholders at the governmental, national and local levels (including the borrowing country, civil society, donors and international institutions) in preparing strategies for debts relief. There is also potential for governments to work together with the regional and international development banks and the lending institutions to improve the planning and execution of projects involving the various stakeholders.

11. Strengthening Accountability in Development Aid

Development assistance should have clearly-defined functions and straightforward procedures so as to provide a clear line of responsibility, to reduce wastes and to enhance coordination. Effective development aid should also be accompanied by independent audit, reduction of corruption, participation of NGOs, and administrative efficiency. The recipient should also be encouraged to take
measures to deal with corruption and to set up a legal framework for assuring good governance.101

Chapter 8       Recommendations

1.   Institutionalization of the Conference

The Conferences of New or Restored Democracies have continued on an ad hoc basis since 1988. After four conferences and fifteen years’ existence, the time has come to take steps to formalize the Conference and to institutionalize its practices. Formalization would advance the political standing of the Conference in the world, elevate the Conference’s international legal status and would provide better services to its member governments.

The institutionalization of the Conference can best be set out in an international legal instrument (for example, a Charter or Compact) to be adopted by the Conference, addressing such matters as:

- purposes and objectives of the Conference;
- operational principles;
- juridical personality and legal capacity;
- a small core body capable of acting efficiently (e.g. a bureau composed of one President and four Vice-Presidents, one from each geographical region);
- functions and competence, organization of work;
- consultation and searching for consensus;
- rules of procedure.

The preparation of this document would require a combination of expert knowledge and practical experience in international relations and organizations. To facilitate its work in this regard, the Conference may wish to request the United Nations Department of Political Affairs and the United Nations Development Programme, in cooperation with the host government secretariat and other reputable expert bodies active in the field of democracy, to prepare a preliminary draft Charter/Compact of the Conference, taking into account the practices of the Conferences during the past fifteen years. The draft text could then be examined by a working group of member governments to be convened at the Conference in 2005.

2.   Conference’s Support to Maintain the Constitutional Democracy of a Member Government

101 See supra, Chapter 3, section 5 Combating Corruption.
Regional institutions and language groups have adopted procedures and mechanisms to protect their member governments if and when they encounter unconstitutional threats.\textsuperscript{102} Member governments of the Conference are bound together by their choice for democracy. But many of them would have no such institutions to turn to in case of such need.\textsuperscript{103} The process of democratization could be greatly strengthened if like-minded democracies could be mobilized to provide support for member governments confronting unconstitutional challenges. Even for those States that have access to regional institutions, any additional support from the Conference can only further strengthen their effort. Threats to democracy are a serious matter and should be of general concern. A democratic government needs and certainly deserves all the support that it can get.

It is, therefore, important for the Conference on New or Restored Democracies to consider what it can do for its member governments in such situation.

The subject is no doubt highly political and requires careful consideration. To help the Conference find an optimum approach, a list of six core issues are discussed below.\textsuperscript{104} These issues are inter-related and should be considered together.

A. Selection of Situations

The first core issue is the kind of situations that would be appropriate for the consideration of the Conference. Two major types may be envisaged: (i) situations involving more than one member government; (ii) situations involving only one member government.

In a situation where more than one member government is involved, particularly in cases involving armed conflicts, the Conference would necessarily be forced to take sides or to determine the rights and wrongs of its members. At its present stage of development, it would not be appropriate for the Conference to get involved in such situations.

The Conference could consider a situation that involved only one single member government provided that the member government itself approached the Conference. Examples of such situations would be: continuous disturbances and tensions (riots and acts of violence), internal armed conflicts (between governmental authorities and organized armed groups, or between such groups), overthrow, attempted overthrow, planned or threat of overthrow and other unconstitutional moves to acquire power. These are purely internal unconstitutional challenges and no other member government is involved. But if another member government is directly or indirectly involved in the overthrow, the nature of the matter would be changed. The Conference would have to carefully consider its position.

Whether it would be appropriate for the Conference to consider a member government’s attempts to stay in power beyond its constitutional terms would also present a difficult case since it would require the Conference to pass judgment on the constitutionality of the acts taken by the government (e.g. postponing or suspending elections, amending election procedures or changing the terms of offices). All things

\textsuperscript{102} See Chapter 1, Section 6, supra.

\textsuperscript{103} The Security Council may be resorted to if there a threat to international peace and security but unconstitutional challenges may not fall within this category.

\textsuperscript{104} The list is only illustrative.
considered, the Conference should avoid involvement in such a situation until a much later stage when the Conference has acquired sufficient experience.

B. The Conference’s Role: Passive or Active

An active role by the Conference would mean that the Conference would have the power to initiate on its own an investigation of a “situation” without first having received a request from a member government. At the present stage, the Conference should be cautious and should limit its role to cases that are brought to it by the member government concerned.

