



Via e-mail: democracyforum@ohchr.org

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Nathalie Prouvez
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Palais de Justice
1211 Geneva 10, Switzerland

Re: Commentary for the First Session of the Forum on Human Rights, Democracy and Rule of Law—“Widening the Democratic Space: The role of youth in public decision-making”

Dear Nathalie Prouvez

By letter dated June 13, 2016, the Office of the High United Nations High Commissioner for Human Rights (OHCHR) invited academics and experts and non-governmental organizations to participate in the inaugural session of the Forum on Human Rights, Democracy and the Rule the Law, the theme of the first session of which is to be “Widening the Democratic Space: the role of youth in public decision-making. That session arises out of Resolution 28/4 (Human Rights, Democracy and the Rule of Law A/HRC/RES/28/14 (9 April 2015). The OHCHR welcomed the views of academics, experts and non-governmental organizations on topics related to the above-mentioned theme.

It is my great honor to submit, in connection therewith, the following commentary. I understand that this commentary will be made available in due course on the [website](#) of the United Nations Human Rights Office of the High Commissioner for Human Rights, Forum on Human Rights, Democracy and the Rule of Law. I regret that neither I nor the organizations represented here will be able to attend the Forum in person.

Within the framework adopted over the last several years in the United Nations, democracy has assumed an important role, but one embedded in a series of larger projects. Drawing on Resolution 19/36 (A/HRC/RES/19/36; 19 April 2012), it has been noted that (1) democracy, respect for human rights and fundamental freedoms are said to be interdependent and mutually reinforcing; (2) democracy is grounded on the free expression of the will of a people, organized in nation-states, to determine their political, social, economic and cultural systems; (3) that states have the principal responsibility (and obligation) to ensure protection and expression of this popular will; (4) that this obligation is expressed through the fundamental obligation of the state to ensure development and good governance; (5) that international organizations play a role in protecting structures of democracy-human rights-rule of law systems; and (6) that the three inter-embedded concepts are said to be advanced through the elimination of discrimination. We are further advised that the state parties members of the Human Rights Council are encouraged the wish of an increasing number of states to build democratic societies in which it is understood that individuals have the opportunity to shape their own destinies, but of course within the constraints of the social, cultural, economic, political and social structures of those states. This last point is underlined, in Resolutions 28/4 and 19/36 by an emphasis on a fundamental ordering principle—that while democracies share common features, there is no single model of democracy and that democracy, though not universal, also does not belong to any specific peoples or region. And fundamental to all discussion of the inter-embedded concepts of democracy, respect for human rights and rule of law are the correspondingly inter-embedded concepts, sometimes producing contradiction, of respect for sovereignty and rights of self determination.

However, some common features of democracy are suggested. The first is the basic principles of the Covenants on civil and political rights, and that on economic, social and cultural right—the relationship between which remains contested (and thus perhaps emphasizing the need for avoiding one size fits all democracy and respect for sovereign decision-making in developing a model of democracy that suits it. Second, central to democracy, though, seems to be the act of voting at genuine and periodic elections. This form of democratic expression is widely accepted as the core of the traditional performance of democracy. Third, administrative mechanisms for the expression of grievances or aspirations is required. Fourth, elements of good governance appear to be central to the inter-embedded concepts of democracy, rule of law and human rights, including transparency, accountability. Fourth, the Resolutions emphasize the need for political opposition, civil society, and an autonomous press that may serve as sources of surveillance and accountability. Fifth, the role of human rights defenders is acknowledged, though the forms through which such activity may be undertaken is not specified. Among those obligations that fall to intergovernmental organizations is the encouragement of study, in schools and universities, of the inter-embedded concepts as well as basic civics.

It is only within this broad framework that one may usefully approach the issue for discussion at the first session of the Forum—“Widening the Democratic Space: The role of youth in public decision making”. I will suggest two quite distinct areas in which such discussion must necessarily be organized in order to effectively meet the mandate of Resolution 28/4. The *first touches on the role of training* youth for effective political engagement. The second touches on the *role of youth in politics*. The two must be kept separate in order to avoid both confusion of purpose and method, and to ensure that the one is not inadvertently used strategically to undermine the other.

