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## **Equal Participation in Political and Public Life**

1. Equal participation in political and public affairs is a moral and political aspiration, but it is also a broadly recognized realizable political right to which OSCE participating states are committed. Progress, however, has been slow and uneven. Even with groups that have been in the focus of multiple empowerment efforts, such as women, and even in respect to the most traditional forms of political participation, statistics reveal a persisting gap between commitments and reality. In September 2015, parliaments in the OSCE region had an average of 25.7% women's representation. Thirty-four surveyed OSCE countries had, on average, about 27% women in municipal councils, and only 12% of mayors were women.<sup>1</sup>

2. **Equality** (and non-discrimination subsumed in it) has a triple status in international human rights law: it is a general principle, an autonomous right, and an accessory right. Article 25 of the International Covenant on Civil and Political Rights, taken together with Article 2, enshrines the accessory right to equality in respect to participation in political and public affairs. It is worth recalling the content of the right provided in Article 25:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 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; (c) To have access, on general terms of equality, to public service in his country.”

3. To ensure political rights without discrimination on prohibited grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, States should have in place the legal framework of equality law. Modern equality law has developed within a number of OSCE participating States, but it is still sorely missing in others. In the meantime, while in some countries there is not even a legal definition of discrimination, in others, as well as at the regional and international levels, the legal concept of equality has evolved in the last five decades, reflecting the changing views on the question: what should we wish to equalize through legal means? Accordingly, there has been an evolution of the understanding of the right to equality, from equality of treatment to equality of opportunity, and onwards to equality of participation. Today, the right to equality is broadly seen as containing as its elements (a) equal enjoyment of all human rights; (b) equal protection and benefit of the law; and (c) equal participation in all areas of life regulated by law.<sup>2</sup> Under this approach, positive (affirmative) action is a necessary element of the right to equality.<sup>3</sup>

<sup>1</sup> OSCE/ODIHR, Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region, Warsaw 2016, p. 9-10; 5.

<sup>2</sup> The Declaration of Principles on Equality, an international instrument of good practice recognized by the Council of Europe in 2012, defines the right to equality as “the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law”. (*Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008, Principle 1, p. 5.)

<sup>3</sup> “To be effective, the right to equality requires positive action. Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate

4. The global picture of the protection from discrimination and the promotion of equality shows a stark difference among States, including within the OSCE region. With constitutional protection purely rhetorical, many States lack a developed, or indeed any, legislative or policy framework related to equality that would give effect to equality rights enshrined in international human rights law and their own constitutions. At the other end of the spectrum are Canada, the USA and most EU Member States. They have strong comprehensive equality legislation and policies which cover extensive, closed or open-ended lists of protected characteristics (sex, race, religion, sexual orientation, disability, etc.) and areas of life (administration of justice, government and public functions, employment, education, health, provision of goods and services, etc.), and provide legal definitions of prohibited conduct as well as effective remedies. In many jurisdictions, the law goes beyond the prohibition of discrimination and imposes positive duties on public sector bodies and on private organisations to take steps toward equality.<sup>4</sup>

5. In view of the above, it is recommended that, **to strengthen the promotion and protection of equality in respect to participation in political and public affairs, all OSCE States should adopt comprehensive equality legislation.** This recommendation, while not new, is central and pertinent to the topic of this session. Certainly, it has become customary for UN treaty bodies, when reviewing a State party's performance under a particular treaty, to include a standard recommendation to this effect in their concluding observations. But many OSCE participating States are still far from complying.

