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**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Study on common challenges facing States in their efforts to secure democracy and the rule of law from a human rights perspective**

#### **Report of the United Nations High Commissioner for Human Rights**

##### *Summary*

The present study is submitted pursuant to paragraph 24 of Human Rights Council resolution 19/36, in which the Council requested the Office of the United Nations High Commissioner for Human Rights to draft a study on common challenges facing States in their efforts to secure democracy and the rule of law from a human rights perspective, and on lessons learned and best practices in the engagement of the State with the international community to support such processes. Several Member States provided input and their views are reflected in the study.

The study concludes that securing democracy is a continuous exercise. Challenges to democracy can arise in both settled democracies and States transitioning towards democracy. Human rights and the rule of law can be endangered in both contexts in different ways. These challenges can be manifested by the absence, interruption, or abridgement of democratic rules and processes. Democracy is rendered insecure by encroachments on human rights, the lack of empowerment opportunities for all, limits to participation, and poor or absent public debate. More profoundly, democracy is challenged at the political, security and social levels, domestically and globally, by weak or dysfunctional institutions, the erosion of the rule of law, poor leadership, violence, sectarianism, radicalism, extremism, terrorism, intolerance, corruption and impunity.

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## I. Introduction

1. On 23 March 2012, the Human Rights Council adopted resolution 19/36, in which it acknowledged that by promoting the normative content and the realization of the human rights enshrined in various international instruments, it could play a role in developing and promoting the fulfilment of the principles, norms and standards that constituted the basis of democracy and the rule of law.

2. The present study is submitted in accordance with paragraph 24 of the above-mentioned resolution, in which the Office of the United Nations High Commissioner for Human Rights (OHCHR) was requested to, in consultation with States, national human rights institutions, civil society, relevant intergovernmental bodies and international organizations, draft a study on common challenges facing States in their efforts to secure democracy and the rule of law from a human rights perspective, and on lessons learned and best practices in the engagement of the State with the international community to support such processes.

3. By note verbale dated 11 July 2012, OHCHR invited all Member States, relevant intergovernmental and non-governmental organizations (NGOs) and national human rights institutions to provide OHCHR with pertinent information relating to the challenges, lessons learned and best practices referred to in paragraph 24 of the resolution. The responses received by OHCHR<sup>1</sup> are summarized under section VI below.

4. The study is set against the normative framework provided under international law. This framework was explored in an expert seminar on democracy and the rule of law held by OHCHR in 2005. The seminar identified the main challenges to democracy as including deepening poverty, worsened human security, infringements of rights, erosion of the rule of law, escalation of armed conflicts, illegal occupations involving the use of force, unequal access to justice by disadvantaged groups, and impunity.<sup>2</sup>

5. While reaffirming the aforementioned findings, the study endeavors to contribute further to the promotion and strengthening of the interdependence of human rights, democracy and the rule of law by examining more specifically the nature of common challenges faced by States in their efforts to secure democracy. It tackles the complexity of the concept of democracy, identifying its different dimensions and restating its definition from the human rights perspective. It is argued that, transcending important historically informed specificities, the concept of democracy is demonstrably universal. Following the analysis of the centrality of the rule of law and of human rights to democracy as a system of governance, and to democratization as a process, the study sheds light on the most common political, security, and social challenges to securing democracy. It highlights the components of a viable, albeit often fragile process of transition towards democracy, and the role of State and non-State actors. The study concludes with lessons learned and best

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<sup>1</sup> As at 15 November 2012, responses to the note verbale had been received from 16 Member States (Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Czech Republic, Greece, Japan, Jordan, Mauritius, Montenegro, Qatar, Romania, Russian Federation, Slovenia, Spain and Switzerland) and from the Human Rights Commission of Mexico. Owing to the late transmission of the response received from the Russian Federation, its translation was not available for incorporation in the study at the time of submission for publication.

<sup>2</sup> The seminar was designed to promote an analytical approach leading towards practical and action-oriented conclusions on the subject of democracy and the rule of law. The complete list of conclusions and recommendations is included in the report of the seminar (E/CN.4/2005/58, paras. 26-85).

practices drawn from national experiences and international and regional cooperation for the promotion of democracy and the rule of law.

## II. The concept of democracy

### A. Definition

6. Although all civilizations feature different forms of democracy, the concept is a disputed one and there exists a multiplicity of perspectives in understanding its content. The lack of unanimity about the concept of democracy is not, however, inherently problematic, as its contours are identifiable. Etymologically derived from the Greek word *demokratia*, democracy is, in its basic understanding, indicative of a system where the people (*demos*) exercise rule (*kratos*). This original dimension captures the fundamental characteristic of democracy, the rule of the many—as opposed to non-democratic systems such as autocracy (the rule of one), oligarchy (the rule of the few) and aristocracy (the rule of “the best”)—but it does not fully account for the breadth of the notion, in particular the mechanics of such exercise of power and their societal articulation.

