

House Foreign Affairs Committee  
Tom Lantos Human Rights Commission



Hearing  
on  
Reducing the Risk of Mass Atrocities

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Chairmen McGovern and Hultgren, and other distinguished Members of the Commission – on behalf of the International Foundation for Electoral Systems (IFES), I deeply appreciate this opportunity to testify, and thank the Tom Lantos Human Rights Commission for holding this critical hearing series. My testimony will focus on the connection between the political empowerment of minorities and vulnerable groups and the prevention of mass atrocities.

“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 phrase from the Universal Declaration of Human Rights (UDHR) provides the foundation of IFES’ work. As a global leader in democracy promotion, IFES advances good governance and democratic rights by providing technical assistance to election officials; empowering the underrepresented to participate in the political process; and applying field-based research to the electoral cycle. For more than three decades, IFES has worked in over 145 countries to ensure there is a vote for every voice.

The ability for people to participate in elections free from the fear of harm is essential to inclusive, credible elections, and protected by the right to human security and universal suffrage. As all people in society gain a voice in who governs them and how they are governed, we increase the chances that governments serve the interests of all people and protect them from discrimination, intimidation, and violence.

At their core, elections are an exercise in non-violent conflict management, a contest of which ideas, policies and approaches serve society better. They are an alternative to violence as a means to determine who governs. However, because they are at the nexus of power and influence, those seeking power at any cost for self-interest and gain often use any means available to them to win elections. Sadly, mobilizing groups of people to commit acts of hate against others has become an all too common tactic in electoral politics today as has state-sponsored intimidation and violence. The use of social media to propagate disinformation and hate and the overall shortage of credible verification mechanisms have added a further layer of complexity. What political leaders often fail to realize is that once set loose, these powerful negative forces are difficult to rein back in and they may lead to a spiral of violence and even mass atrocities. These harmful trends violate the right to equality and dignity, and the right to personal safety, the right to assemble and associate, the right to participate in elections.

In today's testimony, I will cover two important factors that connect the election process and political violence:

1. Designing Inclusive Electoral Systems, Institutions and Processes
2. Role of Election Management Bodies (EMBs) in Preventing Hate Speech and Electoral Violence

## **I. Designing Inclusive Electoral Systems, Institutions and Processes**

### **Electoral Systems**

A well-designed electoral system can help mitigate conflict and create opportunities for accommodating rights of minorities and other vulnerable or disenfranchised populations. Conversely, a system that does not take into account disenfranchisement and does not promote inclusion, could result in severe harm and instability.

The main role of election systems is to translate the votes cast into seats in legislatures. Some systems favor large parties and some ensure that small parties also receive seats in legislatures. Some systems support intra-party cohesion and others create competition between members of the same party and lead to factions. Some systems require cross-party collaboration to form alliances needed to form government. And others lead to parties forming around ethnic or religious lines. In general, winner-take-all systems tend to favor dominant communities and exclude minority voices.

The following are examples of two systems that could enhance greater inclusion in democracies that face deep ethnic, religious or linguistic divisions. One is closed-list proportional representation (PR) and the other is reserved seats for ethnic, linguistic or other minorities.

1. Closed-list PR delivers highly proportional election results; is relatively invulnerable to gerrymandering; and is simple for both voters and electoral officials. South Africa's transitional 1994 election is often cited as a good example of this system and its benefits. This system also allows parties to place women or ethnic minorities in winnable places on their party list. But proportionality alone will not encourage accommodation or mitigate inter-ethnic tensions. Consider the case of Bosnia and Herzegovina (BiH). The different ethnic groups in BiH are represented in Parliament in proportion to their numbers in the community as a whole. Parties can rely exclusively on the votes of members of their own community for their electoral success, and therefore there is little incentive for them to behave accommodatively on ethnic issues. In fact, the incentives work in the other direction. As it is easy to mobilize support by playing the "ethnic card," major parties in BiH have every incentive to emphasize ethnic issues and sectarian appeals.
2. Reserved seats for ethnic, linguistic or other minorities is another electoral system design that promotes conflict management. This system explicitly recognizes the overwhelming importance of group identity in the political process, and mandates this in the electoral law so that ethnic representation, and the ratio of different ethnic groups in Parliament, is fixed. Many countries reserve a few seats for such groups: e.g., Jordan (Christians and Circassians), India (historically marginalized "scheduled" castes and tribes), Pakistan (non-Muslim minorities), Colombia ("black communities"), Slovenia (Hungarians and Italians), Taiwan (Aboriginal community). However, it is often argued that a better strategy is to design structures that nurture a representative and integrated Parliament naturally, rather than to impose members who may be viewed as "token" parliamentarians with representation but with no genuine influence.

