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DRAFT PRINCIPLES ON FREEDOM AND NON-DISCRIMINATION IN THE
MATTER OF POLITICAL RIGHTS

Note by the Secretary-General

As requested in the second operative paragraph of resolution 4 (XVIII), which the Commission adopted at its eighteenth session, the Secretary-General transmitted to the Governments of States Members of the United Nations and of the specialized agencies the text of the draft principles on freedom and non-discrimination in the matter of political rights drawn up by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/213, para. 370), as well as the suggestions made by the Commission on the Status of Women (E/CN.6/L.336), so that they could submit their comments on the substance of the draft principles and the form in which such principles should be embodied.

The comments received from the Governments of Cyprus, Mexico, Pakistan, Poland, Union of Soviet Socialist Republics, and the United Kingdom of Great Britain and Northern Ireland are transmitted to the Commission herewith.

Cyprus

The Ministry of Foreign Affairs of the Republic of Cyprus presents its compliments to the Secretary-General of the United Nations and ... has the honour to inform him that the appropriate Departments of the Government of the Republic have no comments to make on the relevant enclosures.

Mexico

Preamble

The six paragraphs forming the preamble to the draft Principles on freedom and non-discrimination in the matter of political rights give rise to no comments, as they reflect principles which are embodied in the United Nations Charter and express no view that is inconsistent or conflicts with the text of that instrument.

I. The right of all peoples to self-determination

We have no comment to make on this Principle. It is in accordance with the Mexican doctrine which, as an expression of national sovereignty, is embodied in the last sentence of article 39 of the Constitution. This sentence proclaims the inalienable right of the people to alter or modify their form of government.

II. Political rights of nationals

Paragraph (a)

Here again we have no comment, because the Principle stated in this paragraph is applied in Mexico. Article 35 (III) of the Constitution establishes the prerogative of citizens to associate together to discuss the political affairs of the country. Article 34 of the Constitution provides that all men and women who, in addition to being Mexicans, have reached the age of eighteen years and are married, or twenty-one years, if unmarried, and have an honest means of livelihood are citizens of the Republic.

Paragraph (b)

We have no comments concerning this paragraph. It is consonant with the Mexican system since, under article 37 of the Constitution, Mexican nationality is lost only: (I) by the voluntary acquisition of a foreign nationality; (II) by accepting or using titles of nobility which imply submission to a foreign State; (III) by residing, if a Mexican by naturalization, for five consecutive years in the country of origin; and (IV) by attempting to pass as an alien in a public instrument although Mexican by naturalization or by obtaining and using a foreign

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passport. Furthermore, paragraph (B) of the same article, which deals with cases in which Mexican citizenship is lost, does not sanction deprivation of such citizenship as a means of depriving a person of his political rights.

It should be noted that under the Mexican legal system, the rights and prerogatives of citizens among which political rights are paramount, may be suspended only for grave reasons, which are specified in the six sections of article 38 of the Constitution, as follows: (I) through failure to comply, without sufficient cause, with any of the obligations imposed by article 36. This suspension shall last for one year and shall be in addition to any other penalties prescribed by law for the same offence; (II) through being subjected to criminal prosecution for an offence punishable by imprisonment (pena corporal), the suspension to be reckoned from the date of the formal order of committal to prison; (III) throughout the term of imprisonment; (IV) through vagrancy or habitual drunkenness, affirmed in the manner prescribed by law; (V) through being a fugitive from justice, the suspension being reckoned from the date of the order of arrest until the prescription of the criminal action; and (VI) through final sentence imposing such suspension as a penalty.

Paragraph (c)

We have no comment to make on this paragraph. It should be noted that, in Mexico, however, the conditions referred to are the same for all nationals, as is clear from the above-mentioned articles of the Constitution.

Finally, with regard to Principle II, we are glad to be able to point out that, under the above-mentioned article 34 of the Constitution and the Decree of 13 October 1953, published in the Diario Oficial de la Federación of 17 October 1953, women in Mexico enjoy the same political rights as men.

III. Freedom of opinion and association

This Principle is not considered in any way objectionable as it is embodied in articles 6, 7 and 9 of the Constitution of the United Mexican States.

Article 6 of the Constitution provides that the expression of ideas shall not be subject to any judicial or administrative investigation, unless it offends against good morals, infringes the rights of other persons, incites to crime or disturbs public order.

