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PART I

INTRODUCTION

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## I

## Introduction: Why Do Elections Fail?

Numerous types of flaws and failures undermine elections. In some, opponents are disqualified. District boundaries are gerrymandered. Campaigns provide a skewed playing field for parties. Independent media are muzzled. Citizens are ill-informed about choices. Balloting is disrupted by bloodshed. Ballot boxes are stuffed. Vote counts are fiddled. Opposition parties withdraw. Contenders refuse to accept the people's choice. Protests disrupt polling. Officials abuse state resources. Electoral registers are out of date. Candidates distribute largesse. Votes are bought. Airwaves favor incumbents. Campaigns are awash with hidden cash. Political finance rules are lax. Incompetent local officials run out of ballot papers. Incumbents are immune from effective challengers. Rallies trigger riots. Women candidates face discrimination. Ethnic minorities are persecuted. Voting machines jam. Lines lengthen. Ballot box seals break. Citizens cast more than one ballot. Laws suppress voting rights. Polling stations are inaccessible. Software crashes. "Secure" ink washes off fingers. Courts fail to resolve complaints impartially. Each of these problems can generate contentious elections characterized by lengthy court challenges, opposition boycotts, public protest, or, at worst, deadly violence.<sup>1</sup> In some, failures are intentional; elsewhere, they arise through happenstance, although it is tricky to nail down which is which.

Today all but a handful of countries around the world hold parliamentary elections, but contests can be marred by all these problems – and many more. Flaws corrode democratic governance. As the previous book in this trilogy demonstrated, lack of integrity has many serious consequences, with the capacity to undermine the legitimacy of elected authorities, to erode satisfaction with democracy, to reduce public confidence in political parties and parliaments, and to weaken electoral turnout.<sup>2</sup> Violent protests can destabilize states, especially in hybrid regimes lacking the coercive powers of absolute autocracies and the legitimacy of mature democracies.<sup>3</sup> In emerging economies such

as Kenya and Thailand, disputed procedures have generated instability and undermined investor confidence. Competitive multiparty elections are the bedrock for democratic accountability, linking citizens and the state, empowering electors to “throw the rascals out” if dissatisfied by unpopular leaders. Where contentious elections are seriously flawed, or even failed, however, this mechanism is far from sufficient to rid the world of corrupt, venal, or incompetent rulers, prompting critical citizens to resort to the barricades rather than ballots. The vertical chain of electoral accountability linking citizens and authorities becomes corroded or broken.<sup>4</sup> Elections alone are not sufficient guarantees for democratic governance, where other horizontal channels of public accountability remain weak, but they remain the foundation.

To understand these issues, the first part of this chapter presents the conceptual framework and evidence used to compare electoral integrity around the world. The second part outlines the theoretical argument and the roadmap for the rest of the book.

### I: The Concept of Electoral Integrity

The core notions of “flawed” or “failed” elections, which lie at the heart of this book, require clear standards and consistent benchmarks against which to judge the quality of any contest. To lay the groundwork, as conceptualized and defined by this trilogy, the overarching notion of *electoral integrity* refers to *contests respecting international standards and global norms governing the appropriate conduct of elections*.<sup>5</sup> These standards have been endorsed in a series of authoritative conventions, treaties, protocols, case laws, and guidelines by agencies of the international community.<sup>6</sup> Authority derives primarily from resolutions and treaties passed by the UN General Assembly, the UN Security Council, and UN human rights bodies, supplemented by agreement reaching within regional intergovernmental bodies such as the Organization for Security and Cooperation in Europe (OSCE), the Organization of American States (OAS), and the African Union (AU), and the European Union.<sup>7</sup>

The International Covenant on Civil and Political Rights provides the broadest guarantees of the rights to political participation, including the right to self-determination (Article 1) and the right for everyone to take part in the running of the public affairs of his/her country (Article 25), among others. The treaty has been in effect since 1976 and today 168 countries, out of 193 UN member states, are parties, including the Russian Federation, China, Syria, Belarus, and Zimbabwe. Following ratification, international standards apply universally to all endorsing countries throughout the electoral cycle, providing legal obligations for states, including during the preelectoral period, the campaign, on polling day, and in its aftermath. Treaties formalize agreement among sovereign states. As in any binding contract, upon endorsement states voluntarily limit their sovereignty by accepting international obligations. Of course, in many cases endorsement may simply exist on paper, and electoral rights