The process of electoral system design should be transparent and include input from a wide range of stakeholders. A broad-based and inclusive process builds public confidence. Regardless of the system chosen, certain measures that impact party formation and behavior might also have an impact on protecting minority voices and mitigating or preventing violent conflict. For instance: What requirements should be imposed for parties contesting post-conflict elections or elections in countries with deep sectarian divisions? Should there be requirements for broad-based support across ethnic/geographic/religious spread? Should regional, religious-based, etc., parties be accommodated and if so, at what level of government and what are the risks? Should certain individuals such as those under war crimes investigations be banned from holding party office? Should codes of conduct for political parties include provisions that punish use of disinformation, hate speech, or incitement to communal violence and how should these codes be enforced?

### **Electoral Process**

Equally important for promoting inclusive democracy is safe and equal access to the entire electoral process for all people, particularly marginalized communities, beginning with a voter registry that is inclusive and representative of the entire population. Often, socially marginalized communities also tend to be politically marginalized and have barriers to access the voter registry. It is imperative that EMBs make every effort to include as large a percentage of eligible voters as possible. Identifying and removing barriers to disenfranchised groups from accessing polling places must become a standard part of electoral operations. Some strides are being made in terms of access to persons with disabilities through polling station accessibility audits, which provide a good model. Voting recognizes people as full citizens of their countries. Voting makes their voices heard. And registration and voting give them an opportunity to continue further into the political arena as election officials, civil servants and even elected representatives – all steps that are extremely important to achieve equality, non-discrimination and security. A word here about the importance of a robust and effective electoral dispute resolution system that prosecutes violations of electoral laws. Deterrence and rule of law matter in a society and that starts with elections. If political actors know they can get away with electoral violations, they have less incentive to stop once in office. Prosecution for electoral crimes is extremely low globally. This sets a precedent for impunity. If the rules governing the resolution of election claims are unclear or do not provide for effective remedies, or if arbiters are biased or poorly trained, the adjudication process can destabilize governments, undermine public trust, and engender violence. EMBs and those responsible for regulatory frameworks should ensure the compliance of electoral justice systems with international and regional public law obligations and promotion of effective and fair adjudication.

### **Electoral Institutions**

When it comes to formation of institutions such as EMBs and adjacent institutions that also have an impact on elections such as media commissions, human rights commissions, ministries of information, police and civil service – the more credible, competent and inclusive they are, the more they can contribute to genuine elections. In post-conflict and divided societies, institutions need to engender the trust of the various groups they seek to serve. A few important considerations:

1. EMB composition, who selects them and how inclusive this process is, is extremely important. Minorities should be reflected in senior positions in these institutions if gaining their trust is a priority. For example, the chairman of the Commission on Elections of the Philippines comes from the minority Muslim community, a fact that greatly enhances

public trust in the institution that must deliver a referendum relating to the Muslim Mindanao region next year. One of the three commissioners in the Election Commission of Sri Lanka comes from the minority Tamil community. In both cases, the individuals chosen are accomplished and competent which makes their role in the EMB much more than merely representative;

2. EMBs should ensure that they act independently, free from any political interference, as well as project this independence clearly;
3. EMBs should have adequate powers and checks and balances through effective election dispute resolution and complaints and appeals processes on these powers; and
4. EMBs should implement election management activities with competence as well as impartiality.

