



# International Obligations for Elections

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*Guidelines for Legal Frameworks*

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International IDEA resources on electoral processes

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# Foreword

As head of the Department of Political Affairs and focal point for electoral assistance in the United Nations (UN) system, I am pleased to welcome the publication of International IDEA's most recent volume, *International Obligations for Elections: Guidelines for Legal Frameworks*.

Article 21 of the Universal Declaration of Human Rights states that, '[t]he 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'.

When these words were penned in 1948, less than half of the world's nations chose their leaders by elections. Now almost all countries do. However, no two electoral systems are exactly alike. As the UN General Assembly has stated on many occasions, there is no single model of democracy; there is no one size that fits all. While different, the range of democratic systems does share one important similarity—an intricate link with the civil and political rights and obligations enshrined in the UN Charter and various UN and regional instruments.

While it is each country's sovereign right to choose how to conduct its elections, UN Member States have agreed to abide by a set of obligations and commitments to protect and promote the electoral rights of their citizens. For example, in its resolution on 'Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization' (Resolution 68/164), the General Assembly recently reaffirmed the particular obligation to ensure that every citizen has the effective right and opportunity to participate in elections on an equal basis.

In his most recent report on electoral assistance to the General Assembly (A/68/301), the Secretary-General noted the impressive normative framework aimed at improving electoral administration worldwide, highlighting that most of the UN's work revolves around sharing and assisting in its implementation.

In that sense, these Guidelines will be an invaluable resource to the UN experts who have provided technical assistance in more than 110 countries over the last 25 years. This volume will also be an important tool for electoral observers, both international and national.

But I hope it will prove most useful to those overseeing and administering elections within UN Member States. It is not a recipe book for solving all problems, or a scorecard against which to determine legitimacy. Rather, as a consolidation of UN contributions to public international law, it is an invaluable guide to help all UN Member States understand and interpret the obligations they have signed up to. In this sense, we view these Guidelines as an instrument that can further strengthen national ownership of the electoral process.

I would like to commend International IDEA for its efforts in this important undertaking. I look forward to seeing this publication widely disseminated.

A handwritten signature in black ink, appearing to read 'J. Feltman', with a stylized, flowing script.

*Jeffrey Feltman*  
*Under-Secretary-General for Political Affairs*  
*United Nations Focal Point for Electoral Assistance*

# Preface

With its 2002 publication *International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections*, International IDEA pioneered a methodology for objective electoral law assessment and democratic reform advocacy. The Guidelines introduced checklists that offered user-friendly guidance to gauge legal framework compliance with ‘international standards’, which at the time were promoted as an amalgam of international obligations, political commitments and emerging international good practices.

Since 2002, UN General Assembly and Security Council resolutions have increasingly emphasized references to electoral processes. In parallel, UN Human Rights bodies have systematically reviewed State Parties’ compliance with the International Covenant on Civil and Political Rights and other international treaty obligations applicable to electoral processes, which has produced a wealth of jurisprudence clarifying how the UN review system monitors the implementation of treaty obligations in electoral practice. A number of relevant UN and regional instruments have also entered into force during this period, which has expanded the ambit of public international law over elections.

Until now, the implications of these developments in terms of states’ obligations to hold genuine elections have not been addressed comprehensively or systematically. This publication aims to fill this gap by highlighting the body of case law that has developed into authoritative UN treaty interpretations, thereby defining the international obligations for elections that are enshrined in UN treaties. The exclusive focus on UN instruments is meant to provide the widest possible legal reach. This approach, based on extensive legal research and consultation with different stakeholders, including the pertinent UN bodies, aspires to near-global applicability.

The new Guidelines are intended as a global reference tool, expanding on the legal basis of the user-friendly checklists, for national stakeholders that want to assess their electoral process vis-à-vis the obligations their state has voluntarily undertaken. The focus is, very deliberately, on national accountability—in particular, providing tools to help shape and reform legal frameworks for elections rather than promoting external assessments—and on building the necessary national ownership required for any sustainable reform process. Applicable treaties entrust the implementation of obligations contained therein to State Party responsibility. This includes the requirement to take positive measures to ensure the effective enjoyment of relevant political rights and fundamental freedoms by building an adequate rule of law framework.

The new edition's focus on international obligations thus maintains International IDEA's non-prescriptive approach in promoting the implementation of electoral processes and its efforts to strengthen the national ownership and integrity of electoral processes globally. This approach equally advocates an enhanced role for democracy, human rights and the rule of law in the post-2015 development agenda. Elections with integrity are a key and universal component of this dialogue, to ensure the legitimacy, transparency and accountability of democratic institutions that are called on to deliver that agenda.

Substantiating legal framework analysis through binding UN treaty obligations also aspires to support political momentum for democratic reform. The new Guidelines provide national legislators, electoral administrators and adjudicators, political parties and civil society groups with a wide array of UN jurisprudence to support recommendations for democratic reform. Electoral assistance and election observation can therefore operate within a holistic framework of democracy building, effectively assisting the partner countries to meet their sovereign obligations under public international law. By doing so, the Guidelines intend to promote a common understanding between national and international stakeholders regarding the obligations that State Parties are required to respect.

A handwritten signature in black ink, appearing to read 'Yves Leterme', with a stylized flourish extending to the right.

*Yves Leterme*  
*Secretary-General*  
*International IDEA*



# Acknowledgements

The Guidelines could have not been completed without the valuable and continued contributions made by many individuals and organizations.

First of all, our gratitude goes to the International IDEA colleagues whose advice and support helped us develop the Guidelines: in particular Kristen Sample for her invaluable leadership and support in bringing this production forward; the West Asia and North Africa Team, Ayman Ayoub, Shana Kaiser, Donia Ben Romdhane, Shaker Badr and Pola Samir Kamal for organizing the expert meeting in Tunis and the important commentaries in the drafting process; and Annette M. Fath-Lihic, Stina Larsrud and Vasil Vashchanka of the Electoral Processes Team for providing comments, comparative reflections and continued support. In addition, Massimo Tommasoli, Julian Smith, Sam Van der Staak, Sam Jones and Rumbidzai Kandawasvika-Nhundu offered important advice and comments.

Our special thanks go to the UN Department for Political Affairs and the Electoral Assistance Division for their constant support and advice throughout the drafting process, in particular to Craig Jenness, Armando Martinez-Valdes and Andrew Hyslop. This work benefited significantly from the commentaries and legal insights offered by Sir Nigel Rodley, chairperson of the Human Rights Committee.

The Guidelines were greatly enriched by the synergies and long-lasting mutual collaboration established with the Carter Center, and the inspiration provided by its Database of Obligations. We would like to express our gratitude to David Carroll, Avery Davis-Roberts and Elizabeth Plachta for their genuine collaboration and continued support.

We are also very grateful to the many electoral experts and practitioners who provided important input by clarifying the objectives of this production through the survey we conducted on the Practitioners Network of the ACE Electoral Knowledge Network.

The Guidelines would not have been the same without the quality inputs of the Expert Review Group. We would like to express our sincere appreciation and gratitude for the high-quality contributions of the experts and practitioners who participated in the workshop in Tunis and brilliantly reviewed the draft text of the Guidelines: Ali Al-Bayati, Pierre Claver Ndayicariye, Medhi Foudhaili, Miatta French, Makram Ouass, Chafik Sarsar and Tova Wang.

We also express our thanks for the comments and advice provided by Niall McCann of the UN Development Programme, Emanuele Giaufret of the European External Action Service, Pietro Ducci of the European Parliament, Beata Martin-Rozumilowicz of the Office for Security and Co-operation in Europe-Office for Democratic Institutions and Human Rights, Michael Svetlik of the International Foundation for Electoral Systems, Michael Meyer-Resende of Democracy Reporting International, Betilde Muñoz-Pogossian of the Organization of American States, Patrick Merloe of the National Democratic and María del Carmen Alanís Figueroa of the Federal Electoral Court of Mexico. The Guidelines also benefited from the valuable comments and feedback of the experts present at the Carter Center Expert Meeting Review: Julie Ballington, Donald Bisson, Meghan Fenzel, Jerry Fowler, Denis Kadima and Gilles Saphy.

Three experts in particular went the extra mile in helping to improve the publication, and added depth through their technical expertise and personal experience: Gillian McCormack, Rushdi Nackerdien and Antonio Spinelli.

Additional thanks goes to the Royal Norwegian Ministry of Foreign Affairs for its financial support through a grant that partially funded some of the activities of this project.

Last but not least, special thanks go to International IDEA's Publication team especially Nadia Handal Zander and Tahseen Zayouna as well as to the editors Kelley Friel and Andrew Mash for their excellent and meticulous work.

# Acronyms and Abbreviations

<b>ACDEG</b>	African Charter on Democracy, Elections and Governance
<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>ADR</b>	Alternative Dispute Resolution
<b>Afr.Comm.HPR</b>	African Commission of Human and Peoples' Rights
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>AU</b>	African Union
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment/ Committee Against Torture
<b>CCPR</b>	Human Rights Committee
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination against Women/ Committee on the Elimination of All Forms of Discrimination against Women
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights
<b>CMW</b>	Committee on Migrant Workers
<b>CoE</b>	Council of Europe
<b>CRC</b>	Convention on the Rights of the Child/ Committee on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities / Committee on the Rights of Persons with Disabilities
<b>CSO</b>	Civil society organization
<b>EAC</b>	East African Community
<b>ECCAS</b>	Economic Community of Central African States
<b>ECHR</b>	European Convention on Human Rights
<b>ECOWAS</b>	Economic Community of West African States
<b>EctHR</b>	European Court of Human Rights
<b>EDR</b>	Electoral Dispute Resolution
<b>EMB</b>	Electoral Management Body
<b>EU</b>	European Union
<b>HRC</b>	United Nations Human Rights Council
<b>IADC</b>	Inter-American Democratic Charter
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IDP</b>	Internally Displaced Person
<b>MWC</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>NGO</b>	Non-governmental organization
<b>OAS</b>	Organization of American States

<b>ODIHR</b>	Office for Democratic Institutions and Human Rights
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>PR</b>	Proportional Representation
<b>PVT</b>	Parallel Vote Tabulation
<b>SADC</b>	Southern African Development Community
<b>SG</b>	Secretary-General
<b>TSM</b>	Temporary Special Measures
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UN</b>	United Nations
<b>UNCAC</b>	United Nations Convention Against Corruption
<b>UNDP</b>	United Nations Development Programme
<b>UNDPA</b>	United Nations Department of Political Affairs
<b>UNEAD</b>	United Nations Electoral Assistance Division
<b>UNGA</b>	United Nations General Assembly
<b>UNSC</b>	United Nations Security Council
<b>UPR</b>	Universal Periodic Review

### **Additional Abbreviations used in the Tables of Jurisprudence**

<b>Art(s).</b>	Article(s)
<b>CO</b>	Concluding Observation
<b>Comm.</b>	Communication
<b>Doc.</b>	Document
<b>GC</b>	General Comment
<b>GR</b>	General Recommendation
<b>IE</b>	Independent Expert
<b>No.</b>	Number
<b>P.</b>	Point
<b>Para.</b>	Paragraph
<b>Res.</b>	Resolution
<b>SR</b>	Special Rapporteur
<b>SRSG</b>	Special Representative of the Secretary-General
<b>Vol.</b>	Volume
<b>WG</b>	Working Group

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**Part A**

**Rationale and  
Methodology**

# I. The New International IDEA Guidelines

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## 1. Introduction

This publication provides an up-to-date inventory of United Nations (UN) jurisprudence relevant to electoral processes. It organizes and cross-references international law applicable to elections in order to render it accessible to (and user-friendly for) the full spectrum of national and international stakeholders. This approach aligns with a number of initiatives that took place in the last decade to link election assessments to parameters set by public international law. In particular, the Guidelines complement the Carter Center's promotion of an obligation-based approach to observing and assessing electoral processes.<sup>1</sup> With these new Guidelines, International IDEA also hopes to contextualize electoral assistance within a holistic framework of democracy cooperation in which election observation, electoral technical assistance and national stakeholder engagement all embrace a universally agreed set of values that is in line with the international obligations that UN Member States freely commit to.

Aiming for a global scope, the new Guidelines rely exclusively on UN treaty law and related jurisprudence, bypassing equally valid instruments that have primarily regional application. The Guidelines link UN treaties, UN General Assembly (UNGA) and UN Security Council (UNSC) resolutions, as well as human rights body opinions and decisions, with each step of the electoral cycle. Its Tables of Jurisprudence and Checklists legally substantiate electoral implementation requirements with authoritative reasoning issued by competent UN institutions.

This approach facilitates methodical and comprehensive review by electoral stakeholders, including by electoral management bodies (EMBs), electoral dispute adjudicators, legislators, governments, civil society, donors, political

parties, technical assistance providers, democracy scholars, electoral observers and ordinary citizens. The Tables of Jurisprudence and corresponding Checklists empower national stakeholders, including voters, to refer to UN treaty body precedent when assessing their own legal framework, advocating electoral reform or filing complaints with competent UN bodies, once domestic remedies have been exhausted. The updated Guidelines also facilitate the application of election-related UN treaties, as well as precedent, by regional Treaty-based bodies, national and regional courts, and UN human rights actors.

## **2. How to use the Guidelines**

The Guidelines are divided into three parts. Part A, Rationale and Methodology, is subdivided into four sections. Section I addresses the Guidelines' rationale and methodology. Section II provides an overview of UN Charter-based bodies dealing with electoral processes and the binding documents that govern UN intervention in this field. Section III introduces the institutional and legal foundations of the UN Human Rights system and the treaty bodies that are empowered to issue authoritative interpretations of UN conventions. Section IV outlines 20 core building blocks for elections that can be distilled from UN treaty law.

Part B, Electoral Components and Tables of Jurisprudence, is split into 21 thematic chapters that chronologically address key components of legal frameworks for elections. Each chapter begins with a short narrative to provide guidance on how to use the subsequent Table of Jurisprudence. The tables are staggered to address analytical questions on each legal framework component. Highlighted concepts facilitate quick reference and issue spotting. The questions direct the reader to international obligations that flow from UN treaties, as well as to authoritative UN jurisprudence that interprets and applies the treaty obligations. In an effort to mainstream cross-cutting issues, a number of questions appear in both the chapter addressing the chronological steps of the process and the overarching thematic chapters.

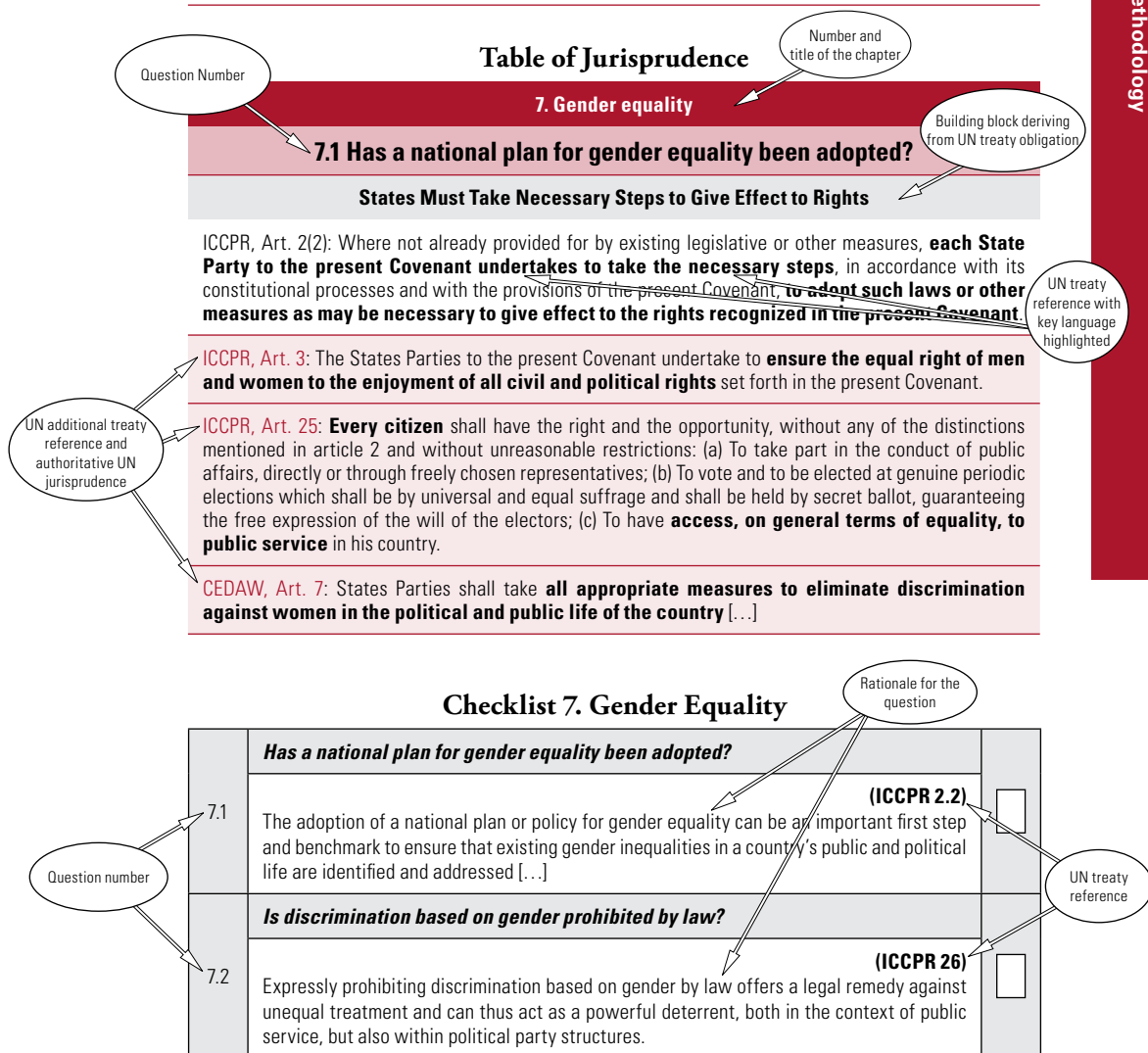
The questions selected do not cover the whole range of issues related to reviewing legal frameworks for elections; they instead refer exclusively to issues that are addressed by UN treaties and relevant case law, and therefore constrain national election administrations in States Parties to the UN treaties. Where appropriate, the Guidelines identify binding regional or sub-regional instruments that address aspects that have not yet been touched upon, or fully developed, by UN instruments.

The Checklists in Part C are designed as user-friendly reference tools that summarize the analytical questions raised in Part B. Building on the original Checklists developed for the 2002 edition, each question is now accompanied

by a brief explanation of its rationale, along with reference to applicable UN treaty articles. Questions are numbered to facilitate cross-reference between the Checklists and Tables of Jurisprudence.

The following figure illustrates the correspondences between the Tables of Jurisprudence in Part B and the Checklists in Part C.

**Figure I.1. How to use the Guidelines**



### 3. Rationale

Building on the lasting success of International IDEA's 2002 *International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections*, the updated and expanded edition incorporates advances made in the last

decade regarding the adoption of UN treaties, instruments and jurisprudence applicable to elections. The 2014 edition thus offers national and international stakeholders a user-friendly reference tool to assess legal frameworks against UN treaty obligations and precedent in the field of democratic elections. By doing so, International IDEA also hopes to encourage the relevant UN institutions to review those aspects of the electoral process that may require additional interpretation.

The 2002 Guidelines' format for legal framework assessment remains valid. Developed jointly with the Organization for Security and Co-operation in Europe and its Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the 2002 Guidelines pioneered the checklists, some of which were inspired by the electoral rights contained in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The 2002 edition branded those obligations as 'standards'. Its checklists provided election observers, civil society and political actors with an objective baseline with which to assess the completeness of national legal frameworks for elections, and thus influenced election observation methodology by offering a uniform structure for analysis and reporting. Technical election assistance providers have also relied on the 2002 checklists to conduct needs assessments.

The 2014 Guidelines aim to empower EMBs, lawmakers, governments, candidates, election judges, civil society and other national stakeholders with assessment indicators that are based on the international obligations to which their state has subscribed. Through its innovative Tables of Jurisprudence and revised Checklists, the Guidelines facilitate in-depth assessment of national framework compliance with UN treaty provisions and jurisprudence on elections by offering key treaty law and interpretative reference for every issue addressed by UN institutions. Such assessments will promote greater transparency in the work of EMBs, as well as strengthen their independence and ownership by further anchoring their work in binding international law. The Guidelines also provide electoral stakeholders and civil society organizations with international legal grounds on which to petition national courts. Once national recourses are exhausted, the Guidelines can help substantiate complaints before competent UN institutions.

#### **4. From standards to obligations**

The Guidelines solely rely on UN treaties and resolutions, and authoritative interpretation thereof, as well as the applicable case law of relevant treaty bodies. While the Guidelines recognize the significance of regional and sub-regional obligations on elections, these are not included in the Tables of Jurisprudence in order to maintain their near-global application and establish a minimum common denominator for election-related obligations for all UN treaty signatory

states and their EMBs. The Guidelines recognize that electoral observation assessments can be based on additional regional instruments and commitments. However, by focusing on UN treaty obligations and the jurisprudence that flows from them, the Guidelines aim to clarify universal benchmarks for States Parties to UN treaties, thereby inspiring global confidence in consistency, objectivity, impartiality, accuracy and professionalism in the assessment of legal frameworks for elections.<sup>2</sup> Guideline users can thus instantly determine whether or not alleged flaws in their legal framework for elections are subject to UN treaty obligations, and whether they could be legally contested as such. Legal framework assessment thus stands on firm legal footing, avoiding what national stakeholders often perceive as ‘foreign standards’, or worse, ‘double standards’. Promoting the legally sound term ‘obligation’ over the unclear notion of ‘standards’ fosters national ownership of electoral reform by exposing its relationship with sovereign treaty commitments.<sup>3</sup>

International IDEA hopes that its Guidelines will ultimately promote legal framework compliance with binding international obligations, since UN conventions can be applied objectively, thus eliminating assessment bias. The Guidelines strive to depoliticize framework analysis by offering an objective and globally applicable self-assessment tool for all national stakeholders interested in evaluating their home state’s level of compliance with its sovereign obligations. The Guidelines are thus devoid of ‘standard’ or ‘good practice’ terminology; questions are formulated only on topics that UN Member States have consensually framed in treaty law and entrusted to UN institutions for authoritative interpretation.

## **5. From an event-driven to a process-oriented approach**

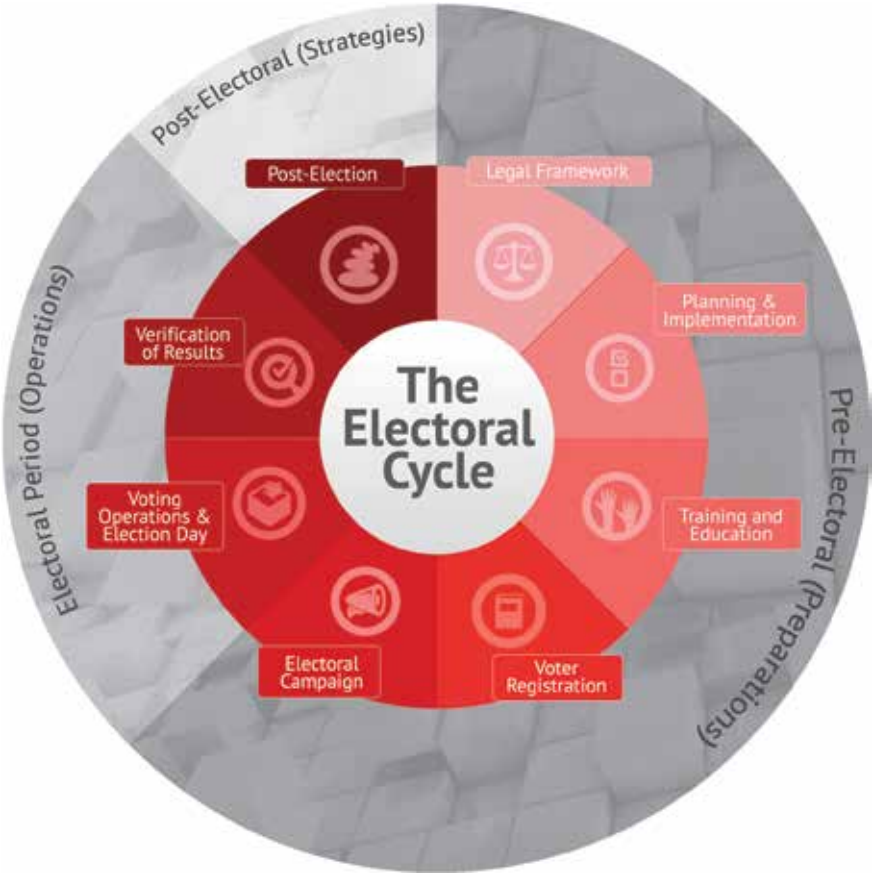
While the Guidelines can be used to analyse isolated aspects of election legislation, the International IDEA methodology assesses legal frameworks for elections as a whole, including ancillary norms that have an indirect bearing on electoral processes and outcomes. As the 2002 edition explained, the legal framework for elections is broadly defined as comprising normative and other elements that govern electoral processes, from international agreements to constitutions and electoral laws, and from EMB decisions and directives to all laws and regulations that have a direct or indirect implications for the process. The Guidelines’ holistic approach is consistent with International IDEA’s historical interpretation of elections as a continuous and interconnected set of activities that start years before, and end long after, election day. The cyclical approach is now embraced by UN resolutions and all major international organizations involved in democracy support.

This electoral cycle approach—as developed in previous International IDEA publications and tools in cooperation with European Commission and

United Nations Development Programme (UNDP) experts—visualizes sequential and interdependent steps, components and phases that make up electoral processes. The International IDEA Guidelines largely follow the breakdown of electoral cycle components, according to the structure of the ACE Electoral Knowledge Network Encyclopaedia, while supplementing chapters that cover cross-cutting themes. The holistic approach reinforces the legal underpinnings of each cycle segment.

When analysing legal frameworks, paying specific attention to the national evolution of legislation can help identify the genesis of anomalies or inconsistencies, as well as lend credence to electoral reform advocacy efforts. Furthermore, placing the electoral process within its historical, cultural, legal, administrative and electoral tradition, with its own specific underlying social factors and political interests, as well as security and logistic constraints, can help ensure that reform is sustainable and acceptable to all stakeholders.

**Figure I.2. The electoral cycle**



Source: International IDEA



## **II. The Sources: UN Charter-based Bodies and Instruments**

### **1. Rationale**

The UN's history and mandate are closely linked to electoral processes. In the late 1940s, shortly after its founding, the UN observed elections in the Korean Peninsula. Since the 1960s, elections have played a central role in the implementation of the UN mandate to maintain peace and security. Pursuant to this mandate, a number of UN agencies deal with elections from different, yet linked, perspectives.

The Guidelines invoke UN instruments and jurisprudence applicable to electoral processes in order to help UN Member States and their national stakeholders build and improve legal frameworks for elections that are in line with their obligations under the UN system.

The UN framework provides the only set of obligations of universal relevance, as UN membership entails acceptance of UN Charter obligations.<sup>4</sup> All States Parties to the Charter are bound to its purpose, including the promotion and encouragement of respect for human rights and fundamental freedoms.<sup>5</sup> UN engagement in furthering human rights and fundamental freedoms has generated the international treaties that form the basis of the Guidelines.

The UN system distinguishes between Charter-based and Treaty-based human rights bodies. Given that the UN Charter itself is a treaty, such a distinction can be misleading, yet it helps differentiate institutional mandates and competences, thereby offering a clearer overview of the various instruments available to national stakeholders when assessing or claiming alleged violations of electoral rights.

## **2. The UN Security Council**

The UN Charter confers on the UNSC primary responsibility for the maintenance of international peace and security, and as such mandates it to enforce the Charter.<sup>6</sup> UNSC membership is currently limited to 15 states, including its five permanent members. The Charter provides that substantive UNSC decisions require the support of nine members, including the concurring votes of its five permanent members, which effectively vests the latter with veto power.<sup>7</sup> Within its mandate to maintain or restore international peace and security, the UNSC can take measures such as freezing assets or imposing travel bans on individuals who have manipulated or obstructed electoral cycles. The UNSC has even authorized military force to remove an outgoing head of state who refused to concede defeat in an election certified by a UN mission.<sup>8</sup> It can also call on regional bodies to enforce its resolutions, since as States Parties to the Charter, UN Member States agree to carry out UNSC decisions. However, only the Member State to which the relevant resolution is directed is obliged to implement the resolution. Within the ambit of restoring peace and security, the UNSC can also use deterrents that other UN bodies lack.

### **2.1 The UN Security Council and electoral processes**

Until the late 1980s, the UN did not directly engage in organizing elections; it only observed, supervised and sometimes certified elections through the activities of the Trusteeship Council.<sup>9</sup> At the end of the Cold War, the UNSC began to mandate UN peacekeeping missions to support national authorities with implementing elections. Thus, resolutions started to insist on a stable, secure and peaceful environment for their conduct. As a result, between the late 1980s and early 1990s, the UN found itself engaged in three major types of electoral missions: the organization and conduct of elections (e.g., Cambodia in 1993), the supervision and control of elections (e.g., Namibia in 1989), and the verification of electoral processes (e.g., El Salvador in 1994).

Over time, UNSC resolutions addressing elections have covered a wide range of concerns, from early resolutions exhorting the rejection of ‘sham election results’ in Rhodesia,<sup>10</sup> to demanding respect for the results of elections that the UN helped implement. In the last two decades, the UNSC has regularly resorted to elections as a strategy to resolve internal Member State disputes.<sup>11</sup> It has called on national authorities and stakeholders to proceed with referendums or national, provincial and even local elections. It has also urged authorities to advance constitutional and legal reform that is relevant to elections. On a more technical level, it has demanded the timely appointment of independent and impartial election commissioners, pressed governments to register voters on a timely and inclusive basis, stressed the importance of fair access to a free private and public media for all candidates, and insisted on effective voter information campaigns.

Within this new paradigm, the UNSC requires that electoral processes abide by their respective constitutional order, political party codes of conduct, civilian control of the military, humanitarian law and applicable international obligations.

The language used in UNSC resolutions to qualify elections has progressively evolved and become more comprehensive. Adjectives such as ‘transparent’, ‘inclusive’, ‘open’ and ‘credible’ have been added to define the meaning of the notion of ‘free and fair’, and this terminology has become a consistent feature of UNSC wording on elections. Other qualifications, such as ‘genuine’, ‘competitive’ and ‘democratic’, have made occasional appearances, but have not hardened into permanent criteria. Struggling to uphold elusive election dates, and facing the cost of prolonged peacekeeping operations that indefinite election postponements entail, the UNSC also began to insist on the ‘timely’ holding of polls. Since 2001, the UNSC has also consistently demanded respect for human rights and the rule of law in electoral contexts, and it systematically references its own Resolution 1325 on Women in Armed Conflict. Resolution 1325 urges Member States to ensure the increased representation of women at all decision-making levels in national, regional and international institutions.

UNSC resolutions offer a wealth of international jurisprudence on the conduct of elections, given the UNSC’s discretion in making recommendations and decisions even beyond treaty obligations. The Guidelines thus cite UNSC precedents in areas neglected by thematic treaties, such as enfranchisement of refugee populations, acceptance of election results and defining the periodicity of elections. UNSC resolutions are archived and searchable by keyword in the UN Official Documents Search database at <<http://www.un.org/en/documents/ods/>>.

### **3. The Department for Political Affairs and the Electoral Assistance Division**

Established in 1992 as part of the UN Secretariat,<sup>12</sup> the UN Department for Political Affairs (UNDPA) monitors and assesses global political developments in an effort to detect potential crises before they escalate, and devises effective responses. The UNDPA provides close support to the Secretary-General and his envoys, as well as to UN political missions deployed to areas of tension around the world with mandates to help defuse crises or promote lasting solutions to conflict. The Under-Secretary-General for Political Affairs, who acts as the UN system-wide Focal Point for electoral assistance, is the head of the UNDPA.<sup>13</sup>

In 1991, the UNGA approved the Secretary-General’s proposal to establish a specialized electoral assistance unit, which was later elevated to a Division

within the UNDPA: the UN Electoral Assistance Division (UNEAD).<sup>14</sup> The UNEAD provides support to the UN Focal Point and ensures coherence and consistency across the UN entities that provide electoral assistance in the field.<sup>15</sup> Among its mandated tasks, the UNEAD evaluates UN Member State requests for assistance and coordinates the related UN Focal Point's response, coordinates assistance activities within the UN system and with other international actors involved in this field, and formulates UN policies and guidelines on electoral matters. Further, in association with other UN entities, it sets the broad parameters for electoral assistance projects.

Apart from peacekeeping or special political mission settings that require a UNSC mandate, electoral assistance projects are implemented in the vast majority of cases by the UN system's specialized agency, UNDP. UNEAD also builds the UN Secretariat's institutional memory, liaises with UNDP and other assistance actors such as International IDEA on other knowledge products and policy-related publications, and manages a roster of international electoral assistance experts that is utilized by all UN entities that deliver electoral assistance activities. It also liaises with regional and other intergovernmental organizations to ensure appropriate working arrangements.

The UNGA regularly reaffirms and regulates the roles of the UN Focal Point and UNEAD in electoral assistance through biennial resolutions. Since 1992, more than 110 requests for assistance have been received and met through the specialized work of UNDP and other UN agencies.<sup>16</sup>

### **3.1 Types of UN electoral assistance**

All UN electoral assistance is based on either UNSC or UNGA mandates or an official request from a Member State. The Focal Point, on behalf of the Secretary-General, must consider all requests and make a decision before the UN system provides (or makes any commitment to) electoral assistance. Needs assessments are carried out by the UNEAD in its role of supporting the Focal Point.

Since 1992, demands for UN electoral assistance have grown exponentially, as have the duration and complexity of operations. This is part of the overall evolution towards process-oriented approaches to assistance—which in turn complements the promotion of national ownership of electoral processes.

UN electoral assistance is provided on the basis that there is no universal model; programmes are tailored according to the specific needs of each requesting Member State. The UN provides a range of electoral assistance activities, from the organization and conduct of elections or the certification of elections (both require a UNSC or UNGA mandate and are extremely rare) to the deployment of expert panels, operational support to international observers or support in creating a conducive environment.

The most common form of assistance is technical assistance, which is defined as legal, operational and logistical assistance to develop or improve electoral laws, processes and institutions.<sup>17</sup> The range of technical assistance provided by the UN has expanded as its experience has grown and Member State requests have become more complex and specific. Technical assistance can be provided in areas such as electoral administration and planning, review of electoral laws and regulations, electoral dispute resolution, boundary delimitation, voter registration, election budgeting, logistics, procurement of election materials, use of technologies, training of election officials, civic and voter education, voting and counting operations, election security and coordination of international donor assistance.

The UNDP is the organization's major implementing body for technical assistance. Its support is largely funded by voluntary contributions by UN Member States and regional bodies such as the European Union (EU). The UNSC regularly appeals to UN Member States to contribute funding for assistance to electoral processes in post-conflict and transitional contexts through the UNDP and other UN entities that provide electoral assistance, including the UN Office for Project Services, UN Women and the UN Volunteer Programme. The 2012 UNGA Resolution 66/163 requested that UNDP continue its democratic governance assistance programmes in cooperation with other relevant organizations, in particular those which promote the strengthening of democratic institutions and linkages between civil society and governments.<sup>18</sup>

Mandates for observation and supervision, under the scope of broad electoral support, were often given to the UN in the early days of its electoral assistance involvement—particularly accompanying decolonization processes—but are no longer very common. Election observation and supervision respond to requests for the UN to assess or even validate the integrity of an electoral process. Such mandates are inherently political, and thus always based on UNSC or UNGA decisions. Although infrequent, these mandates can be an additional tool for national actors to overcome specific post-conflict or confidence crises, and provide interested UN organs with an assessment of the process for their future deliberations. On rare occasions, the UN has accepted mandates to certify electoral processes.<sup>19</sup> In other cases, a small UN panel may be sent to monitor a country's electoral process and issue an internal report to the Secretary-General.

In very exceptional cases, the UN may be fully in charge of organizing elections within a Member State. This occurred in Cambodia (1992–93)<sup>20</sup> and Timor-Leste (2001–02).<sup>21</sup> More often, UN experts form part of national or ad hoc electoral administration bodies, wherein the responsibility is shared between the Member State and the UN. This was the case in South Africa<sup>22</sup> and Mozambique in the 1990s,<sup>23</sup> in Afghanistan in 2004–05<sup>24</sup> and in Iraq

in 2005.<sup>25</sup> These cases are very particular and must be considered within the transitional contexts in which they took place. As a rule, the UN generally takes a supporting role in assisting national electoral administrations.<sup>26</sup>

## **4. The UN General Assembly**

Established in 1945 by the UN Charter, the UNGA operates as the chief deliberative, policymaking and representative UN organ. Composed of all UN Member States (193 at the time of writing), it plays a significant role in setting standards and codifying international law, having ushered the adoption of the ICCPR, among other international human rights treaties.

The UNGA is mandated to promote and encourage respect for human rights and fundamental freedoms by initiating studies and making human rights recommendations.<sup>27</sup> It can thus be seen as the main source of all human rights treaties within the UN system. The UNGA may also consider and approve the UN budget and establish the financial assessments of Member States, consider and make recommendations on the general principles of cooperation for maintaining international peace and security, and make recommendations for the peaceful settlement of any situation that might impair friendly relations among nations.<sup>28</sup>

The UNGA examines human rights questions, including reports of Special Procedures of the Human Rights Council (see below), through its Third Committee. The Committee also discusses the advancement of women, indigenous issues, the rights of persons with disabilities, the treatment of refugees, the promotion of fundamental freedoms through the elimination of racism and racial discrimination, and the right to self-determination.

### **4.1 The UN General Assembly resolutions on electoral processes**

The UNGA adopted its first resolution that exclusively elaborates on electoral processes at its 43<sup>rd</sup> session in 1988. The instrument has since evolved into a standing resolution that the Assembly periodically passes every two years, fine-tuning and adapting it to changing contexts. Initially, the resolution—entitled ‘Enhancing the effectiveness of the principle of periodic and genuine elections’—addressed the organization of initial election cycles in nascent democracies.

In 1995 it was renamed ‘Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization’. It defined the mandate and scope of UN electoral assistance and established the UN Focal Point for Electoral Assistance. Between 1991 and 2006, the resolution was adopted almost in tandem with a second resolution, entitled ‘Respect for the principles of

national sovereignty and non-interference in the internal affairs of States in their electoral processes'. The latter resolution aimed to uphold national sovereignty against international involvement in electoral processes. Since 2007, only the former resolution has continued to be passed on a biennial basis. An examination of the evolution of the wording of the initial resolution in Table II.1 reveals the progressive changes and adjustments in the conceptualization of electoral processes by the UN.

Between 1992 and 2010, the resolution 'Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization' held that the fundamental responsibility for organizing elections lies with the governments of Member States. For the first time in 2013, the UNGA reaffirmed the 'obligation' of Member States to take all appropriate measures to ensure that every citizen has an effective right and opportunity to participate in elections on an equal basis.

The evolution of the UNGA periodic resolution reflects the development of electoral practice as well as a new understanding of the theoretical underpinnings of broad democracy support. Since 2001, the resolution has augmented the qualification of 'free and fair' with 'periodic and genuine', and in 2009 it added 'respect for the freedom to seek, receive and impart information, in accordance with the ICCPR', also noting 'the fundamental importance of access to information and media freedom'.<sup>29</sup> Also in 2009, the UNGA began citing transparency as a fundamental feature of 'free and fair' elections.<sup>30</sup> In 2011, the Assembly recognized the importance of allocating adequate resources to the organization of efficient and transparent elections at the local and national levels.<sup>31</sup>

The gradual evolution of the resolution's language also demonstrates a shift towards cyclical and process-oriented types of support. In 1994, the UNGA first recommended that 'the Electoral Assistance Division provide post-election assistance to States that request such assistance, and to electoral institutions, in order to contribute to the stability and continuity of their electoral process'.<sup>32</sup> In 1997, the resolution recognized that future electoral processes would require 'reassessment and adaptation of the forms of assistance routinely provided previously, in particular to meet the needs of supporting subsequent elections'.<sup>33</sup> In 2007, the resolution first used the term 'electoral cycle',<sup>34</sup> and since 2009 it has called attention to the sustainability and cost-effectiveness of electoral assistance projects, specifically those which concern electoral technology.<sup>35</sup>

The resolution's 2013 edition invites electoral assistance providers to ensure the inclusion of marginalized groups, especially persons with disabilities, to allow the electoral participation of all citizens on an equal basis. The

resolution, however, stops short of referring to the Convention on the Rights of Persons with Disabilities.

**Table II.1. The evolution of the resolution's language through its specific key concepts**

General Assembly Resolution ‘Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization’																	
	1988	1989	1990	1991	1992	1993	1994	1995 <sup>36</sup>	1997	1999	2001	2003	2005	2007	2009	2011	2013
Qualification of electoral processes																	
Periodic and genuine elections by universal suffrage and secret vote or equivalent free voting procedures																	
Free and fair elections																	
Free from coercion and intimidation, respect for the results																	
Freedom to seek, receive and impart information, access to information and media freedom																	
Free from tampering of vote counts, state responsibility in sanctioning such acts accordingly, efficient and transparent elections at local and national levels																	
Transparency is a fundamental feature of free and fair elections																	
State responsibilities and obligations																	
State responsibility for organizing, conducting and ensuring elections																	
State obligation to take appropriate measures to ensure that every citizen has the right and opportunity to participate in elections on an equal basis																	
From electoral event to electoral cycle																	
Electoral event/short-term view and ad hoc intervention																	
Electoral process/long-term view, intervention to support the consolidation and sustainability of the process																	
Electoral cycle approach																	
Coordination and best practice promotion																	
Coordination of efforts among UN actors, intergovernmental and regional organizations																	
Coordination with intergovernmental and regional organizations and best practice sharing and promotion																	
International legal framework for elections																	
Reference to UDHR																	
Reference to ICCPR																	
Reference to CEDAW, ICERD																	
Reference to international obligations																	
Reference to human rights																	
Reference to international law																	



## 5. UN Human Rights Council

The UN Human Rights Commission, precursor of the current Human Rights Council (HRC), was set up by the UN Economic and Social Council within its mandate to promote respect for human rights and fundamental freedoms, including the setting up of commissions for the promotion of human rights.<sup>37</sup> The HRC was formally created by a UNGA resolution in 2006<sup>38</sup> and is therefore considered a UN Charter-based intergovernmental body.

The HRC is empowered to prevent abuses, inequity and discrimination; protect the most vulnerable; and expose perpetrators. It is composed of 47 UN Member States, and is elected by the UNGA and meets in Geneva for ten weeks annually. Council membership is based on equitable geographic distribution.<sup>39</sup>

The Office of the High Commissioner on Human Rights (OHCHR)<sup>40</sup> and the HRC operate under separate UNGA mandates. Nevertheless, OHCHR provides substantive support for HRC meetings and follow-up to their deliberations.

The HRC has contributed to a number of key UNGA resolutions on the protection of political participation, reminding Member States of their international treaty obligations as they relate to the conduct of elections. One of its resolutions urges all states to ensure that no individual's right to participate in the political and public affairs of his or her country is suspended or conditioned, except on objective and reasonable grounds, which are established by law and 'in conformity with international law'.<sup>41</sup>

HRC documents offer further clarification of human rights obligations in areas that are neglected by thematic treaties and treaty body authoritative interpretations.<sup>42</sup> Although the Guidelines cite a number of HRC documents, the HRC's potential seems largely untapped as it relates to electoral processes. Through its individual complaints procedure, citizens and non-governmental organizations (NGOs) from UN Member States can submit complaints on gross and consistent violations of their human rights, including their political and civil rights.

### 5.1 Human Rights Council Special Procedures

Special Procedures denote the mechanisms established by the disbanded Human Rights Commission and assumed by the HRC to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. Special Procedures

are either conducted by an individual—a special rapporteur, representative or independent expert—or a working group, all of which are appointed by the HRC.

As of 1 October 2013, there were 37 thematic and 14 country mandates. They report annually to the HRC, and a majority also report to the UNGA. They are sometimes the only mechanism that will alert the international community on certain human rights issues. So far, no thematic Special Procedure has been created solely for elections, although country-specific Special Procedures have reported on elections, and are cited as such in the Guidelines.

Special Procedures documents can be searched by keyword in the OHCHR Universal Human Rights Index at <<http://uhri.ohchr.org/en>>.

## **5.2 Human Rights Council Universal Periodic Review**

Universal Periodic Review (UPR) involves assessing the human rights records of all UN Member States.<sup>43</sup> The UPR mechanism aims to improve the human rights situation in all countries and address human rights violations wherever they occur. It is a Member State-driven process under HRC auspices, which provides the opportunity for each Member State to declare what actions they have taken to improve their human rights situation and fulfil their human rights obligations. Despite the state-driven nature of the exercise, NGOs have many opportunities to take part and influence the UPR process.<sup>44</sup> As one of the main HRC features, UPR is designed to ensure equal treatment for every reviewed Member State. No other universal instrument of this kind currently exists.

By October 2011, the human rights records of all UN Member States (193 at the time of writing) had been reviewed through the UPR mechanism. In order to formalize the review process, the HRC resolved to vest itself with the power to adopt resolutions and decisions. It also envisions other outcomes, including recommendations, conclusions, summaries of discussions and President's Statements.

The UPR process allows the HRC to remind states of their responsibility to fully respect and implement human rights and fundamental freedoms. The HRC can address, as appropriate, cases of persistent non-cooperation using Special Procedures mechanisms. The Guidelines cite UPR reasoning to illustrate how Member States have been reminded about their obligations in electoral matters.

UPR documents can be searched by keyword in the Universal Human Rights Index at <<http://uhri.ohchr.org/en>>.

### 5.3 The Human Rights Council Complaints Procedure

The HRC complaints procedure is available to individuals subject to the jurisdiction of UN Member States and complaints can be brought against any Member State. It was established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. In 2007, a new complaint procedure replaced the former 1503 procedure.<sup>45</sup>

The complaints procedure is initiated by confidential communication addressed to the HRC in one of the six UN official languages.<sup>46</sup> Individual Communications, or a series of communications, can allege consistent patterns of gross and reliably attested violations of UDHR rights. Any person or group that claims to be a victim of violations of human rights and fundamental freedoms can submit a complaint. Any person or group of persons, including NGOs, acting in good faith in accordance with the principles of human rights, can also submit a complaint on behalf of victims. Reliably attested communications are not inadmissible solely because the knowledge of the individual authors is second-hand, if they are accompanied by clear evidence, although complaints cannot be solely based on media reports.

Complaints to the HRC of violations of human rights and fundamental freedoms are admissible provided that domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged. Complaints cannot be manifestly politically motivated, and their object must be consistent with the UN Charter, the UDHR and other applicable human rights legal instruments. Furthermore, the complaints procedure should not be mandated to seek remedies in individual cases or provide compensation to victims. Complaints cannot relate to cases already being dealt with by a Special Procedure, treaty body, or other UN or similar regional human rights complaints procedure. Throughout the steps of the procedure, the HRC aims to enhance and ensure cooperation with the concerned state.

The HRC can decide to discontinue reviewing the situation when further consideration or action is not warranted. It may also discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the issue. Alternatively, it can keep the situation under review and request that the Member State concerned provide further information within a reasonable period of time, or keep the situation under review and appoint an independent expert to monitor the situation and report back to the HRC. Finally, it can recommend that the OHCHR provide technical cooperation, capacity-building assistance or advisory services to the Member State.

A full description of the complaints procedure and a complaint procedure form (the use of this form is preferred although all formats are accepted) can be found on the OHCHR webpage at <<http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>>.

# III. The Sources: UN Treaty-based Bodies and Instruments

## 1. UN treaties and public international law

For the purposes of the Guidelines, UN treaties generate nearly all the international obligations that relate to the conduct of elections.<sup>47</sup> Treaties formalize agreements between sovereign states. On becoming a party to a treaty, states limit their sovereign rights by voluntarily accepting international obligations. When accepting international obligations under UN treaties, states transfer public sovereign rights to the people subject to their jurisdiction.<sup>48</sup> Individuals, in turn, can legally invoke the treaty against the state if their rights are violated by the state.<sup>49</sup>

Conventions, charters or covenants are all legal synonyms for treaties. Treaties bind, and can only be enforced against, states that are a party to them. The Vienna Convention on the Law of Treaties defines their effect and the procedures for their interpretation. In the UN context, the UNGA formally adopts the substance of proposed treaty texts by resolution. Once a treaty text is adopted, it is open for states to bind themselves legally to its provisions. Depending on each state's constitutional framework, giving legal consent can entail different modalities. The treaty enters into force at a date specified within the text, or when all negotiating states have consented to be bound by it. In the multilateral UN context, it is common to stipulate that a fixed number of states must consent to the treaty for it to enter into force and become a legally binding instrument. A treaty can also enter into force provisionally, once a stipulated set of conditions is met.

Where a state's constitution subjects a treaty signature to ratification, acceptance or approval, the signature in itself does not establish state consent to be legally bound. *Ratification*, *acceptance*, *approval* and *accession* are different modalities by which states can express consent to be bound by a

treaty. Nevertheless, state signatures create good faith obligations to refrain from acts that would defeat the object and purpose of the treaty.<sup>50</sup>

Treaty provisions can be modified through amendments that affect all States Parties. The procedures for amendments are the same as for the original formation of treaties, although many multilateral treaties establish their own amendment procedures. In the absence of such provisions, amendments require the consent of all parties.<sup>51</sup>

When becoming party to a treaty, states can make *reservations* that exclude or alter the legal effect of treaty provisions in their application to that state. Reservations enable a state to accept a multilateral treaty as a whole, while avoiding consent to provisions with which it does not want to comply. Reservations must be compatible with the object and purpose of the treaty. Any signatory or contracting state can object to another State Party's reservation if it deems it incompatible with the object and purpose of the treaty; it can even declare that the objection precludes the treaty's entry into force between them.<sup>52</sup> Furthermore, a treaty might limit reservations, or even prohibit them outright.<sup>53</sup>

Treaties cannot be fully comprehensive; therefore, some degree of interpretation is necessary to ensure their consistent application. The Vienna Convention on the Law of Treaties guides interpretation of international treaty obligations through three interrelated principles: effectiveness; good faith; and contextualization of the treaty's ordinary meaning, object and purpose. UN treaties might also regulate their own interpretation within their operative articles. While UN treaties cited by the Guidelines empower treaty bodies to authoritatively interpret the obligations they give rise to, national courts are also competent to interpret and apply treaties, as long as they bind their respective jurisdiction.

The effect of domestic application of international treaty law depends on whether a state's legal system is a monist or dualist legal system, or a combination of the two. In its pure form, the monist approach ranks international law above national law, so that ratified treaties enjoy quasi-constitutional status—becoming an integral part of what francophone legal systems call the 'constitutional block'—and cannot be superseded by subsequent national legislation. Dualist systems, on the other hand, highlight the difference between national and international law, requiring the express enactment of the latter in national law for it to be applicable. In other words, in dualist systems, ratification of a treaty does not automatically supersede or repeal earlier national legislation that is in conflict with the treaty.

Regardless of the differences in how international law is incorporated into national law, national courts can apply treaties like national law as long as

the treaty was ratified by a national legislative act. Common law countries may also receive international law through the doctrine of judicial precedent, even across borders, via the jurisprudence of other common law countries.<sup>54</sup> The UN has facilitated international conferences on the domestic application of the ICCPR, which spawned, for instance, the Bangalore and Bangkok Declarations of regional groupings of eminent jurists.<sup>55</sup> Data available online show that national courts have increasingly cited the ICCPR in the past decade in a growing number of countries.<sup>56</sup>

Once ratified, a UN treaty automatically becomes part of the domestic law of most countries with civil law and Islamic law traditions, as well as in former communist countries, but it does not do so automatically in common law systems and in Scandinavian jurisdictions. The latter set of legal systems requires their legislatures to transpose the relevant treaty into national legislation.

It should be noted that instead of relying on international obligations, many national litigants favour invoking similar rights as enshrined in regional treaties. Indeed, those instruments open a course of action for appeals to regional human rights courts and commissions, such as the European and Inter-American Court of Human Rights or the African Court on Human and Peoples' Rights, which can grant tangible judicial relief. Some jurisdictions also prioritize the application of regional over UN treaties, since the precedent of regional courts may already bind them.

## 2. The Universal Declaration of Human Rights

In the wake of the horrors of World War II, international consensus over the need to universally guarantee human rights rapidly gained momentum. At the 1945 San Francisco Conference, when the UN Charter was drafted, a proposal for a Declaration on the Essential Rights of Man had already been advanced. The UN Preparatory Commission, which met immediately after the closing session of the San Francisco Conference, recommended that the UN Economic and Social Council establish a commission to promote human rights, as envisaged in the Charter.<sup>57</sup> This led to the creation of the Commission on Human Rights, the predecessor of today's HRC, in 1946.

At its very first session, the UNGA considered a draft Declaration on Fundamental Human Rights and Freedoms and transmitted it to the Economic and Social Council for reference to the Commission on Human Rights.<sup>58</sup> In 1947, the Commission thus formulated what it termed a draft International Bill of Human Rights. However, views and priorities regarding human rights diverged between the two blocs that emerged victorious from World War II. Therefore, the Drafting Committee decided to prepare two documents: one in the form of a political declaration, which would set out

general principles of human rights, and the other in the form of a legal convention, which would define enforceable rights and their limitations.

At its second session in December 1947, the Commission on Human Rights established three working groups: one on the declaration, one on the convention (which it renamed Covenant) and one on its implementation. In 1948, the Commission revised the draft declaration in response to comments received from governments, leaving aside the Covenant and the question of implementation. The same year, the UNGA adopted the UDHR by resolution.<sup>59</sup>

The UDHR presages fundamental rights and freedoms applicable to elections that were later enshrined in the ICCPR, including the freedom of thought and conscience; freedom of opinion and expression; the right to peaceful assembly and association; the right to an effective remedy, equality before the law and freedom from discrimination; the right to take part in the government of one's country; and the right to equal access to public service. Most importantly, the UDHR provides 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'.<sup>60</sup> Already in 1948, the UDHR thus created the blueprint for the election-related provisions of the ICCPR, as well as other UN treaties that guarantee those rights and freedoms to women, racial minorities, migrant workers and persons with disabilities.

Although it is the foundational document of human rights law, the UDHR remains a declaration, and as such lacks binding legal force. It does, however, carry substantial moral and political force. Even though there is no consensus<sup>61</sup> regarding whether all UDHR provisions have hardened into international customary law, numerous national constitutions and regional treaties incorporate UDHR provisions by reference, thus rendering them legally enforceable at the national level. The Guidelines cite the UDHR only on issues that are not explicitly covered by UN treaty law.

### **3. The International Covenant on Civil and Political Rights**

When it adopted the UDHR, the UNGA requested the Commission on Human Rights to prepare a draft Covenant on human rights, and in 1950 it declared that 'the enjoyment of civic and political freedoms and of economic, social and cultural rights is interconnected and interdependent'.<sup>62</sup> However, in order to break away from the ideological Cold War gridlock in 1952, the UNGA called on the Commission to draft two Covenants, one on civil and political rights and the other on economic, social and cultural rights.<sup>63</sup> The UNGA specified that both Covenants should contain as many similar provisions as possible.<sup>64</sup> In 1954, the Commission on Human Rights



finalized both drafts. It ultimately took the UNGA 12 years to adopt both Covenants:<sup>65</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ICCPR.

The ICCPR largely maintains the UDHR's core provisions that cover the right to participate in the conduct of public affairs. Nevertheless, the ICCPR dropped the UDHR's overarching fundamental principle that 'the will of the people shall be the basis of the authority of government', which UNGA resolutions on the UN role in elections consistently reiterate. The ICCPR also dilutes the UDHR's guarantee of equal access to public service by referring to general terms of equality, and does not clarify whether the scope of public service is restricted to public employment or whether it extends to public services.

**Table III.1. UDHR Article 21 vs. ICCPR Article 25**

UDHR Article 21	ICCPR Article 25
	Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.	(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(3) The will of the people shall be the basis of the authority of government; this 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.	(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;
(2) Everyone has the right of equal access to public service in his country.	(c) To have access, on general terms of equality, to public service in his country.

Unlike the UDHR, the ICCPR allows States Parties a considerable margin of discretion in the definition and restriction of fundamental rights and freedoms. The UDHR unequivocally states that 'nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein'.<sup>66</sup> While the ICCPR equally protects several articles from derogation,<sup>67</sup> it subjects other rights, including the freedom of expression, assembly and association, 'to restrictions which are prescribed by law and are necessary to protect national security, public order, or the rights and freedoms of others'.<sup>68</sup> Contrary to the UDHR, the ICCPR also envisages that article 25 rights can be *suspended* by officially proclaimed public emergencies, albeit only 'to the extent strictly required by the exigencies of the situation and never involving discrimination'.<sup>69</sup>

Ten years after its adoption by the UNGA, the ICCPR entered into force on 23 March 1976. At the time of writing, the ICCPR unites 167 State Parties, while seven states have signed but not ratified the treaty. Since these seven signatory states<sup>70</sup> are bound not to act against the object and purpose of the Covenant, the ICCPR can be considered as having quasi-global application.

### **3.1 The Human Rights Committee**

The ICCPR established the Human Rights Committee (CCPR), composed of 18 independent experts; the Covenant binds State Parties to respect its authority.<sup>71</sup> Because the ICCPR establishes the Committee's legal basis in treaty form, the CCPR is considered a treaty body. The Guidelines rely significantly on CCPR documents that provide authoritative interpretation of general obligations that affect elections.

CCPR members serve terms of four years and are elected by all ICCPR States Parties. Membership must be geographically representative, and must reflect different legal traditions and cultures; no State Party can be represented by more than one member. The CCPR normally holds three sessions per year.

The ICCPR requires State Parties to report on the measures they have adopted to give effect to ICCPR rights, and on the progress made in the enjoyment of those rights. States Parties are required to submit reports to the UN Secretary-General for transmission to the CCPR whenever the Committee requests, which is usually every four years. The CCPR can invite specialized UN agencies or bodies, NGOs and national human rights organizations to provide information through written and oral reports on States Parties whose reports are being examined.

Under ICCPR article 41, States Parties can recognize CCPR competence to receive and consider communications by one State Party claiming that another State Party is not fulfilling its obligations under the ICCPR. Such communications may be received and considered only if submitted by a State Party that itself has made a declaration recognizing the CCPR's competence under the article 41 interstate complaints procedure.

National courts have referred to CCPR General Comments (GCs) (including the 1996 GC 25), Concluding Observations and CCPR views on Individual Communications, to interpret the Covenant in national case law. States Parties have also amended their laws as a result of CCPR decisions on individual complaints under the Optional Protocol. In a number of cases, prisoners have been released and compensation paid to victims of human rights violations.<sup>72</sup>

### 3.1.1 Concluding Observations

The CCPR examines reports by State Parties and addresses its concerns and recommendations to the reporting party in the form of Concluding Observations, which contain reasoned instructions on how States Parties should remedy breaches of rights protected by the ICCPR. The Guidelines rely on CCPR election-related observations and instructions as authoritative interpretation of the ICCPR.

Concluding Observations, as well as State Party reporting, can be searched by keyword on the Universal Human Rights Index in the six official UN languages at <<http://uhri.ohchr.org/en>>. Recent Concluding Observations are also linked to the CCPR's webpage.

### 3.1.2 General Comments

The CCPR codifies its interpretation of the Covenant—set forth in its Concluding Observations and reasoned decisions on Individual Communications—in the form of General Comments on thematic or procedural issues. The Guidelines cross-reference applicable CCPR General Comments with electoral cycle events. To date, the CCPR has issued 35 General Comments and is currently updating the earlier documents to keep them current with its jurisprudence.

Apart from GC 25 on participation in public affairs and the right to vote, which dates from 1996, the Guidelines cite: GC 11 on the prohibition of propaganda for war and inciting national, racial or religious hatred; GC 13 on equality before the courts and the right to a fair and public hearing by an independent court established by law; GC 15 on the position of aliens under the Covenant; GC 16 on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation; GC 18 on non-discrimination; GC 27 on freedom of movement; GC 29 on states of emergency; GC 31 on the nature of the general legal obligation imposed on States Parties to the Covenant; GC 32 on equality before courts and tribunals and the right to a fair trial; and GC 34 on freedom of expression. The CCPR has so far not issued General Comments on the freedoms of association and of assembly, both of which the Guidelines accordingly cross-reference with individual CCPR case law.

## 3.2 First Optional Protocol to the ICCPR

The ICCPR's First Optional Protocol entered into force simultaneously with the ICCPR, although it has fewer States Parties.<sup>73</sup> By becoming party to the protocol, states grant individual standing to victims who allege States Party violations of ICCPR rights. The CCPR can thus receive and consider

complaints (Communications) from individuals claiming to be victims of violations of any rights protected by the ICCPR.<sup>74</sup>

Decisions on communications can be searched by keyword on the OHCHR webpage, at <<http://tb.ohchr.org/default.aspx>>. Alternative archives that are searchable by keyword are hosted by the University of Minnesota Human Rights Library at <<http://www1.umn.edu/humanrts/>>, and by the Centre for Civil and Political Rights at <<http://www.cccprcentre.org/individual-communications/decisions-search/>>. The OHCHR also offers a general database for treaty body jurisprudence at <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en)>.

### 3.2.1 The Human Rights Committee Complaints Procedure

Any individual can submit a written complaint in one of the six official UN languages to the CCPR against a State Party, claiming that his or her rights under the ICCPR have been violated. Complaints can also be introduced on behalf of third parties with their consent (or without it, for example in cases of imprisonment or disappearance). For particularly sensitive matters, the complainant can request the non-disclosure of personal details. The exhaustion of national remedies and the submission of the case to other international bodies must be referenced in the complaint.

As detailed in the First Optional Protocol, the CCPR considers the admissibility of Communications in closed meetings, while bringing them to the attention of the State Party alleged to be violating a provision of the Covenant. Within six months, the State Party can respond to Communications with written explanations or statements, clarifying the matter and proposing remedies.<sup>75</sup>

While the Optional Protocol itself imposes no time limit to submit complaints, the CCPR has introduced a procedural rule that generally bars complaints not yet submitted within five years after the exhaustion of domestic remedies or, where applicable, after three years from the conclusion of another procedure of international investigation or settlement.<sup>76</sup> Nor can the CCPR examine complaints if the same matter is pending before another forum. Nevertheless, the CCPR does not bar complaints on matters under consideration by the HRC Complaints Procedure or complaints submitted to HRC Special Rapporteurs or Working Groups (see Section II).

It usually takes the CCPR 12 to 18 months to decide on admissibility. Examining the case's merits may then take a year or two, depending on how cooperative States Parties and the authors of complaints are in submitting all the information required by the CCPR. Individuals who allege that their human rights are being violated may need protection before the CCPR adopts its final views. Without prejudging the merits of complaints, the CCPR

has sometimes addressed urgent requests to the States Parties involved. The CCPR has, for instance, advised against threatened expulsion, requested the suspension of a death sentence and drawn attention to the need for an urgent medical examination. In terms of evidence and the burden of proof, the CCPR has not yet established independent fact-finding functions, but it is bound to consider all written information submitted by the parties.<sup>77</sup>

CCPR decisions constitute authoritative interpretation of the ICCPR.<sup>78</sup> Furthermore, UN treaty bodies, including the CCPR, have developed follow-up procedures to monitor whether States Parties have implemented their recommendations, since they consider that by accepting the procedure, States Parties have also agreed to respect CCPR findings. When the CCPR finds violation of the Covenant, the State Party has six months to provide information on the steps it has taken to implement the CCPR decision. The State Party's response is then transmitted to the complainant for comments.

If the State Party fails to take appropriate action, the case is kept under consideration by the CCPR under the follow-up procedure. A dialogue is thus pursued with the State Party and the case remains open until satisfactory measures are taken. Information related to the follow-up of Committee decisions is not confidential, and the meetings during which this information is discussed are public. In 1990, the CCPR instituted a mechanism to monitor more closely whether States Parties have given effect to its final decisions on the merits of a case.

Some procedures for complaints fall outside the substantive scope of the treaty body system. Such issues can be addressed through CCPR Special and Complaints Procedure. Citizens of states that have not become party to relevant treaties can also present their complaints before the HRC (see Section II).

A full description of the CCPR complaints procedure and a model complaint form (the use of this form is preferred although all formats are accepted) can be found on the CCPR webpage at <<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>> and on the OHCHR webpage at <<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#OPICPR>>.

#### **4. The International Convention on the Elimination of All Forms of Racial Discrimination**

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted in 1966 and entered into force in 1969. At the time of writing, it has 176 States Parties (nine more than the ICCPR) and five signatory states. Substantively, the ICERD mirrors the ICCPR's core

civil and political rights protection within the context of racial and other forms of discrimination. It reiterates several ICCPR provisions, but it also advances beyond the later Covenant in areas relevant to elections.

The ICERD introduces Temporary Special Measures (TSMs), which subsequent UN treaties emulate to compensate for historic disparities that prejudice the equal exercise of rights by special interest groups.<sup>79</sup> It also adopts the UDHR's language on equal access to public service, rather than the ICCPR's softer language of 'on general terms of equality'.

The ICERD also guarantees the enjoyment or exercise of political rights and fundamental freedoms on an 'equal footing'.<sup>80</sup> While the ICERD treaty body has not yet applied the equal footing clause in election-related case law, the wording of the provision indicates that it entitles stakeholders who fall under the Convention's ambit to a level electoral playing field.

ICERD also obligates States Parties to restrict the fundamental freedoms of expression and of association by law, if they are exercised to promote and incite racial discrimination. Such exercise of the two freedoms arguably affects the rights and freedoms of others, and can thus be legitimately restricted, as is also contemplated in the ICCPR.<sup>81</sup> In this context, ICERD's treaty body has reminded governments of several European States Parties of their lack of enforcement of the prohibition against racist propaganda (see Chapters 8, 16 and 21).

Finally, in addition to the ICCPR's array of civil and political rights, the ICERD expressly guarantees state protection against violence or bodily harm, whether inflicted by government officials or by any individual group or institution, as well as the right to nationality, which is critical to the right to vote.<sup>82</sup>

The Guidelines reference ICERD provisions and its treaty body's authoritative interpretation of issues regarding racial discrimination, but also within the broader realm of discrimination, including the call for States Parties to consider positive measures to promote the equal enjoyment and exercise of political rights and freedoms.

#### **4.1 The Committee on the Elimination of Racial Discrimination**

The composition and procedures of the Committee on the Elimination of Racial Discrimination (CERD) matches that of the CCPR, although its case backlog remains much smaller. Victims of human rights violations that straddle electoral rights and discrimination under ICERD should thus take into account the timeliness of adjudication when choosing between CCPR and CERD as a complaints venue.

#### 4.1.1 Individual complaints

Rather than relying on an Optional Protocol, the ICERD integrates an individual complaints mechanism into the text of the treaty, offering States Parties recognition of CERD's competence to consider individual claims through their ratification of the treaty itself. The individual complaints procedure aspect of ICERD entered into force in 1982.<sup>83</sup> The CERD procedures largely mirror those of the CCPR.

The UN Treaty Collection website<sup>84</sup> only identifies which State Parties have accepted ICERD's article 14 individual complaints procedure through each State Party's reservations, but the CERD homepage offers a ratification map.<sup>85</sup> The map reveals that overall, Latin American and European States Parties recognize CERD's individual complaints jurisdiction, while North American, African and Asian States Parties largely do not. The CCPR has thus absorbed some of those regions' complaints on racial discrimination within the ambit of its general competence over civil and political rights.

CERD publishes its General Comments, ratification status, decisions, and complaints procedures on its webpage: <<http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>>, as well as a list of recent individual complaints jurisprudence: <<http://www.ohchr.org/EN/HRBodies/CERD/Pages/Jurisprudence.aspx>>.

### 5. The Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 and entered into force in 1981. At the time of writing, it has 187 States Parties (20 more than the ICCPR). The United States and Palau have signed, but not ratified, the CEDAW. This Convention effectively consolidates a number of previous UNGA-led efforts on women's rights, including the Convention on the Political Rights of Women.<sup>86</sup>

Substantively, CEDAW reaffirms the civil and political rights enshrined in the ICCPR, as they pertain to women. As with the ICERD, CEDAW also progresses beyond passive non-discrimination to advance affirmative measures. While it avoids ICERD's wording of equal footing, it guarantees women enjoyment or exercise of political rights and fundamental freedoms, irrespective of their marital status and on a basis of equality between men and women.<sup>87</sup>

Enjoyment and exercise of rights per se have largely not yet translated into equal political participation and representation. Therefore, like ICERD,

CEDAW requires that State Parties take all appropriate TSMs to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on an equal basis with men. CEDAW provides that such TSMs shall not be considered discrimination.<sup>88</sup> It commits State Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country. In particular, it aims to ensure that women have, on equal terms with men, the right to vote in all elections and public referendums and to be eligible for election to all publicly elected bodies. Lastly, it calls for states to ensure that women can participate in the formulation and implementation of government policy, and hold public office and perform all public functions at all levels of government.<sup>89</sup>

While the ICERD tailors its wording to ensuring a level playing field, CEDAW emphasizes TSMs. Affirmative action and equality of opportunity remain linguistically difficult to reconcile; CEDAW's language ultimately opts for affirmative action. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa explicitly calls for equal representation in all electoral processes.<sup>90</sup> Finally, and relevant to the right to vote, CEDAW specifies equal rights for women and men in acquiring, retaining and conferring citizenship.<sup>91</sup>

The Guidelines reference CEDAW provisions and its treaty body's authoritative interpretation, particularly its General Recommendations, on cross-cutting issues related to gender equality (see Chapter 7).

## **5.1 The Committee on the Elimination of Discrimination against Women**

The Committee on the Elimination of Discrimination against Women (also referred to as CEDAW) is a treaty body of 23 independent experts.<sup>92</sup> Its functions and procedures, including those for filing complaints, are modelled on the CCPR. The Committee meets only once a year, but its deliberation period, which the initial treaty had capped at two weeks, was extended by treaty amendment.<sup>93</sup> Unlike CCPR and CERD, the Committee consolidates its jurisprudence in General Recommendations (GR) rather than General Comments.<sup>94</sup>

CEDAW's General Recommendations Number 23 and 25 are its most relevant for electoral processes. CEDAW Concluding Observations regularly address election-related rights, and can be searched by keyword in the Universal Human Rights Index. Individual Communications are listed on the Committee's webpage, at <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=17](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=17)>.



## 5.2 The Optional Protocol to CEDAW

The Optional Protocol to CEDAW allows its treaty body to consider complaints from individuals under the jurisdiction of States Parties to the Protocol. The Optional Protocol was adopted in 1999 and entered into force in 2000. It currently has 104 States Parties; 15 further states have signed, but not ratified, the individual complaints option. The CEDAW Committee's webpage provides a model complaint form as well as detailed procedural advice at <<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>>.

## 6. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (MWC) was adopted in 1990 and entered into force in 2003. At the time of writing, the treaty has 47 States Parties; 18 states have signed, but not yet ratified, the Convention. EU Member States have so far consistently shunned the Convention.

Apart from fundamental freedoms, article 41 of the MWC holds that migrant workers and members of their families shall have the right to participate in the public affairs of their state of origin and to vote and be elected in elections of that state in accordance with its legislation. The MWC exhorts concerned states to facilitate the exercise of these rights. The Guidelines refer to the MWC and its treaty body's authoritative interpretation when addressing the rights of migrants to register, vote and be elected.

### 6.1 The Committee on Migrant Workers

The Committee on Migrant Workers (CMW) held its first session in 2004. It is composed of 14 independent experts and has so far codified two General Comments, neither of which focuses on electoral rights. The Committee has referenced article 41 in four of its Concluding Observations. The CMW has taken the initiative to call on one State Party to allow non-citizen migrant workers to vote in its municipal elections.<sup>95</sup>

#### 6.1.1 Individual complaints to the CMW

The CMW will be able to consider individual complaints or communications from individuals claiming that their rights under the Convention have been violated, once ten States Parties have accepted this procedure in accordance with article 77 of the Convention. At the time of writing, only two States Parties have accepted this procedure, thus the individual complaints

mechanism has not yet entered into force. The OHCHR webpage provides additional information on individual complaints and the MWC at <<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>>.

## **7. The United Nations Convention against Corruption**

The UNGA recognized that an effective international legal instrument against corruption was desirable and decided to establish a committee to negotiate such an instrument.<sup>96</sup> The United Nations Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in 2005. At the time of writing, UNCAC has 169 State Parties; seven states have also signed, but not yet ratified, the treaty. The UN does not consider UNCAC a human rights instrument and no individual complaints mechanism is in place to address violations of the Convention. Nevertheless, the Convention indirectly affects the effective exercise of human rights, including electoral rights, through its measures against corruption.

UNCAC offers critical safeguards for holding credible and transparent elections, which are beyond the express requirement of earlier treaties but in line with UNGA and UNSC resolution wording. Under UNCAC, States Parties commit, *inter alia*, to develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.<sup>97</sup> It also entrusts its States Parties to take such measures as may be necessary to enhance transparency in their public administration,<sup>98</sup> which is of critical importance for EMB procedures and practices.

UNCAC States Parties commit to adopt, maintain and strengthen systems for recruiting, hiring, retaining, promoting and retiring civil servants and other non-elected public officials, where appropriate, based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude. State Parties are also called upon to include adequate procedures for selecting and training individuals for public positions that are considered especially vulnerable to corruption, and rotating such individuals to other positions, where appropriate.<sup>99</sup>

UNCAC binds State Parties to adopt appropriate legislative and administrative measures regarding standing for election to public office, and to take appropriate legislative and administrative measures to enhance transparency in the funding of political parties and candidates for elected public office.<sup>100</sup> This reference to political finance is the first of its kind in a UN treaty.

Finally, UNCAC implicitly criminalizes the illicit use of state resources for campaign purposes, since it commits State Parties to adopt legislative and

other measures to establish as criminal offences embezzlement, and the misappropriation or other diversion by a public official for his or her benefit (or for the benefit of another person or entity) of any property, public or private funds or securities or any other item of value entrusted to the official by virtue of his or her position.<sup>101</sup>

In sum, UNCAC establishes norms for transparency and the independence of public administration that fill a gap left by human rights treaties. It thus offers a normative reference for the conduct of credible and transparent elections. The Guidelines reference UNCAC provisions in conjunction with the ICCPR obligation to ensure access to information as a fundamental means to combat corruption, the effects of which can harm electoral processes.

## **7.1 The UNCAC Review Mechanism: a Conference of States Parties as treaty body**

UNCAC establishes a Conference of States Parties to improve cooperation and promote its own implementation. In 2009, the Conference created an Implementation Review Mechanism to help States Parties fulfil UNCAC's objectives. UNCAC obligates each State Party to provide the Conference with information on its programmes, plans and practices, as well as on legislative and administrative measures to facilitate its implementation.

Input received from relevant NGOs duly accredited in accordance with procedures decided on by the Conference of States Parties may also be considered. The Conference of States Parties has established a peer mechanism that reviews States Parties by one regional and one extra-regional peer.<sup>102</sup>

## **8. The Convention on the Rights of Persons with Disabilities**

The Convention on the Rights of Persons with Disabilities (CRPD) was adopted in 2006 and entered into force in 2008. At the time of writing, the Convention has 139 States Parties, and 39 states have signed but not ratified the treaty.

The treaty defines its purpose as promoting, protecting and ensuring the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and promoting respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>103</sup>

Many legal frameworks for elections deprive citizens with mental or intellectual disabilities from the enjoyment of their political rights. The CRPD leaves no doubt that even those who are mentally disabled, and who have been placed under guardianship by the courts, should remain fully enfranchised. Although the CCPR once considered that ‘established mental incapacity may be a ground for denying a person the right to vote or to hold office’, it has since overruled this earlier position.<sup>104</sup> Beyond the ICCPR and other UN treaties cited by the Guidelines, the CRPD sets out ‘equality of opportunity’ as a general principle, which echoes ICERD’s ‘equal footing’. It also declares full and effective participation to be a general principle, which earlier treaties stop short of.

Highly relevant for elections, the CRPD commits State Parties to undertake or promote research and development, and to promote the availability and use of new technologies—including information and communications technologies, mobility aids, devices and assistive technologies—suitable for persons with disabilities, giving priority to affordable technologies.<sup>105</sup>

Opening the door for a concept very similar to TSMs,<sup>106</sup> the CRPD—like the ICERD and CEDAW—holds that specific measures that are necessary to accelerate or achieve the de facto equality of persons with disabilities shall not be considered discrimination.<sup>107</sup> Such measures, which lack the temporary nature stressed in the other treaties, could facilitate the candidacies of persons with disabilities, as could the CRPD’s call on States Parties to encourage all organs of the media to portray persons with disabilities in a manner consistent with the CRPD purposes.<sup>108</sup>

The CRPD also requires State Parties to take appropriate measures to ensure that persons with disabilities have access to voter registration and polling facilities, on an equal basis with others, in both urban and rural areas.

In its section on participation in political and public life, the CRPD outlines States Parties’ obligations to ensure that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use. It also calls on states to protect the rights of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and to perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate.

The CRPD guarantees the free expression of the will of persons with disabilities as electors; to this end, States Parties must allow assistance in voting by a person of their choice, if requested. Furthermore, the Convention calls for the active promotion of an environment in which persons with disabilities can fully and effectively participate in the conduct of public affairs, without

discrimination and on an equal basis with others. Lastly, states should encourage the participation of persons with disabilities in public affairs, including in NGOs and associations concerned with the public and political life of the country, and in the activities and administration of political parties.

The Guidelines reference the CRPD and its treaty body's authoritative interpretation as it relates to the cross-cutting issue of enjoyment of the rights of persons with disabilities to register, vote and be elected.

## **8.1 Committee on the Rights of Persons with Disabilities**

The Committee (also referred to as the CRDP) is composed of 18 independent experts and follows the treaty body and procedural model introduced by the ICCPR. At the time of writing, the CRPD has drafted, but not yet adopted, two General Comments.<sup>109</sup>

### **8.1.1. Individual complaints to the CRDP**

The Optional Protocol to the Convention of 2006 entered into force in 2008. At the time of writing, it has 79 States Parties and 36 states have signed (but not ratified) the Protocol. Individual complaints procedures largely follow those of other UN treaty bodies and are described in detail on the OHCHR webpage, at <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>>.

## **9. Other UN treaty bodies**

Part B of the Guidelines sporadically references (in the Tables of Jurisprudence) other UN human rights treaty instruments that have ancillary applications in electoral processes. These are the Committee Against Torture (CAT),<sup>110</sup> which monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Committee on the Rights of the Child (CRC),<sup>111</sup> which monitors implementation of the Convention on the Rights of the Child.

Like the other UN Treaty-based human rights bodies discussed in Section III, the CAT and the CRC are composed of independent experts and have similar functioning mechanisms, such as examining States Parties' reports through Concluding Observations, codifying General Comments, and examining individual complaints and communications.

## **10. Regional and sub-regional obligations**

Outside the UN treaty system, regional and sub-regional bodies have evolved under the auspices of other organizations, such as the African Union, the

Organization of American States, the EU, the Economic Community of West African States (ECOWAS), the East African Community, the Association of Southeast Asian Nations, the League of Arab States and the Council of Europe (CoE).<sup>112</sup> These organizations have adopted a number of normative instruments, which contain election-related obligations that are binding on their States Parties. Whereas many of these instruments largely reiterate the language and measures of UN treaties, some have advanced beyond existing UN provisions on key electoral issues.

Compared with the ICCPR, which will soon celebrate its 50<sup>th</sup> anniversary, the African Charter on Democracy, Elections and Governance (ACDEG), the ECOWAS Protocol<sup>113</sup> and the Inter-American Democratic Charter are very recent and modern instruments designed to fill gaps left by the ICCPR regime. They address issues not foreseen 50 years ago, tackling abuses prevalent within their respective geographic areas. The ACDEG, which entered into force in 2013, offers the broadest and most modern legally binding coverage on elections to date.

Because of their limited geographic application, the Guidelines do not reference regional and sub-regional instruments in the Tables of Jurisprudence, which focus exclusively on UN instruments and jurisprudence of near-global application. Binding regional or sub-regional treaty provisions are referenced in relevant narrative chapters of Part B, if they advance beyond the scope of UN treaty law, albeit not necessarily beyond UN institutional jurisprudence.

Beyond treaties establishing regional obligations, the Guidelines note that other important instruments of specific regional relevance exist and are legitimately used in assessments of particular electoral processes. Such instruments include, for example, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference for Security and Co-operation in Europe, precursor of the OSCE.<sup>114</sup>

## **IV. International Obligations for Elections: The Building Blocks**

This section introduces a set of international obligations for elections that are extrapolated from the UN treaties referenced in the previous section. These obligations are not intended to be exhaustive; rather, they are presented as the building blocks that make up the foundation of any electoral process. Even if treaties express election-related obligations in the form of rights or freedoms, they entail a positive state duty to take the necessary steps to enable citizens to effectively exercise those rights.

The right to equal participation in public affairs cannot be put into practice without conducting elections. Both the UDHR and ICCPR refer to the conduct of ‘genuine’ elections as the process by which citizens come to be freely and equally represented in government, offering a peaceful means to resolve political competition for power. Yet neither instrument defines the term ‘genuine’.

The Guidelines consider the notion of genuine elections that guarantee the free expression of the will of the electors to be the overarching common denominator of election-related international obligations. The notions of ‘genuine elections’ and ‘free expression of the will of the voters’ are hence not represented as building blocks that aid the assessment of legal frameworks for electoral processes. Instead, ‘genuine’ is used to indicate the completeness of compliance with international obligations governing elections and ‘guaranteeing the free expression of the will of the electors’ preconditions legitimacy of electoral processes.<sup>115</sup>

The latter obligation also implies accountability by elected officials, leading the CCPR to state in GC 25 that ‘the authority of government continues to be based on the free expression of the will of electors’. Furthermore, the CCPR requires election results to reflect the free will of the electors, as expressed by a

process of participation through freely chosen representatives. It follows that all stages of the electoral process, up to and including election day operations and the proclamation of results, must be carried out in a manner that does not distort the free expression of the will of the electors. Finally, the state is required to ensure that electors are able to make an informed choice when exercising their free will. As such, the obligation to protect the expression of voters' free will encapsulates the full spectrum of the Guidelines' building blocks that can be distilled from the relevant international human rights documents.

The Guidelines identify 20 other international obligations as key building blocks. In its Tables of Jurisprudence and Checklists, the Guidelines will therefore consistently refer to these 20 international obligations for elections, linking them to the key issues to analyse and cross-referencing them to specific treaty articles, as well as to authoritative interpretation and UN jurisprudence issued by competent UN treaty bodies.

The tabular approach aims to help national and international stakeholders connect obligations to the applicable segments of the electoral process and link them to areas of legal frameworks that risk neglecting fundamental rights. Defining a catalogue of indicators that States Parties to the UN treaties are required to take into account in the context of elections will foster common understanding among stakeholders. To ensure consistency, the conceptual and terminological formulation of the 20 building blocks was inspired and achieved through consultation with other organizations that are active in this field, most notably the Carter Center.

**Table IV.1. International Obligations for Elections**

<ul style="list-style-type: none"> <li>• Right and Opportunity to Participate in Public Affairs</li> <li>• Right and Opportunity to Vote</li> <li>• Right and Opportunity to be Elected</li> <li>• Periodic Elections</li> <li>• Universal Suffrage</li> <li>• Equal Suffrage</li> <li>• Secret Ballot</li> <li>• Freedom from Discrimination and Equality under the Law</li> <li>• Equality Between Men and Women</li> <li>• Freedom of Association</li> </ul>	<ul style="list-style-type: none"> <li>• Freedom of Assembly</li> <li>• Freedom of Movement</li> <li>• Freedoms of Opinion and Expression</li> <li>• Right to Security of the Person</li> <li>• Transparency and the Right to Information</li> <li>• Prevention of Corruption</li> <li>• Rule of Law</li> <li>• Right to an Effective Remedy</li> <li>• Right to a Fair and Public Hearing</li> <li>• States Must Take Necessary Steps to Give Effect to Rights</li> </ul>
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Acknowledging their equal value and the need to examine these obligations in every national context, they are listed in no particular hierarchical order, instead following a logic that begins with the right to participate, followed by electoral rights, and then individual rights and freedoms that extend beyond the electoral field. Judicial obligations complete the list, which concludes with the positive state obligation to take necessary steps to give effect to Covenant rights.



References to treaties, jurisprudence and authoritative interpretation in the following sections are substantiated exhaustively in the Tables of Jurisprudence and Checklists contained in the subsequent chapters.

## 1. Right and Opportunity to Participate in Public Affairs

The right to participate is the cornerstone upon which the entire international human rights order for elections is built. Participation entails an obligation to guarantee that all citizens have the right and the opportunity to partake in public affairs, through political parties, civil society organizations and other citizen initiatives. The UDHR stipulates the universal right to participate in government, directly or through freely chosen representatives. The ICCPR places elections even more firmly at the core of the right to participate. Joint reference to ‘right’ and ‘opportunity’ to participate obligates the state to take positive action to provide services and infrastructure to allow for the effective exercise of the right to participate. This right is also enshrined in the ICERD, CEDAW, MWC and CRPD.

In GC 25, the CCPR defines ‘public affairs’ as ‘a broad concept, which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels’.

As GC 25 notes, the right to participate is an individual right, the violation of which gives rise to claims under ICCPR’s first Optional Protocol (See Section III). Similarly, GC 25 indicates that the ‘allocation of powers and the means by which individuals exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws’. The CCPR further elaborates that ‘[p]articipation through freely chosen representatives is exercised through voting processes which must be established by laws’. Direct participation, as developed in GC 25, covers the exercise of legislative or executive mandates, and participation in referendums and popular assemblies.

Furthermore, ICCPR article 25—in conjunction with the right to freedom of assembly, expression and association—also provides for citizen rights to participate in public affairs through civil society organizations and non-governmental associations. As voiced in GC 25, citizens ‘also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association’.

## **2. Right and Opportunity to Vote**

Every citizen must have the right and the opportunity to vote in equal conditions with other citizens. This right can only be restricted based on objective and reasonable criteria established by law. As GC 25 indicates, the right to vote (in elections and referendums) must be ‘established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, or a ground of disqualification’. GC 25 also holds that the grounds that might deprive citizens of the right to vote must be ‘objective’ and set out in relevant legislative provisions.

GC 25 further explains that equal opportunity to vote also obligates the state to ‘take effective measures to ensure that all persons entitled to vote are able to exercise that right’. This right requires states to take measures to guarantee that the conditions for voting (e.g., voter registration processes) are identical, as well as the opportunity for electors to express their will freely. The CCPR states in GC 25 that any ‘abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced’.

GC 25 links a third component of the right and opportunity to vote to the right of electors to cast their vote in an informed manner. GC 25 explains that exercising the right to vote ‘effectively’ entails that ‘[p]ositive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice’.

Lastly, GC 25 stipulates that persons entitled to vote ‘must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind’.

## **3. Right and Opportunity to be Elected**

Whereas the UDHR makes no direct reference to the right to stand for election, the ICCPR explicitly refers to the right to stand as candidates for elected positions. Thus, every citizen must have the right and the opportunity

to be elected in direct or representative elections, in equal conditions with other citizens. This right can only be restricted based on objective and reasonable criteria established by law. According to the CCPR, this guarantees electors the right to exercise their free will to choose from a selection of candidates. GC 25 states that ‘effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates’.

GC 25 stipulates that the right of persons to stand for election ‘should not be limited unreasonably by requiring candidates to be members of parties or of specific parties’, which protects a citizen’s right to stand independently of party affiliation. The CCPR states further that ‘[n]o person should suffer discrimination or disadvantage of any kind because of that person’s candidacy’.

The requirement of equal opportunity to be elected for all citizens prohibits legal or de facto discrimination or unreasonable restrictions that could create inequalities. Nevertheless, the right to be elected is not an absolute right, and certain restrictions can be imposed. The CCPR notes that restrictions, such as minimum age, ‘must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation’. Nonetheless, GC 25 does allow for certain incompatibilities to avoid conflicts of interest ‘if there are reasonable grounds’.