6. Further, each State, including those that already have otherwise well-developed equality legislation, should look seriously at the neglected issue of **discrimination on the basis of political opinion** – one of the prohibited grounds of discrimination which has featured in international human rights law ever since the listing of protected characteristics in the 1948 Universal Declaration of Human Rights. Discrimination on the basis of political opinion is frequently experienced by persons with oppositional and dissenting political views or affiliations, and can take a huge variety of forms, from politically motivated torture and ill-treatment in custody to pressure on employers to dismiss them or on universities to expel them. It might be argued that this type of discrimination is better dealt with under other human rights related laws, but I believe that equality law covering political opinion can be a potent legal instrument with which to approach the specific area of political participation. It is recommended, therefore, that **participating States review their national legislation to assess its effectiveness in combating discrimination based on political opinion, and take steps to strengthen it.**

7. The modern understanding of human rights places all human rights on an equal footing, thereby emphasizing the interdependence and indivisibility of civil, cultural, economic, political and social rights. Applied to the right to equal participation in the political and public sphere, this approach means that its enjoyment is intrinsically linked to other rights including freedom of association, peaceful assembly, opinion and expression, and access to information, among others. Furthermore, the OSCE participating States have made a

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progress towards equality of particular groups, is a necessary element within the right to equality." (*Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 3, p. 5.)

<sup>4</sup> Often, governments in States where equality law is under-developed or missing are not aware of equality law as an emerging legal field. Some States have group specific or area specific laws that they would typically point at when asked about their equality legislation. For example, these can be declarative framework laws about the advancement of women, social cohesion, disabled persons, etc.; however, they do not qualify as equality legislation if - as the case often is - they do not contain enforceable equality rights. Accordingly, such States have little or no relevant jurisprudence resulting from discrimination claims filed in courts.

solemn commitment to political democracy as the only form of government in which human rights are meaningful and realizable.

8. Recent reports by human rights groups paint a gloomy picture of the entire OSCE region and spell out a disturbing regressive trend in fundamental rights on which equal political participation crucially depends. Where has the spirit of the 1989 Vienna and 1990 Copenhagen Documents disappeared? Where is the glorious determination of that generation of statesmen/women who, in the 1990 Charter of Paris, committed “to build, consolidate and strengthen democracy as the only system of government of our nations”, and to the values of pluralistic debates fostering inclusive and effective participation in political and public affairs? Twenty-seven years later we see, in the OSCE region, anything but a culture of free and equal participation: excessive and disproportionate use of force against peaceful protesters, assaults on journalists, unjustified criminal charges against political opponents, crackdowns on dissenting voices, further surges of restrictive laws suppressing NGO work, outright denials of freedom of association to government opponents, overt political discrimination against minorities, tightened control over the media, and continued growth of government surveillance in the name of counter-terrorism and counter-extremism.<sup>5</sup>

9. Equal participation in political and public affairs is closely related to the way in which States regulate the relationship between freedom of expression and equality. States within the OSCE region have a history of difference over whether/when hate speech should be outlawed, including online speech. As there is no firm bright line in international human rights law on the complex balancing of free speech and equality rights, State policies are drifting across a line in the sand, particularly as regards online expression. It has been argued that online speech differs from offline speech as it can be more disinhibited than speech in the real world; it persists and can be accessed for a long time unless deliberately removed; and it is inherently trans-border, both in the way it travels and is accessed. These attributes can make online speech more powerful and complicate the task of regulation.<sup>6</sup> **Participating States should consider creating new opportunities for debate on regulating online speech to ensure the enjoyment of Internet freedoms and balancing these with equality.** The aim should be agreeing a set of principles that – while leaving plenty of room to work out solutions on a case by case basis – spell out criteria for expression that should be protected in the name of equality and non-discrimination. In this regard, I would draw attention to the Camden Declaration on Freedom of Expression and Equality elaborated by Article XIX in 2009.<sup>7</sup>

10. An increased political participation of under-represented groups (minorities, women, youth, persons with disabilities and non-citizens) is a pathway to a more inclusive and equal

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<sup>5</sup> On all of these claims, see details in Human Rights Watch World Report 2017, <https://www.hrw.org/world-report/2017/>.

<sup>6</sup> D. PoKempner, “The Internet is Not the Enemy”, [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2017-web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf), p.42. Still, as PoKempner states, the principle is that all rights that apply offline apply online as well. Limitations should be strictly necessary and proportionate to legitimate aims.