In terms of structure, there are three broad models of EMBs – independent, governmental and mixed. The independent model, where the EMB is not an entity that answers to the executive, is highly recommended for countries emerging from conflict or facing deep sectarian divisions. This model promotes trust especially as the EMB may need to protect the safety and security of any groups facing electoral discrimination or violence.

In cases where there is deep distrust between communities or conflict of interest such as in referenda, some international involvement may boost trust. Examples include Namibia (1989), Cambodia (1993), South Africa (1994), Timor-Leste (Popular Consultation in 1999 and Constituent Assembly in 2001), Afghanistan (2004), and more recently, related to the Bougainville referendum, where the referendum committee chair is an international election management specialist from Ireland. In other cases, fully national EMBs have overseen post-conflict transitions such as Burundi (2005). In most cases today, national EMBs organize elections in deeply divided societies. The Kosovo election commission has 11 members – the chair is a Supreme Court justice, six members are appointed by the six largest parties in the National Assembly (i.e., Albanian), one by Serbian parties in the Assembly, and three by the Turkish, Roma, Ashkali, Bosniak, and Egyptian parties in the Assembly.

## **II. Role of EMBs in Preventing Hate Speech and Electoral Violence**

Electoral Institutions have a critical role to play in protecting the right of minorities and preventing elections from being used as a platform to spread hate and incitement to violence. I recently co-authored an IFES white paper to help EMBs better understand the range of issues surrounding hate speech during the electoral cycle and the regulatory and non-regulatory options that may be brought to bear.

The IFES approach to this topic is based on international standards, foremost the UDHR and the International Covenant on Civil and Political Rights; but also International Convention on the Elimination of all Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on Rights of Persons with Disabilities, United Nations Declaration on the Rights of Indigenous Peoples, and Convention on the Prevention and Punishment of the Crime of Genocide.

EMBs should be aware of the full set of national constitutional provisions, articles of law, regulations, and key court rulings that address hate speech, along with any international obligations and where they fit into the hierarchy. By doing so, EMBs can better understand their obligations

and limitations under the law, the legal options available to them, and the mandated responsibilities of other institutions with which they might partner.

EMBs should always consider:

1. What can they as electoral institutions do directly under the law to combat hate speech?
2. What other government agencies and independent bodies have responsibilities to counter hate speech and with which they might collaborate on and coordinate a response?
3. What legal reforms might be needed to address gaps or inconsistencies in the law or to provide greater clarity?

EMBs need to be aware that regulatory responses to hate speech are controversial in that they involve restrictions on access to information, free speech, and even political and electoral rights. Fundamental guarantees such as free speech and anti-discrimination can come into conflict with each other and can be difficult to balance. As such, EMBs will need to tread carefully. Moreover, regulatory responses are fraught with a range of other potential problems, including definitional issues, implementation and enforcement challenges, and politicization and abuse of the law. EMBs will face additional considerations including the centrality of free speech and competing ideas to election campaigns, the need to maintain neutrality and treat candidates equally, the application of appropriate and proportionate penalties, and the need to provide for a safe electoral environment.

We also unequivocally state that incitement of hate directed against women, a phenomenon that has been exacerbated globally by social media, in the electoral process is indeed hate speech, as some national and international definitions tend to leave gender/sex out of the definition. Here it is important to refer to IFES' comprehensive violence against women in elections (VAWE) framework to address physical and psychological violence and intimidation against women.

It is the fundamental duty of an EMB to provide for a safe electoral environment. Globally, electoral violence is both widespread and diverse. In 2014, 27 countries spanning five continents experienced it, including states with long-standing democratic institutions (e.g., India) and those beset by fragility and conflict (e.g., Afghanistan). Too often, election campaigns provide a backdrop to violence and the commission of hate crimes (e.g., Nigeria, Kenya, Ethiopia, Sierra Leone, and Zimbabwe). Hate speech during campaigns does not automatically trigger electoral violence. Much depends upon contextual factors, such as history of violence in the country, prejudice and discrimination against minorities or certain marginalized communities, tenuous rule of law, corruption, abuse of state resources, weak judicial and electoral justice mechanisms, lack of independent media, and widespread disinformation and propaganda.