A. The role of training youth for effective political engagement.

First, there can be no widening of the democratic space in the absence of a sure and well accepted notion of what that democratic space consists of, as well as its principles, structures, and operation. Though this sounds somewhat self-evident, recent events have suggested that many states, even those once assured of the foundations of their own democratic theories and operations, may be in the process of developing their own fundamental notions of the meaning of democracy-human rights-rule of law within their own particular political-social-economic-and-cultural frameworks. Where such concepts are deeply contested within a polity, *the education of youth for politics* becomes difficult. And indeed, such contestations of core notions—with the characteristics necessary for effective naturalization within a specific state—serves to teach youth a quite different lesson: that notions of democracy, of rule of law and of human rights may be contingent. More important, and in fragile states, it may also suggest a certain disrespect for the core principles on which a political order has been established and is operating. The consequences can be quite destabilizing for fragile states. For others it serves as a doorway through which the politics of ideological contests among states may be played out. And, indeed, the recent actions by states to increase surveillance and control of civil society elements funded or operating from outside the national territory speaks in part to this disquiet.

But this is not to suggest that the training of youth requires a vigorous suppression of alternative, global or comparative views. Such an extreme approach—not uncommon in states self consciously worried about the extent to which their own values may be viewed as legitimate or may otherwise be deeply embedded in national cultural and social life—is counter-productive. The more one suppresses the organized study of democratic, human rights and rule of law cultures elsewhere, the more fragile national culture may appear to youth. Rather, unless the state—and its leading intellectual, political, social and cultural leaders—is able to fashion a robust, coherent and deeply held basic line about the organization of democracy, human rights principles and rule of law, they will be incapable to teaching their youth the appropriate engagement in such principles and structures within the national context. This is not to suggest that such a basic line excludes debate about the application, history or other aspects of the basic line within the state. On the contrary such discussion should be welcomed. However, such discussion, in the context of training youth for effective participation in democratic space, is impossible if the state is incapable of teaching that complex of core values that frame and supports such democratic space within the national context.

It is not difficult to confuse a healthy cultivation of criticism and self-criticism, even in the context of the political education of youth, and a vigorous embrace of the foundational normative principles on which a state's democratic, human rights and rule of law framework is organized. That confusion is all too apparent in the West, but finds expression in some unfortunate errors in Marxist Leninist and theocratic states as well. Thus, for example, in the United States, it should be possible to consider the training of youth in the principles of U.S. democratic principles and the organization of the state while at the same time examining histories of striving toward the ideals of those principles as they have developed over the history of the state. Yet it is sometime unfortunate to conflate a sense of the failures of historically contextualized people to live up to present day understanding of political ideal as some sort of proof that the state and its system is corrupt, illegitimate or requires some sort of transition to another form of

political organization. But such critical teaching is possible only where there exists a consensus about the core authoritativeness and legitimacy of the fundamental principles that constitute a state's embrace of democracy-human rights- rule of law. And it is a necessary prerequisite to political education for such consensus to be cultivated.

Second, the discussion about consensus about the principles and character of democratic space with national characteristics suggests a second critical point. Youth may not receive appropriate instruction in such principles and characteristics in the absence of a corps of able faculty well trained in teaching these principles and characteristics. It is all too common, to consign education in national democracy to a marginal space. Alternatively, such instruction is viewed as a test of orthodoxy and imposed in a context in which learning through questions and discussion becomes dangerous. Beyond teaching capacity are those texts from which the subjects are imparted to students. Youth may be untrained but they are bright and smart. It is not hard for youth to discern faculty incompetence and worse mediocrity in the presentation of materials for instruction. When incompetent teachers and mediocre materials meet in a classroom the effect is as calculated as if agents provocateurs were sent into the class to undermine the political, social, rule of law and human rights legitimacy of the state. And the state can only have itself to blame. Worse, where deep division exists respecting core concepts, those uncertainties tend to be passed on to students as well—causing confusion or permitting the intervention of those who might seek to present students with alternative education. Even worse, the indifference of the state to the education of its youth in its core political, social, economic and cultural principles produces in students a sense of the indifference of the population to those values that serve as the foundation of the state. That, perversely, is undoubtedly an effective way of undermining democratic organization, respect for human rights and the operationalization of those principles through rule of law regimes. But again, note the difference between respect for core values and their socialization within a youth population, and the cultivation of effective engagement through those values—that is possible only where the core principles of democratic-human rights-and rule of law principles are deeply and positively embedded.