7. In addition to opposition to tyranny, three elements characterize the understanding and the practice of democracy. First, democracy is an institutional arrangement relied upon for arrival at political decisions in which citizens hold power through elections. Second, democracy is a system of governance in which rulers are held accountable for their actions in the public realm by citizens acting indirectly through the competition and cooperation of their representatives. Third, democracy is a political norm predicated upon equality and justice.<sup>3</sup>

8. These elements were broadly captured by the former Commission on Human Rights in a landmark resolution (2002/46), further developed by the Human Rights Council in resolution 19/36, in which the Council stated that democracy includes respect for all human rights and fundamental freedoms, inter alia, freedom of association and of peaceful assembly, freedom of expression and opinion, freedom of thought, conscience, religion or belief, the right to be recognized everywhere as a person before the law and the right to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote in a pluralistic system of political parties and organizations and to be elected at genuine, periodic, free and fair elections by universal and equal suffrage and by secret ballot guaranteeing the free expression of the will of the people, as well as respect for the rule of law, the separation of powers, the independence of the judiciary, transparency and accountability in public administration and decision-making and free, independent and pluralistic media.

9. This definition illustrates the fact that democracy is not confined to the organization of democratic elections, however central those are to it. Citizens must control the political process continuously, beyond the electoral moment. Moreover, democracy is not solely the articulation of popular sovereignty (government of the people, by the people and for the people) but also encompasses values of responsibility and accountability.

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<sup>3</sup> These three elements appear variously throughout the literature on democracy. See, notably, Joseph Schumpeter, *Capitalism, Socialism and Democracy* (New York, Harper and Brothers, 1942); Philippe Schmitter and Terry Lynn Karl, “What democracy is ... and is not”, *Journal of Democracy*, vol. 2, No. 3 (1991), pp. 75-88; and David Held, *Models of Democracy*, 2nd ed. (Stanford, California, Stanford University Press, 1996), p. 2.

10. Furthermore, democracy infers a type of behavior or performance which is necessary for its formal integration, safeguarding and sustainability, and which is essential for (a) the protection of institutions, (b) the accountability of power-holders and (c) the respect and protection of the rule of law and human rights. Such performance is a determining factor in the quality of any transitional process as an open-ended attempt at the realization of democracy.

## **B. Universality of the concept, and diversity of mechanisms**

### **1. Universality of the concept**

11. There is no preeminent tradition of democracy that imposes itself on others. Democracy is not linked to one specific cultural context more than another. However, while the values of democracy are similar, their expression can differ according to specific contexts. It is the conditions prevalent in a given context that qualify it as more democratic than another. Hence, the strengthening of local democratic infrastructures reinforces the global advance of democracy. Ultimately, democracy is stronger and more resilient when it is grounded in legitimate, representative and fair mechanisms of sociopolitical interaction.

12. Narrow interpretations of democracy, such as those confining it to a procedural concept irrespective of its context, do not reflect adequately its inherently universal dimensions. If, in effect, the practice of democracy can and indeed should be contextualized, its core values are demonstrably universal, and this universality is best encapsulated in the fact that everywhere around the world, people demand respect for their rights and this demand is ultimately best accomplished in a state of democracy respectful of the rule of law.

13. Participants at the third International Conference of New or Restored Democracies, held in Bucharest in 1997, noted that there was “an almost universal recognition that a democratic system of government is the best model to ensure a framework of liberties”.<sup>4</sup> The majority of States have adhered to the international instruments that establish the values of democracy, including in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

### **2. Diversity of mechanisms**

14. The mechanisms adopted to give practical meaning to the principles of democracy come in different guises. As noted by the Secretary-General, democracy is not a model to be copied from certain States, but a goal to be attained by all peoples and assimilated by all cultures. It may take many forms, depending on the characteristics and circumstances of societies (A/50/332, para. 5).

15. Checks and balances mechanisms are necessary to give substance to democracy and exercise proper control. Holding free and fair elections, administering transparent rules and effective regulations, teasing out participatory dynamics and protecting and promoting rights and freedoms, all of which governed by the rule of law, constitute a complex set of activities that require the effective establishment and functioning of self-sustaining institutions.

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<sup>4</sup> Note verbale dated 10 September 1997 from the Permanent Representative of Romania to the United Nations, addressed to the Secretary General (A/52/334, appendix, p. 3).

16. Non-institutional actors can also play a useful role in furthering democracy. For example, while traditional leadership may have non-representative features, some traditional authorities have provided an important basis for promoting democratic governance through consensus-based mechanisms. When available, the legitimacy of those arrangements proceeds from their harmonious relationship with their traditional community and their social environment.

### **III. The imperatives of the rule of law and human rights**

#### **A. Interdependence of human rights, democracy and the rule of law**

17. In 1993, the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights stated that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing, and that the international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.<sup>5</sup> Furthermore, the former Commission on Human Rights adopted a series of resolutions between 1999 and 2005 re-emphasizing the interconnection among democracy, human rights, development and the rule of law.

18. Almost 20 years after the World Conference on Human Rights, the Human Rights Council affirmed in resolution 19/36 that democracy is vital for the promotion and protection of all human rights (para. 4), stressing that States are guarantors of democracy, human rights, good governance and the rule of law, and bear responsibility for their full implementation (para. 12).

19. As demonstrated in the above-mentioned 2005 expert seminar,<sup>6</sup> the indivisibility of human rights and the interdependence of human rights and the rule of law are core components of democracy as a concept and as a practice.