<sup>7</sup> See <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>. See also the well-argued opinion of David Cole commenting, in the *New York Review of Books*, on the 2017 Charlottesville violence and ACLU’s decision to defend the white supremacist rally organiser, Jason Kessler. Consonant with the prevailing approaches of anti-discrimination law, Cole argues that hate speech should be limited in the name of equal rights only in situations involving formal hierarchy and captive audiences (such as the workplace or the school), but it should be protected in the public space and the media, in situations where those who disagree can turn away or talk back. (D. Cole, “Why We Must Still Defend Free Speech”, *NYRB*, 28 Sept 2017.)

society. We should add to this the role of socio-economic status – and not as an afterthought, as it has been the most persistent factor in shaping political equality in many if not most countries.<sup>8</sup> To the extent that political parties are still the main gatekeepers to positions of political power, it is important to encourage internal party diversity through a variety of targeted measures, such as the adoption of (voluntary or mandatory) quotas and capacity building programmes. Different quota systems can indeed be effective, although they do raise concerns with many equality advocates.

11. Effective equality policies are predicated on high quality social information. The issue of equality statistics should be addressed by States wishing to encourage equal participation. To give full effect to the right to equality of participation, **States must collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality.** Of course, such information must be collected in compliance with human rights.<sup>9</sup> In 2009, the Outcome Document of the Durban Review Conference recommended that States should develop a system of data collection, including equal-opportunity and non-discrimination indicators, that, upholding the right to privacy and the principle of self-identification, makes it possible to assess and guide the formulation of policies and actions to eradicate racism, racial discrimination, xenophobia and related intolerance. States should recognise that they have a similar positive duty, *mutatis mutandis*, in respect to sex, disability, age, religion, language and other protected characteristics.<sup>10</sup>

12. A mature discussion of equal participation in the 21<sup>st</sup> century must be concerned with the participation rights of children and young people. The KidsRights Index shows that the implementation of child participation rights is impeded by traditional practices and cultural attitudes in the family, schools and certain social and judicial settings. Children at risk, such as, for example, children in alternative care, are rarely included in deciding matters concerning them, let alone matters of more general interest. **OSCE participating States should ensure that the views of children and young people are given due consideration in public affairs through the adoption of child participation legislation, training of professionals, introducing curriculum reforms and awareness raising.** The purpose is to create meaningful venues through which children and young people can influence public policy. Young persons should be respected not so much as apprentice citizens but as autonomous persons who, despite their limited experience, deserve to speak for themselves on agendas of their own making.<sup>11</sup>

13. Young people of voting age in many countries have often been accused of being apolitical, consumerist, disengaged, self-centred, cynical, etc., and their low participation in formal elections has been cited as symptomatic for such attitudes. But young people themselves have strongly challenged this view: they have emphasised that they are not indifferent, but are different, and that they care and express themselves in a different way. At

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<sup>8</sup> In the USA, for example, socio-economic status has been shown to be more important for intergenerational political inequality than sex, ethnic origin, sexual orientation, etc. (See K. Schlozman, S. Verba and H. Brady, *The Unheavenly Chorus: Unequal Political Voice and the Broken Promise of American Democracy*, Princeton University Press, 2012.)

<sup>9</sup> See *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 24, p. 14.

<sup>10</sup> For a framework on collecting statistical information related to human rights performance, see the work on human rights indicators developed under the auspices of the UN OHCHR, available at: [http://www.ohchr.org/Documents/Publications/Human\\_rights\\_indicators\\_en.pdf](http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf).