Consensus on basic values, teacher competence and sound materials provide the three basic ingredients for the sound education of youth for effective political engagement. Teacher training, a robust political discourse (within the constraints of national characteristics and forms of participation), and the preparation of sound materials are the three great tasks of any national effort to widen the democratic space and prepare youth for an effective role in decision making. To that end, each state must be able to approach the core set of universal principles embedded in Resolution 19/36 within their national characteristics. The role of international bodies thus becomes clearer. There is little that international bodies can do with respect to the hard conversations a polity must undertake to achieve core consensus on foundational principles. But international organization can help manage that conversation by providing those materials that may be useful as national leaders confront the possibility of dissonance in basic values and move forward from there. There is more that international bodies might do to provide a clearing house for training and materials that may be adapted by national educational institutions for the training of their youth. That focus might be a most useful allocation of time and resources for the Forum and its staff.

There is a caution here that is worth making explicit. Youth have an uncanny ability to see through hypocrisy. They quickly lose faith in systems that are inherently corrupt or are flabby when the issue of the connection of the operation of the state is contrasted to the ideals of its principles. In those instances all of

the high principles of democracy, human rights and rule of law will fall before the realities of the operation of the state that students see (and by seeing are taught as a lived experience in their daily lives). Students unconsciously are always eager to be taught *truth from facts*. The education of youth, therefore implies a larger obligation—that of ensuring that leaders undertake their own obligations—obligations grounded in a requirement of utmost fidelity to the core principles of their own systems, to strive to exercise governance in accordance with those principles they expect their youth to embrace.

B. The role of youth in politics.

Untrained youth make a poor pool of citizens on whose shoulders to place the responsibility for the protection of a state's core principles of democracy, of human rights and of rule of law. Training, and the cultivation of a shared set of core principles makes it easier to think through the issues of conceiving of a role for youth in decision making. That engagement presents opportunities and challenges.

First, the emphasis on elections is understandable. All states would welcome the strengthening of those procedures that, consistent with their own models of democratic organization, permit the expression of political rights through the exercise of elections, appropriately organized. It serves as the core connection between popular masses and those set out to rule over them. It provides the connection between those from whom power is said to derive and those vested with the exercise of that authority. It serves as a principal means for accountability and for shaping the individual face of the political apparatus. All youth can exercise considerable power through orthodox traditional engagement in electoral processes. The recent elections of President Obama in the United States serves as an interesting example.

Yet such an emphasis misses an essential element of democratic operation—and thus an important element in the project of widening the democratic space and engaging youth in decision making. Voting is sometimes a minor element of the exercise of power within modern democratic states—whether organized on Western models, as Marxist Leninist Party states or as democratic theological states. First voting has little relation to the exercise of oversight over the vast administrative apparatus that has come to exercise an increasing amount of administrative, judicial and legislative authority in every state. The relationship of mass democracy, of human rights and of rule of law to the administrative state—to its ideals and operation—is now at the center of the project of democracy, of human rights and of the shape and exercise of the rule of law. Yet the hyper focus on the rituals of voting for high officials—at any level of state organization—tends to effectively reduce the democratic state—a powerful and perverse irony that should not be lost on either states or international organizations. And indeed, the development of an international governance architecture—from regional human rights organizations, to the organs regulating trade, health, criminal activity and the like, further distances the exercise of democracy, human rights and the rule of law from that intimate relationship between voter and elected official.