20. The primacy of the law ensures the legitimacy of power holders and that of a system of governance adhered to by all. The interlinkage between human rights and the rule of law broadens the observance of democratic values. In established democracies, the legal authority to govern and to exercise power is subject to compliance with the fundamental principles of the rule of law as well as to respect for human rights and fundamental freedoms.

21. The interdependence between democracy and human rights is established in several international human rights instruments, notably the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, which provide that (a) everyone has the right to take part in the government of his country, directly or through freely chosen representatives; (b) everyone has the right of equal access to public service in his country; (c) the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures (art. 21).

22. The Human Rights Committee, in its general comment No. 25 (1996), stresses further this interdependence by demonstrating that article 25 of the International Covenant on Civil and Political Rights, which recognizes and protects the right of every citizen to

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<sup>5</sup> Para. 8.

<sup>6</sup> See para. 4.

take part in the conduct of public affairs, the right to vote and to be elected and to have access to public service, is inherently tied to other key rights and democratic principles, such as the right to freedom of expression (para. 12), non-discrimination (para. 3), and accountability (para. 9).

## **B. Effectiveness of the rule of law and human rights as democratic benchmarks**

23. The rule of law is anchored in a system of government aimed at establishing equality, limiting control and ensuring liberty. Such representative government is envisioned as producing a just social model with positive freedoms so that the principle of legality is itself an element of democracy.<sup>7</sup>

24. Thus, the principles of the rule of law, including the supremacy of the law, the independence and impartiality of the judiciary, legal certainty, equality, non-discrimination, the separation of powers, transparency and accountability are inseparable from those of a functioning democratic order.

25. Democracy constitutes a natural environment for the protection, promotion and effective realization of human rights and the achievement of justice. An objective assessment of the level of respect for human rights and the rule of law enables a proper evaluation of the state of democracy in a given country. In particular, evidence of access to and participation in public affairs and the expression of the people's sovereign choice provide tangible indications of respect for democratic values and the effectiveness of governance institutions under a democratic order.

26. Respect for the rule of law and human rights is also illustrative of respect for the expression of the people's will as the legitimate source of authority. In this context, all human rights, including civil, political or economic, social and cultural rights, should be granted the same level of relevance and legal protection. In parallel, compliance with the rule of law provides the most effective safeguards against bias, selectivity, arbitrariness and abuse of power.

## **IV. Challenges to the securing of democracy**

27. In recent decades, the world has witnessed a steady and increasing drive towards democracy. The number of democracies or countries in transition towards democracy has been on the rise in Southwestern Europe, Latin and Central America, Asia and the Pacific, Eastern and Central Europe, sub-Saharan Africa, the Middle East and North Africa. Throughout the post-cold-war, post-September 11, and post-Arab Spring eras, transitional processes have been underwritten by a continuous effort to secure democracy or democratization. The quantitative expansion of democracy and its contemporary centrality in global politics have not, however, brought an end to the threats that can endanger both nascent and established democracies.

28. The elements essential to democracy noted above can be challenged in these two contexts. The most salient features of democratic deficits are those caused by institutional impediments to democratic practice, deliberate encroachments on freedoms, limits to

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<sup>7</sup> Jesús Rodríguez Zepeda, *Estado de derecho y democracia*, 2nd ed. (Mexico City, Instituto Federal Electoral, 2001), p. 10.

citizen participation, poor or absent public debate, lack of effective empowerment policies and access to justice, and unconstitutional access to power or change of government.

## **A. Political and security challenges**

29. Weak or dysfunctional institutions are among the most serious challenges to democracy. As highlighted above, democracy does not need to follow a uniform pattern. It requires political commitment based on respect for human rights and institutional compliance with the principles of the rule of law. Such interaction and cooperation can be disrupted if all contending forces do not agree to work hand in hand.

30. Continuously weakened institutions can collapse, leading to the breakdown of State order. Among the primary generators of disruption are: an autocratic executive, an inefficient or non-accountable Parliament, attempts to manipulate the constitutional order and the outcome of elections, a military subservient to political interest instead of national security, and the corrosive effects of corruption. The vacuum of authority is another serious challenge for democracy and democratization.

31. Unremitting societal engagement is indispensable to fend off disruption and reversal of democracy. It also allows the community to keep at bay “dictatorship nostalgia” and temptations to step beyond the rule of law (lynching, vigilante groups). Ultimately, there exists an “ever-present connection between the security of persons and democratic coexistence”.<sup>8</sup>

32. Globalization can also constitute a threat to democracy if States’ ability to control the management of their resources, environment and economics is constantly challenged. Similarly, the transnational nature of some prevailing security challenges, such as armed groups operating across several countries, increases the threat on States’ political stability. In recent years, this element has taken on a new dimension relating to the increase of transnational terrorism whereby armed groups moving across boundaries represent serious challenges for national, regional and global security. States’ responses to such threats must be calibrated to avoid a further weakening of democracy. The post-September 11 era witnessed several examples of infringements of human rights and erosions of the rule of law in the context of countering terrorism. In this respect, it is particularly important to stress that human rights may be limited only by law and to such an extent necessary to meet the purpose for which the limitation is allowed in an open and democratic society.

