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Working Group on Parliament and the Reform of Political Parties Legislation

General Principles for Political Parties Legislation in the Arab Region

Adopted during the Third Working Group Meeting
“Building Consensus on Basic Principles or Minimum Standards
For Political Parties Legislation in the Arab Countries”

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The Working Group on Parliament and Reform of Political Parties Legislation, launched by UNDP's Parliamentary Development Initiative in the Arab Region in 2006, held three regional workshops (Rabat (2006), Amman (2006) and Casablanca (2008)) and a focus group meeting (Beirut (2007)). More than 40 Members of Parliament from Jordan, Algeria, Palestine, Kuwait, Lebanon, Morocco, Egypt and Yemen, as well as experts and researchers in public issues attended these meetings. From the discussions that took place during these meetings, a number of general principles were established and adopted, all of which are set out below. Such principles could serve as a basis for future legislation concerning political parties in the Arab Region. They could also contribute to the strengthening and institutional development of political parties in a functioning democratic system of government. They could also reinforce political participation as well as political pluralism. These principles address different aspects of a political party's life, including the formation of a political party, its by-laws, its financing, and its relations with the State and with society.

General Principles

Principle No. 1: Obligating Reasons

A political parties' law should ideally include a preamble which defines the meaning of the term "political party", and which should set out what the functions of such party should be, and the importance of the role that it plays in a democratic society. The preamble should also recall the accepted constitutional norms of the state, a historical overview of the status of public freedoms and democracy, and of the rise of political party life in the country in question. The preamble should stress the need to reconcile the right of individuals and of political parties on the one hand and the importance of regulating this action while ensuring that public order is maintained, and that the freedoms and the rights of others are respected, while at the same time underlining the importance of institutionalizing political activity. Finally, the preamble should also provide reasons for the various principles that are contained within the law itself.

A political party can be defined as an agreement between a group of citizens in relation to a doctrine or a group of political principles, and where such citizens implement an action or a series of actions in a state through an established organization and in accordance with all applicable laws and regulations.

Principle No. 2: Conditions for the Establishment of a Political Party, Its Membership, and Its Activity

a- Conditions of establishment

A political parties' law should aim to encourage the establishment of political parties with a view to creating a regulatory framework within which citizens will operate and which will allow them to participate effectively in decision-making mechanisms. The law should grant democratic rights to every party and should call upon them to deal with the State, citizens and all other political forces and parties in accordance with democratic principles. The law should also grant an equal opportunity for all citizens to engage in political participation. It should also create a framework through which all individuals may advance to political leadership via democratic elections.

The law should provide that, in order for a political party to acquire legal capacity, it must either declare, register or notify the relevant authorities of its formation. The law may require that, in order for a party to acquire legal capacity, an announcement of the party's establishment be published in the official gazette, and that this should take place within one month of the date on which the announcement was made or notice was given.

In case political parties are required to obtain a license, the law would ideally facilitate the procedure that must be satisfied in order to obtain such license; i.e. a license should be granted automatically in the

event certain conditions are met and where the required documentation has been obtained by the relevant authorities. In the event such authorities reject an application for a license, reasons should be provided in writing. A party that has had its application for a license rejected should always have the right to make an appeal before the administrative courts (or before the relevant jurisdiction), and should also be entitled to continue with its establishment pending the court's decision. Finally, the law should also provide that in the event the relevant authorities do not respond to an application for a license within a given time frame, that such failure to respond should be tantamount to an approval.

The law could also, but does not necessarily have to, specify that a party should have a minimum number of founders and could require that each party represent a certain number of the country's geographic constituencies in order to be legally established.

b- Conditions of membership

A political parties' law may require that an individual must satisfy certain conditions in order to join a party's membership. These conditions could include being a national of the relevant country, being of a certain age (typically between 18 and 21 depending on the country), and being in full possession of his or her civil and political rights. The law may also provide that the conditions to become a member of a political party should be the same as those that must be satisfied in order to exercise the right to vote. It is preferable that the law should not prohibit individuals who are exercising specific professions, such as judges, members of the diplomatic corps, civil servants and members of the armed forces, to become party members. In the event such a prohibition does exist, it should be provided for in legislation that governs the administration of those specific professions, as opposed to political party legislation.