<sup>11</sup> On the controversy of age-appropriate regulation of youth participation in the Internet age, see S. Coleman, "Doing IT for Themselves: Management versus Autonomy in Youth E-Citizenship", *Civic Life Online: Learning How Digital Media Can Engage Youth*, ed. by W. Lance Bennett, MIT Press, 2008, pp. 189–206.

present, millennials (and indeed the children of millennials) are creating exciting forms of political participation that differ from traditional forms. But before discussing how these new forms are shaping the future, let us recall that there are things **States could and should do to enhance youth participation in classical formal elections, such as making it possible to vote online**. Electronic voting in Estonia, for example, illustrates the challenges but also the successes of ensuring both secrecy of the ballot and identification of the voter, two key concerns expressed by the sceptics. Further, there should be same-day voter registration, and the physical voting could be spread over two consecutive days, including one working day and one weekend day. While compulsory voting employed in some States remains controversial, there may be a strong argument in favour of a “nudging” approach – making opting out of the vote more difficult, so that people choose to vote by default. Further measures that can be taken by States include various forms of voter education and the increasingly popular Voting Advice Applications (VAAs) - online tools helping one decide whom to vote for, through answering a multiple-choice questionnaire on relevant issues.<sup>12</sup>

14. The notion of participation in political and public life is changing in the 21st century, with strong implications for democratic societies. First, the notion is becoming broader and richer: we are no longer satisfied with calculating percentages of women or ethnic minorities in parliaments, ministerial councils or judiciaries, even though parity in these areas is still a remote destination. Genuine participation should relate to all stages and aspects of the democratic process, from access to information, to expression of policy positions, organising, advocacy, direct political action, consultation on policies and laws, deliberation, and – most importantly – decision-making. For example, access to information allows real-time fact-checking on the Internet during political contests that enables informed voting choices in elections. In response to the deeper needs to participate, political parties in many States conduct surveys, opinion polls, nominations and leadership elections online, shortening the distance between leaders, members and supporters. E-governance is also developing at an impressive pace, transforming the local and central public administration as regular electronic consultations involving civil servants and citizens’ groups are becoming standard practice.

15. The notion of participation is also changing in respect to the level of government, encompassing the local, sub-national, national and global level. It is particularly interesting to observe how governance is moving closer to the people through decentralization and subsidiarity. In Kosovo, for example, the OSCE Mission funded and developed a Digital Platform for Public Participation website in the municipalities of Prishtinë and Gjakovë, through which citizens can file requests, view municipal projects, comment and vote, including on suggestions made by fellow residents.<sup>13</sup> A good practice sometimes described as rights-based budgeting is also spreading, allowing people to participate more or less directly in defining the budgeting priorities of their town or municipality, and promoting transparency and accountability of governance. There is also the question of what counts today as relevant issues in democratic participation: whether civic participation is relevant only to elevated notions of political power and systemic reform, or also to everyday life issues, in emerging forms of what Bakardjieva described as “subactivism”.<sup>14</sup>

16. In view of these new trends in participation, what role can new information and communication technologies (ICTs) play in the 21<sup>st</sup> century? Are they helping to ensure more equal participation in political and public life? Are they empowering disadvantaged groups in

<sup>12</sup> None of these measures is specific to young people, but it is young people that would be among the likely beneficiaries.

<sup>13</sup> <http://www.osce.org/stories/when-click-does-the-trick>.

<sup>14</sup> M. Bakardjieva (March 2009), “Subactivism: Lifeworld and Politics in the Age of the Internet”, *The Information Society*, 25 (2), pp. 91–104.

making their voices matter? Arguments are being put forward in support of opposite views on these questions.

17. Techno-optimists believe that the ICTs in the 21<sup>st</sup> century promote new forms of democratic participation, though based on values and principles articulated before the age of the Internet. They regard democracy as a work in progress, with ICTs as a game-changer. E-democracy is credited with a strong potential for reconciling the tension between the size of the group that participates in democratic decision making and the depth of the will expression. Traditionally, large group size was achieved with simple ballot voting (Yes/No), while depth of will expression was achieved by limiting the number of participants through representative democracy. The social media Web 2.0 revolution combines large numbers of participants with depth of will expressions/opinions, but the latter are not structured and it is difficult to make sense of them. Enter the new information processing techniques, including big data analytics and the semantic web, which have shown promise in overcoming the content cacophony.<sup>15</sup> In legislative and policy decision making, Internet creates the opportunity for a type of government that is simultaneously more democratic and more professional, by creating open online collaboration between self-selecting social networks and closed panels of experts.

