



Amnesty International members only

## **33<sup>rd</sup> International Council Meeting**

### **Circular 9: Explanatory Paper to draft resolution 2.04 (International Board): Development of a Policy on State Obligations on Elections**

**AI Index:** ORG 10/6310/2017  
**To:** Sections and structures  
**ICM Session:** Human Rights Working Party  
**From:** Law & Policy Programme, Amnesty International, International Secretariat  
**Date:** 12 June 2017

#### **PURPOSE STATEMENT**

This paper provides background information to draft resolution 2.04 proposed by the International Board, which would mandate the development of an expanded policy on elections, within certain set parameters.

#### **DISTRIBUTION**

- The paper is for section/structure delegates to the ICM.
- Delegates should talk to their section/structure management and board; law and policy focal points; advocacy leads; media officers; and campaigners.

#### **Papers List**

All ICM papers and background papers are available on the ICM website: password 2017\_ICMRome (o = zero)



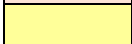
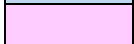

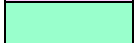

[2017 ICM website](#)

| Release date           | Circular No. | Paper title (Circulars 1, 3 and 4 have been removed from this table, but are available on the ICM website)  | Session                         | AI index number  |
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| Oct 2016               | 2            | Call for internationally elected positions  | N/A                             | ORG 50 4954 2016 |
| June 2017              | 5            | Section and structure voting entitlements   | S26 & S27                       | ORG 10/6318/2017 |
| June 2017              | 6            | Second version resolutions, preliminary costings and draft agenda   | Full ICM                        | ORG 10/6316/2017 |
| June 2017              | 7            | Governance Reform: The new Governance Model explained   | Governance Reform working party | ORG 10 6247 2017 |
| June 2017              | 8            | Governance Reform: Frequently asked questions   |                                 | ORG 10 6248 2017 |
| June 2017              | 9            | Development of a Policy on State Obligations on Elections   | HR Pol working party            | ORG 10/6310/2017 |
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| June 2017              | 13           | Civil disobedience and boycotts   |                                 | ORG 10/6181/2017 |
| July 2017              | 14           | Update on implementation of 2015 ICM decisions and International Board and International Treasurer's Report | S6                              | TBC              |
| July 2017              | 15           | Secretary General's report to the ICM   | S6                              | TBC              |
| July 2017              | 16           | State of the movement report  | S16                             | TBC              |
| July 2017              | 17           | Final version draft agenda, preparing for the ICM   | Full ICM                        | TBC              |
| July 2017              | 18           | Nominations to internationally elected positions  | S7                              | TBC              |
| <b>Post ICM papers</b> |              |   |                                 |                  |
| Aug 2017               | N/A          | 2017 ICM Decisions Report   | N/A                             | TBC              |
| Sep 2017               | N/A          | Report of the 2017 ICM  | N/A                             | TBC              |

**Background papers**

| Release date | Paper title  | Sessions                        | AI index number  |
|--------------|--|---------------------------------|------------------|
| June 2017    | Discussion framework for Governance Reform Working Parties | Governance Reform working party | ORG 10/6313/2017 |

**Session key**

|   |                                 |  |                              |
|---|---------------------------------|--|------------------------------|
|  | ICM plenary session             |  | HR Policy working party      |
|  | ICM plenary: HR context         |  | Workshop                     |
|  | Governance Reform working party |  | Organisational working party |
|   |                                 |  | Regional meetings            |

**Executive summary**

**Objective and intention**

This paper provides background information to draft resolution 2.04 proposed by the International Board, which would mandate the development of an expanded policy on elections, within certain set parameters, in particular, that the policy should be aligned with existing international human rights law. The paper is intended to provide a briefing to the ICM in its consideration of the draft resolution.

### **Summary of key findings / summary of key issues being discussed**

Existing policies do not bar Amnesty from commenting on violations and abuses of human rights, committed *in the context of* elections. For example, the organization can already work on elections issues relating to freedom of expression; freedom of peaceful assembly; and freedom of association, as well as other human rights violations and abuses that are committed before, during and after elections. However, Amnesty presently cannot comment purely on “electoral” human rights in particular the right to vote and to stand for elections. While some elements of electoral rights are sufficiently defined in international law to guide our work, there are many other areas, for example, denial of a person’s right to vote in a country of which they are a citizen but not a resident where it would be difficult for Amnesty to come to a decisive conclusion that a state has violated somebody’s human rights.