33. Violence is a major challenge to democracy. The responsibility of States to prevent or contain violence is paramount before, during and after a political transition. In addressing violence, they should tackle its proximate and deeper causalities as well as its local, national and international dimensions. The institutionalization of strategic peace processes in conflict and post-conflict societies has a significant effect on both the prevention and management of violence in order to protect human rights under the rule of law.

34. Violence can also erupt when the introduction of democracy challenges the foundations of a pre-existing undemocratic political order. Transitions to democracy are inherently disorderly and multifaceted. Specifically, during transitions, members of the former State apparatus may attempt to regain power. Within this context, the peaceful

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<sup>8</sup> Organization of American States, Inter-American Commission on Human Rights, “Report on citizen security and human rights”, document OEA/Ser.L/V/II. (Doc. 57), para. 20. Available from [www.cidh.org/pdf%20files/SEGURIDAD%20CIUDADANA%202009%20ENG.pdf](http://www.cidh.org/pdf%20files/SEGURIDAD%20CIUDADANA%202009%20ENG.pdf).



resolution of conflicts may be particularly challenging for the newly established State institutions.

## **B. Social and economic challenges**

35. Growing inequalities represent a particularly acute challenge to democracy, as they render formal democracy devoid of meaning for destitute citizens. The persistence of poverty and dispossession are a continuous threat to democracy,<sup>9</sup> stripping people of their right to determine their future; a weakening of the social fabric can result.<sup>10</sup>

36. Corruption, in all its forms, also constitutes a major impediment to democratic advance. It can harm democratic values, erode the fabric of society, circumvent the rule of law and lead to violations of human rights. In reinforcing accountability, the preventative and protective roles of democratic laws and institutions strengthen the fight against corruption and impunity and consolidate the promotion of the rule of law.

37. Another social challenge to democracy is disenchantment, which can occur in both young and old democracies. In young ones, it is often triggered by the deterioration of economic and security conditions during transitions. With unrealistic expectations of immediate progress unmet, the people can also be dismayed by the staccato entry of new voices, views, agents and ideas. This cumulative disruptive phenomenon could result in exclusionary attitudes and politics.

38. In established democracies, challenges can take different forms. Citizens deprived of their freedom of expression and the right to voice opposition to political decisions are, in effect, deprived from exercising their right to sovereign deliberation and decision-making. Under these conditions, democracy is rendered insecure.

39. In her speech at the Bali Democracy Forum held in November 2012, the High Commissioner for Human Rights emphasized that “democratic global governance can also be undermined at the national level, by measures that restrict and even punish freedom of expression, the right to receive and impart information, the right to peaceful assembly and the right to freedom of association”, and that “when we talk about participation, some groups of society merit specific attention and inclusion. In this regard, empowerment of groups which have been excluded or marginalized ... and their full participation in decision-making processes are fundamental for the achievement of equality, development and peace”.

40. Democracy is no panacea and democratization is not a miraculous answer to all the societal expectations for prosperity. Increased disenchantment can become a catalyst for the emergence of detrimental social phenomena, such as radicalization, exclusion, racism, discrimination, xenophobia and the stigmatization of non-citizens.

41. In such a context, human rights education, an independent and pluralist media, and efficient national human rights institutions are fundamental to securing democracy. Guarantees for the freedom of expression and opinion are important, yet the challenges for journalists and other media professionals are manifold. They include, notably, censorship and the concentration of media ownership.<sup>11</sup>

<sup>9</sup> Achille Mbembe, “Democracy and the ethics of mutuality: notes from the South African experiment”, seminar presented at the University of Stellenbosch, 14 April 2011.

<sup>10</sup> See Tzvetan Todorov, *Les Ennemis Intimes de la Démocratie* (Paris, Robert Laffont, 2012).

<sup>11</sup> See International Council on Human Rights Policy, *Journalism, Media and the Challenge of Human Rights Reporting* (Geneva, 2002).

## V. The process of transition to democracy

42. Just as the concept of democracy encompasses a variety of traditions, the routes to democracy are variegated. Used interchangeably, the terms “transition to democracy”, “political liberalization” and “democratization” refer to a political process. The departure from a repressive State to a democratic one and the improvement of existing democratic systems invariably will entail facing obstacles. At the same time, transitions are a deliberate course of sequential societal transformation and this allows for the proper integration and enforcement of the normative values of human rights and the rule of law.

### A. From protest to transition

43. The congruence among democracy, human rights and the rule of law is, importantly, manifested when a society expresses its shared sense of nationhood in the context of an uprising meant to achieve democracy. Such a key shift away from the monopolization of power revolves around the adoption of institutions suited for democratic advance.

44. Social volatility and unrest are major impediments to the securing of democracy. There is an important correlation between national unity and the viability of transition. Of the many prerequisites of democracy, this one seems overriding.<sup>12</sup>

45. The expansion of political and electoral competition to facilitate participation is, in that regard, a formative challenge. This was, for instance, the case during the Spanish transition in the 1970s.<sup>13</sup> Democracy is an integrative process and the opening of electoral competition during the early phase of a transition is a sine qua non condition of a proper democratization project.