18. Techno-optimists also see pathways to genuine deliberative democracy and deliberative decision making, the concept of which has been developed in the pre-digital world and advocated, without requiring digital mediation, in areas such as healthcare rationing.<sup>16</sup> A recent example of Internet based deliberative democracy process is the California Report Card created by the Data and Democracy Initiative of the Center for Information Technology Research in the Interest of Society at the University of California, Berkeley. Launched in January 2014, the California Report Card is a mobile-optimized web application designed to facilitate deliberative decision-making. Participants reply to a short opinion poll on six political issues, and are then grouped through Principal Component Analysis into teams that engage in deliberation by entering textual suggestions and grading other participants' comments, eventually leading up to decisions.

19. Allegedly also made practicable by the Internet is so called "liquid democracy" suggested as a new form of representation. This semi-direct democracy with delegable proxy would allow people to appoint a proxy entrusted to vote on their behalf on issues within certain specified areas, while retaining their own right to vote. The proxies could form proxy chains, in which if A appoints B and B appoints C, and neither A nor B vote on a proposed bill but C does, C's vote will count for all three of them. Voters could also rank their proxies in order of preference, so that if their first-choice proxy fails to vote, their vote can be cast by their second-choice proxy.

20. The Internet has also been described as a positive force in boosting electronic direct democracy (EDD) in Switzerland (the country with some of the strongest direct democracy traditions from the deep pre-digital past), Sweden (Demoex party), UK (People's Administration Direct Democracy Party), Turkey (Electronic Democracy Party), USA, etc. Advocates of EDD are getting traction, especially among young people, and some of the proposed radical models seek to make traditional political institutions obsolete. Sooner or later, according to Silicon Valley visionaries such as the Argentinian-born Santiago Siri, the demand for direct democracy will lead to the invention of new tools that would make it

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<sup>15</sup> M. Hilbert, "The Maturing Concept of E-Democracy: From E-Voting and Online Consultations to Democratic Value Out of Jumbled Online Chatter", *Journal of Information Technology and Politics*, April 2009.

<sup>16</sup> See, for example, L. Fleck, *Just Caring: Health Care Rationing and Democratic Deliberation*, OUP, 2006.

possible to eliminate the middleman in politics and governance, as the bitcoin eliminates the middleman in financial transactions.<sup>17</sup> Carl Miller dreams that one day Internet-enabled bitcoin democracy will even eliminate the state as a power structure, and global citizens will be direct decision-makers on everything that concerns them. J. Manuel Feliz-Teixeira envisioned wiki-democracy in which there would be three wings of legislative, executive and judiciary decision-making roles in which every citizen could have a voice with free access to the wiki and a personal ID to continuously reform policies until the last day of December when all votes would be counted and the new law, policy or judicial ruling ratified.<sup>18</sup>

21. New forms of political participation inevitably mean also new forms of political protest, such as Electronic Civil Disobedience. Applied in cyberspace, it is based on the same principals as traditional civil disobedience, like trespass and blockage, and is sometimes identified with hacktivism. And with hackers without borders targeting the slow, inefficient and elitist institutions of power, the plotline of a techno-utopia may be writing itself in real time.

22. Unfortunately, technological progress doesn't necessarily mean positive pro-democratic innovation. Electronic democracy activists can recruit supporters online, but so does Islamic State. A wave of critique has been directed at the new ICTs of the 21<sup>st</sup> century, warning of their role in ruining the achievements of democracy.