Second, to widen the democratic space—whatever the national characteristics of democracy—for engagement in decision making by youth (and others!) requires states to refocus engagement from voting to the centers of rulemaking, of administrative discretion and of the embodiment of human rights concerns within the administrative regulations that tend to shape much of national life in virtually every state on earth. For Western states that requires a willingness to provide venues for (and education in) the means by which youth may comment on administrative regulation, may oversee and report corruption among

administrative officials, and ensure that the highest ideals of the state are exercised on an everyday basis by those who exercise authority in their name.

And indeed, the failures to engage in opening the democratic space in this respect might be understood as a cause for political instability. When popular discontent can find no outlet—where for example the mass line is ignored in Marxist States, where officials remain insulated in others, and where elected and administrative officials appear to betray core principles and engage in substantial corruption (at every level of the state, what the Chinese sometimes refer to as corruption by tigers and flies)—engagement in democratic space can turn into agitation. That agitation, in turn, can quickly move from an extraordinary action for reform and compliance with orthodox political principles, to action for overthrowing the political order itself. Widening youth engagement, then, improves political stability. But that effect is most pronounced where the state remains committed to its values and to ensuring an appropriate policing of its officials to ensure fidelity to the highest ideals of the state.

Lastly, youth engagement can serve as a means of ensuring that the state remain receptive to changes in the everyday conditions of life that may obligate it to change its policies to ensure that it complies with its fundamental obligations to its people. To that end, all states ought to think through measures that ensure spaces and procedures through which people—and especially its youth—can participate and be heard. That is especially important for youth for two reasons. First, youth provide a glimpse at changes in thinking and tastes, and in the way the world is understood, that is a harbinger of changes in the historical condition of a state. These in turn provide clues necessary for adjustment to ensure appropriate application of the national political line to the circumstances of the times—a good effective form of democratic exercise. Second, it provides a means by which the state may more fully engage with its youth population and teach by doing. Error or misperception may be better caught and corrected when it is made evident. And it may be made evident only where there is no fear of punishment. For Marxist Leninist states that means a commitment to the mass line and to correction rather than punishment. In Western states that may mean engaging government and societal forces to better and more effectively respond to criticism or embed effective engagement through more global discourse.

But this commitment to engagement also requires—from both the most advanced Western states, to theocratic and Marxist Leninist states—a form of commitment to make their administrative operations far more accessible to youth than is presently possible. In the West, the ability to effectively engage in democratic deliberations and to monitor and hold accountable administrative agencies is effectively impossible for youth, for the poor, for the uneducated, and for those without appropriate connections sufficient to make their voices meaningful. Those realities shrink the democratic space in the West as effectively as the withering of voting related democratic institutions. In Marxist Leninist states the failure to develop administrative mechanisms for a well-managed engagement by the people with officials that touch on administrative produces profound frustration that is unnecessary in light of the principles of the basic line of the party in power. In both, failures to make more effective intra-party democracy, in accordance with the characteristics of distinct political systems, also profoundly affect the ability of the state to maintain a vigorous and deeply held consensus about its core principles. In both cases, government appears increasingly remote from its people, and the traditional mechanisms for popular accountability—elections—less effective. In Marxist Leninist states the failure to vigorously implement the mass line, to failure to undertake the core obligations of political leadership, produces a similar effect.

With respect to each of these issues—the training of youth for effective participation, and the engagement of youth in politics—there are a number of areas identified here that are appropriate for dialogue and cooperation. Best practices are possible as well. The first step must involve the development of a sensitivity to the value of differences among states in the way in which they have developed legitimate approaches to democratic organization, the protection of human rights and the elaboration of rule of law architectures. That sensitivity is not limitless, but it does suggest that dialogue can help contribute to a better sense of those practices, however diverse, that may universally be understood as legitimate and those that are not. Both Resolutions 28/4 and 19/36 represent a step in that direction. Dialogue here is useful.