Political parties have the right to decide whether or not to impose conditions in addition to those that are provided for by law, and may also provide for a specific mechanism that must be satisfied in order for an individual to become a member. Otherwise, parties may also opt for a simplified process which does not require anything in addition to what is provided for by law.

The law should require that a political party cannot be involved in any type of military activity, and that therefore members cannot be part of paramilitary organizations (although an exception should be drawn in the situation where the country in question is under foreign occupation). The political parties' law may also set out details relating to members' rights and obligations, including equal participation as per the party's internal regulations and the right to raise a judicial challenge in the event the party's regulations have been violated.

Principle No. 3: Party's Regulations

The law should provide that all parties that are legally established must have founding texts, which should include a charter, a basic law and internal regulations. These texts should define the party, its principles and objectives and regulate its functioning.

a- The Charter

The party's founding charter plays a significant role. It includes the principles that were adopted by the party, the objectives that it seeks to meet, and asserts the party's political identity.

b- Basic Law

The basic law must include a description of the party's structure, with its different bodies, boards, apparatuses, branches, divisions, sections, units and the disciplinary council, etc. It must also provide for each body's prerogatives and clarify how each body will be formed. The basic law must also provide for the existence of a policy board which should in turn elect an executive authority and supervise the latter's functioning. Both these bodies must hold periodical meetings. The basic law should include rules in relation to its own amendment, and should indicate what specific body is authorized to propose such an amendment, which body can authorize it, and what specific quorum has to be met for an amendment to be valid. A draft amendment to a basic law can either be prepared by the party's policy board or its executive authority. However, only the party's general convention, which constitutes the largest

institutional base that can make such general structural decisions, should be mandated with the power to authorize such an amendment.

c- Internal Regulations

The internal regulations should explain the tasks of each of the party's institutions, boards, bodies, apparatuses, units, sections, and divisions in detail. The internal regulations should indicate what quorum must be met for each of the party's institutions to hold a regular meeting, what conditions must be satisfied when calling a meeting, and within what timeframe a meeting should take place after it is called. The rules should provide that when a meeting is called, and the invitation should include the agenda that is proposed by the convening party. The internal regulations should stipulate how party officials take office, with elections being the main method of selection. In addition, the regulations should indicate what term should be associated to each position, whether incumbents can be reelected, the number of times incumbents can be reelected (in the event reelection is permissible) and what quorum must be met in order for elections to be valid.

The internal regulations should ideally provide details in relation to how the party's disciplinary council will operate, and should indicate how members or one of the party's bodies can appeal a disciplinary ruling.

Principle No. 4: Financial Resources and Financial System

A party's founders should provide for a financial system from the time when their party is founded. That financial system will indicate from where the party will raise its funds and how such funds will be managed. The system should be fully transparent in terms of both expenditure and income. Ideally, a ceiling should be set on individual donations that are made to the party, while making sure to allow for a different limitation to donors depending on whether they are individuals or institutions. The financial system should also distinguish in-kind donations from cash donations. Moreover, membership fees and the way in which these are paid should also be specified by the financial system. A receipt should be provided to each donor, while a record of all donations should be kept by the party in question. The party may condition a member's right to run for candidacy for any position within the party, or the member's right to vote, or on the settlement of his or her membership fees.

In the event the State grants public funds to parties, such grants must take place within the context of specific regulations, and conditions must be imposed on the recipient of such funds such that it is held publicly accountable for any type of misappropriation. The State's funds should be distributed among parties in accordance with clear, transparent and fair standards, according to which no single party should benefit disproportionately from public resources. Public financial assistance can be distributed according to different methodologies, including:

- A minimum amount of funds should be distributed equally among all parties operating in accordance with the law;
- A certain amount of funds should be allocated to each party in accordance with its share of the national electorate and the number of seats that each party has obtained in the parliamentary elections;
- A certain amount of funds should be allocated to parties based on whether they meet a number of legal requirements, including whether their internal functioning is democratic, or whether the participation of women and youth in the party is encouraged.