continue to be repressed, if countries sign to avoid punishments for not going along with the international community, without experiencing any effective sanctions for non-compliance. Critics charge that many basic principles are widely flouted, and even some established democracies transgress, where the lofty language of human rights is coupled with weak enforcement mechanisms.<sup>8</sup> Many factors may influence how far states act in accordance with their treaty obligations, including international pressures and institutions, the prior values and preferences of particular governments, the capacity of the courts, and the strength of local human rights activists. One of the main reasons why ratification strengthens human rights is through domestic mechanisms; endorsement of international treaties empowers citizens to pressure government to meet their international obligations.<sup>9</sup> Where the world has agreed on the legitimacy of certain minimal standards of electoral rights, then activists can appeal to these principles when organizing to protest against domination and oppression. Survey evidence demonstrates that citizens' demands for democracy and human rights are universal today, although there is also widespread dissatisfaction about how far states observe these principles in practice, generating an expectation gap.<sup>10</sup> Transitions from autocracy, and the expansion of competitive elections around the world, have strengthened the public's capacity to mobilize when challenging power. The international community has also become increasingly active, by providing technical assistance and aid to reform movements seeking to strengthen democratic governance. Thus states face growing pressures at home and abroad to realize electoral rights and to respect international jurisprudence. How abstract principles are interpreted and translated into domestic laws and administrative procedures, however, is a complex process. Textual interpretations differ among countries and cultures, so that what one society regards as appropriate standards may be seen elsewhere to violate fundamental human rights – such as practices concerning whether polling should be voluntary or compulsory, whether registration should be an individual or state initiative, or whether voter identification should be required to be presented before casting a ballot.<sup>11</sup> The notion of “electoral integrity” founded on international human rights agreements is therefore far more powerful, comprehensive, and complex than the popular focus on electoral fraud, implying specific malpractices occurring on polling day such as illicit acts of ballot stuffing, vote-buying, or rigging the count.

What electoral rights are recognized in international treaties? International IDEA, working in conjunction with the Carter Center, has compiled the most comprehensive and systematic set of obligations derived from international jurisprudence, as listed in Table 1.1.<sup>12</sup> The foundation for these standards rests upon Article 21(3) in the Universal Declaration of Human Rights (UDHR 1948). This specifies that “*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.*” This statement has

TABLE 1.1. *International standards for elections*

| Principle   | Interpretation  |
|---|---|
| Rights and opportunities to participate in public affairs | The foundation respecting the rights and opportunities to participate through political parties, civil society organizations, and through voting processes for elected representatives.   |
| Rights and equal opportunities to vote                    | Subject only to reasonable restrictions, such as a minimum age qualification.   |
| Rights and opportunities to be elected                    | Free choice of candidates, with no unreasonable or discriminatory restrictions, such as political affiliation, education, or residency requirements.  |
| Periodic elections  | For example, by defining the length of elected terms and setting firm deadlines for steps in the electoral cycle.   |
| Universal suffrage  | The right to vote should be as inclusive as possible for every adult citizen.   |
| Equal suffrage  | One person, one vote should apply, affecting boundary delimitation and seat allocations.  |
| Secret ballot   | Prohibits connecting citizen identities with their ballot choices, to prevent coercion, corruption, or intimidation.  |
| Freedom from discrimination and equality under the law    | Prohibits discrimination based on race, color, sex, language, religion, political opinion, national origin, property, birth, or other status, essential to ensure that candidates, parties and voters can participate on an equal footing.        |
| Equality between men and women                            | This includes ensuring that women have equal opportunities to participate in elections. CEDAW also recognizes the use of special temporary measures aimed as accelerating de facto equality between women and men, such as gender quota policies. |
| Freedom of association                                    | This includes the right to form political parties and other civic associations, although the ICCPR recognizes restrictions necessary to secure national security, public order, or public safety.   |
| Freedom of assembly                                       | This includes the rights of candidates to organize election campaign meetings, although some restrictions are recognized by the ICCPR as reasonable in the interests of national security or public order.  |