C. Who May Request the Conference’s Support?

Consideration of the foregoing suggests that a request for support is receivable only when it comes directly from the member government concerned. Under this formula, the government concerned is entirely free to decide if it needs help and when to approach the Conference about a situation. Obviously, no member government is likely to request support if the situation is not critical in its view. But it should be that government’s decision alone.

Requests from any entities or factions within that state should not therefore be receivable by the Conference since this would constitute a challenge to the legitimacy of the existing government. It is not appropriate at the present stage for the Conference to allow this kind of challenge to its member government.

D. What should the Conference do when a request for support is received?

Unless the requesting government indicates otherwise, the Conference should communicate the request to all its members. Each member will have the opportunity to consider the request and decide what it can do and what the Conference should do.

It seems appropriate that the Conference should also communicate the request to other conferences, international and regional organizations active in the field of democracy. These organizations should be invited to consider the matter raised in the request and disseminate the information to other interested bodies, including civil society and the media. The objectives are to raise the level of awareness of the situation and to mount an international campaign to bring support to the affected government and to bring pressure to bear on those who are acting unconstitutionally.

E. The Process of consensus-searching

After the request for support has been communicated to all its members, the question is then when Conference itself should consider the request and decide if it should take any additional steps.

In certain circumstances, it might be desirable to immediately convene the whole membership. As a general rule, the request should first be examined by a small group (e.g., the Bureau of the Conference) upon whose recommendation the plenary may then meet. This procedure can protect the Conference so that it is held in reserve to handle situations truly requiring its attention.
As the presiding officer, the President of the Conference should immediately consult the four vice-presidents to seek their views. This group of officers should make their recommendations by consensus or the highest majority (4 out of five) in order to maintain the strength of its recommendation.

The group should be entirely free to consider all appropriate measures that may make a difference to the situation, including the need for further consultation with the neighboring countries in the region. Since the group may face various situations extremely difficult to predict in advance, the group should be completely free to make its recommendation. For the group’s ease of reference, some examples are listed here:

- a statement or declaration in support of the constitutional government,
- visit to the country;
- inter-parties dialogue;
- collection of relevant information;
- recommending NGOs presence;
- appeals for restrain;
- field presence by diplomats, monitoring, fact finding;
- peace conference;
- good offices and other diplomatic initiatives;
- refusal of acceptance of any unconstitutional changes;
- non-recognition of the unconstitutionally constituted regime;
- recourse to regional or international organizations;
- recourse to the UN Security Council;
- no action to be taken.

After careful deliberation, the group should decide what recommendation it should make, if any, and in what form the decision should be announced, if it is to be announced. If it is so recommended by the group, a special or emergency session of the Conference may be convened to consider the recommendation.

The subject is highly political. In order to demonstrate strength and unity, it is important that the Conference should, in such case, make its decision by consensus or near unanimity.

F. Provision of secretariat services

The proposed processes call for the services of a conference secretariat particularly between Conferences to act as the center of communication and to provide objectivity and concentrated effort to service the membership.

The Bucharest Conference held in 1997 recommended the setting up of a permanent conference secretariat. In fact, an ad hoc conference secretariat provided by the host government has usually assumed the follow-up actions.

Alternatively, the Conference may wish request an international organization to perform this particular function on an interim basis.

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105 The practice of the Conference of New or Restored Democracies is to have a President and four Vice-Presidents. See also supra regarding the institutionalization of the Conference.
106 See Bucharest Declaration,....
In the meantime, a feasibility study should be prepared to explore the various issues involved, including the possible funding of a permanent secretariat by institutions or governments that are active in promoting democracy.

In light of the above discussion, the following conclusions may be drawn:

- there is a need for the Conference to adopt a procedure which can lead to consideration of situations brought to it by its member government facing internal unconstitutional challenges;
- stringent tests must be applied in selecting situations admissible to the Conference; a case is admissible only when it is at the request of the member government itself; this means that only internal situations threatening the existing government may be receivable by the Conference;
- a case is not receivable if the Conference would be forced to pit one member government against another member government;
- upon receiving an admissible case, the Conference may communicate the request to all its member governments for information; it is for each member government to decide if it wishes to react to the situation;
- the Bureau may be convened to examine the case and decide whether any recommendation should be made to the Conference;
- the Conference may be convened to consider the case if it is so recommended by the Bureau or it is so requested by its membership (e.g. a fifth).

G. Recommendation

In light of the above, the Conference might wish to create a working group during its current meeting in Mongolia to examine the issues involved. To facilitate the work, draft guidelines should be prepared before hand for the consideration of the working group.