Attention is also drawn to the text of article 7 of the Constitution:

"Freedom to write and publish writings on any subject is inviolable. No law or authority may establish censorship, require bonds from authors or printers, or restrict the freedom of printing, which shall be limited only by the respect due to private life, morals and public peace. In no circumstances may a printing press be sequestered as the instrument of the offence. The organic laws shall contain whatever provisions may be necessary to prevent the imprisonment of the vendors, newsboys, workmen and other employees of the establishment publishing the work denounced, under pretext of a denunciation of offences of the Press, unless their guilt be previously established."

Furthermore, article 9 of the Constitution provides as follows: "The right to assemble or associate peaceably for any lawful purpose shall not be restricted; but only citizens of the Republic may do so to take part in the political affairs of the country; no armed deliberative meeting is authorized. A meeting or assembly shall not be deemed to be unlawful nor shall it be dissolved if the object thereof is to submit a petition or a protest to any authority against any act, provided always that no insults are proffered or violence resorted to, or threats used to intimidate or compel the said authority to render a favourable decision."

The exercise of the individual rights referred to in these three articles is guaranteed under our legal system through the Juicio de amparo (court for the protection of the individual) whose jurisdiction is equal to that of the Federal Courts in all controversies that arise out of laws or acts of the authorities that violate the guarantees of the individual, as provided in article 103 (I) of the Constitution. The form of proceedings in the amparo courts is governed by article 107 of the Constitution and the Ley de Amparo (Act for the protection of the individual), which is the organic law under the above-mentioned articles 103 and 107.

IV. Universality of suffrage

This principle repeats substantially what is contained in Principle II and gives rise to no objection. In Mexico, as already pointed out, all nationals, men and women, of eighteen years of age if married, or twenty-one years of age, if unmarried, who are in possession of their political rights and entered in the

national electoral register, are entitled to vote, as provided in article 60 of the Federal Electoral Act. In Mexico, the right of a person to vote does not depend upon his level of education.

V. Equality of suffrage

Paragraph (a)

We have no objection to this paragraph, as the principle which it contains is in accordance with Mexican law. Under the Mexican legal system, as already pointed out, article 60 of the Federal Electoral Act provides that male Mexican nationals over the age of eighteen years if married, and over the age of twenty-one years if unmarried, who are in possession of their political rights and entered in the national electoral register, are electors. This provision is supplemented by article 52 (I) of the Federal Electoral Act which provides that every Mexican citizen who himself enjoys the exercise of his rights, is bound duly to identify himself and cause his name to be registered for inclusion in the electoral roll of the district in which he is domiciled. Persons who have obtained Mexican nationality by naturalization must submit the necessary documents as evidence of their citizenship and age.

The persons not entitled to vote are specified in article 62 of the same Federal Electoral Act, which provides as follows:

"The following persons shall not be electors: I. Persons not possessing the qualifications required of an elector; II. Citizens who are placed under a disability by an order of the court; III. Persons committed to an institution for drug addiction or a mental disease; IV. Persons against whom criminal proceedings are pending for an offence punishable by imprisonment, as from the date of the order of committal to prison; V. Persons serving a sentence of imprisonment in pursuance of a judicial decision; VI. Fugitives from justice as from the date of issue of the warrant for their arrest until the date when the prosecution is barred by limitations of time; and VII. Persons sentenced by a final judicial decision to the penalty of suspension of the right to vote."

Paragraph (b)

We have no comment to make on this paragraph. It should be pointed out, however, that the system of electoral districts in force in Mexico is provided for in article 12 (XI) of the Federal Electoral Act, which requires the Federal Electoral Commission to divide the territory of the Republic into electoral districts and to publish particulars concerning them before the fifteenth day of December of the year preceding that in which ordinary federal elections are to be held. In accordance with article 52 of the Constitution which prescribes that each electoral district must include 200,000 inhabitants the Commission must for this purpose take due account of the most recent general census of the population. Furthermore, this section of the article expressly provides that the division of the territory shall not be modified during the period between censuses.

Paragraph (c)

We approve the contents of this paragraph. The principle stated is the same as that applied in Mexico where suffrage is direct and every citizen must have his name entered in the National Electoral Register which, under article 45 of the Federal Electoral Act, is a public service that operates permanently; it is responsible for keeping the register of citizens up to date, issuing voting credentials, drawing up and publishing the Electoral Roll and circulating it to the electoral bodies.

VI. Secrecy of the vote

What is stated in this principle is acceptable, as the same requirement exists under the Mexican legal system. Article 84 (II) of the Federal Electoral Act provides that voting shall be by secret ballot and the Act renders those who attempt to sway electors subject to various penalties.