### **Summary recommendations**

The ICM should consider carefully the request to expand the mandate of the movement in accordance with the draft resolution. This paper, and its annexes, should assist in this consideration.

### **Human rights impact**

Working to ensure that electoral human rights are adhered to would also be in line with the broader desire to ensure effective and equal access to, and full participation in, political institutions and other power structures, as well as decisions that affect them, for everybody, including women, minorities, Indigenous communities and others. The right to vote is one of the ways in which citizens exercise the right to political participation, and therefore in the design, implementation, development and execution of the State’s political policies. Depending on the terms of the resolution, expanding our mandate could allow the organization to comment on, for example: violations of the right to vote (e.g., disenfranchisement through voter registration exclusions, or of people convicted of crimes) and the right to stand in elections (exclusion of candidates without objective justification); “gerrymandering” of voting districts that amounts to discrimination against particular groups; or substantive equality (for example between genders); and proposed electoral systems that do not guarantee free choice, plurality of candidates, multi-party elections, and secret and universal ballots. Amnesty could critique election laws or proposals that do not meet these criteria, and could contribute to levelling the playing field in electoral contests. Amending the policy would also allow the organisation to be more relevant in, and to effectively work with civil society partners, in countries in which electoral rights are being denied.

### **Conclusion**

This paper informs the decision of the ICM on whether or not to mandate the further development of a policy; this development of a policy will require careful consideration of a number of issues raised within the paper and annexes and care will be taken by the IS to ensure that these considerations are taken into account. If the resolution is adopted, it is important that the movement await the finalisation of the policy before expanded work on elections proceeds.

**Background papers**

| Paper title   | AI index number                      |
|---|--------------------------------------|
| Discussion paper for consideration on possible revision of Amnesty International policy on elections and democracy (also available in French and Spanish)   | 2 November 2016<br>POL 30/6244/2017  |
| Preliminary Risk Analysis: Elections and Democracy - Elections and Democracy policy consultation (also available in French and Spanish). A final risk analysis will be issued by July to take into account feedback received in the consultations on the preliminary risk analysis. | 22 December 2016<br>POL 30/6243/2017 |
| Policy notes on Amnesty International and elections   | June 2005<br>POL 30/6249/2017        |

## Objective and intention

Some sections, as well as parts of the IS, in particular the Africa Management Team, have called on Amnesty to expand the work the organization can conduct on elections, beyond the limited scope set out in the "Policy Notes on Amnesty International and elections" (June 2005). Their analysis is that significant human rights violations occur in the context of democracy and elections, which among other things: attempts of incumbents to change the electoral or constitutional landscape to stay in power; coups and other unconstitutional changes of power; and ballot fraud, among other issues.

To go beyond the existing position would require an explicit mandate by the movement, as this is an issue that could go directly to the political impartiality, independence and effectiveness of the movement. The right to vote is an area of law and policy that is contentious and complex. This paper provides background information to draft resolution 2.04 proposed by the International Board, which would mandate the development of an expanded policy on elections, within certain set parameters, in particular, that the policy should be aligned with existing international human rights law.

The question is whether Amnesty International should expand its policy to look more closely at how elections are conducted, and whether any extension should be based on international legal standards or go beyond existing international human rights law and standards. Considerations for this decision include (but are not limited to):

- Whether there is sufficient international human rights standards on which to base our work, and whether we need such standards;
- Whether such work would carry a high risk of damaging Amnesty International's real and perceived independence and impartiality;
- Whether the organization has the necessary capacity and expertise, or can acquire these in a reasonable timeframe and for acceptable costs; and
- What the organization would call for as a result of making a determination that an electoral rule or practice constitutes a human rights violation.

## Summary of key findings / summary of key issues being discussed

### *Present situation*

Existing policies, whether set out in the 2005 policy note or other policies, do not bar Amnesty from commenting on violations and abuses of human rights, committed *in the context of* elections. For example, the organization can already work on elections issues relating to freedom of expression; freedom of peaceful assembly; and freedom of association, as well as other human rights violations and abuses that are committed before, during and after elections, such as the unnecessary or excessive use of force by police during demonstrations.

Amnesty can already make human rights analyses of election manifestos, or make uniform calls on all parties and candidates *across the political spectrum* with regard to protecting human rights after the elections (often in the form of "human rights agendas"). Amnesty can also comment on laws or practices that have a discriminatory impact on voting rights of particular groups of people on one of the prohibited bases of discrimination under international law.