Hate speech during electoral campaigns increases the *risk* of electoral violence. EMBs, security actors, and others responsible for providing a safe electoral environment must be prepared to mitigate and manage this risk. To effectively mitigate and manage this risk, EMBs need to understand the links between hate speech and other variables in the electoral process, including electoral violence, electoral security and electoral integrity.

- **Electoral violence** is “any harm or threat of harm to any person or property involved in the election process, or the process itself, during the election period.”
- **Electoral security** is the process through which electoral stakeholders, information, events and property are protected from harm or threat of harm.
- **Electoral integrity**, as defined by the Kofi Anna Foundation's Global Commission on Elections, Democracy, and Security, refers to “any election that is based on the democratic

principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle.”

Hate speech, which is often accompanied by intimidation and incitement, can trigger physical and psychological violence that directly undermines electoral security and electoral integrity. Hate speech may lead to actions that are clearly defined as offenses in law and that may qualify as a “hate crime.” In other instances, the speech itself may carry criminal penalties. Integrating hate speech countermeasures into a more comprehensive electoral security and integrity strategy will require dedicated leadership, focused attention, and adequate resources.

In some cases, hate speech and hate crimes may be unleashed as an election tool by manufacturing offense as was demonstrated in Jakarta’s gubernatorial elections in 2017, where hardline organizations were able to mobilize mass support to defeat a candidate who was seen as offending the majority religion. George Cherian, a professor in the Department of Journalism at Hong Kong Baptist University, has coined the term “hate-spin” to describe “a double-sided technique that combines hate speech (incitement through vilification) with manufactured offense-taking (the performing of righteous indignation).” His insightful book, *Hate Spin: The Manufacture of Religious Offense and Its Threat to Democracy*, examines how politicians in India, Indonesia and the United States (U.S.), three of the world’s largest democracies, “have orchestrated the giving of offense and taking of offense as instruments in identity politics, exploiting the democratic and free speech space to undermine those very values.” Hate speech can also be used as a suppression tool against women and other marginalized groups, undermining free, fair, and inclusive democratic processes.

EMBs can use a combination of the following strategies to address hate speech and incitement to communal violence during elections:

1. **Engage other stakeholders:** Making inroads against hate speech will be contingent upon forming strategic partnerships and alliances and working collaboratively. To achieve greater scope, scale, and sustainable success, EMB strategies to counter hate speech will need to leverage the existing mandates, capabilities, and resources of government institutions, independent agencies, media, and civil society.
2. **Model good behavior:** The baseline of any EMB strategy to combat hate speech should be to ensure that it does not engage in or tolerate discrimination or hateful speech toward any individual or group by the members of the institution or any of its election staff (permanent and temporary). This modeling behavior will extend to human resources practices, internal and external communications, the substance of regulations, the provision of services, the content and delivery of public information and voter education messages, the handling of complaints and appeals, and advocacy directed at electoral reforms.
3. **Speak out against discrimination and hatred:** As public officials, EMB chairpersons and commissioners have a platform from which to speak out against hate speech. By speaking out, EMB leaders can help raise awareness of hate speech and its consequences, which, in turn, can help mobilize a public response. EMB leaders, especially when they have public confidence, are well-positioned to explain the dangers of hate speech and incitement to hatred to the electoral process and democracy.