46. A second incipient challenge concerns the dismantling of the structure of a former authoritarian regime. This is particularly sensitive as regards the role of armed forces. As the State must retain the legitimate exercise and control over its national forces, the successful dismantlement of the old order (e.g., disbanding party militias) is an arduous task whose consequences can be disruptive if not properly planned.

47. A third challenge is linked to the need to engage in redistribution of political power with a view to secure effective government underwritten by the rule of law and human rights. This is achieved through constitutional reform. The introduction of laws legalizing political association and the recognition of political pluralism are central to this exercise. The principle of separation of powers between the legislative, executive and judicial branches must be codified constitutionally and implemented effectively.

48. The quality of a transition process is another challenge in this phase. Regime transitions are diverse and do not always lead to democracy as an outcome. While democracy is contingent on the respect of rights and freedoms, the enactment of civic responsibility, the tolerance of difference, and the sharing of communal burden, democratization rests on action based on firm political commitment to achieve its objectives.

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<sup>12</sup> This was argued in particular in Dankwart Rustow’s founding transitology text, “Transitions to democracy: toward a dynamic model”, *Comparative Politics*, vol. 2, No. 3 (April 1970), pp. 337-363.

<sup>13</sup> See José Félix Tezanos, Ramón Cotarelo, and Andrés de Blas, eds., *La Transición Democrática Española* (Madrid, Sistema, 1989).

## B. The role of State and non-State actors

49. Both State and non-State actors should contribute to the furtherance or slowing down of transitions to democracy. A successful or viable transitional process is contingent on its anchoring in nationwide reforms to ensure respect for human rights and the rule of law. The second International Conference of New or Restored Democracies, held in Managua in 1994, noted the structural vulnerability of new democracies. The encumbrance of the process by the lack of a credible opposition, weak civil society, weak economies, political monopoly by ruling party, potential military intervention, weak democratic political culture, and incumbency continuity that precludes regime change, is vexing.<sup>14</sup>

50. Newly elected authorities must address the question of impunity, and ensure accountability for serious and systematic violations of human rights and international humanitarian law involving State and non-State actors, through effective redress and remedial strategies. This includes, inter alia, criminal prosecution and national investigation commissions.

51. Transitional justice, a conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes,<sup>15</sup> emerges as an imperative to successful transitions to democracy. The notion of transitional justice “comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”<sup>16</sup> Persons unlawfully deprived of liberty or convicted without due process must be granted compensation and rehabilitation. The role of an independent and efficient judiciary is crucial in this context.

52. The empowerment and involvement of civil society in the practice of democracy is essential to its good functioning. To facilitate a democratic transition, civil society organizations must actively advocate tolerance, trust and mutual respect. Ultimately, the manifold contribution of civil society to democracy can be identified as agenda-setter, educator, counterpart of the Government and source of new political alternatives.<sup>17</sup>

## VI. Lessons learned and best practices

### A. National experiences

53. Responding to the note verbale of 11 July 2012 from OHCHR, Member States highlighted the following.

<sup>14</sup> Usman A. Tar, “The challenges of democracy and democratisation in Africa and the Middle East”, *Information, Society and Justice*, vol. 3, No. 2 (July 2010), p. 88.

<sup>15</sup> Ruti Teitel, “Transitional justice genealogy,” *Harvard Human Rights Journal*, vol. 16 (2003), p. 69.

<sup>16</sup> Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para. 8.

<sup>17</sup> Mehran Kamrava and Frank O. Mora, “Civil society and democratization in comparative perspective: Latin America and the Middle East”, *Third World Quarterly*, vol. 19, No. 5 (December 1998), p. 897; Caroline Boussard, *Crafting Democracy: Civil Society in Post-Transition Honduras* (Lund, Sweden, Bloms Tryckeri, 2003), p. 19.

54. Austria identified corruption as a main obstacle to the realization of the rule of law. Its intensified anti-corruption activities included the creation of the Central Office for the Prosecution of Economic Offences and Corruption, with countrywide jurisdiction, and the International Anti-Corruption Academy. The Austrian Development Cooperation gives priority to combating corruption, which affects governance and development policy. Training in human rights, democracy and the rule of law have become mandatory for judges and prosecutors.

55. Azerbaijan reported on its efforts to build a democratic and secular State respecting human rights and the rule of law. They include the establishment of the Institute of Human Rights, which investigates the infringement of fundamental freedoms in democratic processes; the adoption of the National Action Plan for the Protection of Human Rights; and the establishment of the office of the Ombudsman to ensure the protection of national minorities, freedom of speech and religious tolerance. Among lasting challenges, Azerbaijan noted the protection of the rights of refugees and internally displaced persons, the harmonization of national legislation with international human rights standards and the adverse effects of corruption.

56. Bosnia and Herzegovina reported on the measures adopted at the legislative, judicial and administrative levels to remedy inconsistencies in its legal system with the principles of international law, that is, with respect to equality before the law, the legal protection of its 17 national minorities and the elimination of racial discrimination, through the adoption of an anti-discrimination law. It noted the importance of the principles of predictability and accessibility upheld by the European Court of Human Rights.