## 4. Periodic Elections

The ICCPR declares that ‘every citizen shall have the right and the opportunity [...] to vote and be elected at [...] periodic elections’. States Parties must therefore ensure that their legal frameworks guarantee this right by establishing certainty and regularity in the holding of elections.

The CCPR refers to elections as a means to ‘ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them’, which implies the periodic holding of elections. The CCPR confirms in GC 25 that ‘elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors’. Without providing actionable guidance on the length of these intervals, the CCPR concludes that such rights ‘should be guaranteed by law’, fortifying the obligation of periodicity with legal certainty.

## 5. Universal Suffrage

To give effect to the right to equal participation, States Parties are required to ensure that the right to vote is as inclusive as possible in terms of electors' eligibility criteria. The right to vote and to be elected in elections that guarantee the free expression of the will of the electors, without discrimination or unreasonable restrictions, echoes universal suffrage. The obligation of universality demands that although every state can determine who is eligible to participate in an electoral process, conditions must be non-discriminatory and as inclusive as possible. This notion is reiterated in ICERD.

GC 25 explains that 'conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria'. It further considers that the exercise of the right to vote 'should be available to every adult citizen', and that the exercise of these rights 'may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable'. The wording 'adult citizen' also invokes two potential criteria with which to define the electorate: a certain age at which 'adulthood' is considered to have been reached, and citizenship.

## 6. Equal Suffrage

The UDHR, ICCPR and ICERD protect the obligation to attribute equal weight to each vote, as far as technically possible. The CCPR elaborates that the 'principle of one person, one vote, must apply, and within the framework of each state's electoral system, the vote of one elector should be equal to the vote of another'.

Given the difficulties of ensuring absolute equality in practice, the interpretation is for every vote to have as equal a weight as possible with all other individual votes, which affects boundary delimitation and seat allocation in the case of multi-member electoral districts of varying population size. GC 25 thus determines that 'the drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representative freely'. The CCPR further considers that the adoption of TSMs to facilitate and encourage participation by women and minorities can be appropriate to give full effect to the right of equal suffrage.

## 7. Secret Ballot

The obligation to guarantee the secrecy of the ballot features in both the UDHR as ‘secret vote’ and in the ICCPR as elections held by ‘secret ballot’. The interpretation of this obligation prohibits connecting the identity of voters to their electoral choice before, during or after their ballot is cast. Secrecy of the ballot guarantees that voters can cast their vote freely. The continuous nature of the right to the secrecy of the vote, even in the run-up to election day, is emphasized in GC 25: voters should be free from any coercion or compulsion to disclose how they ‘intend to vote or how they voted’.

The overriding concern of voting secrecy aims to protect electors from casting their vote subject to any corruption, coercion or intimidation. The CCPR has interpreted the secrecy of the ballot in this sense, noting that electors must be free from ‘any form of coercion or compulsion to disclose how they intend to vote or how they voted’. Furthermore, it adds that the voter cannot waive his or her right to a secret vote.

In GC 25, the CCPR calls on states to ‘take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists’. The requirement for ‘independent scrutiny of the voting and counting process [...] so that electors have confidence in the security of the ballot and the counting of the votes’ also underlines the link between the secrecy of the vote, the transparency in which votes are counted and general voters’ confidence in the process.

## 8. Freedom from Discrimination and Equality under the Law

The ICCPR enshrines the right of all citizens to exercise their political rights and freedoms without any discrimination or unreasonable restrictions, and to have access to public service on ‘general terms of equality’. States Parties hence have an obligation to guarantee that all persons are treated equally and without discrimination and/or unreasonable restrictions in the exercise of their rights and freedoms. Freedom from discrimination is crucial in electoral processes to ensure that candidates, parties, voters and citizens can participate on an equal footing, particularly concerning state-owned bodies or resources, such as ensuring equal access to the media or public spaces for holding campaign events. The ICCPR further prohibits any form of distinction between individuals within a state’s territory on grounds ‘[s]uch as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

The ICCPR stipulates that all ‘persons are equal before the law and are entitled without any discrimination to the equal protection of the law, the

law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

The obligation to guarantee equal access to public service is stated in the UDHR and the ICCPR, which couches it with the adjunct ‘in general terms of equality’. The ICERD adopts the wider UDHR formulation, whereas the CEDAW adopts an even broader notion of ‘public life of the country’. The CCPR develops the notion by stating that in order to ‘ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable’. It adds that ‘[b]iasing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1’. Furthermore, and highlighting the obligation for states to take measures to ensure equality before the law, the CCPR also contemplates affirmative action ‘[a]ffirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens’.

To ensure a level playing field for electoral candidates, the CCPR has adopted a combined reading of ICCPR articles 25 and 26, stating that States Parties ‘should treat all political parties on an equal footing and offer them equal opportunities to pursue their legitimate activities’. The CCPR has thus clarified that unilateral abuse of state resources for campaign purposes violates the Covenant.

## **9. Equality Between Men and Women**

The right and opportunity for women to participate in a country’s public affairs ought to be equal to that of men. Recognizing that this is rarely the case in practice, positive TSMs to accelerate equality between men and women are not considered discriminatory by the treaties that advance them. The obligation to guarantee equal treatment between men and women, including the right to vote and be elected, is covered by ICCPR article 3 through the notion of the ‘equal right [...] to the enjoyment of all civil and political rights’. Moreover, the CEDAW reaffirms the need for states to take all appropriate measures in all fields to ‘ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men’. The CEDAW prescribes measures to eliminate discrimination against women

in the political and public life of a country, including participation in all levels of government and in non-governmental associations.

The CEDAW provides that the '[a]doption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination [...] these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved'. CEDAW GR 25 applies the term 'measures' to encompass 'a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes, allocation and/or reallocation of resources, preferential treatment, targeted recruitment, hiring and promotion, numerical goals connected with time frames and quota systems. The choice of particular "measures" will depend on the context in which article 4.1 is applied and on the specific goal it aims to achieve'.

## 10. Freedom of Association

The ICCPR guarantees the right to freedom of association with others. All persons have the right to free association, which extends to the creation of political parties and other forms of civic organizations. Freedom of association is not absolute, although the ICCPR suggests that 'no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others'.

The CCPR considers freedom of association to be 'an essential adjunct to the rights protected by article 25'. Further, the right to freely form and join political associations plays 'a significant role in the conduct of public affairs and the election process'. In combination with the freedoms of expression and assembly, the CCPR considers freedom of association to be part of the 'essential conditions for the effective exercise of the right to vote'.

Apart from political organizations, the intersection of the right to participate and freedom of association also forms the basis of the legitimacy of civil society organizations involved in electoral processes. Civil society constitutes a vehicle for citizens to 'take part in the conduct of public affairs', as noted by the CCPR.

## 11. Freedom of Assembly

The ICCPR recognizes the obligation to guarantee freedom of assembly. It provides that all persons have the right to assemble freely, which allows candidates to conduct electoral campaign gatherings. The law may prescribe

reasonable and non-discriminatory restrictions and conditions for the exercise of this right. As with the freedom of association, assembly is not an absolute right; some restrictions are contemplated, as long as they are ‘imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others’.

As noted above, the CCPR highlights that ‘[f]reedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected’.

## **12. Freedom of Movement**

The ICCPR guarantees that ‘[e]veryone lawfully within the territory of a state shall, within that territory have the right to liberty of movement’. The law may prescribe specific reasonable, proportionate and non-discriminatory restrictions and conditions for the exercise of this right. Freedom of movement allows political contestants to campaign for election without geographic restrictions: ‘Everyone shall be free to leave any country, including his own’; ‘[n]o one shall be arbitrarily deprived of the right to enter his own country’. Yet freedom of movement can be limited, but only as provided by law and as is necessary to ‘protect national security, public order (*ordre public*), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Covenant’.

Nevertheless, the CCPR notes that ‘it would be a clear violation of the Covenant if the rights enshrined in article 12, paragraphs 1 and 2, were restricted by making distinctions of any kind, such as [...] political or other opinion’. Such violation would be particularly relevant during an electoral process, for example in the voter registration or campaign periods. Finally, in its GC 25, the CCPR notes that ‘[p]ositive measures should be taken to overcome specific difficulties, such as [...] impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively’.

## **13. Freedom of Opinion and Expression**

All persons have the right to freedom of opinion and expression. Although the media are one of the main beneficiaries of this freedom, the right extends to all persons, including to political candidates and parties during an electoral campaign. The law may prescribe reasonable, proportionate and non-discriminatory restrictions on and conditions for the exercise of freedom of expression, but not for freedom of opinion. The ICCPR establishes that ‘[e]veryone shall have the right to hold opinions without interference; Everyone



shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice'. The Covenant further determines that this right 'carries with it special duties and responsibilities' and that it 'may therefore be subject to certain restrictions [...] as are provided by law and necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health and morals'.

The CCPR holds that '[f]reedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected'. Furthermore, in its GC 10, the CCPR states that the right to hold opinions without interference is 'a right to which the Covenant permits no exception or restriction'.

Also relevant to the media, the CCPR's GC 10 emphasizes that, within the framework of state reports, 'It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right'. In addition, in GC 19 the CCPR determines that 'when a State Party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself'. In GC 34 it develops various aspects of the freedom of expression regarding the media.

## 14. Right to Security of the Person

Security of the person concerns freedom from injury, but also extends to the liberty of persons, including the prohibition of arbitrary arrest or detention, which covers the rights of detained persons and protects due process guarantees. Article 9 of the ICCPR stresses that the right to security of the person is universal in the sense that it is guaranteed to 'everyone', and not merely citizens. All persons have the right to their personal integrity, to be secure from injury and the threat of injury, including protection from arbitrary arrest and detention. This right extends to all persons active during an electoral process: candidates, EMB personnel, civil society organizations, the media and voters.

The right to security of the person safeguards political candidates and activists during the electoral campaign. As set forth by the CCPR, '[n]o person should suffer discrimination or disadvantage of any kind because of that person's candidacy'.

To protect the security of electors during an electoral process, the CCPR establishes that 'intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced'. It also reiterates that

persons 'entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will'.

The Guidelines also refer to this right in relation to the protection of individuals from racial discrimination and acts of violence motivated by racial, religious and national hatred. Article 20 of the ICCPR requires national legislation to ensure the security of the person by outlawing the dissemination of racist and xenophobic ideas and banning organizations that promote such ideologies. This obligation is particularly emphasized as it concerns media regulatory frameworks.

## **15. Transparency and the Right to Information**

All persons have the right to seek and receive public information regarding the work of all public administrations. All bodies and organizations vested with public powers have an obligation to be transparent in their operations.

The right to access information can be considered an adjunct, as expressed in the ICCPR, to the right to freedom of expression, since 'this right shall include freedom to seek, receive and impart information and ideas of all kinds'. The right to information is further developed by UNCAC in article 10, which stresses that in the fight against corruption, a state shall 'take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate'. These measures may include 'adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration, and with due regard to the protection of privacy and personal data, on decisions and legal acts that concern members of the public'.

Further, UNCAC article 13.1 requires State Parties to promote transparency by 'ensuring that the public has effective access to information' as a measure to strengthen citizen participation in the fight against corruption. UNCAC governs all aspects of public administration, potentially including EMBs, for which transparency can help inspire confidence in their performance and impartiality. Moreover, the obligation of transparency also applies to other electoral stakeholders, namely political parties and candidates (whose transparency is called for in UNCAC) and further extends to all stakeholders, including civil society organizations that are active in electoral processes.

## 16. Prevention of Corruption

All persons have the right to be protected against corruption. States have an obligation to take necessary measures to prevent corruption at all levels, including throughout the electoral process.

Setting out to prevent corruption and promote the integrity of public affairs, the UNCAC fills a gap in international treaty law. Its provisions governing public administration are directly applicable to EMBs. UNCAC mandates states to ‘adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement’ of civil servants and other non-elected officials on the basis of the ‘principles of efficiency, transparency and objective criteria such as merit, equity and aptitude’. UNCAC provisions on procurement are equally applicable to EMBs.

UNCAC provisions also cover elected officials, establishing that State Parties ‘shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for election to public office’. In relation to election campaigns, UNCAC provides that State Parties, ‘shall also consider taking appropriate legislative and administrative measures [...] to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties’.

The UNCAC aims to prevent corruption at all levels of government by imposing safeguards and checks and balances, as well as by encouraging the active participation of citizens and civil society in the prevention of (and the fight against) corruption. In this sense, UNCAC advances provisions regarding transparency and public participation in decision-making processes that are relevant for electoral processes. Corruption is prone to undermine (or even defeat) the expression of electors’ free will, and can taint the impartiality of election administrators and adjudicators.

## 17. Rule of Law

The UDHR Preamble asserts that ‘human rights should be protected by the rule of law’ to prevent recourse ‘as a last resort, to rebellion against tyranny and oppression’. Although the notion of the rule of law is considered essential for the protection of human rights, and constitutes a logical foundation of public international law, it is not expressed verbatim in international treaties. The obligation to uphold the rule of law entails equal accountability before the law, the fight against impunity for human rights violations, legal certainty and predictability, as well as the independence and impartiality of the judiciary. Although not cited explicitly in the ICCPR, the Covenant

does protect certain aspects of the rule of law, such as guaranteeing that everyone is equal before the law, which implies that no one is above the law. ICCPR requirements that rights must be guaranteed by law also ensure legal certainty, which forms another element of the rule of law. On the other hand, the UNCAC determines that each 'State Party shall [...] reflect the principles of Rule of Law' in laying down the basic anti-corruption policies and practices that its State Parties must adhere to.

The CCPR's GC 29 indicates that '[s]afeguards related to derogation [...] are based on the principles of legality and the rule of law inherent in the Covenant as a whole'. Furthermore, in GC 32 the CCPR considers the 'competence, independence and impartiality' of tribunals to be 'an absolute right that is not subject to any exception'. The independence of the judiciary is further developed by GC 32.

## **18. Right to an Effective Remedy**

As part of the necessary measures that State Parties of the ICCPR are required to take to give effect to the rights recognized in the Covenant, they must guarantee the right to an effective remedy. As the ICCPR specifies, State Parties shall undertake 'to ensure that any persons whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity'. All persons should have the right to obtain a timely and effective remedy by competent administrative, legislative or judicial authorities to claim the full enjoyment of their rights. Moreover, states must end violations if they are still ongoing. While the notion of remedies goes beyond judicial bodies and includes administrative and legislative mechanisms, the ICCPR equally recognizes the importance of developing 'the possibilities of judicial remedies'.

The CCPR reiterates that 'in addition to effective protection of Covenant rights, States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights'. The importance of administrative remedies can be particularly significant in many contexts.

In the case of electoral remedies, the CCPR indicates that there should be 'access to judicial review (or other equivalent processes) of the voting and counting so that electors have confidence in the security of the ballot and the counting of the votes'. A particular concern regarding election-related claims, given the limited time frames in which electoral processes are held, is the need for all claims and appeals to be processed in a timely or expeditious manner in order to be fully effective. As expressed in GC 32, '[a]n important aspect of the fairness of a hearing is its expeditiousness'.

## 19. Right to a Fair and Public Hearing

The right to a fair and public hearing is laid down in the ICCPR, which states that all persons ‘shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’.

The CCPR explains that the ‘right to equality before courts and tribunals, in general terms, guarantees, in addition to the principles mentioned in the second sentence of article 14, paragraph 1, those of equal access and equality of arms, and ensures that the parties to the proceedings in questions are treated without any discrimination’.

The general obligation to guarantee a fair and public hearing for all persons extends to an adjacent requirement for timely or expeditious treatment by impartial and independent tribunals. The CCPR’s GC 32 considers that expeditiousness is ‘an important aspect of the fairness of a hearing’ and determines that all stages ‘whether in first instance or on appeal must take place without undue delay’, which is very important for seeking effective remedies within compressed electoral timelines. The provisions concerning the right to a fair and public hearing can also extend to quasi-judicial administrative proceedings.

## 20. States Must Take Necessary Steps to Give Effect to Rights

The ICCPR imposes a positive and far-reaching obligation on States Parties, holding that ‘[w]here not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant’. Thus, states must take all necessary steps to give effect—in the law and its implementation—to all the rights and obligations contained in the ICCPR.

The CCPR determines that this legal obligation ‘is both negative and positive in nature. States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, states must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights’.

Further, the CCPR unequivocally establishes that the requirement ‘to take steps to give effect to the Covenant rights is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State’.

## Notes

- <sup>1</sup> Carroll, D. J. and Davis-Roberts, A., ‘The Carter Center and Election Observation: An Obligations-Based Approach for Assessing Elections’, *Election Law Journal*, 12/1 (2013), pp. 87–93.
- <sup>2</sup> Meyer-Oheldorff, N., ‘Forget “International Standards”’, Discussion Paper No. 2 (Berlin: Democracy Reporting International, 2010), available at <[http://www.democracy-reporting.org/files/internationalstandards\\_discussionpaper\\_2.pdf](http://www.democracy-reporting.org/files/internationalstandards_discussionpaper_2.pdf)>, accessed 10 February 2014.
- <sup>3</sup> Davis-Roberts, A. and Carroll, D., ‘Using International Law to Assess Elections’, *Democratization*, 17/3 (2010), pp. 416–41.
- <sup>4</sup> UN Charter, Arts. 3, 4.
- <sup>5</sup> Ibid., Art. 1.
- <sup>6</sup> Ibid., Art. 24.
- <sup>7</sup> The UN Charter states that China, France, Russia, the United Kingdom (UK) and the United States are UNSC permanent members, while the General Assembly elects the other ten non-permanent members.
- <sup>8</sup> In Côte d’Ivoire in 2010.
- <sup>9</sup> For more information, see the UN webpage on the Trusteeship Council at <<http://www.un.org/en/mainbodies/trusteeship/index.shtml>>, accessed 10 February 2014.
- <sup>10</sup> UNSC Res. 448 (1979), p.1.
- <sup>11</sup> To date, the UNSC has adopted over 2,000 resolutions, of which more than 300 address electoral matters. For more information, see <<http://www.un.org/en/sc/documents/resolutions/index.shtml>>, accessed 10 February 2014.
- <sup>12</sup> The UN Secretariat is the executive branch of the organization. It is headed by the Secretary-General, who is appointed by the UNGA.
- <sup>13</sup> UNGA Res. 46/137 (1991).
- <sup>14</sup> For more information, see <<http://www.un.org/documents/ga/res/46/a46r137.htm>>, accessed 12 May 2014.
- <sup>15</sup> For more information, see <<http://www.un.org/wcm/content/site/undpa/main/issues/elections/actors>>, accessed 10 February 2014.
- <sup>16</sup> For more information, see <<http://www.un.org/wcm/content/site/undpa/main/issues/elections>>, accessed 10 February 2014.

- <sup>17</sup> For more information, see the UN Focal Point for Electoral Assistance, *Policy Directive on Principles and Types of UN Electoral Assistance*, FP/01/2012, May 2012.
- <sup>18</sup> For more information, see <<http://toolkit-elections.unteamworks.org/?q=node/17>>, accessed 10 February 2014.
- <sup>19</sup> For example, in 2010 the head of the peacekeeping operation in Côte d'Ivoire was asked to certify the results of the presidential elections. For more information, see <<http://www.un.org/en/peacekeeping/issues/electoralassistance.shtml>>, accessed 10 February 2014. In January 2011, the referendum on self-determination for South Sudan took place. While the Sudanese authorities were responsible for the referendum process, the UN Mission in Sudan, EAD and UNDP merged as one team to support them by providing technical and logistical assistance. For more information, see <<http://unmis.unmissions.org/>>, accessed 10 February 2014.
- <sup>20</sup> UNTAC (United Nations Transitional Authority to Cambodia) was established by UNSC Res. 745 (1992) to ensure the implementation of the 23 October 1991 Paris Agreements. UNTAC's mandate included the organization and conduct of free and fair general elections. For more information, see <<http://www.un.org/en/peacekeeping/missions/past/untac.htm>>, accessed 10 February 2014.
- <sup>21</sup> UNTAET (United Nations Transitional Administration in Timor-Leste) was established by UNSC Res. 1272 (1999). It had overall responsibility for the administration of East Timor and was empowered to exercise all legislative and executive authority, including the administration of justice. UNTAET organized elections in August 2001, two years after the people of Timor-Leste voted for independence. For more information, see <<http://www.un.org/en/peacekeeping/missions/past/etimor/UntaetM.htm>>, accessed 10 February 2014.
- <sup>22</sup> Following an invitation by the Transitional Executive Council for the UN to observe the South African elections, the mandate of the UN Observer Mission in South Africa was expanded by UNSC Res. 894 (1994) to include election observation. Its specific mandate was spelled out in the *Report of the Secretary-General Concerning Arrangements for United Nations Monitoring of the Electoral Process in South Africa and Coordination of Activities of Internal Observers*, A/48/845-S/1 994/16, paras. 56–9 (1994).
- <sup>23</sup> ONUMOZ (United Nations Operation in Mozambique) was established by UNSC Res. 797 (1992) to help implement the 4 October 1992 General Peace Agreement. ONUMOZ's mandate included the provision of technical assistance and monitoring of the entire electoral process. For more information, see <<http://www.un.org/en/peacekeeping/missions/past/onumozM.htm>>, accessed 10 February 2014.
- <sup>24</sup> For more information, see <<http://unama.unmissions.org/Default.aspx?tabid=12255&language=en-US>>, accessed 10 February 2014.
- <sup>25</sup> For more information, see <[http://www.uniraq.org/index.php?option=com\\_k2&view=item&layout=item&id=1024&Itemid=636&lang=en](http://www.uniraq.org/index.php?option=com_k2&view=item&layout=item&id=1024&Itemid=636&lang=en)>, accessed 10 February 2014.

- <sup>26</sup> For more information, see <[http://www.un.org/wcm/content/site/undpa/main/issues/elections/types\\_of\\_assistance](http://www.un.org/wcm/content/site/undpa/main/issues/elections/types_of_assistance)>, accessed 10 February 2014.
- <sup>27</sup> UN Charter, Art. 13.
- <sup>28</sup> *Ibid.*, Arts. 10–17.
- <sup>29</sup> A/RES/66/163.
- <sup>30</sup> A/RES/64/155.
- <sup>31</sup> A/RES/66/163.
- <sup>32</sup> A/RES/49/190.
- <sup>33</sup> A/RES/52/129.
- <sup>34</sup> A/RES/62/150.
- <sup>35</sup> A/RES/64/155.
- <sup>36</sup> Starting in 1995 (A/RES/ 50/185), the UNGA decided to consider the item biennially.
- <sup>37</sup> UN Charter, Art. 68.
- <sup>38</sup> UNGA Res. 60/251 (2006).
- <sup>39</sup> Seats are distributed as follows: Group of African States, 13; Group of Asian States, 13; Group of Eastern European States, six; Group of Latin American and Caribbean States, eight; and Group of Western European and other states, seven.
- <sup>40</sup> For more information, see the OHCHR webpage at <<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>>, accessed 10 February 2014.
- <sup>41</sup> HRC Res. 24/8, < [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/24/8](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/24/8) >, accessed 8 May 2014
- <sup>42</sup> Additional research and studies on specific thematic issues related to the HRC mandate have been developed by the HRC Advisory Committee, available at <<http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/AboutAC.aspx>>, accessed 10 February 2014.
- <sup>43</sup> The UPR mechanism was created by UNGA Res. 60/251 (2006), which established the HRC.
- <sup>44</sup> Specific information about the role of NGOs in the UPR process is available at <<http://www.upr-info.org/en/how-to/role-ngos>>, accessed 15 September 2014.
- <sup>45</sup> HRC Res. 5/1 Institution-building of the UN HRC (2007) replaced the procedure established by UN Economic and Social Council Res. 1503.
- <sup>46</sup> Arabic, Chinese, English, French, Russian and Spanish.
- <sup>47</sup> Obligations imposed on states by UNSC resolutions arise from States Parties' consent to the UN Charter, which itself is a treaty.
- <sup>48</sup> The OHCHR website offers detailed information on UN treaty bodies, treaties' ratifications and reservations processes at the state level, available at <<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>>, accessed 2 April 2014.



- 49 For more information, see <[https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1\\_en.xml](https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml)>, accessed 10 February 2014.
- 50 Vienna Convention on the Law of Treaties, Arts. 10 and 18.
- 51 Ibid., Art. 40.
- 52 Ibid., Arts. 20–23.
- 53 Ibid., Arts. 2(1)(d) and 19–23.
- 54 For more information, see <[http://www.issafrica.org/anicy/uploads/Kirby\\_Domestic\\_courts\\_\\_intHRLaw.pdf](http://www.issafrica.org/anicy/uploads/Kirby_Domestic_courts__intHRLaw.pdf)>, accessed 10 February 2014.
- 55 For more information on the extent to which the work of the treaty bodies has begun to affect the work of national courts and tribunals, see International Law Association, *International Human Rights Law and Practice*, Berlin Conference, 2004, available at <<http://www.ila-hq.org/en/committees/index.cfm/cid/20>>, accessed 14 April 2014.
- 56 A search of 126 jurisdictions returned 326 cases. It found that the ICCPR has been cited by the national courts of 55 states on 5 continents. This non-exhaustive count marks a dramatic increase compared to the 22 States Parties that reported domestic use of the Covenant to the HRC in 2000. See <<http://www.worldlii.org/>>, accessed 10 February 2014.
- 57 UN Charter, Art. 68.
- 58 UNGA Res. 43 (I).
- 59 UNGA Res. 217 A (III).
- 60 UDHR, Art. 21(3).
- 61 Whereas most of the UDHR is now considered part of customary law, Art. 21 (which addresses political and electoral rights) is consistently excluded from the body of UDHR provisions that most authors and jurists regard as being part of customary international law.
- 62 UNGA Res. 421 (V).
- 63 UNGA Res. 543 (VI).
- 64 UNGA Res. 545 (VI).
- 65 UNGA Res. 2200 A (XXI).
- 66 UDHR, Art. 30.
- 67 The rights to life; freedom from torture; freedom from enslavement or servitude; protection from imprisonment for debt; freedom from retroactive penal laws; recognition as a person before the law; and freedom of thought, conscience and religion.
- 68 ICCPR, Arts. 19, 21 and 22.
- 69 Ibid., Art. 4.
- 70 China, Comores, Cuba, Nauru, Palau, Sao Tomé and Príncipe, St Lucia.
- 71 Part IV of the ICCPR.

- <sup>72</sup> The International Law Association's Committee on International Human Rights Law and Practice has produced a number of reports that provide examples of States Party recognition of the CCPR's work. For more information, see <<http://www.ila-hq.org/en/committees/index.cfm/cid/20>>, accessed 10 February 2014.
- <sup>73</sup> At the time of writing, 115 states were parties to the First Optional Protocol to the ICCPR.
- <sup>74</sup> Individual rights are those contained in ICCPR Arts. 6–27 (inclusive).
- <sup>75</sup> First Optional Protocol to the ICCPR, Art. 4.
- <sup>76</sup> CCPR Rules of Procedure, Rule 96(c).
- <sup>77</sup> In a number of cases dealing with the right to life, torture and ill treatment, or arbitrary arrests and disappearances, the CCPR has established that the burden of proof cannot rest only with the person complaining of the violation of rights and freedoms.
- <sup>78</sup> As of April 2012, the CCPR had received 2,145 Individual Communications; it found ICCPR violations in nearly one-third of these. For more information, see <<http://www2.ohchr.org/english/bodies/hrc/docs/SURVEYCCPR.xls>>, accessed 10 February 2014.
- <sup>79</sup> ICERD, Art. 1(4).
- <sup>80</sup> Ibid., Art. 1(1).
- <sup>81</sup> Ibid., Art. 4.
- <sup>82</sup> Ibid., Art. 5.
- <sup>83</sup> Ibid., Art. 14.
- <sup>84</sup> <<https://treaties.un.org/>>, accessed 27 March 2014.
- <sup>85</sup> For more information, see <<http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>>, accessed 10 February 2014.
- <sup>86</sup> Available at <[https://treaties.un.org/doc/Treaties/1954/07/19540707%2000-40%20AM/Ch\\_XVI\\_1p.pdf](https://treaties.un.org/doc/Treaties/1954/07/19540707%2000-40%20AM/Ch_XVI_1p.pdf)>, accessed 20 March 2014.
- <sup>87</sup> CEDAW, Art. 1.
- <sup>88</sup> Ibid., Art. 4.
- <sup>89</sup> Ibid., Art. 7.
- <sup>90</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Art. 9(1)b.
- <sup>91</sup> Ibid., Art. 9.
- <sup>92</sup> Ibid., Art. 17.
- <sup>93</sup> Ibid., Art. 20(1).
- <sup>94</sup> For more information, see <<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>>, accessed 10 February 2014.

- <sup>95</sup> CMW/C/AZE/CO/1 (2009), p. 37; CMW/C/BOL/CO/1 (2008), p. 8.
- <sup>96</sup> UNGA Res. 55/61 (2000).
- <sup>97</sup> UNCAC, Art. 5.
- <sup>98</sup> Ibid., Art. 10.
- <sup>99</sup> Ibid., Art. 7.
- <sup>100</sup> Ibid., Art. 7.
- <sup>101</sup> Ibid., Art. 17.
- <sup>102</sup> The UN Office on Drugs and Crime published the first year's peer group reviews on its webpage, which also hosts a number of documents emanating from this process. For more information, see <<https://www.unodc.org/>>, accessed 3 April 2014.
- <sup>103</sup> CRPD, Art. 1.
- <sup>104</sup> CCPR/C/BLZ/CO/1, Belize (2013), p. 24.
- <sup>105</sup> CRPD, Art. 4(1)g.
- <sup>106</sup> Art. 5 refers to appropriate and specific measures.
- <sup>107</sup> CRPD, Art. 5.
- <sup>108</sup> Ibid., Art. 8.2(c).
- <sup>109</sup> For more information, see <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx>>, accessed 10 February 2014.
- <sup>110</sup> For more information, see the CAT's webpage at <<http://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIntro.aspx>>, accessed 26 March 2014.
- <sup>111</sup> For more information, see the CRC's webpage at <<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>>, accessed 26 March 2014.
- <sup>112</sup> All CoE Member States are party to the European Convention on Human Rights (ECHR). The Convention was adopted in 1950 and entered into force in 1953, predating the ICCPR. Art. 19 of the ECHR laid the groundwork for the European Court of Human Rights.
- <sup>113</sup> Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, Dakar (2001).
- <sup>114</sup> More information on this document can be found at <<http://www.osce.org/odihr/19394>> and in the OSCE-ODIHR Guidelines for Reviewing the Legal Framework for Elections, available at <<http://www.osce.org/odihr/elections/104573?download=true>>, accessed 26 March 2014.
- <sup>115</sup> The Guidelines will use the terms 'voters' and 'electors' interchangeably, except when referring to the general obligation, when the term 'elector' will be used, in keeping with ICCPR wording.

**Part B**

**Electoral  
Components  
and Tables of  
Jurisprudence**

# Chapter 1. Structure of the Legal Framework

## Overview

The Guidelines aim to provide tools with which to review national legal frameworks for elections based on international obligations and UN jurisprudence. Analysing the structure of the legal framework is a necessary first step. While a debate on legal traditions or the modalities of incorporating international norms into national law is beyond the scope of this volume, suffice it to say that a national legal framework should respect the obligations laid out in the relevant international treaties and jurisprudence ratified by a particular state.

The Guidelines broadly define the legal framework for elections as including international agreements, applicable constitutional provisions, the electoral law, and all normative and other instruments that affect electoral processes directly or indirectly. In some countries, the framework may include legislation such as political party laws, voter registration laws and citizenship laws. It also includes all regulations attached to the electoral law and to other relevant laws promulgated by the government, including interim and transitional bodies. The legal framework for elections may encompass relevant directives and/or instructions related to the electoral law and regulations issued by the electoral management body (EMB), as well as related codes of conduct (voluntary or otherwise) that may affect the electoral process. Although governments are free to develop legal frameworks, written law—as opposed to custom or administrative orders—is needed to govern electoral processes. Written law provides the benefits of certainty, visibility and transparency. It is also more readily subject to judicial interpretation and review, and is more predictable to interested parties, including voters.

Legislation can affect electoral processes if it develops or curtails fundamental freedoms of assembly, association, opinion, movement or expression, especially if it imposes criminal liability on the exercise of political and civil rights. International obligations require States Parties to repeal or suspend laws that may discourage political participation. The following Table of Jurisprudence also addresses rule of law concepts that cut across other topic areas in the Guidelines. The International Covenant on Civil and Political Rights (ICCPR) frames rule of law requirements in broad terms of non-discrimination and equality before the courts. The *UN Handbook on the Legal, Technical and Human Rights Aspects of Elections* highlights the importance of core rule of law principles such as legal certainty, accessibility, coherence, timeliness and stability of the legal framework. In a welcome development, the United Nations Convention Against Corruption (UNCAC) specifically requires States Parties to abide by rule of law principles by laying down the basic anti-corruption policies and practices to which State Parties must adhere.

Nevertheless, rule of law principles are better developed in the African Charter on Democracy, Elections and Governance (ACDEG) and the Economic Community of West African States (ECOWAS) Protocol on Democracy and Good Governance, Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (Supplementary Protocol) as well as in the Inter-American Democratic Charter (IADC).<sup>1</sup>

The separation of powers is another area embraced by regional obligations beyond the scope of UN treaties. The ACDEG and ECOWAS Supplementary Protocol both specifically invoke the separation of powers as a shared principle among States Parties.

The ECOWAS Protocol prohibits amendments to the legal framework less than six months before election day unless they are sanctioned by a broad political consensus.<sup>2</sup> This is an important safeguard that the UN framework does not yet consider, which helps guarantee legal stability and predictability, and reinforce the certainty of the legal framework.

The role of legal frameworks includes entrenching the periodicity of elections by defining the length of elected terms, and setting firm timelines for the electoral cycle, including a mechanism for the transfer of power. A breach of periodicity or a refusal to concede electoral defeat involves a denial of the exercise of fundamental rights. However, the lack of a definition of periodicity has largely left it to United Nations Security Council (UNSC) discretion to intervene—or not—when incumbents indefinitely postpone elections in order to extend their terms without permitting the expression of the free will of the electorate. Clear precedent and/or authoritative ICCPR interpretation regarding the excessive postponement of elections or the peaceful transfer of

power could strengthen this general obligation of periodicity. The ECOWAS Supplementary Protocol establishes that elections shall be organized on the dates or in the periods defined in the constitution or electoral laws, while the European Convention on Human Rights (ECHR) requires that elections be held at ‘reasonable intervals’.<sup>3</sup>

## Table of Jurisprudence

### 1. Structure of the Legal Framework

#### 1.1 Does the legal framework incorporate applicable international obligations into national law?

##### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures** as may be necessary to give effect to the rights recognized in the present Covenant.

**CCPR, GC 31, p. 13:** Article 2, paragraph 2, requires that States Parties take the necessary steps to give effect to the Covenant rights in the domestic order. It follows that, **unless Covenant rights are already protected by their domestic laws or practices, States Parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant.** Where there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant’s substantive guarantees. Article 2 allows a State Party to pursue this in accordance with its own domestic constitutional structure and accordingly does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law. **The Committee takes the view, however, that Covenant guarantees may receive enhanced protection in those States where the Covenant is automatically or through specific incorporation part of the domestic legal order. The Committee invites those States Parties in which the Covenant does not form part of the domestic legal order to consider incorporation of the Covenant to render it part of domestic law to facilitate full realization of Covenant rights as required by article 2.**

**CCPR/C/79/Add. 33(1994), Comments on Cameroon, p. 17:** The Committee recommends that the Cameroonian authorities avail themselves of the **constitutional reform to incorporate in the national legal system all the rights guaranteed by the Covenant, and that each article of the draft be systematically checked against the provisions of the Covenant.**

**CCPR/C/GE0/CO/3, Georgia (2007), p. 14:** The Committee regrets the absence of adequate education of judges, and the fact that they are not generally trained in international human rights law, with the result that in practice there is very little direct enforcement of the rights recognized under the Covenant [...]. **The State party should in particular provide training on the Covenant and its implications for interpretation of the Constitution and domestic legislation, so as to ensure that all actions of the judiciary will be in accordance with its obligations under the Covenant.**

**A/HRC/21/63 (SR Cambodia, 2012), p. 63:** The objective of electoral reform should be to ensure that no violations of electoral laws take place and that the laws themselves conform to international standards. Government interlocutors often respond to the Special Rapporteur that their procedures are in accordance with existing law. What is needed, however, is for the **laws to be compatible with international standards flowing from treaties ratified by Cambodia and jurisprudence developed by treaty bodies and with the principle of the rule of law.** Cambodia should rise above a mechanical application of democracy and the rule of law and implement the fundamental principles and spirit behind the notion of the rule of law.

**A/55/40 [Vol. I] (SUPP), Australia, 2000, p. 514:** The Committee is concerned that in the absence of a constitutional bill of rights, or a constitutional provision giving effect to CCPR, there remain lacunae in the protection of Covenant rights in the Australian legal system. (c) There are still areas in which the domestic legal system does not provide an effective remedy to persons whose rights under the ICCPR have been violated.

## 1.2 Does the legal framework ensure the separation and balance of powers?

### Rule of Law

UDHR, Preamble: [...] Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

CCPR, GC 25, p. 7: Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those **representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power**. It is also implicit that the representatives **exercise only those powers which are allocated to them in accordance with constitutional provisions**.

CCPR, GC 13, p. 3: In particular, States parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are independent, impartial and competent, in particular with regard to the manner in which judges are appointed; the qualifications for appointment and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the **actual independence of the judiciary from the executive branch and the legislative**.

CCPR/C/79/Add. 79, Slovakia (1997), p. 3: The Committee also notes with concern that the **lack of clarity in the delimitation of the respective competences of the executive, legislative and judicial authorities may endanger the implementation of the rule of law and a consistent human rights policy**.

CCPR/C/79/Add. 84, Iraq (1997), p. 7: The Committee is **deeply concerned that all government power in Iraq is concentrated in the hands of an executive which is not subject to scrutiny or accountability, either politically or otherwise. It operates without any safeguards or checks and balances** designed to ensure the proper protection of human rights and fundamental freedoms in accordance with the Covenant. This appears to be the most significant factor underlying many violations of Covenant rights in Iraq, both in law and in practice.

CAT/C/KAZ/CO/2, Kazakhstan (2008), p. 25: [...] The Committee reiterates its previous recommendation (A/56/44, p129 (e)) that the State party should guarantee **the full independence and impartiality of the judiciary**, inter alia, by **guaranteeing separation of power**.

CCPR/CO/71/SYR/Add. 1, Syrian Arab Republic (2001), p. 15: The Committee has noted the delegation's explanations to the effect that the independence and impartiality of the judiciary in the Syrian Arab Republic are fully assured. It nonetheless **remains concerned about certain aspects of the appointment of judges** which pose problems with regard to article 14, paragraph 1 of the Covenant. **This is the case of the four-year renewable term of the members of the Supreme Constitutional Court** (article 141 of the Constitution), **which, as currently formulated, may compromise their independence vis-à-vis the executive branch**. The Committee is also concerned that proceedings may be held in camera in circumstances not authorized by article 14, paragraph 1.

CCPR/CO/79/GNQ, Equatorial Guinea (2004), p. 7: The Committee expresses its concern at the absence of an independent judiciary in the State party and at the conditions for the appointment and dismissal of judges, which are not such as to **guarantee the proper separation of the executive and the judiciary**.

Mikhail Ivanovich Pastukhov v. Belarus, Comm. No. 814/1998, UN Doc. CCPR/C/78/D/814/1998 (2003): **The dismissal of Judge Mikhail Ivanovich Pastukhov from his position as a judge of the Belarus Constitutional Court was part of an attempt to diminish the independence of the judiciary**. While the organization of a national court system may be changed by legitimate democratic means, the change here was part of an **attempt to consolidate power in a single branch of government** through the pretense of a constitutional referendum. [...] The presidential decree dismissing Judge Pastukhov from his office as judge of the Constitutional Court **violated the rights guaranteed to him and to the people of Belarus under Articles 14 and 25** of the Covenant.

A/HRC/RES/19/36 (2011), p. 1: [The Human Rights Council] stresses that democracy includes respect for all human rights and fundamental freedoms, inter alia [...], **the separation of powers, the independence of the judiciary**, transparency and accountability in public administration and decision-making and free, independent and pluralistic media.



### 1.3 Does the legal framework guarantee periodic elections?

#### Periodic Elections

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

UNSC Res. 1880, Côte d'Ivoire (2009), p. 1: [The Security Council] recalls that in the statement of its President dated 29 May 2009 (S/PRST/2009/16) it welcomed the new electoral timeline endorsed in Ouagadougou by all the main Ivorian political actors and leading to the first round of the presidential elections on 29 November 2009, and underlines that the Ivorian political actors are **bound to respect this timeline to demonstrate their political commitment towards the holding of free, fair, open and transparent elections**. p. 2: Reiterates its determination to bring its full support to a credible electoral process for the presidential and legislative elections in Côte d'Ivoire and expresses its conviction that any postponement of the presidential elections of 29 November 2009 **would be inconsistent with a credible process** and with the Ouagadougou Political Agreement as endorsed by the Security Council.

CCPR, GC 25, p. 7: Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those **representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power**. It is also implicit that the representatives **exercise only those powers which are allocated to them in accordance with constitutional provisions**.

CCPR/C/MWI/CO/1, Malawi (2012), p. 20: The Committee expresses concern at the fact that local government **elections have not taken place since 1995**, when they should be held once every five years, as required by the Local Government Elections Act (article 25). The State party should **take appropriate measures to organize, as soon as possible, the next local government elections**, including by allocating the necessary budget for this purpose.

A/HRC/RES/19/36 (2012), p. 1: [The Human Rights Council] **stresses that democracy includes respect for all human rights and fundamental freedoms**, inter alia, freedom of association and of peaceful assembly, freedom of expression and opinion, freedom of thought, conscience, religion or belief, the right to be recognized everywhere as a person before the law and the right to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote in a pluralistic system of political parties and organizations and **to be elected at genuine, periodic, free and fair elections** by universal and equal suffrage and by secret ballot guaranteeing the free expression of the will of the people, as well as respect for the rule of law, the separation of powers, the independence of the judiciary, transparency and accountability in public administration and decision-making and free, independent and pluralistic media.

### 1.4 Does the legal framework protect electoral rights by law?

#### States Must Take Necessary Steps to Give Effect to Rights; Rule of Law

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to **take the necessary steps**, in accordance with its constitutional processes and with the provisions of the present Covenant, **to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

UDHR, Preamble: [...] Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that **human rights should be protected by the rule of law**.

ICCPR, Art. 25: **Every citizen shall have the right** and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CCPR, GC 29, p. 16: Safeguards related to derogation [...] are based on the **principles of legality and the rule of law** inherent in the Covenant as a whole.

CCPR, GC 25, p. 4: Any **conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria** [...]. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are **established by law** and which are objective and reasonable. p. 9: **The rights and obligations provided for in paragraph (b) should be guaranteed by law**. p. 10: **The right to vote at elections and referenda must be established by law**. p. 11: **Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws, and those laws should be strictly enforced**. p. 16: **The grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures**. p. 19: In conformity with paragraph (b), **elections must be conducted** fairly and freely on a periodic basis **within a framework of laws guaranteeing the effective exercise of voting rights**. p. 20: An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and **in accordance with established laws which are compatible with the Covenant**. p. 22: Reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and **indicate how the secrecy, security and validity of the voting process are guaranteed by law**.

A/HRC/RES/19/36 (2012), p. 16: [The Human Rights Council] calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by: (h) **Taking appropriate measures and steps to amend electoral laws in order to enable people to vote and participate in elections, without unreasonable restrictions**.

## 1.5 Does the legal framework offer legal certainty and coherence?

### States Must Take Necessary Steps to Give Effect to Rights; Right to an Effective Remedy

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to **take the necessary steps**, in accordance with its constitutional processes and with the provisions of the present Covenant, **to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

UNSC Res. 1876 (2009), p. 3: Requests the Secretary-General to establish a United Nations Integrated Peace-building Office in Guinea-Bissau (UNIOGBIS) to succeed UNOGBIS [...] with the following key tasks: (b) Strengthening the capacities of national institutions in order to maintain constitutional order, public security and the full **respect for the rule of law**; (h) Undertaking human rights promotion, protection and monitoring activities and **supporting the institutionalization of respect for the rule of law**.

CCPR, GC 29, p. 16: Safeguards related to derogation [...] are based on the **principles of legality and the rule of law** inherent in the Covenant as a whole.

CCPR/CO/72/NET, Netherlands (2001), p. 19: There is a sizeable backlog in **revision of outdated and obsolete legislation**, in particular in provisions of the Antillean criminal code. The Committee considers that, especially in the area of criminal law, **legal certainty and clarity are of particular importance** in enabling individuals to determine the extent of liability for specific conduct.

CCPR/C/UNK/CO/1, Serbia (2006), p. 8: The Committee is **concerned about the legal uncertainty** resulting from the failure to specify which provisions of the formerly applicable law are being replaced by those UNMIK Regulations and Kosovo Assembly laws which merely state that they supersede any inconsistent laws or provisions. It is also concerned by the **legal uncertainty** created by the existence of a parallel court system administered by the Ministry of Justice of Serbia, in certain parts of Kosovo (arts. 2 and 4). UNMIK, in cooperation with PISG, should **ensure that any new law or regulation specifies which formerly applicable laws or provisions are being replaced**, that laws and regulations are made accessible to the public in all official languages of Kosovo **via the Official Gazette and the internet**, and that former Yugoslav laws that continue to be applicable can be consulted easily.

A/HRC/7/28/Add. 3 (SRSG on the situation of human rights defenders, 2008), Serbia, p. 150: UNMIK and the future international presence should implement the recommendations of the Human Rights Committee on the independence of the judiciary and **lack of legal certainty**.

CERD/C/62/CO/1, Côte d'Ivoire (2003), p. 14: The Committee notes with concern that the **misinterpretation of election laws** has given rise to tensions between ethnic and religious groups.

CEDAW/C/BIH/CO/3, Bosnia and Herzegovina (2006), p. 30: The Committee urges the State party to **harmonize the election law** with the Law on Gender Equality.

A/HRC/RES/19/36, 2012, p. 16: [The Human Rights Council] calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by: (c) **Ensuring that a sufficient degree of legal certainty and predictability is provided in the application of the law, in order to avoid any arbitrariness.**

A/HRC/13/16 (UPR, 2010), Equatorial Guinea, Recommendation No. 72: [...] Establish a representative independent body to **review the country's election framework and ensure the legitimacy of the democratic process.**

## 1.6 Does the legal framework prohibit discrimination based on gender?

### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, **the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination** on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CEDAW, Art. 5: States Parties shall take all appropriate measures: (a) **To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles** for men and women.

ICCPR, Art. 3: The States Parties to the present Covenant undertake to ensure the **equal right of men and women to the enjoyment of all civil and political rights** set forth in the present Covenant.

CEDAW, Art. 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a **policy of eliminating discrimination against women** and, to this end, undertake (b) **To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.**

CEDAW, Art. 7: **States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country** and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.

## 1.7 Does the legal framework ensure equal protection under the law?

### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, **the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination** on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 14: **All persons shall be equal before the courts and tribunals.**

ICERD, Art. 5: [...] States Parties undertake to prohibit and to **eliminate racial discrimination in all its forms and to guarantee the right of everyone**, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) **The right to equal treatment before the tribunals and all other organs administering justice;** (c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

**CRPD, Art. 12:** (1) States Parties reaffirm that **persons with disabilities have the right to recognition everywhere as persons before the law**. (2) States Parties shall **recognize that persons with disabilities enjoy legal capacity** on an equal basis with others in all aspects of life. (3) States Parties shall **take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity**. (4) States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

**CCPR, GC 32, p. 9:** **The right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status**, whether asylum seekers, refugees, migrant workers, unaccompanied children or other persons, who may find themselves in the territory or subject to the jurisdiction of the State party. A situation in which an individual's attempts to access the competent courts or tribunals are systematically frustrated de jure or de facto runs counter to the guarantee of article 14, paragraph 1, first sentence. **This guarantee also prohibits any distinctions regarding access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds. The guarantee is violated if certain persons are barred from bringing suit against any other persons such as by reason of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

**A/HRC/15/9 (UPR, 2010), Armenia, p. 95.3:** End politically motivated prosecutions of individuals it deems opposition, and **take steps to strengthen the rule of law**, including respecting minimum guarantees as laid out in the International Covenant on Civil and Political Rights, **equal protection of the law** and judicial independence.

## 1.8 Is the legal framework publicly accessible?

### Transparency and the Right to Information

**ICCPR, Art. 19(2):** Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

**UNCAC, Art. 13(1):** Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**.

**UDHR, Preamble:** [...] Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that **human rights should be protected by the rule of law**.

**ICCPR, Art. 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**.

**UNCAC, Art. 5(1):** Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that **promote the participation of society and reflect the principles of the rule of law**, proper management of public affairs and public property, integrity, **transparency and accountability**.

**CCPR, GC 34, p. 25:** [...] **A norm, to be characterized as a 'law'**, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it **must be made accessible to the public** [...].

CCPR, GC 31, p. 15: Article 2, paragraph 3 requires that in addition to effective protection of Covenant rights, States Parties must ensure **that individuals also have accessible and effective remedies to vindicate those rights.**

CCPR, GC 32, p. 8: The right to equality before courts and tribunals, in general terms, guarantees, in addition to the principles mentioned in the second sentence of Article 14, paragraph 1, those of **equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination.**

CCPR, GC 25, p. 11: **Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.** p. 12: Information and materials about voting should be available in **minority languages.** p. 20: An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant [...] **Electors should be fully informed of these guarantees.**

CCPR/C/79/Add. 93, Israel (1998), p. 23: The Committee expresses its **profound concern at the effect of the unpublished directive** of the Ministry of the Interior, under which Palestinians may lose their right to live in the city if they cannot prove that East Jerusalem has been their 'centre of life' for the past seven years. p. 28: [...] The Committee recommends that **regulations and criteria for funding be published** and applied to all religious groups on an equal basis.

CCPR/C/UNK/CO/1, Serbia (2006), p. 8: UNMIK, in cooperation with PISG (Provisional Institutions of Self-Government), should ensure that any new law or regulation specifies which formerly applicable laws or provisions are being replaced, **that laws and regulations are made accessible to the public in all official languages of Kosovo via the Official Gazette and the internet, and that former Yugoslav laws that continue to be applicable can be consulted easily.**

CCPR/CO/82/BEN, Benin (2004), p. 7: The Committee notes with concern that **the individual complaint procedure before the Constitutional Court, which is highly important, is largely unknown to the public and that the Court's decisions are not subject to a follow-up procedure** (article 2 of the Covenant). The State party should **make people more aware of the opportunities they have to bring matters before the Constitutional Court,** ensure that the Court's decisions are enforced, and contemplate the establishment of a body to follow up the Court's decisions.

## 1.9 Does the legal framework establish limits to exceptional derogations of rights and obligations?

### Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 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.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICCPR, Art. 4(1): In time of **public emergency** which threatens the life of the nation and the existence of which is officially proclaimed, the **States Parties** to the present Covenant **may take measures derogating from their obligations** under the present Covenant to the extent **strictly required by the exigencies of the situation,** provided that such measures are **not inconsistent with their other obligations under international law** and **do not involve discrimination** solely on the ground of race, colour, sex, language, religion or social origin.

CCPR, GC 27, p. 13: States should always be guided by the principle that the **restrictions must not impair the essence of the right** (cf. art. 5, para. 1); **the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.**

CCPR, GC 29, p. 3: On a number of occasions the Committee has expressed its **concern over States parties that appear to have derogated from rights protected by the Covenant, or whose domestic law appears to allow such derogation in situations not covered by article 4.**

Jorge Landinelli Silva v. Uruguay, Comm. No. R.8/34, UN Doc. Supp. No. 40 (A/36/40) at 130 (1981), p 8.2: In addition, even on the assumption that there exists a situation of emergency in Uruguay, the Human Rights Committee **does not see** what ground could be adduced to support the contention that, in order to restore peace and order, it was **necessary to deprive all citizens, who as members of certain political groups had been candidates in the elections of 1966 and 1971, of any political right for a period as long as 15 years.**

## Resources

- ACE Project, 'Legal Framework', 2012, available at <<http://aceproject.org/ace-en/topics/lf>>, accessed 28 March 2014
- Boda, M. D., 'Judging Elections by Public International Law: A Tentative Framework', *Representation*, 41/ 3 (2005), pp. 208–29
- Global Commission on Elections, Democracy and Security, *Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide*, 2012
- Goodwin-Gill, G.S., *Free and Fair Elections* (Inter Parliamentary Union, 2006)
- International IDEA, *International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections* (Stockholm: International IDEA, 2002)
- International IDEA, *A Practical Guide to Constitution Building* (Stockholm: International IDEA, 2011)
- Merloe, P., *Promoting Legal Frameworks for Democratic Elections: An NDI Guide for Developing Election Laws and Law Commentaries* (Washington, D.C.: National Democratic Institute, 2008)
- Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines for Reviewing a Legal Framework for Elections* (OSCE/ODIHR, 2013)
- The Carter Center and Democracy Reporting International (DRI), *Strengthening International Law to Support Democratic Governance and Genuine Elections* (The Carter Center and DRI, 2012)

## Notes

- <sup>1</sup> ACDEG, Art. 3; ECOWAS Supplementary Protocol, Art. 33; IADC, Arts. 2, 3 and 4.
- <sup>2</sup> ECOWAS Supplementary Protocol, Art. 2.1.
- <sup>3</sup> ECOWAS Supplementary Protocol, Art. 2.2; ECHR, Art. 3.

# Chapter 2. Electoral Systems

## Overview

The choice of electoral system is one of the most important institutional decisions for any democracy.<sup>1</sup> Electoral systems primarily translate votes cast into seats won by parties and candidates. The key variables are: the electoral formula (i.e., whether a plurality-majority, proportional, mixed or other system is used, and what mathematical formula is used to calculate the seat allocation), the ballot structure (i.e., whether the voter votes for a candidate or a party and whether the voter makes a single choice or expresses a series of preferences) and the district magnitude (not only how many voters live in a district, but how many representatives that district elects to the legislature). All of these variables must be enshrined in a country's legal framework (i.e., constitution, electoral law, or other legislative or executive instrument).

An electoral system has three main tasks: (1) to translate the votes cast into seats won in a legislative chamber, (2) to act as the conduit through which the people can hold their elected representatives accountable and (3) to give incentives to those competing for power to frame their appeals to the electorate in distinct ways. The choice of electoral system can address a society's political cleavages by accommodating the main conflicts and differences among social groups through a system of political representation that guarantees inclusiveness. This choice is thus best made by first analysing the country's particular goals (e.g., proportional election outcomes, strong local district representation) and then assessing which electoral system is most likely to meet them, given the country's social, political, geographic and historical context.

As with other electoral components, there is no 'best' electoral system that is suitable for all. UN instruments and jurisprudence hence defer electoral

system choice to sovereign preference. When reviewing the electoral system, it is important to consider whether a country is sharply divided along political, religious, ethnic or other lines, and whether minorities are properly and equitably represented in the political system. If a country suffers from recurrent conflict over a particular issue that could be (directly or indirectly) attributed to the choice of electoral system, then that conflict could be remedied by using a different electoral system or by introducing reforms to the existing system. Therefore the advantages and disadvantages of different electoral systems should still be considered.

Electoral systems are often categorized according to how proportionately they translate votes cast by voters into seats won by parties. A typical categorization structure divides electoral systems into three major families: plurality-majority, mixed and proportional representation (PR) systems. Plurality-majority systems typically prioritize local representation—via the use of small, single-member electoral districts—over proportionality. PR systems typically use larger multi-member districts and deliver outcomes that are more proportional. Mixed systems offer yet other approaches, as well as various combinations of plurality and proportional models (such as electing one part of the legislature by PR and another from local districts).

Electoral system design can increase the momentum of democratic governance and political change. It may also encourage popular participation and enable the emergence of legitimate representatives who can handle a wide range of needs and expectations. Yet ineffective electoral system design can derail progress toward democracy or even ignite political instability. Electoral systems are ideally designed not only to work under current conditions but also to accommodate future changes in attitudes and behaviour, as electoral incentives change. They can either contribute to the development of stable democracy or serve as a major obstacle to it.<sup>2</sup>

An electoral system can help ‘engineer’ specific outcomes, such as encouraging cooperation and accommodation in a divided society. Furthermore, electoral systems can influence aspects of the political environment (e.g., development of party structures) as well as the link between citizens and their leaders (e.g., political accountability, representation and responsiveness). In divided societies, for example, where language, religion, race or other forms of ethnicity represent a fundamental political division, particular electoral systems can reward candidates and parties who act in a cooperative, accommodating manner with other groups, or they can punish these candidates, rewarding those who appeal only to their own group. Thus a country’s choice of electoral system is the foundation upon which most of the legal framework of elections is built.

The application of electoral systems within a particular country context can have a significant (positive or negative) impact on the electoral fortunes of



various political contenders. For example, in a PR system in which the law establishes a certain percentage of the vote as the legal threshold for securing a seat in the legislature, this percentage can be ‘adjusted’ in order to benefit certain parties and adversely affect (or even eliminate) others.

In many countries, the electoral system includes provisions intended to promote the inclusion of historically under-represented groups in elected institutions. Such measures can foster the election of women and ethnic and linguistic minorities, such as reserved seats that can only be contested by candidates from (and sometimes only voted for by voters from) designated groups. Temporary Special Measures (TSMs)<sup>3</sup> can take the form of rules pertaining to candidate recruitment and selection, requiring parties to nominate a set number or percentage of candidates from designated under-represented groups.

As in other areas, regionally binding treaties have developed a number of notions that UN treaties do not explicitly consider. Thus, political pluralism is listed among the ACDEG’s objectives, and the consolidation of multiparty systems is expected of its States Parties.<sup>4</sup> Similarly, the ACDEG establishes the promotion of representative systems of government as a principle.<sup>5</sup>

The following Table of Jurisprudence covers the above-mentioned issues in reference to the obligations of the Right and Opportunity to Vote, the Right and Opportunity to be Elected, Universal Suffrage, Equal Suffrage, the Right and Opportunity to Participate in Public Affairs, and Freedom of Association.

## Table of Jurisprudence

2. Electoral Systems
2.1 Are all seats in at least one chamber of the national legislature directly elected?
Right and Opportunity to Vote, Right and Opportunity to be Elected
ICCPR, Art. 25: <b>Every citizen shall have the right and the opportunity</b> , without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (b) <b>To vote and to be elected</b> 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.
CCPR, GC 25, p. 7: Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those <b>representatives do in fact exercise governmental power and that they are accountable through the electoral process for the exercise of that power.</b>
CCPR/C/79/Add. 84, Iraq (1997), p. 18: The Committee is concerned that under article 38 (c) of the Constitution, <b>the members of the Revolutionary Command Council are not elected by universal and equal suffrage. This is incompatible with the right of citizens to take part in the conduct of public affairs</b> , under article 25(a) and (b) of the Covenant. Therefore: the Committee recommends that steps be taken with a view to ensuring citizens the right and the opportunity to take part in the conduct of public affairs, either directly or through freely chosen representatives.

CCPR, CO, Hong Kong, A/50/40, paras. 408–35 (1995), p. 19: The Committee is aware of the reservation made by the United Kingdom that article 25 does not require establishment of an elected Executive or Legislative Council. It however takes the view that **once an elected Legislative Council is established, its election must conform to article 25 of the Covenant**. The Committee considers that the **electoral system in Hong Kong does not meet the requirements of article 25, as well as articles 2, 3 and 26 of the Covenant**. It underscores in particular that **only 20 of 60 seats in the Legislative Council are subject to direct popular election and that the concept of functional constituencies, which gives undue weight to the views of the business community, discriminates among voters on the basis of property and functions. This clearly constitutes a violation of articles 2, paragraph 1, 25 (b) and 26**.

CCPR/C/79/Add. 44 (1994), Comments on Morocco, para. D: The Committee is concerned that the **electoral system, under which two-thirds of members of the House of Representatives are elected by direct universal suffrage and one-third by an electoral college, may raise issues as to the requirements, under article 25 (b) of the Covenant, that elections be held by 'universal and equal suffrage'**.

## 2.2 Does the electoral system guarantee universal representation in elected bodies?

### Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 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.

A/HRC/13/23 (IE on minority issues, 2010), Afghanistan, p. 7: **Unless the minority population constitutes a majority in an electoral district, the election of representatives of minority-based parties is more likely to be successful under proportional representation systems, where the cumulative votes of minorities are taken into account**. Reducing the registration requirements for political parties may facilitate the creation of new minority-focused parties.

CCPR/C/USA/CO/3 (2006), United States of America, p. 36: The Committee, having taken note of the responses provided by the delegation, remains concerned that **residents of the District of Columbia do not enjoy full representation in Congress**, a restriction which does **not seem to be compatible with article 25 of the Covenant** (articles 2, 25 and 26). The State party should ensure the right of residents of the District of Columbia to take part in the conduct of public affairs, directly or through freely chosen representatives, in particular with regard to the House of Representatives.

CCPR/C/BIH/CO/1, Bosnia and Herzegovina (2006), p. 8: The State party should reopen talks on constitutional reform in a transparent process and on a wide participatory basis, including all stakeholders, with a view to adopting an **electoral system that guarantees equal enjoyment of rights under article 25 ICCPR to all citizens irrespective of ethnicity**.

CERD/C/BOL/CO/17-20, Bolivia (2011), p. 13: [...] [The Committee] is concerned that the Electoral System Act, by providing for only 7 seats from special electoral districts out of a total of 130 seats, **contravenes both the Constitution and the Convention**.

CCPR/C/CHL/CO/5, Chile (2007), p. 15: While it notes that the reference to the binominal system has been removed from the Constitution, the Committee observes with concern that, as the State party indicated, the **electoral system in use in Chile can hamper the effective parliamentary representation of all individuals (articles 3 and 25 of the Covenant)**. The State party should make greater efforts to overcome the political obstacles to amendment of the Constitutional Act on Popular Votes and Vote Counts, in order to guarantee the right to **equal, universal suffrage** established under article 25 of the Covenant.

CERD/C/MUS/CO/15-19, Mauritius (2013), p. 18: The Committee recommends that the State party ensure that the new electoral system addresses obstacles to the participation in political life by, and adequate representation of ethnic groups. The Committee requests the State party to include in its next periodic report information on the **representation of each ethnic group in the various appointed and elected public bodies**, including also details about the participation of women from such groups.

Commission on Human Rights, E/CN.4/2006/78/Add.3 (SR Indigenous, 2006), p. 86: The MMP electoral system be constitutionally entrenched to guarantee adequate representation of Maori in the legislature and **at regional and local governance levels**.

## 2.3 Does the electoral system directly or indirectly disadvantage women?

### Equality between Men and Women; States Must Take Necessary Steps to Give Effect to Rights

CEAW, Art. 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, **on equal terms with men**, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights** set forth in the present Covenant.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CEAW/C/CHN/CO/6, China, (2006), p. 39: While acknowledging that the established target of 25 per cent of women in advisory and consultative bodies has been reached by the Government of the Hong Kong Special Administrative Region, the Committee notes with concern **the low level of political representation of women, including in the functional constituencies**. The Committee is concerned that the **electoral system of functional constituencies may constitute indirect discrimination against women**, as it results in the unequal participation of women in political life. p. 40: The Committee urges the Government of the Hong Kong Special Administrative Region to take temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's General Recommendation 25 so as to increase women's representation in politics, including in the functional constituencies.

CEAW, CO, China (1999), A/54/38, paras. 251–336, p. 319: The Committee expresses concern that the **electoral system of the Region contains structural obstacles to the equal political participation of women**, which is indirect discrimination against women, especially with respect to the functional constituencies.

CEAW/C/BIH/CO/3, Bosnia and Herzegovina, (2006), p. 29: The Committee is concerned that the recent amendments to the election law did not incorporate this aspect and, furthermore, that **introduction of open lists of candidates in the last election resulted in a significant decrease of women in the Parliamentary Assembly**.

## 2.4 Does the electoral system directly or indirectly disadvantage minorities?

### Right and Opportunity to be Elected; States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CCPR, GC 25, p. 21: [...] The drawing of electoral boundaries and the method of allocating votes should not **distort the distribution of voters or discriminate** against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

CERD/C/BOL/CO/17-20, Bolivia (2011), p. 13: While the Committee notes with appreciation that the Constitution recognizes the equal civil and political rights of indigenous communities and the advances made in the representation of indigenous peoples in the Government at the highest level, it is concerned that, **in practice, members of these communities continue to be subjected to discrimination and are underrepresented in all Government and decision-making bodies**. (The Committee) is **concerned that the Electoral System Act**, by providing for only 7 seats from special electoral districts out of a total of 130 seats, **contravenes both the Constitution and the Convention**.

A/HRC/13/23 (IE on minority issues, 2010), Afghanistan, p. 70: **Unless the minority population constitutes a majority in an electoral district, the election of representatives of minority-based parties is more likely to be successful under proportional representation systems**, where the cumulative votes of minorities are taken into account. **Reducing the registration requirements for political parties may facilitate the creation of new minority-focused parties.** p. 71: [...] Where the electoral system requires parties to present a list of candidates for election, as opposed to single-candidate constituencies, **there may be a legal or policy requirement that the list be ethnically mixed or have a minimum number of minority candidates.** Other special measures may be applied, especially to facilitate the election of women candidates. p. 73: **Some types of electoral systems may be more conducive than others to the election of minority representatives, and mechanisms specifically designed to enhance minority representation may also be incorporated into the electoral system.** [...] The Human Rights Committee has stressed that '[t]he principle of one person, one vote, must apply, and within the framework of each state's electoral system, the vote of one elector should be equal to the vote of another'. [...] However, in certain circumstances, in particular where the minority is small and as a special measure to improve the integration of a minority into the political system, **members of minorities may have the right to vote for both a minority representative with a reserved seat and a general non-minority representative.**

A/HRC/13/25, (Forum on Minority Issues 2010), p. 15: At the national level, a proportional representation system or some other electoral design should be put in place, where practicable, **to increase opportunities for minorities to participate effectively** in State-wide political life. Conversely, **Governments should not change the electoral system or electoral boundaries in a way that would be likely to weaken minority representation.**

## 2.5 Does the electoral system promote equal representation?

### Equal Suffrage

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CCPR, GC 25, p. 21: Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The **principle of one person, one vote, must apply**, and within the framework of each State's electoral system, the **vote of one elector should be equal to the vote of another.** The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

CCPR/C/CHL/CO/5, Chile, 2007, p. 15: While it notes that the reference to the binominal system has been removed from the Constitution, the Committee observes with concern that, as the State party indicated, the **electoral system** in use in Chile **can hamper the effective parliamentary representation of all individuals (articles 3 and 25 of the Covenant).** The State party should make greater efforts to overcome the political obstacles to amendment of the Constitutional Act on Popular Votes and Vote Counts, in order to guarantee the right to **equal**, universal suffrage established under article 25 of the Covenant.

Istvan Mátyus v. Slovakia, Comm. No. 923/2000, UN Doc. A/57/40 at 257 (2002), p. 3.2: The author contends that his rights, under article 25(a) and (c), were violated, as he would have needed substantially more votes to be elected to the town council than candidates in other districts, due to the fact that the number of representatives in each district was not proportional to the number of inhabitants therein. p. 9.2: As regards the question whether article 25 of the Covenant was violated, the Committee notes that the Constitutional Court of the State party held that **by drawing election districts for the same municipal council with substantial differences between the number of inhabitants per elected representative**, despite the election law which required those voting districts to be proportional to the number of inhabitants, the **equality of election rights required by the State party's constitution was violated.** [...]

## 2.6 Does the legal framework effectively allow for political party pluralism?

### Right and Opportunity to Participate in Public Affairs; Freedom of Association

ICCPR, Art. 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.**

ICCPR, Art. 22: (1) **Everyone shall have the right to freedom of association** with others, including the right to form and join trade unions for the protection of his interests. (2) **No restrictions may be placed on the exercise of this right** other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others [...].

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

UNSC, Res. 960 (1994), p. 5: [The Security Council] also calls upon all Mozambican parties to **continue the process of national reconciliation based**, as provided for in the General Peace Agreement, **on a system of multi-party democracy** and the observance of democratic principles which will ensure lasting peace and political stability.

CCPR/CO/80/UGA, Uganda (2004), p. 22: The Committee is concerned that peaceful demonstrations organized by opposition political parties have been forcibly dispersed by the police and that freedom of movement of political opponents has also been restricted in certain cases. It remains **concerned at the constraints which limit the right of political parties to participate in periodic elections, to criticize the Government and to take part in the decision-making process.** Notwithstanding the fact that the delegation referred to the State party's wish to organize multiparty elections in 2006, the Committee remains concerned that no specific information has been provided about the practical measures envisaged to attain this goal (arts. 22 and 25). The State party should **ensure the full enjoyment of the right to freedom of association, in particular in its political dimension.** The Committee considers that **the State party should ensure that the general elections scheduled for 2006 effectively allow for multiparty participation.**

CCPR/CO/79/GNQ, Equatorial Guinea (2004), p. 12: While the Committee has taken note of the **introduction of a multiparty system** and of the adoption of the National Pact between the Government and the authorized political parties, it regrets the continuing harassment of political opponents through, inter alia, detentions, fines and difficulty in finding employment or leaving the country to attend meetings abroad, for example. It also notes with concern that political parties opposed to the Government are discriminated against, and that some have apparently even had difficulty in registering. Lastly, the Committee notes with alarm the irregularities during the latest elections held in the State party, culminating in the withdrawal of all the opposition candidates. The State party should, in accordance with articles 25 and 26 of the Covenant, **treat all political parties equally and give them all the same opportunities to carry out their lawful activities.**

A/HRC/RES/19/36 (2012), p. 1: [The Human Rights Council] stresses that democracy includes [...] the right to [...] vote in a **pluralistic system of political parties and organizations** and to be elected at genuine, periodic, free and fair elections by universal and equal suffrage and by secret ballot guaranteeing the free expression of the will of the people, as well as respect for the rule of law, the separation of powers, the independence of the judiciary, transparency and accountability in public administration and decision-making and free, independent and pluralistic media; p. 6: **Emphasizes the crucial role played by the political opposition and civil society in the proper functioning of a democracy.**

## 2.7 Can political parties replace elected candidates before they take office?

### Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 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.**

CCPR, GC 25, p. 7: **Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power.** It is also implicit that the **representatives exercise only those powers which are allocated to them in accordance with constitutional provisions.** Participation through freely chosen representatives is exercised through voting processes which must be established by laws that are in accordance with paragraph (b).

A/HRC/21/63 (SR Cambodia, 2012), p. 54: Cambodian political parties are largely unregulated and generally have no clear democratic procedures for the selection of candidates. **The party leadership controls the content of the list, making candidates more loyal to the party leadership than to their own constituents. This can also result in the arbitrary removal of candidates from lists, meaning that they then lose their seats.** The combination of proportional representation and party-list systems results in the National Assembly being the weakest link in the Cambodian governance system.

## Resources

ACE Project, 'Electoral Systems', available at <<http://aceproject.org/ace-en/topics/es>>, accessed 28 March 2014

Electoral Institute for Sustainable Democracy in Africa (EISA), *Electoral System Reform, Democracy and Stability in the SADC Region: a Comparative Analysis* (Johannesburg: EISA, 2003)

International IDEA, *Electoral System Design* (Stockholm: International IDEA, 2005)

International IDEA, *Designing for Equality: Best-fit, Medium-fit and Non-favourable Combinations of Electoral Systems and Gender Quotas* (Stockholm: International IDEA, 2007)

Matlosa, K., *Survey of Electoral Systems and Reform Imperatives in the SADC Region* (Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 2003)

Reilly, B., 'Electoral Systems for Divided Societies', *Journal of Democracy*, 13/2 (2002), pp. 156–70

Wall, A. and Salih, M., *Engineering Electoral Systems: Possibilities and Pitfalls* (Netherlands Institute for Multiparty Democracy, 2007)

## Notes

<sup>1</sup> International IDEA 2005.

<sup>2</sup> Ibid.

<sup>3</sup> For further information on TSMs, see Chapter 7.

<sup>4</sup> ACDEG, Arts. 2 and 32.

<sup>5</sup> ACDEG, Art. 3.

# Chapter 3. Electoral Boundaries

## Overview

Electoral boundaries delimit geographic territory for electoral purposes. Within an electoral boundary, one or more representatives can win seats to an elected body, depending on the electoral system adopted. Electoral boundaries may follow pre-existing administrative divisions, or disregard them partially or entirely. As with electoral systems, all boundary delimitation processes involve significant political consequences and therefore require regulation by national legal frameworks.

The process of identifying electoral districts and boundaries is constrained by the international obligation of equal suffrage. Delimitation should not be designed to dilute or discount the vote of any population groups or areas. Fair electoral district or constituency-delimitation procedures will take into account a range of information, including available census data, territorial contiguity, geographic and topographic accessibility, and communities of interest.

During the 19th century in Europe and in self-governing European colonies around the world, the legislature was responsible for drawing constituency boundaries. Partisan politics and gerrymandering (the deliberate manipulation of boundaries so as to advantage or disadvantage particular political interests) were more often than not an accepted consequence of the delimitation process. However, in most consolidated democracies, the idea that politicians are best excluded from the delimitation process emerged, so that legislators have opted out, handing the process over to independent commissions. Today, a substantial majority of countries employs an electoral authority or a specifically designated independent boundary commission to delimit electoral district boundaries, as confirmed by the the following Table of Jurisprudence.<sup>1</sup> If the boundary delimitation process remains in the hands

of an executive organ, the process should be highly transparent and visible so that stakeholders can eventually seek redress in the appropriate administrative or judicial forums without jeopardizing the electoral calendar.

Apart from the overriding obligations of Equal Suffrage and the availability of the Right to Effective Remedy against attempts at gerrymandering, the Table of Jurisprudence below also addresses the following general obligations: Freedom from Discrimination and Equality under the Law, the State Must Take Necessary Steps to Give Effect to Rights, Transparency and the Right to Information, and the Right and Opportunity to Participate in Public Affairs. The periodicity of the mandate to update and adjust constituency boundaries to changing population demographics merits further attention by the competent UN treaty bodies.

Table of Jurisprudence

3. Electoral Boundaries
3.1 Is equality of the vote guaranteed by law?
Equal Suffrage
ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (b) To vote and to be elected at genuine periodic elections which shall be by universal and <b>equal suffrage</b> .
CCPR, GC 25, p. 21: Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of <b>one person, one vote, must apply</b> , and within the framework of each State's electoral system, <b>the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.</b>
3.2 Are objective criteria established by law for deviating from 'population equality'?
Equal Suffrage
ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (b) To vote and to be elected at genuine periodic elections which shall be by universal and <b>equal suffrage</b> .
Istvan Mátyus v. Slovakia, Comm. No. 923/2000, UN Doc. A/57/40 (Vol. II) at 257 (2002), p. 2.2: According to the author, when comparing the number of residents per representative in the individual voting districts in the town of Rožňava, he came up with the following figures; one representative per 1,000 residents in district number one; one per 800 residents in district number two; <b>one per 1,400 residents in district number three; one per 200 residents in district number four; and one per 200 residents in district number five</b> . p. 9.2: As regards the question whether <b>article 25 of the Covenant</b> was violated, the Committee notes that the Constitutional Court of the State party held that by <b>drawing election districts for the same municipal council with substantial differences between the number of inhabitants per elected representative, despite the election law which required those voting districts to be proportional to the number of inhabitants, the equality of election rights required by the State party's constitution was violated</b> . In the light of this pronouncement, based on a constitutional clause similar to the requirement of equality in article 25 of the Covenant, and in the <b>absence of any reference by the State party to factors that might explain the differences in the number of inhabitants or registered voters per elected representative</b> in different parts of Rožňava, the Committee is of the opinion that <b>the State party violated the author's rights under article 25 of the Covenant</b> .



### 3.3 Are electoral boundaries discriminatory?

#### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CCPR, GC 18, p. 7: the Committee believes that **the term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.**

CERD/C/JOR/CO/13-17, Jordan (2012), p. 13: While noting as positive the State party's 2010 election law which increases the number of seats representing urban districts, where most Jordanians of Palestinian origin reside, the Committee is concerned that the current **structure of the State party's parliament remains disproportionately imbalanced in favour of rural districts.**

### 3.4 Does the EMB or another impartial and independent body have the legal mandate to delimit electoral districts?

#### Right to an Effective Remedy; State Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,** notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

CCPR, GC 25, p. 20: An **independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted** fairly, impartially and in accordance with established laws which are compatible with the Covenant.

A/HRC/13/23 (IE on minority issues, 2010), p. 78: To ensure that boundaries do not unfairly prejudice any group, **an official demarcation body independent of government and with a fully representative membership should be set up.**

### 3.5 Does the law prescribe the periodic review of electoral districts?

#### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (b) To vote and to be elected at genuine periodic elections which shall be by universal and **equal suffrage.**

CCPR, GC 25, p. 19: In conformity with paragraph (b), elections must be conducted fairly and freely on a **periodic basis within a framework of laws guaranteeing the effective exercise of voting rights.** p 21: **The principle of one person, one vote, must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another.** The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

### 3.6 Is the electoral boundary delimitation and review process conducted in a transparent manner?

#### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.

CCPR, GC 34, p. 18: Article 19, paragraph 2 embraces **a right of access to information held by public bodies**. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. [...] As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output. p 19: To give effect to the right of access to information, **States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information.**

### 3.7 Is the electoral boundary review process open to public debate and consultation?

#### Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 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.

UNCAC, Art. 5 (1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that **promote the participation of society** and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, **transparency** and accountability.

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.

CCPR, GC 25, p. 8: Citizens also take part in the conduct of public affairs by exerting influence through **public debate and dialogue** with their representatives or through their capacity to organize themselves.

A/HRC/RES/19/36, 2012, p. 16: [The Human Rights Council] calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by: **Supporting inclusive and democratic approaches in the elaboration and revision of fundamental laws and regulations that underpin democracy** and the rule of law, human rights and fundamental freedoms.

### 3.8 Does the legal framework provide for effective and timely appeals against decisions on boundary delimitation?

#### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) To ensure that **any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity**; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) **To ensure that the competent authorities shall enforce such remedies when granted.**

CCPR, GC 31, p. 15: Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights.**

CCPR, GC 32, p. 27: An important aspect of the fairness of a hearing is its **expeditiousness**. While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3(c) of article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be allocated for the administration of justice.

Ruben Toribio Muñoz Hermoza v. Peru, Comm. No. 203/1986, UN Doc. Supp. No. 40 (A/44/40) at 200 (1988), p. 11.3: With respect to the requirement of a fair hearing as stipulated in article 14, paragraph 1 of the Covenant, the Committee notes that **the concept of a fair hearing necessarily entails that justice be rendered without undue delay.** [...] This delay, which the State party has not explained, constitutes a further aggravation of the violation of the principle of a fair hearing.

## Resources

ACE Project, 'Boundary Delimitation', 2012, available at <<http://aceproject.org/ace-en/topics/bd>>, accessed 27 March 2014

International IDEA, *Electoral System Design: The New International IDEA Handbook* (Stockholm: International IDEA, 2008)

Organisation for Security and Co-operation in Europe, Office of Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines for Reviewing a Legal Framework for Election* (OSCE/ODIHR, 2013)

International Foundation for Electoral Systems (IFES), *Challenging the Norms and Standards of Election Administration* (Washington, D.C.: IFES, 2007)

Handley, L., *Delimitation Equity Project: Resource Guide* (Washington, D.C.: IFES, 2006)

Soldevilla, T.F., *La Circunscripción Electoral: Perú y la Región Andina* (Oficina Nacional de Procesos Electorales, Centro de Investigación Electoral, 2002)

United Nations (UN), *Human Rights and Elections: United Nations Handbook on the Legal, Technical and Human Rights Aspects of Elections*, 1994

## Notes

<sup>1</sup> For more information, see <<http://www.ifes.org/Content/Publications/Books/2006/Delimitation-Equity-Project-Resource-Guide.aspx>>, accessed 10 February 2014.

# Chapter 4. Political Parties

## Overview

Democracies cannot function without political parties. Parties are expected to reflect citizens' concerns, aggregate and mediate diverse interests, project a vision of society and develop policy options accordingly. They are supposed to inspire and attract supporters to their cause; their membership levels are important for proving their claim to represent the people. In practice, parties may not live up to expectations regarding their services to citizens or the quality of leadership. They nevertheless continue to be entrusted with what is perhaps the most strategic responsibility of modern democracy: to prepare and select candidates for elections, and to support them into positions of leadership and government.<sup>1</sup>

National legal frameworks for elections are required to provide for the right of all individuals and groups to establish, in full freedom, their own political parties or other political organizations with legal guarantees to enable them to compete with each other on a basis of equitable treatment before the law. Although political parties are private entities, the national legal framework can promote internal party democracy (for instance by law or through funding incentives). The Human Rights Committee (CCPR) *Travaux Préparatoires* indicate that political parties are called upon to function democratically to guarantee citizens' equal right and opportunity to be elected and to participate in public affairs.<sup>2</sup> Requirements can include primary elections or party congresses, and may take on greater relevance in political environments dominated by a single political party. Furthermore, within the confines of the electoral system, the right of individuals to run as independent or non-affiliated candidates must be protected.

The legal framework must provide a level playing field for the recognition and registration of all political parties, regardless of their ideological position or organizational structure. Once registered, political parties must be granted equal access to the ballot. The legal framework may (1) provide a structure for registering political parties and establishing the dates for opening and closing registration (or require registration to remain continuously open); (2) specify when, how and where registration procedures must take place; and (3) set out the process of validating registration.

Where the legal framework requires collecting signatures as evidence of support for an application for registration, a reasonable timeframe for their collection (and for the subsequent signature verification process) needs to be guaranteed. The principle of equal treatment requires that legal frameworks guarantee that the same registration criteria apply to all political parties at all levels. To guarantee the right to an effective remedy, the grounds for rejection of a registration application must be based on objective criteria, clearly stated in the legal framework and reasoned in relevant decisions. Avenues to appeal against the rejection of registration applications, and against decisions to suspend or dissolve political parties, must be available.

In the Guidelines, political party formation and activities are treated separately from political finance, political party and candidate registration, and regulation of political activity during electoral campaigns, which are addressed in Chapters 5, 14 and 16, respectively. The increasing importance of these issues for elections is highlighted by the fact that the Human Rights Council (HRC) has created a thematic Special Procedures mandate on Freedom of Association, even if the CCPR has not yet consolidated a General Comment (GC) on this theme. The following Table of Jurisprudence also covers issues related to Freedom of Opinion and Expression, the Right and Opportunity to Participate in Public Affairs, the Right to an Effective Remedy, the Right and Opportunity to be Elected, Freedom from Discrimination and Equality under the Law.

## Table of Jurisprudence

### 4. Political Parties

#### 4.1 Is the right to form political parties unreasonably restricted?

##### Freedom of Association; Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 22: (1) Everyone shall have the right to **freedom of association with others**, including the right to form and join trade unions for the protection of his interests. (2) **No restrictions** may be placed on the exercise of this right other than those which are prescribed by law and which are **necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others** [...].

ICCPR, Art. 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.

ICCPR, Art. 19: (1) **Everyone shall have the right to hold opinions without interference.** (2) **Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds,** regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

CCPR, GC 25, p. 27: The **right to freedom of association**, including the right to form and join organizations and associations concerned with political and public affairs, is an **essential adjunct to the rights protected by article 25**. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process.

A/HRC/20/27 (SR on the rights to freedom of peaceful assembly and of association, 2012) p. 95: [...] Associations should be established after a process that is simple, easily accessible, non-discriminatory, and non-onerous or free of charge. Registration bodies should provide a detailed and timely written explanation when denying the registration of an association. Associations should be able to challenge any rejection before an impartial and independent court. p. 96: Any associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment. p. 97: Associations should be free to determine their statutes, structure and activities and to make decisions without State interference. p. 100: Suspension or involuntarily dissolution of associations should be sanctioned by an impartial and independent court in case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in compliance with international human rights law.

CCPR/C/RWA/CO/3 Rwanda (2009), p. 21: [The State Party] should **treat all political parties on an equal footing and offer them equal opportunities to pursue their legitimate activities**, in accordance with the provisions of articles 25 and 26 of the Covenant.

CCPR/CO/71/UZB, Uzbekistan (2001), p. 23: The Committee is deeply concerned about **excessively restrictive provisions** of Uzbek law with respect to the **registration of political parties as public associations**, by the Ministry of Justice (article 6 of the Constitution, Political Parties Act of 1991). **This requirement could easily be used to silence political movements opposed to the Government, in violation of articles 19, 22 and 25 of the Covenant.** The Committee strongly recommends a revision of the relevant part of the State party's legislation to **ensure that registration is not used to limit the rights of association guaranteed by the Covenant.**

CCPR/CO/75/MDA, Republic of Moldova (2002), p. 16: The Committee is concerned that **certain requirements** that the State Party places **upon the registration of political parties**, such as conditions with respect to **the extent of their territorial representation, may violate article 25 of the Covenant**, by restricting the right of individuals to full expression of their political freedoms. The State Party should **review its law and policy concerning the registration of political parties, removing those elements which are inimical to the full exercise of Covenant rights, in particular article 25.**

CCPR/C/79/Add.95, Algeria (1998), p. 17: The Committee remains concerned that the State party's restriction under Law 97-09 **on the right to form political parties, effectively prohibits political activists the right to associate with one another** or to vote for representatives of their choice, **in view of the wide range of proscribed categories** (religious, linguistic, racial, gender related, regional, corporatist). Since taking effect, this law has been invoked to **ban or prevent the legalization of more than 30 parties**. The Committee recommends that the conditions required by the Covenant with respect to restrictions on the right to freedom of association be met and that current legislation be amended so as to bring it into conformity with the requirements of the Covenant and the obligations entered into by Algeria upon its accession to it.

CCPR/CO/80/UGA, Uganda (2004), p.8: The Committee notes the adoption of the Anti-Terrorism Act of June 2002, pursuant to Security Council resolution 1373 (2001). It is concerned that section 10 of the Act criminalizes **a 'terrorist organization' without any reference to a particular criminal offence committed by or through such an organization**. It is also concerned that section 11 of the Act **does not establish objective criteria for determining membership in a 'terrorist organization'** (Arts. 2 and 15). The State party should review the Anti-Terrorist Act with a view to ensuring that the provisions set out in sections 10 and 11 are in full conformity with the Covenant.

**Boris Zvozkov et al. v. Belarus, Comm. No. 1039/2001, UN Doc. CCPR/C/88/D/1039/2001 (2006), p. 7.2:** The reference to 'democratic society' in the context of article 22 indicates, in the Committee's opinion, that **the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably viewed by the government or the majority of the population, is a cornerstone of a democratic society.** p. 7.3: In the present case, the restrictions placed on the authors' right to freedom of association consist of several conditions related to the registration of a public association. According to the Supreme Court's judgment of 20 August 2001, the only criterion which the 'Helsinki XXI' statutes and, respectively, the authors' application for registration did not meet was a compliance **with domestic law, under which public organizations do not have a right to represent and defend the rights of third persons.** This restriction must be assessed in the light of the consequences which arise for the authors and their association. p. 7.4: The Committee firstly notes that the author and the State party disagree on whether domestic law indeed prohibits the defence of the rights and freedoms of citizens who are not members of a particular association (paragraphs 2.2, 2.3, 4, 5.2 above). Secondly, it considers that even if such restrictions were indeed prescribed by law, the State party has not advanced any argument as to why it would be necessary, for purposes of article 22, paragraph 2, to condition the registration of an association on a limitation of the scope of its activities to the exclusive representation and defence of the rights of its own members. Taking into account the consequences of the refusal of registration, i.e., the unlawfulness of operation of unregistered associations on the State party's territory, the Committee concludes that the refusal of registration does not meet the requirements of article 22, paragraph 2. The authors' rights under article 22, paragraph 1 have thus been violated.

**Vladimir Katsora, Leonid Sudalenko and Igor Nemkovich v. Belarus, Comm. No. 1383/2005, UN Doc. CCPR/C/100/D/1383/2005 (2010), p. 8.2:** The issue before the Committee is whether the refusal of the Belarus authorities to register 'Civil Alternative' unreasonably restricted the authors' right to freedom of association. [...] In accordance with article 22, paragraph 2, **any restriction on the right to freedom of association must cumulatively meet the following conditions:** (a) it must be **provided for by law;** (b) **may only be imposed for one of the purposes set out in paragraph 2;** and (c) must be **'necessary in a democratic society'** for achieving one of these purposes. **The reference to 'democratic society' in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favorably viewed by the government or the majority of the population, is a cornerstone of any society.**

## 4.2 Do objective criteria regulate the creation of political parties?

### Freedom of Association; Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 22: (1) **Everyone shall have the right to freedom of association** with others, including the right to form and join trade unions for the protection of his interests. (2) **No restrictions may be placed on the exercise of this right** other than those which are **prescribed by law** and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others [...].