The law may also allow for the State to provide indirect forms of assistance to parties, including exemptions from taxes and fees, the free use of public buildings and granting free air time on state owned media, etc...

The law could also provide that political parties should be prohibited from receiving foreign funds with a view to safeguarding national sovereignty.

Principle No. 5: Institutions with authority to oversee parties' affairs

The political party law may establish a special governmental directorate, department or unit to run political parties' affairs. It is also possible for this oversight entity to be affiliated to the Ministry of Justice or Ministry of Interior, to the judicial sector or to an independent public body such as the Higher Electoral Committee. This oversight entity should receive each political parties' founding documents when they are established. It examines such documents, verifies whatever information, they contain and then submits a report to the authority that the oversight entity is affiliated to. Such authority will then decide on the licensing application or, depending on the regime in force in the country in question, will merely take note of the fact that the party has been established. This oversight entity should follow up on the work of the existing political parties and should receive copies of all their official notices. It should also set up an archive for all developments relevant to political parties and their activities, provided that its powers are restricted to maintaining administrative records on each party as well as archiving.

Principle No. 6: Appeals and Penalties

In case of internal conflict inside a party, it is preferable that there be a party body that has powers to settle the conflict. If this is not possible, party members are entitled to appeal to the ordinary judiciary and challenge a decision taken by the party before the judiciary in the event of a breach of any of the party's rules and regulations by any a party official. In case the party infringes the Constitution or the laws or threatens public order, the government or the relevant ministry has the right to refer the matter to an emergency judicial proceeding.

When a conflict arises, the body that is responsible for settling the matter can decide either to annul the decision in question, to temporarily suspend the party's activity, to freeze the application of one or several of the party's decisions, or to dissolve the party in the event the party's practice explicitly threatens the public order. The party's general assembly may also decide to dissolve the party and advise the relevant governmental authority of its decision. In such case, the latter should notify the judiciary which will in turn be responsible for liquidating the party's assets as per the applicable legal procedures.

Principle No. 7: Encouraging Women and Youth Participation

Encouraging the political participation of women and youth is a good practice. Thus, many believe that the law should allocate a quota for women and youth in leading party positions. A quota can be adopted temporarily. On the other hand, in case the law provides for allocations of financial assistance to political parties, the government may impose as a condition that parties satisfy a particular quota in relation to women and youth participation in order to be able to benefit from financial assistance.

Principle No. 8: Transitional Provisions

When drafting a new law to regulate political parties for the first time, or when an existing law is amended, it is preferable that the new law include transitional provisions in order to give the existing political parties the opportunity to settle their status. In the event of a new law or of an existing law being amended, a specified deadline should be imposed on existing parties in order to submit all of their basic documentation (charter, basic laws, internal regulations, minutes, as well as a financial register) to the competent authority or directorate. The file shall include a list of officials, their party positions and addresses, in addition to a registry of all of the party's assets and documents relating to all of the party's offices. Accordingly, the oversight entity¹ will prepare a draft decision regarding the settlement of the party's status and forward it to the competent authority to issue a decision.

¹ See Principle No. 6.

General Recommendations

1. Other Relevant Laws

The legislator must review whatever laws exist in addition to the political party law which affect the functioning of political parties, with a view to building a harmonious and integrated legislative framework and a wider space for democratic party functioning (examples of such law include electoral laws, laws on electoral expenditure, media laws, publications laws, associations laws, laws regulating the right to assembly, as well as Parliament's by-laws, etc.)

2. Drafting or Amending Political Party Legislation

When drafting a political parties' law, it is advisable that the process be as participatory as possible, and that it involve a series of open meetings with civil society (including political parties, unions, associations, etc.) in order to discuss the draft's contents. It is preferable that any draft law that regulates political party life be the subject of a large number of deliberations that bring legislators together with political parties, civil society and all other interested groups in the country in question. The purpose should be to ensure that the draft law addresses all concerns, guarantees equal rights and establishes a balance between political freedoms on the one hand and the necessity to safeguard the security of citizens on the other.