57. Bulgaria reported on national measures to ensure compliance with due legal process with regard to lengthy judicial proceedings, the lack of efficient domestic remedies for the victims of crimes, and excessive use of force by police forces. Those measures included the amendment of the Judiciary System Act to introduce efficient compensatory mechanisms. Bulgarian authorities are expected to develop those mechanisms within a reasonable period of time.

58. The Czech Republic referred to its transitional experience, noting that effective support of democracy is a long-term strategic goal, based on partnership with civil society and encouraged as a common political commitment through bilateral and multilateral diplomacy. The Transition Promotion Programme set up in 2005 recognizes the linkage between democracy, the rule of law and human rights as the most effective instrument to control, prevent and redress human rights violations. The principles of democratic governance, including media freedom, access to information and the empowerment of civil society, were given priority in the transition policy.

59. Greece reported on the guarantees provided for civil servants under the Code of Civil Servants to criticize the action of a superior authority. Lifelong training for civil servants, in compliance with their right to continuing education, is an important factor for developing staff skills. It contributes to improving the quality and effective functioning of public administration and enhances its capacity to combat corruption.

60. Japan reported on its international support for democratization, notably through the Partnership for Democratic Development. This support includes the development of legal, judicial and electoral systems; training programmes for the judiciary, public administrations and police officers; women's empowerment; and strengthening of civil society. The principles guiding the support are partnership with developing countries based on consultations and agreement and self-help efforts by the partner country.

61. Jordan reported on legislative and practical measures adopted in conformity with international human rights standards to ensure the independence of the judiciary and military courts, access to justice by all, including minorities, equality before the law, fair

trial and due legal process, equal access of persons with disabilities to public affairs, transparency and accountability of public and private institutions, and accountability for serious human rights violations, such as torture and honour crimes. Additional measures included training for legal professionals and the elaboration of a professional guide to assist public prosecutors in investigating torture crimes and protecting the rights of the victims of torture and of persons deprived of their liberty.

62. Mauritius referred to the principles of constitutionalism and the rule of law, which constitute the democratic anchor of its society. These are further ensured by the role of the National Human Rights Commission, the National Preventive Mechanism Act, and the National Human Rights Action Plan. Access to and administration of justice have been improved through professional training for legal practitioners and police officers.

63. Montenegro reported on constitutional provisions guaranteeing the protection of individual rights and freedoms, the separation of powers and the protection of minority groups, prohibiting their forced assimilation. An independent body, the Protector of Human Rights and Freedoms, ensures protection for the values of democratic society, in cooperation with civil society. A code of ethics was developed to strengthen the independence and effectiveness of the judiciary.

64. Qatar reported on measures to promote democracy and the rule of law, including the elaboration of the new Constitution and the Qatar National Vision 2030. The Constitution and laws enacted since 1994 guarantee the protection of human rights and basic democratic principles (i.e., equality before the law, the right to fair trial, the independence of the judiciary and separation of powers). Several institutions were established to serve the same purpose, including the National Human Rights Committee, the Doha International Center for Interfaith Dialogue, the Doha Centre for Media Freedom, and the Administrative Control and Transparency Authority.

65. Romania reported on the importance of minority representation in Parliament. The Council of National Minorities was established to serve as a consultative body to ensure the participation of national minorities in political life through institutional and decision-making mechanisms. The use of minority languages in local public administration and before the courts ensures the enjoyment of human rights and fair administration of justice. The National Council for Combating Discrimination and the Permanent Election Authority were also established to guarantee and supervise the implementation of the principles of equality and non-discrimination among citizens and the good functioning of electoral consultations.

66. Slovenia stressed that, in times of significant changes under a constitutional democracy, there should be no infringement of human rights or freedoms. Human rights institutions, the judiciary and the Constitutional Court should fulfil their respective missions as guardian institutions. Under the “Ombudsman Plus” system, representatives of NGOs have been involved in the monitoring of the treatment of persons deprived of their liberty. In addition to the adoption of human rights-compliant legislation, a specialized department was established within the Office of the State Prosecutor to prosecute criminal offences committed at work by police officers.

67. Spain reported on initiatives taken by several ministries to promote a national security policy conducive to the enjoyment of human rights. Members of the police forces and the State Secretariat for Security receive training in human rights and crisis management, in cooperation with countries in Latin America, Africa and the Middle East. Special attention is paid to the protection of victims of domestic violence, equality and non-discrimination, the rights of detainees, children and the elderly, the eradication of ethnic and racial profiling, independent legal representation for unaccompanied foreign minors

subject to repatriation, the study of international humanitarian law, bilateral human rights dialogue, and engagement with civil society.

68. Switzerland referred to two questions debated at the national and international levels, namely, the preventive control of conformity with the law in general, and the process of initiatives aimed at modifying the Constitution. It noted that democracy, the rule of law, and federalism are among the defining features of the Swiss constitutional structure. These principles have equal value, condition each other and are mutually reinforcing. The State must determine which organs will oversee the conformity of the Constitution and national laws with international law. Similarly, cantonal initiatives aimed at modifying the Constitution should be compatible with Swiss federal law or international law.