ICCPR, Art. 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.

**CCPR, GC 34, p. 21:** [...] The Committee also recalls the provisions of article 5, paragraph 1 of the Covenant according to which **'nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant'.**

**CCPR, GC 27, p. 13:** [...] **Laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.**

**CCPR/CO/72/PRK, Democratic People's Republic of Korea (2001), p. 25:** [...] The Committee has taken note of the delegation's explanation that, as there has been no popular manifestation of any desire to create new political parties, **no regulation or legislation governing the creation and registration of political parties is currently envisaged.** The Committee considers that this situation **runs counter to the provisions of article 25** of the Covenant, as it may adversely affect the rights of citizens to participate in the conduct of public affairs through freely chosen representatives, as required by article 25.

### 4.3 Do objective criteria determine the de-registration and/or non-registration of political parties?

#### Freedom of Association

ICCPR, Art.22: (1) **Everyone shall have the right to freedom of association** with others, including the right to form and join trade unions for the protection of his interests. (2) **No restrictions may be placed on the exercise of this right** other than those which are **prescribed by law** and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others [...].

**CCPR, GC 27, p. 13: [...] Laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.**

**CCPR, GC 34, p. 21: [...] The Committee also recalls the provisions of article 5, paragraph 1, of the Covenant according to which ‘nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant’.**

**CCPR/C/IRN/CO/3, Islamic Republic of Iran (2011), p. 29: The Committee also notes with concern the arrest of dozens of political opposition members in February 2011 as well as the dissolution by court order of two pro-reform political parties (art. 25).**

**M.A. v. Italy, Comm. No. 117/1981, UN Doc. Supp. No. 40 (A/39/40) at 190 (1984), p. 13.3:** The execution of a sentence of imprisonment imposed prior to the entry into force of the Covenant is not in itself a violation of the Covenant. Moreover, it would appear to the Committee that the acts of which M.A. was convicted (reorganizing the dissolved fascist party) were of a kind which are removed from the protection of the Covenant by article 5 thereof and which were in any event **justifiably prohibited** by Italian law **having regard to the limitations and restrictions applicable** to the rights in question under the provisions of articles 18(3), 19(3), 22(2) and 25 of the Covenant. In these respects therefore the communication is inadmissible under article 3 of the Optional Protocol, as incompatible with the provisions of the Covenant, *ratione materiae*.

**Viktor Korneenko et al. v. Belarus, Comm. No. 1274/2004, UN Doc. CCPR/C/88/D/1274/2004 (2006), p. 7.2:** The key issue before the Committee is whether the dissolution of ‘Civil Initiatives’ amounts to a restriction of the author’s right to freedom of association, and whether such restriction was justified. [...] In this regard, the Committee observes that **the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities.** The protection afforded by article 22 extends to all activities of an association, and **dissolution of an association must satisfy the requirements of paragraph 2 of that provision.** In the light of the serious consequences which arise for the author and his association in the present case, the Committee considers that the dissolution of ‘Civil Initiatives’ amounts to a restriction of the author’s right to freedom of association. p. 7.3: The Committee observes that, in accordance with article 22, paragraph 2, in order for the interference with the right to freedom of association to be justified, any restriction on this right must **cumulatively meet the following conditions:** (a) it must be **provided by law**; (b) may **only be imposed for one of the purposes set out in paragraph 2**; and (c) must be **‘necessary in a democratic society’** for achieving one of these purposes. The reference to the notion of ‘democratic society’ in the context of article 22 indicates, in the Committee’s opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society [...] p. 7.7: Taking into account the severe consequences of the dissolution of ‘Civil Initiatives’ for the exercise of the author’s right to freedom of association, as well as the unlawfulness of the operation of unregistered associations in Belarus, the Committee concludes that the dissolution of ‘Civil Initiatives’ does not meet the requirements of article 22, paragraph 2 and is disproportionate. The author’s rights under article 22, paragraph 1, have thus been violated.



#### 4.4 Does the legal framework provide for a timely remedy against the de-registration and/or non-registration of political parties?

##### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) **To ensure that the competent authorities shall enforce such remedies when granted.**

CCPR, GC 32, p. 27: An important aspect of the fairness of a hearing is its **expeditiousness**. While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3(c) of article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be allocated for the administration of justice.

CCPR, GC 31, p. 15: Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights.**

CCPR/CO/73/AZE, Azerbaijan (2001), p. 23: The Committee is concerned at **reported obstacles imposed on the registration and free operation of non-governmental human rights organizations and political parties** (arts. 19, 22, 25). The Committee urges the State party to take all necessary steps to enable national non-governmental human rights organizations to function without hindrance. **With regard to political parties, the Committee urges the State party to take all necessary measures to ensure that registration is not used to silence political movements opposed to the Government and to limit the rights of association guaranteed by the Covenant.** In particular, legislation should clarify the status of associations, non-governmental organizations and political parties in the period between the request for registration and the final decision; such status should be consistent with articles 19, 22 and 25.

#### 4.5 Are there provisions to promote internal party democracy?

##### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

CCPR, GC 25, p. 26: **States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.**

A/HRC/RES/15/21 (2010): Recognizing also that the rights to freedom of peaceful assembly and of association are essential components of democracy, providing individuals with invaluable opportunities to [...] elect leaders to represent their interests and hold them accountable.

A/HRC/21/63 (SR Cambodia, 2012), p. 54: Cambodian **political parties are largely unregulated and generally have no clear democratic procedures for the selection of candidates. The party leadership controls the content of the list, making candidates more loyal to the party leadership than to their own constituents.** This can also result in the arbitrary removal of candidates from lists, meaning that they then lose their seats.

#### 4.6 Are there measures to promote gender equality in political party leadership?

##### States Must Take Necessary Steps to Give Effect to Rights; Equality between Men and Women

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CEDAW, Art. 7: States Parties shall **take all appropriate measures to eliminate discrimination against women in the political and public life of the country** and, in particular, shall ensure to women, on equal terms with men, the right: (c) To **participate in non-governmental organizations and associations concerned with the public and political life of the country**.

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights** set forth in the present Covenant.

CEDAW, GR 23, p. 33: Measures that have been adopted by some political parties include **setting aside for women a certain minimum number or percentage of positions on their executive bodies** ensuring that there is a balance between the number of male and female candidates nominated for election, and **ensuring that women are not consistently assigned to less favourable constituencies or to the least advantageous positions on a party list**.

CEDAW, GR 25, p. 29: States parties should provide **adequate explanations with regard to any failure to adopt temporary special measures**. Such failures may not be justified simply by averring powerlessness, or by explaining inaction through predominant market or political forces, such as those inherent in the private sector, private organizations, or **political parties**. States parties are reminded that **article 2 of the Convention, which needs to be read in conjunction with all other articles, imposes accountability on the State party for action by these actors**.

CEDAW/C/ZMB/CO/5-6, Zambia (2011), p. 26: (a) adopt temporary special measures [...] **conditioning the financing of political parties on equal representation of women in their internal bodies and on candidate lists**.

A/58/38(SUPP) (CEDAW, 2003), Costa Rica, p. 58: The Committee notes that the provisions of the Electoral Code establishing minimum 40 per cent **quotas for women's participation have not been fully respected by political parties**.

#### 4.7 Does the law protect against discrimination and reprisals on grounds of political affiliation?

##### Freedom from Discrimination and Equality under the Law, Freedom of Association

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law**. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 22: (1) **Everyone shall have the right to freedom of association** with others, including the right to form and join trade unions for the protection of his interests. (2) **No restrictions may be placed on the exercise of this right** other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others [...].

ICCPR, Art. 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.

CCPR/CO/79/GNQ, Equatorial Guinea (2004), p. 12: While the Committee has taken note of the introduction of a multiparty system and of the adoption of the National Pact between the Government and the authorized political parties, it **regrets the continuing harassment of political opponents through, inter alia, detentions, fines and difficulty in finding employment or leaving the country to attend meetings abroad, for example**. It also notes with concern that **political parties opposed to the Government are discriminated against, and that some have apparently even had difficulty in registering**. Lastly, the Committee notes with alarm the irregularities during the latest elections held in the State party, culminating in the withdrawal of all the opposition candidates. The State party should, in accordance with articles 25 and 26 of the Covenant, **treat all political parties equally and give them all the same opportunities to carry out their lawful activities**.

Jorge Landinelli Silva v. Uruguay, Comm. No. R.8/34, No. 40 (A/36/40) at 130 (1981), p. 9: The Human Rights Committee, acting under article 5(h) of the Optional Protocol, is of the view that, by **prohibiting the authors of the communication from engaging in any kind of political activity for a period as long as 15 years, the State party has unreasonably restricted their rights under article 25 of the Covenant.**

Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo, Comm. Nos. 422/1990, 423/1990 and 424/1990, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990 (1996), p. 7.5: The Committee recalls that the authors were all suspended from their posts for a period of well over five years for activities considered contrary to the interests of the Government; in this context, it notes that Mr. Dobou was a civil servant, whereas Messrs Aduayom and Diasso were employees of the University of Benin, which is in practice state-controlled. As far as the case of Mr. Dobou is concerned, the Committee observes that **access to public service on general terms of equality encompasses a duty, for the State, to ensure that there is no discrimination on the ground of political opinion or expression.** This applies *a fortiori* to those who hold positions in the public service. The rights enshrined in **article 25** should also be read to encompass **the freedom to engage in political activity individually or through political parties, freedom to debate public affairs, to criticize the Government and to publish material with political content.**

A/HRC/12/48 (ADVANCE2) (UN Fact Finding Mission on the Gaza Conflict, 2009), para. 1943: The **detention of members of the** Palestinian **legislative council** by Israel **violates the right not to be arbitrarily detained**, as protected by article 9 of ICCPR, insofar as **it is based on political affiliation and prevents those members from participating in the conduct of public affairs**, it is also in violation of its articles 25 recognizing the right to take part in public affairs and 26, which provides for the right to equal protection under the law, insofar **as their detention is unrelated to their individual behaviour, it constitutes collective punishment**, prohibited by article 33 of the fourth Geneva Convention [...].

#### 4.8 Is the right of political association and activity framed by objective criteria?

##### Right and Opportunity to Participate in Public Affairs; Freedom of Association

ICCPR, Art. 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.

ICCPR, Art. 22: (1) **Everyone shall have the right to freedom of association with others**, including the right to form and join trade unions for the protection of his interests. (2) **No restrictions may be placed on the exercise of this right other than those which are prescribed by law** and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

A/HRC/17/40/Add.2 (SR on contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance, 2011), Singapore, p. 76: In the light of General Recommendation No. 30 (2004) on non-citizens of the Committee on the Elimination of Racial Discrimination, the Special Rapporteur recommends that the constitutional provisions restricting certain human rights to Singaporean citizens—including the right to non-discrimination on the ground of religion, race, descent or place of birth in any law or in the appointment to any employment under a public authority, the rights in respect to education and the freedom of speech, assembly and **association**—**be revised to extend equal human rights protection to all individuals** residing in Singapore, **including non-citizens.**

A/HRC/15/46 (SR Cambodia, 2010), p. 67: The new laws should **ban active party political members from holding judicial positions and ban judges and prosecutors from acting as advisers to party political leaders** or ministers. The judges and prosecutors may be members of a political party prior to their appointment, However, **when they are appointed to judicial positions they should cease to be an active member of any political party or play any role in party political activities.**

## Resources

- ACE Project, 'Parties and Candidates', 2012, available at <<http://aceproject.org/ace-en/topics/pc>>, accessed 28 March 2014
- European Union (EU), *Methodological Guide on Electoral Assistance* (Brussels: EU, 2006), available at <[http://ec.europa.eu/europeaid/what/human-rights/election\\_observation\\_missions/documents/election-assistance-methodologicalguide\\_en.pdf](http://ec.europa.eu/europeaid/what/human-rights/election_observation_missions/documents/election-assistance-methodologicalguide_en.pdf)>, accessed 10 February 2014
- International IDEA, *Gender and Political Parties: Far from Parity* (Stockholm: International IDEA, 2011)
- International IDEA, *Political Parties in Africa through a Gender Lens* (Stockholm: International IDEA, 2013)
- International IDEA and Netherlands Institute for Multiparty Democracy (NIMD), *Strategic Planning for Political Parties: A Practical Tool* (Stockholm and The Hague: International IDEA and NIMD, 2013)
- International IDEA, *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance* (Stockholm: International IDEA, 2014)
- National Democratic Institute (NDI), *Minimum Standards for the Democratic Functioning of Political Parties* (Washington, D.C.: NDI, 2008)
- Netherlands Institute for Multiparty Democracy (NIMD), *A Framework for Democratic Party-Building Handbook* (The Hague: NIMD, 2004)
- Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines on Political Party Regulation* (OSCE/ODIHR, 2011), available at <<http://www.osce.org/odihr/77812>>, accessed 10 February 2014
- Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Comments on the Law of Turkmenistan on Political Parties* (OSCE/ODIHR, 2012), available at <<http://aceproject.org/ero-en/regions/asia/TM/turkmenistan-analysis-of-the-law-on-political/view>>, accessed 10 February 2014
- Soldevilla, F. T., *Regulación Jurídica de los partidos políticos en el Perú*, 2010, available at <<http://aceproject.org/ero-en/regions/americas/PE/peru-regulacion-juridica-de-los-partidos-politicos/view>>, accessed 10 February 2014
- Wood, T., 'Extending International Human Rights Obligations to Political Parties', *Cambridge Journal of International and Comparative Law*, 2/3 (2013), pp. 431–51

## Notes

- <sup>1</sup> International IDEA 2014.
- <sup>2</sup> CCPR/C/SR.1509, *Travaux Préparatoires*, GC 25, para. 52.

# Chapter 5. Political Finance

## Overview

Political parties' activities and electoral campaigns cost money: 'The financing of political life is a necessity—and a problem.'<sup>1</sup> This necessity, and its implications, make it crucial that legal frameworks for elections consider regulating the financing of general political party activities, as well as campaign financing and party and candidate expenditures. Provisions related to contributions to parties and candidates and their expenditures can be established in either electoral legislation or stand-alone laws on political parties and their finances.

The issue of political finance can be broken down into three distinct categories: general political party activities, campaign finance and abuse of state resources. Considering the still-limited UN framework in this domain, the Guidelines combine all three elements in a single chapter along with related aspects concerning monitoring and enforcement mechanisms. While political party activities include general activities (beyond electoral activities), campaign finance refers to 'financial transactions to political parties or candidates related to an electoral campaign, which could include formal, financial or in-kind donations or expenditure'.<sup>2</sup> Campaign finance regulations can help promote the transparency and integrity of electoral processes and can thus contribute to the full enjoyment of citizens' equal right and opportunity to participate in public affairs. The abuse of state resources for political gain is defined as: 'The use of state and public sector powers and resources by incumbent politicians or political parties to further their own prospects of election, in violation of legal and/or other norms and responsibilities governing the exercise of public office.'<sup>3</sup>

Political parties and candidates can potentially rely on public funding and private funding, both of which can be direct or indirect. Payment of direct financial subsidies to candidates or parties from public funds has increased around the world in an effort to level the playing field among electoral contestants. Indirect public funding includes free broadcasting time; making state payments and facilities available to political parties and candidates; the use of government facilities and public personnel; state grants to party foundations; and tax relief, tax credits or matching grants. Distribution of direct public funding to political parties or candidates may be allocated according to several criteria and can help promote stability for political parties throughout the electoral cycle, or during particular electoral events. Distribution can match actual expenditure, rendering the receipt of public money conditional on the party or candidate also raising money from private sources. Public funding can also be apportioned according to each party's votes received in the previous general election or past elections, or proportional to the number of seats in the legislature.

The main forms of private funding are: donations to political parties or candidates by individuals, funding by institutions such as large business corporations and trade unions, and membership subscriptions and in-kind contributions from supporters. Regulation of private campaign contributions should be designed to ensure equal freedom to raise private funds. It may also cap contributions and/or expenditures in order to level the campaign playing field to a reasonable degree, taking into account geographic, demographic and material costs. The enforceability of such provisions must be kept in mind when framing or assessing options. Finally, measures to promote awareness of political finance laws and regulations among stakeholders can be very effective in enhancing transparency and supporting compliance with the relevant laws.

The following Table of Jurisprudence reveals that UN instruments regulate political finance almost exclusively through the UNCAC, whose nascent peer-review mechanism is described in Part A, Section III.7. To date, UNCAC lacks a competent treaty body to monitor compliance, issue authoritative interpretation of the Convention and receive complaints. Nevertheless, the Convention has been transposed in some regional and sub-regional instruments, and might be enforceable through regional bodies.

At the regional level, the African Union Convention on Preventing and Combating Corruption develops the notion of financial accountability of elected officials, committing States Parties to require public officials to declare their assets before and after their terms of office.<sup>4</sup>

Beyond the Prevention of Corruption in political finance—which is one of the UNCAC's main inroads into the electoral domain, together with

Transparency and the Right to Information—the following Table of Jurisprudence also addresses the Right and Opportunity to Participate in Public Affairs, the Right and Opportunity to be Elected, Freedom from Discrimination and Equality under the Law, States Must take Necessary Steps to give Effect to Rights, the Right to an Effective Remedy, and the Right to a Fair and Public Hearing.

## Table of Jurisprudence

### 5. Political Finance

#### 5.1 Does the legal framework require the transparency of political party and candidate contributions and expenditures?

##### Transparency and the Right to Information

UNCAC, Art. 7(3): Each State Party shall also consider taking **appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.**

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information.**

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, **develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.**

UNCAC, Art. 1: The purposes of this Convention are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; [...] (c) To **promote integrity, accountability and proper management of public affairs and public property.**

UNCAC, Art. 8(5): Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems **requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest** may result with respect to their functions as public officials.

#### 5.2 Are there reasonable caps on financial contributions to, or spending by and on behalf of, political parties and candidates?

##### Freedom From Discrimination and Equality Under the Law

ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to **the equal protection of the law.** In this respect, the **law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground** such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

UNCAC, Art. 1: The purposes of this Convention are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; [...] (c) To **promote integrity, accountability and proper management of public affairs and public property.**

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, **develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.**

CCPR, GC 25, p. 19: **Reasonable limitations on campaign expenditure** may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.

CCPR/C/RWA/CO/3, Rwanda (2009), p. 21: It [the State Party] should **treat all political parties on an equal footing and offer them equal opportunities to pursue their legitimate activities**, in accordance with the provisions of articles 25 and 26 of the Covenant.

A/HRC/21/63 (SR Cambodia, 2012), p. 62: The country needs political stability to accelerate the process of economic development, but that stability should be founded on fairness, equity, transparency, legitimacy and a **level playing field** to enable all political actors to make an equitable contribution to the country's governance.

### 5.3 If public funding to political parties is provided, is it distributed equitably?

#### Right and Opportunity to be Elected; Freedom from Discrimination and Equality under the Law

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to **the equal protection of the law**. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CCPR/C/RWA/CO/3, Rwanda (2009), p. 21: It [the State party] should **treat all political parties on an equal footing and offer them equal opportunities to pursue their legitimate activities**, in accordance with the provisions of articles 25 and 26 of the Covenant.

A/HRC/20/27/Add.2 (SR on the rights to freedom of peaceful assembly and of association, 2012), Georgia, p. 90: (d) increase efforts to **ensure that all political parties, including opposition parties, have genuine, equitable and adequate access to state resources for election campaigning**. It is especially crucial that **the line between the ruling party and the state be clearly defined** in order to create **a level playing field**.

Commission on Human Rights, Res. 2003/35 (2003), p. 11: Recognizes that **inequitable political, economic, cultural and social conditions** can breed and foster racism, racial discrimination, xenophobia and related intolerance, which in turn **exacerbate inequity**.

### 5.4 Is the abuse of state resources regulated?

#### Prevention of Corruption; Right and Opportunity to be Elected

UNCAC, Art. 1: **The purposes of this Convention are:** (a) **To promote and strengthen measures to prevent and combat corruption more efficiently and effectively:** [...] (c) **To promote integrity, accountability and proper management of public affairs and public property.**

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

UNCAC, Art. 17: Each State Party shall adopt such **legislative and other measures** as may be necessary to **establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.**



CCPR/C/RWA/CO/3, Rwanda (2009), p. 21: The Committee finds cause for concern in the reported obstacles to the registration and freedom of action of human rights NGOs and opposition political parties (arts. 19, 22, 25 and 26 of the Covenant). [...] It should **treat all political parties on an equal footing and offer them equal opportunities to pursue their legitimate activities**, in accordance with the provisions of articles 25 and 26 of the Covenant.

A/HRC/21/63 (SR Cambodia, 2012), p. 62: The country needs political stability to accelerate the process of economic development, but that **stability should be founded on fairness, equity, transparency, legitimacy and a level playing field to enable all political actors to make an equitable contribution to the country's governance**. p. 71: Another issue is the use of state resources, including the time of government employees, motor vehicles and materials, by political parties during their campaigning. **The government must ensure that all civil servants, police and military personnel do not participate in political activities or use government resources while working in their official capacities, and that neutrality is paramount.**

A/HRC/20/27/Add.2 (SR on the rights to freedom of peaceful assembly and of association, 2012), Georgia, p. 90: (d) increase efforts to ensure that all political parties, including opposition parties, have **genuine, equitable and adequate access to state resources** for election campaigning. It is especially crucial that the line between the ruling party and the state be clearly defined in order to create a **level playing field**.

## 5.5 Does the legal framework define and sanction the concealment of illicit campaign funds?

### Prevention of Corruption

UNCAC, Art 1: The purposes of this Convention are: (a) **To promote and strengthen measures to prevent and combat corruption more efficiently and effectively**; [...] (c) **To promote integrity, accountability and proper management of public affairs and public property.**

UNCAC, Art. 24: Without prejudice to the provisions of article 23 of this Convention, **each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence**, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, **the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.**

UNCAC, Art. 23(1): **Each State Party shall adopt**, in accordance with fundamental principles of its domestic law, **such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally**: (a) (i) **The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action.**

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information.**

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, **integrity, transparency and accountability.**

## 5.6 Are donations by non-national persons or entities regulated?

### Prevention of Corruption

UNCAC, Art. 1: The purposes of this Convention are: (a) To **promote and strengthen measures to prevent and combat corruption more efficiently and effectively**; [...] (c) **To promote integrity, accountability and proper management of public affairs and public property.**

**UNCAC, Art. 16:** (1) Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, **offering or giving to a foreign public official** [...], directly or indirectly, of an undue advantage, for the official himself or herself or another person or **entity**, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business. (2) Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or **entity**, in order that the official act or refrain from acting in the exercise of his or her official duties.

**UNCAC, Art. 21:** Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities: (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a **private sector entity**, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting; (b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

**UNGA Res. 46/130**, p. 6: [The General Assembly] strongly **appeals to all States to refrain from financing or providing, directly or indirectly, any other form of overt or covert support for political parties or groups and from taking actions to undermine the electoral processes in any country.**

## 5.7 Are campaign finance regulations monitored and enforced?

### Prevention of Corruption

UNCAC, Art. 1: The purposes of this Convention are: (a) To **promote and strengthen measures to prevent and combat corruption more efficiently and effectively**; [...] (c) **To promote integrity, accountability and proper management of public affairs and public property.**

**UNCAC, Art. 5:** (1) **Each State Party shall**, in accordance with the fundamental principles of its legal system, **ensure the existence of a body or bodies**, as appropriate, **that prevent corruption** by such means as: (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; (b) Increasing and disseminating knowledge about the prevention of corruption. (2) **Each State Party shall grant the body or bodies** referred to in paragraph 1 of this article the **necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence.** The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

**ICCPR, Art. 2(2):** Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

**A/HRC/20/27/Add.2 (SR on the rights to freedom of peaceful assembly and of association, 2012)**, Georgia, p. 90: (b) **Seriously consider reviewing the prerogatives of the chamber of control, in particular of the new unit responsible for monitoring financing related to political parties**, in particular, with regard to the need to substantiate its decisions and the obligation to obtain a judicial instruction before taking any action in the event of reasonable doubt when an illicit activity is suspected, and to ensure that it is transparent, independent and accountable, and seen to be so in law and fact.

## 5.8 Do political parties and candidates have the right of timely appeal against political finance sanctions?

### Right to an Effective Remedy; Right to a Fair and Public Hearing

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (b) To ensure that **any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities**, or by any other competent authority provided for by the legal system of the State, **and to develop the possibilities of judicial remedy**; (c) **To ensure that the competent authorities shall enforce such remedies when granted.**

ICCPR, Art. 14: (1) In the determination of any criminal charge against him, everyone shall be entitled to a **fair and public hearing by a competent, independent and impartial tribunal established by law** [...] (2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

CCPR, GC 31, p. 15: Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights.**

CCPR, GC 32, p. 27: An important aspect of the fairness of a hearing is its **expeditiousness**. While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3 (c) of article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be allocated for the administration of justice.

## 5.9 Are both candidates and political parties liable for campaign finance offences?

### Prevention of Corruption

UNCAC, Art. 1: The purposes of this Convention are: (a) To **promote and strengthen measures to prevent and combat corruption more efficiently and effectively**; [...] (c) **To promote integrity, accountability and proper management of public affairs and public property.**

UNCAC, Art. 26: (1) **Each State Party** shall adopt such measures as may be necessary, consistent with its legal principles, **to establish the liability of legal persons for participation in the offences established in accordance with this Convention.** (2) Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. (3) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences. (4) **Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.**

UNCAC, Art. 30(7): Where warranted by the gravity of the offence, **each State Party**, to the extent consistent with the fundamental principles of its legal system, **shall consider establishing procedures for the disqualification**, by court order or any other appropriate means, for a period of time determined by its domestic law, **of persons convicted of offences established in accordance with this Convention from: (a) Holding public office.**

UNCAC, Art. 28: **Knowledge, intent or purpose** required as an element of an offence established in accordance with this Convention **may be inferred** from objective factual circumstances.

## 5.10 Do candidates have to declare their assets before and after their term of office?

### Prevention of Corruption; Transparency and the Right to Information

UNCAC, Art. 1: The purposes of this Convention are: (a) To **promote and strengthen measures to prevent and combat corruption more efficiently and effectively**; [...] (c) **To promote integrity, accountability and proper management of public affairs and public property.**

UNCAC, Art. 7(3): Each State Party shall also consider taking **appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.**

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

**UNCAC, Art. 8(5): Each State Party shall endeavour**, where appropriate and in accordance with the fundamental principles of its domestic law, **to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding**, inter alia, **their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.**

**UNCAC, Art. 20:** Subject to its constitution and the fundamental principles of its legal system, each **State Party shall consider adopting such legislative and other measures** as may be necessary **to establish as a criminal offence, when committed intentionally, illicit enrichment**, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

## Resources

ACE Project, 'Political Finance', available at <<http://aceproject.org/ace-en/topics/eif/eif08/eif08c>>, accessed 28 March 2014

Council of Presidents and Prime Ministers of the Americas, *Financing Democracy: Political Parties, Campaigns, and Elections* (Organization of American States, Inter-American Forum on Political Parties, 2003), available at <[http://www.ndi.org/files/1565\\_lac\\_financingdemoc.pdf](http://www.ndi.org/files/1565_lac_financingdemoc.pdf)>, accessed 10 February 2014

Gutiérrez, P. and, Zovatto, D., *Funding of Political Parties and Election Campaigns in the Americas* (OAS and International IDEA, 2005)

Gutiérrez, P. and Zovatto, D., *Financiamiento de los Partidos Políticos en América Latina* (OAS, International IDEA, Universidad Nacional Autónoma de México, 2011), available at <[http://www.oas.org/es/sap/docs/deco/Financiamiento\\_partidos\\_s.pdf](http://www.oas.org/es/sap/docs/deco/Financiamiento_partidos_s.pdf)>, accessed 10 February 2014

International Foundation for Electoral Systems (IFES), *Challenging the Norms and Standards of Election Administration* (Washington, D.C.: IFES, 2007)

International IDEA, *Funding of Political Parties and Election Campaigns* (Stockholm: International IDEA, 2003)

International IDEA, *Illicit Political Finance and State Capture* (Stockholm: International IDEA, 2009)

International IDEA, *Illicit Networks and Politics in the Baltic States* (Stockholm: International IDEA, 2013)

International IDEA, Political Finance Database, available at <<http://www.idea.int/political-finance/>>, accessed 10 February 2014

Magolowondo, A., Falguera, E. and Matsimbe, Z., *Regulating Political Party Financing: Some Insight from the Praxis* (Stockholm and Washington, D.C.: International IDEA and NDI, 2013)

Ohman, M., *Abuse of State Resources* (Washington, D.C.: IFES, 2011)

Ohman, M., *Training In Detection and Enforcement (TIDE) Political Finance Oversight Handbook* (Washington, D.C.: IFES, 2013a)

Ohman, M., *Financing Politics: The Middle East and North Africa* (Washington, D.C.: IFES, 2013b)

Organization of American States (OAS), *Observing Political-Electoral Financial Systems: A Manual for OAS Electoral Observation Missions* (OAS, 2012)

Transparency International (TI) and The Carter Center, *The CRINIS Project: Money in Politics, Everyone's Concern* (TI and The Carter Center, 2007), available at <[http://archive.transparency.org/regional\\_pages/americas/crinis%20](http://archive.transparency.org/regional_pages/americas/crinis%20)>, accessed 10 February 2014

## Notes

- <sup>1</sup> Ohman 2013a.
- <sup>2</sup> International IDEA, Glossary, Political Finance database.
- <sup>3</sup> Ibid.
- <sup>4</sup> African Union Convention on Preventing and Combating Corruption, Art. 7. In addition, Art. 10 calls for the transparency and regulation of political party funding.

# Chapter 6. Electoral Management

## Overview

The complexity of and specialized skills necessary for electoral management require that an institution (or institutions) be responsible for electoral activities. The term EMB refers to the institution(s) responsible for electoral management, regardless of the wider institutional framework that is in place.<sup>1</sup> An EMB is an organization or body that has the sole purpose of, and is legally responsible for, managing some or all of the elements that are essential for the conduct of elections and direct democracy instruments—such as referendums, citizen initiatives and recall votes—if they are part of the legal framework. Essential elements include: (a) determining who is eligible to vote; (b) receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates); (c) conducting polling; (d) counting the votes; and (e) tabulating the votes<sup>2</sup>. If these essential elements are tasked to multiple bodies, then each body can be considered an EMB.

The concept of electoral management as a specialized branch of electoral administration activities has emerged relatively recently as the ‘process of execution of the activities, tasks and functions of electoral administration’; electoral administration is defined as the ‘measures necessary for conducting or implementing any aspect of an electoral process’.<sup>3</sup> Without prejudging the different models and modalities of electoral management and EMBs around the world, the following Table of Jurisprudence covers key issues to analyse and the jurisprudence applicable to the practical implementation of electoral processes.

Different countries’ electoral management models may result from holistic design processes. Equally, they may be more or less appropriate grafts on to existing systems of state administration. While there are many variations,

there are three broad types or models of electoral management: Independent, Governmental and Mixed Models.<sup>4</sup> EMBs can also be broken down into permanent bodies, which remain active beyond election events, or temporary bodies that only exist for a specific electoral process. In transitional contexts, transitional EMBs may also be created ad hoc.

The UN framework does not define an electoral management model, but CCPR jurisprudence explains that an independent electoral authority should be established to ‘supervise’ the electoral process and ensure that it is conducted fairly, impartially and in accordance with established laws that are compatible with the Covenant.<sup>5</sup> UN jurisprudence has so far refrained from defining clear criteria for institutional and individual independence, as it has done extensively for institutions and members of the judiciary. However, regional treaty law and jurisprudence is evolving towards a preference for the independent model. The ACDEG and the ECOWAS Supplementary Protocol both offer more assertive provisions in favour of independent and impartial or neutral EMBs that not only supervise, but also organize elections. The ACDEG also requires independent bodies to be sufficiently funded and to operate professionally, effectively and efficiently. It is worth noting that the ECOWAS Supplementary Protocol further calls for EMBs to have the ‘confidence of all political actors’.<sup>6</sup>

On the much-debated topic of EMB independence, International IDEA highlights—through its *Electoral Management Design Handbook* and electoral reform activities around the world—the notion of ‘behavioural or fearless independence’, as opposed to ‘structural independence’. This ‘behavioural or fearless independence’ refers to the practical ability for EMBs to implement their mandate independently from other state’s institutions, regardless of the management model. ‘Behavioural or fearless independence’ is the essential criteria to be upheld and advocated in any electoral reform effort with legislators, political parties and civil society activists.

Beyond this crucial element, legal frameworks best ensure that an objective, unbiased, independent and effective administrative structure is in place. This involves careful attention to provisions on the appointment, security of tenure, definition of conflicts of interest, swearing in, remuneration, duties, powers, qualifications and reporting structure of electoral staff. Staff must be insulated from bias and political pressure at all levels, and a single line of ultimate authority must be established. These concerns are relevant regardless of the type of EMB model. Thus, some states will adopt a hierarchy headed by a Chief Electoral Commissioner, while others will opt for an Electoral Commission with fair partisan representation, recognized neutrality or a combination of both.

States are required to ensure that all electoral activities throughout the electoral cycle, including the decision-making process, legal process and the organization of electoral events, are conducted in a fully transparent manner. Each time elections are scheduled, the dates should be set out on an electoral calendar. Allowing adequate time for effective campaigning and public information efforts—for voters to inform themselves and for administrative, legal, training and logistic arrangements to be made—is also required. The electoral calendar should be publicized as part of civic information services, in the interests of transparency and securing public understanding and confidence in the process.<sup>7</sup> In this spirit, the UNSC now consistently calls for transparent elections, an obligation enshrined in the UNCAC. Both the ACDEG and the ECOWAS Supplementary Protocol explicitly call upon States Parties to ensure that elections are transparent.<sup>8</sup>

The following Table of Jurisprudence relies on UNCAC provisions and, to a certain extent, UNSC resolutions—a novel approach that strives to underline the level of importance acquired by EMBs in states’ institutional structures and their potential role as models of governance for other state institutions in transitional societies. Beyond Transparency and the Right to Information, the referenced obligations that are considered most relevant in analysing EMB-related legal provisions are: Rule of Law, States Must take Necessary Steps to Give Effects to Rights, the Right and Opportunity to Participate in Public Affairs, the Prevention of Corruption and the Right to an Effective Remedy.

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ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, <b>each State Party to the present Covenant</b> undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to <b>adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant</b> .
ICCPR, Art. 25: <b>Every citizen shall have the right and the opportunity</b> , 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, <b>guaranteeing the free expression of the will of the electors</b> .
UNCAC, Art. 1: The purposes of this Convention are: (c) <b>To promote integrity, accountability and proper management of public affairs and public property</b> .
UNCAC, Art. 19: Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, <b>the abuse of functions or position</b> , that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.



**UNCAC, Art. 8:** (2) In particular, each **State Party shall endeavour to apply**, within its own institutional and legal systems, **codes or standards of conduct for the correct, honourable and proper performance of public functions**. (4) **Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities**, when such acts come to their notice in the performance of their functions. (6) Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

**UNSC Res. 1883 (2009):** (The Security Council) Emphasizing UNAMI's efforts to assist the Independent High Electoral Commission and the Iraqi Government in the development of processes for holding successful Iraqi provincial elections in January 2009 and Kurdistan Regional Government elections in July 2009, and towards Iraqi national parliamentary elections in January 2010, and **stressing the importance of the transparency, impartiality and independence of the Independent High Electoral Commission**.

**CCPR, GC 25, p. 20:** **An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially** and in accordance with established laws which are compatible with the Covenant.

**A/HRC/21/63 (SR Cambodia, 2012), p. 65:** The National Election Committee should have independent and autonomous status in the constitutional and legal structure of Cambodia, with its **own independent budget allocated by the parliament**.

**A/HRC/19/67 (SR Myanmar, 2012), p. 94:** The Special Rapporteur also recommends that: (b) the Union Election Commission **exercise its powers in an independent and impartial manner** to ensure that ballots are held in a more inclusive, participatory and transparent and, thus, credible manner [...].

**A/HRC/18/10 (UPR, 2011), Sierra Leone, Recommendation No. 81.46:** Take necessary measures to **ensure the independence and credibility of the bodies that will have primary jurisdiction over validating polling results** in the 2012 Presidential and Parliamentary elections, as well as to ensure the appropriate level of security at the polls sufficient for all voters to freely exercise their franchise.

## 6.2 Does the EMB have regulatory powers?

### States Must Take Necessary Steps to Give Effect to Rights

**ICCPR, Art. 2(2):** Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

**CCPR, GC 25, p. 20:** An independent electoral authority should be established to supervise the electoral process and to ensure that it is **conducted fairly, impartially** and in accordance with established laws which are compatible with the Covenant.

**A/HRC/21/63 (SR Cambodia, 2012), p. 65:** The **National Election Committee should have independent and autonomous status** in the constitutional and legal structure of Cambodia [...].

**CCPR/C/79/Add. 79, Slovakia (1997), p. 3:** The Committee also notes with concern that the **lack of clarity in the delimitation of the respective competences of the executive, legislative and judicial authorities may endanger the implementation of the rule of law and a consistent human rights policy**.

**CCPR/C/79/Add. 84, Iraq (1997), p. 7:** The Committee is deeply concerned that all government power in Iraq is concentrated in the hands of an executive which is not subject to scrutiny or accountability, either politically or otherwise. **It operates without any safeguards or checks and balances designed to ensure the proper protection of human rights and fundamental freedoms in accordance with the Covenant**. This appears to be the most significant factor underlying many violations of Covenant rights in Iraq, both in law and in practice.

**A/HRC/RES/19/36, 2012, p. 1:** Stresses that democracy includes respect for all human rights and fundamental freedoms, inter alia [...] **the separation of powers**.

### 6.3 Are there measures to ensure equal and merit-based access to EMB positions?

#### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 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. (c) **To have access, on general terms of equality, to public service in his country.**

UNCAC, Art. 7(1): Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, **maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:** (a) **That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude.**

CCPR, GC 25, p. 23: Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. **To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.** [...] It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

A/HRC/21/63 (SR Cambodia, 2012), p. 65: The president and members of the committee should be drawn from a pool of retired senior judges, senior and distinguished members of the Cambodian bar and senior professors of law, politics and public administration. p. 79: The National Electoral Committee should appoint **professional election administrators** to replace village chiefs during voter registration and on election day and bring all commune election officers and processes under its own stricter supervision mechanism.

### 6.4 Are there provisions prohibiting conflicts of interest and ensuring security of tenure for EMB positions?

#### Prevention of Corruption

UNCAC, Art. 1: The purposes of this Convention are: (a) **To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;** [...] (c) **To promote integrity, accountability and proper management of public affairs and public property.**

UNCAC, Art. 8(5): **Each State Party shall endeavour**, where appropriate and in accordance with the fundamental principles of its domestic law, **to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.**

UNSC Res. 1911 (2010), p. 11: Recalls that it is fully prepared to impose targeted measures pursuant to paragraph 20 of resolution 1893 (2009), including among other things against persons who are determined to be a threat to the peace and national reconciliation process in Côte d'Ivoire, and recalls further that, pursuant to paragraph 6 of the above-mentioned resolution, any threat to the electoral process in Côte d'Ivoire, in particular any **attack on or obstruction of the action of the Independent Electoral Commission** in charge of the organization of the elections or the actions of the operators mentioned in paragraphs 1.3.3 and 2.1.1 of the Ouagadougou Political Agreement, shall constitute a threat to the peace and national reconciliation process for the purposes of paragraphs 9 and 11 of resolution 1572 (2004).

CCPR, GC 25, p. 23: To ensure access on general terms of equality, the **criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable**. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. **Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures**. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

CCPR/CO/76/TGO, Togo (2002), p. 20: The Committee takes note of the State party's decision **to dissolve**, in June 2002, on the basis of article 40 of the Electoral Code, the Independent National Electoral Commission (CENI) that was the outcome of the Lomé Framework Agreement and was composed of representatives of various political parties. The Committee also takes note of the delegation's explanations in that regard, as well as of other reports that the State party has not made all the necessary efforts to ensure the smooth operation of CENI. **In such conditions, the legislative elections of 27 October 2002, in which part of the opposition again refused to participate, might not have been sufficiently in keeping with the requirements of transparency and honesty under article 25 of the Covenant**.

A/HRC/21/63 (SR Cambodia, 2012), p. 65: The president and members of the committee should be drawn from a pool of retired senior judges, senior and distinguished members of the Cambodian bar and senior professors of law, politics and public administration. p. 68: The president and members of the National Election Committee and the Provincial Election Committees should be **appointed for a fixed term and have security of tenure**. They should be **barred from holding positions in political parties during and up to two years after the expiry of their terms of office**.

## 6.5 Is the EMB required to operate transparently?

### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

UNCAC, Art. 5(1): **Each State Party shall**, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, **coordinated anti-corruption policies that promote the participation of society and reflect the principles** of the rule of law, proper management of public affairs and public property, integrity, **transparency** and accountability.

ICCPR, Art. 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.

CCPR, GC 34, p. 18: Article 19 (ICCPR), paragraph 2 embraces a **right of access to information held by public bodies. Such information includes records held by a public body**, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this General Comment. The designation of such bodies may also include other entities when such entities are carrying out public functions. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output [...]. p. 19: **To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information [...]**.

**UNSC Res. 1883 (2009):** [The Security Council] Emphasizing UNAMI's efforts to assist the Independent High Electoral Commission and the Iraqi Government in the development of processes for holding successful Iraqi provincial elections in January 2009 and Kurdistan Regional Government elections in July 2009, and towards Iraqi national parliamentary elections in January 2010, and stressing the importance of the **transparency, impartiality and independence of the Independent High Electoral Commission.**

**CCPR/C/CPV/CQ/1, Cape Verde (2012),** p. 17: The Committee notes the lack of information on the measures taken by the State party to implement the recommendation of the National Electoral Commission to amend the provisions of its Electoral Code in order to ensure **greater security and transparency in the conduct of elections.** [...] The State party should provide information on the concrete measures taken to implement the recommendations of the National Electoral Commission to amend the Electoral Code in order to ensure greater electoral security and transparency, and to review the voter identification and registration processes.

## 6.6 Does the legal framework prescribe procurement procedures for the EMB?

### Prevention of Corruption

UNCAC, Art. 1: The purposes of this Convention are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; [...] (c) To **promote integrity, accountability and proper management of public affairs and public property.**

**UNCAC, Art. 9(1): Each State Party shall,** in accordance with the fundamental principles of its legal system, **take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making,** that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia: (a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders; (b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication; (c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures; (d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed; (e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

**UNCAC, Art. 10:** Taking into account the need to combat corruption, **each State Party shall,** in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration,** including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.

**ICCPR, Art. 19(2):** Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds,** regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

## 6.7 Is the EMB financially accountable?

### Transparency and the Right to Information; Prevention of Corruption

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds,** regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 1: The purposes of this Convention are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; [...] (c) To **promote integrity, accountability and proper management of public affairs and public property.**

**UNCAC, Art. 9: (2) Each State Party shall**, in accordance with the fundamental principles of its legal system, **take appropriate measures to promote transparency and accountability in the management of public finances**. Such measures shall encompass, inter alia: (b) Timely reporting on revenue and expenditure; (c) A system of accounting and auditing standards and related **oversight**; (d) Effective and efficient systems of risk management and internal control; and (e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph. (3): Each State Party shall take such civil and administrative measures as may be necessary in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related **to public expenditure and revenue** and to prevent the falsification of such documents.

**UNCAC, Art. 10:** Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

**UNCAC, Art. 5(1): Each State Party shall**, in accordance with the fundamental principles of its legal system, **develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability**.

## 6.8 Are there provisions to ensure the timely review of EMB decisions?

### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have **an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by **competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system** of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

**CCPR, GC 25, p. 20:** There should be independent scrutiny of the voting and counting process and **access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes**.

**CCPR, GC 32, p. 27:** An important aspect of the fairness of a hearing is its **expeditiousness**. While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3(c) of article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be allocated for the administration of justice.

**CCPR/C/NIC/CO/3, Nicaragua (2008), p. 20:** The State party should meet the targets laid down in the Inter-American Court's ruling and, in particular, take steps to bring about the necessary reforms in the Elections Act as recommended by the Court **and introduce a simple legal remedy against decisions by the Supreme Electoral Board**.

**Leonid Sinitsin v. Belarus, Comm. No. 1047/2002, UN Doc. CCPR/C/88/D/1047/2002 (2006), p. 3:** The Committee recalls that article 2, paragraph 3 of the Covenant guarantees an **effective remedy** to any person claiming a violation of the rights and freedoms spelled out in the Covenant. In the present case, **no effective remedies were available to the author to challenge the CEC ruling** declaring his nomination invalid, nor could he challenge the subsequent refusal by the CEC to register him as a presidential candidate before an independent and impartial body. The Committee considers that the absence of an independent and impartial remedy to challenge the CEC ruling on the invalidity of the author's nomination [...].

## Resources

- ACE Project, 'Electoral Management', available at <<http://aceproject.org/ace-en/topics/em>>, accessed 27 March 2014
- European Commission, United Nations Development Programme, EC-UNDP Partnership on Electoral Assistance, eLearning Portal. Course on Sustainability of Electoral Administration, available at <<http://elearning.ec-undp-electoralassistance.org/login/index.php>>, accessed 23 April 2014
- Electoral Institute for Sustainable Democracy in Africa (EISA), *Principles for Election Management, Monitoring, and Observation in the SADC Region* (Johannesburg: EISA, 2003)
- Hounkpe, M. and Fall, I. M., *Electoral Commissions in West Africa: A Comparative Study* (Abuja: Friedrich-Ebert-Stiftung, 2010)
- International Foundation for Electoral Systems (IFES) and United Nations Development Programme (UNDP), *Getting to the Core: A Global Survey on the Cost of Registration and Elections*, available at <<http://www.ifes.org/-/media/Files/Publications/Survey/2006/300/CorePublcolor.pdf>>, accessed 23 April 2014
- International IDEA, *Code of Conduct for the Ethical and Professional Administration of Elections* (Stockholm: International IDEA, 1997)
- International IDEA, *Electoral Management Design: The International IDEA Handbook* (Stockholm: International IDEA, 2006)
- International IDEA, *Social Media: A Practical Guide for Electoral Management Bodies*, 2014
- López-Pintor, R., *Electoral Management Bodies as Institutions of Governance* (UNDP, 2000)
- López-Pintor, R. and Fischer, J., *Cost of Registration and Elections (CORE) Project* (Washington, D.C.: International Foundation for Electoral Systems, 2005)
- Mozaffar, S. and, Schedler, A., 'The Comparative Study of Electoral Governance: Introduction', *International Political Science Review*, 23 (2002), pp. 5–27
- Pastor, R. A., 'The Role of Electoral Administration in Democratic Transitions: Implications for Policy and Research', *Democratization*, 6/4 (1999), pp. 1–27
- Spinelli, A., *Strategic Planning for Effective Electoral Management: A Practical Guide for Electoral Management Bodies to Conduct a Strategic Planning Exercise* (Washington, D.C.: International Foundation for Electoral Systems, 2011)
- United Nations (UN), *Human Rights and Elections: United Nations Handbook on the Legal, Technical and Human Rights Aspects of Elections* (New York and Geneva: UN, 1994)

## Notes

- <sup>1</sup> López-Pintor, R. 2000.
- <sup>2</sup> International IDEA 2006, pp. 5.
- <sup>3</sup> Ibid., pp. 329–30.
- <sup>4</sup> Ibid., pp. 6–15.
- <sup>5</sup> CCPR, GC 25, para. 20.
- <sup>6</sup> ACDEG, Art. 17; ECOWAS Supplementary Protocol, Art. 3.
- <sup>7</sup> UN, 1994.
- <sup>8</sup> ACDEG, Art. 3; ECOWAS Supplementary Protocol, Art. 1.b.

# Chapter 7. Gender Equality

## Overview

Gender equality refers to ‘the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women’s issue but should concern and fully engage men as well as women’.<sup>1</sup> In the electoral context, gender equality focuses primarily on political representation and participation in its broadest sense.

The Guidelines address gender equality obligations by both mainstreaming them throughout thematic chapters that deal with the various phases of the electoral process and present this stand-alone chapter compiled to highlight issues that legal frameworks must consider in accordance with the relevant international treaties and jurisprudence. These include specific obligations such as Equality between Men and Women, Freedom from Discrimination and Equality under the Law, Right to Security of Person and States Must Take Necessary Steps to Give Effect to Rights. In addition to the general obligations under the ICCPR, the present chapter refers to the CEDAW treaty articles relevant to electoral processes. CEDAW treaty body General Recommendations (GR) and Concluding Comments are referenced together with HRC and CCPR jurisprudence.

Representation of women remains of concern in all electoral processes. Whereas world population statistics place the number of men and women at an equal level and never outside a 45–55 per cent differential, women’s



representation in parliaments and in appointed positions within government institutions remains considerably below equal representation.<sup>2</sup> According to the statistics of the Inter-Parliamentary Union (IPU), the world average proportion of women members of the lower house of national legislatures stands at 21.8 per cent.<sup>3</sup>

Serious challenges remain in improving the access of women to national and sub-national levels of government and other elected or appointed bodies. The same is also true of their ability to impact on and within these bodies. This situation persists even though countries around the world have recognized the under-representation of women in their political and public life and started to adopt measures to help women enter politics and national legislatures. In 1995, the Beijing Process was initiated, aiming for 30 per cent women representation in national legislatures, a threshold seen as a ‘critical mass’ needed for women to be able to make a meaningful contribution in an otherwise male domain. By October 2013, 37 countries had achieved the goal of 30 plus per cent women representation in the lower house of their national legislatures.

CEDAW requires the adoption of Temporary Special Measures (TSMs) by States Parties to advance gender equality in terms of representation. The persistent inequality faced by women in various aspects of public and political life justifies adoption of special measures of a temporary nature to expedite the reduction of historical imbalances. Among the more popular of these measures—which CEDAW exempts from the general prohibition of discrimination—it is important to distinguish between candidate quotas and reserved seats for women.<sup>4</sup> The latter sets aside a certain number of seats for women among representatives in a legislature; these seats can be filled by election or appointment. Candidate quotas specify the minimum percentage of candidates on a party candidate list for election that must be women. Candidacy quotas can be mandatory, incentivized or voluntary.

Although the political commitment to at least 30 per cent of women representation was made under UN auspices, the binding UN framework on gender in elections stops short of imposing quantitative obligations on States Parties. The ICCPR calls upon States Parties to guarantee the right to the equal enjoyment of rights between men and women, which invites claims for equality of participation in public life upon a combined reading of ICCPR articles 3 and 25. The CEDAW further requires that States Parties ensure to women (on equal terms with men) the right to participate in the formulation and implementation of government policy, and to hold public office and perform all public functions at all levels of government.<sup>5</sup>

The Protocol to the African Charter of Human and Peoples’ Rights on the Rights of Women in Africa offers a stronger imperative: it holds that States

Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that women are represented equally with men at all levels in all electoral processes.<sup>6</sup> Both the ACDEG and the ECOWAS Supplementary Protocol contain powerful provisions promoting the participation and representation of women.<sup>7</sup> Strong regional treaty language may well have contributed to African democracies matching up to their European peers: both Africa and Europe now each take five places among the top 12 countries in terms of women’s representation in the lower houses of the legislature.<sup>8</sup>

Beyond representation, it is equally important to consider measures to promote the participation of women in all fields of public and political life:

It is critical, for the sake of ensuring fully functional democratic institutions, and total respect for the human rights of all, that these challenges be targeted and overcome. A concerted effort is needed to target all stages of women’s political participation, from the moment they decide they want to run for public office, through each step till they reach that designated office, and thereafter to ensure that as members of parliaments, they have the means and needed resources to impact positively and constructively on the advancement of their nation.<sup>9</sup>

Political participation in this context touches on the equal right and opportunity to participate as citizens, voters, activists, demonstrators, administrators and elected officials in a country’s political and public life.

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ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, <b>each State Party to the present Covenant undertakes to take the necessary steps</b> , in accordance with its constitutional processes and with the provisions of the present Covenant, <b>to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant</b> .
ICCPR, Art. 3: The States Parties to the present Covenant undertake to <b>ensure the equal right of men and women to the enjoyment of all civil and political rights</b> set forth in the present Covenant.
ICCPR, Art. 25: <b>Every citizen</b> 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 <b>access, on general terms of equality, to public service</b> in his country.
CEDAW, Art. 7: States Parties shall take <b>all appropriate measures to eliminate discrimination against women in the political and public life of the country [...]</b>

**CEDAW, Art. 5:** States Parties shall take all appropriate measures: (a) To **modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles** for men and women.

**CEDAW/C/POL/CO/6, Poland (2007)**, p. 13: The Committee invites the State party to adopt a **comprehensive national action plan for gender equality with sufficient resources, in consultation with women's non-governmental organizations**, and to provide information in next report on the impact of, and results achieved in, implementation towards the realization of women's de facto equality.

**CCPR/C/JPN/CO/5, Japan, (2008)**, p. 12: The Committee notes with concern that, despite numerical targets for the representation of women in public offices, women hold only 18.2 percent of the seats in the Diet and 1.7 percent of government posts at the level of directors of Ministries, and that some of the numerical targets set in the 2008 Programme for Accelerating Women's Social Participation are extremely modest, such as the 5 percent target for women's representation in positions equivalent to directors of Ministries by 2010. (Arts. 2 (1), 3, 25 and 26). **The State party should intensify its efforts to achieve equitable representation of women and men** in the National Diet and at the highest levels of the government and in the public service, **within the timeframe set in the Second Basic Plan for Gender Equality** adopted in 2005, by adopting special measures such as statutory quota and by reviewing numerical targets for women's representation.

## 7.2 Is discrimination based on gender prohibited by law?

### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, **the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**

**CEDAW, Art. 2:** States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, **prohibiting all discrimination against women.**

**CEDAW, Art. 7:** States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.

## 7.3 Does the legal framework allow and provide for TSMs to achieve gender equality?

### Equality between Men and Women; States Must Take Necessary Steps to Give Effect to Rights

**CEDAW, Art. 7:** States Parties shall take all **appropriate measures to eliminate discrimination against women** in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.**

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant undertakes to take the necessary steps**, in accordance with its constitutional processes and with the provisions of the present Covenant, **to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

**CEDAW, Art. 4:** (1) **Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination** as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. (2) Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

CEDAW, GR 25 (2004), p. 29: States parties should provide adequate explanations with regard to any failure to adopt temporary special measures. Such failures may not be justified simply by averring powerlessness, or by explaining inaction through predominant market or political forces, such as those inherent in the private sector, private organizations, or political parties. States parties are reminded that article 2 of the Convention, which needs to be read in conjunction with all other articles, imposes accountability on the State party for action by these actors. p. 31: States parties should include, in their constitutions or in their national legislation, provisions that allow for the adoption of temporary special measures. p. 33: States parties should ensure that such temporary special measures are **specifically permitted under anti-discrimination legislation or other constitutional guarantees of equality**. p. 34: Under article 3, **States parties are invited to report on the institution(s) responsible for designing, implementing, monitoring, evaluating and enforcing such temporary special measures**.

A/HRC/RES/19/36 (2012), p. 17: [The Human Rights Council] calls upon Member States to **enhance social cohesion and solidarity**, as important elements of democracy, **by: (b) Encouraging the political and economic empowerment of women, including by increasing their representation in parliaments, cabinets and the work force, thereby reflecting equality between men and women.**

A/HRC/12/13 (UPR, 2009), *Yemen*, Recommendation No. 5, p. 91: Amend the provisions of the crime and penalty law, the election and referendum law, the labour code and the prison law which are in contradiction to its international obligations under CEDAW and **take concrete measures to improve the social, economic and political participation of women.**

CEDAW/C/CHE/CO/3, *Switzerland* (2009), p. 34: The Committee reiterates its previous Concluding Observations of 2003 and urges the State party to **take sustained legal and other measures, with benchmarks and concrete timetables, to increase the representation of women in elected and appointed positions in public life, in political parties, in the diplomatic service and in the judiciary in line with its General Recommendation 23.**

CCPR/C/JPN/CO/5, *Japan* (2008), p. 12: [...] **The State party should intensify its efforts to achieve equitable representation of women and men** in the National Diet and at the highest levels of the government and in the public service, within the timeframe set in the Second Basic Plan for Gender Equality adopted in 2005, **by adopting special measures such as statutory quota and by reviewing numerical targets for women's representation.**

## **7.4 Are there provisions allowing and providing for appropriate measures to promote gender equality in all elected bodies?**

### **Equality between Men and Women; States Must Take Necessary Steps to Give Effect to Rights**

CEDAW, Art. 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall **ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.**

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.**

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

CEDAW, Art. 3: **States Parties shall take in all fields**, in particular in the political, social, economic and cultural fields, **all appropriate measures, including legislation, to ensure the full development and advancement of women**, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

UNSC Res.1325 (2000): Urges Member States to ensure **increased representation of women at all decision-making levels** in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.

CEDAW, GR 23 (1997), p. 28: [...] **political parties also have a responsibility to ensure that women are included in party lists and nominated for election in areas where they have a likelihood of electoral success.** States parties should also endeavour to ensure that women are **appointed to government advisory bodies on an equal basis with men** and that these bodies take into account, as appropriate, the views of representative women's groups. It is the Government's fundamental responsibility to encourage these initiatives to **lead and guide public opinion and change attitudes that discriminate against women** or discourage women's involvement in political and public life. p. 32: [...] Political parties should be encouraged to adopt effective measures, including the **provision of information, financial and other resources, to overcome obstacles to women's full participation and representation** and ensure that women have an **equal opportunity in practice to serve as party officials and to be nominated as candidates for election.** p. 33: Measures that have been adopted by some political parties include [...] ensuring that there is a **balance between the number of male and female candidates nominated for election, and ensuring that women are not consistently assigned to less favourable constituencies or to the least advantageous positions on a party list [...].**

CEDAW, GR 5 (1988): The Committee on the Elimination of Discrimination against Women, taking note that the reports, the introductory remarks and the replies by States parties reveal that while significant progress has been achieved in regard to repealing or modifying discriminatory laws, there is still a **need for action to be taken to implement fully the Convention by introducing measures to promote de facto equality between men and women [...].**

CEDAW GR 25 (2004), p. 22: The term 'measures' encompasses a **wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems.** The choice of a particular 'measure' will depend on the context in which article 4, paragraph 1 is applied and on the specific goal it aims to achieve. p. 23: [...] **For appointment, selection or election to public and political office, factors other than qualification and merit, including the application of the principles of democratic fairness and electoral choice, may also have to play a role.**

CEDAW, A/56/38, paras. 54–96, Singapore (2001), p. 88: The Committee urges the Government of Singapore to enhance its efforts to increase women's representation in politics and decision-making through a **gender-sensitive application of the meritocracy principle and by taking measures to guarantee the equal opportunity of women to participate in these areas.** Such measures **may include the imposition of minimum quotas** for women political candidates.

CEDAW/C/BIH/CO/3, Bosnia and Herzegovina (2006), p. 30: The Committee urges the State party to **harmonize the election law with the Law on Gender Equality.**

CEDAW/C/BLR/CO/7 (CEDAW, 2011), Belarus, p. 24: Recommends that the State party (c) **create an enabling environment for free democratic competition ensuring equal conditions for all women and men standing for election, including independent women candidates and those belonging to opposition parties.**

CEDAW/C/MNE/CO/1 (CEDAW, 2011), Montenegro, p. 22: While noting the recent adoption of the law for the election of councillors and representatives providing for a **quota for women candidates on political parties' electoral lists of 30 per cent**, the Committee **regrets that the law does not require that every third rank on a list be given to a woman candidate.** It notes with concern that women are significantly underrepresented in Parliament (9 out of 81 Members of Parliament), Parliamentary Committees (no women on the Committees for Security and Defence or for Economy, Finance and Budget), the Cabinet (1 out of 17 Ministers), municipal councils (92 out of 632 councillors), town halls (1 out of 21 mayors), leadership positions and internal bodies of political parties, and in senior positions in the judiciary and in the public service, including in female-dominated sectors such as education, where the vast majority of school principals are men. p. 23: (e) **provide incentives for political parties to nominate equal numbers of women and men as candidates** and harmonize their statutes with the law on gender equality, e.g. through **party financing** and by **encouraging broadcasting media to allocate extra time** to those parties during electoral campaigns.

CEDAW/C/ARM/CO/4, Rev. 1, Armenia (2009), p. 16: While welcoming the amendment to the Election Code establishing a 15 per cent quota for women, and a minimum of one woman out of every 10 candidates, the Committee **is concerned that the quota has been ineffective.** p. 17: The Committee further calls upon the State party to expedite the **process to amend the Election Code to raise the 15 per cent quota, and consider raising it beyond the proposed 20 per cent.**

CEDAW/C/MDK/CO/3, *The Former Yugoslav Republic of Macedonia (2006)*, p. 25: While **commending the introduction of the 30 per cent quota for each gender** in the Law on Election of Members of Parliament and the Law on Local Elections, the Committee notes with concern that this amendment has not produced the desired results as **women continue to be underrepresented in elected bodies**. The Committee is also concerned about the underrepresentation of women in appointed bodies and at the international level. p. 26: [...] The Committee also recommends that **steps be taken to meet the 30 per cent quota** established in the Law on Election of Members of Parliament and the Law on Local Elections. The Committee encourages the State party to **step up its efforts to increase women's representation in elected and appointed bodies and at the international level**.

CEDAW/C/EGY/CO/7, *Egypt (2010)*, p. 29: The Committee notes various measures taken by the State party, including the recent amendment of its election law establishing a quota of 64 additional seats reserved for women in the People's Assembly (lower house) and the establishment of the Egyptian women's parliamentary forum. The Committee is concerned, however, that this **quota does not include the Shura Assembly and only covers two consecutive parliamentary terms**. [...] Furthermore, the Committee remains concerned about the continuing underrepresentation of women in public, political and professional life and in decision-making positions, including in municipal, town and village councils, and in senior management in general.

CEDAW, A/58/38, Supplement No. 38, Paras. 31-75, *Costa Rica (2003)*, p. 59: The Committee recommends that the State party redouble efforts and strengthen legislative or procedural measures, as necessary, to ensure proper application of legislation in force, and it seek approval of reforms to articles 5 and 6 of the Act promoting the Social Equality of Women with the view to **ensuring women's participation both in party structures and in elective posts, including the alternation of men and women in lists** of candidates submitted for election by political parties [...].

CCPR/C/BIH/CO/1, *Bosnia and Herzegovina (2006)*, p. 11: The Committee notes with concern that, despite the introduction of quotas in the Election Law of Bosnia and Herzegovina requiring political parties to nominate at least 30 per cent women candidates, women are still underrepresented in legislative and executive bodies at all levels. (art. 3 and 25 (c)). **The State party should harmonize the quota system** of election law with the requirements of the Gender Equality Law and **take special measures in addition to statutory quotas to enhance the representation of women in all legislative and executive bodies**.

CEDAW/C/MEX/CO/7-8, *Mexico (2012)*, p. 22: The Committee notes that the State party has made substantial progress to ensure women's equal participation with men in political life at the federal level. However, it is concerned about gaps in the federal and state electoral legal frameworks which **may lead to the non-compliance of the gender quota system to register candidates in a proportion of 40:60 and that this quota system has not yet been incorporated in all the states' electoral legislation**. It is further concerned about the low number of indigenous women participating in the political life of the State party.

## 7.5 Does the electoral system disadvantage candidates based on gender?

### Equality between Men and Women, States Must Take Necessary Steps to Give Effect to Rights

CEDAW, Art. 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, **on equal terms with men**, the right: (a) **To vote in all elections and public referenda** and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant**.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CEDAW/C/CHC/CO/6, *China (2006)*, p. 39: While acknowledging that the established target of 25 per cent of women in advisory and consultative bodies has been reached by the Government of the Hong Kong Special Administrative Region, the Committee notes with concern **the low level of political representation of women, including in the functional constituencies**. The Committee is concerned that the **electoral system of functional consistencies may constitute indirect discrimination against women**, as it results in the unequal participation of women in political life. p. 40: The Committee urges the Government of the Hong Kong Special Administrative Region to take temporary special measures in accordance with article 4, paragraph 1 of the Convention and the Committee's General Recommendation 25 so as to increase women's representation in politics, including in the functional constituencies.

CEDAW, CO China (1999), A/54/38, paras. 251–336, p. 319: The Committee expresses concern that the **electoral system of the Region contains structural obstacles to the equal political participation of women**, which is indirect discrimination against women, especially with respect to the functional constituencies.

CEDAW/C/BIH/CO/3, Bosnia and Herzegovina (2006), p. 29: The Committee is concerned that the recent amendments to the election law did not incorporate this aspect and, furthermore, that the **introduction of open lists of candidates in the last election resulted in a significant decrease of women in the Parliamentary Assembly**.

## 7.6 Are there provisions to promote gender equality in the election administration?

### Equality between Men and Women; States Must Take Necessary Steps to Give Effect to Rights

CEDAW, Art. 7: States Parties shall **take all appropriate measures to eliminate discrimination against women in the political and public life of the country** [...].

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant**.

ICCPR, Art. 2(2): **Where not already provided for by existing legislative or other measures, each State Party to the present Covenant** undertakes to take the necessary steps, **in accordance with its constitutional processes and with the provisions of the present Covenant**, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

UNSC Res.1325 (2000): Urges Member States to ensure **increased representation of women at all decision-making levels** in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.

CCPR, GC 25 (2004), p. 24: **Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens**.

CEDAW/C/ETH/CO/6-7, Ethiopia, 2007, p. 27: The Committee recommends that the State party: (a) **adopt temporary special measures**, in accordance with article 4, paragraph 1 of the Convention and the Committee's General Recommendation no. 25 (2004), **such as gender quotas that apply throughout the structure of the National Electoral Board of Ethiopia** as well as to political appointments, **with a view to accelerating the equal representation of women and men in elected and appointed political bodies, especially in decision-making positions**.

CEDAW, CO, Bangladesh (1993), p. 285: The Committee noted that 10 per cent of all gazetted and 15 per cent of all non-gazetted public service posts were reserved for women and asked to what extent those quotas had been filled. The representative explained that, **in order to increase women's participation in the public sector, the Government had introduced a quota system** in 1976, at the entry level in the public sector. Currently however, women occupied about 5 per cent of the officer positions, 12 per cent of the staff positions and 3 per cent of the lower blue-collar-worker positions.

CEDAW/C/DEU/CO/6, Germany (2009), p. 32: The Committee requests the State party to monitor developments with regard to the participation of women in top management positions, with a view to further supporting such participation through legislative or policy initiatives, and to **ensure that the representation of women in political and public bodies reflects the full diversity of the population**.

## 7.7 Does the law protect women from reprisals in the exercise of their political rights?

### Right to Security of Persons

ICCPR, Art. 9(1): **Everyone has the right to liberty and security of person**. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.



**CEDAW, Art. 2:** States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (c) To **establish legal protection of the rights of women** on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective **protection of women against any act of discrimination**.

**CEDAW, GR 23 (1997)**, p. 20(c): In many nations, traditions and social and cultural stereotypes discourage women from exercising their right to vote. Many **men influence or control the votes of women by persuasion or direct action, including voting on their behalf. Any such practices should be prevented.**

**CEDAW/C/TLS/CO/1, Timor-Leste (2009)**, p. 33: The Committee is further concerned about information suggesting that **women standing for election fear reprisal from their communities or other forms of political intimidation and violence.**

## **7.8 Are there provisions for the production of statistical data disaggregated by gender?**

### **States Must Take Necessary Steps to Give Effect to Rights**

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

**CEDAW, GR 9 (1989):** Statistical data concerning the situation of women, [...] Recommends that States parties should make every effort to **ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender**, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested.

**CEDAW, GR 25 (2004)**, p. 35: The Committee [...] recommends that **States parties provide statistical data disaggregated by sex in order to measure the achievement of progress towards women's de facto or substantive equality and the effectiveness of temporary special measures.**

**CEDAW/C/MNE/CO/1, Montenegro (2011)**, Introduction, p. 2: The Committee [...] regrets that the report was overdue and **lacked statistics disaggregated by gender and qualitative data on the situation of women in a number of areas covered by the Convention**, in particular in respect of women from disadvantaged groups.

**CEDAW/C/DEU/CO/6, Germany (2009)**, p. 31: The Committee also expresses concern about the **lack of information on the presence of immigrant women in decision-making positions in a country where immigrants account for a large percentage of the population.** p. 32: [...] It further requests the State party to provide information on results achieved, including **relevant disaggregated statistical data.**

## **7.9 Do laws or procedures for acquiring or conferring citizenship discriminate based on gender?**

### **Equality between Men and Women; Freedom from Discrimination and Equality under the Law**

CEDAW, Art. 7: States Parties shall take all **appropriate measures to eliminate discrimination against women in the political and public life of the country [...].**

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.**

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**CEDAW, Art. 9:** (1) States Parties shall **grant women equal rights with men to acquire, change or retain their nationality.** They shall ensure in particular that **neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.** (2) States Parties shall **grant women equal rights with men with respect to the nationality of their children.**



CEDAW, GR 21 (1994), p. 6: **Nationality is critical to full participation in society.** In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. **Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.**

CEDAW/A/59/38, Kuwait (2004), p. 66: [...] The Committee is concerned that the Nationality Act **allows** Kuwaiti **women to transfer their nationality to their children only in specific circumstances**, such as when the nationality of the father is unknown or if he is stateless or deceased, or after an irrevocable divorce.

CEDAW/C/NER/CO/2, Niger (2007), p. 15: [...] the Committee is concerned about continuing legal provisions and regulations that discriminate against women, including the **law on nationality**, which **does not give women of the Niger who marry foreigners the option to transmit their nationality to their spouse** [...].

CEDAW/C/KWT/CO/3-4, Kuwait (2011), p. 44: The Committee reiterates its concern that nationality can be acquired and transferred, with few exceptions, only through a husband or father of Kuwaiti nationality, which disproportionately affects the stateless persons, including the Bidoun – ‘illegal residents’ – and about the **lack of birth certificates and other identification documents of children of stateless Bidoun women and men married to non-Kuwaitis.**

CCPR/C/79/Add.93, Israel (1998), p. 27: The Committee is concerned that Arab **women citizens** of Israel have in some cases been **required to relinquish their citizenship** should they marry a Palestinian and apply for residence in the occupied territories. It welcomes the Israeli Government’s response that this policy no longer applies and recommends that those already affected be made fully aware of the relevant legal provisions and that their status be restored.

## 7.10 Are there provisions allowing for positive measures to include women in the voter register?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2 (2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

CEDAW, GR 25 (2004), p. 35. The Committee [...] recommends that States parties provide statistical data disaggregated by sex **in order to measure the achievement of progress towards women’s de facto or substantive equality and the effectiveness of temporary special measures.**

CEDAW/A/57/38, Yemen (2002), p. 402: While welcoming the State party’s plans to ensure women’s participation in the upcoming electoral registration process, the Committee is **concerned about the low rate of registration of women as voters and their low representation on electoral lists and in political decision-making bodies.** p. 403: The Committee requests the State party to **take measures to increase the political representation of women as voters and as candidates at all levels.** It also calls upon the State party to explore the **use of temporary special measures** in accordance with article 4, paragraph 1 of the Convention, **such as quotas**, in order to increase women’s access to decision-making positions.

CEDAW/C/PAK/CO/4, Pakistan (2013), p. 26: The Committee calls upon the State party to establish a **procedure for filing complaints in cases of forced disenfranchisement of women** and adopt the draft bill submitted by the Election Commission of Pakistan, **advocating re-polling where less than 10 per cent of women’s votes were polled.**

## 7.11 Are there any measures that indirectly restrict women's right to vote or stand for office?

### Equality between Men and Women; Freedom from Discrimination and Equality under the Law

CEDAW, Art. 7: States Parties shall take **all appropriate measures to eliminate discrimination against women in the political and public life of the country** [...].

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant**.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law**. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CEDAW, GR 23 (1997), p. 18: The Convention obliges States parties in **constitutions or legislation to take appropriate steps to ensure that women, on the basis of equality with men, enjoy the right to vote in all elections and referendums, and to be elected**. These rights must be **enjoyed both de jure and de facto**. p. 20: (d) Other factors that in some countries inhibit women's involvement in the public or political lives of their communities include **restrictions on their freedom of movement or right to participate** [...]. p. 23: The enjoyment of the right to vote by women should **not be subject to restrictions or conditions that do not apply to men or that have a disproportionate impact on women**. For example, limiting the right to vote to persons who have a **specified level of education**, who **possess a minimum property qualification** or who are **literate** is not only **unreasonable**, it may violate the universal guarantee of human rights. It is also likely to have a **disproportionate impact on women**, thereby contravening the provisions of the Convention.

CEDAW/C/BIH/CO/3, *Herzegovina* (2006), p. 11: The Committee is also concerned that the creation of a constitutional framework as well as of political and administrative structures **based on ethnicity** as the determining factor has **contributed to a limited recognition and implementation of gender equality principles**.

CEDAW/C/TJK/CO/3, *Tajikistan* (2007), p. 25: The Committee is also concerned about the practice of 'family voting' during elections, whereby **one family member, usually male, votes for the entire family**, especially in rural areas. p. 26: It also urges the State party to review the entire election process for discriminatory elements from a gender perspective and consider **waiving the registration fee for women candidates**.

CEDAW/C/MNG/CO/7, *Mongolia* (2008), p. 29: The Committee also notes with concern that the **requirement to contribute 20 million togrogs (mnt) to gain party nomination for candidature is a particular obstacle for women** candidates in their participation in national elections.

## 7.12 Are there provisions for the public funding of women candidates, where applicable?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CEDAW, Art. 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall **ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies**.

CEDAW, GR 25 (2004), p. 8: [...] Pursuit of the goal of substantive equality also calls for **an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women**.

CEDAW/C/ETH/CO/6-7, Ethiopia (2011), p. 27: The Committee recommends that the State party: (b) **allocate greater funds for women candidates, including opposition candidates, in the public funding of election campaigns.**

CEDAW/C/ZWE/CO/2-5, Zimbabwe (2012), p. 28: The Committee recalls its General Recommendations No. 23 (1997) on women in political and public life and no. 25 (2004) on **temporary special measures**, and calls on the State party to: (b) **allocate adequate funds for women candidates to elections, including opposition candidates, in the public funding of election campaigns.**

### 7.13 Are there provisions for capacity building for women and on gender equality?

#### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

CEDAW, Art. 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall **ensure to women**, on equal terms with men, **the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.**

CEDAW, GR 3 (1987): [The Committee] urges all States parties effectively to adopt **education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.**

CEDAW/C/OMN/CO/1, Oman (2011), p. 32: The Committee calls upon the State party to: (c) **Develop training and mentoring programmes for women candidates and women elected to public office as well as programmes on leadership and negotiation skills for current and future women leaders.**

CEDAW/C/MDK/CO/3, The Former Yugoslav Republic of Macedonia (2006), p. 26: The Committee recommends that the State party carry out **awareness-raising campaigns for men and women on the importance of women's participation in political and public life and in decision-making**, and that it create enabling, encouraging and supportive conditions for such participation [...].

CEDAW/C/ETH/CO/6, Ethiopia (2011), p. 27: The Committee recommends that the State party: (d) provide **training on gender equality to politicians, journalists and decision makers, especially men**, to enhance the understanding that the full, equal, free and democratic participation of women and men in political and public life is a requirement for the full implementation of the Convention.

### 7.14 Are there measures to promote gender equality in political parties?

#### Equality between Men and Women

CEDAW, Art. 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country [...].

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.**

UNSC Res.1325 (2000): Urges Member States to ensure **increased representation of women at all decision-making levels** in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.

CEDAW, GR 23 (1997), p. 33: Measures that have been adopted by some political parties include **setting aside for women a certain minimum number or percentage of positions on their executive bodies**, ensuring that there is a balance between the number of male and female candidates nominated for election, and **ensuring that women are not consistently assigned to less favourable constituencies or to the least advantageous positions on a party list.**

CCPR, GC 25 (2004), p. 26: **States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.**

CEDAW/C/ZMB/CO/5-6, *Zambia* (2011), p. 26: (a) Adopt temporary special measures [...] **conditioning the financing of political parties on equal representation of women in their internal bodies and on candidate lists.**

CEDAW/C/MNE/CO/1, *Montenegro* (2011), p. 23: The Committee recommends that the State party: (e) **provide incentives for political parties to nominate equal numbers of women and men as candidates and harmonize their statutes with the law on gender equality** e.g. through party financing and by encouraging broadcasting media to allocate extra time to those parties during electoral campaigns.

A/58/38(SUPP) (CEDAW, 2003), Costa Rica, p. 58: The Committee notes that **the provisions of the Electoral Code establishing minimum 40 per cent quotas for women's participation have not been fully respected by political parties.**

## **7.15 Does the law establish effective remedies and sanctions to ensure compliance with TSMs?**

### **States Must Take Necessary Steps to Give Effect to Rights**

ICCPR, Art. 2: (2) Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.** (3) Each State Party to the present Covenant undertakes: (a) To ensure that **any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) **To ensure that the competent authorities shall enforce such remedies when granted.**

**CEDAW, Art. 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country [...].**

CEDAW, GR 23 (1997), p. 20(c): In many nations, traditions and social and cultural stereotypes discourage women from exercising their right to vote. Many **men influence or control the votes of women by persuasion or direct action, including voting on their behalf. Any such practices should be prevented.**

CEDAW, GR 25 (2004), p. 7: Firstly, States parties' obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination—committed by public authorities, the judiciary, organizations, enterprises or private individuals—in the public as well as the private spheres by competent tribunals as well as **sanctions and other remedies.** Secondly, **States parties' obligation is to improve the de facto position of women through concrete and effective policies and programmes.** Thirdly, States parties' obligation is to address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.

CEDAW/C/ALB/CO/3, *Albania* (2010), p. 22: [...] The Committee is concerned, however, about the different approaches to gender quotas in provisions for the general election and local elections, and the **differing sanctions for non-compliance** with the provisions. (r) **Introduce further temporary special measures in order to achieve de facto or substantive gender equality in all areas covered by the Convention.**

CEDAW/C/HTI/CO/7, *Haiti* (2009), p. 28: The Committee is concerned at the low representation of women in elected bodies at the national and local levels and in public administration, as well as the stereotypical views of the role of women in society that discourage women from participating in political life. The Committee takes note of the fact that the electoral law of 2005 did not have any positive impact on the 2006 election, and that, as acknowledged by the State party, the new electoral law of 2008, which offers similar financial incentives to political parties, may not have the desired impact. The Committee notes with appreciation that the State party, in an effort to address this imbalance, intends to draft a new **quota bill** in carrying out the action plan of the Ministry for the Status of Women and Women's Rights for 2008–2009.

### 7.16 Are there provisions to regulate the equal treatment of women by the media?

#### Equality between Men and Women; Freedom from Discrimination and Equality under the Law

CEDAW Art. 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country [...].

ICCPR Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**CEDAW, GR 19 (1992), p. 24(d): Effective measures should be taken to ensure that the media respect and promote respect for women.**

**CEDAW/C/CHE/CO/3, Switzerland (2009), p. 34:** The Committee recommends that the State party **continue its efforts to encourage the media to ensure that female and male candidates and elected representatives receive equal visibility in the media, especially during election periods.**

**CEDAW/C/MNE/CO/1, Montenegro (2011), p. 23:** The Committee recommends that the State party: (e) **provide incentives for political parties to nominate equal numbers of women and men as candidates** and harmonize their statutes with the law on gender equality e.g., through party financing and by **encouraging broadcasting media to allocate extra time to those parties during electoral campaigns.**

### 7.17 Are there measures providing specific protection for women with disabilities or other multiple forms of discrimination?

#### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**CEDAW, GR 25 (2004), p. 12:** Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from **multiple forms of discrimination** based on additional grounds such as race, ethnic or religious identity, **disability**, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. **States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.**

**CRPD/C/PER/CO/1, Peru (2012), p. 15:** The Committee urges the State party to accelerate its efforts to eradicate and prevent discrimination against women and girls with disabilities, by **incorporating gender and disability perspectives in all programmes**, as well as by **ensuring their full and equal participation in decision-making.** The Committee urges the State party to amend its legislative framework to **provide special protection to women and girls with disabilities**, as well as to **adopt effective measures to prevent and redress violence against women and girls with disabilities.**

**CEDAW/C/DEU/CO/6, Germany (2009), p. 31:** The Committee also expresses concern about **lack of information on the presence of immigrant women in decision-making positions in a country where immigrants account for a large percentage of the population.**

## Resources

Araujo, C., et al., *Mujer y Política, El impacto de las Cuotas de Género en América Latina* [Women and Politics: The Impact of Gender Quotas in Latin America] (Stockholm: International IDEA and FLACSO-Chile, 2008)

- Gender Links (ed.), *This Seat is Taken: Elections and the Under-representation of Women in Seven Southern African Countries* (Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 2010)
- International IDEA, *Political Parties in Africa through a Gender Lens* (Stockholm: International IDEA, 2013)
- International IDEA, *Women in Parliaments: Beyond Numbers* (Stockholm: International IDEA, 2005)
- International IDEA, *Designing for Equality: Best-fit, Medium-fit and Non-favourable Combinations of Electoral Systems and Gender Quotas* (Stockholm: International IDEA, 2007)
- International IDEA, *Gender and Political Parties: Far from Parity* (Stockholm: International IDEA, 2011)
- International Republican Institute (IRI), *Southern Sudan Legislative Assemblies: A Legislator's Guide to Gender Politics* (Washington, D.C.: IRI, 2010)
- Kanakuze, J., *Quotas in Practice: The Challenge of Implementation and Enforcement in Rwanda* (Stockholm: International IDEA, 2003)
- National Democratic Institute (NDI), *Democracy and the Challenge of Change: Training Modules to Increase Women's Political Participation* (Washington, D.C.: NDI, 2013)
- Sieminska, R., 'Gender Party Quotas in Poland', in *The Implementation of Quotas: European Experiences*, paper presented at the International IDEA/CEE Network for Gender Issues Conference, 2004
- United Nations (UN), *Women and Elections: Guide to Promoting the Participation of Women in Elections*, 2005
- United Nations Development Programme (UNDP), *Electoral Financing to Advance Women's Political Participation: A Guide for UNDP Support*, 2007, available at <[http://iknowpolitics.org/sites/default/files/electoral\\_financing-en-ebook.pdf](http://iknowpolitics.org/sites/default/files/electoral_financing-en-ebook.pdf)>, accessed 16 July 2014
- United Nations Development Programme (UNDP) Sudan, *Handbook for Women Candidates: a Toolkit for Election Campaigning and Public Speaking*, available at <[http://old.iknowpolitics.org/files/UNDP\\_Women\\_Booklet\\_ENG.pdf](http://old.iknowpolitics.org/files/UNDP_Women_Booklet_ENG.pdf)>, accessed 27 March 2014

## Notes

- <sup>1</sup> United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), <<http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>>, accessed 10 February 2014.
- <sup>2</sup> World Bank Databank, <<http://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS>>, accessed 10 February 2014.
- <sup>3</sup> For more information see the IPU website at <<http://www.ipu.org/wmn-e/world.htm>>, accessed 10 February 2014.

- <sup>4</sup> International IDEA 2005, p. 142.
- <sup>5</sup> CEDAW, Art. 7.
- <sup>6</sup> Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa, Art. 9(1)b.
- <sup>7</sup> ACDEG, Art. 29.3; ECOWAS Supplementary Protocol, Art. 2.3.
- <sup>8</sup> For more information, see the IPU website at <<http://www.ipu.org/wmn-e/classif.htm>>, accessed 17 November 2013.
- <sup>9</sup> International IDEA 2005, p. 13.

# Chapter 8. Equal Opportunities for Minorities and Marginalized Groups

## Overview

Effective representation for minorities and marginalized groups in the electoral process has been long neglected, in part because the UN human rights system currently lacks a comprehensive definition of ‘minorities’. Through article 27 of the ICCPR, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,<sup>1</sup> the UN General Assembly (UNGA) potentially limits the definition of minorities to these four groups. In his proposed definition of ‘minority’, the Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities focuses on ‘numerically inferior’ groups in a ‘non-dominant position’.<sup>2</sup> International IDEA promotes the use of ‘marginalized groups’ as a definition that better encapsulates discrimination that also affects groups that are not in a numerical minority. The questions identified in the following Table of Jurisprudence are formulated within this paradigm, aiming to cover all situations of marginalization, although they refer directly to concerns related to UN terminology on the representation of ‘minorities’.

In this context, the following Table of Jurisprudence proposes a comprehensive coverage of minority and marginalized group rights through a combined interpretation of the ICCPR and the ICERD. The rights of minorities and marginalized groups are covered by ICCPR article 14, which protects equality under the Law, as well as by article 26, which prohibits discrimination. Articles 1 and 5 of the ICERD, however, go beyond the negative obligation not to discriminate: they require minorities and marginalized groups to be positively enabled to compete on an ‘equal footing’. To promote the representation of minority groups, special measures, akin to those discussed in relation to the participation of women in Chapter 7, can be considered. Hence, this combined interpretation advocates taking a proactive approach



to legal frameworks for elections. It goes beyond assuring equal opportunities in voter and candidate registration, or through reserved seats, and requires continuous support through access to the electoral campaign, media and public resources.

Thus, electoral systems are often designed to enhance minority representation. Large district magnitudes tend to encourage parties ‘to nominate candidates from minorities on the basis that balanced tickets will increase their electoral odds. In PR systems, low or no thresholds can also facilitate the representation of otherwise under-represented or unrepresented groups’.<sup>3</sup> Similarly, specific regions can be expressly over-represented to facilitate the increased representation of geographically concentrated groups. Electoral boundaries can also be adjusted to promote the representation of particular groups. However, the manipulation of any electoral system in order to promote or protect minority representation is often controversial.

In plurality/majority systems, seats in the legislature are sometimes set aside for minorities and communal groups. Representatives who benefit from reserved seats are usually elected in much the same manner as other representatives, but are sometimes elected only by members of the particular minority community designated in the electoral law. This requires a communal voter list or roll—a separate register of electors for whom the qualification for registration is a determinable criterion.<sup>4</sup> While certain communal voter list arrangements give the task of determining who falls into which category to some form of registration body, others give this choice to the individual. Many such communal voter lists’ arrangements have been abandoned after it became clear that communal electorates, while guaranteeing group representation, often had the perverse effect of undermining the path of accommodation between different groups—potentially creating minorities within minorities—since they offered no incentives for political intermixing between communities.

The Guidelines address the equal representation of minorities and marginalized groups from a holistic perspective that encompasses crucial components of the electoral process with several references to the ICERD and UNCAC to complement ICCPR-based jurisprudence. While advocating mainstreaming their rights throughout the electoral process by inserting specific references into the relevant chapters, the following Table of Jurisprudence highlights the specific issues that legal frameworks are required to consider concerning the rights of minorities and marginalized groups, in accordance with new ways of reading international treaties and jurisprudence. The referenced obligations are: Freedom from Discrimination and Equality under the Law, States Must Take Necessary Steps to Give Effect to Rights, the Right and Opportunity to be Elected, Equal Suffrage, the Right and Opportunity to Vote, Transparency and the Right to Information, and the Right and Opportunity to Participate in Public Affairs.

## Table of Jurisprudence

### 8. Equal Opportunities for Minorities and Marginalized Groups

#### 8.1 Does the legal framework protect the civil rights of minorities?

##### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICERD, Art. 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice; (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (c) **Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;** (i) The right to freedom of movement and residence within the border of the State; (ii) The right to leave any country, including one's own, and to return to one's country; (iii) The right to nationality; (vii) The right to freedom of thought, conscience and religion; (viii) The right to freedom of opinion and expression; (ix) The right to freedom of peaceful assembly and association; (v) The right to education and training.