4. **Open space for pluralistic public dialogue:** EMBs are in a position to create opportunities and promote activities that expand public dialogue and debate during election campaigns. This may involve providing airtime to a diverse set of stakeholders. EMBs should support public forums, such as televised candidate debates, town hall meetings, and roundtable discussions, that are designed to promote issue-based discussions.
5. **Contribute to learning:** EMBs face a challenge in designing and delivering better strategies, programs, and messages during elections when information is lacking about the extent to which various electoral stakeholders understand hate speech and how this affects their mindsets and behaviors. Investments in public opinion surveys and focus groups can help EMBs better understand how, in what manner and to what extent speech impacts behavior. Research is also essential to understanding what counterstrategies are effective in a given context.
6. **Monitor, collect and report data:** The monitoring, collection, and reporting of data on the occurrence of hate speech, as with instances of electoral violence, will also be essential to developing and putting into place effective risk-mitigation strategies and security plans, as well as informing investigation and adjudication processes. Government agencies and civil society actors may be involved in this process.
7. **Mitigate risk through security planning:** EMBs should apply available data on hate speech to mitigate electoral violence and safeguard the security of all electoral stakeholders. EMBs will need to engage various security actors in joint security planning and implementation. When police act as perpetrators or supporters of hate speech in elections, EMBs will need to collaborate with human rights commissions or police oversight commissions to hold them accountable. EMBs should also engage organizations and service providers addressing gender-based violence to effectively respond to the differential forms of violence against women and men in the electoral process.
8. **Adjudicate effectively and responsibly:** If EMBs are responsible for adjudicating cases involving hate speech and incitement to hate during election campaigns, EMBs will need to avoid the pitfalls encountered by other judicial and administrative bodies. These include slow adjudication, broad interpretation, inconsistent jurisprudence, political bias, legal overreach and abuse, disproportionate penalties, and non-compliance with international obligations.
9. **Train electoral stakeholders:** Typically, EMBs are involved in training a range of electoral stakeholders from their own personnel to political party representatives, candidates and their surrogates, nongovernmental organizations, police, and the media. Training programs should integrate themes relating to human rights, voting rights, non-discrimination, gender equality, protected and prohibited speech, what constitutes hate speech and incitement of hatred, and obligations under national law and international instruments.
10. **Raise awareness and educate voters:** Public information campaigns and voter education programs provide accurate information that dispels myths and misconceptions. Such efforts can help voters identify and address intolerance in their own lives and recognize and resist hate speech purveyed by officials, candidates and their supporters, and the media. Longer-term civic education is also important to raising civic literacy levels and reducing the public's vulnerability to hate speech and calls to violence.

**11. Advocate for a better legal framework to combat hate speech:** If domestic legislation is inadequate to the task of countering hate speech during the electoral period, if it presents challenges with respect to implementation, or if it fails to meet international obligations and best practices, the EMB should lend its unique perspective and expertise to legal reform efforts. Some EMBs shy away from electoral reform advocacy, citing the lack of any legal mandate to engage in such activities. At a minimum, however, EMBs should be able to engage in “information sharing” and “awareness raising” with lawmakers.

### **III. Recommendations:**

We ask the U.S. Congress to consider the following:

- IFES recommends that in the design of electoral assistance programs supported by the U.S. government, sufficient emphasis be placed on and resources allocated to (1) analyzing the potential for hate speech, hate crimes and violence against disenfranchised groups in elections and (2) devising interventions that could encourage and support both EMBs and networks of national champions for electoral security and democratic inclusion;
- IFES also recommends that when designing programs that address reconciliation and marginalization, the U.S. government consider the important role played by the electoral and political processes in both potentially exacerbating hatred and discrimination as well providing a venue for positive civic engagement and political empowerment; and
- IFES recommends that we, as Americans, set a high standard for ourselves, exerting every effort to eradicate any form of hate speech or intimidation from our own electoral process.

As Dr. Martin Luther King, Jr. said “Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate; only love can do that.” We need to deeply understand this love, this interconnectedness. Diversity is our strength. If we think of society as a body – we see millions of cells, with extraordinary diversity of forms and functions, all collaborating to make the existence of the human being possible. The principle that governs the functioning of the human body is not uniformity but rather unity in diversity. Could institutions then inspire societies and nations to think of themselves similarly and rise above sectarianism, and even nationalism, and seek a future where the dignity of each individual is respected and all people are able to safely assemble, associate and participate in government – so that truly the will of the people forms the basis of the authority of government?

Chairmen McGovern and Hultgren, thank you again for this opportunity to testify. On behalf of IFES, we are honored to partner with the U.S. Government and Congress, international aid organizations, and of course, people all over the globe in support of more peaceful and credible elections worldwide.