| Principle   | Interpretation  |
|---|---|
| Freedom of movement                                       | Recognizes that contestants should be free to campaign without restrictions and persons entitled to vote should be free to exercise their rights.   |
| Freedom of opinion and expression                         | These rights apply to the media, but also to parties and candidates.  |
| Right to security of the person                           | This includes prohibition of injury, intimidation, arbitrary arrests, or detention, including candidates and activists, during campaigns.   |
| Transparency and rights to information                    | Electoral authorities have an obligation to be transparent in their operations, as do stakeholders such as parties, candidates and civil society organizations.   |
| Prevention of corruption                                  | States are obliged to prevent corruption, including in the electoral process. UNCAC emphasizes that states should take measures to enhance transparency in the funding of candidates and political parties. |
| Rule of law   | This includes equality before the law, and the independence and impartiality of the judiciary.  |
| Rights to an effective remedy                             | This includes access to judicial review for election-related claims arising from voting and counting, to ensure public confidence in the process and results.   |
| Right to a fair and public hearing                        | This right obliges states to provide timely or expeditious treatment by impartial and independent tribunals.  |
| States must take necessary steps to give effect to rights | States are obliged to take necessary steps to give effect to the rights in the ICCPR, both by refraining from restricting these rights but also by protecting these rights.                                 |

Source: Domenico Tuccinardi, ed. 2014. *International Obligations for Elections: Guidelines for Legal Frameworks*. International IDEA: Stockholm. Chapter 4.

become the blueprint for subsequent standards. Agreement about the norms governing the conduct of elections was further specified in Article 25 of the UN International Covenant for Civil and Political Rights (ICCPR of 1966), which came into force a decade later. International standards continued to evolve, including through international conventions on the elimination of all forms of racial discrimination (ICERD 1966) and discrimination against women (CEDAW, 1979), the UN Convention against Corruption (UNCAC 2003), the Convention on the Rights of Persons with Disabilities (CRPD 2006), as well as agreements secured in the 1990 Copenhagen Document of the Conference on

Security and Cooperation in Europe (CSCE) and the 2002 Venice Commission's Code of Good Practice in Electoral Matters.<sup>13</sup>

This framework provides the legal mandate for electoral assistance by UN agencies and bureaus. Until the late 1980s, the role of the UN in elections was mainly to observe, supervise, and sometimes certify the results. After the end of the Cold War, however, the UN's role expanded in different contests, by providing more aid and technical assistance and also by directly organizing several elections in peacekeeping operations, such as Cambodia in 1993, Namibia in 1989, and the Democratic Republic of Congo in 2006. The Electoral Assistance Division (UNEAD) in the UN Department of Political Affairs coordinates electoral assistance within the United Nations and formulates policies and guidelines. The United Nations Development Programme (UNDP), in liaison with UNEAD, serves as the main UN agency that deploys technical assistance and aid when member states request help with the legal, operational, or logistical management of elections. The UNDP reports to its executive body and ultimately works within the broader mandate established by the UN General Assembly. Regional intergovernmental organizations have also expanded their roles in updating electoral standards and issuing practical guidelines, notably for observers to assess the quality of elections, as exemplified by the OSCE *Election Observation Handbook*.<sup>14</sup>

International standards are not static, however, as illustrated by the evolving language used in the UN General Assembly resolution 63/163 on “*Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization*” passed every two years since 1988.<sup>15</sup> For example, the agreement on state responsibilities for organizing elections was strengthened in 1991, while the notion of an “electoral cycle” rather than event was added in 1993.<sup>16</sup> Norms continue to evolve at different stages of acceptance, like widening concentric circles rippling from a stone dropped in a pond.<sup>17</sup> The classic international conventions of human rights have been widely internalized today, regarded as appropriate guides to conduct elections around the world. For example, the principle of universal franchise for all citizens is now universally accepted, without restrictions of voting rights based on sex, class, caste, race, ethnicity, disability, or religion. Other standards continue to diffuse around the globe, as more and more countries adopt these norms, exemplified by the spread of gender quotas for elected office following CEDAW in 1979 and the 1990 Beijing Declaration adopting a target of 30 percent of seats for women.<sup>18</sup> Yet other canons are not yet entrenched in international jurisprudence, although principles are advocated by norm entrepreneurs, such as those governing political finance regulations proposed by Transparency International, the OAS, and the OSCE.<sup>19</sup>