A/HRC/17/40/Add.2 (SR on contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance, 2011), Singapore, p. 76: In light of General Recommendation No. 30 (2004) on non-citizens of the Committee on the Elimination of Racial Discrimination, the Special Rapporteur recommends that the **constitutional provisions restricting certain human rights to Singaporean citizens**—including the right to non-discrimination on the ground of religion, race, descent or place of birth in any law or in the appointment to any employment under a public authority, the rights in respect to education and the freedom of speech, assembly and association—**be revised to extend equal human rights protection to all individuals** residing in Singapore, **including non-citizens.**

A/HRC/RES/15/21 (2010), p. 1: [The Human Rights Council] calls upon States to **respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections, and including persons espousing minority or dissenting views or beliefs,** human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.

CERD/C/PRY/CO/1-3, Paraguay (2011), p. 15: The Committee recommends that the State party adopt the necessary reforms, including **legal and administrative measures, to ensure that the domestic justice system has effective and sufficient means of protecting indigenous and afro-descendent communities' rights,** including effective mechanisms for lodging complaints.

CERD/C/64/CO/4, Libya (2004), p. 16: Noting that the State party has not provided information on the practical implementation of Art. 6 of the Convention, the Committee recommends that the State party **raise the awareness of the population on their rights under the Convention, including their right to an effective remedy, and to sensitize the police and judicial authorities to the issue of racial discrimination.**

A/HRC/4/32/Add.3 (SR on the situation of human rights and fundamental freedoms of indigenous people, 2007), Kenya, p. 94: The Government, through the Electoral Commission of Kenya, should regulate the nomination of members of Parliament by political parties, in particular to **ensure adherence to the constitutional provisions on the need to take into account special interest groups** in those nominations.

## 8.2 Are there anti-discrimination provisions?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICERD, Art. 4: States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia: (a) Shall **declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;** (b) Shall **declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;** (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

A/HRC/15/18 (WG on people of African descent, 2010), *United States of America*, p. 82: The Working Group [...] recommends that the particular history and context of people of African descent be taken into account in developing relevant legislation and when designing specific and holistic programmes and other remedies to address racial discrimination directed at this population group. The very procedure of, for instance, **adopting a separate anti-discrimination law might assist the process of reviewing some older legislation, particularly those relating to slavery and electoral rights.** Furthermore, such an act would be an **appropriate instrument to regulate affirmative measures and positive actions as well to shift the burden of proof and the general use of statistics in cases of discrimination brought before courts.** Such new legislation, together with the ratification of the mentioned international treaties, would represent a powerful tool in combating discrimination of any sort and on any level.

## 8.3 Are there any provisions that discriminate against indigenous communities?

### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICERD, Art 1(1): In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an **equal footing**, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

CCPR/C/HUN/CO/5, *Hungary (2010)*, p. 22: The Committee is concerned at the legal requirement provided by Act LXXVII of 1993 on the Rights of National and Ethnic Minorities which prescribes that only those groups of people who represent a numerical minority and have lived in the territory of the State party for at least one century will be considered a minority or ethnic group under the terms of this Act (arts. 26 and 27). The State party should **consider repealing the condition that a minority group should be able to demonstrate that it has lived in the territory of the State party for at least a century in order to be recognized as a national or ethnic minority group.** The State party should ensure that the conditions for State recognition of minority groups are in line with the Covenant, particularly article 27 as expounded by General Comment No. 23 of the Committee, so that **nomadic and other groups that do not satisfy the requirement due to their lifestyle are not excluded from the full protection of the law.**

CERD/C/MEX/CO/16-17, *Mexico* (2012), p. 16: It also notes with concern the lack of information on the political participation of people of African descent (art. 5(c)). [...] The **Committee recommends that the State party redouble its efforts to ensure the full participation of indigenous people, especially women, in all decision-making institutions, particularly in representative institutions and those dealing with public matters, and that it take effective measures to ensure that all indigenous peoples participate at every level of the administration.** The Committee also exhorts the State party to take steps to ensure the participation of people of African descent in political and public affairs. In both cases, the Committee recommends that the State party take special measures or affirmative action, in accordance with the Convention and General Recommendation No. 32 (2009) of the Committee, on the meaning and scope of special measures in the Convention.

CCPR/C/NIC/CO/3, *Nicaragua* (2008), p. 20: While the Committee notes that the State party has partly complied with the ruling by the Inter-American Court of Human Rights in the YATAMA case, it regrets that it has not undertaken the necessary legislative reform to introduce a simple legal remedy ensuring that indigenous and ethnic communities in the autonomous regions **can take effective part in elections with due regard for their traditions, conventions and customs** (Arts. 25 and 27).

## 8.4 Are there provisions to monitor the effective political participation of minorities?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

CCPR/C/FRA/CO/4, *France* (2008), p. 12: The Committee notes that the State party has failed to provide any statistical information that would allow the empirical assessment of effective access to private and public employment, public services, and political participation, on the part of persons belonging to racial, ethnic or national minorities, as well as members of different religious communities. The Committee observes that the **absence of this information can mask problems of de facto discrimination, and impede the design of appropriate and effective public policies to combat all forms of racial and religious discrimination** (Arts. 2, 25, 26 and 27). **The State party should collect and report adequate statistical data, disaggregated on the basis of racial, ethnic, and national origin, in order to enhance the effectiveness of its efforts aimed at ensuring equal opportunity to persons belonging to these minority groups,** and to meet the reporting guidelines of the Committee.

A/HRC/19/54/Add.2 (SR on human rights of IDPs, 2012), *Kenya*, Summary: The Special Rapporteur noted key remaining challenges, including the lack of a policy and legislative framework, of **comprehensive, efficient and disaggregated data-collection systems**, and of sufficient operational and institutional capacity.

A/HRC/15/18 (WG on People of African Descent, 2010), *United States of America*, p. 82: The Working Group recommends that the particular history and context of people of African descent be taken into account in developing relevant legislation and when designing specific and holistic programmes and other remedies to address racial discrimination directed at this population group. The very procedure of, for instance, adopting a separate anti-discrimination law might assist the process of reviewing some older legislation, particularly those relating to slavery and electoral rights. Furthermore, such an act would be an **appropriate instrument to regulate affirmative measures and positive actions as well to shift the burden of proof and the general use of statistics in cases of discrimination brought before courts.** [...].

CERD/C/IND/CO/19, *India* (2007), p. 17: [...] The Committee recommends to the State Party to effectively enforce the reservation policy; to ensure the rights of members of scheduled castes and scheduled and other tribes to freely and safely vote and stand for election and to fully exercise their mandate if elected to their reserved seats; to apply reservation policy to all categories of public service posts, including the highest, and to extend it to the judiciary; to ensure adequate **representation of scheduled castes, scheduled and other tribes and ethnic minorities in Union, State and local governments and legislatures;** and to **provide updated statistical data on such representation in its next periodic report.**

## 8.5 Does the electoral system and/or boundary delimitation disadvantage minorities?

### Right and Opportunity to be Elected; States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CCPR, GC 25, p. 21: [...] The drawing of electoral boundaries and the method of allocating votes should not **distort the distribution of voters or discriminate** against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.

A/HRC/13/23 (IE on minority issues, 2010), Afghanistan, p. 70: **Unless the minority population constitutes a majority in an electoral district, the election of representatives of minority-based parties is more likely to be successful under proportional representation systems**, where the cumulative votes of minorities are taken into account. **Reducing the registration requirements for political parties may facilitate the creation of new minority-focused parties.** p. 71: Minorities also face challenges when participating in majority parties. Even if they do address minority issues, **majority parties may not prioritize in their broader agendas, or may lose sight of, those issues important to minority communities.** [...] Where the electoral system requires parties to present a list of candidates for election, as opposed to single-candidate constituencies, **there may be a legal or policy requirement that the list be ethnically mixed or have a minimum number of minority candidates.** Other special measures may be applied, especially to facilitate the election of women candidates. p. 73: **Some types of electoral systems may be more conducive than others to the election of minority representatives, and mechanisms specifically designed to enhance minority representation may also be incorporated into the electoral system.** [...] As a matter of general principle, therefore, each voter has one vote. However, in certain circumstances, in particular where the minority is small and as a special measure to improve the integration of a minority into the political system, **members of minorities may have the right to vote for both a minority representative with a reserved seat and a general non-minority representative.**

A/HRC/13/25, (Forum on Minority Issues 2010), p. 15: At the national level, a proportional representation system or some other electoral design should be put in place, where practicable, **to increase opportunities for minorities to participate effectively** in State-wide political life. Conversely, **Governments should not change the electoral system or electoral boundaries in a way that would be likely to weaken minority representation.**

## 8.6 Are there special measures to promote the representation of minorities?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICERD, Art. 1(4): **Special measures** taken for the sole purpose of **securing adequate advancement of certain racial or ethnic groups** or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms **shall not be deemed racial discrimination**, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they **shall not be continued after the objectives for which they were taken have been achieved.**

ICERD, Art. 2(2): States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, **special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them**, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

CCPR/C/FRA/CO/4, *France* (2008), p. 26: The Committee notes with concern that persons belonging to racial, ethnic or national minorities are rarely selected for representative bodies, including the National Assembly, and may occupy few positions in the police, the public administration and the judiciary (articles 2, 25 and 26). **The State party should facilitate the participation of persons who are members of minority groups in publicly elected bodies, including the National Assembly and local government.** In particular, the State party should **seek ways to increase the number of candidates belonging to minorities included in the list of political parties running for elections [...].**

A/HRC/13/23 (IE on minority issues, 2010), *Afghanistan*, p. 47: Arguments for special measures which could ensure the participation of minorities in public bodies are based on the fact that because of their smaller number, minorities can hardly ever determine the outcome of decisions in a **majoritarian democracy**. In practice, minorities tend to be outvoted, unable to secure representation proportionate with their numbers, thus denying them an effective voice in the public and political life of states. **The rationale for special measures is not, as is frequently perceived, to create a privileged position for minorities, but rather to level the playing field, placing minorities in the same position as majorities.** Being involved in national political and social processes, contributing to policymaking and participating in (and benefiting from) public services should help to counter marginalization and alienation. States that welcome the participation and integration of minorities tend not only to be more stable, but also more prosperous.

CCPR/C/TKM/CO/1, *Turkmenistan* (2012), p. 22: The Committee is concerned at the limited access of ethnic minorities to employment in the public sector and in decision-making bodies. The Committee is concerned at reports of the alleged use of a forced assimilation policy of 'Turkmenisation', which seriously reduces opportunities for ethnic minorities in the fields of employment, education and political life (Arts. 25, 26 and 27). The State party should **strengthen its efforts to promote the participation of minority groups in public life and decision-making bodies by, inter alia, adopting temporary special measures.** The State party is requested to provide in its second periodic report data disaggregated by ethnic groups on the representation of minority groups in public office and decision-making positions.

CERD/C/KAZ/CO/4-5, *Kazakhstan* (2010), p. 11: The Committee is concerned about the limited participation of minorities in political life and decision-making at both national and regional levels, and in particular their continuing under-representation in both houses of parliament, i.e. Majilis and Senate. The Committee notes that the process of selection and appointment of assembly members and of nine deputies to the lower chamber of the parliament from the assembly of people of Kazakhstan may not be fully based on **the principle of representativeness** and election by ethnic minority groups themselves.

CERD/C/HRV/CO/8, *Croatia* (2009), p. 16: The Committee welcomes the measures taken by the State party to ensure fair and **adequate representation of minorities in central, regional, and local administration**, police force, and the judiciary and notes the results achieved so far, such as the election of a member of the Roma minority to the national parliament.

CCPR/C/HUN/CO/5, *Hungary* (2010), p. 20: The State party should consider re-introducing **the allocation of reserved seats to national and ethnic minorities** in order to improve their participation in the conduct of public affairs.

A/HRC/7/23/Add.2 (IE on minority issues, 2008), *France*, p. 95: **Political Parties in France should seek ways to increase the number of persons belonging to minorities that win election to national, regional and local government structures.**

A/HRC/13/25 (Forum on Minority Issues, 2010), p. 10: Governments should take effective measures to end discrimination. They should consider, for instance, **instituting independent monitoring and complaints mechanisms designed to prevent discrimination in voting, vote fraud, intimidation and similar acts that inhibit the effective participation of all, especially members of minorities, in electoral activities.** Such mechanisms might include, inter alia, **ombudspersons, independent electoral commissions and/or free legal services.** These mechanisms should be made **available in the geographic regions and languages of minority communities, and should be adequately resourced.**

## 8.7 Do voter eligibility criteria discriminate against minorities?

### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CCPR/C/USA/CO/3, *United States of America* (2006), p. 35: The Committee is concerned that about five million citizens cannot vote due to a felony conviction, and that this practice has **significant racial implications**. The Committee also notes with concern that the recommendation made in 2001 by the National Commission on Federal Election Reform that all states restore voting rights to citizens who have fully served their sentences has not been endorsed by all states. The Committee is of the view that general deprivation of the right vote for persons who have received a felony conviction, and in particular those who are no longer deprived of liberty, do not meet the requirements of **articles 25 of 26** of the Covenant, nor serves the rehabilitation goals of article 10 (3). The State party should adopt appropriate measures to ensure that states restore voting rights to citizens who have fully served their sentences and those who have been released on parole. The Committee also recommends that the State party review regulations relating to deprivation of votes for felony conviction to ensure that they always meet the reasonableness test of article 25. The State party should also **assess the extent to which such regulations disproportionately impact on the rights of minority groups** and provide the Committee with detailed information in this regard.

A/HRC/15/18 (WG on people of African descent, 2010), *United States of America*, p. 73: The second challenge is that at any given time, 5.3 million American **citizens are denied the right to vote because of criminal convictions and Americans of African descent constitute a disproportionately large percentage of this electorally disenfranchised population**.

CERD/C/JOR/CO/13-17, *Jordan* (2012), p. 13: While noting as positive the State party's 2010 election law which increases the number of seats representing urban districts, where most Jordanians of Palestinian origin reside, the Committee is concerned that the current structure of the State party's parliament remains disproportionately imbalanced in favour of rural districts. The Committee is further concerned that, **as non-citizen residents**, Jordan's large **refugee population remains unable to participate** in the political processes and decision-making in the State party [...]. The Committee recommends that the State party consider further amendments to its election law and apportionment of parliamentary seats to facilitate proportionate representation of Jordanians of all ethnic origin as well as non-national residents in its politics and decision making.

## 8.8 Does the legal framework provide effective measures to include minorities on the voter register?

### Right and Opportunity to Vote; States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICERD, Art. 5: [...] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (c) Political rights, in particular the **right to participate in elections—to vote** and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (d)(iii) **The right to nationality**.

CCPR/C/NIC/CO/3, *Nicaragua* (2008), p. 20: While the Committee notes that the State party has partly complied with the ruling by the Inter-American Court of Human Rights in the YATAMA case, it regrets that it has not undertaken the necessary legislative reform to introduce a simple legal remedy ensuring that indigenous and ethnic communities in the autonomous regions **can take effective part in elections with due regard for their traditions, conventions and customs** (Arts. 25 and 27).

A/HRC/7/19/Add.5 (SR on racism, racial discrimination, xenophobia and related forms of intolerance, 2008), p. 110: Measures undertaken by the government and implemented by the Central Electoral Board, including via **the establishment of a separate birth registration regime** for newborns of Haitian descent, onerous requirements for late registration of births, or denial or revocation of *cédulas* belonging to people born in the Dominican Republic, **constitute acts which deny constitutionally granted citizenship to persons belonging to this minority group**, along with their children, thus rendering them stateless [...].



CCPR/C/79/Add.93, Israel (1998), p. 27: The Committee is concerned that Arab women citizens of Israel have in some cases been **required to relinquish their citizenship** should they marry a Palestinian and apply for residence in the occupied territories. It welcomes the Israeli Government's response that this policy no longer applies and recommends that those already affected be made fully aware of the relevant legal provisions and that their status be restored.

A/HRC/13/25 (Forum on Minority Issues, 2010), p. 26: Where citizenship is a requirement for voting, election to political office or appointment to a position in the public service, there should be a **reasonable process for attaining such citizenship that is clearly defined, widely communicated and non-discriminatory with regard to race, ethnicity or religion**. The **process should not be prohibitive or present deterrents**, such as being unduly lengthy, costly or otherwise burdensome for persons who meet the requirements.

CCPR/C/ALB/CO2, Albania (2013), p. 23: (e) **Ensure that all Roma people have identity cards so as to facilitate their right to vote**.

CERD/C/COG/CO/9, Congo (2009), p. 17: The Committee notes with concern that the level of **registration of births among indigenous people is low and that some indigenous people lack identity documents**. The Committee recommends that the State party redouble its efforts to ensure that **all births among indigenous peoples are registered and that such registered individuals are provided with personal identity documents**. The Committee encourages the State party to **bring civil status registration centres closer to the communities where indigenous people live** (art. 5(d))

CCPR/C/HUN/CO/5, Hungary (2010), p. 21: The Committee is concerned at the administrative shortcomings of the minority election register, and the self-government system, which, inter alia, renders it obligatory for minorities **to register their ethnic identity**, and, therefore, deters those who do not wish their ethnic identity to be known, or have multiple ethnic identities, from registering in particular elections (arts. 2 and 25). The State party should adopt measures to address the shortcomings of the minority election register, and the minority self-government system in general, in order to **ensure that it does not deter and disenfranchise minorities** from participating in minority self-government elections.

## 8.9 Are electoral laws and election materials translated into minority and local languages, and made widely available?

### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups outside the public sector**, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**.

ICCPR, Art. 27: In those States in which ethnic, religious or linguistic minorities exist, **persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language**.



CCPR, GC 25, p. 12: **Positive measures** should be taken to overcome specific difficulties, such as illiteracy, **language barriers**, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. **Information and materials about voting should be available in minority languages.** Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

CCPR, GC 34, p. 25: **A norm, to be characterized as a 'law', must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public [...].**

CCPR/C/UNK/CO/1, Serbia (2006), p. 8: [...] UNMIK, in cooperation with PISG (Provisional Institutions of Self-Government), should ensure that any new law or regulation specifies which formerly applicable laws or provisions are being replaced, that **laws and regulations are made accessible to the public in all official languages** of Kosovo via the Official Gazette and the internet, and that former Yugoslav laws that continue to be applicable can be consulted easily [...].

CERD/C/MUS/CO/15-19, Mauritius (2013), p. 20: The Committee requests the State party to ensure that **proper status is given to the languages spoken by the various groups of the population.** The Committee also calls on the State party to **eliminate language barriers to equality and to the enjoyment of civil and political rights** as well as economic, social and cultural rights, in particular the right to education.

A/HRC/13/25 (Forum on Minority Issues, 2010), p. 19: There should be **no prohibition or unreasonable restriction placed on the use of any minority language during election campaigns**, although language use should naturally be determined by assessing how the broadest constituencies possible may be reached. As far as possible, **electoral authorities should provide voting information in both the official language and those minority languages used by voters in the areas where they are concentrated.**

## 8.10 Are there provisions prescribing civic and voter education concerning minority rights?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICERD, Art. 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (e)(v) **The right to education and training.**

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CERD/C/64/CO/5 (CERD, 2004), Nepal, p. 17: The Committee urges the State party to engage in efforts to **promote awareness among the general public, as well as among members of disadvantaged communities, of the importance of their active participation in public and political life.** The Committee recommends that the State party continue to enforce **special measures to guarantee to members of disadvantaged groups the right to participate in elections**, to vote and stand for election, and to have due representation in government, legislative bodies and the judiciary.

A/HRC/13/25 (Forum on Minority Issues, 2010), p. 23: States should **ensure that all mechanisms, procedures and institutions established to promote and increase the political participation of persons belonging to minorities take into account the specific needs of minority women**, as well as those of **other groups within minority communities potentially subjected to intersectional discrimination**, such as **minorities with disabilities.**

## 8.11 Are there measures to ensure equal access, and the provision of polling stations and polling materials to minority areas?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

**ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**ICERD, Art. 5:** In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and **equal** suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have **equal access to public service**.

CCPR/C/ 92, *The former Yugoslav Republic of Macedonia* (2008), p. 18: The Committee notes with concern alleged irregularities during the local elections in 2005, including the inadequate **supply of ballot papers to some minority groups**, while noting the efforts of the State party to address these problems (Art. 25). The State party **should take measures** to ensure that future elections are conducted in a manner fully guaranteeing the free expression of the will of the electors.

## 8.12 Do conditions for candidate registration disadvantage or exclude minorities?

### Right and Opportunity to be Elected

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

A/HRC/13/23 (IE on minority issues, 2010), *Afghanistan*, p. 60: **Linking political participation exclusively with ethnic identity by requiring that candidates standing for election be members of certain ethnic groups** and that voters belonging to certain ethnic groups be allowed to vote only for candidates from their respective groups **can be detrimental to the effective political participation of minorities**. As previously noted, **language proficiency requirements imposed on candidates can also negatively impact the effective participation of persons belonging to minorities** and in certain cases have been deemed illegal by human rights bodies and courts.

A/HRC/13/25 (Forum on Minority Issues, 2010), p. 18: **Literacy, language, religious or other requirements that exclude minorities from the right to vote or to stand for elected office at the national, regional or local level should be removed**, as they may **breach the prohibition of discrimination** and result in minorities not being able to participate effectively in political life.

## 8.13 Does the law establish effective remedies and sanctions to ensure compliance with TSMs?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

**ICERD, Art. 6:** States Parties shall assure to everyone within their jurisdiction **effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination** which violate his human rights and fundamental freedoms contrary to this Convention, as well as the **right to seek from such tribunals just and adequate reparation or satisfaction** for any damage suffered as a result of such discrimination.

**CERD/C/IND/CO/19, India (2007)**, p. 17: The Committee notes with concern reports that Dalit candidates, especially women, are frequently forcibly prevented from standing for election or, if elected, forced to resign from village councils or other elected bodies or not to exercise their mandate, that many Dalits are not included in electoral rolls or otherwise denied the right to vote, and that public service posts reserved for scheduled castes and scheduled tribes are almost exclusively filled in the lowest category (e.g. sweepers). The Committee is also concerned that scheduled castes and scheduled and other tribes are underrepresented in the Union, State and local governments and legislatures, as well as in the public service. (Arts. 5 (c) and 2 (2)). The Committee recommends to the State party to **effectively enforce reservation policy; to ensure rights of members of scheduled castes and scheduled and other tribes to freely and safely vote and stand for election and to fully exercise their mandate if elected** to their reserved seats; to apply reservation policy to all categories of public service posts, including the highest, and to extend it to judiciary; to ensure adequate representation of scheduled castes, scheduled and other tribes and ethnic minorities in Union, State and local governments and legislatures; and to provide updated statistical data on such representation in its next periodic report.

### **8.14 Does the law prohibit and sanction the incitement of hatred and violence against minority groups?**

#### **Freedom from Discrimination and Equality under the Law, Right to Security of Persons**

**ICCPR, Art. 26:** **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**ICCPR, Art. 20:** (1) Any propaganda for war shall be prohibited by law. (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

**ICERD, Art. 5:** In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (b) The right to **security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.**

**ICCPR, Art. 2(2):** Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

**CERD/C/ITA/CO/16-18, Italy (2012)**, p. 17: The Committee is extremely concerned by the prevalence of racist discourse, stigmatization and stereotypes directed against Roma, Sinti, Camminanti and non-citizens. The Committee is concerned that in the few cases where politicians have been prosecuted for discriminatory statements, stays of execution have allowed those prosecuted to continue their political activities and to stand for election. The Committee notes that **the fundamental right to freedom of expression does not protect the dissemination of ideas of racial superiority or incitement to racial hatred.** The Committee is also concerned that **racial discrimination is increasing in the media and on the internet, particularly on the social networks** (Arts. 2 and 4).

**CERD/C/NLD/CO/17-18, Netherlands (2010)**, p. 8: The Committee is concerned at the incidence of racist and xenophobic speech emanating from a few extremist political parties, the continuing incidence of manifestations of racism and intolerance towards ethnic minorities and the general deterioration in the tone of political discourse around discrimination (Art. 4). The Committee urges the State party to **take more effective measures to prevent and suppress manifestations of racism, xenophobia and intolerance** and to **encourage a positive climate of political dialogue**, including at times of local and national election campaigns.

CERD/C/AUT/CO/18-20, *Austria* (2012), p. 12: The Committee urges the State party to **thoroughly investigate and prosecute**, where appropriate, **the use during election campaigns of statements by politicians that incite racial hatred against persons of minority ethnic origin**. In this regard, the State party should **take active steps to prevent candidates and organizations from promoting and inciting racial discrimination**.

## 8.15 Does the legal framework establish minority consultative councils or devolution to regional autonomous bodies for minorities?

### Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 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.

A/HRC/13/23 (IE on minority issues, 2010), *Afghanistan*, p. 82: Consultative mechanisms can provide useful opportunities for minority participation as supplements when equal participation in elected bodies is insufficient because the minority community is too small to impact an election. [...] They may be part of the institutional structure of government and there may be a legal requirement that they be consulted on particular matters. For such mechanisms to be effective, **it is important that consultative bodies have a clear legal status, that the obligation to consult them is established in law and that their involvement in decision-making processes is of a regular, meaningful and permanent nature**. Such bodies should be properly resourced and attention should be paid to the representativeness of their members, who should be chosen by the minority community through transparent procedures. It is important that the members appointed have the requisite qualifications to carry out the work and that they be truly representative, including of minority women. Finally, these structures must be commensurate with the needs of minority communities.

A/HRC/13/25 (Forum on Minority Issues, 2010), p. 16: **Where minorities are concentrated geographically**, consideration should be given in appropriate circumstances **to devolving power, creating autonomous or other sub-State divisions, or adopting other means to enable minorities to have a significant and direct impact on matters that directly affect them**. Such solutions need not detract from overall State responsibilities, but might be **based on the concept of 'subsidiarity'**, namely that decision-making should generally occur at the lowest level of government consistent with the goals to be attained.

CERD/C/GTM/CO/12-13, *Guatemala* (2010), p. 8: [...] the Committee reiterates its concern about the problems experienced by indigenous peoples in gaining access to justice, particularly because **the indigenous legal system is not recognized** and applied and because of the lack of a sufficient number of interpreters and bilingual court officials who are knowledgeable about judicial proceedings. It regrets, in particular, that, when a number of judges were appointed to the Supreme Court in late 2009, no indigenous person was selected (art. 5 (a)). In the light of its General Recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, **the Committee urges the State party in its national legal system to recognize the indigenous legal system and to ensure respect for, and recognition of, the traditional systems of justice of indigenous peoples, in conformity with international human rights law**. The Committee also recommends that the State party **guarantee the right of indigenous peoples to an appropriate system of legal interpreters and of bilingual counsel and court officials in judicial proceedings**.

CERD/C/ECU/CO/20-22, *Ecuador* (2012), p. 19: The Committee is concerned that progress in respect of the draft bill on coordination and cooperation between the indigenous and ordinary justice systems has stalled in the National Assembly. It is also concerned by the slow pace of progress in the development of legal instruments governing the areas of authority, jurisdiction and responsibilities of the indigenous justice system (Arts. 2, 5 (a) and 6). **The Committee urges the State party to ensure respect for and recognition of the traditional systems of justice of indigenous peoples in accordance with international human rights law** and reiterates its recommendation (CERD/C/ECU/CO/19, para. 12) that the State party expedite the passage of the draft bill aimed at harmonizing and regulating the functions, jurisdiction and responsibilities of the indigenous justice system and the national justice system.

CERD/C/MEX/CO/16-17, Mexico (2012), p. 16: **While taking note of the State party's efforts to guarantee the participation of indigenous peoples in the political process**, and particularly in representative institutions, the Committee reiterates its concern about the number and level of government posts held by indigenous people, especially women. The Committee **notes with concern that**, pursuant to article 2, section A. VII, of the Constitution, **the right of indigenous peoples to elect their political representatives according to their own laws is limited to the municipal level.**

CCPR/C/NIC/CO/3, Nicaragua (2008), p. 20: While the Committee notes that the State party has partly complied with the ruling by the Inter-American Court of Human Rights in the YATAMA case, it regrets that it has not undertaken the necessary legislative reform to introduce **a simple legal remedy ensuring that indigenous and ethnic communities in the autonomous regions can take effective part in elections with due regard for their traditions, conventions and customs** (arts. 25 and 27).

## Resources

Association of European Electoral Officials (ACEEEO), *Sarajevo Declaration on Electoral Access for Persons with Disabilities and Persons belonging to Minorities*, 2012

National Democratic Institute (NDI), *Assessment of Barriers to Roma Political Participation in Romania* (Washington, D.C.: NDI, 2009)

Elections Canada, *Les Autochtones et le Processus Électoral Fédéral : les Tendances de la Participation et les Initiatives d'Élections Canada* (Québec: Elections Canada, 2004), available at <<http://www.elections.ca/content.aspx?section=res&dir=rec/part/abor&document=index&lang=f>>, accessed 10 February 2014

International Foundation for Electoral Systems (IFES), *Finding a Voice: Underrepresented Populations*, available at <[http://www.ifes.org/Content/Publications/Brochure/2012/-/media/Files/Publications/Brochure/2012/IFES%20Brochure\\_Underrepresented%20Populations.pdf](http://www.ifes.org/Content/Publications/Brochure/2012/-/media/Files/Publications/Brochure/2012/IFES%20Brochure_Underrepresented%20Populations.pdf)>, accessed 28 March 2014

International IDEA, *Electoral System Design* (Stockholm: International IDEA, 2005)

United Nations (UN), *Minority Rights: International Standards and guidance for Implementation* (Geneva and New York: Office of the High Commissioner for Human Rights, 2010), available at <[http://www.ohchr.org/Documents/Publications/MinorityRights\\_en.pdf](http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf)>, accessed 28 March 2014

## Notes

- <sup>1</sup> A/RES/47/135, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, Art. 1.
- <sup>2</sup> E/CN.4/Sub.2/384/Rev. 1/ para. 568.
- <sup>3</sup> International IDEA 2005, p. 122.
- <sup>4</sup> Ibid., p. 175.

# Chapter 9. Equal Opportunities for Persons with Disabilities

## Overview

The Convention on the Rights of Persons with Disabilities (CRPD) defines persons with disabilities as ‘those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’<sup>1</sup> The particular impact of political, economic, educational or simply physical barriers on persons with disabilities gives rise to a stand-alone Table of Jurisprudence and related Checklist in the Guidelines. The following table addresses issues that legal frameworks should regulate in order to comply with relevant international treaties and case law. In accordance with the approach followed for other cross-cutting components of the electoral process, the Guidelines also attempt to mainstream respect for the rights of persons with disabilities throughout the entire electoral process by including references to them throughout.

The right to vote must be open to be enjoyed and exercised without discrimination. National legal frameworks are therefore required to provide equal opportunities for all individuals to register to vote, to vote in secret and to mark a ballot directly, without assistance. Everyone must have the right to free and equal access to participate, as well as the effective opportunity to participate, in electoral processes without discrimination of any kind. Accordingly, individuals with intellectual disabilities, psychiatric disorders or any other disability have an equal right to register to vote, and the concomitant equal right to vote. Individuals who are deprived of their physical or economic liberty (for instance, through institutionalization or court-appointed guardianship), or who are subject to compulsory treatment, may not be excluded or suspended from exercising their universal electoral rights. It would be discriminatory to test an individual or group of individuals

to ascertain whether they have the capacity to cast an informed, intelligent or rational vote. Any violation of these rights shall entitle the victim to seek and obtain an effective administrative, legal or judicial remedy.

States are obligated to take ‘positive measures [...] to overcome specific difficulties’<sup>2</sup> to ensure that their citizens are able to exercise the universal right to register to vote, as well as the right to vote in public, on equal terms with others. Accordingly, states are called upon to overcome impediments to freedom of movement by requiring election authorities to conduct voter registration and voting at sites that are accessible to citizens with physical and other disabilities. States are also required to ensure that voters who reside in institutional settings, and those who are homebound by disability, can exercise the right to register to vote and the right to vote. Furthermore, states should help persons with disabilities overcome language barriers by requiring electoral authorities to ensure that sign language interpretation is available throughout the entire electoral process, and help overcome communications barriers by requiring election authorities to consult with disability organizations to identify and secure the use of other means of facilitating communication (such as Braille, large print, and audio or electronic devices). Electoral authorities must also take into account that citizens with disabilities might have poor literacy skills. Off-site voting measures can also be considered, such as: (1) advance voting; (2) postal voting; (3) voting at institutions, hospitals and homes for the elderly; (4) home-based voting; and (5) kerbside voting. These options supplement, but do not supplant, the right to vote at public polling stations.

Assisted voting may constitute an ‘effective measure’ to enable citizens to exercise their right to vote. The decision to be assisted in the process of voting must be freely made by the voter. When used, assisted voting mechanisms must include safeguards to protect the universal right to vote, in order to protect the voter from manipulation and to ensure the secrecy of the ballot. These safeguards include: (a) the right of the voter to decide who provides assistance; (b) the requirement that the assistant satisfies all criteria for voting, as established by law; (c) the requirement that the electoral agency provide an official assistant if the voter requiring assistance does not or cannot bring an assistant; (d) the requirement that the assistant is formally obliged to ensure the intent and secrecy of the vote; and (e) that violation of this obligation shall result in a penalty.

In meeting their obligations to enable citizens with disabilities to fully exercise their electoral rights, election authorities may promulgate non-discriminatory regulations and provide instructions to educate polling staff, election authorities, other stakeholders and society about the electoral rights of persons with disabilities, and about the manner in which these citizens can exercise their right to vote.



The following Table of Jurisprudence covers issues that correspond to specific obligations such as: Right and Opportunity to Vote, Freedom from Discrimination and Equality under the Law, States Must Take Necessary Steps to Give Effect to Rights, Secret Ballot, Right and Opportunity to be Elected, Equality between Men and Women, Transparency and the Right to Information. In addition to the general obligations, the Table of Jurisprudence refers to specific CRPD treaty articles and CRPD Committee Concluding Comments that are relevant to electoral processes, together with HRC and CCPR jurisprudence.

## Table of Jurisprudence

### 9. Equal Opportunities for Persons with Disabilities

#### 9.1 Are persons with disabilities effectively granted an equal right to vote?

##### Right and Opportunity to Vote; Freedom from Discrimination and Equality under the Law

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and **without unreasonable restrictions**: (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.

ICCPR Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law**. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CRPD, Art. 29: States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: a) To **ensure that persons with disabilities can effectively and fully participate in political and public life** on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected.

CCPR/C/PRY/CO/3, *Paraguay* (2013), p. 11: While noting that the delegation has acknowledged the need to reform the electoral code to bring it fully into line with the Convention on the Rights of Persons with Disabilities, the Committee is concerned about the **disproportionate restrictions on the right to vote** of persons deprived of their liberty and **persons with disabilities** under articles 91 and 149 of the electoral code.

CCPR/C/ALB/CO2, *Albania* (2013), p. 22: [...] The Committee is particularly concerned about the **legal restriction on persons with disabilities to exercise their right to vote** in the State party (Arts. 2, 10, 25 and 26). [...] The State party should **revise its legislation to ensure that it does not discriminate against persons with mental, intellectual or psychosocial disabilities by denying them the right to vote on grounds that are disproportionate or that have no reasonable and objective relationship to their ability to vote**.

CRPD/C/ESP/CO/1, *Spain* (2011), p. 48: The Committee recommends that all relevant **legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others**. The Committee requests the State party to amend article 3 of Organic Act 5/1985, which allows the denial of the right to vote based on individualized decisions taken by a judge. The **amendment should ensure that all persons with disabilities have the right to vote**.

A/HRC/17/17 (UPR, 2011), *Estonia*, p. 77.13: Review and revise the code of civil procedure, as necessary, to **ensure that persons with disabilities are not deprived of their right to vote on the basis of disability**.

## 9.2 Does the legal framework facilitate voter registration for persons with disabilities?

### States Must Take Necessary Steps to Give Effect to Rights; Right and Opportunity to Vote

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CRPD, Art. 5: (3) In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that **reasonable accommodation is provided**. (4) Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

CRPD, Art. 29: **States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:** a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: (i) **Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use**.

CCPR, GC 25, p. 11: **States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed**. If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.

CRPD/C/PER/CO/1, Peru (2012), p. 44: The Committee remains concerned at: (a) the fact that persons with disabilities, who have been judicially interdicted, remain ineligible to vote and that the names of those **excluded from the national voter registry have not yet been fully restored**; (b) the lack of information on measures taken in order to inform the persons with disabilities on the above-mentioned developments and prevent such violations from happening in the future; (c) numerous cases of persons in institutions who have not been able to exercise their right to vote because they lack identity documents or because of the interdiction to leave the institution, absence of special assistance or the distance from the polling station. p. 45: The Committee recommends that the State party: (a) **restore voting rights to all people with disabilities who are excluded from the national voter registry, including people with disabilities subject to judicial interdiction**; (b) reach out to vulnerable individuals and protect people with disabilities from such violations in the future, including through relevant training.

## 9.3 Are there provisions to safeguard the secrecy of the vote for persons with disabilities?

### Secret Ballot

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CRPD, Art. 29: States Parties shall **guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others**, and shall undertake: a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and to be elected, inter alia, by: (i) Ensuring that **voting procedures, facilities and materials are appropriate, accessible and easy to understand and use**; (ii) Protecting the **right of persons with disabilities to vote by secret ballot** in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate; (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing **assistance in voting by a person of their own choice**.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CCPR/C/PRY/CO/3, Paraguay (2013), p. 11: The Committee is also concerned about the lack of practical measures to facilitate physical access to voting stations and to **make voting slips available in Braille** (Arts. 2, 25 and 26).

A/HRC/19/16 (UPR, 2011), Uganda, p. 111.36: **Ensure the right to vote for persons with disabilities, in line with the Convention on the Rights of Persons with Disabilities, and implement, among others, alternative measures to enable them to vote freely and in secret, and to easily access to facilities.**

## 9.4 Are there provisions requiring polling stations to be accessible to the disabled?

### States must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CRPD, Art. 29: States Parties shall **guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others**, and shall undertake: a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: (i) **Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.**

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CCPR, GC 25, p. 12: Positive measures should be taken **to overcome [...] impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively.**

CRPD/C/PER/CO/1, Peru (2012), p. 45: The Committee recommends that the State party: (c) guarantee the **right to vote of people with disabilities in institutions**, by ensuring that they are **physically permitted to go to assigned polling stations and have the support required to do so, or to permit alternative options.**

CRPD/C/ARG/CO/1, Argentina (2012), p. 47: The Committee would like to express its recognition of the fact that the State party has repealed the provisions in its electoral code that barred deaf-mute persons who do not know how to communicate in writing and persons with psychosocial or intellectual disabilities who have been interned in public institutions from exercising their right to vote. Nevertheless, the Committee remains concerned by: (b) the **lack of appropriate measures for ensuring that institutionalized persons with disabilities have access to the polls and can leave the institutions in question in order to vote.** p. 48: The Committee recommends that the State party: (b) **pursue its efforts to ensure that institutionalized persons with disabilities have access to the polls** by, for example, devising and implementing a national plan for ensuring that people are able to exercise their right to participation in political life (CRPD/C/ARG/Q/1/add.1, para. 249) or other alternative solutions.

CRPD/C/TUN/CO/1, Tunisia (2011), p. 21: The Committee recommends that the State party, in close consultation with persons with disabilities and their representative organizations, **undertake a comprehensive review of the implementation of laws on accessibility in order to identify, monitor and address those gaps.** It recommends that awareness-raising programmes be conducted for the relevant professional groups and all stakeholders. It further recommends that **sufficient financial and human resources be allocated as soon as possible to implement the national plan on accessibility for existing and future infrastructure.**

CCPR/C/PRY/CO/3, Paraguay (2013), p. 11: The Committee is also concerned about the lack of practical measures to **facilitate physical access to voting stations** and to make voting slips available in Braille (arts. 2, 25 and 26).

A/HRC/19/16 (UPR, 2011), Uganda, p. 111.36: **Ensure the right to vote for persons with disabilities**, in line with the Convention on the Rights of Persons with Disabilities, and implement, among others, **alternative measures to enable them** to vote freely and in secret, and **to easily access to facilities**.

## 9.5 Are persons with disabilities effectively granted an equal right to stand for office?

### Right and Opportunity to be Elected

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:** (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.

CRPD, Art. 29: States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: a) **To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and to be elected.**

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 2(1): Each State Party to the present Covenant undertakes to respect and to **ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind**, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

## 9.6 Are there measures to support elected officials with disabilities to effectively exercise their mandate?

### States must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CRPD, Art. 27(1): **States Parties recognize the right of persons with disabilities to work, on an equal basis with others [...]** States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia: (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions; (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances; (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training; (g) Employ persons with disabilities in the public sector.

CRPD, Art. 5: (3) In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. (4) **Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination** under the terms of the present Convention.

CCPR, GC 25, p. 7: Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those **representatives do in fact exercise governmental power**.

CRPD/C/ESP/CO/1, Spain (2011), p. 48: [...] Furthermore, it is recommended that all persons with disabilities who are elected to a public position are **provided with all required support, including personal assistants**.

## 9.7 Are persons with mental disabilities and those under guardianship enfranchised?

### Right and Opportunity to Vote; Freedom from Discrimination and Equality under the Law

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CRPD/C/CHN/CO/1, China (2012), p. 45: The Committee is concerned with article 26 of the election law, which excludes citizens with intellectual and psychosocial impairments from the voting process. p. 46: The Committee recommends that the State party revise article 26 of the election law to **ensure that all persons with disabilities have the right to vote on an equal basis with others.**

CCPR/C/BLZ/CO/1, Belize (2013), p. 24: The Committee is concerned that persons found to be suffering from mental disabilities under any law in force in the State party are disqualified from voting and registering to vote (Arts. 25 and 26). The State party should **revise its legislation to ensure that it does not discriminate against persons with mental intellectual or psychosocial disabilities by denying them the right to vote on bases that are disproportionate or that have no reasonable and objective relationship to their ability to vote**, taking account of article 25 of the Covenant, and article 29 of the Convention on the Rights of Persons with Disabilities.

CRPD/C/ARG/CO/1, Argentina (2012), p. 47: The Committee would like to express its recognition of the fact that the State party has repealed the provisions in its electoral code that barred deaf-mute persons who do not know how to communicate in writing and persons with psychosocial or intellectual disabilities who have been interned in public institutions from exercising their right to vote. Nevertheless, the Committee remains concerned by: (a) the fact that the amendments to the electoral code have not included the **elimination of the provision whereby persons who have been declared legally incompetent by a court of law are barred from exercising their right to vote.**

CRPD/C/TUN/CO/1, Tunisia (2011), p. 35: The Committee recommends the urgent adoption of legislative measures to ensure that persons with disabilities, including **persons who are currently under guardianship or trusteeship, can exercise their right to vote and participate in public life, on an equal basis with others.**

CRPD/C/HUN/CO/1, Hungary (2012), p. 26: The Committee recommends that the State party use effectively the current review process of its civil code and related laws to take **immediate steps to derogate guardianship in order to move from substitute decision-making to supported decision-making which respects the person's autonomy, will and preferences** and is in full conformity with article 12 of the Convention, including with respect to the individual's right, in his/her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to choose a place of residence. The Committee further recommends that the State party provide training, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for all actors, including civil servants, judges, and social workers, on the recognition of the legal capacity of persons with disabilities and on mechanisms of supported decision-making.

## 9.8 Are there special measures for women with disabilities to exercise their electoral rights?

### Equality between Men and Women

CEDAW, Art 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights** set forth in the present Covenant.

CEDAW/C/DJI/CO/1-3, Djibouti (2011), p. 25: (d) Ensure that women, including **women with disabilities, have adequate opportunities to participate** and that they have a vote in the planning, implementation, monitoring and evaluation of development policies and community projects.

CEDAW, GR 25, p. 12: Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from **multiple forms of discrimination** based on additional grounds such as race, ethnic or religious identity, **disability**, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take **specific temporary special measures to eliminate such multiple forms of discrimination against women** and its compounded negative impact on them.

CRPD/C/TUN/CO/1, Tunisia (2011), p. 15: The Committee recommends that the State party: (a) Design and implement **awareness-raising campaigns and education programmes** throughout society, including at the family level, on women **with disabilities in order to foster respect for their rights** and dignity; combat stereotypes, prejudices and harmful practices; and promote awareness of their capabilities and contributions; [...] (c) Undertake **studies and research** in order to identify the situation and specific requirements of women with disabilities, with a view to **elaborating and adopting strategies, policies and programmes**, especially in the fields of education, employment, health and social protection, to promote their autonomy and full participation in society, and to combat violence against women.

CRPD/C/PER/CO/1, Peru (2012), p. 15: The Committee urges the State party to accelerate its efforts to **eradicate and prevent discrimination against women and girls with disabilities, by incorporating gender and disability perspectives in all programmes**, as well as by **ensuring their full and equal participation in decision-making**. The Committee urges the State party to amend its legislative framework to **provide special protection to women and girls with disabilities**, as well as to **adopt effective measures to prevent and redress violence against women and girls with disabilities**.

## 9.9 Do persons with disabilities have the right to freedom of association?

### Freedom of Association

ICCPR, Art. 22: (1) **Everyone shall have the right to freedom of association** with others, including the right to form and join trade unions for the protection of his interests. (2) **No restrictions may be placed on the exercise of this right** other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others [...].

CRPD, Art. 29: States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: (b) [to] promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including: (i) **Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;** (ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

## 9.10 Are there provisions prescribing civic and voter education concerning the rights of persons with disabilities?

### Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

UNCAC, Art. 13: Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations**, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**; (c) **Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula**; (d) **Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption**.

CRPD, Preamble: The States Parties to the present Convention recognize the **importance of accessibility [...] to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms**. Definitions: 'Communication' includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

CCPR, GC 25, p. 11: **States must take effective measures to ensure that all persons entitled to vote are able to exercise that right**. p. 20: [...] Assistance provided to the disabled, blind or illiterate should be independent. Electors should be **fully informed of these guarantees**.

CRPD/C/PER/CO/1, Peru (2012), p. 44: The Committee remains concerned at: (b) the lack of information on measures taken in order to inform the persons with disabilities on the above-mentioned developments and prevent such violations from happening in the future. p. 45: The Committee **recommends that the State party to: (b) Reach out to vulnerable individuals and protect people with disabilities from such violations in the future, including through relevant training**.

## Resources

ACE Project, 'Elections and Disability', available at <<http://aceproject.org/ace-en/focus/disability>>, accessed 28 March 2014

Association of European Electoral Officials (ACEEEO), *Sarajevo Declaration on Electoral Access for Persons with Disabilities and Persons belonging to Minorities*, 2012

Elections Canada, *La Participation Electorale des Electeurs Handicapés, Analyse Comparative des Pratiques Canadiennes* (Québec: Elections Canada, 2012), available at <[http://elections.ca/res/rec/part/spe/dis\\_f.pdf](http://elections.ca/res/rec/part/spe/dis_f.pdf)>, accessed 10 February 2014

Elections Canada, 'Persons with Disabilities and Elections', *Electoral Insight*, 6/1 (2004), available at <[http://www.elections.ca/res/eim/pdf/insight\\_2004\\_04\\_e.pdf](http://www.elections.ca/res/eim/pdf/insight_2004_04_e.pdf)>, accessed 27 March 2014

*Equal Opportunities for Persons with Disabilities*, available at <<http://www.electionaccess.org/>>, accessed 10 February 2014

Global Initiative to Enfranchise People with Disabilities, *The Bill of Electoral Rights for Citizens with Disabilities*, available at <[http://www.electionaccess.org/rs/Bill\\_English.htm](http://www.electionaccess.org/rs/Bill_English.htm)>, accessed 10 February 2014

International Foundation for Electoral Systems (IFES), *Accessible Elections for Persons with Disabilities in Five Southeast Asian Countries* (Washington, D.C.: IFES, 2013)

International Foundation for Electoral Systems (IFES), *Opening Doors: Ensuring Access*, available at <[http://www.ifes.org/-/media/Files/Publications/Brochure/2011/IFES\\_Opening\\_Doors\\_brochure.pdf](http://www.ifes.org/-/media/Files/Publications/Brochure/2011/IFES_Opening_Doors_brochure.pdf)>, accessed 28 March 2014

International Foundation for Electoral Systems (IFES) and National Democratic Institute (NDI), *Equal Access: How to Include Persons with Disabilities in Elections and Political Processes* (Washington, D.C.: IFES and NDI, 2014)

Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines for Reviewing a Legal Framework for Elections* (OSCE/ODIHR, 2013)

## Notes

<sup>1</sup> CRPD, Art. 1.

<sup>2</sup> CCPR/C/21/Rev.1/Add.7, GC No. 25, para. 12.



# Chapter 10. Electoral Observers

## Overview

Electoral observation has become a recurrent element in electoral processes around the world, and is performed by international groups, regional groups and networks, and national or citizen organizations. However, the role of observers in electoral processes is not fully developed in UN treaties. The Declaration of Global Principles for Non-partisan Election Observation and Monitoring by Citizen Organizations defines election observation as the:

Mobilization of citizens in a politically neutral, impartial and non-discriminatory manner to exercise their right of participation in public affairs by witnessing and reporting on electoral developments through: independent, systematic and comprehensive evaluation of legal frameworks, institutions, processes and the political environment related to elections; impartial, accurate and timely analysis of findings; the characterization of the findings based on the highest ethical standards for impartiality and accuracy; the offering of appropriate recommendations for obtaining genuine democratic elections; and advocating for improvements in legal frameworks for elections, their implementation through electoral related administration and removal of impediments to full citizen participation in electoral and political processes.<sup>1</sup>

Its predecessor and source of inspiration, the Declaration of Principles for International Election Observation, offers a similar definition of international observation.<sup>2</sup> Hence, the Guidelines refer primarily to electoral observation activities with a long-term presence and process-oriented assessments, but also include the mandate of short-term election observers, whose work is limited to the observation of events immediately before and after (and on) election

day. Unless specifically mentioned, the following Table of Jurisprudence does not distinguish between international and citizen electoral observation.

Electoral observation can provide an effective means to verify the genuineness of electoral outcomes and the degree of national reception and implementation of international obligations subscribed to by the observed States Party. The presence of electoral observers may decrease the likelihood of intimidation and fraud, since neutral, objective observers can instil confidence in the electorate and thereby increase not only their willingness to participate in the process, but also their ability to express their political will freely in the polling booth without fear of reprisal. Deployment of a sufficient number of observers is crucial to ensure that their presence is widely recognized by the electorate.<sup>3</sup> In order to maximize the added benefit of non-partisan observation, observers should be legally afforded free movement, access to all steps of the electoral process, and protection from harm and interference while carrying out their duties.

The UN framework and jurisprudence do not distinguish between a legally protected and enforceable right to observe elections and one granted by administrative discretion. Conversely, the ACDEG establishes this right as an express and enforceable treaty provision.<sup>4</sup> While the CCPR requires independent supervision of the electoral process, it still necessitates an individual complaint against the rejection of observer accreditation before it calls for a statutory right to observe. International observation of electoral processes, and the related obligation for states to allow observers to perform their role as described above, is mostly enshrined in regional treaties that establish reciprocal obligations for electoral observation, or in bilateral agreements between the host state and the international organization invited to deploy an electoral observation mission.

Citizen-based electoral observation can anchor its activities more solidly through the combined application of several ICCPR-related obligations: the Right and Opportunity to Participate in Public Affairs and the Freedom of Association and Expression. The obligation to guarantee Transparency and the Right to Information, together with the measures to prevent corruption as framed by the UNCAC, further consolidate the right of citizen-based organizations to observe electoral processes. Beyond the scope of UN instruments, the ACDEG requires states to create conducive conditions for CSOs to exist and operate.<sup>5</sup>

The following Table of Jurisprudence complements the above-mentioned obligations with three more: States Must Take Necessary Steps to Give Effect to Rights, the Right to an Effective Remedy and the Right to Security of Persons, to complete the UN treaty and related jurisprudence protection of a comprehensive notion of electoral observation.

## Table of Jurisprudence

### 10. Electoral Observers

#### 10.1 Can NGOs and CSOs register and operate freely?

##### Right and Opportunity to Participate in Public Affairs, Freedom of Association

ICCPR, Art. 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.

ICCPR, Art. 22: (1) **Everyone shall have the right to freedom of association** with others, including the right to form and join trade unions for the protection of his interests. (2) **No restrictions may be placed on the exercise of this right** other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others [...].

CCPR, GC 25, p. 4: The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. p. 8: Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or **through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association.**

CCPR/CO/79/GNQ, Equatorial Guinea (2004), p. 11: The Committee notes with alarm that Act No. 1 of 1999 governing the operation of non-governmental organizations has not yet been amended, because it does not provide for human rights organizations. It also remarks with concern that a number of associations, such as the Press Association of Equatorial Guinea (ASOPGE) and the Bar Association, are said to have been banned without good reason. Lastly, it takes note with concern of the lack of trade unions in the State party. The State party should take all **necessary steps to guarantee the rights of assembly and association**, especially the right to form trade unions (arts. 19, 21 and 22). It should amend Act No. 1 of 1999 to **permit the registration and operation of non-governmental human rights organizations** and allow the Press Association of Equatorial Guinea (ASOPGE) and the Bar Association to operate without hindrance.

CCPR/CO/76/TGO, Togo (2002), p. 19: **The Committee is disturbed by the distinction that the State party makes between associations and non-governmental organizations, and reports that non-governmental human rights organizations have been unable to obtain permission to register.** The State party should provide information on the consequences of the distinction made between associations and non-governmental organizations. The State party should ensure that this distinction does not violate, in law or in practice, the provisions of article 22 of the Covenant. The Committee notes the assurance given by the delegation that human rights defenders who have submitted information to the Committee will not be harassed in Togo.

CCPR/C/ETH/CO/1 Ethiopia (2011), p. 25: The Committee is concerned by the provisions of the Proclamation on Charities and Societies No.621/2009, which prohibits Ethiopian NGOs from obtaining more than 10 per cent of their budget from foreign donors, and at the same time, prohibits the NGOs considered by the State party to be foreign, from engaging in human rights and democracy-related activities. This legislation **impedes the realization of the freedom of association and assembly** as illustrated by the fact that many NGOs and professional associations were not authorized to register under the new Proclamation or had to change their area of activity (arts. 21 and 22). The State party should revise its legislation to ensure that any limitations on the right to freedom of association and assembly are in strict compliance with articles 21 and 22 of the Covenant, and in particular it **should reconsider the funding restrictions on local NGOs in the light of the Covenant and it should authorize all NGOs to work in the field of human rights.** The State party **should not discriminate against NGOs that have some members who reside outside of its borders.**

CCPR/C/RWA/CO/3 Rwanda (2009), p. 21: The Committee finds cause for concern in the **reported obstacles to the registration and freedom of action of human rights NGOs** and opposition political parties (Arts. 19, 22, 25 and 26 of the Covenant). **The State party should take the necessary steps to enable national human rights NGOs to operate without hindrance [...].**

## 10.2 Are there provisions requiring the timely treatment of registration applications for CSOs/NGOs?

### Freedom of Association

ICCPR, Art. 22: (1) **Everyone shall have the right to freedom of association** with others, including the right to form and join trade unions for the protection of his interests. 2. **No restrictions may be placed on the exercise of this right** other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others [...].

UNSC Res. 1991 (2011), p. 6: [The Security Council] calls upon the Commission Électorale Nationale Indépendante (CENI), political parties and relevant Congolese authorities to swiftly adopt and implement codes of conduct and ensure timely **accreditation of national and international observers**.

CCPR/C/TKM/CO/1, Turkmenistan (2012), p. 19: The Committee is concerned that the Law on Public Associations severely restricts freedom of association in that it, inter alia, provides for the compulsory registration of public associations and contains **onerous obligations on associations to report to authorities**. The Committee is also concerned that associations undergo **cumbersome administrative processes** for registration so that in some instances associations are forced to wait for a number of years before they obtain a registration certificate (Art. 22). The State party should ensure that the process of registration of associations complies with article 22, paragraph 2 of the Covenant. In this regard, the **State party should reform its system of registration to ensure that registration applications are processed professionally and expeditiously**.

## 10.3 Does the legal framework allow observation of the entire electoral process?

### Right and Opportunity to Participate in Public Affairs; Transparency and the Right to Information

ICCPR, Art. 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.

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, **integrity, transparency and accountability**.

UNCAC, Art. 10: Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

UNCAC, Art. 13: (1) Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the **active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations**, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes; (b) **Ensuring that the public has effective access to information**; (c) Undertaking public information activities that contribute to non-tolerance of corruption; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. [...] (2) Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

UNSC Res. 2053 (2012): Stressing the need for the Congolese authorities to address the irregularities and challenges identified by **national and international observers** during the presidential and general elections on 28 November 2011.

CCPR, GC 25, p. 20: There should be **independent scrutiny of the voting and counting process** and access to judicial review or other equivalent process **so that electors have confidence in the security of the ballot and the counting of the votes.**

A/HRC/15/16 (UPR, 2010), Belarus, p. 98, Recommendation No. 37: **Commit to inviting independent international observers to monitor future election processes.**

CCPR/C/IRN/CO/3, Islamic Republic of Iran (2011), p. 29: [...] The Committee notes with concern that with regard to the 10th presidential election in 2009: (2) **international observers were not allowed entry to monitor the election results.** [...] [The State Party] also take adequate steps to guarantee that elections are conducted in a free and transparent manner, in full conformity with the Covenant, including through the establishment of an independent electoral monitoring commission.

CCPR/C/79/Add.32, Mexico (1994), p. 16: The Committee suggests to the Mexican authorities that they fully implement article 25 of the Covenant, in particular with regard to elections, by taking legal and practical measures to ensure equitable representation of the entire electorate, and to ensure that the balloting is free from fraud and takes place in an atmosphere of calm essential to the voters' exercise of free choice. To that end, the willingness of the authorities to **accept international observers during the balloting would contribute to the transparency of the elections.**

#### 10.4 Are there objective criteria and timeframes for accreditation?

##### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

CCPR, GC 25, p. 20: There should be **independent scrutiny of the voting and counting process** and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.

Commission on Human Rights, E/CN.4/2006/95/Add.2 (SRSG HR Defenders, 2006), p. 106: The Special Representative calls on the Government to develop appropriate measures for adequate protection of election monitors and journalists in view of the 2007 elections; in particular, **formal recognition of election monitors** in order to ensure their safety.

#### 10.5 Is freedom of movement for observers granted?

##### Freedom of Movement; States Must Take Necessary Steps to Give Effect to Rights; Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 12: (1) **Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement** and freedom to choose his residence. (2) Everyone shall be free to leave any country, including his own. (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. (4) No one shall be arbitrarily deprived of the right to enter his own country.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICCPR, Art. 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.

CCPR, GC 25, p. 20: There should be **independent scrutiny** of the voting and counting process and **access to judicial review or other equivalent process** so that electors have confidence in the security of the ballot and the counting of the votes.

CCPR, GC 27, p. 16: States have often failed to show that the application of their laws restricting the rights enshrined in article 12, paragraphs 1 and 2, are in conformity with all requirements referred to in article 12, paragraph 3. **The application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality.**

CCPR, GC 15, p. 6: **However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant.** p. 8: **Once an alien is lawfully within a territory, his freedom of movement within the territory and his right to leave that territory may only be restricted in accordance with article 12, paragraph 3.** Differences in treatment in this regard between aliens and nationals, or between different categories of aliens, need to be justified under article 12, paragraph 3. [...]

## 10.6 Are there provisions for a timely appeal against refusal of accreditation?

### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To **ensure that the competent authorities shall enforce such remedies when granted.**

CCPR, GC 31, p. 15: Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights.**

CCPR, GC 32, p. 27: An important aspect of the fairness of a hearing is its **expeditiousness**. While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3 (c) of article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be allocated for the administration of justice.

## 10.7 Are there provisions safeguarding the security of observers?

### Right to Security of Persons

ICCPR, Art. 9: (1) **Everyone has the right to liberty and security of person.** No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

UNSC Res. 1991 (2011), p. 5: [The Security Council] recognizes the **primary responsibility of the Government** of the Democratic Republic of the Congo **and its national partners** to create propitious conditions for the forthcoming elections, **urges** the Government as well as all relevant parties **to ensure** an environment conducive to a free, fair, credible, inclusive, transparent, peaceful and timely electoral process, which includes free and constructive political debate, freedom of expression, freedom of assembly, equitable access to media including State media, **safety** for all candidates, as well as **for election observers** and witnesses, journalists, human rights defenders and actors from the civil society including women [...].

CCPR, GC 15, p. 6: **However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant.** p. 7: **Aliens have the full right to liberty and security of the person.**

Commission on Human Rights, E/CN.4/2006/95/Add.2 (SRSG HR Defenders, 2006), Mission to Nigeria, p. 106: The Special Representative calls on the Government to develop appropriate measures for adequate **protection of election monitors** and journalists in view of the 2007 elections; in particular, formal recognition of election monitors in order to ensure their safety.

A/HRC/14/24/Add.7 (SR on extrajudicial, summary or arbitrary executions, 2010), p. 101: Election monitoring is a relatively recent phenomenon which came of age only at the end of the Cold War. Although it has gained a remarkable degree of acceptance, it inevitably remains a highly sensitive issue for Governments struggling to stay in power. Assertions of interference in sovereignty are thus never far beneath the surface. Nevertheless, it is essential that election monitors move systematically beyond a focus on the formal structures of elections and election day monitoring. **It should be understood that an election is not free or fair unless the authorities can show that they have done all within their power to minimize and respond to election related violence. For its part, the human rights community also needs to pay more attention to elections per se, rather than focus primarily on specific incidents of violence.**

## Resources

- Boda, M. D., 'Judging Elections by Public International Law: A Tentative Framework', *Representation*, 41/3 (2005), pp. 208–29
- Carroll, D. J. and Davis-Roberts, A., 'Using International Law to Assess Elections', *Democratization*, 17/3 (2010), pp. 416–41
- Carroll, D. J. and Davis-Roberts, A., 'The Carter Center and Election Observation: An Obligations-Based Approach for Assessing Elections', *Election Law Journal*, 12/1 (2013), pp. 87–93
- Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, 2005, available at <<http://aceproject.org/electoral-advice/election-observation/declaration-of-principles-for-international>>, accessed 23 June 2014
- Electoral Institute for Sustainable Democracy in Africa (EISA), *Principles for Election Management, Monitoring, and Observation in the SADC Region* (Johannesburg: EISA, 2003)
- Electoral Reform International Services (ERIS), *The Work of Domestic Election Observer Groups Around the World*, available at <[http://ceas.europa.eu/eueom/pdf/promoting-and-defending-democracy\\_en.pdf](http://ceas.europa.eu/eueom/pdf/promoting-and-defending-democracy_en.pdf)>, accessed 23 April 2014
- European Commission (EC), *Handbook for European Union Election Observation*, 2008
- Global Network of Domestic Election Monitors (GNDEM), initiators, Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations and Code of Conduct for Non-Partisan Citizen Election Observers and Monitors, commemorated at the UN, 3 April 2012
- International IDEA, *The Integrity of Elections: the Role of Regional Organizations* (Stockholm: International IDEA, 2012)
- Muñoz-Pogossian, B., 'The Role of International Electoral Observation Missions in the Promotion of the Political Rights of Women: The Case of the OAS', *Election Law Journal*, 12/1 (2013)
- Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Election Observation Handbook* (OSCE/ODIHR, 2010)

Tuccinardi D. and Balme F., 'Citizen Election Observation Towards a New Era', *Election Law Journal*, 12/1 (2013)

United Nations (UN), *Handbook on the Legal, Technical and Human Rights Aspects of Elections* (New York and Geneva: UN, 1994)

## Notes

- <sup>1</sup> Para. 4 of the Declaration signed at the UN on 3 April 2012, available at <<http://www.gndem.org/declaration-of-global-principles>>, accessed 10 February 2014.
- <sup>2</sup> Declaration of Principles for International Election Observation, 2005, para. 4, available at <<http://aceproject.org/electoral-advice/election-observation/declaration-of-principles-for-international>>, accessed 23 June 2014.
- <sup>3</sup> UN 1994.
- <sup>4</sup> ACDEG, Art. 22 stipulates that States Parties shall create a conducive environment for independent and impartial national monitoring or observation mechanisms. Art. 19 covers international observation carried out by the African Union within its Member States, including host state responsibilities.
- <sup>5</sup> ACDEG, Art. 12.



# Chapter 11. Civic and Voter Education

## Overview

Implicit in the concept of free choice is that of an informed choice. Credible and transparent electoral processes must reflect the political will of the voters. Voters can neither express, nor formulate their will without access to information about candidates, political parties and the practical, procedural, aspects of the electoral process. Well-organized, non-partisan information programmes and unhindered distribution of political party information are therefore critical elements of genuine elections. Legal frameworks are required to ensure that EMBs or relevant public bodies take the necessary steps to allow voters to make informed choices.

Civic education offers information and/or educational programmes designed to increase the comprehension and knowledge of civil rights and responsibilities. Civic education activities can also include specifically targeted training for certain professional groups, such as police and security personnel, the media and political parties, in order to prepare them for their respective roles in the electoral process.<sup>1</sup> In turn, voter education is defined as an activity that raises awareness of the electoral process and the requirements and procedures for voter registration, voting, and other elements of the electoral process. Finally, voter information is typically implemented as short-term programmes that focus on specific electoral information, providing relevant factual information on a specific electoral process to voters on a timely basis.<sup>2</sup> UN jurisprudence requires all three elements above to ensure the effective exercise of ICCPR article 25 rights by an informed community, as well as civic education in public schools and elsewhere.

Non-partisan voter education should aim to inform voters as to the ‘who, what, where, when and how’ of registration and voting. It can also help to

inform the public on issues, such as why they should participate and what guarantees are in place to protect their right to participate in the process. Voter education should be accessible to all members of society, regardless of their language or level of literacy. As such, voter education material should be multimedia and multilingual and culturally appropriate for various social groups. Public bodies, such as the EMB where applicable, usually bear primary responsibility for civic and voter education programmes. Moreover, such programmes can also be implemented effectively by CSOs. At the sub-regional level, the ECOWAS Supplementary Protocol calls upon states to involve CSOs involved in electoral matters in civic education campaigns.<sup>3</sup>

Providing targeted and timely voter information on procedural issues in the registration and election process is largely the responsibility of public bodies, such as EMBs. However, political parties have a strategic campaign interest in ensuring that relevant information is disseminated among their potential voters. Political parties and independent candidates are responsible, in turn, for ensuring that the electorate is informed of their political programme and candidacies.

The following Table of Jurisprudence covers issues from all three elements emphasizing the obligation that States Must Take Necessary Steps to Give Effect to Rights, and focusing on the obligations of Transparency and the Right to Information, Universal Suffrage, the Right and Opportunity to Vote, Freedom from Discrimination and Equality under the Law.

### Table of Jurisprudence

11. Civic and Voter Education
11.1 Are there provisions mandating civic and voter education?
Transparency and the Right to Information
<p>ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include <b>freedom to seek, receive and impart information and ideas of all kinds</b>, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>UNCAC, Art. 10: Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such <b>measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate</b>. Such measures may include, inter alia: (a) <b>Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration</b> and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.</p> <p>UNCAC, Art. 13: Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to <b>promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations</b>, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) <b>Enhancing the transparency of and promoting the contribution of the public to decision-making processes</b>; (b) <b>Ensuring that the public has effective access to information</b>; (c) <b>Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula</b>; (d) <b>Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption</b>. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary.</p>

CCPR, GC 34, p. 18: Article 19 (of the ICCPR), paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. [...] As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output [...] p. 19: To give effect to the right of access to information, States parties should **proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information [...]**.

CCPR, GC 25, p. 11: **Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community.**

CRC/C/NOR/CO/4, Norway (2010), p 25: [...] in line with article 29 of the Convention, to ensure that the pilot project on voting from the age of 16 is appropriately supported through the **provision of civic and human rights education** and that impact of the project on the citizenship role of adolescents is evaluated.

A/HRC/RES/19/36 (2012), p. 19: [The Human Right Council] invites intergovernmental regional, sub-regional and other organizations and arrangements, national human rights institutions and relevant non-governmental organizations to engage actively in work at the local, national, sub-regional and regional levels to consistently support and consolidate democracy and the rule of law, and to initiate exchanges with the United Nations system on their experiences by, inter alia: (c) **Encouraging the study, in schools and universities, of democracy, the rule of law, human rights and good governance, as well as the functioning of public administration, political institutions and civil society organizations;** (d) **Elaborating and widely distributing reports, assessments, training materials, handbooks, case studies and documentation on various types of democratic constitutions, electoral systems and administration in order to assist populations in making more informed choices.**

CEDAW/C/TJK/CO/3 (2007), Tajikistan, p. 26: It (the Committee) further urges the State party to establish legal safeguards that would prevent the practice of family voting and to continue to **conduct educational campaigns** seeking to explain that voting for others is not acceptable and could invalidate the results of elections.

## 11.2 Is the EMB responsible for voter education and voter information?

### Transparency and the Right to Information; States Must Take Necessary Steps to Give Effect to Rights

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information.**

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNSC Res. 1389 (2002), p. 6: Notes with appreciation the ongoing support provided by the Public Information Section of UNAMSIL to the **National Electoral Commission in designing and implementing a civic education and public information strategy**, and encourages UNAMSIL to continue these efforts.

CCPR, GC 31, p. 7: [...] The Committee believes that it is important to **raise levels of awareness** about the Covenant not only among public officials and State agents but also among the population at large.

CCPR, GC 25, p.11: **Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.** p. 12: Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with. p. 20: [...] **Electors should be fully informed of these guarantees.**

CRC/C/NOR/CO/4, Norway (2010), p. 25: [...] in line with article 29 of the Convention, to ensure that the pilot project on voting from the age of 16 is appropriately supported through the **provision of civic and human rights education** and that impact of the project on the citizenship role of adolescents is evaluated.

CRC/C/AUT/CO/3-4, Austria (2012), p. 28: While noting that the voting age was lowered from 18 to 16 years in 2007 and that the right to participation is protected in article 4 of the Federal Constitutional Law on the rights of children, the Committee recommends that the State party conduct research to monitor the impact of the lowering of the voting age and **educate children on the exercise of the right to vote in an effective manner.** The Committee also recommends that the State party take into account its General Comment no. 12 (2009) and take effective measures to implement the right of the child to participation in relevant matters arising under the Convention.

### 11.3 Are there provisions targeting civic and voter education for women?

#### Equality Between Men and Women; States Must Take Necessary Steps to Give Effect to Rights

CEDAW, Art. 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, **on equal terms with men**, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

CEDAW, GR 3 (1987): [The Committee] urges all States parties effectively to **adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women.**

CEDAW/C/OMN/CO/1, Oman (2011), p. 32: The Committee calls upon the State party to: (c) **Develop training and mentoring programmes for women candidates and women elected to public office as well as programmes on leadership and negotiation skills for current and future women leaders.**

CEDAW/C/ETH/CO/6-7, Ethiopia (2011), p. 27: The Committee recommends that the State party: (d) provide **training on gender equality to politicians, journalists and decision makers, especially men, to enhance the understanding that the full, equal, free and democratic participation of women and men in political and public life is a requirement for the full implementation of the Convention.**

### 11.4 Are there provisions prescribing civic and voter education concerning minority rights?

#### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICERD, Art. 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, **States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction** as to race, colour, or national or ethnic origin, to equality before the law, **notably in the enjoyment of the** following rights: (c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (v) **The right to education and training.**

ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the **law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination** on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CERD/C/64/CO/5 (CERD, 2004), Nepal, p. 17: The Committee urges the State party to engage in efforts **to promote awareness among the general public, as well as among members of disadvantaged communities, of the importance of their active participation in public and political life.** The Committee recommends that the State party continue to enforce **special measures to guarantee to members of disadvantaged groups the right to participate in elections, to vote and stand for election, and to have due representation in government, legislative bodies and the judiciary.**

A/HRC/13/25 (Forum on Minority Issues, 2010), p. 23: States should **ensure that all mechanisms, procedures and institutions established to promote and increase the political participation of persons belonging to minorities take into account the specific needs of minority women,** as well as those of **other groups within minority communities potentially subjected to intersectional discrimination, such as minorities with disabilities.**

## 11.5 Are there provisions prescribing civic and voter education on the rights of persons with disabilities?

### Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 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.

CRPD, Preamble: The States Parties to the present Convention recognize the **importance of accessibility [...] to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms.** Definitions: 'Communication' includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.

CRPD, Art. 29: **States Parties shall** guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: b) **To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs,** without discrimination and on an equal basis with others, and encourage their participation in public affairs, including: (i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties; (ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information.**

CCPR, GC 25, p. 11: States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. p. 12: **Positive measures should be taken to overcome specific difficulties,** such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. **Information and materials about voting should be available** in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with. p. 20: Assistance provided to the disabled, blind or illiterate should be independent. Electors should be **fully informed** of these guarantees.

CRPD/C/PER/CO/1, Peru (2012), p. 44: The Committee remains concerned at: (b) the lack of information on measures taken in order to inform the persons with disabilities on the above-mentioned developments and prevent such violations from happening in the future. p. 45: The Committee recommends that the State party: (b) **Reach out to vulnerable individuals and protect people with disabilities from such violations in the future, including through relevant training.**

## 11.6 Are there provisions requiring public media airtime for voter information/education?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

**UNCAC, Art. 13(1):** Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations**, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**; (c) **Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula**; (d) **Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption**. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary.

**UNSC Res. 2065 (2012):** [The Security Council] *urges* the Independent Media Commission to ensure compliance with the Media Code of Practice, and *emphasizes* the **need for media practitioners to remain committed to providing professional, independent, and factual coverage and to promoting public education and dialogue during the electoral period**.

**CCPR, GC 25, p. 11: Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.** p. 12: **Positive measures should be taken to overcome specific difficulties**, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

## 11.7 Are electoral laws and electoral materials translated into minority and local languages and made widely available?

### States Must Take Necessary Steps to Give Effect to Rights; Freedom from Discrimination and Equality under the Law

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**UNCAC, Art. 13(1):** Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups outside the public sector, [...]** in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**.

**ICCPR, Art. 27:** In those States in which ethnic, religious or linguistic minorities exist, **persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language**.

CCPR, GC 25, p. 12: **Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages.** Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

CERD/C/MUS/CO/15-19, Mauritius (2013), p. 20: The Committee requests the State party to ensure that **proper status is given to the languages spoken by the various groups of the population.** The Committee also calls on the State party to **eliminate language barriers to equality and to the enjoyment of civil and political rights** as well as economic, social and cultural rights, in particular the right to education.

A/HRC/13/25 (Forum on Minority Issues, 2010), p. 19: There should be **no prohibition or unreasonable restriction placed on the use of any minority language during election campaigns**, although language use should naturally be determined by assessing how the broadest constituencies possible may be reached. As far as possible, **electoral authorities should provide voting information in both the official language and those minority languages used by voters in the areas where they are concentrated.**

## Resources

ACE Project, 'Civic and Voter Education', 2012, available at <<http://aceproject.org/ace-en/topics/ve>>, accessed 27 March 2014

Association of European Electoral Officials (ACEEEO), *Non armis, sed vi suffragiorum* [By the authority of the ballot, not the force of the bullet, Handbook on Youth Voter's Education] (ACEEEO, 2006), available at <[http://www.aceeeo.org/images/file/E-docs/handbook%20on%20youth%20voters%20ed\\_aceeeo\\_2006.pdf](http://www.aceeeo.org/images/file/E-docs/handbook%20on%20youth%20voters%20ed_aceeeo_2006.pdf)> accessed 27 March 2014

Democracy International (DI), *A Survey on Public Perception on Elections and Civic Education* (Bethesda, Md.: DI, 2013)

Elections Canada, *L'impact de l'éducation civique sur la participation électorale, Semaine Canadienne de la Démocratie*, available at <<http://www.democracy-democratie.ca/content.asp?section=res&dir=rsrch/icevt&document=icevt&lang=f#ftn1>>, accessed 10 February 2014

International Foundation for Electoral Systems (IFES) and National Democratic Institute (NDI), *Equal Access: How to Include Persons with Disabilities in Elections and Political Processes* (Washington, D.C.: IFES and NDI, 2014)

International IDEA, Civic Education Research Database, available at <<http://civiced.idea.int/>>, accessed 10 February 2014

International IDEA, *Electoral Management Design: The International IDEA Handbook* (Stockholm: International IDEA, 2006)

International IDEA, *Engaging the Electorate: Initiatives to Promote Voter Turnout from Around the World* (Stockholm: International IDEA, 2006)

United Nations (UN), *Human Rights and Elections: United Nations Handbook on the Legal, Technical and Human Rights Aspects of Elections* (New York and Geneva: UN, 1994)

## Notes

- <sup>1</sup> UN, 1994.
- <sup>2</sup> International IDEA 2006, p. 67.
- <sup>3</sup> ECOWAS Supplementary Protocol, Art. 8. ACDEG, Art. 12 calls on states to integrate civic education into their educational curricula.



# Chapter 12. Voter Eligibility

## Overview

Voter eligibility is the cornerstone of democratic elections. It refers to the criteria that legal frameworks impose on persons to be able to exercise their right to vote, often through prior registration. The Guidelines dedicate separate chapters to the principles of voter eligibility and their practical applications through voter registration processes. This division aims to facilitate the analysis and review of the issues related to these two interconnected aspects of an electoral process, in an attempt to help interested stakeholders identify whether potential gaps relate to enfranchisement rights or to their implementation.

Formal constitutional or legal recognition of the right and opportunity to vote is common to democratic states, and plays both a substantive and a confidence-building role. The Right and Opportunity to Vote is often subject to certain qualifications, such as citizenship, age and residency requirements. It is important to review the rationale behind such restrictions and their effects to ensure that this fundamental right is adequately protected in line with ICCPR obligations. For example, denial of suffrage rights for long-past political crimes or treason convictions can be abused. Even seemingly simple and clear rules, such as disqualification for ‘mental incapacity’, may require examination. Other obligations referenced in the following Table of Jurisprudence are Freedom from Discrimination and Equality under the Law, Universal Suffrage, and Equality between Men and Women.

The legal framework must state the circumstances under which a person’s eligibility rights may be curtailed or suspended, in what manner or to what degree. Meeting voter eligibility criteria is often a precondition to standing for election. Therefore, any limitation or restriction on the right to vote is

justifiable only by exceptional circumstances or according to commonly accepted principles of reasonableness. In this spirit, some states now waive citizenship requirements for supranational and local elections.<sup>1</sup> Unlike other rights, the ICCPR does not clearly describe grounds for derogation of this right; it leaves it to CCPR GC 25 to identify unreasonable criteria for its restriction.

The CCPR has received a steady flow of complaints against the disenfranchisement of convicts or persons detained but not yet convicted. Different jurisdictions have taken different approaches to the issue, ranging from a total ban on registering as a voter for any person convicted of any offence, to restricting the voting right for certain types of offences (most often for crimes of dishonesty). Some frameworks link the suspension of the right to vote to the term of imprisonment, while others uphold the right for all convicts. The CCPR holds that restrictions of the right to vote must be clearly laid down in the law and cannot be subject to discretion. In its case law, the CCPR holds that any convict deprived of voting rights must at least have access to an effective remedy. The ECOWAS Supplementary Protocol explicitly calls upon states to guarantee the eligibility of members of the armed forces and security personnel.<sup>2</sup>

In any case, ICCPR States Parties are required to ensure that disqualification factors do not entail impermissible discrimination and are limited in scope, so as to provide maximum reasonable enfranchisement of otherwise eligible voters. Procedures to determine voter eligibility must aim to accommodate universal participation and not create unnecessary technical barriers. For instance, advance registration can be allowed for those who reach the minimum voting age on election day, but after the close of registration. Suspension of the registration period or process should occur as closely as possible to election day so as to provide the greatest opportunity for electors to register.<sup>3</sup>

While the UN framework encapsulates the bulk of voter eligibility issues enumerated above, it would benefit from addressing the distinction of reaching voting age by the date of registration versus by election day. The distinction critically matters, given the demographic share of young persons in many countries around the world.

## Table of Jurisprudence

### 12. Voter Eligibility

#### 12.1 Does the law enfranchise all citizens of voting age?

##### Right and Opportunity to Vote, Universal Suffrage

ICCPR, Art. 25: Every citizen shall have **the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

**CCPR, GC 25**, p. 4: **Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria.** For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen [...].

**CCPR/C/CHN-MAC/CO/1, China, Macao (2013)**, p. 7: Macao, China should consider taking all preparatory measures with a view to introducing **universal** and equal **suffrage in conformity with the Covenant**, as a matter of priority. It should outline a clear and comprehensive plan of action and set timelines for the transition to an electoral system based on universal and equal suffrage that will ensure enjoyment by all its citizens of the right to vote and to stand for election in compliance with article 25 of the Covenant, taking due account of the Committee's General Comment no. 25 (1996).

#### 12.2 Are restrictions on the right to vote objective and reasonable?

##### Right and Opportunity to Vote

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

**CCPR, GC 25**, p. 4: Any **conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria.** For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. **The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.** For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office. p. 10: **The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions**, such as setting a minimum age limit for the right to vote. It is **unreasonable to restrict the right to vote on the ground of physical disability** or to impose **literacy, educational or property requirements.** **Party membership should not be a condition of eligibility to vote, nor a ground of disqualification.**

**CCPR/C/GBR/CO/6, United Kingdom of Great Britain and Northern Ireland (2008)**, p. 28: The Committee remains concerned at the State party's maintenance of section 3(1) of the Representation of the People Act 1983 **prohibiting convicted prisoners from exercising their right to vote**, especially in the light of the judgment of the European Court of Human Rights in *Hirst v. United Kingdom* (2005). The Committee is of the view that **general deprivation of the right to vote for convicted prisoners may not meet the requirements of article 10, paragraph 3, read in conjunction with article 25 of the Covenant.** (art. 25). The State party should review its legislation denying all convicted prisoners the right to vote in light of the Covenant.

**CRPD/C/CHN/CO/1, China (2012)**, p. 45: The Committee is concerned with article 26 of the **election law, which excludes citizens with intellectual and psychosocial impairments from the voting process.** (See Chapter 9 on Persons with Disabilities for further jurisprudence.)

Dissanayake, Mudiyansele Sumanaweera Banda v Sri Lanka, Comm. No. 1373/2005, UN Doc. CCPR/C/93/D/1373/2005, p. 8.5: As to the claim of a violation of article 25(b), due to the prohibition on the author from voting or from being elected for seven years after his release from prison, the Committee recalls that **the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds, established by law, which are objective and reasonable. It also recalls that 'if a conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence'**. While noting that the restrictions in question are established by law, the Committee notes that, except for the assertion that the restrictions are reasonable, the State party has provided no argument as to how the restrictions on the author's right to vote or stand for office are proportionate to the offence and sentence. Given that these restrictions rely on the author's conviction and sentence, which the Committee has found to be arbitrary in violation of article 9, paragraph 1, as well as the fact that the State party has failed to adduce any justifications about the reasonableness and/or proportionality of these restrictions, the Committee concludes that **the prohibition on the author's right to be elected or to vote for a period of seven years after conviction and completion of sentence are unreasonable** and thus amount to a violation of article 25(b) of the Covenant.

A/50/40, paras. 408–435, Hong Kong (1995), p. 19: [...] [The Human Rights Committee] is also concerned that **laws depriving convicted persons of their voting rights for periods of up to 10 years may be a disproportionate restriction of the rights protected by article 25**.

A/HRC/13/25 (Forum on Minority Issues, 2010), p. 26: **Where citizenship is a requirement for voting, election to political office or appointment to a position in the public service, there should be a reasonable process for attaining such citizenship that is clearly defined, widely communicated and non-discriminatory** with regard to race, ethnicity or religion. The process **should not be prohibitive or present deterrents**, such as being **unduly lengthy, costly or otherwise burdensome** for persons who meet the requirements.

## 12.3 Is the right to vote restricted in a discriminatory or arbitrary manner?

### Right and Opportunity to Vote

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law**. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CCPR, GC 25, p. 10: The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements. Party membership should not be a condition of eligibility to vote, nor a ground of disqualification. p. 14: Persons who are **deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote**.

CCPR/CO/77/LUX, Luxembourg (2003), p. 8: The Committee remains concerned that, for a large number of offences, **the systematic deprivation of the right to vote is an additional penalty in criminal cases** (article 25 of the Covenant).

CCPR/C/USA/CO/3, United States of America (2006), p. 35: The Committee is concerned that about **five million citizens cannot vote due to a felony conviction**, and that this practice has **significant racial implications**. [...] The Committee is of the view that general deprivation of the right to vote for persons who have received a **felony conviction**, and in particular those who are no longer deprived of liberty, **do not meet the requirements of articles 25 of 26 of the Covenant**, nor serves the rehabilitation goals of article 10(3). [...].

CRPD/C/ESP/CO/1, Spain (2011), p. 48: The Committee recommends that all relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others. The Committee requests the State party to amend art. 3 of Organic Act 5/1985, which **allows the denial of the right to vote based on individualized decisions taken by a judge**. The amendment should ensure that all persons with disabilities have the right to vote. Furthermore, it is recommended that all persons with disabilities who are elected to a public position are provided with all required support, including personal assistants.

*Denis Yevdokimov and Artiom Rezanov v Russian Federation*, Comm. 1410/2005, UN Doc. CCPR/C/101/D/1410/2005, p. 7.4: The Committee recalls its General Comment No. 25 which states that the right to vote and to be elected is not an absolute right, and that the restrictions may be imposed on it provided they are not discriminatory or unreasonable. It also states that **if conviction for an offence is a basis for suspending the right to vote, the period for such suspension should be proportionate to the offence and the sentence**. p. 7.5: The Committee [...] is also aware [...] that the principle of proportionality requires sufficient link between the sanction and the conduct and circumstances of the individual concerned. The Committee notes that the State party, whose legislation provides a **blanket deprivation of the right to vote to anyone sentenced to a term of imprisonment, did not provide any arguments as to how the restrictions in this particular case would meet the criterion of reasonableness as required by the Covenant**. In the circumstances, the Committee concludes there has been a **violation of article 25 alone and in conjunction with article 2, paragraph 3 of the Covenant**.

*Luciano Weinberger Weisz v. Uruguay*, Comm. No. R.7/28, UN Doc. Supp. No. 40 (A/36/40) at 114 (1981), p. 15: The Human Rights Committee is aware that under the legislation of many countries criminal offenders may be deprived of certain political rights. Accordingly, article 25 of the Covenant only prohibits 'unreasonable' restrictions. **In no case, however, may a person be subjected to such sanctions solely because of his or her political opinion** (arts. 2(1) and 26). Furthermore, in the circumstances of the present case there is **no justification for such a deprivation of all political rights for a period of 15 years**.

*Fongom Gorji-Dinka v. Cameroon*, Comm. No. 1134/2002, UN Doc. CCPR/C/83/D/1134/2002 (2005), p. 5.6: As regards the author's claim that the removal of his name from the voters' register violates his rights under **article 25(b)** of the Covenant, the Committee observes that the **exercise of the right to vote and to be elected may not be suspended or excluded except on grounds established by law which are objective and reasonable**. Although the letter dated 25 March 1998, which informed the author of the removal of his name from the register of voters, refers to the 'current electoral law', it justifies that measure with his 'judicial antecedent'. In this regard, the Committee reiterates that **persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote [...]**. It also recalls that **persons who are otherwise eligible to stand for election should not be excluded by reason of political affiliation**. In the absence of any objective and reasonable grounds to justify the author's deprivation of his right to vote and to be elected, the Committee concludes, on the basis of the material before it, that the removal of the author's name from the voters' register amounts to a violation of his rights under article 25(b) of the Covenant.

*Dissanayake, Mudiyansele Sumanaweera Banda v. Sri Lanka*, Comm. No. 1373/2005 UN Doc. CCPR/C/93/D/1373/2005, p. 8.5: As to the claim of a violation of article 25(b), due to the **prohibition on the author from voting or from being elected for seven years after his release from prison**, the Committee recalls that the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds, established by law, which are objective and reasonable. It also recalls that **'if a conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence'**. While noting that the restrictions in question are established by law, the Committee notes that, except for the assertion that the restrictions are reasonable, the State party has provided no argument as to how the restrictions on the author's right to vote or stand for office are proportionate to the offence and sentence. Given that these restrictions rely on the author's conviction and sentence, which the Committee has found to be arbitrary in violation of article 9, paragraph 1, as well as the fact that the State party has failed to adduce any justifications about the reasonableness and/or proportionality of these restrictions, the Committee concludes that the **prohibition on the author's right to be elected or to vote for a period of seven years after conviction and completion of sentence, are unreasonable** and thus amount to a violation of article 25(b) of the Covenant.