VII. Periodicity of elections

This principle is approved, as it is also applied in Mexico. Article 6 of the Electoral Act in force provides that effective suffrage forms the basis of the federal democratic representative system and the responsibility for the

supervision and conduct of elections is therefore shared equally by the State, the lawfully registered parties and the citizens of Mexico, in the manner and subject to the conditions laid down by the Act. Article 2 of the Act deals with the periodicity of elections and provides that the ordinary elections of deputies shall be held every three years and the elections of senators and for President of the Republic every six years, on the first Sunday in the month of July of the year in which the particular election falls.

VIII. Genuine character of elections and other public consultations

We have no objection to the four paragraphs of this principle. Various provisions of the Federal Electoral Act and, in particular, articles 84, 85, 86, 87, 88 and 89, specify the legal means of ensuring freedom to vote for any registered candidate, while the chapters concerning balloting, the counting of ballots and election procedure guarantee the supervision of elections by impartial bodies. Chapter III of the Act, which deals with political parties, establishes the right of the latter to organize and function freely.

IX. Access to elective public office

We approve this principle which corresponds, moreover, to the Mexican legal practice. It is laid down in article 35 (II) of the Constitution that a citizen has the right to be elected to every office subject to popular election and to be appointed to any other employment or commission, provided that he has the qualifications established by law, while article 36 (IV) lists among the obligations of citizens service in the elective offices of the Federation or of the States which shall in no case be gratuitous. Finally, article 36 (V) establishes further that it is the duty of a citizen to serve on the municipal councils of his place of residence, to carry out electoral functions and to serve on the jury.

X. Access to non-elective public office

The contents of principle X are approved for the reasons already given in respect of principle IX.

XI. Measures which shall not be considered discriminatory

We have no comment to make on this principle.

XII. Limitations

This principle is considered acceptable as it is in accord with the general provisions of the United Nations Charter.

XIII. Constitutional guarantee

This principle is considered acceptable. The incorporation of rights and freedoms in a constitution is regarded as the best means of guaranteeing them. Mexico applies this procedure and has, in addition, the juicio de amparo (court for the safety of the individual), a strictly Mexican institution, one of the main purposes of which is to ensure Federal protection for any complainant who considers that his personal guarantees have been violated.

XIV. Recourse to independent tribunals

It is felt that this principle states an appropriate procedure for cases of denial or violation of the rights and freedoms in question. In Mexico, the Federal courts have this high responsibility and the procedure to be followed by persons seeking to assert their rights before them is laid down in the Ley de Amparo, which issues the necessary enactment under articles 103 and 107 of the Constitution.

XV. Application of the Principles

We have no comment to make on this Principle which is entirely acceptable.

Pakistan

In principles IX and X, "Access to elective public office" and "Access to non-elective public office", the Government of Pakistan prefer the original text of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the amendments proposed by the Commission on the Status of Women; that is, the Government of Pakistan prefer the words "duties or personal interests" to "financial or professional interests".

As regards the form in which the principles should be embodied, the Government of Pakistan fear that multiplication of declarations will weaken the force of existing instruments. They would therefore favour a convention as the appropriate form.

Poland

I. 1. The Government of the PPR agrees with the suggestion of the Commission on the Status of Women that a reference to the Convention on the Political Rights of Women be made in the preamble.

2. Similarly, the Government of the PPR agrees to the insertion in principle II (Political rights of nationals) of the amendment of the Commission on the Status of Women relating to equal political rights irrespective of marital status.

3. However, in the opinion of the Government of the PPR it is not advisable to limit the meaning of the term "duties or personal interests" in principle IX (Access to elective public office) and in principle X (Access to non-elective public office) to "financial or professional interests" as proposed by the Commission on the Status of Women.

4. In the opinion of the Government of the PPR it is an essential drawback of the General Principles that the necessity for protection against war propaganda, national, racial and religious hatred has not been clearly referred to. That is why the Polish Government considers it necessary to add the following statement in principle XII (Limitations):

"In particular an explicit banning of incitement to national, racial and religious hatred, banning of war propaganda and restriction of political freedoms of organized groups of a fascist or Nazi nature - shall be considered as consistent with these principles."

5. Furthermore, the Government of the PPR proposes to add in principle XIII (Limitations) after the words: "democratic society" the words: "and of maintaining international peace, security and friendly relations among nations."

6. The Government of the PPR proposes that in principle XV (Application of principles) the words: "countries which are under alien domination" be replaced by "countries which have not yet attained independence".