However, Amnesty presently cannot comment purely on "electoral" human rights as set out in, for example, Article 21 of the UDHR and Article 25 of the ICCPR. The latter article recognises the right of each citizen without discrimination and without unreasonable restrictions: "(a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the

free expression of the will of the electors.”<sup>1</sup> These issues are presently outside of Amnesty’s mandate, although international human rights law and standards provide a minimum base for analysis on certain aspects of this rights. Other questions on which we cannot comment are either explicitly excluded from our mandate by past ICM resolutions (such as any right to external self-determination<sup>2</sup>), or could not be based on existing international human rights law (see below).

In practice this means that Amnesty does not comment on situations where a violation of this right by itself is alleged. In order to comment on an election-related HR violation or aspect, generally another human right must be found as the basis for any claim, complaint, or recommendation, such as Article 19 of the ICCPR (freedom of expression).

### **International human rights law and standards (overview)**

Relevant legal provisions are not reproduced in full here (for details, please see the Discussion Paper on possible revision of Amnesty International policy on elections and democracy, Part C). However, it should be noted that beyond top-level norms such as Article 21 of the UDHR and Article 25 of the ICCPR, international standards explaining what the right to vote and to stand in elections mean in detail are limited.<sup>3</sup>

However, international standards do give some guidance on minimum criteria that could be utilized by Amnesty such as: “genuine” (competitive, multi-party), transparent, free and secret elections; universal suffrage; the right of citizens to vote and to stand in elections, including as independent candidates; a fair system for voter / candidate registration; access to identification documents necessary for the electoral process; the right to freely communicate information and ideas in the context of elections, including fair and equitable access by contesting parties and candidates to state-controlled media during elections; guarantee of independent observer access to the electoral process; prohibition of arbitrary annulments of election results, or the dissolution of political parties without precise cause; and the need for impartial and independent election monitoring bodies, and the state’s duty to provide for their material needs.

Related standards, which may be able to give guidance for particular questions and recommendations, include the right to equality and non-discrimination, in particular regarding women’s participation in political and public life (Article 7 of CEDAW, and related CEDAW General Recommendations); the right to effective participation for members of minorities or Indigenous communities (Article 27 of the ICCPR); the protection against discrimination of specific groups on a basis prohibited under international law; as well as the permissibility of special measures to overcome these forms of discrimination. International standards and bodies give broad discretion to the state for national preferences with regard to electoral rules, accepting that this is a fundamental aspect of a state’s sovereignty. Therefore different forms of

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1 The excluded issues would include, for example, disenfranchisement of particular individuals; the drawing of electoral districts to achieve a particular political outcome; the monitoring of elections, including if there are doubts about the integrity of the voting mechanisms or count; the resolution of electoral disputes; whether elections are “genuine” or “free and fair”; and the funding of elections and political campaigns.

2 See also 2005 ICM Decision 9, which put limits on our work on external self-determination and the Circular, Amnesty International and the right to self-determination - POL 30/013/2005.

3 International reference documents to draw from include General Comment No. 25 (1996) of the Human Rights Committee on Article 25 of the ICCPR, and respective Committee jurisprudence; UN Commission of Human Rights, and Human Rights Council resolutions; reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association; and regional human rights law and standards, such as Article 13 of the African Charter on Human and Peoples’ Rights, together with resolutions of the African Commission on Human and Peoples’ Rights and the African Charter on Democracy, Elections and Governance; Article 23(2) of the American Convention on Human Rights and OAS Declarations, such as the Inter-American Democratic Charter; Article 3 of the first Additional Protocol to the European Convention on Human Rights; and the jurisprudence of the bodies tasked with the monitoring of the relevant documents.

government and participation are acceptable so long as citizens are allowed to “genuinely and effectively” “participate in the conduct of public affairs”.<sup>4</sup>

In sum, while some elements of electoral rights are sufficiently defined to guide our work, there are many other areas where it would be difficult for Amnesty to come to a decisive conclusion that a state has violated somebody’s human rights. The current draft resolution stipulates that the policy will align to international law. Thus, for Amnesty to take policy positions that go beyond international law, these would need to be expressly stated in the resolution. Examples of issues that would not be considered as falling within international law include the following:

- Calls on a State to permit refugees or other non-resident citizens to vote;
- Extension of the franchise to citizens that are 16 and over (and not just 18);
- Calls on political leaders to establish term limits, or to adhere to term limits contained in their national law laws and to refrain from removing such term limits.
- Right to referendums on specific electoral issues, for example on term limits;
- Particular electoral systems (e.g. 1<sup>st</sup> past the post verses proportional representation).