## 12.4 Are detainees and convicts deprived of the right to vote?

### Right and Opportunity to Vote

ICCPR Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CCPR, GC 25, p. 14: Persons who are **deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote**.

CCPR/CO/77/LUX, Luxembourg (2003), p. 8: The Committee remains concerned that, for a large number of offences, **the systematic deprivation of the right to vote is an additional penalty in criminal cases** (article 25 of the Covenant).

CCPR/C/GBR/CO/6, United Kingdom of Great Britain and Northern Ireland (2008), p. 28: The Committee remains concerned at the State party's maintenance of section 3(1) of the Representation of the People Act 1983 **prohibiting convicted prisoners from exercising their right to vote**, especially in the light of the judgment of the European Court of Human Rights in *Hirst v. United Kingdom* (2005). The Committee is of the view that **general deprivation of the right to vote for convicted prisoners may not meet the requirements of article 10, paragraph 3 read in conjunction with article 25 of the Covenant**. The State party should review its legislation denying all convicted prisoners the right to vote in light of the Covenant.

CCPR/C/USA/CO/3, United States of America (2006), p. 35: The Committee is concerned that about **five million citizens cannot vote due to a felony conviction**, and that this practice has significant racial implications. [...] The Committee is of the view that **general deprivation of the right vote for persons who have received a felony conviction, and in particular those who are no longer deprived of liberty, do not meet the requirements of articles 25 of 26 of the Covenant**, nor serves the rehabilitation goals of article 10 (3). The State party should adopt appropriate measures to ensure that states **restore voting rights to citizens who have fully served their sentences and those who have been released on parole** [...].

A/50/40, paras. 408–435, Hong Kong (1995), p. 19: [...] [The Human Rights Committee] is also concerned that laws **depriving convicted persons of their voting rights for periods of up to 10 years may be a disproportionate restriction** of the rights protected by article 25.

Dissanayake, Mudiyansele Sumanaweera Banda v Sri Lanka, Comm. No. 1373/2005, UN Doc. CCPR/C/93/D/1373/2005, p. 8.5: As to the claim of a violation of article 25(b), due to the prohibition on the author from voting or from being elected for seven years after his release from prison, the Committee recalls that the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds, established by law, which are objective and reasonable. It also recalls that **'if a conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence'**. While noting that the restrictions in question are established by law, the Committee notes that, except for the assertion that the restrictions are reasonable, the State party has provided no argument as to how the restrictions on the author's right to vote or stand for office are proportionate to the offence and sentence. Given that these restrictions rely on the author's conviction and sentence, which the Committee has found to be arbitrary in violation of article 9, paragraph 1 as well as the fact that the State party has failed to adduce any justifications about the reasonableness and/or proportionality of these restrictions, the Committee concludes that the prohibition on the author's right to be elected or to vote for a period of seven years after conviction and completion of sentence are unreasonable and thus amount to a violation of article 25(b) of the Covenant.

Denis Yevdokimov and Artiom Rezanov v Russian Federation, Comm. 1410/2005, UN Doc. CCPR/C/101/D/1410/2005 (2011), p. 7.4: The Committee recalls its General Comment No. 25 which states that the right to vote and to be elected is not an absolute right, and that the restrictions may be imposed on it provided they are not discriminatory or unreasonable. It also states that **if conviction for an offence is a basis for suspending the right to vote, the period for such suspension should be proportionate to the offence and the sentence**. The Committee notes that, in the present case, the deprivation of the right to vote is coextensive with any prison sentence and recalls that, according to article 10, paragraph 3 of the Covenant, the **penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation**. It also recalls the United Nations Basic Principles for the Treatment of Prisoners. Principle 5 indicates that 'except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party [...] the International Covenant on Civil and Political Rights [...]'. p. 7.5: The Committee notes the State party's reference to earlier decisions of the European Court of Human Rights. However, the Committee is also aware of the Court's judgment in the case *Hirst v United Kingdom*, in which the Court affirmed that the principle of proportionality requires sufficient link between the sanction and the conduct and circumstances of the individual concerned. The Committee notes that the State party, whose legislation provides a **blanket deprivation of the right to vote to anyone sentenced to a term of imprisonment, did not provide any arguments as to how the restrictions in this particular case would meet the criterion of reasonableness as required by the Covenant**. In the circumstances, the Committee concludes there has been a **violation of article 25 alone and in conjunction with article 2, paragraph 3, of the Covenant**.

## 12.5 Do voter eligibility criteria discriminate against minorities?

### Freedom from Discrimination and Equality under the Law; Right and Opportunity to Vote

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 25: Every citizen shall have the **right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICERD, Art. 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice; (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (c) **Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.**

CCPR/C/USA/CO/3, *United States of America* (2006), p. 35: The Committee is concerned that about five million citizens cannot vote due to a felony conviction, and that this practice has significant racial implications. [...] The Committee is of the view that general deprivation of the right vote for persons who have received a felony conviction, and in particular those who are no longer deprived of liberty, **do not meet the requirements of articles 25 of 26 of the Covenant**, nor serves the rehabilitation goals of article 10 (3). The State party should adopt appropriate measures to ensure that states restore voting rights to citizens who have fully served their sentences and those who have been released on parole. The Committee also recommends that the State party review regulations relating to **deprivation of votes for felony conviction to ensure that they always meet the reasonableness test of article 25**. The State party should also assess the extent to which such regulations **disproportionately impact on the rights of minority groups** and provide the Committee with detailed information in this regard.

## 12.6 Do the laws or procedures on acquiring or conferring citizenship discriminate based on gender?

### Equality between Men and Women; Freedom from Discrimination and Equality under the Law

CEDAW, Art. 7: States Parties shall take **all appropriate measures to eliminate discrimination against women in the political and public life of the country** [...].

ICCPR, Art. 3: The States Parties to the present Covenant undertake to **ensure the equal right of men and women to the enjoyment of all civil and political rights** set forth in the present Covenant.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status.

CEDAW, Art 9: (1) States Parties shall **grant women equal rights with men to acquire, change or retain their nationality**. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. (2) States Parties shall **grant women equal rights with men with respect to the nationality of their children**.

CEDAW/A/59/38, *Kuwait* (2004), p. 66: [...] In particular, the Committee is concerned that the Nationality Act **allows Kuwaiti women to transfer their nationality to their children only in specific circumstances**, such as when the nationality of the father is unknown or if he is stateless or deceased, or after an irrevocable divorce.

CEDAW/C/NER/CO/2, *Niger* (2007), p. 15: [...] The Committee is concerned about continuing legal provisions and regulations that discriminate against women, including the **law on nationality, which does not give women of the Niger who marry foreigners the option to transmit their nationality to their spouse** [...].

CEDAW/C/KWT/CO/3-4, Kuwait (2011), p. 44: The Committee reiterates its concern that nationality can be acquired and transferred, with few exceptions, only through a husband or father of Kuwaiti nationality, which disproportionately affects the stateless persons, including the Bidoun—“illegal residents”—and about the **lack of birth certificates and other identification documents of children of stateless Bidoun women and men married to non-Kuwaitis**.

## 12.7 Are persons with mental disabilities and those under guardianship enfranchised?

### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CRPD/C/CHN/CO/1 (CRPD, 2012), China, p. 45: The Committee is concerned with article 26 of the election law, which excludes citizens with **intellectual and psychosocial impairments** from the voting process. p. 46: The Committee recommends that the State party revise article 26 of the election law to **ensure that all persons with disabilities have the right to vote on an equal basis with others**.

CCPR/C/BLZ/CO/1, Belize, (2013), p. 24: The Committee is concerned that persons found to be suffering from mental disabilities under any law in force in the State party are disqualified from voting and registering to vote (arts. 25 and 26). **The State party should revise its legislation to ensure that it does not discriminate against persons with mental intellectual or psychosocial disabilities by denying them the right to vote** on bases that are disproportionate or that have no reasonable and objective relationship to their ability to vote, taking account of article 25 of the Covenant, and article 29 of the Convention on the Rights of Persons with Disabilities.

CRPD/C/ARG/CO/1, Argentina (2012), p. 47: The Committee would like to express its recognition of the fact that the State party has repealed the provisions in its electoral code that barred deaf-mute persons who do not know how to communicate in writing and persons with psychosocial or intellectual disabilities who have been interned in public institutions from exercising their right to vote. Nevertheless, the Committee remains concerned by: (a) the fact that **the amendments to the electoral code have not included the elimination of the provision whereby persons who have been declared legally incompetent by a court of law are barred from exercising their right to vote**; (b) The lack of appropriate measures for ensuring that institutionalized persons with disabilities have access to the polls and can leave the institutions in question in order to vote.

CRPD/C/TUN/CO/1, Tunisia (2011), p. 35: The Committee recommends the urgent adoption of legislative measures to ensure that persons with disabilities, including **persons who are currently under guardianship or trusteeship, can exercise their right to vote and participate in public life, on an equal basis with others**.

CRPD/C/HUN/CO/1, Hungary (2012), p. 26: The Committee recommends that the State party use effectively the current review process of its civil code and related laws to take **immediate steps to derogate guardianship in order to move from substitute decision-making to supported decision-making which respects the person's autonomy**, will and preferences and is in full conformity with article 12 of the Convention, **including with respect to the individual's right**, in his/her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to choose a place of residence [...].

## 12.8 Are any residency requirements on the exercise of the right to vote reasonable?

### Freedom from Discrimination and Equality under the Law; Universal Suffrage

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.



CCPR, GC 25, p. 11: If residence requirements apply to registration, they must be reasonable, and **should not** be imposed in such a way as to **exclude the homeless from the right to vote**.

Marie-Hélène Gillot v. France, Comm. No. 932/2000, UN Doc. A/57/40 at 270 (2002), p. 11.2: The Committee has to determine whether the restrictions imposed on the electorate for the purposes of the local referendums of 8 November 1998 and in 2014 or thereafter constitute a violation of articles 25 and 26 of the Covenant [...]. p. 13.1: The authors maintain [...] that the criteria used to determine the electorates in local ballots represent a departure from French rules on electoral matters (the right to vote can be made dependent only on the criterion of inclusion on an electoral roll, either of the commune of domicile, irrespective of the period of residence, or of the commune of actual residence for at least 6 months) and thereby impose on them discriminatory restrictions which are contrary to the International Covenant on Civil and Political Rights. p. 13.2: In order to determine the discriminatory or non-discriminatory character of the criteria in dispute, in conformity with its above-mentioned decisions, **the Committee considers that the evaluation of any restrictions must be effected on a case-by-case basis, having regard in particular to the purpose of such restrictions and the principle of proportionality**. p. 13.17: Furthermore, in the Committee's view, the **restrictions on the electorate** resulting from the criteria used for the referendum of 1998 and referendums from 2014 onwards **respect the criterion of proportionality to the extent that they are strictly limited *ratione loci* to local ballots on self-determination and therefore have no consequences for participation in general elections, whether legislative, presidential, European or municipal, or other referendums**. p. 13.18: Consequently, the Committee considers that the criteria for the determination of the electorates for the referendums of 1998 and 2014 or thereafter are not discriminatory, but are based on objective grounds for differentiation that are reasonable and compatible with the provisions of the Covenant.

CRPD/C/HUN/CO/1, Hungary (2012), p. 46: The Committee recommends that all relevant legislation be reviewed to ensure that all persons with disabilities regardless of their impairment, legal status or **place of residence** have a right to vote, and that they can participate in political and public life on an equal basis with others.

## 12.9 Are there provisions allowing for registration from abroad?

### Right and Opportunity to Vote

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICMW, Art. 41(1): Migrant workers and members of their families shall have the right to **participate in public affairs of their State of origin and to vote and to be elected at elections of that State**, in accordance with its legislation.

A/HRC/20/24/Add.1 (SR on the human rights of migrants, 2012), Albania, p. 37: [...] Whereas **national law protects the political rights and freedoms of Albanian migrants abroad and provides that the State should create the necessary facilities for them to exercise the right to vote**, article 11 of the Electoral Code stipulates that this right can only be exercised on the territory of Albania. The Special Rapporteur heard criticism that independent voting at consular offices remains problematic. p. 72: (f) **guarantee in law and practice the right of Albanian citizens abroad to participate in national public life and to vote**, including through the review of the Electoral Code.

A/HRC/21/63, (SR Cambodia, 2012), p. 81: Since Cambodia allows dual citizenship, **the National Election Committee should make it possible for Cambodians living abroad to exercise their voting rights**, at least in the countries where it has diplomatic and/or consular representation, as done by many other countries.

CMW/C/AZE/CO/2, Azerbaijan (2013), p. 35: The Committee recommends that the State party increase its efforts to **facilitate the exercise of voting rights of Azerbaijani nationals working abroad**, particularly in light of the next presidential elections to be held in October 2013.

CMW/C/PHL/CO/1, Philippines (2009), p. 35: While also noting the efforts undertaken by the State party to facilitate the participation of migrant workers abroad in elections for President, Vice President, Senators and Party-list representatives, the Committee is concerned that the **pre-required 'affidavit of intent to return to the Philippines within 3 years' for immigrants/permanent residents abroad may limit the exercise of their right to vote.** p. 38: The Committee encourages the State party to continue its efforts to: (a) encourage Filipino **workers abroad to register and participate in elections,** (b) **maintain a register of overseas voters and take additional steps to facilitate the exercise of voting rights by Filipino migrant workers residing abroad,** (c) invite the Philippine Congress to consider the proposals to amend RA 9189 to delete the requirement of an 'affidavit of intent to return'.

CMW/C/MEX/CO/1, Mexico (2006), p. 10: The Committee also recognizes the efforts made by the State party for **voting rights to be extended to Mexican citizens resident abroad.**

CMW/C/BIH/CO/2, Bosnia and Herzegovina (2012), p. 40: In the light of the next general elections to be held in 2014, the Committee recommends that the State party increase its efforts to **facilitate the exercise of voting rights of Bosnian nationals working abroad.**

## 12.10 Are eligible resident non-citizens allowed to register to vote in local elections?

### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, **national** or social origin, property, birth or other status.

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICMW, Art. 42: (2) States of employment shall facilitate, in accordance with their national legislation, the consultation or **participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.** (3) **Migrant workers may enjoy political rights in the State of employment** if that State, in the exercise of its sovereignty, grants them such rights.

CCPR, GC 25, p. 3: Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25. State reports should indicate whether any groups, such as **permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.**

A/HRC/13/25 (Forum on minority issues, 2010), p. 27: **Efforts should be made to accommodate the political participation of documented and regular migrant workers at the municipal level.** This may include **recognition of voting rights in municipal elections** or the creation of special consultative bodies at the municipal level for enabling dialogue on issues of concern to migrants.

CMW/C/BOL/CO/1 (2008), p. 8: The Committee welcomes the fact that, pursuant to Electoral Code, art. 93(b), **foreigners have the right to vote in municipal elections.**

CMW/C/COL/CO/1 (2009), p. 6: The Committee further welcomes: (c) The entry into force of Act No. 1070 of 2006 governing the voting rights of foreigners resident in Colombia, and of Decision No. 373 of 31 January 2007, which **enabled foreigners resident in Colombia to register to vote in the elections for mayors, municipal councillors and members of local administrative bodies,** held on 28 October 2007.

CERD/C/ITA/CO/16-18, *Italy* (2012), p. 24: The Committee notes that a number of Roma who came to Italy following the dismantling of the former Yugoslavia have lived in Italy for many years without citizenship, a situation which also affects their children. The Committee notes that citizenship for children born in Italy whose parents are foreigners is still to be granted (art. 5). The Committee recommends that the State party **take measures to facilitate access to citizenship** for stateless Roma, Sinti and **non-citizens** who have lived in Italy for many years, and to pay due attention to and remove existing barriers. Bearing in mind the 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness, the Committee also recommends that the State party **take measures to reduce statelessness**, in particular statelessness among Roma and Sinti children and children born in Italy.

CCPR/CO/78/PRT, *Portugal* (2003), p. 6: The Committee welcomes the **granting to foreigners of the rights to vote and to be elected in local elections**, as well as the recognition of broader political rights for citizens of Portuguese-speaking countries, under condition of reciprocity.

CERD/C/JOR/CO/13-17, *Jordan* (2012), p. 13: The Committee is further concerned that, as **non-citizen residents**, Jordan's large refugee population **remains unable to participate in the political processes and decision-making in the State party**. [...] The Committee recommends that the State party consider further amendments to its election law and apportionment of parliamentary seats to **facilitate proportionate representation of Jordanians of all ethnic origin as well as non-national residents in its politics and decision making**.

## Resources

ACE Project, 'Focus on Elections and Disabilities', available at <<http://aceproject.org/ace-en/focus/disability/default/?searchterm=disabilities>>, accessed 28 March 2014

Carter, C., 'The Right to Vote for Non-Resident Citizens: Considered through the Example of East-Timor', *Texas International Law Journal*, 46 (2001), pp. 655-74

Electoral Institute for Sustainable Democracy in Africa (EISA), *Voter Registration in Africa: Comparative Analysis* (Johannesburg: EISA, 2010)

European Union (EU), *Methodological Guide on Electoral Assistance* (Brussels: EU, 2006), available at <[http://ec.europa.eu/europeaid/what/human-rights/election\\_observation\\_missions/documents/election-assistance-methodological-guide\\_en.pdf](http://ec.europa.eu/europeaid/what/human-rights/election_observation_missions/documents/election-assistance-methodological-guide_en.pdf)>, accessed 10 February 2014

Grace, J., *The Electoral Rights of Conflict Forced Migrants: A Review of Relevant Legal Norms and Instruments, Participatory Elections Project*, Discussion Paper No. 1 (Geneva: International Organization for Migration, 2003), available at <[http://www.geneseo.edu/~iompress/Archive/Outputs/Review%20of%20Legal\\_Final.pdf](http://www.geneseo.edu/~iompress/Archive/Outputs/Review%20of%20Legal_Final.pdf)>, accessed 10 February 2014

Groenendijk, K., *Local Voting Rights for Non Nationals in Europe: What We Know and What We Need to Learn* (Washington, D.C.: Migration Policy Institute, 2008), available at <<http://www.migrationpolicy.org/transatlantic/docs/Groenendijk-final.pdf>>, accessed 10 February 2014

Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines for Reviewing a Legal Framework for Elections* (OSCE/ODIHR, 2013)

Yard, M., *Civil and Voter Registries: Lessons Learned from Global Experiences*

(Washington, D.C.: International Foundation for Electoral Systems, 2011)

United Nations (UN), *Human Rights and Elections: United Nations Handbook on the Legal, Technical and Human Rights Aspects of Elections* (New York and Geneva: UN, 1994)

## Notes

- <sup>1</sup> The Treaty of the European Union (Maastricht Treaty) establishes in Art. 8 (b)1 the right of non-national EU citizens to vote and to stand in municipal elections of the state in which they reside.
- <sup>2</sup> ECOWAS Supplementary Protocol, Art. 21.
- <sup>3</sup> UN, 1994.

# Chapter 13. Voter Registration

## Overview

Voter registration is often the most controversial and expensive component of an electoral process. No voter register is completely current and accurate, thus all voter lists remain exposed to complaints and objections, both of technical and political nature. Despite the central role played by voter registration activities in the electoral cycle and its significant costs, its relevance for EMB strategic planning and democracy support capacity-building programming has only fully emerged in recent years. Voter registration processes, regardless of the registration model or technology applications chosen to support them, touch upon broader issues related to the state's administrative structure and social contracts. Voter eligibility rules are examined in Chapter 12.

The general international obligations that affect voter registration are the Right to Vote and the State Must Take Necessary Steps to Give Effects to Rights. The right to vote is violated if the legal framework makes it unreasonably difficult for a person to register to vote, as a person who is not registered can generally not vote. The right to vote is also violated if the legal framework fails to ensure accuracy in voter registers, or fails to enable the detection of fraudulent registration, compromising the obligation to guarantee Equal and Universal Suffrage by diluting the weight of legitimate votes. States are thus required to ensure that voter registers are comprehensive, inclusive, accurate and up to date, and that the registration process and voter register are fully transparent.

The legal framework may place the responsibility to register to vote on the individual, an approach referred to as active voter registration. This option requires the individual applicant to proactively seek registration with the competent authorities. Alternatively, the legal framework may hold the

state responsible for deriving voter lists from the civil register, an approach known as passive voter registration. Another passive registration approach tasks the EMB or other competent body with compiling voter registers, either by sending official enumerators from house to house to register voters or by extrapolating eligible voter data from the civil registry. Some frameworks may also split the responsibility between the state and citizens. In all cases, however, the final responsibility for the voter register lies with a local or central state authority or EMB, which must ensure that voter registers are maintained in an accurate, current, complete, transparent and secure manner, in full respect of the Freedom from Discrimination and Equality under the Law.

Regardless of the approach chosen, the voter registration process aims to facilitate the registration of eligible voters while safeguarding against the registration of ineligible persons. Hence, the legal framework for elections is called on to define:

- types of citizenship and proof of age documentation;
- types of residency documentation;
- methods of voter registration;
- processes for dealing with objections and appeals;
- voter identification; and
- documentation required by voters.

All of the above must be clearly stated in the law, objectively determinable and not be subject to arbitrary decision. The obligations of Transparency and the Right to Information require that voter registers are public documents that can be monitored and made available for inspection at no cost to the requester. In order to guarantee respect for the underlying treaty obligations, the legal framework ideally specifies who may access voter registers, how the inspection will take place and when voter registers are available for public inspection. Transparency and accuracy of the process also require the law to specify who is permitted to request registration changes, additions and deletions. The framework must also detail the procedure for making such requests and the time period during which such requests may be made. Requests for changes, additions and deletions in voter registers should be cut off by a minimum time period before an election in order to finalize and close registers. Persons may be entitled to make requests that relate to other people in addition to themselves. When a person is permitted to make a request that affects another person, the other person must be notified of the request and be permitted to respond to the request.

Changes, additions and deletions require regulation to ensure that they are only made upon the presentation of specific documentation and in accordance with the procedure identified in the legislation. Before finalizing voter registers, all registered political parties can be given notice of (and provided

access to) the registers so that they may verify, object to or seek to add such names as they wish. To abide by its obligations, states are required to ensure that decisions on requests are made expeditiously within a set time period provided by law. Decisions can be subject to administrative and judicial appeal, to be determined within a similarly established and expeditious timeframe, so as to ensure that registered voters are able to exercise their article 25 rights on election day.

Legal frameworks often require applicants to disclose certain information to authorities when registering as a voter. In order to protect the ICCPR-enshrined right to privacy, legislation related directly to voter registration is required to regulate and prevent the collection, use or dissemination of such personal data or information for any purpose other than the exercise of suffrage rights. This includes provisions that relate to iris recognition, fingerprints, photographs and personal identification numbers, as well as to ethnicity or other factors that could lead to discrimination, compromise the secrecy of the vote or place the voter at risk of political reprisal.

In their voter registration procedures, states are called upon to specify what personal information and data will be publicly listed on the voter register. Similar safeguards must also be in place where voter lists are based on civil registration data. Clearly stating the permitted uses of information obtained from cross-checking voter and civil registers, and whether the information can be used for purposes other than challenging the registration of a particular voter, will also contribute to protecting citizen rights. Laws can regulate whether such information can be used for the campaign activities of political parties and candidates, police investigations, or commercial or other purposes. National legal frameworks are also entrusted with determining sanctions for the misuse of information obtained from voter registers.

Overall, UN jurisprudence addresses voter registration fairly exhaustively, although it has not expressly called for the continuous or sufficiently periodic update of voter registers, to ensure that they are accurate and up-to-date. International treaties and jurisprudence do not determine what voter registration method is preferable, and consider this choice to be context driven, even if case law advocates sustainable and locally owned solutions. The specific issue of voter list transparency and accessibility is expressly referenced in the ECOWAS Supplementary Protocol, which calls upon states to ‘prepare voter lists in a transparent and reliable manner’, with the collaboration of political parties and voters.<sup>1</sup> Furthermore, the ECOWAS Supplementary Act A/SA.1/01/10 on Personal Data Protection recognizes the progress made in the area of Information and Communication Technologies (ICT) and the subsequent challenges in protecting personal data. The document equally identifies the rights of individuals whose personal data are being processed (Chapter VI) as well as the obligations of personal data controllers (Chapter VII).<sup>2</sup>

## Table of Jurisprudence

### 13. Voter Registration

#### 13.1 Are there provisions requiring an accurate, inclusive and updated voter register?

##### Universal Suffrage

ICCPR, Art. 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.

UNSC Res. 1944, Haiti (2010): Acknowledging the continued support of the Organization of American States to modernize the Haitian voter registry and stressing the **importance of updating the voter list** following the devastation caused by the earthquake of 12 January 2010.

CCPR, GC 25, p. 11: **States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed.** If residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote. Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced. p. 12: Positive measures should be taken to overcome [...] impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively.

A/HRC/12/15 (UPR, 2009), The Former Yugoslav Republic of Macedonia, p. 77: Conclusions and/or Recommendation, No. 37: [...] **Compile a new voter registration list to ensure full participation** of the electorate in future elections.

A/HRC/17/30/Add.2 (SR on the independence of judges and lawyers, 2011), p. 120 (b): The Special Rapporteur recommends that the Government of Mozambique, with the assistance of the international community: [Recommends to] (iii) undertake the necessary steps to **provide Mozambicans with national identification cards** to allow them to be fully recognized as persons before the law.

#### 13.2 Are there provisions requiring that the voter registration process is transparent and accessible?

##### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information.**

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

UNCAC, Art. 5(1): **Each State Party shall**, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that **promote the participation of society and reflect the principles** of the rule of law, proper management of public affairs and public property, integrity, **transparency and accountability.**

CCPR, GC 25, p. 11: **Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.**



CCPR/C/CPV/CO/1, *Cape Verde* (2012), p. 17: The Committee notes the lack of information on the measures taken by the State party to implement the recommendation of the National Electoral Commission to amend the provisions of its Electoral Code in order to ensure greater security and transparency in the conduct of elections. The Committee also notes the **lack of information on the measures taken to review the voter identification and registration processes** (art. 25). The State party should provide information on the concrete measures taken to implement the recommendations of the National Electoral Commission to amend the Electoral Code in order to ensure greater electoral security and transparency, and to review the voter identification and registration processes.

A/HRC/21/63 (SR *Cambodia*, 2012), p. 78: The electoral process, including the **voter registration process**, and the manner in which electoral disputes are dealt with should be **transparent** and conform to international standards. For example, the National Electoral Committee should make public the names of polling officers [...].

### 13.3 Are there any direct or indirect fees for the issuance of documents necessary to register?

#### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, **property**, birth or **other status**.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CCPR, GC 25, p. 12: **Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively.**

A/HRC/21/63 (SR *Cambodia*, 2012), p. 73: There should be a more **effective, impartial and non-discriminatory procedure for the registration of voters** in Cambodia. Accordingly, the government should expeditiously provide necessary documents, Khmer nationality identity cards, passports and other necessary civil registration documents to all citizens for nominal fees and should reregister voters using the data from those cards as a basis to establish a new electoral roll. p. 74: **Any Cambodian citizen eligible to vote should be entitled to request registration with the electoral and/or local authorities at any point during the year.**

CCPR/C/BIH/CO/1, *Bosnia and Herzegovina* (2006), p. 22: [...] **The State party should remove administrative obstacles and fees in order to ensure that all Roma are provided with personal documents, including birth certificates**, which are necessary for them to have access to health insurance, social security, education and other basic rights.

### 13.4 Are there provisions allowing for positive measures to include women in the voter register?

#### States Must Take Necessary Steps to Give Effect to Rights; Equality Between Men and Women

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 3: **The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.**

CEDAW, Art. 7: **States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:** (a) **To vote in all elections and public referenda** and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

CEDAW, GR 25 (2004), p. 35: The Committee draws attention to and reiterates its General Recommendation No. 9, on statistical data concerning the situation of women, and recommends that States parties provide statistical data disaggregated by sex **in order to measure the achievement of progress towards women's de facto or substantive equality and the effectiveness of temporary special measures.**

CEDAW/A/57/38, Yemen (2002), p. 402: While welcoming the State party's plans to ensure women's participation in the upcoming electoral registration process, the Committee is **concerned about the low rate of registration of women as voters and their low representation on electoral lists and in political decision-making bodies.** p. 403: The Committee requests the State party to **take measures to increase the political representation of women as voters and as candidates at all levels [...].**

CEDAW/C/PAK/CO/4 Pakistan, (2013), p. 26: The Committee calls upon the State party to establish a **procedure for filing complaints in cases of forced disenfranchisement of women** and adopt the draft bill submitted by the Election Commission of Pakistan, **advocating re-polling where less than 10 per cent of women's votes were polled.**

### 13.5 Does the legal framework provide effective measures to include minorities on the voter register?

#### States Must Take Necessary Steps to Give Effect to Rights; Right and Opportunity to Vote

ICCPR Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICERD, Art. 5: [...] **States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:** (c) **Political rights, in particular the right to participate in elections—to vote** and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (d)(iii) **The right to nationality.**

A/HRC/13/25 (Forum on Minority Issues, 2010), p. 26: Where citizenship is a requirement for voting, election to political office or appointment to a position in the public service, there should be a **reasonable process for attaining such citizenship that is clearly defined, widely communicated and non-discriminatory with regard to race, ethnicity or religion.** The process should not be prohibitive or present deterrents, such as being unduly lengthy, costly or otherwise burdensome for persons who meet the requirements.

A/HRC/7/19/Add.5 (SR on contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance, 2008), p. 110: Measures undertaken by the government and implemented by the central electoral board, including via **the establishment of a separate birth registration regime for newborns** of Haitian descent, onerous requirements for late registration of births, or denial or revocation of *cédulas* belonging to people born in the Dominican Republic, **constitute acts which deny constitutionally granted citizenship to persons belonging to this minority group, along with their children, thus rendering them stateless [...].**

CCPR/C/NIC/CO/3, Nicaragua, (2008), p. 20: While the Committee notes that the State party has partly complied with the ruling by the Inter-American Court of Human Rights in the YATAMA case, it regrets that it has not undertaken the necessary legislative reform to introduce a simple legal remedy ensuring that indigenous and ethnic communities in the autonomous regions **can take effective part in elections with due regard for their traditions, conventions and customs** (Arts. 25 and 27).

CCPR/C/ALB/CO2, Albania (2013), p. 23: (e) Ensure that all Roma people have **identity cards so as to facilitate their right to vote**.

CERD/C/COG/CO/9, Congo (2009), p. 17: The Committee notes with concern that the **level of registration of births among indigenous people is low and that some indigenous people lack identity documents**. The Committee recommends that the State party redouble its efforts to ensure that **all births among indigenous peoples are registered and that such registered individuals are provided with personal identity documents**. The Committee encourages the State party to **bring civil status registration centres closer to the communities where indigenous people live** (Art. 5(d)).

CCPR/C/HUN/CO/5, Hungary (2010), p. 21: The Committee is concerned at the **administrative shortcomings of the minority election register**, and the self-government system, **which**, inter alia, renders it obligatory for minorities to register their ethnic identity, and, therefore, **deters those who do not wish their ethnic identity to be known, or have multiple ethnic identities, from registering in particular elections**. (Arts. 2 and 25). The State party should adopt measures to address the shortcomings of the minority election register, and the minority self-government system in general, in order to ensure that it does not deter and disenfranchise minorities from participating in minority self-government elections.

CERD/C/IND/CO/19, India (2007), p. 17: The Committee notes with concern reports that Dalit candidates, especially women, are frequently forcibly prevented from standing for election or, if elected, forced to resign from village councils or other elected bodies or not to exercise their mandate, that many Dalits **are not included in electoral rolls or otherwise denied the right to vote**, and that public service posts reserved for scheduled castes and scheduled tribes are almost exclusively filled in the lowest category [...]. The Committee recommends to the State party to **effectively enforce reservation policy; to ensure rights of members of scheduled castes and scheduled and other tribes to freely and safely vote and stand for election and to fully exercise their mandate** if elected to their reserved seats [...].

### 13.6 Does the legal framework facilitate voter registration for persons with disabilities?

#### States Must Take Necessary Steps to Give Effect to Rights; Right and Opportunity to Vote

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, **the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground** such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CRPD, Art. 5: (3) In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. (4) **Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination** under the terms of the present Convention.

CRPD, Art. 29: States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: a) **To ensure that persons with disabilities can effectively and fully participate in political and public life** on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: (i) **Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use**.

CCPR, GC 25, p. 11: **States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed**. [...] Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced [...].

CRPD/C/PER/CO/1, Peru (2012), p. 45: The Committee recommends that the State party: (a) restore voting rights to all people with disabilities who are **excluded from the national voter registry**, including people with disabilities subject to judicial interdiction.

### 13.7 Are there provisions to register IDPs?

#### States Must Take Necessary Steps to Give Effect to Rights; Freedom from Discrimination and Equality under the Law

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

UNSC Res. 1582 (2005), p. 17: [The Security Council] reaffirms the unacceptability of the demographic changes resulting from the conflict, reaffirms also the **inalienable right** of all refugees and **internally displaced persons** affected by the conflict to return to their homes in secure and dignified conditions, in accordance with international law and as set out in the Quadripartite Agreement of 4 April 1994 (S/1994/397, annex II) and the Yalta Declaration.

Commission on Human Rights, E/CN.4/1998/53 Add.2, UN Guiding Principles on Internal Displacement, Art. 22(d): Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: (d) **The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right.**

CCPR/CO/80/COL, Colombia (2004), p. 19: [...] The Committee also expresses its concern regarding the **difficulties experienced by internally displaced persons in exercising their civic rights, especially the right to vote.** The State party should intensify programmes aimed at providing economic and social assistance to internally displaced persons so that they may, in conformity with article 26 of the Covenant, enjoy as many of the benefits provided by State institutions as possible. **It should also take the necessary steps to ensure that displaced persons are able to exercise the rights guaranteed in article 25.**

A/HRC/10/59 (Joint Report on technical assistance and capacity building, 2009) Democratic Republic of the Congo, p. 108: There is a risk that internally displaced persons cannot exercise their right to vote and be elected if the local elections planned for 2009 would take place before they can return. The national election commission, in cooperation with Monuc and other partners, should **ensure registration of the displaced as voters** and be supported to find ways **to ensure (e.g. through provisions on absentee voting) that the displaced can in fact exercise their political rights.** p. 109: In addition, and also to build a more inclusive society generally, the government should launch a campaign in the eastern DRC to **provide national identification and electoral cards** to anyone qualifying for DRC nationality under the new nationality law of 12 November 2004. Implementation should be guided by a rebuttable presumption that those who currently live or prior to the armed conflict have lived in the DRC are considered nationals of the DRC [...].

A/HRC/4/38/Add.2 (SRSG on human rights of IDPs, 2006), p. 67: The Representative of the Secretary-General recommends that the government authorities should: (h) **ensure the full participation of displaced persons at every stage of the electoral process** now under way, including by making a concerted effort to identify people—the attention of the independent electoral commission should be drawn to this question.

### 13.8 Are there provisions to register refugees?

#### States Must Take Necessary Steps to Give Effect to Rights; Freedom from Discrimination and Equality under the Law

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

UNSC Res. 1536 (2004), p. 4: [The Security Council] encourages Afghan authorities to enable an electoral process that provides for **voter participation that is representative of the national demographics including women and refugees** and calls upon all eligible Afghans to fully participate in the registration and electoral processes.

UNSC Res. 1100 (1997), p. 8: [The Security Council] also stresses the importance of **assisting with the prompt repatriation of refugees who are willing to return to Liberia in time to participate in the registration and voting process.**

UNSC Res. 1582 (2005), p. 17: [The Security Council] reaffirms the unacceptability of the demographic changes resulting from the conflict, reaffirms also the **inalienable right of all refugees** and internally displaced persons **affected by the conflict to return to their homes** in secure and dignified conditions, in accordance with international law and as set out in the Quadripartite Agreement of 4 April 1994 (S/1994/397, annex II) and the Yalta Declaration.

CERD/C/JOR/CO/13-17, Jordan (2012), p. 13: The Committee is further concerned that, as non-citizen residents, Jordan's large **refugee population remains unable to participate** in the political processes and decision-making in the State party.

### 13.9 Are there measures to facilitate the registration of nomadic communities?

#### States Must Take Necessary Steps to Give Effect to Rights; Freedom from Discrimination and Equality under the Law

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

A/HRC/13/25, (Forum on Minority Issues, 2010), p. 25: States should also consider what **special arrangements are necessary to guarantee the right to effective political participation for persons belonging to nomadic communities** who are least likely to have traditional documentation or proof of long-term residency in electoral districts.

A/HRC/13/23, Add. 1 (IE on Minority Issues) Kazakhstan, 2010, p. 92: **Groups**, including Roma and *Luli* (or *Lyuli*), were generally **described as nomadic or itinerant** and with livelihoods solely in the informal sector. Such groups **are not represented in the Assembly of the People or other State institutions.** They **often lack identification documents** required to secure services and may be vulnerable with regard to access to health care, education, housing and the effects of extreme poverty. Women and children belonging to these groups may be particularly at risk. The Government is urged to constructively engage with such communities in order to assess their needs and address discrimination against them. **Sustainable solutions should be developed to improve access to their rights.**

CCPR/C/HUN/CO/5, Hungary (2010), p. 22: The Committee is concerned at the legal requirement provided by Act LXXVII of 1993 on the Rights of National and Ethnic Minorities which prescribes that only those groups of people who represent a numerical minority and have lived in the territory of the State party for at least one century will be considered a minority or ethnic group under the terms of this Act. (arts. 26 and 27). The State party should consider repealing the condition that a minority group should be able to demonstrate that it has lived in the territory of the State party for at least a century in order to be recognized as a national or ethnic minority group. The State party should **ensure that the conditions for State recognition of minority groups are in line with the Covenant**, particularly, article 27 as expounded by General Comment No. 23 of the Committee, so that **nomadic and other groups that do not satisfy the requirement due to their lifestyle are not excluded from the full protection of the law**.

### 13.10 Are there provisions for timely amendments, corrections, claims or challenges to the voter register?

#### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) **To ensure that the competent authorities shall enforce such remedies when granted**.

UNCAC, Art. 10: Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; (b) **Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities**; and (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

CCPR, GC 31, p. 15: Article 2, paragraph 3 requires that in addition to effective protection of Covenant rights, States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights**.

CCPR, GC 32, p. 27: An important aspect of the fairness of a hearing is its **expeditiousness**. While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3 (c) of article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be allocated for the administration of justice.

CCPR, GC 34, p. 18: [...] **Every individual should have the right to ascertain in an intelligible form, whether and, if so, what personal data is stored in automatic data files, and for what purposes**. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files. If **such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified**.

Munoz Hermoza v. Peru, Comm. No. 203/1986, UN Doc. Supp. No. 40 (A/44/40) at 200 (1988), p. 11.3: With respect to the requirement of a fair hearing as stipulated in article 14, paragraph 1, of the Covenant, the Committee notes that **the concept of a fair hearing necessarily entails that justice be rendered without undue delay**. In this connection the Committee observes that the administrative review in the Munoz case was kept pending for seven years and that it ended with a decision against the author based on the ground that he had started judicial proceedings. A delay of seven years constitutes an unreasonable delay. [...] However, the delays in implementation have continued and two and a half years after the judgement of the Tribunal of Constitutional Guarantees, the author has still not been reinstated in his post. This delay, which the State party has not explained, constitutes a further aggravation of the violation of the principle of a fair hearing.

### 13.11 Are there provisions that penalize interference with registration?

#### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

UNCAC, Art. 1: The purposes of this Convention are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; (c) To **promote integrity, accountability and proper management of public affairs** and public property.

**CCPR, GC 25, p. 11: [...] Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced [...] p. 20: [...] States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process [...].**

### 13.12 Are there measures to protect voter data privacy?

#### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

UNCAC, Art. 10: Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.**

**ICCPR, Art. 17: (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.**

**CCPR, GC 34, p. 18: [...] Every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control his or her files [...].**

**CCPR, GC 16, p. 10: The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law.** Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and **is never used for purposes incompatible with the Covenant**. In order to have the most effective protection of his private life, **every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes.** Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. **If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.**



## Resources

- ACE Project, 'Voter Registration', 2012, available at <<http://aceproject.org/ace-en/topics/vr>>, accessed 27 March 2014
- Electoral Institute for Sustainable Democracy in Africa (EISA), *Voter Registration in Africa: Comparative Analysis* (Johannesburg: EISA, 2010)
- European Union (EU), *Methodological Guide on Electoral Assistance* (Brussels: EU, 2006), available at <[http://ec.europa.eu/europeaid/what/human-rights/election\\_observation\\_missions/documents/election-assistance-methodological-guide\\_en.pdf](http://ec.europa.eu/europeaid/what/human-rights/election_observation_missions/documents/election-assistance-methodological-guide_en.pdf)>, accessed 10 February 2014
- European Union (EU), United Nations Development Programme (UNDP) and International IDEA, *Procurement Aspects of Introducing ICT Solutions in the Electoral Processes* (Brussels, Geneva and Stockholm: EU, UNDP, International IDEA, 2010), available at <<http://aceproject.org/ero-en/misc/procurement-aspects-of-introducing-icts-solutions>>, accessed 10 February 2014
- European Commission-United Nations Development Programme, EC-UNDP Partnership on Electoral Assistance, eLearning Portal. Course on Sustainability of Electoral Administration, available at <<http://elearning.ec-undp-electoralassistance.org/login/index.php>>, accessed 24 April 2014
- International Foundation for Electoral Systems (IFES) and United Nations Development Programme (UNDP), *Getting to the Core: a Global Survey on the Cost of Registration and Elections*, available at <<http://www.ifes.org/-/media/Files/Publications/Survey/2006/300/CorePubColor.pdf>>, accessed 23 April 2014
- International Organization for Migration (IOM), *The Electoral Rights of Conflict Forced Migrants: A Review of Relevant Legal Norms and Instrument*, Participatory Elections Project, Discussion Paper no. 1 (Geneva: International Organization for Migration, 2003)
- Ladley, A., Holtved, O. and Kantha, S., *Improving the Electoral Roll and Voter Registration in Papua New Guinea* (Boroko: National Research Institute Papua New Guinea, 2010), available at <<http://aceproject.org/ero-en/regions/pacific/PG/improving-the-electoral-roll-and-voter/view>>, accessed 10 February 2014
- López-Pintor, R. and Fischer, J., *Cost of Registration and Elections (CORE) Project: Center for Transitional and Post-Conflict Governance* (Washington, D.C.: International Foundation for Electoral Systems, 2005)
- Organisation Internationale de la Francophonie (OIF), *Guide Pratique, Pour la Consolidation de l'État Civil, des Listes Electorales et la Protection des Données Privées*, (Paris, 2014)
- Organisation Internationale de la Francophonie (OIF), *La Biométrie en Matière Electorale: Enjeux et Perspectives*, Rapport sur les pratiques utiles et les perspectives opérationnelles (Libreville, Gabon, 2012)
- Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Handbook for the Observation of Voter Registration* (OSCE/ODIHR, 2012)



Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines on Population Registration* (OSCE/ODIHR, 2009)

Projeto de Apoio aos Ciclos Eleitorais nos Países Africanos de Língua Oficial Portuguesa e Timor-Leste (PRP PALOP-TL), *Handbook on Technology and Electoral Registration*, 2011.

Yard, M., *Civil and Voter Registries: Lessons Learned from Global Experiences* (Washington, D.C.: International Foundation for Electoral Systems, 2011)

## Notes

- <sup>1</sup> ECOWAS Supplementary Protocol, Art. 5.
- <sup>2</sup> ECOWAS Supplementary Act A/SA.1/01/10 on Personal Data Protection, 2010.

# Chapter 14. Registration of Candidacies

## Overview

Registration of candidacies serves to ensure that all independent candidates, political parties, coalitions and their respective candidates are able to compete in elections on the basis of equal treatment. The Guidelines treat the framework for the formation of political parties, described in Chapter 4, separately from the registration of candidacies (or ballot access) during the pre-electoral period. Yet, many procedural requirements for registering candidacies may be the same as, or very similar to, those for the initial registration (or formation) of parties, such as signature requirements, deposits or geographic spread. Further, the legal framework might ease, or even waive, most of the requirements for access to ballots that it imposes on independent candidates. In some cases, registered parties may be able to gain ballot access automatically by virtue of their status as a registered party. Within the confines of the electoral system, CCPR GC 25 establishes the right of individuals to run as independent or non-affiliated candidates.

If parties are not required to register their candidacy, the requirements for party formation become even more important. The legislative framework for elections should provide for the right of all individuals and groups to establish, in full freedom, their own political parties or other political organizations. They should have legal guarantees to enable them to compete with each other on the basis of equal treatment before the law and in full transparency. Accordingly, the legal framework is called upon to provide a level playing field for the recognition and registration of all political parties, regardless of their ideological position.

The obligation to protect the Right and Opportunity to be Elected requires sufficient notification of the exact political party or candidate registration

period. Alternatively, registration could be continuously open and have a cut-off date well in advance of election day to allow the pursuit of timely remedies that specify when, how and where registration procedures must be undertaken, and set out the process of verifying registration. The legal framework is required to ensure uniformity in the registration process so that the same process applies to all political parties and candidates at all levels. Reasonable grounds for rejecting a registration application based on objective criteria—along with avenues of timely appeal against rejections or decisions to suspend or dissolve political parties—will contribute to the respect for the Right of an Effective Remedy.

Candidacy criteria vary, although they often include monetary deposits, consideration of previous electoral results and minimum numbers of signatures (with or without a geographic spread). The procedure for validating signatures is especially sensitive. One invalid signature should not invalidate other signatures or the signature list as a whole. CCPR jurisprudence holds that when signature collection is involved, registration may require verifying a fixed number of valid signatures without regard to the number or percentage of invalid signatures that may be on the registration list. Clear criteria, timelines and procedures for signature vetting and appeals, together with the presence of party/candidate agents and electoral observers, will contribute to greater transparency in this part of the process.

Provisions regarding the procedures to decide on the registration of candidacies are required to guarantee the Right to an Effective Remedy. Adequate time must be permitted to correct clerical errors before formally rejecting nominations. The law is also required to allow timely appeals to an independent adjudication body and an expedited ruling to enable a candidate or party to be placed on the ballot if registration was improperly denied.

## Table of Jurisprudence

### 14. Registration of Candidacies

#### 14.1 Is the right to stand restricted only in a reasonable, objective and non-discriminatory manner?

##### Right and Opportunity to be Elected

ICCPR, Art. 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**.

ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the **law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground** such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CCPR, GC 25, p. 4: **Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria.** For example, it may be reasonable to require a **higher age for election or appointment to particular offices than for exercising the right to vote**, which should be available to every adult citizen. The **exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable.** For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

CCPR/C/BIH/CO/2, *Bosnia and Herzegovina* (2012), p. 6: The Committee recalls its previous recommendation (CCPR/C/BIH/CO/1, para. 8) and **expresses its regret that the constitution and election law of the State party continues to exclude persons who do not belong to one of the State party's 'constituent peoples'**, namely Bosniaks, Croats and Serbs, from being elected to the House of Peoples and to the tripartite presidency of Bosnia and Herzegovina. The Committee particularly regrets that, notwithstanding its previous recommendations and the judgment of the European Court of Human Rights in the case of *Derovo Sejdić and Jakob Finci*, application nos. 27996/06 and 34836/06, handed down on 22 December 2009, efforts to amend the constitution have stalled such that the law continues to exclude citizens from certain groups from participating in elections that were held in October 2010 (Arts. 2, 25 and 26).

CCPR/CO/79/LVA *Latvia* (2003), p. 4: The Committee notes with great interest [...] positive legislative reforms [...], in particular the adoption and entry into force of [...] amendments to election law, **removing the language requirement to stand for election.**

CCPR/C/79/Add.78, *Lebanon* (1997), p. 23: The Committee notes with concern that every Lebanese **citizen must belong to one of the religious denominations officially recognized** by the Government, and that this is a requirement in order to be eligible to run for public office. This practice does not, in the Committee's opinion, comply with the requirements of **article 25** of the Covenant.

CCPR/C/IRN/CO/3, *Islamic Republic of Iran* (2011), p. 29: The Committee is concerned about the **requirements for registration in election campaigns** (in particular article 28, sections 1 and 3, of the Majlis Elections Act), **and the right of the Guardian Council to reject parliamentary candidates** (in accordance with article 3 of the Amendment to the Majlis Elections Act). The Committee notes with concern that with regard to the 10th presidential election in 2009: (1) only four candidates were approved out of more than 450 prospective candidates [...].

CERD/C/60/CO/11, *Qatar* (2002), p. 12: The Committee notes with concern the distinction drawn between **citizens by birth and naturalized** citizens as regards access to public office and other kinds of employment, as well as the **right to vote and to stand for election**. The Committee believes that supplementary conditions attached to exercise of these rights by naturalized citizens are not consistent with art. 5 (c) and (e) (i) of the Convention (ICERD).

CCPR/C/SR.724, *Senegal* (1987): While limitations are allowed for persons convicted of electoral offences, such **restrictions must be limited in time.**

*Jorge Landinelli Silva v. Uruguay*, Comm.No. R.8/34, UN Doc. Supp. No. 40 (A/36/40) at 130 (1981), p. 8.2: In addition, even on the assumption that there exists a situation of emergency in Uruguay, the Human Rights Committee does not see what ground could be adduced to support the contention that, in order to restore peace and order, it was necessary to **deprive all citizens, who as members of certain political groups had been candidates in the elections of 1966 and 1971, of any political right for a period as long as 15 years**. This measure applies to everyone, without distinction as to whether he sought to promote his political opinions by peaceful means or by resorting to, or advocating the use of, violent means. The Government of Uruguay has failed to show that the interdiction of any kind of political dissent is required in order to deal with the alleged emergency situation and pave the way back to political freedom.

*Leonid Sudalenko v. Belarus*, Comm. No. 1354/2005, UN Doc. CCPR/C/100/D/1354/2005 (2010), p. 6.5: [...] **The fact that the reasons given for refusing to register the author's candidacy** for the House of Representatives contrasted to those given in the case of Ms. L.S. (see paragraph 2.8 above) **indicates that the provisions of the relevant domestic law can be exploited to unreasonably restrict the rights protected by article 25, paragraphs (a) and (b), of the Covenant**. p. 6.7: In light of the information before the Committee, and in the absence of any explanations from the State party, it concludes that the **refusal to register the author as a candidate for the 2004 elections to the House of Representatives was not based on objective and reasonable criteria and is, therefore, incompatible with the State party's obligations under article 25**, paragraphs (a) and (b), read in conjunction with article 2, paragraph 1, and article 26 of the Covenant.

*Antonina Ignatane v. Latvia*, Comm. No. 884/1999, UN Doc. CCPR/C/72/D/884/1999 (2001), p. 7.4: The Committee notes that, in this case, the decision of a single inspector, taken a few days before the elections and contradicting a language aptitude certificate issued some years earlier, for an unlimited period, by a board of Latvian language specialists, was enough for the Election Commission to decide to strike the author off the list of candidates for the municipal elections. The Committee notes that the first examination, in 1993, was conducted in accordance with formal requirements and was assessed by five experts, whereas the 1997 review was conducted in an ad hoc manner and assessed by a single individual. **The annulment of the author's candidacy pursuant to a review that was not based on objective criteria** and which the State party has not demonstrated to be procedurally correct **is not compatible with the State party's obligations under article 25 of the Covenant**. p. 7.5: The **Committee concludes that Mrs. Ignatane has suffered specific injury in being prevented from standing for the local elections in the city of Riga in 1997, because of having been struck off the list of candidates on the basis of insufficient proficiency in the official language**. The Human Rights Committee considers that the author is a victim of a violation of article 25, in conjunction with article 2 of the Covenant.

## 14.2 Can independent candidates stand for all levels of election?

### Right and Opportunity to be Elected

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CCPR, GC 25, p. 17: The right of persons to stand for election **should not be limited unreasonably by requiring candidates to be members of parties or of specific parties**.

A/HRC/21/63 (SR Cambodia, 2012), p. 50: [...] The legal conditions for registering as candidate in the National Assembly elections raise some concerns. According to the Law on the Election of the Members of the National Assembly, a candidate must be a registered voter of at least 25 years of age, a Cambodian citizen from birth, have a residence in Cambodia and be nominated by a political party. **It does not allow independent candidates to stand in elections and limits the possibility of standing as a candidate to citizens born in Cambodia, thus barring naturalized citizens**. In this respect it does not entirely conform to international standards and best practices. p. 80: the current law, which requires a person to be nominated to stand for election by a political party, **should be amended to make it possible for independent candidates to stand** in the national elections.

### 14.3 Does the law protect candidates from discrimination or disadvantage?

#### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, **the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status**.

CCPR, GC 25, p. 15: **No person should suffer discrimination or disadvantage of any kind because of that person's candidacy.**

CCPR/CO/79/GNQ, Equatorial Guinea (2004), p. 12: While the Committee has taken note of the introduction of a multiparty system and of the adoption of the National Pact between the Government and the authorized political parties, **it regrets the continuing harassment of political opponents through**, inter alia, detentions, fines and difficulty in finding employment or leaving the country to attend meetings abroad, for example. **It also notes with concern that political parties opposed to the Government are discriminated against, and that some have apparently even had difficulty in registering.** The State party should, in accordance with articles 25 and 26 of the Covenant, treat all political parties equally and give them all the same opportunities to carry out their lawful activities.

CCPR/CO/80/COL, Colombia (2004), p. 11: The Committee is also concerned that such practices as the **arrest of election candidates continue**; murders of legislators dating from earlier years remain unpunished.

### 14.4 Do registration procedures guarantee equal treatment for all candidates?

#### Freedom from Discrimination and Equality under the Law; Right and Opportunity to be Elected

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CCPR/C/RWA/CO/3, Rwanda (2009), p. 21: The Committee finds cause for concern in the reported **obstacles to the registration** and freedom of action of human rights NGOs and **opposition political parties** (arts. 19, 22, 25 and 26 of the Covenant). The State party should [...] treat all political parties on an **equal footing** and offer them **equal opportunities** to pursue their legitimate activities, in accordance with the provisions of articles 25 and 26 of the Covenant.

CCPR/CO/84/TJK, Tajikistan (2005), p. 25: The Committee is concerned about the possibility, in the State party's law, to **refuse to register as candidates for election individuals against whom criminal proceedings are pending, notwithstanding the fact that their guilt has not been established** (Arts. 25 and 14, para. 2). **The State party should** amend its legislation and practice in line with the requirements of articles 25 and 14, paragraph 2, of the Covenant, so as to **ensure that persons merely charged with an offence are presumed innocent and retain their right to stand for elections**.

CCPR/CO/79/GNQ, Equatorial Guinea (2004), p. 12: While the Committee has taken note of the introduction of a multiparty system and of the adoption of the National Pact between the Government and the authorized political parties, it regrets the continuing harassment of political opponents through, inter alia, detentions, fines and difficulty in finding employment or leaving the country to attend meetings abroad, for example. It also notes with concern **that political parties opposed to the Government are discriminated against, and that some have apparently even had difficulty in registering.** Lastly, the Committee notes with alarm the irregularities during the latest elections held in the State party, culminating in the withdrawal of all the opposition candidates. **The State party should, in accordance with articles 25 and 26 of the Covenant, treat all political parties equally and give them all the same opportunities to carry out their lawful activities [...].**

## 14.5 Are procedures and timelines for candidate registration reasonable and defined by law?

### Equal Right and Opportunity to be Elected

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CCPR, GC 25, p. 9: The rights and obligations provided for in paragraph (b) **should be guaranteed by law**. p. 16: Conditions relating to **nomination dates, fees or deposits should be reasonable and not discriminatory**.

CCPR/CO/69/KGZ, Kyrgyzstan (2000), p. 23: The Committee is concerned about the conduct of the parliamentary elections in the Kyrgyz Republic in March 2000 and in particular about the **non-participation of political parties which failed to register one year prior to the elections, or the statutes of which did not explicitly declare an intention to stand for elections**.

Leonid Sudalenko v. Belarus, Comm. No. 1354/2005, UN Doc. CCPR/C/100/D/1354/2005 (2010), p. 6.3: The Committee recalls that, in the present case, **the registration of the author was refused by the District Electoral Commission on the ground that he provided personal data that 'did not correspond to reality' but without indicating what specific data was impugned by this finding**. In this regard, the Committee recalls its **General Comment on article 25, according to which the exercise of the rights protected by article 25 may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable**. [...] The fact that **the reasons given for refusing to register the author's candidacy** for the House of Representatives contrasted to those given in the case of Mr. L.S. [...] **indicates that the provisions of the relevant domestic law can be exploited to unreasonably restrict the rights protected by article 25, paragraphs (a) and (b)**, of the Covenant. p 6.7: In light of the information before the Committee, and in the absence of any explanations from the State party, it concludes that the refusal to register the author as a candidate for the 2004 elections to the House of Representatives was not based on objective and reasonable criteria and is, therefore, incompatible with the State party's obligations under article 25, paragraphs (a) and (b), read in conjunction with article 2, paragraph 1, and article 26 of the Covenant.

## 14.6 Do candidacy criteria address conflicts of interest?

### Prevention of Corruption

UNCAC, Art. 1: The purposes of this Convention are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; [...] (c) To **promote integrity, accountability and proper management of public affairs and public property**.

UNCAC Art 7: (2) **Each State Party shall** also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office. (4) Each State Party shall, in accordance with the fundamental principles of its domestic law, **endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest**.

UNCAC, Art 12: (e) **Preventing conflicts of interest by imposing restrictions**, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure.

CCPR, GC 25, p. 16: **If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions** (e.g., the judiciary, high-ranking military office, public service), **measures to avoid any conflicts of interest should not unduly limit the rights protected by paragraph (b)** (of Art. 25, ICCPR).

Debreczeny v. The Netherlands, Comm. No. 500/1992, UN Doc. CCPR/C/53/D/500/1992, p. 9.3: The Committee notes that the restrictions on the right to be elected to a municipal council are regulated by law and that they are based on objective criteria, namely the electee's professional appointment by or subordination to the municipal authority. Noting **the reasons** invoked by the State party **for these restrictions**, in particular, **to guarantee the democratic decision-making process by avoiding conflicts of interest, the Committee considers that the said restrictions are reasonable and compatible with the purpose of the law.** In this context, the Committee observes that legal norms dealing with bias, for example section 52 of the Municipalities Act to which the author refers, are not apt to cover the problem of balancing interests on a general basis. The Committee observes that the author was at the time of his election to the council of Dantumadeel serving as a police officer in the national police force, based at Dantumadeel and as such for matters of public order subordinated to the mayor of Dantumadeel, who was himself accountable to the council for measures taken in that regard. In these circumstances, **the Committee considers that a conflict of interests could indeed arise and that the application of the restrictions to the author does not constitute a violation of article 25 of the Covenant.**

## 14.7 Are signature requirements reasonable?

### Right and Opportunity to be Elected

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CCPR, GC 25, p. 17: If a candidate is required to have a **minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy.**

CCPR/CQ/75/MDA, Moldova (2002), p. 16: The Committee is concerned that certain requirements that the State Party places upon the registration of political parties, such as conditions with respect to the extent of their **territorial representation**, may violate article 25 of the Covenant, **by restricting the right of individuals to full expression of their political freedoms.** The State Party should review its law and policy concerning the registration of political parties, removing those elements which are inimical to the full exercise of Covenant rights, in particular **article 25.**

Leonid Sinitsin v. Belarus, Comm. No. 1047/2002, UN Doc. CCPR/C/88/D/1047/2002 (2006), p. 7.3: The Committee takes note of the author's claim that despite numerous **irregularities in as far as the handling of signatures in support of his candidacy by the Electoral Commissions on all levels is concerned, his initiative group submitted a sufficient number of signatures to the CEC for it to be able to make an informed decision on whether to register him as a candidate.** The Committee also notes the author's claim, which is uncontested, that the adoption of the CEC ruling on the invalidity of his nomination exceeded the CEC's powers as set out in the Electoral Code and the Law 'On the Central Electoral Commission of the Republic of Belarus on Elections and Conduct of Republican Referendums' [...].

## 14.8 Does the legal framework provide for timely appeals against party or candidate rejection?

### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To **ensure that the competent authorities shall enforce such remedies when granted.**

CCPR, GC 32, p. 27: An important aspect of the fairness of a hearing is its **expeditiousness.** While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3 (c) of article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible, supplementary budgetary resources should be allocated for the administration of justice.



CCPR, GC 31, p. 15: Article 2, paragraph 3 requires that in addition to effective protection of Covenant rights, States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights.**

*Leonid Sinitin v. Belarus*, Comm. No. 1047/2002, UN Doc. CCPR/C/88/D/1047/2002 (2006), p. 7.3: [...] The Committee recalls that article 2, paragraph 3, of the Covenant guarantees an **effective remedy** to any person claiming a violation of the rights and freedoms spelled out in the Covenant. In the present case, **no effective remedies were available to the author to challenge the CEC ruling declaring his nomination invalid, nor could he challenge the subsequent refusal by the CEC to register him as a presidential candidate before an independent and impartial body.** The Committee considers that **the absence of an independent and impartial remedy to challenge the CEC ruling on the invalidity of the author's nomination** and, in the present case, the CEC refusal to register his candidacy, resulted in a violation of his rights under **article 25(b)** of the Covenant, read in conjunction with **article 2**.

#### 14.9 Does the legal framework regulate the withdrawal and removal of candidates?

##### Right and Opportunity to Be Elected

ICCPR, Art. 25: Every citizen shall have the **right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CCPR, GC 25, p. 16: (b) The grounds for the **removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures.**

CCPR/CO/84/TJK, *Tajikistan*, 2005, p. 25: The Committee is concerned about the possibility, in the State party's law, to refuse to register as candidates for election individuals against whom criminal proceedings are pending, notwithstanding the fact that their guilt has not been established (Arts. 25 and 14, para. 2). **The State party should amend its legislation and practice in line with the requirements of articles 25 and 14, paragraph 2, of the Covenant, so as to ensure that persons merely charged with an offence are presumed innocent and retain their right to stand for elections.**

## Resources

ACE Project, 'Parties and Candidates', 2012, available at <<http://aceproject.org/ace-en/topics/ei/eif/eif07/eif07a>>, accessed 28 March 2014

Australian Electoral Commission, 'Political Party Registration', available at <[http://www.aec.gov.au/Parties\\_and\\_Representatives/party\\_registration/](http://www.aec.gov.au/Parties_and_Representatives/party_registration/)>, accessed 10 February 2014

Elections Canada, *Registered Political Parties and Parties Eligible for Registration*, available at <<http://www.elections.ca/content.aspx?dir=par&document=index&lang=e&section=pol>>, accessed 10 February 2014

European Commission (EC), *EU Methodological Guide on Electoral Assistance* (Brussels: European Commission, 2006), available at <[http://ec.europa.eu/europeaid/what/human-rights/election\\_observation\\_missions/documents/election-assistance-methodologicalguide\\_en.pdf](http://ec.europa.eu/europeaid/what/human-rights/election_observation_missions/documents/election-assistance-methodologicalguide_en.pdf)>, accessed 10 February 2014

International IDEA and Netherlands Institute for Multiparty Democracy (NIMD), *Strategic Planning for Political Parties: A Practical Tool* (Stockholm and The Hague: International IDEA and NIMD, 2013)

National Democratic Institute (NDI) *Minimum Standards for the Democratic Functioning of Political Parties* (Washington, D.C.: NDI, 2008)

Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines on Political Party Regulation* (OSCE/ODIHR, 2011), available at <<http://www.osce.org/odihr/77812>>, accessed 10 February 2014

# Chapter 15. Media Environment

## Overview

The media plays an essential role in fostering and upholding democratic societies. They can perform three fundamental functions throughout the electoral cycle: (1) relay the messages of political parties and candidates; (2) monitor and supervise the electoral process; and (3) provide voters with information on the candidates, specific procedures and processes.

Over the past 15 years, the role of the media has grown enormously, and has acquired unprecedented importance in political life beyond the electoral campaign period. It is now an influential and decisive factor in electoral contests well before the campaigns begin. In order to illustrate the importance of the media throughout the electoral cycle, the Guidelines divide the role and responsibilities of the media in electoral processes into two chapters. The present chapter addresses the general media environment and how legal frameworks guarantee the Freedom of Expression and Opinion in addition to Transparency in terms of media access and the Right to Information. The specific role of the media during electoral campaigns is examined in Chapter 17.

Keeping the public informed of the political platforms, views and goals of all parties and candidates in a balanced and unbiased manner requires legal provisions to ensure that all political parties and candidates have access to (and equitable treatment in) the media. This is illustrated by the UN jurisprudence compiled in the following Table of Jurisprudence. Such regulations can play an important role in providing all parties and candidates with the opportunity to compete on the basis of equitable treatment before the law and by state authorities. Given the power of the media in some contexts, party or candidate propaganda through the media well in advance of an election event may influence voter choices. Regulations often apply to state or publicly owned

media. However, given their public service responsibilities, private media are also normally obliged to provide equitable access to all parties and candidates on the basis of non-discrimination. Clear legal provisions are required for the timely implementation of these provisions, as well as a process for establishing a formula for access and equitable treatment that is unambiguous and can be objectively applied.

Regulations regarding balance and non-discrimination against parties or candidates are usually targeted at broadcast media, while print media are given greater license to be tendentious. Diverging regulatory approaches to broadcast and print media are justified, since broadcasters require licences to use frequencies (which are public goods) and should therefore meet public service obligations. Radio and television broadcasters gain easy direct access to people's homes, while newspapers are purchased with conscious deliberation from the consumer. Specialized regulation of digital and online media is still in its relatively early days, and regulating online news, social media and comment boards presents particular challenges.

Although relevant international treaties and jurisprudence allow for restrictions of freedom of expression, they circumscribe such constraints to the twin criteria of necessity and proportionality. The exceptional nature of these restrictions, together with objective criteria for their determination, must be provided for in national legal frameworks. All punitive measures against the media require clearly stated procedures and safeguards, including the right to obtain an effective and timely remedy.

The obligations to ensure Freedom of Opinion and Expression, together with Transparency and the Right to Information, are the underlying considerations behind the questions on the following Table of Jurisprudence. These freedoms are further strengthened by the obligation for States Parties to guarantee the Right to Security of the Person and the Right to an Effective Remedy.

## Table of Jurisprudence

### 15. Media Environment

#### 15.1 Are there provisions granting citizens and media access to information?

##### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this **right shall include freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 13(1): Each State Party shall take **appropriate measures**, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations**, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**.

CCPR, GC 34, p. 13: **A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights.** It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. **The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.**

A/HRC/23/39, (SR on the rights to freedom of peaceful assembly and of association, 2013), p. 83: [...] the Special Rapporteur calls upon States: (e) **To ensure and facilitate at all times access to the internet and other new communications technologies, and to further ensure that any restriction on such access or on the content of websites is reviewed by a competent judicial court.**

#### 15.2 Are there provisions granting citizens and media freedom of expression?

##### Freedom of Opinion and Expression

ICCPR, Art. 19: (1) **Everyone shall have the right to hold opinions without interference.** (2) Everyone shall have the right to **freedom of expression**; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

CCPR, GC 25, p. 12: **Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.** p. 25: In order to ensure the full enjoyment of rights protected by article 25, **the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.** It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.

CCPR, GC 34, p. 13: The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. p. 30: The public also has a corresponding right to receive media output. p. 38: As noted earlier in paragraphs 13 and 20, concerning the content of political discourse, the Committee has observed that **in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high**. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is **not sufficient to justify the imposition of penalties**, albeit public figures may also benefit from the provisions of the Covenant. Moreover, **all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition**. Accordingly, the Committee expresses concern regarding laws on such matters as lese majesty, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have **been impugned**. **States parties should not prohibit criticism of institutions, such as the army or the administration**.

CCPR/CO/71/DOM, Dominican Republic (2001), p. 22: The Committee takes note of the existence of a **crime of 'desacato' (disrespect of authority)**, which it deems **contrary to article 19 of the Covenant**.

CCPR/ZMB/CO/3, Zambia (2007), p. 25: The Committee notes with particular concern that under the Penal Code, **defamation against the President as well as publication of false news are still considered as criminal offences**. The Committee reiterates its concern over reports of arrests and charges brought against journalists for the publication of articles critical of the Government, which are used as harassment and censorship techniques (art. 19). The State party should repeal the above-mentioned provisions of the Penal Code. It should find other means to ensure accountability of the press, so as to be in full compliance with the Covenant, in particular **the right to freedom of expression**.

CCPR/C/RI/CO/5, Costa Rica (2007), p. 18: The Committee is concerned about the legislative restrictions on journalism in the State party, such as the law protecting the honour of officials and public figures, and the provisions defining the press offences of defamation and libel, although it notes that they are punishable with a fine. The Committee is also concerned about reports of attacks on and threats against journalists in the State party, which could jeopardize its democratic system. **The State party should take vigorous steps to guarantee freedom of expression and of the press in accordance with the terms of article 19 of the Covenant**. In particular, it should ensure that bill No. 15974 concerning 'Freedom of expression and the press', which is currently before the Legislative Assembly, is fully compatible with the safeguards and limitations set out in the Covenant, including access to information. **The State party should also investigate, bring to trial and punish perpetrators of attacks on or threats against journalists and should compensate the victims**.

Bodrozic v. Serbia and Montenegro, Comm. No. 1180/2003, UN Doc. CCPR/C/85/D/1180/2003 (2006), p. 3.1: The author alleges that his criminal conviction for the **political article published violates his right under article 19 to freedom of expression**. p. 7.2: [...] The Committee recalls that article 19, paragraph 3, permits **restrictions on freedom of expression**, if they **are provided by law and necessary for respect of the rights or reputations of others**. In the present case, the Committee observes that the State party has advanced no justification that the prosecution and conviction of the author on charges of criminal insult were necessary for the protection of the rights and reputation of Mr. Segrt. [...] It is difficult for the Committee to discern how the expression of opinion by the author, in the manner he did, as to the import of these facts amounted to an unjustified infringement of Mr. Segrt's rights and reputation, much less one calling for the application of criminal sanction. The Committee observes, moreover, that **in circumstances of public debate in a democratic society, especially in the media, concerning figures in the political domain, the value placed by the Covenant upon uninhibited expression is particularly high**. It follows that the author's conviction and sentence in the present case amounted to a violation of article 19, paragraph 2 of the Covenant.

Marques v. Angola, Comm. No. 1128/2002, UN Doc. CCPR/C/83/D/1128/2002 (2005), p. 2.1: [...] The author, a journalist, [...] wrote several articles critical of Angolan President dos Santos in an independent Angolan newspaper, the *Agora*. p. 6.1: [...] The Committee observes that **the author was arrested on**, albeit undisclosed, charges of **defamation** which, although qualifying as a crime under Angolan law, does not justify his arrest at gunpoint by 20 armed policemen, nor the length of his detention of 40 days, including 10 days of incommunicado detention. The Committee concludes that in the circumstances, **the author's arrest and detention were neither reasonable nor necessary but, at least in part, of a punitive character and thus arbitrary**, in violation of article 9, paragraph 1.

Aduayom et al. v. Togo, Comm. No. 422/1990, 423/1990 and 424/1990, (1996), UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990 (1996), p. 3.1: The authors claim that both their arrest and their detention was contrary to article 9, paragraph 1, of the Covenant. [...] They further contend that the State party has violated article 19 in respect to them, because **they were persecuted for having carried, read or disseminated documents that contained no more than an assessment of Togolese politics**, either at the domestic or foreign policy level. p. 7.4: [...] The Committee observes that the **freedoms of information and of expression are cornerstones in any free and democratic society**. It is in the essence of such societies that its **citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticize or openly and publicly evaluate their Governments without fear of interference or punishment**, within the limits set by article 19, paragraph 3. On the basis of the information before the Committee, it appears that the authors were not reinstated in the posts they had occupied prior to their arrest, because of such activities. The State party implicitly supports this conclusion by qualifying the authors' activities as 'political offences', which came within the scope of application of the Amnesty Law of 11 April 1991; there is no indication that the authors' activities represented a threat to the rights and the reputation of others, or to national security or public order (article 19, paragraph 3). In the circumstances, the Committee concludes that there has been a violation of article 19 of the Covenant.

### 15.3 Are restrictions on freedom of expression necessary and proportionate?

#### Freedom of Opinion and Expression; Transparency and the Right to Information

ICCPR, Art. 19: (1) **Everyone shall have the right to hold opinions without interference.** (2) **Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice [...].

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**.

CCPR, GC 34, p. 42: **The penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression.** p. 47: **Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression.** All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, **consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice.** In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to **avoid excessively punitive measures and penalties.** Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. States parties should **consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.** It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously—such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others.

CCPR/C/ITA/CO/5, Italy (2006), p. 19: The Committee, bearing in mind the nature of the rights guaranteed under article 19 of the Covenant and the limited conditions and grounds under which these rights may lawfully be restricted, and noting that a draft bill under consideration by the Senate envisages that imprisonment will no longer be authorized in case of defamation, is concerned that defamation currently remains punishable by imprisonment. **The State party should ensure that defamation is no longer punishable by imprisonment.**

CCPR/C/CRI/CO/5, *Costa Rica* (2007), p. 11: The Committee is concerned about the **legislative restrictions on journalism in the State party, such as the law protecting the honour of officials and public figures, and the provisions defining the press offences of defamation and libel**, although it notes that they are punishable with a fine. The Committee is also concerned about reports of attacks on and threats against journalists in the State party, which could jeopardize its democratic system. The State party should take vigorous steps to **guarantee freedom of expression and of the press in accordance with the terms of article 19 of the Covenant**. In particular, it should ensure that bill No. 15974 concerning 'Freedom of expression and the press', which is currently before the Legislative Assembly, is fully compatible with the safeguards and limitations set out in the Covenant, including access to information.

CCPR/C/TUN/CO/5, *Tunisia* (2008), p. 18: The Committee is concerned by certain provisions of the Press Code as well as by their application in practice, which is contrary to article 19 of the Covenant. Article 51 of that Code contains a **particularly extensive definition of the offence of defamation, which is moreover subject to severe penalties, including imprisonment, especially in cases of criticism of official bodies, the army or the administration** (article 19 of the Covenant). **The State party should take steps to put an end to direct and indirect restrictions on freedom of expression.** Article 51 of the Press Code should be brought in line with article 19 of the Covenant, so as to ensure a fair balance between protection of a person's reputation and freedom of expression.

CCPR/CO/72/PRK, *Democratic People's Republic of Korea* (2001), p. 23: The Committee is concerned that various provisions of the Press Law, and their frequent invocation, are difficult to reconcile with the provisions of article 19 of the Covenant. The Committee is concerned that the **notion of 'threat to the State security' may be used in such ways as to restrict freedom of expression**. Also, the Committee is concerned that the permanent presence in the Democratic People's Republic of Korea of foreign media representatives is confined to journalists from three countries, and foreign newspapers and publications are not readily available to the public at large. Moreover, Democratic People's Republic of Korea journalists may not travel abroad freely. The State party should **specify the reasons that have led to the prohibition of certain publications and should refrain from measures that restrict the availability of foreign newspapers to the public**. The State party is requested to relax restrictions on the travel abroad by Democratic People's Republic of Korea journalists and to avoid any use of the notion of 'threat to the State security' that would repress freedom of expression, contrary to article 19.

CCPR/C/HND/CO/1, *Honduras* (2006), p. 17: The Committee welcomes the Supreme Court's ruling that the **offence of 'disrespect for authority'**, which had become a **means of restricting freedom of expression**, is unconstitutional [...].

CRPR/CO/69/KWT, *Kuwait* (2000), p. 36: The Committee is concerned about the limits imposed on freedom of expression and opinion in Kuwait, which are not permissible under article 19, paragraph 3 of the Covenant, and refers in this connection to its General Comment No. 10. The Committee is particularly concerned about the vagueness of chapter III of Law No. 3 of 1961 on Printing and Publication (report, para. 240), and about **restrictions imposed on academic and press freedom, the temporary closing of a newspaper and the banning of certain books**; it is alarmed at the criminal prosecution, imprisonment and fining of authors and journalists in connection with their non-violent expression of opinion and artistic expression [...].

*Kankanamge v. Sri Lanka*, Comm. No. 909/2000, UN Doc. CCPR/C/81/D/909/2000 (2004), p. 2.1: The author is a journalist and editor of the newspaper 'Ravaya'. Since 1993, he has been indicted several times for allegedly having defamed ministers and high-level officials of the police and other departments, in articles and reports published in his newspaper. He claims that these indictments were indiscriminately and arbitrarily transmitted by the Attorney-General to Sri Lanka's High Court, without proper assessment of the facts as required under Sri Lankan legislation, and that they were designed to harass him. As a result of these prosecutions, the author has been intimidated, his freedom of expression restricted and the publication of his newspaper obstructed. p. 9.4: So far as a violation of article 19 is concerned, the Committee considers that the indictments against Mr. Kankanamge all **related to articles in which he allegedly defamed high State party officials and are directly attributable to the exercise of his profession of journalist and, therefore, to the exercise of his right to freedom of expression**. [...] The Committee concludes that the facts before it reveal a violation of article 19 of the Covenant, read together with article 2(3).



## 15.4 Can private media operate freely and without censorship?

### Freedom of Opinion and Expression; Transparency and the Right to Information

ICCPR, Art. 19: (1) **Everyone shall have the right to hold opinions without interference.** (2) Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information.**

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the **participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.**

CCPR, GC 34, p. 39: States parties should ensure that legislative and administrative frameworks for the regulation of the mass media are consistent with the provisions of paragraph 3. Regulatory systems should take into account the differences between the print and broadcast sectors and the internet, while also noting the manner in which various media converge [...]. It is incompatible with article 19 to refuse to permit the publication of newspapers and other print media other than in the specific circumstances of the application of paragraph 3. Such circumstances may never include a ban on a particular publication unless specific content, that is not severable, can be legitimately prohibited under paragraph 3. **States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations.** The criteria for the application of such conditions and licence fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant. Licensing regimes for broadcasting via media with limited capacity, such as audiovisual terrestrial and satellite services should provide for an equitable allocation of access and frequencies between public, commercial and community broadcasters. [...] p. 40: [...] **The State should not have monopoly control over the media and should promote plurality of the media.** Consequently, States parties should take appropriate action, consistent with the Covenant, to **prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views.** p. 41: [...] Furthermore, **private media must not be put at a disadvantage compared to public media in such matters as access to means of dissemination/distribution and access to news.**

CCPR/CO/75/VNM, Vietnam (2002), p. 18: The Committee is concerned at reports of the **extensive limitations on the right to freedom of expression in the media and the fact that the Press Law does not allow the existence of privately owned media.** It is also concerned at the press laws which impose restrictions on publications which, inter alia, are said to cause harm to political stability or insult national institutions. These broadly defined offences are incompatible with paragraph 3 of article 19 of the Covenant. The State party should **take all necessary measures to put an end to direct and indirect restrictions on freedom of expression.** The press laws should be brought into compliance with article 19 of the Covenant.

CCPR/C/79/Add.33, Cameroon (1994), p. 13: The Committee notes that **freedom of expression is not guaranteed, owing to the requirement of prior deposit of all publications, censorship and the control exercised by the authorities over the press, radio and television.**

CCPR/CO/79/Add.106, Lesotho (1999), p. 23: The Committee is concerned that the relevant authority under the **Printing and Publishing Act has unfettered discretionary power to grant or to refuse registration to a newspaper, in contravention of article 19 of the Covenant.** The Committee recommends to the State party to provide for guidelines for the exercise of discretion and procedures for effective review of the validity of the grounds for refusal of registration and to bring its legislation into conformity with article 19 of the Covenant.

CCPR/CO/79/Add.121 (2000), Guyana, p. 19: **The Committee is concerned that freedom of expression may be unduly restricted by reason of the government monopoly of radio broadcasting.** It is also concerned at the lack of specific remedies for journalists who have been subjected to violence or harassment by the police or other authorities (art. 19). The State party should remove restrictions on freedom of expression which are incompatible with article 19, paragraph (3), and should ensure that effective remedies are available to any person whose rights under article 19 of the Covenant have been violated.

CCPR/CO/79/RUS, Russian Federation (2003), p. 18: **The Committee notes with concern the closure in recent years of a number of independent media companies and an increase in State control of major media outlets** (TV channels, radio stations and newspapers), either directly or indirectly through state-owned corporations, such as the state-run company Gazprom, which took over the independent nationwide television network NTV in 2001. **The State party is invited to protect media pluralism and avoid state monopolization of mass media**, which would undermine the principle of freedom of expression enshrined in article 19 of the Covenant.

CCPR/C/79/Add. 37, Italy (1994), p. 5.6: In order to avoid the inherent risks in the excessive concentration of control of the mass information media in a small group of people, the Committee emphasizes the **importance of implementing measures to ensure impartial allocation of resources**, as well as equitable access to such media, and of **adopting anti-trust legislation regulating mass media**.

CCPR/CO/75/GMB, Gambia (2004), p. 21: In the Committee's opinion, **the closure of independent radio stations, as well as the possibility, under Decree No. 71 (1996), to impose heavy fines on independent newspapers that do not register annually** as required under the 1994 Newspaper Act **and pay the registration bond** payable pursuant to Decree No. 70 (1996), **is indicative of unjustifiable restrictions on freedom of thought and expression and of a pattern of harassment of independent media**. The State party should reconsider the system for registration of independent newspapers and repeal Decrees Nos. 70 and 71, to bring its regulation of the print media into conformity with article 18 and article 19 of the Covenant.

CCPR/CO/73/UKR, Ukraine (2001), p. 22: The Committee is concerned about [...] the **absence of criteria for granting or denying licences to electronic mass media, such as television and radio stations, which has a negative impact on the exercise of freedom of expression and the press provided in article 19 of the Covenant**. It is also concerned that **the system of government subsidies to the press may be used to stifle freedom of expression**. [...] (b) The State party should take effective measures to define clearly in law the functions and competences of the State Communications Committee of Ukraine. The decisions of the State Communications Committee should be subject to judicial control. (c) The State party should ensure that **clear criteria are established for payment and withdrawal of government subsidies to the press, so as to avoid the disbursement of such subsidies for the purpose of stifling criticism of the Government**.

CCPR/CO/69/KGZ, Kyrgyzstan (2000), p. 21: **The Committee expresses its concern about the closing of newspapers on charges of tax evasion and in order to secure the payment of fines. It is also concerned about the functions of the National Communications Agency, which is attached to the Ministry of Justice and has wholly discretionary power to grant or deny licences to radio and television broadcasters**. Delay in the granting of licences and the denial of licences have a negative impact on the exercise of freedom of expression and the press guaranteed under article 19 and result in serious limitations in the exercise of political rights prescribed in article 25, in particular with regard to fair elections. The tasks and competences of the National Communications Agency should be clearly defined by law, and its decisions should be subject to appeal to judicial authority.

CCPR/CO/79/LKA, Sri Lanka (2003), p. 17: While appreciating the repeal of the statutory provisions relating to criminal defamation, **the Committee notes with concern that State radio and television programmes still enjoy broader dissemination than privately owned stations**, even though the Government has taken media-related initiatives, by repealing the laws that provide for State control of the media, by amending the National Security Act and by creating a Press Complaints Commission (art. 19). **The State party is urged to protect media pluralism and avoid state monopolization of media**, which would undermine the principle of freedom of expression enshrined in article 19 of the Covenant. The State party should take measures to ensure the impartiality of the Press Complaints Commission.

## 15.5 Are there provisions guaranteeing freedom of expression on the internet?

### Freedom of Opinion and Expression

ICCPR, Art. 19: (1) **Everyone shall have the right to hold opinions without interference**. (2) Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or **through any other media of his choice**.

CCPR, GC 34, p. 43: Any **restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3.** Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is **also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.**

CCPR/CO/84/SYR, Syrian Arab Republic (2005), p. 13: The Committee is concerned at the extensive limitations on the right to freedom of opinion and expression in practice, which go beyond the limitations permissible under article 19(3). Furthermore, the **Committee is concerned at allegations that the Government has blocked access to some internet sites used by human rights defenders or political activists** (art. 19). The State party should revise its legislation to ensure that any limitations on the right to freedom of opinion and expression are in strict compliance with article 19 of the Covenant.

CCPR/C/IRN/CO/3, Islamic Republic of Iran (2011), p. 29: The Committee is concerned about the requirements for registration in election campaigns (in particular article 28, sections 1 and 3, of the Majlis Elections Act), and the right of the Guardian Council to reject parliamentary candidates (in accordance with article 3 of the Amendment to the Majlis Elections Act). The Committee notes with concern that with regard to the 10th presidential election in 2009: (3) **cell phone signals and access to social networking and opposition websites were blocked.**

## 15.6 Are there provisions restricting the incitement of hatred and violence in the media?

### Right to Security of Persons

ICCPR, Art. 9: (1) Everyone has the right to liberty and security of person [...].

ICCPR, Art. 20: (1) Any propaganda for war **shall be prohibited** by law. (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

ICCPR, Art. 19: (1) **Everyone shall have the right to hold opinions without interference.** (3) **The exercise of the rights** provided for in paragraph 2 of this article carries with it special duties and responsibilities. It **may therefore be subject to certain restrictions**, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

CCPR, GC 11, p. 2: **Article 20** of the Covenant states that **any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.** In the opinion of the Committee, these required prohibitions are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities. The prohibition under paragraph 1 **extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace** contrary to the Charter of the United Nations, while paragraph 2 is directed against any **advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned.** The provisions of article 20, paragraph 1, do not prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations. For article 20 to become fully effective **there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation.** The Committee, therefore, believes that States parties which have not yet done so should take the measures necessary to fulfil the obligations contained in article 20, and should themselves refrain from any such propaganda or advocacy.

## 15.7 Are there provisions to ensure the security of journalists?

### Right to the Security of Persons

ICCPR, Art. 9: (1) **Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.** (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

**CCPR, GC 34, p. 23: States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression.** Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, **under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression,** including such forms of attack as arbitrary arrest, torture, threats to life and killing, **be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.**

**CCPR/CO/83/UZB, Uzbekistan (2005), p. 20:** The Committee is concerned about persistent reports that journalists have been harassed in the exercise of their profession (Covenant, art. 19). **The State party should adopt appropriate measures to prevent any harassment or intimidation of journalists and ensure that its legislation and practice give full effect to the requirements of article 19 of the Covenant.**

**CCPR/CO/82/MAR, Morocco (2004), p. 23:** The Committee is concerned about the persistent reports that journalists have been fined or harassed in the exercise of their profession. **The State party should take the necessary measures to prevent any harassment of journalists and to ensure that its legislation and practices give full effect to the requirements of article 19 of the Covenant.**

**CCPR/C/CRI/CO/5, Costa Rica (2007), p. 11:** The Committee is concerned about the legislative restrictions on journalism in the State party, such as the law protecting the honour of officials and public figures, and the provisions defining the press offences of defamation and libel, although it notes that they are punishable with a fine. The Committee is also concerned about reports of attacks on and threats against journalists in the State party, which could jeopardize its democratic system. **The State party should take vigorous steps to guarantee freedom of expression and of the press in accordance with the terms of article 19 of the Covenant.** In particular, it should ensure that bill No. 15974 concerning 'Freedom of expression and the press', which is currently before the Legislative Assembly, is fully compatible with the safeguards and limitations set out in the Covenant, including access to information. **The State party should also investigate, bring to trial and punish perpetrators of attacks on or threats against journalists and should compensate the victims.**

**CCPR/CO/79/Add.106, Lesotho (1999), p. 22:** The Committee is seriously concerned about reports of **harassment of and repeated libel suits against journalists who criticize the Government** of Lesotho. The Committee is also gravely concerned about the reports received by the Committee that newspapers which adopt a negative attitude against the Government are refused advertisement by the State and parastatal companies, and that **journalists working for the State who are seen at the opposition demonstrations are required to submit their resignations.** The Committee urges the State party to respect freedom of the press and **desist from taking any action which would violate the freedom of the press.**

CCPR/C/HND/CO/1, Honduras (2006), p. 17: [The Committee] is [...] concerned at the cases of **harassment and deaths of journalists** and human rights defenders, and at the apparent impunity of the perpetrators (articles 19 and 6 of the Covenant). The State party should take the necessary steps to **prevent any harassment of journalists** and human rights defenders **and ensure the full implementation of the provisions of article 19 of the Covenant**. The State party should also **ensure that those responsible for the deaths of journalists** and human rights defenders **are prosecuted and punished and that the relatives of the victims are duly compensated**.