69. The National Human Rights Commission of Mexico reported on the introduction—following extensive national consultations—of a constitutional reform on human rights aimed at harmonizing national legislation with international human rights law, strengthening the rule of law and ensuring greater efficiency of the system of human rights protection.

## **B. International and regional cooperation for the promotion of democracy and the rule of law**

70. Over the years, sustained support bringing legitimacy and competence to the securing of democracy has generated some good practices. Nation-owned and -driven democracy processes enjoy the support of the international community, which endeavors to provide tangible assistance at the inception of transition to democracy and encourage democratic changes.

71. In 1996, the Secretary-General issued *An Agenda for Democratization*, in which he noted that “democratization is a process which leads to a more open, more participatory, less authoritarian society”.<sup>18</sup> Subsequently, in 2007, the General Assembly decided to observe on 15 September of each year the International Day of Democracy<sup>19</sup> with a view to raising awareness about the subject. The activities of the Community of Democracies and each International Conference of New or Restored Democracies held between 1994 and 2006 illustrate, among other processes, an expanding international interest in the promotion of democracy.

72. The Department of Political Affairs has provided the secretariat support for the International Conference of New or Restored Democracies. Moreover, in 1991, the General Assembly adopted resolution 46/137, through which it set up an electoral assistance unit, later reorganized as the Electoral Assistance Division within the Department of Political Affairs, to provide electoral assistance to a large number of interested Member States.

73. OHCHR and the United Nations Development Programme (UNDP) seek to address the challenges of democracy deficit through their respective advisory services and technical cooperation programmes. Given the scope of its operational capacity, UNDP is the primary international assistance provider for promoting good governance and democracy worldwide, notably at the level of elections, Parliament effectiveness and accountability, civil society participation, and training of government officials. In response to the 2011

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<sup>18</sup> United Nations publication, Sales No. E.97.1.3, p. 1.

<sup>19</sup> General Assembly resolution 62/7.

Arab Spring, UNDP has developed a guide for peaceful transformational change processes embracing youth as a positive force.<sup>20</sup>

74. The promotion of democracy and the rule of law is also a programmatic objective of OHCHR, inherently linked to its mission to ensure respect for and protection of all human rights. Under the OHCHR Technical Cooperation Programme, the focus is placed on training activities to strengthen the legal and judicial framework for human rights protection, the provision of legal expertise in constitutional and legislative reforms, training for parliamentarians, the empowerment of vulnerable and disadvantaged segments of society, advocacy, awareness and human rights education. OHCHR has also been active in supporting democratization and transitional justice processes, including by engaging in the design and implementation of inclusive national consultations; supporting the establishment of truth-seeking processes, judicial accountability mechanisms and reparations programmes; and enhancing institutional reform.

75. The universal periodic review of the Human Rights Council is a unique mechanism that enables a review of the human rights record of all Member States and provides, through its regular scrutiny, potential incentives for change and reforms aimed at strengthening democracy.

76. The United Nations Democracy Fund was established in 2005 to support projects aimed at building and strengthening democratic institutions and ensuring the participation of all groups in democratic processes. The Fund focuses on several themes, including strengthening democratic dialogue, promoting human rights, civil society empowerment, civic education, accountability and transparency.

77. Several regional intergovernmental organizations have integrated democracy promotion into their work programme and/or governing charter. These include the Organization for Security and Cooperation in Europe, the Organization of American States, the Association of Southeast Asian Nations, the European Commission and the African Union. The integration of clauses on human rights and democracy in international aid and commerce agreements, such as the Cotonou Agreement between the European Union and African, Caribbean and Pacific States, has been an important codification of the interlinkages among human rights, democracy and economic development.

78. Some of these organizations, such as the African Union, the Organization of American States, the Economic Community of West African States and the International Organization of la Francophonie have systematically suspended the membership of countries opting for unconstitutional changes of government. The African Union introduced specific measures against the unconstitutional overthrow of democratically elected governments. The Biketawa Declaration of the Pacific Islands Forum and the Warsaw Declaration, both adopted in 2000, make similar commitments in respect of unconstitutional changes of power and attempts to modify national Constitutions to extend presidential terms of office.

79. The Inter-Parliamentary Union assists in establishing parliamentary systems worldwide. It has developed guidelines for good practice in parliaments and methods for assessing parliamentary performance.

80. Promoting and advancing democracy has also been a priority for a large number of civil society organizations around the world. These include the International Institute for Democracy and Electoral Assistance, the International Center for Transitional Justice, the

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<sup>20</sup> See United Nations Development Programme, “Strategy of response to transformative change championed by youth in the Arab region” (2012).

Centre for Constitutional Transitions at the University of New York, the Geneva Centre for Security Policy, the Geneva Centre for the Democratic Control of Armed Forces and the European Inter-University Centre for Human Rights and Democratisation.