### Risk analysis

This summary is based on the “Preliminary Risk Analysis: Elections and Democracy” conducted by the IS (see table of reference documents above), although a more fully developed risk assessment, taking into account section feedback provided by March 2017, is being developed in parallel, and will be circulated before the ICM.

There are **risks associated with not expanding our work** on elections. First, it may appear inconsistent if Amnesty is silent on human rights violations and abuses arising from denials of the right to vote and stand for elections, which is part of the global human rights canon that Amnesty is mandated to work on by its statute.<sup>5</sup> Secondly, if Amnesty fails to address elections and democracy it could be seen as failing to address an arena in which many human rights violations and abuses occur. Thirdly, it is possible that Amnesty would not be seen as being part of the local human rights community or caring about locally dominant issues, and would therefore be considered irrelevant to the human rights struggles of the vast majority of people. If Amnesty is not seen as responding to the denial of a key route for citizens to challenge human rights violations, it may lose existing and potential support, membership and funding. Under the current policy, Amnesty is often unable to cooperate with local human rights groups when they raise concerns about electoral rights. For example, when Yahya Jammeh annulled the results of the 2017 Presidential election, virtually every other human rights group was condemning this decision. Amnesty, however, could only call for Jammeh’s regime to refrain from undermining the rights to freedom of expressions and to point to the instability that the announcement would generate.

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4 The Human Rights Committee has stated that the ICCPR “does not impose any particular electoral system”. The UN Human Rights Council affirmed that “there is no single model of democracy”. Amnesty would therefore not be able to give comments, at least not based on specific international human rights standards, with regard to preference for specific electoral or political systems (such as “first past the post”, proportional representation, constituency systems, preferential/alternative vote systems, electoral colleges, parliamentary or presidential systems, bi-/unicameral, unitary/federal systems, constitutional monarchies, direct or indirect voting, right to referendums); how to change election-related rules, whether set out in a constitution or statutory legislation; or term limits (both length and recurrence). International bodies further generally accept as lawful a broad array of “legitimate” restrictions to electoral rights.

5 Article 1 of the statute reads: “Amnesty International’s vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. In pursuit of this vision, Amnesty International’s mission is to undertake research and action focused on preventing and ending grave abuses of these rights.” [emphasis added]

The main **risk of expanding our work on elections and democracy** is – depending on the extent of the formulation of our policy - that we could lose our real and perceived **impartiality**, and be more effectively portrayed by our opponents as “instruments of the West”, or associated with particular parties at the domestic level. This could have an adverse impact on our work in countries that are not seen as being “democratic”. Any perception as a “western, pro-democracy organization” could make our position vis-à-vis those governments or other powerholders even more difficult than it already is, and give these a convenient excuse not to engage with us. That being said, there is now a close to universal consensus, at least nominally, around the need for democracy. This is usefully illustrated by the practise of countries such as China to tolerate the existence of little-known political parties that do not challenge the status quo.

Amnesty could find itself associated with particular parties as it tries to protect their electoral rights, although the parties’ platforms may not be in line with the organization’s values and objectives, or even international human rights law. This is, however, a risk that occurs in regard to protection of the rights to freedom of expression and assembly.

Work on elections could be particularly contentious because the determination of what makes an election “free and fair” or how democratic institutions should function is in many cases context specific and there is no international consensus. There would be a risk involved in expanding our work into areas where there are insufficient international human rights laws and standards on which to base our work, since making public interventions in such areas will inevitably depend on a value judgment and open us up to allegations of bias.

While monitoring many aspects of electoral rights does not require specialised capacity beyond Amnesty’s existing capacity (for example, determining when individuals have been denied the right to exercise their vote), some elements would be beyond our existing skills and capacity, for example to assess whether an election was conducted freely and fairly. There is a risk of low quality work unless we expend considerable financial resources to retrain or hire staff. An alternative could be to rely on external sources and research for information on some aspects of our elections work, with the risk of using unreliable information and damaging our credibility, or otherwise to refer to the assessments of other organisations, without Amnesty itself endorsing such assessment.

### **Summary of comments and questions by sections during the consultation process**

There has been some support for expanding the policy, although many sections requested further details on whether some or all of the potential areas of expansion were necessary. The Africa regional offices also consulted with African Sections in September in Dakar and received strong support for an extension to the policy. Overall, it is clear that this topic is expected to be of more relevance to some sections than others and that sections in established democracies are more reluctant than those in developing countries to expand the limits of our policy on elections work.