CCPR/CO/73/UKR, Ukraine (2001), p. 22: **The Committee is concerned about reports of intimidation and harassment of journalists**. (a) The State party should **ensure that journalists can carry out their activities without fear of being subjected to prosecution and refrain from harassing and intimidating them**, in order to give full effect to the right to freedom of expression and of the press provided in article 19 of the Covenant.

CRPR/CO/69/KWT, Kuwait (2000), p. 36: [The Committee] [...] **is alarmed at the criminal prosecution, imprisonment and fining of authors and journalists** in connection with their non-violent expression of opinion and artistic expression, which in some cases has been deemed to be disrespectful of Islam and in other cases held to be pornographic. **The Committee is concerned about the implications of penal proceedings against journalists, requiring them to prove their good faith and reveal their sources**, raising issues not only under article 19 but also with regard to the presumption of innocence guaranteed by article 14, paragraph 2 of the Covenant.

Commission on Human Rights, E/CN.4/2006/95/Add.2 (SRSG, HR Defenders, 2006), p. 106: The Special Representative calls on the Government to develop appropriate measures for adequate **protection of election monitors and journalists** in view of 2007 elections [...].

A/HRC/RES/19/36 (2012), p. 7: [The Human Right Council] calls upon States to **ensure a safe and enabling environment for the media, including for journalists, media workers and associated personnel**.

## 15.8 Is the media regulated by an independent media authority?

### Right to an Effective Remedy; States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity**; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To **ensure that the competent authorities shall enforce such remedies when granted**.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

UNSC Res. 2065 (2012): [The Security Council] **urges the Independent Media Commission to ensure compliance with the Media Code of Practice, and emphasizes the need for media practitioners to remain committed to providing professional, independent, and factual coverage and to promoting public education and dialogue during the electoral period**.

CCPR, GC 34, p. 39: It is recommended that States parties that have not already done so should establish an **independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licences**. p. 40: The Committee reiterates its observation in General Comment No. 10 that 'because of the development of modern mass media, **effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression**' [...].

CCPR, GC 31, p. 15: Article 2, paragraph 3 requires that in addition to effective protection of Covenant rights, States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights**.

CCPR/CO/79/Add.78, Lebanon (1997), p. 25: The Committee therefore recommends that the State party review and amend the Media Law of November 1994, as well as its implementing decree, with a view to bringing it into conformity with article 19 of the Covenant. It recommends that the State party **establish an independent broadcasting licensing authority, with the power to examine broadcasting applications and to grant licences in accordance with reasonable and objective criteria**.

CCPR/CO/69/KGZ, Kyrgyzstan (2000), p. 21: [The Committee] [...] is also concerned about the functions of the **National Communications Agency, which is attached to the Ministry of Justice** and has wholly discretionary power to grant or deny licences to radio and television broadcasters. **Delay in the granting of licences and the denial of licences have a negative impact on the exercise of freedom of expression and the press** guaranteed under article 19 and result in serious limitations in the exercise of political rights prescribed in article 25, in particular with regard to fair elections. The **tasks and competences of the National Communications Agency should be clearly defined by law, and its decisions should be subject to appeal to judicial authority.**

CCPR/CO/73/UKR, Ukraine (2001), p. 22: (b) The State party should take effective measures to **define clearly in law the functions and competences of the State Communications Committee** of Ukraine. The decisions of the **State Communications Committee should be subject to judicial control.**

## Resources

ACE Project, 'Media Environment', available at <<http://aceproject.org/ace-en/topics/Archive-ACE-2.0/me/meb>>, accessed 28 March 2014

Diamond, L., 'Liberation Technology', *The Journal of Democracy*, 21/3 (2010), pp. 69–83

Institute for Media, Policy and Civil Society (IMPACS), *Media and Elections: An Elections Reporting Handbook* (Vancouver: IMPACS, 2004)

*International Mechanism for Promoting Freedom of Expression*, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression, 2009, available at <<http://www.osce.org/fom/37188>>, accessed 10 February 2014

Meyer, P., 'Ushahidi as a Liberation Technology', in *Liberation Technology: Social Media and the Struggle for Democracy* (Baltimore, Md.: John Hopkins University Press, 2012)

National Democratic Institute (NDI), *Media Monitoring to Promote Democratic Elections: An NDI Handbook for Citizen Organizations* (Washington, D.C.: NDI, 2002)

Organisation Internationale de la Francophonie (OIF), Reporters Sans Frontières, 'Guide Pratique du Journaliste en Période Electorale', available at <<http://www.francophonie.org/Guide-pratique-du-journaliste-en.html>>, accessed 18 June 2014.

Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Handbook on Media Monitoring for Election Observation Missions* (OSCE/ODIHR, 2012)

Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines for Reviewing a Legal Framework for Elections* (OSCE/ODIHR, 2013)

Projeto de Apoio aos Ciclos Eleitorais nos Países Africanos de Língua Oficial Portuguesa e Timor-Leste (PRP PALOP-TL), *Handbook on Journalistic Ethics in Media Coverage of Electoral Processes*, 2011.

United Nations (UN), *Human Rights and Elections: United Nations Handbook on the Legal, Technical and Human Rights Aspects of Elections* (Geneva and New York: UN, 1994)

United Nations Development Programme (UNDP), *Media and Elections: A guide for Electoral Practitioners*, 2014.

Woods, L., 'Sir Nigel Rodley on General Comment 34, Article 19, ICCPR', *Law, Justice and Journalism*, 2012, available at <<http://lawjusticejournalism.org/2012/04/02/sir-nigel-rodley-on-general-comment-34-article-19-iccpr/>>, accessed 10 February 2014

# Chapter 16. Electoral Campaign

## Overview

An electoral campaign can form the pinnacle of freedom of opinion and expression in democratic societies. It is defined as ‘the set of organizational and communication activities carried out by candidates and/or political parties with the aim of attracting voters’.<sup>1</sup> The Guidelines address the aspects pertaining to campaign finance in Chapter 5 under the broader topic of political finance.

Elections are a means to translate the free expression of the will of the electors into representative government. To achieve this objective, it is necessary for all parties and candidates to be able to freely distribute their manifestos—their political issues and proposed solutions—to the electorate during the electoral campaign. Freedom of Assembly and Freedom of Opinion and Expression provide the necessary guarantees for the effective exercise of political campaigning. Legal frameworks are thus required to ensure that each political party and candidate enjoys equal access to the electorate and equal opportunity to communicate their message, in line with the Right and Opportunity to be Elected. In a combined reading of articles 25 and 26 of the ICCPR, the CCPR has clearly stated that the principle of equality extends from Covenant rights to effective equality of opportunity to exercise ICCPR rights.

Official campaign periods may be established by law. Furthermore, States Must Take Necessary Steps to Give Effect to Rights by stipulating in their legal frameworks the types of conduct and behaviour that are prohibited during electoral campaigns. This includes the prohibition of incitement to violence and racial hatred. Provisions regulating the conduct of political parties and candidates, or references to codes of conduct, may be enshrined



in the electoral law or criminal law. Voluntary codes of conduct may be developed from agreements reached between various political parties, often brokered by the EMB, which can address issues not explicitly regulated in the legal framework. States are responsible for ensuring that any such provisions are consistent with existing legislation and are not unduly restrictive, so as to provide the opportunity for unobstructed campaigning. Codes of conduct for democratic campaign management may call for parties and candidates to advance some of the following imperatives:

- respect the right and freedom of all other parties and candidates to campaign and disseminate their political ideas and principles without fear;
- act in a manner that respects the rights of other parties and candidates, as well as the rights of citizens, especially voters;
- respect the freedom of the press;
- ensure reasonable freedom of access by all parties and candidates to all potential voters; and
- give potential voters who wish to participate in related political activities the freedom to do so.

At the same time, codes of conduct might ensure that no party or candidate will harass or obstruct media representatives engaged in their professional activities; or disrupt, destroy or frustrate the campaign efforts of any other party. In particular, they will not:

- prevent the distribution or display of handbills, leaflets or posters of other parties and candidates;
- deface or destroy the posters of other parties and candidates;
- deface private property or government or public buildings by writing slogans, pasting posters, etc.;
- prevent any contestant from holding rallies, meetings, marches or demonstrations;
- seek to prevent any person from attending the political rallies of another party; or
- permit their supporters to do anything prohibited by the code of conduct.

Electoral legislation provides procedures and mechanisms for complaints and disputes during campaigns, as a measure to guarantee the Right to an Effective Remedy; these procedures must produce prompt and effective remedies in order to avoid irreparable harm during generally short campaign periods. Some legal frameworks for elections provide for alternative mechanisms, such as mediation, to resolve campaign disputes.<sup>2</sup> Such mechanisms can generate interaction between contesting parties and candidates during the campaign period, for instance in the form of a standing committee coordinated by the

EMB to prevent or resolve disputes in an expeditious manner. Alternative dispute resolution mechanisms enable stakeholders to exchange views, air grievances and foster consensual approaches to resolve disputes, potentially helping to prevent incidents of electoral violence, without resorting to official electoral justice procedures.

Positive provisions for a free electoral campaign in the legal framework require backing by a reasonable, yet credible, sanctions regime. If a code of conduct is incorporated into the electoral law, civil or administrative penalties may apply to its breach. Other electoral penalties, such as the disqualification of candidates or parties, can be imposed as long as they are limited in duration. Whatever legal or other sanctions are established, candidates, parties and party members have to clearly understand their obligations. Therefore it is imperative that rights, obligations and sanctions are defined unambiguously. States are required to ensure that their legal frameworks establish penalties that are proportional to the offences, and that all offenders are treated equally.

Article 25(c) of the ICCPR establishes that every citizen shall have the right and the opportunity, without unreasonable restrictions, to have access, on general terms of equality, to public service in his country. The CCPR has so far applied subsection (c) only to public service positions, not public services per se, which would include access to public broadcasting and other public services and spaces relevant to electoral campaigns. The ACHPR takes this notion somewhat further by providing that every individual shall have the right of access to public property and services in strict equality of all persons before the law.<sup>3</sup>

The following Table of Jurisprudence also covers themes related to the operational running of electoral campaigns, touching on the obligations to guarantee Freedom of Movement, Prevention of Corruption and the Right to Security of the Person.

Table of Jurisprudence

16. Electoral Campaign
16.1 Is there freedom to engage in political campaigning?
Freedom of Opinion and Expression
ICCPR, Art. 19: (1) <b>Everyone shall have the right to hold opinions without interference.</b> (2) <b>Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds</b> , regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
ICCPR, Art. 21: <b>The right of peaceful assembly shall be recognized.</b> No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order ( <i>ordre public</i> ), the protection of public health or morals or the protection of the rights and freedoms of others.

**ICCPR, Art. 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.

**CCPR, GC 25, p. 19:** Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and **free to support or to oppose government**, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. **Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.** p. 25: In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including **freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.**

**CCPR, GC 34, p. 37:** Among **restrictions on political discourse** that have given the Committee cause for concern are the prohibition of **door-to-door canvassing**, restrictions on the **number and type of written materials** that may be distributed during election campaigns, **blocking access during election periods to sources, including local and international media, of political commentary, and limiting access of opposition parties and politicians to media outlets.** Every restriction should be compatible with paragraph 3.

**A/HRC/RES/15/21, The rights to freedom of peaceful assembly and of association (2010), p. 1:** (The Human Rights Council) *calls upon* States to **respect and fully protect the rights of all individuals to assemble peacefully and associate freely, including in the context of elections, [...] and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.**

**CCPR/C/JPN/CO/5, Japan (2008), p. 26:** The Committee is concerned about **unreasonable restrictions placed on freedom of expression and on the right to take part in the conduct of public affairs**, such as the prohibition of **door-to-door canvassing**, as well as **restrictions on the number and type of written materials that may be distributed during pre-election campaigns**, under the Public Offices Election Law. It is also concerned about reports that political activists and public employees have been arrested and indicted under laws on trespassing or under the National Civil Service Law for distributing leaflets with content critical of the Government to private mailboxes (art. 19 and 25). The State party **should repeal any unreasonable restrictions on freedom of expression and on the right to take part in the conduct of public affairs from its legislation to prevent the police, prosecutors and courts from unduly restricting political campaigning and other activities protected under articles 19 and 25 of the Covenant.**

**Viktor Korneenko et al. v. Belarus, Comm. No. 1553/2007, UN Doc. CCPR/C/95/D/1553/2007 (2009), p. 2.1:** Mr. Korneenko was a member of the electoral headquarters of Mr. Milinkevich during the presidential campaign in the spring of 2006; Mr. Milinkevich was a Presidential candidate. On 6 March 2006, two weeks before the elections, Mr. Milinkevich asked him to transport twenty-eight thousand **electoral leaflets** [...]. His car was stopped and searched by the traffic police and **the booklets were seized.** According to him, the police record relating to the search did not give any reason for the seizure, but only indicated that the car contained electoral material. p. 8.3: The Committee reiterates in this context that the right to freedom of expression is of paramount importance in any democratic society, and that any restrictions on its exercise must meet strict tests of justification. **The State party has presented no explanation as to why the restriction of the Mr. Korneenko's and Mr. Milinkevich's right to disseminate information was justified** under article 19, paragraph 3 of the Covenant, **except its affirmation that the seizure and the destruction of the leaflets was lawful.** In the circumstances and in the absence of any further information in this regard, the Committee concludes that both Mr. Korneenko and Mr. Milinkevich's rights under article 19, paragraph 2 of the Covenant have been violated. [...] p. 8.4: The Committee recalls that in its General Comment on article 25, it has observed that in order to ensure the full enjoyment of rights protected by article 25, **the free communication of information and ideas about public and political issues between citizens is essential;** it requires the full enjoyment and respect for the rights guaranteed inter alia by article 19 of the Covenant, **including the freedom to publish political material, to campaign for election and to advertise political ideas.**

Patrick Coleman v. Australia, Comm. No. 1157/2003, UN Doc. CCPR/C/87/D/1157/2003 (2006), p. 7.2: The Committee notes that the author's **arrest, conviction and sentence undoubtedly amounted to a restriction on his freedom of expression**, protected by article 19, paragraph 2 of the Covenant. [...] p. 7.3: The Committee notes that it is for the State party to show that the restriction on the author's freedom of speech was necessary in the present case. Even if a **State party may introduce a permit system aiming to strike a balance between an individual's freedom of speech and the general interest in maintaining public order in a certain area, such a system must not operate in a way that is incompatible with article 19 of the Covenant**. In the present case, the author made a public address on issues of public interest. On the evidence of the material before the Committee, there was no suggestion that the author's address was either threatening, unduly disruptive or otherwise likely to jeopardise public order in the mall; indeed, police officers present, rather than seeking to curtail the author's address, allowed him to proceed while videotaping him. The author delivered his speech without a permit. For this, he was fined and, when he failed to pay the fine, he was held in custody for five days. The Committee considers that the **State party's reaction in response to the author's conduct was disproportionate and amounted to a restriction of the author's freedom of speech which was not compatible with article 19, paragraph 3 of the Covenant**. It follows that there was a **violation of article 19, paragraph 2, of the Covenant**.

Vladimir Katsora v. Belarus, Comm. No. 1377/2005, UN Doc. CCPR/C/99/D/1377/2005 (2010), p. 7.2: The first issue before the Committee is whether or not the application of article 167-10, part 1, of the Code on Administrative Offences to the author's case, [...] constituted a restriction within the meaning of article 19, paragraph 3, on the author's right to impart information. The Committee notes that article 167-10, part 1, of the Code on Administrative Offences establishes administrative liability for engaging in activities on behalf of unregistered or non-reregistered political parties, trade unions or the other public associations. **It also notes that if the State party were to impose a requirement of a state registration of political parties (including electoral blocks of registered political parties), trade unions and the other public associations, it would effectively establish obstacles regarding the exercise of the freedom to impart information, guaranteed by article 19, paragraph 2 of the Covenant**. p. 7.3: The second issue is, therefore, whether in the present case such obstacles are justified under **article 19, paragraph 3 of the Covenant, which allows certain restrictions but only as provided by law and necessary: (a) for respect of the rights or reputations of others; and (b) for the protection of national security or of public order (*ordre public*), or of public health or morals. The right to freedom of expression is of paramount importance, and any restrictions to the exercise of this right must meet a strict test of justification**. [...] The Committee concludes that in the absence of any pertinent explanations from the State party, the restrictions to the exercise of the author's right to impart information cannot be deemed necessary for the protection of national security or of public order (*ordre public*) or for respect of the rights or reputations of others. The Committee therefore finds that the author's rights under article 19, paragraph 2 of the Covenant have been violated in the present case.

## 16.2 Are campaign restrictions prescribed by law and subject to judicial or equivalent review?

### Freedom of Assembly; Right to an Effective Remedy

ICCPR Art. 21: **The right of peaceful assembly shall be recognized**. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

ICCPR Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) **To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities**, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) **To ensure that the competent authorities shall enforce such remedies when granted**.

CCPR, GC 31, p. 15: Article 2, paragraph 3 requires that in addition to effective protection of Covenant rights, States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights**.

CCPR/CO/69/KGZ, Kyrgyzstan (2000), p. 22: The Committee is **concerned about restrictions on the holding of public meetings and demonstrations**, which exceed those permitted under article 21 and about the **lack of appeal procedures in the case of denial of permission**.

CCPR/CO/83/KEN, Kenya (2005), p. 23: The Committee notes with concern that large public political meetings are subject to a prior notification requirement of at least three days under section 5 of the Public Order Act, and that public demonstrations have not been authorized for reasons that appear to have nothing to do with the justifications listed in article 21 of the Covenant. Additional matters of concern are that **no remedy appears to be available for the denial of an authorization**, and that unauthorized meetings are at times broken up with violence (article 21, paragraph 2, of the Covenant). The State party should **guarantee the right of peaceful assembly and impose only those restrictions that are necessary in a democratic society**.

CCPR/CO/75/MDA, Moldova (2002), p. 15: [...] The State party should revise its law with a view to ensuring that the time periods required for advance notice to its authorities of assemblies, as well as the **procedures applied to such requests and appeals against initial decisions**, pay due regard to the ability in practice of the individuals concerned fully to enjoy their rights under article 21 of the Covenant.

A/HRC/20/27 (SR on the rights to freedom of peaceful assembly and of association, 2012), p. 20: The Special Rapporteur calls upon States: (a) To recognize that the rights to freedom of peaceful assembly and of association play a decisive role in the emergence and existence of effective democratic systems as they are a channel allowing for dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected; (e) To ensure that **any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law**, necessary in a democratic society, and proportionate to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness. **Any restrictions should be subject to an independent, impartial, and prompt judicial review**; (k) To recognize that **the rights to freedom of peaceful assembly and of association can be exercised through new technologies, including through the internet**.

### 16.3 Are restrictions on public campaign events reasonable?

#### Freedom of Assembly

ICCPR, Art. 21: **The right of peaceful assembly shall be recognized**. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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**.

CCPR, GC 25, p. 25: In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including **freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas**.

A/HRC/23/39, (SR on the rights to freedom of peaceful assembly and of association, 2013), p. 83: In relation to freedom of peaceful assembly, the Special Rapporteur calls upon States: (b) To ensure that **peaceful assemblies are governed at most by a regime of notification regarding the holding of peaceful assemblies, in lieu of a regime of authorization. The notification procedure**, where introduced, **should be as simple and expeditious as possible**; (c) To provide organizers, whenever an assembly is restricted in compliance with international human rights norms and standards, **with reasonable alternatives to hold their peaceful assemblies**, which should be facilitated within "sight and sound" of the target audience.

A/49/40, paras. 312–333, Cyprus (1994), p. 4: The Committee is concerned that the 1958 law regulating lawful assembly and **requiring permits for public assemblies is not in compliance with article 21** of the Covenant. In this regard, the Committee emphasizes that restrictions on freedom of assembly must be limited to those which are deemed necessary in conformity with the Covenant.

CCPR/CO/82/MAR, Morocco (2004), p. 24: The Committee remains concerned that **the process of issuing a receipt for advance notice of meetings is often abused, which amounts to a restriction on the right of assembly**, as guaranteed by article 21 of the Covenant. The State party should **eliminate the obstacles to the exercise of the right of assembly** (Covenant, art. 21).

CCPR/CO/75/GMB, Gambia (2004), p. 22: The Committee is concerned that **the right to freedom of assembly is subject to limitations** that go beyond what is permissible under article 21 of the Covenant and that such limitations, including **denial of authorization to hold meetings, are targeted in particular at the political opposition to the Government**. The State party should **ensure full respect for the provisions of article 21, and should do so on a non-discriminatory basis**.

A/50/44, paras. 132–145, Mauritius (1996), p. 20: The Committee takes note with concern of the **requirement that prior notification be made seven days before any public meeting is held in order to obtain permission from the Commissioner of Police**.

CCPR/CO/75/MDA, Moldova (2002), p. 15: The Committee is further concerned at the **requirement of 15 days' advance notice of proposed assemblies to be provided to the relevant authorities**. The Committee considers that a requirement **of such length may unduly circumscribe legitimate forms of assembly**. The State party should revise its law with a view to ensuring that the **time periods required for advance notice to its authorities of assemblies, as well as the procedures applied to such requests and appeals against initial decisions, pay due regard to the ability in practice of the individuals concerned fully to enjoy their rights** under article 21 of the Covenant.

CCPR/CO/76/TGO, Togo (2002), p. 18: The Committee is **concerned at reports that peaceful demonstrations organized by civil society are regularly prohibited and forcibly dispersed by the authorities, while marches in support of the President of the Republic are regularly organized by the authorities**. The State party should ensure the practical enjoyment of the right of peaceful assembly and should **restrict the exercise of that right only as a last resort**, in accordance with article 21 of the Covenant.

## **16.4 Are there provisions protecting the freedom of movement of candidates and their supporters?**

### **Freedom of Movement; Right and Opportunity to be Elected**

ICCPR, Art. 12: (1) **Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence**. (2) Everyone shall be free to leave any country, including his own. (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. (4) No one shall be arbitrarily deprived of the right to enter his own country.

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

CCPR/CO/80/UGA, Uganda (2004), p. 22: The Committee is concerned that peaceful demonstrations organized by opposition political parties have been forcibly dispersed by the police and that **freedom of movement of political opponents has also been restricted in certain cases**.

CCPR/CO/79/GNQ, Equatorial Guinea (2004), p. 13: The Committee regrets that, according to reports of **numerous military roadblocks, the requirement to obtain a visa to leave the State party and the practice of internal political exile, the right to freedom of movement is still restricted**. The State party should, in conformity with the provisions of articles 9, 12 and 25 of the Covenant, **guarantee the freedom of circulation** recognized in article 12 of the Covenant by doing away with all military roadblocks or taking steps to prevent their being used as a means of extortion, by repealing the requirement to obtain a visa to leave the country and by abolishing the practice of internal political exile.

## 16.5 Is advocacy of violence, hatred and incitement of national, racial or religious hatred prohibited?

### Security of the Person; States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 9(1): **Everyone has the right to liberty and security of person.**

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICCPR, Art. 20(2): Any **advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.**

CCPR, GC 34, p. 21: Paragraph 3 [of Art. 19 of ICCPR] expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason, two limitative **areas of restrictions** on the right are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or of **public order** (*ordre public*) or of **public health or morals**. p. 52: **It is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions.**

CCPR, GC 11, p. 2: Article 20 of the Covenant states that **any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.** In the opinion of the Committee, these required prohibitions are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities. **The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned.** The provisions of article 20, paragraph 1, do not prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations. For article 20 to become fully effective **there ought to be a law making it clear that propaganda and advocacy as described therein is contrary to public policy and providing for an appropriate sanction in case of violation.** The Committee, therefore, believes that States parties which have not yet done so should take the measures necessary to fulfill the obligations contained in article 20, and should themselves refrain from any such propaganda or advocacy.

CERD/C/ITA/CO/16-18 (2012), *Italy*, p. 17: The Committee is extremely concerned by the prevalence of **racist discourse**, stigmatization and stereotypes directed against Roma, Sinti, Camminanti and non-citizens. The Committee is concerned that in the few cases where politicians have been prosecuted for discriminatory statements, stays of execution have allowed those prosecuted to continue their political activities and to stand for election. **The Committee notes that the fundamental right to freedom of expression does not protect the dissemination of ideas of racial superiority or incitement to racial hatred.** The Committee is also concerned that racial discrimination is increasing in the media and on the internet, particularly on the social networks (Art. 2 and 4).

CERD/C/NLD/CO/17-18 (2010), *Netherlands*, p. 8: The Committee is concerned at the incidence of racist and xenophobic speech emanating from a few extremist political parties, the **continuing incidence of manifestations of racism and intolerance towards ethnic minorities and the general deterioration in the tone of political discourse around discrimination** (art. 4). The Committee urges the State party to take **more effective measures to prevent and suppress manifestations of racism, xenophobia and intolerance and to encourage a positive climate of political dialogue, including at times of local and national election campaigns.**

A/HRC/10/8/Add.3 (SR on Freedom of Religion and Belief, 2009), p. 69: Concerning vote-bank politics and electoral focus on inter-communal conflicts, SR freedom of religion would like to reiterate her predecessor's suggestion to **debar political parties from the post-election use of religion for political ends.** [...] The Representation of the Peoples Act 1951 should be scrupulously implemented, including the provision on disqualification for membership of parliament and state legislatures of persons who promote feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language.



## 16.6 Is the abuse of state resources during campaigning regulated?

### Prevention of Corruption; Right and Opportunity to be Elected

UNCAC, Art. 1: The purposes of this Convention are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; [...] (c) To **promote integrity, accountability and proper management of public affairs and public property**.

ICCPR, Art. 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.

UNCAC, Art. 17: Each State Party shall adopt such legislative and other measures as may be necessary to **establish as criminal offences**, when committed intentionally, the embezzlement, **misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property**, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

A/HRC/20/27/Add.2 (SR on the rights to freedom of peaceful assembly and of association, 2012), Georgia, p. 90: (d) increase efforts to ensure that all political parties, including opposition parties, have **genuine, equitable and adequate access to state** resources for election campaigning. It is especially crucial that the line between the ruling party and the state be clearly defined in order to create a **level playing field**.

A/HRC/21/63 (SR Cambodia, 2012), p. 62: The country needs political stability to accelerate the process of economic development, but that stability should be founded on fairness, equity, transparency, legitimacy and a **level playing field to enable all political actors to make an equitable contribution to the country's governance**. p. 71: Another issue is the **use of state resources, including the time of government employees, motor vehicles and materials**, by political parties during their campaigning. The government must ensure that all **civil servants, police and military personnel do not participate** in political activities or **use government resources while working in their official capacities**, and that neutrality is paramount.

CCPR/C/RWA/CO/3, Rwanda (2009), p. 21: The Committee finds cause for concern in the reported obstacles to the registration and freedom of action of human rights NGOs and opposition political parties (arts. 19, 22, 25 and 26 of the Covenant).[...] It should **treat all political parties on an equal footing** and offer them **equal opportunities** to pursue their legitimate activities, in accordance with the provisions of articles 25 and 26 of the Covenant.

## 16.7 Does the legal framework prohibit violence and intimidation resulting from campaigning?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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**.

CCPR, GC 25, p. 11: **States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. [...] Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced**.



CCPR/CO/79/GNQ, *Equatorial Guinea* (2004), p. 12: While the Committee has taken note of the introduction of a multiparty system and of the adoption of the National Pact between the Government and the authorized political parties, it **regrets the continuing harassment of political opponents through, inter alia, detentions, fines and difficulty in finding employment or leaving the country** to attend meetings abroad, for example. It also notes with **concern that political parties opposed to the Government are discriminated against**, and that some have apparently even had difficulty in registering. The State party should, in accordance with **articles 25 and 26** of the Covenant, **treat all political parties equally and give them all the same opportunities to carry out their lawful activities**.

*Essono Mika Miha v. Equatorial Guinea*, Comm. No. 414/1990, UN Doc. CCPR/C/51/D/414/1990 (1994), p. 2.3: In [...] 1988, the author returned to Equatorial Guinea, so as to **actively support the activities of the opposition party** [Partido de Progreso] **of which he is a member**. p. 6.4: [...] On the basis of this information, the Committee concludes that he was subjected to torture at the prison of Bata, in violation of article 7; it further observes that the **deprivation of food and water** after 16 August 1988, as well as the denial of medical attention after the ill-treatment in the, or outside the, prison of Bata, amounts to cruel and inhuman treatment within the meaning of article 7, as well as to a violation of article 10, paragraph 1. p. 6.5: As to the author's allegation that he was **arbitrarily arrested and detained** [...] it further notes that the author was not given any explanations for the reasons of his arrest and detention, except that the President of the Republic had ordered both, that he was not brought promptly before a judge or other officer authorized by law to exercise judicial power, and that he was unable to seek the judicial determination, without delay, of the lawfulness of his detention. On the basis of the information before it, the Committee finds a violation of article 9, paragraphs 1, 2 and 4.

A/HRC/21/63 (SR Cambodia, 2012), p. 72: For the elections to be credible, **all opposition parties must be free to organize and campaign without fear and hindrance**. Elections are not only about polling day, but also the overall human rights context in Cambodia. The Special Rapporteur has been informed of cases of harassment and intimidation of people attending party political meetings of opposition parties by government officials and the secret police. The **government must therefore ensure that opposition parties are free to carry out their political activities without harassment and intimidation, not only around the dates of elections but also in the lead-up to the elections and throughout the parliamentary cycle**.

## 16.8 Are there provisions ensuring the security of candidates, campaign workers and supporters?

### Right to Security of the Person

ICCPR, Art. 9: (1) **Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.** (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

CCPR/CO/80/COL, *Colombia* (2004), p. 11: The Committee is also concerned that such practices as **arrest of election candidates** continue; murders of legislators dating from earlier years remain unpunished.

*Felix Kulov v. Kyrgyzstan*, Comm. No. 1369/2005, UN Doc. CCPR/C/99/D/1369/2005 (2010), p. 2.1: The author submits that he is a **member and one of the leaders of the political opposition** in Kyrgyzstan. p. 8.3: The Committee notes the author's allegations under article 9, paragraph 1, that the **decision to detain him was unlawful**, as the investigators had no evidence that he wanted to escape or to obstruct the inquiries. [...] In the absence of any further information, the Committee concludes that there has been a violation of article 9, paragraph 1, of the Covenant. p. 8.4: As for the author's claims under articles 9, paragraph 3, read together with article 2, paragraphs 1 and 2, that the decision to place him in pretrial detention was made by a prosecutor, i.e. a representative of the executive branch, under the national legislation, in his absence, and that he was not brought before a judge or other officer authorized by law to exercise judicial power. [...] In these circumstances, the Committee concludes that **the facts as submitted reveal a violation of the author's rights under article 9, paragraph 3, of the Covenant**. p. 8.5: The author also claimed violation of article 9, paragraph 4, as he was allegedly kept in an investigation detention centre since 6 February 2001, due to the opening of a third case against him. His detention was allegedly prolonged [...] but in absence of any judicial control. The author allegedly appealed with the General Prosecutor's Office, but all his appeals were rejected [...]. In the absence of any further information, the Committee concludes that there has been a violation of article 9, paragraph 4, of the Covenant.

A/HRC/14/24/Add.7 (SR on extrajudicial, summary or arbitrary executions, 2010), p. 95: **Many killings of candidates or voters are the result of politicized security forces, controlled by political leaders and used for unlawful political purposes**. In these cases, the international community should undertake to assist the Government to depoliticize its forces through long-term restructuring and training efforts. p. 96: Further research should examine the role played by **presidential guards or equivalent forces** whose loyalty is de facto to the President rather than the State and whose role in the context of elections seems generally unlikely to be conducive to the enjoyment of electoral and democratic freedoms. There is a legitimate question as to how a leader in an unstable society can legitimately protect himself and his Government short of achieving comprehensive reform of the entire armed forces. But the electoral implications of such arrangements need to be better understood and measures put in place to diminish the likelihood of the presidential guard playing an abusive role. p. 97: In countries **where candidates or political leaders control private armed groups, significant efforts need to be taken to research those links and to dismantle the groups before and during elections**.

## 16.9 Are there provisions confining the role of security forces during campaigning?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 9: (1) **Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.** (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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**.

CCPR/C/ETH/CO/1, Ethiopia (2011), p. 18: The Committee is concerned over allegations of the resort to **excessive and sometimes lethal force by the security forces**, notably during the post-elections violence in 2005, and by the manner in which the Commission of Inquiry established to investigate these events, may be presumed to have applied an inappropriate test of proportionality and necessity, its actual content of which the State party failed to clarify (Arts. 6 and 7). The State party should take **measures to eradicate all forms of excessive use of force by law enforcement officials**. It should, in particular: (a) establish a mechanism to carry out independent investigations of complaints; (b) initiate proceedings against alleged perpetrators; (c) **provide training to law enforcement officers**; (d) bring its legislative provisions and policies into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and (e) provide adequate reparation to the victims.

CERD/C/JOR/CO/13-17, Jordan (2012), p. 13: [...] It is also **concerned that security forces**, whose leadership generally excludes Jordanians of Palestinian descent, **continue to exercise significant influence over Jordanian political life in a manner that limits citizens' freedoms of speech and assembly** (art. 5(c)).

A/HRC/14/24/Add.3 (SR on extrajudicial, summary or arbitrary executions, 2010), Democratic Republic of the Congo, p. 112: With regard to election-related violence: (a) MONUC and the international community should **consider the risk of violence by government security forces during the next election period to be high. The security situation** in the west of the Democratic Republic of the Congo **should be closely monitored, and contingencies put in place for civilian protection**; (b) the Republican Guard should be fully integrated into the regular Congolese army; (c) detention facilities operated outside the law by security agencies such as the republican guard should be closed immediately.

A/HRC/14/24/Add.7 (SR on extrajudicial, summary or arbitrary executions, 2010), p. 90: In countries with a track record of **election violence**, Governments should **draw up plans for dealing with such violence in the future in ways that are consistent with their human rights obligations**. Too often, Governments respond as if they had no inkling that relatively predictable violence would in fact occur. While some of the details of such contingency planning will need to remain confidential, it is also essential that the authorities release enough detailed information in order to make it clear that serious planning has been undertaken, as well as to **discourage those potentially violent forces who might otherwise assume there will be few obstacles to, and no consequences flowing from, their actions**.

CCPR/C/RWA/CO/3, Rwanda (2009), p. 21: The Committee finds cause for concern in the **reported obstacles to the registration and freedom of action of human rights NGOs and opposition political parties** (Arts. 19, 22, 25 and 26 of the Covenant). The State party should take the necessary steps to **enable national human rights NGOs to operate without hindrance**. [...]

## 16.10 Are campaign grievances adjudicated on time to provide an effective remedy?

### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) **To ensure that the competent authorities shall enforce such remedies when granted**.

CCPR, GC 31, p. 15: Article 2, paragraph 3 requires that in addition to effective protection of Covenant rights, States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights**.

CCPR, GC 32, p. 27: An important aspect of the fairness of a hearing is its **expeditiousness**. While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3 (c) of article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be allocated for the administration of justice.

A/HRC/20/27 (SR on the rights to freedom of peaceful assembly and of association, 2012), p. 20: The Special Rapporteur calls upon States: (e) To ensure that **any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law**, necessary in a democratic society, and proportionate to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness. **Any restrictions should be subject to** an independent, impartial, and **prompt judicial review**.

CCPR/CO/75/MDA, Moldova (2002), p. 15: [...] The State party should revise its law with a view to **ensuring that** the time periods required for advance notice to its authorities of assemblies, as well as **the procedures applied to** such requests and **appeals against initial decisions, pay due regard to the ability in practice of the individuals concerned fully to enjoy their rights under article 21 of the Covenant**.

## Resources

- ACE Project, 'Legal Framework', 2012, available at <<http://aceproject.org/ace-en/topics/lf/>>, accessed 10 February 2014
- ACE Project, 'Campaigning', available at <<http://aceproject.org/ace-en/topics/pc/pcc/pcc08/?searchterm=electoral%20Campaign>>, accessed 28 March 2014
- Democracy Reporting International (DRI), *Pakistan Election Law and International Standards: a Reference Guide on Legislative Gaps and Vulnerabilities* (Berlin: DRI, 2013)
- Gutiérrez, P. and Zovatto, D., *Funding of Political Parties and Election Campaigns in the Americas* (OAS and International IDEA, 2005)
- International Foundation for Electoral Systems (IFES), *Abuse of State Resources: A Brief Introduction to What it is, How to Regulate against it and How to Implement such Resources* (Washington, D.C.: IFSE, 2011)
- International IDEA, *Code of Conduct for Political Parties Campaigning in Democratic Elections* (Stockholm: International IDEA, 1999), available at <[http://www.idea.int/publications/coc\\_campaigning/index.cfm](http://www.idea.int/publications/coc_campaigning/index.cfm)>, accessed 3 April 2014
- International IDEA, *Funding of Political Parties and Election Campaigns* (Stockholm: International IDEA, 2003)
- National Democratic Institute (NDI), *Political Campaign Planning Manual* (Washington, D.C.: NDI, 2009)
- Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines for Reviewing a Legal Framework for Elections* (OSCE/ODIHR, 2013)
- Open Society Justice Initiative, *Monitoring Elections Campaign Finance: a Handbook for NGOs* (New York: Open Society Foundations, 2005)

## Notes

- <sup>1</sup> ACE Project 2012, p.96.
- <sup>2</sup> For more information on electoral disputes and electoral justice, see Chapter 20 of the Guidelines: 'Electoral Justice'.
- <sup>3</sup> ACHPR, Art 13.

# Chapter 17. Media Campaign

## Overview

This chapter discusses the role and responsibilities of the media during electoral campaigns. General media rights in relation to the broader electoral process are covered in Chapter 15. This distinction highlights the specific UN treaty obligations that bind States Parties regarding the work of the media during electoral campaigns. The development of new technology, information and communication tools has multiplied sources of information, introduced immediacy and transformed modes of reporting, but this is so far rarely reflected in the language of treaties, which tend to refer to ‘traditional’ print and broadcast media. Nevertheless, it is possible to interpret relevant media obligations as including online and certain social forms of information dissemination. This chapter focuses on media access for political parties, candidates and supporters, requirements concerning media reporting during electoral campaigns and the dissemination of voter education/information during the campaigns.

Democratic elections are not possible where legal frameworks inhibit freedom of speech during campaign periods. Too often, legal frameworks in transitional and established democracies censor campaign speeches by imposing sanctions against public speaking that ‘defames’ or ‘insults’ another person or political rival, which could include criticism of the government, a government official or a candidate in the campaign. Any provision, regardless of the legal source, that imposes disqualification, imprisonment or monetary fines for criticizing or ‘defaming’ the government, another candidate or a political party may be subject to abuse. Furthermore, limitations on Freedom of Opinion and Expression are not in line with UN treaty provisions and related jurisprudence unless they comply with the limited set of restrictions foreseen in the ICCPR. Any such restrictions must be necessary and established by law, and have the

aim to protect national security, public order, public health or morals, and the rights and reputations of others. Moreover, the ICCPR also prohibits any propaganda for war or the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Fundamental freedoms must thus be weighed when reviewing provisions that permit censorship of candidates, supporters or the media.

The obligation to guarantee the Right and Opportunity to be Elected calls for equitable access for political parties and candidates to state-owned radio and television during the electoral campaign period by providing that all parties are guaranteed a defined share of airtime according to a pre-established formula<sup>1</sup> (e.g., on the basis of seats won in the previous election). Whatever method they choose, states are required to ensure that it is reasonable within their national context and well defined in their laws or regulations.

Media access by parties and candidates may be regulated by a media or public information law rather than the electoral law. Media laws may only provide general statements on access, and delegate authority for promulgating the specifics of implementation to an administrative body such as a specialized media commission or an EMB. Equitable treatment and access to the media are undermined if state-owned or controlled media are allowed to favour a political party or candidate in their news coverage, political coverage, forums or editorials. The relevant jurisprudence requires States Parties to prohibit biased coverage or preferential treatment in state or public media. Particular care is needed to avoid placing government advertisements in a manner that can be perceived as favouring one party or candidate. Legal frameworks are also called upon to define penalties or corrective mechanisms.

The obligation to guarantee Freedom from Discrimination and Equality under the Law requires provisions to protect political parties and candidates from discrimination in their access to public or private media. Furthermore, international jurisprudence calls for such access to be fair. This implies not only allocating broadcast time or print space to all parties and candidates, but also fairness in the placement and timing of such access (i.e., primetime versus late night broadcasts, or front page versus back page), as well as the identification of the political advertisement (which is not to be disguised as news or editorial content). If political advertising is allowed, measures can be taken to ensure that private media charge the same rates to all parties and candidates without discrimination. In countries where paid political advertising is banned, provisions are usually in place for free political party broadcasts, which help voters make informed choices. The use of the media for campaign purposes must also be responsible in terms of content, so that no party makes statements that are false, slanderous or racist, or which constitute incitement to violence.<sup>2</sup>

The conduct of opinion polls and exit polls is another area for consideration. Some jurisdictions determine that any limitation on such polls is an infringement of freedom of speech and expression, and is hence unacceptable. Other jurisdictions restrict the publication of opinion polls in the days immediately leading up to the election, and permit the publication of exit polls only after the polling is completed, or after the official results are announced. Analysis is required as to whether any restrictions are reasonable and proportionate, as freedom of speech and expression during elections is particularly important. In every case, opinion and exit polls are required to be explicit about their methodology, including the sample size and margin of error, so as not to be misleading.

The Guidelines have also analysed UN treaty language on the provision of public media airtime for voter information and education. While the UN treaties do not specify that voter information/education should be disseminated free of charge by public or state media, the ICCPR and UNCAC place a positive obligation on States Parties to ensure the effective exercise of the rights enshrined in the treaties. Disseminating voter information/education through state and public media is a logical way to achieve this.

In addition to the referenced obligations, the following Table of Jurisprudence also focuses on the obligations of Transparency and the Right to Information and States Must Take Necessary Steps to Give Effects to Rights as they apply to the media’s involvement in electoral campaigns.

Table of Jurisprudence

17. Media Campaign
17.1 Are there provisions granting the media freedom of expression?
Freedom of Opinion and Expression
ICCPR, Art. 19: (1) <b>Everyone shall have the right to hold opinions without interference.</b> (2) Everyone shall have the right to <b>freedom of expression</b> ; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
CCPR, GC 25, p. 12: <b>Freedom of expression</b> , assembly and association are <b>essential conditions for the effective exercise of the right to vote and must be fully protected.</b> p. 25: In order to ensure the full enjoyment of rights protected by article 25, <b>the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.</b> It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.



CCPR, GC 34, p. 13: **The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.** This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. p. 30: The public also has a corresponding right to receive media output. p. 38: [...] the Committee has observed that **in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high.** Thus, the mere fact that forms of expression are considered to be insulting to a public figure is **not sufficient to justify the imposition of penalties**, albeit public figures may also benefit from the provisions of the Covenant. Moreover, **all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.** Accordingly, the Committee expresses concern regarding laws on such matters as, lese majesty, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. **States parties should not prohibit criticism of institutions, such as the army or the administration.**

CCPR/ZMB/CO/3, *Zambia* (2007), p. 25: The Committee notes with particular concern that under the Penal Code, **defamation against the President as well as publication of false news are still considered as criminal offences.** The Committee reiterates its **concern over reports of arrests and charges brought against journalists for the publication of articles critical of the Government, which are used as harassment and censorship techniques** (Art. 19). The State party should repeal the above-mentioned provisions of the Penal Code. It should find other means to ensure accountability of the press, so as to be in full compliance with the Covenant, in particular **the right to freedom of expression.**

CCPR/C/TUN/CO/5, *Tunisia* (2008), p. 19: The Committee is concerned that during elections, the Electoral Code (article 62-III) prohibits anyone from using a **private or foreign radio or television channel or one broadcasting from abroad** with a view to encouraging listeners to vote or to abstain from voting for a candidate or list of candidates (articles 19 and 25 of the Covenant). **The State party should abolish these restrictions in order to make the provisions of the Electoral Code fully compatible with articles 19 and 25 of the Covenant.**

*Kim Jong-Cheol v. Republic of Korea*, Comm No. 968/2001, CCPR/C/84/D/968/2001, p. 8.2: The Committee notes that the issue before it is whether **the author's conviction**, under Section 108(1) of the Election for Public Office and Election Malpractice Prevention Act, for **having published an article on the results of opinion polls during the campaign period of the Presidential election, violates article 19, paragraph 2, of the Covenant.** Article 19, paragraph 2, of the Covenant guarantees the right to freedom of expression and includes 'freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media'. **The Committee considers that through his articles, the author was exercising his right to impart information and ideas within the meaning of article 19, paragraph 2, of the Covenant.**

*Aduayom et al. v. Togo*, Comm No. 422/1990, 423/1990 and 424/1990 (1996), p. 7.4: In respect of the claim under article 19, the Committee observes that it has remained uncontested that the authors were first prosecuted and later not reinstated in their posts, between 1986 and 1991, inter alia, for having read and, respectively, disseminated information and material critical of the Togolese Government in power and of the system of governance prevailing in Togo. The Committee observes that the **freedoms of information and of expression are cornerstones in any free and democratic society.** It is in the essence of such societies that its **citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticize or openly and publicly evaluate their Governments without fear of interference or punishment, within the limits set by article 19, paragraph 3.** On the basis of the information before the Committee, it appears that the authors were not reinstated in the posts they had occupied prior to their arrest, because of such activities. The State party implicitly supports this conclusion by qualifying the authors' activities as 'political offences', which came within the scope of application of the Amnesty Law of 11 April 1991; **there is no indication that the authors' activities represented a threat to the rights and the reputation of others, or to national security or public order** (article 19, paragraph 3). In the circumstances, **the Committee concludes that there has been a violation of article 19 of the Covenant.**

## 17.2 Are there provisions requiring equitable access for all political parties and candidates to public media?

### Right and Opportunity to be Elected; Transparency and the Right to Information

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: 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.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information.**

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that **promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.**

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

UNSC Res. 1933 (2010), Côte d'Ivoire, p. 7: [The Security Council] urges again the political parties to comply fully with the Code of Good Conduct for elections, which they signed under the auspices of the Secretary-General, **recalls the importance for the public throughout the country to have access to pluralistic and diverse information through the media** and urges further **all relevant Ivorian stakeholders to allow equitable and broader access to media and in particular** the Ivorian authorities **to allow equitable access to State media.**

CCPR, GC 34, p. 16: States parties should **ensure that public broadcasting services operate in an independent manner.** In this regard, States parties should guarantee their **independence and editorial freedom.** They should **provide funding in a manner that does not undermine their independence.** p. 39: [...] **Regulatory systems** should take into account the differences between the print and broadcast sectors and the internet, while also noting the manner in which various media converge [...]. p. 41: Care must be taken to ensure that **systems of government subsidy to media outlets and the placing of government advertisements are not employed to the effect of impeding freedom of expression [...].**

CCPR/C/RWA/CO/3, Rwanda (2009), p. 21: The Committee finds cause for concern in the reported obstacles to the registration and freedom of action of human rights NGOs and opposition political parties (arts. 19, 22, 25 and 26 of the Covenant). [...] It should **treat all political parties on an equal footing** and offer them **equal opportunities to pursue their legitimate activities**, in accordance with the provisions of articles 25 and 26 of the Covenant.

CCPR/CO/75/GMB, Gambia (2004), p. 23: While Decree No. 89 (1996), which banned political party activity, was abrogated in July 2001, the Committee notes with concern that **political parties opposed to the Government are routinely disadvantaged and discriminated against in their activities**, for example by **denial or serious limitation of the possibility of radio or television broadcasts. The State party should treat all political parties equally and provide them with equal opportunities for the pursuit of their legitimate activities**, in line with the provisions of articles 25 and 26 of the Covenant.

CCPR/CO/76/TGO, Togo (2002), p. 17: The Committee is **concerned at reports that opposition political parties lack practical access to public audio-visual and sound media** and that the members of such parties are the target of continuous public slander campaigns in the media (Arts.19 and 26 of the Covenant). The State party should guarantee the **fair access of political parties to public and private media** and ensure that their members are protected against slander. The Committee would like to receive additional information on the way in which the High Audio-visual and Communications Authority (HAAC) **ensures, in practice, parties' fair access to the media**, as well as on the results obtained. The substance of the regulations in that area should also be transmitted to the Committee.

CCPR/CO/75/MDA, Republic of Moldova (2002), p. 14: The Committee is concerned that, contrary to articles 19 and 26 of the Covenant, the **State television and radio broadcasting service** (Tele-Radio Moldova) **has been subject to directives inconsistent with the requirements of impartiality and non-discrimination with respect to political opinion**. The State party should take the necessary steps, including legislative measures, to **ensure** that the State broadcaster enjoys broad discretion as to programming content, and **that competing views, including those of political parties opposed to government policy, are appropriately reflected in the broadcaster's transmissions**.

### 17.3 Are there provisions to regulate the equal treatment of women candidates by the media?

#### Equality between Men and Women; Freedom from Discrimination and Equality under the Law

CEDAW, Art. 7: States Parties shall **take all appropriate measures to eliminate discrimination against women in the political and public life of the country** [...].

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law**. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CEDAW, GR 19, p. 24: (d) Effective measures should be taken to **ensure that the media respect and promote respect for women**.

CEDAW/C/CHE/CO/3, Switzerland (2009), p. 34: The Committee recommends that the State party continues its efforts to encourage the media to **ensure that female and male candidates and elected representatives receive equal visibility in the media, especially during election periods**.

CEDAW/C/MNE/CO/1, Montenegro (2011), p. 23: The Committee recommends that the State party: (e) provide **incentives for political parties to nominate equal numbers of women and men as candidates** and harmonize their statutes with the law on gender equality e.g., through party financing and **by encouraging broadcasting media to allocate extra time to those parties during electoral campaigns**.

### 17.4 Are there provisions protecting parties and candidates from discrimination by private media?

#### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the **law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground** such as race, colour, sex, language, religion, **political or other** opinion, national or social origin, property, birth or other status.

CCPR, GC 18, p. 9: Reports of many States parties contain information regarding legislative as well as administrative measures and court decisions which relate to protection against discrimination in law, but they very often lack information which would reveal discrimination in fact. [...] The Committee wishes to know if there remain any problems of **discrimination in fact, which may be practiced either by public authorities, by the community, or by private persons or bodies**. The Committee wishes to be informed about legal provisions and administrative measures directed at diminishing or eliminating such discrimination.

CCPR/CO/76/TGO, Togo (2002), p. 17: The Committee is concerned at reports that **opposition political parties lack practical access to public audio-visual and sound media** and that the members of such parties are the target of continuous public slander campaigns in the media (articles 19 and 26 of the Covenant). The State party should **guarantee the fair access of political parties to public and private media and ensure that their members are protected against slander**. The Committee would like to receive additional information on the way in which the High Audio-visual and Communications Authority (HAAC) **ensures, in practice, parties' fair access to the media**, as well as on the results obtained. The substance of the regulations in that area should also be transmitted to the Committee.

## 17.5 Do journalists have non-discriminatory and broad access to the entire electoral process?

### Freedom of Opinion and Expression

ICCPR, Art. 19: (1) **Everyone shall have the right to hold opinions without interference.** (2) **Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

CCPR, GC 34, p. 44: Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with paragraph 3. **Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is non-discriminatory** and compatible with article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors. p. 45: It is normally **incompatible with paragraph 3 to restrict the freedom of journalists and others who seek to exercise their freedom of expression** (such as persons who wish to travel to human rights-related meetings) to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries or to restrict freedom of movement of journalists and human rights investigators within the State party (including to conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses). States parties should **recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources**.

CCPR/C/TUN/CO/5, Tunisia (2008), p. 19: The Committee is concerned that during elections, the Electoral Code (article 62-III) prohibits anyone from using a private or foreign radio or television channel or one broadcasting from abroad with a view to encouraging listeners to vote or to abstain from voting for a candidate or list of candidates (articles 19 and 25 of the Covenant). **The State party should abolish these restrictions in order to make the provisions of the Electoral Code fully compatible with articles 19 and 25 of the Covenant**.

## 17.6 Are there provisions requiring public media airtime for voter information/ education?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

UNCAC, Art. 13: Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations**, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) **Enhancing the transparency of and promoting the contribution of the public to decision-making processes;** (b) **Ensuring that the public has effective access to information;** (c) **Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;** (d) **Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information** concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary.

UNSC Res. 2065 (2012): [The Security Council] *urges* the Independent Media Commission to ensure compliance with the Media Code of Practice, and *emphasizes* the **need for media practitioners to remain committed to providing professional, independent, and factual coverage and to promoting public education and dialogue during the electoral period.**

CCPR, GC 25, p. 11: Voter education and registration campaigns are **necessary to ensure the effective exercise of article 25** rights by an informed community. p. 12: **Positive measures** should be taken to **overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.** States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with.

### 17.7 Does the legal framework provide timely remedies for media grievances?

#### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an **effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity**; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) **To ensure that the competent authorities shall enforce such remedies when granted.**

CCPR, GC 32, p. 27: An important aspect of the fairness of a hearing is its **expeditiousness**. While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3 (c) of article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be allocated for the administration of justice. p. 63: The way criminal proceedings are handled may affect the exercise and enjoyment of rights and guarantees of the Covenant unrelated to article 14. **Thus, for instance, to keep pending, for several years, indictments for the criminal offence of defamation brought against a journalist for having published certain articles, in violation of article 14, paragraph 3 (c), may leave the accused in a situation of uncertainty and intimidation and thus have a chilling effect which unduly restricts the exercise of his right to freedom of expression** (article 19 of the Covenant).

CCPR, GC 31, p. 15: Article 2, paragraph 3 requires that in addition to effective protection of Covenant rights, States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights.**

*Womah Mukong v. Cameroon*, Comm. No. 458/91, UN Doc. CCPR/C/51/D/458/1991 (1994), p. 2.1: The author is a journalist, writer and long-time opponent of the one-party system in Cameroon. He has frequently and publicly advocated the introduction of multiparty democracy and has worked toward the establishment of a new political party in his country. p. 8.3: [...] the effectiveness of remedies against ill treatment cannot be dissociated from the author's portrayal (uncontested and indeed confirmed by the State party) as a political opposition activist. Thirdly, the Committee notes that after his return, the author has continued to suffer specified forms of harassment on account of his political activities. Finally, **it is uncontested that the case which the State party itself considers relevant to the author's situation has been pending before the Supreme Court of Cameroon for over twelve years.** In the circumstances, the Committee questions the relevance of the jurisprudence and court decisions invoked by the State party for the author's particular case and concludes that there is no reason to revise the decision on admissibility in as much as the author's claim under article 7 is concerned.

## Resources

- ACE Project, 'Media and Elections', available at <<http://aceproject.org/ace-en/topics/Archive-ACE-2.0/me>>, accessed 28 March 2014
- Institute for Media, Policy and Civil Society (IMPACS), *Media and Elections: An Elections Reporting Handbook* (Vancouver: IMPACS, 2004)
- International IDEA, *Election Coverage from a Gender Perspective: A Media Monitoring Manual* (Stockholm: International IDEA, 2011)
- International Mechanism for Promoting Freedom of Expression*, Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression, 2009, available at <<http://www.osce.org/fom/37188>>, accessed 10 February 2014
- National Democratic Institute (NDI), *Media Monitoring to Promote Democratic Elections: An NDI Handbook for Citizen Organizations* (Washington, D.C.: NDI, 2002)
- New Zealand Electoral Commission, *Media Handbook: Parliamentary Elections* (Wellington: Electoral Commission, 2013), available at <[http://www.elections.org.nz/sites/default/files/bulk-upload/documents/media\\_handbook\\_2013.pdf](http://www.elections.org.nz/sites/default/files/bulk-upload/documents/media_handbook_2013.pdf)>, accessed 10 February 2014
- Organisation Internationale de la Francophonie (OIF), Reporters Sans Frontières, *Guide Pratique du Journaliste en Période Electorale*, available at <<http://www.francophonie.org/Guide-pratique-du-journaliste-en.html>>, accessed 18 June 2014
- Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines for Reviewing a Legal Framework for Elections* (OSCE/ODIHR, 2013)
- Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Handbook on Media Monitoring for Election Observation Missions* (OSCE/ODIHR, 2012)
- Projeto de Apoio aos Ciclos Eleitorais nos Países Africanos de Língua Oficial Portuguesa e Timor-Leste (PRP PALOP-TL), *Handbook on Journalistic Ethics in Media Coverage of Electoral Processes*, 2011.
- Semetko, H., *Election Campaigns: Balance and the Mass Media*, paper presented at the Harvard-World Bank Workshop, Cambridge, MA, 29-31 May 2008, available at <<http://www.hks.harvard.edu/fs/pnorris/Acrobat/WorldBankReport/Chapter%207%20Semetko.pdf>>, accessed 28 March 2014
- United Nations (UN), *Human Rights and Elections: United Nations Handbook on the Legal, Technical and Human Rights Aspects of Elections* (New York and Geneva: UN, 1994)
- United Nations Development Programme (UNDP), *Media and Elections: A guide for Electoral Practitioners*, 2014

## Notes

- <sup>1</sup> ACDEG, Art. 17 calls upon states to ensure fair and equitable access by contesting parties and candidates to state-controlled media during elections.
- <sup>2</sup> UN, 1994.

# Chapter 18. Polling

## Overview

Polling condenses a number of ICCPR article 25 obligations into a single activity to ensure the exercise of every voter's political rights. The fundamental objective of polling is to ensure the execution of the Right to Vote, and to do so by Secret Ballot (or any other equivalent, free and secret procedure) in respect of the free expression of the will of the electors.

Legal framework provisions that regulate the control and security of the vote, as well as the casting of votes at polling stations, are required to guarantee ballot security and ensure that no individual vote can be attributed to a specific voter's identity. While polling activities on election day should not be taken out of the broader context of the electoral process, election day is when the largest number of individuals in a country exercise the Right and the Opportunity to Participate in Public Affairs. A number of measures are therefore required of the EMB and other authorities to guarantee the full enjoyment of this right.

The Guidelines cover two basic activities related to polling: (1) the identification of individuals as legitimate voters at the polling station and (2) the act of voting by marking/selecting and casting the ballot. These two activities entail a number of processes, operations, organizational measures and procedures performed by a polling station committee in the polling station, either manually or electronically. They also require the utilization of a large quantity of pre-approved materials, either in hard or digital format.

In order to ensure the secrecy of the vote, identification and voting activities must be conducted consecutively and kept separate at all stages. Nobody, including polling station committee members, can be allowed to see a voter's



marked or selected ballot before the count. This prohibition is waived for persons who are legally authorized to assist voters requesting assistance, in line with the conditions and procedures established by national law. The secrecy of the vote requires electoral legislation to stipulate detailed procedures for voter identification and ballot marking and casting, effectively touching on the interlinked obligation that the State Must Take Necessary Steps to Give Effect to Rights.

Legal framework provisions are required to enable polling station staff to ensure voters are identified according to legally established procedures and criteria before being authorized to cast a vote. States are called upon to ensure that polling procedures prevent voter impersonation, double voting and family voting. Similarly, polling procedures can be designed to help give effect to the Right and Opportunity to Vote and remain as simple as possible to ease the voting process. Polling provisions require all ballots and voting materials to be adequately safeguarded before, during and after voting to contribute to the respect of the free expression of the will of the electors.

Prohibiting the presence of unauthorized persons in polling stations minimizes situations in which voters may be intimidated, which compromises their ability to cast a vote that freely expresses their will. For the same reason, weapons are usually banned inside polling stations. Police officers and security forces should only enter polling stations to cast their vote, or at the request of a polling station official in response to a clear need to restore order and to protect the Right to Security of the Person.

Information on polling procedures must be available to stakeholders and the public, in keeping with the obligations to ensure Transparency and the Right to Information. Allowing electoral observers and political party and candidate agents to be present in polling stations throughout election day is an equally important measure to enhance transparency, but also to grant the Right and Opportunity to Participate in Public Affairs to all interested citizens.

In addition to voting in polling stations, the legal framework for elections may provide for alternative methods of voting, such as postal voting, mobile voting or polling stations for particular groups of voters (e.g., barracked military personnel, hospitalized persons, prisoners, refugees or IDPs). States are required to define situations in which special voting provisions are applicable (e.g., if it is physically impossible for the voter to travel to a regular polling station to vote). However, some jurisdictions might provide exceptions to this for special reasons, for example, allowing large sections of voters to access postal voting. In all cases, adequate mechanisms are required to prevent the abuse of such alternative voting methods.

Legal frameworks are called upon to prohibit any form of discrimination in voting procedures, and to protect the uniform application of these measures to all similarly placed voters. Identification requirements for voters who are eligible to use alternative voting provisions can be established to safeguard the integrity of these special voting activities and to prevent double voting. Allowing party and candidate agents, as well as election observers, access to such special voting procedures contributes to the transparency of the process. Some jurisdictions have banned remote voting procedures, such as postal or internet-based systems, as the applications used could not guarantee the secrecy of the vote.

The following Table of Jurisprudence also addresses the obligation to ensure the Right to an Effective Remedy to complete the array of issues that are covered in UN jurisprudence related to polling activities. For a number of issues, the Table of Jurisprudence calls for a combined interpretation of the ICCPR and UNCAC to strengthen the relevance of transparency, accountability and citizen participation in electoral processes.

### Table of Jurisprudence

18. Polling
18.1 Are there provisions to protect the exercise of the right to vote?
Right and Opportunity to Vote
ICCPR, Art. 25: <b>Every citizen shall have the right and the opportunity</b> , without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.
CRPD, Art. 29: States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: a) <b>To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others</b> , directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: (i) <b>Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.</b>
CCPR, GC 25, p. 12: <b>Positive measures should be taken to overcome specific difficulties</b> , such as illiteracy, language barriers, poverty, or impediments to freedom of movement <b>which prevent persons entitled to vote from exercising their rights effectively</b> . Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice. States parties should indicate in their reports the manner in which the difficulties highlighted in this paragraph are dealt with. p. 14: Persons who are <b>deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote</b> . p. 20: States should take measures to guarantee the requirement of the secrecy of the vote during elections, <b>including absentee voting</b> , where such a system exists.
CCPR/C/79/Add.60; A/50/44, Mauritius (1996), paras. 132–45, p. 30: The Committee recommends that <b>appropriate steps be taken to ensure that the inhabitants of the islands of Agalega and St. Brandon are able to exercise their right to vote as required by article 25 of the Covenant.</b>

CCPR/C/MDK/CO/2, *The Former Yugoslav Republic of Macedonia* (2008), p. 18: The Committee notes with concern alleged irregularities during the local elections in 2005, including the **inadequate supply of ballot papers to some minority groups**, while noting the efforts of the State party to address these problems (art. 25). The State party should take measures to **ensure that future elections are conducted in a manner fully guaranteeing the free expression of the will of the electors**.

CCPR/C/AZE/CO/3, *Azerbaijan* (2009), p. 17: The Committee is concerned at numerous reports regarding irregularities, in particular during the State party's 2005 parliamentary elections, but also in the context of the 2008 Presidential elections (art. 25). **The State party should take the necessary measures to ensure enjoyment by all its citizens of the rights provided for in article 25 of the Covenant**, taking due account of the Committee's General Comment No. 25 (1996) on article 25 (Participation in public affairs and the right to vote).

A/HRC/17/30/Add.2 (SR on the independence of judges and lawyers, 2011), p. 120: (b) The Special Rapporteur recommends that the Government of Mozambique, with the assistance of the international community: [...] (iii) **To undertake the necessary steps to provide Mozambicans with national identification cards** to allow them to be fully recognized as persons before the law.

CRPD/C/PER/CO/1, *Peru* (2012), p. 44: The Committee commends the State party for issuing a resolution in October 2011 that nullified previous policies excluding persons with certain psychosocial and intellectual disabilities from the electoral rolls, as well as for updating the National Identity and Civil Status Registry (RENIEC) accordingly. However, the Committee remains concerned at: (c) numerous cases of persons in institutions who have not been able to exercise their right to vote because they **lack identity documents or because of the interdiction to leave the institution, absence of special assistance or the distance from the polling station**.

*Fongum Gorji-Dinka v. Cameroon*, Comm. No. 1134/2002, UN Doc. CCPR/C/83/D/1134/2002 (2005), p. 6: As regards the author's claim that the removal of his name from the voters' register violates his rights under **article 25 (b)** of the Covenant, the Committee observes that **the exercise of the right to vote and to be elected may not be suspended or excluded except on grounds established by law which are objective and reasonable**. [...] In this regard, the Committee reiterates that **persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote**, and recalls that the author was acquitted by the Military Tribunal in 1986 and that his conviction by another tribunal in 1981 was expunged by virtue of Amnesty Law 82/21.

## 18.2 Is the secrecy of the vote guaranteed?

### Secret Ballot; States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CRPD, Art. 29: States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: (ii) **Protecting the right of persons with disabilities to vote by secret ballot** in elections and public referendums without intimidation.

CCPR, GC 25, p. 20: States should **take measures to guarantee the requirement of the secrecy of the vote** during elections, **including absentee voting, where such a system exists**. This implies that **voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process**. Waiver of these rights is incompatible with article 25 of the Covenant.

CEDAW/C/TJK/CO/3 (2007), *Tajikistan*, p. 26: It [the Committee] further urges the State party to establish **legal safeguards that would prevent the practice of family voting** and continue to conduct educational campaigns seeking to explain that **voting for others is not acceptable** and could invalidate the results of elections.

A/HRC/19/16 (UPR, 2011), **Uganda**, Recommendation No. 111.36: Ensure the right to vote for persons with disabilities, in line with the Convention on the Rights of Persons with Disabilities, and implement, among others, **alternative measures to enable them to vote freely and in secret**, and to easily access facilities.

### 18.3 Are there provisions requiring polling stations to be accessible to the disabled?

#### States must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CRPD, Art. 29: States Parties shall **guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others**, and shall undertake: a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: (i) Ensuring that voting procedures, **facilities and materials are appropriate, accessible and easy to understand and use**.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law**. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CCPR, GC 25, p. 12: Positive measures should be taken **to overcome [...] impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively**.

A/HRC/19/16 (UPR, 2011), **Uganda**, Recommendation No. 111.36: **Ensure the right to vote for persons with disabilities**, in line with the Convention on the Rights of Persons with Disabilities, and implement, among others, **alternative measures to enable them to vote freely and in secret**, and **to easily access facilities**.

CRPD/C/ARG/CO/1, **Argentina (2012)**, p. 47: The Committee would like to express its recognition of the fact that the State party has repealed the provisions in its electoral code that barred deaf-mute persons who do not know how to communicate in writing and persons with psychosocial or intellectual disabilities who have been interned in public institutions from exercising their right to vote. Nevertheless, the Committee remains concerned by: (b) the **lack of appropriate measures for ensuring that institutionalized persons with disabilities have access to the polls and can leave the institutions in question in order to vote**. p. 48: The Committee recommends that the State party: (b) **pursue its efforts to ensure that institutionalized persons with disabilities have access to the polls** by, for example, devising and implementing a national plan for ensuring that people are able to exercise their right to participation in political life (CRPD/C/ARG/Q/1/add.1, para. 249) or other alternative solutions.

CRPD/C/PER/CO/1, **Peru (2012)**, p. 45: The Committee recommends that the State party: (c) guarantee the **right to vote of people with disabilities in institutions**, by ensuring that they are **physically permitted to go to assigned polling stations and have the support required to do so, or to permit alternative options**.

CRPD/C/TUN/CO/1, **Tunisia (2011)**, p. 21: The Committee recommends that the State party, in close consultation with persons with disabilities and their representative organizations, **undertake a comprehensive review of the implementation of laws on accessibility in order to identify, monitor and address those gaps**. It recommends that awareness-raising programmes be conducted for the relevant professional groups and all stakeholders. It further recommends that **sufficient financial and human resources be allocated as soon as possible to implement the national plan on accessibility for existing and future infrastructure**.

## 18.4 Are there provisions regulating assisted voting?

### Right and Opportunity to Vote; States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CRPD, Art. 29(a)(iii): Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, **where necessary, at their request, allowing assistance in voting by a person of their own choice**.

CCPR, GC 25, p. 20: **Assistance provided to the disabled, blind or illiterate should be independent. Electors should be fully informed of these guarantees.**

## 18.5 Are there effective measures to protect voters against coercion, undue influence or violence?

### Right to Security of Persons

ICCPR, Art. 9(1): Everyone has the right to liberty and **security of person** [...].

CCPR, GC 25, p. 11: Any abusive interference with registration or voting as well as **intimidation or coercion of voters should be prohibited by penal laws, and those laws should be strictly enforced**. p. 20: States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that **voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant**.

CCPR/C/79/Add.32, Mexico (1994), p. 11: The Committee has doubts and concerns about the electoral system and practices and the climate of violence in which the most important elections have taken place. It **notes that this situation precludes the full guarantee of free choice by all voters and the participation of all citizens in the conduct of public affairs, in particular through freely chosen representatives, in accordance with article 25 of the Covenant**.

A/HRC/12/15 (UPR, 2009), The Former Yugoslav Republic of Macedonia, Recommendation No. 37: Implement effective measures to **prevent intimidation of voters** in future elections.

## 18.6 Are political party/candidate agents and electoral observers allowed inside polling stations?

### Transparency and the Right to Information; Right and Opportunity to Participate in Public Affairs

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as **civil society, non-governmental organizations and community-based organizations**, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) **Enhancing the transparency** of and promoting the contribution of the public to decision-making processes; (b) Ensuring that the public has **effective access to information**; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary.

ICCPR, Art. 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.

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption **policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability**.

CCPR, GC 25, p. 20: **The security of ballot boxes must be guaranteed and votes should be counted in the presence of the candidates or their agents**. There should be **independent scrutiny of the voting and counting process** and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.

CCPR/C/IRN/CO/3, Islamic Republic of Iran, (2011), p. 29: [...] The Committee notes with concern that with regard to the 10<sup>th</sup> presidential election in 2009: (2) **international observers were not allowed entry to monitor the election results**.

## 18.7 Is there timely stakeholder access to polling information?

### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**.

UNCAC, Art. 10: Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance **transparency in its public administration**, including with regard to its **organization, functioning and decision-making processes**, where appropriate. Such measures may include, inter alia: (a) Adopting procedures or regulations **allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

UNCAC Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that **promote the participation of society and reflect the principles of the rule of law**, proper management of public affairs and public property, **integrity, transparency and accountability**.

CCPR, GC 34, p. 18: Article 19 [of the ICCPR], Paragraph 2 embraces a right of access to information held by public bodies. Such information includes **records held by a public body**, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in Paragraph 7 of this General Comment. The designation of such bodies may also **include other entities when such entities are carrying out public functions**. As has already been noted, taken together with Article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output. p. 19: To give effect to the right of access to information, States parties **should proactively put in the public domain Government information of public interest**. States parties should make every effort to **ensure easy, prompt, effective and practical access to such information**.

A/HRC/21/63, (SR Cambodia, 2012), p. 78: The electoral process, including the voter registration process, and the manner in which electoral disputes are dealt with should be **transparent** and conform to international standards. For example, the National Electoral Committee should **make public the names of polling officers and make the voter list available** to candidates from all political parties upon request, affording them an opportunity to challenge the fraudulent inclusion of names on the list.

## 18.8 Are voter identification procedures and requirements standardized?

### Right and Opportunity to Vote

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

CCPR, GC 25, p. 21: **The principle of one person, one vote must apply.**

CCPR/C/CPV/CO/1, Cape Verde (2012), p. 17: The State party should provide information on the concrete measures taken to implement the recommendations of the National Electoral Commission to amend the electoral code in order to **ensure greater electoral security and transparency**, and to review the voter identification and registration processes (Art. 25).

A/HRC/21/63 (SR Cambodia, 2012), p. 76: The National Election Committee should devise special measures to **ensure that those who are homeless or have been recently evicted from their land are not disenfranchised in the forthcoming elections**.

Commission on Human Rights, E/CN.4/2006/115 (IE Haiti, 2006), p. 78: Forgery-proof voter registration cards updated for the next ballot should allow the spelling of family names to be fixed and the establishment of the National Identification Office, whose statute has just been published in a decree, to be accelerated. **Hence the importance of successfully concluding the distribution of voter registration cards**, which will become mandatory and serve as an identity card. It remains to be seen whether they will make use of biometric identification and whether any guarantees in that regard are envisaged, a point not verified by the independent expert.

## 18.9 Are there provisions allowing for voting from abroad?

### Right and Opportunity to Vote; States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICMW, Art. 41: (1) **Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.** (2) The States concerned shall, as appropriate and in accordance with their legislation, **facilitate the exercise of these rights**.

A/HRC/20/24/Add.1 (SR on the human rights of migrants, 2012), Albania, p. 37: As noted in the National Strategy on Migration, a key implication of the high level of emigration is the level of political participation: many Albanians migrants cannot participate in Albanian elections although they make up a great part of the voters' list. Whereas national law protects the political rights and freedoms of Albanian migrants abroad and provides that the State should create the necessary facilities for them to exercise the right to vote, article 11 of the Electoral Code stipulates that this right can only be exercised on the territory of Albania. The Special Rapporteur heard criticism that independent voting at consular offices remains problematic. p. 72: (f) **The government should guarantee in law and practice the right of Albanian citizens abroad to participate in national public life and to vote, including through the review of the Electoral Code.**



A/HRC/21/63 (SR Cambodia, 2012), p. 81: Since Cambodia allows dual citizenship, **the National Election Committee should make it possible for Cambodians living abroad to exercise their voting rights, at least in the countries where it has diplomatic and/or consular representation, as done by many other countries.**

CMW/C/AZE/CO/2 (CMW, 2013), Azerbaijan, p. 35: The Committee recommends that the **State party increase its efforts to facilitate the exercise of voting rights of Azerbaijani nationals working abroad**, particularly in light of the next presidential elections to be held in October 2013.

CMW/C/PHL/CO/1 (CMW, 2009), Philippines, p. 36: The Committee encourages the State party to continue its efforts to: (a) encourage Filipino **workers abroad to register and participate in elections**; (b) **maintain a register of overseas voters and take additional steps to facilitate the exercise of voting rights** by Filipino migrant workers **residing abroad**; (c) invite the Philippine Congress to consider the proposals to amend RA 9189 to delete the requirement of an 'affidavit of intent to return'.

CMW/C/BIH/CO/2 (CMW, 2012), Bosnia and Herzegovina, p. 39: The Committee regrets that only a small amount of the large number of Bosnian nationals working abroad exercised their voting rights during the last elections held in the State party. p. 40: In the light of the next general elections to be held in 2014, **the Committee recommends that the State party increase its efforts to facilitate the exercise of voting rights of Bosnian nationals working abroad.**

## 18.10 Are there provisions ensuring IDPs the opportunity to vote?

### Right and Opportunity to Vote; States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 25: **Every citizen shall have the right and the opportunity**, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

A/HRC/4/38/Add.2 (SRSG on human rights of IDPs, 2006), p. 50: In this respect, the Representative of the Secretary-General stresses that **displaced persons who are citizens of Côte d'Ivoire must be able to participate fully in the current electoral process**. Principle 22 specifies that **internally displaced persons have the right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right**. The Representative of the Secretary-General therefore invites the authorities responsible for the elections to take the necessary steps to **eliminate the obstacles to the participation of displaced persons in the electoral process** (documentation, insecurity, regulations on where they are entitled to vote, etc.), to provide them with clear, timely information, and to ensure that they vote when the time comes.

A/HRC/10/59 (Joint Report on technical assistance and capacity building, 2009), Democratic Republic of the Congo, p. 108: There is a risk that internally displaced persons cannot exercise their right to vote and be elected if the local elections planned for 2009 would take place before they can return. The National Election Commission, in cooperation with MONUC and other partners, should **ensure registration of the displaced as voters and be supported to find ways to ensure** (e.g., through provisions on absentee voting) **that the displaced can in fact exercise their political rights.**

CCPR/CO/80/COL, Colombia (2004), p. 19: [...] The Committee also expresses its concern regarding the difficulties experienced by internally displaced persons in exercising their civic rights, especially the right to vote. [...] The State should also take the necessary steps to **ensure that displaced persons are able to exercise the rights guaranteed in article 25.**

## 18.11 Are there measures to provide for the security of polling stations and polling material?

### State Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**



UNSC Res. 1991 (2011), p. 5: [The Security Council] calls upon the Congolese authorities to **ensure secure conditions for the conduct of and unrestricted access to the polls**, including through cooperation with MONUSCO, consistent with the mission's role with regard to the protection of civilians and calls upon all parties to respect the results of the polls.

CCPR, GC 25, p. 20: [...] The **security of ballot boxes must be guaranteed** and votes should be counted in the presence of the candidates or their agents. p. 22: [...] **State reports should also describe the laws and procedures which ensure that the right to vote can in fact be freely exercised by all citizens and indicate how the secrecy, security and validity of the voting process are guaranteed by law.** The practical implementation of these guarantees in the period covered by the report should be explained.

A/HRC/11/2/Add.2 (SR on extrajudicial, summary or arbitrary executions, 2009), Brazil, p. 78: Designing policing strategies solely with electoral objectives in mind does a disservice to the police, the communities affected, and society at large.

A/HRC/18/10 (UPR, 2011), Sierra Leone, Recommendation No. 81.46: Take necessary measures to ensure the independence and credibility of the bodies that will have primary jurisdiction over validating polling results in the 2012 Presidential and Parliamentary elections, as well as to **ensure the appropriate level of security at the polls sufficient for all voters to freely exercise their franchise.**

CAT/OP/BEN/1 (SPT, 2011), Benin, p. 140: With a view to decreasing impunity, the Subcommittee on the Prevention of Torture recommends that **all law enforcement officers be obliged to wear a means of clear identification, such as a name badge or other identification while on duty.**

A/HRC/14/24/Add.7 (SR on extrajudicial, summary or arbitrary executions, 2010), p. 90: In countries with a **track record of election violence, Governments should draw up plans for dealing with such violence in the future in ways that are consistent with their human rights obligations.** Too often, Governments respond as if they had no inkling that relatively predictable violence would in fact occur. While some of the details of such contingency planning will need to remain confidential, it is also essential that the authorities release enough detailed information in order to make it clear that serious planning has been undertaken, as well as to discourage those potentially violent forces who might otherwise assume there will be few obstacles to, and no consequences flowing from, their actions. p. 94: **Before elections, police should receive crowd- and riot-control training, and be equipped with the appropriate equipment. The security forces should prepare plans in advance for policing the post-election period.** In some cases, international police assistance may be appropriate.

## 18.12 Are there measures to ensure equal access, and the provision of polling stations and polling material to minority areas?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.**

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the **law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground** such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICERD, Art. 5: [...] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and **equal** suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have **equal access to public service.**

CCPR/C/MDK/CO/2, The Former Yugoslav Republic of Macedonia (2008), p. 18: The Committee notes with concern alleged irregularities during the local elections in 2005, including the **inadequate supply of ballot papers to some minority groups**, while noting the efforts of the State party to address these problems (Art. 25). The State party should take measures to ensure that future elections are conducted in a manner fully guaranteeing the free expression of the will of the electors.

## 18.13 Does the legal framework allow timely appeals against decisions taken at the polling station level?

### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by **competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State**, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

CCPR, GC 32, p. 27: An important aspect of the fairness of a hearing is its **expeditiousness**. While the issue of undue delays in criminal proceedings is explicitly addressed in paragraph 3 (c) of article 14, delays in civil proceedings that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing enshrined in paragraph 1 of this provision. Where such delays are caused by a lack of resources and chronic under-funding, to the extent possible supplementary budgetary resources should be allocated for the administration of justice.

CCPR, GC 31, p. 15: Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights. States Parties must ensure **that individuals also have accessible and effective remedies to vindicate those rights**.

## Resources

ACE Project, 'Focus on E-Voting', available at <<http://aceproject.org/ace-en/focus/e-voting>>, accessed 28 March 2014

ACE Project, 'Voting Operations', available at <<http://aceproject.org/ace-en/topics/vo>>, accessed 27 March 2014

Alvarez, R. M. and Hall, T. E., *Point, Click and Vote: The Future of Internet Voting* (Washington, D.C.: Brookings Institution Press, 2004)

Goldsmith, B., *Electronic Voting and Counting Technologies: A Guide to Conducting Feasibility Studies* (Washington, D.C.: International Foundation for Electoral Systems, 2011)

International Foundation for Electoral Systems (IFES) and United Nations Development Programme (UNDP), *Getting to the Core: a Global Survey on the Cost of Registration and Elections*, available at <<http://www.ifes.org/-/media/Files/Publications/Survey/2006/300/CorePubcolor.pdf>>, accessed 23 April 2014.

International Foundation for Electoral Systems (IFES) and National Democratic Institute (NDI), *Equal Access: How to Include Persons with Disabilities in Elections and Political Processes* (Washington, D.C.: IFES and NDI, 2014)

International IDEA, *Voting From Abroad: the International IDEA Handbook* (Stockholm: International IDEA, 2007)

International IDEA, *Introducing Electronic Voting: Essential Considerations* (Stockholm: International IDEA, 2011)

International Organization for Migration (IOM), *The Electoral Rights of Conflict Forced Migrants: A Review of Relevant Legal Norms and Instruments*, Participatory Elections Project, Discussion Paper no. 1 (Geneva: IOM, 2003)

Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines for Reviewing a Legal Framework for Elections* (OSCE/ODIHR, 2013)

United Nations (UN), *Human Rights and Elections: United Nations Handbook on the Legal, Technical and Human Rights Aspects of Elections*, 1994

# Chapter 19. Counting and Results Management

## Overview

Counting and tabulation determine the winners and losers of an electoral contest at a point in the process in which the physical exhaustion of electoral officials meets the rising emotions of the electoral stakeholders, who are eager to know the results. Respect for the free expression of the will of the electors thus relies on fair, honest, conscientious and transparent management of counting and tabulation activities. Transparency and access to information underpin counting and results management, so as to instil confidence in the process and its outcome. EMBs are called upon to balance demands for timely information with procedural accuracy. Granting full access to these crucial stages of the electoral process to party and candidate agents or representatives and electoral observers (particularly national or citizen observers) is not only a key element to ensure Transparency and the Right to Information; it is also a conduit for the Right and Opportunity to Participate in Public Affairs. States are required to ensure that the entire process by which a winner is determined is completely open to public scrutiny and conducted in an expeditious manner.

The same obligations also require that the legal framework grants public access to all relevant counting documents other than the ballots, such as polling station protocols and minutes, tabulation and tally sheets, and decisions that determine or affect election results. Posting the counting and tabulation results at all levels of the election administration, including at the polling station, municipal and state EMB levels—and handing out certified results to party and candidate agents—further enhance transparency and traceability.

States are obligated to ensure that Transparency and the Right to Information is implemented in a manner that respects the Freedom from Discrimination and Equality under the Law of all categories of stakeholders. The legal

framework must clearly state the electoral formula that will be used to convert votes into legislative seats. In proportional representation systems, seats can only be allocated on the basis of final results. Legal frameworks must address thresholds, quotas and all details of the electoral formula, as well as ties, withdrawals, and the substitution or death of a candidate. Similarly, clear criteria for establishing ballot validity for all electoral races are to be set forth in law, together with the accountability of blank votes in case of absolute majority requirements. The Right to an Effective Remedy requires any objections to counting procedures to be recorded and attached to results sheets, including objections to the criteria used to determine the validity of ballots.

Predetermined procedures (and a seamless chain of custody) are required for transferring the official tally sheets and certified copies, ballot papers and other election materials from polling stations and lower electoral administration levels to intermediate and higher EMB-designated offices for consolidation and safekeeping. Similar safeguards are required where technology is used to count or aggregate votes. The legal framework must provide for independently verifying the accuracy and soundness of the hardware and software used to count ballots. Whether manual, mechanical or electronic counting is used, supervision procedures are necessary to ensure accuracy, reliability and transparency.

Confidence in the results requires transparency, which is enhanced by allowing parties, candidates, observers and voters to track vote counts from individual polling stations all the way through the intermediate levels and up to the final consolidated results. Such measures also contribute to ensuring respect for the free expression of the will of the electors by providing the ability to detect irregularities at different results management levels. Clear procedures and timeframes by which election results are validated, certified and announced are also required. Additionally, the law must be unambiguous regarding the circumstances that trigger a recount or new elections at any or all polling stations.

As the following Table of Jurisprudence reveals, the processes of counting, results announcement and publication expose gaps in UN treaties and jurisprudence regarding democratic elections. Some of these gaps can be overcome through a combined interpretation of the ICCPR-related obligation of Freedom from Discrimination and Equality under the Law and the UNCAC-related provisions on Transparency and the Right to Information. At the regional level, the ECOWAS Supplementary Protocol calls upon states to ensure that the conduct and announcement of results is done transparently.<sup>1</sup>

Stakeholders would benefit from clearer treaty body opinions on ballot validity, as indicated by the clear expression of the will of the voter. Further

clarity on the right of candidate/party agents and observers to obtain certified copies of the results and aggregation tables, as well as their right to observe all steps of the results process, would also be a positive contribution to the development of obligations concerning counting and results management. Another area in which treaty body jurisprudence is lacking and that merits further consideration relates to the display and publication of polling station and tabulation centre results, including the obligation to disaggregate final results by polling station. Finally, the timeliness of results announcements also deserves further authoritative interpretation by UN treaty bodies.

## Table of Jurisprudence

### 19. Counting and Results Management

#### 19.1 Are there provisions for timely stakeholder access to counting procedures?

##### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**.

UNCAC, Art. 10: Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance **transparency in its public administration**, including with regard to its **organization, functioning and decision-making processes**, where appropriate. Such measures may include, inter alia: (a) Adopting procedures or regulations **allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that **promote the participation of society and reflect the principles of the rule of law**, proper management of public affairs and public property, **integrity, transparency and accountability**.

CCPR, GC 34, p. 18: Article 19 [of the ICCPR], paragraph 2 embraces a right of access to information held by public bodies. Such information includes **records held by a public body**, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this General Comment. The designation of such bodies may also include other entities when such entities are carrying out public functions. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output. p. 19: To give effect to the right of access to information, States parties **should proactively put in the public domain Government information of public interest**. States parties should make every effort to **ensure easy, prompt, effective and practical access to such information**.

A/HRC/21/63 (SR Cambodia, 2012), p. 78: **The electoral process, including the voter registration process, and the manner in which electoral disputes are dealt with should be transparent** and conform to international standards. For example, the National Electoral Committee should make public the names of polling officers and make the voter list available to candidates from all political parties upon request, affording them an opportunity to challenge the fraudulent inclusion of names on the list.

## 19.2 Are there provisions allowing the presence of political party/candidate agents and electoral observers during counting and tabulation procedures?

### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as **civil society, non-governmental organizations and community-based organizations**, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) **Enhancing the transparency of and promoting the contribution of the public to decision-making processes**; (b) Ensuring that the public has **effective access to information**; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary.

ICCPR, Art. 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.

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that **promote the participation of society and reflect the principles of the rule of law**, proper management of public affairs and public property, **integrity, transparency and accountability**.

UNCAC, Art. 10: Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to **enhance transparency** in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) Adopting procedures or regulations **allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and**, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

CCPR, GC 25, p. 20: [...] There should be **independent scrutiny of the voting and counting process** and access to judicial review or other equivalent process so that electors have **confidence in the security of the ballot and the counting of the votes**.

A/HRC/18/10 (UPR, 2011), Sierra Leone, Recommendation No. 81.46: Take necessary measures to **ensure the independence and credibility of the bodies that will have primary jurisdiction over validating polling results** in the 2012 presidential and parliamentary elections.

CCPR/C/IRN/CO/3, Islamic Republic of Iran (2011), p. 29: [...] The Committee notes with concern that with regard to the 10th presidential election in 2009: (2) **international observers were not allowed entry to monitor the election results**. [...]

## 19.3 Are there provisions defining the validity of each vote?

### Transparency and the Right to Information

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency** in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public.**

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) **Enhancing the transparency** of and promoting the contribution of the public to decision-making processes.

UNCAC, Art. 5(1): Each State Party shall, in accordance with the **fundamental principles** of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, **transparency** and accountability.