## **VII. Conclusions and recommendations**

### **A. Conclusions**

81. **Securing democracy should be an overarching and permanent concern for Member States. Systematic violations of human rights and the rule of law inevitably lead to a retreat of democracy.**

82. **The contemporary global spread of democracy is a dynamic movement responding to a popular impulse and aspirations for adherence to the principles of human rights and the rule of law, for greater justice and liberty.**

83. **There is no single model of democracy. Democracy does not belong to any country or region more than another. The constitutive norms, standards and values of democracy are universal. They are grounded in the Charter of the United Nations, the Universal Declaration of Human Rights and core international human rights instruments.**

84. **Democracy, human rights and the rule of law are interdependent and mutually reinforcing. They enjoy a symbiotic relationship within a system of governance. The weakening of one endangers the enjoyment or even the existence of the others.**

85. **Democracy is a platform for inclusive participation, empowerment and accountability. It can be made resilient through solid institutions led by constitutionally invested and accountable officials and by human rights-compliant laws, policies and practices.**

86. **Challenges to democracy arise in both settled and transitional democracies. The main threats to democracy include violence, sectarianism, extremism and intolerance. Additional challenges, such as poverty, abuse of power, endemic economic and political corruption, impunity and the curtailment of fundamental freedoms, lead to serious setbacks.**

87. **As, inevitably, a trial-and-error process, democratization is a complex and unpredictable path beset with challenges. The quality of the transition, the nature of leadership commitment and the enactment of the transition requirements determine its achievements.**

88. **Democracy takes root over time. Its safeguarding is a lengthy and continuous exercise. It requires steady investment and astute agency. Contemporary transitions are eminently complex, involving an ever-growing number of State and non-State actors.**

89. **Democratization is about the crystallization of a new system. The ensuing transformations can spell disorder and potential conflict and violence. Leadership must grasp these complex phenomena and adopt flexible and competent approaches.**

90. **The international community has been more successful at providing support in the early stages of a transition, notably through electoral assistance, than during the subsequent phases of democracy consolidation. The United Nations should remain on course to respond to the continuing concerns of Member States.**



91. There is a need for an internationally concerted and endorsed strategic framework of *accompagnement* of nascent democracies. Such a framework would highlight comparative advantages and complementarities and would reinforce coherence and cooperation throughout the United Nations system.

## B. Recommendations

### National efforts to promote democracy and the rule of law

92. States should strive to respect the principles of the rule of law, in particular, the separation of powers, the independence of the judiciary, the independence and accountability of Parliament and institutional checks and balances, as guarantors of protection against impunity, corruption and abuse of power.

93. Democracy, development and human rights have important conceptual and practical affinities.<sup>21</sup> The suppression of impediments to participation in public life and decision-making, reductions in income disparities, improved access to economic opportunities and social safety nets are markers of a healthy democracy. State-building should not be merely a technocratic exercise. Building or rebuilding inclusive, resilient and responsive States requires inclusive and participatory governance, accountability and constructive State-society relations.<sup>22</sup>

94. There is momentum for an interactive approach, synergies and coordination among national actors, including parliaments and national human rights institutions, the United Nations system and regional organizations, with respect to the development of guidelines and codes of conduct and the exchange of experiences and lessons learned. Human rights indicators<sup>23</sup> should be further developed to include the translation of democratic principles into operational benchmarks.

95. All components of civil society must be able to exercise their right to participate in decision-making structures and mechanisms and to be actively involved in democratization processes.

96. Incitement to hatred, discrimination or intolerance on any ground is a threat to democracy and should be appropriately countered.

97. National security and counter-terrorism strategies must not serve as pretexts to undermine democracy, human rights and the rule of law.

98. Human rights education and civic education foster democratic culture and practices and promote a culture of peace. They should be systematically incorporated into school and academic curricula.

### International efforts to promote democracy and the rule of law

99. Democracy assistance should revolve around building States' capacities to undertake comprehensive reforms. A constructive promotion of democratic ideals, anchored in respect for human rights, including the right to self-determination, serves to advance global peace and security.

<sup>21</sup> See Jack Donnelly, "Human rights, democracy, and development", *Human Rights Quarterly*, vol. 21 (1999), pp. 608-632.

<sup>22</sup> See Anna K. Jarsad and Timothy D. Sisk, eds., *From War to Democracy: Dilemmas of State-Building* (Cambridge, Cambridge University Press, 2008).

<sup>23</sup> See OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (HR/PUB/12/5).

100. The international community should continue supporting transitional processes. Constructive dialogue among Member States would enrich their understanding of the challenges specific to each process. Lessons drawn from the recent experiences in the Middle East and North Africa could be of particular interest in this regard.

101. International cooperation strategies for the promotion of a “holistic” democracy should focus on the advancement of all human rights, including civil, political, economic, social and cultural rights and the right to development. Special attention should be devoted to promoting equality and combating discrimination, and to protecting the rights of women and disadvantaged and vulnerable groups, including poor people, indigenous peoples, minorities and persons with disabilities.

102. By weakening the social fabric of societies, the global economic crisis represents a threat to democracy. Efforts should be invested in alleviating the debt burden of the countries confronted with drastic austerity measures. The protection of human rights should be taken into account in devising financial remedies and aid packages.

103. International exchanges, such as the World Forum for Democracy, held in Strasbourg in October 2012, and the fifth Bali Democracy Forum, held in November 2012, must be encouraged in order to foster links and to provide further opportunities for experience-sharing and comparative learning on democracy and the promotion of human rights.

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