Thus, in defining what is meant by elections that are free and fair, genuine, or democratic – some of the most commonly used terms in news headlines and observer reports in the international community – accounts typically emphasize a checklist reflecting the classic principles. The International IDEA guidelines

identify the twenty international obligations, listed in Table 1.1, which are regarded as the key building blocks. Based on this understanding, states are obliged to protect the voting rights of all citizens, to safeguard opportunities for all candidates and parties to campaign freely, to hold contests at regular intervals, to protect candidates and citizens from threat of political violence or intimidation, to provide transparent processes of electoral administration, and to offer timely and expeditious judicial processes adjudicating complaints and disputes.<sup>20</sup> In practice, however, as mentioned earlier, how these abstract principles translate into national laws and detailed administrative procedures remains a complex process. For example, the concept of a “universal franchise” is widely agreed as a basic human right, yet states continue to differ in their legal definition of citizenship, minimal age requirements, qualifications to vote, and the exclusion of certain categories, such as prisoners or overseas populations.<sup>21</sup> Even greater controversy continues to surround several important issues where there is no global consensus. Normative values clash even among Western democracies, such as the appropriate standards guiding political finance regulations and thus the use of disclosure requirements, spending caps and donor limits, and public funding of political parties.<sup>22</sup> The obligations endorsed in international treaties therefore provide a *minimum* basis for electoral integrity and, while not absolutely relative, the abstract principles are open to differing legitimate interpretations when translated into national laws and practices.

To clarify the basic foundations, and avoid common misunderstandings, it is worth emphasizing at the outset how this conceptualization differs in several important respects from other common approaches.

Firstly, in this study normative authority is understood to derive from the body of human rights treaties and conventions in the international community; not directly from principles of democracy per se. Thus, while multiparty elections are essential for contestation and participation in liberal democracy, contrary to other scholars, democratic theories are not referenced as the authority for the origins of these ideas.<sup>23</sup> Instead, in line with the approach endorsed by such organizations as the Carter Center and International IDEA, the quality of elections is evaluated by principles and procedures derived from international jurisprudence.<sup>24</sup> As a result, one admitted limitation is that the core concept of electoral integrity used in this study is less coherent than tighter or minimalist scholarly notions, since electoral rights have not been codified in a consistent fashion. One major counterbalancing advantage, however, is that the universality of the concept applies to all independent nation states holding national elections. In practice this means that the empirical analysis measures the quality of national elections held around the world, including in one-party states such as Vietnam and Cuba, as well as in long-established democracies such as Sweden and Canada. Ultimately, the Universal Declaration of Human Rights can be traced back to underlying notions of democracy reflecting deeply held values among the Western great powers, following the end of the Second World

War. But the legitimacy of human rights treaties derives from endorsement by UN member states in the world community, not from political philosophy. Diplomatically, this powerful notion also means that human rights obligations are regarded as legally binding and applicable to autocratic states that have endorsed international treaties even if they reject liberal democratic principles.

Analytically, this also means that the book uses global comparisons and it does not focus on any particular regime type. This approach diverges from the conventional literature, which has evolved in two parallel streams during recent decades focused, respectively, upon electoral malpractices through the intentional repression of human rights in hybrid regimes such as Russia and through maladministration in established democracies such as the United States.

The turn of the century saw growing recognition among comparative and area scholars of the persistence of many hybrid regimes that are neither absolute autocracies nor consolidated democracies.<sup>25</sup> The end of the “transition paradigm” spurred renewed attention on how contests function to preserve the power of ruling elites in “electoral authoritarian” regimes in Latin America, Asia, and Central and Eastern Europe. From this perspective, studies assume that the key “puzzle” is to explain why and how ruling parties in these types of regimes intentionally manipulate the outcome to preserve their legitimacy and power within a façade of nominally competitive multiparty contests.<sup>26</sup> The main remedy, from this perspective, lies in how to restrict the abuse of power and fraudulent electoral acts by ruling parties, both domestically through strengthening transparency, accountability, and inclusive participation, as well as externally, from diplomatic pressures, including through the deployment of international observer missions.<sup>27</sup>

By coincidence, in the aftermath of the Florida debacle in the 2000 Gore versus Bush presidential election and the 2002 Help America Vote Act, another distinct stream of literature evolved simultaneously among scholars of American politics with a flood of contemporary studies analyzing the quality of electoral administration in the United States.<sup>28</sup> Drawing upon the disciplines of public sector management and electoral law, political scientists examined the technical problems of organizing and managing American elections, such as flaws in state-level electoral registration, provisional ballots, advance voting, and polling facilities. These problems are conventionally framed as largely managerial issues, where technocratic solutions – better performance indices, legal reforms, and procedural amendments – are typically proposed to improve the efficiency of the electoral process.

By contrast, rather than limiting the comparison to any particular type of regime, this study rejects the assumptions underlying these conventional approaches and adopts a global comparative framework. The book starts from the more agnostic position that electoral malpractices in any country around the globe can arise from limitations of *democratic governance*, that is to say, from either restrictions on fundamental human rights and violations committed