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.**

CCPR, GC 25, p. 21: [...] Any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and **give effect to the free expression of the will of the electors.** The principle of one person, one vote, must apply. p. 22: [State] **Reports should also describe the laws and procedures which** ensure that the right to vote can in fact be freely exercised by all citizens and **indicate how** the secrecy, security and **validity of the voting process are guaranteed by law.**

## 19.4 Are recounts triggered by legal criteria?

### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

CCPR, GC 31, p. 15: Article 2, paragraph 3 requires that in addition to effective protection of Covenant rights, States Parties must ensure that **individuals also have accessible and effective remedies to vindicate those rights.**

CCPR, GC 25, p. 20: [...] There should be **independent scrutiny** of the voting and **counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.**

A/HRC/18/10 (UPR, 2011), Sierra Leone, Recommendation No. 81.46: Take necessary measures to **ensure the independence and credibility of the bodies that will have primary jurisdiction over validating polling results** in the 2012 Presidential and Parliamentary elections, as well as to **ensure the appropriate level of security at the polls sufficient for all voters to freely exercise their franchise.**



## 19.5 Are there provisions requiring transparent results management?

### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the **principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability**.

A/HRC/18/10 (UPR, 2011), *Sierra Leone*, Recommendation No. 81.46: **Take necessary measures to ensure the independence and credibility of the bodies that will have primary jurisdiction over validating polling results** in the 2012 Presidential and Parliamentary elections, as well as to **ensure the appropriate level of security at the polls sufficient for all voters to freely exercise their franchise**.

A/HRC/15/16 (UPR, 2010), *Belarus*, Recommendation No. 98.36: Conform to repeated demands of the international community not to detain political prisoners and not to engage in judicial proceedings for political motives, liberalize the media sector, and guarantee freedom of expression and of the media, and reform electoral law so as to guarantee the **transparency of vote counting**, and, finally, lift all obstacles to the functioning of non-governmental organizations and political parties.

A/HRC/11/29 (UPR, 2009), *Jordan*, p. 44: (b) Establish an independent electoral commission, allowing for open participation of political parties and **objective certification of election results**.

CCPR/CO/73/AZE, *Azerbaijan* (2001), p. 24: The Committee is concerned at the serious interference in the electoral process, whilst noting the delegation's statement with respect to the **punishment and dismissal of those responsible and the cancellation of the results of elections** in 11 districts where serious violations had been found and the holding of new elections in those districts. **The State party should take all necessary measures to ensure that the electoral process is conducted in accordance with article 25 of the Covenant**.

CCPR/C/IRN/CO/3, *Islamic Republic of Iran* (2011), p. 29: [...] The Committee notes with concern that with regard to the 10th presidential election in 2009: [...] (2) international observers were not allowed entry to monitor the election results; (3) cell phone signals and access to social networking and opposition websites were blocked; (5) **election results were approved** by Ayatollah Khamenei **before certification** by the Guardian Council. The State party should introduce legislative amendments to ensure that articles 3 and 28, sections 1 and 3, of the Majlis Elections Act are in conformity with the rights guaranteed in article 25 of the Covenant.

## 19.6 Are there provisions requiring the availability of polling station and tabulation results?

### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) **Enhancing the transparency of** and promoting the contribution of the public to decision-making processes; (b) **Ensuring that the public has effective access to information**; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary.

UNCAC, Art. 5(1): Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the **principles of the rule of law**, proper management of public affairs and public property, **integrity, transparency and accountability**.

CCPR, GC 34, p. 18: Article 19 (of the ICCPR), paragraph 2 embraces a **right of access to information held by public bodies**. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production. Public bodies are as indicated in paragraph 7 of this General Comment. The designation of such bodies may also include other entities when such entities are carrying out public functions. As has already been noted, taken together with article 25 of the Covenant, the right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output. p. 19: To give effect to the right of access to information, **States parties should proactively put in the public domain Government information of public interest**. States parties should **make every effort to ensure easy, prompt, effective and practical access to such information**.

## 19.7 Are results required to be published broken down by polling station?

### Transparency and the Right to Information

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**.

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

**UNCAC, Art. 5(1):** Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that **promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.**

**UNSC, Res. 1880 (2009), p. 1:** Recalls that in the statement of its President dated 29 May 2009 (S/PRST/2009/16) it welcomed the new electoral timeline endorsed in Ouagadougou by all the main Ivorian political actors and leading to the first round of the presidential elections on 29 November 2009, and underlines that the Ivorian political actors are bound to respect this timeline to demonstrate their political commitment towards the holding of free, fair, open and **transparent elections.**

**CCPR, GC 34, p. 19:** To give effect to the **right of access to information, States parties should proactively put in the public domain Government information of public interest.** States parties should **make every effort to ensure easy, prompt, effective and practical access to such information.**

**CCPR, GC 25, p. 20:** There should be **independent** scrutiny of the voting and **counting process** and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes.

## 19.8 Are there provisions allowing for parallel vote tabulation (PVT) or quick counts?

### Transparency and the Right to Information

**UNCAC, Art. 13(1):** Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation of individuals and groups** outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information.**

**UNCAC, Art. 10:** Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public.**

**UNCAC, Art. 5(1):** Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the **principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.**

**ICCPR, Art. 19(2):** Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

**CCPR, GC 25, p. 20:** There should **be independent scrutiny of the voting and counting process** and access to judicial review or other equivalent process so that **electors have confidence** in the security of the ballot and **the counting of the votes.**

## 19.9 Are there provisions to guarantee respect for election results?

### Right and Opportunity to be Elected

ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.**

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.

**UNSC Res. 1975 (2011):** (1) [The Security Council] **urges all the Ivorian parties and other stakeholders to respect the will of the people** and the election of Alassane Dramane Ouattara as President of Côte d'Ivoire, as recognized by ECOWAS, the African Union and the rest of the international community.

**CCPR, GC 25, p. 7:** Where citizens participate in the conduct of public affairs through freely chosen representatives, **it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power.** It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws that are in accordance with paragraph (b). p. 19: In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. [...] **The results of genuine elections should be respected and implemented.**

## Resources

ACE Project, 'Results Management Systems', 2013, available at <<http://aceproject.org/ace-en/topics/vc>>, accessed 27 March 2014

Electoral Commission–United Nations Development Programme,  
EC-UNDP Partnership on Electoral Assistance, eLearning Portal. Course  
on ICT and Elections Management, available at <<http://elearning.ec-undp-electoralassistance.org/login/index.php>>, accessed 23 April 2014

Estok, M., Nevitte, N. and Cowan, G., *The Quick Count and Election Observation: An NDI Handbook for Civic Organizations and Political Parties* (Washington, D.C.: National Democratic Institute, 2002)

Goldsmith, B., *Electronic Voting & Counting Technologies: A Guide to Conducting Feasibility Studies* (Washington, D.C.: International Foundation for Electoral Systems, 2011)

Meyer-Resende, M., 'Transparent Voting Saves Lives', *The Guardian*, 2 August 2009, available at <<http://www.theguardian.com/commentisfree/2009/aug/02/transparent-voting-election-count>>, accessed 10 February 2014

Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Guidelines for Reviewing a Legal Framework for Elections* (OSCE/ODIHR, 2013)

United Nations (UN), *Human Rights and Elections: United Nations Handbook on the Legal, Technical and Human Rights Aspects of Elections*, 1994

## Notes

- <sup>1</sup> ECOWAS Supplementary Protocol, Art. 6.

# Chapter 20. Electoral Justice

## Overview

Electoral justice is a foundation of democracy. It safeguards both the legality of the electoral process and citizens' political rights. In line with recent doctrinal evolution in categorizing mechanisms for preventing and resolving electoral disputes, the Guidelines promote the concept of electoral justice instead of electoral dispute resolution (EDR) to identify the related international obligations. An electoral justice system refers to a country's means or mechanisms to ensure and verify that electoral actions, procedures and decisions comply with the legal framework, and to protect or restore the enjoyment of an electoral right.<sup>1</sup> This is a significantly broader concept than one that only embraces the outcome of an election conducted in accordance with legal provisions, as it goes beyond the letter of the law in addressing the integrity of the entire process.

Electoral justice not only resolves electoral disputes; it also protects citizens' political and electoral rights as defined in UN treaties and a number of regional electoral instruments. Thus, electoral justice protects fundamental obligations such as the Right and Opportunity to Vote and to be Elected, Equality Between Men and Women, Freedom of Association, the Right to Security of the Person and the Right and Opportunity to Participate in Public Affairs—and touches on Freedom of Opinion and Expression, Freedom of Assembly, Transparency and the Right to information, Right to a Fair and Public Hearing, and the Right to an Effective Remedy. Further, the concept of electoral justice takes into account the fact that things can go wrong in electoral processes, and that the manner in which these wrongs are redressed can determine the overall legitimacy of an electoral outcome and the level of trust in the electoral process.<sup>2</sup>

Electoral justice plays a fundamental role in the continual process of democratization, and catalyses the transition from the use of violence to lawful means to resolve political conflicts. An electoral justice system that resolves political conflict through legal mechanisms, and guarantees full compliance with the law, helps democracy thrive.<sup>3</sup> Within the broader notion of electoral justice, electoral disputes are further defined as ‘any complaint, challenge, claim or contest relating to any stage of the electoral process’.<sup>4</sup> UN jurisprudence focuses primarily on EDR, requiring states to establish their own EDR system through the legal framework, providing mechanisms to address electoral disputes and respect stakeholder rights throughout the electoral cycle.

Alongside the ICCPR’s Right to an Effective Remedy, legal frameworks are required to ensure that every voter, candidate and political party enjoys the Right to a Fair and Public Hearing with the competent EMB, administrative body or court to claim a remedy against alleged infringements of electoral rights. States are called upon to ensure that laws require EMBs, courts and other adjudicating bodies’ decisions to allow sufficient time for the aggrieved parties to exercise their electoral rights. National legal frameworks are also required to provide for judicial or equivalent review by the corresponding EMB or a court with the authority to review and exercise final jurisdiction on the matter. The decision of the court of last resort must be issued promptly.

Timely deadlines for adjudicating complaints and notifying complainants of decisions are very important. Deadlines must allow for a degree of flexibility, taking into account the level of the EMB or court, and the nature of the complaint and the electoral urgency. For example, campaign grievances call for expedient adjudication to allow for the reparation of possible harm to electoral contestants. Prompt resolutions can frequently prevent a minor complaint from escalating into political belligerence. However, certain types of disputes that affect electoral outcomes can only be raised in an election petition after the electoral process has concluded.

Judicial and equivalent review procedures need to be insulated from corruption and partisan influence if they are to accommodate the necessary electoral functions of hearing petitions, objections and complaints. The judiciary is the principal national body charged with protecting the rule of law, both during and between electoral periods, often through specialized electoral sections. However, in certain contexts, EMBs, administrative, judicial and ad hoc bodies can also assume this role.<sup>5</sup> In order to ensure that effective avenues are available through which stakeholders can file objections and complaints about the electoral process, it is necessary to guarantee a judiciary that is unconstrained by any partisan influence or control.<sup>6</sup>

The UN treaties and related jurisprudence govern electoral justice through norms related to the independence and impartiality of the judiciary and the other administrative or equivalent bodies that may be vested with this role, as well as through due process guarantees, non-discrimination and equal treatment by the courts. UN treaty body jurisprudence emphasizes that only an expeditious remedy can be effective, and that decisions need to be taken promptly within electoral timelines. The Right to an Effective Remedy must be maintained not only for the announcement of results, but also for all other decisions throughout the electoral cycle that may compromise rights protected by UN treaties. The following Table of Jurisprudence illustrates that some aspects of electoral justice would benefit from further treaty body attention, such as the timeliness of the peaceful transfer of power once all judicial remedies are exhausted, a mechanism that often lacks firm deadlines.

Table of Jurisprudence

20. Electoral Justice
20.1 Does the legal framework designate a forum for electoral grievances?
Right to an Effective Remedy
ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) <b>To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy</b> , notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.
ICCPR, Art. 14(1): All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
CCPR, GC 25, p. 20: There should be independent scrutiny of the voting and counting process and <b>access to judicial review or other equivalent process</b> so that electors have confidence in the security of the ballot and the counting of the votes.
CCPR, GC 32, p. 9: A <b>situation in which an individual’s attempts to access the competent courts or tribunals are systematically frustrated de jure or de facto runs counter to the guarantee of article 14, paragraph 1</b> . p. 18: The notion of a ‘tribunal’ in article 14, paragraph 1 designates a body, regardless of its denomination, that is <b>established by law, is independent of the executive and legislative branches of government</b> or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature. Article 14, paragraph 1, second sentence, guarantees access to such tribunals to all who have criminal charges brought against them. <b>This right cannot be limited, and any criminal conviction by a body not constituting a tribunal is incompatible with this provision</b> . Similarly, whenever rights and obligations in a suit at law are determined, this must be done at least at one stage of the proceedings by a tribunal within the meaning of this sentence. <b>The failure of a State party to establish a competent tribunal to determine such rights and obligations or to allow access to such a tribunal in specific cases would amount to a violation of article 14</b> .
CCPR, GC 31, p. 15: Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights, States Parties must ensure <b>that individuals also have accessible and effective remedies to vindicate those rights</b> .



## 20.2 Are there provisions granting the judicial or equivalent review of administrative acts and decisions related to the electoral process?

### Right to an Effective Remedy; Right to a Fair and Public Hearing

ICCPR, Art. 2(3): (b) To ensure that **any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy**; (c) To ensure that the competent authorities shall enforce such remedies when granted.

ICCPR, Art. 14(1): All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his **rights and obligations** in a suit at law, **everyone shall be entitled to a fair and public** hearing by a competent, independent and impartial tribunal established by law.

CCPR, GC 25, p. 20: There should be independent scrutiny of the voting and counting process and **access to judicial review or other equivalent process** so that electors have confidence in the security of the ballot and the counting of the votes.

CCPR, GC 31, p. 15: Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure **that individuals also have accessible and effective remedies to vindicate those rights**.

CCPR/C/NIC/CO/3, Nicaragua (2008), p. 20: The State party should meet the targets laid down in the Inter-American Court's ruling and, in particular, **take steps** to bring about the necessary reforms in the Elections Act as recommended by the Court and **introduce a simple legal remedy against decisions by the Supreme Electoral Board**.

A/HRC/21/63 (SR Cambodia, 2012), p. 69: The Special Rapporteur has reviewed the mechanism to resolve electoral disputes and is of the view that it should be improved. Currently, the election officials themselves are entrusted with the task of resolving preliminary election disputes. To increase the confidence of all political parties in the election process, there is a need to **amend the law and to create another institution, such as a special election tribunal or election court within the judicial structure of Cambodia or as a special election tribunal within the national constitutional council to resolve election-related disputes, rather than using the National Election Committee itself to do so**.

A/HRC/13/16 (UPR, 2010), Equatorial Guinea, Recommendation No. 72: (1) **Ensure an impartial review of irregularities and formal electoral complaints** stemming from the November 29 elections.

Leonid Sinitsin v. Belarus, Comm. No. 1047/2002, UN Doc. CCPR/C/88/D/1047/2002 (2006), p. 3: The Committee recalls that article 2, paragraph 3 of the Covenant guarantees an **effective remedy** to any person claiming a violation of the rights and freedoms spelled out in the Covenant. In the present case, **no effective remedies were available to the author to challenge the CEC ruling** declaring his nomination invalid, **nor could he challenge the subsequent refusal by the CEC to register him as a presidential candidate before an independent and impartial body**. The Committee considers that the absence of an independent and impartial remedy to challenge the CEC ruling on the invalidity of the author's nomination [...].

## 20.3 Can the final appeals body provide effective remedies?

### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

CCPR, GC 31, p. 15: Article 2, paragraph 3 requires that in addition to effective protection of Covenant rights, States Parties must ensure **that individuals also have accessible and effective remedies to vindicate those rights**.

CCPR/C/NIC/CO/3, *Nicaragua*, (2008), p. 20: While the Committee notes that the State party has partly complied with the ruling by the Inter-American Court of Human Rights in the YATAMA case, it regrets that it has not undertaken the necessary legislative reform to **introduce a simple legal remedy** ensuring that indigenous and ethnic communities in the autonomous regions can take effective part in elections with due regard for their traditions, conventions and customs (arts. 25 and 27).

CCPR/CO/73/AZE, *Azerbaijan* (2001), p. 24: The Committee is concerned at the **serious interference in the electoral process**, whilst noting the delegation's statement with respect to the **punishment and dismissal of those responsible** and the **cancellation of the results** of elections in 11 districts where serious violations had been found and the holding of new elections in those districts. The State party should take all necessary measures to ensure that the electoral process is conducted in accordance with article 25 of the Covenant.

CCPR/CO/75/GMB, *Gambia* (2004), p. 5: The State party should bring its laws into conformity with the provisions of the Covenant. Schedule 2, section 13 of the Constitution grants **retroactive immunity** to members of the armed forces provisional revolutionary council (AFPRC); this situation **is incompatible with article 2 of the ICCPR** which enshrines right to effective remedy.

CCPR/C/SDN/CO/3, *Sudan* (2007), p. 11: The State party should: (a) undertake to ensure, in all circumstances, that the victims of violations of human rights are guaranteed **effective remedy, which is implemented in practice, including the right to as full compensation and reparations as possible**; (b) Provide the human and financial resources required for the efficient functioning of the Sudanese legal system, particularly the special courts and tribunals established to try crimes committed in Sudan.

CCPR/C/RWA/CO/3, *Rwanda* (2009), p. 12: The State party should ensure that **all allegations of such violations are investigated by an independent authority and that those responsible for such acts are prosecuted and duly punished. The victims or their families should have an effective remedy, including adequate compensation**, in accordance with article 2 of the Covenant.

A/55/40[VOL.I] (SUPP), *Australia* (2000), p. 514: The Committee is concerned that in the absence of a constitutional bill of rights, or a constitutional provision giving effect to Covenant (ICCPR), there remain lacunae in the protection of Covenant rights in the Australian legal system; (c) there are still areas in which the domestic legal system does not **provide an effective remedy to persons whose rights under ICCPR have been violated**.

CCPR/C/COL/CO/6, *Colombia* (2010), p. 10: The State party should ensure that legislation is adopted and should implement a policy that **fully guarantees the right to an effective remedy and to full reparation**; (r) Implementation of this law must be pursued taking into account the basic principles and guidelines on the **right to a remedy** and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law (A/RES/60/147, 2006) and taking into account the five elements of that right: **restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition** [...].

CCPR/C/CAN/CO/5, *Canada* (2006), p. 11: The State party should ensure that relevant human rights legislation is amended at federal, provincial and territorial levels and state's legal system enhanced, so that all **victims of discrimination have full and effective access to competent tribunal and to effective remedy**.

CAT/C/ETH/CO/1 (2011), *Ethiopia*, p. 17: (c) The Committee continues to be concerned at numerous and consistent reports about **the absence of an independent and impartial investigation of, and the lack of prosecutions and sentences for, the use of lethal force by members of the security forces during the post-election riots** in 2005, when 193 civilians and 6 police officers were killed.

## **20.4 Are there provisions guaranteeing the independence and impartiality of EDR bodies?**

### **Right to a Fair and Public Hearing**

ICCPR, Art. 14: (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, **everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law** [...]. (2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

CCPR, GC 32, p. 19: The requirement of competence, **independence and impartiality** of a tribunal in the sense of article 14, paragraph 1, is an **absolute right that is not subject to any exception**. The requirement of independence refers, in particular, to the **procedure and qualifications for the appointment of judges**, and guarantees relating to their **security of tenure until a mandatory retirement age or the expiry of their term of office**, where such exist, the **conditions governing promotion, transfer, suspension and cessation of their functions**, and the **actual independence of the judiciary from political interference by the executive branch and legislature**. States should take **specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them**. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal. It is necessary to **protect judges against conflicts of interest and intimidation**. In order to safeguard their independence, the status of judges, including **their term of office, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law**. p. 20: Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. The dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary. The same is true, for instance, for the dismissal by the executive of judges alleged to be corrupt, without following any of the procedures provided for by the law.

CCPR, GC 13, p. 3: In particular, States parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are **independent, impartial and competent**, in particular with regard to **the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the judiciary from the executive branch and the legislative**.

Mikhail Ivanovich Pastukhov v. Belarus, Comm. No. 814/1998, UN Doc. CCPR/C/78/D/814/1998 (2003), p. 7.3 [...] No effective judicial protections were available to the author to contest his dismissal by the executive. In these circumstances, the Committee considers that the author's dismissal from his position as a judge of the Constitutional Court, several years before the expiry of the term for which he had been appointed, constituted an **attack on the independence of the judiciary** and failed to respect the **author's right of access, on general terms of equality, to public service in his country**. Consequently, there has been a violation of **article 25 (c) of the Covenant, read in conjunction with article 14, paragraph 1, on the independence of the judiciary and the provisions of article 2**.

CCPR/CO/79/GNQ, Equatorial Guinea (2004), p. 7: The Committee expresses its concern at the **absence of an independent judiciary** in the State party and at the conditions for the appointment and dismissal of judges, which are not such as to **guarantee the proper separation of the executive and the judiciary**.

CCPR/C/79/Add.100, Armenia (1998), p. 8: The Committee notes that the independence of the judiciary is not fully guaranteed. In particular, it observes that the **election of judges by popular vote for a fixed maximum term of six years does not ensure their independence and impartiality**.

CCPR/C/CAF/CO/2, Central African Republic (2006), p. 16: The Committee is concerned by reports suggesting that the **independence of the judiciary** is not guaranteed in practice (article 14 of the Covenant). The State party should endeavour to suppress corrupt practices in the judiciary. It should also recruit and train a sufficient number of **judges** in order to ensure adequate administration of justice throughout the country and to combat crime and impunity. Sufficient budgetary resources should be allocated for the administration of justice.

CCPR/C/COD/CO/3 (2006), Democratic Republic of the Congo, p. 21: The Committee is concerned at the continued existence of military courts and at the absence of guarantees of a fair trial in proceedings before these courts. It is also concerned at the clearly insufficient number of active judges in the Democratic Republic of the Congo, and at **the low pay they receive, which frequently results in their corruption**, according to information provided to the Committee. The shortage of judges contributes to the increase in crime and to the failure to prosecute criminal offences (Art. 14 of the Covenant). [...] It should fight the corruption of judges, recruit and train enough judges to ensure the proper administration of justice throughout the territory of the Republic, fight crime and impunity, and allocate sufficient budgetary resources for the administration of justice.

A/HRC/13/16 (UPR, 2010), Equatorial Guinea, Recommendation No. 72: [...] Ensure an **impartial review of irregularities and formal electoral complaints** stemming from the November 29 elections.

## 20.5 Are there provisions requiring that decisions are legally reasoned and published?

### Right to a Fair and Public Hearing; Transparency and the Right to Information

ICCPR, Art. 14: (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, **everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law** [...]. (2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**.

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

CCPR, GC 13, p. 6: It should be noted that, even in cases in which the public is excluded from the trial, the **judgment must, with certain strictly defined exceptions, be made public**.

CCPR, GC 32, p. 29: [...] Even in cases in which the public is excluded from the trial, **the judgment, including the essential findings, evidence and legal reasoning must be made public**.

CAT/C/FIN/CO/4/Add.1, Finland (2006), p. 3: The **publicity of proceedings**, the right to be heard and obtain a **reasoned decision**, and the right of appeal as well as other guarantees of a fair trial and good governance are ensured by law.

A/HRC/20/19/Add.2 (SR on the independence of judges and lawyers, 2012), p. 99: The Special Rapporteur encourages the judiciary: (b) to **take all necessary steps to ensure the uniform and equal application of the law, including by publicizing its decisions**.

A/HRC/21/63 (SR Cambodia, 2012), p. 78: The electoral process, including the voter registration process, and **the manner in which electoral disputes are dealt with should be transparent** and conform to international standards. For example, the National Electoral Committee should make public the names of polling officers [...].

CAT/C/MDA/CO/2 (CAT, 2010), Republic of Moldova, p. 15 (a): [The State party should] promptly, impartially and effectively **investigate all complaints and allegations of misconduct** by law enforcement officers during the post-election demonstrations in April 2009 by establishing an independent, impartial and credible body that should comply with relevant international standards in this area, particularly the updated set of principles for the protection and promotion of human rights through action to combat impunity, the **findings of which should be made public**.

A/HRC/19/67 (SR Myanmar, 2012), p. 94: (b) Problems such as the use of advance votes, the **procedures and costs for filing a complaint**, allegations of campaign irregularities and restrictions on the ability of political parties to conduct campaign activities be addressed.

## 20.6 Are there provisions requiring hearings to be held in public?

### Right to a Fair and Public Hearing; Transparency and the Right to Information

ICCPR, Art. 14: (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]. (2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

UNCAC, Art. 10: Taking into account the need to combat corruption, **each State Party shall**, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration**, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration** and, with due regard for the protection of privacy and personal data, **on decisions and legal acts that concern members of the public**.

UNCAC, Art. 13(1): Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, [...] in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (b) **Ensuring that the public has effective access to information**.

UNCAC, Art. 11(1): Bearing in mind **the independence of the judiciary** and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take **measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary**. Such measures may include rules with respect to the conduct of members of the judiciary.

ICCPR, Art. 19(2): Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive and impart information and ideas of all kinds**, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

CCPR, GC 32, p. 29: Article 14, paragraph 1 acknowledges that courts have the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a **hearing must be open to the general public, including members of the media**, and must **not, for instance, be limited to a particular category of persons**. Even in cases in which the public is excluded from the trial, **the judgment, including the essential findings, evidence and legal reasoning must be made public**.

CCPR/CO/71/SYR/Add.1, Syrian Arab Republic (2001), p. 15: The Committee is also concerned that proceedings may be **held in camera in circumstances not authorized by article 14, paragraph 1**. The State party should take appropriate measures to ensure and protect, at all levels, the independence and impartiality of the judiciary.

Felix Kulov v. Kyrgyzstan, Comm. No. 1369/2005, UN Doc. CCPR/C/99/D/1369/2005 (2010), p. 8.6: The author also claims that he is a victim of violation of article 14, paragraph 1, as **his case was examined** by a military court **in closed meeting**; the investigation classified his case file as secret without giving any grounds and the 63-page judgement was prepared within three hours, putting into question the partiality of the judges. He adds that military courts do not meet the standards of independence. The Committee recalls its jurisprudence that **the court must provide for adequate facilities for the attendance of interested members of the public**, within reasonable limits, **taking into account, for example, potential public interest in the case**, duration of the oral hearing and the time the formal request for publicity has been made. p. 9: The Human Rights Committee [...] is of the view that the State party has violated articles [...] 14, paragraphs 1 [...].

## 20.7 Do all electoral stakeholders have access to electoral justice mechanisms?

### Right to an Effective Remedy; Freedom from Discrimination and Equality under the Law

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto **determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State**, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

ICCPR, Art. 14(1): **All persons shall be equal before the courts and tribunals.** In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

ICCPR, Art. 16: Everyone shall have **the right to recognition everywhere as a person before the law.**

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.**

CCPR, GC 31, p. 15: Article 2, paragraph 3 requires that in addition to effective protection of Covenant rights, States Parties must ensure **that individuals also have accessible and effective remedies to vindicate those rights.**

## 20.8 Are unreasonable fees imposed for filing complaints?

### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and **guarantee to all persons equal and effective protection against discrimination on any ground** such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CCPR, GC 32, p. 10: **The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.** While article 14 explicitly addresses the guarantee of legal assistance in criminal proceedings in paragraph 3(d), **States are encouraged to provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it.** p. 11: The **imposition of fees** on the parties to proceedings that would de facto prevent their access to justice might give rise to issues under article 14, paragraph 1. In particular, a rigid duty under law to award costs to a winning party without consideration of the implications thereof or without providing legal aid may have a deterrent effect on the ability of persons to pursue the vindication of their rights under the Covenant in proceedings available to them.

A/HRC/19/67 (SR Myanmar, 2012), p. 94: (b) Problems such as the use of advance votes, the **procedures and costs for filing a complaint**, allegations of campaign irregularities and restrictions on the ability of political parties to conduct campaign activities be addressed.

## 20.9 Are there provisions protecting the participants in legal proceedings (including public officials) from reprisals for testifying in electoral disputes?

### Right to Security of Persons

ICCPR, Art. 9: (1) **Everyone has the right to liberty and security of person.** No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

UNCAC, Art. 32: (1) **Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention** and, as appropriate, for their relatives and other persons close to them. (2) The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process: (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons; (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

UNCAC, Art. 33: Each State Party shall consider incorporating into its domestic legal system appropriate measures to **provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.**

ICERD, Art 5: [...] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to **equal treatment before the tribunals and all other organs administering justice;** (b) The right to **security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.**

CCPR/CO/79/LKA, Sri Lanka, (2003), p. 9: The Committee also notes with concern reports that **victims of human rights violations feel intimidated from bringing complaints or have been subjected to intimidation and/or threats thereby discouraging them from pursuing appropriate avenues to obtain effective remedy** (Art. 2 ICCPR).

## 20.10 Does the legal framework establish alternative mechanisms to hear complaints of stakeholders who do not have access to EDR mechanisms?

### Right to an Effective Remedy

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,** notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

CCPR, GC 31, p. 15: Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure **that individuals also have accessible and effective remedies to vindicate those rights.**



CCPR/C/SVK/CO/3, Slovakia (2011), p. 5: [...] The Committee is concerned that the National Centre for Human Rights (NCHR) has a limited mandate and independence, and has not been provided with adequate resources to carry out its functions. The Committee thus regrets that the NCHR fails to meet the standards set out by the Paris Principles (General Assembly Resolution 48/134) (art. 2). The State party should revise the act that establishes the NCHR (National Centre for Human Rights) to **expand the scope of its mandate and competence to effectively promote and monitor the protection of human rights**. The State party should also take concrete measures to ensure that the NCHR is provided with adequate financial and human resources in line with the Paris Principles.

CCPR/C/CHN-MAC/CO/1, China (2013), p. 8: While noting the dual mandate of the Commission against Corruption to fight corruption and to fulfil the function of ombudsman, the Committee regrets the **lack of concrete information on the effective functioning of the ombudsman's mandate, the capacity to investigate individual complaints and to take measures to remedy attested violations**. The Committee is also concerned that the commissioner is appointed by the chief executive, which might affect the independence of the institution in relation to the executive power (art. 2).

CCPR/CO/69/KWT, Kuwait (2000), p. 45: The Committee, while noting the establishment of a Human Rights Commission in the Ministry of the Interior and of a Human Rights Committee in the National Assembly, encourages the State party to **establish a truly independent and effective mechanism to ensure effective remedies** as required by article 2, paragraph 3, of the Covenant.

## Resources

ACE Project, 'Electoral Dispute Resolution', available at <<http://aceproject.org/ace-en/topics/lf/lfb/lfb12>>, accessed 14 May 2014

Integrity Action, 'Accra Principles', available at <<http://www.integrityaction.org/electoral-justice-accra-principles>>, accessed 10 February 2014

International Foundation for Electoral Systems (IFES), *The Resolution of Disputes Related to 'Election Results': A Snapshot of Court Practice in Selected Countries Around the World – 2004*, available at <[http://www.ifes.org/~media/Files/Publications/Conference%20Papers%20and%20Reports/2004/62/ConfPaper\\_Indonesia\\_FINAL.pdf](http://www.ifes.org/~media/Files/Publications/Conference%20Papers%20and%20Reports/2004/62/ConfPaper_Indonesia_FINAL.pdf)>, accessed 14 May 2014

International IDEA, *Electoral Justice: The International IDEA Handbook* (Stockholm: International IDEA, 2010)

Matlosa, K., Khadiagala, G.M. and Shale, V., *When Elephants Fight: Preventing and Resolving Election-Related Conflicts in Africa* (Johannesburg: Electoral Institute for Sustainable Democracy in Africa, 2006)

Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System* (OSCE/ODIHR, 2000)

The Carter Center, *International Obligations for Electoral Dispute Resolution*, Discussion Paper, 2009, available at <<http://www.cartercenter.org/resources/pdfs/peace/democracy/des/edr-approach-paper.pdf>>, accessed 15 September 2014

Vickery, C., *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (Washington, D.C.: International Foundation for Electoral Systems, 2011)



Weinberg, B., H., *The Resolution of Election Disputes: Legal Principles that Control Election Challenges* (Washington, D.C.: International Foundation for Electoral Systems, 2008)

United Nations (UN), *Human Rights and Elections: United Nations Handbook on the Legal, Technical and Human Rights Aspects of Elections*, 1994

## Notes

- <sup>1</sup> International IDEA 2010, p. 9.
- <sup>2</sup> For more information, see <[http://www.integrityaction.org/sites/www.integrityaction.org/files/documents/files/ej\\_principles.pdf](http://www.integrityaction.org/sites/www.integrityaction.org/files/documents/files/ej_principles.pdf)>, accessed 10 February 2014.
- <sup>3</sup> International IDEA 2010, p. iii.
- <sup>4</sup> Ibid., p. 199.
- <sup>5</sup> International IDEA 2010, pp. 137–43.
- <sup>6</sup> UN, 1994.

# Chapter 21. Electoral Offences

## Overview

An electoral offence is '[a]n act or omission defined as a criminal offence, usually through electoral legislation or general criminal legislation. Examples include electoral fraud, voter coercion, impeding or falsifying voter registration and violations of campaign financing provisions'.<sup>1</sup> The purpose of defining and imposing sanctions on electoral offences falls under the obligation that States Must Take Necessary Steps to Give Effect to Rights. The central value of this ICCPR-based obligation is to protect legal interests that are intended to be attained or realized through the exercise of the overall political electoral rights guaranteed to the person, and ultimately to the Right and Opportunity to Participate in Public Affairs.<sup>2</sup>

The ICCPR and its jurisprudence stipulate that states are required to punish violation of electoral rights by law, and to take necessary measures to protect those rights. Most national legal frameworks for elections thus criminalize various rights violations collateral to electoral offences. Nevertheless, not all offences committed in relation to elections are systematically prosecuted and enforced in many national legal frameworks.

Recent electoral outcomes around the world show that fraud can undermine an electoral process in both established and transitional societies. The stakes in elections to executive office or legislative bodies are extremely high, so it is essential that the democracy support community recognize that individuals, interest groups and political parties are willing to go to great lengths to ensure that 'their' candidate or party acquires or remains in power.

If the electoral process is not safeguarded through holistic and proactive provisions, combating electoral fraud effectively and credibly becomes

extremely challenging. To date, EMBs and other relevant stakeholders have placed insufficient emphasis on combating electoral fraud in a strategic manner. A genuine electoral fraud control plan, instituted by the EMB and publicly available for review, allows election administrators to credibly and proactively detect, deter and mitigate electoral fraud. The implementation of such a plan is a clear indicator that the EMB is willing and prepared to assess threats to the integrity of the electoral process, and to take action to defend its credibility.

Donors can act as both catalysts and supporters of such EMB actions by placing electoral fraud at the forefront of their democracy and governance support programming: ‘by formally including the electoral fraud plan among its official indicators, donors would make it abundantly clear to EMBs, other state institutions, electoral observer missions and organizations offering technical assistance that electoral fraud must be combated effectively and continuously’.<sup>3</sup>

When assessing the effectiveness of legal framework enforcement mechanisms against electoral offences, the independence of the prosecuting authority from electoral stakeholders deserves special attention, notably from UN treaty bodies. This aspect is tackled in the following Table of Jurisprudence by analysing the applicable UN treaty provisions and jurisprudence upholding the obligations of Freedom from Discrimination and Equality under the Law, the Right to a Fair and Public Hearing, the Right to an Effective Remedy and the Prevention of Corruption. Other important aspects related to addressing electoral offences concern, the Right to Security of Persons and Freedom of Opinion and Expression.

## Table of Jurisprudence

### 21. Electoral Offences

#### 21.1 Are sanctions for electoral offences proportionate, but effective?

##### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 2(1): Each State Party to the present Covenant undertakes to **respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind**, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CCPR, GC 25, p. 11. States must take **effective measures** to ensure that all persons entitled to vote are able to exercise that right. [...] Any abusive interference with registration or voting as well as intimidation or coercion of voters should be **prohibited by penal laws and those laws should be strictly enforced**.

CCPR, GC 31, p. 6: The legal obligation under article 2(1) is both negative and positive in nature. States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and **only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights**. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.

A/HRC/14/24/Add.7 (SR on extrajudicial, summary or arbitrary executions, 2010), p. 91: **Impunity for election-related violence is widespread. Investigations and prosecutions are essential to reduce future violence**. In countries with recurring election violence, the Government should consider setting up special police and prosecutor task forces to focus specifically on election-related murders and other crimes. Following extensive election violence, the Government, with international assistance where appropriate, should set up an independent commission with a mandate to comprehensively study the violence and propose the necessary reforms. p. 93: The reality is, however, that, in the majority of situations in which heavily challenged election practices are followed by serious violence, the Government will be deeply implicated and unwilling under any circumstances to commission any sort of independent inquiry. [...]

## 21.2 Are there provisions to prevent the executive from intervening in the prosecution of electoral offences?

### Freedom from Discrimination and Equality under the Law

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law**. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

UNCAC, Art. 11: (1) Bearing in mind the **independence of the judiciary** and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, **take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary**. Such measures may include rules with respect to the conduct of members of the judiciary. (2) Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the **prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service**.

CCPR, GC 32, p. 19: The requirement of competence, **independence and impartiality** of a tribunal in the sense of article 14, paragraph 1, is an **absolute right that is not subject to any exception**. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the **actual independence of the judiciary from political interference by the executive branch and legislature**. States should take **specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making** through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. A **situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal**. p. 25: **Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive**.

CCPR, GC 13, p. 3: In particular, States parties should specify the relevant constitutional and legislative texts which provide for the establishment of the courts and ensure that they are **independent, impartial and competent**, in particular with regard to **the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the judiciary from the executive branch and the legislative**.

CCPR/C/79/Add.33, Cameroon (1994), p. 23: The **Committee is concerned** that the independence of the judiciary is not fully ensured. In addition the Committee is concerned that article 64 of the Criminal Procedure Code allows **for the intervention by the Ministry of Justice or by the Attorney General to end criminal proceedings** in certain instances (art. 14).

A/HRC/15/46 (SR Cambodia, 2010), p. 67: The new laws should ban active party political members from holding judicial positions and **ban judges and prosecutors from acting as advisers to party political leaders or ministers**. The judges and prosecutors may be members of a political party prior to their appointment. However, when they are appointed to judicial positions they should **cease to be an active member of any political party or play any role in party political activities**.

A/HRC/15/8 (UPR, 2010), Kenya, p. 102.13: Establish a **national mechanism independent of the public prosecutor and the attorney general for the investigation and prosecution of crimes committed during and following the 2007 election period**.

A/HRC/13/16 (UPR, 2010), Equatorial Guinea, Recommendation No. 72: [...] **Ensure an impartial review of irregularities and formal electoral complaints** stemming from the November 29 elections.

CCPR/CO/79/GNQ, Equatorial Guinea (2004), p. 7: The Committee expresses its concern at the **absence of an independent judiciary** in the State party and at the conditions for the appointment and dismissal of judges, which are not such as to **guarantee the proper separation of the executive and the judiciary**.

### 21.3 Are there provisions providing for due process and fair trial rights of those accused of electoral offences?

#### Right to a Fair and Public Hearing

ICCPR, Art. 14: (1) **All persons shall be equal before the courts and tribunals**. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, **everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...]**. (2) **Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law**. (3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt. (5) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. (7) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

CCPR, GC 25, p. 11: States must take **effective measures** to ensure that all persons entitled to vote are able to exercise that right. [...] Any abusive interference with registration or voting as well as intimidation or coercion of voters should be **prohibited by penal laws and those laws should be strictly enforced**.

CCPR GC 32, p. 15: The **right to a fair and public hearing by a competent, independent and impartial tribunal** established by law is guaranteed, according to the second sentence of article 14, paragraph 1, in cases regarding the determination of criminal charges against individuals or of their rights and obligations in a suit at law. Criminal charges relate in principle to acts declared to be punishable under domestic criminal law.

CCPR/CO/73/AZE, Azerbaijan (2001), p. 24: The Committee is concerned at the serious interference in the electoral process, whilst noting the delegation's statement with respect to the **punishment and dismissal of those responsible and the cancellation of the results of elections** in 11 districts where serious violations had been found and the holding of new elections in those districts. **The State party should take all necessary measures to ensure that the electoral process is conducted in accordance with article 25 of the Covenant**.

### 21.4 Are military tribunals allowed to try civilian electoral stakeholders?

#### Right to a Fair and Public Hearing

ICCPR, Art. 14(1): All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by **a competent, independent and impartial tribunal** established by law [...].

CCPR, GC 13, p. 4: [...] The Committee notes the existence, in many countries, of **military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned.** Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that **the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in Art. 14.** The Committee has noted a serious lack of information in this regard in the reports of some States parties whose judicial institutions include such courts for the trying of civilians. In some countries such military and special courts do not afford the strict guarantees of the proper administration of justice in accordance with the requirements of Art.14 which are essential for the effective protection of human rights. If States parties decide in circumstances of a public emergency as contemplated by Art.4 to derogate from normal procedures required under Art. 14, they should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation, and respect the other conditions in paragraph 1 of Art.14.

CCPR GC 32, p. 22: While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that **the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned.** Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14. **Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons,** and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.

CCPR/CO/79/GNQ, Equatorial Guinea (2004), p. 7: The Committee also regrets the absence of safeguards to ensure that civilians are tried solely by civilian courts and **not by military tribunals.** Bearing in mind article 14 of the Covenant, the State party should take steps to safeguard in practice the judiciary's independence and its role as the sole administrator of justice and to guarantee the competence, independence and tenure of judges. In addition, the State party should restrict the jurisdiction of the military justice system, removing civilians from it.

CCPR/C/COD/CO/3 (2006), Democratic Republic of the Congo, p. 21: The Committee is concerned at the continued existence of **military courts and at the absence of guarantees of a fair trial in proceedings before these courts.** It is also concerned at the clearly insufficient number of active judges in the Democratic Republic of the Congo, and at the low pay they receive, which frequently results in their corruption, according to information provided to the Committee. The shortage of judges contributes to the increase in crime and to the failure to prosecute criminal offences (Art. 14 of the Covenant). **The State party should abolish military courts for ordinary offences.** It should fight the corruption of judges, recruit and train enough judges to ensure the proper administration of justice throughout the territory of the Republic, fight crime and impunity, and allocate sufficient budgetary resources for the administration of justice.

Felix Kulov v. Kyrgyzstan, Comm. No. 1369/2005, UN Doc. CCPR/C/99/D/1369/2005 (2010), p. 8.6: The author also claims that he is a victim of violation of article 14, paragraph 1, as **his case was examined by a military court in closed meeting;** the investigation classified his case file as secret without giving any grounds and the 63-page judgement was prepared within three hours, putting into question the partiality of the judges. He adds that **military courts do not meet the standards of independence.** The Committee recalls its jurisprudence that the court must provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, for example, potential public interest in the case, duration of the oral hearing and the time the formal request for publicity has been made. p. 9: The Human Rights Committee [...] is of the view that the State party has violated articles [...] 14, paragraphs 1 [...].

## 21.5 Is the presumption of innocence upheld?

### Right to a Fair and Public Hearing

ICCPR, Art. 14: (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [...].

(2) **Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.**

CCPR, GC 13, p. 7: By reason of the **presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt**. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.

CCPR/C/AUS/CO/5, Australia (2009), p. 11: [...] The State party should in particular: (a) **guarantee the right to be presumed innocent by avoiding reversing the burden of proof**.

CCPR/CO/84/TJK, Tajikistan (2005), p. 25: The Committee is concerned about the possibility, in the State party's law, to refuse to register as candidates for election individuals against whom criminal proceedings are pending, notwithstanding the fact that their guilt has not been established (Arts. 25 and 14, para. 2). The State party should amend its legislation and practice in line with the requirements of articles 25 and 14, paragraph 2, of the Covenant, so as to **ensure that persons merely charged with an offence are presumed innocent and retain their right to stand for elections**.

Felix Kulov v. Kyrgyzstan, Comm. No. 1369/2005, UN Doc. CCPR/C/99/D/1369/2005 (2010), p. 2.1: The author submits that he is a member and one of the leaders of the political opposition in Kyrgyzstan. p. 8.7: The Committee notes the author's allegations of **violation of presumption of innocence**, as the authorities allegedly used national media to portray him as a criminal; his lawyers were given only limited time to study the evidence, and 'obstacles' were added to examine the additional evidence presented by the prosecution; [...] The Committee considers that due weight must be given to the author's allegations and concludes that there has been a violation of article 14, paragraphs 2, 3(b), (c), (d) and (e) of the Covenant.

## 21.6 Are sanctions on electoral offences effectively enforced?

### Right to an Effective Remedy; States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.

ICCPR, Art. 2(3): Each State Party to the present Covenant undertakes: (a) **To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy**, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) **To ensure that the competent authorities shall enforce such remedies when granted**.

CCPR, GC 31, p. 4: The obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level—national, regional or local—are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally, including before the Committee, **may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility** [...].

CCPR/C/HKG/CO/2, Hong Kong (2006), p. 17: The Committee is concerned about allegations of threats and acts of vandalism against some legislators during the run-up to elections in 2004 and it regrets that the Hong Kong Special Administrative Region (HKSAR) did not provide it with information on the difficulties caused to legislators of the Democratic Party (Arts. 19 and 25). The HKSAR should **investigate allegations of harassment of legislators**, ensure that they do not recur and take the **necessary steps** for full compliance with articles 19 and 25.

CAT/C/MDA/CO/2 (CAT, 2010), Republic of Moldova, p. 15 (a): [The State party should] promptly, impartially and **effectively investigate** all complaints and allegations of **misconduct by law enforcement officers during the post-election** demonstrations in April 2009 by establishing an independent, impartial and credible body that should comply with relevant international standards in this area, particularly the updated set of principles for the protection and promotion of human rights through action to combat impunity, the findings of which should be made public.

Commission on Human Rights, E/CN.4/2006/56/Add.1 (WG on enforced or involuntary disappearances, 2006), Colombia, p. 110: Any persons linked to, or known to have helped or supported, paramilitary groups or their activities should be investigated and if needs be prosecuted as accomplices to criminal activities, and if found guilty punished, according to law; (r) if politicians are involved, they **should be prevented from finishing their terms of office and/or held ineligible for re-election**.

A/HRC/14/24/Add.7 (SR on extrajudicial, summary or arbitrary executions, 2010), p. 91: **Impunity for election-related violence is widespread. Investigations and prosecutions are essential to reduce future violence.** In countries with recurring election violence, the Government should consider setting up special police and prosecutor task forces to focus specifically on election-related murders and other crimes. Following extensive election violence, the Government, with international assistance where appropriate, should set up an independent commission with a mandate to comprehensively study the violence and propose the necessary reforms. p. 93: The reality is, however, that in the majority of situations in which heavily challenged election practices are followed by serious violence, the Government will be deeply implicated and unwilling under any circumstances to commission any sort of independent inquiry.

## 21.7 Is the unilateral abuse of state resources regulated?

### Prevention of Corruption

UNCAC, Art. 1: The purposes of this Convention are: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; [...] (c) To **promote integrity, accountability and proper management of public affairs and public property**.

UNCAC, Art. 17: Each State Party shall adopt such legislative and other measures as may be necessary to establish as **criminal offences**, when committed intentionally, the embezzlement, **misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position**.

A/HRC/20/27/Add.2 (SR on the rights to freedom of peaceful assembly and of association, 2012), Georgia, p. 90: (d) increase efforts to ensure that all political parties, including opposition parties, have **genuine, equitable and adequate access to state resources for election campaigning**. It is especially crucial that **the line between the ruling party and the state be clearly defined in order to create a level playing field**.

A/HRC/21/63 (SR Cambodia, 2012), p. 62: The country needs political stability to accelerate the process of economic development, but that stability should be founded on fairness, equity, transparency, legitimacy and a level playing field to enable all political actors to make an equitable contribution to the country's governance. p. 71: Another issue is the **use of state resources, including the time of Government employees, motor vehicles and materials**, by political parties during their campaigning. The government must ensure that all **civil servants, police and military personnel do not participate in political activities or use government resources** while working in their official capacities, and that neutrality is paramount.

CCPR/C/RWA/CO/3, Rwanda (2009), p. 21: The Committee finds cause for concern in the reported obstacles to the registration and freedom of action of human rights NGOs and **opposition political parties** (arts. 19, 22, 25 and 26 of the Covenant). The State party should take the necessary steps to enable national human rights NGOs to operate without hindrance. It should **treat all political parties on an equal footing and offer them equal opportunities to pursue their legitimate activities**, in accordance with the provisions of articles 25 and 26 of the Covenant.

## 21.8 Does the legal framework criminalize violation of the secrecy of the vote, vote buying and intimidation?

### States Must Take Necessary Steps to Give Effect to Rights

ICCPR, Art. 2(2): Where not already provided for by existing legislative or other measures, **each State Party to the present Covenant** undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to **adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant**.



ICCPR, Art. 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (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.**

UNCAC, Art. 5: (1) Each State Party shall, in accordance with the fundamental principle of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. (2) Each State Party shall endeavour to establish and **promote effective practices aimed at the prevention of corruption.** (3) Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

CCPR, GC 25, p. 11: [...] Any abusive interference with registration or voting as well as intimidation or coercion of voters **should be prohibited by penal laws** and those laws should be strictly enforced [...]. p. 20: [...] States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any **unlawful or arbitrary interference with the voting process** [...].

A/HRC/12/15 (UPR, 2009), The Former Yugoslav Republic of Macedonia, p. 37: Implement effective measures to **prevent intimidation of voters** in future elections.

## 21.9 Are there provisions to prohibit and sanction incitement of hatred and violence?

### Right to Security of Persons; Freedom from Discrimination and Equality under the Law

ICCPR, Art. 9(1): Everyone has the **right to liberty and security of person** [...].

ICERD, Art. 4: States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to **adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination** and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia: (a) **Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination**, as well as all acts of violence **or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;** (b) **Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities**, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law.

ICCPR, Art. 20: (1) Any propaganda for war shall be prohibited by law. (2) Any **advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.**

ICCPR, Art. 26: **All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.** In this respect, the law shall prohibit any discrimination and **guarantee to all persons equal and effective protection against discrimination on any ground** such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

A/HRC/10/8/Add.3 (SR on freedom of religion or belief, 2009), India, p. 69: The Representation of the Peoples Act 1951 should be scrupulously implemented, including the provision on **disqualification for membership of parliament and state legislatures of persons who promote feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language.**

CERD/C/NLD/CO/17-18 (CERD, 2010), Netherlands, p. 8: The Committee is concerned at the incidence of **racist and xenophobic speech emanating from a few extremist political parties, the continuing incidence of manifestations of racism and intolerance towards ethnic minorities** and the general deterioration in the tone of political discourse around discrimination (art. 4). The Committee urges the State party to **take more effective measures to prevent and suppress manifestations of racism, xenophobia and intolerance** and to encourage a positive climate of political dialogue, including at times of local and national election campaigns. The Committee welcomes the concerted efforts of the State party to police and remove discriminatory or racist material from Dutch websites. Nevertheless, it is concerned that the dissemination of such material through the internet remains widespread (art. 4) [...].

CERD/C/ITA/CO/16-18 (CERD, 2012), Italy, p. 17: The Committee is extremely concerned by the prevalence of racist discourse, stigmatization and stereotypes directed against Roma, Sinti, Camminanti and non-citizens. **The Committee is concerned that in the few cases where politicians have been prosecuted for discriminatory statements, stays of execution have allowed those prosecuted to continue their political activities and to stand for election.** The Committee notes that the fundamental right to freedom of expression does not protect the dissemination of ideas of racial superiority or incitement to racial hatred. **The Committee is also concerned that racial discrimination is increasing in the media and on the internet, particularly on the social networks** (arts. 2 and 4). The Committee recommends that the State party: (a) **Take appropriate measures to prosecute individuals, including politicians,** for the acts referred to in article 4, and to ensure that the legal principle of stay of execution does not prevent justice from prevailing [...]. (b) **Reinforce the mandate of the Authority which monitors the media to ensure that racist statements are prosecuted and victims granted reparations** [...] (c) Raise awareness among media professionals of their responsibility not to disseminate prejudice and to avoid reporting incidents involving non-citizens, members of Roma and Sinti communities in a way that stigmatizes such communities as a whole, bearing in mind its General Recommendations No. 27 (2000) and No. 30 (2004).

CERD/C/AUT/CO/18-20 (CERD, 2012), Austria, p. 12. The Committee **regrets the use of inflammatory language by politicians during election campaigns that vilifies and promotes prejudices against persons of minority ethnic origins in the State party** (arts. 4 and 5). The Committee urges the State party to thoroughly **investigate and prosecute, where appropriate, the use during election campaigns of statements by politicians that incite racial hatred against persons of minority ethnic origin.** In this regard, **the State party should take active steps to prevent candidates and organizations from promoting and inciting racial discrimination.**

## 21.10 Is calling for an election boycott permissible?

### Freedom of Opinion and Expression

ICCPR, Art. 19: (1) **Everyone shall have the right to hold opinions without interference.** (2) **Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds,** regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Leonid Svetik v. Belarus, Comm. No. 927/2000, UN Doc. CCPR/C/81/D/927/2000 (2004), p. 7.2: The author claims that his right under article 19 has been violated, as he was subjected to an administrative penalty for the sole expression of his political opinion. [...] The Committee recalls that article 19 allows restrictions only to the extent that they are provided by law and only if they are necessary: (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order (*ordre public*), or of public health or morals. The Committee thus has to decide whether or not punishing a **call to boycott a particular election** is a permissible limitation of the freedom of expression. p. 7.3: The Committee recalls that according to Article 25(b), every citizen has the right to vote. In order to protect this right, States parties to the Covenant should prohibit intimidation or coercion of voters by penal laws and those laws should be strictly enforced. The application of such laws constitutes, in principle, a lawful limitation of the freedom of expression, necessary for respect of the rights of others. However, **intimidation and coercion must be distinguished from encouraging voters to boycott an election.** The Committee notes that voting was not compulsory in the State party concerned and that the declaration signed by the author did not affect the possibility of voters to freely decide whether or not to participate in the particular election. The Committee concludes that in the circumstances of the present case the limitation of the liberty of expression did not legitimately serve one of the reasons enumerated in article 19, paragraph 3, of the Covenant and that the author's rights under **article 19, paragraph 2, of the Covenant have been violated.**

F. Birindwa ci Bithashwiwa, E. Tshisekediwa Mulumba v. Zaire, Comm. Nos. 241/1987 and 242/1987, UN Doc. CCPR/C/37/D/242/1987 (1989), p. 1: The authors of the communications [...] are two Zairian citizens and founding members of the Union pour la Démocratie et le Progrès Social ('U.D.P.S.'; Union for Democracy and Social Progress), an opposition group in Zaire. p. 12.7: [...] With respect to Mr. Tshisekedi, it observes that he was kept in detention for close to two months following the break-up of the demonstration of 17 January 1988. The State party has not contested his claim that during this period, he was not brought before a magistrate, contrary to article 9, paragraph 3 of the Covenant. Mr. Tshisekedi further **suffered administrative measures of internal banishment** for intermittent periods between 11 April and 16 September 1988 **as a result of his call for a boycott of the partial elections** held in Kinshasa on 10 April 1988. Finally, he was subject to unlawful attacks on his honour and his reputation, in that the authorities sought to have him declared insane, although medical reports contradicted such diagnosis. p. 13: The Human Rights Committee, acting under article 5, paragraph 4 of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts of the communications disclose violations of the International Covenant on Civil and Political Rights: (b) in respect of Etienne Tshisekediwa Mulumba of article 9, paragraph 3, because he was not brought promptly before a judge following his arrest on 17 January 1988.

## Resources

- ACE Project, 'Sanctions for Specific Electoral Offences', available at <<http://aceproject.org/main/english/lf/lfd10.htm/?searchterm=electoral%20offences>>, accessed 28 March 2014
- Darnolf, S., *Assessing Electoral Fraud in New Democracies: A New Strategic Approach* (Washington, D.C.: International Foundation for Electoral Systems, 2011)
- International Foundation for Electoral Systems (IFES), *Research on the System of Challenging Electoral Violations & Adjudication of Disputes Related to Local Elections in Ukraine* (Washington, D.C.: IFES, 2010)
- International IDEA, *Electoral Justice: The International IDEA Handbook* (Stockholm: International IDEA, 2010)
- Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System* (OSCE/ODIHR, 2000)
- United Nations Development Programme (UNDP), *Elections and Conflict Prevention, a guide to Analysis, Planning and Programming*, 2009, available at <[http://unipsil.unmissions.org/portals/unipsil/media/publications/Elections\\_and\\_Conflict\\_Prevention.pdf](http://unipsil.unmissions.org/portals/unipsil/media/publications/Elections_and_Conflict_Prevention.pdf)>, accessed 16 July 2014
- Vickery, C., *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (Washington, D.C.: International Foundation for Electoral Systems, 2011)
- Vickery, C. and Shein, E., *Assessing Electoral Fraud in New Democracies: Refining the Vocabulary* (Washington, D.C.: International Foundation for Electoral Systems, 2012)
- Weinberg, B. H., *The Resolution of Election Disputes: Legal Principles that Control Election Challenges*, 2<sup>nd</sup> Edition (Washington, D.C.: International Foundation for Electoral Systems, 2008)

## Notes

<sup>1</sup> International IDEA 2010, p. 199.

<sup>2</sup> Ibid., p. 143.

<sup>3</sup> Darnolf 2012, p. 4.



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# **PART C**

# **Checklists**

**Table C. 1: Acronyms and abbreviations used in the Checklists**

<b>CCPR</b>	Human Rights Committee	<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination against Women/ Committee on the Elimination of All Forms of Discrimination against Women	<b>IDP</b>	Internally Displaced Person
<b>CERD</b>	Committee on the Elimination of Racial Discrimination	<b>MWC</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>CMW</b>	Committee on Migrant Workers	<b>NGO/CSOs</b>	Non-governmental organization/ Civil society organization
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities / Committee on the Rights of Persons with Disabilities	<b>PVT</b>	Parallel Vote Tabulation
<b>EDR</b>	Electoral Dispute Resolution	<b>TSM</b>	Temporary Special Measures
<b>EMB</b>	Electoral Management Body	<b>UNCAC</b>	United Nations Convention Against Corruption
<b>GC</b>	General Comment	<b>UDHR</b>	Universal Declaration of Human Rights
<b>HRC</b>	United Nations Human Rights Council	<b>UNSC</b>	United Nations Security Council
<b>ICCPR</b>	International Covenant on Civil and Political Rights		

## Checklist 1. Structure of the Legal Framework

1.1	<b>Does the legal framework incorporate applicable international obligations into national law?</b>	<input type="checkbox"/>
	<b>(ICCPR 2.2)</b> The rights recognized in the relevant international treaties to which the state subscribes must be adequately enshrined and guaranteed in the national legal framework. This incorporation into the national framework can take effect at different hierarchical levels, depending on each state's legal tradition.	
1.2	<b>Does the legal framework ensure the separation and balance of powers?</b>	<input type="checkbox"/>
	<b>(UDHR, Preamble)</b> Separation and balance of powers is necessary for implementing the rule of law and protecting human rights. National legal frameworks are called upon to guarantee the independence of legislative, executive and judicial authorities in order to prevent the arbitrary or unchecked use of state power.	
1.3	<b>Does the legal framework guarantee periodic elections?</b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> The obligation to hold periodic elections stems from the right of all citizens to vote and be elected in periodic elections, to ensure that governmental authority continues to reflect the will of the voters. Periodicity of electoral processes and their guarantees are to be enshrined in law.	
1.4	<b>Does the legal framework protect electoral rights by law?</b>	<input type="checkbox"/>
	<b>(ICCPR 2.2; UDHR, Preamble)</b> To limit arbitrary interpretation and the application of electoral rights by ad hoc regulation or executive decree, core provisions must be guaranteed by law. States are required to stipulate any limitations or conditions on the exercise of electoral rights in law.	
1.5	<b>Does the legal framework offer legal certainty and coherence?</b>	<input type="checkbox"/>
	<b>(ICCPR 2.2, 2.3)</b> An internally incoherent national legal framework can compromise the effective protection of electoral rights. Ensuring coherence and legal certainty requires consistency and clarity in all provisions, regardless of their rank in the legal hierarchy.	
1.6	<b>Does the legal framework prohibit discrimination based on gender?</b>	<input type="checkbox"/>
	<b>(ICCPR 26)</b> Anti-discrimination legislation is a requirement under the obligation to ensure freedom from discrimination and equality under the law. The CEDAW takes this further, requiring states to take positive measures. Specific prohibitions concerning discrimination against women in political life can be adopted for greater protection.	
1.7	<b>Does the legal framework ensure equal protection under the law?</b>	<input type="checkbox"/>
	<b>(ICCPR 26)</b> Ensuring equal protection under the law is a precondition for the equal enjoyment of rights and opportunities to participate in public affairs. National legal frameworks must ban any form of discrimination, including on the grounds of political opinion, religious beliefs, and ethnic or social origin.	
1.8	<b>Is the legal framework publicly accessible?</b>	<input type="checkbox"/>
	<b>(ICCPR 19.2; UNCAC 13.1)</b> States are required to ensure that their complete legal framework for elections is publicly accessible. This accessibility contributes to legal certainty and transparency, and to the equal enjoyment of rights and opportunities to participate in public affairs.	



1.9	<b><i>Does the legal framework establish limits to exceptional derogation of rights and obligations?</i></b>	
	<p style="text-align: right;"><b>(ICCPR 25)</b></p> <p>ICCPR obligations pertaining to electoral processes may be derogated from, notably during states of emergency. In order to avoid abuse, states are called upon to establish and regulate conditions, timeframes and limits to derogations taken under officially declared states of emergency. Hence, such provisions must ensure respect for the principles of necessity and freedom from discrimination, and must be consistent with other obligations under international law.</p>	<input type="checkbox"/>

## Checklist 2. Electoral Systems

2.1	<b><i>Are all seats in at least one chamber of the national legislature directly elected?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> The obligation to guarantee the right of citizens to participate freely in the conduct of public affairs, corroborated by the referenced jurisprudence, requires states to ensure that the seats of at least one chamber of an elected national legislature are open to elections held by universal and equal suffrage.	
2.2	<b><i>Does the electoral system guarantee universal representation in elected bodies?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> When designing or reviewing electoral systems, states are called upon to ensure the representation of all groups. States are required to facilitate the participation of all groups resident in the districts holding elections through a holistic set of measures that begins with electoral system design.	
2.3	<b><i>Does the electoral system directly or indirectly disadvantage women?</i></b>	<input type="checkbox"/>
	<b>(CEDAW 7; ICCPR 2.2, 3)</b> Electoral systems are not gender neutral. Different electoral systems and candidate list structures can disadvantage women candidates directly or indirectly, thereby exacerbating the historical inequality between men's and women's rights and opportunities to be elected. In keeping with their obligations, States Parties are called upon to consider these implications when reviewing their electoral systems.	
2.4	<b><i>Does the electoral system directly or indirectly disadvantage minorities?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25; ICCPR 2.2)</b> Electoral systems can disadvantage or promote the effective political participation of minorities. When designing or reviewing electoral systems, states are required to consider the implications that different systems and processes (such as high thresholds or open-candidate lists) can have—directly or indirectly—on the participation and representation of minorities.	
2.5	<b><i>Does the electoral system promote equal representation?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> States are called upon to ensure that electoral systems promote the equal weight of the vote under any electoral system, and across electoral districts, through the implementation of affirmative measures. Ensuring that national legal frameworks aim to guarantee a proportional ratio of voters and representatives for each constituency will help fulfil this obligation.	
2.6	<b><i>Does the legal framework effectively allow for political party pluralism?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 22, 25)</b> Guaranteeing the right and opportunity to participate in public affairs, together with the right to freedom of association, weighs heavily in favour of political party pluralism, an argument adopted by CCPR and HRC jurisprudence. Limitations and derogations to these rights must be non-discriminatory and established in the law.	
2.7	<b><i>Can political parties replace elected candidates before they take office?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> States are required to ensure that the replacement of elected candidates before they take office is regulated by law, in order to mitigate the potential intimidation and coercion of candidates, and to avoid undermining the free will of electors.	

### Checklist 3. Electoral Boundaries

3.1	<b><i>Is equality of the vote guaranteed by law?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> States are required to establish in law the obligation to respect equal suffrage for all bodies elected by popular vote. This includes drawing electoral boundaries to ensure that the weight of each vote is as equal as possible.	
3.2	<b><i>Are objective criteria established by law for deviating from 'population equality'?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> Recognizing that absolute equality for every vote remains effectively very difficult to attain, it is the responsibility of each legal framework to set objective criteria to draw electoral districts in such a way that the ratio of electors per representative is as balanced as possible across them. Measures to promote the representation of particular groups also require objective criteria set out in law, such as geographic contiguity and accessibility, as well as community of interest.	
3.3	<b><i>Are electoral boundaries discriminatory?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 26)</b> The obligation to guarantee freedom from discrimination and equality under the law proscribe discriminatory practices when creating electoral boundaries that could unfairly prejudice certain groups. This does not preclude measures to promote the participation or representation of particular groups.	
3.4	<b><i>Does the EMB or another impartial and independent body have the legal mandate to delimit electoral districts?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.2, 2.3)</b> Each State Party's legal framework determines which body is responsible for boundary delimitation. The jurisprudence establishes that this responsibility is best carried out by an independent and impartial body, such as an EMB, in order to inspire confidence in the electoral process.	
3.5	<b><i>Does the law prescribe the periodic review of electoral districts?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.2)</b> Electoral districts must be reviewed periodically to ensure they maintain the degree of equality of the vote, that is required by law. For greater legal certainty, national laws can establish provisions regarding such reviews and their triggers.	
3.6	<b><i>Is the electoral boundary delimitation and review process conducted in a transparent manner?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 19.2; UNCAC 10)</b> The obligations of transparency and the right to information are often neglected during the boundary delimitation process, also due to its separate sequencing from the voter registration process. If conducted with full participation of stakeholders, they may contribute to prevent and/or expose malpractice when there is still time to address it. Transparency is also critical to enhancing the overall understanding of (and trust in) the electoral process.	
3.7	<b><i>Is the electoral boundary review process open to public debate and consultation?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> Openness to debate and public consultation serve to engage politicians, the media, observers and citizens as a whole, potentially increasing the quality of the delimitation exercise and confidence in the process. When the exercise is conducted according to the criteria highlighted above, the ability to adjudicate effectively and expeditiously upon potential complaints can be greatly enhanced.	

3.8	<p><b><i>Does the legal framework provide for effective and timely appeals against decisions on boundary delimitation?</i></b></p> <p><b>(ICCPR 2.3)</b></p> <p>An effective right to administrative and judicial appeal completes the measures required of states to carry out boundary delimitation exercises in a fully transparent manner. It further provides a safeguard against late and opportunist challenges, which are prone to derail the electoral calendar.</p>	<input type="checkbox"/>
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## Checklist 4. Political Parties

4.1	<b><i>Is the right to form political parties unreasonably restricted?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 22, 25)</b> The right to freedom of association to form political parties can only be restricted by law, and within ICCPR-defined parameters that are reasonably necessary. Unreasonable restrictions can stifle political movements and restrict individuals' rights to exercise political freedoms.	
4.2	<b><i>Do objective criteria regulate the creation of political parties?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 22, 25)</b> States are required to establish objective and precise criteria to regulate the creation of political parties in law. This will prevent arbitrary decisions that may affect the creation of political parties by going beyond the ICCPR ambit of reasonable restrictions, and thereby hamper the effective exercise of the right to freedom of association.	
4.3	<b><i>Do objective criteria determine the de-registration and/or non-registration of political parties?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 22)</b> To protect political associations from arbitrary and discretionary de-registration or non-registration, states are required to establish objective and precise criteria to regulate the circumstances under which the above mentioned activities are permitted.	
4.4	<b><i>Does the legal framework provide for a timely remedy against the de-registration and/or non-registration of political parties?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.3)</b> Without a timely and effective remedy against dissolution or refusal of registration, there is no effective guarantee of freedom of association. The question completes the protection afforded to individuals' right to freedom of association and their right and opportunity to participate in public affairs through political parties.	
4.5	<b><i>Are there provisions to promote internal party democracy?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.2)</b> To strengthen citizens' equal right and opportunity to be elected and to participate in public affairs, political parties can be called upon to operate and function democratically. The legal framework can promote measures that favour internal party democracy, such as primary elections or party congresses. Such measures become very important where only one or two political parties dominate the electoral field, thus stifling the prospects of independent candidates or smaller parties.	
4.6	<b><i>Are there measures to promote gender equality in political party leadership?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.2; CEDAW 7)</b> States Parties can promote greater gender equality in political party leadership to compensate for some of the obstacles that women face to access political life. In addition to legal requirements for political party leadership structures, public funding of political parties can be conditioned on the level of representation of women.	
4.7	<b><i>Does the law protect against discrimination and reprisals on grounds of political affiliation?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 22, 26)</b> Discrimination and reprisals on the grounds of political affiliation restrain the full enjoyment of the right of freedom of association and the right to participate in public affairs. It is particularly important to ensure that the implementation of administrative measures regulating political affiliation are not used in a discriminatory manner against opposition parties.	

4.8	<b><i>Is the right of political association and activity framed by objective criteria?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 22, 25)</b> To avoid arbitrary and discretionary interpretations, states are required to ensure that any restrictions on political activity are clearly established in the law and based on objective criteria.	

## Checklist 5. Political Finance

5.1	<b><i>Does the legal framework require the transparency of political party and candidate contributions and expenditures?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 19.2; UNCAC 7.3)</b> Transparency of political party and candidate finance is a key aspect of promoting accountability and preventing corruption. Reporting and disclosure requirements are essential when limitations on contributions or campaign expenditures are imposed. The relevant treaty provisions require the law to establish periodic reporting at reasonable intervals of all contributions received and expenditures incurred by parties or electoral candidates.	
5.2	<b><i>Are there reasonable caps on financial contributions to, or spending by and on behalf of political parties and candidates?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 26)</b> The legal framework can place a cap on the election expenditure of parties and candidates in order to limit the influence of money in politics and level the playing field. Periodic reporting requirements are an essential element of such provisions.	
5.3	<b><i>If public funding to political parties is provided, is it distributed equitably?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25, 26)</b> Public funding can be provided to help facilitate the right and opportunity to be elected. Where such funding is provided, it must be distributed among contestants equitably (not necessarily equally). States are called upon to allocate funding in a non-discriminatory manner, excepting special measures to promote the participation of disadvantaged or marginalized groups.	
5.4	<b><i>Is the abuse of state resources regulated?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25; UNCAC 1)</b> To protect the equal right and opportunity of all citizens to be elected, states are required to regulate and proscribe discrimination in political parties' access to state resources (state media, buildings, property and other resources). Penalizing the unilateral abuse of state resources within national legal frameworks is key to deterring such abuse and mitigating situations that unduly advantage incumbents.	
5.5	<b><i>Does the legal framework define and sanction the concealment of illicit campaign funds?</i></b>	<input type="checkbox"/>
	<b>(UNCAC 1)</b> The penalization of campaign fund concealment follows from the requirement to disclose campaign funds. States are required to impose penalties on those that either fail to file reports or file intentionally false reports, while ensuring that sanctions are proportional to the gravity of the offence.	
5.6	<b><i>Are donations by non-national persons or entities regulated?</i></b>	<input type="checkbox"/>
	<b>(UNCAC 1)</b> Regulating the acceptance, conditions or prohibition of donations by non-national persons or entities contributes to the fight against corruption during electoral processes and promotes transparency and legal certainty. Relevant UNCAC provisions expressly prohibit foreign financing in particular contexts, as well as the practice of offering and receiving undue advantage.	

5.7	<b><i>Are campaign finance regulations monitored and enforced?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(UNCAC 1)</b></p> <p>States are called upon to establish mechanisms to monitor and enforce compliance with political finance laws in their legal framework in order to ensure a certain degree of effectiveness. This is also part of the state's positive obligation to promote integrity, accountability and proper management. Such mechanisms can include the creation of independent supervisory bodies and other provisions that enhance transparency and prevent corruption throughout the electoral process, such as financial disclosure templates.</p>	
5.8	<b><i>Do political parties and candidates have the right of timely appeal against political finance sanctions?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.3, 14)</b></p> <p>The right to an effective remedy serves as a safeguard against the arbitrary application of political finance sanctions. Such a remedy does not necessarily require a judicial mechanism, as administrative ones can adequately fulfil this function. However, both types of remedies require expeditious application to be effective.</p>	
5.9	<b><i>Are both candidates and political parties liable for campaign finance offences?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(UNCAC 1)</b></p> <p>To ensure the accountability of campaign finance offenders, UNCAC requires States Parties to establish the liability of both private and corporate persons, without prejudicing the other. This measure also contributes to enhancing transparency, which aids the fight against corruption.</p>	
5.10	<b><i>Do candidates have to declare their assets before and after their term of office?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 19.2; UNCAC 1, 7.3)</b></p> <p>The disclosure of candidates' assets before and after their terms of office can be an effective measure of transparency and accountability, and is among the UNCAC's mechanisms to prevent corruption. The inclusion in the legal framework of such a requirement is to be accompanied by the criminalization of illicit campaign funding.</p>	



## Checklist 6. Electoral Management

6.1	<b>Does the legal framework allow the EMB to act independently?</b>	<input type="checkbox"/>
	<b>(ICCPR 2.2)</b> Beyond any formal recognition of EMB independence, States Parties are required to ensure that EMBs have the capacity to act independently. True independence requires budgetary independence, as well as security of tenure for EMB members and staff. Government failure to provide timely resources is tantamount to interference, and is likely to detract from the EMB's impartiality and ability to operate.	
6.2	<b>Does the EMB have regulatory powers?</b>	<input type="checkbox"/>
	<b>(ICCPR 2.2)</b> Not all EMBs enjoy regulatory powers, and in some legal contexts it might not be appropriate to vest them with such powers. When EMBs have regulatory powers, they need to perform their duties independently of the executive and the legislature. Whatever the legal framework, EMBs should be consulted in the lawmaking or regulation-making process regarding electoral processes.	
6.3	<b>Are there measures to ensure equal and merit-based access to EMB positions?</b>	<input type="checkbox"/>
	<b>(ICCPR 26)</b> Equal access to public service for all citizens and all positions, including those within the EMB, ensures freedom from discrimination and equality under the law. Equal and merit-based access to EMB positions and careers also helps bolster its independence, impartiality and technical capacity to administer electoral processes.	
6.4	<b>Are there provisions prohibiting conflicts of interest and ensuring security of tenure for EMB positions?</b>	<input type="checkbox"/>
	<b>(UNCAC 1)</b> Behavioural EMB independence hinges on freedom from all forms of undue influence. Security of tenure and the regulation of potential conflicts of interest can be powerful measures to protect EMB independence and reduce the risk of partiality. UNCAC provisions for the public sector and public officials apply to all EMB staff, as they require merit-based approaches to the recruitment, promotion, suspension and dismissal of public servants.	
6.5	<b>Is the EMB required to operate transparently?</b>	<input type="checkbox"/>
	<b>(ICCPR 19.2)</b> As applies to public service in general, UNCAC and CCPR jurisprudence require that legal provisions assure the transparent operation of EMBs. Transparency includes accessibility to all procedural and regulatory instruments, as well as to all public records regarding the electoral process and EMB funding. The right to information extends to political candidates and the media, as well as to associations and citizens.	
6.6	<b>Does the legal framework prescribe procurement procedures for the EMB?</b>	<input type="checkbox"/>
	<b>(UNCAC 1)</b> According to UNCAC, EMB procurement procedures and criteria must be prescribed in the legal framework to ensure transparency, prevent corruption, and provide legal certainty and clarity, in order to safeguard the effective expenditure of public funds. Implementing these provisions enables all stakeholders to monitor one of the most neglected and controversial aspects of electoral operations.	
6.7	<b>Is the EMB financially accountable?</b>	<input type="checkbox"/>
	<b>(ICCPR 19.2; UNCAC 1)</b> States are required to take measures to ensure the financial accountability of EMBs that are responsible for their budget and for managing electoral funds. Financial accountability is a good indicator of a sustainable electoral process.	

6.8	<p><b><i>Are there provisions to ensure the timely review of EMB decisions?</i></b></p>	<div></div>
	<p><b>(ICCPR 2.3)</b></p> <p>Timely access to an effective judicial or administrative remedy against EMB decisions is a necessary guarantee to ensure EMBs' overall accountability. It is also an early confidence-building and dispute-prevention mechanism. States are called upon to ensure that their legal frameworks provide for the review of EMB decisions, and that expeditious and enforceable remedies are available.</p>	

## Checklist 7. Gender Equality

	<b><i>Has a national plan for gender equality been adopted?</i></b>	
7.1	<p style="text-align: right;"><b>(ICCPR 2.2)</b></p> <p>The adoption of a national plan or policy for gender equality can be an important first step and benchmark towards ensuring that gender inequalities in a country's public and political life are identified and addressed. The adoption and publication of such a plan indicates that gender concerns are taken into consideration in a holistic manner.</p>	<input type="checkbox"/>
	<b><i>Is discrimination based on gender prohibited by law?</i></b>	
7.2	<p style="text-align: right;"><b>(ICCPR 26)</b></p> <p>Expressly prohibiting gender-based discrimination by law offers a legal remedy against unequal treatment and can thus act as a powerful deterrent, both in public service and within political party structures.</p>	<input type="checkbox"/>
	<b><i>Does the legal framework allow and provide for TSMs to achieve gender equality?</i></b>	
7.3	<p style="text-align: right;"><b>(CEDAW 7; ICCPR 2.2, 3)</b></p> <p>CEDAW develops the general ICCPR obligation that states must take necessary steps to give effect to rights, obligating States Parties to take appropriate measures to eliminate discrimination against women in the political and public life of their country. This all-encompassing obligation provides the basis for the TSMs that CEDAW promotes. TSMs aim to accelerate gender equality in practice, and are not to be considered discriminatory.</p>	<input type="checkbox"/>
	<b><i>Are there provisions allowing and providing for appropriate measures to promote gender equality in all elected bodies?</i></b>	
7.4	<p style="text-align: right;"><b>(CEDAW 7; ICCPR 2.2, 3)</b></p> <p>TSMs can operate through candidate quotas, reserved seats, political party public funding incentives, support programmes, media regulations and any other measures intended to increase the representation of women in all elected bodies. TSMs must be temporary so as not to constitute discrimination. The significant body of quota-related jurisprudence is dealt with in this question to emphasize the importance of quotas in achieving gender equality, but not as an aim in itself.</p>	<input type="checkbox"/>
	<b><i>Does the electoral system disadvantage candidates based on gender?</i></b>	
7.5	<p style="text-align: right;"><b>(CEDAW 7; ICCPR 2.2, 3)</b></p> <p>Electoral systems are not gender neutral. Different systems and candidate list structures can disadvantage women candidates, skewing their opportunity to be elected along gender lines. Gender bias in electoral systems is addressed in depth in International IDEA's Designing for Equality guide. In keeping with their obligations, States Parties are called upon to consider these implications when reviewing their electoral systems.</p>	<input type="checkbox"/>
	<b><i>Are there provisions to promote gender equality in the election administration?</i></b>	
7.6	<p style="text-align: right;"><b>(CEDAW 7; ICCPR 2.2, 3)</b></p> <p>To fulfil their CEDAW and ICCPR obligations to take necessary steps to ensure equality between men and women in public service, States Parties must promote gender equality at all levels of their national election administration.</p>	<input type="checkbox"/>
	<b><i>Does the law protect women from reprisals in the exercise of their political rights?</i></b>	
7.7	<p style="text-align: right;"><b>(ICCPR 9.1)</b></p> <p>The right to security of the person must be guaranteed equally to men and women, the risk of reprisals can be a significant obstacle to women's participation in political and public life. States Parties are required to take appropriate measures to protect women from undue influence, in order to assure that they freely enjoy ICCPR article 25 rights.</p>	<input type="checkbox"/>

	<b><i>Are there provisions for the production of statistical data disaggregated by gender?</i></b>	
7.8	<p align="right"><b>(ICCPR 2.2)</b></p> <p>Accurate and up-to-date gender-disaggregated statistical data on women's involvement in political and public life is necessary to assess baselines and benchmarks of equality between men and women. Such data are an essential way to increase transparency, and to plan and monitor effective TSMs. Data can be made public to determine and monitor the degree of participation and explore which positive measures are most effective in a given context.</p>	<input type="checkbox"/>
	<b><i>Do the laws or procedures for acquiring or conferring citizenship discriminate based on gender?</i></b>	
7.9	<p align="right"><b>(CEDAW 7; ICCPR 3, 26)</b></p> <p>Citizenship and the issuance of national identification documents play a significant role in enabling the full enjoyment of political and civil rights. Discriminatory laws and regulations on citizenship acquisition or loss, or outdated national documentation procedures, can in practice deprive women of the opportunity to participate in their country's political and public life under the same conditions as men.</p>	<input type="checkbox"/>
	<b><i>Are there provisions allowing for positive measures to include women in the voter register?</i></b>	
7.10	<p align="right"><b>(ICCPR 2.2)</b></p> <p>States Parties are obligated to remove obstacles in voter registration procedures that directly or indirectly disadvantage women. TSMs can be adopted to promote the registration of women. Gender-disaggregated voter registration data can help monitor equality between men and women in the voter register, and signal areas where further measures might be required.</p>	<input type="checkbox"/>
	<b><i>Are there any measures that indirectly restrict women's right to vote or to stand for office?</i></b>	
7.11	<p align="right"><b>(CEDAW 7; ICCPR 3, 26)</b></p> <p>Conditions restricting the right to vote or stand for office, such as fees and document and education requirements, can disproportionately disadvantage women candidates. According to the referenced jurisprudence, States Parties are called upon to consider the indirect effect of candidacy criteria when reviewing their legal framework.</p>	<input type="checkbox"/>
	<b><i>Are there provisions for the public funding of women candidates, where applicable?</i></b>	
7.12	<p align="right"><b>(ICCPR 2.2)</b></p> <p>Among TSMs, the quoted jurisprudence provides that States Parties can consider allocating public funding or greater funding (if public funding is already provided) to women candidates in order to help them overcome the additional obstacles they face compared to men candidates.</p>	<input type="checkbox"/>
	<b><i>Are there provisions for capacity building for women and on gender equality?</i></b>	
7.13	<p align="right"><b>(ICCPR 2.2)</b></p> <p>Among the TSMs referenced in the quoted case law, States Parties can consider training and capacity building for women, including women candidates, to help them overcome obstacles that women face more than men. Training and capacity building on gender equality throughout the electoral cycle can help reduce gender inequality.</p>	<input type="checkbox"/>
	<b><i>Are there measures to promote gender equality in political parties?</i></b>	
7.14	<p align="right"><b>(CEDAW 7; ICCPR 3)</b></p> <p>States Parties can promote gender equality in political party leadership through their national legal framework. Beyond legal requirements for political party leadership structures, public funding of political parties can be conditioned on the level of women representation.</p>	<input type="checkbox"/>

7.15	<b><i>Does the law establish effective remedies and sanctions to ensure compliance with TSMs?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2)</b> TSMs cannot be implemented in a vacuum. States Parties are required to take the necessary steps, in a consistent and proportionate fashion, for them to be effective. Thus, effective remedies and sanctions are required, and must be enforced against violations of the prohibition on discrimination and against TSM violations. As simple fines have often proven ineffective, the wholesale disqualification of non-conforming candidate lists has become an essential sanction.	
7.16	<b><i>Are there provisions to regulate the equal treatment of women by the media?</i></b>	<input type="checkbox"/>
	<b>(CEDAW 7; ICCPR 26)</b> Equal treatment of women in the media can enhance public recognition of women candidates, and thus boost women's representation. Prohibiting media discrimination against women and taking positive measures to ensure equal treatment (in terms of both quantity and editorial content) contribute to attaining de facto equality between men and women.	
7.17	<b><i>Are there measures providing specific protection for women with disabilities or other multiple forms of discrimination?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 26)</b> In order to guarantee freedom from discrimination and equality under the law, TSMs might target women with disabilities or women facing multiple forms of discrimination (minorities, migrants and nomads, among others) to further compensate for the inequalities they face as women.	

## Checklist 8. Equal Opportunities for Minorities and Marginalized Groups

8.1	<b>Does the legal framework protect the civil rights of minorities?</b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 26; ICERD 5)</b></p> <p>In accordance with the relevant provisions of the ICCPR, ICERD and related jurisprudence, national legal frameworks are required to protect minorities' civil rights. Provisions related to voter or candidate registration might indirectly discriminate on the grounds of race, language and religion, and must therefore be reviewed attentively. States are therefore called upon to respect the obligation of equality under the law at all stages of the electoral cycle.</p>	
8.2	<b>Are there anti-discrimination provisions?</b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 2.2)</b></p> <p>The negative obligation not to discriminate demands positive legislative action that bans discrimination. Drafting and passing anti-discrimination provisions has a positive effect throughout the legal framework, as it forces the legislator and the EMB to reflect on effective positive measures that can affect the entire process. Adopting anti-discrimination legislation also lays the ground for remedial claims at an independent and impartial tribunal.</p>	
8.3	<b>Are there any provisions that discriminate against indigenous communities?</b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 26)</b></p> <p>Beyond national, ethnic, religious and linguistic minorities, specific attention is required to avoid general regulations causing in their implementation a non-deliberate discrimination against indigenous communities, since such groups often operate with informal parallel structures and might not be fully aware of their civil and political rights.</p>	
8.4	<b>Are there provisions to monitor the effective political participation of minorities?</b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 2.2)</b></p> <p>Among the measures to prevent discrimination against minorities, UN jurisprudence calls upon States Parties to monitor their political participation and representation. Monitoring requires the compilation of data to better assess, design and evaluate policies to promote the effective political participation of minorities. Data can be made public to determine and monitor the degree of participation and explore which positive measures are most effective in a given context.</p>	
8.5	<b>Does the electoral system and/or boundary delimitation disadvantage minorities?</b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 2.2, 25)</b></p> <p>Electoral systems and the configuration of electoral districts can either disadvantage or promote the effective political participation and representation of minorities. To abide by the obligations of equal suffrage and the equal right and opportunity to be elected, legal frameworks need to take into account the implications of electoral system choice and implementation. High thresholds or open candidate lists, for instance, might stifle the effective participation and representation of minorities.</p>	
8.6	<b>Are there special measures to promote the representation of minorities?</b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 2.2)</b></p> <p>Like the CEDAW, the ICERD introduces special measures to address historical inequalities in representation. The referred CCPR and CERD case law calls on states to incorporate TSMs by law in order to promote the political representation of minority groups in all elected bodies. TSMs for minorities are especially meant to overcome disparities and weaknesses in electoral system design. ICERD exempts these measures, which can include quotas or reserved seats among other positive measures, from being considered discriminatory.</p>	

8.7	<b><i>Do voter eligibility criteria discriminate against minorities?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 26)</b> States Parties are required to ensure that voter eligibility criteria are free from direct or indirect discrimination against minorities. Discrimination may flow from purely administrative provisions, such as civil registration fees or timetables, and is sometimes the result of obsolete provisions in peripheral legislation that is not directly election-related. Any form of discrimination against minorities must be removed to guarantee the obligation of freedom from discrimination and equality under the law.	
8.8	<b><i>Does the legal framework provide effective measures to include minorities on the voter register?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.2, 25)</b> There should be no provision that directly or indirectly discriminates, disadvantages or deters members of minority groups from registering or being included on the voter register. This includes consideration of legislation and procedures concerning the right to nationality/citizenship and access to national identification and other preconditions for registering. Measures to promote the inclusion of minorities on the voter register can be considered TSMs.	
8.9	<b><i>Are electoral laws and election materials translated into minority and local languages, and made widely available?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 19.2; UNCAC 10)</b> Language can be a strong barrier to political participation, so international law calls upon states to take steps to promote participation by providing information on the electoral process in minority and local languages. Materials in minority languages ensure that members of minority groups are not disadvantaged in their access to information on the electoral process.	
8.10	<b><i>Are there provisions prescribing civic and voter education concerning minority rights?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.2; ICERD 5)</b> To promote the participation of minorities in electoral processes, CERD and CCPR jurisprudence requires states to provide targeted civic and voter education efforts for all segments of the electorate, including majority groups, on minority rights to participate in electoral processes. Such measures will, for example, help ensure that members of minority groups can exercise their political rights without any barriers to equality.	
8.11	<b><i>Are there measures to ensure equal access, and the provision of polling stations and polling materials to minority areas?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.2)</b> Equal access is required in ICCPR and ICERD provisions for all stages of the electoral process, including their operational and logistical aspects, such as practical and contextual measures to ensure that minority areas receive the same treatment in terms of electoral materials, resources and access as other areas of the country. This includes the provision of assistance for disabled voters referred to in Chapter 13 in the Guidelines.	
8.12	<b><i>Do conditions for candidate registration disadvantage or exclude minorities?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> Procedures that regulate candidate registration can prejudice minority participation if, for instance, they require a declaration of ethnicity or religion. Conversely, provisions linking registration for elected positions to membership in a certain group can discourage or limit the participation of minorities.	