II. As regards the form in which these General Principles should be embodied, the Government of the PPR is of the opinion that it is not desirable to draft and conclude international agreements or conventions on freedom and non-discrimination in the matter of political rights at a time when - as is well known - the work on

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the two covenants on human rights is not yet concluded. It is the opinion of the Polish Government that in these circumstances the most appropriate form would be the adoption of the General Principles as a resolution of the Commission on Human Rights.

The Government of the Polish People's Republic reserves itself the right to submit further comments in the course of discussions on the draft General Principles.

Union of Soviet Socialist Republics

In the Soviet Union the principles of freedom and non-discrimination in the matter of political rights are already applied in practice. The effective application of these principles is guaranteed by the Constitution of the USSR, by Soviet law and by the policy and practical conduct of the Soviet Government and the Communist Party of the Soviet Union.

The USSR Constitution guarantees freedom of speech, freedom of the Press, freedom of assembly, including the holding of mass meetings, freedom to hold street processions and demonstrations, freedom of conscience, freedom of religious worship and freedom to engage in anti-religious propaganda, the right to form public organizations, and so on. The USSR Constitution prohibits all discrimination, including discrimination in the field of political rights. According to article 123 of the USSR Constitution, it is an indefeasible law that citizens of the USSR, irrespective of their ethnic origin or race, shall have equal rights in all spheres of economic, cultural, political and other public activity. The same article also provides that any direct or indirect restriction of the rights of - or, conversely, the establishment of any direct or indirect privileges for - citizens on account of their race or ethnic origin is punishable by law. Under article 122 of the USSR Constitution, women in the USSR are accorded equal rights with men in all spheres of economic, cultural, political and other public activity.

The USSR Constitution and Soviet law guarantee Soviet citizens the right to work, the right to rest, the right to social insurance, and so on. Such guarantees are vitally important for most of the population in any country, for without them other rights and freedoms, including those in the political sphere, cannot be enjoyed by the workers in practice.

The freedom to enjoy political rights without any discrimination is not merely proclaimed by the USSR Constitution but is also protected by fundamental safeguards deriving from the socialist nature of Soviet society. The Soviet State, which began as a dictatorship of the proletariat, has now entered a new stage and become a State of the whole people, an organ responding to the interests and the will of the entire nation. Expressing the will of the nation, the Soviet State protects, as it has done in the past, the rights and freedoms of citizens.

The Soviet nation has now entered the period of building a communist society on a general scale. The transition to communism entails the development of the individual rights and freedoms of Soviet citizens by all possible means. Socialism gave and guaranteed the workers very extensive rights and freedoms. Communism brings the workers great new rights and opportunities. The main trend of development of the socialist State during the period of building communism will be to expand and improve socialist democracy in all its aspects and to achieve active participation by all citizens in the government of the State, in the direction of economic and cultural affairs and in the strengthening of supervision by the people over the operation of the State machinery. The programme adopted by the Communist Party of the Soviet Union at its Twenty-second Congress, which is a programme of life and work for the whole of Soviet society, states that "in the course of the further development of socialist democracy there will be a gradual transformation of the organs of State power into organs of community self-government".

The Soviet Union has consistently advocated that all countries in the world should strictly observe the principles of freedom and non-discrimination in the field of political rights. An important step towards achieving this goal might be the preparation of an international convention or declaration binding States to observe strictly the principles of freedom and non-discrimination in the matter of political rights and to ensure that those principles were observed in their territory by all the means at their disposal.

The General Principles on Freedom and Non-discrimination in the Matter of Political Rights prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities might serve as the basis for such a convention or declaration, provided that the text was improved and that the following essential additions, changes and amendments were made in it.

1. While proclaiming the general principles of freedom and non-discrimination in the matter of political rights, the draft does not in actual fact provide any guarantees regarding the application of those principles. In this respect Principle XIII as now worded is inadequate. The draft should provide that States must assume an obligation to take measures, including legislative and constitutional action, to guarantee that the principles of freedom and non-discrimination in the matter of political rights are observed.

2. Paragraphs (a), (b) and (c) of Principle XI are not specific enough. The terms "reasonable requirements" and "reasonable qualifications" can be interpreted in various ways and thus might in practice give rise to discrimination in the matter of citizens' political rights. The same applies to the expression "meeting the just requirements" in Principle XII of the draft.

In many countries even now such reservations ("reasonable requirements") are used as a basis for discrimination in the field of political rights. Thus, the wide-spread discrimination practised in certain countries against women in the matter of access to public employment is often justified on the pretext that it is appropriate, reasonable, etc. and even that it is in the interests of the women themselves and of society.