The Forum might help states work through their own engagement with their respective systems. Developing a national based consensus on core principles—grounded in international norms embraced by states—is an essential first step. From there a focus on teaching—teacher training and materials development—would produce profoundly positive effects. These require resources and the Forum might do well to explore the sources of such resources. For many developing states, it might be useful to consider the coordination between the work of the Forum and the lending policies and technical assistance capacities of international financial institutions (IFIs). Indeed, the relationship between such capacity building and public sector oriented lending and governance capacity building is already well understood but in need of substantially better coordination among actors. In that vein, of course, new enterprises, like the Asian Infrastructure Investment Bank, might serve as useful vehicles for providing the resources necessary for the foundational resource of good governance and a policy well instructed in its core ideological structures enhancing democracy, human rights and rule of law in their respective national contexts.

But such capacity, especially those efforts targeting youth and youth participation in robust democratic practices, one's appropriate for their respective national contexts, also require a fundamental re-thinking of the emerging systems of rights that tend to reduce access to knowledge. In particular, the transformation of knowledge creation from a human resource to property, especially property in the hands of publishers who are not the creators of knowledge, pose an increasingly serious risk to the ability of states to enhance the training of their youth in those core matters of democratic citizenship. This is not the place to debate the value of ownership of knowledge or of regimes of intellectual property. However, it is important to understand that the enhancement of the democratic space—whatever the national context—may be heavily dependent on the ability to access knowledge. And rising intellectual property regimes—with their pay walls and rationing of the highest products of global intellectual and national life, pose a challenge to the core mission of this Forum and the fundamental undertaking of enhancing democratic space and participation for youth.

Most important, perhaps, is the role of the Forum in coordinating its own work—and resource development—with the work of other special procedures. There is substantial overlap, for example, between the work of this forum and that of the Working Group for Business and Human Rights especially with respect to human rights and economic activity. And thus a last and quite specific suggestion—it may be useful to convene all special procedures to coordinate their respective mandates with the obligation to ensure that such work enhances fidelity to national and legitimate principles of democracy, of human rights, and of rule of law.

I hope these brief operations are of some use to the Forum and its staff. CPE, FLIA and I are happy to work with both going forward to the extent it is appropriate. I may be reached via email at lcb911@me.com. I look forward to hearing of the work of the Forum.

Sincerely,



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[The Coalition for Peace & Ethics](#) (CPE) serves as an institutional environment for an ideology free, non-partisan and independent investigation, analysis, scrutiny, research, inquiry, examination, and practice of peace and ethics. To that end, CPE will encourage and support boundary-pushing, multi- and interdisciplinary research that advances an understanding of issues relating to peace and ethics studies, including issues of constitutional governance, globalization, public and private economic activities and their social, cultural, economic, religious and political impacts.

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[Larry Catá Backer](#) (B.A. Brandeis University; M.P.P. Harvard University Kennedy School of Government; J.D. Columbia University) is on the boards of the PE and FLIA. He also serves as the W. Richard and Mary Eshelman Faculty Scholar and Professor of Law & International Affairs at the Pennsylvania State University, where he teaches courses in constitutional law, corporate law (including multinational corporations), transnational law, and International Organizations. His publications include *[Lawyers Making Meaning: The Semiotics of Law in Legal Education](#)* (Springer 2013), and *[Signs in Law, A Source Book](#)* (Springer 2014) (both with Jan Broekman), casebooks, *[Comparative Corporate Law](#)* (Carolina Academic Press, 2002) and *[Law and Religion: Cases, Materials, and Readings](#)* (West 2015, with Frank S. Ravitch), an edited collection of essays, *[Harmonizing Law in an Era of Globalization](#)* (Carolina Academic Press, 2007), and a number of articles and contributions to published collections of essays. The publication of the book *[Introduction to U.S. Law and Legal System](#)* (Carolina Academic Press) is forthcoming in 2016. Shorter essays appear on his essay site, "[Law at the End of the Day](#)."