8.13	<b><i>Does the law establish effective remedies and sanctions to ensure compliance with TSMs?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2)</b></p> <p>Sanction mechanisms and remedies ensure compliance with TSMs, and thus promote the effective participation of minorities. As with gender equality, such mechanisms are as important as the measure itself, as they close legal loopholes that allow the underlying obligation to be bypassed.</p>	
8.14	<b><i>Does the law prohibit and sanction the incitement of hatred and violence against minority groups?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 20, 26; ICERD 5)</b></p> <p>Both the ICERD and ICCPR expressly prohibit the incitement of hatred and violence, including against minority groups. National legislation to this effect is necessary to guarantee the security of the person, prevent discrimination and promote the participation of minority groups in electoral processes. Any such measures are required to include sanctions. If racist propaganda or incitement to violence can be conducted with impunity, this also skews the notion of a level playing field against minorities.</p>	
8.15	<b><i>Does the legal framework establish minority consultative councils or devolution to regional autonomous bodies for minorities?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 25)</b></p> <p>States Parties can consider establishing structures to encourage the participation of minorities in the conduct of their local public affairs, inter alia through councils or the devolution of certain state prerogatives to regional autonomous bodies. Such processes can bring consultative and decision-making processes closer to minority groups and enhance minority participation in public and political life.</p>	



## Checklist 9. Equal Opportunities for Persons with Disabilities

9.1	<b><i>Are persons with disabilities effectively granted an equal right to vote?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 25, 26)</b></p> <p>ICCPR and CRPD provisions, and their related jurisprudence, require States Parties to these treaties to guarantee equal rights and opportunities to vote to persons with disabilities, without any unreasonable restrictions. Many legal frameworks still contain provisions or allow mechanisms (e.g., court orders depriving certain categories of persons with disabilities of their right to vote) that prevent the full application of the equal right to vote.</p>	
9.2	<b><i>Does the legal framework facilitate voter registration for persons with disabilities?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2, 25)</b></p> <p>States are required to ensure that their legal frameworks are free from provisions that directly or indirectly discriminate, disadvantage or deter persons with disabilities from registering or being included in the voter register. This includes the consideration of legislation and procedures concerning access to national identification mechanisms, and provision of adequate infrastructure to allow access to voter registration locations and necessary documentation (e.g., tactile, Braille or audio registration forms). Measures to promote or facilitate the inclusion of persons with disabilities on the voter register are required by treaty body jurisprudence.</p>	
9.3	<b><i>Are there provisions to safeguard the secrecy of the vote for persons with disabilities?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 25; CRPD 29)</b></p> <p>The ICCPR-based concept of secrecy of the vote is reinforced in the CRPD, which calls upon its States Parties to ensure that their legal framework safeguards the right of persons with disabilities to vote by secret ballot in all elections by providing appropriate facilities, materials and procedures. Measures must address the design of the voting ballot and the vote-casting process. For example, paper ballot systems must provide Braille accommodations to ensure that voters with visual impairments can cast an independent and secret ballot. Automated or electronic voting systems are required to respond to the principle of universal design, enabling voters with mobility or sight impairments to use the same voting machines as all other citizens, for instance by using audio cues or prompts. Off-site voting procedures bear the same responsibility to protect the secrecy of the ballot.</p>	
9.4	<b><i>Are there provisions requiring polling stations to be accessible to the disabled?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2; CRPD 29)</b></p> <p>To ensure that persons with disabilities are guaranteed the effective exercise of the right and opportunity to vote on an equal basis with others, treaty body jurisprudence requires that legal frameworks of States Parties to the CRPD consider measures to ensure that persons with disabilities can effectively access polling. Such measures can include disabled access to polling stations and/or the use of mobile and/or off-site voting procedures and technology.</p>	
9.5	<b><i>Are persons with disabilities effectively granted an equal right to stand for office?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 25; CRPD 29)</b></p> <p>ICCPR and CRPD provisions oblige States Parties to effectively guarantee persons with disabilities equal rights and opportunities to be elected without discriminatory restrictions in their legal frameworks, such as mandatory health certificates. A positive requirement is placed on states to facilitate the effective participation of persons with disabilities in the conduct of public affairs, for example through the use of new technologies.</p>	
9.6	<b><i>Are there measures to support elected officials with disabilities to effectively exercise their mandate?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2; CRPD 27.1)</b></p> <p>ICCPR article 2.2 and CRPD jurisprudence establish positive measures to support elected officials with disabilities. States Parties to these treaties can incorporate such measures in their legal frameworks to contribute to the exercise of election mandates held by persons with disabilities, under equal conditions with others.</p>	

9.7	<b><i>Are persons with mental disabilities and those under guardianship enfranchised?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25, 26)</b> ICCPR, CRPD and applicable case law call upon States Parties to ensure that their legal frameworks safeguard the rights of persons with mental disabilities, including those under guardianship or trusteeship, to vote on an equal basis with others (the CCPR overruled its own precedent on this issue in favour of the right to vote of persons with mental disabilities).	
9.8	<b><i>Are there special measures for women with disabilities to exercise their electoral rights?</i></b>	<input type="checkbox"/>
	<b>(CEDAW 7; ICCPR 3)</b> CEDAW treaty body jurisprudence requires states to legally protect the right of women with disabilities to participate in public affairs, since disabled women often experience multiple forms of discrimination.	
9.9	<b><i>Do persons with disabilities have the right to freedom of association?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 22)</b> Article 29b of the CRPD makes express reference to freedom of association of persons with disabilities. States Parties' legal frameworks are obliged to guarantee freedom of association for the full enjoyment of political rights to persons with disabilities.	
9.10	<b><i>Are there provisions prescribing civic and voter education concerning the rights of persons with disabilities?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25; UNCAC 13)</b> A joint reading of the ICCPR, UNCAC and CRPD suggests a requirement for States Parties to target civic and voter education to persons with disabilities in order to promote their participation and representation. Targeted messages to the general public on the political rights of persons with disabilities are also envisaged in CRPD jurisprudence.	

## Checklist 10. Electoral Observers

	<b><i>Can NGOs and CSOs register and operate freely?</i></b>	
10.1	<p style="text-align: right;"><b>(ICCPR 22, 25)</b></p> <p>National legal frameworks are required to permit the registration and free operation of human rights NGOs/CSOs as a precondition for engaging in electoral observation. Restrictions on their operation, including access to funding, are in breach of the obligation to guarantee the freedom of association.</p>	<input type="checkbox"/>
	<b><i>Are there provisions requiring the timely treatment of registration applications for CSOs/NGOs?</i></b>	
10.2	<p style="text-align: right;"><b>(ICCPR 22)</b></p> <p>Registration applications for CSOs/NGOs can be hindered by onerous conditions, lengthy administrative procedures, excessive discretionary powers or a lack of transparency in their adjudication. Measures can be considered to circumscribe administrative or executive discretion that might be abused to limit the ability of an NGO/CSO to participate in the electoral process.</p>	<input type="checkbox"/>
	<b><i>Does the legal framework allow observation of the entire electoral process?</i></b>	
10.3	<p style="text-align: right;"><b>(ICCPR 25; UNCAC 5.1)</b></p> <p>Full access to the entire electoral process is a precondition for effective and meaningful electoral observation (both national and international), including access to all relevant stakeholders, processes, documents and procedures—such as national statistical, census and civil registration data, where appropriate—or access to electoral data and results-processing centres and their technology infrastructure. UNCAC provisions calling for transparency by public officials provide a cogent argument against any type of denial of access.</p>	<input type="checkbox"/>
	<b><i>Are there objective criteria and timeframes for accreditation?</i></b>	
10.4	<p style="text-align: right;"><b>(ICCPR 2.2)</b></p> <p>Arbitrary accreditation criteria and uncertain timeframes can thwart efforts to observe electoral processes. If independent observers are required to be accredited, legal frameworks are called upon to provide objective criteria and establish timeframes for accreditation that allow timely recourse to an independent and impartial tribunal.</p>	<input type="checkbox"/>
	<b><i>Is freedom of movement for observers granted?</i></b>	
10.5	<p style="text-align: right;"><b>(ICCPR 2.2, 12, 25)</b></p> <p>The effective conduct of electoral observation requires that freedom of movement for observers be granted and respected. Freedom of movement can be curtailed on grounds of excessive security and safety concerns. CCPR General Comments impose upon States Parties the need to guarantee freedom of movement to national and international electoral observers, which can be limited only by exceptional restrictions as established by law. GC 15 provides additional grounds for the freedom of movement of international observers as aliens who are lawfully present in the territory of the host country.</p>	<input type="checkbox"/>
	<b><i>Are there provisions for a timely appeal against refusal of accreditation?</i></b>	
10.6	<p style="text-align: right;"><b>(ICCPR 2.3)</b></p> <p>Denial of electoral observer accreditation requires timely and effective appeal processes. National legal frameworks must assure expeditious appeals, decisions and remedies in order to shield electoral observation initiatives from being thwarted by administrative or judicial procrastination.</p>	<input type="checkbox"/>
	<b><i>Are there provisions safeguarding the security of observers?</i></b>	
10.7	<p style="text-align: right;"><b>(ICCPR 9)</b></p> <p>The security of electoral observers must be guaranteed to ensure that their operations and data-gathering activities can be carried out free from intimidation that may limit or alter the nature of their assessment. Unhindered observer operations help safeguard electoral integrity, which benefits all electoral stakeholders. States Parties must endeavour to take adequate measures to ensure the security of observers. GC 15 provides additional grounds for the security of international observers as aliens lawfully present in the territory of the host country.</p>	<input type="checkbox"/>

## Checklist 11. Civic and Voter Education

11.1	<b><i>Are there provisions mandating civic and voter education?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 19.2; UNCAC 10, 13)</b> Legal frameworks provide for civic and voter education on voter registration and polling in order to enhance the transparency of the electoral process and permit the effective exercise of the right to vote based on an informed choice. As civic and voter information activities typically entail the expenditure of public funds, it is necessary for funding allocation to be covered by law.	
11.2	<b><i>Is the EMB responsible for voter education and voter information?</i></b>	<input type="checkbox"/>
	<b>(UNCAC 13.1; ICCPR 2.2)</b> Regardless of the EMB model chosen, legal frameworks can give the election administration primary responsibility to conduct civic and voter education activities. The EMB's ability to share or delegate this responsibility (for instance to CSOs/NGOs or other agencies) can also be established by law.	
11.3	<b><i>Are there provisions targeting civic and voter education for women?</i></b>	<input type="checkbox"/>
	<b>(CEDAW 7; ICCPR 2.2)</b> To promote the participation of women in electoral processes, ICCPR and CEDAW States Parties are called upon to provide targeted civic and voter education to women at all stages of the process, including to women elected to public office. General civic and voter education on women's participation can be considered to raise awareness on gender equality.	
11.4	<b><i>Are there provisions prescribing civic and voter education concerning minority rights?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.2; ICERD 5)</b> To promote the participation of minorities in electoral processes, States Parties are called upon to establish measures in their legal frameworks to provide targeted civic and voter education to minority and marginalized groups in order to ensure their timely and full inclusion. Targeted voter information constitutes a TSM that, for example, can help ensure that minorities can exercise their political rights without language barriers. Many other measures aimed at facilitating minority participation could remain ineffective without this early type of effort.	
11.5	<b><i>Are there provisions prescribing civic and voter education on the rights of persons with disabilities?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> A joint reading of the ICCPR, UNCAC and CRPD suggests a requirement for States Parties to target civic and voter education to persons with disabilities in order to promote their participation and representation. Assisted voting procedures merit special information campaigns. Customized messages to the general public on the political rights of persons with disabilities are also beneficial to the full enjoyment of electoral rights.	
11.6	<b><i>Are there provisions requiring public media airtime for voter information / education?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.2)</b> The dissemination of voter information/education through public media can be an effective instrument to increase awareness of particular aspects of the electoral process and its procedures. In most cases, public television and radio offer the best and most cost-effective means to reach the electorate, including illiterate voters. As public broadcasters are legally mandated to operate in the public interest, they may be required by law to allocate free airtime to public interest segments.	

11.7	<p><b><i>Are electoral laws and electoral materials translated into minority and local languages and made widely available?</i></b></p>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2, 26)</b></p> <p>In many contexts, language can be a barrier to political participation. The ICCPR and UNCAC, as well as CCPR General Comments, require states to take positive steps to promote participation by providing information on the electoral process, and hence on the legal framework, in minority languages and throughout the country's territory. Translation of the law can also help to ensure that members of minority groups are not discriminated against and do not participate at a disadvantage in any electoral process.</p>	

## Checklist 12. Voter Eligibility

12.1	<b><i>Does the law enfranchise all citizens of voting age?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> States have an obligation to guarantee universal suffrage to every adult citizen. Legal frameworks are required to enfranchise all citizens who fulfil legally established voting age criteria, and should specify, in the interests of legal certainty, whether the voting age must be attained by election day or by the registration date.	
12.2	<b><i>Are restrictions on the right to vote objective and reasonable?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> Restrictions on the exercise of the right to vote must be objective, reasonable and established by law. Any criteria that are too broad or vague and vest the registration authority with discretion—for instance the certification of ‘good moral standing or character’—invite arbitrary and subjective disqualification. Other requirements related to disability, literacy, education, property and party memberships cannot serve as grounds for ineligibility.	
12.3	<b><i>Is the right to vote restricted in a discriminatory or arbitrary manner?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> To prevent arbitrary or discriminatory restrictions, states are called upon to guarantee that the equal right and opportunity to vote is not restricted along directly or indirectly discriminatory criteria, such as former or current political affiliation or activity. Relevant jurisprudence calls for any restrictions on the right to vote to be established by law and to avoid excluding otherwise eligible citizens from exercising this right.	
12.4	<b><i>Are detainees and convicts deprived of the right to vote?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> Restrictions on the exercise of the right to vote must be objective, reasonable and established by law. The presumption of innocence requires that detained but not yet convicted persons must be allowed to vote. States are called upon to ensure that any suspension of voting rights of criminal convicts is proportionate to the offence committed, and that persons whose voting rights have been suspended have access to an effective remedy, even while in prison. States are equally required to restore voting rights to citizens who have fully served their sentences.	
12.5	<b><i>Do voter eligibility criteria discriminate against minorities?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25, 26)</b> Legal frameworks must consider whether their voter eligibility criteria discriminate directly or indirectly against minorities and marginalized groups. Discrimination may be the unintended result of purely administrative procedures or requirements, such as civil registration fees or schedules. Indirect discrimination can also flow from obsolete provisions in peripheral legislation that is not necessarily election related. States are required to address any form of discrimination against minorities in order to guarantee the obligation of freedom from discrimination and equality under the law.	
12.6	<b><i>Do the laws or procedures on acquiring or conferring citizenship discriminate based on gender?</i></b>	<input type="checkbox"/>
	<b>(CEDAW 7; ICCPR 3, 26)</b> Citizenship and national identification document-issuing procedures play a significant role in allowing the full enjoyment of political and civil rights. Discriminatory laws and regulations on citizenship acquisition or loss, or outdated national documentation procedures, can deprive women of the opportunity to participate in political and public life on an equal footing with men.	

12.7	<b><i>Are persons with mental disabilities and those under guardianship enfranchised?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 26)</b> ICCPR, CRPD and recent case law of both competent treaty bodies call upon States Parties to ensure that their legal frameworks safeguard the voting rights of persons with mental disabilities, including those under guardianship or trusteeship. States are required to ensure that the right to vote of persons with mental, intellectual or psychosocial disabilities is not denied due to unreasonable and non-objective justification regarding their ability to vote.	
12.8	<b><i>Are any residency requirements on the exercise of the right to vote reasonable?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25, 26)</b> Residency requirements can be necessary to determine the allocation of electors to particular electoral districts. Nonetheless, the referenced jurisprudence conditions such requirements on criteria of reasonableness and non-discrimination so that, for example, the homeless cannot be denied the right to vote.	
12.9	<b><i>Are there provisions allowing for registration from abroad?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> The right and opportunity to vote extends to all citizens, so legal frameworks may facilitate the exercise of voting rights of citizens living abroad through inclusive residency requirements, entitling them to register to vote outside the country. HRC and CMW jurisprudence calls upon states to take all necessary measures to ensure that expatriate citizens can register to vote under the same safeguards as those registering in country. The MWC obligates states of origin to facilitate the exercise of these rights for migrant workers.	
12.10	<b><i>Are eligible resident non-citizens allowed to register to vote in local elections?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 26)</b> CCPR and CERD jurisprudence contemplates the right of long-term resident non-citizens to vote (and therefore to register to vote) in local elections. This evolving trend accommodates the right and opportunity to participate in public affairs in places where such affairs most closely concern the voter. The MWC provides that migrant workers may enjoy political rights in the state where they are employed, in accordance with national legislation.	

## Checklist 13. Voter Registration

13.1	<p><b><i>Are there provisions requiring an accurate, inclusive and updated voter register?</i></b></p> <p style="text-align: right;"><b>(ICCPR 25)</b></p> <p>The systematic compilation and periodic updating of voter registers, in order to keep them accurate and inclusive, promotes confidence among electoral stakeholders. An accurate and up-to-date voter register is also indispensable for ensuring the right to equal suffrage, since multiple voting on the basis of illegitimate voter register entries dilutes the weight of legitimate votes. Legal mandates to update voter registers, either on a continuous basis or periodically, must end ahead of polling in order to shield election results from subsequent challenges on the grounds of defective voter registers. Additional safeguards are necessary if registration is allowed on election day.</p>	<input type="checkbox"/>
13.2	<p><b><i>Are there provisions requiring that the voter registration process is transparent and accessible?</i></b></p> <p style="text-align: right;"><b>(ICCPR 19.2; UNCAC 13.1)</b></p> <p>Making voter registration information, data and procedures legally available to stakeholders for inspection, while safeguarding data privacy, will allow electoral participants and voters the opportunity to review their accuracy. Investing in the provision of early voter registration information can strengthen the entire process, allow for amendments and save EMBs from lengthy and politically difficult challenges at a later stage. Voter register disclosure can be gazetted in the form of local provisional lists, registration audits, SMS query and searchable web-based lists.</p>	<input type="checkbox"/>
13.3	<p><b><i>Are there any direct or indirect fees for the issuance of documents necessary to register?</i></b></p> <p style="text-align: right;"><b>(ICCPR 26)</b></p> <p>Direct or indirect fees and cumbersome administrative procedures to obtain or replace documents (i.e., birth certificates, citizenship or residency documents) that are required to register can effectively disenfranchise eligible voters. States must remove administrative obstacles to registration in line with their obligation to take measures to facilitate the exercise of the right to vote without discrimination.</p>	<input type="checkbox"/>
13.4	<p><b><i>Are there provisions allowing for positive measures to include women in the voter register?</i></b></p> <p style="text-align: right;"><b>(CEDAW 7; ICCPR 2.2, 3)</b></p> <p>States must refrain from gender-based discrimination in voter registration procedures. Positive measures can be adopted as TSMs to register women to vote. Gender-disaggregated voter registration data can help monitor the degree of equality between men and women on the voter register, and signal areas in which further measures might be justified.</p>	<input type="checkbox"/>
13.5	<p><b><i>Does the legal framework provide effective measures to include minorities on the voter register?</i></b></p> <p style="text-align: right;"><b>(ICCPR 2.2, 25)</b></p> <p>States are required to repeal provisions that directly or indirectly discriminate, disadvantage or deter members of minority and marginalized groups from registering to vote or being included on the voter register. The obligation includes legislation and procedures related to the right to nationality/citizenship, access to national identification and other preconditions to register. Positive measures to promote the inclusion of minorities on the voter register can be considered TSMs, and are thus temporarily exempt from the general prohibition of discrimination.</p>	<input type="checkbox"/>



13.6	<b><i>Does the legal framework facilitate voter registration for persons with disabilities?</i></b>	<input type="checkbox"/>
	<p><b>(ICCPR 2.2, 25)</b></p> <p>States are required to repeal provisions that directly or indirectly discriminate, disadvantage or deter persons with disabilities from registering to vote or being included on the voter register. The obligation includes legislation and procedures concerning access to national identification mechanisms and the provision of adequate infrastructures allowing access to voter registration locations and documentation (e.g., tactile, Braille or audio registration forms). Positive measures to promote or facilitate the inclusion of persons with disabilities on the voter register can also be considered TSMs.</p>	
13.7	<b><i>Are there provisions to register IDPs?</i></b>	<input type="checkbox"/>
	<p><b>(ICCPR 2.2, 26)</b></p> <p>CCPR and HRC jurisprudence determine that IDPs must not be discriminated against in terms of their rights to participate in public affairs and to vote. States have a positive obligation to take the necessary steps to ensure that eligible IDPs within their territory are registered to vote and can effectively exercise their right to vote in all electoral processes.</p>	
13.8	<b><i>Are there provisions to register refugees?</i></b>	<input type="checkbox"/>
	<p><b>(ICCPR 2.2, 26)</b></p> <p>Despite significant additional costs, the risks of registration fraud and operational challenges, UNSC resolutions have consistently affirmed that refugees are not to be discriminated against in terms of their rights to participate in public affairs and the right to vote. States are called upon to take the necessary steps to ensure that eligible refugees are registered to vote and can effectively exercise their right to vote in all electoral processes, regardless of where they have sought refuge.</p>	
13.9	<b><i>Are there measures to facilitate the registration of nomadic communities?</i></b>	<input type="checkbox"/>
	<p><b>(ICCPR 2.2, 26)</b></p> <p>The registration of nomadic communities can be costly and controversial: it requires mobile equipment and special cross-checks, as these communities often hold citizenships and residency in several states and can be more exposed to vote-buying attempts. Because of their mobile lifestyle, nomadic communities can suffer obstacles to appearing at the legally set time and place of registration and polling. Specific measures and protection by law of persons belonging to nomadic communities are required to guarantee the right of effective political participation by these communities on an equal footing with other eligible persons.</p>	
13.10	<b><i>Are there provisions for timely amendments, corrections, claims or challenges to the voter register?</i></b>	<input type="checkbox"/>
	<p><b>(ICCPR 2.3; UNCAC 10)</b></p> <p>The lack of publicly available voter registration data often sets the scene for limited attention to and scrutiny of provisional voter lists. Adequate visibility of this process enhances the possibility of addressing inconsistencies and mistakes on the voter register in due time. EMB regulations must grant adequate access to, and scrutiny of, the voter lists to all national stakeholders. The legal framework is required to regulate amendments, corrections, claims or challenges of voter register data. The right for citizens to modify or rectify incorrect data within a specified timeframe can contribute to the accuracy of (and potentially the confidence in) the quality of the register, since active voter registration is a largely stakeholder-driven process.</p>	
13.11	<b><i>Are there provisions that penalize interference with registration?</i></b>	<input type="checkbox"/>
	<p><b>(ICCPR 2.2; UNCAC 1)</b></p> <p>The intense observation scrutiny and media attention to the immediate pre-electoral period has led to a growing interest in perpetrating fraudulent manipulations during the voter registration process, which typically happens much earlier. States are called upon to impose criminal sanctions on interference with this process, as well as on the intimidation or coercion of stakeholders involved.</p>	

13.12	<b><i>Are there measures to protect voter data privacy?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2; UNCAC 10)</b></p> <p>The emergence of new technology applications in voter registration processes—and the increasing attention to synergies between voter registration, civil registration and other state-owned statistical databases—calls for the protection of voter data privacy and its potential conflict with transparency measures. Legal frameworks must therefore define the allowable use of, and minimum safeguards for, all voter registration data.</p>	

## Checklist 14. Registration of Candidacies

14.1	<b><i>Is the right to stand restricted only in a reasonable, objective and non-discriminatory manner?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> States are required to ensure that any conditions that restrict the equal right and opportunity to be elected (such as monetary deposits, thresholds based on previous elections, minimum number of signatures, etc.) are objective, reasonable and regulated by law. Unreasonable or discriminatory restrictions (such as language, education, religion, property or political opinion) are prohibited. Restrictions that prohibit electoral offenders from standing as candidates must be established by law and be limited in time and proportional to the offence, excluding lifetime bans on candidacy.	
14.2	<b><i>Can independent candidates stand for all levels of election?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> CCPR interpretation of the equal right and opportunity to be elected requires that States Parties take the necessary measures to allow independent candidates (unaffiliated with any political party) to stand for all elective offices.	
14.3	<b><i>Does the law protect candidates from discrimination or disadvantage?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.2)</b> Legal frameworks are called upon to include practical measures to protect candidates from discrimination or any disadvantage as a result of their political activity. CCPR jurisprudence calls for the proscription and enforcement of sanctions against all forms of harassment, intimidation or coercion of candidates.	
14.4	<b><i>Do registration procedures guarantee equal treatment for all candidates?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25, 26)</b> Registration requirements, such as that candidates must establish offices in every region of the country, or the blanket disqualification of candidates subject to pending judicial proceedings, can create inequalities. High candidacy deposit fees can also produce discriminatory outcomes.	
14.5	<b><i>Are procedures and timelines for candidate registration reasonable and defined by law?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> CCPR jurisprudence is consistent in establishing that procedures and timelines for candidate registration must be reasonable, objective and established by law. Further, the detailing of the various steps for candidate registration in regulations and directives issued well in advance of the registration period, and their consistent application, is a guarantee of integrity and transparency.	
14.6	<b><i>Do candidacy criteria address conflicts of interest?</i></b>	<input type="checkbox"/>
	<b>(UNCAC 1)</b> UNCAC calls upon States Parties to adopt safeguards on conflicts of interest of elected officials in order to reduce the risk of corruption. The types of public officials that fall within this category vary considerably in different contexts, and the ineligibility intervals may also vary considerably.	
14.7	<b><i>Are signature requirements reasonable?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 25)</b> Procedures and timelines for signature verification, procedural transparency, electoral observer and party/candidate agent access, validation, scrutiny, appeals and remedies need to be reasonable and addressed by law. For example, the requirement to obtain signatures from every region/district of the country can discriminate against regional, ethnic and smaller parties that enjoy a strong public following but are limited to a particular area.	

14.8	<b><i>Does the legal framework provide for timely appeals against party or candidate rejection?</i></b>	<input type="checkbox"/>
	<p data-bbox="854 192 958 216"><b>(ICCPR 2.3)</b></p> <p data-bbox="228 220 958 314">The expeditiousness of remedies and judicial appeals is particularly significant in this stage of the electoral timetable, in which ballots need to be produced in accordance with the list of registered candidates. The operational imperatives of the electoral process cannot be used as an excuse to avoid a full review of rejected applications.</p>	
14.9	<b><i>Does the legal framework regulate the withdrawal and removal of candidates?</i></b>	<input type="checkbox"/>
	<p data-bbox="854 384 958 407"><b>(ICCPR 25)</b></p> <p data-bbox="228 411 958 505">Legal frameworks must limit the timeframes for candidate withdrawal in order to curb undue influence on candidates, which can artificially reduce voter choice. States are required to extend restrictions on withdrawal to the substitution of elected candidates prior to taking office.</p>	

## Checklist 15. Media Environment

15.1	<b><i>Are there provisions granting citizens and media access to information?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 19.2; UNCAC 13.1)</b></p> <p>A combined reading of the ICCPR and UNCAC highlights the obligation to guarantee transparency and the right to seek, receive and impart information, which is a crucial mechanism for holding elected officials accountable. In order to enhance the right of all persons to access information, the media are specifically entitled to access information and disseminate it adequately.</p>	
15.2	<b><i>Are there provisions granting citizens and media freedom of expression?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 19)</b></p> <p>The ICCPR's derogation clause to the freedom of expression is prone to abusive interpretation and thus, it can be used to limit the enjoyment of the right. Treaty body jurisprudence illustrates how allegations of defamation are often used to arbitrarily limit free speech. CCPR jurisprudence thus insists that the media must be allowed to operate freely in order to inform public opinion on the full political spectrum.</p>	
15.3	<b><i>Are restrictions on freedom of expression necessary and proportionate?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 19; UNCAC 13.1)</b></p> <p>Restrictions on freedom of expression must be established by law to ensure respect for the rights and reputations of others and to protect national security or public order (<i>ordre public</i>), or public health or morals. Since CCPR interpretation declares public figures and institutions (including the government) to be legitimate subjects of criticism and political opposition, it establishes that laws limiting freedom of expression must respect the twin criteria of necessity and proportionality. Banning criticism of the government or of any public official for their performance cannot be considered an acceptable limitation. States are required to ensure that sanctions for any violations of these provisions are proportionate and not of a criminal nature.</p>	
15.4	<b><i>Can private media operate freely and without censorship?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 19; UNCAC 5.1, 13.1)</b></p> <p>The uncensored operation of private media plays a significant role in preventing corruption and introducing greater transparency and accountability to electoral processes. Private media need to operate free from discrimination and be guaranteed equal treatment with public media. Prior deposit requirements are contrary to transparency and freedom of expression, as are overly burdensome registration/licensing criteria for media outlets. Procedures for registering media outlets, technical authorizations to operate, sanctions and closing procedures can all potentially place undue limits on the freedom of private media.</p>	
15.5	<b><i>Are there provisions guaranteeing freedom of expression on the internet?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 19)</b></p> <p>International treaties and jurisprudence have to be interpreted in the light of the advent of new technologies. Recent treaty body jurisprudence requires that any restrictions imposed on freedom of expression on the internet respect the same criteria of reasonableness and necessity as those imposed on 'traditional' media. Filtering and blocking websites linked to opposition parties does not meet the criteria regarding the exercise of the right to freedom of expression contained in the ICCPR article 19.</p>	
15.6	<b><i>Are there provisions restricting the incitement of hatred and violence in the media?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 9.1, 20)</b></p> <p>Incitement of hatred and violence harms the interests of others and threatens public safety, thus bringing it within the admissible limitations of freedom of expression. Article 20 of the ICCPR thus expressly prohibits incitement to hatred and violence. Media regulatory frameworks are called upon to condemn and eradicate incitement to hatred and violence in, or through, the media. This requires provisions that criminalize the dissemination of racist and xenophobic ideas and prohibit organizations that promote hatred and violence.</p>	

15.7	<b><i>Are there provisions to ensure the security of journalists?</i></b>	<input type="checkbox"/>
	<p>Journalists are frequently subjected to threats, intimidation and attack because of their work. This phenomenon increases in electoral contexts. CCPR case law has consistently called for all cases to be investigated, for perpetrators to be prosecuted and for victims to be compensated.</p> <p style="text-align: right;"><b>(ICCPR 9)</b></p>	
15.8	<b><i>Is the media regulated by an independent media authority?</i></b>	<input type="checkbox"/>
	<p>Treaty body jurisprudence recommends that States Parties establish independent and public licensing authorities to regulate the broadcasting sector. Legal frameworks should provide these authorities with the power to examine broadcasting applications and grant licences according to reasonable and objective criteria. Similarly, independent regulatory bodies are considered the appropriate bodies to supervise the media sector.</p> <p style="text-align: right;"><b>(ICCPR 2.2, 2.3)</b></p>	

## Checklist 16. Electoral Campaign

16.1	<b><i>Is there freedom to engage in political campaigning?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 19)</b></p> <p>States are required to protect the freedom to engage in political campaigning on an equal footing for all candidates through legal framework guarantees to respect the freedoms of assembly, opinion and expression. Ensuring that campaigns are geared at promoting the free and informed participation of electors in public affairs will contribute to the legitimacy of electoral processes and outcomes. CCPR jurisprudence identifies particular cases of unreasonable restrictions, such as bans on door-to-door canvassing, limitations on propaganda material and limited access to media outlets.</p>	
16.2	<b><i>Are campaign restrictions prescribed by law and subject to judicial or equivalent review?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.3, 21)</b></p> <p>Per the ICCPR, campaign restrictions must be prescribed by law and subject to prompt judicial or equivalent review. Expedient review procedures and remedies prevent potential arbitrary or discriminatory obstacles from having an impact throughout the campaign period, which is often relatively short. Where the law establishes campaign silence periods, states should take measures to ensure that relevant provisions are respected.</p>	
16.3	<b><i>Are restrictions on public campaign events reasonable?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 21)</b></p> <p>States are required to limit any restriction on the holding of public campaign events to the criteria of necessity and non-discrimination. Where prior notification may be justified on the grounds of public safety and public order, notification periods and timeframes for authorization must be issued well before the requested event date in order to guarantee freedom of assembly. Discriminatory practices in the granting of authorizations are in breach of the freedom of assembly.</p>	
16.4	<b><i>Are there provisions protecting the freedom of movement of candidates and their supporters?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 12, 25)</b></p> <p>States are called upon to ensure that any restriction on candidates' freedom of movement is non-discriminatory and clearly regulated in the legal framework. Effective campaigning requires that candidates are allowed to travel around the entire territory of the country, and that voters are given the opportunity to access all candidates and political messages without discrimination.</p>	
16.5	<b><i>Is advocacy of violence, hatred and incitement of national, racial or religious hatred prohibited?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 9.1, 20.2)</b></p> <p>International jurisprudence allows for the limitation of the freedoms of opinion and expression to protect the rights or reputations of others, in addition to public health and morals. Moreover, the ICCPR and ICERD oblige national legal frameworks to prohibit all forms of propaganda that incite hatred or violence, including war propaganda.</p>	
16.6	<b><i>Is the abuse of state resources during campaigning regulated?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(UNCAC 1; ICCPR 25)</b></p> <p>The abuse of state resources during campaigning can give unfair, and sometimes considerable, advantages to incumbents who indulge in this practice. Such abuse may involve using state infrastructure and vehicles, or the work-time of civil servants and state officials, as well as the misappropriation of public funds. A combined reading of the UNCAC and ICCPR requires that states take measures within their legal frameworks to prohibit, prevent and punish such behaviour. Where the use of state resources is permissible for electoral campaign purposes, its usage must respect the obligations of non-discrimination and equitable access for all contestants.</p>	

16.7	<b>Does the legal framework prohibit violence and intimidation resulting from campaigning?</b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2)</b></p> <p>Violence and intimidation can have a significant impact on the run-up to election day, potentially influencing turnout, voter choices and the overall ability of electoral stakeholders to carry out their mandate. Prohibiting all forms of direct and indirect violence and intimidation against candidates and citizens during electoral campaigns falls under States Parties' obligations to guarantee the security of the person and respect the free expression of the will of the electors. Sanctions and enforcement mechanisms against any violations are a necessary corollary.</p>	
16.8	<b>Are there provisions ensuring the security of candidates, campaign workers and supporters?</b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 9)</b></p> <p>The right to security of the person is not limited to the electoral campaign. States Parties are required to take particular measures to ensure the security of candidates, campaign workers and supporters by protecting them from intimidation, harassment and violence.</p>	
16.9	<b>Are there provisions confining the role of security forces during campaigning?</b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2)</b></p> <p>Security forces can contribute to the holding of genuine elections by ensuring the security of the process and by deterring and addressing electoral violence. CCPR jurisprudence calls for defining and limiting the role of security forces in relation to their primary duty of maintaining a safe environment. The excessive presence of security forces at political rallies can result in intimidation and unnecessary provocation. Training security forces and disseminating the relevant human rights treaties can enhance the peacefulness and security of campaigns.</p>	
16.10	<b>Are campaign grievances adjudicated on time to provide an effective remedy?</b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.3)</b></p> <p>In order to be effective, judicial or equivalent remedies against campaign grievances need to be issued in the form of immediately executed injunctions that bar the offender from continuing his/her actions. To increase the overall effectiveness of the remedies, varying degrees of fines can be attached to injunctions, particularly when addressing repeat offenders. Alternative mechanisms for resolving campaign disputes can provide equally effective avenues to prevent electoral campaign incidents and identify consensual solutions.</p>	



## Checklist 17. Media Campaign

17.1	<b><i>Are there provisions granting the media freedom of expression?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 19)</b></p> <p>The requirement to guarantee freedom of opinion and expression as spelled out in Chapter 15 of the Guidelines assumes specific relevance in the electoral campaign period. The protection of this fundamental freedom during campaigning calls for the media to be allowed to operate freely while informing public opinion on political issues and political messages. The development and publication of opinion polls and exit polls may be legitimately restricted in the run-up to election day to safeguard the integrity of the process (as in the case of 'campaign silence' periods).</p>	
17.2	<b><i>Are there provisions requiring equitable access for all political parties and candidates to public media?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 25; UNCAC 5.1, 13.1)</b></p> <p>ICCPR and UNCAC provisions oblige States Parties to guarantee the equal right and opportunity to be elected, as well as equal access to public service, in addition to non-discrimination, transparency and the right to information. To this end, the jurisprudence requires that, given their public service role, state and public media provide pluralistic and diverse information, including through equitable (quantitatively and qualitatively balanced) and broad access. The formulas for airtime distribution, timeslot allocation and public funding are to be established in law. Particular attention is needed in the placement of government advertisements, to ensure there is no discrimination against other political actors contesting the elections.</p>	
17.3	<b><i>Are there provisions to regulate the equal treatment of women candidates by the media?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(CEDAW 7; ICCPR 26)</b></p> <p>Equal treatment of women in the media can enhance public recognition of women candidates and help boost their representation in elected bodies. Prohibiting media discrimination against women candidates and taking positive measures to ensure equal treatment in terms of quantity and editorial content can help attain de facto equality between men and women as required by relevant international treaties.</p>	
17.4	<b><i>Are there provisions protecting parties and candidates from discrimination by private media?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 26)</b></p> <p>Discrimination can manifest itself in private media as the refusal to sell advertising time to opposition parties or favouring certain contestants in the placement of paid advertising. CCPR jurisprudence requires legal frameworks to take measures to protect all political parties and candidates from discrimination (including advertising rates) in private media. CCPR's joint reading of ICCPR articles 25 and 26 requires states to guarantee fair access to all political parties in private media, as well as protection from slander.</p>	
17.5	<b><i>Do journalists have non-discriminatory and broad access to the entire electoral process?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 19)</b></p> <p>Ensuring non-discriminatory and broad access for all journalists to seek and impart information throughout the electoral process is necessary to respect the obligation of freedom of opinion and expression. Journalist accreditation schemes must be open, non-discriminatory and inclusive. The right of freedom of movement for journalists is to be protected, so as not to restrict the exercise of their profession.</p>	

	<b><i>Are there provisions requiring public media airtime for voter information/education?</i></b>	
17.6	<p>The dissemination of voter information/education through public media can be an effective instrument to increase awareness of particular aspects of the electoral process and its procedures. CCPR GC 25 calls upon States Parties to undertake public information activities in the fight against corruption—which covers, by extension, the fight against electoral malpractice.</p> <p style="text-align: right;"><b>(ICCPR 2.2)</b></p>	<input type="checkbox"/>
	<b><i>Does the legal framework provide timely remedies for media grievances?</i></b>	
17.7	<p>Legal frameworks of States Parties must provide timely and effective administrative and judicial remedies for all media grievances, in keeping with the related obligation to guarantee the right to an effective remedy. Judicial recourse limits the scope of arbitrary decisions, which can constrain the freedom of expression.</p> <p style="text-align: right;"><b>(ICCPR 2.3)</b></p>	<input type="checkbox"/>

## Checklist 18. Polling

18.1	<b><i>Are there provisions to protect the exercise of the right to vote?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 25)</b></p> <p>States are required to take measures to protect the exercise of the right to vote of all electors. Special voting provisions may be established by law to accommodate vulnerable groups or individuals. Special voter accommodation requires clear and detailed procedures and provisions, providing sufficient safeguards to prevent any abuse. Publishing and disseminating adequate information about polling materials and procedures, including special voting arrangements, to all electors and stakeholders can help protect the equal right to vote.</p>	
18.2	<b><i>Is the secrecy of the vote guaranteed?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2, 25)</b></p> <p>States must take measures to protect the secrecy of the vote either by overcoming physical constraints in polling station layouts or by remote modalities. Voters have to be protected from pressure to disclose their choice. Polling procedures or practices cannot, under any circumstance, allow the cross-referencing of data from the identification and ballot-marking stages. The practice of family voting, in which one family member casts ballots on behalf of relatives, violates the secrecy of the vote. The secrecy of the vote can exceptionally be waived by voters who request assistance from a freely chosen person, in accordance with the conditions and criteria established by law.</p>	
18.3	<b><i>Are there provisions requiring polling stations to be accessible to the disabled?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2; CRPD 29)</b></p> <p>To ensure that persons with disabilities are guaranteed the right and opportunity to vote on an equal basis with others, legal frameworks of States Parties to the CRPD and ICCPR are further called upon to consider measures to eliminate any physical barriers to access polling sites and cast ballots. Such measures can include disabled access to polling stations and/or the use of mobile and/or off-site voting procedures.</p>	
18.4	<b><i>Are there provisions regulating assisted voting?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.2, 25)</b></p> <p>The exercise of the right to vote by certain electors can require different modalities of assisted voting if they are unable to cast their ballot using the general procedures. ICCPR and CRPD provisions call for such special procedures to be incorporated into national legal frameworks and to be disseminated well in advance of election day to provide potential electors with information on how to cast their ballots.</p>	
18.5	<b><i>Are there effective measures to protect voters against coercion, undue influence or violence?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 9.1)</b></p> <p>Coercion, undue influence and/or violence on election day can arise due to poor infrastructure, but also because of inadequate polling station layout or inadequate queue management. The electoral administration is called upon to take all necessary preventive measures and to address abuse effectively if, when and where it arises. This might include the authorization to adopt local solutions at the polling station level that guarantee the free expression of the will of the voters under specific circumstances.</p>	
18.6	<b><i>Are political party/candidate agents and electoral observers allowed inside polling stations?</i></b>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 19.2, 25; UNCAC 13.1)</b></p> <p>The presence of political party/candidate agents and electoral observers (citizen and international) in polling places is an important transparency safeguard. Citizen observation also constitutes one form of exercise of citizens' right to participate in public affairs. Observers' presence can deter intimidation and manipulation, prevent violence and facilitate the settlement of potential disputes at the local level.</p>	

18.7	<b><i>Is there timely stakeholder access to polling information?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 19.2; UNCAC 10, 13.1)</b></p> <p>Providing and disseminating all relevant polling documents and information sufficiently in advance of election day meets the joint requirement of transparency and the right to information. This obligation also applies to access to polling information at the polling station level on election day. Access to relevant polling documents and information increases the accountability of electoral officials and empowers voters to exercise their voting rights correctly.</p>	
18.8	<b><i>Are voter identification procedures and requirements standardized?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 25)</b></p> <p>Clarifying and standardizing voter identification procedures and requirements helps ensure legal certainty and the privacy of voters' data. Any inconsistency in the procedures raises the possibility of unequal treatment and profiling on political or other grounds. States are required to provide electors with the necessary legal documents to be able to exercise their right to vote effectively, without any direct or indirect obstacles.</p>	
18.9	<b><i>Are there provisions allowing for voting from abroad?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 2.2, 25)</b></p> <p>The right and opportunity to vote extends to all citizens, wherever they are located, so that legal frameworks may facilitate the exercise of voting rights for citizens living abroad (including refugees), entitling them to register and vote outside the country. HRC and CMW jurisprudence calls upon states to take all necessary measures to ensure that these citizens can cast their vote under the same safeguards as those voting in country.</p>	
18.10	<b><i>Are there provisions ensuring IDPs the opportunity to vote?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 2.2, 25)</b></p> <p>In a similar vein as the provisions concerning refugees, IDPs cannot be deprived of their right to vote simply because they were forced to leave their habitual place of residence. States are required to take additional measures to ensure that eligible voters who are victims of forced displacement within their state's territory are provided with an effective opportunity to exercise their right to vote in all electoral processes, for instance through absentee voting or tendered voting.</p>	
18.11	<b><i>Are there measures to provide for the security of polling stations and polling material?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 2.2)</b></p> <p>Polling stations must be secure in order to protect the right of voters to cast their ballot free from intimidation or coercion, so as to guarantee respect of their free will. However, the presence of security forces on election day must be regulated in order to prevent armed interference and the potential intimidation of electors through the presence of security forces. The entry and presence of police officers and/or security forces inside polling stations also requires regulation, as does their chain of command on election day. Security of polling stations also extends to provisions regarding the layout and distribution of tasks within the station.</p>	
18.12	<b><i>Are there measures to ensure equal access, and the provision of polling stations and polling material to minority areas?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 2.2)</b></p> <p>The ICCPR and ICERD require equal voter access to all stages of the electoral process, including operational and logistical aspects such as practical and contextual solutions to ensure that minority and marginalized areas receive the same treatment in terms of electoral materials, resources and polling station access, as other areas of the country.</p>	

18.13	<p><b><i>Does the legal framework allow timely appeals against decisions taken at the polling station level?</i></b></p>	<input type="checkbox"/>
	<p style="text-align: right;"><b>(ICCPR 2.3)</b></p> <p>States are required to ensure that appeals are resolved expeditiously to avoid undue delays that could undermine the right to an effective remedy. It is an important safeguard to defuse potential discontent and electoral violence. This requires the establishment of mechanisms for the on-site resolution (or at least recording) of disputes at the polling station level, so that records of objections are entered into polling station protocols for results appeals and challenges.</p>	

## Checklist 19. Counting and Results Management

19.1	<p><b><i>Are there provisions for timely stakeholder access to counting procedures?</i></b></p> <p style="text-align: right;"><b>(ICCPR 19.2; UNCAC 13.1)</b></p> <p>Transparency and accountability are key safeguards in the counting and results consolidation process. All stakeholders benefit from timely access to information on counting procedures, which helps dispel speculation and disinformation. Treaty body jurisprudence calls for legal frameworks to ensure effective, timely and non-discriminatory access to this information.</p>	<input type="checkbox"/>
19.2	<p><b><i>Are there provisions allowing the presence of political party/candidate agents and electoral observers during counting and tabulation procedures?</i></b></p> <p style="text-align: right;"><b>(ICCPR 19.2, 25; UNCAC 13.1)</b></p> <p>The presence of political party/candidate agents and electoral observers (citizen and international) during counting and tabulation processes boosts transparency and the exercise of citizens' right to participate in public affairs. Observer presence helps deter intimidation and manipulation, reinforces stakeholder confidence in the process and facilitates the settlement of potential disputes at the various results management levels.</p>	<input type="checkbox"/>
19.3	<p><b><i>Are there provisions defining the validity of each vote?</i></b></p> <p style="text-align: right;"><b>(UNCAC 5.1, 10, 13.1)</b></p> <p>The legal determination of clear ballot validity criteria meets the obligation to give effect to the free will of the electors. A lack of clear criteria opens the door for arbitrary ballot invalidation and entails protracted disputes during the counting process. Conversely, overly stringent criteria may unreasonably invalidate ballots that clearly communicate the intent of the voter. States are required to legislate that evidence of the voter's intention serves as the overriding criterion to determine the validity of a ballot.</p>	<input type="checkbox"/>
19.4	<p><b><i>Are recounts triggered by legal criteria?</i></b></p> <p style="text-align: right;"><b>(ICCPR 2.3)</b></p> <p>If the legal framework regulates a resort to recounts, the trigger for such a mechanism must be established according to legal criteria. The same applies for invalidating polling station or entire district results, and holding election reruns after results are annulled. Clarity as to who can request a recount or a new election is required, as are deadlines for such requests, all necessary procedures to make the request, deadlines for adjudicating on the request, and the timing and procedures that will govern a recount or new election. Where technology is to be used in counting or tabulating, it must be clear what the recount may entail (i.e., whether the data will be re-entered or a parallel manual count conducted).</p>	<input type="checkbox"/>
19.5	<p><b><i>Are there provisions requiring transparent results management?</i></b></p> <p style="text-align: right;"><b>(ICCPR 19.2; UNCAC 5.1, 10)</b></p> <p>UNCAC provisions call for national legal frameworks to require EMBs, as part of the public service, to act transparently, including during the results management process. The presence of political party/candidate agents and observers fosters transparency. In order to allow the pursuit of effective remedies, the legal framework must impose timeframes on the different stages of the results management process, particularly on the publication of provisional or preliminary results prior to final certification, and on the secure storage of all used ballots and election materials. It is imperative that all of these measures are publicly accessible and widely disseminated to ensure transparency.</p>	<input type="checkbox"/>

19.6	<b><i>Are there provisions requiring the availability of polling station and tabulation results?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 19.2; UNCAC 10, 13.1)</b></p> <p>Public availability of polling station and tabulation results enhances the transparency of the electoral process and demonstrates procedural respect for the right of access to information held by public bodies. Public on-site availability of electoral documents at all levels of election administration greatly enhances public confidence in the process. Publishing detailed tabulation results in state-owned or controlled print media, in the official gazette and, wherever possible, on the EMB website as soon as the results are certified, helps inspire stakeholder confidence and acceptance of election outcomes. Granting certified copies of polling station and tabulation results sheets to political party/candidate agents can be an additional measure to enhance transparency in the process.</p>	
19.7	<b><i>Are results required to be published broken down by polling station?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 19.2; UNCAC 10, 13.1)</b></p> <p>The publication of results broken down by polling station enhances accountability and transparency by helping detect irregularities in the tabulation process and allowing public scrutiny. Publicly accessible polling station breakdowns include the number of ballots used and returned; the number of valid, blank, spoiled and invalid ballots; and the number of votes for each political party or candidate. This degree of detail is necessary to enable the representatives of parties, candidates and electoral observers to track results and locate potential inconsistencies in the consolidation.</p>	
19.8	<b><i>Are there provisions allowing for parallel vote tabulation (PVT) or quick counts?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(UNCAC 10, 13.1)</b></p> <p>Quick counts or PVTs are statistical tools to predict and assess the accuracy of election results. They constitute an additional transparency measure that might prove decisive in mitigating conflicts in certain contexts and raise the overall confidence of voters in the counting process. According to general UNCAC principles, national legal frameworks may authorize the use of such tools as instruments that can contribute to the transparency of the process.</p>	
19.9	<b><i>Are there provisions to guarantee respect for election results?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 25; UNCAC 10)</b></p> <p>The ICCPR obligation to respect the free will of electors comports the acceptance of election results by political actors. Results acceptance allows all stakeholders to refocus on the overall objective of the electoral process and on what the entire legal framework aims to deliver: the correct political outcome that reflects the true will of the electorate, as recent UNSC resolutions invoke.</p>	

## Checklist 20. Electoral Justice

20.1	<p><b><i>Does the legal framework designate a forum for electoral grievances?</i></b></p> <p style="text-align: right;"><b>(ICCPR 2.3)</b></p> <p>ICCPR article 2.3 expressly requires that legal frameworks establish a competent judicial, administrative or legislative body to hear alleged violations of all ICCPR-related rights. Establishing functioning remedies well in advance of an electoral process plays an important preventive and deterrent role.</p>	<input type="checkbox"/>
20.2	<p><b><i>Are there provisions granting the judicial or equivalent review of administrative acts and decisions related to the electoral process?</i></b></p> <p style="text-align: right;"><b>(ICCPR 2.3, 14.1)</b></p> <p>In keeping with the general obligation to guarantee the right to an effective remedy, and to develop possible judicial remedies, legal frameworks conferring EMBs' electoral adjudication powers are required to allow judicial or equivalent review of challenged EMB acts and decisions. Without external review, EMB powers would be elevated above the law, and thus exposed to abuse, which can lead to a loss of public confidence.</p>	<input type="checkbox"/>
20.3	<p><b><i>Can the final appeals body provide effective remedies?</i></b></p> <p style="text-align: right;"><b>(ICCPR 2.3)</b></p> <p>Final election appeals bodies require the power to grant an array of effective relief. Such remedies can include the invalidation of results, partial or full reruns of elections, or recounts; they must be awarded or denied in a timely manner in order to be effective according to the ICCPR's criteria. Protracted processes can frustrate stakeholder rights or freedoms. Contrary to penal procedures, there is no international right of appeal in civil procedures against first-instance decisions, as long as the first-instance mechanism meets the criteria of impartiality and independence.</p>	<input type="checkbox"/>
20.4	<p><b><i>Are there provisions guaranteeing the independence and impartiality of EDR bodies?</i></b></p> <p style="text-align: right;"><b>(ICCPR 14)</b></p> <p>ICCPR and related CCPR jurisprudence call upon legal frameworks of States Parties to guarantee the independence and impartiality of election tribunals. Legally predetermined procedures for the appointment and tenure of judges are required to promote the independence, impartiality and competence of EDR bodies in order to ensure equal treatment under the law for all litigants.</p>	<input type="checkbox"/>
20.5	<p><b><i>Are there provisions requiring that decisions are legally reasoned and published?</i></b></p> <p style="text-align: right;"><b>(ICCPR 14; 19.2; UNCAC 13.1)</b></p> <p>To guarantee the right to a fair and public hearing, CCPR jurisprudence determines that legal frameworks require reasoned and published decisions on electoral disputes. Reasoned and published decisions contribute to the transparency of the process and to the uniform and equal application of the law.</p>	<input type="checkbox"/>
20.6	<p><b><i>Are there provisions requiring hearings to be held in public?</i></b></p> <p style="text-align: right;"><b>(ICCPR 14; UNCAC 10, 13.1)</b></p> <p>Within its general obligation to guarantee the right to a fair and public hearing, CCPR jurisprudence requires that States Parties establish that hearings of EDR bodies be held in public and grant access to the media. Holding public hearings contributes to the transparency of the process, to equal treatment, and to stakeholder access to information. Any restrictions on the public nature of hearings must be stated in law. Furthermore, all judgements, essential findings, evidence and legal reasoning are to be made public.</p>	<input type="checkbox"/>



20.7	<b><i>Do all electoral stakeholders have access to electoral justice mechanisms?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.3, 26)</b> The right of stakeholders to access electoral justice mechanisms, under equal conditions, regardless of the timing and type of alleged grievance filed, must be provided by law. The right to an effective remedy is protected by different ICCPR articles from various angles, and includes the opportunity for all interested parties to respond and to adduce evidence.	
20.8	<b><i>Are unreasonable fees imposed for filing complaints?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 26)</b> To guarantee the right of all persons to equality under the law, access to legal counsel must be granted and discriminatory obstacles to equal access to EDR mechanisms must be removed. CCPR jurisprudence calls upon states to limit the imposition of court fees or other onerous requirements so as not to unduly burden stakeholders with limited financial means.	
20.9	<b><i>Are there provisions protecting the participants in legal proceedings (including public officials) from reprisals for testifying in electoral disputes?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 9; UNCAC 32)</b> UNCAC requires that States Parties incorporate witness protection safeguards into their legal frameworks. Fear of reprisal can deter witnesses from testifying to the competent authorities, thereby compromising the guarantee of the right to an effective remedy.	
20.10	<b><i>Does the legal framework establish alternative mechanisms to hear complaints of stakeholders who do not have access to EDR mechanisms?</i></b>	<input type="checkbox"/>
	<b>(ICCPR 2.3)</b> CCPR jurisprudence calls upon states to consider establishing alternative or additional mechanisms, such as Human Rights Commissions or ombudsmen, to hear complaints of stakeholders who lack standing before other EDR bodies. Such measures fall under the electoral justice concept of enlarging the spectrum of remedies available to stakeholders on electoral grievances.	

## Checklist 21. Electoral Offences

21.1	<p><b><i>Are sanctions for electoral offences proportionate, but effective?</i></b></p> <p style="text-align: right;"><b>(ICCPR 2.2)</b></p> <p>Proportionate and effective criminal sanctions for electoral offences are among the measures that CCPR commentaries and jurisprudence insist on. Often, financial fines do not adequately deter abuse, since electoral contestants decide that paying them is worth the risk. Nor do fines compensate for the potential damage suffered by the aggrieved parties. Disqualifying electoral offenders from standing as candidates can be established by law, as long as the disqualification is limited in duration and excludes lifetime bans on candidacy for electoral offenders. Such prohibitions can serve as effective deterrents to electoral offences.</p>	<input type="checkbox"/>
21.2	<p><b><i>Are there provisions to prevent the executive from intervening in the prosecution of electoral offences?</i></b></p> <p style="text-align: right;"><b>(ICCPR 26)</b></p> <p>The obligation to ensure freedom from discrimination and equality under the law requires provisions to prevent executive interference in the prosecution of electoral offences. The principles of the separation of powers and the independence of the judiciary can be effective mechanisms to prevent prosecutorial bias and promote confidence in the process.</p>	<input type="checkbox"/>
21.3	<p><b><i>Are there provisions providing for due process and fair trial rights for those accused of electoral offences?</i></b></p> <p style="text-align: right;"><b>(ICCPR 14)</b></p> <p>ICCPR and related jurisprudence obligate states to guarantee the right to a fair and public hearing. Legal frameworks are held to ensure that this guarantee, and the rights to due process and a fair trial, extend to persons accused of electoral offences.</p>	<input type="checkbox"/>
21.4	<p><b><i>Are military tribunals allowed to try civilian electoral stakeholders?</i></b></p> <p style="text-align: right;"><b>(ICCPR 14.1)</b></p> <p>CCPR jurisprudence establishes that trying civilians in military tribunals can only be considered under very exceptional circumstances. The rationale for establishing military tribunals responds to criteria that are normally not compatible with the impartial administration of justice. Legal frameworks are required to ensure that the jurisdiction of military courts is narrowly defined, and that necessary safeguards of the rights of the accused are duly protected.</p>	<input type="checkbox"/>
21.5	<p><b><i>Is the presumption of innocence upheld?</i></b></p> <p style="text-align: right;"><b>(ICCPR 14)</b></p> <p>The cardinal ICCPR due process guarantee applies mostly to candidate and voter eligibility issues, but concerns all electoral contestants, especially in relation to avoiding the reversal of the burden of proof in the context of an electoral campaign. The right to a fair hearing and equality before the law requires that legal frameworks include provisions to ensure that candidates' presumption of innocence of alleged electoral offences is consistently upheld. In results appeals, the burden to prove electoral irregularities remains with the appellant.</p>	<input type="checkbox"/>
21.6	<p><b><i>Are sanctions on electoral offences effectively enforced?</i></b></p> <p style="text-align: right;"><b>(ICCPR 2.2, 2.3)</b></p> <p>The enforcement of sanctions for electoral offences can help promote confidence in the process and serves as a deterrent. Consistent CCPR jurisprudence calls upon States Parties to take the necessary measures, including enforcement, to ensure that electoral rights are upheld. Enforcement needs to be effective and non-discriminatory to combat impunity. Any system of immunities must be weighed against the limitations it entails in terms of the effectiveness of available remedies.</p>	<input type="checkbox"/>

21.7	<b><i>Is the unilateral abuse of state resources regulated?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(UNCAC 1)</b></p> <p>Political party access to state resources (state media, buildings, property and other resources) for campaigning must be regulated and non-discriminatory to protect the equal right and opportunity of all citizens to be elected. UNCAC provisions are very clear in their defence of the integrity and accountability of public affairs and public property. The unlawful use of state resources must be criminalized in national legal frameworks in order to give full effect to this prohibition.</p>	
21.8	<b><i>Does the legal framework criminalize violation of the secrecy of the vote, vote buying and intimidation?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 2.2)</b></p> <p>Respect for the free expression of the will of the electors requires States Parties to include provisions in their legal frameworks to proscribe any attempts to manipulate or interfere with the electoral process, including similar violations during voter registration (see Chapter 13 in the Guidelines). The CCPR calls for the codification of violations of the secrecy of the vote, vote buying, and voter intimidation or coercion in penal or criminal law, as administrative sanctions do not provide an adequate deterrent. UNCAC provisions also offer clear-cut language on corruption and malpractice prevention.</p>	
21.9	<b><i>Are there provisions to prohibit and sanction incitement of hatred and violence?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 9.1; ICERD 4)</b></p> <p>In electoral contexts, the ICERD and ICCPR expressly hold states to prohibit and eradicate incitement of hatred and violence in their legal frameworks, codifying such actions as electoral offences. The dissemination of racist and xenophobic ideas must be outlawed, and organizations that promote such hatred and violence must be banned. Prosecution and sanctions for incitement of hatred or violence require consistent enforcement. Treaty body jurisprudence recognizes the challenge of enforcing this prohibition on the internet.</p>	
21.10	<b><i>Is calling for an election boycott permissible?</i></b>	<input type="checkbox"/>
	<p align="right"><b>(ICCPR 19)</b></p> <p>The obligation for States Parties to guarantee freedom of opinion and expression, as enshrined in the ICCPR and related jurisprudence, extends to calls for election boycotts. Such calls to boycott can be permissible as long as they do not contravene other legal provisions (e.g., compulsory voting) or voters' ability to freely decide whether to participate in the electoral process.</p>	

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# Conclusions

For decades, legislators, academics, EMBs, technical assistance and observer bodies, and other electoral stakeholders have struggled to find an objective and logical approach to shaping, measuring and evaluating the quality of electoral-related legislation, the electoral process and elections themselves. Most approaches tended to be subjective in nature and frustratingly difficult to define and/or validate. Electoral observers often had to opt for undefined formulae, including, ‘meets (or does not meet) international standards’, ‘free and fair elections’, etc.: terms that made good headlines, but that often lacked legal substance.

This publication results from exploration undertaken by a group of electoral experts in the wake of the signing of the Declaration of Principles for International Election Observation. The Carter Center’s Database of Obligations helped clear the initial path. International IDEA decided to provide national stakeholders with specific research on the UN treaty framework in order to facilitate objective assessments of national electoral environments, legislation, management and operations, and respect for consensual and applicable international undertakings to which UN Member States have voluntarily subscribed.

The new IDEA Guidelines expand on the original 2002 version by placing emphasis, and the onus, on national authorities and national stakeholders. They are not an exhaustive compendium of international and regional election-related documents; indeed, observation groups may include additional criteria to assess elections that are applicable in different contexts. Instead, the Guidelines aim to help shape and build electoral processes that respect international treaties. The publication serves as a tool to empower national stakeholders to apply international law to electoral processes, providing legal pointers to minimum common denominators for bringing national legal frameworks for elections into compliance with international obligations. The Guidelines allow legislators, adjudicators and EMBs to confidently advocate electoral reform. Stakeholders can thus review, assess, prepare and argue in favour of these obligations accordingly, as virtually all states share the obligations referenced by the Guidelines.

This obligations-based approach is described in detail elsewhere in the Guidelines. A comprehensive set of checklists is provided in Part C, which serves as an easy reference guide for meeting outstanding international obligations. As the 2013 version of the UNGA Resolution ‘Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization’ reaffirms, it is the ‘obligation of all States to take all appropriate measures to ensure that every citizen has the effective right and opportunity to participate in elections on an equal basis’.

Although at first glance the term ‘obligations’ may appear rigid and inflexible, it reflects the essence of international treaties. Further, obligations empower national bodies with persuasive arguments for advocating and instituting constructive electoral reforms. They also provide grounds for determining how (and whether) international assistance may be needed, and for submitting

requests for assistance to meet these obligations. In his 2013 biennial report on UN electoral assistance, the UN Secretary-General endorses the obligations-based approach by encouraging and supporting ‘the efforts of Member States to comply with their international obligations and commitments as they apply to elections’.

Indeed, the term obligations goes a long way towards ensuring that parliaments, political parties, EMBs, electoral dispute adjudicators and civil society groups can debate and apply obligations from the same perspective—nationally and internationally. The obligations-based approach also facilitates common and consistent external international evaluation, relying on a single, universal foundation of international law. Ultimately, both national and international stakeholders will share one unique framework—whether to shape or assess elections, or to facilitate understanding and cooperation—while at the same time promoting national ownership.

This initiative, rooted in international treaties, defines the majority of electoral obligations in public international law, inasmuch as they apply to national legal frameworks. However, a number of key obligations await definition and validation in future international instruments or authoritative interpretation.\* Pending gaps include EMB independence, political party and candidate financing, periodicity of elections, the role of party agents, polling and counting procedures, voter education and the form of results publication, among others highlighted in this publication. Some regional treaties already address some of these gaps to cover their specific regional needs and interests.

Lastly, it is hoped that the obligations-based approach will help civil society organizations defend the right to participate in public and political life in order to better understand and advocate for the rights and freedoms that their state has obligated itself to respect. The Guidelines exhaustively refer to the different UN treaty bodies, empowering civil society to present their grievances before them. Advocacy before UN treaty bodies already fulfils a key normative function by developing authoritative interpretation that can fill some of the outstanding gaps in the treaty framework. The Guidelines can thus promote constructive dialogue between the electoral community and the UN human rights system.

International IDEA looks forward to promoting this obligations-based approach by national and international electoral practitioners through the use of its Guidelines in reviewing, framing and challenging legal frameworks for elections.

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\* Recognizing these challenges, a reform process was completed by the UN Member States in 2014. The reform’s outcome will affect treaty bodies’ work but it can be viewed as a first step in the right direction. A detailed description of the reform of the UN Human Rights Treaty Bodies can be found at <[http://www.asil.org/insights/volume/18/issue/16/reform-united-nations-human-rights-treaty-bodies#\\_edn1](http://www.asil.org/insights/volume/18/issue/16/reform-united-nations-human-rights-treaty-bodies#_edn1)>, accessed 4 September 2014.

## Annex A

# Glossary of terms

<b>Absentee voting</b>	A mechanism to allow voters to cast votes outside their assigned polling station of original residence. In a broad sense, it can also include postal voting, early voting, online voting or voting at alternative polling sites.
<b>Abuse of state resources</b>	The use of state and/or public sector powers and resources by incumbent politicians or political parties to further their own prospects of election, in violation of legal and/or other norms and responsibilities governing the exercise of public office.
<b>Acceptance/ approval</b>	The acceptance or approval of a treaty have the same legal effect as ratification, and consequently express the consent of a state to be bound by a treaty (Vienna Convention on the Law of Treaties).
<b>Accession</b>	Act whereby a state accepts the offer or the opportunity to become a party to a treaty that has already been negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force (Vienna Convention on the Law of Treaties).
<b>Adoption</b>	Formal act to establish the form and content of a proposed treaty text. Generally, adoption of a treaty text takes place through the expression of the consent of the states participating in the treaty-making process (Vienna Convention on the Law of Treaties).
<b>Advance voting</b>	Opportunity for electors to cast their vote before election day via postal voting and/or by voting at especially determined polling sites. Also referred to as early voting.

<b>Affirmative action</b>	Positive measures mandated by law or official policy, usually for a fixed or determined period, that give preferential treatment to historically underrepresented individuals or groups in order to accelerate their equal representation.
<b>Alternative dispute resolution (ADR)</b>	Mechanism that allows disputing parties to come to an agreement short of litigation. ADR is generally classified into four types: negotiation, mediation, collaborative law and arbitration. Sometimes conciliation is also included. It can be used alongside existing legal systems or to compensate for mistrust in the conventional system.
<b>Appeal</b>	Legal submission to a higher authority that seeks to challenge or overturn the decision of a lower-instance body.
<b>Assisted voting</b>	Voters who suffer from temporary or permanent physical disability, blindness or severe vision impairment, or voters who are not sufficiently literate in the ballot language, can request assistance in marking their choice. They can be assisted either by a polling official or by a person of the voter's choice. Legal frameworks often require the assistant to be registered at the voter's polling station.
<b>Ballot structure</b>	Way in which electoral choices are presented on the ballot paper, in particular whether the ballot is candidate-centred (elector chooses between candidates) or party-centred (elector chooses among parties and political groupings). Ballots can also offer multiple choices, such as preferential votes.
<b>Campaign (electoral)</b>	Political activity aimed at promoting candidates, political parties or voter choice in a direct democracy instrument, during a defined period. Campaigns can include meetings, rallies, speeches, parades, broadcasts, debates, door-to-door canvassing, billboards, media advertisements, and new media activities such as blogs and social media messaging.
<b>Campaign finance</b>	Financial transaction to or by political parties or candidates for election campaign purposes, which could include formal, financial, or in-kind donations or expenditures.
<b>Campaign funding</b>	Term that includes public and private funding. Private campaign funding refers to resources donated by individuals or privately owned corporations to fund electoral campaigns. Public campaign funding is the provision of government resources to fund electoral campaigns. Both types of funding can be direct or indirect.
<b>Candidate</b>	Person who is nominated to contest an election, either representing a political party, political coalition or running independently.



<b>Candidate quotas</b>	Mechanism that requires that a certain proportion of the candidates standing in an election must belong to historically underrepresented social segments.
<b>Charter-based Bodies (human rights)</b>	UN institutions established by the UN Charter.
<b>Citizenship</b>	Status of being a citizen of a country, which involves a range of rights and obligations. Citizenship can be awarded by birth in a country's territory ( <i>ius solis</i> ), parentage ( <i>ius sanguinis</i> ), by naturalization based on a period of lawful residence or by marriage.
<b>Civic education</b>	Information and/or education programme designed to increase popular comprehension and knowledge of citizen rights and responsibilities.
<b>Code of conduct</b>	Set of specific rules of behaviour for particular stakeholders (e.g., for EMB members and/or staff or political parties, or for journalists), regarding their professional participation in an electoral process.
<b>Constituency</b>	Synonym for electoral district.
<b>Convention</b>	Synonym for multilateral treaties with a large number of parties. Conventions are open to participation by the international community as a whole. Instruments negotiated under the auspices of an international organization are often titled Conventions. Unless referring specifically to a particular Convention, the Guidelines use the term interchangeably with 'treaty'.
<b>Covenant</b>	Synonym for treaty. Unless referring specifically to a particular Covenant, the Guidelines use the term interchangeably with 'treaty'.
<b>Customary international law (CIL)</b>	CIL is one of two primary forms of international law, the other is treaty law. CIL is based on evidence of general practice accepted as law by states or nations. The Statute of the International Court of Justice recognizes CIL as 'evidence of a general practice accepted as law'.
<b>Direct democracy procedure</b>	Legal arrangement that gives citizens the right to be directly involved in the political decision-making process (e.g., polling directly on political decisions). Direct democracy may take one of three forms: (1) citizens vote on a public policy proposal originated elsewhere (referendums); (2) citizens set the agenda by originating a public policy proposal themselves (initiative); or (3) citizens request and vote on the early termination of an elected representative's term of office (recall).

<b>District magnitude</b>	Number of representatives elected by one electoral district.
<b>Election administration</b>	Measures necessary for conducting or implementing any aspect of electoral processes.
<b>Elector</b>	Person who is qualified and registered to vote. Unless quoting from a particular treaty provision, the Guidelines use the terms ‘elector’ and ‘voter’ interchangeably.
<b>Electoral boundaries</b>	Borders of geographic areas that form electoral districts.
<b>Electoral boundary delimitation</b>	Process of dividing geographic territory into electoral districts. It also involves allocating electors to electoral districts and polling sites.
<b>Electoral calendar</b>	Sequence of tasks, cross-referenced with dates and deadlines, related to planning and conducting an electoral event.
<b>Electoral cycle</b>	Continuum of steps involved in preparing and implementing elections or direct democracy instruments, including pre-electoral preparation, election implementation and post-electoral tasks such as evaluation, maintaining institutional memory, and consulting and planning for electoral reform.
<b>Electoral dispute</b>	Any complaint, challenge, claim or objection against any stage of the electoral process.
<b>Electoral dispute resolution (EDR)</b>	Process of hearing and adjudication on any complaint, electoral challenge, claim or objection against any stage of the electoral process.
<b>Electoral dispute resolution body</b>	Institution tasked with defending electoral rights and resolving electoral disputes, such as administrative, judicial, legislative, international (or, in transitional contexts, ad hoc) bodies.
<b>Electoral district</b>	Geographically delimited area for electoral purposes. An electoral district may elect one or more representatives to an elected body, and can also be referred to as a ‘constituency’.
<b>Electoral formula</b>	Part of the electoral system dealing specifically with translating votes into seats.
<b>Electoral justice</b>	Mechanism to ensure that every action, procedure and decision related to the electoral process remains within the law and respects the rights granted under it. Electoral justice includes alternative, preventive and EDR mechanisms.

<b>Electoral law</b>	Legislation governing the process for electing political institutions, as defined in a country's constitution or institutional framework.
<b>Electoral Management Body (EMB)</b>	Legally responsible institution for managing some or all essential elements of the conduct of elections and direct democracy instruments.
<b>Electoral observation</b>	The systematic, comprehensive and accurate gathering of information concerning the laws, processes and institutions related to the conduct of elections and other factors concerning the overall electoral environment; the impartial and professional analysis of such information; and the drawing of conclusions about the character of electoral processes based on the highest standards for accuracy of information and impartiality of analysis (Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, Art. 4).
<b>Electoral observer (national/ international)</b>	Person accredited to witness and assess (but not intervene in) the proceedings of an electoral process. National observers are individuals, residents or citizens who monitor and observe the electoral process in their own country. International observers monitor and observe the electoral process in a foreign country.
<b>Electoral offence</b>	Act or omission defined as a criminal offence by electoral legislation or penal law. Examples include electoral fraud such as vote buying, voter coercion, impeding or falsifying voter registration, and violations of campaign financing provisions such as abuse of state resources. Can be synonymous with 'electoral crime'.
<b>Electoral system</b>	Set of rules and procedures that translates votes cast into legislative or deliberative seats for parties and candidates. The three most significant components of an electoral system are the electoral formula, ballot structure and district magnitude.
<b>Eligible voter</b>	Individual who satisfies the legal requirements for voting in an election or direct democracy instrument.
<b>Family voting</b>	Practice in which a family member casts proxy votes on behalf of one or more family members, or where one member of the family pressures other members to vote for a certain candidate, party or choice in a direct democracy instrument.
<b>Gender equality</b>	Equal rights, responsibilities and opportunities of women and men and girls and boys. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men (UN Women).

<b>Gerrymandering</b>	Deliberate manipulation of electoral district boundaries in order to advantage or disadvantage a particular political interest.
<b>Governmental Model (EMB)</b>	Electoral management model that organizes and manages elections through the executive branch of government, such as the Ministry of the Interior, and/or through local authorities.
<b>Independent candidate</b>	Candidate who is not nominated by, or affiliated with, a political party or coalition.
<b>Independent Model (EMB)</b>	Electoral management model that organizes and manages elections through an EMB that is institutionally independent of and autonomous from the executive, judicial and legislative branches of government, and which controls and manages its own budget.
<b>Internally displaced persons (IDPs)</b>	Persons who are forced to leave their place of habitual residence in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters, and who have not crossed an internationally recognized state border (IOM; UN Guiding Principles on Internal Displacement).
<b>Invalid votes</b>	Votes that are not counted in favour of any electoral candidate due to accidental or deliberate errors in marking the ballot.
<b>Judicial review</b>	Judicial power to review and invalidate legislative, administrative or executive acts on the grounds of their constitutionality or legality. In some contexts, judicial review can apply international and regional obligations.
<b>Kerbside voting</b>	Mobile voting modality which allows polling staff members to temporarily bring voting materials to eligible voters outside the polling station. It is designed for voters who cannot access the polling station.
<b>Legal framework</b>	International, regional, constitutional, legislative and regulatory provisions applicable to elections; ulterior legislation affecting electoral processes, such as political party laws; subsidiary electoral rules, regulations and codes of conduct.
<b>Marginalized group</b>	Social groups that are subject to direct or indirect discrimination, including groups that are not in a numerical minority.
<b>Media campaign</b>	The role and responsibility of the media during an election campaign.

<b>Media environment</b>	The general environment in which the media exercise their roles and responsibilities in relation to the overall electoral process throughout the electoral cycle.
<b>Migrant worker</b>	Person who migrates outside his or her country of origin with the main purpose of obtaining wage-earning employment.
<b>Minority</b>	A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members—being nationals of the state—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (UN Sub-Commission on Prevention of Discrimination and Protection of Minorities)
<b>Mixed-Model (EMB)</b>	Dual structure with a policy, monitoring or supervisory component that is independent of the executive branch of government (as with the Independent Model) and an implementation component located within a department of state and/or local government (as with the Governmental Model). Under this model, elections are organized by the governmental implementation component of the EMB, with some level of oversight provided by the independent component of the EMB.
<b>Mixed system (Electoral system)</b>	System in which parts of a legislative or deliberative body are elected by two different electoral systems (e.g., proportional representation and plurality/majority). There are two kinds of mixed systems: parallel systems and mixed-member proportional systems.
<b>Mobile voting</b>	Mechanism by which voters can cast votes without having to appear at their assigned polling station. A polling committee brings the mobile ballot box to the voters (e.g., ill or elderly voters can cast their ballot at home or in hospital) and subsequently mixes it with the main ballot box before the counting process.
<b>Multi-member district</b>	Electoral district that elects more than one representative to a legislature or deliberative body.
<b>Obligation</b>	Legal duty by which a person or sovereign state is bound to act (or not act) in a specific manner.
<b>Off-site voting</b>	Range of mechanisms voters can use to cast votes without having to appear at their assigned polling station, including voting in advance; by mail; at institutions, hospitals and homes for the elderly; at home; and kerbside and mobile voting.

<b>Optional Protocol</b>	Legal instrument that establishes additional substantive rights and obligations to a treaty for those parties that subscribe to it. It enables certain parties to the treaty to establish among themselves a framework of obligations that go beyond the general treaty, to which not all parties of the general treaty consent. The Optional Protocol may address ancillary matters such as interpreting treaty clauses or regulating technical aspects.
<b>Parallel vote tabulation (PVT)</b>	A proven methodology employed by non-partisan citizen observers to independently verify official election results. PVT is based on a systematic assessment of voting and counting processes. Unlike exit polls, PVTs do not ask citizens how they voted; they rely on trained observers collecting data at polling stations (NDI)
<b>Persons with disabilities</b>	Persons with long-term physical, mental, intellectual or sensory impairments that, in interaction with various attitudinal and environmental barriers, impair their full and effective participation in society on an equal basis with others (UN).
<b>Plurality/majority (Electoral system)</b>	Electoral system family based on the principle that a candidate(s) or party with a plurality of votes (i.e., more than any other) or a majority of votes (i.e., 50 per cent plus one—an absolute majority) is/are declared the winner(s) of an election. Such a system may use single-member districts (e.g., in ‘first-past-the-post’ systems, alternative vote or two-round systems) or multi-member districts (e.g., block vote and party block vote).
<b>Polling</b>	Stage of the electoral process that involves (1) identifying individuals as legitimate voters at the polling station and (2) the act of voting by marking/selecting and casting the ballot.
<b>Polling station</b>	Venue established for the purpose of polling, controlled by polling officials.
<b>Postal voting</b>	Mechanism by which a voter marks/selects his or her ballot paper and returns it by post to a legally designated official.
<b>Proportional representation (PR) (Electoral system)</b>	Electoral system family based on the principle of translating the overall votes for a party or grouping into a corresponding proportion of seats in an elected body. All PR systems require the use of multi-member districts. There are two major types of PR system: list PR and single transferable vote (STV).
<b>Protocol</b>	Protocols can assume differing functions in international treaty law. The Guidelines invoke solely those that establish additional rights and obligations to a treaty. Such protocols enable certain parties to the treaty to agree among themselves to a framework of obligations that reaches beyond the treaty.

<b>Proxy voting</b>	Voters who fulfil certain legal qualifications may be allowed to appoint a proxy to cast a vote on their behalf if they are unable to attend a voting station because of infirmity, employment requirements or temporary absence from the area of registration on election day.
<b>Quota</b>	Number of seats in an elected body, or the proportion of candidates nominated by a party or grouping that is required by law to be filled by representatives of a particular kind (most commonly women). The term can also be used to indicate the number of votes needed to win a seat in a particular electoral district in a PR system.
<b>Ratification</b>	The international act whereby a state gives consent to be bound by a treaty.
<b>Recount</b>	A recalculation, in full or in part, of the votes cast in an election or direct democracy instrument. Recounts can be carried out at the polling station level or at any level of the aggregation or tabulation process.
<b>Refugee</b>	A person who flees from his or her country as a result of conflict or natural disaster, which directly affects him or her.
<b>Registered voter</b>	Eligible voter who is included in an official list or register of electors.
<b>Registration of candidacies</b>	Act of determining the validity of applications to stand for election for political parties, coalitions and candidates and accepting those that meet defined criteria.
<b>Remedy</b>	Measures to enforce or restore a right through a court, administrative tribunal or equivalent authority, in the event that harm or injury is inflicted upon an individual or group.
<b>Remote voting</b>	A mechanism by which voters are enabled to cast a vote without attending a polling station on the day(s) fixed for voting
<b>Reservation</b>	Declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that state. A reservation enables a state to accept a multilateral treaty as a whole by giving it the option not to apply certain provisions with which it does not want to comply. A treaty might prohibit reservations or allow for only certain reservations to be made (Vienna Convention of the Law of Treaties).
<b>Reserved seats</b>	Seats in which a determinable criterion such as religion, ethnicity, language, gender or external registration is a requirement for nomination or election.

<b>Results management</b>	Set of operations to count, report, secure, track, transmit, tabulate, consolidate, announce, disaggregate and publish election results.
<b>Signatories</b>	Within the context of public international law, the term refers to states or international organizations that have expressed their commitment to be bound by a treaty through its formal signature by an official representative of the state who has the authority to bind the state.
<b>Single-member district</b>	Electoral district that elects only one member to a legislature or elected body.
<b>Special polling site</b>	Polling sites established in a hospital, psychiatric ward, military facility, prison, retirement home or similar institution to enable voters who may not be able to access other polling stations to cast their vote.
<b>Spending limits or caps</b>	Maximum amount that electoral candidates can legally spend during the electoral campaign period or during a defined period of time. Spending caps or limits can also cover third-party expenditure on behalf of, or for the benefit of, a political party or candidate.
<b>Standard</b>	Document that details requirements, specifications, guidelines or characteristics about processes that are accepted by a group of individuals, states or organizations and that can be used consistently to ensure that materials, products, processes and services are fit for purpose (International Organization for Standardization). Criterion for measuring acceptability, quality or accuracy' (Black's Law Dictionary).
<b>State of emergency</b>	Public emergency that threatens the life of a nation (ICCPR, Art.4; CCPR, GC 29).
<b>Suffrage</b>	The right to vote.
<b>Tabulation of votes</b>	The process of compiling the results of polling stations at the regional or central level. Also known as consolidation, aggregation or amalgamation of results.
<b>Temporary Special Measures (TSMs)</b>	Affirmative action provisions designed to secure the full and equal enjoyment of human rights and fundamental freedoms for disadvantaged groups. These measures are temporary by nature and should remain in place until they are no longer needed (CEDAW; ICERD).



<b>Tendered voting</b>	Specific voting procedure in which voters claim, but cannot prove, their identity and/or eligibility to vote at a particular polling station. These voters may be allowed to vote, with the ballot's validity suspended until subsequent verification of eligibility and/or identity.
<b>Threshold</b>	Minimum percentage of votes a political party, coalition or a candidate needs in order to win seats. Formal thresholds are legally established percentages of the valid votes cast, while effective or natural thresholds arise from the quotient of votes necessary to be awarded a seat in a given constituency.
<b>Treaty</b>	An international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation (Vienna Convention on the Law of Treaties).
<b>Treaty-based body</b>	Body of independent experts appointed through UN mechanisms and tasked by the relevant treaty itself to monitor treaty implementation.
<b>Voter</b>	Person who is qualified and registered to vote in an election or under a direct democracy instrument. The Guidelines use the terms 'voter' and 'elector' interchangeably.
<b>Voter education</b>	Process that raises stakeholders' awareness of the electoral process, including the procedures for voter registration and voting.
<b>Voter eligibility</b>	Criteria legally imposed on persons in order to be able to exercise their right to vote, often through a prior registration phase.
<b>Voter impersonation</b>	Type of electoral fraud in which a person casts a vote for an eligible voter without being legally authorized.
<b>Voter registration</b>	Process of establishing individuals' eligibility to cast a ballot in an electoral process or direct democracy instrument by including eligible individuals on a register through different types of data gathering processes.

## Annex B

# About the contributors

**Martina Garbuglia** served as research assistant for *International Obligations for Elections: Guidelines for Legal Frameworks*. Previously, she worked for the NEEDS Project, the International IDEA West Africa Office, ULB-CEVIPOL and the European Parliament. She has taken part in international electoral observation missions organized by the European Union, the Carter Center and Democracy International, and cooperated with the ACE Electoral Knowledge Network. Ms Garbuglia holds a BA in Political Science and a postgraduate degree in Development. She is a semi-accredited BRIDGE facilitator.

**Ron Gould** is the former Elections Canada assistant chief electoral officer. The architect of Elections Canada's international programme, he has carried out over 100 electoral-related missions in over 70 countries since 1984, including electoral consulting, planning and observation. Mr Gould was responsible for designing and organizing the 'first' elections in Cambodia and Bosnia, and was one of the international electoral commissioners for the first South African post-apartheid election in 1994. He has advised the UN, Commonwealth, OAS and OSCE/ODIHR. He has headed or been actively involved in electoral missions for IFES, International IDEA, the Carter Center and the Inter-American Union of Electoral Organizations, among others. Mr Gould has published *Strengthening Democracy: A Parliamentary Perspective* (1995) and *A Guide for Election Observers* (1995), and was one of the initiators of International IDEA's *International Electoral Standards: Guidelines for Reviewing the Legal Framework of Elections* (2002). He graduated from Toronto University, and has undertaken specific studies at Laval University, Carleton University, McGill University, Queen's University and at the Public Service Commission in Canada.

**Leandro Nagore de Sousa** has participated in over 20 international electoral observation and expert missions, as well as assistance projects for national citizen observers in 16 countries on four continents. Since 2009, he has been regularly involved in the development and delivery of face-to-face and online courses on national and international election observation and management. He also contributes to several projects aimed at the development of methodological and practical tools for election observation and management, notably through the EDGE Foundation. He has a BA in Philosophy, Politics and Economics and a post-graduate degree in Public International Law.

**Domenico Tuccinardi** is currently senior programme manager for International IDEA's Global Programme. From 2008 to 2012, he was director of the NEEDS Project. A specialist in electoral management and electoral legislation, voter registration and electoral technology, he has worked in electoral assistance and democracy development in Eastern Europe, the Middle East, Asia and Africa for 18 years. He previously served as special adviser for the EU to the Referendum Commission on the Independence of Montenegro, led the EU Assistance Project for the first Constituent National Assembly of Iraq, and was deputy director of the OSCE Elections Department in Bosnia, the OSCE-delegated commissioner in its first National Election Commission. Among his appointments in electoral observation, Mr Tuccinardi was deputy chief observer for the EU Election Observation Missions in Venezuela and Nicaragua. He has written articles for international democracy reviews, co-authored the *EU Methodological Guide on Electoral Assistance* (2005), contributed to several International IDEA electoral handbooks and has managed the establishment of the Practitioners' Network of the ACE Electoral Knowledge Network. He holds a Law Degree and an MA in International Law and International Relations.

**Manuel Wally** has served as international legal adviser in more than 20 electoral assistance and electoral observation missions. He has worked in Sudan, South Sudan, Côte d'Ivoire, Uganda, Malawi, Senegal, Niger, Pakistan, Fiji, Egypt, Kenya, Tanzania, Burundi, the Central African Republic, Comoros, Rwanda, Yemen and the Solomon Islands. Before that, he worked for political campaigns, civil society and public interest law firms in the United States and the European Union. He earned his LLB with honours at the University of London, and his PhD at the University of Salzburg. He currently lives in Dakar, Senegal.

## Annex C

# About International IDEA

### **What is International IDEA?**

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide.

The objectives of the Institute are to support stronger democratic institutions and processes, and more sustainable, effective and legitimate democracy.

### **What does International IDEA do?**

The Institute's work is organized at global, regional and country level, focusing on the citizen as the driver of change.

International IDEA produces comparative knowledge in its key areas of expertise: electoral processes, constitution building, political participation and representation, and democracy and development, as well as on democracy as it relates to gender, diversity, and conflict and security.

International IDEA brings this knowledge to national and local actors who are working for democratic reform, and facilitates dialogue in support of democratic change.

In its work, International IDEA aims for:

- increased capacity, legitimacy and credibility of democracy;
- more inclusive participation and accountable representation; and
- more effective and legitimate democracy cooperation.

### **Where does International IDEA work?**

International IDEA works worldwide. Based in Stockholm, Sweden, the Institute has offices in the Africa, Asia and the Pacific, Latin America and the Caribbean, and West Asia and North Africa regions.