Written section feedback showed broad agreement to expand election-related work into some areas already covered by the existing mandate (D.1 a, b, c, of the discussion paper). In particular, there was broad consensus that discriminatory practices (especially regarding gender, race and ethnicity) should and could be worked on more. However, most sections argued that any extension beyond the existing policy limits should be restricted to areas covered by sufficiently clear international human rights law (D.2.a of the discussion paper), and possibly even by further selection, as the discussion had shown how broad work on elections could potentially be. Some sections suggested a staggered approach of limited expansion only, and with potentially further expansions down the road based on experiences made.

Arguments in favour of extending our work included that electoral human rights are enshrined in international documents and that any reluctance to engage in elections should not stand in the way of calling out human rights violations where they exist. Getting involved in the electoral framework early may mean that serious abuses at a later stage, such as violence, are avoided. If Amnesty does not take a position



on illegitimate electoral rules, power grabs and abuse of resources, it could be seen as effectively condoning these. Amnesty could not only raise awareness of the applicable rules, but also work together with other organizations active in this field. The credibility of the movement could be enhanced, by showing it is proactively working towards preventing human rights violations, instead of just reacting to them.

General arguments made against extending Amnesty's policy on elections include the lack of a clear explanation of the added value and the need to go beyond the work already undertaken, especially into areas where international law is not yet clear. Instead, it was suggested to focus on those core areas where Amnesty is established as doing quality work, rather than implying we can tackle a broad range of new and complex questions, including those for which international human rights law does not provide adequate answers.

Many sections were concerned about Amnesty's impartiality, including our ability to access and call on all types of countries and government, potential contradictions with the approach of not challenging the legality of a government, and not being seen as being political in selecting which country situations to work on. A second major concern was the complex of workload and capacity if new issues were added, in particular in light of existing challenges and shortfalls within the organization, and the likely additional resources required. Some sections argued strongly against Amnesty acting as "election monitors", but opinions were more divided with regard to whether we could utilize others' findings in this regard. Many Sections were supportive of the work on the rights clearly contained in international law, but cautioned against work more broadly on 'democracy' given the lack of an internationally agreed definition.

Particular issues highlighted as needing additional clarifications include the relationship between work on elections and the media, whether "state media" or "ownership patterns of private media", as well as the implications of the citizenship requirement. AI Greece identified the voting rights of refugees, especially in their home country, and of people living under military occupation as an issue missing from the discussion.

### **Human rights impact**

It could be argued that electoral rights such as enshrined in Article 21 of the UDHR, Article 25 of the ICCPR, and relevant regional law, are now part of our "vision and mission", under the statute revisions that have taken place in the past 15 years and during which the organization moved away from limiting itself to work on certain lists of rights.

Within our present Strategic Goals, such an extension would serve Outcomes 1.2 (People claiming rights), related to equality and non-discrimination, 2.2 (Progress towards equality), 2.3 (ESCR realisation) and 4.1 (Human rights governance and accountability strengthened at national level), although it should be noted that a new policy would likely only become fully operational, and last well beyond, after the present Strategic Goals period.

Should the movement decide to extend Amnesty's mandate to areas with a sufficient human rights basis, this could allow the organization to comment on, for example: violations of the right to vote (e.g., disenfranchisement through voter registration exclusions, or of people convicted of crimes) and the right to stand in elections (exclusion of candidates without objective justification and effective redress against such a decision); "gerrymandering" of voting districts that amounts to discrimination against particular groups; a lack of equality of opportunity (access to funding, public media), or substantive equality (for example between genders); and proposed electoral systems that do not guarantee free choice, plurality of candidates (including independents), multi-party elections, and secret and universal ballots. Amnesty could critique election laws or proposals that do not meet these criteria, and could contribute to levelling the playing field in electoral contests.

Working to ensure that electoral human rights are adhered to would also be in line with the broader desire to ensure effective and equal access to, and full participation in, political institutions and other power structures, as well as decisions that affect them, for everybody, including women, minorities, Indigenous communities and others. The right to vote is one of the ways in which citizens exercise the right to political participation, and therefore in the design, implementation, development and execution of the State's political policies.

### **Conclusion**

This paper, and the accompanying discussion paper and risk analysis, provide a background to the draft resolution and the considerations taken into account by the Board in presenting the draft resolution. The papers also set out the internal consultation within the movement and a short consideration of the risks of either expanding or not expanding the current mandate. If the present resolution is adopted, it is important that the policy be developed and consulted on within as rapidly as possible (while allowing Sections at least two months to review it) but also that the IS and movement refrain from expanding work beyond the current mandate until such a time as the policy has been finalised.