23. Change in political participation in the age of Internet is part of the transformation of the "public sphere" as defined by Habermas: society engaged in critical public debate, whereby the only legitimate government is that which listens to the "public sphere". The Internet is apparently reshaping legitimacy. The role played by the broadcast media is shared by alternative power structures that may or may not be more democratic. In the new "public sphere", one observes emerging new links between politicians and their audiences, with which they can now be in direct daily contact via Twitter, Facebook, email lists, etc. Traditional journalism is no longer so central to the creation of the media agenda itself. Messaging, too, is changing in the digital communities of the social media. New viral forms of messaging are displacing the linear, controlled process of message creation by traditional political elites and mainstream media. It is difficult for a central power to fight the guerrilla style mobilisation spreading online, and viral communications engender real-world movements. All this can go in the direction of stronger democratic participation, but at the same time, authoritarian or populist leaders can also rely on new ICTs fed by a voluntary digital army as their power base.

24. According to the techno-sceptics (or are they better described as techno-realists?), the Internet has not changed people's role as citizens in a positive way. Martin Hindman, in *The Myth of Digital Democracy*, argues that, contrary to popular belief, the Internet has done little to broaden political discourse and instead has empowered a small set of elites.<sup>19</sup> In the digital world, people tend to divide into very distinct digital tribes living in a kind of echo chambers, re-tweeting, sharing and forwarding content that they agree with. No proper debate or dialogue occurs across tribe lines. Indeed, the argument goes, the Internet has accelerated the decline of parliamentary democracy by turning the audience into a shallow crowd and a consumer market to whom politicians are trying to sell a product at election time. But fewer people are buying it, leading to high levels of distrust and fall in election

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<sup>17</sup> See for example the website *democracy.earth* on what Siri describes as 10x disruption of government.

<sup>18</sup> [https://paginas.fe.up.pt/~feliz/e\\_poster4\\_wiki-law-government.pdf](https://paginas.fe.up.pt/~feliz/e_poster4_wiki-law-government.pdf).

<sup>19</sup> See also his article "Digital Processes and Democratic Theory", *MartinHilbert.net*, 2015.

turnouts.<sup>20</sup> Further, objections to direct democracy have been voiced and the argument is that they apply with a vengeance to EDD, such as the potential for direct governance to tend towards the polarization of opinions, populism, and demagoguery.

25. Critics have also pointed at the offensive language, the trolls, the surge of populism, the lack of privacy, the superficiality of the social media discourses, the fragmentation of knowledge, the fake news in the post-truth world and the blurred levels of truthfulness, the dominance of symbolic politics over evidence based, expert-made policy, etc. Of these and other risks, I would grade as most dangerous the potential for tyranny of the majority and for further marginalisation of the most disadvantaged minorities, as well as the runaway surveillance by government of everyone's entire communications, under the pretext of combatting terrorism and extremism.

26. And yet, the Internet has been described as promoting a culture of sharing; allowing everyone's voice to be expressed; providing universal and inexpensive access for the powerless; providing the option of anonymity in States that persecute opponents; being ultra-pluralistic, with information coming from an avalanche of different sources, etc. Can these views, opposed as they are, be all simultaneously true? Can the Internet foster equal participation in decision-making enjoyed by well-informed citizens, as well as lead to the debilitation of the public sphere as, for example, in the dystopian fictional world of Dave Eggers in his chilling novel, *The Circle*? I believe the answer is affirmative. Much as they have been extolled as the gateway to a democratic participatory utopia, or feared for their potential for totalitarian surveillance by Big Brother, in one respect, the information and communication technologies of the 21<sup>st</sup> century, in their captivating complexity, are descendants of the humble stone age axe. They are tools. Which way they strike is up to the user. The Internet is itself neither democratic nor anti-democratic. It will take a sustained effort by democracy stakeholders to utilise its democratic potential and to limit its perils.

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<sup>20</sup> See Carl Miller's TED talk on Digital Democracy on Youtube, <https://www.youtube.com/watch?v=FNL22RvFwn0>.