It would accordingly be advisable either to omit Principle XI altogether or to include in it more specific provisions that would eliminate all possibility of discrimination against any citizens, including women, in the field of political rights. In any case, the words "reasonable requirements" and "reasonable qualifications" should be replaced by some term with a more definite meaning.

Sub-paragraph (d) (i) of Principle XI is also unacceptable. Its inclusion as now worded in an international convention or declaration would imply that the signatory States were sanctioning the fact that in some countries an element of the population did not enjoy equality with the rest in the matter of political rights. The existence of such a situation, moreover, is a gross violation of the spirit and the principles of the United Nations Charter, the Universal Declaration of Human Rights and the Declaration on the granting of independence to colonial countries and peoples. The States in which this situation still exists must assume a strict obligation to take all necessary action to ensure equality in the enjoyment of political rights for those members of their population who do not in fact enjoy equality with the rest of the population. It is obvious that such action cannot be regarded as discriminatory towards anybody.

3. Sub-paragraph (d) of Principle VIII ought perhaps to be joined with Principle III and be supplemented by a provision to the effect that freedom of opinion and expression and freedom of peaceful assembly and association must not be used to legalize the activities of organizations engaging in war propaganda or in the propagation of national or racial hatred or enmity between peoples.

4. In Principle XIV it should be made clear that what is referred to is the treatment of citizens in national tribunals. In many countries, moreover, it is not the courts, or not exclusively the courts, that are competent to deal with violations of political rights, but some other body, such as an administrative organ.

5. The second preambular paragraph is not quite correct. It is one of the purposes of the United Nations to achieve international co-operation in encouraging and promoting respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. The text of this paragraph should be brought into line with Article 1(3) of the United Nations Charter.

6. The following should be added to Principle XV:

"Immediate steps shall be taken, in Trust and Non-Self-Governing Territories and all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom."

7. It must be stated in Principle IV that the right to vote not only must not be made conditional on literacy, but must also not be made subject to residential or property qualifications.

United Kingdom of Great Britain and
Northern Ireland

Article II

We consider sub-paragraph (b) as being out of place in this article and incapable of enforcement, because of the difficulty of proving that a person had been deprived of nationality in order to deprive him of political rights. The point is already, and more properly, covered by Article IX of the United Nations Convention for the Reduction of Statelessness, which reads:

"A contracting state may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."

Article III

We welcome the prominence given to this provision (which was formerly paragraph (d) of Article VI) in the present draft.

Article IV

The drafting of this article appears to be defective: the opening words "Every national" need to be qualified by a phrase such as fulfilling the age, residence and other conditions referred to in Article II (c). A qualification of this kind was proposed by the United Kingdom representative at the Sub-Commission but was rejected.

Article V

In the light of the discussion at the Sub-Commission (E/CN.4/830, paragraphs 74-79) it seems reasonable to assume that the reference to "the same weight" in paragraph (a), and the terms of paragraph (b) of this article, do not require the introduction of proportional representation, or exact numerical equality of electoral districts, but merely mean that each citizen should have the same right and opportunity as any other citizen to vote for the candidate or candidates of his choice.

Nevertheless paragraph (b) is still open to objection (i) in view of the Rules for Redistribution of Seats in the Second Schedule to the House of Commons

(Redistribution of Seats) Act, 1949, which require regard to be had to Local Government boundaries and (ii) as regards the words "completely reflect the will of all the voters".

The insertion of the words "within such limits as are practicable" between the words "shall" and "be established" in line 2 of paragraph (b) would, we consider, meet point (i).

On (ii) it might be said that our majority vote system does not reflect the will of all the voters and instead of the words at the end of (b) "make the results most accurately and completely reflect the will of all the voters" we should prefer a form of words such as "ensure a proper balance of representation between the districts".

Article VI

The second half of paragraph (b) as drafted would not permit any inquiry as to a voter's intentions for such innocuous purposes as public opinion polls. The words after "intends to vote" where it first occurs should be deleted.

Article VII

While we should prefer to the present wording after "ensure" such words as "The continuance of the representative character of the legislature", we would not object to the present text, which is an improvement over the earlier text.

Article VIII

It seems doubtful whether any comment can usefully be made on the subject of the single list of candidates.

Articles IX and X

In paragraph (a) of each article the words "in which he resides", which presumably are meant to apply to local elections, may be regarded as over-restrictive. In this country the owning of property in a district is in addition to the basic qualifications (of age and nationality) a sufficient qualification for election to, and membership of, a local authority.

Article XI

We should perhaps mention that provisions in our law (and no doubt in that of other countries) disqualify from voting persons who have committed certain offences, and disqualify certain categories of persons from being local councillors or Members of Parliament.
